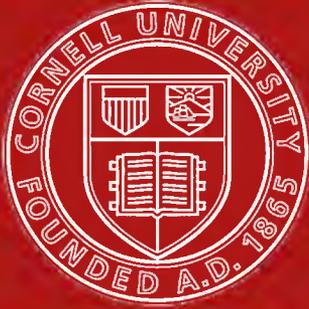


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STATHAM'S

ABRIDGMENT OF THE LAW

TRANSLATED BY

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II

BOSTON
THE BOSTON BOOK COMPANY
1915

Chartre

Le vie y q' & garnise fust mort Et s'mz p' & ch're fust alloune p' o'.

En accompte Verz vne h il fust v' & au ch're de p'don p' fust scire fao' p' o' a q'le vie y q'il nau vien'z donnt ee' garny p' ore il vient p' pria q'il p' coumb' Verz ledit h. **Hynd** vo' couient de suer sicut alias qar q'mt vne scire fao' e' ag' il ne peut y sinon q'il veigne p' le pro' mez al sicut alias il peut p' & mischiek sicome en vne vouche' al sc'm il ne p' y sinon q'il soit som'. mez al sequat' il p' pur & mischiek p' o' **Tu** lou v'n est vouche' p' est prest denty' demit q' as' som' issit il peut enty' en & garny assetz bn' p' o' puis sicut alias fust ag' p' o' p' hoc sequit' q' & sicut alias est pemptoy' p' o'.

En dette port' p' iii. Verz iii. tanq'z ils sup' v' & vne de eux fust ch're de p'don p' au scire fao' Verz lez iii. p' o' Et le vie y q'un fust garny p' q' l'autrez ii. onnt vien'z p' o' **Percy** il q' e' garny ne vient p' q' no' prio' q'il soit d'de a cel entent q' sil ne veigne q'il soit nonnsue en q's cas & nonnsute lun de eux est & nonnsute de toutz auxib'n come en & p'rim' acc' p' o' p' puis il fust d'de p' appust p' attourney p' q' sicut alias fust ag' Verz lez ii. p' idem dies don' a luy p' q'rc si al sicut alias toutz iii. veign' silz & y rescen' de comtee Verz luy p' o' **En** le p'rim' cas ils ne poient coumb' Verz luy tanq'z o' compaign' veign' p' o' mez credo q'il au idem dies tanq'z l'autrez onnt sue louy ch'rez q're bn' p' o' en **Scip' R** p' o'.

En dette le def' p' v' & au ch're de p'don p' fust scirek a q' & p' declare p' o' p' & p' troua maym/ pris p' au iony' onty' a q' & io' il fust def' et & p' pria q' & ch're soit disalloune Et l'oppinion **vouly** q'il sera alloune p' cap' issa' Verz o' maymgnontz p' sibe m' & terme en dette lou sur & scirek le def' ple' d' en bay' p' & p' demurre en ley sur le ple' p' l'oppinion q' & ch're sera aloune p' o' maint' p' o' q're.

Le Baron p' o' seme sup' v' & feme au ch're de p'don p' myst' am't al' & courte p' pria p' **Neuton** q'ele peut aler a large **Thiru** vous priez bn' qar nous n' poio' alouuer qar ele ne peut au scirek s'mz & bay' p' q'le ch're fust rebail' a & feme p' ele al' a' a' large p' o' semble q' ele fust emprisonne p' capias v' legab' p' fust o' ch're p' o'.

En dette & baron p' & feme sup' v' & & feme au ch're de p'don p' le me' al' & courte p' pria de' dismyf se eo q' ele ne prut au scire **Rhank** al' & ceu ley q'mt vne fust v' & au ch're de p'don & p' fust mys a nouel' & original' & m' & cas est icy p' q' ele fust dismyffe et & p' au capias v' & Verz & baron p' o' & feme q're si & baron au ch're a p'z sil' a'na scire fao' en & nonn' demesne ent' less'mt' o' feme p' il' seble q' nom' p' o'.

En trans & def' dit q' & p' fust v' & & p' myst' a' m't ch're de p'don q' fust parchace pen' d' & b're p' fust ag' bon' p' o'.

Une fust atteynt eu appelle p' luy prist a & clergie p' & p' dit q'il fust bigamus p' b're issit de le certifier p' puis & p' murust p' le def' au ch're de p'don Et par & q' o' espal' & mat' ne fust p' reherce en le ch're l'oppinion q' ceo ne vaut p' o'.

En appelle Verz ii. p' vne feme p' ils sup' vil' agez a sa s'ur' p' puis lunde eux purchace ch're de p'don p' au scip'k Verz & p' q' fust garny p' ne vient p' p' q' & ch're fust aloune p' puis l'auty' de R' parchace ch're de p'don p' pria q'il soit aloune **Hank** vo' col' dau' scip'k **Noxon** non' si qar le seme est garny al' sup' de ma compaign' p' ne vient p' issit e' le original' & de vie **Hank** sil' fust en tiel' & acc' en q' & p' d'ust cont' sur & p'rim' original' & vous ditz & ley mez en o' cas ele ne coumb' a p' mez & y dit a vous si vous suez rienz dire pur q' vo' ne setez penduz p' q' ag' fust q'il fust scire fao' sil' voil' & no' ceo mat' p' d'ussez causez p' o'.

En appelle de mort dome & def' ad ch're de p'don p' scip'k Verz & p' & & vie y q'il est mort o' ch're ne sera alloune tanq'z il ad vne scip'k Verz o' heire p' o' simile **Th'chaes** .xi. h. iiii. p' o'.

Un fust v' & al' fuit le deane p' le chapitre de l'ic'h'sel' Dien' b're de dette p' il fust ch're de p'don p' scip'k fao' Verz lez p' & & vie y q'il s' sup' garnys a q' & iour lez def' dit q' puis & dary' contians & deane fust mort p' pria q' & chartre fust alloune p' q'il fust dismyffe Et p' o' q' l'attourney lez p' ne p' ceo' dediy' ag' fust q' & ch're fust alloune p' o' il' semble q'il nau' tiel' & excep'cion' demit' declarao' t'n' p' cas le report' ne cy p' set' p' o'.

Hillarii. xl. E. iii.
Hillarii. xl. viii. E. iii.

Hillarii. xl. viii. E. iii.

Hillarii. l. E. iii.

Trinitatis. xi. h. iiii.

Hillarii. xiii. h. iiii.

Michaelis. xxxii. E. iii.

Michaelis. xi. h. iiii.

Michaelis. ix. h. iiii.

Pasche. ix. h. iiii.

Anno. xi. h. vi.

STATHAM'S ABRIDGMENT

EXTENT⁴⁹

(1) **If a man** recovers in value, and a writ issues to extend the land, and the sheriff returns the extent, the vouchee may pray that it be entered that the demandant recovered against the tenant, and he over against the vouchee, saving to the vouchee his advantage of the said extent *si ipsum imposterum calumpniare voluerit*, then he can have a re-extent. And if it be found to be more than it was at first, he shall be recouped, etc. And that extent shall be made in the presence of the tenant, as it should be, etc. And if the lands be in the same county, he shall have an extent in the writ *De Habere Facias ad Valenciã*, to wit: all upon one *Præcipe quod Reddat*. Trinity
7 Hen. IV.

Reported in Y. B. Trinity, 7 Hen. IV, p. 19, pl. 27. The point in the abridgment is wholly upon the Latin text; the point in the French portion of the case is not touched upon in the abridgment. Case 1.

(2) **A man recovered** damages in a writ of Waste, and had an *elegit*, and the defendant came and said that it was extended for too little, and he prayed a re-extent and had it. Which note, etc. (But yet that is hard to prove, because he could do so *ad infinitum*, etc.) Hilary
21 Ed. III.

The case has not been identified in Y. B. Hilary, 21 Ed. III. Fitzh: Case 2. Extent, 3, has the case.

⁴⁹ We have in our two cases but a very slender exposition of the old law of extents. Indeed we have no indication of the older law, that of the old manorial extent, of which we have so many examples in the publications of the Camden Society: The Black Book of Peterborough; the Domesday of St. Paul; the Battle Cartulary; The Worcester Register. The Bolden Book, printed at the end of Domesday, gives many examples. It is this manorial extent that is treated of in the History of the Law of England by Pollock and Maitland, and perhaps this was the most interesting example of the extent. The extent

of which our two cases are examples is simply the valuation of lands. When completely valued they were said to be fully extended.

EXTENTISEMENT⁵⁰

Statham 94 b. (1) **In debt** upon the arrears of a lease for the term of ten years, which were passed, the demand was for rent for four years. FULTHORPE: Judgment of the count, for he has not shown that he was satisfied as to the remainder. For in debt upon an obligation for twenty pounds, the plaintiff in his declaration demanded only ten pounds, and did not show that he was satisfied as to the remainder, the whole abated; and so here. CHAUNT: Not the same, for in the case that you have put it is an entire debt; but in the case here the rent is separate, and we could have the rent for each one, or a writ of Debt, etc. And the count was held good, etc. FULTHORPE said that within the term, the plaintiff had entered on part of the leased land, and before he entered there was nothing in arrear, etc., and as to the remainder, "nothing due him," etc. CHAUNT: The first plea goes to the whole, for all this rent is entire as a rent charge, wherefore it is not in the case of the Statute, etc.

Case 1. Reported in Y. B. Mich. 7 Hen. VI, p. 2, pl. 7. See also Brooke, Extinguishment, 17. The Statute is that of 52 Hen. III (1350), cap. 16. Marlbridge, Stats. at Large, Vol. 1, p. 55 (68).

Michaelis
26 Hen. V. (2) **See by Newton**, in Avowry, that if there be a mesne lord and a tenant, and the lord purchases of the mesne, the lordship of the mesne is gone. And the reason is because he who was lord paramount holds the land over of the king, or of another person, and is tenant to himself of the lands, for before the purchase of the mesne he held the same lands by certain services, which services still endure, and he is his tenant and no other; then he cannot hold of him and also of the mesne, etc. ASCOUGH: He holds of both, because he came to the lands by his own purchase, etc.

NEWTON: And if so, then he holds of the mesne, and the mesne holds of no one, which is an inconvenience which cannot be; although the mesne shall have his rent as a rent seck, etc., but all the mesne services are gone: which PORTYNGTON conceded, etc.

There is no printed year of 26 Hen. VI. Fitzh: Extentisement, 7, Case 2. has the case.

⁵⁰ Our first case, as it is reported at length in the Year Book, gives us a fair idea of this destruction or extinguishment of a rent. The case is argued at great length. Cowell says that "Extinguishment in our law signifies an effect of consolidation: For example, if a man have due to him a yearly Rent out of any Lands, and afterwards purchase the same Lands, now both the Property and Rent are consolidated or united in one Possessor; and therefore the Rent is said to be Extinguished." [Cowell, Interpreter: Extentisement.]

Coke has much learning upon the matter, not only in regard to rents [Coke, 1st. Inst. pp. 147, a, 149, a] but also in regard to the extinction of them. [See that title as to the extinction of a seignory (*supra*, p. 83, a), the extinction of a mesnalty, and many other points.]

FORMEDON ⁵¹

(1) **In formedon** in the descender, the tenant said that the demandant formerly brought a Formedon in the remainder against us, for the same tenements, by which writ he demanded a fee simple, etc. FYNCHEDEN: Did he take title by the same gift? KYRTON: No, sir, but by another. FYNCHEDEN: Then the writ is good, etc. And they adjourned, etc. Statham 95 a,
Paschal
40 Ed. III.

Reported in Y. B. Paschal, 40 Ed. III, p. 21, pl. 16. See also Brooke, Case 1. Formedon, 77. The case has references to a number of later cases, evidently put in by the compiler of the Year Books.

(2) **In formedon** in the descender, by one under age, the tenant pleaded in bar the warranty of his ancestor with assets, etc. BELKNAP: Show where there are assets. CANNISH: We will do that when you are of age. And the opinion was that he should show them immediately, and he did so. Which note, for if he were of age he should Michaelis
40 Ed. III.

not show them *prima facie*, but after the rejoinder of the demandant, etc.

- Case 2. Reported in Y. B. Mich. 40 Ed. III, p. 39, pl. 17.
- Michaelis
5 Ed. III. (3) **In formedon** in the remainder, he bound the esplees solely in the person of him to whom the gift was made; and in Formedon in the reverter, in the donor, and also in the donee; and yet it seems but reasonable that he should not need to bind the esplees in the donee, for he did not claim anything of his possession, etc. The law is the same in a writ of Escheat, etc. Query?
- Case 3. The only case of a Formedon in Mich. 5 Ed. III which resembles the case digested is that in Y. B. Mich. 5 Ed. III, p. 35, pl. 6. The latter part of the digested case is wanting, and probably refers to another case.
- Trinity
42 Ed. III. (4) **In formedon** in the descender, or in the reverter, the writ should mention all those who held the estate after the gift; but it is otherwise of a *Scire Facias* out of a fine. As appeared Trinity, 42, in a *Scire Facias*. (Study as to the difference, etc.)
- Case 4. Reported in Y. B. Trinity, 42 Ed. III, p. 19, pl. 4, but the point made is rather obscurely shown in the case. The identification may not be correct.
- Hilary
43² Ed. III. (5) **Where land** is given to a man in tail, and he has issue two daughters, and one daughter has issue, and the other also, and they die, and their issue are to bring an action; if the daughters were never seised they shall make themselves heirs to their grandfather and show that the moiety which belonged to one daughter should descend to one, and the other moiety which belonged to the other daughter, to the other; and they shall have separate writs. And if the daughters were seised after the death of their father then they shall make themselves heirs to them and the writ shall be "*insimul tenuit*" and after partition, "*in purpartiam tenuit*," etc. See the plea, for various reasons, etc. In Formedon.
- Case 5. Reported in Y. B. Paschal (not Hilary), 43 Ed. III, p. 16, pl. 19. See also Brooke, Formedon, 54; and Fitzh: Formedon, 24.

(6) **In formedon** in the descender, it was alleged that the third part of a manor was in one H, and E, his wife, in tail, and he as cousin and heir to them brought Formedon for the moiety of the third part. BELKNAP: He had another writ against us for the other half, by which he made himself heir to one M, "*que prædictam medietatem tercie partis insimul tenuit*" with one A, mother of the plaintiff, so that by that writ he has admitted a possession of one-half of the lands, etc. BELKNAP: If the case be such that this M entered and held A out, so that she was but an abator of the half, we cannot have any other writ, wherefore if you will not show in fact that A was seised, your plea will not abate our writ: which was conceded.

Paschal
43 Ed. III.

Reported in Y. B. Hilary (not Paschal), 43 Ed. III, p. 7, pl. 21. See Case 6. also Brooke, Formedon, 53; and Fitzh: Formedon, 23. However, the report does not present some features of the case as it appears in Statham and each abridgment differs from the others.

(7) **If lands be given** for term of life, the remainder over in tail; the tenant for term of life dies, he in the remainder enters and discontinues the tail and dies; his issue can have Formedon in the descender, alleging that the lands were given to his father, without speaking of the tenant for term of life, etc. And the writ [was adjudged] good, etc.

Paschal
43 Ed. III.

Reported in Y. B. Paschal, 43 Ed. III, p. 8, pl. 7. See also Brooke, Case 7. Formedon, 14; and Fitzh: Formedon, 26.

(8) **In formedon** in the descender, a man shall mention in the writ all who could have held the estate lineally, and he shall make himself heir to him who was last seised, and show how, etc.

Hilary
48 Ed. III.

Reported in Y. B. Hilary, 48 Ed. III, p. 7, pl. 13. See also Brooke, Case 8. Formedon, 17.

(9) **In formedon**, if a man makes himself cousin and heir to the donee, by way of resort, the writ shall not mention how he is cousin, etc., but he should show it in his count, etc. See the *Registrum*.

Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments. Case 9.

- Paschal
5 Ed. III. (10) **In formedon** in the descender, the tenant demanded judgment of the writ for it was "*per formam donationis prædictæ*," whereas it should be "*per formam donationis et participationis prædictarum*." HERLE: The writ is good enough. (But yet that should be shown in his count), etc.
- Case 10. Reported in Y. B. Paschal, 5 Ed. III, p. 13, pl. 4.
- Michaelis
10 Ed. III. (11) **The writ was** that one A gave to one R, in tail, etc., and that *post mortem prædictus R, et G, filius ejusdem R*, aforesaid, it ought to descend to the demandant, as to son and heir of G, etc. And because he did not make G heir to the donee the writ was abated, notwithstanding he showed it in his count, etc.
- Case 11. The case has not been identified in Y. B. Mich. 10 Ed. III, or in the early abridgments.
- Michaelis
10 Ed. III. (12) **If I lease lands** for life, and then grant the reversion in tail to one who has issue and dies, and the tenant for life dies; the issue shall have Formedon in the remainder, and not Formedon in the descender, because his father had no possession, etc. Contrary, Hilary 4 of the same king, where it was held by HERLE and STOUFORD that a man shall not have Formedon in the remainder except where the remainder is tailed by the same deed, etc.
- Case 12. The case has not been identified in Y. B. Mich. 10 Ed. III, or in the early abridgments.
- Michaelis
18 Ed. III. (13) **Formedon** was brought, and the writ was "*præcipe quod reddat medietatem exituum provenientium de duobus molendinis*," etc. And it was held good, etc. *Simile* Hilary, 10 Hen. IV, in a *Cui in Vita*, etc.
- Case 13. The case has not been identified in Y. B. Mich. 18 Ed. III, or in the early abridgments.
- Michaelis
21 Ed. III. (14) **In formedon** in the descender, on a gift made to a man and to A, his wife, in tail, he made himself heir to them. GRENE: This husband, to whom it was given, alienated the said tenements before the Statute. Judgment if action. THORPE: Since we can have no other writ, but this action is given to us instead of a *Cui in Vita*, judgment,

etc. WILLOUGHBY: If they of the Chancery will grant you a *Cui in Vita*, to wit: "*quam clamat tenere sibi et hæredibus de corpore suo exeuntibus,*" we will admit it to be good. And then the tenant freely admitted that the writ was good, etc.

WILLOUGHBY said in the same plea, that on a gift in tail, made before the Statute, and an alienation after the Statute, a man shall have Formedon, for the Statute is "*Quod alienationem imposterum faciendam locum habet, etc., et ad dona prius facta non extenditur,*" which word "*dona*" is meant to apply to an alienation, etc.

Reported in Y. B. Mich. 21 Ed. III, p. 45, pl. 63.

Case 14.

The Statute is that of Westminster the Second, 13 Ed. I (1285), cap. 1, Stats. at Large, Vol. 1, p. 166 (164). The words of the writ as given by the Statute are "*Quod alienationem tenementi contra formam doni imposterum faciendam locum habet et ad dona prius facta non extenditur.*"

(15) **In formedon** in the descender on a gift made to the grandfather of the demandant, he made the descent from the said grandfather to one B, and from B to C, and from C to himself as to brother and heir, etc. HULS: Judgment of the writ, for it should be "Since his brother died without an heir of his body." THIRNING: In Formedon in the remainder it shall be as you say, but in this case the writ is good, wherefore answer.

Michaelis
3 Hen. IV.

Statham 95 b.

And see that in Formedon in the remainder or in the reverter, the writ is "Since the donee died without an heir," etc., for in these writs he cannot do anything else, for otherwise he has no cause of action. And also he cannot make himself heir to them except in that case, but where he makes himself heir it will be understood that he died without issue, etc. And the law is the same in a writ of Cosinage, for the writ does not say, "Since he died without issue." And in Formedon in the remainder, if the remainder is tailed to his brother after the death of the donee in tail, he shall say in his writ that the donee is dead without issue but he shall not say that his brother is dead without issue, etc. But that after the death, etc., as in Formedon in the descender, etc.

Reported in Y. B. Mich. 3 Hen. IV, p. 1, pl. 3. See also Brooke, Formedon, 21; and Fitzh: Formedon, 12. Statham has a fuller report than the Year Book, or either of the abridgments.

Case 15.

Hilary
40 Ed. III.

(16) **If land be tailed** to descend to two daughters, and one of them enters into the entirety and keeps the other out; and the other has issue and dies, and she who entered into the whole dies without issue, the issue of the other shall have Formedon for one half and she shall be heir to her grandfather, because her mother was never seised; and as to the other half she shall make herself heir to her aunt, etc. And the writ shall be "*insimul tenuit*" with her mother. Still the writ is false, for her mother was never seised; but she cannot have another writ, etc.

Case 16. Reported in Y. B. Hilary, 40 Ed. III, p. 8, pl. 17. See also Brooke, Formedon, 5; and Fitzh: Formedon, 21.

Trinity
49 Ed. III.

(17) **In formedon** in the descender, the writ was "and that after the death," etc., the gift ought to descend to the demandant as cousin and heir, etc. And he was forced to show in his count how he was cousin, etc. As in a writ of Cosinage, etc.

THORPE said, in the same plea, that where the gift was made to one H, and many held the estate afterwards, in that case the writ should say, "and that after the death of the donee, and one such, the daughter and heir," etc., and so of each one; and he should make himself heir to him who was last seised, etc. But where they did not hold the estate the writ shall say (as above). But yet in the Chancery they are accustomed to say, "and that after the death of the donee and one such, daughter and heir," etc., and so of each one until [they come] to him who made the discontinuance, and from him on, unless he be left out as heir, etc., so that it may afterwards appear in the writ who made the discontinuance. For if the donee made the discontinuance the writ shall say, "And that after the death of the donee and one such, the daughter of the donee," and so as to each one, without calling any of them heir, etc.

Case 17. Reported in Y. B. Trinity, 49 Ed. III, p. 20, pl. 4. See also Brooke, Formedon, 19.

Michaelis
19 Hen. VI.

(18) **In formedon** for the manor of H, the writ was that the mother of the demandant held in purpart, etc. YELVER-

TON: Judgment of the writ, for the writ is "*præcipe quod reddat manerium*, etc., H," of which such a one gave, whereas it should be "*simul cum alio manerorium*" or another thing, for she cannot have the whole manor in purpart, unless the other thing was given with the manor. MARKHAM: That would be a good exception in an "*insimul tenuit*," but not here, for if a man had one manor in fee simple and another in fee tail, his daughters could make a partition, and one could have one manor and the other the other manor, wherefore the writ is good. YELVERTON: Then if she who had the manor in fee simple alienated, her issue is without remedy. NEWTON: It is not so, for she shall have Formedon for the manor which is entailed, for the partition does not prevent her, when her mother had alienated it. And even if it were not alienated, then still she could have Formedon, as it seems. PORTYNGTON: The issue in that case can enter into the entailed manor. NEWTON: Not so, for the partition is as strong as a discontinuance. And they adjourned, etc. Query, could one parcener recover *pro rata* in such a case? etc. See that the case of "*insimul tenuit*" is not similar to this case, for there it cannot be brought except for the half, etc.

The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the Case 18. early abridgments.

(19) **In formedon**, the count was that the gift was made to one B and Alice in frank-marriage, and they bound many descents. SKRENE: It appears by these descents that the fourth degree is passed, so it has become a common tail, in which case the writ shall be for a general gift, since the frank marriage is impaired, etc. Query?

Michaelis
12 Hen. IV.

Reported in Y. B. Mich. 12 Hen. IV, p. 9, pl. 15. See also Brooke' Case 19. Formedon, 27; and Fitzh: Formedon, 15.

See as to formedon, in the title of Gift, etc.

Note.

Statham, title Donne, p. 71 a, *supra*.

(20) **A man** shall have Formedon in the reverter for rent, without showing a deed. The law is the same in Formedon in the descender for rent.

Michaelis
18 Ed. III.

- Case 20. The case has not been identified in Y. B. Mich. 18 Ed. III, or in the early abridgments.
- Michaelis 12 Ed. II. (22) **Formedon** for a common in gross was adjudged good, etc.
- Case 21. The case has not been identified in Y. B. Mich. 12 Ed. II, or in the early abridgments.
- Trinity 15 Ed. III. (22) **Formedon** for a Corody, to wit: for rent and certain bread, is good; by the opinion of the COURT. And that in a Formedon.
- Case 22. There is no early printed year of 15 Ed. III. The case has not been identified in the Rolls Series for that year and term.
- Trinity 18 Ed. III. (23) **Where a remainder** is limited to two and their heirs and one dies, the other shall have Formedon, alleging that the remainder was tailed to him, without speaking of the other. But he shall tell in his count how it was tailed to both, and that the other is dead, etc.
- Case 23. The case has not been identified in Y. B. Trinity, 18 Ed. III, or in the early abridgments.
- Note. **See as to formedon**, in the title of Issue, Mich. 15 Ed. III. Good matter, etc.
- See Statham, title of Issue, *infra*, p. 117 b, case 43.

⁵¹ The books are so full of Formedons, and so much has been written of them, while the Statute *De Donis* is more than well commented upon, that there seems no further need of much speaking about it. Yet we have in our abridgment no great number of cases, and Fitzherbert enlarges our twenty-three to sixty-eight only. The Year Books begin to give us their cases very soon after the promulgation of the Statute *De Donis*, and as a natural result we have the discussions founding themselves upon the Statute. "The action was not given by the Statute, but was the outcome of pure common law doctrine and the practice of conveyancers." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 25.] Maitland says of the *forma doni*: "To our minds it is a mistake to suppose that our common law starts with rigid, narrow rules about this matter, knows only a few precisely defined forms of gifts and rejects everything that deviates by a hair's breadth from the established models. On the contrary in the thirteenth century it is elastic and liberal, loose

and vague. It has a deep reverence for the expressed wish of the giver, and is fully prepared to accept any new writs which will carry that wish into effect. From Henry III's day onward for a long time to come, the main duty in this province will be that of establishing some certain barriers against which the *Forma doni* will beat in vain." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 27, 28.] See also the cases on the subject in Fitz: *Nat. Brev.*, Formedon (pp. 486-505.)

FRANK MARRIAGE

(1) **In formedon**, a deed was produced which said, "*dedi, etc., in liberam maritagium habendum sibi et heredibus suis in perpetuum tenendum de capitalibus,*" etc. FYNCHEDEN: It seems that they shall have a fee tail, and a fee simple to their collateral heirs, because that may stand well together, etc. Query? For it seems that after the fourth degree is passed they shall have a fee, etc., for both clauses are so, etc. But yet, query? For if lands be given in frank-marriage, and the donor releases to them, they shall have a fee until the issue is spent, although the fourth degree be passed, etc. Query? For by such a release they have changed their tenure, for they do not hold in frank-marriage, since there is no one who can acquit them, etc. But it seems that if they alienate, their issue shall have Formedon, and count on a general gift, and not of the gift in frank-marriage, etc. But in the principal case here they cannot have free marriage, for they do not hold of the donor, consequently they have a fee, etc. As if lands be given in frank-marriage, the remainder over in fee, they hold, not by free marriage, but for the term of their two lives, etc. Query, if lands be given to a man in tail, the remainder to his heirs, how shall the lord have his avowry upon him? etc. And afterward, Mich. 46 of the same king, it was well argued, and it was held that the writ should abate, since it shall be called a common tail and not a frank-marriage, for the above reason. But yet, if they have a fee afterward, the tail is terminated, etc. (But yet it was hard to prove that this was a tail, etc.)

Statham 96 a.

Michaelis
45 Ed. III.

Case 1. Reported in Y. B. Trinity (not Mich.), 45 Ed. III, p. 19, pl. 22. See also Brooke, Frank Marriage, 1. The series of queries seems to have been due to Statham's own study of the question raised in the case. It is not in the report of the case in the Year Book.

Note. **See as to free marriage**, in the title of Wardship, Paschal, 31 Ed. III.

The citation does not appear in the title of Garde, Statham, *infra*, pp. 101 b, to 103 b.

FYNEZ

Hilary
42 Ed. III. (1) **A man** and his wife admitted the tenements which the husband held in the right of his wife, as her dower, to be the right of one J and his wife, for the life of the woman who made the conusance. And because the wife and her husband, to whom the conusance was made, sued by attorney, the Court would not accept the fine, etc. And that is strange, for she shall not be examined in that case, etc. Query, also, for that fine did not end the fee simple, etc.

Case 1. Reported in Y. B. Hilary, 42 Ed. III, p. 7, pl. 24. See also Brooke, Fynes, 14.

Hilary
42 Ed. III. (2) **The husband** and his wife made a conusance, etc., as, etc., and that the husband and his wife and the heirs of the husband warranted. And because it was found by examination that all was in the right of the wife, they would not admit the fine in such a manner, but that the husband and his wife and the heirs of the woman should warrant. But yet, if they had been joint tenants, the warranty of one of them would be accepted, but not the warranty of both, for uncertainty, etc.

Case 2. Reported in Y. B. Paschal (not Hilary), 42 Ed. III, p. 13, pl. 26. See also Brooke, Fynes, 15.

Trinity
44 Ed. III. (3) **A man** can levy a fine, reserving to himself a rent, and if the rent be in arrear, then he can distrain, but he cannot reserve a rent [an entry]¹ for default of payment, etc., consequently there shall not be any condition in the fine, etc.

¹ Words from the report of the case.

Reported in Y. B. Trinity, 44 Ed. III, p. 22, pl. 25. See also Brooke, Case 3. Fynes, 20; and Fitzh: Fynes, 36.

(4) **See a fine** levied in the court of an abbot, who had jurisdiction of pleas, etc. If such a fine be of force was well argued in a *Certiorari*, as appears in the title of Conusance, etc. Michaelis
44 Ed. III.

Reported in Y. B. Mich 44 Ed. III, p. 28, pl. 8. See also Statham, Case 4. Conusance, *supra*, p. 44 b, case 4.

(5) **A man** who has only a life estate cannot levy a fine to any other except to him in the reversion, for there the fee is ended, etc. Michaelis
45 Ed. III.

The case has not been identified in Y. B. Mich. 45 Ed. III, or in the early abridgments. Case 5.

(6) **One would** have granted and rendered certain lands, and could not, for FYNCHEDEN said that a man cannot charge lands of which he is not seised, and this fine is executory, etc. But it is otherwise upon a fine upon a conusance of right. And then he admitted all the right to be in the husband and his wife, rendering a certain rent with distress, etc., and the woman was examined. Which note, etc. Trinity
46 Ed. III.

Reported in Y. B. Trinity, 46 Ed. III, p. 15, pl. 3. See also Brooke, Case 6. Fynes, 27.

(7) **One A told how** one J, holding for life, the reversion regardant to him, granted and rendered the remainder to F, who was a party to the fine. And because he who rendered demised himself of the fee, they would not admit the fine without words of right, inasmuch as both are parties to the writ of Covenant. But if he be a stranger: as if I grant and render to one for life, the remainder over in fee, there is no need of words of right, etc. Statham 96 b.
Trinity
47 Ed. III.

The case has not been identified in Y. B. Trinity, 47 Ed. III, or in the early abridgments. Case 7.

(8) **Two men** granted by a fine that whereas one J held the tenements for his life, the reversion to them, and that it Paschal
21 Ed. III.

should remain to H, etc. And because the fee was not alleged to be in one of them solely, they would not admit it, etc. And then they treated the fine in this manner: Where J held for life, the reversion to them and to the heirs of one of them, they granted as above, etc. And so see that the fee should be determined in one person; as well on the part of the conusor as on the part of the conusee, etc.

Case 8. Reported in Y. B. Hilary (not Paschal), 21 Ed. III, p. 13, pl. 9. See also Fitzh: Fynes, 54.

Hilary
18 Ed. III.

(9) **If the tenant** by the curtesy grants his estate over, if he who is in the reversion would grant the reversion by a fine, he shall not mention him who had his estate, and yet the right passes. But query? How shall the attornment be made in that case?

And see in the same plea, that in those cases where a man wishes to grant the reversion, it can pass well enough without words of reversion, etc., for he can admit all the right that he had in the lands to be in another, etc., and by that admission all the reversion passes; and that is the common course, etc.

Case 9. Reported in Y. B. Hilary, 18 Ed. III, p. 3, pl. 9. See also Fitzh: Fynes, 111.

Paschal
18 Ed. III.

(10) **In a writ of dower**, the second tenant by his warranty entered into the warranty, and upon that a fine was levied between the demandant and himself, by which the demandant released and quitclaimed all the right; which was admitted. And so note that a fine can be levied upon every writ, etc., to wit: a fine upon a release, etc. And still, in that case, none of them had anything in the lands at the time the fine was levied, etc.

Case 10. Reported in Y. B. Paschal, 18 Ed. III, p. 12, pl. 3. See also Fitzh: Fynes, 112.

Michaelis
24 Ed. III.

(11) **One admitted**, etc., it to be the right of J. B. and C. D. as that, etc., by force of which they granted and rendered, etc., with warranty, of them all. And it was admitted because they were heirs in gavelkind, etc.

The case has not been identified in Y. B. Mich. 24 Ed. III, or in the early abridgments. Case 11.

(12) **The tenant** by the warranty levied a fine to the demandant of the lands in demand, and still he was not tenant in fact: By THIRNING, in a writ of Error. And it was said in the same plea, if a justice takes jurisdiction of a fine and then the king dies, the writ of Covenant shall be resummoned, and a writ shall issue to the justices to bring the conusor into the Bench, etc. Query? Michaelis 8 Hen. IV.

The second point is found on p. 5 of a very long report of a writ of Error, reported in Y. B. Mich. 8 Hen. IV, p. 3, pl. 6. See also Brooke, Fynes, 34. Case 12.

(13) **One H admitted**, etc., it to be the right of B, as that which the said B, and K, his wife, had of his gift; and he released and quitclaimed to them and to the heirs of the husband, with warranty. BABYNGTON: Where is the woman? WESTBURY: Here, by attorney. BABYNGTON: She should be here in her own person, for it may be that the land is in her right, in which case she shall be estopped from claiming another estate than a freehold. PASTON: No possession is changed by this fine. Query? etc. Paschal 3 Hen. VI.

Reported in Y. B. Paschal, 3 Hen. VI, p. 42, pl. 12. See also Brooke, Fynes, 7. Case 13.

See as to fines, in the title of *Scire Facias*. Note.

Statham, title of *Scire Facias*, *infra*, pp. 161 b to 166 a.

(14) **If a man** makes a fine in the Chancery by a writ, of lands which exceed forty shillings, or by debt or damage which exceed forty pounds, and that fine is entered of record in the Chancery, then if that writ be abated he shall have a new writ without making a fine. As was adjudged in the case of *Plumpton*. But yet it is to be distinguished, in regard to the matter for which it was abated, etc. Anno 20 Ric. II.

There is no printed Year Book for 20 Ric. II. The case has not been identified elsewhere. Case 14.

(15) **A fine was levied** upon a writ of Entry. But first the demandant counted and the tenant defended, and upon that Michaelis 5 Ed. II.

they prayed leave to agree, and upon that levied the fine, etc. And from this it follows that a fine can be levied upon every writ by which land is demanded, or upon other writs which charge lands; as a writ of Warranty of Charter, or a *Quid Juris Clamat*, or a *Per que Servicia* and writs of that sort, as it seems, etc.

Case 15. The case has not been identified in Y. B. Mich. 5 Ed. II, or in the early abridgments.

Michaelis
12 Ed. II. (16) **A fine was levied** for rent of lands, and rent was reserved with a clause of distress, etc. Query, if a man can grant a rent charge with distress, etc.?

Case 16. The case has not been identified in Y. B. Mich. 12 Ed. II, or in the early abridgments.

FEOFFMENTS ET FAITZ

Statham 97 a. (1) **In the bench**, they would not allow a deed [to be enrolled]¹ because by an examination they understood that no livery of seisin was made [by deed]. (But yet, although it had been enrolled, a man could say that nothing passed, although he be a party, etc. But he cannot say, "Not his deed," etc.) Query?

Paschal
44 Ed. III. Case 1. Reported in Y. B. Paschal, 44 Ed. III, p. 7, pl. 5. See also Fitzh: Feoffments et Faits, 52.

Trinity
45 Ed. III. (2) **In debt** upon an obligation, if the defendant pleads an acquittance and the plaintiff cannot deny it, the obligation shall be condemned, etc. And the law is the same in all cases where the party cannot have an Attaint. And although the party reverses this for error, if the deed was admitted by the plaintiff, to wit: the acquittance, he shall never have an action upon that obligation, etc.

Case 2. The case has not been identified in Y. B. Trinity, 45 Ed. III, or in the early abridgments.

Hilary
1 Hen. VI. (3) **A deed can have** two deliveries, and the second delivery is good. And that is in the case where the first delivery was void; as if I release to one who had nothing in the lands, that delivery is void; and then he purchases

¹ Words from the text.

the lands, and bails the deed to me, and I re-deliver it; then it is good. But it is otherwise as to a voidable deed, as where one under age makes a release, for it can take effect [at the first delivery],¹ etc. In a note. *Simile* Mich. 8 Hen. VI.

There is no printed Hilary Term for 1 Hen. VI. There is a case in Mich. 1 Hen. VI (the only printed term for that year), p. 4, pl. 16, in which the question is discussed, and the statement in the case, that but one delivery of a deed can be good, is controverted, and the point made in the case abridged by Statham is touched upon. See also Fitzh: Feoffments et Faits, 1. Case 3.

(4) **An inquest** came to the bar, and the issue was whether the lessee had a term for life of the lease of the plaintiff, or at his will. **FORTESCUE**: A deed indented was produced in evidence to the jury, which witnessed the lease to be made for life, but no livery of seisin was made, wherefore it is obscure to the jury. **NEWTON**: If you find that no livery of seisin was made, albeit the plaintiff commanded him to enter, still, if he entered, he had no freehold, nor is he a disseisor; then his estate is only at will. And it was so found, etc. Trinity
18 Hen. VI.

Reported in Y. B. Trinity, 18 Hen. VI, p. 16, pl. 6. See also Fitzh: Feoffments et Faits, 101. Case 4.

(5) **In an assize**, it was found by verdict that one J made a deed of feoffment to one Alice, whom he was to take to wife, and when they came to the door of the monastery to be married he himself bailed this same deed to her, and said, "I desire that you shall have these same tenements which you see there, which are comprised within this deed." And the tenements were in another county. And after the espousals she entered; in which [tenements] the husband agreed not to claim anything during the life of his wife, except in the right of his wife. And it was held a good feoffment. Hilary
38 Ed. III.

Reported in Y. B. Paschal (not Hilary), 38 Ed. III, p. 11, pl. 22. See also Fitzh: Feoffments et Faits, 47. There is nothing about the lands being in another county in the report of the case. Fitzherbert says the tenements were "beyond the cemetery of the monastery." Case 5.

(6) **Where a deed** is "*dedi, concessi, et confirmari*," a man can use it by way of a feoffment or by way of a Hilary
21 Hen. VI.

¹ Words from the case.

confirmation, whichever he will. But if he takes it once by way of feoffment he cannot take it afterward by way of confirmation, nor the reverse, etc. But yet this is to be understood to be where it takes effect through matter which is shown, for if it once takes effect in any way, it is sufficient, etc.

Case 6. The case has not been identified in Y. B. Hilary, 21 Hen. VI, or in the early abridgments.

Trinity
19 Hen. VI.

(7) **An assize** was adjourned out of the county of Surrey, where the tenant pleaded in bar that one H enfeoffed B and C, by the deed which he produced, "*habendum sibi et heredibus,*" and "*suis*" was left out. And B survived, whose estate, etc.; and he gave color to the plaintiff. And the plaintiff demurred upon the plea. FORTESCUE: By this deed B had only a life term, hence the tenant should have alleged in his plea that the said B is still alive, otherwise the plea is of no avail. WANGFORD: It shall be understood that he is alive until the contrary is shown by the plaintiff, for if it is good to any common intent it is good by way of a bar, etc. FORTESCUE: I will put a case in which it cannot be otherwise understood than that he is alive, and yet he ought to allege in fact that he is alive; as if I say that I held jointly on the day the writ was purchased, and still hold; I must allege that he is still alive or else it is of no value, *à fortiori*, here. Which was conceded. MARKHAM: The plaintiff demurred upon the plea, and has not made title, and the tenant had no possession in himself except by color of a feoffment where nothing passed, etc. NEWTON: If the bar is not good there is no need to make title in any case, for it is insufficient to say it, and not to say, etc. But it seems that B had only a life term, for it is uncertain whether the heirs of one or the other shall have it. HODY: If lands be given to F and his wife, and the heirs which the husband begets upon the wife, there are no certain words, to wit: "*suis,*" and yet the issue between them shall have the lands and shall be heir to both: so here, it is necessary that he who survives shall have to him and to his heirs, and if the lands be given to F and to

his wife, "*et heredibus ipsius F de corpore A procreatis*"; now A has only a life term. ASCOUGH: Your last case is not a tail, for it may be that the brother of F, or another of those cousins, might beget upon one A one who would be heir to F, so it is uncertain. But if it be given to F and A, "*et heredibus ipsius F, quos ipse procreabit de A,*" then it is a good tail, and A has only a life term. And, sir, this case is not certain, no more than where I give lands in tail, the remainder to another in the aforesaid form, etc. And then by the advice of all the justices in the Exchequer Chamber, the Assize was adjudged at large.

Reported in Y. B. Trinity, 19 Hen. VI, p. 73, pl. 2. See also Fitzh: Case 7. Feoffments et Faits, 8. The case does not state that the Assize was granted, but that they adjourned.

(8) **In an avowry**, PRISOT held clearly that if one entitles himself by a deed in which there are certain conditions, and does not show the deed or speak of the conditions in his plea, the Court will understand that it is not the same deed by which he entitled himself before. Which the other justices conceded, because it was close to their own opinion. POLE pleaded the conditions comprised in the deed, in an avowry upon a rent charge, to wit: if the grantor married before such a day that the rent should be suspended, etc. And he said that the grantor had not married, etc. Michaelis
31 Hen. VI.

There is no case of an Avowry in the printed term of Mich. 31 Hen. VI; Fitzh: Feoffments et Faits, 103, has the case. Case 8.

(9) **Land was given** to a woman, "*habendum sibi et heredibus B, quondam viri sui de corpore*" of the same woman should beget. And it was the opinion of THIRNING, that if the issue was "*in rerum natura*" at the time of the feoffment, he would take a joint estate with the woman, etc. (But yet that cannot be; no more than where land is given to B "*habendum sibi et Johanni* at Noke." In that case Hilary
5 Hen. IV.
Statham 97 b.)
J at Noke shall not have the lands because there were no words of a gift to him, etc.)

The case has not been identified in Y. B. Hilary, 5 Hen. IV, or in the early abridgments. Case 9.

Hilary
27 Hen. VI. (10) **If four or five** make a deed which has only one seal, still that can be the deed of all, for if all have sealed with one and the same seal, and in one and the same place, the deed is good against them all. And that in Trespass, etc.

And it was said in the same plea, that if a man makes a simple deed, and a livery of seisin upon condition, nothing passes by the said deed. (And all the same the law is the other way), etc.

Case 10. The case has not been identified in Y. B. Hilary, 27 Hen. VI, or in the early abridgments.

Note. **See as to feoffments et faits**, in the title of Release, and in the title of Gift, and in the title of Assize, Mich. 41 Ed. III.

Statham title of Release, *infra*, pp. 158 b to 159 a; and Statham, title of Donne, *supra*, p. 70 a; and Statham, title of Assizes, *supra*, pp. 14 a to 16 a.

Trinity
14 Hen. IV. (11) **A deed of** which the seal is damaged so that no impression can be seen is of no value. As appeared in Debt, etc. (But that deed was an acquittance, etc.)

Case 11. Reported in Y. B. Hilary (not Trinity), 14 Hen. IV, p. 30, pl. 38. See also Fitzh: Feoffments et Faits, 44, but he takes the case upon another point.

Michaelis
44 Ed. III. (12) **An acquittance** of which the date is erased is of no value. As appeared in Debt, etc. *Contra*, Anno 9 Hen. VI. Held by all the COURT, etc.

Case 12. Reported in Y. B. Mich. 44 Ed. III, p. 42, pl. 47. See also Brooke, Faits, 11.

Paschal
12 Ed. II,
last
paragraph. (13) **An acquittance** of a receiver does not bar his master, be he a general or a special receiver, etc. But if he shows a deed by which his master had given him power to make an acquittance, peradventure it is otherwise. But yet that deed should be shown by the defendant, etc.

Case 13. The case has not been identified in Y. B. Paschal, 12 Ed. II, or in the early abridgments.

(14) **A feoffment** of lands leased at will, or lands in villeinage, is good without an attornment or further [act of] the tenant, etc. It is otherwise as to a term for years, etc. In an Assize, etc. Michaelis
16 Ed. II.

There is no Michaelmas Term in 16 Ed. II. The case has not been identified elsewhere. Case 14.

(15) **A man cannot** enfeoff his tenant for a term of years because he has no possession, etc. And one joint tenant cannot enfeoff his companion, etc. In the same plea in an Assize, etc. Hilary
22 Hen. VI.

The second point in the case is reported in Y. B. Hilary, 22 Hen. VI, p. 42, pl. 21, but the first point said to be "in the same plea" does not appear there. See also, for the second point, Brooke, Feoffments de Terres, 15; and Fitzh: Feoffments et Faits, 11. Case 15.

(16) **A feoffment** of lands of which a man had execution by a statute merchant is not good without attornment. Trinity
7 Hen. IV.

The case has not been identified in Y. B. Trinity, 7 Hen. IV, or in the early abridgments. Case 16.

(17) **One brought** a writ of Debt in London upon an indenture. And at the end of the indenture it was written "*apud Lewis.*" POLE: It appears that the writ should have been brought in the county of Sussex, where it bears date. DANBY: There is a difference between a date and writing, for date and delivery are interchangeable. Then it can well agree that it was written at Lewis and delivered in London, and so it shall be understood, because the contract was made in London. PORTYNGTON: If he had declared that it had been delivered in London, he had then done wisely, which he has not done, etc. PRISOT: Writing and date have the same effect; and a man can plead a special livery on another day, but not at another place, etc. PORTYNGTON: Yes, sir, with a special reason; as in an action upon an obligation bearing date in London, the defendant said that it was made at York by duress of imprisonment, and it should be tried there; which the Court conceded. And also he can declare upon an obligation made at one place, where it bears date, when he was Michaelis
31 Hen. VI.

under age, and delivered at another place when he was of full age. PRISOT: It is wrong to allege delivery of an obligation at another place, etc., because it is in his election whether he will take an obligation for his debt or not. In which case he cannot vary from it. And the law is the same as to an acquittance, for I am not obliged to pay to you your debt unless you make me an acquittance. But on a release it is otherwise, because I cannot do anything else but take such a release as he will make, etc. And they adjourned, etc.

Case 17. The case has not been identified in Y. B. Mich. 31 Hen. VI, or in the early abridgments.

FOURCHER ⁵²

Statham 98 a. (1) **In dower**, the tenant vouched two; one appeared, Michaelis the other was essoined, and the same day given to the 44 Ed. III. other. And so they could delay *ad infinitum*, as it was said. See the Statute.

Case 1. Reported in Y. B. Mich. 44 Ed. III, p. 45, pl. 61.
Statute of Vouchers, 20 Ed. I (1292), Stats. at Large, Vol. 1, p. 261.

Michaelis (2) **In a writ of wardship of the body** against two, at 14 Hen. IV. the great distress one made default. SKRENE prayed a distress with proclamation against him. HANKFORD: That you shall not have, for you cannot recover half of the body, wherefore, etc., and he who appears shall not be forced to answer without the other. SKRENE: Then they can delay forever. HANKFORD: They can, to my mind; and they can also do so in a *Quod Permittat*; writ of Waste; writ of Mesne; writ of Warranty of Charters; writ of Debt, and other writs where the process is "*Summoneas, attachimentas et distringas*," etc.

Case 2. Reported in Y. B. Hilary (not Mich.), 14 Hen. IV, p. 37, pl. 55. See also Brooke, Fourcher, 8; and Fitzh: Fourcher, 13.

(3) **In a writ of waste** against two, at the great distress one appeared, and the other made default; and he who appeared was made to answer, etc. Study the cause, etc. Trinity
39 Ed. III.

Reported in Y. B. Trinity, 39 Ed. III, p. 15, pl. 5.

Case 3.

(4) **In a quem reditum reddit** against two, the opinion was that they could not fourch¹ by an essoin after both had appeared in Court, etc. Michaelis
8 Hen. VI.

Reported in Y. B. Mich. 8 Hen. VI, p. 15, pl. 37. See also Brooke, Fourcher, 19; and Fitzh: Fourcher, 3.

Case 4.

(5) **Two brought replevin**, and they would have fourched by essoin, and could not, because of the injury to the avowant, etc. Michaelis
9 Hen. VI.

Reported in Y. B. Mich. 9 Hen. VI, p. 44, pl. 23. See also Brooke, Fourcher, 4; and Fitzh: Fourcher, 4.

Case 5.

(6) **In debt** against the husband and his wife, they could fourch by an essoin: By the opinion of the COURT, etc. Michaelis
11 Hen. IV.

Reported in Y. B. Mich. 12 Hen. IV, p. 1 (94), pl. 1. See also Brooke, Fourcher, 7; and Fitzh: Fourcher, 12.

Case 6.

(7) **In covenant** against two: they can fourch forever. Trinity
2 Ric. II.
There is no printed year of 2 Ric. II. The case has not been identified in the early abridgments. So the case must stand by itself as an arraignment of the eternal delays in court proceedings. Case 7.

(8) **In a writ of Partitio Facienda**, they can fourch. Michaelis
20 Ed. II.
There is no printed Year Book for the last six months of the reign of Ed. II. There could be no Michaelmas Term for 20 Ed. II. Fitzh: Fourcher, 1, has a digest that varies from the point in Statham; it can hardly be called a case. Case 8.

(9) **The vouchees** can fourch by dividing the essoin. And this in Dower, etc. But it is otherwise in an Aid Prayer: as appeared Trinity, 3 Hen. VI. Michaelis
44 Ed. II.

Reported in Y. B. Mich. 44 Ed. III, p. 45, pl. 61.

Case 9.

¹ "Fourch" or divide the essoin, thus delaying the cause perpetually.

⁵² Fourcher is a term which has dropped out of modern law, which treats it — if it treats it at all — as if it were the same word as vouch. This it is not, nor did it mean the same thing in the old law. The translation given the word, as it appears in the Statute of Gloucester, cap. 13, and West. I, cap. 23, in the Statutes at Large, may have been a contributing cause to this habit, for habit it is rather than intentional error. For the Fourcher was, as the old dictionaries have it, “a devise used to delay the plaintiff or defendant in suits against two.” It was the suit against two that made the fourcher, or fork, the two prongs of the delay. One of the parties need not answer until the other appeared, and thus by first one failing to appear, and then the other, the suit could be delayed, as is said in our case 7, “*in eternum*.” The “mischief” of this is apparent, and it was this evil that the statutes above mentioned attempted to remedy. The “*Termes de la Ley*” says cautiously, however, that “in some cases” these statutes give a remedy, and it is apparent that the fourcher was still in use, as even our few cases, did we look no further, are later in date than either of the statutes, and these cases are simply a few of the many cases in the Year Books; Brooke has twenty cases and Fitzherbert fourteen. It is not necessary to define the term voucher, and probably not necessary to show how the confusion between the two terms came about. In attempting to show the steps by which that confusion was caused I must confess failure, the fourcher drops out so quietly from the terminology of the law. Where it is palpably referred to, it has become a voucher in the histories, even of those of the older law, and perhaps being thought of slight importance the matter has been given no attention. Yet it was a matter of no slight importance in the history of the older practice; it had its effect upon that delay of the law which ever creeps into all practice, doubtless in this case as in most cases with the intention of favoring the weaker litigant, the attempt to aid the weaker being made an opportunity for the stronger to aid himself, — there are always those who stand ready to turn the rules of practice to their own advantage. Somewhere in the as yet obscure history of the minor actions and of the rules of the old practice lie hidden the secrets of our older law — the secrets which, lying buried as they do, lead to the misinterpretation and even to the misrepresentation of the law and legal practice of the Year Book era. It is inevitable that with these minor points unknown or ignored, the greater points, apparently of so much more importance, do get a twist never intended by the justices themselves.

FAUX JUGEMENT⁵³

Statham 98 b. (1) **A man shall not** have a writ of Error for any
 Hilary plea which is in a Franchise, unless it begins in the King's
 45 Ed. III.

Court, and upon that jurisdiction is granted, etc.: By THORPE. Query? But he shall have a false judgment. Item, he said that on a judgment given in a Court of *Pié Poudré* a man shall not have a writ of False Judgment, and yet there are not many suitors. Query? For I believe that he shall have a writ of Error in both the cases.

Reported in Y. B. Hilary, 45 Ed. III, p. 1, pl. 2. See also Brooke, Case I. Faux Judgement, 3; and Fitzh: Faux Judgement, 6. All the abridgers question the correctness of the judgment, and seem greatly in doubt as to the law on the subject.

(2) **A writ** of False Judgment was sued on a judgment in Winchester, in an Assize of fresh force, and a writ was directed to the sheriff, "*quod in propria persona sua accedat ad curiam,*" etc. And a *recordare facias loquelam, que est coram ballivus*, etc. And the sheriff returned that he had been [to the Court] and that the suitors would not record the plea, whereupon a writ issued to distrain the bailiffs and the suitors. And then the bailiffs and some of the suitors said that they were citizens and not suitors, and that the king had granted to the bailiffs and citizens, etc., jurisdiction of the pleas, etc. And the bailiffs said the same thing. In which case a writ of Error should have been sued, etc. THORPE: By such a jurisdiction you cannot have conusance of an Assize of fresh force; besides some of the suitors have not come, wherefore the Court awards that you record that you have not the power to act without them; and the Court awards imprisonment, and that they shall be punished as well as you. Wherefore he said to the plaintiff to sue a distress *sicut alias*, etc. Query, if the same day will be given to those who were in Court, etc.?

There is no printed year of 31 Ed. III. Fitzh: Faux Judgement, 8, Case 2. has the case. Fitzherbert's account is much longer than Statham's.

(3) **In a writ** of False Judgment out of ancient demesne, CHAUNT asked judgment, for the writ said, "*quod recordum habeas sub sigillo tuo per quatuor legales homines,*" which

Hilary
31 Ed. III.

Paschal
15 Hen. VI.

four men are not here, judgment of the writ. JUYN: If the record is here, that is enough, etc. BROUN: Yes, sir; but if a distress were awarded against them, then he should be here in his own person to save their issues. CHAUNT said to that, that one of the defendants against whom the writ in ancient demesne was brought is dead, judgment if action. And we pray that the record be remanded. JUYN: We are not accustomed to remand records which have once been before us; wherefore as to that you will be advised. (Query, if the judgment be affirmed or reversed, if they will remand the record? And if not, if the parties can plead further here, as in a writ of Error, etc.? Which cannot be, as I believe, for then the lands will be a free fee, etc. But yet it seems that they can award execution here, for that does not change the nature of the land, etc.)

Case 3. There is no printed year of 15 Hen. VI. Fitzh: Faux Judgement, 17, has the case.

Michaelis
38 Ed. III.

(4) **In a writ** of False Judgment, on a judgment given in ancient demesne. FYNCHEDEN: You yourself are tenant of the freehold, for execution was not sued; judgment if to this suit, etc. FENCOT: Wherefore should I not have this suit as well as a writ of Error, which lies before execution? THORPE: It is different, for a writ of Error always lies against him who is a party or privy, but it is not so for the tenant, because the error should be tried by the record, but in this case the writ shall always be brought against the tenant of the lands, although he be a stranger to the judgment, wherefore the error shall be tried by averment and not by record, because it is not recorded,¹ which averment no one can have except the tenant of the lands, wherefore answer, etc.

¹“A writ of error lies at all times against him who was party to the judgment, and the reason is because he cannot plead, except as to a thing which is comprised in the record, but in a writ of false judgment he can plead matter which is without the record.” Extract from the report of the case in the Year Book.

Reported in Y. B. Mich. 38 Ed. III, p. 34, pl. 49. See also Brooke, Case 4. Faux Judgement, 8; and Fitzh: Faux Judgement, 14. Brooke differs considerably from the others in his report.

(5) **In a writ** of False Judgment on a judgment given by a writ of right close in the Court, etc., false judgment was assigned because the lands were held by virgates and the freehold was in the lord; which case he should have sued by bill, etc. HANKFORD: It is true it should be sued by bill, but you cannot maintain this writ, for if so, and we reversed the judgment, you will be restored to a freehold, where of your own admission you have nothing except at will. Which the Court conceded, wherefore HANKFORD said, Go to God; and that the plaintiff be in mercy, etc. Query, if that judgment bound him, since it was *coram non judice*? Michaelis
14 Hen. IV.

Brooke, Faux Judgement, 7, gives this case as reported in 14 Hen. IV, Case 5. p. 39, where I have not been able to identify it. In Brooke's report there is an interesting distinction between a socman of a freehold who pleads in ancient demesne by a writ, and a socman of a base tenure who pleads in ancient demesne by a bill.

(6) **If a writ** of False Judgment be abated, the plaintiff shall not have a *Scire Facias* against the party, as he shall have where a writ of Error is abated, to wit: "*de recordo que coram nobis residet*"; for MARTYN distinguished between a writ of Error and a writ of False Judgment, for the false judgment is not of record until it has come here; then if the writ by which it has come here is abated, it has come without a warrant; then it remains before the suitors, for it is as if no writ had been sued. But it is different in a writ of Error, for that was recorded before. And also a record can be brought into the King's Bench by a judgment of the Common Bench without a writ, but the suitors cannot bring it without a writ, for the above reason, wherefore, etc. Query? Hilary
4 Hen. VI.

The case has not been identified in Y. B. Hilary, 4 Hen. VI, or in the early abridgments. Case 6.

(7) **A man** shall have a writ of False Judgment on a false judgment given upon a *Justicies* [writ], and not a writ of Error. By YELVERTON and MARKHAM, in Error, etc. Hilary
31 Hen. VI.

Case 7. The case has not been identified in Y. B. Hilary, 31 Hen. VI. Fitzh: Faux Judgement, 15, has the case.

Michaelis
3 Ed. III.

(8) **False judgment was affirmed** and a judicial writ issued out of the Common Bench, in the nature of the protestation made in the first writ, etc. And the first writ was an Assize of Mort d'Ancestor. And they awarded a writ to the sheriff to summon the jurors to come here; and they meant by that that the nature of ancient demesne shall not be changed, for they followed the protestation, since when they have once erred in ancient demesne they can never more hold a plea as to that matter. And from this it follows that when the judgment is affirmed here that they award an exigent and send back the record when they wish. And perchance he against whom the recovery was had has not satisfied the damages within the ancient demesne, but he has outside, and so execution can be awarded here, etc. Study, etc.

Case 8. Reported in Y. B. Hilary (not Mich.), 3 Ed. III, p. 9, pl. 29. See also Fitzh: Faux Judgement, 16.

⁵³ The complaint of false judgment is a very early instance of appellate procedure. The writ — *Breve de falso justicies* — is known to Bracton, in whose Note Book are found numerous instances. [Bracton: Note Book, 40 (1219), 415, 511 (in which the complainant withdrew the complaint), 592 (an interesting case, showing the procedure), 824 (also a picturesque case), 834, 955, 1019, 1122, 1436 (a very full case), 1672, and a very short entry of a case, 1342.]

Glanville also has something in his book of the Law and the Customs. [Glanville, VIII, 9. See also Britton, chap. 50, f. 129, 13, b.] Reeves [Hist. of Eng. Law, Vol. 1: 153] gives us a little about these complaints, quoting Glanville's paragraph. Reeves, however, did not have the benefit of the cases in the Note Book which are far more illuminating. Crabb says, "The liberty of falsifying a judgment was given by the Assizes of Jerusalem," [Crabb, p. 123] and he brings the custom up through the Saxon Laws, the Alfredian Code and that of Edgar (c. 3), and the laws of Ed. (c. 3) and Guil. I (c. 15). We are told not to depend too much on the "fictions of the Miroir," but the laws themselves may legitimately be used, and we may well grant their support to Crabb. At least, as Mr. Kelham says, "they bear a venerable aspect." [Kelham, Pref. to Laws of W. Conq.] If the false judgment of these old laws be not that of the later law, it is difficult to prove it. Maitland takes us back to the Anglo-Saxon law, and the laws of Edgar

[P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 666] also. By the authority of the *Leges Henrici* [10, sec. 1] he considers that "the complaint of false judgment was a royal plea, and could only be urged in the king's court." "In England this principle was upheld, and it delivered us from some of the worst results of feudalism; the great lords had no control over the courts held by their tenants." [*Supra*, pp. 666, 667.]

"The king's court cannot be charged with a false judgment; but gradually as it breaks into segments and throws off wandering satellites, something like an appeal from one segment to another or from the satellite to the central nucleus, becomes possible." [*Supra*, p. 668.] Gradually the idea that the accusation could be against the judgment rather than against the judge came into shape, and by the time of the earliest Year Books, let us say early in the reign of Edward I, the Faux Jugement of our title had gotten well into shape.

All in all it was a valuable portion of the old procedure. If we more politely call the process a writ of error now, we do not the less feel that it is a false judgment.

FAUX EMPRISONEMENT

(1) **If a man** sues an action against another, and he shows to the sheriff that I was myself the person, whereas I was not, and the sheriff arrests me, I shall have a writ of False Imprisonment against them both. By HANKFORD and THIRNING. Statham 99 a.
Hilary
13 Hen. IV.

Reported in Y. B. Mich. 13 Hen. IV, p. 3, pl. 5. See also Fitzh: Case 1. Faux Emprisonment, 11.

(2) **In false imprisonment**, the plaintiff counted that he took him in a vill in one county, and carried him into another county, and there imprisoned him. And the writ was challenged because it was for different trespasses in different counties. FYNCHEDEN: We cannot have any other writ, for we cannot have a writ of the taking by itself, nor of the imprisonment by itself; wherefore the writ was adjudged good, etc. Michaelis
38 Ed. III.

Reported in Y. B. Mich. 38 Ed. III, p. 29, pl. 37. See also Fitzh: Case 2. Faux Emprisonment, 9.

- Trinity
19 Hen. VI. (3) **If a summons** issues against J S, and the *Capias* issues against A S, and the sheriff takes J S; when J S shows this matter to the Court, the process will be amended, and he shall plead with the plaintiff, and yet he shall have a writ of False Imprisonment against the sheriff. And where the sheriff takes him by virtue of a *Capias*, and does not return the writ, etc., which case is opposed to the other case, etc.
- Case 3. Reported in Y. B. Trinity, 19 Hen. VI, p. 80, pl. 10. See also Fitzh: Faux Emprisonment, 12. He ends a little more abruptly than does Statham, and does nothing to assist in clearing up the obscurity of the last phrase.
- Paschal
4 Ed. I.
Case 4. (4) **Two cannot join** in a [writ of] False Imprisonment. We have no early printed Year Books for the reign of Ed. I. It is not yet known how many years of that reign there may be in manuscript. Probably more than has usually been thought possible.
- Trinity
35 Hen. VI. (5) **If the escheator** takes the goods of a man who is outlawed, and does not mention them in his account, the other — when he is restored to a legal position — shall have a writ of False Imprisonment against him, for if he has not accounted for them, he cannot justify, etc. By the opinion of the COURT in Trespass *Coram Rege*, etc., to wit: that he imprisoned him until he made a fine, etc.
- Case 5. The case has not been identified in Y. B. Trinity, 35 Hen. VI, or in the early abridgments.

FORGER DEZ FAITZ

- Trinity
15 Hen. VI. (1) **One A brought** a writ of Forgery, etc., against one B, who said that the plaintiff had nothing in the lands of which he alleged the release to be forged, except jointly with one C, who is living, not named, etc. Judgment of the writ. NEWTON: To that we say that well and true it is that the plaintiff was seised as above. And we say that you made the release in his name, and in my name, and that he sealed the deed and delivered it to you, and you have

proclaimed the same deed in fairs and markets to be my deed, and made in my name, in disturbance, etc. FULTHORPE: Inasmuch as you have admitted the joint tenancy, judgment, etc. PASTON: He has admitted the joint tenancy, but by this matter which he has shown he has a cause of action in his own name, for by the release the right of his companion is gone, so they cannot join, wherefore answer him, etc. Which note.

There is no printed year of 15 Hen. VI. Fitzh: Forger des Faux Faits, 5, has the case, but he changes Paston's remarks so much that it may be assumed that he had seen the original notes of the case, or a manuscript report. Case 1.

(2) **A writ of forgery of deeds** brought against a man was challenged because the writ was "because he had falsely conspired," etc., whereas he could not conspire with himself. And it was not allowed, for there was no such writ at the common law, and the Statute gives it upon a certain form, etc. Anno 11 Hen. VI.

Reported in Y. B. Mich. 11 Hen. VI, p. 2, pl. 5. See also Fitzh: Forger des Faux Faits, 18. Case 2. The case went off into a dissertation upon the false Latin of the writ. The case also says that the judgment was given afterwards in another term, but I have not been able to find it in the printed books.

The Statute is that of 1 Hen. V (1413), cap. 3, Stats. at Large, Vol. 3, p. 2, "Penalty for forging or publishing a false deed."

(3) **One brought** a bill for the Forgery of Deeds, and the bill recited the Statute, and that on such a day and year of the father of the present king the defendant wrote a release, etc., and that on such a day and year of the present king the defendant published and proclaimed the same deed, to the contempt of our Lord the King, etc. ROLFF: The bill should abate, for it is as much in contempt of the other king, for the deed was made then. MARTYN: The proclamation was made in the time of the present king, and the action of the plaintiff was commenced then; and the other was only a convenience, etc. Which the Court conceded, etc. Michaelis 4 Hen. VI.

Case 3. Reported in Y. B. Mich. 4 Hen. VI, p. 4, pl. 7. The case does not show that the Court "conceded" the point. But the reporter says, "There were many good exceptions taken, but I was not there."

For the Statute, see *supra*, case 2.

Paschal
18 Ed. III.

(4) **In forgery of deeds**, by which the plaintiff was disturbed in his possession of the manor of B. YELVERTON: Judgment of the writ, for the plaintiff never had anything in the said manor except *pro indiviso* with one F, who is alive, etc. MARKHAM: This F is the same person who is defendant, etc., judgment. FORTESCUE: The writ seems good, for although the defendant be not named as plaintiff, still the writ is good, as if a co-heir holds her sister out, she shall have a *nuper obiit* in her own name, without naming the other as plaintiff, because she had done her a wrong. So here. PASTON: In trespass for trees cut, it is pleaded as above, so here, for it touches a freehold, etc. NEWTON: If two are impleaded, one of them shall have an action of maintenance without the other. And if timber is carried away, each shall have an action for himself, although they are holding in common, etc. And if both shall have the action, one will recover damages for a wrong he did himself, for no severance lies in the case, etc. And suppose a stranger forged a deed for that which belongs to one of them, wherefore shall he not have an action sole, for the Statute says, "that the party so grieved shall have his suit," etc., and no one is injured except himself, wherefore, etc. And they adjourned, etc.

Case 4. The case does not appear in Y. B. Paschal, 18 Ed. III, but it is reported at great length in Y. B. Paschal, 18 Hen. VI, p. 5, pl. 5, and continued on pp. 6 and 7. See also Fitzh: Forger des Faux Faits, 6. For the statute see *supra*, case 2.

Statham 99 b.
Michaelis
9 Hen. VI.

(5) **In a writ of Forgery of Deeds** it was alleged that the defendant had proclaimed different deeds, knowing them to be falsely made by one H. CHAUNT: Judgment of the writ, for the Statute is a copulative, to wit: If a man "forges and proclaims" and by this writ he alleges that another forged, and the defendant proclaimed. And it

was the opinion of MARTYN that the writ was good enough. See the Statute, etc.

Reported in Y. B. Mich. 9 Hen. VI, p. 50, pl. 33. See also Fitzh: Case 5. Forger des Faux Faits, 3.

The Statute is that of 1 Hen. V. (1413), cap. 3, Stats. at Large, Vol. 1, p. 1 (2). The language of the Statute is paraphrased in the case, making the argument on the "copulative" a very weak one. The case does not show that MARTYN said anything, or that a decision was rendered.

(6) **In a writ** of Forgery of Deeds it was alleged that the defendant had forged and proclaimed, etc. The defendant said by protestation that he did not proclaim, but he said that as to the forgery, "not guilty." NEWTON: You should answer the proclamation, etc. MARTYN: That plea goes to the whole, for if he did not forge he shall not be attainted for the proclamation in this writ; for if another [forged it] and he proclaimed it, you shall have a writ that he proclaimed a deed knowing it to be falsely made. Which was conceded. And that is the reason that he had made that protestation, to save himself from being estopped in another writ. And then the issue was taken as above, etc. But yet the ancient form of pleading where such an action is given by Statute is to say that he did not forge, to wit: to answer to the point of the writ, and not plead "not guilty," etc. Trinity
9 Hen. VI.

Reported in Y. B. Trinity, 9 Hen. VI, p. 26, pl. 22. See also Brooke, Case 6. Forger des Faits, 1; and Fitzh: Forger des Faux Faits, 4.

(7) **It is a good plea** to say that the plaintiff had nothing in the lands, except jointly with a stranger, not named, etc. Query, if it be a plea to say that he had nothing in the lands at the time, etc.? The same plea was adjudged good, Mich. 38 Hen. VI. Trinity
9 Hen. VI.

Reported in Y. B. Trinity, 9 Hen. VI, p. 26, pl. 38. Statham does not show the connection with the subject; it was a writ of forgery of deeds. Fitzh: Forger des Faux Faits, 17, has the case. Case 7.

(8) **In forgery of deeds**, the defendant pleaded not guilty, and it was found that he did not forge, but that he published; and in the opinion, NEWTON said that the Michaelis
19 Hen. VI.

plaintiff should not recover anything. Study well, etc., for it has been adjudged in such a writ against two that one did not forge, but published, and the other did not publish but forged, yet the plaintiff had judgment to recover his damages against both, etc.

Case 8. The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the early abridgments.

FOREST

Paschal
45 Ed. III. (1) **In trespass** for an imprisonment, the plaintiff said that he was forester in fee of the forest of Windsor, and how it was presented at a sweinmote by the foresters, verderors, regarders, and agisters, that the plaintiff had killed six does, and the defendant [went to the plaintiff and prayed him to agree to] find pledges, and he would not,¹ wherefore he put him in prison until the coming of the justices in Eyre, etc. Judgment if action? It seems that that is no plea unless he shows him a better authority to put him in prison; as to say that it belongs to his office, or else, etc., the plaintiff says, "of your own tort without such reason," etc. And the issue was taken. But yet a man has been ousted of such an averment before justices in Eyre, where it was said that he could have no traverse to such a presentment, because it was taken by more than twelve, etc. (But yet that is no reason, etc.)

Case 1. Reported in Y. B. Paschal, 45 Ed. III, p. 7, pl. 8.

Hilary
50 Ed. III. (2) **It was found** before the verderors and the seneschal of the forest of S, that one H had enclosed and made a park of that which is part of the forest, etc., and a presentment was taken by thirty-six men, and it was removed by a suggestion. And it was the opinion of THORPE that the party should not have a traverse to that, etc., for to a presentment in that manner, or to a present-

¹ "That this same who is defendant came to the plaintiff and prayed him to find pledges to answer before the justices in Oyer in this *pais*, etc. And he refused to do this, wherefore he retained him, etc." Extract from the report of the case.

ment in a leet, a man shall not have a traverse unless it touches his freehold or inheritance, etc. And then he should make title to himself and not hold to a general traverse, etc. Query?

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the Case 2. early abridgments.

FRANK FALDE

(1) **A man cannot** have free fold, unless by prescription as appendant to his manor or his house, etc. But in Norfolk and Suffolk, by the custom of the country, if he who has such a fold alienates, his alienee shall have it in gross, etc.

Statham
100 a.
Hilary
I Ed. III.

The case has not been identified in Y. B. Hilary, 1 Ed. III, or in the Case 1. early abridgments.

FIERI FACIAS

(1) **One brought** a writ of Debt for the damages recovered in a special Assize. NORTON: Within the year you sued a *Fieri Facias* to the sheriff, etc., [by which he levied for the monies] ¹ and they were paid to you, judgment if action. SKRENE: That is no plea, for the sheriff is not held to pay it to the party, but to the Court, for the writ says, "*Et denarios illos habeas hic,*" etc. HORTON: But this was a special Assize, in which case the power of the justices is ended when the Assize is finished. SKRENE: It is not reasonable that he shall defeat a record by an allegation. (Query, how shall the writ be in such a case? For the justices of a general Assize will make such a writ returnable at their next session, etc., and in that case the writ is returnable before them there, etc.) THIRNING: The sheriff should have paid the money to the justices of Assize when he returned that writ, for the writ is returnable before them. And although no place be made certain, the writ is

Paschal
11 Hen. IV.

¹ Words from the case.

none the worse. And he also held clearly that although the writ had been returnable at their next session, and they did not come, still the sheriff should pay the money to them, etc.

Case 1. Reported in Y. B. Paschal, 11 Hen. IV, p. 58, pl. 8.

Note. **See as to fieri facias**, in the title of Execution, etc.
Statham, title of Execucion, *supra*, pp. 92 b, and 93 b.

FALSER DE RECOVRE ⁵⁴

Statham 100 b.
Trinity 32 Ed. III.
Case 1. (1) **If an abbot** loses by an action tried upon a collateral issue, his successor [shall not] falsify the recovery. By the opinion, etc., in the case of *Lira*. Well debated, etc.

There is no printed year of 32 Ed. III. Fitzh: Fauxefier de Recovrie, 8, has the case, but even more abbreviated. It seems necessary to add the words we have put in brackets.

Trinity 30 Hen. VI. (2) **In a writ of ejection firmæ**, the defendant pleaded a recovery against the lessor of the plaintiff, and the possession of the plaintiff [in the meantime], etc. And the termor traversed the title of him who recovered; thus the recovery was falsified, etc. And it was the opinion of the COURT that he should not get to that, for if so, then there had been no need to have made the Statute of Gloucester, etc. And they adjourned, etc.

Case 2. The case has not been identified in Y. B. Trinity, 30 Hen. VI, or in the early abridgments.

Statute of Gloucester, 6 Ed. I (1278), cap. 11, Stats. at Large, Vol. 1, p. 117 (125).

Paschal 9 Hen. VI. (3) **In a writ of annuity** against a parson, who prayed aid of the patron and of the ordinary, who were summoned and did not come, wherefore he admitted the action of the plaintiff, upon which he had judgment. And then he brought a *Scire Facias* against another parson, his successor, who said by ROLFF that his predecessor, by fraud of the plaintiff, admitted his action; and besides that he traversed the plea in the writ of Annuity. NEWTON:

To the plea pleaded in that manner, etc. PASTON: When the patron and the ordinary were prayed in aid and did not come, his admission is as strong as if they had all admitted, for the plaintiff cannot otherwise get to the recovery of his annuity, etc. And they adjourned.

And it was said in the same plea, that the admission of an abbot bound his house in perpetuity.

Reported in Y. B. Paschal, 9 Hen. VI, p. 2, pl. 6. See also Fitzh: Case 3. Fauxefier de Recoverie, 6.

(4) **In a scire facias** out of a fine, against one K, who said that a long time before the fine was levied that these lands were entailed, and two parceners, as heirs in tail, brought a Formedon for the same lands and other lands, against one H, and recovered by force of the entail paramount; and then they made partition between them, so that these lands were allotted as the purpart of the ancestor of the tenant; and the other lands to the other coparcener, who had issue M, and died; and we pray aid of M, and because she is under age we pray that the case be delayed. NORTON: That plea is double. HANKFORD: It is not, for the partition and the descent are the substance, and the rest is only for a convenience to make the descent good. THIRNING: Although one disseises me, and has issue two daughters who make partition, one shall have aid of the other in a writ of Entry upon a disseisin. HANKFORD doubted that, for the demandant has to disprove the descent by his writ. SKRENE (for the demandant): We will aver that he never had such a paramount gift as he has pleaded. And we say that a long time after the fine the said H abated in the same lands, by fraud, etc. So the recovery was false and feigned; and we pray that he be ousted of the aid. THIRNING: Be well advised as to your plea, for it is hard to try the right upon these dilatory pleas that he pleads, etc. SKRENE: We would have delayed for the nonage, and the tenant has been ousted of his age by such a falsifying of recovery before this time, wherefore, etc. And they adjourned. Study well, etc.

Reported in Y. B. Paschal, 11 Hen. IV, p. 60, pl. 11. See also Brooke, Case 4. Fauxefier de Recoverie, 36.

Trinity
19 Hen. VI.

(5) **The Abbot of Selby** brought a *Scire Facias* against a parson of a church out of a judgment tailed by the said abbot against the predecessor of the said parson, where he had had the aid of the patron and of the ordinary, who made default. And the parson traversed the prescription, and it was found against him, etc. And then the parson prayed aid and had it, and the ordinary made default, and the patron came and joined the parson, and they said that all the jurors of the first inquest were dead, and traversed the prescription, etc. **PASTON**: It is hard to traverse the prescription and put something on trial which has been once tried, for if one recovered against the tenant in tail, by an action tried, his issue can falsify the recovery by saying that his father had a warrant from the ancestor of the demandant in the first action, which he could have pleaded, and so falsify the recovery, for that is not contrary to the verdict. But to have anything be more than once tried on the same point cannot be. **FORTESCUE**: He cannot have an Attaint, wherefore if he cannot be aided in such a way he is without a remedy. **NEWTON**: Peradventure if he had brought the Attaint and the sheriff had returned that they were dead so that it might appear to us that there were no laches in the father, peradventure this case had been better. **MARKHAM**: I will put a case where a man cannot have Attaint, and yet he can falsify the recovery. As if a man has issue two sons by different mothers, and dies seised, and a stranger abates; the oldest son brings an Assize of Mort d'Ancestor and is barred, and dies without issue; the other son shall not have Attaint, and yet that recovery binds him forever. **FORTESCUE**: He shall have Attaint in that case, because he is in danger of losing. **NEWTON**: No, sir, because he is a stranger to the original, but he could have a writ of right, etc. And then by the advice of those in the King's Bench, it was adjudged that the plaintiff should recover, etc.

Case 5.

Reported in Y. B. Mich. (not Trinity), 19 Hen. VI, p. 39, pl. 82. See also Brooke, *Fauxefier de Recoverie*, 11; and Fitz: *Fauxefier de Recoverie*, 14. Statham appears to be in error in saying that judgment was given for the plaintiff unless he had a different report before him. Our printed books recite only an adjournment.

(6) **In trespass** for a close broken, the defendant said that the place where, etc., is ancient demesne, and on such a day he brought a writ of right against the plaintiff, in the Court, etc., and made his protestation in the nature of an Assize; on which the plaintiff appeared and pleaded to the Assize, and it was found for us, wherefore we had judgment to recover and enter, on which entry he has conceived his action. SKRENE, by protestation, [said] he did not admit such a recovery; but we say that on such a day one H enfeoffed us by a fine, of these same lands, so it became a free fee, and so that recovery is false and feigned, etc. (And note that the fine was before the recovery.) NORTON: Inasmuch as you yourself are a party to the recovery, which was by a tried action, judgment, etc. But he dared not demur, but pleaded another matter in bar. (All the same, query if he could get to plead another matter, etc., for he would then depart from his first bar, etc. And see that he could well render the recovery void in that case, as it seems, since it was *coram non judice*, etc.)

Michaelis
7 Hen. IV.

Reported in Y. B. Mich. 7 Hen. IV, p. 3, pl. 20. See also Brooke, Case 6. Fauxefier de Recoverie, 9; and Fitzh: Fauxefier de Recoverie, 10.

See as to falsifying of recovery, in the title of Collusion and Covin, etc. And also in the title of Non-Tenure, Hilary 7 Hen. VI, by NEWTON, etc.

Note.

Statham, title Collusion and Covyne, *supra*, p. 47 b. And Statham, title Nonntenure, *infra*, p. 130 b, case 6.

(7) **A man sued** a *Scire Facias* out of a judgment given in a *Cessavit de cantaria*, against a parson of a church, who was the predecessor of the defendant. And the defendant then prayed aid of the patron, and of the ordinary, and the aid was granted; whereupon a summons issued against them, and they made default. GODEREDE (for the parson) said that for all the time that the cessor is alleged, such a one, chaplain, performed the divine services, etc. Which matter, etc. CHAUNT: For anything that he has said, judgment, etc. And so to judgment. GODEREDE:

Michaelis
14 Hen. VI.

Statham
101 a.

It seems that we should have the plea, for when the judgment is by default we shall clearly be received to falsify the recovery, and especially when our estate was not defeated in fact, but the possession at all times continued: as if such a judgment be given against the tenant in tail, and before execution is sued the tenant in tail dies, if a *Scire Facias* be brought against his heir, he can falsify the recovery; so here. MARTYN: That is not so, but the issue shall be taken by a Formedon, and the falsifying of the recovery in the Formedon, for notwithstanding he is in by descent, still he who recovers could enter upon him, or sue an execution, for the right of the tenant is disproved by the judgment, in which case the heir will be put to his writ of Formedon, and then he who recovers can have his warranty, etc. So here the successor shall have a writ of *Jure d' Utrum*, and if the recovery be pleaded against him, then he shall falsify it; but he cannot delay the execution by such a plea, for he can have a writ of Error, etc. Wherefore execution was awarded, etc. And see that he did not say in that plea that that recovery was by fraud between his predecessor and the one who recovered. And it seems that there is no need to say so, for when such a recovery is by default, or by rendition, or "not denied," it shall be understood it was by fraud, etc. Query?

Case 7. The case has not been identified in Y. B. 14 Hen. VI. (That year is not divided into terms in the printed reports.) There is a short case on p. 8 of that year (pl. 33) which resembles the abridged case, but has only a part of the case as it is given in Statham.

⁶⁴ Not much is said in the books on this segment of the old pleading. Yet the procedure was well known, at least in the later Year Books. Just when it became of common use it is not easy to determine. Fitzherbert has a case as early as 7 Ed. II. [Fitzherbert, 11.] Britton [Liber 2, c. 17, f. 123 b.,] speaks of the "falsification of our writs," "*En tote le fausiones trevez en nos breffs*," so that term was well known at the time [circa 1291-92] of the writing of his book, which was nearly contemporary with the appearance of our first Year Books — those of Edward I. I have not been able to find any reference to them in Bracton's Note Book, or in his treatise, but my search of the latter has not perhaps been sufficiently thorough. In the sixth year of Ed. I the Statute of Gloucester treats of a "feigned recovery" and gives a remedy. [Cap. 11.]

So we get back to the appearance of the action in a statute in the early years of Ed. I. It forms a part of the subject of recoveries, but a part which has been somewhat neglected.

FRAUNCHISE

(1) **A franchise put in view**, where such is not the custom, is not traversable for that reason, although it be presented. But they shall make a fine, for a franchise shall not be seised except at the suit of the king in a *Quo Warranto*. By HANKFORD and PRISOT, *Coram Rege*, etc. Anno
6 Hen. V.

There is no printed year of 6 Hen. V. Fitzh: Franchise, 1, has the case. Case 1.

See as to franchise, in the title of Return, and also in the title of Conusance. Note.

Statham, title of Retourne, *infra*, pp. 156 a to 157 b; and Statham, title Conusance, *supra*, pp. 43 a to 44 a.

GARDE ⁵⁵

(1) **In a writ of right of wardship**, the infant died pending the writ, and the writ was abated. Note this. Statham
101 b.
Hilary
2 Hen. IV.
Case 1.
Reported in Y. B. Paschal (not Hilary), 2 Hen. IV, p. 18, pl. 4. See also Brooke, Garde, 22. The case gives "Fitzherbert, Garde, 130, *contra*," which is correct, but Brooke gives several citations in support of the case.

(2) **If the tenant of a bishop dies while his heir is under age, and the bishop dies before he is seised of the wardship, his successor cannot seise the wardship, because of the title which is in the king during the vacancy.** Paschal
2 Hen. IV.

The only case of a wardship in this year and term is one in which the facts correspond, but the law is decidedly contrary. "It was held for clear law in this plea that if the tenant of a bishop dies, while his heir is under age, and then the bishop dies before any seisin of the infant in his life, the successor can seise him, etc. And they shall have a writ of ravishment of wardship if anyone takes him out of his possession." Y. B. Paschal, 2 Hen. IV, p. 19, pl. 11. Case 2.

- Hilary
40 Ed. III. (3) **A writ of right of wardship** was brought where the deforcement was made, although the lands by reason of which, etc., were in another county. And the writ was adjudged good, etc.
- Case 3. Reported in Y. B. Hilary, 40 Ed. III, p. 6, pl. 13. See also Brooke, Garde, 8; and Fitzh: Garde, 93. Brooke says it was adjudged good "against the opinion of many." Kirton said that it seemed to him "a marvellous judgment."
- Hilary
18 Ed. III. (4) **The king granted** to one J a fee farm in fee, to hold of him by the services which had been due. J died while his heir was under age, and this matter was found by an office, and it was adjudged that the king should have the wardship, for that service should be understood to be knight's service, since no service was expressed, etc. And so see that a rent can be held, etc.
- And it was said in the same plea, if a man grants the services of his tenant before the Statute, to hold of him, that he can distrain for the services, to wit: the cattle of the grantee, but not the cattle of the tenant, for then the land would be charged with two distrains, etc., in fee farm. And if that be the law, a man can act in the same manner to this day, for it is not to the injury of the Statute *Quia emptores terrarum*, etc.
- Case 4. The case has not been identified in Y. B. Hilary, 18 Ed. III, or in the early abridgments. But it is possible that the reference is to 24 Ed. III, as the text is not clear. The case has not been identified in that year, however.
- The Statute is that of Westminster the Third, 18 Ed. I (1290), Stats. at Large, Vol. 1, p. 255.
- Paschal
45 Ed. III. (5) **In a writ of wardship** of the body and of the lands, brought by two, they showed the descent of the seignory in the tail. And the defendant said that there was another to whom the seignory had descended also, not named. BELKNAP: He of whom you plead has released to you. THORPE: Still he should be named and should be severed. FYNCHEDEN: Peradventure he means that this release is a bar to all. THORPE: Certainly the other should recover all the body notwithstanding the release. And this well argued. And they adjourned, etc.
- Case 5. Reported in Y. B. Mich. (not Paschal), 45 Ed. III, p. 10, pl. 2. See also Brooke, Garde, 13; and Fitzh: Garde, 100.

(6) **In a writ of right of wardship**, it was found that the ancestor of the infant held of the plaintiff, etc., and that the infant was a minor of twelve years. **FYNCHEDEN**: You can choose to have a conditional judgment, or else to recover the infant, because he is under the age of puberty. And he asked for a conditional judgment and had it. **THORPE**: If the infant be married after the judgment, he can have a *Scire Facias* to have the value, etc. Query?

Trinity
45 Ed. III.

Reported in Y. B. Trinity, 45 Ed. III, p. 16, pl. 19. See also Brooke, Case 6. Garde, 15.

(7) **See by WILLOUGHBY**, that if my tenant in frank marriage alienates in fee, and takes an estate in fee, holding of the chief lords, that I shall not have the wardship of the heir, although he takes an estate to himself in fee. (Query? For that seems a remitter, etc.)

Paschal
31 Ed. III.

And it was said in the same plea, that if the tenant in frank marriage, or in tail, alienates in fee, to hold (as above) that the lord shall be forced to avow upon the alienee, but not the donor, for then he might lose his reversion, etc. And so see that the donor can avow for his rent when his reversion is discontinued, and so he shall have the rent and not the wardship, etc. Query?

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 7.

(8) **In a writ of wardship**, the inquest found that the heir was married by the deforcser, and they were forced to say of what age he was; and they said that he was six years old, to the damage of a thousand pounds. **SHARSHULL**: Say to what damage, if he be not married. And they said to a hundred pounds. **SHARSHULL** said to the plaintiff, "For what judgment do you pray?" **FYNCHEDEN**: A thousand pounds. **SHARSHULL**: It may be that the heir would not agree. **FYNCHEDEN**: As to that, "what may be may be." Whereupon it was adjudged that he should recover a thousand pounds, etc. Query, if the heir disagreed at the age of puberty, if the guardian could offer him a marriage? I believe not, etc., for it seems that it would be bigamy, etc.

Trinity
21 Ed. III.

Case 8. The case has not been identified in Y. B. Trinity, 21 Ed. III, or in the early abridgments.

Paschal
24 Ed. III. (9) **If one who holds** of the king dies, and his heir is under age, the king shall have the wardship, etc. All the other lords of whom he holds shall sue to the king by petition for the rent which is held of them, and shall have it: **By WILLOUGHBY**, etc. And the heir, at his majority, shall release to all the lords, etc.

Case 9. Reported in Y. B. Paschal, 24 Ed. III, p. 24, pl. 5.

Paschal
24 Ed. III. (10) **The Count of Lancaster** granted to one H the wardship and marriage of one F, who was under age, and he granted by the same deed that if the said F died, his heir being under age, that he should have the wardship of him, and so from heir to heir until one of his heirs came to his majority. And then another who held of the count died, his heir being under age, whereupon the count seised the wardship, and then this same F died, and he who was in the wardship of the count was heir to F, to wit: son of K, sister of the said F, and he had the lands through his mother. And the said H demanded the wardship, etc. And it was the opinion that he should not have it, because the count was once legally seised, and he could have sold and married, etc.¹ No more than in the case of the *Count of Warwick*, where lands descended to his ward, which were held of the king, etc. Well argued, etc.

Case 10. Reported in Y. B. Paschal, 24 Ed. III, p. 25, pl. 8. And a longer report in Y. B. Residuum of Paschal Term, 24 Ed. III, p. 44, pl. 28. See also Brooke, Garde, 46.

Paschal
24 Ed. III. (11) **If a man** holds of the king in knight's service, the king shall have the wardship of all those other lands held of others, if they are held in socage, burgage, or any other way. And this by **THORPE**, in a writ of Entry upon a disseisin, etc.

Case 11. Reported in Y. B. Paschal, 24 Ed. III, p. 46, pl. 33. The point, which is merely *dicta*, is to be found on p. 47.

¹ The case has it, "he could not have sold without a wrong done to some one."

(12) **One leased** land for life, the remainder over in tail. Michaelis
24 Ed. III.
The tenant in tail had issue a minor, and died while the issue was still a minor; then the lord was seised of the rent of the tenant for life. The tenant for life died, and it was adjudged that the issue in the tail should be in the wardship, because he could not have the land except as heir to his father, although his father never had any possession. But yet, query, for until the remainder be executed, all in the remainder shall be considered purchasers, etc. For if a man have title to the land he can enter upon the issue in the tail, for the above reason, etc.

Reported in Y. B. Mich. 24 Ed. III, p. 33, pl. 28. See also Fitzh: Case 12. Garde, 48.

(13) **A mesne lord** and tenants; each one holds of the other in chivalry. The mesne grants and confirms the estate of the tenant, to hold of him by one penny for all services, doing to the chief lord the services owing by the mesne. And the opinion was that the mesne should have the wardship of the heir of the tenant, and that he held in chivalry, because he held over in chivalry. Paschal
49 Ed. III.

And it was said in the same plea, that if the lord paramount released to the mesne, saving to him one penny for all services, by that release the tenure of the tenant paravail was changed, and that he held in socage because he held over in socage. Statham
102 a.

And it was said in the same plea, that if a lord paramount wishes to distrain the tenant for the services the lord purchased of him, the tenant shall have a writ of Mesne, notwithstanding the first clause above, because he cannot by that clause be bound to pay any services except to the next lord paramount to the mesne, and not to the other lords paramount, etc. And upon that the mesne shall show against such a clause that he holds over in chivalry of one J, for if he holds of J in socage, and J holds over in chivalry, still the tenant holds only in socage. And this in an account against the guardian, etc. Well argued, etc. Query?

Reported in Y. B. Paschal, 49 Ed. III, p. 10, pl. 2.

Case 13.

Michaelis
49 Ed. III.

(14) **In a writ of wardship** against three, two appeared at the distress, and the third made default, wherefore the grand distress issued for the third part, and the same day was given to the others; on which day he made default again, whereupon the plaintiff prayed seisin of the third part of the lands; and as to the body he was ready to count against them, because it could not be severed. THORPE: You speak truly as to the body, for in wardship of the body brought by two, although one be nonsuited the other can sue further for the entirety; and so it seems in this case, for those who appear should answer for all the lands, because it is an entire thing, and a chattel, and a thing, etc. BELKNAP: One of them may lose his part, as well as a joint tenant in a *Præcipe quod Reddat*, wherefore if those who appear do not wish to claim the tenancy of the whole, "without this that he who made default had nothing," the plaintiff will recover seisin of that part. Which the Court conceded, etc. (It seems that they erred, for the reason is clear), etc.

Case 14. Reported in Y. B. Trinity (not Mich.), 49 Ed. III, p. 19, pl. 1. See also Brooke, Garde, 19; and Fitzh: Garde, 104.

Michaelis
12 Ed. III.

(15) **If my tenant** holds of another by "posteriority," who grants the services to the king; and then the tenant grants the services over, and the tenant dies, his heir being a minor, the grantee of the king shall not have the wardship of the body, as the king should have had if he had granted the services. And this by the opinion of all the COURT, in Wardship, etc.

And see in the same plea, that joint tenancy, several tenancy, and non-tenure as to the lands, are good pleas in a writ of Wardship, etc. And the law is the same as to the body, etc. Query?

Case 15. There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series for that year.

Paschal
33 Ed. III.

(16) **If my tenant** leases lands for life and dies, his heir being a minor, I shall have the wardship by reason of the reversion, because I have no tenant, etc. But if I avow

for my services upon the infant, I shall be estopped from having him in wardship. But if my tenant leases for life, the remainder over in fee, and he who is in the reversion dies, his heir being a minor, I shall not have the wardship, for the tenant for life is my tenant, and I shall avow upon him. In Wardship, etc.

There is no printed year of 33 Ed. III. Fitzh: Garde, 8, has the Case 16. case.

(17) **See by SHARSHULL and THORPE**, that if my tenant leases his lands for a term of years, or makes a statute merchant to one who sues execution in his lifetime, and then my tenant dies, his heir under age, I shall oust the termor, and also the tenant by the statute, because I claim only a chattel, and my chattel is the older chattel. And also such termors are not injured, for when the heir attains his majority they shall have their term, etc. And so the whole charge falls upon the heir, etc. But yet, query as to that case of the statute merchant, or *elegit*, for those are in a manner charges of which the recognizee had legal execution by record, etc. But the heir shall oust the tenant for a term of years, etc. Study well, etc.

Hilary
36 Ed. III.

There is no printed year of 36 Ed. III. Fitzh: Garde, 9, has the Case 17. case.

(18) **In a writ of wardship**, it is a good plea to say that the ancestor of the infant had nothing in the lands at the time of his death, for if he was disseised the lord would not have his wardship by a writ of Wardship, nor by seisin of him, until the tenancy was recovered. By WILLOUGHBY and SHARSHULL, etc.

Trinity
36 Ed. III.

There is no printed year of 36 Ed. III. Fitzh: Garde, 10, has the Case 18. case.

(19) **If my tenant** enfeoffs his son and heir, who is under age, and he does homage to me, and then my tenant dies, I shall not have the wardship: By THORPE, because that homage is so high in the right that it concludes me, etc., and it was my folly to take it, etc. But the taking of my

Trinity
36 Ed. III.

rent or any other service does not conclude me, unless it be in a Court of record, etc. (And yet it is hard to prove by reason that any service concludes me, for I cannot do anything else but take the services when he gives me notice, etc. And if such acceptance of the services ousts me of the wardship, the Statute of Collusions is not to the purpose, etc. Like material adjudged, Mich. 32. Well argued, etc.)

Case 19. There is no printed year of 36 Ed. III. Fitzh: Garde, 11, has the case.

Statute of Collusions, West. Second, 13 Ed. I (1285), cap. 32, Stats. at Large, Vol. 1, p. 163 (206).

Hilary
3 Ed. III.

(20) **A writ of ejectment of wardship** was brought for the body and for the lands. And the writ was adjudged good. And the *Registrum* agrees with that. (Query as to the process, and if he should have process of outlawry as to the body, etc?) Whereupon he said that there was a writ of Right of Wardship pending against him for this same ejectment, etc. Judgment of the writ, etc.

Case 20. Reported in Y. B. Hilary, 3 Ed. III, p. 7, pl. 22. See also Fitzh: Garde, 18.

Trinity
47 Ed. III.

(21) **The king** brought a writ of Ravishment of Wardship, and it was adjudged good. And so it seems that the king shall have whatever action he will, etc.

Case 21. The case has not been identified in Y. B. Trinity, 47 Ed. III. Fitzh: Garde, 30, has the case.

Trinity
41 Ed. III.

(22) **In ravishment of wardship**, the plaintiff counted that he gave the lands to B and to K, his wife, in tail to hold of him by knight's service; and that after their death he was seised of one J, son and heir of B, until etc. BELKNAP: K survived B, so he should have made him heir to K, judgment, etc. FYNCHEDEN: That is a good exception in a [writ of] Right of Wardship, but not here, wherefore answer, etc.

Case 22. Reported in Y. B. Trinity, 41 Ed. III, p. 15, pl. 6. See also Fitzh: Garde, 94.

(23) **In [a writ of] ravishment of wardship**, the plaintiff counted that he was possessed of the wardship as in right of his wife, and the writ was adjudged good in his own name, leaving out the wife. But it is otherwise in [a writ of] Right of Wardship; and it seems that the wife should be named, for she shall recover the infant. As in a writ of Ejectment of Wardship she shall recover the wardship, and shall be restored to the lands; consequently the woman shall be named, etc. And the law is the same in a writ of *ejectione firmæ*, etc. Query? etc.

Trinity
47 Ed. III.

And it was said in the same plea, that as to a battery made on the woman the action shall be brought in both their names, etc.

And it was said in the same plea, that if the woman be named in the writ of Ravishment and they recover, and the husband dies before execution is sued, the executors of the husband shall sue execution, and not the woman, notwithstanding she was named, etc. Query?

Statham
102 b.

The case has not been identified in Y. B. Trinity, 47 Ed. III, or in the early abridgments. Case 23.

(24) **In [a writ of] ravishment of wardship**, he shall be understood to be heir to him who last died seised, etc.

Michaelis
10 Ed. III.

Reported in Y. B. Mich. 10 Ed. III, p. 46, pl. 15. The point appears on p. 47, and seems not to be a part of the decision. Case 24.

(25) **Executors shall have** a writ of Ravishment where the infant was ravished from their testator. And this by the Statute of Ed. III, which says that executors shall have an action for goods carried away in the lifetime of their testator, etc.

Hilary
5 Hen. IV.

The case has not been identified in Y. B. Hilary, 5 Hen. IV, or in the early abridgments. Case 25.

The Statute is that of 4 Ed. III (1330), cap. 7, Stats. at Large, Vol. 1, p. 430 (434).

(26) **In [a writ of] ravishment of wardship**, if the jurors say that they do not know if the infant is married or not, the judgment shall be conditional, etc. Query, then, how it shall be tried whether he is married or not,

Michaelis
21 Ed. III.

when there are different opinions, etc.? And if the infant be sent to another county they will write a letter to the sheriff of the same county to certify them if he be married or not, etc., before they give judgment, etc. By WILLOUGHBY, etc.

Case 26. The case has not been identified in Y. B. Mich. 21 Ed. III, or in the early abridgments.

Hilary
43 Ed. III. (27) **In a writ** of Forfeiture of Marriage, the defendant demanded judgment of the writ, because the plaintiff should have made him heir to his father and his mother, whereas they had made him heir to his father only. And it was not allowed because this is only a personal action, as are ravishment of wardship or ejectment, etc. But yet in this writ of Forfeiture it is a good plea to say that he does not hold of him, without saying more, etc. Query.

Case 27. The case has not been identified in Y. B. Hilary, 43 Ed. III, or in the early abridgments.

Trinity
43 Ed. III. (28) **The king** seised the wardship of one H, and committed him to one B, until, etc., rendering a certain rent; and B tendered him a marriage and he refused it, and B kept himself in after the majority of the heir, and for the value, etc., and for rent in arrears for this same wardship, the king seised it, and held it three years, and the heir sued livery, and had a *Scire Facias* against B, and because it was seised through the default of B, it was adjudged that the heir should have livery. And then B sued a writ of *Valor Maritagii* against H, who pleaded all this matter. And THORPE said that if the heir did not sue livery until he came to the age of forty years the king should have the profits, and after the livery he shall have the value of the marriage and consequently the king's farmer shall have the value of the marriage, and no profit that the king has shall be repaid. Wherefore it was adjudged that the plaintiff should recover and have a writ of Inquiry, etc.

Case 28. Reported in Y. B. Trinity, 43 Ed. III, p. 20, pl. 8.

(29) **In a writ of forfeiture**, etc., it was challenged because the Statute provides that "*teneat terram ejus*," etc. So he shall have an action of trespass, etc. And it was not allowed, for it might be that he was heir to the mesne, for no lands, etc.

Reported in Y. B. Paschal, 18 Ed. III, p. 18, pl. 23.

Statute of Merton, 20 Hen. III (1235), cap. 6, Stats. at Large, Vol. 1, Case 29, p. 24 (28).

(30) **In [a writ of] forfeiture of marriage**, if the lord recovers he shall recover the whole in damages, and he shall not have execution of the lands which were in his wardship, for the Statute is "*quod teneat terram ejus*," etc. And that is meant by way of retaining, and not where he brings an action, etc., wherefore it is better in such a case to have a writ of Trespass, etc.

There is no printed year of 33 Ed. III. The case has not been identified elsewhere.

For the Statute see case 29, *supra*.

(31) **In a writ of intrusion of wardship**, the issue was upon the refusal and not upon the tender, etc. *Simile*, see Anno 31, folio 6, *Liber Assisarum*, that the tender is not to the purpose in that case, for the Statute is "*de mero jure*," etc., and there is no statute which provides in the affirmative that the lord shall tender him the marriage, etc. Study well. But in the writ of Forfeiture of Marriage where he demands double the value of the marriage, there he should declare that he tendered the marriage and he refused, for otherwise he cannot have the double value which is given by the Statute, etc. But in a writ of Intrusion of Wardship, where he recovers only the single value, he will not mention any tender, nor that the defendant refused it, etc.

Reported in Y. B. Hilary, 40 Ed. III, p. 6, pl. 12.

Case 31.

The Statute is that of 20 Hen. III (1285), cap. 7, Stats. at Large, Vol. 1, p. 24 (28), Forfeiture of Marriage. See cap. 6 of the same Act.

(32) **In a writ of intrusion of wardship** the writ was general, and the count also. NEWTON: One H was seised

Hilary
14 Hen. VI.

of the manor of B, and held it of one G by knight's service, which G granted to our ancestor the same services, to hold of him by knight's service, before the Statute, and you are heir to G; thus you should declare that we hold the services, and not the land. PASTON: Your plea had been better if you had said, "Without this that you hold any land" of him, for your plea goes to the action, etc. And they adjourned.

Case 32. Reported in Y. B. Anno 14 Hen. VI, p. 24, pl. 70. The case does not say they adjourned, but it appears that they were held to answer. Statute of 20 Hen. III (1235), cap. 6, Stats. at Large, Vol. 1, p. 24 (28).

Michaelis
21 Ed. III.

(33) **In a writ of wardship** brought by the Prince of Wales, it was shown how the ancestor of the infant held of the king as of his crown, etc., and that the king had granted him the services, etc., to him and to the heirs of the Kingdom of England. And the tenant said that this same ancestor held of him by an older feoffment; that he did not hold of the prince, or of those whose estate the prince had, etc. And it was the opinion that he should have the plea, notwithstanding the words, for it is only the patent of the king to which no prerogative extends, etc.

Case 33. Reported in Y. B. Mich. 21 Ed. III, p. 41, pl. 46. See also Brooke, Garde, 37. The case does not indicate any decision in this term, nor does it contain anything in regard to the prerogative of the king. Brooke says, "The honor is now severed from the crown, and therefore the prince shall not have any prerogative." Statham probably had the report of the case after the adjournment, but I have not been able to find it.

Note.

See as to wardship, in the title of Resummons and also in the title of Voucher and in the title of Counterpleader; in the title of Collusion and in the title of Non-Tenure, where it is held that the writ of Wardship lies against the possessor, albeit he had only at will, or that he be guardian in socage, etc. And in the title of Process, where it is held that the same process shall be against the vouchee in wardship as against the tenant, to wit: proclamation, etc. But yet, query?

See Statham, title of Resummons, et Reattachement, *infra*, pp. 160 a to 160 b; Voucher, *infra*, pp. 182 a to 184 b; Countreplee de Voucher, *supra*, pp. 48 b to 49 b; Collusion and Covyne, *supra*, p. 47 b, Nonntenure, *infra*, p. 130 b; Processe, *infra*, pp. 138 a to 141 a.

(34) **If I hold** of a man by priority, and he holds over, and I hold other lands of another by "posteriority," and I forejudge¹ the mesne, then he of whom I held before by posteriority shall have the wardship of the body of my heir, for then I hold of him by priority: By SHARSHULL, etc., in a writ of Wardship. But yet the tenancy is not changed after the forejudgment, but he does not hold by the same services by which he held before, etc., for he holds by such services as the mesne held, and the other services are extinct. Study well, etc. And see such matter in a writ of Wardship, Michaelis, 11 Ed. III, and the rest of the matter in Hilary, 14 of the same king; well argued, but it was not decided, etc.

Hilary
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Garde, 12, has the case. Case 34.

(35) **In a writ of ejectment of wardship**, because the plaintiff made himself heir to his father, whereas his grandfather survived his father, the writ was abated, etc.

Michaelis
14 Hen. IV.

The case has not been identified in Y. B. Mich. 14 Hen. IV, or in the early abridgments. Case 35.

(36) **In [a writ of] ravishment of wardship**, the defendant demanded judgment of the writ, and he showed how the plaintiff should have made him heir to his mother and not to his father, etc. And it was not allowed, unless he made title in himself etc. Query as to that, since the plea is only in abatement of the writ? etc., for the contrary is held in other places.

Michaelis
7 Hen. IV.

Reported in Y. B. Mich. 7 Hen. IV, p. 2, pl. 14. See also Fitzh: Garde, 75. Case 36.

(37) **If my tenant** makes a feoffment and dies, and his heir is a minor; and H brings a writ of *Dum non fuit*

Statham
103 a.
Paschal
7 Hen. IV.

¹"Forejudger is a judgment given in a writ of mesne brought by a tenant against a mesne lord, who should acquit the tenant of services demanded by the lord above, of whom the tenement is holden." "Termes de la Ley," 1721.

compos mentis, and recovers, I shall not have the wardship of him. By the opinion of the COURT in a writ of Wardship, etc.

Case 37. The case has not been identified in Y. B. Paschal, 7 Hen. IV, or in the early abridgments, unless the point may be thought to be found in the argument of the case reported in Y. B. Paschal, 7 Hen. IV, p. 12, pl. 7.

Michaelis
12 Hen. IV. (38) **In a writ** of Wardship of the Body, the defendant said that the ancestor of the infant enfeoffed him of the same lands that he alleged to be held of him. The tenant said that that feoffment was by collusion, and SKRENE: You cannot have the body before you have recovered the land. HANKFORD: So it seems, for at the common law, by such a feoffment he was forbarred of the heir and of the lands, and the Statute is "*Non licebit hujusmodi feoffatos disseisire.*" So that as to the lands, the collusion shall be first tried, for that is the principal [matter]. For if my tenant is disseised and dies, I shall not have a writ of Wardship of the Body until the heir has entered into the lands, etc. But yet SKRENE dared not demur, but traversed the collusion etc.

Case 38. Reported in Y. B. Hilary (not Mich.), 12 Hen. IV, p. 13, pl. 5. See also Fitzh: Garde, 79. The Statute is that of Marlbridge, 52 Hen. III (1267), cap. 6, Stats. at Large, Vol. 1, p. 55 (59).

Trinity
27 Hen. VI. (39) **Thomas Skargill** brought a writ of Ravishment of Wardship against Giles Thornton, who said that he did not ravish, etc., and the inquest said that he did ravish. And then it was asked by the Court, of the inquest, if he was married or not? Who said that the defendant ravished the infant when he was fourteen years of age and more, and then he affianced him to one Isabelle, daughter of the defendant, to have her for his wife, and then, before he came to the age of twenty-one years, the said plaintiff got the wardship of the said infant, and when he was eighteen years old the plaintiff married him to one Anne, daughter of R, and that marriage continued until by the exertions of the defendant, at the suit of the said Isabelle, they were divorced, because of the pre-contract aforesaid. And the said plaintiff appealed to the Pope, "*cum effectu,*" which appeal is still

pending and not decided, and at this date the defendant is of age, and prays their counsel. And they taxed forty pounds of damages, and a hundred marks in costs, and a thousand pounds for the marriage, etc. POLE: The plaintiff cannot recover for the marriage, for various reasons, for I have consulted with doctors of the spiritual law, who say that at all times pending the appeal the espousals are continued; for it is not like a writ of Error in our law. And also, although the espousals be defeated, still he shall not have the value of the marriage, nor forfeiture, for it is found that he was married by the plaintiff, and whether that was rightfully or wrongfully the law implies that he was satisfied, for it was his folly, etc. And also the Statute which gives the value of the marriage, says, "If the infant be married by the ravisher," and it was found that the infant was betrothed to the daughter of the ravisher, but it is not found that he was married to her, etc. And, sir, as to that divorce, nor of this appeal, the jury has nothing to do, for such matters do not lie in our jurisdiction, wherefore, etc. And if the plaintiff shall now recover damages for the marriage, he will recover twice, which is not reasonable. DANBY: By that betrothal he was disabled from making any other marriage, wherefore the defendant has done what he could to oust us from the marriage. And so, if a man recovers the value of the marriage twice, as if the ravisher marries the infant before the age at which he can assent, there he will recover the value; and if afterwards the infant disagrees, and then his guardian tenders him a marriage, and he refuses it, the guardian shall have the value again, for *de mero jure*, etc. And then it was adjudged that the plaintiff should recover his damages for the ravishment, to wit: forty pounds, and one hundred marks for the costs, but he recovered nothing for the marriage, for the reasons above set forth, etc.

The case has not been identified in the short printed Trinity Term of Case 39. 27 Hen. VI, or in the early abridgments.

The Statute is that of 20 Hen. III (1235), cap. 7, Stats. at Large, Vol. 1, p. 24 (30).

- Note. **See as to wardship**, in the title of Judgment, Paschal, 24 Ed. III, etc. And in the title of Joint Tenancy, Michaelis 49 Ed. III.
 See Statham, title of Jugement, *infra*, p. 113 a, case 3; and Statham, title of Joyntenancy, *infra*, p. 114 a, case 7.
- Paschal (40) **See that a man** can abridge his demand in wardship
 39 Ed. III. as well as in a writ of Dower, etc. As appeared in a writ of Wardship. And yet he does not make a demand but declares, and he can abridge that declaration because nothing certain is demanded in the writ, etc.
- Case 40. Reported in Y. B. Paschal, 39 Ed. III, p. 10, pl. 18. See also Fitzh: Garde, 91.
- Hilary (41) **The guardian** cannot oust the tenant by *elegit*,
 1 Ed. III. but he may oust the termor: By the opinion of SCROPE, etc., in Dower.
- Case 41. Reported in Y. B. Hilary, 1 Ed. III, p. 2, pl. 7. See also Fitzh: Garde, 13.
- Michaelis (42) **A man can take** an infant out of the possession
 14 Hen. IV. of the king, etc., in [a writ of] ravishment of wardship; that is, where no title is found, etc.
- Case 42. The case has not been identified in Y. B. Mich. 14 Hen. IV, or in the early abridgments.
- Trinity (43) **In [a writ of] ravishment of wardship**, it is no plea
 1 Ed. III. that there are two "Dales" and neither without an addition, etc. *Simile* Michaelis, 11 Ed. II.
- Case 43. The case has not been identified in Y. B. Trinity, 1 Ed. III, or in the early abridgments.
- Paschal (44) **Seisin of wardship** is clearly sufficient by parole.
 22 Ed. III. And that in [a writ of] Wardship.
- Case 44. The case has not been identified in Y. B. Paschal, 22 Ed. III, or in the early abridgments.
- Anno (45) **The grantee of the king** shall have the wardship
 13 Hen. IV. although the land is held by posteriority; just as the king shall have it, because it is adjudged to be all that time in

the hands of the king, inasmuch as the heir on his majority can sue livery; and the wife shall also be endowed in the Chancery.

Reported in Y. B. Mich. 13 Hen. IV, p. 6, pl. 15.

Case 45.

(46) **If the king** grants to a man the custody of the lands and hereditaments of one who is in his wardship during his minority, etc., and then before the heir comes of age, one J, who holds of him by knight's service, dies, his heir being a minor, the king shall have the wardship of that heir, and not the committee of the king. As was granted by all the justices in the Exchequer Chamber in the case of the *Duchess of Suffolk*, etc. And the king shall also have the presentation to the advowson, notwithstanding such grant, unless express mention of the advowson be made in the grant, etc.

Michaelis
35 Hen. VI.

The case has not been identified in Y. B. Mich. 35 Hen. VI, or in the early abridgments. Case 46.

(47) **In [a writ of] wardship of the body**, the writ alleged that the ancestor of the infant held of him certain rents and lands, etc. And it was adjudged good, for they said that the rent can be held of the king, and the king can grant the same rent which is thus held of him to another; then the rent is held of the grantee of the king; so that rent can be held. And if to any intent it can be held, the writ is good. But yet, query? For if the king grants a rent to a man to hold of him, still, if the king grants that rent, the grantee shall not have any distress, etc. But many say that the king in that case can distrain in other lands of the grantee for that rent, but yet his grantee shall not do so. Query as to that although he cannot distrain, peradventure he shall have the wardship, as the king shall have it, etc.

Michaelis
13 Hen. VI.

Statham
103 b.

There is no printed year of 13 Hen. VI. The case has not been identified elsewhere. Case 47.

⁵⁶ One or two moot points in the law of guardianship have already been touched upon in the notes to the titles of Accompte and of Administratours. The idea that "owing to the deficiencies of the action of account at the common law," we have to wait for a practicable action of

account until the equitable action has grown up, has been noticed in the notes to the action of account. The idea crops up again in the theory that, owing to the inefficacy of the action of account, there was no machinery for "compelling a guardian to realize his responsibilities." [Holdsworth, *Hist. of Eng. Law*, Vol. 3: 398.] If the action of account was not deficient, as I have contended [see *Accompte*, *supra*, p. 29], then the argument that because of its deficiencies the guardian could not be compelled to realize his responsibilities also falls. It does not seem necessary to repeat here what has been said upon the action of account. But we may ask here: was there no adequate machinery to compel the guardian to realize his responsibilities? In the time of the Year Books, and to be more definite, the period of our abridgment, was guardianship merely "the privilege of the guardian"? [Holdsworth, *Hist. of Eng. Law*, Vol. 3: 399.] The mere fact that "the infant must get his property at his majority, as it was left to him" [*supra*, 399] shows that the privilege was strictly limited. It seems to have been very largely the "holding" of the infant or his property, which was so beneficial to the guardian. While the body or the property was in his or her possession (for the mother was often the guardian), there could much benefit accrue to the guardian under the feudal law or custom. Thinking back to the thought which those living at that period would naturally think, we do not find the position of guardian so entirely a privileged one. "An infant land-owner must be in ward to some one, and to some one who as a matter of course will be entitled to make a profit of his wardship," but the general rule in the United States to-day is to allow compensation to guardians. [Schouler, *Dom. Rel.* §375 and note.] The amount of his compensation differs greatly in the different states, and it is generally considered that a guardian should be compensated according to the equity of the situation, the amount of property to be handled, and the time and trouble necessarily consumed in the duties of the guardianship. Was not this in fact just what the guardian got under the old law? We think of wardships as of burdens. On this point it is impossible to refrain from using Maitland's language: "To speak of the English lords as groaning under the burdens of wardship and marriage is hardly permissible; we do not hear their groans." [P. & M. *Hist. of Eng. Law*, 2d ed., Vol. 1: 324.] Neither do the sobs of the orphan strike upon our ears with any insistency. Human nature was very much as it is now; the feudal burdens were not the burden to those who lived in feudal times that we know they would be to ourselves. They were taxes, laid differently from our taxes, those modern taxes under whose burden we do groan loudly, however little we feel them, but they were probably no more burdensome than ours. To be sure, it may be said that the taxpayer of the lower strata of that day, who, as a matter of course bore the heavier burdens, was a voiceless factor in the civilization of which he was a part. This was not the case in the matter of guardianships, however; the landed infant formed a part of the lordship of the land; he was not voiceless, either as an infant or when he attained his "age." The cases we have to deal with in the abridgment do not show the infant trying to

secure justice and failing. We do not find him trying to bring actions of account against his guardians and not succeeding. Coke knew the common law at least as well as the most expert of our moderns (though some of the latter may not think so) and although he admits that there is a question on the right of the infant to bring account, his argument seems sufficient to settle the matter in favor of the right. [Coke: 1st Inst., Socage, sec. 123.] In the action of account Maitland's note on the subject has already been taken up [*supra*, Accompte, pp. 26, 27]. Coke cites Fitzherbert's *Natura Brevium*, 118, and Fitzherbert in turn refers to the case cited by Coke, 32 Ed. III. I have not been able to verify this case from the printed books, but Fitzherbert's Abridgment, Garde, 31, has a long and apparently clear digest of it, and the liability to account is agreed to by all. The animus against the writ of account at the common law seems to color the theories of the law upon this subject. As we have seen, the true status of the relation of guardian and ward as presented in the Year Books can only be understood by placing oneself in the mental attitude of those whose lives were limited by the feudal law. We do not find the personal relations of guardian and ward much emphasized in the particular cases considered in the Abridgment. It is the possession of the land that is chiefly sought. And where it is the body of the heir, it is — except in the case where the mother is, or is seeking to be, the guardian — chiefly because the possession of the body carries with it many privileges — privileges of the heir which were conferred on the person "holding" the heir, giving him a certain status and correlative privileges. If we can forget to think of the feudal wardship as a burden, and think of it just as it presents itself in the case law of the time, we may learn to think of it a little less unkindly.

GARRANTIE DE CHARTER

(1) **In [a writ of] warranty of charter** brought by two, on a deed with warranty made to them and to a third. And they showed that the third had surrendered to them without a deed. And it was the opinion that they should have the warranty for the entirety; and so it was adjudged, etc. Michaelis
40 Ed. III.

And it was said in the same plea, that the law is the same where one releases to the other, etc. Query?

Reported in Y. B. Mich. 40 Ed. III, p. 41, pl. 21. See also Brooke, Case 1. Garrantie, 6; and Fitz: Garrantie 12.

(2) **Two brought [a writ of] Warranty of Charter**, and declared that one H had brought an Assize against them and Michaelis
48 Ed. III.

recovered, and that pending the Assize they brought this writ; and that the defendant would not afford them any matter to bar the plaintiff of the Assize. HAM: One of the plaintiffs has died while the writ was pending; judgment of the writ. PERSHAY: Then we cannot have any other writ, because the Assize is ended. FYNCHEDEN: Yes, certainly, for *journees accomptes*, for there is no default in you. Whereupon the writ was abated, and he sued another writ, etc.

Case 2. Reported in Y. B. Mich. 48 Ed. III, p. 22, pl. 4.

Trinity
31 Ed. III. (3) **A man** shall have [a writ of] Warranty of Charter in whichever county he will. By the opinion of THORPE, and that in a writ of Warranty of Charter.

Case 3. There is no printed year of 31 Ed. III. Fitzh: Garrantie des Charters, 14, has the case.

Michaelis
24 Ed. III. (4) **A writ of warranty of charter** is well brought after the land is recovered against him, and he shall recover the warranty, for that is the nature of the action. But if he brings a *Scire Facias* afterward to have in value, as he should in all cases of warranty of charter, he shall be barred from an execution, because he will not have garnished him pending the writ by which the land is recovered; in which case he could have showed him matter to have barred the demandant. And therefore it is well in such a case that the defendant, in a writ of Warranty of Charter, should plead specially, so that he can have the advantage afterwards at the *Scire Facias*, etc. And also to excuse himself from the damages. And that in a writ of Warranty of Charter.

Case 4. The case has not been identified in Y. B. Mich. 24 Ed. III, or in the early abridgments.

Trinity
31 Ed. III. (5) **A man** should bring his writ of Warranty of Charter according to the writ which is used against him; as if there are two *præcipe's* in the writ he shall have two writs of Warranty, etc. And if lands and rent are demanded against him the law is the same. And that by THORPE, in a [writ of] Warranty of Charter.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 5.

(6) **In [a writ of] warranty of charter**, it is no plea to say that you were not impleaded on the day the writ was purchased, for he shall recover his warranty. But yet, query? For he should have a writ in accord with that case, etc., "*quia timet implicitari*," but he shall not recover damages in that case. And also it is no plea to say that you were impleaded by a writ of Formedon, in which you can vouch, etc., but he shall recover his warranty. But it is a good plea to say that you were not tenant on the day of the purchase of the writ, etc. But in the *Scire Facias* it is a good plea to say that you were impleaded by such a writ in which you could have vouched and did not, and that you had no notice, etc. And so, if he can allege any default in him, he can extort an execution from him, etc. Paschal 18 Ed. III.

The case has not been identified in Y. B. Paschal, 18 Ed. III, or in the early abridgments. Case 6.

(7) **If a man** recovers his warranty *pro loco et tempore*, by a writ of Warranty of Charter; still, if he be impleaded afterward in such an action in which he can vouch him, he shall vouch him, or else the other will extort execution from him in the *Scire Facias*. And if it be an action in which he cannot vouch, he can garnish him, etc. *Simile* held by HORNEBY and FRISBY, Michaelis, 24 Ed. III, in a writ of Warranty of Charter. Michaelis 19 Ed. III.

There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year. Fitzh: Garrantie des Charters, 9, has the case. Case 7.

(8) **In a writ of warranty of charter**, it was held by HERLE and STONORE that if I am impleaded, and bring a writ of Warranty of Charter pending the plea, and recover the warranty, if the lands be recovered against me I shall sue execution by a *Habere Facias ad Valenciam*, without suing a *Scire Facias*. It is different where I recover the warranty before I am impleaded, etc. But yet I should have brought my *Scire Facias* pending the plea where I Statham 104 a. Paschal 19 Ed. III.

had recovered my warranty before, or else vouched him, etc. Query well, etc.

Case 8. There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year. Fitzh: Garrantie des Charters, 10, has the case.

Michaelis
21 Hen. VI.

(9) **In a writ of warranty of charter**, the plaintiff counted that the defendant had warranted to him certain lands, by a deed which he produced, and that one A brought an Assize against him for the same lands, and that he came to the defendant and prayed him to offer a plea to save the land, and he refused it, and then the Assize was awarded, wherefore he recovered, etc. YELVERTON: Action, etc., for a long time before you had any interest in these lands the said A was seised until disseised by one F, and then we enfeoffed the plaintiff, upon whom the said A entered, so the warranty is extinct, etc. MARKHAM: That is no plea, for he cannot disable his own estate, to wit: that his estate is by a disseisin; as if I disseise YELVERTON and grant a rent charge to a man, and then YELVERTON releases to me, etc. PASTON: Not the same, for in your case your estate is always continued, but not so here, for by the entry of A all the mesne estates were defeated. And if a man leases land to me by a deed indented, rendering a certain rent, I may well say that the plaintiff had nothing except by a disseisin made on one B, who has entered, etc., so here. ASCOUGH: It is different when he to whom a release is made is in by title and when not. As if two disseise me and I release to one of them, he cannot keep his companion out, but the release shall inure to both, for their entry shall be held to be that of their feoffor, and not by me. And in that case if their feoffor enfeoffed them with warranty, their warranty remains, for my release to the tenant does not defeat the mesne estate, as my entry does, etc. And they adjourned, etc.

Case 9. Reported in Y. B. Paschal (not Mich.), 21 Hen. VI, p. 41, pl. 12. The case was argued Michaelmas Term, 22 Hen. VI, p. 22, pl. 39, where after a very long argument the case went off upon another point. See also Fitzh: Garrantie des Charters, 16.

(10) **A man** shall have a writ of Warranty of Charter as assignee. By FYNCHEDEN and THORPE, in a writ of Warranty of Charter, which SHARSHULL denied, etc. Hilary 36 Ed. III.

There is no printed year of 36 Ed. III. Fitzh: Garrantie des Charters, Case 10. 11, has the same short digest of the case.

(11) **Warranty of charter** for lands where rent was demanded was adjudged good. But the rent which was demanded was a rent service, etc. In the Iter of Norfolk. Anno 4 Ed. III.

This case from the Iter cannot be identified in the printed years. Fitzh: Garrantie des Charters, 12, has the case in the same words as Statham. Case 11.

(12) **Warranty of charter** was adjudged good against the issue of the tenant in tail, notwithstanding there was a Formedon pending against him for the same lands, etc. Michaelis 2 Ed. III.

The case has not been identified in Y. B. Mich. 2 Ed. III, or in the early abridgments. Case 12.

(13) **Where the disseisor** leased the lands for life, and the disseisee released to the tenant for life with warranty, and the tenant for life died, his lessor can vouch the disseisee or his heirs, but he shall not have a writ of Warranty of Charter. By the opinion of PASTON, in a *Præcipe quod Reddat*. And yet it is hard to bind him by that warranty, for although the release inures to the reversioner, to wit: to increase his right, still the warranty will not be taken so broadly, for he is not heir nor assignee to the tenant for life; and although he were heir to him by blood, still he had not these lands by descent, etc. Michaelis 22 Hen. VI.

Reported in Y. B. Mich. 22 Hen. VI, p. 22, pl. 39. See *supra*, case 9. See also Fitzh: Garrantie des Charters, 17. Case 13.

GARRANTIE

(1) **One A leased lands** to one B for life; B leased his estate to C, in whose possession the ancestors of A released with warranty, and B dying, A entered. C ousted him. Statham 104 b. Hilary 41 Ed. III.

A brought an Assize, and it was adjudged that that warranty would not bar him, since by that release the estate of C was not increased.

Case 1. The case has not been identified in Y. B. Hilary, 41 Ed. III. Fitzh: Garrantie, 15, has the case.

Hilary
41 Ed. III. (2) **In a formedon** in the reverter, the warranty of the ancestor of the demandant is a bar, whether it be lineal or collateral, since he demands a fee simple, etc.

Case 2. The case has not been identified in Y. B. Hilary, 41 Ed. III. Fitzh: Garrantie, 16, has the case.

Trinity
45 Ed. III. (3) **A man admitted**, etc., to be the right of H, who granted and rendered to B and H, for the term of their two lives, the remainder to B, son of the said H. Then the husband levied another fine to one G, to whom the possession [passed]. H released with warranty. G renefeoffed the husband and his wife for the term of their two lives, the remainder to one F, in fee. The husband died and the wife died. The said B as heir of H entered; F ousted him, and pleaded this warranty in bar of the Assize. And it was the opinion that the retaking of the second estate in fee was in his remitter, since she survived her husband; so the warranty was extinct in the lifetime of H, and that warranty was not barred. But yet it was said on the part of the defendant that the woman sued livery after the death of her husband, in the Chancery, agreeing to the second feoffment. To which THORPE said that that agreement should not be a prejudice to those in the first reversion, which was immediately recontinued when she survived her husband. And also she would not be estopped by that agreement, for the seisin of the king was not legal, because she was in by the survivorship. FYNCHEDEN: If my ancestor releases to my tenant for life, with warranty, and my ancestor dies, and my tenant for life dies and his heir enters, that warranty shall not bar me, because the reversion was always continued in me. But if my tenant for life be disseised, and my ancestor releases to the disseisor and dies, although my tenant for

life enters, still the reversion is to the disseisor, and the warranty will bar me, because my reversion was discontinued at the time, etc. Query?

And it was moved in the same plea: if my tenant for life be disseised, I can enter, etc. In the Assize of Basingbourne, etc.

Possibly the case reported in Y. B. Trinity, 45 Ed. III, p. 18, pl. 10. Case 3. Yet the case as printed omits so much which is necessary to our case, that the reference is merely given for the sake of comparison. The case cannot be said to be really identified.

(4) **If I give lands** in tail, and warrant the same lands to him, his heirs, and his assignees; the tenant in tail alienates and dies without issue; if I bring a writ of Formedon in the reverter, that warranty bars me. By the opinion of the COURT, in the case of *Whitby*, etc. (And from that it follows that a warranty can increase an estate, which is contrary to the common opinion, etc.) Hilary
46 Ed. III.

Reported in Y. B. Hilary, 46 Ed. III, p. 4, pl. 11. See also Brooke, Case 4. Garrantie, 15; and Fitzh: Garrantie, 18.

(5) **If a man leases land** to me for the term of my life, without a deed, still I shall recover in value against him, but not against his heir, nor against his grantee, albeit they have the reversion, etc. No more than tenant in dower, nor by the curtesy, for they shall not recover in value, etc. No more shall the tenant for life recover against him in the reversion, etc. And in an Assize of Mort d'Ancestor, brought on the possession of his mother, the warranty of his father, by force of such a lease for a term of life, is not a bar, although he had assets by descent, etc. For the Statute of Gloucester applies to a warranty in fact, and not a warranty in law. And that by WILLOUGHBY, in a writ of right, etc. Hilary
18 Ed. III.

The case has not been identified in Y. B. Hilary, 18 Ed. III, or in the early abridgments. Case 5.

The Statute is the Statute of Gloucester, 6 Ed. I (1278), Stats. at Large, Vol. 1, p. 117.

Paschal
24 Ed. III.

(6) **A man can never** put his lands in value by the deed of his ancestor, unless the lands descended to him through the same ancestor who made the deed. As, if the grandfather be seised of lands, and the father dies; the grandfather dies; the son cannot put these lands in value by the deed of his father, for he cannot make himself heir to him, etc. And the law is so, albeit the father had a reversion, since he was never seised of the mesne, etc.

Case 6.

The case has not been identified in Y. B. Paschal, 24 Ed. III, or in the early abridgments, unless it is the case reported in Y. B. Mich. 30 Ed. III, p. 30, pl. 65. There are many differences and likenesses between the cases. Statham undoubtedly had a different manuscript than the one used in the printed version.

Michaelis
30 Ed. III.

(7) **A manor descended** to two coparceners who made a purpart in the Chancery, and because one part was of a greater value, he granted to the other out of the same part twenty shillings of rent; and afterwards from the same half so charged, he enfeoffed one J with warranty, who brought against him [a writ] of Warranty of Charter and recovered the warranty. And then the other coparcener, whose rent was granted, brought a *Scire Facias* against J as terre-tenant, and recovered forty shillings for the arrears of the same rent. And then J brought a *Scire Facias* against the other coparcener to have in value, etc. SETON: It is not reasonable that he have in value, for if he had been impleaded for the rent he could not have vouched us; no more than where a man is impleaded for a rent service, for that is not merely a rent charge, for the law says, "constrain a man to grant such a rent," and that is proved, for a man shall avow for such a rent without showing a deed, therefore it is a rent which is not against the common law, and consequently he cannot recover in value, etc. And also, if he recovers in value he will recover against us forever. And it may be that this rent will be terminated; as by the death of the other coparcener without issue, then he shall have the lands, and then the rent is ended, for it cannot escheat, because it is not held of anyone, etc. But yet it seems in that case if she be attained

of felony, so that the lord had his part by escheat, that the lord shall have the said rent, since it is incident to the purpart, etc. Query well.

The case has not been identified in Y. B. Mich. 30 Ed. III or in the Case 7. early abridgments.

(8) **Where I have** title to the lands, and [yet] my entry is not lawful, and I enter, I shall not have my warranty paramount, because another had title to the possession, and I am not in in my remitter; but if I die seised of such an estate, my heir shall have the warranty, for he is in in his remitter, etc. Paschal 27 Ed. III.

The case has not been identified in Y. B. Paschal, 27 Ed. III, or in the Case 8. early abridgments.

(9) **Where he who is in the** remainder has recovered by default of his tenant for life, and vouches to warranty, and the vouchee would not save the bar, the demandant had judgment to recover against the tenant and he over, it is said that execution shall cease until after the death of the tenant for life, etc., because he in the remainder had no reason to have the lands while the tenant lived, etc. Query, if the demandant in that case shall have his judgment against the tenant, or hold by receipt; and if he shall have judgment against the tenant for life, how shall the judgment over in value be given? For it seems that it should be in accord, or else it cannot be, etc. Hilary 23 Ed. III.

And it was said in the same plea, that where the tenant for life, where the remainder is by the same deed, vouches to warranty, and the demandant recovers against him, and he over, and has execution, that after the death of the tenant for life, he in the reversion can enter on the same lands so recovered in value, etc., since their estates commenced all at one time. But where land is leased for life, and then the reversion is granted over by another deed, the law is the other way, for there there are two warranties for the first warranty, because the tenant for life was enfeoffed, not [during,] but for, his life. Query, then, how should he in the reversion get to his warranty, etc.? Statham 105 a.

- Case 9. The case has not been identified in the very short printed year of 23 Ed. III, which has no Hilary Term reported. The language of the case is obscure and involved, and it is very probable that the translation may be incorrect in many points, but where there is no way to correct the text by reference to any other, it has been thought best to follow the text as literally as possible.
- Paschal
29 Ed. III. (10) **Where** there are two joint tenants, and they make partition between them by agreement, they have both lost their warranty. But where one makes a feoffment of that which belongs to him, still the other shall have his warranty for the half, because there was no fault in him, etc. But query if the feoffee of the other shall have his warranty as assignee, etc.? And it seems not, for it is not to both, etc. In Formedon.
- Case 10. The case has not been identified in Y. B. Paschal, 29 Ed. III, Fitzh: Garrantic, 70, has the case.
- Hilary
4 Ed. III. (11) **If lands** be given to a man and his wife in tail, the remainder to the right heirs of the husband; the husband alienates with warranty, and dies without an heir of his body; his collateral heir brings formedon in the remainder, claiming a fee simple; he shall be barred, because the warranty was without any descent. But it is otherwise where the remainder is limited to him expressly by name. As appeared Paschal, 42 Ed. III. (All the same it seems that it is all one, etc.) Query?
- Case 11. Reported in Y. B. Mich. (not Hilary), 4 Ed. III, p. 56, pl. 65. See also Fitzh: Garrantie, 58.
- Michaelis
29 Ed. III. (12) **If a woman** purchases a wardship and marries, and the woman dies, and the husband is sued for the wardship, he shall have the warranty of the feoffor of the woman; and yet he is a stranger to it, because it was a chattel and legally vested in him, etc. And the law is the same when he is sued in the lifetime of his wife, etc. Query, how can a man have execution in value by such a voucher? In a writ of Wardship, etc.
- Case 12. The case has not been identified in Y. B. Mich. 29 Ed. III, or in the early abridgments.

(13) **If I recover** lands in value, and then I implead him for those lands, I shall not vouch him by reason of the first warranty, because it was once executed, etc. And the law is the same where I am enfeoffed of rent with warranty, and then the land comes in place of the rent; I shall not have the warranty for the lands, for a covenant shall be strictly construed, etc. By WILLOUGHBY, in Formedon. Hilary
23 Ed. III.

There is no printed Hilary Term for the year 23 Ed. III. There is no case of a writ of Formedon in Michaelmas Term, which is the only printed term for that year. Case 13.

(14) **If I am disseised**, and my brother release with warranty and enters into religion, that warranty bars me, albeit he is alive, for I shall not have his lands by descent, and consequently the warranty has descended, etc. Paschal
34 Ed. III.

And it was said in the same plea, that if the parson of a church be disseised of lands in the right of his church, that the release of his brother with warranty will bar him for life. And that in an Assize, etc.

There is no printed year of 34 Ed. III. Fitzh: Garrantie, 71, has the case. He says, "for I shall have the lands by descent, consequently the warranty has descended." Case 14.

(15) **In a writ of dower**, the warranty of the ancestor of the demandant is no bar. Query as to the cause, etc.? Paschal
34 Ed. III.

There is no printed year of 34 Ed. III. Fitzh: Garrantie, 72, has the case. Case 15.

(16) **The warranty** of every ancestor of those who could have held an estate before him against whom the warranty is pleaded, albeit they did not hold an estate, nor is any mention made of them in the writ, is not a bar without assets, etc., for it is lineal, and that shall be shown by the tenant in his bar, to wit: how he could have been heir; as where tenant in tail had issue two sons, and discontinued, and the elder released with warranty, and died without issue; that is lineal to the younger, for the above reason. But if the elder releases with warranty, and dies while his father is living, it is otherwise, for then he was never in such a position that he could hold an estate, and Paschal
35 Ed. III.

so there is a distinction. By SHARSHULL and WILLOUGHBY, etc.

Case 16. There is no printed year of 35 Ed. III. Fitzh: Garrantie, 73, has the case.

Paschal
33 Ed. III. (17) **In an assize** of Common of Pasture, the release of the ancestor of the plaintiff with warranty is no bar, for the warranty does not extend to the common, for if he was impleaded by a stranger for the common, he would not vouch by reason of that warranty, nor, consequently, bar him, etc. But the release of the plaintiff without warranty is good. But if it be with warranty and he relies upon the warranty, it is no bar, etc.

Case 17. There is no printed year of 33 Ed. III. Fitzh: Garrantie, 74, has the case.

Paschal
18 Ed. III. (18) **If I vouch two** and show their deed to bind them, and one admits and the other denies the deed, and upon that I am at issue, and it is found against me, I shall recover against the other only the half. But yet if I had demurred upon him, upon his admittance, and not replied to the other, I should have recovered the entire warranty against him. By STONORE.

And the law is the same where I vouch two, and one says that he is under age, and I say he is of full age, and it is found for him; I shall recover against the other only the half, albeit he admitted the deed, and I shall be barred against the infant forever, etc.

Case 18. The case has not been identified in Y. B. Paschal, 18 Ed. III. Fitzh: Garrantie, 75, has the case.

Note. **See of warrantie**, in the title of Warranty of Charter; and also in the title of Voucher, and in the title of Counterplea of Voucher; and also in the title of Formedon.

Statham, title Garrantie de Charter, *supra*, pp. 103 b to 104 a; and Statham, title of Voucher, *infra*, pp. 182 a to 184 b; Statham, title of Countreplee de Voucher, *supra*, pp. 48 b to 49 b. Statham, title of Formedon, *supra*, pp. 95 a to 95 b.

(19) **If land** be given to me in tail, and I discontinue, and my brother releases with warranty and dies, and I die; my issue enters and dies, and his heir is in by descent, still he is not in in his own right, because that collateral warranty was once descended, which is a bar and defeats the tail forever. And the discontinued should recontinue his estate by a writ of Entry upon a disseisin. But it is otherwise as to a lineal warranty, for although it be descended with assets, still if the issue in tail enters, and dies seised, his issue is in his own right, for that warranty is no bar, except for the time, for if he who is barred by the assets alienates the assets, his issue shall have Formedon of the lands tailed. By NEWTON, and that in the Assize of Kelomme, etc. But yet, query? For it seems that the collateral warranty in the case above is defeated when the issue in tail is in by descent; as well as if the issue in tail brought a Formedon and recovered, where that collateral warranty is not pleaded in bar, then he is in [in] his own right and the warranty is defeated.

And it was said in the same plea, if I alienate lands to the value of forty shillings, with warranty, and then it is increased by tin, lead or coal, to the value of twenty pounds, that he shall recover in value, according to the value that it had at the time of the alienation, and no more, etc. Query?

Reported in Y. B. Hilary, 19 Hen. VI, p. 59, pl. 26. See also Fitzh: Case 19. Garrantie, 3.

(20) **If a man** enfeoffs me upon condition, and I enfeoff another, and he who enfeoffs me enters, because of conditions broken, and my feoffee enters afterwards, against whom my feoffor brings a writ of *Præcipe quod Reddat*, and he vouches me; I shall avoid the warranty from him because, by the entry of my feoffor, the warranty was annulled, and yet he is not in of any other estate, having regard to me. By HANKFORD and THIRNING, etc. (Query? For it seems that the contrary is law.)

There is no printed Hilary Term for the ninth year of Hen. IV. The case has not been identified in the only printed term for that year.

- Michaelis
12 Hen. VI. (21) **In a writ of entry**, the tenant vouched two to warranty, who entered into the warranty, and then one of them made default. BROWN: The petty cape should issue against both, for each of them is charged with the entire warranty; as if one vouches the heir, and another as bastard, by reason of the possession. COTTESMORE: Not the same, for the bastard shall be charged for all, but not so here, etc. And they adjourned.
- Case 21. Reported in Y. B. Hilary (not Mich), 12 Hen. VI, p. 6, pl. 4.
- Note. See as to warranty, in the title of Age, Trinity, 19 Ed. III; and in the title of Voucher; and in the title of Warranty of Charter, etc.
- Stham, title of Age, *supra*, p. 5 a, case 23; Stham, title of Voucher, *infra*, pp. 182 a to 184 b. Stham, title of Garrantie de Charter, *supra*, pp. 103 b to 104 a.
- Michaelis
27 Hen. VI. (22) **In a juris d'utrum** brought by the parson of a church, the warranty of his ancestor is no bar. By the opinion of NEWTON. No more is it a bar in a writ of Entry *sine assensu capitali*, brought by a dean or master of a college or of an abbey, etc. But as to the abbot it is clear; for he cannot be heir, etc., consequently, etc. In a *Juris d'Utrum*, etc.
- Case 22. The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the early abridgments.
- Michaelis
12 Ed. II. (23) “**And I, etc., say** that I warrant the land against every one,” and he did not say to whom, etc. And it was adjudged a good bar. *Simile* Mich. 14 Hen. IV.
- Case 23. The case has not been identified in Y. B. Mich. 12 Ed. II, or in the early abridgments.
- Trinity
11 Ed. III. (24) **Warranty** was defeated by the entry of the sister of one who was beyond the sea, in his own right, if he was living, and if not in her own right. And that in an Assize, etc.
- Case 24. There is no early printed year of 11 Ed. III. The case has not been identified in the Rolls Series for that year, or in the early abridgments.

(25) **Warranty** is no bar in Formedon in the descender, without assets, by the equity of the Statute of Gloucester, because it is given in place of a Mort d'Ancestor. By the opinion of the COURT in a Formedon. Michaelis
11 Ed. III.

There is no early printed year of 11 Ed. III. The case has not been identified in the Rolls Series for that year or in the early abridgments. Statute of Gloucester, 6 Ed. I (1278), Stats. at Large, Vol. 1, p. 117. Case 25.

(26) **If the heir** of the tenant in dower grants the reversion, and she attorns, she cannot vouch the grantee, etc., consequently, if the land which she holds in dower is recovered, she shall not be newly endowed. And that by the opinion of the COURT in a *Quid Juris Clamat*, etc. Michaelis
10 Ed. II.

Reported in Y. B. Mich. 10 Ed. II, p. 303, pl. 24. The point appears to be merely *dicta*. Case 26.

GRANTE

(1) **If a man** grants an annual rent to another, by a deed in this form, "*Obligo me tali,*" etc., "*et heredibus suis in uno annuali, redditu de 40s. percipiendum annuatim de manerio meo de F, et obligo manerium meum prædictam et catalla in dicto manerio ad distringendum per ballivum domini regis,*" etc. And for rent in arrear the defendant distrained without the bailiff of the king, and justified the taking in a writ of Trespass. And the opinion was that the "bailiff of the king" was not to the purpose, because the king would not receive any advantage from that, etc. Trinity
46 Hen. VI.

The citation is an obvious error, as Henry VI reigned only thirty-nine years. The case is to be found in Y. B. Trinity 46 Ed. III, p. 18, pl. 17. See also, Brooke, Grannte, 21; and Fitzh: Grannte, 49. Case 1.

(2) **If a man** grants estovers "to me and my people," that grant extends to me and my villeins, and to my household, and to no others. By WILLOUGHBY and SHARSHULL in Trespass. Hilary
33 Ed. III.

There is no early printed year of 33 Ed. III. Fitzh: Grannte, 83, has the case. Or, as Fitzherbert puts it, "homagers," which would mean persons in his homage, or who owed him fealty. Case 2.

- Michaelis
2 Hen. IV. (3) **A man granted** an annuity to one B, and to his heirs, and because the grantor did not grant for him and his heirs, the opinion was that the writ would not be good, nor the grant, except for his life, etc. And the law is the same, it seems, albeit he grants to him and his heirs, for it is hard to charge his heir since nothing else is charged with the grant, but only the person, etc., for it is not like an obligation, etc.
- Case 3. The case has not been identified in Y. B. Mich. 2 Hen. IV, or in the early abridgments.
- Statham
106 a.
Trinity
43 Ed. III. (4) **If the grant** of a manor [is] before the Statute "*Prærogativa Regis*," and in the charter there was no mention of an advowson or of appurtenances, still the fees and the advowsons shall pass by the same grant. As was adjudged in a *Quare Impedit* which was well argued. And from this it follows that "*Prærogativa Regis*" is a Statute; and yet many say it is not, etc.
- Case 4. Reported in Y. B. Mich. 43 Ed. III, p. 21, pl. 12. (Discussion of the point on p. 22.) See also Brooke, Grannte, 19, and Fitzh: Grannte, 46. Statute of "*Prærogativa Regis*," 17 Ed. II (1324), Stats. at Large, Vol. 1, p. 376. There is an interesting discussion in the case in regard to the Statute. Kirton says, "*Prærogativa Regis* is not a Statute, but a rehearsal of the prerogative of the king."
- Paschal
9 Hen. VI. (5) **If one has** a rent service issuing out of an acre of land, of which I am seised, and I grant that he can distrain for the same rent in all my lands, that is a good grant, and all my lands are charged by it; and he shall avow by the form, etc. And if I grant to a man that he can distrain in my lands for ten shillings of rent annually, that is a good rent charge; and yet there are no words as of the grant of the rent.
- Case 5. Reported in Y. B. Paschal, 9 Hen. VI, p. 9, pl. 23. See also Brooke, Grannte, 131; and Fitzh: Grannte, 6.
- Trinity
9 Hen. VI. (6) **In the exchequer chamber** it was related that the king had granted to the Duchess of York, "*quandam insulam et quoddam castrum cum pertinentis simul cum omnibus exitibus, amerciamentis, proficuis omnium gentium, residen-*

tium et non residentium, ac cum advocacionibus vadiis, reliiviis wreck of sea, et alius, etc., de et in insulam predictam in quibuscunque curiis nostris emergentibus." And the chief baron said that the sheriff upon his account prayed to be allowed for certain issues and amercements, before the justices of the Common Bench, forfeited by such a one and such a one, tenants of the duchess, etc. And he showed the patents which witnessed as above. And besides that, that the duchess should make a levy for the issues by her ministers, etc. CHEYNE: Those words, to wit: that she can make a levy by her ministers, are good words for her, for otherwise the sheriff could have levied and accounted for them, and the duchess would have been obliged to sue by petition. Which was conceded. WAMPAGE: It seems that the letters-patent are void. If the king grants to me the manor of A, together with the advowson of the church of B, which advowson is not part of the manor of A, that advowson does not pass, because it is not part of the manor; so here, the issues are not part of the island, nor of the camp. And these issues which she claims are for things which do not arise within the island; for if a man of another county brings Formedon against me, and those of the island are impaneled, and because they do not come they lose the issues, the duchess shall not have those issues. And they adjourned, etc. Well argued.

And it was said in the same plea, that if the king grants to the bailiff of a vill that he shall hold pleas of all things arising within the said vill, still those of the vill shall be impleaded elsewhere for the same thing, for it is not as where he grants to them that they shall not be impleaded "*extra villam,*" etc. For the grant of the king shall be taken strictly for the grantee, etc.

Reported in Y. B. Trinity, 9 Hen. VI, p. 27, pl. 30. See also Fitzh: Case 6. Grannte, 7. A very long and "well-argued" case.

(7) **The King Henry IV** had granted by his letters, to the rector of Edyngton and his associates and their successors forever, that if any tithe with fifteenths should be granted to the king by the commonalty or the clergy, Paschal
19 Hen. VI.

the said rector and his successors, their terre-tenants, and their possessions, their goods and chattels, should be quit. And he granted further, by the same letters, a license to the same rector to take another church and hold it to his own use. And then a collector, upon his account in the Exchequer, prayed to be discharged, so far as it concerned certain possessions which were in the rector, etc. FORTESCUE (for the king): It seems that he shall be discharged, for first, the letters-patent are void, inasmuch as at the time of the grant the king had no title to the fifteenth. As if I grant to a man [by a deed] that if at such an hour he will make me an obligation that that shall be void: that grant is not to the purpose. And also, although the grant be good, still the rector is estopped from taking any advantage of it, inasmuch as he is one of those who granted the tithes and the fifteenths. And at least the church which he had appropriated after the grant is not discharged. MARKHAM: As to that that he shall be estopped, the king is estopped as well against him. And if he would have said in the plea that he would not have granted, that would not be to the purpose, for where the greater passes, all passes. And if one of the commonalty of L be disseised, and the mayor and the commonalty release, that shall not be a bar to the disseisee, although he be one of the commonalty, nor *vice versa*, if the commonalty be disseised and each of them releases separately, that will be no bar to the body of the commonalty. And that is clearly proven; for if one recovers against a commonalty nothing shall be put in execution except the goods which they have in common; so here, such a grant of the fifteenths for all the commonalty shall not be in derogation of the letters-patent made to a private person. FULTHORPE: This grant is void, for it will be prejudicial to all other persons; for if the possession of the rector, which he had in the vill, is discharged, then the rest of the vill will be charged for the whole. Which all the COURT denied, for they will be discharged as to that portion. FULTHORPE: At least he shall sue to the king to have as much as he paid, and shall not be discharged by the plea; no more than if I lease

lands for life, and then by another deed grant that he shall not be impeached for waste, he shall not take advantage of that by way of bar, but he is put to his writ of Covenant. FORTESCUE: He will plead it in bar in a writ of Waste in your case, and that is the common course here. Which NEWTON and HODY conceded. PORTYNGTON (to FULTHORPE): Your case proves the grant to be good, for I can grant that you shall not be impeached for waste; and also that although you cease for two years, I shall not have an action, and yet at the time of the grant I had no cause of action, etc. WAMPAGE: If you had inherited it first. But in your case the king did not inherit any fifteenth, wherefore the grant is void. FRAY (to FORTESCUE): I grant your case, indeed, as to the obligation; but suppose I grant to you that if you and others will be bound to me, that the obligation shall be void against you, that grant is good, and the obligation shall be void against you, and good against the others: so here, the grant is void as to the rector, etc. And generally the grant of a fifteenth shall not oust a special grant by letters-patent, without special words, to wit: "notwithstanding," etc.; no more than a general statute shall bind or restrict the private customs without special words. HUNT: It seems that he shall not be discharged by the plea, but he shall have a writ of the king to the Barons of the Exchequer to discharge him, as FULTHORPE has said. And they adjourned. Well argued, etc.

Statham
106 b.

Reported in Y. B. Paschal, 19 Hen. VI, p. 62, pl. 1. See also Brooke, Case 7. Grannte, 40, and Fitzh: Grannte, 10.

(8) **The king** by his letters-patent recited that whereas one H held of him certain lands in chief, he granted to Thomas Tresham that the hour the said H died, his heir being under age, that he should have the wardship of his heir, and of all his heirs when, etc. And whether the said grant was good or not was before the justices who were assembled in the Exchequer Chamber. CHOKE: It seems to me that the grant is good, for the king had an interest in the wardship, but he had no possession in the wardship;

Michaelis
30 Hen. VI.

and albeit that such a grant by a common person would not be good, still the grantee could have a writ of Covenant against the grantor, and consequently he would have the advantage against the king by way of answer. And that the grant is good I can prove, for the king can grant to me that whereas one A is indicted of felony, that if he be outlawed for the same felony, I shall have all that he forfeits to the king, and such a grant is good. LACON: And the king can grant the temporalities of a bishop before they have fallen in. WAMPAGE: *Contra*. And your cases do not resemble this case, for of issues and amercements, chattels of felons and fugitives, the king is seised in law, and such things are in him, and he is the possessor of them; but it may be in this case the king never had the wardship nor shall ever have it; and if he wishes to grant to me that when his terre-tenant dies without an heir that I shall have the escheat, or when his villein purchases land, that I shall have that land so purchased — those grants are void: so here. HALTOSTE (to the same effect): For if the grant be good in this case here, it is because it is a service in the king, and the king can grant the services of his tenant well enough. But, sir, I shall prove that it is not a service, for if after such a grant made to Tresham, the king grants to me the services of the same tenant, and then the tenant dies, his heir being under age, I shall have the wardship and not Tresham. And this clearly proves that the grant does not take effect at the time of the grant, wherefore, etc. And then the justices looked at the Statute of the year eight of Henry the Sixth which says that patents of the lands of which no title is found for the king of record, shall be void. And they held clearly that by those words the letters patent were clearly void. But yet some argued that the Statute did not extend to that case; for they said that the Statute was made for the advantage of those who were ousted by such lords, and not to the advantage of the king, etc. Well argued. Query as to the difference between the case that LACON put and this case, because there is little difference, etc.?

The case has not been identified in Y. B. Mich. 30 Hen. VI. Fitzh: Case 8. Grannte, 91, has the case.

The Statute is that of 18 Hen. VI (1439), cap. 1, Stats. at Large, Vol. 3, p. 218.

See as to grant, in the title of Attournment, Mich. 24 Note. Ed. III.

Statham, title of Attournment, *supra*, p. 18 a, case 4.

(9) **If the king** grants to a man the chattels of felons and fugitives whenever they are condemned, still he shall not have the goods of him who is attainted of treason, nor of him who is a suicide; nor of him who is put to his penance. And this in a note. *Simile* Mich. 8 Hen. IV, *Concessi*, etc. But where the king grants confiscated chattels, he shall have the goods of him who is a suicide, and of him who is put to his penance. By the opinion of the justices in the King's Counsel, Mich. 8 Hen. IV, etc. It is the same as to the *Fiscus* when the bursar of the king confiscates. And it is the same when it is *forinseca* to the bursar of the king. Anno 22 Ed. III.

The case has not been identified in Y. B. Anno 22 Ed. III. Fitzh: Case 9. Grannte, 72, has what is probably the case. He cites the *Liber Assisarum*, p. 29, but I do not find the case there.

(10) **If I grant** to a man the reversion of all my lands and tenements, the reversion passes by those general words, as well as by a special rehearsal, etc. As appeared in an Aid Prayer, etc. Trinity 5 Ed. III.

The case has not been identified in Y. B. Trinity, 5 Ed. III, or in the early abridgments. Case 10.

(11) **A grant** of the reversion to the king, without a deed, is good. As appeared in a *Scire Facias*, etc. Hilary 4 Ed. III.

The case has not been identified in Y. B. Hilary, 4 Ed. III, or in the early abridgments. Case 11.

See as to grant, in the title of Presentment to the Church, Trinity, 9 Ed. III. Note.

Statham, title of Presentment à Eglise, *infra*, p. 141 a.

GAGER DE DELIVERANS

- Statham
107 a.
Trinity
31 Ed. III. (1) **In replevin**, the defendant avowed because he leased to the plaintiff one acre of land for the term of ten years, rendering a certain rent with distress, etc. BELKNAP: He is seised of the cattle, and we pray that he will wage the deliverance. FYSSHE: That we will not do, for the deed says that we can distrain, and retain the distraint against gage and pledge until we are paid. And notwithstanding that he was driven to wage his deliverance, or else he would have been sent to prison, etc.
- Case 1. There is no printed year of 31 Ed. III. Fitzh: Gager de Deliverance, 5, has the case.
- Trinity
31 Ed. III. (2) **If the plaintiff** prays that he may wage the deliverance, and he says that the delivery is made, issue shall not be taken upon that, but he shall wage the deliverance. In Replevin. *Simile* Trinity, 21 Ed. III.
- Case 2. There is no printed year of 31 Ed. III. Fitzh: Gager de Deliverance, 24, has the case.
- Hilary
35 Ed. III. (3) **A man** shall not wage the deliverance before avowry, for it may be that he can claim property by his avowry, etc. By the opinion of WILLOUGHBY, he shall not wage the deliverance before they are at issue, or demur in law, etc. Query, if the defendant pleads in abatement of the writ, or to the jurisdiction, shall he wage the deliverance? And see by THORPE, in the same plea, that those words of wager of deliverance are not to be otherwise understood but to the effect that he shall deliver the cattle, and take a pledge from the plaintiff, to wit: pledges to return the cattle if a return is adjudged. (But yet it is not so, for the defendant shall find surety to make the deliverance, etc., for the plaintiff shall find sureties to return the cattle before he shall have replevin), etc.
- Case 3. There is no printed year of 35 Ed. III. Fitzh: Gager de Deliverance, 25, has the case.

(4) **In replevin**, the plaintiff counted of his goods and chattels, to wit: grain and barley, wrongfully taken. The defendant said that he leased one acre of land to the plaintiff for a term of years, etc., and that within the term the plaintiff surrendered to him, and the lands were sown with the said grain, etc., and he took it, etc. And the plaintiff said that he did not surrender. Upon which they were at issue. BURTON: The plaintiff has four oxen in withernam¹; we pray that he wage the deliverance of them. SETON: The defendant is seised of the barley and grain, and before he wages deliverance of that we will not wage, etc., for the nature of this suit is to recover the cattle, and the damages for the wrongful taking. And the law regards the property [as] more in us than in him until the issue is tried. Wherefore WILLOUGHBY said: He has claimed property, and if he has claimed property in the county the sheriff cannot make the delivery to you. And if the issue be found for you, you will recover all in damages, wherefore wage the deliverance of the withernam.

Trinity
30 Ed. III.

Reported in Y. B. Trinity, 30 Ed. III, p. 9, pl. 3. See also Fitzh: Case 4. Gager de Deliverance, 6.

(5) **If the plaintiff** says that the avowant is seised of the cattle, and prays that he shall wage deliverance, it is a good plea to say that he put them in an open pound, and that they are dead, etc. Which the COURT conceded, etc. Query, if the issue is taken upon that, and found against the avowant, is it peremptory, etc.?

Hilary
4 Hen. VI.

Reported in Y. B. Hilary, 4 Hen. VI, p. 13, pl. 11. See also Brooke, Case 5. Gager de Deliverance, 23; and Fitzh: Gager de Deliverance, 12.

¹ "Withernam is the taking or driving of a distress to a hold, or out of the county, so that the sheriff cannot upon replevin make delivery thereof to the party distrained; in which case a writ of withernam is directed to the sheriff for the taking of as many of his beasts that [he] did thus unlawfully distrain, or as much goods of his, into his keeping, until he hath made deliverance of the first distress." "Termes de la Ley," 1721. I give this note, as there may be some who are not deeply read in the old law who may like to have some ready assistance at hand. Others will of course not need these explanations.

- Michaelis
31 Ed. III. (6) **In replevin**, upon the return of the sheriff, the plaintiff had certain cattle of the defendant in withernam, upon which the defendant came and justified, because the goods for which the replevin was sued were his own goods. And upon that they were at issue. The defendant prayed deliverance of the withernam. HAMUN: That he cannot have until the issue is tried. THORPE: We do not think that the property in the cattle for which the replevin is sued is in the defendant when the contrary may be found, wherefore you, defendant, sue deliverance of the withernam, etc.
- Case 6. There is no printed year of 31 Ed. III. Fitzh: Gager de Deliverance, 26, has the case.
- Michaelis
30 Hen. VI. (7) **In replevin**, if the party prays that the other shall wage his deliverance, it is a good plea to say that they died in the pound. And the plaintiff shall say that they died through the negligence of the defendant, and show how; and that is a peremptory issue for them. By PRISOT and PORTYNGTON, etc.
- Case 7. Reported in Y. B. Mich. 30 Hen. VI, p. 1, pl. 6. See also Fitzh: Gager de Deliverance, 16.
- Paschal
27 Hen. VI. (8) **In avowry**, if a man avows in right of the king, as his minister, he shall not wage the deliverance.
- Case 8. The case has not been identified in Y. B. Anno 27 Hen. VI. There is no printed Paschal Term for that year.
- Note. **See as to wager of deliverance**, in the title of Damages, Mich. 11 Hen. IV; and in the title of Jurisdiction, Hilary, 21 Ed. III.
- Statham, title of Damages, *supra*, p. 60 b, case 35; and Statham, title of Jurisdiction, p. 111 b, *infra*, case 7.
- Michaelis
3 Ed. III. (9) **A man** shall not wage the deliverance where he pleads in abatement of the writ, because in another writ he can traverse the taking, etc.
- Case 9. The case has not been identified in Y. B. Mich. 3 Ed. III, or in the early abridgements.

(10) **In trespass** for cattle taken from his cart, the plaintiff counted that the defendant still detained them. The defendant avowed because he held of him by certain services, and that he could not find any other distress. And upon that they were at issue, and the plaintiff prayed that he should wage the deliverance, and so it was adjudged, notwithstanding this action is a writ of Trespass, etc. (But yet it is more of a Replevin than a writ of Trespass.)

Michaelis
5 Ed. III.

The case has not been identified in Y. B. Mich. 5 Ed. III, or in the Case 10. early abridgments.

GARRANT D'ATTORNEY⁵⁶

(1) **See good matter** upon the warrant of attorney, in the title of Error where, after conusance granted, the warrant of attorney, which was in the Bench, should serve in the franchise, and the attorney himself shall be essoined in the franchise, and not his master, etc. *Simile* 21 Ed. III, in a writ of Error, etc.

Statham
107 b.
Michaelis
31 Ed. III.

There is no printed year of 31 Ed. III. (Statham, title of Error, Case 1. *supra*, p. 89 b, case 2.)

(2) **An attorney** can say that his warrant is in the Chancery, and such a warrant is quite sufficient. And that in a writ of Entry, etc. Query, if he shall have a day to bring it in, etc.?

Michaelis
12 Hen. VI.

Reported in Y. B. Mich. 12 Hen. VI, p. 6, pl. 5. See also Fitzh: Case 2. Garrant de Attorney, 23.

(3) **In a plea of land**, they shall admit a warrant of attorney at the instance of such a one, albeit the party who made the warrant is not present.

Hilary
34 Ed. III.

There is no printed year for 34 Ed. III. Fitzh: Garnisee et Garnyse-ment, 39, has a case on the point.

(4) **In detinue** against one, the garnishee came by a *Scire Facias*, and the plaintiff by his attorney counted against him. NORTON: You shall not have a warrant against us.

Michaelis
7 Hen. IV.

SKRENE: The warrant that he has is a sufficient warrant against you. And in Replevin the defendant appeared by attorney, and that attorney avowed upon a stranger; and yet the warrant was that "one such, *pro loco suo*," against the plaintiff. And so here. HANKFORD: It is not the same. And you will find it adjudged Hilary, 3 Ed. III¹ in a writ of Wardship, where the plaintiff declared by attorney, and the defendant said that another man had a writ for that same wardship against him on the same day, etc. And the attorney of the plaintiff would have interpleaded with him, and could not, because he had no warrant against him, etc. But a *Scire Facias* issued against his master, and the same day was given to the others, etc. And the law is the same in a writ of Detinue, etc. And then by advice, etc., it was adjudged that the warrant which was against the defendant was good enough against the garnishee. Which note, etc.

Case 4. Reported in Y. B. Mich. 7 Hen. IV, p. 3, pl. 19. See also Brooke, Garrant de Attorney, 45; and Fitzh: Garrant de Attorney, 11.

Hilary
22 Ed. III. (5) **In debt**, the defendant waged his law by attorney, and on the day that he had to make his law, the attorney of the defendant pleaded the release of the plaintiff after the last continuance. And it was the opinion that he should have the plea; and yet it seems that his warrant was ended, because he could not make his law, but his master should. And in the same way he shall say that the plaintiff died after the last continuance, etc.

Case 5. The case has not been identified in Y. B. Hilary, 22 Ed. III, or in the early abridgments.

Anno
24 Ed. III. (6) **If a man** appears as guardian for an infant under age, he should have a warrant, but it is otherwise if he appears as best friend, etc.

⁵⁶ "Hitherto have wee in some sort intreated of such acts and Instruments as are made and done by the parties themselves being personally present: Now we intend to set down such Instruments as give authority to others, as their factors or attornies to do the like for them . . .

¹ The report of the case says 31 Ed. III.

by Proctors or Attornies authorized thereunto by written Warrants.' Thus West of the Symboleography, who speaks of the fact that attorneys, "be verie necessary and profitable for humane societie . . . who take upon the charge to do other men's business . . . committed to them in Instruments making and ordaining of Atturnies, which bee sometimes called letters of Atturnies, sometimes warrants of Atturnie, sometimes Proxies or Procurations." [West: Sym. Pt. 1, lib. 2, sec. 516.] Just what was the earlier status of the attorney is uncertain. We may follow them back into the earliest law, but not by the same name. If it were "*responsalis*" in Glanville's day [Glan. Lib. XI, cap. 1] as Maitland has it [P. & M. Hist. of Eng. Law, Vol. 1: 213] the Latin term does not denote what was later meant by attorney. Beames [Glanville, Book 1, cap. 1, note], the translator of Glanville, translates "*responsalis*" "attorney," but thinks Coke [Coke, 1st Inst. 128, a] was of the opinion that an attorney differed from a *responsalis*. It is as an ancestor, not as an equivalent, we should take the *responsalis*, who seems to have been much more strictly limited in the scope of his action [See Glanville, Book XI, *De Responsalibus*] than the attorney of our Year Books. Again the suspicion that Coke was right assails us. He evidently considered the *responsalis* more as one in the position of an essoiner, one who came to excuse an absence, than as one who appears to plead his "master's" cause; and to the attorney who could not appear for the plaintiff or demandant at the common law without the king's warrant was given the power to "plead all manner of pleas" by the "Statutes that give the making of Attornies which have worn out *responsales*." [Coke, 1st Inst. 128, a.]

The first statute is that of Merton [20 Hen. III (1235), cap. 10] which allows every free man "freely to make his attorney." The next is the Statute of Westminster I [3 Ed. I (1275), cap. 29] which sets forth that unworthy persons had taken occasion to use the permission granted to all freemen, and had abused the new freedom. But in spite of this an enlargement of their powers was again granted by the Statute of Westminster II [13 Ed. I (1285), cap. 10] giving any persons power to make a general attorney. As all these statutes were earlier than any of our Year Books, we, of course, find the attorney occupying the field, talking for his master, and identifying himself with him; even to saying "our wife." Just how and when the departure came from the limited *responsalis* to the free pleader we cannot absolutely say. We have, however, Coke's significant remark about the Statute that wore out the *responsales*. Probably the Statute of Merton in 1235 gave the death blow to the old idea of the limited form of the appointed attorney.

GARNYSEE ET GARNYSEMENT

(1) **In detinue** for charters, the plaintiff counted that he himself and one T delivered the charters to the defendant Michaelis
21 Ed. III.

upon certain conditions between him and the said T, into an impartial hand, to redeliver to him who performed the conditions. And he said that he had performed the conditions. (Query, if the declaration be good?), etc. The defendant said that he did not know if the conditions were performed, and he said that T was dead, and that he had issue one J, and that certain lands which the charters concerned descended by the said T, and he prayed garnishment against him, and had it, notwithstanding the death of T was not returned.

Case 1. Reported in Y. B. Mich. 21 Ed. III, p. 41, pl. 44. See also Brooke, Garnisee et Garnisement, 26; and Fitzh: Garnisee et Garnysement, 37.

Paschal
30 Ed. III. (2) **In detinue** for a writing, the defendant said that the plaintiff, by the same deed which he demands, had released to one T, who was a party to the bailment, and to many others; and he prayed a *Scire Facias* against all, and could not have it, except against T, because a man shall not have a *Scire Facias* against any other except against him who is a party to the bailment, or his heirs or executors, etc. By THORPE, etc.

Case 2. There is no Paschal Term in the printed year of Ed. III. There is a case in Hilary Term, 30 Ed. III, p. 6, pl. 6, which is digested in Fitzh: Garnisee et Garnysement, 34, which is very like this case, but the *Scire Facias* was awarded.

Paschal
34 Ed. III. (3) **The garnishee** shall not plead the release the plaintiff made to him of all actions. By the opinion of WILLOUGHBY. And that in Detinue, etc. Query? But after the last continuance it seems that he can clearly plead a release.

Case 3. There is no printed year for 34 Ed. III. Fitzh: Garnisee et Garnysement, 8, has the case.

Paschal
14 Hen. VI. (4) **In detinue**, the defendant said that they were delivered to him by the plaintiff and one B, etc. And he prayed a *Scire Facias* and had it. And B came and said that he alone bailed him the writings, and he prayed delivery. And it was the opinion that he should not have the plea, for it was contrary to the conditions which the defendant

showed. And he could not say that the conditions were different, etc. Query, if the case were that he alone bailed, could he sue? For they cannot interplead, and if he shall not have such matter by protestation, he will be barred afterward in a writ of Detinue, etc.

Reported in Y. B. Anno 14 Hen. VI, p. 11, pl. 14. See also Fitzh: Case 4. Garnisee et Garnysement, 7.

(5) **In detinue for** writings, the defendant prayed a *Scire Facias* against two; and the sheriff returned that one was dead. And the defendant prayed a *Sicut Alius* against the other, and could not have it, because the *Scire Facias* was abated by his death, etc. Whereupon a new *Scire Facias* was awarded against the survivor and the executors of the other. But yet it was against the opinion of HANKFORD that it was issued against the executors of the other, etc. Query as to the reason? Michaelis
14 Hen. IV.

Reported in Y. B. Mich. 14 Hen. IV, p. 1, pl. 4. See also Brooke, Case 5. Garnisee et Garnysement, 24; and Fitzh: Garnisee et Garnysement, 21. Both question against whom the *Scire Facias* was to be sued: the living defendant alone or with the executors of the deceased.

(6) **In detinue** against one A, as executor of one B, for a bag sealed, with muniments. And in special he declared upon a charter by which one F gave the manor of T to his father in tail. PASTON: Our testator was seised of the manor of G jointly with one K, which K entered after the death of our testator. And this bag, thus sealed, came into our possession as executor, and we suppose that there are charters in this bag, which belong to the said K, and we pray a *Scire Facias* against him. MARTYN: I take it to be law that in no case, in a writ of Detinue, shall the defendant have a *Scire Facias*, unless he admits that which the plaintiff has declared, wherefore it is better that the Court shall open the bag, and upon that award the *Scire Facias* at their discretion. BABYNGTON: It cannot be that we shall open the bag, for even if we awarded the deeds to the plaintiff, that would not prevent K from demanding them against the plaintiff, etc. And they adjourned. Statham
108 a.
Hilary
3 Hen. VI.

- Case 6. Reported in Y. B. Hilary, 4 Hen. VI, p. 35, pl. 31. See also Brooke, Garnisee et Garnisement, 1.
- Michaelis
3 Hen. VI. (7) **The garnishee** need not plead any plea in abatement of the writ of *Scire Facias* if he be the person himself, for he is garnished for his advantage. By the opinion of the COURT in Detinue, etc. Query, what pleas he shall plead in abatement of the original?
- Case 7. The case has not been identified in Y. B. Mich. 3 Hen. VI, or in the early abridgments.
- Paschal
3 Hen. VI. (8) **In detinue** against an abbot, he prayed a *Scire Facias* against one B, etc., who came and said that after the writ of Detinue was purchased, and before the *Scire Facias* was awarded, the abbot who is defendant was deposed, and he demanded judgment of the writ. PASTON: The abbot shall not have the plea, for although he be deposed pending the writ, still the writ is good. Which was conceded. ROLFF: We plead in abatement of the *Scire Facias*. BABYNGTON: That cannot be, for in a *Scire Facias* there is no plaintiff, unless you are, who are garnished, for it takes the place of your writ of Detinue, etc. And it was clearly the opinion that he should not have the plea.
- Case 8. Reported in Y. B. Paschal, 3 Hen. VI, p. 40, pl. 9. See also Brooke, Garnisee et Garnisement, 4; and Fitzh: Garnisee et Garnysement, 3.
- Trinity
3 Hen. VI. (9) **A, who was** the wife of B, brought a writ of Detinue on a release against one C, who said that it was delivered to him by the plaintiff and H, which H is dead; and he prayed a *Scire Facias* against S, his heir, and had it; who came and demanded judgment of the count, for at the time of the delivery she was the wife of the said B, in which case she should have alleged the bailment to be made by both, or by the husband alone, etc. ROLFF: For anything, etc. And so to judgment, etc. (It seems that the plea goes to the action, etc.) Study well, etc.
- Case 9. Reported in Y. B. Trinity, 3 Hen. VI, p. 50, pl. 13.
- Michaelis
18 Hen. VI. (10) **In detinue**, MARKHAM showed how a *Scire Facias* was awarded against two who were parties to the bailment,

and that the sheriff returned that one was garnished, and that the other was dead, and prayed that the writ of *Scire Facias* be wholly abated. NEWTON: The plaintiff has demanded an obligation against the demandant, in which the two garnishees are each of them bound to him in the entire sum severally; in which case, if the plaintiff recovers the deed, each of them is severally liable at his will; in which case the *Scire Facias* is severable in its nature; so it follows that a *Scire Facias* shall issue against the executors of him who is dead, and that the writ shall stand well enough against the other, etc. To which PASTON agreed, etc. And then in Hilary Term, MARKHAM prayed that the writ should abate, as above. NEWTON: I know, indeed, that if an action of debt which is an original be brought against two, by separate *præcipe's*, and one dies, that the whole shall abate. But this *Scire Facias* is only a writ to make them interplead upon the original and not upon the *Scire Facias*. And where two interplead and one dies, the other writ stands good, and the defendant answers to it. And where the vouchee enters into the warranty and then dies, the original holds good, and he shall revouch. And then, by the advice, etc., the writ was adjudged good, and a *Scire Facias* issued against the executor of the other. And query, if the other who is garnished shall have the same day, or shall he plead immediately, inasmuch as they can be severed in pleading, etc.? Query as to the case of the vouchee, etc.? But if the vouchee dies before he enters into the warranty, it is clear that the original holds good, etc.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the Case 10. early abridgments.

See as to garnishment in the title of Excommunication, Note. Paschal, 3 Hen. VI, etc., and in the title of Detinue, and in the title of Interpleader, etc.

Statham, title of Excommengement, *supra*, p. 79 b, case 3. Statham, title of Detenu, *supra*, pp. 67 a to 67 b. Statham, title of Entre Pleder, *supra*, pp. 86 a to 86 b.

HERYOT

- Statham
108 b.
Hilary
34 Ed. III. (1) **If my tenant**, who holds of me by a heriot, alienates a part of his land to another, each of them is chargeable to me for a heriot, because it is entire, etc. And although the tenant purchases the land back, still, if I am seised of the heriot by the other man, I shall have a heriot from him for every part, etc. By WILLOUGHBY and SHARSHULL in Replevin.
- Case 1. There is no printed year of 34 Ed. III. Fitzh: Haryott, 1, has the case.
- Note. **See as to heriot**, in the title of Avowry.
Statham, title of Avower, *supra*, pp. 22 b to 25 b.

HORS DE SON FEE

- Trinity
45 Ed. III. (1) **Out of his fee** is no plea in a Formedon for rent, because there is a title comprised within the writ, etc. By the opinion of the COURT, etc. *Simile* Hilary, 40, in a writ of Entry for rent, etc. (But yet it seems that the tenant should have the plea, to the intenc that he shall acknowledge the rent, what sort of rent it is, for if it be a rent charge he can vouch, etc.)
- Case 1. Reported in Y. B. Mich. (not Trinity), 45 Ed. III, p. 14, pl. 14. See also Brooke, Hors de Son Fee, 3.
- Hilary
18 Hen. VI. (2) **In a writ of entry** upon a disseisin made on my ancestor for rent, "out of his fee" is a good plea, albeit the title was comprised within the writ, to wit: "Because he claimed it to be his right and inheritance," for to that title a man cannot have anything, etc.
- Case 2. The case has not been identified in Y. B. Hilary, 18 Hen. VI, or in the early abridgments.
- Michaelis
33 Ed. III. (3) **In a writ of mesne**, it is a good plea to say "out of the fee," of him who took the distraint, etc. (Query? For that is contrary to the declaration of the plaintiff, etc.)

There is no printed year of 33 Ed. III. Fitzh: Hors de Son Fee, 26, Case 3. has the case.

(4) **He upon whom** the avowry is made shall plead "out Michaelis of his fee" notwithstanding he can disclaim, etc. Well ^{27 Hen. VI.} debated. *Simile* adjudged Mich. 14 Hen. IV.

The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the Case 4. early abridgments.

JOURE ⁵⁷

(1) **A man was outlawed** and sued a charter of pardon, Statham and he prayed that the plaintiff should count against him, ^{109 a.} because the plaintiff was present in Court, etc. FYNCH-^{Trinity} EDEN: He has had no day here, wherefore sue a *Scire Facias*. ^{46 Ed. III.}

Reported in Y. B. Trinity, 46 Ed. III, p. 15, pl. 2. See also Fitzh: Case 1. Jour, 4.

(2) **In a quare impedit** after issue joined, a day was Michaelis given in three months, notwithstanding the Statute, which ^{21 Ed. III.} says every fifteen days, etc. Query as to the reason?

Reported in Y. B. Mich. 21 Ed. III, p. 29, pl. 6. See also Fitzh: Case 2. Jour, 3. Statute of 51 Hen. III (1266), Stats. at Large, Vol. 1, p. 37.

(3) **In replevin**, the plaintiff was nonsuited and had a Michaelis writ "*de secundam obligatione*," and the pone against the ^{21 Ed. III.} lord was not served, and the lord came and prayed that the plaintiff should count against him. SKRENE: He has had no day, for the pone was not returned. THORPE: If you have livery of the cattle, you will not sue to the sheriff for a return of the pone, wherefore it is reasonable that you count against him, etc. Query?

The case has not been identified in Y. B. Mich. 21 Ed. III, or in the Case 3. early abridgments.

(4) **In debt**, at the *Nisi Prius* it was found for the plain- Michaelis tiff, and on the day in the Bench the justices gave a day ^{21 Hen. VI.} to the parties in the same term, to be advised; on which

day the defendant said that the plaintiff had died since the day at the *Nisi Prius*, and he prayed that the writ should abate. MARKHAM: He had no day to plead the plea, and also judgment shall relate to the day at the *Nisi Prius*, on which day he was alive. NEWTON: Although the defendant had no day, still the plaintiff shall ask to hear his judgment. And if the demandant shall not have the plea, he is injured, for he cannot have an *Audita Querela* because the death was after the *Nisi Prius*; nor can he have Attaint, because the party is dead; nor can he have a writ of Error, wherefore, etc. And they adjourned. Query as to these cases, etc.?

Case 4. The case has not been identified in Y. B. Mich. 21 Hen. VI, or in the early abridgments.

Hilary
13 Hen. IV. (5) **Where a man** has aid of the king, in an Assize, a day is given to the parties until the next session; as appeared in Hilary, 13 Hen. IV, in an Assize.

Case 5. The case has not been identified in Y. B. Hilary, 13 Hen. IV, or in the early abridgments.

Michaelis
8 Hen. VI. (6) **In detinue**, a *Scire Facias* issued against the garnishee, and the sheriff returned that he had nothing. And he came and prayed that the plaintiff should count against him. MARTYN: You have had no day, etc. BABYNGTON: Yes, sir, he had a day by the roll. Whereupon he demanded oyer of the writ, and had it, but the COURT said that the plaintiff need not count [anew] against him, etc.

Case 6. Reported in Y. B. Mich. 8 Hen. VI, p. 16, pl. 41. See also Fitzh: Jour, 31.

Michaelis
3 Hen. VI. (7) **In debt**, the sheriff returned "*Cepi corpus [et] quod languidus in prisona.*" And the next day the same defendant came and demanded the plaintiff. WESTBURY: He had no day in Court. BABYNGTON: He had a day by the roll. Wherefore the plaintiff was demanded and was nonsuited. Query, if the sheriff shall be amerced, etc.? And see by 16 Ed. III, the sheriff returned to the *Capias* "*non est*

inventus," on which day a protection was produced for the demandant, and it was allowed for the above reason.

Reported in Y. B. Mich. 3 Hen. VI, p. 3, pl. 3. See also Brooke, Case 7. Jour, 2; and Fitzh: Jour, 29.

(8) **At the nisi prius** the inquest passed for the plaintiff. And on the day in the Bench the defendant said that the plaintiff had taken a husband, etc. And it was not allowed, because he had no day, etc., since the day in the Bench shall relate to the day in the *Nisi Prius*. Michaelis
4 Hen. IV.

Reported in Y. B. Mich. 4 Hen. IV, p. 3, pl. 9. See also Fitzh: Case 8. Jour, 1. The reason as given in the abridgment does not appear in the case.

⁶⁷ In the old pleading, the giving of the day to the parties, in which to plead, was of very great importance. There could be no justice unless both litigants had their day in court, and if through inadvertence or chicane one of them did not get that day, it was not allowed to work to his disadvantage but a further day was given upon which day both parties were warned to appear. Coke [1st. Inst. 134, b., sec. 201] sets forth the whole matter of days quite fully, yet we miss, here as elsewhere, except in the cases themselves, that stress upon the absolute right of every one to the day in court where there was any legal decision to be made upon their rights as to person or property, that we might expect. Our first case shows us that the mere physical being in court was not enough. One of the litigants is in court and prays that the other may count against him as he is in court, although there has been no *Scire Facias* issued to garnish him. The court will not agree that the possibly chance presence of a man will bring him before the court; the proper process must be observed; the proper writ issued; the man must have notice that the process will be used against him. A man does not have his day in court just because he looks into the court haphazardly. The day was a legal day, and legal formalities must be observed, just as much in the forty-sixth year of Edward III, as in the time of the fifth George, and in the countries that have come to count their years without king's names.

Our sixth case is similar to our first case, as the point in that case was that the defendant was in court and asked that the defendant count against him, and they would not allow it. But in this last case the defendant had been garnished and the sheriff had returned "*nihil*," so there had been a sufficient process, but he had had no day; yet the court thought that it was not common sense to warn him to come in when he was already there, and so the case went on. It is easy to see where the two cases differ and that the point is that the defendant must have sufficient notice and appear on the appointed day.

INTRUSION

- Trinity
43 Ed. III. (1) **In a writ of intrusion**, it was alleged that his ancestor was seised and leased, etc. BELKNAP: Your ancestor never had anything in the lands; Ready. KYRTON: That is no plea, for you should answer to the lease, etc. But yet he had the plea. (And wrongly, as it seems, etc.)
- Case 1. Reported in Y. B. Hilary (not Trinity), 43 Ed. III, p. 5, pl. 9. See also Brooke, Intrusion, 2; and Fitzh: Intrusion, 1. In the case FYNCH-EDEN says to the counsel, "Since you have agreed to accept the issue, it shall be as you have said, but we are in doubt if this be a reasonable issue."
- Hilary
35 Ed. III. (2) **It is a good plea** [in a writ of] Intrusion, to say that the demandant enfeoffed the tenant, etc.
- Case 2. There is no printed year of 35 Ed. III. Fitzh: Intrusion, 5, has the case.
- Paschal
35 Ed. III. (3) **In a writ of intrusion** in the first degree, the tenant does not vouch, but he can pray in aid, etc.
- Case 3. There is no printed year of 35 Ed. III. The case has not been identified elsewhere.
- Paschal
12 Ed. III. (4) **It is a good plea** in a writ of Intrusion to say that he did not intrude, etc. By STONORE. But yet HERLE said that he should make title in himself. Query? For it seems good, as well as to say in an Assize that he did not disseise, etc.
- Case 4. There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series for that year. Fitzh: Intrusion, 6, has the case.

JOURNEZ ACCOMPTEZ ⁵⁸

- Statham
109 b. (1) **In a praecipe quod reddat**, the tenant waged his law of non-summons, wherefore the writ abated. And in the second writ the tenant pleaded non-tenure, and the demandant averred that he was tenant on the day of the purchase of the first writ, etc.
- Paschal
46 Ed. III.

Reported in Y. B. Paschal, 46 Ed. III, p. 14, pl. 21. See also Brooke, Case 1. *Journes Accomptes*, 6; and Fitzh: *Journes Accomptes*, 11.

(2) **In debt** against the executors of one H, who said that the said H died intestate, and the ordinary committed the administration to them, in which case, etc. Wherefore the writ abated. And then he brought a new writ against them, as administrators, who pleaded "fully administered day of the purchase of the writ." HAMUN: Since this writ is brought by *journez accomptez* and you did not say "fully administered the day of the purchase of the first writ," judgment. And so to judgment, etc. (But yet it seems that that is no plea, but if he wished to gain the advantage he should show that his writ was purchased by *journez accomptez*, etc., without this that he would aver that he had assets on the day of the purchase of the first writ, etc. Query?) Trinity
48 Ed. III.

Reported in Y. B. Trinity, 48 Ed. III, p. 21, pl. 10. See also Brooke, Case 2. *Journes Accomptes*, 7; and Fitzh: *Journes Accomptes*, 12.

(3) **If the** demandant be nonsuited, he shall not have the advantage of *journez accomptez* in the second writ. By NEWTON and BROUN. And that in a *Præcipe quod Reddat*, etc. Paschal
21 Hen. VI.

The case has not been identified in Y. B. Paschal, 21 Hen. VI. Case 3. Fitzh: *Journes Accomptes*, 22, has the case.

(4) **A man shall not have** the advantage by *journez accomptez* where the writ is abated for variance. And that in [a writ of] Account. But yet, query? Michaelis
32 Ed. III.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 4.

(5) **In a præcipe quod reddat** against the husband and his wife, the husband died, wherefore the writ abated, and the woman made a feoffment; the demandant brings a new writ against the woman, and she pleads non-tenure; the demandant shall not have the advantage by "*journez accomptez*," to wit: to say that she was tenant on the day Hilary
38 Ed. III.

the writ was purchased. And that by GRENE. But it is otherwise as to two joint tenants, etc.

Case 5. Reported in Y. B. Hilary, 38 Ed. III, p. 1, pl. 5.

Hilary
13 Ed. III. (6) **A man shall** not have the advantage by *journez accomptez* where the writ is abated for false Latin. By HERLE, in Formedon, etc.

Case 6. There is no early printed year of 13 Ed. III. The case has not been identified in the Rolls Series.

Hilary
7 Hen. VI. (7) **The tenant in tail** had issue two daughters and died. They brought Formedon within the year after the title had accrued to them, and then one of them died without issue, and the other brought Formedon, and the tenant pleaded non-tenure, and she had the advantage by *journez accomptez*, etc., notwithstanding half of the land accrued to her by a new title, to wit, by the death of her sister, which was two years after the death of her father, etc. But because she did not mention her sister in the descent, but made herself heir to her father for the whole, was the reason she had that advantage, etc. But it was said if the tenant in tail has issue two sons and dies and then the elder [son] dies, and the other brings Formedon, he shall not have the advantage, (as above,) because he should mention his brother, because he could have held an estate as heir, etc. But it is otherwise as to the sister, for she cannot hold an estate unless they both do so as one heir, etc. Well argued.

Case 7. Reported in Y. B. Mich. (not Hilary), 7 Hen. VI, p. 16, pl. 25. See also Brooke, *Journes Accomptes*, 12.

Paschal
34 Ed. III. (8) **If a man sees** that his writ is abateable, and he prays leave to seek a better writ, and it is granted him, he shall have the advantage, in the second writ, by *journez accomptez*, etc. And that is the reason why one prays leave to seek a better writ, etc. By THORPE, in [a writ of] Formedon.

Case 8. There is no printed year of 34 Ed. III. The case has not been identified elsewhere.

(9) **In a quare impedit** against a prior, who was named Paschal
as patron and then died. The plaintiff brought another 10 Ed. III.
Quare Impedit against his successor and the incumbent.
And the successor alleged that the church was full six
months, etc. And the plaintiff had the advantage by
journez accompez, etc. Query?

Reported in Y. B. Paschal, 10 Ed. III, p. 16, pl. 5. See also Fitzh: Case 9.
Journes Accomptes, 15.

See as to journez accompez, in the title of Joint Ten- Note.
ancy, in the first paragraph.

Satham, title of Joyntenanncy, *infra*, p. 114 a, case 1.

⁵⁸ Very little of the real nature of the "writ by journeys accompt" is set out in these few cases of the abridgment. It was an important part of the pleading of the time, as is more fully shown in the well-known *Spencer's* case [Coke: Repts. pt. 6, p. 9]. In that case Coke expounds the words "journeys accompts" by the words "accompt of days." That is, if a writ was abated without default of the plaintiff or demandant, a new writ could be purchased which was a continuance of the first writ, and it was to be purchased by "accompt of days . . . and with diligence." [Coke: *Spencer's* Case, 10, b.] By reference to Bracton [Bracton, Lib. 4, fo. 176] we find that the second writ was spoken of as given as a matter of course, where the first writ had failed for some formal defect, if the new writ was prosecuted diligently. From this sentence we seem to derive the idea of our *journez accompez*. The days must be no more than are needed; the matter must go on briskly; all delays must be accounted for.

We are given, by many authorities, a great deal as to the strict formalities by which writs are abated; but they say very little of the *journez accompez* by which, if a writ did abate for such trivial errors, it could be again brought as a matter of course, if the error was immediately — or freshly — reformed. It was not a new suit; plaintiff and defendant should be the same; the error was cured in a few days, and the suit went on "in the same course" as before.

JOYNDER IN AIDE

(1) **See in replevin** how he upon whom the avowry was Statham
made joined the plaintiff, who was his tenant for years, 110 a.
without any process, etc. And they both disclaimed, etc. Paschal
Well argued. 45 Ed. III.

Case 1. Reported in Y. B. Paschal, 45 Ed. III, p. 7, pl. 9. See also Brooke, Joinder in Aide, 5; and Fitzh: Joinder in Aide, 9.

Trinity
31 Ed. III.

(2) **In replevin**, the defendant avowed upon one W. **PER-SHAY**: This W was mesne between the plaintiff and the avowant, but he held by lesser services, (and he showed what,) etc. And this same W granted his services to one H, and the plaintiff attorned, because he was tenant in demesne. And you have here the said H, who joins the plaintiff and says he is ready to pay you, etc. And we demand judgment, if, for anything which [he says] he ought to avow, etc. **BARR**: And we, judgment, because the said H is a stranger to this avowry, and no one can be joined except he upon whom the avowry is made. **SETON**: If the lord distrain the tenant for the services of the mesne, where the mesne has paid them, etc., and the tenant comes to the mesne and prays him to join him, and he will not, he shall have a writ of Mesne against him, for then it is proven that he was distrained in his default. Which **THORPE** denied, and said that he shall never have a writ of Mesne unless the services of the mesne are in arrear, etc. And it was the opinion that there could be no joinder, etc.

Case 2. There is no printed year of 31 Ed. III. Fitzh: Joinder in Aide, 14, has the case.

Trinity
15 Ed. III.

(3) **The mesne** shall not be received to join the tenant in an avowry where the avowry is made upon another person than upon the mesne, unless he shows by a deed how he comes to the mesnalty: by **STONORE**.

And **WILLOUGHBY** said in the same plea, that he cannot join in any case unless he offers to the lord the services with the arrears; that is, where he is a stranger to the avowry, etc. **STONORE**: The ancient form is: when the cattle of his tenant are taken for the services of the mesne, the mesne shall put his cattle in the pound, and deliver his cattle to the tenant; and if the mesne then offers the services to the lord, and he refuses them, he shall have replevin for the cattle that he put in the pound; and still they were not taken, etc. But he shall show the special matter in maintenance of his writ, etc.

There is no early printed year of 15 Ed. III. The case is to be found Case 3. at great length in the Rolls Series, 15 Ed. III, pp. 106-126.

(4) **The mesne** cannot join the tenant by attorney, but in his own person; and he cannot join unless he comes before any plea pleaded by the plaintiff, etc. And no mesne can join the tenant except that mesne of whom the tenant holds immediately, etc. As in the case of many mesnes, etc. Michaelis
4 Ed. III.

The case has not been identified in Y. B. Mich. 4 Ed. III. Fitzh: Case 4. Joinder in Aide, 16, has the case.

(5) **In a cui in vita**, the tenant prayed aid of one H, who was ready to join, but the tenant would not have him joined unless he came by process. SHARSHULL: Since he is in Court, what purpose would a process serve? FYNCHEDEN: Unless you are willing to say that he is the same person of whom we prayed aid, we will not admit the plea. SHARSHULL: Yes, we will, in case the plaintiff assents to it, for it is not reasonable that you should have the issue if the plaintiff wishes to say that he is father, etc. WILLOUGHBY: Yes, sir, inasmuch as the tenant puts his land in jeopardy, for if he takes the issue the other can enter, if the reversion be to him, etc. Query, if he enters for such a cause, will the writ abate? And it seems not, etc. Paschal
21 Ed. III.

Reported in Y. B. Paschal, 21 Ed. III, p. 14, pl. 15. See also Brooke, Case 5. Joinder in Aide, 7; and Fitzh: Joinder in Aide, 11.

(6) **A man cannot** join in aid by attorney, where he comes without process, but in his own person, etc. But where he comes by process he can join by attorney well enough, etc. Hilary
11 Hen. IV.

The case has not been identified in Y. B. Hilary, 11 Hen. IV, or in the early abridgments. Case 6.

(7) **In replevin**, the plaintiff who was tenant for years prayed aid of his lessor, upon whom the avowry was made; and he came without process, and was received to join; and this was because of the evil as to the damages which Michaelis
2 Hen. VI.

the termor could otherwise recover against him by a writ of Covenant; as in a writ of Mesne, etc. And then he pleaded one plea and the termor another plea. ROLFF: If they vary in their pleas it cannot be said to be a joinder, etc. Which the Court conceded. And also the plaintiff was a stranger to the avowry, who cannot plead any plea by himself, etc. See [the case] for it was well argued.

Case 7. Reported in Y. B. Mich. 2 Hen. VI, p. 1, pl. 1. See also Brooke, Joinder in Aide, 2; and Fitzh: Joinder in Aide, 2. The case is full of legal points "well argued."

Paschal 21 Hen. VI. (8) **A man** can join himself to his tenant at will, in Replevin, because he cannot have aid from him: By the opinion of NEWTON, etc., in a [writ of] Replevin. But yet PASTON held that he should have the aid. It seems that he cannot join, for he is not injured as against the plaintiff, by a writ of Covenant nor by a writ of Mesne.

Case 8. The case has not been identified in Y. B. Paschal, 21 Hen. VI, or in the early abridgments.

JOYNDER EN ACCION

Statham 110 b.
Paschal 48 Ed. III. (1) **Four women brought** a writ of Entry in the *post*, on a disseisin made on four ancestors, and they counted that four sisters were seised, etc., and made the descent from two to two of the demandants, as daughters, etc. And from the other two to the other two as cousins, etc. And because the action was conceived on a disseisin made on several ancestors in one writ, in which case they should have had separate writs, the writ was abated. And it was said that although their ancestors could have had an Assize in common, still their heirs should have separate actions; as if two parceners are disseised, and one has issue and dies, the other shall have an Assize of Novel Disseisin [for one half, and the other shall have a writ of Entry on a disseisin for the other half]. And also a man shall [not] have a writ of possession for that of which two ancestors die seised [in one writ]¹ no more than he shall have an action which is mixed, in the right, etc.

¹The words in brackets are from the report of the case.

Reported in Y. B. Paschal, 48 Ed. III, p. 14, pl. 7. See also Brooke, Case 1. Joinder in Action and in Plea, 17; and Fitzh: Joynder in Action, 8. Brooke follows the report of the case by beginning: "Four husbands and their wives."

(2) **Where land was given** to a man for life, the remainder to the right heirs of two, in fee, who had issue; their issue after the death of their father, and after the death of the tenant for life, cannot join in an action, to wit: in a *Scire Facias* to execute the fine, but they shall be put to sue separate writs, to wit: one for one half, and the other for the other half, etc., because there was a severance in fact through the gift, etc. But yet WILLOUGHBY said that if one of the two had died without issue, before the fine was executed, that the other could sue execution for all by the survivorship, etc. Query?

Trinity
24 Ed. III.

Reported in Y. B. Trinity, 24 Ed. III, p. 29, pl. 17. See also Brooke, Case 2. Joinder in Action and in Plea, 38; and Fitzh: Joynder in Action, 10.

(3) **Two coparceners** and their issue can join in a writ of Aiel. By the opinion of WILLOUGHBY and SHARSHULL, etc. From this it follows that at the common law they could join in every action except an Assize of Mort d'Ancestor; for they said that this was by the common law, in a writ of Aiel, for it is repugnant, etc. But in a writ of Cosinage, and all other writs, it is not repugnant, etc., for each of them can have such a writ by herself, but each of them cannot have a writ of Aiel by herself, for to one is given a writ of Aiel, and to the other an Assize of Mort d'Ancestor, etc. But they can join in a writ of Aiel through the equity of the Statute, etc. (But yet that is hard, etc.)

Trinity
24 Ed. III.

The case has not been identified in Y. B. Trinity, 24 Ed. III, or in the early abridgments. Case 3.

The Statute is that of Marlbridge, 52 Hen. III (1267), cap. 12, Stats. at Large, Vol. 1, p. 55 (61).

(4) **If an obligation** be made to the king and his suitors, they shall join in an action with the king: as was adjudged in the Exchequer in Debt, etc.

Anno
20 Ric. II.

There is no printed Year Book for 20 Ric. II. The case has not been identified in the early abridgments. Case 4.

JURIS D'UTRUM ⁵⁹

Statham
111 a.
Trinity
40 Ed. III.

(1) **A vicar brought a juris d'utrum** against a prior, who was parson of the same church of which he was vicar [which] was endowed of his lands forever. And he could have for that an Assize or a *Juris d' Utrum* against a stranger. And the defendant was also called prior, and not parson, although the prior showed that he was parson and he asked judgment if the Court would admit it; yet he was made to answer, etc. BELKNAP: The writ is "*Utrum fit libera elemosina vicarie, aut libera elemosina rectoræ.*" And in the writ we were called parson, without this, etc., that we will aver that our predecessor died seised of these same lands as of his parsonage and we found our church seised of them, judgment of the writ. KYRTON: It is reasonable that he be named parson, for otherwise he cannot have the aid of the patron and of the ordinary. FYNCHEDEN: If he shows that he came to that by a legal title, it is reasonable that he shall have the aid, and for so much shown, to wit: a legal title in his predecessor, the writ shall abate. But we think that your predecessor had nothing except by a disseisin, etc. And your plea is also triable by a jury, wherefore he should award a jury to us, etc. As if in an Assize the tenant alleges joint tenancy or other such thing, that shall be tried by the Assize, and if a disseisin be found it was well brought, and you can so say in this writ. And although you do not say, "and if it be found," still we need not inquire as to the points of the writ, etc. And the law is the same in all juries, etc. SHARSHULL: If in an Assize the tenant says that the plaintiff has taken a husband, etc., it is necessary to answer to that; so here. FYNCHEDEN: In your case it may well be since it goes to the person, and also it is a thing moving from the plaintiff, but anything that the tenant alleges on his own part, as "joint tenancy" and such things, shall be tried immediately without an answer from the plaintiff: so here, etc. And the law is the same in an Assize of Mort d'Ancestor, and this I have always taken to be a distinction, etc. Wherefore the jury was awarded, etc.

And a *Nisi Prius* was granted immediately. And so note that they could plead although the jury did not appear, etc. And the law is the same in an Assize, etc.

And it was said in the same plea, that the ordinary can bring in the vicary if the parsonage is impoverished and deliver it to the parson. And he can also make an assignment of the lands of the parson to the vicar; all without a license from the king.

And it was said in the same plea, that if the defendant had shown that the lands had been delivered to him by the ordinary in improvement of his parsonage, that this Court would not have jurisdiction as to that, etc. (See this plea, because it was well and thoroughly argued, etc.)

Reported in Y. B. Trinity, 40 Ed. III, p. 27, pl. 5. See also Brooke, Case 1. *Juris Utrum*, 2; and Fitzh: *Juris Utrum*, 2.

(2) **In a juris d'utrum** against three by separate summons, the jury can be awarded against one, and so taken by parts. And the law is the same in a Mort d'Ancestor; but it is otherwise in an Assize of Novel Disseisin, because the writ does not allege anyone to be tenant as in the other cases. By the opinion of the COURT in a *Jure d'Utrum*, etc. Michaelis
17 Ed. III.

Reported in Y. B. Mich. 17 Ed. III, p. 47, pl. 11. See also Fitzh: Case 2. *Juris Utrum*, 11.

(3) **An abbot, parson** emparsoné of the church of S, brought a writ of Entry *ad terminum qui preterit* on a lease made by his predecessor, and counted that it was the right of his church of S, of which he was parson. And it was adjudged that the writ should abate, although it might be that it was annexed to his house, because he could not have another action except the *Jure d'Utrum*, etc. Hilary
4 Ed. III.

And in the same term an abbot brought a *Jure d'Utrum* as parson of the church of B, and the writ was adjudged good, but it did not appear whether it was brought on a disseisin made on his predecessor, or on himself; or he who was parson before the appropriation, etc.

The case has not been identified in Y. B. Hilary, 4 Ed. III, or in the early abridgments. Case 3.

Michaelis
38 Ed. III.

(4) **A vicar brought a *Jure d'Utrum*** against one F, and made his title that it was the right of his church; and he said that A, his predecessor, was seised. (And so note that he shall make his title without, etc. As in an Assize of Darrein Presentment, etc.) CLAIM: You should not have the *Jure*, for our brother, etc., died seised, etc., after whose death this A entered and enfeoffed one F, against whom we brought the Mort d'Ancestor, and he vouched the said A to warranty, who entered, etc., and traversed the point of our writ, wherefore the Assize was awarded, and passed for us; so his possession was disproved, without this that he ever had any other estate. FYNCHEDEN: This is a writ of right, in which the possession is not traversable. SHARSHULL: So it is, therefore without title you cannot have the jury. THORPE: This writ is in the possession, for the plea shall not be joined, wherefore he has well pleaded. FENCOT: We say that A, our predecessor, was seised, etc., as in right of his church, in the life of your brother. CLAIM: That is no plea, without showing how he was seised, etc. THORPE: You have destroyed one seisin, and he has shown another seisin before, wherefore it is reasonable that he should have the jury. CLAIM: He was not seised in the life of our brother; Ready, etc. (Query as to the title?)

Case 4.

Reported in Y. B. Mich. 38 Ed. III, p. 37, pl. 53. See also Brooke, *Juris Utrum*, 4; and Fitzh: *Juris Utrum*, 1. The case is not very well abridged either as to the facts or the law.

Trinity
8 Ed. II.

(5) **In a *jure d'utrum***, it is a good plea to plead a recovery in a *Cessavit* against the predecessor of the plaintiff, by default, without concluding to the jury, because the Statute of Gloucester says that the lands draw with them the remainder, etc. In a *Jure d'Utrum*. And it seems that another recovery in any plea of lands is sufficiently good, for it is not a writ of right, for the pleas shall not be joined; nor is it a writ of possession solely, for it is not brought on dying seised, but it is a plea in the right of him who is in possession, as a writ of Entry, etc., as it seems, etc.

The case has not been identified in Y. B. Trinity, 8 Ed. II, or in the early abridgments. Statute of Gloucester, 6 Ed. I (1278), Stats. at Large, Vol. 1, p. 117. Case 5.

⁶⁹ The "*Utrum*" has of late given rise to some controversy. Mr. Pike, in his introduction to the second part of the Year Book of 20 Ed. III, [p. xxiii] says: "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." This new name is the *Jure de Utrum*, with which Mr. Pike has no quarrel; it is the conversion of the *Jure de Utrum* into the *Juris Utrum* which is displeasing to him. Our title is not quite in the form to which he objects; it still retains the "D" which he assumes to have been chipped off at the same time that the *Jure* became *Juris*.

Mr. Pike accuses Fitzherbert of being the guilty converter of the one phrase into the other; he is "detected in the very act" [*supra*, p. xxvi] and we are shown that the words in manuscript, which were written *Jur. de Utrum*, are transposed by Fitzherbert [Fitz: *Juris Utrum*, 5] into *Juris Utrum*. It is with hesitancy that one undertakes the task of relieving friend Fitzherbert of a portion at least of this criminal liability, or of depriving him of the honor of the "stupendous success" accredited to him by Mr. Pike. But there had been a maker of abridgments before Fitzherbert, and he also had used the title of *Juris D'utrum* — retaining, as we have said, the "S," but still using the "D". Statham used the title before Fitzherbert, however, and we may very easily see how natural it would have been for Fitzherbert to copy his predecessor in this as in many other instances. But Fitzherbert was to copy in his new *Natura Brevium* an older work now known as the *Vieux Natura Brevium*, but which in his time was known simply as THE *Natura Brevium*, published at a date not absolutely known, but probably about the same time that Fitzherbert published his Abridgment. If published at or about the same time, it is a question which has borrowed this title from the other, or whether they followed an already established custom. The chances seem to favor the latter presumption, since it does not seem likely that the writer of the *Natura Brevium* would have followed Fitzherbert — only just coming into reputation — in any radical change in the naming of a writ already so well known; nor is it likely that Fitzherbert, with a reputation still to make, would have followed a radical departure from established custom. What is sure is, that if the *Natura Brevium* is the older of the two books, then we do not find Fitzherbert deliberately changing the name of the writ, for in the *Natura Brevium*, on the

twenty-seventh page (using the edition printed by Myddylton, which is apparently the oldest edition, and one not known to most of the catalogers), we have the *Briefe de Juris Utrum* in the margin, while the paragraph begins: "*Brief de Juris Utrum.*" With Statham surely, and the unknown author of the *Natura Brevium* probably, using the term before Fitzherbert had done so, we, it seems, should be able to exonerate him from being the one to misname the writ, as indeed Mr. Pike has himself indicated when he conjectures that "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.*" [Pike: Prf. to 20 Ed. III, R. S. Pt. 2, p. xxv.] This hypothesis seems unlikely, for although we know such errors in copying to be of constant occurrence, we do not find the law being so altered at this period of its history. The writ called for a jury, but not by the name of a *jurata*; "*duodecim liberes*," or lawful men, were called up to *recognoscere utrum*, the tenement belonged to the "*feuodum J vel sic utrum sit libera elemosina.*" [Old *Natura Brevium*, fo. 27.] No change in the law was hinted at. It remained an Assize, although it took "a new turn . . . and became the 'parson's writ of right' " [Maitland, *Forms of Action*, p. 327. Inc. in Maitland: *Equity*] but always the jury is spoken of, and always the writ is the same. Knowing what they were writing about, knowing the action well, knowing that it was an Assize, that it called for a jury, and discussing all these things in the cases as we constantly find them doing, can we accept the theory that the title of the writ was changed simply by a clerical error — the carelessness of a clerk? After reading case after case in the Year Books it seems impossible to suppose that everywhere the copyist is in error. And as one reads it seems clearer and clearer that one was understood to be the "Assize *Utrum*" and the other the "Writ *Juris Utrum.*"

The *Assize Utrum* remained the *Assize Utrum*, but it became the habit in classifying the law, when the legal writers began that long task which has no end, to classify along the lines of least resistance or of most knowledge, so the classification took the names of the writs. The Old *Natura Brevium*, Fitzherbert's *Natura Brevium*, and a host of followers and imitators took the bulk of their titles, not from elaborate classifications of substantive law but from the names of the writs; therefore it was not from the *Assize Utrum*, but from the writ which had come to be called the writ *Juris Utrum*, or the "*juris utrum*," that the titles in the abridgment and very early treatises were formed. How did it come to be so called if not from the error of ignorance, as is supposed by Mr. Pike? Our writ began as the *Breve utrum* (the writ whether). [Glanville, Lib. 13, c. 23; Bracton, Lib. 4, fo. 286, *Assize*

Utrum; Britton, fo. 235, *Assize Utrum*.] But this Assize, as we have seen, became the parson's writ of right [Maitland, *Forms of Action*, p. 327] and Bracton [Bracton, Lib. 4, fo. 286] says: "But there is amongst other assises a certain assise *quæ multum habet possessionis et juris*." It became, to the minds of the active practitioners of the law, the writ to "try the right whether"; and so instead of the *assize utrum*, or the *breve utrum*, it came to be to them the *juris utrum*, or the right whether. Exactly the point when the change took place is, of course, not easy to show at this time; it is a simple matter of time and opportunity for a search into the manuscript cases or the rolls. It is open to proof by any one who has the time and the interest.

Our first case under this title of *Juris Utrum* in our abridgment is in Trinity Term, 40 Ed. III. The printed books as far back as 1581—further I have not been able to trace them—say "the plaintiff sued a *juris utrum*." The manuscripts might tell a different story—will tell it before long in print if it is to be told. Statham found the *juris utrum* among the first words of the first case which he put under the title, and he took his cases from the manuscript. He had no one to copy and it was natural he should use the words of the writ, as has been done ever since his time.

Maitland, who, as Mr. Pike says, has "devoted more than a page to the *Assise Utrum*, or writ *Juris Utrum*," shows that he had consciously or unconsciously arrived at the separation of the Assise and the writ, in thus separating the two names. It is probable that it was entirely conscious with him, and that it had not occurred to him to make the difference plain, or the time had not come for him to do so.

JURISDICCION

(1) **No man shall plead** to the jurisdiction of the Court, to wit: to say that the lands are in ancient demesne, etc., unless he is tenant of the freehold. By FYNCHEDEN, in a *Præcipe quod Reddat*, etc. After such a plea he can plead joint tenure: by the opinion of FYNCHEDEN, but not non-tenure, for the above reason, etc.

Statham
111 b.
Michaelis
41 Ed. III.

Reported in Y. B. Mich. 41 Ed. III, p. 22, pl. 13.

Case 1.

(2) **The court shall** have jurisdiction where the defendant entitles himself as to his tithes. And so if the plaintiff be a layman, albeit the defendant shows that the plaintiff is in by a parson of holy church, etc. In Trespass, etc.

Paschal
42 Ed. III.

- Case 2. Reported in Y. B. Paschal, 42 Ed. III, p. 12, pl. 19. See also Brooke, Jurisdiction, 6; and Fitzh: Jurisdiction, 12.
- Michaelis
43 Ed. III. (3) **In trespass** by a vicar of a church against a parson of another church, although the plaintiff entitles himself to the tithes, the Court shall have jurisdiction, because the right to the tithes cannot be tried between the vicar and the defendant. And the law is the same if the plaintiff be a farmer of the parson, etc. Query, if the vicar be perpetual, etc.? Query, if the debate be between a vicar and the parson of the same church? etc.
- Case 3. Reported in Y. B. Mich. 43 Ed. III, p. 34, pl. 44. See also Fitzh: Jurisdiction, 48.
- Michaelis
44 Ed. III. (4) **The court shall** have jurisdiction between a parson and the servant of another parson, because the right cannot be tried unless his master was a party, etc. (Query, for it seems that he can have aid, etc., in which case, etc. But yet he shall not have the aid in Trespass before issue, wherefore, etc. And also it is reasonable that the Court shall have jurisdiction, for he cannot have an action against the servant in the Court Christian, nor against a farmer, nor a conusor, etc.)
- Case 4. The case has not been identified in Y. B. Mich. 44 Ed. III, or in the early abridgments.
- Hilary
46 Ed. III. (5) **In trespass** for trees pulled up, the defendant said that the place where, etc., was ancient demesne, judgment if the Court, etc. FYNCHEDEN: That is no plea, because it is merely personal, but in Replevin, a writ of Wardship for lands, and in a writ of Account, it is a good plea, etc. (But yet, query the reason for the account, etc.? In account against a guardian in socage it has been held a plea, etc.)
- Case 5. Reported in Y. B. Hilary, 46 Ed. III, p. 1, pl. 2.
- Paschal
48 Ed. III. (6) **If a man** makes a covenant with me in England, to serve me in the war in France, or upon the sea, I can choose to have my action in the Common Bench, or in the Court

of the Constable and Marshal, etc. By the opinion of the COURT. In a note.

Reported in Y. B. Hilary (not Paschal), 48 Ed. III, p. 2, pl. 6. See Case 6. also Brooke, Jurisdiction, 15.

(7) **In replevin**, the defendant said that he took them in another place, which is held of the manor of E, which manor is ancient demesne, judgment if the Court, etc. (But yet, query well how that plea shall be pleaded? For it does not follow the pleading in the *Præcipe quod Reddat*, where the land is in ancient demesne, etc.) THORPE: You should make an avowry, for otherwise he cannot have a return. And so he did, etc. SHARSHULL: Although he makes an avowry he shall never have a return, for although it be found for him, this Court cannot have cognizance of the taking, because it is ancient demesne, upon which no issue can be taken now, but the issue shall be taken upon the place, etc. And so it was. And the plaintiff prayed that he would wage the deliverance, and so he did. (And wrongly, as I believe, for he would never have a return, etc., as it seems. And see [this case] for it seems, in Replevin, if the defendant says that the place where, etc., is ancient demesne, and makes an avowry, it seems that by the making of the avowry he affirms the jurisdiction. And it also seems that such a plea is not good in Replevin, for if a man wishes to plead to the jurisdiction of the Court he should give to the plaintiff an action for the same thing in another court. And in ancient demesne a man cannot have Replevin, as it was said; and he cannot have a writ of Trespass against his lord. Wherefore, study the reason for this, etc.)

Hilary
21 Ed. III.

Reported in Y. B. Hilary, 21 Ed. III, p. 51 (additional), pl. 3. See Case 7. also Fitzh: Jurisdiction, 27. The latter part of the case as abridged here consists entirely of the remarks of Statham or some other reporter. They are not taken from the case itself. Fitzherbert gives only a short digest.

(8) **In account** against a guardian in socage, who said that the lands of which, etc., were ancient demesne. And it was held a good plea, because the freehold had come

Hilary
21 Ed. III.

in question, for he could say that he held in knight's service, etc. And it seems that the law is the same in Trespass for trees cut, for the defendant can say that it was his freehold, etc. Query? And HANKFORD said that he could have a bill of account against him in ancient demesne, etc. Query?

Case 8. Reported in Y. B. Hilary, 21 Ed. III, p. 10, pl. 30. See also Brooke, Jurisdiction, 24.

Michaelis
49 Ed. III. (9) **In account** for the time he was his bailiff in A, and receiver of his moneys, etc. BELKNAP: A is within the Cinque Ports, judgment if the Court, etc. PARLE: The king was seised of this same manor of A, and leased it to us to farm, which term still lasts until, etc. THORPE: Although the king was seised and leased to you, still it is within the franchise, as it was before, and of the same condition, witness the Statute, "*Si quis tenuerit de aliqua escaeta,*" etc., wherefore you cannot take anything, etc. PARLE: Still he should answer to this, that he is our receiver, etc. THORPE: It is true. And so he did.

Case 9. Reported in Y. B. Mich. 49 Ed. III, p. 24, pl. 1. See also Brooke, Jurisdiction, 17; and Fitzh: Jurisdiction, 55.

The Statute is that of 19 Ed. I (1301), *De Escheatoribus*. Stats. at Large, Vol. 1, p. 303.

Paschal
22 Hen. VI. (10) **In an assize** against two, who pleaded jointly to the jurisdiction of the Court, the plaintiff said that he was seised until disseised by them, to the use of one of the two alone, and to the plea pleaded, etc. And then he to whom the use, etc., would have pleaded in bar as sole tenant, and could not, etc.

Case 10. The case has not been identified in Y. B. Paschal, 22 Hen. VI, or in the early abridgments.

Trinity
39 Ed. III. (11) **The plaintiff** demanded account of a receipt in Norwich and Bury. CLAIM: Bury is within the franchise which is [adjoining] this. And because no one demanded the franchise it was adjudged that such a plea did not lie in his mouth, etc.

Case 11. The case has not been identified in Y. B. Trinity, 39 Ed. III, or in the early abridgments.

(12) **In trespass** for grain carried away, etc. HORTON: Michaelis
 The churches of A and B are adjoining and we are parson 14 Hen. IV.
 of A, and the plaintiff is parson of B, and, claiming the
 grain as his tithes, he took them, and we took them back, etc.
 And he was forced to show in how many acres he claimed
 the tithes. SKRENE: That is no plea, for he does not
 show that they were within his parish, for they are within
 our parish and he cannot claim them, unless as a part.
 HANKFORD: It may be that it is not a parish; as the forest
 of Windsor, etc. wherefore answer.

Reported in Y. B. Hilary (not Mich.), 14 Hen. IV, p. 17, pl. 14. See Case 12.
 also Brooke, Jurisdiction, 28; and Fitzh: Jurisdiction, 41. They were
 finally told to sue in the Court Christian.

(13) **In debt** in London, the defendant pleaded a release Michaelis
 bearing date in another county, and the plea was removed, 13 Hen. IV.
 and the plaintiff prayed process and could not have it,
 because it was removed without warrant, for it is outside
 the provisions of the Statute, etc.

And in the same plea HANKFORD said that in a bill of Statham
 fresh force in London, bastardy was alleged, etc., and the 112 a.
 plea was removed to that place, and we awarded a writ
 to the bishop, etc. (So note that in London they cannot
 award a writ to the bishop, etc. Query, what they do there
 in a *Quare Impedit*, etc. But that is not like this case,
 for the Assize is brought for lands, and the Statute says
 "tenements," etc., which is not to be understood as mean-
 ing any other personal action than the Assize, etc. Query
 as to *Quare Impedit*, Wardship, Mesne, *Ne Injuste Vexes*,
Quod Permittat, and those which are similar, etc.?)

The case has not been identified in Y. B. Mich. 13 Hen. IV. Fitzh: Case 13.
 Jurisdiction, 56, has the case, and he gives a citation to p. 25 of 13
 Hen. IV. There are only 17 printed pages for that year. The case,
 however, seems to be that reported in Y. B. Hilary, 14 Hen. IV, p. 25,
 pl. 33. See *infra*, case 19.

The Statute is West. II, 13 Ed. I (1285), c. 18, Stats. at Large, Vol. 1,
 p. 163 (194).

Michaelis
1 Hen. V.

(14) **In debt**, the plaintiff counted on twenty shillings upon an obligation and twenty shillings upon a contract. And for variance between the writ and the obligation the writ was abated, and yet the defendant was put to answer to the contract, etc. (So note that the Court took jurisdiction over so small a sum.)

Case 14.

Reported in Y. B. Paschal (not Mich.), 1 Hen. V, p. 4, pl. 5.

Hilary
38 Ed. III.

(15) **The Abbot of S** brought a writ of Trespass against the Prior of C, for his sheaves of grain carried away. CHARLETON: We were parson of this same vill of S, where, etc., and they were severed from the nine parts, and we took them for our tithes, and the plaintiff claimed them as tithes, etc. (But yet that was not sufficient color, for he did not show for what cause the plaintiff claimed them as tithes, etc.) Judgment if action, etc. CLAIM: S is a house of the order of Cistercians, in which order the demesne lands are not titheable, etc. And a composition was made between the abbot and the prior, that the abbot should not tithe his demesne lands. See, here is the deed, judgment, etc. (This plea is double, etc.) FYNCHEDEN: This plea proves that it is by right of the tithes, judgment if the Court, etc. KYRTON: And inasmuch as you do not answer to the composition, which is a lay thing, judgment. If a parson grants to another that his lands shall not be titheable, by that grant it has become a lay chattel, although it be between parson and parson, etc. THORPE: I grant it well there; because you have admitted the right of the tithes to be in the parson, which right shall not be tried here; but it is otherwise in our case at bar, for if he wishes to say that his demesne lands are titheable, then the right as to the tithes shall be tried here, wherefore, etc. (But I believe that he took that by protestation, to wit: that his demense lands were never titheable, for else it is double, etc. Then it seems that the composition is not to the purpose, for he can have an action of covenant upon that, and recover his damages, etc. And that was the opinion.) And then it was adjudged that the abbot should take nothing by his writ, etc. And then the abbot brought a

writ of Covenant upon the same composition, and recovered his damages, etc.

Reported in Y. B. Hilary, 38 Ed. III, p. 6, pl. 21. See also Fitzh: Case 15. Jurisdiction, 43. They were finally told to sue in the Court Christian.

(16) **In trespass** for a close broken and sheep taken, etc. Michaelis
 HILARY: As to the sheep, one A is vicar of B, and the 14 Ric. II.
 defendant is protector of this vicar and his servants; and the sheep were his tithes, and the plaintiff, etc., judgment if the Court, etc. And the opinion was that he should have the plea. (Query as to the cause, etc.?) And as to the close it is a cemetery of this same church, and he put them in; judgment if the Court, etc. WADE: This Court should have jurisdiction of the cemetery, for it is the freehold of the vicar, or the parson, of which he can have an Assize, etc. And they adjourned, etc.

There is no printed Year Book for 14 Ric. II. See, however, Fitzh: Case 16. Jurisdiction, 19.

(17) **In debt** by a parson, who counted that he had Michaelis
 leased to the defendant a certain portion of tithes, rendering a certain rent each year, etc., for a term of ten years. And the defendant demanded judgment if the Court could take jurisdiction, inasmuch as it was for tithes. And it was not allowed, because the moneys which are reserved are a lay chattel, etc. 13 Ric. II.

There is no printed Year Book for 13 Ric. II. See, however, Fitzh: Case 17. Jurisdiction, 21.

(18) **In trespass** against two, one said that he was a Paschal
 servant of the Staple, judgment, etc. And the other said, 2 Hen. VI.
 inasmuch as the plaintiff had conceived his action against him and another of whom the Court had no jurisdiction, judgment, etc. ROLFF: And inasmuch as the action is several, judgment, etc. And so to judgment.

The case has not been identified in Y. B. Paschal, 2 Hen. VI, or in the Case 18. early abridgments.

(19) **In debt** against one A, formerly a mayor of the Trinity
 Staple, because he had allowed a prisoner to go: who said 9 Hen. VI.

that the mayor of the Staple has power to hold pleas of things touching the Staple, etc., judgment if the Court should have jurisdiction? As in London, if the sheriff allows a prisoner to go, the party shall have an action against them before the new sheriff, and not in this Court. So here. (All the same, query as to that case, etc.) MARTYN: If a man be bound to me in a Statute of the Staple I can elect to sue my action here, or before the mayor [of the Staple], wherefore answer.

And it was said in the same plea, that a release made to him who has thus escaped is no plea for the warden, because it is a new action, given for the offence against the Statute, etc. (Distinguish this, etc.)

Case 19. Reported in Y. B. Trinity, 9 Hen. VI, p. 19, pl. 13. See also Fitzh: Jurisdiction, 6.

The Statute of the Staple, 27 Ed. III (1353), cap. 8, Stats. at Large, Vol. 2, p. 78 (83).

Michaelis
18 Hen. VI.

(20) **In trespass**, the defendant said that he was parson of the church of B, and the place where, etc., is an acre of land which is within the same vill, and part of his glebe of the same church. And the plaintiff is parson of C, which is adjoining, and he, claiming the same land as part of his glebe of that [parish], entered, upon whom the defendant entered and made the trespass, judgment if the Court, etc. NEWTON: That has nothing to do with the jurisdiction, for the matter shown by you is not triable in the Court Christian, for he shall have an Assize for that which is part of his glebe, etc. Which was conceded; wherefore he took the plea to the action, etc. And it was challenged because he did not give sufficient color to the plaintiff, etc. Study well.

Case 20. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Hilary
20 Hen. VI.

(21) **In trespass** for corn in sheaves. FORTESCUE: One A is a parson of the church of B, who leased his parsonage to us, and the place where, etc., is within our parish, and the corn was severed from the nine parts, and we took it

and you are parson of C, which is adjoining, etc., and you, alleging that this same place was within your parish, took them, and we took them [back], judgment if action. PORTYNGTON: It is true that the place is within your parish, but we and our predecessors have had the sheaves there time, etc., as a part of our church; and we pray our damages. FORTESCUE: Now by this conusance we pray that the Court be ousted of the jurisdiction, for we have claimed them as tithes, and you claim them as tithes of a part within our parish, so the right to the tithes is to be tried, and not the possession, wherefore, etc. PORTYNGTON: So the right to the tithes is to be tried when the issue is taken, whether the place be within our parish or within your parish, and yet it shall be tried in this Court. So here. But now you have passed that step, for you have affirmed the jurisdiction. ASCOUGH: So it seems, for he could have taken his plea to the jurisdiction. NEWTON: Although he took his plea to the action, and this plea goes to the jurisdiction, we will take the plea to the jurisdiction, etc. And then they demurred in law, etc. (Query, inasmuch as the defendant here is a lay man, and a farmer, etc. And see that it is wrong for such a prescription to be tried here, etc. For in the Court Christian they will prescribe for forty years or fifty years; and in our law it is not so, etc., wherefore his prescription can be allowed by the law of holy church, and yet it shall be found against him in our law, etc.) And then the Court was ousted of the jurisdiction, etc.

Statham
112 b.

Reported in Y. B. Hilary, 20 Hen. VI, p. 17, pl. 8. See also Brooke, Case 21. Jurisdiction, 80; and Fitzh: Jurisdiction, 8.

See as to jurisdiction, in the title of Ancient Demesne, Note. Trinity, 3 Hen. VI, and in the title of Count, Mich. 30 Ed. III, and in the title of Jurisdiction, Trinity, 40 Ed. III.

Statham, title of Auncien Demesne, *supra*, p. 19 b, case 8; Statham, title of Connte, *supra*, p. 38 a, case 3. There is no citation of a case in 40 Ed. III, in his title of Jurisdiction.

(22) **If the defendant** pleads to the jurisdiction, and the plaintiff demurs in law upon the plea, and it is found against the defendant, query if it be peremptory, etc.

- Case 22. There is no citation in Statham to this case, and it has not been identified in the early abridgments.
- Michaelis
18 Ed. III. (23) **In a writ of entry *de quibus*** the tenant demanded the view, and was ousted, and then was received to say that the land was ancient demesne, because such a plea comes from the view, etc.
- Case 23. The case has not been identified in Y. B. Mich. 18 Ed. III, or in the early abridgments.
- Paschal
33 Ed. III. (24) **In debt upon an obligation** bearing date in Chester, the defendant was put to answer to it, because it might be that the defendant had nothing in Chester, or that there was no jurisdiction over him there, so that he could be brought to answer. Wherefore he said not his deed, and the other alleged the contrary. And the record was sent to Chester to be tried there, etc.
- Case 24. There is no printed year of 33 Ed. III. Fitzh: Jurisdiction, 57, has the case.
- Hilary
6 Hen. V. (25) **The lands in Wales** which are held immediately of the king are pleadable in England. By the opinion of HANKFORD. And that in Trespass *Coram Rege*.

JUGEMENT

- Statham
113 a.
Hilary
18 Ed. III. (1) **In dower**, the issue was taken on "never joined [in legal matrimony,]" etc. And the bishop certified that they were legally married. And the tenant made default, and judgment was given immediately, notwithstanding the default of the tenant, etc.
- Case 1. Reported in Y. B. Hilary, 18 Ed. III, p. 2, pl. 7. See also Fitzh: Jugement, 118.
- Paschal
24 Ed. III. (2) **In a quare impedit**, the plaintiff was nonsuited, and the defendant had a writ to the bishop. And because they were not informed as to the damages, they sent a writ to the sheriff to inquire at what time it was vacant; what value it had by the year, and if it was now vacant or not;

and if full, of whose presentation? Who replied that the bishop had made collation, etc. Whereupon the defendant prayed his damages for two years. **NOTT:** It is of record that he had a writ to the bishop within six months, wherefore, although he was negligent and suffered the bishop to present, that should not injure us, etc. And the opinion was clear that he should have damages for only half a year, etc. So note that he had two judgments, etc. And the law is the same in a writ of Cosinage, where a man recovers by default, etc.

The case has not been identified in *Y. B. Paschal*, 24 Ed. III, or in the early abridgments. Case 2.

(3) **In a resummons** against the executor of the defendant in a writ of Wardship, who pleaded "fully administered," upon which they were at issue, etc. And the plaintiff had judgment to recover the wardship before the inquest was held, because the right of the plaintiff was not denied by their testator, nor by them. But yet he shall [not] have judgment for the damages until after the issue is tried, etc. Query as to that matter, etc. Paschal
24 Ed. III.

Reported in *Y. B. Paschal*, 24 Ed. III, p. 25, pl. 14, and in the *Residuum* of the same term, p. 48, pl. 34. See also *Fitzh: Jugement*, 223. Case 3.

(4) **In a recordare** out of ancient demesne, because the tenant claimed to hold at the common law, the demandant offered to aver that it was ancient demesne. (But yet I believe that it should have been tried by the record of Domesday.) And then the demandant prayed judgment. And the opinion was that they could not give judgment here, etc., for then it would be a free fee, but it should be remanded, etc. Query, when it is remanded shall the tenant plead any other plea, inasmuch as the issue was found against him, etc. Michaelis
30 Ed. III.

Reported in *Y. B. Mich.* 30 Ed. III, p. 22, pl. 39. See also *Fitzh: Jugement*, 146. Case 4.

See as to conditional judgment, in the title of Dower; **Note.** in the title of Wardship. And also of Judgment, in the title of Executors.

Statham, title of Dower, *supra*, pp. 73 a to 75 b. Statham, title of Garde, *supra*, pp. 101 b to 103 b. Statham, title of Executours, *supra*, pp. 87 a to 88 b.

Hilary
33 Ed. III.

(5) **If I pray** to be received for default of my tenant for life, and vouch to warranty one who enters and knows not how to bar the demandant, and the demandant has judgment to recover against the tenant who made default, he who is received shall have judgment to recover over in value, and still no judgment is given against him, etc. As appeared in a writ of Entry, etc.

Case 5. There is no printed year of 33 Ed. III. Fitzh: Jugement, 222, has the case.

Michaelis
14 Hen. IV.

(6) **In replevin**, the defendant made conusance upon the plaintiff as bailiff to one A, because he was chosen collector of his rent by reason of the lands which he held of him according to the custom there, etc. And as he would not agree to that, the plaintiff said that he had nothing in the said lands except jointly with one J, etc. And upon that plea the parties took a day until another term, on which day the defendant made default, and the plaintiff had judgment to recover his damages without making any process, etc. (And yet it seems that it cannot be called a departure, because it was in another term, etc.)

Case 6. Reported in Y. B. Mich. 14 Hen. IV, p. 2, pl. 5.

Paschal
9 Hen. VI.

(7) **A man brought** a writ of Trespass for his park broken and does taken. And the defendant was found guilty, etc. And the plaintiff prayed a special judgment upon the Statute. NEWTON: Your action is not brought upon the Statute, but at the common law, for your writ should be "against the form of the Statute," etc. And it was the opinion that he should have judgment according to the Statute, because there was the same action at common law, so the Statute had no need to be cited, but yet even if the Statute should [not] be cited, still the writ should be "against the form of the Statute," etc.

Case 7. Reported in Y. B. Paschal, 9 Hen. VI, p. 2, pl. 5. See also Fitzh: Jugement, 10.

Statute of Westminster the First, 3 Ed. I (1275), cap. 20, Stats. at Large, Vol. 1, p. 74 (90).

(8) **In a quare impedit** against two, at the distress one made default, and the other appeared and pleaded a plea in abatement of the writ, upon which the plaintiff demurred in law; and the plaintiff prayed a writ to the bishop against him who made default. And it was the opinion of many that he should not have it until the other plea was decided, because it could make an end of all. But yet they were of different opinions, inasmuch as he who made default could not take advantage of the other plea, etc. But it seems he who appeared could bar the plaintiff of all if he had pleaded in bar and had had a writ to the bishop against the plaintiff; in which case the plaintiff would take no advantage of the default of the other, until, etc.

Hilary
7 Hen. VI.

Reported in Y. B. Mich. (not Hilary), 7 Hen. VI, p. 14, pl. 24. See also Fitzh: Jugement, 8. A very long and confused case, in which the point here made is concealed.

Case 8.

(9) **In debt** upon an obligation for ten pounds, the defendant admitted eight pounds; and as to the forty shillings, he showed an acquittance. The plaintiff prayed judgment for that which was admitted. MARTYN: What do you say to the acquittance? FULTHORPE: We cannot say anything to that, for if we admit it our writ will abate, whereupon he would have judgment for the remainder. And so he did not mention the acquittance, but it was not denied by him.

Trinity
3 Hen. VI.

And see in the same term, in Debt, partly upon an obligation, and partly upon a contract, the defendant admitted the obligation, and for the rest he waged his law; and because the plaintiff would have judgment immediately, he demurred in law upon the wager of law, and as to that he was barred; and he recovered the remainder, etc. And so note, etc.¹

Reported in Y. B. Trinity, 3 Hen. VI, p. 48, pl. 6.

Case 9.

¹ Reported in Y. B. Hilary, 3 Hen. VI, p. 37, pl. 33.

Michaelis
11 Hen. IV.

(10) **In an assize** brought by the husband and his wife, they recovered seisin of the land and damages for the issues in common; and for the goods carried away at the time of the disseisin the husband only had judgment to recover his damages, for the wife could not have a writ during the coverture, etc. And those damages for the goods carried away are given by the Statute, etc. But yet it was the opinion of THIRNING that a man shall recover damages in that case by the common law, for the writ of Assize runs, "*Cum catallis esse in pace*," and see this plea, for it was finely argued.

Case 10.

Reported in Y. B. Mich. 11 Hen. IV, p. 16, pl. 38. See also Brooke, Jugement, 20; and Fitzh: Jugement, 70. The case gives the Statute as that of Westminster the First, cap. 36, which is a manifest error. The Statute is probably West. II, 13 Ed. I (1285), cap. 25, Stats. at Large, Vol. 1, p. 163 (199). The writ can be found in Fitzherbert, *Natura Brevium*, p. 177.

Hilary
8 Hen. IV.

(11) **In trespass** against two, one pleaded a release, and the other "not guilty." And the plaintiff was at issue with both. If he who pleaded not guilty be found guilty before the other issue is tried, the plaintiff shall recover against him, although the release be found against him. All the same if the release had been first inquired into they would not inquire as to the other issue. By the opinion of HANKFORD and HALS. And that in an Appeal.

Case 11.

The case has not been identified in Y. B. Hilary, 8 Hen. IV, or in the early abridgments.

Michaelis
8 Hen. V.

(12) **Where a man** had recovered damages, and he had the body of the defendant in execution, and then the plaintiff came into Court and admitted that he was satisfied, and the defendant prayed to be dismissed, they would not dismiss him unless they were positively assured that the plaintiff was the same person, etc. But they would award a *Scire Facias* against him, etc. And the law is the same

Statham,
113 b.

where a man is outlawed at the suit of the party and he has a charter of pardon, etc. But there it is reasonable, for it is necessary for the plaintiff to declare upon the

original, which he cannot do unless he comes by process, etc. In a note, etc.

Reported in Y. B. Mich. 8 Hen. V, p. 7, pl. 2.

Case 12.

(13) **In deceit** against two, one appeared and the other made default. SKRENE, for the plaintiff, prayed that he might relinquish his suit against him who appeared, and have judgment or process against the other. THIRNING: That cannot be, but it may well be the other way; that is to say, you can have judgment against him who appears, and relinquish your suit against the other who made default, which HANKFORD conceded.

Hilary
9 Hen. IV.

Reported in Y. B. Mich. (not Hilary) 9 Hen. IV, p. 3, pl. 9. There is no printed Hilary Term for that year. Fitzh: Jugement, 224, gives the case.

Case 13.

(14) **Judgment** was given upon a verdict of the inquest which passed against the plaintiff; where on the day in the Bench after the *Nisi Prius*, the defendant made default and he was not nonsuited. And that in Wardship, etc.

Michaelis
2 Ed. III.

The case has not been identified in Y. B. Mich. 2 Ed. III, or in the early abridgments.

Case 14.

(15) **Judgment** will not be given against the wife who is received for the default of her husband, and desires to admit the action of the demandant. And that in a *Præcipe quod Reddat*, etc.

Hilary
10 Ed. III.

Reported in Y. B. Hilary, 10 Ed. III, p. 4, pl. 10. See also Fitzh: Jugement, 206. This was a writ of Entry.

Case 15.

(16) **In detinue**, on the day of garnishment, the plaintiff was nonsuited, and the writing was delivered to the defendant, etc. In Debt.

Paschal
22 Ed. III.

Reported in Y. B. Paschal, 22 Ed. III, p. 5, pl. 19. See also Fitzh: Jugement, 184.

Case 16.

(17) **Judgment** was given for the plaintiff on an issue tried, notwithstanding no declaration was made; and yet

Michaelis
22 Hen. VI.

that matter was shown to the Court before judgment. And that in Debt.

Case 17. The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the early abridgments.

Hilary
9 Ed. III. (18) **In debt**, the plaintiff counted partly upon an obligation and partly upon a contract. And the defendant admitted the obligation, and traversed the contract. And they were at issue. And as to that which he admitted, the plaintiff had judgment to recover immediately; and also the damages for that part. And process was awarded against the inquest for the remainder. Which note, etc.

Case 18. The case has not been identified in Y. B. Hilary, 9 Ed. III, or in the early abridgments.

Michaelis
31 Hen. VI. (19) **In trespass** against several, one was found guilty to the damage, etc., wherefore the plaintiff prayed judgment against him. MOLE: He shall wait until the other issues are tried. PRISOT: The other issues are "not guilty," and although he has judgment now, still he shall [not] have execution until he relinquishes his suit against the others, wherefore he can have this judgment and execution shall cease. BROUN: That is the common course here, etc. Wherefore it was adjudged that the plaintiff should recover his damages, etc.

Case 19. The case has not been identified in Y. B. Mich. 31 Hen. VI, or in the early abridgments.

Michaelis
13 Hen. VI. (20) **In conspiracy** nor in Trespass against two where they plead a joint plea, the plaintiff cannot relinquish his suit against one of the two, and have judgment against the other, as he could have done upon separate pleas. As appeared in a writ of Forgery of Deeds, etc.

Case 20. There is no printed year of 13 Hen. VI. The case has not been identified in the early abridgments.

Anno
8 Ed. II.
In an Iter of
Northumber-
land. (21) **One was** appealed for the death of his father, and the defendant waged battle with him, and the defendant was killed in the field; and the judgment was that he should

be hung, etc. And that is against those who say that judgment cannot be given against a dead person, and that is the reason that men do battle by their champions in a writ of right, etc. And the justices said at the same time that such a judgment should always be given, for otherwise the lord cannot have a writ of Escheat, etc.

This is a case taken from one of the unpublished Eyres, which cannot be identified in the printed Year Books. Case 21.

JOYNTENANNCY

(1) **In a praecipe quod reddat** against one who pleaded joint tenure with one C, whereupon the writ abated because the demandant admitted it, etc. And then he brought a writ against those two, who pleaded joint tenancy with a third, and to that they were received, etc. And the demandant said that they two were tenants on the day of the purchase of the first writ, without this, etc. CANNISH: To that you shall not get, for that is [unknown] to the first writ. And also the writ was never good, etc. FYNCHEDEN: That is dependent upon the first writ, and so it is in a way all one writ. And the opinion was that he should have the averment, etc., wherefore the two vouched that same person with whom, etc. And to that they were received, etc. It is reasonable that the two should plead jointly with the third, because of the injury to their warranty, etc. One of them was a stranger to the first plea, wherefore, etc.

Statham
114 a.
Hilary
41 Ed. III.

Reported in Y. B. Mich. (not Hilary), 41 Ed. III, p. 4, pl. 11. Case 1.

(2) **In a scire facias** against one J, for tenements in the vill of T, J said that he held jointly with one R, and showed a charter of the tenements in S, and he said that S is a hamlet of T. CANNISH: We say that S is a vill by itself, judgment if you shall be received to allege joint tenancy of the tenements in another vill. MORICE: That is no plea, for you ought to maintain the sole tenancy by the Statute. And if I put forward a deed for other lands in

Michaelis
41 Ed. III.

the same vill you shall not have that plea; no more here, etc. THORPE: That is true, but here he shall have the plea by the common law; and if you put forward a fine he will avoid it, as above. And that was the opinion, etc.

Case 2. Reported in Y. B. Mich. 41 Ed. III, p. 25, pl. 21. See also Fitzh: Joyntenancy, 5.

Statute of Marlbridge, 52 Hen. III (1267), cap. 9, Stats. at Large, Vol. 1, p. 55 (61).

Michaelis
43 Ed. III.

(3) **See Michaelmas**, 43 Ed. III, the last Assize for rent; the tenant pleaded joint tenure, by a deed of the lands of which, etc. And he did not say "without this that there was any taker named," etc. Still many were named in the writ, etc. (And I believe that the reason was because the plea went only in abatement of the writ, etc. But yet it is wrong to have the plea in that manner, etc. And see in the same plea how the plaintiff estopped him from alleging joint tenure by the deed, etc.)

Case 3. The case has not been identified in Y. B. Mich. 43 Ed. III, or in the early abridgments.

Trinity
48 Ed. III.

(4) **In formedon** against one J, who said that he held jointly with one H, not named, etc., of the feoffment of one F, judgment of the writ. HAMUN: This H is my villein, wherefore judgment if my writ is not good, etc. PERSHAY: If he brought this writ against his villein he would be enfranchised, because process would issue against him by the Statute, etc. FYNCHEDEN: He is neither party nor privy, for he shall not have attaint, but assize, if he is ousted by such an averment, etc. And in that case if the demandant can enter into one half, and shall have an action for the other half, the defendant could have his warranty, and now he cannot, without naming the other, etc. FULTHORPE: Then if one enfeoff me, and owns himself to be the villein of another, I shall lose my warranty. FYNCHEDEN: Yes, sir, by way of voucher; for it is a good plea to say that he who vouches is my villein; wherefore if his lord brings an action against you, the warranty is gone, but you can have warranty of charter, etc. And then FULTHORPE, for the

demandant, "saving to you the advantage of your villein," said that he was sole tenant, etc. Query, if he be now enfranchised? etc.

Reported in Y. B. Trinity, 48 Ed. III, p. 16, pl. 1. See also Brooke, Case 4. Joyntenancy, 9.

Statute of 25 Ed. III (1350), cap. 18, Stats. at Large, Vol. 2, p. 49 (59).

(5) **In an assize**, the tenant pleaded joint tenure by a fine. The plaintiff said, "not comprised." And it was the opinion that he should not have the plea, because it amounted to no more than "sole tenant," etc., which answer was not given by the common law. Michaelis
24 Ed. III.

Reported in Y. B. Mich. 24 Ed. III, p. 36, pl. 46.

Case 5.

(6) **In a writ of entry** in the nature of an Assize, the tenant pleaded joint tenure, without a deed, of the feoffment of H. NEWTON: I was seised until disseised by the defendant, etc. FULTHORPE: That is no plea, for the defendant can say that he did not disseise him, in which case the right shall be tried, for if it be found the plaintiff shall be barred. PASTON: It is not true. But the writ shall abate. (Query, etc.) MARTYN: It is no plea, for other reasons; for he said that the defendant enfeoffed one H and retook the estate to himself and the other, and that he entered and was seised until disseised by the defendant alone; and he did not say "which estate he continued until the purchase of the writ," etc. And his plea also amounts to no more than that he is sole tenant, in which case he shall take the general issue, etc. But yet the plea was adjudged good, etc. Paschal
14 Hen. VI.

Reported in Y. B. Anno 14 Hen. VI, p. 8, pl. 36.

Case 6.

(7) **In [a writ of] wardship** against one J, who pleaded joint tenure of the land, etc. THORPE: He pleads joint tenure of the freehold, so of other things which are not in demand, etc. PERSHAY: He can do so well enough, for although he does not claim anything in the wardship, peradventure his companion can, etc. And also he can say he Michaelis
49 Ed. III.

had nothing in the wardship except jointly, etc. And it is a good plea as well of the body as of the lands. Which the Court conceded. And the plaintiff maintained his writ, and prayed process upon the Statute, because the defendant pleaded joint tenure by a deed, etc. THORPE: The Statute which gives the process in an Assize says further: "*In omnibus brevibus per que ten' petuntur*," and here there is no land in demand, wherefore you are outside of the provisions of the Statute. Which the Court conceded, etc.

And it was said in the same plea, that if I recover lands against a man, and I bring a *Scire Facias* against him, that joint tenure is no plea for him, since he is a party, etc. But it is otherwise as to a stranger. See this plea, because it was well argued, etc.

Case 7. Reported in Y. B. Mich. 49 Ed. III, p. 26, pl. 4. See also Brooke, Joyntenancy, 10; and Fitzh: Joyntenancy, 6.

Statute of *De Conjunctim Feoffatis*, 34 Ed. I (1306), Stats. at Large Vol. 1, p. 313. The words of the writ are "*In aliis vero brevibus per que ten' petuntur*."

Hilary
15 Hen. VI.

(8) **In a writ of entry** in the nature of an Assize, the tenant pleaded joint tenure with his wife, of the feoffment of one H. NEWTON: A long time before this H had anything our father was seised, etc., and leased these same lands to the said H, for his life; who alienated to the tenant and to his wife in fee; and we entered and were seised until disseised by the tenant alone. WESTON: That is no plea. By our entry the possession was in our wife, for she cannot dissent during the coverture, so it is not like two other joint tenants, etc. PASTON: It is all one. But if he can avoid the joint tenancy by this special matter is doubtful, for at the common law, if a man had alleged joint tenure by a deed, the writ should abate. And the law is the same now by a fine, for a man cannot say that those who were parties, and had nothing, etc.; nor at the common law that he did not enfeoff, etc. COTTON: You say truly, although he cannot avoid it by matter in fact, he can avoid it by matter in law, as above, in both cases. Which was conceded. And then the replication was adjudged good, and the defendant was made to answer to it, etc. But yet it

seems that the defendant should demur in law upon him, and that the demandant should have seisin of the land. And that that demurrer is peremptory, etc. See [the case] for it was finely argued, etc.

There is no printed year of 15 Hen. VI. Fitzh: Joyntenancy, 18, Case 8. has the case. He there refers to Y. B. 14 Hen. VI, p. 25, pl. 76, which seems to be the case abridged. Fitzherbert brackets his cases together, so we may infer that they are analogous in matter.

(9) **If the tenant** pleads joint tenure on the part of the plaintiff, he shall say that the plaintiff never had anything except jointly, etc. And the plaintiff shall say that he was sole seised, without this that he held jointly. And there are two negatives and yet the issue is good, etc. But it is otherwise on the part of the tenant, for there he pleads in the affirmative, to wit: that he holds and held jointly the day, etc. In Trespass, by NEWTON and ASCOUGH, etc.

Statham
114 b.
Michaelis
27 Hen. VI.

The case has not been identified in Y. B. Mich. 27 Hen. VI. Fitzh: Case 9. Joyntenancy, 30, has the case.

(10) **In a quare impedit**, joint tenure is no plea: by the opinion of HANKFORD, but it is otherwise in a writ of right of an advowson, etc.

Michaelis
14 Hen. IV.

Reported in Y. B. Mich. 14 Hen. IV, p. 12, pl. 12. See also Fitzh: Joyntenancy, 32. There may be some doubt as to the identification of the case, but as to the point see what Hankford said about a wise man of the law, and the reference to Bereford, in the latter part of the case.

Case 10.

(11) **In a [writ] of right of wardship**, the defendant pleaded joint tenure, and was driven to show of what estate he held jointly, and he did so. SKRENE: You ought also to show of whose gift, etc. HANKFORD: There is no need unless he pleads the joint tenure by deed; for if I and another disseise you, and you bring an Assize against me, I shall abate your writ, and I shall not show of whose gift, etc. And although a man shows of whose gift, still the plaintiff shall not have an answer to the gift. Query? For the contrary is the custom, for they always show of whose gift, etc.

Michaelis
14 Hen. IV.

Reported in Y. B. Mich. 14 Hen. IV, p. 15, pl. 7. See also Brooke Case 11. Joyntenancy, 15; and Fitzh: Joyntenancy, 33. See *infra*, case 17.

- Trinity
13 Ric. II. (12) **If I enfeoff three or four**, and deliver seisin to one of them in the name of all, all are tenants until they have dissented in a Court of record. And although it be found by verdict that one had disagreed in fact, that does not avail, but he remains tenant. And that in an Assize.
- Case 12. There is no early printed Year Book for 13 Ric. II. Fitzh: Joyntenancy, 9, has a longer digest of the case.
- Trinity
7 Ric. II. (13) **In a writ of waste**, joint tenure is a good plea. Query, inasmuch as it is contrary to the writ in waste, etc. But yet this may be distinguished, etc. And query, how shall it be pleaded, etc.?
- Case 13. There is no printed Year Book for 7 Ric. II. Fitzh: Joyntenancy, 7, has the case. The writ was against a guardian who had sole charge of the body and estate of the ward.
- Trinity
9 Hen. VI. (14) **In a writ *de quibus disseisivit***, by the demandant, against A and B, A pleaded non-tenure, etc., and B said that a long time before the demandant had anything, one E was seised, etc., and enfeoffed the said B and one F in fee, by force of which, etc., of whose estate they were seised on the day of the purchase of the writ, and still are, so they hold jointly with the said F, etc., without this that A had anything in it, etc., judgment of the writ. NEWTON: We were seised until disseised by those persons named, who have made a feoffment to persons unknown, etc., without this that we will aver that they are takers of the profits, etc. CHAUNT: That is no plea, for we have alleged that we hold jointly, by a feoffment made before the disseisin, so outside the provisions of the Statute, for the Statute does not apply except to a feoffment made after the disseisin, etc. PASTON: He has voided the joint tenure well enough, for the feoffment is not to the purpose, because it is not traversable, but the demandant should answer to the joint tenure, consequently, be the feoffment before or after, it does not change the case, for it will not be entered in the roll; and even if it be, it is not to the purpose, for the above reason, etc. And they adjourned, etc.

Reported in Y. B. Trinity, 9 Hen. VI, p. 14, pl. 4. The statement made by Paston does not appear in the printed case, nor does Paston's name appear. Case 14.

Statute of 1 Ric. II (1377), cap. 9, Stats. at Large, Vol. 2, p. 204 (209).

(15) **In replevin**, the defendant avowed upon the plaintiff, and bound the seisin by the hand of the plaintiff or his ancestors; but it is no plea for him, for if my tenant enfeoffs his issue, of full age, and another, and dies, I shall avow upon the issue. By LUDDINGTON, etc. (Which I do not believe.) Hilary
8 Hen. V.

Reported in Y. B. Hilary, 8 Hen. V, p. 1, pl. 2. But the case does not bear out the statement to which Statham takes issue. There appears to have been nothing decided. Case 15.

(16) **In an assize** of rent against two, who pleaded joint tenancy of the lands of which, etc. SKRENE: We were seised of the rent until disseised by you. And he showed a special disseisin, to the use, etc.; and that feoffment was made by collusion. And besides that we will aver that they had at times, etc., taken the profits of the lands. NORTON: Inasmuch as we have pleaded joint tenancy of another thing which is not in demand, and so out of the purview of the Statute, judgment. And so to judgment. And so note that the Statute relates to joint tenure as well as non-tenure, etc. But it does not extend to separate tenure, etc.

There is no citation for this case in Statham, and it has not been identified. The Statute would appear to be that of 34 Ed. I (1306), Stats. at Large, Vol. 1, p. 313. Case 16.

(17) **If a man** pleads joint tenure, he shall show of whose gift, and of what estate. And that in a writ of Entry. Michaelis
27 Hen. VI.

The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the early abridgments. See *supra*, case 11. Case 17.

(18) **In an assize** brought by the Duchess of Suffolk, against J. Wenlock, and K, his wife, Drew Barrington, and others; the said J and D answered as tenants and Michaelis
30 Hen. VI.

pleaded five pleas in bar to five parts of the same lands, etc. The plaintiff said that the said J. Wenlock and K, his wife, in right of the said K, and the said Drew jointly, were tenants the day, etc., without this that the said J and D were sole tenants in the manner, etc. And without this that the said J had anything except as in right of the said K, his wife. FORTESCUE: That last "without this" has no need to be there, for the plaintiff has confessed that they are joint tenants by a form which is not merely contrary to their acceptance. And in an Assize which was adjourned at Winchester, the tenant said that he leased the lands to two men for the term of their two lives, who leased their estates to the plaintiff, and the two men are dead, wherefore the tenant entered, etc. And the plaintiff said that the tenant leased to three men, to wit: to the two and to another, as above, who leased, as above, and that the third is still living, without this that he leased to the two alone. And the opinion of all the justices was that there was no need to have the "without this," for it was not contrary to the plea of the tenant, because he admitted all that which the plaintiff had said, and more. But yet, peradventure, it is no great vice, although he said the "without this," since it is only surplusage, etc. Wherefore, be advised. And it has been adjudged that when a man has pleaded joint tenure with one B, wherefore the writ abated, that in the second writ they can plead joint tenure with the third, for the above reason, etc. And then the plaintiff waived the second "without this." And so, in my conceit, they could have left out the first "without this," for in an Assize the plaintiff can choose his tenant at large to their acceptance. But yet the opinion of FORTESCUE was that they should have the "without this." And also where the two accept the tenancy severally, and the plaintiff says that one of the two is tenant, then he shall say "without this, that the other had anything."

And see in the same plea, FORTESCUE said that where two take the tenancy severally, and the plaintiff says that one of them is tenant, as above, and the Assize finds that the other is tenant, in that case the plaintiff shall not be

barred, but the writ shall abate, and that was the ancient law, etc. PRISOT: The opposite is the custom now. FORTESCUE: And wrongly, to my thinking, etc.

The case has not been identified in Y. B. Mich. 30 Hen. VI, or in the Case 18. early abridgments. There is a case where a Drew Barrington is plaintiff in a suit of Deceit, Mich. 13 Hen. IV, p. 1, pl. 4.

See as to joint tenancy, in the title of Writ, etc., Mich. Note. 27 Hen. VI.

Statham, title of Briefe, *supra*, pp. 28 b to 31 a.

(19) **The tenant** alleged joint tenure on one J, of the feoffment of the plaintiff. That is a good plea in an Assize, etc. Query if the plaintiff shall have anything as to the feoffment, etc., since he is a party? Paschal
3 Ed. III.
Statham
115 a.

And see in the same plea, that joint tenancy alleged in a writ of Waste by a deed is not within the Statute, which says "*In omnibus brevibus per que tenetua petuntur*," etc. In [a writ of] Waste.

Reported in Y. B. Paschal, 3 Ed. III, p. 12, pl. 7. The Statute is that of 34 Ed. I (1306), Stats. at Large, Vol. 1, p. 313. Case 19.

(20) **Joint tenancy** in wardship is no plea, unless he says of what estate. In Wardship, etc. Hilary
14 Hen. IV.

Reported in Y. B. Hilary. 14 Hen. IV, p. 15, pl. 8. See also Brooke, Joyntenancy, 15; and Fitzh: Joyntenancy, 33. See also *supra*, case 11. Case 20.

(21) **Where joint tenancy** is alleged by a fine, it is no plea that the other with whom, etc., had released to the tenant, etc. In a *Præcipe quod Reddat*, in an Iter of Northampton, etc. Not comprised is good, pleading such joint tenure; in the same plea, etc. Anno
20 Ed. II.

There is no Y. B. for 20 Ed. II. The case has not been identified elsewhere. Case 21.

JUSTIFICACION

(1) **One brought a bill** against the deputy of the sheriff of B, and said that he delivered to him a writ, on such a day and in such a place in Middlesex, and that the defendant Hilary
19 Hen. VI.

subtracted it and did not return it, etc. And the bill was challenged because it should have been brought against the sheriff or under sheriff, and not against him, etc. And it was not allowed. MARKHAM: A long time after the delivery of the writ to us, and before the subtraction, U, then sheriff of the same county of B, our master, commanded us to deliver the writ to him, and so we did, which is the same subtraction. FORTESCUE: To that plea, etc. NEWTON: It appears that your action should have been against his master. FORTESCUE: Our action is brought on a subtraction in Middlesex, and he shows a re-delivery in the county of B, and does not answer us. And he also says, "which is the same subtraction," and by his plea it appears no subtraction, so the plea is of no value. NEWTON: If that justification be good, he shall not answer you, for he can justify in every place a subtraction by command of his master. But as to the other point, we will be advised.

Case 1.

The case has not been fully identified in Y. B. Hilary, 19 Hen. VI, or in the early abridgments. Possibly the abridgment refers to the case printed in Y. B. Hilary, 19 Hen. VI, p. 50, pl. 7; and Y. B. Paschal, 19 Hen. VI, p. 71, pl. 16, where similar matter is argued at length.

Paschal
19 Hen. VI.

(2) **In a writ**, because the defendant should have imprisoned the plaintiff at E, in the county of Middlesex, the defendant said that a writ came to the sheriff of Essex to attach the plaintiff, who made a warranty to the defendant, by force of which he took him to S, in the county of Essex, without this, etc. And he had the plea, etc. See that he did not say that he was bailiff, sworn, etc., and acknowledged, etc., which is contrary to the Statute of Westminster the Second, etc. Query? The plaintiff said that he took him in E, in Middlesex. Ready, etc. And the Court said that if the defendant be found guilty in any place within the County of Middlesex, he shall be attainted, notwithstanding the issue was taken upon a certain place. It seems that the plea is merely "not guilty," because it is in another county, etc.

Case 2.

The case has not been identified in Y. B. Paschal, 19 Hen. VI, or in the early abridgments.

The Statute is that of West. II, cap. 39, Stats. at Large, Vol. 1, p. 163 (214).

See as to justification, in the title of Trespass, many Note. matters; and in the title of Rescous, Trinity, 40 Ed. III; and in the title of Barre.

See Statham, title of Trans, *infra*, pp. 170 a to 174 a. Statham, title of Rescous, *infra*, p. 153 a, case 1. Statham, title of Barre, *supra*, pp. 31 b to 36 b.

(3) **In trespass** for his servant taken and imprisoned at F. YOUNG: Our lord the king was seised of the forest of Shottery, and he and all his progenitors have been seised of the same forest from time, etc. And one D was forester of the same forest and killed two beasts of the forest. And the defendant, as deputy of the said B, came to arrest him, and the plaintiff saw him and fled into a certain place called Squag, of which the place is a part, and the defendant chased him and took him and imprisoned him, etc. WANGFORD: That is no plea for many reasons, for first, he shows that one D was forester, and he does not show how he was forester, and he cannot be forester except by grant of the king, or by prescription. And he also says that he, "as deputy of the said D," and does not show that he could make a deputy unless his grant of his office mentions it, etc., except in special cases, as a sheriff, etc. And he also says that he took him in a certain place, etc., and does not show that the same place is within the forest, and to my thinking it is not legal to take him out of the forest, unless he has been possessed of him; as if a sheriff comes to arrest a man, and then he flees into another county, the sheriff cannot take him; but if he arrests him, so that he is once in his keeping, and he flees into another county it is legal that the sheriff take him, for he shall be said to be at all times in his keeping; but he has not shown that he had arrested him, but he said that he came to arrest him, etc. And also he did not show that the forest is in the same county where the writ is brought. And also he does not show in what county this place called Swag is. And it was the opinion of the justices that the plea was worthless, etc. In Trespass *Coram Rege*.

Hilary
21 Hen. VI.

The case has not been identified in Y. B. Hilary, 21 Hen. VI, or in Case 3. the early abridgments.

ISSUE ⁶⁰

- Statham
115 b.
Michaelis
2 Hen. IV.
- (1) **In account**, the plaintiff alleged that the defendant was his receiver of forty pounds by the hands of one H. The defendant said that this H gave him the said sum, without this that he received it to the use of the plaintiff. And he could not have that issue, but he took the usual issue, to wit: without this that he was his receiver by the hand of H, etc. But yet "never his receiver" generally, is a good plea, notwithstanding the receipt is alleged by another's hand, for the entry shall be "*modo et forma prout prædictus querens narravit*," etc. Query?
- Case 1. Reported in Y. B. Mich. 2 Hen. IV, p. 12, pl. 50.
- Paschal
40 Ed. III.
- (2) **In a quare impedit**, the defendant said that the church was filled by his presentation six months before the writ was purchased, and he showed how, etc., to wit: that it was vacant by the death of such a one, and that he presented, etc., and so, etc., as above. BELKNAP: It was not filled; Ready, etc. FYNCHEDEN: the issue shall be taken upon the vacancy, etc. (But yet I believe that that cannot be, for he shall say that it was vacant and not full, and traverse the affirmation of the defendant, etc., for otherwise his action fails. Study well, etc.)
- Case 2. The case has not been identified in Y. B. Paschal, 40 Ed. III, or in the early abridgments.
- Paschal
40 Ed. 111.
- (3) **In a quare impedit** against a bishop, who said that he examined the clerk, etc., and that it was not a sufficient writ, wherefore he sent to the plaintiff to purchase another, etc. The plaintiff said that it was a sufficient writ; Ready, etc. And he was driven to say, "And so able to rely upon his writ," etc. And that was tried by the Exchequer, but if the clerk had been dead, that should have been tried by the country. As appeared in the year 38 Ed. III, etc. All the same it seems that inasmuch as he is a stranger to the writ, that it shall be tried by the country, as in bastardy, etc.
- Case 3. Reported in Y. B. Paschal, 40 Ed. III, p. 25, pl. 32. See also Fitzh: Issue, 145.

The abridgment does not report the case correctly. The question was if the clerk was sufficiently "lettered," or "not lettered." The error seems to arise from the use of the words "letter" and "writ."

(4) **In a scire facias**, the tenant said that those who were parties to the fine had nothing, etc., but one J was seised, whose estate, etc. The demandant said that this J had nothing at the time, etc. Ready. And he could not have the plea, without maintaining the fine, etc. Trinity
40 Ed. III.

Reported in Y. B. Trinity, 40 Ed. III, p. 30, pl. 8. See also Fitzh: Case 4. Issue, 148.

(5) **In a cui in vita**, the tenant showed how one G leased to him for life, and he prayed aid of him. And the demandant said that he had nothing in the reversion, and upon that the issue was taken. Which note. Hilary
41 Ed. III.

Reported in Y. B. Hilary, 41 Ed. III, p. 8, pl. 18.

Case 5.

(6) **Debt was brought** in London against executors, who pleaded "never executors, nor administrated as executors." And the plaintiff said that they were executors and administrators, and had administered at Royston in the county of H. And it was the opinion of the COURT that that was no issue, for it demanded two trials. Wherefore he said that she administered as executrix of R, etc. (And so see that he could choose to take the issue upon either point, etc.) And the inquest said that she administered certain goods to the value of ten pounds. THORPE: You shall say whether she administered as executrix, for if she administered, claiming to her own use, the action does not lie against her. Which note. Michaelis
41 Ed. III.

Reported in Y. B. Mich. 41 Ed. III, p. 31, pl. 38.

Case 6.

(7) **In replevin**, the defendant said that whereas the plaintiff had alleged the taking to be made at B, we say that the taking was in C, which is another vill; and for answer he has made an avowry for damage feasant. BELKNAP: He took them in B; Ready, etc. FYNCHEDEN: That is no issue, unless you say, etc., without this, etc., for although you are plaintiff, still he has become an actor, Trinity
42 Ed. III.

and you should answer him. And so he did. But yet it seems that the defendant should have answered the plea, to wit: that he took them in C, and not in B, etc.

Case 7. Reported in Y. B. Paschal (not Trinity), 42 Ed. III, p. 18, pl. 32. The case, according to the printed report, ended as Statham suggests it should have ended.

Trinity
42 Ed. III.

(8) **In a scire facias** to have execution out of a fine, by which one B admitted, etc., to be the right of one H, as that which he had of his gift, by force of which he granted and rendered to the said R and M, his wife, in tail, the remainder to this present demandant, etc. **BELKNAP**: This R had nothing except in right of his wife, which wife was seised in fee of the same lands before the fine was levied, and at the time, etc., and she survived her husband and all her life continued the possession. And after her death one F, as cousin and heir to the wife, entered and enfeoffed us, judgment. **FYNCHEDEN**: He has admitted the fine, in which case the right of the wife is discontinued, so the entry of her heir is not legal. **KYRTON**: It is not so, for the wife was not a party to the conusance, in which case she was never examined. But if she had been a party to the conusance, and although she had thus been estopped to claim another estate, and her heir also, consequently the tenant who had her estate would be. Yet in that case the wife was not a party to the conusance, and although he took an estate by the grant and render, still if she continued in possession after the death of her husband, she is in her better right, and the fine is void, etc. **KYRK**: Then we say M never had anything in these same lands, except as wife of R, etc. Ready. **KYRTON**: That is no issue, for you should maintain your writ, to wit: that the parties were seised: Ready. **FYNCHEDEN**: It is different when one avoids a fine by traversing, to wit: those who were parties, etc., had nothing, but one such, etc., whose estate, etc., for there the plaintiff ought to maintain the fine, as you say, but in this case you have admitted a possession in the husband, who was a party to the fine, to wit: such possession as that he could make a fine or a feoffment; then, since he has admitted such possession, you should answer to that, etc.

KYRK: If I would void the fine, as to say that those, etc., never had, etc., but one of them had a term for his life, of the lease of one H; which H entered and enfeoffed me, etc. In that case the demandant ought to maintain that they were seised, as the note alleges. Ready. FYNCHEDEN: It is not true, for in your case he has admitted a possession on which he could make a feoffment, in which case he shall answer you, for you void the fine by an affirmative to which he should answer, to wit: that they were seised as the note alleged, without this that he had anything of the lease of H. But when you void the fine in the negative, to wit: as to say generally that the parties to the fine had nothing, etc., it suffices for him to maintain the possession without answering you, and this I have always taken for a distinction, etc. And then the issue was taken upon the possession of M. And study this well, etc.

Reported in Y. B. Trinity, 42 Ed. III, p. 19, pl. 4. A long case, Case 8. closely argued.

(9) **See as to an issue** taken upon the sufficiency of damages, where a man distrains for damage feasant, or for an estray, etc. In Detinue.

Paschal
44 Ed. III.

Reported in Y. B. Paschal, 44 Ed. III, p. 14, pl. 30.

Case 9.

(10) **In formedon** for rent, the tenant vouched as tenant of the lands of which, etc. FENCOT: Your demand is for a rent service, etc., judgment. KYRTON: Then we say that this land is out of your fee. FYNCHEDEN: That is no plea, for he has put the title in his writ. And also if he be out of possession of the rent, the land is out of his fee for the time, wherefore it can stand with his demand, which proves that he is out of possession of the rent, and [such] an issue shall be good to every common intent. And also if the plaintiff takes issue with you, it proves that he had no cause of action, wherefore, etc. KYRTON: Then we say that the land is held of one J for the same rent, without this that this demand is for a rent service, and we pray that our plea be entered. THORPE: Nothing shall be entered except whether it be a rent service or not, etc. And he put the other matter in evidence, etc. (Study the reasoning of

Statham
116 a.
Trinity
44 Ed. III.

FYNCHEDEN, for it is a strange conceit, etc. Query, if the issue shall be taken as THORPE said, etc.?)

Case 10. Reported in Y. B. Trinity, 44 Ed. III, p. 19, pl. 15. The "strange conceit" of FYNCHEDEN does not appear in the printed report of the case.

Hilary
42 Ed. III. (11) **In a writ of False Imprisonment**, the defendant said that the plaintiff was his villein regardant, etc. And the plaintiff said that his grandfather was born in another county, and was an adventurer, and was free, etc. The tenant would have averred that he was his villein in the manner, etc., and could not without answering to this that he was an adventurer, etc. Wherefore he said that he was his villein, without this that his ancestor was an adventurer. And the issue was tried by people of the county where the manor was, and not where he was born. And so note that he was an adventurer, for some say that an adventurer is he whom no one knows from whence he comes, nor where he was born, etc. The contrary appears, etc.

Case 11. The case has not been identified in Y. B. Hilary, 42 Ed. III, or in the early abridgments.

Michaelis
32 Ed. III. (12) **In an avowry**, the defendant avowed upon the plaintiff in three acres of land, for ten shillings. FYNCHEDEN: One H, whose estate you have in the seignory, enfeoffed one G of two of the acres aforesaid, to hold of him by five shillings; and of the other two acres, to hold of him by five shillings, by this deed, etc., so he should have made separate avowries, judgment, etc. FYNCHEDEN: The tenements are held of us by an entire service of ten shillings, of an entire tenancy, etc. FYNCHEDEN: That is no plea, for you should answer to the deed. As well as if I would oust you of an avowry for many services which are not comprised within the deed, etc. THORPE (to FYNCHEDEN): In your case he answers to the deed because his answer is in place of the *ne injuste vexes* or a *contra formam feoffamenti*, etc. But here you are a stranger to the deed, and he also. Wherefore the averment was received. (And wrongly, as I believe.)

Case 12. There is no printed year of 32 Ed. III. The case has not been identified elsewhere. In the abridgment, Fyncheden is made to carry on

the entire argument, for and against. The name of his opponent may well have been Fencot, as the two names when abbreviated are easily confused.

(13) **In a writ of debt**, the defendant said that the obligation was endorsed upon condition that if the defendant came to L, by the attachment of the plaintiff, before one month, etc., and at the cost of the plaintiff, and there accounted, etc., that then, etc. And he said that he was not attached to come at his cost. TANK:¹ That is double: one that he was not attached; the other that he was not attached at our cost, etc. THORPE: Answer him. TANK:¹ He was attached; Ready, etc. KYRK: Since you do not deny that we were attached at your cost, judgment. And they were in great doubt how the issue should be tried, to wit: upon one condition or upon both, etc. Study well, etc., for it is different where the conditions are to be fulfilled upon the part of the plaintiff, and where on the part of the defendant, etc.

Trinity
46 Ed. III.

Reported in Y. B. Trinity, 46 Ed. III, p. 16, pl. 8.

Case 13.

(14) **In [a writ of] wardship**, the defendant said that the ancestor of the infant, whom you allege died your tenant, enfeoffed such a one, whose estate, etc. HAMMUN: He died our tenant; Ready. And upon that the issue was taken without answering to the feoffment, etc. (And wrongly, as I believe.)

Michaelis
46 Ed. III.

Reported in Y. B. Mich. 46 Ed. III, p. 31, pl. 34. The case says, "And the parties marvelled at such an issue, without replying to the feoffment."

Case 14.

(15) **In a cessavit** against three, who made default. And at the Grand Cape all three waged their law of non-summons, and on the day, etc., two appeared and the third made default; and as to the third part the demandant prayed seisin of the land. And there came one H and said that he leased the land to the three for the term of their lives; and for this third part he prayed to be received. HAMMUN: He had nothing in the reversion the day the writ

Paschal
48 Ed. III.

¹ TANK was at this time Chief Justice, but his name does not appear in the Year Book case.

was purchased. Ready. HANKFORD: That is no plea, for if we had purchased the reversion pending the writ, still we shall be received. FYNCHEDEN: Then if your case be such, you should have shown it upon your receipt. And therefore he has answered you well enough *prima facie*. Wherefore the issue was taken, as above, etc. The other two made their law. And the writ was not abated except against those two, and it stood against those who were received, etc.¹ Which note. From this it follows that they can be summoned separately, etc.

Case 15. Reported in Y. B. Paschal, 48 Ed. III, p. 13, pl. 5. See also Fitzh: Issue, 159, where the point is quite differently taken.

Trinity
13 Ed. III. (16) **In a writ of annuity**, A counted that the defendant had granted to him an annuity, until he should be advanced to a benefice of holy church, etc. The defendant said that he had tendered him a benefice and he refused it, etc. And the plaintiff said that he did not refuse, etc. And the opinion was that that was no issue, for then it is to "not denied that there was a tender," in which case the Court takes it that he refused, wherefore the issue was taken on the tender, etc. (But yet it had been well taken upon the refusal, etc.)

Case 16. There is no early printed year of 13 Ed. III. The case has not been identified in the Rolls Series for that year and term.

Hilary
19 Ed. III. (17) **A man avowed** for a certain rent, in Replevin, etc. The plaintiff said that the ancestor of the avowant enfeoffed the ancestor of the plaintiff by this deed, etc., to hold of him by one penny for all services, as for many services, etc. To which the defendant said that he and his ancestors were seised of this same rent, time, etc., without this that he had such an ancestor after time, etc. And the issue was taken, etc.

Case 17. There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year and term.

Michaelis
5 Ed. III. (18) **If a man** entitles himself to a common as appendant, it is no plea to say that one of those whose estate, etc., was not seised of the common; or to say that he was not

¹ These words are not in the report of the case.

seised of the common as appendant, but he should traverse the prescription in accordance, etc.

HERLE took a diversity in the same plea: where the issue is taken that they have not used the common of time, etc., and where they have not had the common of time, etc., for the one determines the right, and the other does not, etc. Query?

Reported in Y. B. Paschal (not Mich.), 5 Ed. III, p. 15, pl. 9. The Case 18. "diversity" taken by HERLE, is not in the text of the case, and the identification is not wholly satisfactory.

(19) **In a quare impedit**, the defendant said that the church was not vacant while the temporalities were in the hands of the king. And the other averred the contrary. SHARSHULL: That is not a good issue, for if the church is vacated after the death of the bishop, and before the king is seised by his office, etc., the king shall present, etc. And the law is the same where the church became vacant in the life of the bishop, etc.

Trinity
24 Ed. III.
Statham,
116 b.

Reported in Y. B. Trinity, 24 Ed. III, p. 29, pl. 21.

Case 19.

(20) **One prayed to be received** upon the default of his tenant in dower. The demandant said that she had a fee; Ready. And the issue was taken upon that, etc.

Michaelis
24 Ed. III.

The case has not been identified in Y. B. Mich. 24 Ed. III, or in the early abridgments. Case 20.

(21) **In debt** against two. NEWTON: One of these died after the last continuance. STRANGE: He did not die after the last continuance; Ready, etc. MARTYN: That is no plea, for that is a negative pregnant; but he can say: Ready, that he did not [die]. Query, how shall the issue be joined? For the case was that he died before the last continuance. But yet if the plaintiff admitted the death, be it before or after, it seems that the writ would abate, etc. And if it be found by verdict that he died before, the writ would abate, as it seems, for the judgment will be reversed for that matter, etc.

Paschal
14 Hen. VI.

The case has not been identified in Y. B. Anno 14 Hen. VI, or in the early abridgments. Case 21.

- Michaelis
30 Ed. III. (22) **In a scire facias**, the tenant said that those, etc., except one H, etc. FITZ: The parties were seised as the fine alleges, without this that H had anything, etc. And the issue was taken. (But yet it is no issue, as it seems, for it is double; for it is taken upon two negatives, etc., and also both parties could not be seised at the time, etc. Wherefore, query; how shall the entry be in that case?)
- Case 22. The case has not been identified in Y. B. Mich. 30 Ed. III, or in the early abridgments.
- Paschal
33 Ed. III. (23) **If one prays his age** by his guardian, and the demandant says that he is of full age, and process issues against him that he may be viewed; that issue is not peremptory, but an answer, etc. In Formedon.
- Case 23. There is no printed year of 33 Ed. III. The case has not been identified in the early abridgments.
- Paschal
18 Hen. VI. (24) **In debt** against A, and B, his wife, executrix of the will of F; the husband, for his wife, said that his wife had fully administered the day, etc. FORTESCUE: The woman has assets in her hands. Ready. PORTYNGTON: That is no plea, for the woman cannot have assets unless the husband has, etc., for a married woman cannot have goods, wherefore he should reply that both have assets, or that the husband has, etc. FORTESCUE: A woman can have goods to another's use, as executrix; and so can a monk, and a villein; wherefore the issue is not good. Which all the Court conceded, etc.
- Case 24. Reported in Y. B. Paschal, 18 Hen. VI, p. 4, pl. 4.
- Michaelis
27 Hen. VI. (25) **If the tenant** pleads joint tenancy on the part of the plaintiff, he shall say that the plaintiff never had anything except jointly, etc. And the plaintiff shall say that he was sole tenant, without this that he held jointly, etc. And so the issue shall be taken upon two negatives, but yet the first negative includes an affirmative, for he cannot plead otherwise; for he cannot say that the plaintiff holds jointly in the present time, for that is contrary to his action; which proves that he is out of possession.
- Case 25. The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the early abridgments.

(26) **In a scire facias**, the tenant said that those, etc., Trinity 32 Ed. III. except one F, etc. The demandant said that he who rendered was seised at the time, etc. And upon that the issue was taken, etc., for if either of the parties had, etc., the fine is good, etc.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 26.

(27) **In replevin**, the defendant said that he affirmed a complaint in the Court of H against the plaintiff for debt, and recovered, and the same cattle were delivered in execution. MOWBRAY: Wage the deliverance. THORPE: He has claimed property, wherefore, etc. MOWBRAY: Of your own tort, without such cause. THORPE: You should answer to the cause in this writ of Replevin. MOWBRAY: His plea is a justification rather than an avowry, wherefore my plea is good; as well as in Trespass, etc. THORPE: You should answer to the cause, etc. Wherefore he said that they were not delivered in execution; Ready. And the other said the contrary. Hilary 38 Ed. III.

Reported in Y. B. Hilary, 38 Ed. III, p. 3, pl. 11. See also Fitzh: Case 27. Issue, 140.

(28) **In trespass**, upon the Statute of Marlborough, that it is not allowable to anyone to take a distress in the highway, whereas the defendant had taken an ox in the vill of F, etc., and detained it until he had made a fine, etc. And the writ was challenged because it comprehended two matters, where one is given by the Statute, etc. And it was not allowed. Which note. Wherefore he said that he took the ox in his field damage feasant, without this that he took it in the highway; and without this that we detained it until, etc. And the issue was taken upon both, etc. Michaelis 39 Ed. III.

Reported in Y. B. Mich. 39 Ed. III, p. 20, pl. 2. See also Brooke' Case 28. Issue Joyn, 66.

Statute of Marlbridge, 52 Hen. III (1267), cap. 15, Stats. at Large, Vol. 1, p. 55 (67).

- Hilary
11 Ric. II. (29) **When** the parties have demurred in judgment, always time before judgment, by consent of the parties they can take the issue and relinquish the demurrer, etc. Query if it be adjourned until another term? For if it be once entered in the Roll it cannot change the case, etc.
- Case 29. There is no printed Year Book for 11 Ric. II. Fitzh: Issue, 146, has the case, with the exception of the "query."
- Michaelis
9 Hen. VI. (30) **In debt** upon an obligation, the defendant showed a condition that if he repaired a certain house before such a day, that the obligation should be void. And he said he was ready to make the repairs. And one, by command of the plaintiff, disturbed him. (Query, if he need show what day the disturbance was?) ROLFF: He did not disturb you by our command. Ready. MARTYN: That is a negative pregnant. ROLFF (by protestation): There never was any such disturbance; but we say that we did not command J to disturb you. And the other said the contrary.
- Case 30. Reported in Y. B. Mich. 9 Hen. VI, p. 44, pl. 25. The report of the case says, "And this plea was between John, King of England, and John Lyle."
- Michaelis
7 Hen. VI. (31) **Scire facias** was brought against U and T, to execute a fine. COTTESMORE: U is tenant of the entirety, without this that, etc. And he pleaded over in bar. And T said that he held jointly with one H, etc., without this that U had anything, etc. And the plaintiff said that they were tenants as the writ alleged, etc. And so see that he did not answer to the joint tenancy alleged by T, etc., for he did not need to any more than to answer to the plea in bar that U pleaded, for when one pleads a separate tenancy, the plea that he pleads, although in bar or in abatement of the writ, is not material, etc. (But yet it seems that he answered to the joint tenancy in this case), etc.
- Case 31. The case has not been identified in Y. B. Mich. 7 Hen. VI, or in the early abridgments.

(32) **In a praecipe quod reddat** against two, one pleaded non-tenure, and the other joint tenure, with one A, without this that the other had anything. NEWTON: They are sole tenants as the writ alleges, without this that the said A ever had anything, etc. GODEREDE: You should say, "without this that he holds jointly," for otherwise his plea is not answerable. And it was not allowed. CHAUNT: The demandant should answer twice, to wit: that the one who pleads non-tenure is tenant as the writ alleges; and against the other that they are tenants in the manner, etc., without this, as above, etc. BROUN: The issue is well joined. Which the whole Court conceded. Study well, for that issue is contrary to the issue in the *Scire Facias* as above; ¹ and yet there is a distinction between them, etc.

Paschal.
9 Hen. VI.

Statham
117 a.

Reported in Y. B. Paschal, 9 Hen. VI, p. 1, pl. 4.

Case 32.

(33) **In trespass** for a house broken, etc. NEWTON: Action you should not have, for a long time before the plaintiff had anything, one A was seised, etc. And he showed how the lands were devisable, etc., and that the said A devised the same house to a woman in tail, and if she died without issue, that the executors of the said A could sell, etc. This same A made the defendant his executor and died, and the said woman took the said plaintiff for her husband, and died without issue, wherefore this same defendant came, as executor, to see of what value the house was, and found the house open, etc. CHAUNT: He entered, claiming a fee and freehold, and broke the windows, wherefore judgment, etc. STRANGE: It is hard to try the intent of his coming, wherefore it is a better issue to say, "of his own tort, without such cause," for that issue lies properly in such cases where the intent of a man comes in question; as in Battery, where the defendant says that it was of his assault, etc., and such like, etc. NEWTON: We found the house open (as above), without this that we broke the windows, claiming a fee or free-

Trinity
9 Hen. VI.

¹ Case 31, *supra*.

hold. And the others alleged the contrary. Query as to that issue, for it seems that the "without this" should have come from the part of the plaintiff, etc. See also that by such a devise, (as above,) the executor cannot enter, for the devise is that they can sell, and not a devise to them so that the freehold can accrue to them. And in that case they could sell something that they have not, to wit: a freehold, etc. And they could sell the lands in that case, although the heir be in by descent. But it is otherwise where the freehold is devised to them, for there they could have an action, etc., but in the other case not, etc. Query?

Case 33. Reported in Y. B. Trinity, 9 Hen. VI, p. 29, pl. 34. Paston said to Chaunt: "Be advised, for the issue is in a new form."

Michaelis
3 Hen. VI. (34) **In a scire facias** the tenant said that such a one leased him the same lands for the term of his life, and he prayed aid of him. The demandant said that the tenant was seised in fee. Ready. And the other alleged the contrary.

Case 34. Reported in Y. B. Mich. 3 Hen. VI, p. 9, pl. 11.

Hilary
3 Hen. VI. (35) **In trespass** for his servant taken out of service at Dale, etc. The defendant said that a long time before he was retained by you, he was retained by us at Sale, in the same county, and we travelled through Dale and he came to us by his own free will, judgment, etc. ROLFF: Before he made a covenant with you he made a covenant with us, and was in our service. Ready. And the other alleged the contrary. MARTYN: That is no issue, for no day is made certain by either party. Which the Court conceded. Wherefore ROLFF [said]: He made a covenant with us, on such a day, before which day he made no covenant with you. Ready. And the others alleged the contrary. From this it follows that if one dwells with me, and is not retained by me, that a stranger can retain him and take him out of my service, etc.

Case 35. Reported in Y. B. Hilary, 3 Hen. VI, p. 31, pl. 22.

Michaelis
11 Hen. IV. (36) **In replevin**, the defendant avowed upon the plaintiff as upon his lawful tenant, for rent in arrear. The plain-

tiff said that the avowant had granted his seignory to one B, in tail, who is seised, etc., and so out of your fee. NORTON: Within our fee. Ready. And the issue was taken, etc. (But if the plaintiff had left out that ["so out of your fee,"] then the avowant would have had to answer to the matter that he alleged, etc.) And then the plaintiff said that the sheriff had made no replevin of any of the cattle, and prayed that he should wage the deliverance. NEWTON: Deliverance was made of all. Ready. And the other alleged the contrary. And note that such an issue was refused, Trinity, 21 Ed. III.

Reported in Y. B. Mich. 11 Hen. IV, p. 10, pl. 22. See also Fitzh: Case 36. Issue, 137, a very short digest upon the point of deliverance only.

(37) **In trespass** against several, the defendant said that one of the defendants was dead before the writ was purchased. FORTESCUE: He is alive. Ready. NEWTON: You should say "without this, that he is dead." Which was conceded, wherefore he said so. MARKHAM: He died in such a place. Ready. NEWTON: Well done, etc. Michaelis
18 Hen. VI.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments. Case 37.

(38) **In covenant**, because the defendant was bound to make a house for the plaintiff, so long, etc., sufficient, etc., and he had not made it sufficient, etc. And the other said "sufficient," and the inquest found for the plaintiff. MARKHAM: To judgment you should not go, for he does not show by the plea in what point it is not sufficient; wherefore, etc. And by advice it was adjudged that the plaintiff should recover, etc. Michaelis
18 Hen. VI.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments. Case 38.

(39) **In an avowry** for a rent charge, the plaintiff said that he who charged was his ancestor, etc., and he as heir in tail entered, after his death. And that it is no plea for the defendant to say that at the time that he was charged he was seised in fee simple, unless he says, "And not in Trinity
18 Hen. VI.

the tail," because it may be that he was seised of both estates. And this in Replevin.

Case 39. The case has not been identified in Y. B. Trinity, 18 Hen. VI, or in the early abridgments.

Michaelis
18 Hen. VI. (40) **In [a writ of] wardship**, the defendant said that the ancestor of the infant enfeoffed him, judgment if action. FORTESCUE: It is true, but he enfeoffed you — his heir being under age — to enfeoff this same heir at his full age, by covin, etc. MARKHAM: He enfeoffed us for a certain debt that he owed us, without this that he enfeoffed us to re-enfeoff his heir; Ready. FORTESCUE: That is no plea, for you should say, "without this that he enfeoffed us by covin, etc.," for if one counterpleads a voucher, to wit: he who, etc., according to the Statute, it is no plea to say that one such, your ancestor, was seised but you say generally. Ready; so here. NEWTON (to the same effect): In a *Jure d'Utrum* between two persons, it is no plea for the defendant to say that such a one enfeoffed him, but he shall say further, "and so his free alms." Wherefore the issue was taken, as above, "without this that he enfeoffed him by covin, etc." And the others alleged the contrary.

Case 40. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Statute of Westminster the First, 3 Ed. I (1275), cap. 40, Stats. at Large, Vol. 1, p. 74 (100).

Michaelis
12 Hen. VI. (41) **In debt** against one as heir. ROLFF: Judgment of the count, because you have not shown that we have lands by descent. And it was not allowed, wherefore he said that he had nothing by descent the day the writ was purchased. STRANGE: You were seised of so much, etc., in such a place, by descent, the day the writ was purchased; Ready. And the others alleged the contrary. (It seems that the issue was not good, for the defendant should have said that he had nothing by descent of which he was seised the day the writ was purchased.

Query, if he alienates and retakes an estate? It seems that he will be charged, etc.)

Reported in Y. B. Mich. 12 Hen. VI, p. 2, pl. 6.

Case 41.

(42) **In a writ of conspiracy** against four, two appeared and one of them said that whereas the writ was brought against them and against one J de B, of London, draper; we say that there was not any J de B, of London, draper, living on the day the writ was purchased, nor ever since. And the plaintiff was held to answer to that; and the issue was taken in the manner, etc. Which note.

Stham
117 b.

There is no citation to this case in Stham, and it has not been identified.

Case 42.

See as to issue, in the title of Wardship; and in the title of Trial; and in the title of Dower, Paschal, 41 Ed. III. In the title of Averment; in the title of Avowry, Hilary, 43 Ed. III; and in the title of Estoppel, Hilary, 44 Ed. III; and in the title of Account, and in the title of Joinder, Paschal, 21 Ed. III; and in the title of Monstrance, Trinity, 24 Ed. III, and in the title of Escheat, Michaelmas, 11 Hen. IV, and in the title of Bastardy, Hilary, 7 Hen. IV, and in the title of Writs, Trinity, 5 Ed. III.

Note.

Stham, title of Garde, *supra*, pp. 101 a to 103 b. Triall, *infra*, pp. 175 b to 178 a. Dower, *supra*, p. 73 a, case 4. Averrement, *supra*, p. 25 a. Avower, *supra*, p. 22 b, case 6. Estoppel, *supra*, pp. 81 b to 83 b. The case cited does not appear, however, in that title. Accompte, *supra*, pp. 1 a to 3 b. Joynder in Aide, *supra*, p. 110 a, case 5. Monstranz dez Faitz, etc., *infra*, p. 125 b, case 13. Eschete, *supra*, p. 80 a; the case cited is not there. Bastardie, *supra*, p. 27 a, case 6. Brieff, *supra*, p. 29 a, case 29.

(43) **In a writ of false imprisonment**, the defendant showed how on such a day a *Capias* came to the sheriff of the same county to take the body of the plaintiff, and that the sheriff made a warrant to us to arrest him, by force of which we took him, etc. HORTON: Of your own wrong, without such a cause. HANKFORD: That is a strange issue, for that fact should be tried, to wit: whether he took him for that cause or of his own wrong, for he did not

Trinity
10 Hen. IV.

deny the plea, except that he had such a warrant, etc. THIRNING: Although he had such a warrant, and did not show such a warrant when he arrested him, then the issue is to see if he imprisoned him of his own wrong, and not for that cause; wherefore the issue is good, and can be tried, for such a servant who is not a bailiff sworn and admitted should show his warrant when he arrested him. Note well, etc. And so see that the cause in this case had no relation to the matter of record, to wit: whether such a writ came to the sheriff or not, etc.

Case 43. There is no printed Trinity Term for 10 Hen. IV. The case has not been identified in the two printed terms, or in the early abridgments.

Michaelis
15 Ed. III. (44) **In formedon**, the tenant said that he did not give. The demandant showed that such a one devised the same lands, and he could have no other writ, wherefore, etc. The tenant said, as to part, that the devisor was never seised so that he could make a devise; and as to the remainder he said that the ancestor of the demandant was never seised by force of the devise. And the issue was taken upon both pleas. Which note well, etc.

Case 44. There is no early printed year of 15 Ed. III. In spite of some differences it is probably the case reported in the Rolls Series, 15 Ed. III, p. 372, No. 48.

Trinity
16 Ed. III. (45) **In a writ of annuity** the specialty read, "until he be promoted to a benefice of holy church." The defendant alleged a tender of a benefice in the presence, etc., and that he refused it. The plaintiff said that the defendant by one, his co-monk, sent him a presentation which he tendered us, and we would have taken it, and he would not deliver it, but carried it away, and so there was no refusal. THORPE: The issue shall be upon the tender; for if we did not refuse, then the tender is not denied by you; and the matter which you allege proves that he did not tender. Wherefore the issue was taken upon the tender, and the special matter, as above, was entered for clearness at the inquest.

Case 45. There is no early printed year of 16 Ed. III. The case is reported in the Rolls Series, 16 Ed. III, 2, p. 142, No. 33.

(46) **In debt against executors**, it is no plea to say that his testator died intestate, for that will not make an issue; but he shall say, "never executor, nor ever administered as executor," etc. Paschal
18 Ed. III.

Reported in Y. B. Paschal, 18 Ed. III, p. 19, pl. 28.

Case 46.

(47) **In a quare impedit**, the issue was taken that the church was not vacant by deprivation, for the Court would not suffer them to take the issue, to wit: that he was not deprived, etc. But yet, query, for it seems that it is a negative pregnant, etc. (I believe that they did this by reason of the trial, etc.) Michaelis
21 Ric. II.

And it was said in the same plea, that although one shows bulls of the Pope of the deprivation, they shall not be allowed in the King's Court no more than bulls of excommunication, etc.

There is no printed Year Book for the reign of Ric. II. Fitzh: Issue, 147, has the case apparently copied from Statham, even to the "credo." Case 47.

(48) **In trespass** for a house broken, the defendant said that he leased the house to the plaintiff for life, and that he came and found the doors of the house open, and he entered to see if any waste had been made, which is the same entry, etc. The plaintiff said that he broke the walls of the same house, of which breaking and entry, etc. POLE: He did not break them. Ready. MOILE: That is no plea, for we have alleged a special matter in destruction of your bar, which is a traverse merely, in which case you shall say, "as to the breaking, not guilty" as well as if you had pleaded it in the beginning, in which case it is no plea that you did not break, or that you did not enter, but you shall say, "not guilty." So here. For your plea amounts to no more than to the usual issue, etc., in which case if you do not take the usual issue your plea is of no avail. Which the Court conceded. Wherefore POLE said that he entered, as above, without this that he was guilty of the breaking of the walls. Ready. And the other alleged the contrary, etc. Michaelis
31 Hen. VI.

The case has not been identified in Y. B. Mich. 31 Hen. VI, or in the early abridgments. Case 48.

⁶⁰ Stephen tells us [Stephen: Pleading, 1st ed. 1824, note 10 of the appendix] that "the expression '*isser d'empler*' . . . which may be translated to *get out of* or *finish the pleading*, . . . clearly marks the meaning and derivation of the term *issue*." "It is observable that the parallel word *fin* appears to have been used in the same sense in Normandy." Mr. Stephen accepts the derivation of Finch [Finch: Law, 396] as the "more unexceptionable" of the various definitions of the word *issue*. [Stephen: Pleading, 1st ed. 1824, note 39, appendix.] "An issue is, when both the parties join upon somewhat they refer unto a trial, to make an end of the plea." Bracton's "*Litis contestatio*" is also accepted as the equivalent of the later "issue," which word he apparently did not use. [See Lib. 5, fo. 373, a.] In our cases from the earliest Year Books, those of 20 and 21 Ed. I [Rolls Series], we find the word "issue" [pp. 128-9] "*jekes le bref de entre prit issue*." The greater part of the cases do not have the word itself, but end, "*Ready de averrer come avant e dyt*," or the mere "Ready," etc., is given in the books, which Maitland used to translate or transpose into "And they were at issue."

It is to the issue rather than to the judgment that the Year Book lawyers plead their causes. This would appear to be the cause, or one of the causes, of what has been complained of as the over-subtlety of their arguments at times. The skilful forming of the issue is a matter of art, whether it be done, as of old, before the court by men set face to face with each other, thus thinking on their feet, countering and attacking in a tourney of wits, or whether it be as it is to-day, by the silent student in his office, listening nevertheless to the issues of those bygone days, and parrying with at least equal skill the foreseen argument of his opponent. For now as then the case must be drawn to an issue before it is tried; the legal principle thought out and selected; the logical deduction drawn, "and then to judgment," as of old. Even now the skill is shown in getting at the issue, but we await the written decision, the reasoned summing up of both sides, and the final sustaining of one, before we call our reports complete. Not so the legal lights of Edward's time. To them, after the issue had been skilfully arrived at, the matter of fact, as it seemed to them, had comparatively little interest. Nor does it seem that they had overmuch concern for the fate of the clients, unless where it is shown in such remarks as that of Gascoigne, when he said to the defendant: "I would not be in your place for a hundred pounds, for you will be hung by the neck." [Y. B. Hilary, 11 Ric. II; Statham, Utlary, case 6.] But it was not in the criminal law that skill in the forming of issues was displayed, and it is not the criminal cases that we find giving us examples of the issue. We have in our cases here, debt, account, replevin, *quare impedit*, avowry, wardship, contract, and many others of a like nature. We have only two cases that can be called criminal cases and these are cases of very little importance. The trend of the case law of England has been away from a technical or analytical treatment of the criminal law. Without a real criminal appeal, and therefore with the criminal cases decided

for all time in the lower courts, one might read the case law of England as it stands in the reports without being forced to impress upon one's mind the principles of the criminal law. A short shrift there has always been in the law of England, from the days of Gascoigne to the days of Beck. It has been easier and cheaper to hang a man than to follow our much derided fashion of giving even a criminal a full and fair chance. To the honor of Englishmen and English law, a long step forward has at last been taken. A genuine appeal lies from the lower court, and the innocent defendant has an opportunity to stand before a Court of Criminal Appeal, organized with a view of giving him a greater amount of protection (7 Ed. 7, § 23, 1908) than he has ever had before in all past time in England.

ISSUEZ DEZ TERRES RETOURNABLE ⁶¹

(1) **If the sheriff makes** a return of the goods in issue, and the party can aver for the king that he could have returned greater issues, the sheriff will issue a writ to the justices of Assize to inquire as to that, etc. In a note. *Simile*, 10 Ric. II, in Debt. Statham
118 a.
Paschal
20 Hen. VI.

A note in Y. B. Paschal, 20 Hen. VI, p. 25, pl. 10. The language is none too clear, but the case helps the abridgment slightly. See also Brooke, Issues Retournees sur Terres, 2. Case 1.

(2) **The sheriff** cannot return issues upon the lessor who has leased his lands for a term of years, etc. Query, if he has leased at will? etc. Hilary, 7 Hen. IV. (But yet the contrary is customary, I believe.) Hilary
7 Hen. VI.

Reported in Y. B. Hilary, 7 Hen. VI, p. 9, pl. 15. See Brooke, Issues Retournees sur Terres, etc., 5. The point, however, is not clearly made. Case 2.

(3) **If the sheriff** returns that the party in many issues has nothing, there is no remedy, for he can appear and save his issues. Michaelis
10 Hen. IV.

The case has not been identified in Y. B. Mich. 10 Hen. IV, or in the early abridgments. Case 3.

See as to issues, in the title of Averment. Note.
Statham, title of Averment, p. 22 a.

⁶¹ This title appears to be rather a residuum of cases which fall under the head of "Issues," but did not belong to the issue between the parties

to the suit. The cases under this title are too slight for us to base any opinion upon them, but the return of the sheriff as to the issues was an important part of the procedure in many cases. The return of the sheriff indeed figured very prominently from the beginning. The cases in Bracton's Note Book show the different returns in innumerable cases, and they form a part of still more cases in the Year Books.

Our case 2, although a slight thing to hang even a small point upon, is really, as it is printed in the Year Book, a very interesting case. It was complained that the case had been adjourned to Westminster, and Babyngton said that "it is a great matter, and the parties in their own counties came with great routs of armed people, more like going to battle than to the Assize."

IMPRISONMENT

- Paschal
10 Ed. III. (1) **A man shall not** be imprisoned for denying a record to which he himself is a party, notwithstanding it is found against him. *Simile* in the Iter of Northampton, Anno 14 Ed. III. But if he denies his deed it is otherwise. And that in an Assize, etc. (For it is as wrong in one case as in the other), etc.
- Case 1. Reported in the *Liber Assisarum*, 10 Ed. III, p. 25, pl. 10. See also Brooke, Imprisonment, 38; and Fitzh: Imprisonment, 6.

LEY ⁶²

- Statham
118 b.
Hilary
41 Ed. III. (1) **The plaintiff shall** have his law in an action in which law does not lie for the defendant. As if in a writ of Account for the time for which he was his bailiff, the defendant upon the account shows the tallies of his lord, he shall say they are not his tallies. Ready by his law, etc. (And in other cases, as appeared in Laborers, etc.)
- Case 1. The case has not been identified in Y. B. Hilary, 41 Ed. III, or in the early abridgments.
- Paschal
42 Ed. III. (2) **In debt**, the defendant came by a *Cepi Corpus* and waged his law, and found pledges to make his law, and

also mainpernors, and would have had the mainpernors be also the pledges, and could not, but found others, etc.

Reported in Y. B. Hilary (not Paschal), 42 Ed. III, p. 7, pl. 31. Case 2.

(3) **In a praecipe quod reddat** against two, who waged their law, etc., and on the day, etc., one made default, and the other came and said that he was tenant of the entirety, and was ready to make his law, but could not, except for the half. And the writ was abated for that half and not for the whole. But yet it seems that it should wholly abate, for it was the folly of the demandant that he would not pray his judgment against the other before he made his law, etc.

Hilary
41 Ed. III.

Reported in Y. B. Hilary, 41 Ed. III, p. 2, pl. 7. See also Brooke, Case 3, Ley Gager, 14.

(4) **If I bring** an action of debt for my salary against one by whom I was retained as a servant, he can wage his law on the contract, to wit: that I was never retained by him, etc. In Debt. (But yet I believe that is not law.)

Hilary
33 Ed. III.

There is no printed year of 33 Ed. III. The case has not been identified in the early abridgments. Case 4.

(5) **In account**, where the receipt is alleged by the hand of another, the defendant shall not have his law. But it is otherwise in Detinue, because one shall not have an answer to the bailment, but to the Detinue, which is the cause of his action. And the reason is the same in Debt, although the contract be by another hand, etc.

Paschal
34 Ed. III.

There is no printed year of 34 Ed. III. The case has not been identified in the early abridgments. Case 5.

(6) **In an attachment** upon a prohibition, because he had sued the plaintiff in a Court Christian for something that belonged, and he said that he never sued any plea against the prohibition, etc. Ready, by his law. And he had his law, etc. To which the Court agreed [in] Trinity, 32 Ed. III.

Hilary
24 Ed. III.

Reported in Y. B. Hilary, 24 Ed. III, p. 39, pl. 16. See also Brooke, Case 6, Ley Gager, 88; and Fitzh: Ley, 62.

Hilary
24 Ed. III.

(7) **In debt**, the plaintiff counted that he sold to the defendant one sack of wool by one H, his servant, for a sum in demand. The defendant waged his law. CLAIM: You will no more wage your law than in Account, where the receipt is alleged by another's hand. WILLOUGHBY: Not the same, for in the case at bar you count that you yourself sold the wool, by one H, your servant, so you yourself are a party by your own count; but in the other case you allege that the defendant was your receiver by the hand of another, etc. And also in the other case he could have an answer to the receipt accordingly, but he cannot do so here, for he answers to the debit, which is the strength of your action. Wherefore the law was admitted, etc.

Case 7. The case has not been identified in Y. B. Hilary, 24 Ed. III. Fitzh: Ley, 63, has the case.

Michaelis
15 Hen. VI.

(8) **One was found** to have a surplus upon his account, and he brought an action of debt against the lord, who waged his law. And that was received, etc. But yet it seems that the action does not lie, etc. Query, if a surplus be found before auditors are assigned in the Common Bench, etc?

And see in the same plea, if one be found in arrears before an auditor, that he can wage his law. And the law is the same, as it seems, where he accounts before the lord and another, etc. One shall not wage his law in detinue of charters concerning lands; in the same plea.

Case 8. There is no printed year of 15 Hen. VI. The case has not been identified in the early abridgments.

Hilary
1 Hen. VI.

(9) **In debt**, the plaintiff counted that he leased certain sheep to the defendant for a term of years, rendering a certain rent, to wit: annually for every sheep four pence, and if any sheep were dead or strayed at the end of the term, that he should pay for each, etc., twelve pence. And he showed that four sheep had strayed, so he demanded four shillings for them, and five shillings for rent in arrear. And the opinion of the COURT was that the defendant should

have his law. (But yet it lies in the notice of the country, as well as a lease of lands. But it was said that in that case, he cannot have [a writ of] *Ejectione Firmæ* nor [a writ of] *Quare Ejecit*, etc., and so it is not the same.)

And it was said in the same plea, that in every case where a writ of Debt is brought upon an arbitrement, that the defendant shall have his law, albeit the submission and the arbitrement are by deeds, for the Assize is not founded upon the submission, but upon the arbitrement; and although the arbitrement be by deed, that is not to the purpose, for the parties are strangers, etc. And, therefore, it is customary when they put themselves in arbitration to make a bond, and to bring the action on the bond, etc.

Reported in Y. B. Mich. 1 Hen. VI, p. 1, pl. 3. See also Brooke, Case 9. Ley Gager, 64; and Fitzh: Ley, 1. Statham, Fitzherbert, and the case vary greatly as to the sums to be paid—all being much mixed in their arithmetic, but fairly well agreed as to their law.

(10) **In detinue** on a release by which all the right that a man has in land is released, the defendant shall have his law. By the opinion of WILLOUGHBY: because it concerns a freehold. Hilary
35 Ed. III.

There is no printed year of 35 Ed. III. The case has not been identified in the early abridgments. Case 10.

(11) **In debt** against an abbot, because his predecessor purchased of the plaintiff certain provisions for the sum in demand, which came to the use of the house. PORTYNGTON: Nothing due him. Ready by his law. YELVERTON: That cannot be, for it is on another's contract; no more than an executor, etc. NEWTON: Against an executor such an action on another's contract does not lie without a specialty. [Yet] a man shall wage his law on another's contract, for in debt against me on a contract made by my wife before the coverture I shall wage my law; so here. PORTYNGTON: In your case it is reasonable, because they are only one person. NEWTON: That is not the reason, etc. And the opinion was that he should have his law, etc. Hilary
21 Hen. VI.

And it was said in the same plea, that where a man brought a writ of Debt, and declared that the defendant had been at the inn with him, paying so much by the week for his table, etc., the defendant shall not have his law, etc. (But yet the law is the other way), etc.

Case 11. Reported in Y. B. Hilary, 21 Hen. VI, p. 23, pl. 3. See also Brooke, Ley Gager, 46; and Fitzh: Ley, 13. Brooke says that the justices were in doubt, Fitzherbert that they agreed he should have his law. The report of the case is in agreement with Brooke, for no decision is reported.

Hilary
13 Hen. IV. (12) **In account**, the defendant [said he] received so much by the hands of the wife of the plaintiff. And the defendant made his law.

Case 12. The point is found in a case reported in Y. B. Mich. (not Hilary), 13 Hen. IV, p. 8, pl. 23. But it is merely *dicta* by Hankford. See also Fitzh: Ley, 65.

Trinity
12 Ric. II. (13) **In detinue** against two who waged their law jointly. And on the day, etc., one made default, and the other was received to make his law, etc. It is otherwise in Debt.

Case 13. There is no early printed Year Book for 12 Ric. II. The case has not been identified in the early abridgments, or in the Y. B. 12 Ric. II, Ames Foundation, ed. Deiser.

(14) **If an attorney at law** brings an action of debt for his salary because he had been of counsel, etc., the defendant shall wage his law, because he was not requirable by the Statute to be of counsel, etc. And so it seems when a priest brings an action for his salary; for the above reason, etc.

Case 14. The citation for this case is missing in Statham, and it has not been identified in the Year Books or in the early abridgments.

Statham
119 a. (15) **Where a man** wages his law, he shall not have a traverse to the convenience of the action; and that is to hasten the Court, for the Court shall not [force] the people of the king to come to try cases unless it is opportune. But yet, from that it follows that where a man wages his law he shall not plead to the country; which is not so, etc.,

for perchance he does not know where to acquire so many men to come with him to make his law, wherefore, etc.

Another case without a citation in Statham, and which remains Case 15. unidentified.

(16) **In detinue** against executors for a bailment made to their testator, the opinion of BABYNGTON was that they should have their law, because the possession charged them, etc. Michaelis
3 Hen. VI.

And see, in the same plea, that if a man entitles himself to deeds, as concerning the lands, he should show a bailment for that by which he claims the lands, or other special matter, and he cannot merely say that they are concerning lands in which he has an inheritance, etc.

Reported in Y. B. Paschal (not Mich.), 3 Hen. VI, p. 38, pl. 1. See also Case 16. Brooke, Ley Gager, 9.

(17) **In debt** upon arrears of an account. FORTESCUE: Nothing owing him. Ready to make our law, and we pray that he be examined. And so see that he waged his law immediately upon the plea. And the attorney for the plaintiff was examined, who said that his master leased an inn, with bedding and hangings, to the defendant for a term of years, rendering a certain rent, and that at the end of the term he accounted, and was found in arrears because a part of the stuff was lost and wasted; and he was also found in arrears for part of his rent, which part amounted to the sum in demand. NEWTON: That was a strange account; for the arrears of the rent you should now declare upon the lease, and for the stuff you should have an action of detinue, upon which the defendant shall have his law. BROWN: In debt upon arrears for rent, the defendant cannot wage his law, consequently not here. NEWTON: As to that, it is good that he amend his count, and declare upon the lease. BROWN: The count is entered in the Roll. NEWTON, to the defendant: Then have your law immediately, or find pledges to do so, etc. But observe, that if the defendant had said at the beginning, to wit: he would wage his law immediately, and made his prayer, as above, then he Hilary
20 Hen. VI.

should have made his law immediately after the examination, without having to answer over, etc. Query, shall the plaintiff have an action afterwards, etc., since he was once barred, etc.? And so see that a man does not account for such stuff except where he was bailiff of the house and had the care and administration of the goods, etc.

Case 17. Reported in Y. B. Hilary, 20 Hen. VI, p. 16, pl. 3. See also Brooke, Ley Gager, 6; and Fitzh: Ley, 9.

Hilary
20 Hen. VI. (18) **In debt** upon the arrears of an account, before an auditor, the defendant waged his law, by the advice of all the justices, etc. And in the same term, in the Exchequer, a bailiff brought a bill of debt against his lord because there was a surplus; and by advice, the lord was ousted of his law. NEWTON said that that was by the common law; for at the common law a bailiff shall not have his law against an account found before two auditors; and consequently the lord could not have it against him for the surplus, etc.

Case 18. Reported in Y. B. Hilary, 20 Hen. VI, p. 16, pl. 4. See also Brooke, Ley Gager, 7; and Fitzh: Ley, 10. The word "two" before "auditors" is probably an error.

Michaelis
7 Hen. IV. (19) **At the return of the petty cape**, the tenant said that he could not come on account of the rising of the waters, and that he was ready to make his law. THIRNING: I have never seen a man have his law, etc., in such a case, etc. And they adjourned. And it seems that he shall not have his law, for it is clearly in the notice, etc. But a summons can be made secretly, or he can summon the party by garnishment *ore tenus*, etc.

Case 19. The case has not been identified in Y. B. Mich. 7 Hen. IV, or in the early abridgments. There is a case of wager of law in which the "rising of the waters" figures in Y. B. Mich. 7 Hen. IV, p. 3, pl. 17, but the case is not the same, unless Statham had a longer report which brought in the point which he has digested.

Hilary
7 Hen. IV. (20) **In debt**, the defendant waged his law. SKRENE: To that you should not get, for the other day in the same action you said that you bought the goods for the king, and prayed aid of him; and we said that you bought them for

your own use, and notwithstanding, you had the aid, and we have sued a *procedendo*, etc. And so, inasmuch as you have admitted the contract, judgment if the law, etc. HANKFORD: If the defendant had accounted to the king for part, then he owed nothing to you. Wherefore it was adjudged that he should have his law, etc.

Reported in Y. B. Hilary, 7 Hen. IV, p. 7, pl. 3. See also Brooke, Case 20. Ley Gager, 30; and Fitzh: Ley, 29.

(21) **Where in debt** the king brings a *quo minus* in the Exchequer, the defendant shall not have his law, albeit he declares upon a simple contract, etc. And that is for the advantage of the king, etc.

The case has not been identified in Y. B. Hilary, 8 Hen. V. Fitzh: Case 21. Ley, 66, has the case.

(22) **In every case of debt** where an account should accrue to the king, as in an action upon a penalty given by the Statute, etc., the defendant shall not wage his law. By FORTESCUE, etc. *Verbum gratia*, etc.

The case has not been identified in Y. B. Mich. 28 Hen. VI, or in the early abridgments. Case 22.

Statute of Acton Burnel, 11 or 13 Ed. 1 (1283 or 1285), Stats. at Large, Vol. 1, p. 141.

See as to law, in the title of Actions upon the Case, Hilary 48 Ed. III; and in the title of Account, Hilary, 30 Ed. III; and in the title of Essoin, Hilary, 7 Hen. IV.

Statham, title Accions sur le Cas, *supra*, p. 10 b, case 9; title of Accompte, *supra*, p. 1 a, case 13; title of Essoin, *supra*, pp. 77 a to 78 b. The case cited does not appear in the latter title.

(23) **A dumb man** made his law by signs. And that in a note. Michaelis 18 Ed. III.

Reported in Y. B. Mich. 18 Ed. III, p. 53, pl. 64. See also Fitzh: Case 23. Ley, 64. "And he put his hand over the book, and kissed it; and so without words performed the law; and the writ abated. And Stonore said to him, 'Once forsworn, forever forlorn.'"

(24) **In account** against a prior for a receipt by the hands of his fellow monk before his entry into religion, Paschal 2 Hen. V.

the prior shall have his law. But yet that is strange, for although the defendant and the fellow monk in that case are but one person, still the receipt was not by the hand of the plaintiff; no more than if the plaintiff declared that the defendant received twenty pounds of the plaintiff by the hands of the defendant, etc.

Case 24. Reported in Y. B. Paschal, 2 Hen. V, p. 2, pl. 11. See also Fitzh: Ley, 67. The prior did not have his law, "but the opinion of the Court was clear that he should have his law." The decision and the opinion seem to have been two different things in this case.

Michaelis
14 Ed. II. (25) **A man** shall wage his law against a sealed tally; as appeared in Debt, etc. Contrary in London, by the custom of the city.

Case 25. The case has not been identified in Y. B. Mich. 14 Ed. II. Fitzh: Ley, 70, has a case on the point, but it cannot be positively identified.

Paschal
19 Ed. II. (26) **In debt** for grain and barley, the defendant was ousted of his law. Query as to the reason.

Case 26. The case has not been identified in Y. B. Paschal, 19 Ed. II, or in the early abridgments.

Hilary
22 Hen. VI. (27) **In debt** for lands sold, the defendant shall have his law.

Case 27. Reported in Y. B. Hilary, 22 Hen. VI, p. 43 (44), pl. 28. See also Brooke, Ley Gager, 87. But it seems that they "imparled."

Hilary
22 Hen. VI. (28) **In debt** against two joint tenants, they made their law separately.

Case 28. The case has not been identified in Y. B. Hilary, 22 Hen. VI, or in the early abridgments.

Trinity
22 Hen. VI. (29) **In debt** upon the arrears of an account, [before auditors] the plaintiff was examined, and it was found that they were arbitrators and not auditors, and the defendant made his law, etc.

Case 29. Reported in Y. B. Hilary (not Trinity), 22 Hen. VI, p. 41, pl. 13. See also Brooke, Ley Gager, 52; and Fitzh: Ley, 14.

(30) **The jurors** in an Assize made their law that they were not summoned, etc.

Case 30. This case has no citation in Statham, and has not been identified elsewhere.

(31) **In debt**, the plaintiff counted that he was retained by the defendant for twenty shillings a year. And the defendant was received to wage his law. And this was before the Statute of Laborers, etc. Statham
119 b.
Hilary
3 Ed. III.

The case has not been identified in Y. B. Hilary, 3 Ed. III, or in the early abridgments. Case 31.

Statute of Laborers, 23 Ed. III (1349), Stats. at Large, Vol. 2, p. 26.

(32) **If I lease** land and cattle to a man for a term of years, rendering a certain rent. Query, if the defendant shall wage his law in debt upon the arrears, etc.?

There is no citation to this case in Statham, and it has not been identified. Case 32.

(33) **A man** shall not have his law in an Assize, because he was not attached for fifteen days; nor because he was not summoned, in [a writ of] Mort d'Ancestor, because nothing is lost by his default, but by verdict, etc. And the law is the same in a personal action, for the above reason. (But yet he shall have no answer to the attachment in a personal action.) Hilary
6 Ed. III.

The case has not been identified in Y. B. Hilary, 6 Ed. III, or in the early abridgments. Case 33.

⁶²No title of our abridgment is more important than this. The attempt to escape from the wager of law shaped and misshaped many an action. If the wager of law lay on a certain suit there was pretty sure to grow up some other suit or action which would accomplish the same object, yet in which the wager of law was not allowed; the later suit or action would survive and become a part of the modern law; the former would gradually die out. Proof by oath helpers was not abolished in the law of England until 1833 [Stat. 3 & 4 Will. IV, c. 42, sec. 13]. But before the end of Henry II's reign, it was "being pushed into the background." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 1: 150.] But the trial by jury which was, as Maitland says, gradually to supersede the wager of law, was not to do so for many, many years; the process was indeed gradual, and all through our Year Books the wager of law is a part of the ordinary procedure. It was older than the trial by jury, and had gotten a very strong hold upon the minds of the people. The supernatural element, perhaps, the fact that "the plaintiff, if he thought there had been perjury on the other side, would have the satisfaction of knowing that some twelve of his enemies were devoted to

divine vengeance" [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 600] may have helped the "Ley" to keep its hold on the popular mind, and therefore kept it in constant use in the courts. We are told, moreover, that "the concentration of justice at Westminster did much to debase the wager of law by giving employment for a race of professional swearers." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 636.] These professional swearers doubtless did not fear the divine vengeance, as they had tested it so often and come off scatheless, while those who looked on and saw no bolts from heaven fall upon them ceased also to believe in the oath-helped litigant.

But the trial by jury was by no means a perfect mode of securing the truth; the jurors were often as conscienceless as the professional swearers (we have known of professional jury servers even as late as the opening years of the twentieth century) and so the two systems could continue to live on side by side, and men went on waging their law, and the counsel went on arguing as to whether in the cases before the bar the litigant should "have his law," until, as we have it in the title of our abridgment, "Ley" meant a mode of proof by oath helpers.

LIBERTATE PROBANDA ⁶³

Hilary
11 Hen. IV.

(1) **In a writ of nativo habendo** issued *sicut alias et pluries vel camara nobis*, etc., to which writ the sheriff returned that he had commanded, etc., the bailiff of his liberty, etc., who said that he had nothing, etc., and further he excused himself of the contempt, so that a *non omittas* issued, returnable now; to which the sheriff returned that before the delivery of the same writ the defendant had sued a writ of *libertate probanda*, so that at the *non omittas* he did nothing. LOPHAM: We pray that the sheriff be amerced, for he should not surcease for the writ of *libertate probanda*, for it came too late; because at the *pluries* the Court here was seised of the plea, and the power of the sheriff to return had expired. As it is in Replevin, for he shall have nothing by this *non omittas*, but shall serve the writ and return it here, for he cannot observe the *libertate probanda*, which says that he shall adjourn the parties before the justices of Assize; and that he cannot do, for he has nothing of which to make an adjournment, for the above reason. ROLFF: Sir, it is not like the case of a replevin, for there at the *pluries*

his power is ended and he shall not have any other thing, but he shall have a replevin; but in that case he does not take the body. Wherefore the *non omittas* was badly awarded, etc. And notwithstanding that, the sheriff, by award, was amerced. Query of this *libertate probanda*. And if the justices of Assize can hold a plea upon that? etc. And see that there is a Statute of Edward III which says that notwithstanding the writ of *libertate probanda* the lord should not omit to seise him and his goods also; and he disables himself if he brings an action against him; by the same Statute, etc.

Reported in Y. B. Hilary, 11 Hen. IV, p. 48, pl. 24.

Case 1.

The Statute is that of 25 Ed. III (1350), cap. 18, Stats. at Large, Vol. 2, p. 59. The words of the Statute are not quite as strong as those of the abridgment.

(2) **Although he has a pone to remove the writ *de nativo habendo*, still the villein can deliver the writ of *libertate probanda* and the sheriff shall surcease to serve the writ of *de nativo habendo* notwithstanding the pone be of an older date than the *libertate probanda*. And that in a writ of Niefte.** Trinity
25 Ed. III.

The case has not been identified in Y. B. Trinity, 25 Ed. III, or in the early abridgments. Case 2.

⁶⁸ There was a time when in "Free England" a man had to prove that he was free. The writ of *Libertate Probanda* was given to a man or a woman who was a villein or neif, when they had fled from their lord, and if they could bring it before the lord brought the *nativo habendo*, then they could "remain in peace until the coming of the justices." ["Termes de la Ley."] It could also be used when the lord claimed the villein and the villein claimed to be free. The writ does not appear to have been in very constant use. The usual course seems to have been for the lord to claim a man as his villein, and for the latter to plead "frank and of frank estate" in court. If the defendant could be declared free in a court of record, he could never again be a villein, even though his former unfree status had been patent. Declaring a man or a woman free by the court had the effect of freeing them. [Y. B. 12 Ed. III (R. S.) 12 & 13 Ed. III, p. 228 (230).] The books are full of such cases. Yet it may not be unimportant to state that the exact legal status of a villein at this period is still uncertain. Doubtless this is because the customs of the various counties varied in respect to that status, or even the customs of

the manors. What was true in one place would not be equally true in a nearby county; what was true there was again modified by other customs in other manors or counties. The Year Book cases do not clear these dim points; the text is full of villeins and villein tenures and there is much talk of both, but the talk reveals the fact that even the justices were often at sea upon what it seems to us now should have been well settled points of the law. The position of the villein, his not-free, not-slave status, the privileges he had and the powerlessness which is apparent, all these need clearer knowledge than we have as yet.

In Sir Mathew Hale's notes to Fitzherbert's *Natura Brevium* [p. 179] our first case is referred to as "a notable case." Fitzherbert [N. B. 77] gives the form of the writ, the process, and the pone. A special form of the writ is also given for a woman.

LIVEREE

- Statham
120 a.
Trinity
44 Ed. III. (1) **If the king [heir] sues livery** for lands in one county, and enters into lands in another, without suing livery, the king shall seize all, and shall have the return of the issues in the meantime. And that in a *diem clausit extremum*. And also, if in suing his livery he has not mentioned the advowson, the king shall present, etc. But he cannot seize in that case, etc. Query, if he shall re-seize in the first case, without suing a *Scire Facias* for those lands of which he had not livery, etc.?
- Case 1. Reported in Y. B. Trinity, 44 Ed. III, p. 25, pl. 34. For the point as to suing in two counties, see Y. B. Paschal, 44 Ed. III, p. 12, pl. 17. See also Brooke, Livery et Ouster les Mains, 9; and Fitzh: Liverie, 25 and 26.
- Trinity
33 Ed. III. (2) **If one holds** of the king in chief, in socage, and dies, and the king seizes, he should sue livery and not Ouster les Mains, because the seisin of the king was legal: By WILLOUGHBY. And that in a note. But if he hold of another, in chivalry, it is otherwise, for then he does not hold of the king *in capite*.
- Case 2. There is no printed year of 33 Ed. III. Fitzh: Liverie, 1, has the case.
- Hilary
13 Hen. IV. (3) **An office was traversed**, to wit: that the tenant of the king made a feoffment to him who offered the traverse,

without this that he died seised, etc. And for the king it was offered to aver that he did not. And pending this traverse it was found by another office that such feoffment was by collusion. And then the issue was found against the king. And the opinion of HANKFORD and THIRNING was that he should have the livery, for an office found pending the writ would injure him; but he shall have livery and then he shall answer to the other office by a *Scire Facias*, etc.

The case has not been identified in Y. B. Hilary, 13 Hen. IV, or in the Case 3. early abridgments.

(4) **If the tenant** of the king makes a lease for life and dies, and the king seizes, he shall sue [a writ of] *ouster le main* and have livery *cum exitibus*, for the seisin in the king was not legal, for his tenancy was not changed. And the law is the same where the remainderman is ousted, as it seems, etc. And the law is the same as to two joint tenants, and one dies, for the above reason. Michaelis
14 Hen. IV.

Reported in Y. B. Hilary (not Mich.), 14 Hen. IV, p. 33, pl. 49. See Case 4. also Brooke, Livery et Ouster les Mains, 19; and Fitzh: Liverie, 24. The case in Statham is quite different from those in the other abridgments, and indeed his statement is not in the report of the case. I have ventured to cite the case as identical because the law seems to be the same.

(5) **The tenant of the king** died, and had issue a daughter, under age, who was married to a man of full age, and they sued livery from the hand of the king; and then another abated in certain lands which were not seised in the hand of the king; and of which the said tenant died seised. And this was found before the escheator and that the said daughter had entered upon the abator. And the justices were in doubt whether or not all the lands should be re-seised, or that that land only [which was not seised in the king's hands] should be re-seised. THIRNING: It will be hard to re-seise, for I understand that if the tenant of the king dies seised and a stranger abates, against whom on coming of age the heir brings an Assize of Mort d'Ancestor, and recovers, that in that case the king shall not be seised, etc. And they adjourned. Trinity
12 Ric. II.

Case 5. There is no early printed Year Book for 12 Ric. II. Fitzh: Liverie, 28, has a longer digest of the case, showing that he did not take it from Statham, but the additional matter does not change the point as made by Statham. The case is now fully reported in Y. B. 12 Ric. II, p. 20, Ames Foundation, ed. Deiser.

Paschal
18 Ed. III.

(6) **Where livery is made** by an office which is not sufficient, the king shall seize without any *Scire Facias*, but where livery is made upon an office, although another right be found for the king, he shall not seize without a *Scire Facias*, etc. And that is by the Statute of Lincoln, etc. In an Office, etc.

Case 6.

The case has not been identified in Y. B. Paschal, 18 Ed. III, or in the early abridgments.

The Statute of Lincoln, 19 Ed. I (1301), Stats. at Large, Vol. 1, p. 303.

Hilary
2 Hen. VI.

(7) **In the exchequer chamber**, it was related how one H, Duke of Gloucester, gave certain lands, which were part of his dukedom, to one J T, in tail, who had issue one R, and died. And R had issue two sons, to wit: H and J, and died. H entered and had issue one M, who was a bastard, and died. And the king, as duke, because of the minority of M, without any office found, entered and committed the wardship to a stranger during the minority of M. Then J, son of R, brother of the said H, entered upon the patentee of the king, and M, the minor, ousted him, and he brought an Assize. And all the preceding matter was found, to wit: that M was a bastard and J was heir in tail, wherefore he had judgment to recover. And then the king pardoned him all manner of entries, and it was then found by a mandamus that M was heir to H, her father, and that J had issue F, the elder son, and S, the younger, and died. And it was found by [a writ of] *diem clausit extremum*, which was directed to the Duke of Gloucester, that J held the lands of the king, and that F was his heir, and the king seized. And then F died a minor without an heir of his body, and then a *Devenerunt* issued, by which it was found that S was heir to F, wherefore the king seized him. And then M came of age and proved her age, and S also, and then both of them came

into the Chancery, and each of them prayed livery out of the hand of the king. PASTON: It seems that M shall have livery, for since the king seized her, and committed her to a stranger during her minority, and then it was found by a mandamus that she was heir to H, her father, it is reasonable that she have livery. And the reason is the stronger that she should not have livery because of the recovery in the Assize, [but that] is void in law, for by the entry of J no freehold accrued to him by his entry. And although the recovery is good between the parties, still that shall not bind the king, who is not a party. BABYNGTON: *Contra*. The recovery is good, for if the king seized the wardship of an heir, and then another ancestor of that same heir dies, and a stranger abates, and the heir brings the Mort d'Ancestor by which he is found a bastard, he shall be precluded from suing livery; so here, M shall be precluded, etc., for of this bastardy which is so found, each shall have his advantage. And besides, as to S, it seems to me that he shall not have livery, for the office by which it was found that M was heir was not traversed. And if two are found heirs by different offices, and he who was found heir by the last office wishes to sue livery, he should traverse the first office; as to say that he is heir, without this, etc., and pray the livery, etc. And also it was not found by any office that J was heir to H, etc. And albeit it was found that he held the land of the king, and had issue, as above, that does not disprove the first office by which M was found heir to H. And when the king seized it shall be understood that it was in right of M, etc. ROLFF: When it was found by verdict of the Assize that M was a bastard, and that J was heir to H, that was as strong as if it had been found by a commission, and stronger, wherefore he has found a sufficient title, etc. And they adjourned, etc.

Reported in Y. B. Hilary, 2 Hen. VI, p. 5, pl. 5. (It should be Case 7. placitum 2, but is numbered "5" in the Year Book.) See also Brooke, Livery et Ouster les Mains, 38; and Fitzh: Liverie, 35. The digest of Brooke is hardly more than a mention of a point in the case.

- Trinity
7 Hen. IV.
Statham
119 b. (8) **If my father holds** of the king and dies, and the king seizes and enfeoffs a stranger, I shall have a *Scire Facias* against the stranger to find if he has anything to say as to why I shall not have livery; and I shall not be compelled to sue by petition in that case, as to say, etc. And that in a *Scire Facias*.
- Case 8. Reported in Y. B. Trinity, 7 Hen. IV, p. 17, pl. 16. See also Brooke, Livery et Ouster les Mains, 12; and Fitzh: Liverie, 23. The latter gives a long digest of a short case.
- Note **See as to livery**, in the title of Office; and in the title of Traverse.
Statham, title of Office, *infra*, p. 131 a. Title of Traverse, *infra*, pp. 169 a to 169 b.
- Hilary
2 Ed. III. (9) **If one sister** who is of age sues livery out of the hand of the king by an extent, the other sister, when she comes of age, shall have a writ to extend the lands again, if she desires. As appeared in a *Scire Facias*, etc. (Query as to the last part of this?)
- Case 9. Reported in Y. B. Hilary, 2 Ed. III, p. 20, pl. 5. See also Fitzh: Liverie, 8.
- Anno.
12 Hen. IV. (10) **Before the tenant** of the king shall have livery, he should have a writ of the Clerk of the Rolls to the Keeper of the Privy Seal, witnessing this, etc., and a Privy Seal to the Chamberlain of the king to receive his homage. And when he has done his homage, he shall have a writ from the Chamberlain to the Chancellor, and then he shall have a writ to the escheator to have livery. And this by SKRENE, in the Chancery.
- Case 10. The case has not been identified in Y. B. Anno 12 Hen. IV, or in the early abridgments.
- Anno
21 Ric. II. (11) **Before the tenant** of the king shall have livery he should sue a writ of *etate probanda*, which shall be directed to the sheriff of the county where he was born, notwithstanding the lands are in another county. And each one who shall be included in the inquest shall be forty-

two years old at least, so that he was of full age at the time when he who sues the writ was born. And they shall tell of signs to prove the time of his birth, to wit: that that year there was a great thunder or pestilence, and things like that. And all those signs shall be returned by the sheriff, etc. Query, if there can be less than twelve in the inquest, since the trial is by proof, etc.? And also such a writ of *etate probanda* has often been directed to the escheator, etc.

There is no printed Year Book for 21 Ric. II. Fitzh: Liverie, Case 11. 5, has the case.

LABORERS⁶⁴

(1) **A man can marry** my servant, but he cannot take her from my service, etc. By HANKFORD. Query? Hilary 2 Hen. IV.

Reported in Y. B. Hilary, 2 Hen. IV, p. 13, pl. 3. See also Brooke, Case 1. Labourers, 18; and Fitzh: Labor, 48.

(2) **Action upon the statute** was brought against a damsel of the age of ten years. HANKFORD: She cannot make a covenant under marriageable age, to wit: twelve years, wherefore take nothing, etc. But if she be taken out of your service you shall have an action against him who took her. (But if he who took her retained her before he took her, it is otherwise, as I believe, etc.) Paschal 2 Hen. IV.

Reported in Y. B. Paschal, 2 Hen. IV, p. 18, pl. 7. See also Brooke, Case 2. Labourers, 19; and Fitzh: Labor, 14.

Statute of Laborers, 23 Ed. III (1349), Stats. at Large, Vol. 2, pl. 26.

(3) **The writ was brought** against two servants, alleging that they departed, etc. And because the departure of one could not be the departure of the other, in which case they should have had separate writs, it was adjudged that he take nothing, etc. Michaelis 40 Ed. III.

Reported in Y. B. Mich. 40 Ed. III, p. 35, pl. 2.

Case 3.

(4) **If a man holds** an acre of land by the services of doing certain works for his lord, he shall not be compelled Michaelis 40 Ed. III.

to serve, by the Statute, etc. The reason is plain. Stat. of Laborers, 23 Ed. III [1349], Stats. at large, Vol. 2, p. 26.

Case 4. Reported in Y. B. Mich. 40 Ed. III, p. 39, pl. 16. See also Fitzh: Labor, 21.

Hilary
41 Ed. III. (5) **The plaintiff** can choose to bring his action in the county where the retainer is, or in the county where the departure is. And that in Laborers; for the issue can be taken upon each of them, etc.

Case 5. Reported in Y. B. Hilary, 41 Ed. III, p. 49 (1), pl. 2.

Trinity
45 Ed. III. (6) **A man** shall not have an action upon the Statute of Laborers against one who is retained over a year. As appeared in Laborers, etc.

Case 6. Reported in Y. B. Mich. (not Trinity), 45 Ed. III, p. 13, pl. 11. See also Brooke, Labourers, 8; and Fitzh: Labor, 49. There is no decision given in the report of the case. The point is made by Kyrton.

For the Statute see case 2, *supra*.

Trinity
47 Ed. III. (7) **The plaintiff** counted that the defendant was retained by him for half a year, etc. The defendant said that the Statute only speaks of laborers, etc., and we are an artisan, judgment of the writ. THORPE: That goes to the action. Wherefore he said, "Never retained," etc. Query? For by the Statute a man shall have an action against every servant who departs, as it seems. But no servant shall be compelled to serve, except in the occupation of husbandry, as it seems, etc.

Case 7. Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 22, pl. 53. See also Brooke, Labourers, 15; and Fitzh: Labor, 40.

For the Statute see case 2, *supra*.

Statham
121 a.
Paschal
5 Hen. V. (8) **In a writ** upon the Statute of Laborers, it is not necessary to cite the Statute: By MARTYN, etc. (But yet the contrary is the custom, etc., for there was never any action on such matters at the common law.)

Case 8. Reported in Y. B. Hilary (not Paschal), 5 Hen. V, p. 11, pl. 26. See also Fitzh: Labor, 13.

For the Statute see case 2, *supra*.

(9) **The plaintiff** counted that he found the defendant wandering about and required him to serve him, and he would not, etc. **BELKNAP**: We say that before the request, we made a covenant with one J, etc. **MORICE**: He who covenanted has not sufficient ¹ to have a servant, etc. Ready, etc. Upon which the issue was taken. Query as to how this sufficiency shall be determined, etc.? (And see if the Statute extends to such a request.)

Trinity
38 Ed. III.

Reported in Y. B. Trinity, 38 Ed. III, p. 12, pl. 1. See also Brooke, Case 9. Labourers, 25; and Labor, 18.

For the Statute see case 2, *supra*.

(10) **In a writ** upon the Statute, the defendant said that he was retained by the wife of the plaintiff when she was sole, and then the plaintiff took this same woman to wife, and she died within the year, judgment, etc. **WADHAM**: That is no plea, but yet our matter is clear, wherefore we say that he was retained by us. Ready. And the other alleged the contrary. (And the plea is not good, for he did not answer the plaintiff unless he said, "without this that he was retained by the plaintiff," etc.)

Hilary
12 Ric. II.

There is no printed Year Book for 12 Ric. II. The case is found in Y. B. 12 Ric. II, p. 106, Ames Foundation, ed. Deiser. Fitzh: Labor, 46, has a similar case in 12 Ric. II, in which the pleading conforms to the judgment of Statham.

Case 10.

For the Statute see case 2, *supra*.

(11) **A man can justify** on his master's account because his salary is in arrear. Query if the master can discharge his servant without his consent? etc.

Michaelis
13 Ric. II.

There is no printed Year Book for 13 Ric. II. The case has not been identified in the early abridgments.

Case 11.

(12) **A man shall have** a writ upon the Statute of Laborers against a carpenter who is retained for a year and departs, etc. And he shall count accordingly, to wit: that he was retained in the office of carpenter, etc. See the Statute, etc.

Michaelis
11 Hen. IV.

The point is found in a case of Trespass reported in Y. B. Mich. 11 Hen. IV, p. 33, pl. 60. The writ which was an action on the case,

Case 12.

¹ These words from the case make the matter a little more clear: "But is a boy himself."

was adjudged "too feeble," but the plaintiff was told he could have an action on the Statute of Laborers.

For the Statute see case 2, *supra*.

(13) **A villein** shall be compelled to serve. As appears by the Statute, etc. But his lord shall be preferred if he has need [of him], by the Statute. Which note.

Case 13. The citation for this case is missing in Statham, but the law is made sufficiently clear by the provisions of the Statute, for which see case 2, *supra*.

Michaelis
4 Hen. IV. (14) **A writ** upon the Statute of Laborers was brought against a chaplain, alleging that he was collector of his rent, and of his tithes. And the action was maintained, which is strange, for he shall not be compelled to serve,¹ etc., but yet the Statute is, "*In servicio congruo*."

Case 14. Reported in Y. B. Mich. 4 Hen. IV, p. 2, pl. 7. See also Fitzh: Labor, 51 and 61.

Hilary
7 Hen. IV. (15) **A man shall** be required to serve at the age of twelve years: as was adjudged in Laborers.

Case 15. Reported in Y. B. Mich. (not Hilary), 7 Hen. IV, p. 5, pl. 29. See also Brooke, Labourers, 20; and Fitzh: Labor, 15.

For the Statute see case 2, *supra*.

Paschal
9 Hen. VI. (16) **The defendant said** that he was retained by the plaintiff [to instruct] him in the art of writing, and that the plaintiff would not teach him his art, wherefore, etc. The COURT held that he should say, "without this that he was his servant."

And it was said in the same plea, that if an infant under age makes himself an apprentice that is not good, unless the custom be such as it is in London, etc. And the action lies against him who is under age, etc. Query?

¹ "A chaplain or a gentleman cannot be compelled to serve." The action was maintained on the "second matter," that is on his being a bailiff and collecting rent, but not on the "first matter," *i.e.*, the chaplaincy. Statham evidently did not have a full report or overlooked the statement. Fitzherbert copies the error.

Reported in Y. B. Paschal, 9 Hen. VI, p. 7, pl. 18. See also Brooke, Case 16. Labourers, 2; and Fitzh: Labor, 1. The issue was taken upon the question whether he was his servant or his apprentice, upon which point we have no argument.

For the Statute see case 2, *supra*.

(17) **An action upon** the Statute of Laborers is not maintainable against an Esquire. And that in Laborers. Paschal
12 Hen. VI.

There is no printed Paschal Term for 12 Hen. VI. Fitzh: Labor, 52, Case 17. has the case.

For the Statute see case 2, *supra*.

(18) **An action upon** the Statute of Laborers was maintained against a chaplain, etc. Paschal
46 Ed. III.

Reported in Y. B. Paschal, 46 Ed. III, p. 14, pl. 19. See also Brooke, Case 18. Labourers, 10; and Fitzh: Labor, 35.

For the Statute see case 2, *supra*.

(19) **In an action upon** the Statute of Laborers against the master and the servant. The master said that he was his villein regardant to his manor of D, and he had need of a servant and took him, as well he might. Judgment, etc. And it was challenged because he did not allege that he was seised of him; and also because it is not allowed to anyone to take his villein when he was legally retained, without showing specially that he departed from him, and he freshly [pursued] him and took him out of the service of the plaintiff, etc. But yet the plea was adjudged good. But they said that that is no plea for the servant, to wit: to say that he was a villein, etc., as above. Query, if my villein be condemned and his body in execution, if I can take him, etc.? And it seems not, but it is hard in the above case to call the plea good, for the Statute of Laborers says that villeins shall be compelled to serve, and that their lords shall be preferred, etc.; yet if he be legally retained he cannot take him, etc. Trinity
29 Ed. III.

Reported in Y. B. Trinity, 29 Ed. III, p. 41, pl. 29. See also Fitzh: Case 19. Labor, 53, and 55.

For the Statute see case 2, *supra*.

⁶⁴ The Statute of Laborers is the first attempt to bring under the statute law "this part of the community" by name. [Reeves, Hist. of

Eng. Law, Vol. 2: 389.] At first merely an ordinance of Council, it was made an act of parliament thirty years afterward, by the statute of 2 Ric. II [St. 1, c. 8]. It is apparent that the limits of the act were not defined, or that it was very strongly desired by some of the more privileged classes that the act should be construed to include many more persons than the words of the act in fact included. The law of supply and demand was evidently not respected by such powers, for just as the supply became very low, and the laborer had an opportunity to raise his position and to become independent because the supply was low and the demand very great, the highest law of the realm was invoked to overturn the great natural law, so often used as a weapon against the laborer who desires an increase of wages. The act apparently was meant, in the first section, to apply chiefly — or indeed wholly — to the vagrant class. The later more specific provisions apply to certain classes of workmen, not servants, but the provisions in these chapters are far “less drastic than those of the first paragraph.” The second chapter, however, furnishes the greater number of cases for our books, for the departure of servants is a constant cause of litigation. [See our cases 3 and 12.] We have in case 7 an attempt to claim that an artisan is not a laborer, and the contention is sustained so far as the artisan's being compelled to serve is concerned. Case 14 gives an example of the action being maintained against a chaplain. And again in case 17, and then in case 18, we find an attempt to extend the statute to include the class for whose benefit it was made — an action is brought against an esquire. It is not a surprise to find that the action is not maintained; the surprise lies in the fact that it is brought at all. We dimly feel, although the cases are not definite enough to give a very clear light upon the subject, that there was a continual revolt against these statutes (the other statutes being 25 Ed. III, cap. 1-3 and 12 Ric. II, c. 3 & 7). In chapter 6 of the latter statute, laborers were forbidden to play tennis or football and other important games. Merric England was not to be allowed to be too merry, and in truth there is no merriment left in the eye or aspect of the English laborer of to-day. In the cold light of the legislation, not for the laborer, as is the legislation of to-day, but against the laborer, one does not wonder that the light went out. The statutes of 7 Hen. IV, c. 18 (apprentices); 6 Hen. VI, cap. 3; 23 Hen. VI, cap. 13; and the statute passed in 3 Hen. VI, cap. 1, in regard to masons bring the dimly realized revolt into the light of day. The solitary laborer had no power, but the laborer united in “confederations and confederacies” was effective against the statutes which were “openly violated and broken.” Such “chapters and congregations” were strictly prohibited. The order survived however, and probably was a forerunner of the many associations of the economically inferior that have since arisen. How many of the economic evils of to-day among the English-speaking countries may be traced back to the severe and unjust legislation embodied in these statutes, we may not say; it is apparent that their roots strike deep into the past.

LATITAT ⁶⁵

(1) **In a decies tantum** a *Capias* was returned, etc., and the plaintiff prayed a latitat, and could not have it. Query as to the cause, etc.?

Statham
12I b.
Trinity
47 Ed. III.

Reported in Y. B. Trinity, 47 Ed. III, p. 4, pl. 7.

Case 1.

(2) **Where a man** had a latitat in another county, he shall not have an exigent in this county, but in the county where the original was brought.

Trinity
11 Hen. IV.

Reported in Y. B. Trinity, 11 Hen. IV, p. 72, pl. 6.

Case 2.

(3) **One had demanded** sureties of the peace for a man in the King's Bench, and said that he was in London, and upon that suggestion they awarded a latitat in London, notwithstanding there was no original, to wit: by writ, etc. Query, if they would make such an award in another county than in London?

Hilary
35 Hen. VI.

The case has not been identified in Y. B. Hilary, 35 Hen. VI, or in the early abridgments. Case 3.

⁶⁵ This bill has had an important career by reason of its later connection with the bill in equity, and the bill of Middlesex, which as it has been elsewhere shown are not to be confused with the older bill common in the Year Books.

LACHESSE

(1) **Laches** shall be adjudged in an infant under age if he does not present to an advowson within the six months, etc., because then the title devolves on the bishop, etc. It is otherwise where a descent falls for land in which his entry was legal during his minority, etc. And the law is the same as to a married woman. As appeared in a *Quare Impedit*.

Hilary
33 Ed. III.

There is no printed year of 33 Ed. III. The case has not been identified elsewhere. Case 1.

LETE

- Statham
122 a.
Trinity
18 Hen. VI. (1) **See in the case** of the *Prior of Merton* that a leet and a hundred are of different natures, for it was held there by all the Court that a hundred is not a leet, for in the hundred they have not power to inquire of all the points, as they have in a leet, etc. And that hundred is called the torn of the sheriff, and it is a Court Baron, as it seems, etc.
- Case 1. The point appears on page 13, in a long case, reported in Y. B. Trinity, 18 Hen. VI, p. 11, pl. 1, the case of the *Prior of Merton* against the *Mayor of New Windsor*. This case is full of the learning of the old law upon leets and allied topics.
- Hilary
7 Hen. VI. (2) **A man cannot inquire** of the rape, nor of the death, of men in a leet, but of petty treason and other felonies he can: By PASTON, in Debt, etc. And the reason is because these are reserved to the Crown (as it seems), etc.
- Case 2. Reported in Y. B. Mich. (not Hilary), 7 Hen. VI, p. 12, pl. 17. See also Fitzh: Lete et Hundred, 10.

LICENCE

- (1) **If two joint tenants** hold of the king, and one releases to the other, he shall have a licence from the king, otherwise he will seize by a fine, for he is adjudged in by him, etc. And in the year eight of Henry the Fourth a licence was shown in such a case in the Assize of the Duke of York, etc.
- Case 1. There is no citation given for this solitary case of License. Fitzh: Licence, 1, gives it as Mich. 8, Hen. IV, p. 8, which is the case of the *Duke of York*, cited in the case, but is not the case itself. The point made in the abridgment is not clear in the case.

MESNE

- Statham
122 b. (1) **In a writ of mesne**, the defendant showed that he had granted the services of the same lands by a fine upon

a conusance of right, to one B, etc. And because he [did not] show that the tenant attorned, the opinion was that the plea was of no value. ^{Hilary} 40 Ed. III.

Reported in Y. B. Hilary, 40 Ed. III, p. 7, pl. 14. See also Brooke, Case 1. Mesne, 1; and Fitzh: Mesne, 26.

(2) **A man shall have** a writ of Mesne although he is not distrained, etc., and recover the acquittance, but not the damages, etc. In a Monstraverunt, etc. ^{Michaelis} 40 Ed. III.

Reported in Y. B. Mich. 40 Ed. III, p. 44, pl. 29. See also Fitzh: Mesne, 50. Case 2.

(3) **In a writ of mesne**, CHELR (for the defendant): Sir, whereas the plaintiff has counted that he was distrained by one J, our lord, we do not hold of J: Ready. FYNCH-EDEN: It may be that you do not hold the lands of J, and yet the action is good enough against you; for if there is one lord, or two, between you and J, then it is to be seen whether you do not hold of him; and if the case be as you say, you should have shown it in abatement of the count, but when you did not do it but pleaded over to the action, and affirmed the count to be good, this that you plead now is not to the purpose, but you can disclaim if you wish, etc. Wherefore answer. CHELR: Not distrained in our default: Ready. And the other alleged the contrary. BELKNAP: Now we pray judgment to recover the acquittance. And he had it, etc. ^{Hilary} 44 Ed. III.

Reported in Y. B. Hilary, 44 Ed. III, p. 2, pl. 7. See also Brooke, Mesne, 2. Case 3.

(4) **In a writ of mesne**, the defendant said that the lord paramount was dead. Judgment of the writ. And because he that sued the writ of Mesne had only an estate for life, etc., the writ was adjudged good, etc. ^{Trinity} 13 Ed. III.

There is no early printed year of 13 Ed. III. The case is reported in the Rolls Series, 12 and 13 Ed. III, p. 306, No. 9. See also Fitzh: Mesne, 12. Case 4.

(5) **A man shall not have** a writ of Mesne except against him of whom he holds immediately, etc. Then if there be ^{Michaelis} 4 Ed. III.

many mesnes, and the lord paramount distrains for the services of another mesne, who is not next to the tenant, the tenant shall have a writ of Mesne against his mesne, and that mesne a writ of Mesne against his mesne, etc. And HERLE said that the form in such a case is that the next mesne to the tenant shall put his cattle in the pound for the cattle of the tenant, and that same mesne shall come to his mesne paramount to him, and require him to act in the same manner; and if he will not he shall have a writ of Mesne against him, and if he will say that he was never distrained in his default, which is true, etc., he shall show the special matter in maintenance of his action.

And THORPE held in the same plea, that in that case the tenant paravail shall have a writ of Trespass against the lord paramount, and that he is not in the case of the Statute of Marlborough, "*non ideo puniatur dominus*," etc. Query, etc. In Replevin.

Case 5. The case has not been identified in Y. B. Mich. 4 Ed. III, or in the early abridgments. Statute of Marlbridge, 52 Hen. III (1267), cap. 3, Stats. at Large, Vol. 1, p. 55.

Michaelis
21 Ed. III.

(6) **If I lease lands** to a man for life, to hold of me by a penny or a robe for all services, and doing the services to the lord of the fee; if the lord distrains him he shall not have a writ of Mesne against me, unless he says that he tendered the monies to the lord and he refused them. (But yet, it is doubtful as to the cattle in that case. But if he distrains for homage, he shall have a writ of Mesne against me, for he cannot do homage, etc.) In Mesne, etc.

Case 6. Reported in Y. B. Mich. 21 Ed. III, p. 49, pl. 74. See also Brooke, Mesne, 8; and Fitzh: Mesne, 49.

Michaelis
5 Ed. III.

(7) **In a writ of mesne**, the mesne said that the plaintiff did not hold of him. STONORE: You can disclaim in the mesnalty, and consequently you shall not have this plea. (Query as to the allegations of that disclaimer?)

Case 7. The case has not been identified in Y. B. Mich. 5 Ed. III, or in the early abridgments.

(8) **A man shall not have** an acquittance for suit to a hundred, for that is a real suit, which a man shall have by reason of his residency, etc. Then it seems that the lord paramount shall not distrain in that land, although the mesne is resident within the precinct of his leet, etc. Query? Michaelis
4 Ed. III.

And in the same plea the plaintiff would have prescribed, and could not unless it be a suit service, etc. In Mesne.

The point is found in Y. B. Mich. 4 Ed. III, p. 42, pl. 8. The case was adjourned without coming to a decision. See also a long digest of the whole case in Fitzh: Mesne, 42. Case 8.

(9) **Service does not** acquit of service except for that part; as appeared in a writ of Mesne, etc. But that is not to be understood of the tenant in free marriage, for he shall have the acquittance, and still he does not pay anything, etc. But it seems that the quantity of the services is not to the purpose; for if I hold of a man and he holds over, whether he holds by less services or greater, he shall acquit me, etc. Michaelis
20 Ed. III.

There is no early printed year of 20 Ed. III. The case is reported at length in Y. B. (R. S.) 20 Ed. III, pt. 2, p. 350. The case, however, was adjourned without judgment. Case 9.

(10) **If the lord** paramount dies pending the writ of Mesne, the writ shall not abate, etc. But this is to be understood where no forejudgment lies, for if it be forejudged, the death of the lord paramount abates the writ, for it cannot be expectant on the death of anyone, etc. As was adjudged in Mesne, etc. Trinity
21 Ed. III.

The case has not been identified in Y. B. Trinity, 21 Ed. III. Fitzh: Mesne, 48, has the case. Case 10.

(11) **The mesne** alienated the mesnalty by a fine, pending a writ of Mesne against him, at the suit of the tenant, and the tenant pleaded over and forejudged the mesne, notwithstanding the alienation of the tenant shall be understood to be to the chief lord paramount, and the grantee of the mesnalty shall not force him to attorn, etc. But yet, query? For the tenant by his writ of Mesne does not demand the mesnalty, etc. In a *Per que Servicia*, etc. (Study well.) Hilary
34 Ed. III.

- Case 11. There is no printed year of 34 Ed. III. Fitzh: Mesne, 47, has the case.
- Note. **See as to mesne**, in the title of *Scire Facias*, Mich. 46 Ed. III.
 Statham, title of *Scire Facias*, *infra*, p. 164 b, case 12.
- Trinity (12) **A man shall not** have forejudgment against the
 7 Ed. III. husband and his wife. By HERLE, in Mesne, etc.
- Case 12. Reported in Y. B. Trinity, 7 Ed. III, p. 41, pl. 53. "There is no reason that the woman should be forejudged of the seignory for the default of her husband."
- Hilary (13) **A man of religion** shall not have forejudgment. As
 19 Ed. III. appeared in Mesne, etc. But yet if the collusion be inquired of, it seems that he shall have it, etc.
- Case 13. There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year and term.

MONSTRAVERUNT ⁶⁶

- Statham (1) **In a monstraverunt**, they showed that they were
 123 a. distrained for many services. CANNDISH: They do not show what day or year they were distrained. And it is a good plea to say "not distrained," etc. FYNCHEDEN: Be they distrained on one day or another, the writ lies for them, wherefore answer. And they were forced to show that the manor was in ancient demesne, etc. Which note, for otherwise they should not have this writ, etc. Query, if it lies against one who has only an estate for years in the manor? etc.
- Case 1. Reported in Y. B. Mich. 40 Ed. III, p. 44, pl. 29. See also Brooke, Monstraverunt, 1; and Fitzh: Monstraverunt, 2.
- Trinity (2) **In a monstraverunt**, they were forced to show
 49 Ed. III. that the manor was ancient demesne, wherefore they showed the charter of the king, which set forth how the manor was in the hands of King Stephen, and the charter of the same King Stephen by an *Inspeximus*, and

besides he confirmed their customs, etc. THORPE: You should show the record of Domesday, for that is only a relation that you show, etc., for it may be that it is a free fee, and then the charter is of no value, etc. And they adjourned.

Reported in Y. B. Trinity, 49 Ed. III, p. 22, pl. 8. See also Brooke, Case 2. Monstraverunt, 3; and Fitzh: Monstraverunt, 4.

He produced a charter of the present king (Ed. III), in which the king said that he had seen (by this word *inspeximus*) the charter of King William the Conqueror, who had given, granted, and confirmed this same manor, etc.

(3) **See in a monstraverunt**, the opinion of the COURT, ^{Paschal} that the death of one of the plaintiffs shall not abate ^{2 Hen. V.} the writ, for although all are not named, still the writ lies for those who wish to sue. By BABYNGTON, etc. Well debated.

Reported in Y. B. Mich. 1 Hen. V, p. 13, pl. 28. The citation as ^{Case 3.} given in Statham is also given in Fitzherbert, Monstraverunt, 7, but he gives no page. He gives a complete citation to the case in 1 Hen. V. Brooke, Monstraverunt, 6, gives the citation to 1 Hen. V only. The case in 1 Hen. V is a good case and "well debated."

⁶⁶ The writ of *Monstraverunt* as shown in the few cases given here was a writ for tenants in ancient demesne, who were burdened, or claimed that they were burdened, with more or other services than were originally due. Reeves says that it was first met with in the reign of Ed. II, but we find that the writ was used as early as the middle of the reign of Henry III. There are at least two writs of *Monstraverunt* given in Bracton's Note Book [1230, 1237], both in the year 1237. In Maitland's Register of Writs there is a writ of *Monstraverunt* [No. 105]. He places the date of the Register between 1236 and 1267. It is, therefore, apparent that the *Monstraverunt* was much earlier than our historians had until recently supposed. Maitland [Reg. of Orig. Writs, p. 579] calls it "a writ of critical importance in the history of the English peasantry," and writing of it as of the middle of the reign of Henry III, says: "It is no new thing; but very possibly, until lately, it could not be obtained until the matter had been brought under the king's own eye, or at least his chancellor's eye." [*Ib.*, p. 579.] The constant encroachment by the lords on the ancient rights of the tenants made the writ of great value to the latter. If we may read between the lines of these cases we can see that there was an apparent attempt to enlarge the scope of the writ to include other tenures. It is also apparent that the court did not overmuch favor even the limited writ, and were wholly adverse to any enlargement of its scope.

There is another writ of *Monstraverunt* not frequently mentioned in the discussions of the writ of this name. It became, however, a very important writ. This is the *Monstraverunt de Compoto*, which was given by the statute of Marlbridge [Cap. 23] in 1267, to certain classes of persons desiring to take advantage of the action of account. Its history belongs with the history of that action.

MAYNPRIS

- Hilary
2 Hen. IV. (1) **If a man** finds bail in a *Capias* or exigent, and has a *Supersedeas*, and makes default, and a *Capias* issues against him and his sureties, which are taken by the *Capias*, or else come freely, and the sureties are fined; the party shall not be fined, but shall be imprisoned until the plea is ended, etc. Query, if it be not found that process issued against him? etc. And if he comes freely he shall not have sureties, but be imprisoned, etc. Query?
- Case 1. Reported in Y. B. Hilary, 2 Hen. IV, p. 14, pl. 10. See also Brooke, Maynprise, 24; and Fitzh: Maynprise, 34.
- Paschal
42 Ed. III. (2) **If on the return** of the exigent the plaintiff be essoined, the defendant shall have the same day, without finding sureties, etc. In Debt. *Simile*, Michaelis, 48 Ed. III, etc. Query, if he makes default afterwards, etc.?
- Case 2. Reported in Y. B. Paschal, 42 Ed. III, p. 8, pl. 2. See also Brooke, Maynprise, 8; and Fitzh: Maynprise, 38. The case in Mich. 48 Ed. III, is on page 23, pl. 5 — almost the same case.
- Michaelis
46 Ed. III. (3) **In a [writ of] account**, the defendant was adjudged to account, where he came by the exigent. And for certain allowances they were in arrears, wherefore they were put back in the place.¹ And because it was pending a long time in judgment, he found mainprise, etc.
- Case 3. Reported in Y. B. Mich. 46 Ed. III, p. 30, pl. 27. See also Brooke, Maynprise, 13; and Fitzh: Maynprise, 42.

¹ Probably sent back into the hall where they could discuss the matter at leisure. The reporter of the cases (and Brooke) wonder at the action taken, "for it is against the Statute of Westminster the Second, cap. 11." But it appears from the report that the case was delayed through fraud.

(4) **In an audita querela**, the plaintiff shall not be allowed mainprise until the defendant has appeared and given an answer, etc. **Query?** Michaelis
48 Ed. III.

Reported in Y. B. Hilary (not Mich.), 48 Ed. III, p. 1, pl. 3. See also Fitzh: Maynprise, 10. Case 4.

(5) **In debt**, the defendant came by the exigent and waged his law, and found pledges for his law. **THORPE:** You should find bail, etc. And he would have found bail from the pledges, and could not, but from others, etc. Paschal
31 Ed. III.

There is no printed year of 31 Ed. III. Fitzh: Maynprise, 11, has the case. Case 5.

(6) **In [a writ of] account** the defendant waged his law, but he did not find mainprise for that, wherefore if he failed of his law, he should be adjudged to account, in which case the plaintiff can have a *Capias* and an exigent, etc. Trinity
5 Ed. III.

Reported in Trinity, 5 Ed. III, p. 21, pl. 6. See also Fitzh: Maynprise, 5. Case 6.

(7) **Where the exigent** is awarded against one and he comes and surrenders himself, and finds mainprise and has a *Supersedeas*, the mainprise cannot be taken from one day to the other until the suit be ended, but only to keep his day; but when he shall have appeared on the day, etc., then he can find such mainprise well enough, etc. Statham
123 b.
Hilary
18 Ed. III.

Reported in Y. B. Hilary, 18 Ed. III, p. 7, pl. 24. See also Fitzh: Maynprise, 17. Case 7.

(8) **One sued a capias** of Outlawry, and was in the keeping of the sheriff of L. And one came to the bar and showed matter, and prayed a writ to the sheriff to have him brought in so that he could find mainprise and have his charter and a *Scire Facias*, etc. And he had it. And this in a note. Michaelis
24 Ed. III.

Reported in Y. B. Mich. 24 Ed. III, p. 76, pl. 100. Case 8.

(9) **See, by Sharshull**, that there is a distinction between bail and mainprise, for the bail is "such a one is entrusted Hilary
33 Ed. III.

to the bailiffs" in which case they are his guardians, and if they let him escape they shall answer for an escape, etc. And for that they shall be hung.

Case 9. There is no printed year of 33 Ed. III. Fitzh: Maynprise, 12, has the case.

Hilary
12 Ric. II. (10) **Immediately** after judgment the mainpernors are discharged, etc. And the law is the same when they have him in mainprise until such a day, on which day he appears; as soon as his appearance is recorded the mainpernors are discharged, etc. And they put him in ward, etc.

Case 10. There is no early printed year book for 12 Ric. II. The case has not been identified in the early abridgments, or in Y. B. 12 Ric. II, Ames Foundation, ed. Deiser.

Hilary
36 Ed. III. (11) **"Justified,"** etc. And still it seems not, for the entry is that such a one and such a one "*manucaperent*," etc. But where he is delivered to them in bail they can imprison him well enough, etc. By WILLOUGHBY in Debt, etc.

Case 11. There is no printed year of 36 Ed. III. The case has not been identified in the early abridgments.

MAYNTENANCE

Paschal
14 Hen. VI. (1) **One brought a writ** of maintenance, etc. NEWTON: It appears by his declaration that the plaintiff and another brought the action in which the maintenance is alleged, in which both shall have the action, etc. CHAUNT: In Formedon brought by two, one can sue an action of maintenance leaving out the other; and I have seen that, etc. PASTON: It is not the same, for in a Formedon, or a real plea, in which summons and severance lie, it may be, but this is brought on a maintenance, upon a writ of Trespass, in which no severance lies; but the nonsuit is a nonsuit for both, wherefore, etc. MARTYN: But the grievance of one is not the grievance of the other, etc. For if two be sued in the Court Christian jointly, they shall have separate attachments, etc. And they adjourned, etc.

Case 1. Reported in Y. B. 14 Hen. VI, p. 13, pl. 45.

(2) **In [a writ of] maintenance**, the defendant justified as the attorney at law. The plaintiff said that the defendant had given to one B to give to four jurors eight pounds, so he assigned a special maintenance, etc. And then they were at issue, and it was found for the plaintiff. **BEEL**: To judgment you should not go, for the writ is brought on a maintenance made before justices of Assize in the county, etc. The defendant has justified as an attorney at law, after the attornment here in the Bench; and the plaintiff in his replication has confessed that it was adjourned and has assigned a special maintenance after the adjournment, in which case he cannot have had a writ *quod manutenuit quandam querelam que summonus fuit*. Michaelis
21 Hen. VI.

And then they adjourned before such justices at A, in a writ of Error, and awaited, etc., wherefore, etc. Which **FORTESCUE** conceded. But **WEST** held the contrary, because the writ of maintenance was not taken upon the record, but upon the Statute.

Reported in Y. B. Mich. 21 Hen. VI, p. 15, pl. 30, and continued in Case 2.
Y. B. Mich. 22 Hen. VI, p. 5, pl. 7, a case in which there is much learning on the subject. And see Brooke, Maintenance, 14; and Fitzh: Mayntenance, 7.

The Statute is that of Ed. III (1327), cap. 14, Stats. at Large, Vol. 1, p. 413 (418).

(3) **In [a writ of] maintenance**, it was alleged that he maintained a quarrel on an appeal at D, etc., before certain justices. The defendant said that this same person whom the plaintiff alleged maintained, was his servant at the time, etc., and before, etc., and the defendant prayed certain men of the law to be with him of counsel at B, within the same county, etc. **MARKHAM**: That is no plea, for he has justified that he employed certain men in another place. **NEWTON**: The place is not material; no more than in Trespass for goods carried away, etc., wherefore answer, etc. Query, if he justified on another day, etc.? Hilary
21 Hen. VI.

Apparently another point from case 2, *supra*, reported Y. B. Mich. Case 3.
(not Hilary), 21 Hen. VI, p. 15, pl. 30. I have not been able to identify the point in any case in Hilary Term. See also Brooke, Maintenance, 14; and Fitzh: Mayntenance, 7.

- Statham
124 a.
Michaelis
8 Hen. V. (4) **A man brought** a writ of Maintenance because the defendant maintained a quarrel in a writ of right close in ancient demesne; and the writ was adjudged good, etc. From this it follows that a man shall have a writ of Maintenance on a maintenance had in the county, or the Court Baron, notwithstanding they are not Courts of Record, etc.
- Case 4. Reported in Y. B. Mich. 8 Hen. V, p. 8, pl. 3. But the case does not support the statement that the writ was adjudged good. Fitzh: Maintenance, 24, has the case in the same form as it appears in Statham, but in placitum 29 of the same subject he gives the case as it appears in the Year Book.
- Trinity
9 Hen. VI. (5) **In [a writ of] maintenance** against one A, because he maintained a quarrel in London, on such a day, etc., between, etc., and because he did not say before what justices the plea was held, it was the opinion that the writ should abate, notwithstanding that the plaintiff made it clear in his count, etc.
- Case 5. Reported in Y. B. Trinity, 9 Hen. VI, p. 20, pl. 14. See also Brooke, Maintenance, 2.
- Michaelis
19 Hen. VI. (6) **Richard Bruyn** and K, his wife, brought a writ of maintenance against one G, who demanded judgment of the writ, inasmuch as the woman was named in this writ, in which nothing is to be recovered except damages, etc. But he dared not demur, but pleaded to the action, etc.
- Case 6. The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the early abridgments.
- Michaelis
27 Hen. VI. (7) **A man cannot** "maintain" his tenant for any other cause than for a thing that belongs to his lands, etc., for the defendant can show that he leased an acre of land to him whom the plaintiff alleged to be a maintainer, for a term of years, and that the plaintiff brought against him a writ of Trespass made on the same lands, and he "maintained" him, etc. And the plaintiff said that the trespass was brought on a trespass made on another acre of land, etc.

And the defendant was obliged to answer to that, etc. In Maintenance, etc.

The case has not been identified in Y. B. 27 Hen. VI. Fitzh: Mayn- Case 7.
tenance, 25, has the case.

(8) **A man shall have** a writ of Maintenance, notwithstanding he is nonsuited in the action in which the maintenance is alleged, etc. Contrary, Anno 7 Hen. IV, *Coram Rege*. Paschal
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Maintenance, 26, has Case 8.
the case.

(9) **In writ of maintenance** it is a good plea to say that an agreement was made between them for a tunnel of wine, which he took for this same maintenance. Anno
12 Hen. VI.

The case has not been identified in Y. B. Anno 12 Hen. VI. Fitzh: Case 9.
Mayntenance, 27, has the case.

(10) **A bill of maintenance** was adjudged good in the Common Bench, against one who was present in Court "*quod manutenuit hic in curia in placita non discusso*," notwithstanding there was no mention in the bill that the defendant was present in Court, nor in the keeping of the custodian of the Fleet, nor that he was an attorney of the place. And they said that if he was an attorney and did not come that he would lose his office. And no process shall issue against him, but he shall be demanded, etc. And this is by the Statute of Ed. III, Anno 4. Michaelis
22 Hen. VI.

The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the early abridgments. Case 10.

Statute of 4 Ed. II (1330), cap. 11, Stats. at Large, Vol. 1, p. 430 (436).

(11) **In [a writ of] maintenance** they alleged that he maintained by one William Clement, who brought a writ of maintenance against Gertrude de Lunez, and others. All except Gertrude pleaded not guilty, and Gertrude said that he whom it was alleged was a maintainer, was her servant, and that he came to one Master Moyle, serjeant at law, and Michaelis
31 Hen. VI.

prayed him to be of counsel to him, which is the same maintenance, etc. To which the plaintiff said that he gave one hundred shillings to one F and H, to distribute between certain persons, to maintain the said quarrel, on which maintenance he has conceived this action. And Gertrude said that he did not give the hundred shillings in the manner, etc. And the issue was found for the plaintiff, wherefore he had judgment to recover. And see error assigned on this in the King's Bench. One error, because when the plaintiff replied, as above, "on which maintenance he has conceived his action," he brought the writ on that. Another, because he said that Gertrude gave one hundred shillings to F to distribute between certain persons, and did not say between whom, for it may be that he distributed the money to the prothonotaries and men of counsel, which was legal, etc. LACON: It seems that he departed from his action, for when he has said, "On which maintenance he has conceived his action," he clearly proves that the others who were named in the writ were not parties to him to whom Gertrude gave the hundred shillings. Then if they maintained for other reasons the plaintiff should have had separate actions; as in Trespass against three for trees cut and battery. If the plaintiff confesses that one of the defendants beat him, and the other cut the trees, the writ shall abate. LITTLETON: Although three or four maintain in different manners, still I shall have one entire action of maintenance against them for the Statute is general, and does not speak of any maintenance. And the law is the same in a *Quare Impedit* for different disturbances, etc. FORTESCUE: In a writ of Monstraverunt, one of the plaintiffs showed that he held by one service, and another by another service, still they are joined in the action, because such is the nature of the action: so here. The statute speaks of maintenance, which must mean every maintenance, in which case he can assign one maintenance in one, and another maintenance in another, for by each of them I am injured, etc. Study well, etc.

Case 11.

Reported in Y. B. Mich. 31 Hen. VI, p. 8, pl. 1. See also Brooke, Maintenance, 52. For the Statute see *supra*, case 10.

MYSNOMER

(1) **In a writ of entry**, it was alleged that the tenant had no entry except by K and one H, his wife. The tenant said that the woman was named A, and not K, and he had the plea, for the mischief as to the warranty, etc. Statham
124 b.
Michaelis
21 Ed. III.

Reported in Y. B. Mich. 21 Ed. III, p. 47, pl. 69. See also Fitzh: Case 1. Misnombre, 17.

(2) **In debt** against executors, one came at the distress and pleaded a misnomer of his companion, and it was not allowed. But MARTYN said to him that he could have said that he had another co-executor, not named, etc., and by such means have abated the writ. Query, if he was badly named, was it not as if he were not named? etc. And so note, etc. Hilary
14 Hen. VI.

Reported in Y. B. Trinity (not Hilary), 14 Hen. VI, p. 3, pl. 18. Case 2. See also Brooke, Misnomer, 69 (his digest varies from Statham's), and Fitzh: Misnombre, 2.

(3) **In debt** against three, all pleaded a misnomer of one of them. NEWTON: A man shall not plead a misnomer of his companion, for if the husband wishes to plead a misnomer of his wife he shall not be received, unless his wife appears with him. MARKHAM: But that plea is in abatement of the whole writ. NEWTON: What of that, etc.? Paschal
18 Hen. VI.

The case has not been identified in Y. B. Paschal, 18 Hen. VI, or in the early abridgments. Case 3.

(4) **In trespass** or debt against an abbot, although he is not named according to his foundation in every point, still if he be known by that name the writ is good: as where it was founded by the name of an abbot of the house of our Lady of B, and the writ was brought against him as the abbot of B. And because he was known by that name Michaelis
21 Hen. VI.

the writ was adjudged good, etc. But it was said that it is otherwise in a plea of lands, etc.

- Case 4. Probably the case reported in Y. B. Mich. 21 Hen. VI, p. 4, pl. 8; although the case differs in many respects from the case as digested. It is cited for this point in the notes to the Year Book, and stands for the point in law. See also Brooke, Misnomer, 31.
- Hilary
41 Hen. IV. (5) **In trespass** against several, the misnomer of one of them does not abate the writ, except against him who is misnamed. Contrary, Anno 2 Hen. IV, etc.
- Case 5. The mis-citation of this case in Statham is patent. The case might — and may — be identified, but I have not as yet succeeded in doing so.
- Michaelis
44 Ed. III. (6) **In trespass** against one J, who said there are two J's in the same vill, to wit: the elder and the younger, and no distinction made in the writ; judgment of the writ. And because he did not deny that he was the same person the writ was adjudged good, etc. And because he did not give the distinction in his plea, that was entered on the Roll, to wit: that he was the younger, etc.
- Case 6. The case has not been identified in Y. B. Mich. 44 Ed. III, or in the early abridgments.
- Paschal
5 Ed. III. (7) **In a praecipe quod reddat** for the manor of C, the tenant said that the land put in view was the manor of D, and not the manor of C. And for that reason the writ was abated, etc.
- Case 7. The case has not been identified in Y. B. Paschal, 5 Ed. III, or in the early abridgments.
- Hilary
19 Hen. VI. (8) **In debt** against a woman [continued] until the exigent when she surrendered herself to the sheriff. And then she came in her own person, and said that whereas she was formerly cited as the wife of H, that she was the wife of J, and not the wife of H. PORTYNGTON: She shall not have the plea, no more than as if she had surrendered herself here by a *Supersedeas*, for she shall be estopped, etc. NEWTON: She had no need to have surrendered herself if she were misnamed, etc. YELVERTON: It is not the

same as a case of *Supersedeas*, for where one is misnamed, one can come of his free will and plead the misnomer, so here, she has surrendered herself of her own free will, and has done no act of record to estop herself, etc. And the opinion was that she should have the plea, etc.

Reported in Y. B. Hilary, 19 Hen. VI, p. 58, pl. 23. See also Fitzh: Case 8. Misnombre, 3. See what appears to be another report of the same case in the same year, Michaelmas Term, p. 43, pl. 89, and also Brooke, Misnomer, 29.

(9) **In a writ** upon the Statute of Liveries, the defendant pleaded a misnomer of the vill. MARTYN: Process of outlawry does not lie in this action, wherefore you shall not have the plea. NEWTON: If he was taken, etc., the king would have a process of outlawry. BABYNGTON: That is for the contempt. NEWTON: Although the party sued the action thus, yet the king shall have half, so in a manner the king is a party, etc. Michaelis
8 Hen. VI.

Reported in Y. B. Mich. 8 Hen. VI, p. 9, pl. 21. See also Brooke, Case 9. Misnomer, 64.

The Statute of Liveries, 1 Ric. II (1377), cap. 7, Stats. at Large, Vol. 2, p. 204 (208).

(10) **One was** indicted for treason, by the name of F, abbot of T, who said that his name was U, etc. And because the attorney of the king could not deny it, he went quit, etc.

There is no citation for this case in Statham, and it has not been identified elsewhere. Case 10.

MOIGNE

(1) **In trespass**, the defendant said that the plaintiff was a professed monk, etc. The plaintiff showed how the king had committed all the possessions of the abbey, etc., during the war, etc. And because he did not show that he was a fermor, etc., which name [made him responsible and] gave him the action, the writ was abated, etc. Statham
125 a.
Michaelis
2 Hen. IV.

MARKHAM said, in the same plea, that the wife of Sir R. Belknap, who was exiled, sued an action in her own name, and was received, because her husband was condemned by the law, etc.

Case 1. Reported in Y. B. Mich. 2 Hen. IV, p. 7, pl. 26. On the second point the reported case and Statham give different reasons for admitting the woman. The case being because he was the fermor of the king. See also Brooke, Moigne, etc., 20. He makes a very different digest of the case.

Hilary
44 Ed. III. (2) **If a monk** be presented to a vicarage which is perpetual, by his sovereign, he can use every action to the profit of his vicarage in his own name, because it is outside of his obedience, but yet his profession remains, etc. In a *Quare Impedit*.

Case 2. Reported in Y. B. Hilary, 44 Ed. III, p. 4, pl. 17. See also Brooke, Moigne, etc., 29.

Paschal
45 Ed. III. (3) **In debt against the abbot of B**, and one J, his monk, the demand was for twenty pounds, and he counted that the monk was prior of S [appointed], and removable at the will of the abbot, and to have a fair on a certain day, etc., and that he recovered twenty pounds against one G by a plea, etc., which G was delivered to the prior in execution, etc., and the prior suffered him to go at large, wherefore this action accrued, etc. And because he was named with the abbot the writ was abated, for writ should have been brought against the abbot alone, etc. But it is otherwise on a contract made by a monk before his entry into religion, etc., notwithstanding that he be such a prior as in the above case, etc.

Case 3. Reported in Y. B. Mich. (not Paschal), 45 Ed. III, p. 9, pl. 1. See also Brooke, Moigne, etc., 2.

Hilary
8 Hen. V. (4) **A monk who** is a fermor for the king may maintain an action of debt in his own name, without his sovereign, "*quo minus debitum domini Regis solvere non poterit.*" And the abbot said¹ that there are many such records in the Exchequer, etc. In a note, etc.

Case 4. Reported in Y. B. Hilary, 8 Hen. V, p. 6, pl. 23.

¹"And Dixin, Clerk of the Pipe, said that there were twenty such actions in the Exchequer."

**MONSTRANZ DEZ FAITZ RECORDEZ FYNES ET
CHARTRES**

(1) **The Prior of S** brought a writ of Trespass against one J, and counted that the king had granted to one J, his predecessor, and to his successors, by his letters-patent, that they should have the goods forfeited and chattels left in a certain place. And he said that one W came from a certain place and carried away certain goods, to wit: one horse. And because men suspected him, he left it, wherefore one J, our bailiff, seised it. And the defendant came with force and arms and took him away, etc. **BELKNAP**: He has founded this action upon a charter of the king, and he does not show it, etc. **CANNISH**: This is a writ of Trespass, for goods carried away out of our possession, wherefore it is not necessary, etc. **BELKNAP**: To what effect do you talk of the charter, then? **FYNCH-EDEN**: If he uses the action where he never had possession of the thing granted, he should show the charter, but if he had possession, and he uses the action for goods carried away, out of his possession, although the charter is recited in the writ, still he has no need to show it. And they adjourned, etc.

Hilary
40 Ed. III.

Reported in Y. B. Hilary, 40 Ed. III, p. 10, pl. 19. See also Brooke, Case 1. Monstrans des Faits, etc., 13; and Fitzh: Monstrans des Faits, etc., 136.

(2) **In a quod ei deforceat** the demandant did not show the record of the recovery, etc.

Michaelis
41 Ed. III.

Reported in Y. B. Mich. 41 Ed. III, p. 30, pl. 34. See also Brooke, Case 2. Monstrans des Faits, etc., 16; and Fitzh: Monstrans des Faits, etc., 138.

(3) **The defendant avowed** because the services of a tenant were granted by a fine to one in the tail, the remainder to him. And he said that the tenant in tail was seised of the services, and then died, without issue, and then he was seised of the fealty of the tenant, and for so much rent he avowed, etc. **BELKNAP**: He does not show anything for

Paschal
44 Ed. III.

the remainder, nor possession of the services in himself, wherefore, etc., for he should show the deed here as well as in a Formedon in the remainder. THORPE: There is no need, for he has shown enough, wherefore answer, etc. (Peradventure the seisin he showed in the tenant in tail was enough, etc.), for otherwise it is hard to prove that the fealty of the tenant will be enough, etc.

Case 3. Reported in Y. B. Paschal, 44 Ed. III, p. 11, pl. 15. See also Brooke, Monstrans des Faits, etc., 18.

Trinity
44 Ed. III. (4) **See how the issue** of the tenant in tail pleaded that his father made a feoffment to another upon condition, and because the conditions were broken he entered; and he showed nothing of the conditions. And that in Trespass, etc. (All the same in a plea of lands he cannot do so, etc. And see the plea, for it was not adjudged, etc.)

Case 4. The case has not been identified in Y. B. Trinity, 44 Ed. III, or in the early abridgments.

Statham
125 b.
Michaelis
46 Ed. III. (5) **In wardship**, the tenant vouched without showing a deed¹ for FYNCHEDEN said that it might be that the vouchee leased without a deed, and then made a warranty, etc.

Case 5. Reported in Y. B. Mich. 46 Ed. III, p. 25, pl. 9. See also Brooke, Monstrans des Faits, etc., 23; and Fitzh: Monstrans des Faits, etc., 152.

Trinity
47 Ed. III. (6) **In trespass** for trees cut, against many, one said that a commission issued to one of the defendants who is named, to cut certain trees for the king, etc., and we came to aid him in the place where, etc., which is the same trespass. And he paid us according to what the king took, etc. And the opinion was that he should show the commission, etc. (But yet it seems not; no more than an under-collector, etc. But yet the plea does not seem good for other reasons, etc., for at least he should show that he did the cutting by agreement with us, etc.)²

Case 6. Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 18, pl. 35.

¹ Against the opinion of Kyrton.

² This opinion does not appear in the report of the case.

(7) **In a praecipe quod reddat**, the tenant said that one H leased to him for life, remainder to F, in fee, of whom he prayed aid. **PERSHAY**: He should show a deed for the remainder; as well as where the remainderman is received and shows a deed. And in a writ of waste it is no plea to say that the plaintiff leased to him, the remainder over to another, without showing a deed. It is otherwise of a grant of a reversion, for the deed does not belong to him, etc. And then he had the aid without showing a deed, etc.

Trinity
47 Ed. III.

Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 18, pl. 36. See Case 7. also Brooke, *Monstrans des Faits*, etc., 25; and Fitzh: *Monstrans des Faits*, etc., 155.

(8) **The remainderman** shall not have an action of waste, unless he shows a deed for the remainder, etc.

Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III. Fitzh: Case 8. *Monstrans des Faits*, etc., 54, has the case.

(9) **In a praecipe quod reddat**, the tenant vouched himself, because one F, his grandfather, by a fine, admitted all the right, etc., to be in H, who granted and rendered it back to F for the term of his life, the remainder to us in the tail, etc. **PERSHAY**: He does not show the fine, and he should show the fine, or else give a precedent, if there be warranty in the gift, or else he cannot vouch as assignee, etc., for he shall have a traverse to the gift in that case, etc. Query, inasmuch as it is contrary to the fine, etc.?

Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments. Case 9.

(10) **In [a writ of] formedon**, the tenant said that one H enfeoffed him on conditions of payment and non-payment; and that he had paid, etc. And he entered upon him while the writ was pending, so his estate was defeated, etc. And he did not show anything of the conditions, because the demandant was a stranger, etc., and also it might be that at the time of the payment he re-delivered the deed, etc. Query?

Paschal
50 Ed. III.

There is no printed Paschal Term for 50 Ed. III. Fitzh: *Monstrans des Faits*, etc., 53, has the case. Case 10.

- Michaelis
21 Ed. III. (11) **The king** brought a *Quare Impedit*, and made title [showing] how one H held an advowson of him, and had issue five daughters, and died. They made a composition to present in turn, and one of them died, her heir under age and in the wardship of the king, so it belonged, etc. And she showed how it came to be her turn, etc. And the defendant, who was one of the parceners, said that the mother of the infant had confirmed the estate of her mother in the same advowson in fee, and she showed how her mother presented, but she showed no deed, because she showed that it was executed in her mother, etc. But yet the opinion was that she should show the deed, etc. Well debated.
- Case 11. Reported in Y. B. Mich. 21 Ed. III, p. 37, pl. 33. See also Brooke, Monstrans des Faits, etc., 47. There was no decision, but they adjourned.
- Hilary
24 Ed. III. (12) **A man prayed** aid of the king in a *Scire Facias*, and he did not show a deed of the lease; but he did not have the aid until he had a writ out of the Chancery to witness the lease, etc. (So there is a double delay "*nisi citius venerit.*")
- Case 12. Reported in Y. B. Hilary, 24 Ed. III, p. 23, pl. 6.
- Trinity
24 Ed. III. (13) **One brought** a *Quare Impedit* against one F, and said that one B was seised of a manor to which, etc., and presented; after whose death it descended to three daughters, who assigned it to one K, their mother, in dower, who presented, etc. And then the oldest daughter, by a deed, granted the reversion of that which belonged to her, to one B, wherefore K attorned, and B granted this same reversion to the father of the plaintiff, and K attorned. And after the death of our father and K, we entered into the third part, to which, etc., so he had the estate of the elder, and it now belongs to him to present, etc. THORPE: He speaks of two deeds, and does not show any, etc. And although your father was seised of the third part to which, etc., still he was not seised of the entire advowson, so the possession of the advowson was not executed, but you are

in the position [you would be in] if you were to bring a writ of Intrusion or a writ of Waste on the assignment of any person, etc. And the opinion was that he should not show it, etc. And then the issue was taken that there never was any such K. Ready, etc. Query, if it be an issue, etc.?

Reported in Y. B. Trinity, 24 Ed. III, p. 27, pl. 5, and there is also a Case 13. further report in the "*residuum*" of that year and term, p. 52, pl. 32. See also Fitzh: Monstrans des Faits, etc., 2.

(14) **Executors** recovered against one J, etc., a debt of ^{Michaelis} one hundred pounds, and then they sued a *Scire Facias* ^{24 Ed. III.} against the terre-tenant J, who demanded the reading of the will. NEWTON: We cannot show the original, which is of record, which says, "*profert scriptum testamentorium.*" STONORE: To that we are completely a stranger, wherefore, etc. And it was adjudged that they did not have to show it. And the law is the same in a writ of Annuity, when they have recorded the annuity, etc., and then bring a *Scire Facias*. (But yet that is understood as to an annuity, which is granted to their testator for a term of years, for otherwise they cannot have it), etc.

Reported in Y. B. Mich. 24 Ed. III, p. 30, pl. 4. See also Fitzh: Case 14. Monstrans des Faits, etc., 2.

(15) **In a quid juris clamat**, the tenant said that the conusor leased the same lands to him for life, without impeachment of waste, and saving to him, etc. And because he did not show the deed, he could not have the advantage of that [plea], etc. ^{Michaelis} ^{24 Ed. III.}

Reported in Y. B. Mich. 24 Ed. III, p. 37, pl. 53. See also Fitzh: Case 15. Monstrans des Faits, etc., 57. His digest is longer than the printed case.

(16) **If one pleads** in bar a fine of the ancestor of the plaintiff, where the plaintiff is a minor, he should show the fine, or else he shall have the Assize at large, etc., for otherwise his plea is no more than a simple feoffment by ^{Michaelis} ^{24 Ed. III.}

deed, etc. In an Assize. Query, if the plaintiff is of full age, etc., if he shall show the fine, etc.?

Case 16. The case has not been identified in Y. B. Mich. 24 Ed. III, or in the early abridgments.

Hilary
49 Ed. III.

(17) **It was found** by an Office, that one H had granted the reversion of one B, his tenant for life, to the king; and the tenant attorned, and after the death of B, one F entered, wherefore a *Scire Facias* issued against him; and he came and challenged it, because the king did not show a deed of the grant. THORPE: It is not necessary, for the grant to the king is good without a deed. FYNCHEDEN: If such a grant be made in the Chancery, and entered of record, you speak truly, and otherwise not. BELKNAP: If the tenant of the king be attainted of a felony, the king shall have an action for the debt which was due him, without showing a deed. FYNCHEDEN: It is not so, for then a man shall be in a worse state in regard to the king than in regard to the party; for against the party he could have waged his law, and not so against the king; wherefore if the king has no deed, he shall not have an action. Which was conceded. And then the tenant was made to answer over, etc.

Statham
126 a.

Case 17. Reported in Y. B. Hilary, 49 Ed. III, p. 4, pl. 8. See also Fitzh: Monstrans des Faits, etc., 32.

Paschal
35 Ed. III.

(18) **The issue of the** tenant in tail shall have Formedon in the remainder, on a remainder granted to his father, without showing the deed, notwithstanding the remainder was not executed, for if his father had lost the deed it is not reasonable that because of that fact his issue shall be without recovery, etc. By WILLOUGHBY, in Formedon, etc.

Case 18. There is no printed year of 35 Ed. III. Fitzh: Monstrans des Faits, etc., 58, has the case.

Paschal
12 Ed. III.

(19) **If I grant** to a man the first presentation on the next vacancy, and he presents, and on the second vacancy he presents, and I bring [a writ of] *Quare Impedit*, etc.;

if I desire to take advantage of that special grant, to nullify the last presentation, I must show a deed of the grant, or else it will be understood that he presented as patron, and in his own right, etc. By HERLE in a *Quare Impedit*.

There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series for that year and term. There is a like case, however, in 11 and 12 Ed. III, Rolls Series, Paschal Term, p. 94. Case 19.

(20) **If a convicted clerk** makes his purgation, and is arraigned for that same felony, he shall plead his purgation. But it was the opinion that he should show the record of it, etc. In the Eyre of Northumberland. (But yet it seems the contrary.) Anno
3 Ed. III.

The case has not been identified in Y. B. 3 Ed. III. Fitzh: Monstrans des Faits, etc., 33, has the case. Case 20.

(21) **In [a writ of] trespass** against one who justified as under-collector, he did not show the commission, etc. Trinity
5 Hen. V.

Reported in Y. B. Hilary (not Trinity), 5 Hen. V, p. 11, pl. 28. See also Fitzh: Monstrans des Faits, etc., 35. The commission apparently was not asked for. Case 21.

(22) **A man can plead** a release enrolled in London, without showing it, because by the custom it is as strong as a fine, etc. But yet, query, for it seems that a man shall not plead a fine upon a release, without producing it. And that in Trespass: By the opinion of THIRNING, etc. Michaelis
10 Hen. IV.

Reported in Y. B. Mich. 10 Hen. IV, p. 3, pl. 5. See also Fitzh: Monstrans des Faits, etc., 34. It is a note only, and in an additional "And it was said" at the end of the chief case. Case 22.

(23) **In a [writ of] quare impedit**, the plaintiff counted that one J admitted that all the right that he had in the advowson to be the right of an abbot who granted and rendered to him and to his heirs that on every vacancy the said J and his heirs should present a clerk to the abbot, and the abbot should present the same clerk to the bishop. And because this was a covenant against the common law, he was forced to show the fine, etc. And the law is the Michaelis
14 Hen. IV.

same where a man entitles himself to a rent charge by a fine, he shall show it, etc.

And it was said in the same plea, that if a man pleads a fine in bar, in which a warranty is comprised, that he shall produce it, etc. And so it seems that where a man should show a deed, he should show a fine, etc. Study well, etc.

Case 23. Reported in Y. B. Mich. 14 Hen. IV, p. 10 (11), pl. 9. See also Brooke, *Monstrans des Faits*, etc., 40; and Fitz: *Monstrans des Faits*, etc., 130.

Hilary
38 Ed. III. (24) **The plaintiff** demanded the wardship of one J, etc. KNYVET: The ancestor of this J made a conusance to us, etc., by a fine, wherefore we granted to him in the tail, to hold of us; so he holds of us, and not of you, etc. BELKNAP: You released, by a deed to this same ancestor, all the right, etc. And he did not show the deed, and still he had the plea, because it belonged to the heir.

Case 24. Reported in Y. B. Hilary, 38 Ed. III, p. 7, pl. 28. See also Brooke, *Monstrans des Faits*, etc., 44. The last words are taken from the digest of Brooke.

Trinity
12 Ric. II. (25) **One made a conusance** as servant to one A, executor of the will of one B, and by his command, etc., and he did not show the will, etc. Thus a bailiff or a servant shall be in a better condition than his master, etc. (But it seems that his master has no need to show a will in such a case), etc.

Case 25. There is no early Year Book for 12 Ric. II. The case has not been identified elsewhere.

Trinity
2 Hen. VI. (26) **In [a writ of] formedon**, the demandant counted that King Richard gave these same lands to his ancestor in tail, by his letters-patent, but he did not show them, etc. ROLFF: He does not show the letters-patent, wherefore, etc. WESTON: He need not, for we have shown how the gift was executed in our ancestor. MARTYN: It is different when a thing can commence without a specialty, for then the specialty shall be shown, and the king cannot give lands without a specialty; and if he does so it is void, wherefore

he should show them, etc. And although a rent charge be executed in the ancestor, still in a writ of Formedon the deed should be shown: so here. WESTBURY: If I declare on a gift made by a fine to my ancestor in tail, I shall not show the fine, etc. And it may be that my ancestor had lost the letters, and that fact should not oust me of my action, etc. MARTYN: It is reasonable in your case of the fine, for the fine is only evidence of the gift, which gift could pass by livery without a deed, wherefore, etc. And then he showed the letters-patent, etc. Query, where a remainder or a reversion is granted and executed, if a man shall show the deed? For that does not pass without a specialty, wherefore, etc. Query?

Reported in Y. B. Trinity, 2 Hen. VI, p. 14, pl. 13. See also Fitzh: Case 26. Monstrans des Faits, etc., 74.

(27) **He who had an estate** with a coparcener avowed for a rent charge granted upon the purpart without a deed. And he showed the matter in his avowry: [that is,] what estate he had in the purpart of that same parcener, etc. And he did not show any deed for the rent, etc., for the rent passed by the livery of his part of the lands, etc. Query?

Trinity
2 Hen. VI.

The case has not been identified in Y. B. Trinity, 2 Hen. VI, or in the early abridgments.

(28) **In [a writ of] corpus cum causa** to the sheriff of Oxford, he returned the writ to the Common Bench, that he had the body, etc., and the reason he could not have him was because he was [attendant] on the Court of the Chancery at Oxford, wherefore a writ issued to the Chancellor to certify the cause, who replied "various causes" and that he was a guardian of the peace by prescription, and also by the charter of the king. And it was not necessary to show the letters patent, because he had a day in Court; and also it is sufficient for the Court if the cause be sufficient in itself, for it is not traversable, etc.¹ Query?

Michaelis
9 Hen. VI.

Reported in Y. B. Mich. 9 Hen. VI, p. 44, pl. 24.

Case 28.

¹ The abridgment has been slightly amended by words from the report of the case, in order to make it more intelligible.

- Michaelis
7 Hen. VI. (29) **If one pleads** a devise in bar, or by way of title, he does not show anything for it, for the will by which it is devised belongs to the executor, and not to him. And that in *Replevin*, etc.
- Case 29. The case has not been identified in Y. B. Mich. 7 Hen. VI, or in the early abridgments.
- Hilary
7 Hen. VI. (30) **In debt** upon a record in the Court of *Pié Poudré*, the plaintiff did not show the record, but a transcript of it, which came into the Chancery by *Certiorari*, and from there to the Bench by a *Mittimus*, and it was adjudged good enough, etc., for they would not go back of the plain record. But where the record is traversed or such like, etc. (Query? Then how shall it be sent back? etc. Or shall it remain in the Bench and not be sent back, etc.?)
- Statham
126 b. And it was said in the same plea, that in a *Scire Facias* out of a recovery, it is no plea to allege false Latin, or a discontinuance in the first original, etc. Query?
- Case 30. Reported in Y. B. Hilary, 7 Hen. VI, p. 18, pl. 1. See also Brooke, *Monstrans des Faits*, etc., 50; and Fitzh: *Monstrans des Faits*, etc., 78.
- Michaelis
3 Hen. VI. (31) **In debt**, the defendant demanded judgment of the writ, because the plaintiff had a complaint for this same debt, of an older date, pending against him in London, to which he had appeared. MARTYN: That is no plea for that is only an allegation. And also if the plea be good, you ought to show the record, because it is merely dilatory. BABYNGTON: If the plea be good, he need not show the record. Which was conceded, etc. (I believe the reason is because if he lacked the record, it is peremptory for him, etc. Query? For if a man shows an outlawry in the plea to a jury, he shall show the record "*sub pede sigilli*." As appeared in a writ of Debt, Mich. 50 Ed. III, etc.) COKAYN: Your plea shall not abate his writ, wherefore answer. From this it follows that although I plead a recovery in a lower Court, that that is no plea, unless I say that he has sued execution. But yet, query? For if I show that he had a judgment, then he can sue execution at his will, wherefore it is not the same, etc. But

in the Common Bench it is a good plea to say that the plaintiff had a bill¹ of an older date, for the same debt, pending against him in the Exchequer. And I believe that the reason is that they cannot make an allegation to the Barons of the Exchequer, etc., for [that Court] is not inferior to them, etc. Query, shall he show the record in that case? etc.

Reported in Y. B. Mich. 3 Hen. VI, p. 15, pl. 21.

Case 31.

(32) **In a scire facias** upon a record in a writ of Annuity, the plaintiff did not show the deed. Paschal
3 Hen. VI.

Reported in Y. B. Paschal, 3 Hen. VI, p. 40, pl. 7. See also Brooke, Case 32. Monstrans des Faits, etc., 6.

(33) **A man** brought a writ of Debt upon a recovery in a bill of debt, in the Court Kingston upon Hull¹ and the opinion was that he should show the record, etc. (Contrary said to be law.) Michaelis
11 Hen. IV.

Reported in Y. B. Mich. 11 Hen. IV, p. 12, pl. 27. See also Fitzh: Monstrans des Faits, etc., 50, where he says that it was decided by all the parties that he had no need to show the record. Apparently there was no decision; the record of the recovery was in Court, but they did not press the point. Case 33.

(34) **In formedon** in the descender for a gift made to one B, in tail, the remainder to the ancestor of the demandant, in tail, by a fine. SKRENE: He does not show the fine, wherefore, etc. NORTON: He has shown that the gift was executed. HANKFORD: There is no need to plead as to the fine, to wit: the remainder, for he has shown that the gift was made to his immediate ancestor, then he shall not be forced to show the fine; but since he has pleaded as to a remainder, and there can be no remainder without a specialty, it is necessary that you show it: as in an Avowry, if I say that such a one granted to me the rent of his tenant, and he attorned, and that I was seised of the rent for the tenant; now I should show a deed of the grant, and yet if I had not pleaded the grant, it had been a sufficient title to have alleged the seisin by itself. And albeit the tenant

¹ Words from the case.

had not answered to the fine, still it may be that there was a variance between the fine and the declaration. THIRNING: Albeit there was a variance, still the tenant should have no advantage of that, because the action was not conceived upon the fine. But yet in a Formedon in the remainder, the deed or fine should be shown to entitle him to the action, etc. And they adjourned.

Case 34. Reported in Y. B. Mich. 11 Hen. IV, p. 39, pl. 68. See also Brooke, Monstrans des Faits, etc., 34; and Fitzh: Monstrans des Faits, etc., 126. Brooke states that he did not have to show the fine, but there appears to have been no decision in the case.

Hilary
11 Hen. IV. (35) **In an appeal**, the plaintiff was nonsuited after his declaration, and the defendant was arraigned at the suit of the king, and said that he was indicted for the same felony before justices of the peace, etc. And then he showed a charter of pardon which was allowed, etc. THIRNING: Show the charter or you will be hung, for of things which remain with the party although they be of record, he shall show them; as a fine, and deed enrolled, etc.

And it was said in the same plea that if a man pleads a charter, it is not allowed that he shall plead not guilty afterwards, since the felony is in a manner admitted, etc. Query?

Case 35. Reported in Y. B. Hilary, 11 Hen. IV, p. 41, pl. 6. See also Brooke, Monstrans des Faits, etc., 36; and Fitzh: Monstrans des Faits, etc., 128.

Michaelis
11 Hen. IV. (36) **In [a writ of] dower**, the demand was for forty pounds rent. NORTON: It was found before the escheator, etc., that your husband died seised of an acre of land, held of the king in chief; and of a manor called H, from which the said rent issued: and that he had issue one F, a minor, wherefore the king seized, etc.; and we do not think, the king not counselled, etc. HANKFORD; You should show the record, for it is not like an Assize *in pais*, where the escheator can be examined, etc. Wherefore he was forced to show the record. And so note, etc. (Study this plea, for it proves that she had no reason to be endowed of the

rent, since her husband was seised of the lands in fee, so the rent was extinct. But he should not conclude in bar, but have aid.)

Reported in Y. B. Mich. 11 Hen. IV p 39, pl 69. See also Fitzh: Case 36. Monstrans des Faits, etc., 127.

(37) **In dower for rent.** PORTYNGTON: Your husband had nothing in the rent except jointly with one W, etc. SKRENE: Do you plead that as taker of the rent or as tenant of the lands? HANKFORD: He has answered your demand, wherefore he has done enough. Which the Court conceded. SKRENE: W released to our husband, etc.: but he did not show the deed. HANKFORD: It is well for you to say that your husband was seised, who could endow you, and put that in evidence, for otherwise it is hazardous. Which the Court conceded. Wherefore he took the issue in the manner, etc.

The case has not been identified in Y. B. Trinity, 11 Hen. IV, or in the early abridgments.

(38) **If an executor** brings an action and shows the will, and the defendant empars until another day, on which day the defendant demands hearing of the will, because there was a variance between the will and the writ, the plaintiff need not produce the will, for the defendant has passed that step, because he could have taken such an exception before, etc. But it is otherwise as to an obligation which remains in Court, and not with the party. And so note, etc. In Debt, etc.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

(39) **In debt upon** an obligation. RIKHILL: The obligation is endorsed, that if the defendant performs certain conditions, contained in certain indentures, that then, etc. And he said that he had performed them. TYRWHIT: Show the indentures. RIKHILL: There is no need, etc. But they were forced to show them, etc. And so they did, etc.

Reported in Y. B. Mich. 7 Hen. IV, p. 1, pl. 1. See also Brooke, Case 39. Monstrans des Faits, etc., 28; and Fitzh: Monstrans des Faits, etc., 123.

- Michaelis
7 Hen. IV. (40) **Executors brought** [a writ of] ravishment of wardship, for a ward ravished out of the possession of their testator, and they were forced to show the will, etc. It is otherwise if he had been ravished out of their own possession.
- Case 40. Reported in Y. B. Mich. 7 Hen. IV, p. 2, pl. 14. See also Brooke, Monstrans des Faits, etc., 29; and Fitzh: Monstrans des Faits, etc., 124.
- Statham
127 a.
- Paschal
12 Hen. IV. (41) **In a praecipue quod reddat**, the tenant said that one H leased the lands to him for life, the remainder to one F, in fee, of whom he prayed aid. And he was driven to show a deed for the remainder, because the deed for the remainder belonged to him for his life, if it be not indented, etc.
- Case 41. Reported in Y. B. Paschal, 12 Hen. IV, p. 20, pl. 7. See also Brooke, Monstrans des Faits, etc., 39.
- Note. **See as to monstrans**, in the title of Voucher; and in the title of Title, Mich. 3 Hen. VI; and in the title of *Quare Impedit*, Mich. 11 Hen. IV; and in the title of Conditions, many matters.
- Statham, title of Voucher, *infra*, pp. 182 a to 184 b; title of Title, *infra*, p. 175 a, case 16; title of *Quare Impedit*, *infra*, p. 148 a, case 45, title of Conditions, *supra*, pp. 42 b to 43 b.
- Trinity
10 Ed. III &
Trinity
11 Ed. III. (42) **In dower**, the tenant vouched to warranty the heir of the husband, in the wardship of one H; and he showed a deed of the husband to bind him. And the demandant demanded to hear the deed read, and had [the demand] notwithstanding he was not a party. And from this it follows that if the deed be not sufficient he shall have an answer to it, etc. And process was made against the guardian, who came and said that it was not the deed of the ancestor of the infant. And he could not have the plea but was driven to say that he did not enfeoff by the deed, wherefore he was a stranger. And from this it follows that the heir shall not have attain for the issues tried between

them, etc. And he is bound by the plea of the guardian, wherefore, query?

Reported in Y. B. Paschal (not Trinity), 10 Ed. III, p. 24, pl. 42. Case 42.
See also Fitzh: Monstrans des Faits, etc., 14. It may be well to say that the identification of this case is not wholly satisfactory, and it may be an error to call it an identified case.

(43) **In a quare impedit** for the king against one H, patron, and against the incumbent, who appeared. And the patron went away in despite of the Court. And the incumbent said that the king gave this same advowson a long time before, etc., to this same [person] who is named as patron, by his letters-patent, and he presented us, etc. POLE: He does not show the letters-patent. PRISOT: They do not belong to him, and also he does not claim the same thing which was granted by the letters. And an under-sheriff does not show the letters-patent made to his master. And if a man shall have by the king's grant, that he shall have every year one sheriff in every county, and the sheriff is impleaded, he cannot show the patent by which the king granted, etc. And the opinion clearly was that he should not show them, wherefore he passed over, etc.

Reported in Y. B. Paschal (not Hilary), 31 Hen. VI, p. 14, pl. 3. Case 43.
See also Fitzh: Monstrans des Faits, etc., 92.

(44) **If a man** has a rent charge in fee simple by grant of another person, and he grants the same to me for life, I shall not be forced to show the first deed, because it does not belong to me, but it belongs to the grantor, since he grants a lesser estate. And that by SHARSHULL in an Avowry.

The case has not been identified in Y. B. Mich. 31 Hen. VI, or in the early abridgments.

MORT DANNCESTER⁶⁷

(1) **In an assize of Mort d'Ancestor**, separate tenancy will abate the writ, for the writ is "*Scire Facias*, etc., *qui*

Statham
127 b.

Hilary
21 Ed. III.

terram illam tenant" or "*tenet*." And this in a Mort d'Ancestor.¹

Case 1. The case has not been identified unless the case in Y. B. Hilary, 41 Ed. III, p. 7, pl. 16, can be considered to be the case digested. The same point is taken there, but not in the same manner.

Paschal
17 Ed. III. (2) **In an [assize of]** Mort d'Ancestor, the tenant vouched in a foreign county, therefore the assize was adjourned and the vouchee entered into the warranty, and vouched over one who came into the Bench and [gave the deed,²] which bore date in the same county where the Assize was brought, wherefore they prayed that the Assize be remanded to try it. SHARSHULL: That cannot be, for the issue is taken out of the point of the Assize, and the demandant is no party to the issue, nor the tenant, nor the tenant any more than he. [And the Assize which is without day shall not be resummoned unless it can be taken in the nature of an Assize, and not in the nature of a *Nisi Prius*.]³

Case 2. Reported in Y. B. Paschal, 17 Ed. III, p. 28, pl. 26. See also Fitzh: Mortdancestor, 5.

Michaelis
32 Ed. III. (3) **In an assize** of Mort d'Ancestor, if the tenant vouches in a foreign county, it is a good counterplea to say that the vouchee had sufficient assets in value in the same county, etc. And that is because of the inconvenience, because the justices cannot make a process in another county, etc. But that is understood to be where it is brought *in pais*, etc., for the above reason. And the law is the same in a *Præcipe quod Reddat* before justices in eyre, for the above reason, etc.

Case 3. There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments.

Hilary
33 Ed. III. (4) **Land was given** to a man in tail and upon failure of issue, the remainder to his right heirs. And he died without

¹ There is an error in Statham here. Instead of printing the first subject on this page at the head of the page, he prints the title of the second subject on the page, so that the title of Mort d'Ancestor does not appear in the page heading at all.

² Words from the report of the case.

³ This is not in the report of the case, or in Fitzherbert.

issue, and his collateral heir brought an Assize of Mort d'Ancestor, and it was maintained. But yet, if he had issue, the issue would only have had Formedon, and consequently he would have had but a fee tail all his life, etc. Query?

There is no printed year of 33 Ed. III. Fitzh: Mortdancestor, 33, Case 4. has the case.

(5) **In [an assize of]** Mort d'Ancestor, if the tenant traverses one of the points of the writ, as to say that he is not next, [etc.] and that is found for the plaintiff, they shall not inquire as to the other points, because when one point of the writ is traversed, all the others are not denied, but, in a manner, admitted. But it is different where he confesses no point; as to say that the plaintiff is a bastard, to wit: special bastardy, which is triable by the Assize, and they find that the plaintiff is legitimate. (Still they do not inquire further as to the points of the writ, because no point was traversed, etc. But yet, query?)

Hilary
35 Ed. III.

There is no printed year of 35 Ed. III. The case has not been identified elsewhere. Fitzh: Mortdancestor, 34, has the case.

Case 5.

(6) **In an assize** of Mort d'Ancestor, the tenant said that one was seised and enfeoffed the same ancestor and one F in fee, which estate they continued until your ancestor died; and the other held herself in by the survivorship, whose estate we have, etc. And the plaintiff was made to answer that, and said that his ancestor died, etc., without this that the other had anything, etc. (Query, if that be a good reply? etc.)

Hilary
5 Hen. IV.

Reported in Y. B. Hilary, 5 Hen. IV, p. 1, pl. 1. See also Fitzh: Case 6. Mortdancestor, 35.

(7) **In [an assize of]** Mort d'Ancestor, the tenant made default, wherefore a resummons issued against him, on which day he came and pleaded in bar. HILARY: You should save the first default or else the Assize will be taken on your default. But yet he was forced to answer to his bar, etc. Query, for what cause the Assize was not awarded on the first day?

Hilary
10 Hen. IV.

The case has not been identified in Y. B. Hilary, 10 Hen. IV. See Case 7. also Fitzh: Mortdancestor, 36.

⁶⁷ The abridgment in its headline to the page [p. 126 b.] on which the cases which belong to this title appear, has "*Mayntenance de Brief*," which is the title which properly belongs to the cases on the lower half of the page. This leaves the title of *Mort d'Ancestor* without a headline or title, and the reader in glancing over the book would assume that there was no title of *Mort d'Ancestor* in the volume. There are in fact but five cases, although the Year Books themselves are filled with such cases.

The writ has been traced back to the Norman law. Bracton writes of it in both the treatise and the Note Book, and the latter contains many cases. In England the Assize of Northampton (c. 4) is supposed to be "the origin of the possessory action of *Mort D'Ancestor*." [P. & M. Hist. of Eng. Law, 2d ed., Vol. I: 138, 147.] "The *recognitio de morte antecessoris* was so called because "the parties were obliged to proceed by way of *recognitio beneficium constitutionis regni*." [Holdsworth, Hist. of Eng. Law, Vol. 1: 151.] Reeves gives the writ [Reeves, Hist. of Eng. Law, Vol. 1: 178-9]. He also sets out the procedure in full. We may catch an illuminating glimpse of the reason for the popularity of the action from two of Maitland's phrases: "The principle of the *Mort D'Ancestor* is that if a man has died in seisin, that is, possession of a tenement, and was not holding it as a mere life tenant, his heir is entitled to obtain possession of it as against every other person, no matter that such person claims, and actually has a better right to the land than the dead man had. Such a right, if it exists, must be asserted in an action: it is not to be asserted by 'self-help,' by a seizure of the vacant tenement. Another and a heavy blow is thus struck at feudal justice, for the defendant in an assize of *Mort d'Ancestor* is very likely to be the dead tenant's lord, who will have seized the lands upon some pretext of making good his seignorial claims." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 1: 148.] "The *Mort d'Ancestor* is a blow aimed at feudalism by a high-handed king." [*Ib.*, Vol. 2: 57.]

The *Mort d'Ancestor* was one of the four petty assizes. The *Assize Utrum*, *Novel Disseisin*, and the *Darrein Presentment* were the other three. The writ directs the empanelling of an inquest, "*duodecim liberos et legales homines de vicineto*." The recognitors answer the questions "the points of the assize" which are: "Was A seised in his demesne as of fee on the day on which he died? Did he die within the period of limitation allowed by the writ? Is the claimant A's nearest heir? It lay only where the father, mother, brother, sister, uncle, aunt, nephew, or niece of the claimant died seised, and a stranger abated." [Holdsworth, Hist. of Eng. Law, Vol. 3: 17.] The assize is known as one of the possessory assizes. [Holdsworth, Hist. of Eng. Law, Vol. 1: 151.] "A strictly possessory action." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 57.] Later developments of the writ were the writs of Aiel, Besaiei, and Cosinage.

MAYNTENER DE BRIEFF

(1) **In a writ of entry** upon a disseisin; against a man and his wife and their son, the son disclaimed in the tenancy; the husband disclaimed for his wife, and said that he was the villein of one J, and held the same lands of him in villeinage. And the demandant would have maintained his writ, and could not without answering to the villeinage, wherefore he said that he was free, etc., the day of the purchase of the writ, etc. And that answer is given by the Statute, etc., for at the common law that writ abated immediately by such a plea, without answer, etc. Query, if a writ be brought against two, and one says that he is tenant of the whole, etc., and the other says that he is a villein, as above, could the demandant in that case maintain his writ?

Hilary
43 Ed. III.

Reported in Y. B. Hilary, 43 Ed. III, p. 5, pl. 12. See also Brooke, Case 1. Maintenance de Brieff, 34; and Fitzh: Mayntainance de Brieff, 45. The Statute has not been identified.

(2) **In [a] cessavit** against two, one made default, wherefore the Grand Cape was awarded for the half, and the other had the same day, and then he made default again, wherefore the demandant prayed seisin of the other half, without this, etc. And the demandant maintained his writ. But yet it was said that it was in his election, to wit: to maintain his writ or to answer to the bar of the tenant, since the other had made default, and had traversed his demand. And then at the *Nisi Prius* he made default, and the demandant prayed seisin of the land for the half on which the first default was [made], and he had the petty cape for the other half. Which query, for it seems that at the return of the petty cape he could save his default for all. In consequence, the petty cape should have been awarded for all. And query as to that? etc.

Paschal
31 Ed. III.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.

Statham
128 a.

(3) **In a praecipe quod reddat** against three, one disclaimed. And the opinion of SHARSHULL and WIL-

Hilary
34 Ed. III.

LOUGHBY was that the demandant could maintain his writ, if he would; and yet the writ was a Formedon, so no inconvenience as to the damage, etc.

Case 3. There is no printed year of 34 Ed. III. Fitzh: Mayntainance de Brieff, 8, has the case.

Hilary
4 Hen. VI. (4) **In a writ of entry** in the nature of an Assize, if the tenant pleads non-tenure, the demandant shall say that he was seised, until, etc., and that he had made a feoffment to persons unknown, etc., without saying that he brought an action within the year after the title had accrued to him, etc., for the Statute of Henry the Fourth says that a man shall have an action upon a disseisin made on him, all his life, and does not say that he shall have an Assize, etc.: By MARTYN and HULS.

Case 4. Reported in Y. B. Hilary, 4 Hen. VI, p. 14, pl. 13. See also Fitzh: Mayntainance de Brieff, 15.

The Statute is that of 4 Hen. IV (1402), cap. 7, Stats. at Large, Vol. 2, p. 423 (428). "Such disseisees shall have their action."

Hilary
4 Hen. VI. (5) **In a writ of entry** upon a disseisin against the husband and his wife, who made default. And at the return of the Grand Cape the husband came and said that he was tenant of the entirety, without this, etc., and waged his law, etc. And the demandant would have maintained his writ and could not, etc., for it was not adjudged, etc.

Case 5. The case has not been identified in Y. B. Hilary, 4 Hen. VI, or in the early abridgments.

Trinity,
18 Hen. VI. (6) **In a praecipe quod reddat** against two, if one pleads non-tenure and the other says he is tenant of the whole, and pleads in bar, the demandant may answer to the bar if he will, without maintaining his writ: By NEWTON, in a writ of Forgery of Deeds, etc. And the law is the same, when at the Grand Cape one makes default, and the other says that he is tenant of the whole, etc. (But perchance it is reasonable there, because one of them was not in Court to take issue with the demandant, etc.)

Case 6. The case has not been identified in Y. B. Trinity, 18 Hen. VI, or in the early abridgments.

(7) **In an assize** against the husband and his wife, who pleaded joint tenure with a stranger, the plaintiff said that they had aliened to persons unknown, taking an estate to them, and to the third, and that the husband and his wife took the profits, etc. And the writ was abated because the husband and his wife could not take the profits in common, etc. Query, if he need to have said that they took an estate to them and to the third, etc.? Query as to this case, for the joint tenure was not pleaded by deed, etc.

Hilary
6 Hen. VI.

There is no printed year of 6 Hen. VI, Fitzh: Mayntenance de Case 7. Brieff, 9, has the case.

(8) **In a formedon** against five persons, they demanded the third part of the manor of A. MARKHAM (for two): We hold the lands jointly with one H, etc., and we held them the day, etc., without this that the others have anything in them, etc. And for two others FORTESCUE pleaded a like plea. And for the fifth he said that one F was seised of twenty acres of land, and ten acres of meadow, part of the same manor, in which case your writ should be "the third part of the manor, except, etc." And see that he who pleaded this last plea did not take any tenancy, etc., because it is to be understood that he was tenant as the writ alleged. Query, etc.? PASTON: That last plea is no plea, for it is merely a non-tenure. NEWTON: With a little more, to wit: without this, that he had anything in the said twenty acres, etc., the day, etc., or ever after, etc. Wherefore FORTESCUE said so.¹ ASCOUGH: Now the plea is good, to my thinking, for if this be found the writ will abate; as well as in an Assize where the plea is of a manor; and if such a plea be pleaded, the plaintiff cannot abridge his complaint. And the law is the same in a writ of Dower, where the demand is for a manor, etc., because a manor is entire, etc. But it is otherwise if the complaint with the demand be for so many acres, etc., for he can abridge one acre or two acres;

Michaelis
18 Hen. VI.

¹ The little more that Newton had suggested.

but if he would abridge a manor, he should abridge the third part, or the fourth part; and then it is not certain how many acres are comprised within the manor, etc. But if the complaint be of a manor, and he gives the exact number of acres there are in the manor, then it seems that he can abridge his complaint for so many acres well enough, etc. (Query?) NEWTON: Your idea is good, whether it be law or not, etc. FORTESCUE: It is a good plea to say that part of the manor is in another county. PORTYNGTON maintained his writ, and said that they were tenants as the writ alleged. Ready, etc. FORTESCUE: That is no plea, for he should answer to the joint tenure which we have alleged, to wit: to say "tenants as the writ alleges, without this that we hold jointly, etc." NEWTON: It is not necessary, to my thinking, for the tenant has taken a "*sans ceo.*" And also the last plea, to wit: the joint tenure, is not to the purpose, for the first plea is a separate tenancy, which goes to the abatement of all the writ, and if it be found for the demandant, he will recover seisin of the land, so the second plea will not be answered; no more than where one pleads a separate tenancy, and pleads over in bar and concludes: "Judgment if action." The plaintiff does not answer the second plea, because the first plea shall be the end of all. (See the plea, because it was well argued, etc.)

Case 8.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Michaelis
7 Hen. IV.

(9) **In [a writ of] wardship** against two, one pleaded the non-tenure, and the other pleaded a plea in bar, to wit: that the ancestor of the infant held of him immediately; and he was ousted of the plea. And they were in doubt whether the plaintiff should maintain his writ or else answer to the bar, etc.

Case 9.

The case has not been identified in Y. B. Mich. 7 Hen. IV, or in the early abridgments.

Note.

See as to Maintenance of Writ in the title of Saver de Defaute, etc., Trinity, 47 Ed. III; and in the title of

Several Tenancy; and in the title of Joint Tenure, Paschal, 12 Hen. IV.

Statham, title Saver de Defaute, *infra*, p. 166 b, case 5; title of Severalle Tenanncy, *infra*, p. 168 a; title of Joyntenanncy, *supra*, pp. 114 a to 115 a.

MORTMAYN

Statham
128 b.

(1) **One brought [a writ of] *Quare Impedit*** against an abbot, alleging in his title that the said abbot held of him the same advowson, by homage and fealty. And he showed that the same abbot had appropriated the same advowson to himself and to his successors, without his license; and he, within the year, seized the advowson according to the Statute, and presented, etc., and he disturbed him. **MUTLOW:** We are of the foundation of one H, etc., and we hold the same advowson of you in free alms. Ready to aver it, and if he can make an issue. **WILLOUGHBY:** Holds he by free alms or by other services, it seems that he is not within the Statute, for the Statute speaks of lands and tenements, etc. And also the Statute was made because of the injury to the lord, who might lose his escheat, etc., which injury is not here, for be it appropriated or not, he holds by the same services as before, and he can have no other advantage of an abbey, etc., for if there be a mesne lord and tenants, and the mesne be an abbot, he can purchase the tenancy, and still the lord cannot enter because he is not damaged by that, etc. But if he was lord and also founder, as in the case here, peradventure he could enter, for the founder shall have the patronage at the vacancy, etc. And if the lord will not enter within the year, the king enters, because he can have the patronage through the minority of the founder, or by an escheat, etc. **SHARSHULL:** He has no license from the king; and it seems that he should also show a license from the lord, etc. **DERRWORTHY:** Before the Statute for the clergy the king could seize by a fine in that case, and that is by his prerogative, wherefore it is not the same, etc. (See this matter, for it was an advowson in gross,

Hilary
21 Ed. III.

which is difficult to be held, etc. But if it be appendant, to wit: part of a manor, it is otherwise, etc. Many hold that a rent can be held, etc. Query?)

Case 1. Reported in Y. B. Hilary, 21 Ed. III, p. 5, pl. 15. See also Brooke, Mortmayne, 12; and Fitzh: Mortmayne, 11.

The Statute is the Statute of 14 Ed. III (1340), cap. 2, Stats. at Large, Vol. 1, p. 494 (495).

Paschal
10 Hen. IV.

(2) **If there be a mesne** lord and a tenant, and the tenant is an abbot, and the mesne releases to the abbot all the right he has in the land; in that case the lord shall have that rent. By THIRNING, in an Assize, etc. (But yet, query? For it seems that the rent is extinct; and if the lord shall have it, he shall have that rent, and also his own rent that he had before, and so he would have two seignories, etc.) And also the contrary was adjudged, Trinity, 21 Ed. III, to wit: that the lord can release part of the service, because it is not within the Statute, for in that case the abbot could not purchase the rent, but the rent is ended for that part, etc.

Case 2. There is no Paschal Term in the short printed year of 10 Hen. IV. The case has not been identified in the early abridgments.

For the Statute see case 1, *supra*.

Hilary
22 Ed. III.

(3) **If an advowson** was given to an abbot before the Statute, he can still appropriate that advowson to the House, without a license, for it does not injure any person, etc. Also it is neither land nor tenements nor temporal things, but tithes and oblations; and thus it is without the purview of the Statute. And that by the whole Court, etc.

Case 3. The case has not been identified in Y. B. Hilary, 22 Ed. III. Fitzh: Mortmayne, 16, has the case.

For the Statute, see case 1, *supra*.

Note.

See as to mortmain, in Collusion and *Quale Jus*.

Statham, title of Collusion and Covyne, *supra*, p. 47 b. Title of *Quale Jus*, *infra*, p. 148 b.

NONNSUTE

(1) **In account**, the defendant was outlawed and had a charter of pardon, and a *Scire Facias*, and the sheriff returned "*nihil*," whereupon a *Sicut Alias* was awarded and sued, and he did not come, wherefore it was adjudged that he was nonsuited upon the original writ, etc. Query, inasmuch as the original was terminated? etc.

Statham
129 a.
Trinity
45 Ed. III.

Reported in Y. B. Trinity, 45 Ed. III, p. 16, pl. 17. See also Fitzh: Case 1. Nonsuite, 11.

(2) **In [a writ of] champerty** by two, the opinion of the COURT was that the nonsuit of one should be the nonsuit of both, since the action was personal, etc.

Trinity
47 Ed. III.

Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 6, pl. 2. See also Brooke, Nonsuite, 7. Case 2.

(3) **Although a man** be nonsuited in an *Audita Querela* he shall have another *Audita Querela*, but in the second writ he shall [not] have a *Supersedeas* to the sheriff to allow the execution: as he shall have in the first writ, etc. And the law is the same in a writ of Error.

Hilary
24 Ed. III.

The case has not been identified in Y. B. Hilary, 24 Ed. III. Brooke, Nonsuite, 32, has the case, giving the citation as Y. B. 24 Ed. III, 7. In the printed Year Books 24 Ed. III begins on p. 23, not, as is usually the case, with page 1. No case of *Audita Querela* in that term appears to contain the proposition thus digested. There is a case in Paschal Term, 22 Ed. III, p. 4, pl. 12, which Brooke cites, and which does support the point in the digest. Case 3.

(4) **Although a man** be nonsuited in a *Quid Juris Clamat*, or a *Per que Servicia*, it is not peremptory. By WILLOUGHBY and THORPE.

Paschal
24 Ed. III.

Reported in Y. B. Paschal, 24 Ed. III, p. 45, pl. 30. See also Brooke, Nonsuite, 57, in the second paragraph. Case 4.

(5) **If one traverses** an office for the king, and then is nonsuited, he shall not have a new traverse. By HALS, etc., in an Office.

Michaelis
4 Hen. VI.

Reported in Y. B. Hilary (not Mich.), 4 Hen. VI, p. 12, pl. 9. See also Brooke, Nonsuite, 34. Case 5.

- Hilary
3 Hen. IV. (6) **In account**, the defendant was adjudged to account and a day was given to them to be before the auditors, on which day the plaintiff did not come, wherefore the auditors showed this matter to the Court; and the opinion was that he should be nonsuited, etc.
- Case 6. Reported in Y. B. Hilary, 3 Hen. IV, p. 7, pl. 31. See also Brooke, Nonsuite, 53. Brooke says they adjourned. Statham says that the opinion was that they should be nonsuited. The case gives no decision, but it apparently went on.
- Michaelis
3 Hen. VI. (7) **In [a writ of] debt**, the defendant waged his law, on which day ROLFF demanded the plaintiff. MARTYN: He is not demandable in this term after he has appeared, and had a day to the next day to make his law, except to hear a verdict, etc., but you wish to be nonsuited, which shall not be, etc. Wherefore he said to the defendant that he should go quit. Query? For it seems that he should have made his law, inasmuch as the plaintiff was not demandable, etc.
- Case 7. Reported in Y. B. Mich. 3 Hen. VI, p. 13, pl. 16. See also Brooke, Nonsuite, 1, where there is a line of cases given on the point, much in the modern manner. And see, Fitzh: Nonsuite, 1. The digest is slightly amended from the case.
- Hilary
11 Hen. IV. (8) **A nonsuit** in a petition of right is peremptory: By HANKFORD in a Petition, etc.
- Case 8. Reported in Y. B. Hilary, 11 Hen. IV, p. 52, pl. 30. See also Brooke, Nonsuite, 12. Hankford does not appear in the printed case. The case reads thus: "And the nonsuit was awarded; and it was said that after the nonsuit he should not have an action, . . . but the contrary seemed to be the opinion of the Court."
- Hilary
20 Hen. VI. (9) **If a man** be nonsuited in a writ of False Judgment, HODY held that the justices cannot proceed to the examination of the Errors, inasmuch as he was nonsuited in the same writ, etc., for it is not like a writ of Error, for in a writ of Error the plaintiff is nonsuited upon the *Scire Facias*, and not upon the writ of Error, and so they could, in that case, proceed to the examination, since the original by which the record came before them remained, etc. But in the False Judgment a day is given to the parties by the same

writ, wherefore, etc. Query, etc., if the sheriff holds a plea for the justices, and there is error, shall it be reversed by a writ of False Judgment, and not by a writ of Error? etc.

Reported in Y. B. Hilary, 20 Hen. VI, p. 18, pl. 11. See also Brooke, Case 9. Nonsuite, 3; and Fitzh: Nonsuite, 3.

(10) **See by BABYNGTON**, that if a man has a bill against another in the Exchequer upon his account, and is nonsuited, that he shall not have more bills, but shall be put to sue by writ, etc. And the law is the same if a bill be abated, etc. Query, if the law is the same in the King's Bench? etc.

The case has not been identified in Y. B. Hilary, 8 Hen. V, or in the early abridgments. Hilary
8 Hen. V.
Case 10.

(11) **A nonsuit** in an appeal of mayhem is peremptory, in Trespass. In the Book of Assizes. Anno
43 Ed. III.

Reported in the *Liber Assisarum*, 43 Ed. III, p. 276, pl. 39. See also Brooke, Nonsuite, 66. Case 11.

(12) **A nonsuit** of one of the plaintiffs, in Replevin, is the nonsuit of both, etc. This may be distinguished. Trinity
12 Ed. III.

There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series. Case 12.

(13) **A nonsuit** was adjudged and the writ of exigent was not returned. And that in Trespass. Michaelis
38 Ed. III.

Reported in Y. B. Mich. 38 Ed. III, p. 20, pl. 1. See also Fitzh: Nonsuite, 9. Case 13.

(14) **A nonsuit** in an Attaint is peremptory. In a note, etc. *Simile* adjudged, Trinity, 2 Ed. II. Michaelis
29 Ed. III.

The case has not been identified in Y. B. Mich. 29 Ed. III, or in the early abridgments. Case 14.

(15) **If a man demurs** in law, he cannot be nonsuited in the same term. But on the day that he has by the adjournment, he can. And that in Trespass, etc. Michaelis
7 Ric. II.

There is no printed Year Book for 7 Ric. II. Fitzh: Nonsuite, 16, has a longer digest of the case. Case 15.

(16) **In a [writ of] champerty**, the nonsuit of one of the plaintiffs is the nonsuit of all, etc. Michaelis
47 Ed. III.

Reported in Y. B. Mich. 47 Ed. III, p. 6, pl. 2. Case 16.

- Trinity
12 Ed. II. (17) **A nonsuit** in [a writ of] Neifty after an emparlance is peremptory, and the villein is enfranchised. And that in [a writ of] Neifty. But if a man of religion be plaintiff, it is not peremptory, except for his time, etc. And the law is the same as to a *feme covert*, as appeared, Mich. 3 Ed. II, in a note, etc. It seems that it shall not be peremptory except after issue joined upon the point of the [writ of] Neifty; as in a writ of Right, etc.
- Case 17. The case has not been identified in Y. B. Trinity, 12 Ed. II, or in the early abridgments.
- (18) **If the verdict** be given for the plaintiff, he can be nonsuited after verdict, for the Statute says "where it passes against the plaintiff," etc. And it might be that small damages are found, upon which it is well to be nonsuited, etc.
- Case 18. There is no citation to this case in Statham, and it has not been identified. It must be a late case, as it is after 2 Hen. IV.
The Statute is that of 2 Hen. IV (1400), cap. 7, Stats. at Large, Vol. 2, 404 (410).

NISI PRIUS

- Statham
129 b. (1) **See where a nisi prius** was granted in a *Juris d' Utrum*.
- Trinity
40 Ed. III. Reported in Y. B. Trinity, 40 Ed. III, p. 27, pl. 5. The point is found on p. 30, at the end of the long case, but was said there that "Now it is ousted by the Statute of 42 Ed. III, cap. 3; that no *Nisi Prius* shall issue until the writ of *Venire Facias* is sued and returned," (Stats. at Large, Vol. 2, p. 179, c. 11,) which is, of course, the note of a later annotator.
- Case 1.
- Hilary
24 Ed. III. (2) **The king** brought a writ of right on an advowson of St. Dunstan's, in London, against one who put himself on the great Assize. And then for the king a *Nisi Prius* was prayed, and it was granted, because those of London will not come here, etc.
- Case 2. Reported in Y. B. Hilary, 24 Ed. III, p. 23, pl. 8. See also Brooke, *Nisi Prius*, 16. The "because" is Statham's.

(13) **A nisi prius** will not be granted where one is taken on a statute merchant, and sues an *Audita Querela*, on which they are at issue, because the plaintiff cannot be delivered out of prison. And that in an *Audita Querela*, etc. Paschal
15 Ed. III.

There is no early printed year of 15 Ed. III. The case is reported in the Rolls Series, 15 Ed. III, p. 44, No. 15. The point is on p. 50. Fitzh: *Nisi Prius*, 22, also has the case. Case 3.

(4) **A nisi prius** will not be granted where anyone of the inquest is sworn here, albeit the inquest remains for lack of jurors. But it shall be taken here, etc. And if a *Nisi Prius* be granted in a *Quare Impedit*, or in an Assize of Darrein Presentment, the judgment shall be given *in pais* because of the inconvenience of a lapse, etc. In the same plea, etc. In a *Præcipe quod Reddat*; that is by the Statute, etc. Trinity
20 Ed. III.

There is no early printed year of 20 Ed. III. The case is printed in the Rolls Series, 20 Ed. III, pt. 1, p. 486. The point is on pp. 488-9. Case 4.

Statute of West. II, 13 Ed. III (1285), cap. 30, Stats. at Large, Vol. I, p. 163 (205).

(5) **If before the justices of nisi prius** the parties will discharge the inquest, and demur in law upon the evidence, the justices will not suffer it, for they have no power to discharge the inquest upon such a matter. By FORTESCUE, at St. Martyn's, etc. Paschal
30 Ed. III.

The case has not been identified in Y. B. Paschal, 30 Ed. III, or in the early abridgments. Case 5.

See as to *Nisi Prius*, in the title of Repeal, Hilary, 14 Hen. VI. Note.

Statham, title of Repelle, p. 163 a, *infra*, case 1.

(6) **A nisi prius** was granted before any names of jurors were returned, by the consent of the parties. In an Attachment upon a Prohibition. Michaelis
3 Hen. IV.

Reported in Y. B. Mich. 3 Hen. IV, p. 3, pl. 13. See also Brooke, Case 6. *Nisi Prius*, 9.

- Trinity
27 Ed. III. (7) **A nisi prius** will be granted before any names of the jurors are returned, where the tenant or the defendant cannot be essoined, etc. In a writ of Estrepement, etc. And this was before the Statute, etc.
- Case 7. Reported in Y. B. Trinity, 27 Ed. III, p. 4, pl. 11. See also Fitzh: *Nisi Prius*, 20.
For the Statute see case 1, *supra*.
- Trinity
25 Ed. III. (8) **A nisi prius** is not granted if the king be a party, etc. In a *Nisi Prius*. But if the king will consent, it is otherwise.
- Case 8. The case has not been identified in Y. B. Trinity, 25 Ed. III, or in the early abridgments.

NUPER OBIIT ⁶⁸

- Paschal
7 Ed. III. (1) **In a nuper obiit**, the tenant shall not have his age, the view, nor the voucher, notwithstanding they claim by separate descents. And that by HERLE, etc. (Query, if the action lies there, etc.?)
- Case 1. Reported in Y. B. Paschal, 7 Ed. III, p. 13, pl. 6. See also Fitzh: *Nuper Obiit*, 3; but his point is that the *Nuper Obiit* lies between parceners; this smaller point, which is taken in the course of the pleading, he does not touch on.
- Michaelis
21 Ed. III. (2) **If after** the death of the ancestor a stranger abates, and enfeoffs one of the daughters of him who died seised, etc., the other daughter shall not have the *Nuper Obiit* against him, because she does not claim by descent.
- Case 2. Reported in Y. B. Mich. 21 Ed. III, p. 32, pl. 16. See also Fitzh: *Nuper Obiit*, 4.
- Hilary
7 Hen. VI. (3) **Non-tenure** or several tenure is no plea in a *Nuper Obiit*. By NEWTON and PASTON, in a *Scire Facias*. Contrary, Paschal, 7 Ed. III, in a *Nuper Obiit*.
- Case 3. Reported in Y. B. Mich. (not Hilary), 7 Hen. VI, p. 8, pl. 12.
Newton says, "It is a sort of maxim that non-tenure, nor several tenancy, is no plea in a *Nuper Obiit*."

- (4) **A nuper obiit** for a Corody was adjudged good. Michaelis
17 Ed. II.
Reported in Y. B. Mich. 17 Ed. II, p. 503, at the bottom of the Case 4.
page. Bereford as usual is very emphatic in his decision.
- (5) **Nuper obiit** lies between sisters, of the half blood, etc., Anno 3, Ed. I.
of the seisin of the common ancestor, etc.
There are no known Year Books for the very early years of Ed. I. Case 5.
Fitzh: *Nuper Obiit*, 5, has the case.
- (6) **In a nuper obiit**, the demandant shall have judgment to hold in severalty, etc. Paschal
21 Ric. II.
There is no printed Year Book for 21 Ric. II. The case has not been Case 6.
identified elsewhere.

Query? Shall the issue have the *Nuper Obiit* where his mother was held out of the lands by her coparcener, and on the other hand, shall the issue of him who holds the other out and dies enter? Note.

⁶⁸ There are two instances of the *Nuper Obiit* in Bracton's Note Book. One [12] in 1218, the other in 1217 [1327], so the writ belongs to the older law and was in use long before the Year Books began to make any record of them.

The old "Natura Brevium" seems preferable to the more stilted style of Fitzherbert's later book, in its explanation of the writ, where it refers to the *Nuper Obiit*. The older book says, "This writ lies where a man has many heirs who inherit together, as many daughters or sons, if it be in Kent, and dies seised of certain lands or tenements held in fee simple if any of the co-heirs enter on the land, and holds the others out, then those who are held out shall have the writ against the co-heir who is in. And in the same manner this writ lies when one deforces many, or many have deforced one of her reasonable part, and the process is as in a writ of Aiel." [Old "Natura Brevium," *Nuper Obiit*, Myddylton, n. d.]

Fitzherbert in his "Natura Brevium" gives the various writs [*Nuper Obiit*, 197]. He there cites our case 2. [*Ib.*, 197.] Later writers say nothing about the writ being confined to Kent, and our first case does not appear to have been adjudicated there. It may be that the origin of the writ was among one of the customs of Kent; it has many of the earmarks of the customs common in that county. It was in use in Kent [Robinson: Common Law of Kent, 138] and is evidently connected with the writ of right *de rationabili parte*, which lay between privies in blood only, as between brothers in gavelkind. [Booth: Real Actions, 119.] None of the authors whom I have con-

sulted refer to the old "Natura Brevium," being apparently satisfied that Fitzherbert would give the whole law. As he did not, it shows that it is better not to place too much reliance upon Fitzherbert, but to go back as far as possible.

NOMEN DIGNITATIS

- Statham
130 a.
Michaelis
24 Ed. III.
- (1) **One H, Prebendary** of the Prebend of B, brought a *Quare Impedit*, etc. NORTON: While the writ was pending the plaintiff was made bishop, etc. SHARSHULL: That goes to the action. Wherefore the defendant pleaded another plea, etc.
- Case 1. The case has not been identified in Y. B. Mich. 24 Ed. III, or in the early abridgments.
- Michaelis
39 Ed. III.
- (2) **In a writ of wardship** against H. Humphreyville, who demanded judgment of the writ because he was a Count of Angers, not named Count, etc. FYNCHEDEN: Angers is out of the kingdom, and it cannot be tried here.¹ THORPE: He is summoned to be at each Parliament by that name, etc. Wherefore the writ was abated.
- Case 2. Reported in Y. B. Mich. 39 Ed. III, p. 35, pl. 43. See also Brooke, Nomen, etc., 29; and Fitzh: Nomen Dignitatis, 8.
- Paschal
2 Hen. VI.
- (3) **A writ of waste** was brought and was, "*Præcipe A*, who was the wife of W, Count of Arundel." ROLFF: She is, and was the day of the purchase of the writ, Countess of Arundel, not named, etc. Judgment of the writ. MARTYN: It is understood that she is countess, for through her husband she takes her name of countess; and if the writ had been brought against them in the lifetime of her husband it had been good, "*Præcipe W*, count, etc., and A, his wife," without naming her countess, etc., and yet she was countess in his lifetime, etc. And the writ was adjudged good, etc.
- Case 3. Reported in Y. B. Trinity (not Paschal), 2 Hen. VI, p. 10, pl. 1 (point on p. 11). See also Brooke, Nomen, etc., 2; and Fitzh: Nomen Dignitatis, 1.

¹ Whether he was a count or not.

(4) **See by PASTON**, that "knight" is a name of dignity, Hilary
for if he be made a knight pending the writ, it abates [the writ]. And the law is the same if he be not named knight
when he is plaintiff. Well argued. 7 Hen. VI.

Reported in Y. B. Mich. (not Hilary), 7 Hen. VI, p. 14, pl. 24 (point on p. 15). See also Brooke, Nomen, etc., 18; and Fitzh: Nomen Dignitatis, 2. Case 4.

See as to names of dignity, in the title of Writ, etc. Note.
Statham, title of Briefe, *supra*, pp. 28 b to 31 a.

NONNABILITE

(1) **In a cui in vita brought by two**, the defendant said that one of them was a professed monk. HORTON: What say you to the other? SKRENE: That goes to both. Which the Court conceded. Wherefore he said that he was not professed. Ready. And the other alleged the contrary. Query, shall the tenant answer to the other? For it is not reasonable that if the issue be found against the demandant that the other demandant should recover seisin of the land, for that plea goes to the action; and where a plea goes to the action, although it be in disability of the person, it does not disable any but himself. As in a case where an outlawry for a felony is alleged as to one of them. But yet a man can answer and say that it was his own folly to name him who was thus disabled, in the writ, etc., in which case the plea goes only to the writ, etc. Query?

Reported in Y. B. Mich. 7 Hen. IV, p. 2, pl. 11. See also Brooke, Case 1. Nonabilitie, 8; and Fitzh: Nonabilitie, 19. Michaelis
7 Hen. IV.

(2) **One A, vicar of the church of B**, brought a writ of debt upon an obligation against one F, who demanded judgment of the writ, because on such a day the plaintiff entered into religion, etc. PASTON: He does not say whether he entered into religion before the obligation or afterward. MARTYN: Be it one or the other, the obliga- Michaelis
3 Hen. VI.

tion is void. STRANGE: His superior and he himself shall have an action. Which was denied, etc. ROLFF: You shall never be received to say that we entered into religion, for you are bound to us by the name of vicar, as above. And it was not allowed. Wherefore he said that the Abbot of Spresented him to the same vicarage, and we were discharged of obedience, and then the defendant made this obligation, etc. MARTYN: That is no plea, unless you say that you have pleaded and have been impleaded by such a name from time, etc. Which BABYNGTON conceded. Wherefore he said (as above). BABYNGTON: It is well that you say something else, because of the Statute, which says that a man of religion shall not present to such a vicarage, etc. Wherefore he said that he was presented before the Statute, etc. Which Statute was in the time of King Henry IV, etc.

Case 2. Reported in Y. B. Hilary (not Mich.), 3 Hen. VI, p. 23, pl. 2. See also Brooke, Nonabilitie, 2; and Fitzh: Nonabilitie, 1.

The Statute of 4 Hen. IV, does not contain any such provision as that quoted in the case.

Note. **See as to non-ability**, in the title of Excommunication; and also in the title of Outlawry, etc.

Statham, title of Excommengement, *supra*, p. 79 b. Title of Utlary, *infra*, pp. 187 a 188 b.

Hilary
12 Hen. IV. (3) **In debt**, the defendant said that the plaintiff was a professed monk in a house in Normandy; judgment if he shall be received. THIRNING: That is no plea, for it cannot be tried. But if you show that he is under the obedience of any superior in this kingdom, then you can have the plea. Which HANKFORD conceded, etc.

Case 3. Reported in Y. B. Hilary, 12 Hen. IV, p. 16, pl. 12. See also Fitzh: Nonabilitie, 2.

NONNTENURE

Statham
130 b.
Michaelis
45 Ed. III. (1) **In a scire facias** out of a fine, the tenant, as to part, pleaded non-tenure. And I believe that the reason is

because when a man pleads non-tenure of part he shall say that he was tenant of that same part, etc. Query? *Simile*, Michaelis, 38 Ed. III.

Possibly the case reported in Y. B. Trinity (not Mich.), 45 Ed. III, Case 1. p. 17, pl. 1. There is little to identify the case as it stands in the abridgment.

(2) **In a praecipe quod reddat** for rent, the tenant said Michaelis
that he was tenant of the lands of which, etc., and that 21 Ed. III.
he paid the rent to one H, so there was a taker of the rent,
against whom the writ should have been brought; judg-
ment of the writ. And the plea was adjudged good, etc.

Reported in Y. B. Mich. 21 Ed. III, p. 33, pl. 20.

Case 2.

(3) **In a resummons** of Wardship against the heir of the Hilary
defendant, he would have pleaded non-tenure of the body 18 Ed. III.
and could not, etc.

Reported in Y. B. Hilary, 18 Ed. III, p. 4, pl. 15. But the non- Case 3.
tenure is but a point in the midst of the case. See also Fitzh: Non-
tenure, 23.

(4) **In a praecipe quod reddat** for the third part of a Hilary
manor, non-tenure as to part abates all the writ, notwith- 18 Ed. III.
standing the Statute, etc. But it is otherwise in a writ of
Dower, for there is no third part, and there is no certainty
in the writ, but in the demand, etc. Study well, etc.

The case has not been identified in Y. B. Hilary, 18 Ed. III, or in the Case 4.
early abridgments.

The Statute of 34 Ed. I (1306), *De Coniunctim Feoffatis*, Stats. at
Large, Vol. 1, p. 313.

(5) **In a writ of wardship**, the defendant said that he had Michaelis
nothing in the wardship except at the will of one H; judg- 24 Ed. III.
ment of the writ. WILLOUGHBY: Such a writ is maintain-
able against a guardian in socage, who claims nothing
except by reason of nurture, and, consequently, against you.
THORPE: Then H has lost his voucher, etc. And it was
the opinion that the writ was good, because he had posses-
sion, and was a deforcer, etc. Query?

Reported in Y. B. Mich. 24 Ed. III, p. 31, pl. 11. See also Brooke, Case 5.
Nontenure, 24; and Fitzh: Nontenure, 16.

Hilary
7 Hen. VI.

(6) **In a scire facias** out of a recovery against one H, who said that a long time before the purchase of the writ one H was seised, etc., until disseised by one F, who enfeoffed the tenant, and pending the writ the disseisee had entered and so our estate is defeated; judgment of the writ. **NEWTON:** That is only a non-tenure, wherefore we pray execution. **PASTON:** But it is a special non-tenure, for he has admitted that at one time, pending the writ, they were tenants. And it is a good plea to say that he had nothing except for a term of years, of the lease of such a one, etc. **MARTYN:** Had it been shown that one had recovered the lands against him, pending the writ, the writ had been good, but to say as above is difficult, etc. **GOODEVE:** If you have a judgment against me in a *Scire Facias*, and before you enter I purchase the lands and you oust me, I shall have the Assize, because I cannot plead non-tenure in a *Scire Facias*, etc. And the law is the same here, for if the demandant had judgment against you and entered, he who is tenant shall have an Assize, wherefore he has no power, unless he have an execution at his peril, etc. And from that it follows that a man cannot plead that he was not tenant, but "one such is tenant," unless it be at his peril. **NEWTON:** If the disseisee enters upon the tenant, pending a writ against the tenant, and the demandant proceeds and recovers and enters, the disseisee shall have the Assize; and if he pleads the recovery, he shall show how he entered pending the writ, without saying more, for by that entry that writ was abated. But if the disseisee entered after judgment and before execution, and then he who recovered enters, and then brings the Assize, and he pleads that recovery in bar, then he should traverse the title of him who recovered, for by his entry after judgment the writ was not abated, etc. And they adjourned. Note that reason, etc.

Case 6.

Reported in Y. B. Mich. (not Hilary), 7 Hen. VI, p. 16, pl. 26. See also Brooke, Nontenure, 19. The case is long and confused, and the language of the abridgment is not clear. It is difficult to convey the sense without entirely rewriting the case, which does not seem to me allowable.

(7) **Non-tenure** is a good plea in a writ of *Ejectione Firmæ*: By the opinion of PASTON, in a Formedon, etc., since he recovers his term, etc. Which NEWTON denied. But they said it was a good plea in a *Quare Ejecit infra Terminum*, etc.

Hilary
26 Hen. VI.

There is no printed year of 26 Hen. VI. Fitzh: Nontenure, 20, has the case. Case 7.

(8) **In a scire facias** a special non-tenure is a good plea, but not in a *Præcipe quod Reddat*: By PORTYNGTON, etc. Query as to the distinction? etc.

Michaelis
31 Hen. VI.

The case has not been identified in Y. B. Mich. 31 Hen. VI. Fitzh: Case 8. Nontenure, 21, has the case.

NUSANNZ⁶⁹

Statham
131 a.

(1) **A writ of nuisance** was removed out of the county by a pone; and here in the Bench the defendant had the view, and after the view he was essoined, and on the day of the essoин he made default, wherefore BELKNAP prayed a *distringas* against him to answer to the default, and to the party in place of a petty cape; as in a *Quod Permittat*, etc. And the said Court that he should have no such writ in either writ, but he could have a *distringas* to answer to the party and not to the default; and it was so adjudged, etc. And so see that such a writ, which is a sheriff's writ, is a summons, and not determined by the Assize. As appears by the *Registrum*, etc. Which see.

Paschal
42 Ed. III.

Reported in Y. B. Paschal, 42 Ed. III, p. 9, pl. 9. See also Brooke, Nusans, 4. Case 1.

(2) **In an assize of nuisance** the defendant said that the plaintiff had abated that which was alleged to be a nuisance, pending the writ; and the plea was adjudged good, etc. Which see, because a good Assize.

Michaelis
46 Ed. III.

Reported in Y. B. Mich. 46 Ed. III, p. 23, pl. 7. See also Brooke, Nusans, 6; and Fitzh: Nusans, 7. Case 2.

Michaelis
11 Hen. IV.

(3) **See an assize of nuisance**, Mich. 11 Hen. IV, where the form of the writ of nuisance is well touched upon, to wit: When it shall be "*Arctavit, obstruxit,*" etc., and when "*Levavit seu [divertit] cursum,*" etc.

And it was said in the same plea by HANKFORD: that a man shall not have an Assize for a road in gross. Which was conceded, etc.

Case 3.

Reported in Y. B. Mich. 11 Hen. IV, p. 25, pl. 48. See also Brooke, Nusans, 9.

⁶⁹ The assize of nuisance is treated by Bracton as a variation of the writ of *Novel Disseisin* [Bracton: III, 162-164], the idea being that the raising, throwing down, or destroying of anything belonging to the freehold was a *disseisin*. In the Note Book there are several examples of the assize of nuisance [N. B. 701, 806, 1081, 1196, 1253, 1785, 1804, 1953]. As these cases from the Note Book are of a very early date (1216-1221), they mark the beginning of a line of cases on the subject which come down uninterruptedly to this day; the procedure, of course, has changed. The word itself has survived all vicissitudes and is as common or even more common than in the olden days. Everywhere and in all times the nuisance, or annoyance, or injury, arises, and in that day as in this it called for some legal redress, lest the strong hand and the self-help put all peace out of the question. The courts have been abating nuisances ever since the first writ gave a legal right to do that which had been theretofore done by force.

There is no necessity of writing of the writ here. That which has been done many times needs no doing over.

OFFICE

Michaelis
2 Hen. IV.

(1) **Although it be found** before the escheator that one W was outlawed, that is not to the purpose, unless they have the record. And that in an Office, etc.

Case 1.

Reported in Y. B. Mich. 2 Hen. IV, p. 5, pl. 17. See also Brooke, Office before Escheators, 5; and Fitzh: Office, 3.

Michaelis
32 Ed. III.

(2) **It was found** by an office that one W died seised of a manor held of the king in chief, which descended to one R, as son and heir of the said W; and that the said R was a fool from his birth, and an idiot; wherefore a *Scire Facias* issued against one N, tenant of the manor, [to answer] "if he

knew," etc., who came and said that this same R, after the death [of W] released to one F, then tenant, etc., all the right, etc., who enfeoffed us, etc., at which time R was of good memory, without this that he was a fool from his birth. Ready. FYNCHEDEN: Inasmuch as he has admitted an alienation without a license, and it has been found that the land is held of the king, we pray that the lands may be seized into the hands of the king to have a fine, etc. FENCOT: We have answered to that for which we were garnished; and seisin by the king cannot be recognized by us unless the issue be found against us. And furthermore the year is passed, so he cannot seize without a *Scire Facias*. Which was conceded, etc. And they adjourned. Query, if he can seize after the year for an alienation without a license, without suing a *Scire Facias*, etc.?

There is no printed year for 32 Ed. III. The case has not been Case 2. identified in the early abridgments.

See as to office, in the title of Traverse, many matters. Note. And also in the title of Livery, etc.

Statham, title of Traverse, *infra*, pp. 169 a to 169 b. Title of Liverree, *supra*, pp. 120 a to 120 b.

(3) **The Bishop of B died**, and a writ issued out of the Exchequer, in the county where he died, to inquire on what day he died. And it was certified that on such a day, etc. And then another writ issued in another county, where the cathedral church was, to inquire as to the value of his temporalities and what day he died. And it was certified on another day, which was a long time before the first day. And because the chapter should have the temporalities during the vacancy, they wished to traverse the second office. FORTESCUE: Since it was certified what day he died, the second writ was wrongly awarded. And if it were well awarded the chapter shall not traverse it, but that which is to the greatest advantage for the king shall be taken; as if it be found by different offices in different counties, to wit: by one office that the heir of the tenant of the king is of one age, and by another office, of another; that which is

Hilary
32 Hen. VI.

best for the king shall be taken, and the heir shall not have any traverse to that, when he wishes to sue livery, because he will affirm the same office by his suit, etc. Which all the justices conceded. And then FORTESCUE changed his opinion, and said that it was not the same as the case of the heir, inasmuch as the heir is found heir by an office, and afterwards affirms the office by the suing of the livery, in which case he shall not have a traverse, etc. But it is otherwise in the other case, etc. The reason is apparent, etc.

- Case 3. The case has not been identified in Y. B. Hilary, 32 Hen. VI, or in the early abridgments.
- Paschal
3 Hen. IV. (4) **If a man** desires to traverse an office, he shall entitle himself, and not say that he was seised, "without this," etc. As appeared in an Office, etc.
- Case 4. Reported in Y. B. Paschal, 3 Hen. IV, p. 14, pl. 1. The abridgment gives a very poor idea of the case.

ORDINARY

- Statham
131 b.
Michaelis
45 Ed. III. (1) **If a man** be bound, and does not bind his heirs or executors, and dies intestate, and the ordinary sequestrates, he shall be bound by that; just as the executor will be, because he represents the office of an executor, etc. And that is by the Statute of Westminster the Second.
- Case 1. The case has not been identified in Y. B. Mich. 45 Ed. III, or in the early abridgments.
The Statute of Westminster the Second, 13 Ed. I, cap. 19 (1285), Stats. at Large, Vol. 1, p. 163 (194).
- Paschal
35 Ed. III. (2) **The ordinary** cannot have an action of debt, although he has an obligation made to him who died intestate, etc., for an action of debt is given against him, but not for him, etc.
See by THORPE in the same plea, that there is nothing which can compel the ordinary to commit the administration. And that in Debt, etc.
- Case 2. There is no printed year for 35 Ed. III. The case has not been identified in the early abridgments. Fitzherbert does not have the title.

OBLIGACION ⁷⁰

(1) **An obligation was made thus:** "Memorandum, Hilary that W H, *tenetur A de B in viginti libris, [sibi] solvendum,*" ^{40 Ed. III.} etc. And because the words were in the third person, the opinion was they could not bind a man, unless the deed were indented (which deed was not good).¹ And also the deed was sealed, and no mention was made in the obligation that it was sealed; and for that reason it was adjudged that the plaintiff take nothing, etc.

Reported in Y. B. Hilary, 40 Ed. III, p. 1, pl. 2. See also Brooke, Case 1. Obligation, 18.

(2) **In debt** against an abbot, he showed the obligation Trinity made by his predecessor, which read, "*Noverint, etc., me 14 Hen. VI. abbatem teneri, etc. In cuius rei, etc., testimonium [huic presenti scripto] sigillum conventur [apposui].*" NEWTON: We will demur upon that, etc. PASTON: It seems good, for if he had said, "with the assent of the convent," that had been good. And so much is proved when it is proved with the convent seal; for otherwise they could not have delivered the seals to him, etc. And they adjourned, etc.

Reported in Y. B. Anno 14 Hen. VI, p. 16, pl. 54. The argument in Case 2. the abridgment does not follow that in the case. But in neither are the arguments very clear.

See as to obligation, in the title of Feoffments and Note. Deeds.

Statham, title of Feoffments et Faitz, *supra*, pp. 97 a to 97 b.

⁷⁰ Obligation, as we find it in these two cases, and as it appears in the Year Books, refers to a special sort of obligation. Bracton used the term as the Romans used it; not so the Year Books. The obligation that they know is that "set down in the bond." If the bond is wanting there is no obligation. It meant simply and entirely the bond—the thing itself. But every bond was not good; they scrutinized the bonds very closely and any error or omission was severely dealt with. Cowell in his Dictionary, the first edition of which was published in 1607, says

¹ Words not in the case. The case gives citations to other cases to show where an obligation in the third person will be good.

that "Obligation, *obligatio*, is a bond," and makes no reference to any use of the word except in regard to the bond. Coke says it "is a word of his own nature, of a large extent, but it is commonly taken in the common law for a bond containing a penalty." [Coke, 1st. Inst. 172.] The older dictionaries of the law do not contain the word at all. The Roman idea of obligation in the wider sense, was, of course, known to Coke, but with that knowledge evidently in his mind, he excludes all thought of it from the scope of the word at the common law. They were still speaking and thinking in the same way in Elizabeth's time. [See *Hayford v. Andrews*, Croke, Eliz. 697.] "An agreement by parol cannot dispense with an obligation." And the same was true in the time of James I. [See, among other cases, *Abbot v. Rookwood*, Croke, James, 594.]

The later development of the law and the idea of the modern law of Obligation is too well known to need any further exposition here. It is all modern law, and has no place in these notes.

OYER AND TERMINER

Statham
132 a.
Trinity
4 Ed. III.

(1) **In the oyer and terminer**, if the party makes default on the first day, a man shall have a *Venire Facias*, or a pone *per vadium* at his election.

Case I.

The case has not been identified in Y. B. Trinity 4 or 5 Ed. III.

OFFICE DE COURTE

Trinity
35 Ed. III.

(1) **In a writ of entry** within the degrees, the tenant prayed aid of a stranger, who was not named in the writ; and the demandant could not grant the aid, for then his writ would abate. But in that case the Court *ex officio* will grant the aid. As appeared in a writ of Entry, etc.

Case I.

There is no printed year of 35 Ed. III. The case has not been identified in the early abridgments.

Hilary
38 Ed. III.

(2) **In a quare impedit**, [a writ] to the bishop was awarded upon the default of the plaintiff, who was non-suited. And then the justices were informed by the attorney for the plaintiff that the attorney for the defendant had not any warrant, wherefore they did not send the writ

to the bishop to surcease, etc. And so note a judgment was reversed *ex officio*, by the Court, without a writ of Error, etc. Query? Suppose he were installed before the second writ came to the bishop, etc.

Reported in Y. B. Paschal (not Hilary), 38 Ed. III, p. 8, pl. 4.

Case 2.

PLENITIE

(1) **In a quare impedit**, plenitie is no plea against the king, albeit he claims in the right of another.

Statham
132 b.

Reported in Y. B. Hilary (not Paschal), 44 Ed. III, p. 3, pl. 14. See also Brooke, *Plenitie*, 2.

Paschal
44 Ed. III.
Case 1.

(2) **One brought a *Quare Impedit*** against an abbot, and counted that one H held an advowson of him, etc., and he bound the possession, etc. And he said that the said H aliened the same advowson in mortmain, to the same abbot who is now defendant, and to his successors, without license, so it belongs to him to present, because it is still within the year, etc. **FYNCHEDEN**: The church was full six months before the writ was purchased; judgment of the writ. **THORPE**: That goes to the action, for you can have no other action. **SHARSHULL**: If the year be passed, the lord paramount shall have it for half a year, and plenitie is no plea against him, because there is no default in him; no more here, etc. And that was the opinion, etc. Wherefore he said that H was never seised of the advowson, etc. Query, if that be a plea? For it seems that he should answer whether he held the advowson, etc. And also it does not appear by his declaration whether the advowson was in gross or appendant, for if it be in gross it is hard to be held, etc. Query? etc. It seems that when plenitie is alleged of the presentation of the plaintiff or of the defendant, or of a stranger, it does not change the case, for that shall not be an issue, to wit: if it be on one presentation or on another, but [he shall] answer to this that it is full, etc. No more than when one alleges joint tenure by deed of the gift of the plaintiff, or of another; that is

Trinity
21 Ed. III.

a part of that plea which shall be answered, etc. Query? See the Statute which says, "*Quoad [hoc] si pars rea excipiat de plenitudine ecclesie per suam propriam presentationem non propter plenitudinem illam,*" etc. Query, what the common law was, and is? etc. It seems that it was a plea at the common law, to wit: the plenitie of the presentation of the plaintiff on the day the writ was purchased; and now that is ousted by the Statute of Westminster the Second, etc.

- Case 2. Reported in Y. B. Trinity, 21 Ed. III, p. 27, pl. 25.
 Statute of Westminster the Second, 13 Ed. I (1285), cap. 5, Stats. at Large, Vol. 1, p. 163 (177).
- Paschal
18 Ed. III. (3) **In a quare impedit** by the king, plenitie was pleaded against him, albeit she made title of the endowment of the king, and bound the presentation in the king, etc.
- Case 3. The case has not been identified in Y. B. Paschal, 18 Ed. III, or in the early abridgments.
- Hilary
18 Ed. III. (4) **Plenitie** is a plea for the patron and not for the incumbent, nor for the bishop against the patron; but for the bishop against the archbishop it is a good plea, although the clerk be in by the bishop, or by another disturber, etc., to wit: to say that it was full, six months before the purchase of the writ, etc. As appeared in a *Quare Impedit*, which see.
- Case 4. The case has not been identified in Y. B. Hilary, 18 Ed. III, or in the early abridgments.
- Trinity
8 Ed. III. (5) **In an assize of Darrein Presentment** brought by the Prior of St. John against one J, who said that the church was full of the presentation of the predecessor of the plaintiff, etc. And he had the plea. But yet many hold that a man shall never allege plenitie except of his own presentation, etc. Query?
- Case 5. The case has not been identified in Y. B. Trinity, 8 Ed. III, or in the early abridgments.
- Hilary
30 Ed. III. (6) **In a scire facias** brought by one coparcener against the other, upon a composition, plenitie is no plea, for by

the Statute she shall have a *Scire Facias* when she will; as well after the six months as before, etc.

The case has not been identified in Y. B. Hilary, 30 Ed. III, or in Case 6. the early abridgments.

The Statute of Westminster the Second, 13 Ed. I (1285), cap. 5, Stats. at Large, Vol. 1, p. 163 (177).

(7) **It is a good plea** to say that the church was full of the presentation of the plaintiff before the purchase of the writ, and still is, without saying that it was full, six months before, for if it be full of his presentation, he had no cause of action, etc. Michaelis
12 Hen. IV.

Reported in Y. B. Mich. 12 Hen. IV, p. 11, pl. 21.

Case 7.

See as to plenitie, in the title of Darrein Presentment, Mich. 45 Ed. III, good matter. And also in the title of *Quare Impedit*, etc. Note.

Satham, title of Darrein Presentment, *supra*, p. 76 b, case 2. Title of *Quare Impedit*, *infra*, p. 146 a to 148 b.

PREScription⁷¹

(1) **A man can have** a warren by prescription without a grant of the king (but this is meant in his own lands, which are held of him, and not in other lands, as I believe). Query? etc. In Trespass. But yet it may be that those lands in which I claim the warren were the lands of my ancestor before time, etc., and that he reserved the warren, etc. Satham
133 a.
Paschal
43 Ed. III.

Reported in Y. B. Paschal, 43 Ed. III, p. 13, pl. 7. See also Fitz: Prescription, 41. The point is not much clearer in the printed case. Case 1.

(2) **A man can hold** all kinds of pleas by prescription, but he cannot have jurisdiction of the pleas out of the Court of the King by prescription, but he should have a special grant from the king, etc. *Simile* Paschal, 38 Ed. III. Hilary
45 Ed. III.

Reported in Y. B. Hilary, 45 Ed. III, p. 1, pl. 2 (on p. 3).

Case 2.

- Trinity
46 Ed. III. (3) **A man** can have a franchise of infangthief and outfangthief by prescription; also of waif and stray, but not of chattels of felons, and fugitives, because that belongs to the crown, etc. By *KNYVET*, in a note.
- Case 3. Reported in *Y. B. Trinity*, 46 Ed. III, p. 16, pl. 10. See also *Brooke*, Prescription, 10; and *Fitzh: Prescription*, 27.
- Trinity
49 Ed. III. (4) **In trespass** for trees cut in L, in the county of D, the defendant said that he held one acre of land in the vill of H, of one F, as of his manor of K, in bondage, which manor of K is in the county of W, and we say that this H had common appendant for himself and all his tenants in bondage, in the place where, time, etc. And so note that he prescribed in the right of his master; for tenant at will cannot prescribe, etc. And with this agrees the year nine of Henry the Sixth, in the case of *Chaworth*, etc.
- And see in the same plea, that if a man brings an Assize in adjoining counties he shall have two writs and one patent, etc.
- Case 4. Reported in *Y. B. Trinity*, 49 Ed. III, p. 19, pl. 2. See also *Fitzh: Prescription*, 43.
- Michaelis
21 Hen. VI. (5) **A man** cannot prescribe to have jurisdiction, nor to have fines, nor issues which are forfeited to the king, for when such things have accrued to the king by matter of record a man cannot have them by prescription, etc. But of other things which belong to the king and the title of the king accrues to him by matter of record, the law is otherwise; as of Waif, Stray, Wreck of the Sea, Treasure Trove, and so of like things. By *FORTESCUE*, in *Trespass*, etc.
- Case 5. The case has not been identified in *Y. B. Mich.* 21 Hen. VI, or in the early abridgments.
- Trinity
22 Ed. III. (6) **In a writ of annuity** brought by a prior, who prescribed in the annuity, and bound the seisin in one H, his predecessor. *BIRTON*: That H was never seised, etc. And the opinion was that he should have the plea without traversing the prescription, etc. And the law is the same in a

Cessavit, etc. Query? Because such a case of *Cessavit* is unintelligible, unless it be of a fee farm, etc.

The case has not been identified in Y. B. Trinity, 22 Ed. III, or in the Case 6. early abridgments.

(7) **In debt**, the plaintiff counted that one D was seised of the manor of H, in the vill of C, in the county of Huntingdon, where the writ was brought, within which manor the said D had a Court three weeks in three weeks, and that he and all, etc., lords of this same manor, had had such a Court and jurisdiction in pleas of debt for all manner of sums arising within the same manor, and that the said plaintiff such a day, etc., at a Court held in the same manor before such a one, etc., affirmed a plea of debt against the defendant, and demanded from him one hundred shillings, etc. And he appeared and admitted his action, wherefore action accrued, etc. MARKHAM: Where you have alleged the manor to be in C, in the county of H, it is in the county of M. Ready, etc. NEWTON: That is no plea, for C, in the county of H, cannot be understood to be C, in the County of M; and you can say, "no such vill," etc. ASCOUGH: He could say, "no such record," and that would be tried by the jury. NEWTON: Certainly not, but by the record, for it is a Court of record by his prescription. Which the Court conceded. And note that he could prescribe to hold such pleas, etc. But he could not prescribe to have jurisdiction of pleas out of the Court of the King, etc. The reason is apparent, etc. But yet some say that if he can show an allowance in Eyre of such a prescription, to wit: to have jurisdiction of pleas out of the Court of the King, that the prescription is good, etc., or an allowance in the Bench, etc. PASTON: If the entitling be the "Court of such a one, held at C, in the county of H," then it is perilous to say, "no such record," etc. (And see here that he did not show the record in maintainance of his action, etc.) MARKHAM said that the plaintiff affirmed a complaint for one hundred shillings against the defendant in the Court of the said D, at C, in the county of M, without this that there was any such record at C, in the county of H, etc., and he demanded

Michaelis
18 Hen. VI.

judgment of the writ. PORTYNGTON: Emparle. Query as to that plea, for it amounts to no more than "No such record at C, in the county of H," etc., unless he would aid himself by the Statute which says that "an action of debt and detinue, etc., shall be brought in the county where the contract was made," etc. And also it seems that the plaintiff can pray his debt, inasmuch as he does not deny the action; wherefore he could say, as above, and that the plaintiff had released to him in the same county, etc., and not admit the action of the demandant, etc., for the demandant would not have any answer to that, but he could maintain his writ, etc. But if he pleaded thus, peradventure the defendant would be estopped to plead any other plea, etc.? Study this plea well, etc.

Case 7. The case has not been identified in Y. B. Mich. 18 Hen. VI. Fitzh: Prescription, 45, has the case.

The statute is that of 6 Ric. II (1382), cap. 2, Stats. at Large, Vol. 2, p. 252 (253).

Paschal
19 Hen. VI.

(8) A **parson** brought a writ of Annuity against an abbot, who prescribed, etc. FORTESCUE showed how a composition was made between their predecessors for default of tithes, by which the predecessor of the abbot granted the same annuity, etc. And so he should have counted upon the composition, and not upon the prescription; judgment of the count, etc. NEWTON: It does not appear by your plea if the composition was made after time of memory; and if it was made before time, etc., then he has done well. Yet if it were made after time, etc., it is hard for it to be a good plea. FORTESCUE: If the king grants to me a rent by his letters-patent, before time of memory, I shall count upon them. NEWTON: [No, my Lord.] FORTESCUE: I suppose it to be of a thing as to which a man cannot prescribe, to wit: as to jurisdiction of pleas out of the Court of the King, and the like. NEWTON: Then you should show an allowance after time of memory, etc. And they adjourned, etc.

Case 8. Reported in Y. B. Trinity (not Paschal), 19 Hen. VI, p. 75, pl. 3. See also Brooke, Prescription, 22; and Fitzh: Prescription, 5.

(9) **A man** can prescribe to hold pleas, but not to demand jurisdiction of pleas. And that in [a plea] of false judgment, etc. Hilary 45 Ed. III.

Reported in Y. B. Hilary, 45 Ed. III, p. 2, pl. 2. (The case begins on p. 1.) Fitzh: Prescription, 42, has the case. Case 9.

(10) **A prescription** that all the inhabitants of such a vill should have common in a certain place, is not good, because they are not a corporation. By all the COURT, in [a writ of] Debt, etc. Trinity 22 Hen. VI.

The case has not been identified in Y. B. Trinity, 22 Hen. VI. Fitzh: Case 10. Prescription, 46, has the case.

(11) **The king had given** an office to one in Ireland, by his letters-patent, to be occupied by himself or by his deputy; and then he gave the same office to another; and the first patentee brought a *Scire Facias* against the second patentee, who came and said that the land of Ireland is separate and distinct from this land of England, and that they had power to call a Parliament there from time, etc. And that at a Parliament held there a Statute was made, that if a man had any office there, and he did not come before a certain time to occupy it, in his own person, that he should be discharged. And he said that the plaintiff occupied his office by a deputy, and did not come in his own person, wherefore he was discharged by the authority above mentioned; wherefore the office became vacant, and the king by these letters-patent gave it to the defendant, etc. PORTYNGTON: The land of Ireland cannot prescribe in things which are prejudicial to the king; for if they would make a Statute there that one of his enemies should have a vill there, which was the king's, that would not bind the king; no more can they defeat the patents of the king. FORTESCUE: That prescription is not in any person in Ireland, but it is in the king, for as I understand it, no tenant at will can prescribe, and yet tenant at will of the king can prescribe, since his prescription is in the king. For the Chancellor of England can prescribe as to a presentation to the church, under a certain value, and yet he Statham 133 b. Michaelis 19 Hen. VI.

holds his office only at will. And so can the chief justice of the Common Bench give an office in the Bench to one for the term of his life, and that by prescription, and still he is only in his office at will; so here. And in many cases the king shall be disinherited by prescription, for in gavel-kind, where one is attainted of felony, the king shall not have the day nor the waste nor the escheat, although it be held of him in chief. And also a man shall have Waif by prescription, which belongs to the king *de jure*. And they adjourned, etc. It seems that this *Scire Facias* should have been sued in Ireland, and not here. (Query as to that?)

Case 11. The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the early abridgments.

Michaelis
27 Hen. VI. (12) **In a writ of annuity** against a vicar, the plaintiff prescribed, etc. DANBY: That vicarage was founded such a year, after the time of memory, by the Bishop of S; judgment, etc. POLE: That is no plea, for it is only an argument to prove our prescription false. And such was the opinion, etc., wherefore he traversed the prescription.

Case 12. The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the early abridgments.

Hilary
22 Hen. VI. (13) **If a man** wishes to prescribe a custom within a vill, he ought first to prescribe that this same vill has been a vill since time, etc. As appeared in the case of *Bonville*, etc.

Case 13. The case has not been identified in Y. B. Hilary, 22 Hen. VI. Fitzh: Prescription, 47, has the case.

Michaelis
19 Hen. VI. (14) **In replevin** against a prior, who avowed because he and his predecessors were seised of two shillings of rent, issuing out of an acre of land, of which, etc., of time, etc. And he said further that they were accustomed time, etc., to distrain for the same rent, as it behoved them to do. YELVERTON: Your predecessor brought a writ of Annuity against our father, then being seised of the same acre in tail, for the same two shillings, in the time of King

Henry the Fourth, upon which writ this fine was levied between them, by which our father granted to him and to his successors the said two shillings of rent, to pay, etc., without this that you or your predecessors have been seised before this fine was levied, of time of which, etc. **MARKHAM**: That is only an argument, for such a fine does not change our title, which we had before; and if it did, still he should traverse us generally, for he has admitted a possession in us which is defeated by the death of his father. And it might be that we had possession after that fine, which is to be understood of the rent which is in demand. But he dared not demur, but said that he and his predecessors had been seised of time, etc. And so see a special traverse to a prescription. And see that in such a prescription it is necessary to bind a special seisin, etc. **NEWTON**: Query, in what manner; for the prescription is general, to wit: That he and all his predecessors had been seised of time? etc. Study well, etc.

The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the Case 14. early abridgments.

(15) **One brought** a writ of Trespass upon the Case, against a prior; and he counted that the said prior was seised of a house, and that he and all those whose estate he had in the said house had dug a ditch, etc., of time, etc., and he said that the said defendant had not dug the ditch, because of which certain lands of the plaintiff are overflowed, etc. **SKRENE** (for the defendant): We and our predecessors have been seised of the same house of time, etc., so your writ should allege that we and our predecessors, etc., have made the ditch, etc.; judgment of the writ. **HANKFORD**: If the case be as you say, the prescription is of no value, for you have the estate of your predecessors, for your entry is not alleged by him, etc. And for that reason the writ was abated, etc.

Reported in Y. B. Mich. 12 Hen. IV, p. 7, pl. 13.

Case 15.

See also Brooke, Prescription, 16; and Fitzh: Prescription, 26.

(16) **In trespass** for digging clay, the defendant said that he was seised of a house, etc., and that he and all

Hilary
27 Hen. VI.

those whose estate, etc., had been accustomed to dig clay, in the place where, etc., and to mend the highway before the said house, of time, etc., and the road was broken and he dug, etc. POLE demurred upon the plea. And they adjourned, etc. Study well, etc.

Case 16. The case has not been identified in Y. B. Hilary, 27 Hen. VI, or in the early abridgments.

Michaelis
9 Hen. VI. (17) **A man** can have a fair by prescription. As appeared in the case of the *Prior of St. Bartholomew*.

Case 17. Reported in Y. B. Mich. 9 Hen. VI, p. 45, pl. 28. See also Fitzh: Prescription, 2.

Michaelis
14 Hen. IV. (18) **In debt** they were at issue, and at the *Nisi Prius* the defendant produced a protection, and then in the Bench the plaintiff produced a repeal, wherefore the defendant was demanded. ASKHAM: We pray our debt, because the defendant made default; for to adjudge it now is as if no protection had ever been put. HANKFORD: Although he had made default in the county, you would not have had the inquest by default; no more shall you have it now, etc. ASKHAM: We pray a new *Nisi Prius*. THIRNING: You shall have it, and sue a new process against the inquest, etc.

Case 18. The case has not been identified in Y. B. Mich. 14 Hen. IV, or in the early abridgments. It is evidently a case of protection, not of prescription, and has wandered in here out of its place.

⁷¹ It will be noted that the things which are being "prescribed" for are incorporeal things like a warren [case 1], pleas [case 2], courts [case 7], and so on. Reeves says that "Land might be transferred not only by a legal title, and livery thereon, but without title or livery at all, namely *per usucaptionem*; that is, by continual and peaceable possession for a length of time." [Reeves, Hist. of Eng. Law, Vol. 1: 305.] Maitland says: "Our mediæval law knows no acquisitive prescription for land; all it knows is a limitation of actions." [P. & M. Hist. of Eng. Law, Vol. 2: 141.] Reeves has relied on Bracton [f. 51, b.]. Maitland, quoting this and another phrase [f. 52], says, "Bracton speaks somewhat obscurely; his romanesque terms, *usucapio* and the like, perplex his doctrine." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 141.] Bracton may not be clear but his language, "*per longam, continuam et pac-*

ificam possessionem," seems to mean what is usually meant by prescription. Furthermore, Bracton [f. 52] uses like phrases over and over again, and would seem to have meant what Reeves takes him to have meant, and it does not seem that his language has anything very obscure to dim that meaning. Our cases, however, as has been said, confirm Maitland; we find that it is true that "By way of contrast we may see that many incorporeal things can be acquired by prescription, by long continued user." (P. & M. Hist. of Eng. Law, 2d ed., Vol. 2, p. 141.)

Coke speaks of Prescription, but not clearly enough to frame any argument upon his theories, for or against the acquisition of real property by prescription, or peaceable possession for any certain term of years. Littleton's possession must have been for "time out of mind." Coke in his commentary seems to mean real property, but actually speaks only of incorporeal things. [Coke: 1st Inst., 113 b-114 b.]

So far as our abridged cases go they sustain Maitland's contention, as do the arguments of counsel and the remarks of the justices, although at times there are points at which one feels that the underlying thought is with Reeves. It is an interesting point for further examination. One would have certainly expected that it would have been settled long since.

PARTICION

(1) **If after the death of the ancestor**, the daughter entered and made purpart; and because it was not equal one granted a rent charge to her companion; that is of no value without a deed, unless it be upon the purpart. And although it be upon the purpart, it should be issuing from the same lands which descended to them in common; otherwise it is of no value without a deed. And in the case here, an advowson which was held of the king was assigned in the Chancery as the purpart of one of the daughters. And then afterwards, by a composition between them, they agreed that one of the parceners should present at one time, and another at another time, so the king was estranged from his tenant without a license, wherefore it was adjudged that the king should have a writ to the bishop, in a *Quare Impedit*, as he would seize lands *pro fine*.

Statham
134 a.
Michaelis
21 Ed. III.

And it was said in the same plea, that where such a composition is made between parceners, and the [right] of the king is annulled as to the part of one of them, he

shall have all the presentation in his own name, etc. Contrary elsewhere, etc.

Case 1. Reported in Y. B. Mich. 21 Ed. III, p. 31, pl. 14. See also Brooke, Partition, 10.

Trinity
47 Ed. III. (2) **Partition was made** between two joint tenants, and that matter was found by verdict of the Assize. And the partition was adjudged good, etc. And yet it was without a deed, etc.

Case 2. Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 22, pl. 51. See also Brooke, Partition, 4; and Fitzh: Partition, 8.

Paschal
2 Hen. VI. (3) **A man** shall have a writ of *Partitioe Facienda* against the tenant by the curtesy, of the inheritance of his co-parcener, etc. Query, if that partition binds his issue, etc.?

Case 3. The case has not been identified in Y. B. Paschal, 2 Hen. VI, or in the early abridgments.

Hilary
1 Ed. III. (4) **If after partition** one alienates part of her purpart, or all, and the other is empleaded and prays aid, she shall recover in value; and if the lands which remain in the hands of her parcener, not alienated, are sufficient, she shall have execution by a *Scire Facias* against her alienee, for the deed of her parcener cannot injure her before the aid or after. By the opinion of HULS and STONORE, in a note, etc. Query, if she shall have execution of other lands of her coparcener, etc.?

Case 4. Reported in Y. B. Hilary, 1 Ed. III, p. 3, pl. 20. Statham apparently had a fuller report of the case than the printed year book gives us.

Note. **See as to partition**, in the title of Formedon.

Statham, title of Formedon, *supra*, pp. 95 a to 95 b.

Paschal
9 Hen. VI. (5) **In formedon**, the tenant prayed aid of her coparcener, who was under age, and prayed that the plea be delayed. And she showed how partition was made by the present tenant, and the next friend of the other, etc. ROLFF: We pray that she be ousted of the aid, for she cannot

make partition while under age. WESTON: Then we pray that the writ may abate, inasmuch as the other is not named. MARTYN: You come too late, for by your plea you have admitted the writ to be good, etc. STRANGE: It seems the partition is good, since the law forced her to make it, etc. NEWTON: If lands descend to two parceners, who hold of the king, and one is a minor, the one who is of full age shall have a writ to the escheator, to make partition and livery, *retenta medietate*, etc., as to which partition, if it be not equal, she can, if she wishes, on attaining her majority, have a writ out of the Chancery to amend the partition. And the law is the same as to a *feme covert*; if it be not equal she can disagree and enter and hold, as before, etc. Query?

And it was held by PASTON, in the same plea, that if a minor makes a feoffment he can have an Assize without any [new process], etc.

And he also said that if he makes a feoffment with warranty while under age, when he comes of age, albeit he does not enter, still if he be vouched he can defeat the warranty; for although he cannot enter, unless he enters immediately that he comes of age, still he can always have [a writ of] *Dum Fuit infra Ætatem*, while under age, because the writ is, "*qui plene ætatis est*," etc.

And it was said in the same plea, that if there are two joint tenants, and the one under age alienates his part and dies, that his heir shall have a *Dum Fuit infra Ætatem*. Query? Then if he recovers can the other joint tenant oust him? For by the recovery the land is in *statu quo prius*, etc.

And it was said in the same plea, if a minor brings a writ of Trespass for his close broken, and the defendant pleads in bar the lease of the plaintiff for a term of years which still lasts, it shall be condemned immediately, because the lease is void. And the law is the same if he gives me his goods and I carry them away; he shall have a writ of Trespass. And then the tenant voluntarily vouched one H as heir to B, under age, and prayed that the plea delay. MARTYN: Rather pray that he shall be resummoned, for

process will not issue against him until he is of age. WESTON: In the County of Kent, etc.

And it was said in the same plea, if a *Præcipe quod Reddat* be brought against one under age, that the Court will not suffer him to [delay] the action of the demandant, but the demandant shall recover as "not denied," etc.

- Case 5. Reported in Y. B. Paschal, 9 Hen. VI, p. 5, pl. 14. See also Brooke, Partition, 1. The case was argued at great length, but no decision was made.
- Hilary
9 Hen. IV. (6) **Partition can be made** as well of things in the reversion as of things in demesne, etc. By HANKFORD, in a note, etc. *Simile* Hilary, Ed. III, in a note.
- Case 6. The case has not been identified in Y. B. Hilary, 9 Hen. IV. There is no printed Hilary Term for that year. None of the notes in Michaelmas Term, the only printed term for that year, have been found to contain the point abridged.
- Michaelis
44 Ed. III. (7) **Partition of rent** before possession in fact of the same rent, is good, as appeared in an Avowry, etc.
- Case 7. The case has not been identified in Y. B. Mich. 44 Ed. III. Fitzh: Partition, 6, has the case.
- Paschal
34 Ed. III. (8) **The alienee** of a coparcener shall have a writ of *Partitio Facienda*, etc., See the *Registrum*.
- Case 8. There is no printed year of 34 Ed. III. The case has not been identified elsewhere.
- Paschal
5 Ed. III. (9) **Partition** was adjudged good for one sister against the tenant by the curtesy, etc. Query, if the partition in that case will bind her heir? etc.
- Case 9. The case has not been identified in Y. B. Paschal, 5 Ed. III. Fitzh: Partition, 11, has a longer abridgment of the case, giving some of the argument.
- Hilary
2 Ed. III. (10) **If the elder** daughter had her part in the Chancery, the younger, when she comes of age, can take that which remains in the hand of the king, or have a *Scire Facias*, in order that the lands may not be taken into the hands of the king, and re-extended; and she shall have her purpart of the entirety, etc.
- Case 10. Reported in Y. B. Hilary, 2 Ed. III, p. 20, pl. 5. See also Fitzh: Partition, 15. An interesting Chancery case.

(11) A **man** had issue two daughters by one wife, and another by another wife, and died. They entered. One daughter of the first wife died without issue. The daughter of the second wife shall have nothing of that part, etc. [the part of the dead sister], and that in an Assize, etc.

Michaelis
20 Ed. III.

There is no early printed year of 20 Ed. III. The case has not been identified in the Rolls Series. Case 11.

PROTECCION ⁷²

(1) A **protection was allowed** in a *Scire Facias* out of a fine, etc. Which note.

Statham
134 b.
Paschal
40 Ed. III.

Reported in Y. B. Hilary (not Paschal), 40 Ed. III, p. 18, pl. 9. See also Brooke, Proteccion, 16; and Fitzh: Proteccion, 93. "Notwithstanding the Statute of Westminster the Second, cap. 45." Case 1.

(2) **In every real action** against two by a *præcipe*, a protection put forward by one puts the plea without day for both. And also in debt upon a joint contract. And also in such writs as are mixed in the realty, where summons and severance lies. But in personal actions, where everyone can answer without his companion, the law is otherwise. But yet if in trespass against several, where they plead a joint plea, as a release, etc., upon which they are at issue, on the return of the *Venire Facias* a protection shown for one of them puts the plea without day for all, etc. And the law is the same if they all plead "not guilty," which [pleas] are separate pleas. And although a *Venire Facias* be adjudged, a protection shown for one shall serve for all. And therefore they are accustomed in such cases to have a separate *Venire Facias*, etc.

Michaelis
41 Ed. III.

The case has not been identified in Y. B. Mich. 41 Ed. III. Fitzh: Proteccion, 95, has the case just as it stands in Statham. Case 2.

(3) A **woman brought** a *Quod ei Deforceat quam clamat tenere in dotem*, etc. The tenant produced a protection, and because protection does not lie in a writ of Dower (and

Hilary
43 Ed. III.

in this case she demanded her dower) the protection was not allowed, etc.

Case 3. Reported in Y. B. Hilary, 43 Ed. III, p. 6, pl. 18. See also Brooke, Proteccion, 19; and Fitzh: Proteccion, 30. Brooke says, "And they doubted if protection lay or not."

Trinity
43 Ed. III. (4) **In a writ of account**, the defendant was outlawed and sued a charter of pardon, and had a *Scire Facias* against the plaintiff, on which day he who sued the *Scire Facias* threw a protection, and it could not be allowed before the other had counted against him, etc.

Case 4. Reported in Y. B. Mich. (not Trinity), 43 Ed. III, p. 36, pl. 56. See also Fitzh: Proteccion, 33.

Michaelis
43 Ed. III. (5) **In ancient demesne**, the tenant produced a protection, and because the suitors were in doubt whether the protection should be allowed or not, they gave a day to the parties; on which day the tenant made default, wherefore they awarded the petty cape, etc. But if he had appeared, the protection had been allowed, when all the justices were sitting, etc. In a *Præcipe quod Reddat* in Ancient Demesne, etc. And of this matter it was asked of the justices if it was good: who said "yes," etc.

Case 5. The case has not been identified in Y. B. Mich. 43 Ed. III. Fitzh: Proteccion, 96, has the case.

Trinity
44 Ed. III. (6) **In trespass**, the defendant said that the plaintiff was his villein. The plaintiff emparled until the next day; on which day the attorney of the defendant produced a protection for the defendant, and it was allowed, notwithstanding he had pleaded before, etc. Query? For it seems that they erred, since he was not demandable, etc.

Case 6. Reported in Y. B. Trinity, 44 Ed. III, p. 16, pl. 2. See also Brooke, Proteccion, 24; and Fitzh: Proteccion, 36.

Michaelis
45 Ed. III. (7) **In trespass** against the husband and his wife, a protection produced for the husband puts the plea without day for the husband and his wife, etc. The law is the same

as to an abbot and his co-monks, etc. Query, if a protection for the wife, in that case, will put all without day, etc.?

The case has not been identified in Y. B. Mich. 45 Ed. III, or in the Case 7. early abridgments.

(8) **In debt**, the defendant produced a protection, and it was allowed, and before the year the plaintiff brought another action against him, and he appeared; and the plaintiff prayed that the protection be disallowed, since it was of record that he appeared now. And it was not allowed, etc. And no repeal lies in that case. Trinity
47 Ed. III.

Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 6, pl. 1. See Case 8. also Brooke, Proteccion, 29.

(9) **In a quod permittat** against the bailiffs and commonalty of C. One bailiff and the commonalty were essoined; and for the other bailiff a protection was produced. And the opinion was that the plea should be without day against all, etc. And it was so adjudged. FYNCH-EDEN: In the protection he is named J S, leaving out "bailiff," in which case he should be considered one of the commonalty. And if a protection were produced for twenty of the commonalty, still the others of the commonalty should answer, etc. Which was conceded. But he came too late for that then, wherefore the protection was allowed, etc. Hilary
30 Ed. III.

Reported in Y. B. Hilary, 30 Ed. III, p. 1, pl. 1. See also Fitzh: Case 9. Proteccion, 57. Willoughby: "Judgment is given, wherefore you now plead in vain."

(10) **One sued a writ of error** to reverse a fine, because he was a minor at the time. And he had a *Scire Facias* against the party, who produced a protection. SHARSHULL: It is difficult for a protection to be cast here, for it may be that the plaintiff will be of age before the resummons, and then another protection can be thrown, and so on *ad infinitum*; wherefore we will examine the infant now, by inspection, and also put the plea without day, and save to Trinity
31 Ed. III.

the defendant all his exceptions when the plea shall be resummoned, etc. Which note well, etc.

Case 10. There is no early printed year of 31 Ed. III. Fitzh: Proteccion, 97, has the case.

Trinity
24 Ed. III. (11) **In replevin**, the defendant avowed for a rent charge; the plaintiff said that he held the lands of which, etc., for the term of his life, the remainder regardant to one B, of whom he prayed aid, and had it. And then a protection was produced for the party, and not allowed, because no one could sue a resummons, etc. And it seems he should not have the aid, etc.

Case 11. Reported in Y. B. Trinity, 24 Ed. III, p. 27, pl. 1.

Michaelis
30 Ed. III. (12) **In a praecipe quod reddat** the tenant vouched to warranty, and at the summons against the vouchee the writ was not served, and a protection was produced for the vouchee. SETON: Although the vouchee came now he could not plead, etc.¹ And for that reason the protection was disallowed and a *Sicut Alias* awarded, etc.

Case 12. Reported in Y. B. Mich. 30 Ed. III, p. 23, pl. 43. See also Fitzh: Proteccion, 58.

Michaelis
3 Hen. IV. (13) **In a writ of ravishment** of Wardship, against two; one said that the ancestor of the infant held of him by priority, etc. And the other said that he did not ravish. And on the return of the *Venire Facias*, one produced a protection. And because it was only a joint *Venire Facias*, albeit they had pleaded separate pleas, the justices said clearly that the plea should be put without day for both, wherefore the plaintiff relinquished his suit against him who threw the protection, and prayed the exigent against the other. And note that, etc.

Case 13. Reported in Y. B. Mich. 3 Hen. IV, p. 5, pl. 25. See also Brooke, Proteccion, 81, and Fitzh: Proteccion, 21.

¹ "The protection does not lie for him now, for the writ was not served."

(14) **If the king** has an action against one, protection lies for him unless it be a plea which touches the Crown. By SHARSHULL and WILLOUGHBY, in a *Scire Facias*. Hilary, 32 Ed. III.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 14.

(15) **If a man** comes in by a *Cepi Corpus*, and it is adjourned by mainprise, on the day, etc., he shall not be essoined by a common essoin. Query, if he shall have an essoin for service of the king? For it was said by MARTYN, in the plea, that a protection *quia moraturus*, does not lie for him, but a *quia profecturus* lies well for him. And that in Trespass. Query? For it seems that a *quia moraturus* lies in such case. Michaelis 4 Hen. VI.

Reported in Y. B. Mich. 4 Hen. VI, p. 8, pl. 22. See also Brooke' Proteccion, 59. There are two pl. 59 in Brooke, this is the first 59. Case 15.

(16) **In a praecipe quod reddat**, one prayed to be received, and the demandant said that he had nothing in the reversion. And upon that they were at issue. And on the day of the return of the *Venire Facias* the party produced a protection, and because he was not a party until he was received the protection was disallowed, etc. Statham 135 a. Michaelis 14 Hen. IV.

Reported in Y. B. Hilary (not Mich.), 14 Hen. IV, p. 16, pl. 11. See also Brooke, Proteccion, 37; and Fitzh: Proteccion, 28. Case 16.

(17) **In [a writ of] ravishment** of Wardship, a protection was produced and allowed, and before the year the plaintiff sued another writ of Ravishment against the same person, and it varied from the first writ in the surname, with the intention that the protection should not serve him. And the defendant showed this matter to the Court, and said that he was the same person who threw the protection, etc. And upon that it was said to him to have a writ from the Chancery testifying that he was the same person, and so he had it, etc. Michaelis 32 Ed. III.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 17.

- Hilary
38 Ed. III. (18) **In an audita querela**, a protection was produced for the defendant at the summons, and was it not allowed because he had become an actor; as well as in a *Scire Facias*, when a man has purchased a charter of pardon upon an outlawry, etc. But a *distringas* was awarded, etc. Query? For he did not become an actor until he had come into Court, etc., for in replevin, before avowry, a protection lies for the defendant, etc. (There is a difference, for in replevin the defendant, perchance, can justify.)
- Case 18. Reported in Y. B. Hilary, 38 Ed. III, p. 1, pl. 4. See also Brooke, Proteccion, 41; and Fitzh: Proteccion, 29.
- Paschal
5 Hen. V. (19) **In replevin**, the plaintiff prayed aid and had it, and at the summons *ad auxiliandum* the party threw a protection. ROLFF: It shall not be allowed, for he who prays is plaintiff, and he cannot have it by protection, consequently neither he who is a party, etc.
- Case 19. Reported in Y. B. Hilary (not Paschal), 5 Hen. V, p. 5, pl. 12. See also Brooke, Proteccion, 85; and Fitzh: Proteccion, 19.
- Michaelis
3 Hen. VI. (20) **In detinue**, the garnishee threw a protection *quia profecturus*, and it was allowed, for he is no actor before the king has entitled him to the deed.
- Case 20. Reported in Y. B. Mich. 3 Hen. VI, p. 18, pl. 26. See also Brooke, Proteccion, 1; and Fitzh: Proteccion, 1.
- Michaelis
9 Hen. VI. (21) **In detinue**, after the plaintiff and the garnishee are at issue, a protection does not lie for the garnishee, because he is to have livery of the deed, if the issue be found for him, and so he is an actor, etc. In Detinue.
- Case 21. Reported in Y. B. Mich. 9 Hen. VI, p. 36, pl. 10. See also Brooke, Proteccion, 5; and Fitzh: Proteccion, 6.
- Hilary
3 Hen. VI. (22) **In formedon**, the tenant vouched and at the summons a protection was produced for the vouchee, and it was challenged because he was not privy to the writ before he had entered into the warranty. MARTYN: He is suffi-

ciently privy from the fact that the demandant has granted the voucher. Which was conceded, etc.

Reported in Y. B. Hilary, 3 Hen. VI, p. 30, pl. 16. See also Brooke, Case 22. Proteccion, 2; and Fitzh, Proteccion, 3.

(23) **See that** a protection which is purchased pending the writ will not be allowed unless on a royal voyage, by the Statute, etc. See in the same plea what a royal voyage is, etc. Michaelis
11 Hen. IV.

Reported in Y. B. Mich. 11 Hen. IV, p. 7, pl. 17. See also Brooke, Case 23. Proteccion, 34; and Fitzh: Proteccion, 24. The statute is that of 14 Ric. II (1389), cap. 16, Stats. at Large, Vol. 2, p. 308 (320).

(24) **A capias issued** to the sheriff who returned "*cepi corpus*," and for the defendant a protection *quia moraturus* was produced, and the sheriff had not the body. **NORTON:** We pray that the sheriff be amerced because he has not the body. **THIRNING:** The sheriff is excused by the protection, which says, "*omnibus ministris*," etc., and so he should cease when the protection is shown him. **HANKFORD:** Then he should have returned it so, and not "*cepi corpus*." And yet I deny your case, for the sheriff had no power to allow the protection. **TREUWITH:** If one comes by the exigent and finds mainprise, and on the day, etc., he throws a protection, his mainpernors are discharged. Which was conceded. Wherefore we will allow the protection; but it is necessary for you who threw the protection to show cause, for it is a "*moraturus*," and that is contrary to the return of the sheriff, by which he shows cause, etc., to wit: that he had come from Calais, etc., for provisions, etc., and for such a cause he can throw a protection in his own person *quia moraturus*, etc., but *quia profecturus* can be thrown in his own person without a cause, etc. The reason is apparent. Paschal
11 Hen. IV.

Reported in Y. B. Paschal, 11 Hen. IV, p. 57, pl. 5. See also Brooke, Case 24. Proteccion, 84; and Fitzh: Proteccion, 25.

(25) **See by Thirning**, that a protection lies for the defendant in a writ upon the Statute of Laborers; and yet Michaelis
7 Hen. IV.

the defendant shall not have such matter by way of a plea, to wit: that the king had retained him to go somewhere, for the king cannot force a man to go out of the kingdom, etc.

Case 25. This case has not been identified in Y. B. Mich. 7 Hen. IV, p. 5, or in the early abridgments.

The Statute of Laborers, 23 Ed. III (1349), cap. 1, Stats. at Large, Vol. 2, p. 26.

Michaelis
7 Hen. IV. (26) **A man** was essoined for service of the king, and had a day to bring his warrant, on which day he [showed no warrant]¹ but threw a protection, and the protection was allowed, for it was said that that saved the lack of a warrant. Which study well, etc.

Case 26. Reported in Y. B. Mich. 7 Hen. IV, p. 5, pl. 31. See also Brooke, Proteccion, 32; and Fitzh: Proteccion, 22.

Paschal
7 Hen. IV. (27) **In formedon** a protection was shown, "*quia moratur in obsequio nostro in partibus Walliae.*" And the justices were in doubt whether it should be allowed or not, because Wales is within the kingdom of England, etc.

Case 27. Reported in Y. B. Paschal, 7 Hen. IV, p. 14, pl. 13. See also Brooke, Proteccion, 33; and Fitzh: Proteccion, 23. Brooke and Fitzherbert follow the case more closely than Statham, who merely states the doubt. The protection expired before the day given for "advisement" and the decision remains — like the judges — in doubt.

Michaelis
12 Hen. VI. (28) **In a writ** of Forgery of Deeds the parties were at issue, and then at the octaves of Saint Michael the parties appeared, and the jury also; and the Court, because of other business, would not take the inquest, but commanded them not to depart. And then, three days afterward, the defendant threw a protection, bearing date after their appearance; and prayed that it be allowed. **PASTON:** That cannot be, for all this term is one and the same day, and they have appeared in their own persons, and they are not demandable. **BABYNGTON:** *Contra.* And if the justices appeared at the octaves of Saint Michael, and four

¹ Words from the case.

or five days after the demandant released to the tenant, and the tenant pleaded that release, a special entry shall be made of that; so here the king can take him into his protection when he will, before the inquest has passed, and we will make a special entry of it. In which MARTYN concurred, etc. But if the protection had borne date before, etc., he had overpassed his time, etc.

Reported in Y. B. Mich. 12 Hen. VI, p. 8, pl. 10.

Case 28.

(29) **In the exchequer** the parties were at issue, and on the return of the *Venire Facias* the parties appeared and the jury also. And the defendant challenged the array, which was affirmed; and then he challenged a poll, and for certain reasons the Barons of the Exchequer rose, and they gave a day until the next day; and the next day the defendant produced two protections; one bearing date the same day, and the other bearing date eight days before, etc. And whether either of the protections should be allowed or not, the justices assembled in the Exchequer Chamber to decide. PORTYNGTON: They shall not be allowed, for he has passed that step, since he challenged the jury, so he has done an act, etc. And also he is not demandable, for this day and the other day on which he appeared are all one and the same day in law. ASSHETON: To the same effect. For it is different where a man has pleaded to the issue, and where he has not pleaded; for when he has not pleaded any plea, he shall be demanded any day until he has pleaded a plea, in which case he can throw a protection, which cannot be thrown without a plea, for the throwing of it is a plea; but in that case, after issue, although a day be given to the jurors to the next day, still no day is given to the party, but yet the plaintiff can be nonsuited on every day, but the defendant shall not be demanded, etc. FORTESCUE: We are agreed that the other day and this day are all one day, then the protection which bears date before this day shall not be allowed, for he has lost the advantage of it. And the protection that he has shown this day shall not be allowed, since this day and the other day when the jury appeared are all one and the same day. And the same day he himself

Michaelis
27 Hen. VI.

Statham
135 b.

has agreed to appear at the inquest, for if the plaintiff had made a release to him the same day, and afterwards he had agreed to appear at the inquest he shall not plead, but he should have an *Audita Querela* for that, because he had no time to plead it. And if they had demurred in law upon the challenge, could they come now to throw the protection? (As if he said they could not.) And if the jury shall make default now, then they will lose the value of their lands to the king, because it is all one and the same day, etc. YELVERTON: In the Common Pleas, if the parties appear and the jury also, and the justices rise before the inquest are sworn, on another day the defendant can throw a protection, and a special entry shall be made of it, to wit: "*Ad quem diem nihil exactus fuit et ideo,*" etc. BROWN: In the case here, the jury shall be demanded the next day, but not the defendant, and the reason is, because if it be in a plea of lands and the defendant is demanded, and does not come, then the petty cape issues, and the inquest is not taken for default; which cannot be. PORTYNGTON: If the jury at the *distringas* makes default, and the defendant is received to throw a protection, then their issues will be saved, which is not reasonable, when he suffered the inquest to be appealed. And they adjourned, etc.

Case 29. Reported in Y. B. Mich. 27 Hen. VI, p. 4, pl. 29. See also Brooke, Protection, 9; and Fitzh: Proteccion, 9. Only a part of the argument appears here; there were apparently a number of cases where the point was discussed, but from the case itself, and from the abridgment, it would seem that the question remained in much doubt.

Paschal
27 Hen. VI. (30) **In a praecipe quod reddat** against three who, on the return of the Grand Cape, waged their law of non-summons jointly, and on the day they had to make their law one of them showed a protection, and the others appeared by attorney, and prayed that the plea be put without day against them all. DANBY: We pray seisin of the land against those who appeared by attorney, for they cannot make their law by attorney, for when the law was waged the warrant of attorney was ended. And also in a *Praecipe quod Reddat* they can plead separate pleas, so that one of

them cannot prejudice his companions, for when they wage their law jointly, and on the day for that one of them makes default, still the others shall make their law, for it is not like a writ of Debt, where, by wager of their law, the plaintiffs shall be barred, wherefore, etc. MOILE: As to their appearance by attorney, that does not change the case, for although they make default, still the plea shall be put without day against all. And in a writ of Debt against two, who plead to the issue, and on the return of the *Venire Facias* one of them produces a protection and the other makes default, the inquest shall not be taken for his default, but shall be put without day, wherefore the appearance is not to the purpose. PRISOT (to the same effect): I say that their warrant of attorney is not ended, for on that day they can plead the release the demandant made after the last continuance, albeit their master makes default. And it seems to me, inasmuch as the law was waged jointly, that they shall be put without day against all. But yet, in a *Præcipe quod Reddat*, if at the *Nisi Prius* one of the defendants makes default, still the inquest will be taken; and yet if both make default, the petty cape shall issue. And where at the petty cape the defendants plead jointly that they cannot [come] for the rising of the waters, and upon that they are at issue, at the *Nisi Prius* a protection thrown for one of them puts the plea without day against them all. And they adjourned, etc. Query?

The case has not been identified in Y. B. 27 Hen. VI. There is no printed Paschal Term for that year. The case has not been identified in the early abridgments. It is unfortunate, for the case as it stands in Statham is far from clear. Case 30.

See as to protection, in the title of Prescription, etc., in the last paragraph. Note.

Statham, title of Prescription, *supra*, p. 133 b, case 18.

(31) **In conspiracy** against two, one produced a protection, and it was not allowed, except for himself, etc. But yet, that was an action upon the case, etc. *Simile* Hilary, 42 Ed. III. Michaelis
41 Ed. III.

Reported in Y. B. Hilary (not Mich.), 42 Ed. III, p. 1, pl. 2. See also Fitzh: Proteccion, 101. Case 31.

- Trinity
14 Ed. III. (32) A **protection** was disallowed in an appeal of mayhem, etc. (And I believe that the reason was because the words, to wit: Except touching those pleas which are before our justices itinerant, which are to be understood as relating to pleas of the crown, etc.) But it is not so.
- Case 32. There is no early printed year of 14 Ed. III. The case has not been identified in the Rolls Series for that year, or in the early abridgments.
- Michaelis
15 Ed. III. (33) A **protection** was allowed for one under age. And that in a *Præcipe quod Reddat*.
- Case 33. The case has not been identified in Y. B. Mich. 15 Ed. III. Fitzh: Proteccion, 110, has the same short abridgment of the point.
- Michaelis
19 Ed. II. (34) A **protection** was disallowed at the *Pluries Venire Facias*, against one under age, who was vouched in a *Præcipe quod Reddat*. Query as to the reason? *Simile Anno 32 Ed. III*. It seems that the reason for that was that his age should be decided by inspection, so no time should be lost, etc.
- Case 34. The case has not been identified in Y. B. Mich. 19 Ed. II. Fitzh: Proteccion, 111, has the case.
- Trinity
9 Ed. III. (35) A **protection** was allowed in a *Scire Facias*. And that in a note.
- Case 35. Reported in Y. B. Trinity, 9 Ed. III, p. 21, pl. 8. See also Fitzh: Proteccion, 94, and 108.
- Note. **See as to protection** in the title of Resummons; and in the title of Prescription an argument which was made there, to wit: Michaelis, 14 Henry the Sixth, and in Repeal, etc.
- Statham, title of Resummons et Reattachment, *infra*, 160 a to 160 b. Statham, title of Prescription, *supra*, pp. 133 a to 133 b. Title of Repelle, p. 163 a.
- Anno
9 Ed. III. (36) A **protection** was allowed on the day in the Bench, after the *Nisi Prius*, on which [day] the tenant made default, etc.
- Case 36. Reported in Y. B. Trinity, 9 Ed. III, p. 21, pl. 8. See also Fitzh: Proteccion, 94, and 108. Another point is digested here, from that in Case 35.

(37) **A protection was allowed** in an admeasurement of Trinity
pasture. 11 Ed. III.

There is no early printed year of 11 Ed. III. The case has not been Case 37.
identified in the Rolls Series. Fitzh: Proteccion, 102, has the same
short abridgment.

(38) **In a praecipe quod reddat** against three, on the Trinity
return of the Grand Cape, a protection for one put the 43 Ed. III.
plea without day for all.

The case has not been identified in Y. B. Trinity, 43 Ed. III. Fitzh: Case 38.
Proteccion, 31, has the case.

(39) **In trespass**, a protection was allowed notwithstanding- Hilary
the sheriff returned that he had taken the body. 44 Ed. III.

Reported in Y. B. Hilary, 44 Ed. III, p. 2, pl. 6. See also Brooke, Case 39.
Proteccion, 22; and Fitzh: Proteccion, 34. It was afterward dis-
allowed for a variance.

Statham
136 a.

(40) **A protection** was allowed after the exigent, in Paschal
Account. And that in Trespass, etc. 22 Ed. III.

Reported in Y. B. Paschal 22 Ed. III, p. 4, pl. 3. See also Fitzh: Case 40.
Proteccion, 103. See further, Y. B. 22 Ed. III, p. 7, pl. 4.

(41) **A protection** was allowed which varied from the Paschal
original, which was of an older date than the protection, 25 Ed. III.
because there was more in the protection than in the
writ. And that in a *Praecipe quod Reddat*.

Reported in Y. B. Paschal, 25 Ed. III, p. 84, pl. 18.

Case 41.

(42) **A protection** was disallowed in a *Scire Facias* out of Anno
the Chancery, to be newly endowed, etc. *Liber Assis-* 43 Ed. III.
arum. (For there is no protection in Dower, etc.)

Reported in Y. B. *Liber Assisarum*, 43 Ed. III, p. 274, pl. 32.

Case 42.

(43) **In a decies tantum** a protection was disallowed Anno
before THIRNING, etc. Query as to the reason? etc. It 10 Hen. IV.
seems, inasmuch as the king is a party, etc.

The case has not been identified in Y. B. Anno 10 Hen. IV, or in the Case 43.
early abridgments.

- Paschal
20 Ric. II. (44) **In a quod ei deforceat**, after the tenant has maintained his title, a protection shall be allowed for the demandant. But it is otherwise in Replevin, because the plaintiff recovers damages, etc. (But yet that is not the reason.)
- Case 44. There is no printed Year Book for 20 Ric. II. Fitzh: Protection, 106, has the case. (It would be interesting to have Statham's own reason for the denial of a protection in Replevin.)
- Anno
4 Hen. V. (45) **In formedon** against the husband and his wife, who vouched, process continued until the *Sequatur*, which was not returned; on which day a protection was shown for the husband, and the wife made default. And the protection was allowed, by the advice of all the justices in the Exchequer Chamber except THIRNING, who said that the default of the wife should be adjudged the default of the husband and the wife. But they said to him that on the resummons the husband should save the default that the wife made, etc.
- Case 45. There is no printed year of 4 Hen. V. The case has not been identified in the early abridgments.

⁷² Very often in reading the Year Book cases we find the plaintiff bringing his writ and haling the defendant into Court only to find all further proceedings stopped by the defendant "casting a protection." For the protection is always for the defendant [Fitzherbert, "Nat. Brev." 28]. It would seem that the protection must have been easily purchasable, for we find it being "cast" over and over again, and there is much suspicion thrown upon it, as is indicated by the "Termes de la Ley" [496]. "Note, that any may attach or bring any action real against him that hath such protection, and therein proceed; until the defendant comes and shows his protection in the Court, and hath it allowed, and then his plea or suit shall go without day. But if after it appears that the party who hath the protection goes not about the affairs for which he hath it, then the demandant shall have a repeal thereof."

The protection was a writ granted to a man or woman to pass over the sea on the king's business, "*quia profecturus*, or *quia moraturus*, for one who is abroad on the king's service on the sea or on the marches." And a third is: "A protection which the king by his prerogative may grant, and the same is where a man is debtor unto the king, the king may grant unto him that he shall not be sued or attached but taketh him unto protection until he has paid the king his debt." Fitzh: "Natura

Brevium," p. 28. But an action was given to the creditor by the Statute of 25 Ed. III, cap. 19, Stats. at Large, Vol. 2, p. 49, (59). "But he shall not have execution against the king's debtor who hath such protection, unless he take upon him to pay the debts which the king's debtor owed unto the king." [*Ib.*]

The protection was to endure for a year and a day, and then a new protection could be sued for, if necessary. [Fitzh: "Nat. Brev." 28.] It can easily be seen that this protection was a great advantage for those who could "throw it." The term arouses in the mind a sense of dramatic action. One throws an essoin, or a protection. The case is going quietly on; the parties are apparently prepared for the long legal battle, when the defendant, nonchalantly, as it were, produces the precious paper from somewhere about his person, and throws it into the legal arena. The plaintiff may have guessed it was coming, and then he is prepared to challenge the date of the protection, saying that it was purchased after the purchase of his writ; or that the time for which it was given has run out, it is over a year and a day; or the person protected has delayed going about the business for which the protection was allowed, and is still going on about his own affairs. Over all these points, and many others like them, the battle raged, but we find the protection very frequently allowed in spite of these defences. A weary defendant in these days might almost become a believer in kings and their prerogatives for the sake of such royal shelter from pursuing plaintiffs!

That the points at issue were important in the Year Book days is shown by the large number of cases in the abridgment. The old "Natura Brevium" [xix-xxi] is very interesting upon this matter, and gives the text of the writ, as does Fitzherbert in his later "Natura Brevium" [ff. 28-30]. Modern writers have little or nothing to say of the subject. It therefore forms another topic of interest to the investigator.

PRECE PARCIUM

(1) **Where the exigent** is awarded and the defendant renders himself and finds mainprise, and has a *Supersedeas*, etc., and at the exigent the defendant has a day by the *Prece Partium*, on which day he makes default, a distress shall be awarded against him, and the plaintiff has lost the advantage of the exigent. As appeared in Debt, etc.

Hilary
41 Ed. III.

Reported in Y. B. Hilary, 41 Ed. III, p. 49 (1), pl. 1.

Case 1.

(2) **Who takes a day** by the *Prece Partium* gives the justices jurisdiction to act a reasonable part; to affirm

Paschal
34 Ed. III.

a bad writ a good; and to ratify a bad process; by WILLOUGHBY, in Debt, etc.

Case 2. There is no printed year for 34 Ed. III. There is no subject of *Prece Partium* in the early abridgments. I have chosen to paraphrase rather than translate the text.

Michaelis
14 Hen. IV. (3) **In a praecipe quod reddat**, after the tenant had taken a day by *Prece Partium*, he could have a plea in abatement of the writ, to wit: a plea for the mischief to his warranty, but not any other plea, etc. As appears in a writ of Entry in the Post, where after such a day by *Prece Partium* he would have pleaded in abatement of the writ, and he also would have pleaded in abatement of the writ, as to matter which appeared on the record, etc.

Case 3. The case has not been identified in Y. B. Mich. 14 Hen. IV, or in the early abridgments.

Anno
1 Hen. VI. (4) **After the prece partium** the tenant was received to falsify the other, to wit: to say that he entered by one F, and not by him whom the writ alleged, etc. (I believe that this was because of the mischief to the warranty, etc.)

Case 4. The case has not been identified in Y. B. Anno 1 Hen. VI. It is not placitum 1 of that year.

Anno
10 Ed. III. (5) **After the prece partium** the tenant shall not have the view. And that in a *Cui in Vita. Simile* Hilary, 46, in a *Praecipe quod Reddat*. Contrary Paschal, 18 Ed. III, in a writ of Admeasurement, etc.

Case 5. The case has not been identified in Y. B. Anno 10 Ed. III, or in the early abridgments.

Hilary
7 Ed. III. (6) **After the prece partium** the defendant pleaded in abatement of the writ things which came from the declaration of the demandant. And that in [a writ of] Intrusion, etc.

Case 6. Reported in Y. B. Hilary, 7 Ed. III, p. 3, pl. 7.

PETITION ⁷³

Statham
136 b.
Michaelis
21 Ed. III.

(1) **One H sued a petition** to the king, because King Edward, the father, had given certain rents to his father in

tail, and that by his nonage the king had seized among others the rent arising from the said lands and tenements, and of them enfeoffed one B, in fee; and that he is still under age, and he prayed that inasmuch as of right the king is held to restore it to him as completely as he seized it, the said charter made to B be repealed. And the bill was endorsed and delivered to the Chancellor to do what the law required. Whereupon a *Scire Facias* issued against this same B [to show] why the said charters should not be annulled, etc. Who came and demanded oyer of the original, to wit: of the petition. And it was not allowed, etc. (Query?) Wherefore B showed how the king by his charter granted him this rent in recompense for certain debts, and by this same charter bound himself, that if we were ousted, etc., that we should have as much in value, etc., and we pray aid of the king. THORPE: This writ is to disprove the charter of the king, so they cannot have in value, nor, consequently, the aid, etc. WILLOUGHBY: This suit is not because the king was deceived by the suggestion upon which the charter was granted, but it is because by this gift the portion of the infant is gone, and so this suit is wholly for the infant, so that the infant can be restored to that, etc. Wherefore it was adjudged that he should have the aid, etc. Study well, because it has been held to the contrary, Michaelis, 24 Ed. III, in a *Scire Facias*, by SHARSHULL, etc., where he said expressly that where the king demises his land that the party shall not sue to the king by petition, but against the tenant of the land, etc. Query? For it seems that it is to be understood that the king is seised in the right of another.

Reported in Y. B. Hilary (not Mich.), 21 Ed. III, p. 47, pl. 68. See Case 1. also Brooke, Petition, 11.

(2) **If the king** seizes lands by force of an office, or matter of record, and leases the lands to another for his life, or in fee; if I have title to the lands, then I shall sue to the king by petition: but if the king disseises me, and makes a feoffment in fee, or for life, I can enter. But yet, query if I can enter upon his tenant for life? But yet HANKFORD said No, for

Hilary
9 Hen. IV.

I cannot have a writ of Entry, for the king shall not be called a disseisor in the writ of Entry, etc. Query? And see the Statute of Henry Fourth, which says that if the king disseises a man without an office, and makes a feoffment, the party shall have an Assize, etc.

Case 2. Reported in Y. B. Mich. (not Hilary), 9 Hen. IV, p. 4, pl. 17. See also Brooke, Petition, 9; and Fitzh: Petition, 15.

The Statute of 1 Hen. IV (1399), cap. 8, Stats. at Large, Vol. 2, p. 387 (391).

Paschal
24 Ed. III.

(3) **If one holds** of the king, and of others, and dies while his heir is under age, the other lords shall sue to the king by petition, to have their rents. And that in a note.

Case 3.

Reported in Y. B. Paschal, 24 Ed. III, p. 24, pl. 5.

⁷³ The right of petition is one of the fundamental rights of the English law. In 1305, in the time of Edward I, we find that the writ appointing the receivers of petitions stands at the head of the Parliament Roll. [Parliament Roll, ed. by Maitland, Rolls Series.] "The Roll itself shows that it is the answering of petitions which is its [Parliament's] chief duty." [Holdsworth: Hist. of Eng. Law. Vol. 1, p. 173.] The petitions might come from an individual or a corporation or community. Frequently they appeal for a favor. Others are for things for which there is no writ in the Chancery; still others for things for which there are writs; perhaps in an attempt to secure something that is not exactly justice, or because of a feeling that writs do not do justice and that the king will — a feeling that kings have hearts and that courts have not. So many were they that it was necessary to make provision for their classification. [Holdsworth, Hist. of Eng. Law, Vol. 1: 173.] It became the custom to refer many of these petitions to the Chancellor; he is becoming associated with the asking of things to be done by grace of the king's dispensing mercy, which many of the petitioners are more anxious for than for strict justice, thus laying the foundation for the idea that the "court of conscience" was not constrained by the same ideas of strict right and justice as were the common-law courts.

Maitland [Parliament Roll, *Memoranda de Parlamento* (R. S.), LV] tells us about these petitions. They were written upon "a strip of parchment about five inches long while its breadth will vary from three inches to a bare inch. On the front of this strip and along its length the petitioner's grievance and prayer will be written, usually in French, rarely in Latin, and will be addressed: 'To our Lord the King' or 'To our Lord the King and his Council.' On the back of this strip and across its breadth there will almost always be written some words, usually in Latin, rarely at this time in French, which either prescribe the relief which the petitioner is to have or send him away empty." [Maitland, Parl. Roll (R. S.), LV.]

It is not only for redress against others that the subject petitions the king. The king is being petitioned to do justice against himself or his officers. There can be no suit against the king; so there remains but to beg for grace — to petition for justice to be done. Such a petition will be sent to the Chancellor. It is in such ways as this that the Chancellor is developing into a judicial officer. Proceedings are held before him, the petitioner may receive redress if that is what he is asking for — his land if that is what he seeks. [See cases 1 and 2.] Gradually the petition becomes a bill (but it is to be noted that this is the bill in chancery, not the bill at the common law) [see note to title Bills, *supra*, p. 8] and thus the equitable procedure grows up.

In the beginning the Parliamentary Rolls [36] show that the king, the parliament, the chancery and the courts, as representing the king, all had a part in the hearing and deciding of the petitions. The King's Council in Parliament first received them, but the Chancellor (representing the king) soon gets a larger share of the work. In many cases he does not answer these petitions, but sends them to the proper courts. So the courts finally settle the matters which at first they could not receive, through the lack of any writ to cover the subject-matter.

Hale [Jur. of the Lords' House, chap. xii] writes of the appointment by the king of "receivers of petitions; three for England; three for Ireland, Wales, Gascony and foreign parts" [75]. "There was also a trier or auditor of petitions," [*Ib.*] and Hale says that the *concilium ordinarium* was "very ancient." The work of answering petitions being "a very great encumbrance to the Council of Parliament," "for we find as antiently as 8 Ed. II answers given to such petitions by the *auditores petitionum*." The petitioner in this case was a woman, Katherine Giffard, yet the petitions were to the king and council; they apparently had the power to answer these petitions. Later in the time of Edward III [28 Ed. III] the name of *auditores petitionum* fell into disuse and they were called triers [*Ib.*, 76]. Hale assumes from this fact that they thereafter did not assume to answer the petitions, but only examined them and sent them back to the king's council, or great council, to answer. Hale sets forth in detail the composition of these auditors assigned to answer petitions and their change into triers, and after that the gradual change to committees of petitions or other "committees of their own nomination." Holdsworth says that it was not until 1886 that the formality of appointing them was dropped. [Holdsworth, Hist. of Eng. Law, Vol. 1: 175.] Most of the information in regard to these petitions seems to rest on the authority of Hale, but, of course, that derived from the recent examination of the Parliament Rolls by Maitland and Holdsworth is of a later date and changes the result somewhat. The modern writers, even the most learned, rely on Hale, however, and in some instances we have not the authority upon which Hale himself rested his assertions. Some of his interesting "conjectures" are not here set down, for as yet there seems not to have been any great light thrown upon those records which in his time were, as he said, "dark and obscure." [Jur. H. of L. 65.]

PROCLAMACION

- Statham
137 a.
Michaelis
30 Ed. III. (1) **In a resummons** of wardship, the proclamation was made upon the Grand Distress, which issued on the first original. And it was adjudged good, for they said it was warranted by the Statute of Westminster the Second, as of "*pueris masculis*," etc., (which I do not understand), etc.
- Case 1. Reported in Y. B. Mich. 30 Ed. III, p. 10, pl. 5. See also Fitzh: Proclamation, 6.
Statute of Westminster the Second, 13 Ed. I (1285), cap. 35. Stats. at Large, Vol. 1, p. 163 (209), "Concerning children, males or females, etc."
- Hilary
12 Ric. II. (2) **In dower against four**, one appeared by attorney, who was ready to render dower; and the others made default. And proclamation was made [if anyone knew anything to say, wherefore he should not be received to render, etc., and no one came]. And the demandant recovered the fourth part. And that in [a writ of] Formedon, etc.
- Case 2. There is no early printed Year Book for the reign of Ric. II.
The case is reported in Y. B. 12 Ric. II. p. 129, Ames Foundation, ed. Deiser. The words in brackets are from the report of the case.
- Trinity
7 Hen. IV. (3) **In formedon**, the tenant admitted the action of the demandant, wherefore proclamation was made if any knew wherefore the demandant should not recover? Upon that came one J and said that he enfeoffed the tenant upon conditions of payment and non-payment, and that the tenant by collusion between the demandant and himself had admitted his action, etc. And upon that the tenant was examined, and admitted that it was so, wherefore the judges said that he should never have judgment [until Gabriel should blow his horn] and that the tenant should be punished at their discretion, etc. Query, if that proclamation be by the common law, or by any Statute? For such a proclamation is often made in the Chancery. And they also make a proclamation in the Chancery when a writ issues to the bishop to certify bastardy, etc. But that is by the Statute Anno 9 Hen. VI, which says that before the writ shall issue to the bishop, protestation shall be made once in the

same Court, and three times in the Chancery, for three months, etc.

Reported in Y. B. Trinity, 7 Hen. IV, p. 19, pl. 26. See also Brooke, Case 3. Proclamation, 2; and Fitzh: Proclamation, 14.

Statute of 9 Hen. VI (1430), cap. 11, Stats. at Large, Vol. 3, p. 156 (166). There is an evident error here. The case is in Trinity Term, 7 Hen. IV, and the Statute referred to bears date 9 Hen. VI. There is no allusion to the Statute in the report of the case, so we must take this to be a remark added by Statham or some other annotator.

(4) **In [a writ of] wardship** there shall be no proclamation against the vouchee, for the Statute gives the proclamation at the suit of the demandant, and that is the suit of the tenant, etc. Hilary
29 Ed. III.

Reported in Y. B. Mich. (not Hilary), 29 Ed. III, p. 48, pl. 19. See Case 4. also Fitzh: Proclamation, 15.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 35, Stats. at Large, Vol. 1, p. 163 (209).

(5) **A man** shall not have proclamation in [a writ] of Wardship upon a default, returnable before justices in Eyre. Iter of
Northampton
In a note,
folio 6.
Case 5.
The case has not been identified.

(6) **In [a writ of] mesne**, after the award of the Great Distress, without proclamation, he shall not afterwards have a distress with proclamation, etc. But yet he can have a new writ, wherefore, etc. Michaelis
20 Ed. II.

There is no printed Year Book for the short last year of Ed. II. Case 6. Fitzh: Proclamation, 18, has the case.

(7) **Tenant in free alms** shall not have the proclamation, nor any religious person, etc. By the opinion of the COURT, in [a writ of] Mesne, etc. Paschal
7 Ed. III.

The case has not been identified in Y. B. Paschal, 7 Ed. III. Fitzh: Proclamation, 16, has the case.

PROHIBICION

See as to prohibition, in the title of Attachment upon Note. Prohibition, etc.

Statham, title of Attachment sur Prohibicion, *supra*, p. 26 b.

Trinity
11½ Hen. IV. (1) **If a man** makes an oath to enfeoff me in his lands, if I sue him in the Court Christian for the breaking of his oath, he shall have a prohibition against me or against the judges of the Court Christian, or against both, because by that oath he would force me to lose an inheritance. It is otherwise where I make an oath to perform a personal thing, etc. By HANKFORD, in an Attachment upon Prohibition.

And see in the *Registrum*, if a man and his wife alienate the right of the wife, and the wife swears that she will never sue a *Cui in Vita*; and after the death of her husband she brings a *Cui in Vita*, and the other sues her in the Court Christian, she shall have a prohibition, etc.

Case 1. Reported in Y. B. Trinity, 11 Hen. IV, p. 88, pl. 40. See also Brooke, Prohibition, 18.

Paschal
38 Hen. VI. (2) **A man** can have a prohibition in the King's Bench, or in the Common Bench, and a *præcipe* when he has an action before those who can determine the matter in the Court Christian; as happened in the case of *Peter Alford* against *Towneley*.

Case 2. Reported in Y. B. Mich. (not Paschal), 38 Hen. VI, p. 14, pl. 13. See also Brooke, Prohibition, 6; and Fitzh: Prohibition, 5. Note the modern manner of citing the case of *Alford v. Towneley*.

PROCEDENDO

Statham
137 a.
Michaelis
24 Ed. III. (1) **Where a man prays** aid of the king and has a *procedendo*; then at the *procedendo*, the king and those who pray aid plead in bar; shall the king have matter to bar the demandant? As appeared in a *Scire Facias*.

Case 1. Probably the case reported in Y. B. Mich. 24 Ed. III, p. 64, pl. 69, although the identification is not complete. Fitzh: *Procedendo*, 6, has the same short abridgment.

Michaelis
9 Hen. VI. (2) **In an assize**, the tenant said that the tenements were seised into the hand of the king; and that was found by

the escheator, wherefore it was adjudged that the plaintiff sue to the king. And then he had a *procedendo in loquela*, but not *ad iudicium*. And then the Assize was put without day, as the justices did not come, wherefore a general re-attachment was sued before new justices in the same county. And it was served, and the tenant pleaded in bar, which was traversed, etc. And it was found for the plaintiff; and upon a difficulty they were adjourned into the Exchequer Chamber, etc. And then a writ was delivered to the justices, relating how it was alleged in the first Assize that the tenements were in the hands of the king, commanding them that they should not proceed to judgment *Rege inconsulto*. And the case was, should they proceed to judgment without a *procedendo ad iudicium*, or not? RADFORD: It seems to me that they can proceed without a *procedendo*, for the first Assize was discontinued and all that was depending upon that, so that the new justices, who have a new commission, never had jurisdiction of that, because it is not of record, for the parties pleaded anew, and the pleas before pleaded are void, so, inasmuch as the tenant has not alleged in the second Assize that the tenements are in the hand of the king, he cannot delay the Assize now. ALL THE COURT: No writs are discontinued for the non-coming of the justices, but they are put without day, etc. CHEYNE: The king is not injured, for if the tenements are in his hand, he will not be bound by our judgment. WAMPAGE: It is true, but the matter found now will be evidence against the king; and that is the reason for every aid of the king, where the king is seised; for if the king be seised, he shall not be restored. And they said that every stranger can say that the tenements are seised in the king's hand; "judgment if the king not counselled?" But it is different in the praying for aid, when there is no possession in the king. BABYNGTON: The old justices had a writ to deliver all the records not decided to the new justices, by which it was of record before them. RADFORD: But that writ was not endorsed. BABYNGTON: He is bound to deliver the records by

indenture¹ and not by indorsing the writ: which BROWN conceded. And then, by advice, it was adjudged that the plaintiff should have a *procedendo ad iudicium*.

And it was said in the same plea, that in a special reattachment, the first pleas shall stand. But it is different in a general reattachment. And they said that in this case the plaintiff could have had a special reattachment well enough, etc. Well argued.

Case 2. Reported in Y. B. Mich. 9 Hen. VI, p. 39, pl. 15. See also Brooke, *Procedendo*, 1; and Fitzh: *Procedendo*, 1.

Note. See as to **procedendo**, in the title of Aid of the King, Trinity, 11 Hen. IV; and also in the title of Jurisdiction, Mich. 21 Ed. III; and also in the title of Dower, Trinity, 47 Ed. III. Good matter, etc.

Statham, title Aide de Roy, *supra*, p. 8 b, case 18. Title of Jurisdiction, *supra*, p. 111 b to 112 b. The case cited does not appear in the title. Title of Dower, *supra*, p. 73 a, case 11. It should be "46 Ed. III."

Anno
8 Ed. II.
Eyre of Not-
tingham.

(3) **When jurisdiction** is granted in the franchise [and] the tenant prays aid of the king, or shows matter by which they cannot go forward, *Rege inconsulto*; in that case they can bring a *procedendo* in the franchise if they wish; for when jurisdiction is granted to them they are the judges of the king, and he can write to them, etc. The contrary was adjudged Mich. 21 Ed. III, where the resummons was sued in such a case, etc.

Case 3. We have not the printed Eyre of Nottingham, for Ed. II. Fitzh: *Procedendo*, 7, has the case.

Anno
6 Hen. V.

(4) **The justices** of Assize would not proceed because the king wrote to them to prorogue the Assize, since the tenant was in the service of the king. They could not proceed on another day without a *procedendo*, etc. But yet it seems

¹ "But it has been the custom at all times that the writ shall not be endorsed, but the old justices delivered the writ with the record to the new justices, without endorsing the writ. Which the Court conceded, and Broun, *clerk*, conceded." Words from the case.

they should not stay for such a writing by letter, or by writ, for a protection does not lie in an Assize, consequently, etc. In an Assize at Southwark.

There is no printed year of 6 Hen. V. Fitzh: *Procedendo*, 8, has the case. Case 4.

(5) **Although a *procedendo in loquela*** comes to the justices, they will not proceed to judgment without a *procedendo ad iudicium*, etc. But if it were in an Assize they would award the Assize, for that is no judgment, but an award. And NEWTON did that at Exeter, etc. Anno 22 Hen. VI.

The case has not been identified in Y. B. Anno 22 Hen. VI. Fitzh: *Procedendo*, 9, has the case. His citation is Anno 12 Hen. VI, without term or page. Case 5.

PROPRIETATE PROBANDA

(1) **In a writ of proprietate probanda**, if the sheriff finds the property to be in the plaintiff, he shall deliver the cattle to the plaintiff and attach the defendant to answer; as well to the king as to the party, etc. And the *Registrum* agrees with that, etc. Statham 138 a. Michaelis 30 Ed. III.

Reported in Y. B. Mich. 30 Ed. III, p. 30, pl. 64. See also Fitzh: *Proprietate Probanda*, 3. Case 1.

(2) **If the defendant** claims property in the county, be the plea there by complaint or by writ, the power of the sheriff is ended. But if the plea be before him by writ, and the defendant claims property, the plaintiff can sue a "*Sicut alias vel causam nobis significes*," and upon that the sheriff can return that the defendant claims property, and upon that there shall issue a writ of *Proprietate Probanda*, returnable in the Chancery or in the King's Bench, or in the Common Bench. And although the sheriff finds the property to be in the defendant, that does not conclude the plaintiff, but he can have a writ of Trespass, because it is not an inquest of office, etc. But if he brings a new replevin, the sheriff shall not make the deliverance. (The reason is apparent, etc.) But when the defendant claims Hilary 31 Ed. III.

property in the Bench, and upon that a writ of *Proprietate Probanda* issues, and it is found for the defendant, the plaintiff shall never have a writ of Trespass: By STONORE and SHARSHULL, in the second year of Ed. III, in the Eyre of Nottingham. (But yet it seems that a writ of *Proprietate Probanda* will not be issued in that case, to wit: when the parties appear in the Bench, and the defendant claims property without any cause for entitling himself to the cattle, to which the plaintiff can have an answer; and that shall be tried here, etc., for I think that a man shall never have a writ of *Proprietate Probanda* except upon the return of the sheriff, etc.)

Case 2. There is no printed year for 31 Ed. III. Fitzh: *Proprietate Probanda*, 3, has the case.

Hilary
11 Hen. IV. (3) **If the bailiff** of a man claims property for his master, the sheriff shall not fail to make replevin, for the property cannot be tried between that plaintiff and the bailiff, or the servant of the defendant, etc.

Case 3. Reported in Y. B. Mich. (not Hilary), 11 Hen. IV, p. 4, pl. 10. See also Brooke, *Proprietate Probanda*, 14; and Fitzh: *Proprietate Probanda*, 1. The case in the Year Book ends thus: "And then the writ of *Proprietate Probanda* was awarded, as was said, but I did not hear it, etc."

Michaelis
8 Hen. V. (4) **In a writ of proprietata probanda**, the parties shall have their challenge at the inquest, etc. And if it be found in the county of the defendant he can have an Attaint, and *vice versa*. By HANKFORD.

Case 4. The case has not been identified in Y. B. Mich. 8 Hen. V, or in the early abridgments.

Michaelis
31 Hen. VI. (5) **In replevin** against three, the sheriff returned that two of them took the cattle as bailiffs of such a vill, for the debt of the king, etc., and sold them to the third after the taking, so the third claimed property, etc. GRENE (for the plaintiff) prayed a writ of *Proprietate Probanda*. LACON: That cannot be, for by law it appears that he has property accrued to him from a later time, after the taking, and in a writ of *Proprietate Probanda* they shall only inquire in whom the property was at the time of the taking; and

at the time of the taking the property was in the plaintiff, as appears by the return, wherefore, etc. MARKHAM: That return is not relevant, for the sheriff had nothing to do with that special matter, for although he should return that the bailiffs had delivered the cattle to the third in execution, by force of a recovery, that would not be relevant, for he has nothing to do here, except to make the usual return. YELVERTON: If the property be found to be in the defendant, the plaintiff shall never have an action. Then it is against reason that the property shall be tried in the county, when it can be tried as well here. And I do not know for what reason this writ of *Proprietate Probanda* was ordained. FORTESCUE: It was ordained for the mischief to the plaintiff, for if there were not such a writ I could have any goods within my neighborhood which took my fancy. As if MARKHAM had a horse that I wanted, and he would not sell it, I could have it in spite of him if there were not such a writ, for I would sue a replevin against him, to wit: that he had wrongfully taken my horse, and the sheriff will deliver the horse to me, then MARKHAM shall never have his horse; for if he would plead that he did not take it, as is true, and it is found for him, still he shall not have judgment to recover his horse, but merely damages, which is not reasonable, for it may be that he would not have let the horse go for ten times the value, etc. And to that which you say, that if it be found the property was in the defendant the plaintiff shall never have an action, that is not so, for he shall have a writ of Trespass, and the trial which was in the county shall not preclude him, etc. MARKHAM: The sheriff does not try the title to the cattle, but he tries whether the defendant claims the property or not; so that nothing is tried except that claim. And if he takes them for another reason than for rent in arrear or for damage feasant, then he claims the property. YELVERTON: The true title will be tried and given in evidence before the sheriff, etc. And they adjourned. Query? etc.

The case has not been identified in Y. B. Mich. 31 Hen. VI. Fitzh: *Proprietate Probanda*, 5, has the case.

PROCESSE

- Statham
138 b. (1) **Where an infant under age** appears by his guardian and prays his age, no process shall be made against him, but his guardian shall be told to bring him in, etc.
- Michaelis
41 Ed. III. But it is different where he is vouched while under age, and prays that the plea delay, and that is counterpleaded, etc., for the *Scire Facias* shall issue against the infant at the *Pluries* and *Sequatur*, etc.
- Case 1. Reported in Y. B. Mich. 41 Ed. III, p. 29, pl. 27. See also Fitzh: Proces, 189.
- Paschal
41 Ed. III. (2) **The same process** shall be made against the vouchee, where a man vouches himself as where he vouches a stranger, etc. In a *Præcipe quod Reddat*, etc.
- Case 2. Reported in Y. B. Paschal, 42 Ed. III, p. 15, pl. 29. See also Fitzh: Proces, 190.
- Michaelis
44 Ed. III. (3) **See how process** issued against witnesses when the deed was admitted, and the issue was taken only upon the time, etc. In a *Quid Juris Clamat*, etc.
- Case 3. Reported in Y. B. Mich. 44 Ed. III, p. 34, pl. 20. (The point is found at the end of the placitum.) See also Fitzh: Proces, 146.
- Michaelis
45 Ed. III. (4) **In a writ of wardship**, the defendant pleaded the feoffment of the ancestor of the infant, etc. The plaintiff said that it was by collusion, to re-eneoff the infant when he came of age, etc. And the other said it was *bona fide*, without this that it was by collusion, and he prayed process against the witnesses, and had it.
- Case 4. Reported in Y. B. Trinity (not Mich.), 45 Ed. III, p. 22, pl. 25. See also Fitzh: Proces, 151.
- Note. **See as to process** against the first jurors, in the title of Assize, Hilary, 43 Ed. III.
Statham, title of Assizes, *supra*, p. 14 a, case 6.
- Note. **See of process** upon the Statute of *Conjunctim Feoffatis*, in the title of Joint Tenure, etc.
Statham, title Joyntenanncy, *supra*, 114 a.

(5) **In a writ of annuity**, the sheriff returned that he was a clerk and had no lay fee, and the plaintiff prayed a *Capias* and could not [have it], but a *distringas*, etc. Trinity
47 Ed. III.

Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 14, pl. 16. See also Brooke, Proces, 127; and Fitzh: Proces, 154. Case 5.

(6) **In an assize** against a woman, she said that she brought a writ of Dower against one J, who appeared and afterwards made default, upon which the petty cape issued, on which he made default, wherefore we recovered, and the estate of the plaintiff is [between the date of our writ and judgment rendered], etc. HAMUN: Not comprised. PERSHAY: Comprised. Ready. And we pray process against the summoners, viewers and perners in the petty cape, and against the first summoners. FYNCHEDEN: You shall never have process against the first summoners, because it is uncertain, for the writ runs "*rationabilem dotem*," etc. And she shall never have any demand before appearance, except in the case where the Grand Cape issues, etc. THORPE: The summons will be for all the lands, wherefore it is reasonable that she have a summons against them, etc. But she shall not have process against the viewers, for there are no viewers in a petty cape, because it is not awarded until after appearance, in which case the Court is well enough assured what lands they are, for that clause "*per visum*," etc., is left out in the petty cape, and that is the reason that it is called the first cape, etc. PERSHAY: We pray process against the viewers, etc., in the *habere facias visum*, then. Wherefore process was made against the summoners in the first writ, and against the viewers in the *habere facias visum*, and the perners in the petty cape. Query, if there are not summoners in the petty cape, as well as in the Grand Cape, etc.? But in the Grand Cape the king shall not answer as to the issues, as in a distress, for non-plevin is ousted by the Statute, etc. But see that he prayed process against the summoners and viewers, and from this it follows that they should not be put on an inquest to try the issue, to wit: "not comprised," but they shall be joined to them in the same manner as witnesses, etc. Paschal
48 Ed. III.

- Case 6. Reported in Y. B. Paschal, 48 Ed. III, p. 11, pl. 3.
 Statute of *Articuli super Chartas*, 28 Ed. I (1300), Stat. 3, cap. 12,
 Stats. at Large, Vol. 1, p. 289 (298).
- Hilary (7) **In formedon** in Chester, the tenant vouched three
 50 Ed. III. to warranty, where they had assets in the same county of
 C, and the others had not. And because the voucher was
 entire the Court of C did nothing. But the demandant
 had a writ directed to the justices of C to take up the plea
 in the Bench; and another writ to summon those in the
 franchise; and another writ to the sheriff of D to summon
 the three who had nothing in the franchise. On which
 day the justices did not return their writ, but the sheriff
 returned the writ [by] which the vouchee was summoned,
 who was essoined, etc., wherefore a *Sicut Alias* issued against
 the justices, on which day they did not return any writ;
 and the vouchee made default, wherefore the Grand Cape
 ad valenciam issued against him, and another writ to the
 justices to summon the two; and also a *Pluries Sicut Alias*
 to extend the lands, and a *Sequatur* for the vouchee to the
 said justices, because the principal was in the hands of the
 king. To which it was returned that the principal was
 dead. BELKNAP: That cannot stay the process, for he is
 not a minister of the king, and although a sheriff be
 dead, the process can be made by his executor, etc.
 And the writ shall be directed to the justices of C,
 in A, their lieutenants. PERSHAY: The voucher was to
 protect the writ issued to the justices of Chester to
 resummon the tenant. BELKNAP: Certainly not, for all
 the process shall be sent back to Chester, and then the
 resummons sued; and then a new voucher, etc. And
 then a *Pluries* was awarded to the justices or to their
 lieutenants for all, and not a *Sequatur*, since the principal
 was dead, etc. Query well, etc.
- Case 7. The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the
 early abridgments.
- Michaelis (8) **In formedon**, the tenant prayed aid of one H, under
 31 Ed. III. age, and he prayed that the plea be delayed. And the

demandant offered to aver that he was of full age, and prayed a process against him that he might be viewed. He came, and it was adjudged that he was of full age, and it was asked of him if he would join, etc? And so note that this issue is not peremptory, since it was not tried by a jury, but by inspection, etc. And the tenant prayed process against him to join, etc. WILLOUGHBY: It is not the same as where one is vouched while a minor and process issues, as above, for there, although he be adjudged of full age, still a new process shall issue against him, because the plea will be put in the voucher, and the tenant will be out of Court. But it is the other way as to an aid prayer, wherefore join yourself to him if you will, etc.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 8.

(9) **In formedon** in Chester, the tenant vouched two, and prayed that one be summoned within the franchise, and the other outside, to wit: in the county of Derby. And the justices sent the record into the Bench to make process, etc. Query, if they could send to it the Bench without any *Certiorari*, etc. And then in the Bench, BELKNAP [said]: Sir, it seems to me that you should make process for that which is in the county of Derby, and when the warrant is ended for that part, then to send it back to the franchise; and then they shall make process against him who is sufficient within their franchise, and give the same day to the other, until, etc. Thus the power of the prince can be saved, and not annulled, and the party is not injured, etc. THORPE: That cannot be, for we should issue process according to the voucher, for we cannot give the same day to him who is in the franchise, and thus the process against him is discontinued. Wherefore, as to that which was in the county of Derby, summons was awarded to the sheriff of Derby; and as to that which was in the franchise, a writ issued to the prince, etc., because one vouchee cannot answer without the other. And when the warrant was ended they sent it back into the franchise, etc.

Paschal
49 Ed. III.

Statham
139 a.

Reported in Y. B. Paschal, 49 Ed. III, p. 9, pl. 1.

Case 9.

- Hilary
33 Ed. III. (10) **In a [writ of] wardship**, the tenant vouched; and the opinion of WILLOUGHBY was that he should have the process against him as against the defendant, to wit: the proclamation if he does not come, etc. (But yet it seems not, because the Statute is in restraint of the common law, and so it shall be strictly construed, etc.)
- Case 10. There is no printed year of 33 Ed. III. The case has not been identified in the early abridgments.
Statute of Westminster the Second, 13 Ed. I (1285), cap. 35, Stats. at Large, Vol. 1, p. 163 (209).
- Paschal
10 Ed. III. (11) **In account**, the tenant said, "fully accounted before such auditors." And upon that they were at issue. And process was issued, to wit: *Venire Facias*, the said auditors and twelve men, "*ad recognoscendum super sacramentum suum simul cum prædictis auditoribus si*," etc.
And see such a writ in the Judicial Register, etc. Query, if the auditors shall be joined to the inquest, or if they shall only give their evidence? etc.
- Case 11. The case has not been identified in Y. B. Paschal, 10 Ed. III, or in the early abridgments.
- Michaelis
15 Hen. VI. (12) **In a writ of partitione facienda**, the sheriff returned that he had alienated that which belonged to him, so he had nothing of which he could be summoned. FULTHORPE: We pray the grand distress against him instead of the petty cape, which will be peremptory for him, etc., for otherwise we are injured, etc. PASTON: This action is not like a *Quod Permittat*, for this action is merely personal. FULTHORPE: In a *Præcipe quod Reddat*, if the sheriff returns that the vouchee has nothing, where he was vouched within the same county, the tenant can have the Grand Cape *ad valenciam in terra petita*. PASTON: It may well be, but it is not the same. JUYN: If the vouchee makes default after he has entered into the warranty, the demandant shall have the petty cape *in terra petita*, and there it lies properly, because there he has become tenant of the lands in law, for he pleads in bar

as tenant, etc., but I do not know any reason why we should award the process here. And they adjourned, etc.

There is no printed year of 15 Hen. VI. Fitzh: Proces, 191, has the Case 12. case.

(13) **In trespass** [if] the defendant entitles himself to the freehold by a deed which is traversed, if there be witnesses in the deed, process shall issue against them: By the opinion of the COURT; as well as in a plea of lands, etc. **In Trespass.** ^{Hilary} 1 Hen. VI.

Reported in Y. B. Mich. (not Hilary), 1 Hen. VI, p. 5, pl. 21. See Case 13. also Fitzh: Proces, 61.

(14) **In debt** against the husband and his wife, executrix of one J. At the *Pluries Capias* the husband came voluntarily, and the woman did not come, and because he did not bring his wife with him, they awarded an exigent against both. And the opinion of all the COURT was that it was wrongly awarded, for it should have been awarded only against the wife, because the husband shall not receive corporal punishment for the wife. ^{Michaelis} 30 Hen. VI.

The case has not been identified in Y. B. Mich. 30 Hen. VI, or Case 14. in the early abridgments.

(15) **In a quare impedit**, if the defendant makes default after appearance, the plaintiff shall have a writ to the bishop, etc. But yet, in a *Quod Permittat* a distress has been awarded in such cases, instead of the petty cape; but the *Quod Permittat* is more in the realty, for a fermor shall have a *Quare Impedit*, but not a *Quod Permittat*, etc. Query, if a fermor shall have a writ of Wardship? ^{Michaelis} 30 Hen. VI.

The case has not been identified in Y. B. Mich. 30 Hen. VI, or Case 15. in the early abridgments.

(16) **If a man** is indicted for felony, and in the indictment he is called J de B, of S, in the county of H, formerly of F, in the county of K, formerly of L, in the county of T, in that case process shall not issue, except to the sheriff of H, because it is alleged in the indictment that ^{Trinity} 30 Hen. VI.

he is living there at present, etc. But if he be named as of no place in certain, but formerly of S, in the county of H, and formerly of F, in the county of T, in that case process shall issue in all the counties in which he is so named, etc. In the case of *Sir William Oldhall*, in the King's Bench, etc.

Case 16. The case has not been identified in Y. B. Trinity, 30 Hen. VI. Fitzh: Proces, 192, has the case.

Trinity
30 Hen. VI. (17) **In a praecipe quod reddat**, at the summons, if the demandant is essoined, the tenant, although he makes default, shall not be demanded, but the same day shall be given to him, albeit he is not in Court. And if he makes default on the day of the esoin the petty cape shall issue, and [if] still he does not appear, etc. By the opinion of PRISOT, in Formedon.

Case 17. The case has not been identified in Y. B. Trinity, 30 Hen. VI, or in the early abridgments.

Anno
16 Ed. III. (18) **In debt against executors**, one came at the distress, and was put to answer, and the plaintiff prayed process against the others, and could not have it. Query as to the cause?

Case 18. There is no early printed year of 16 Ed. III. The case is to be found in the Rolls Series, 16 Ed. III, 2, p. 16, where the case is made to depend on the Statute of 9 Ed. III (1335), cap. 3, Stats. at Large, Vol. 1, p. 449 (454). As Statham does not mention the Statute, it may account for his query.

Michaelis
2 Hen. IV. (19) **A man** shall not have a *Capias ad Satisfaciendum*, unless the *Capias* lies in the original: By HANKFORD, in Dower. (But yet it is regularly done, etc., for a *Capias* issues for the king in many cases, etc.)

Case 19. Reported in Y. B. Mich. 2 Hen. IV, p. 6, pl. 24. See also Fitzh: Proces, 117.

Paschal
40 Ed. III. (20) **A man** shall have a *Capias ad Satisfaciendum* where a *Capias* lies in the original, although the party comes in by distress, etc.

Case 20. Reported in Y. B. Paschal, 40 Ed. III, p. 25, pl. 28. (See Statham, *infra*, case 26.) See also Fitzh: Proces, 139.

(21) **In debt** against a bishop, the sheriff returned that he had nothing within the same county. The plaintiff prayed a *Capias* against him, but could not have it, etc. Paschal
43 Ed. III.

Reported in Y. B. Hilary (not Paschal), 43 Ed. III, p. 1, pl. 2. See also Brooke, Proces, 125; and Fitzh: Proces, 140. "Because it was only a covenant and he could not recover damages." Case 21.

(22) **A man** had recovered a debt, and after the year he sued a *Scire Facias*, and then he prayed a *Capias ad Satisfaciendum*, and then the defendant was garnished and did not come. HAMMON: The Statute gives a *Capias* in debt, but not in a *Scire Facias*, wherefore, etc. FYNCHEDEN: If a man recovers in an Assize against two defendants by default where there are several tenants, after the year he shall have a joint *Scire Facias* against them, and "several tenancys" shall not abate the writ, because they are of the same nature as the original, etc. Which THORPE denied, since they can become tenants anew after the recovery, etc. And the opinion was that he should have the *Capias*, etc. Paschal
45 Ed. III.

The case has not been identified in Y. B. Paschal, 45 Ed. III. Fitzh: Proces, 193, has the case. Case 22.

The Statute of Acton Burnel, 11 or 13 Ed. I (1283 or 1285), Stats. at Large, Vol. 1, p. 141.

(23) **In a writ of rescous**, the defendant came in custody and pleaded to the issue, and found mainpernors, and then made default, wherefore the plaintiff prayed a *Capias* against him and his mainpernors and the inquest, on account of his default. And the inquest was awarded for his default, and a *Capias* against his mainpernors, but not against him, because it was a sufficient punishment to take the inquest upon his default. As if a man pleads to the issue, and then is essoined because on the service of the king; although he does not bring his warrant on the day, etc., he shall have but one punishment, to wit: to have the inquest taken for his default, or else to lose twenty shillings, by the Statute, etc. Statham
139 b.
Michaelis
31 Ed. III.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 23.

The Statute is the Statute of Gloucester, 6 Ed. I (1278), cap. 8, Stats. at Large, Vol 1, p. 117 (123).

- Hilary
30 Ed. III. (24) **In a quod permittat**, at the summons the sheriff returned "*nihil*." And the plaintiff prayed a *Capias* and had it, etc. Query, if it be law, etc.?
- Case 24. Reported in Y. B. Hilary, 30 Ed. III, p. 3, pl. 10. See also Fitzh: Proces, 59. The case says "he demanded the view and had it."
- Michaelis
21 Ed. III. (25) **In account**, the sheriff returned that he was a clerk. And a *Capias* was awarded, etc. And the law is the same in every writ where *Capias* lies, etc. And in other writs, upon such a return, the plaintiff shall have a writ to the bishop to bring in his clerk, etc. And with this agrees Hilary, 14 Ed. III. See that *Venire Facias Claricum*, and in what manner the bishop shall have sequestration upon such a writ, etc.
- Case 25. Reported in Y. B. Mich. 21 Ed. III, p. 38, pl. 35.
- Paschal
40 Ed. III. (26) **In a capias ad computandum** or *ad satisficiendum*, and in every *Capias* which issues after judgment, the exigent shall issue after the first *Capias* because it is a thing adjudged, etc. Query, if I recover damages, as in an Assize, and then I sue my *Fieri Facias*, and the sheriff returns that he has nothing, shall I have a *Capias*, etc.? And if so shall I have the exigent after the first *Capias*, etc.?
- Case 26. Reported in Y. B. Paschal, 40 Ed. III, p. 25, pl. 28. See also Brooke, Proces, 18; and Fitzh: Proces, 139.
- Michaelis
30 Hen. VI. (27) **A man** shall have a *Capias Ullagium*, directed to the chamberlain of Chester, to take one who is outlawed, etc. And the writ shall be returned here. And in the same manner to the sheriff of Lancaster, etc.
- Case 27. The case has not been identified in Y. B. Mich. 30 Hen. VI. Fitzh: Proces, 197, has the case.
- Trinity
21 Ed. III. (28) **See a petty cape** was awarded after a petty cape, in the title of Estoppel, etc. Trinity, 31 Ed. III.
- Case 28. The case has not been identified in Y. B. Trinity, 21 Ed. III, or in the early abridgments.
- Michaelis
33 Ed. III. (29) **If a deed be denied** in a *Præcipe quod Reddat*, the *Venire Facias* shall be that he shall cause the witnesses to

come and take of them twelve legal men, etc. And it shall be done in the same manner in an Assize, when a deed is pleaded in a foreign county. And that in Formedon.

There is no printed year of 33 Ed. III. Fitzh: Proces, 196, has Case 29. the case.

(30) **In a praecipe quod reddat** [against] the husband and his wife, and a third. At the Grand Cape the third made default, and the husband and his wife said that they were tenants of the entirety, without this, etc. And upon that they were at issue. And on the return of the *Venire Facias* they made default. The demandant prayed seisin of the land, of the half which was to be lost by the default of the third, and a petty cape for the other half. HILARY: You shall have only the petty cape for all, for the woman may be received for all. And so it was adjudged, etc. But it would have been otherwise if the writ had been brought against two men, etc.

Hilary
21 Ed. III.

Reported in Y. B. Hilary, 21 Ed. III, p. 1, pl. 3.

Case 30.

(31) **In a writ of dower** the tenant vouched. Process was continued until the *Sequatur*, on which day the tenant was essoined, and on the day of the essoin he made default. And the demandant prayed seisin of the land and could not have it, but the petty cape was awarded. But yet on the return of the petty cape he could not save his default, nor say anything, unless it was something that had come in at a later time, etc.

Michaelis
3 Hen. IV.

Reported in Y. B. Mich. 3 Hen. IV, p. 4, pl. 17. See also Brooke, Case 31. Proces, 29.

(32) **In a scire facias** against executors, etc. HEUSTER¹ Hilary told how a *Scire Facias* issued against three executors, and the sheriff returned "*mandavi ballivi*,² etc., *qui mihi nullam*,"⁴ Hen. VI.

¹ This name is given as "Heuster" in the case. He is called "one of the clerks of the place."

² "*Mandavi ballivi talis libertati, qui mihi dedit nullam responsum.*" The case in the printed report ends thus: "BABYNGTON: We will take counsel, for it is good matter. And then, while the matter was under consideration by the justices, the plaintiff died, and so the matter in law was lost." One wonders how long they took for consideration.

etc. Upon which a *non omittas* was awarded, to which the sheriff returned that one of the demandants was dead, wherefore the writ abated. And then the plaintiff purchased a *Scire Facias*, which was a *non omittas*, because it was dependent upon the other, etc. ROLFF: That is difficult, for it is now the first writ, which cannot be a *non omittas*. PASTON (to the same effect): For if the plaintiff had brought a *Sicut Alias*, then it had been a *non omittas*, because then it appears that it is dependent upon the first writ. But now it does not appear by the writ that any other *Scire Facias* was sued, wherefore the Court understands that this is the first writ. HEUSTER: He cannot have a *Sicut Alias* when one of the defendants is dead, but a new writ, because there is no default in them, so it is reasonable that upon showing such matter, which is of record, the writ be "*non omittas*." Which MARTYN conceded, etc.

Case 32. Reported in Y. B. Hilary, 4 Hen. VI, p. 11, pl. 6. The case as it stands in Statham is obscure, but correct. The fuller report of the case makes it clear.

Hilary
13 Hen. IV. (33) **In a writ of right**, after the joining of the plea the tenant made default, and the demandant had judgment, without the award of any petty cape. Which note, etc.

Case 33. The case has not been identified in Y. B. Hilary, 13 Hen. IV, or in the early abridgments.

Hilary
10 Hen. IV. (34) **A man shall have a Capias** against a lord or an abbot, where he has committed a contempt, etc. In Replevin, etc.

Case 34. The case has not been identified in Y. B. Hilary, 10 Hen. IV. Fitzh: Proces, 198, has the case.

Michaelis
9 Hen. V. (35) **In formedon**, the wife was received upon the default of her husband, and vouched to warranty one who entered into the warranty and died, wherefore a resummons issued against the woman, and she made default; and whether the demandant should recover seisin of the land,

or a petty cape or a Grand Cape should be adjudged, the justices did not know.

Reported in Y. B. Paschal (not Mich.), 9 Hen. V, p. 4, pl. 10. In Case 35. the printed report the case went off upon a question as whether the woman should have a writ of Deceit because of a non-summons in fact.

(36) **If one be found** a disseisor with force, in an Assize, Michaelis a *Capias* shall issue *pro Rege*, notwithstanding there was no ^{1 Hen. V.} *Capias* in the original, etc.

The case has not been identified in Y. B. Mich. 1 Hen. V. Fitzh: Case 36. Proces, 199, has the case.

(37) **If one demands** surety of the peace in the King's Hilary Bench, and upon that alleges that the same person is ^{35 Hen. VI.} in London, they will make a *latitat* in London upon that suggestion. And yet there was no original [writ]. And that is as it was adjudged, etc.

The case has not been identified in Y. B. Hilary, 35 Hen. VI. Fitzh: Case 37. Proces, 187, has the case.

(38) **If the sheriff** returns a rescous made on a minister of Hilary the King by a Duke, Count or Baron, a *Capias* shall issue ^{1 Hen. V.} against them for the disobedience, etc. In Rescous, etc.

Reported in Y. B. Mich. (not Hilary), 1 Hen. V, p. 14, pl. 29. See also Case 38. Fitzh: Proces, 114.

(39) **A man** shall not have an *allocatio comitatibus*, where Hilary a County Court is held after the exigent is returned, etc. ^{32 Ed. III.} But he shall have an *exigi de novo*. And that in a note.

There is no printed year of 32 Ed. III. The case has not been identified elsewhere. Case 39.

(40) **One vouched** a foreigner in London, wherefore the Michaelis plea was sent into Court to make process. And then the ^{32 Ed. III.} tenant alleged a discontinuance, because no day was Statham given to the demandant by the Roll. THORPE: This is ^{140 a.} your suit, and the original is not here but in the franchise, so the demandant will await his time there; and if the vouchee had made default you would not have the Grand Cape *ad valenciam* here, but it would be sent back

to the franchise, etc. Query as to that, for it seems that they could not make process upon the default of the vouchee, if he be not within their franchise, etc. And then the process was adjudged good. (Study, etc.)

Case 40. There is no printed year of 32 Ed. III. The case has not been identified elsewhere.

Hilary
38 Ed. III. (41) **The inquest** was sent back for lack of jurors, and the octo tales¹ were arrayed by another sheriff, which were challenged for cause, wherefore KYRTON prayed an octo tales to the coroner, and that process be made against the other jurors to the sheriff. THORPE: You cannot have process to different persons in one and the same issue, wherefore sue a *distringas* to the coroner, and to the tales also, etc. In a note.

Case 41. Reported in Y. B. Paschal (not Hilary), 38 Ed. III, p. 9, pl. 8. See also Brooke, Proces, 49.

Michaelis
39 Ed. III. (42) **In a praecipe quod reddat**, the tenant vouched three, who entered into the warranty, and then one of the vouchees made default, wherefore the petty cape issued for that part. And the same day, etc. And then the tenant of the lands made default, and the vouchee, against whom the petty cape was awarded, also; wherefore the demandant prayed seisin of the lands for the third part; and the petty cape for the two parts. THORPE: You shall have only the petty cape for the whole, for by the default of the tenant the vouchees are out of Court. And it was so adjudged, etc. Study well, etc.

Case 42. The case has not been identified in Y. B. Mich. 39 Ed. III, or in the early abridgments.

Hilary
12 Ric. II. (43) **In debt** against two, [prosecuted] until the exigent. And they had a *Supersedeas*, and on the day, etc., one of them made default, and the other appeared. And the plaintiff had an *exigi de novo* against him who made default, and a *Capias* against his mainpernors. Query,

¹See, for the octo tales, Coke; Repts. lib. 10, p. 102, a; and Brooke, lib. octo tales.

on a joint contract, shall the other be put to answer until the other process is ended by the exigent against his companion? etc.

There is no early printed Year Book for 12 Ric. II. The case is printed in the Y. B. 12 Ric. II, p. 119, Ames Foundation, ed. Deiser. There are some variations in the text, but the case is undoubtedly the same. Case 43.

(44) **In debt** against the husband and his wife [sued] until the exigent. They had a *Supersedeas*, and on the day, etc., the wife made default and the husband appeared, wherefore an *exigi de novo* issued against the woman and the husband found mainpernors, etc. Hilary
12 Ric. II.

There is no early printed Year Book for 12 Ric. II. The case is printed in the Y. B. 12 Ric. II, p. 126, Ames Foundation, ed. Deiser. See also Fitzh: Proces, 160. Case 44.

(45) **In a writ of Curia Claudenda**, the tenant was essoined, and then made default, upon which a distress issued in place of the petty cape, on which day he made default. And the plaintiff prayed a writ to inquire as to the damages, and a writ to distrain him to make reparation, and he had it. Query, if the defendant had appeared? For then it seems the distress shall issue perpetually, etc. Michaelis
13 Ric. II.

There is no printed Year Book for 13 Ric. II. The case has not been identified in the early abridgments. Case 45.

(46) **Where the sheriff** returns, upon a *Fieri Facias* against executors, that they made waste of the goods of the testator, the plaintiff shall have a *Capias ad Satisfaciendum* against them. And that in Debt, etc. Michaelis
2 Hen. VI.

The case has not been identified in Y. B. Mich. 2 Hen. VI, or in the early abridgments. Case 46.

(47) **If they are** at issue in the Chancery, I [they] will make a *Venire Facias* returnable in the King's Bench, and when it is returned then they will put the record in the King's Bench, and not before, etc. As appeared in the case of *Platz*, etc. Hilary
35 Hen. VI.

The case has not been identified in Y. B. Hilary, 35 Hen. VI, or in the early abridgments. Case 47.

Paschal
9 Hen. VI.

(48) **In debt** against the husband and his wife, upon the exigent they had a *Supersedeas*; and notwithstanding it was returned that they were outlawed, on the same day the woman made default and the husband appeared and prayed to be dismissed. MARTYN: It is law that when it is of record that a *Supersedeas* has issued, and the defendant is outlawed notwithstanding, etc., that we reverse the outlawry; and the defendant should answer to the plaintiff, but he cannot answer without his wife, wherefore it seems that an *exigi de novo* shall issue against the woman, and the husband shall have the same day by mainpernors. And it was so adjudged, etc. And if the husband does not come on the day, etc., then a distress shall issue against him, and a *Capias* against his mainpernors, and so the plaintiff can be delayed forever, etc.

Case 48. Reported in Y. B. Paschal, 9 Hen. VI, p. 8, pl. 20. See also Brooke, Proces, 8; and Fitzh: Proces, 84.

Hilary
7 Hen. VI.

(49) **A man** shall have a *Capias* against an abbot if he be impleaded in another county than that in which his abbey is. And that in an Assize, etc.

Case 49. The case has not been identified in Y. B. Hilary, 7 Hen. VI, or in the early abridgments.

Trinity
3 Hen. VI.

(50) **If the tenant** makes default at the summons, and the demandant is essoined, and at the Grand Cape the tenant makes default, and the demandant appears, he shall not have seisin of the land, but a petty cape. And yet the tenant never appeared. But by the essoin of the demandant at the summons, which was an appearance in law, the default of the tenant is saved. And by the opinion of many, the law is the same where the demandant is essoined on the return of the Grand Cape. But the opinion of MARTYN, in that case, was that if the essoiner of the demandant did not pray seisin of the land, that the process was discontinued, for the same day cannot be given to the tenant, because he did not appear. But if he appears he shall have the same day and not save his default, although it be at the return of the Grand Cape, etc., for by the essoin it is waived, etc. But BROUN and HEUSTER thought that the petty cape should issue in the above case.

The case has not been identified in Y. B. Trinity, 3 Hen. VI, or in Case 50. the early abridgments.

(51) **In debt** upon an obligation, the defendant came by the exigent, and said that the obligation was made by duress, etc. And the plaintiff emparled until the other term, on which day the defendant made default, and the plaintiff prayed judgment. THIRNING: It is not reasonable that you be in better condition than you had been if you had taken issue with him; in which case you would not have had anything but the inquest for his default. SKRENE: Yes, sir, we can recover, because he has confessed the action and avoided it, etc. THIRNING: He has not confessed your action, for he, in a manner, denied the deed. But if he had pleaded an acquittance or release it would be otherwise, for then he had confessed your action, and avoided it, and not followed his plea, etc. Wherefore they were advised to award a *Capias* against him to hear his judgment, etc. (But yet it seems that if any process shall issue against him, it shall be a distress, etc. Query, could he plead any plea when he came by such a process? etc.)

Michaelis
11 Hen. IV.

Reported in Y. B. Mich. 11 Hen. IV, p. 31, pl. 58.

Case 51.

(52) **At the sequatur** the sheriff returned "*tarde*" and the vouchee came and entered into the warranty freely, and to that was received, etc.

Hilary
15 Ed. III.

There is no early printed year of 15 Ed. III. The case has not been identified in the Rolls Series for that year and term.

Case 52.

(53) **At the pluries capias** against the husband and his wife, the husband appeared and the wife did not. SKRENE prayed the exigent against both, because the default of the wife is the default of both. HANKFORD: That is in a distress on the Grand Cape, but it is different where the husband would have [to suffer] corporal punishment, wherefore sue the exigent against the wife, and the same day will be given to the husband.

Trinity
11 Hen. IV.

And it was said in the same plea, that if a man has a *latitat* in another county he shall not have the exigent there, but the exigent shall issue according to the original,

Statham
140 b.

etc. Query? For it seems that the original is ended when such a *latitat* is awarded, etc. Query?

- Case 53. Reported in Y. B. Trinity, 11 Hen. IV, p. 72, pl. 6.
- Trinity
11 Hen. IV. (54) **At the sequatur** the writ was not returned, and the tenant was essoined, and the essoinor of the tenant prayed a *Sequatur Sicut Alias* against the vouchee and had it, etc.
- Case 54. Reported in Y. B. Trinity, 11 Hen. IV, p. 72, pl. 8. See also Fitzh: Proces, 123.
- Michaelis
18 Hen. VI. (55) **In a scire facias** where they are at issue, and at the *Nisi Prius* the tenant makes default, no process shall issue against the tenant, as it shall issue in a *Præcipe quod Reddat*, etc. But the inquest shall be taken, etc. Query?
- Case 55. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.
- Paschal
7 Hen. IV. (56) **A venire facias** issued, and the writ was, "*Venire Facias*," etc., "*le villa de S*"; and because the writ was not "*de visne de S*," it was abated and a new *Venire Facias* awarded, notwithstanding the vill of S was a county and franchise in itself, etc.
- Case 56. The case has not been identified in Y. B. Paschal, 7 Hen. IV, or in the early abridgments.
- Hilary
8 Hen. V. (57) **In an appeal** for the death of a man, the exigent shall issue after the first *Capias*. But it is otherwise in an appeal of robbery, etc. By HANKFORD, in a note. And also in an appeal of Mayhem, etc. And all attachments in appeal are by the body, etc.
- Case 57. Reported in Y. B. Hilary, 8 Hen. V, p. 6, pl. 25. See also Fitzh: Proces, 226.
- Michaelis
12 Hen. IV. (58) **In a scire facias**, if the tenant prays aid, a *Scire Facias ad auxiliandum* shall issue against the party, and not a summons, etc., but such process as is in the original. But if two bring a *Scire Facias*, and one does not come, a summons *ad sequendum simul* shall issue. As appeared Hilary 18 Ed. III. (Query as to the difference), etc.?
- Case 58. Reported in Y. B. Mich. 12 Hen. IV, p. 3, pl. 5. See also Brooke, Proces, 38; and Fitzh: Proces, 124.

(59) **An infant** under age brought an Assize, and the warranty of his ancestor was pleaded in bar. Process was awarded against the witnesses, etc. And yet the deed was not traversed, etc. Michaelis
12 Hen. IV.

Reported in Y. B. Mich. 12 Hen. IV, p. 9, pl. 16. See also Fitzh: Case 59. Proces, 126.

(60) **If one makes** a recognizance in the Chancery for surety of the peace, and then he breaks the peace, those of the Chancery will put the record in the King's Bench to make process against his pledges and attachment, because those of the Chancery cannot make any other process than by a *Scire Facias*, etc. By FORTESCUE. And he also said that if the recognizee in a Statute Merchant has the lands of the recognizor in execution, and had received all the money except ten pounds, and the recognizor comes into Court and pays the ten pounds, he shall have a *Scire Facias* against the recognizee. But if it happens that the recognizee has raised all the moneys within the term, then the recognizor shall have a *Venire Facias ad Computandum*, on account of the uncertainty, etc., and not a *Scire Facias*. Which all the justices conceded, in the Exchequer Chamber, where all the justices were assembled, because a thief had confessed a felony in the King's Bench and become an approver, and then he had his clergy, and was delivered to the Abbot of Westminster as ordinary. And then he made his purgation, and was sent to the King's Bench for another felony, etc. And because it appeared to them by the confession of this thief that he was the same person, etc., they said that this was an escape, for where he had confessed the felony, or was outlawed, or had all his challenges at the inquest, and then was delivered to the ordinary, he should not make his purgation, etc. Query, etc. Wherefore they would have awarded a *Scire Facias* against the abbot to answer for the contempt; but they were in doubt, inasmuch as a *Scire Facias* cannot be awarded against one to make a fine, for it is an uncertain thing and a *Scire Facias* does not lie except for a certain thing, so if he be garnished and does not come, he will lose the thing, etc. And the fine is not Hilary
27 Hen. VI.

put in certain, wherefore, etc. And then by advice, etc., a *Scire Facias* was awarded against the abbot, etc.

Case 60. Reported in Y. B. Hilary, 27 Hen. VI, p. 7, pl. 4. The matter, as it appears in Statham, is mixed. The case came up on the indictment of a thief for felony, which is the second matter stated by Statham. The matter of the recognizor is only in the case as matter of argument, and would seem to be, therefore, merely *dictum*.

Note. See as to process, in the title of Essoin, Paschal, 40 Ed. III. See what the process is in attaint, in the title of Attaint, Mich. 12 Hen. VI. See as to Process in the title of Deceit, Mich. 27 Hen. VI, and in the title of Misnomer, Mich. 8 Hen. VI, and in the title of Dower; and in the title of Essoin, Hilary, 1 Hen. VI, and in the title of Estoppel, Trinity, 31 Ed. III, and in the title of Fourcher, Mich. 14 Hen. IV, and in the title of Error, Trinity, 18 Hen. VI; and also in the title of *Scire Facias*, and in the title of Distress.

See Statham in the titles following. Title of Essoin, *supra*, p. 77 b, case 30. Title of Atteint, *supra*, p. 17 a, case 20. Title of Disceipte, *supra*, p. 68 a, case 9. Title of Mysnomer, *supra*, p. 124 b, case 9. Title of Dower, *supra*, pp. 73 a to 75 b. Title of Essoin, *supra*, p. 77 b, case 27. Title of Estoppel, *supra*, p. 81 b, case 6. Title of Fourcher, *supra*, p. 98 a, case 2. Title of Erroure, *supra*, p. 91 a, case 24. Title of *Scire Facias*, *infra*, pp. 163 b to 166 a. Title of Distresse, *supra*, p. 67 a.

Michaelis 22 Hen. VI. (61) **The exigent** will not be awarded in Champerty, etc. As appeared in [a case of] Champerty.

Case 61. Reported in Y. B. Mich. 22 Hen. VI, p. 7, pl. 11. See also Fitzh: Proces, 89.

Hilary 1 Ed. III. (62) **The exigent** will not be awarded against mainpernors, because there is no original writ against them. As appeared in a writ of Account, etc.

Case 62. Reported in Y. B. Hilary, 1 Ed. III, p. 2, pl. 10.

Michaelis 22 Ed. III. (63) **A man shall not** have the *Sequatur sub suo periculo* where an infant under age should be viewed, if the infant be answerable at the issue, etc. In Formedon, etc.

Case 63. The case has not been identified in Y. B. Mich. 22 Ed. III, or in the early abridgments.

(64) **A venire facias** to be viewed will not be awarded where an infant appears by attorney, and says that he is under age, etc. Query as to the process, etc.?

Michaelis
22 Hen. VI.

The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the early abridgments. Case 64.

(65) **In an assize**, if a man be found a disseisor with force, a *Capias* shall issue *pro rege*, and upon that an exigent. As appeared in an Assize, etc.

Paschal
10 Ed. III.

The case has not been identified in Y. B. Paschal, 10 Ed. III, or in the early abridgments. Case 65.

(66) **At the sequatur sicut alias**, the demandant was essoined, and no writ was returned, wherefore the essoignor prayed seisin of the land and could not have it, but a *Sequatur Sicut Pluries* was awarded, etc.

Michaelis
9 Ed. III.

The case has not been identified in Y. B. Mich. 9 Ed. III. Fitzh: Proces, 200, has the case. Case 66.

(67) **The person who was prayed in aid**, after he had joined in aid, produced a protection, which was allowed, and the demandant had a resummons against the tenant, and garnishment against the party, in the same writ. But if the plea had been delayed on account of the nonage of the party a resummons would not issue except against the tenant, because he had not joined in aid, so was not a party to the writ. And that in a *Præcipe quod Reddat*.

Michaelis
11 Ed. III.

Statham
141 a.

There is no early printed year of 11 Ed. III. The case is reported in the Rolls Series, 11-12 Ed. III, p. 261. Case 67.

(68) **In a præcipe quod reddat**, the tenant vouched one H to warranty, and prayed that he be summoned in another county, wherefore summons issued, and was sued, to wit: he was summoned and he did not come, wherefore the Grand Cape *ad valenciam* was awarded, but no writ issued before the lands were extended; wherefore a writ issued to the sheriff of the county where the writ was brought to extend the lands, and process was continued against the vouchee by the Rolls, etc. And if the

Hilary
17 Ed. III.

tenant vouches in the same county, a writ shall issue to the sheriff to extend, and also to take, etc. And on the day of the extent no writ was sued, wherefore a *Sequatur* was entered. Query well as to that, etc.

Case 68. Reported in Y. B. Hilary, 17 Ed. III, p. 8, pl. 26.

PRESENTMENT A ESGLISE

Note. **See as to presentment** to the Church in the title of *Quare Impedit*.

Statham, title of *Quare Impedit*, *infra*, 146 a to 148 b.

Hilary
38 Ed. III. (1) **If the six months** are passed and the bishop does not present, by lapse, the presentation of the patron is legal, etc. In a *Quare Impedit*.

Case 1. The case has not been identified in Y. B. Hilary, 38 Ed. III, or in the early abridgments.

Trinity
45 Ed. III. (2) **If the co-heirs** cannot agree in their presentation, then the presentation of the eldest shall be admitted, etc. But joint tenants and tenants in common should agree, otherwise the bishop will present upon the lapse. And this in Covenant.

Case 2. Reported in Y. B. Mich. (not Trinity), 45 Ed. III, p. 12, pl. 8. The point is brought in only in the argument. See also Fitzh: Presentment al Esglise, 8.

Trinity
9 Ed. III. (3) **If the king** be seised of an advowson which is vacant, and then the king grants the same advowson to another in fee, the king shall not have the presentation for the vacancy which happened while the advowson was in the hand of the king, because the title has gone. But it is otherwise when a church is vacant while the temporalities are in the [hand of a] bishop, albeit the bishop had livery, etc. In a *Quare Impedit*.

Case 3. Reported in Y. B. Trinity, 9 Ed. III, p. 25, pl. 24. See also Fitzh: Presentment al Esglise, 5.

(4) **If I purchase** an advowson, and before I present I suffer a usurpation, I am without a remedy, for I cannot have a writ of right, because I, or any of my ancestors, never had any presentation, etc. Hilary
33 Ed. III.

There is no printed year for 33 Ed. III. Fitzh: Presentment al Case 4. Esglise, 6, has the case.

(5) **If an advowson [becomes]** vacant in the lifetime of my father, and my father dies within the six months, the executors of my father shall have the presentation and not I. By WILLOUGHBY, etc., in a note. Query, etc.? Hilary
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Presentment al Case 5. Esglise, 7, has the case.

PRIVELEGE ⁷⁴

(1) **If a man** renders himself on an exigent in the Common Bench, and finds mainpernors, etc., and on the day for the mainpernors a writ of privilege is thrown, witnessing for him that he is a servant of the Chancery; it comes too late, inasmuch as by the rendering of his body he has affirmed the jurisdiction, etc. Statham
141 b.
Paschal
20 Hen. VI.

And see in the same plea, that the plaintiff shall have the averment to say he is not a menial servant, etc., notwithstanding the contrary is certified by the writ, etc. See the writ, for I think the writ is "*ut accepimus*," and if so peradventure that is the reason, for the king does not certify precisely as he certifies in a protection, for there he says, "*accepimus in protectionem nostrum*"¹ precisely, etc.

Reported in Y. B. Paschal, 20 Hen. VI, p. 26, pl. 14. See also Fitzh: Case 1. Privelege, 9. There is nothing in the printed case like the latter point in the digest.

(2) **In trespass** against several, the plaintiff counted against them and they emparled; and then, while the Court was sitting, one of them produced a *Supersedeas*, Trinity
20 Hen. VI.

¹ "*Suscepimus in protectionem nostram.*"—*Registrum Brevium*, 23.

because he was a servant to the Chancery. YELVERTON: That comes too late, for by his emparlance he has given jurisdiction to the Court. And also, if this stay shall be allowed to him, we will be obliged to bring a new original against the others, which is a mischief. And peradventure we can [not] have an action against the others, inasmuch as we have brought our action jointly at one time, which will estop us, etc. And they adjourned. *Simile* Anno 14 Hen. IV. Well argued, etc.

Case 2. Reported in Y. B. Trinity, 20 Hen. VI, p. 32, pl. 2. See also Brooke, Privelege, 7; and Fitzh: Privelege, 10.

Hilary
27 Hen. VI.

(3) **In debt**, the defendant produced a *Supersedeas* because he was a servant to the Chancellor, and he demanded judgment if the Court would take jurisdiction. MOLE: The defendant is the parson of A, in the county of H, and lives there and goes about his own proper business, without this that he is a servant of the Chancellor. Ready. DANBY: He is his servant in the county of Leicester, and there he performs certain services for him. (And he told what, etc.) PRISOT: That is no issue, for it may be that he is his servant, and not in the office of the Chancery, in which case he shall not have the privilege. PORTYNGTON: Although the law be as you say, the plaintiff has passed that step now, for he could have pleaded it, and did not, for the inquest shall not say more, but whether he is a servant to him generally, as if the issue were joint tenure, etc. And the issue was taken as above. But they were in doubt from what county the jury should come, etc.

Case 3. The case has not been identified in Y. B. Hilary, 27 Ed. VI, or in the early abridgments.

Hilary
27 Hen. VI.

(4) **If one shall have** a writ of Privilege out of the Common Bench in London, because he was attached there in coming to the Court of the king at Westminster to answer to a writ of Debt, etc., [was the question]. And the body with the cause was brought here, out of London. And the answer was delivered that the defendant was summoned to be before one of the sheriffs, etc., to answer to a complaint

of debt for ten pounds. And because the defendant had sufficient goods in London, the serjeant did nothing to him but summon him to be before the sheriff. And the attachment was made on other goods. MOILE prayed a *procedendo*, for although he was summoned, still he can come well enough, etc. PORTYNGTON: You say truly. But peradventure if he was attached by his horse, or other thing without which he cannot travel, it would be otherwise. For if I come to this Court, a man who travelled with me will have the privilege; and yet another of my servants shall not have it, wherefore, etc. And then a *procedendo* was awarded, etc.

The case has not been identified in Y. B. Hilary, 27 Hen. VI, or in the early abridgments. Case 4.

See as to privilege, in the title of *Corpus cum Causa*. Note.

Statham, title of *Corpus cum Causa*, *supra*, p. 54 a.

(5) **Privilege** of the Chancery in other Courts is not available to any one except to the servants attending the Court, and in their office; and not to the servants *in pais*. And that in the case of *Hammond Sutton*, etc. Michaelis 22 Hen. VI.

The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the early abridgments. Case 5.

⁷⁴ The writ of Privilege, as shown by these cases, is one given to those of the Court of Chancery who, if they are sued in any other court, can have this writ of Privilege. There are good illustrations of the writ to be found in "The New Book of Entries" [Brownlow, *Brevia Juridicalia*, title Privilege] and also in the *Registrum Brevium*, title Privilege, 280-283. There were other privileges, as those granted to a corporation or place, as a university, and also that privilege which a member of parliament has of not being arrested during certain periods. But none of these other privileges are discussed in the cases of the abridgment, which deals solely with the privileges of the clerks of the Chancery.

PLEGGEZ

(1) **A question was asked:** If a man, and others, who are his pledges, are bound in a certain sum to keep the peace, Statham 142 a. Michaelis 11 Hen. IV.

and then a *Scire Facias* issues against them and they are garnished, and the principal appears and the pledges make default, what shall be done with the pledges? COLPEPIR: The judgment will be respited until the principal is acquitted or attainted, for that makes an end of all. HANKFORD: The nature of the *Scire Facias* is: if he be garnished and makes default, to lose the sum, etc. And they have also been contumacious, wherefore it seems that even though the principal be acquitted or attainted, they shall lose the sum. And so they held in the King's Bench. Query, etc.?

Case 1. Reported in Y. B. Mich. 11 Hen. IV, p. 13, pl. 28. The abridgment is correct, but a reference to the case, which is short, clears up the too brief points in the abridgment. There is a further account of the case in Hilary Term of the same year, p. 43, pl. 12.

Michaelis (2) **If the sheriff** does not return pledges, the plaintiff
11 Hen. IV. can find pledges here in Court, etc., if the writ be sued against the tenant, etc. Query, if he returns that he sought him and did not find him, nor any pledges to prosecute, wherefore he did nothing to the defendant, can he then find pledges and have process? And that in an Appeal, etc.

Case 2. Reported in Y. B. Mich. 11 Hen. IV, p. 7, pl. 18. See also Brooke, Pledges, 8; and Fitzh: Plegges, 8.

Paschal (3) **In a writ de Plegii's Acquictandis**, etc., the plaintiff
43 Ed. III. could not show a deed witnessing how he became pledged, and for that the defendant [demurred] upon him; and the plaintiff showed that this was the custom of London, etc. And the writ was adjudged good, etc. But yet it seems that he should have shown that the custom was such, in his count, or else in his writ, etc. See the tables for that, etc. And he could not have a *Capias* in his action, because it was an agreement, etc.

Case 3. Reported in Y. B. Paschal, 43 Ed. III, p. 11, pl. 1. See also Brooke, Pledges, etc., 3; and Fitzh: Plegges, 9.

PLEYNT

Michaelis (1) **A complaint for the fourth** part of the serjeanty
7 Ed. III. of the Common Bench was adjudged good, notwithstanding

ing the Statute gives an Assize of *Profit à prendre in loco certo*.

Reported in Y. B. Mich. 7 Ed. III, p. 57, pl. 47. See also Fitzh: Case 1. Pleynt, 21. Statute of Westminster the Second, 13 Ed. I (1285), cap. 25, Stats. at Large, Vol. 1, p. 163 (198).

(2) A **complaint** for part of a corody, notwithstanding ^{Trinity} he was seised of the remnant, was adjudged good, etc. ^{3 Ed. III.}

The case has not been identified in Y. B. Trinity, 3 Ed. III. Fitzh: Case 2. Pleynt, 22, has the case.

(3) **If a man** gives me the charge of his park, taking two ^{Hilary} pence per day and a robe, the complaint shall not be for ^{13 Ed. III.} the office; nor for the custody, unless he be disseised of the whole office. But if he be disseised of the robe, or of the profits, the complaint shall be for "*profits à prendre pro custodia capiendo* two pence" or "one robe," etc.

There is no early printed year of 13 Ed. III. The case has not been ^{Case 3.} identified in the Rolls Series. Fitzh: Pleynt, 23, has the case.

(4) **If a man** grants me a rent charge of twenty shillings, ^{Paschal} payable annually at the four feasts of the year, and I ^{33 Ed. III.} distrain for the rent at one feast, and he makes a rescous on me and I bring an Assize, my complaint will be for the entirety. By the opinion of WILLOUGHBY and SHARSHULL, etc. (But yet he can avow for that part and consequently, etc.)

There is no printed year of 33 Ed. III. Fitzh: Pleynt, 24, has the ^{Case 4.} case.

(5) **The Abbot of Westminster** brought an Assize against ^{Trinity} Henry Etwel and two others, and made his complaint for ^{30 Hen. VI.} twenty shillings of rent; and he made all his title in his complaint, to wit: that he and his predecessors had been seised of time, etc., issuing out of three messuages, "*ut de redditum omnis*." (And note that he did not prescribe any distress albeit the entry was "*ut de redditum omnis*," for they called a rent seck "*redditum omnis*," etc.) They said besides, that for so much in arrear he came to the said H. Etwel, the tenant of one house, and to one G, the

tenant of another house, and to one F, tenant of the third house, and demanded the rent, and they refused him, etc. And it was challenged because he showed separate disseisins, etc. POLE, for H. Etwel, said he was tenant of the three houses, without this that the other two had anything; and he traversed the prescription. And for another he said that no tenant of the freehold was named in the writ; and if it be found, etc. MOILE: We pray the Assize. PRISOT: You should maintain your writ, for he is now in the same plight as if each of them had answered as tenant of one messuage and pleaded a plea in bar, and you had chosen your tenant badly; and if that be found the writ shall abate: so here. And if it be found as Etwel has said you will be barred, wherefore you should answer to the bar and maintain your writ. PORTYNGTON: If he answers both it may very well be a jeofail. PRISOT: And if he does not answer both he may very well be deceived. MOILE said, they are held as we have alleged, and maintained that he and his predecessors had been seised, as above. Query as to the remainder, etc?

Case 5. The case has not been identified in Y. B. Trinity, 30 Hen. VI, or in the early abridgments.

PER QUE SERVICIA ⁷⁵

Statham
142 b.
Michaelis
43 Ed. III.

(1) **In a per que servicia**, the tenant said that the conusor had nothing in the services except in tail; and he showed of whose gift, and that this same conusor had issue. And because his issue, after his death, brought distress for the rent, since the rent cannot be discontinued, he does not think that he should attorn, etc. PERSHAY: It may be that the issue had assets by descent, and there is a warranty in the fine. And it also seems that there is a clear discontinuance when it is by a fine, for the right is out of him by matter of record, etc. But peradventure where the tenant in tail of a rent releases with warranty to the tenant of the lands, that is no discontinuance, for nothing passed but such right as he had, etc. But in that

case the rent is in the conusee, *ipso facto*. HAMMOND: If my tenant for life of a rent aliens in fee, and the tenant attorns, I shall have a writ of entry in *consimili casu*. And that surely proves that a rent can be discontinued. But if he shall be forced to attorn here, and then the issue recovers his rent, it shall be tendered back to him, so he shall have his labor for his pains, etc. And they adjourned, etc. Well argued. But yet it is hard that the rent should be discontinued, as above, for he is not in possession without an attornment; and the tenant will not be compelled to attorn, as above, since he was not in possession, etc. Query?

The case has not been identified in Y. B. Mich. 43 Ed. III, or in the early abridgments. Case 1.

(2) **If I grant** the services of my tenant by a fine, and then he alienates, and the *Per que Servicia* is brought according to the note; although he is not a tenant, if he attorns, that will bind the tenant. By WILLOUGHBY, etc. (But I believe that the law is contrary to that, etc.) Paschal 31 Ed. III.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 2.

(3) **If a man grants** me a manor with the appurtenances by a fine, and part of the manor is in service and the tenants give the services therefrom issuing, which are in another county, I shall bring my *Per que Servicia* in the county where the manor is, according to the fine, etc. And such a writ was adjudged good, etc. And the tenant said that he did not hold of the conusor the day the note was levied. And that was tried in the county where the lands were, etc. Trinity 21 Ed. III.

Reported in Y. B. Trinity, 21 Ed. III, p. 18, pl. 1. See also Brooke, Case 3. *Per que Servicia*, 4.

(4) **The quantity** of the services does not come into question in a *Per que Servicia*, nor in a writ of Mesne, nor in a *Cessavit*. By the opinion of THORPE. But it shall be saved by a protestation; and then in an avowry Trinity 32 Ed. III.

it will come into debate; and in a *Cessavit* upon the tender of the arrears, etc.

Case 4. There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments.

Note. **See as to per que servicia** in the title of Attournment.
Statham, title of Attournement, *supra*, pp. 18 a to 18 b.

Hilary
26 Hen. VI. (5) **A per que servicia** does not lie against the tenant of a manor where the fine is "*manerium cum pertinentibus*," for it should be "*manerium*, and the services of such a one and such a one." By the opinion of NEWTON, in a *Per que Servicia*, etc. (Then it seems that he can avow without an attournment, etc. Query?)

Case 5. There is no printed year of 26 Hen. VI. Fitzh: *Per que Servicia*, 21, has the case.

Hilary
5 Ed. III. (6) **In a per que servicia**, the tenant should not attourn where he has recovered the acquittance against the conusor, unless the conusee will acknowledge the same acquittance, etc.

Case 6. Reported in Y. B. Hilary, 5 Ed. III, p. 1, pl. 5. See also Fitzh: *Per que Servicia*, 16.

Paschal
23 Hen. VI. (7) **Where the tenant** says that [he to whom] the services were granted aliened the lands, the grantee shall have a *Per que Servicia* upon the whole matter. By PASTON, etc., in a *Per que Servicia*.

Case 7. There is no printed year of 23 Hen. VI. Fitzh: *Per que Servicia*, 20, has the case.

Hilary
5 Ed. III. (8) **In a per que servicia**, the tenant said that the conusor had released to him before the fine. The demandant offered to aver that he held of the conusor the day, etc., without answering to the release, and upon that he demurred in judgment. And the opinion of SADLER was that the plea was good, because the demandant could not say that the conusor was a minor, or of non-sane memory at the time,

etc. But yet it seems that he could have any plea to avoid the deed, as well as if he was privy, etc.

Reported in Y. B. Hilary, 5 Ed. III, p. 1, pl. 5. See case 6, *supra*. Case 8.

(9) **It is a good plea** in a *Per que Servicia* that the conu- Hilary
sor was never seised of the services, notwithstanding the 6 Ed. II.
writ is "by which services," etc. But yet a man can grant the services before seisin, etc., in a deed, etc.

Reported in Y. B. Hilary, 6 Ed. II (Maynard), p. 188, pl. 17. Case 9.

(10) **A per que servicia** was abated where the tenant Paschal
held of two, and one granted the services, etc. 9 Ed. II.

The case has not been identified in Y. B. Paschal, 9 Ed. II. Fitzh: Case 10.
Per que Servicia, 19, has the case.

⁷⁵ The *Per que Servicia* and the *Quid Juris Clamat* are two closely allied writs. Both are known to Bracton [Bracton, f. 80, b., 81, b.], who describes the process. There are also a number of cases in the Note Book. [Bracton, Note Book, 236, 369, 593, 598, 627.] A fine was first levied and the tenant was called upon by this writ to show some reason why attornment should not be made. It was undoubtedly a useful writ, since the question as to who should render the services was a matter of a good deal of practical importance to the lord, and it was also of very great importance to the tenant what sort of a lord he was to have over him. The writ appears to have been framed rather for the benefit of the lord than of the tenant; it was a way of forcing him to attorn whether he would or not. [P. & M. Hist. of Eng. Law, 2d ed., Vol. 1: 349; Vol. 2: 103.] We have a case in 34 Ed. I (1306), R. S., 33-35 Ed. I, p. 314, of a *Quid Juris Clamat* in which a recalcitrant tenant—a man and his wife—refused to say what right they had and so were committed to the Fleet. The next day they had learned their lesson, for they came and claimed for the life of the woman only and both attorned and did fealty. It does not seem that it is quite correct to say that they were imprisoned because they would not attorn; it was probably a sort of contempt of court for which they were committed. They did not answer because they held only for the woman's life, and to make that answer was to show that their former claim of a fee was false. The heading of the case, "Where the tenant would not acknowledge," etc., and so was "*committit le baliva gaole de Fleet*," seems somewhat misleading, and perhaps, though we can hardly think so, Maitland himself was so misled. He put the case in a note [P. M. Hist. of Eng. Law, Vol. 1, p. 348, n. 2] and perhaps thought little of it, especially as the writ was devised for the lords for the purpose of coercing tenants, and many cases

undoubtedly did occur in which the unwilling tenant was compelled to take a lord whom he either did not know or knew and disliked. The tenant of to-day knows the same law of necessity, and may be even more easily transferred from a kind master to one he knows from reputation to be hard and unpleasant to deal with. The lord then as now was the landlord, but the tenant could less easily remove, and it is to-day one of the great hardships of the English tenant class that if the landlord is "hard" or turns the tenant out, there is in very many cases no other landlord or tenement to whom or to which to flee. The law which allowed the attornment of a tenant was perhaps less inimical to the tenant than that which ignores the right of a man to a roof at all.

PROVISION ⁷⁶

Statham
143 a.
Hilary
42 Ed. III.

(1) **In a praemunire facias** against two, the sheriff returned that they were garnished; and because he did not give the exact day on which they were garnished, a *Sicut Alias* was awarded, etc., for the Statute says that they shall be garnished two months before the day, etc.

Case 1.

Reported in Y. B. Hilary, 42 Ed. III, p. 7, pl. 26. Statute of Provisors, 27 Ed. III (1353), cap. 1, Stats. at Large, Vol. 2, p. 72.

Hilary
43 Ed. III.

(2) **In a praemunire facias**, the sheriff returned that they were garnished, and because they did not come it was adjudged that they should be out of the protection of the king, and that their lands should be forfeited, etc.

Case 2.

Reported in Y. B. Hilary, 43 Ed. III, p. 6, pl. 14.

Michaelis
44 Ed. III.

(3) **In a praemunire facias** against several, to wit: against one as principal and against the others as accessories. And because the principal did not come on the first day, he was out of the protection of the king. And the accessories demanded judgment if they could be held to answer before the principal was attainted, for although they are out of protection, etc., they are not attainted, but a *Capias* shall issue against them, to which they shall have an answer. THORPE: This suit is not like a felony, wherefore answer, etc. Well argued.

Case 3.

Reported in Y. B. Paschal (not Mich.), 4 Ed. III, p. 7, pl. 6. It is a writ on the Statute of Provisors.

(4) **See the statute of provisors**, which says that where a man sues to the Court of Rome when the lay patron is ousted, it does not refer to a spiritual patron. And if one sues such a writ as to spiritual patronage, which, pending the suit, is aliened or leased to a layman, and then he is ousted by force of such a suit, he is in the position of a provisor, as it seems. In an action on the Statute of Provisors. Which see, etc.

Michaelis
44 Ed. III.

Reported in Y. B. Mich. 44 Ed. III, p. 36, pl. 29. Statute of Provisors, Case 4. see case 1.

See as to praemunire facias, in the title of Damages. Note. Good matter, Mich. 8 Hen. IV.

Satham, title of Damages, *supra*, p. 61 a, case 40.

(5) **A praemunire facias** was sued for the king against one Thomas Thwayt, because he procured and abetted another to sue bulls, etc. And he demanded judgment if this action lay against him alone, leaving out the principal; and if he should be forced to answer before the principal was attainted. And upon that they demurred in law. And see that the Statute is that the abettors shall have the same penalty as those who sue to the Court of Rome.

Michaelis
30 Hen. VI.

The case has not been identified in Y. B. Mich. 30 Hen. VI. There is a case cited in the argument in 36 Hen. VI, p. 29, pl. 32, at the end of the case on page 31, which resembles this case. For the Statute of Provisors, see case 1.

Case 5.

(6) **The king brought a Quare Impedit** against the Bishop of Saint Davids and others for a prebend, which became vacant, because the Bishop of S presented the defendant to a prebend, etc., and the temporalities came into the king's hand through the translation of the same bishop, and then the defendant was created Bishop of Saint Davids, so the prebend was vacant. HORTON: The defendant was in possession of this same prebend until one H, who was made bishop of S, had the temporalities out of the hand of the king. And then our Holy Father the Pope, reciting by his bulls that we were chosen to the bishopric of Saint Davids, granted that we could hold and enjoy all our other benefices until he had otherwise

Michaelis
11 Hen. IV.

ordained for us. And this was before we were created bishop, the temporalities standing in the hand of the king. And he produced the bulls. THIRNING: The plea is double; and also, to my mind, the grant of the Pope cannot change the law of this land. HANKFORD: "*Papa omnia potest.*" HIALLEY: He has admitted a vacancy in fact, which gives title to the king. For it is not as where a clerk takes upon himself two incompatible benefices; there neither of them is vacant in fact until he is deprived by the ordinary, and the patron shall not have a *Quare Impedit* before the privation; but in this case it is vacant at once. And also by those bulls he is in the position of a Provisor, etc. HANKFORD: Then this action is badly conceived, etc. And the next day the king departed from his action and counted upon the Statute of Provisors made in the time of King Edward the Third, and afterwards confirmed in the time of King Richard, that in cases of confirmation, collation, or provision, etc., the defendant shall plead as above (save that he does not answer to that which says that it was vacant during the temporalities), etc.

And it was touched that he could not plead to the right of the king, because he was an incumbent. And there was a long discussion as to whether he was in the position of a provisor, because it was only a continuance of his first estate. And also the Pope could allow him to have a bishopric and these other benefices, as well as one can have a plurality, etc. And it was said that the Statute speaks only of a vacancy and acceptance, so this case is out of the purview of the Statute, etc. And it was also touched that if he was attainted as a provisor, should he be imprisoned according to the Statute, inasmuch as the original was a *Quare Impedit*, etc.? But yet it seems that that was waived when the king counted upon the Statute. And then a writ came to them to [stay the case, but do no more, if it could be done legally]; as the defendant was in correspondence with the king as to the matter. HANKFORD: The Statute is that neither by the Great Seal, nor by the petty seal, [shall the justices cease to do right] etc. THIRNING: It is not so meant where the king is a party, for he might prejudice himself. Which the Court conceded, etc.

HANKFORD said in the same plea, suppose a man married his cousin and had issue; the husband died and his brother entered, and then the Pope confirmed the marriage and the issue ousted him, yet the Pope did nothing, for he is heir until a divorce be sued, etc., as it seems. Query, how shall the divorce be sued, when he is dead, and at whose suit? etc. And query, if the woman be dead also, shall the divorce be sued, etc.?

Reported in Y. B. Mich. 11 Hen. IV, p. 37, pl. 67; continued to Case 6. Paschal Term of the same year, p. 59, pl. 10, and further continued to Trinity Term of the same year, p. 76, pl. 18. The justices were fighting the battle of King against Pope, or rather the "law of the land" against the Pope. For the Statute of Provisors, see case 1, note.

⁷⁶ The great abuses brought about by the "providing" for a bishop or other person an ecclesiastical living, for which such person sued to "the Court of Rome," are set forth in the Statute of Provisors [27 Ed. III (1353)] in which it is stated that it is made because of the "grievous and clamorous complaints of the great men and commons . . . and also that the judgment given in the same court be impeached in another court in prejudice and disherison of our Lord the King." The statute throws a good deal of light upon the constantly recurring struggle between Church and State, and while the cases do not now seem to be of much legal moment, they still have their part to play in the delineation of that great and never-ended struggle of the two powers.

This is most prominently shown in our case 6 [11 Hen. IV. (1409)] where there is great argument and the "law of the land" (both the common law and the Statute of Provisors) is sustained on one side, combated on the other. Thirning says, "I will not dispute as to the power of the Pope, but I see not how he by his bull shall change the law of England." [p. 36.] Later Colepeper says, "the law of the land cannot be changed by the bull of the apostle" [59]. Hilary said that "the Pope is a great and high sovereign from whom all have their powers" [p. 77]. Hankford and Hilary "*instantier à contra*." On this great question the case gives no decision, for the king thought best to end the discussion by a writ to the justices.

Into the courts of justice had pierced the cry of Piers Ploughman; the protest of the Lollard had awakened all England. The commons a few years before had said that they held it "in nowise their interest to be more under the jurisdiction of the prelates or more bound by them than their ancestors had been in times past." [Green: Short History of the English People, p. 260.] Only here and there in the books do we find the justices giving us any glimpse of the trend of their thought on the politics of their times; but in this most unusually long case, with its arguments turned as skilfully as might be on the legal side of the question, we see the contending elements breaking over the strongest

barriers, and facing each other openly in court. Thirning, for the king, evidently had the sympathy of the greater portion of the court [see p. 78] and Hilary had to yield. We get little of all this in the abridgment. What the title of Provisors is concerned about is the construction of the Statute of Provisors, and the cases are evidently collected for that purpose only. They are found in the other abridgments under the title of *Præmunire*, and the cases are nearly all writs of *præmunire*.

PEYN

Statham
143 b.
Anno
9 Hen. IV.

(1) **In an assize**, the Assize was awarded and the full inquest was taken. And there were but five who had [made] the view; and one juror who was seen the same day in the Hall was demanded upon penalty, and did not come. HANKFORD: He will not lose [the amount of] the penalty¹ unless the inquest should remain for his not coming. Which all the Justices conceded. Wherefore a day was given to them to have the view, and a distress issued against all. Query, to what effect was the distress awarded, etc.?

Case I. Reported in Y. B. Mich. 9 Hen. IV, p. 4, pl. 18 (point on p. 5, near end of case). See also Fitzh: Peyn, 3.

PREBENDE

Paschal
12 Ed. III.

(1) **If the king gives** a prebend, he will give it by his letters-patent, and the sheriff will put him in seisin, and he shall not be presented to the bishop, etc. And yet if the king be disturbed he shall have a *Quare Impedit*, etc. Query as to other persons, who are prebendaries, etc. The law is the same in a *Libera Capella*, etc.

Case I. There is no early printed year of 12 Ed. III. The case referred to may be the case reported in the Rolls Series, 11 & 12 Ed. III, p. 522.

Michaelis
32 Ed. III.

(2) **See a writ of entry sine assensu capituli**, brought for a prebend, which was admitted, etc. And the writ was "*in quod non habet ingressum*," etc. And from that it follows that it is a lay fee. Query, how shall the writ be framed, etc.?

Case 2. There is no printed year of 32 Ed. III. The case has not been identified elsewhere.

¹ Loss of the value of his land for a year.

PERJURY

(1) **A man shall not have** an action of perjury in the Court Christian unless the thing by which the perjury is claimed began in the Court Christian; for many [reasons]. Query? Because they had this for a question, Mich. 2 Hen. VI, in a Consultation, etc. Michaelis
2 Hen. IV.

The case has not been identified in Y. B. Mich. 2 Hen. IV, or in the early abridgments. Case I.

PARDON

(1) **A scire facias** issued for the king against one J and his mainpernors, who were bound in a recognizance for twenty pounds to keep the peace, etc. They said that the king had pardoned him all actions, "*debita compota et executiones.*" And the charter bore date before the forfeiture, and after the recognizance. NORTON: That cannot bar the king. SKRENE: Where one is bound to me, and before the day I release him, my action is gone: so here. GASCOIGNE: It is not the same, for in your case it is a present debt, but here it is no debt until the condition is broken. SKRENE: If one be bound to me in twenty pounds, and if he pays ten pounds on a certain day, that then, etc., and before the day I make him an acquittance for twenty pounds, my action is gone, etc. (But see that it is not the same, for in that case he does not declare upon conditions broken, but upon the obligation, etc. But in the other case the breaking of the condition is the cause of the action.) And the king declared that he had broken the conditions, so accrued, etc. Wherefore the defendant dared not demur, but pleaded not guilty, and the other mainpernors were garnished and did not come, wherefore the Court was advised to have execution against them for the king, etc. Statham
144 a.
Hilary.
11 Hen. IV.

Reported in Y. B. Hilary, 11 Hen. IV, p. 43, pl. 12. See also Fitzh: Pardon, 5. There is more of the case in Y. B. Mich. 11 Hen. IV, p. 13, pl. 28. Case I.

PARLIAMENT ⁷⁷

Michaelis
11 Hen. IV.

(1) **In replevin**, one avowed by force of a *Fieri Facias*, which was issued to raise the expenses of the knights in such a vill, which was assessed for so much, etc. The other said that this same vill was an ancient borough, which had come to every Parliament for time, etc. Judgment if they should be charged with the expenses of the knights.

And it was said in the same plea, that if one who is not a baron purchases a barony, these tenements shall pay the expenses of knighthood, because the cause has ceased, etc. And also no tenements of a baron shall be quit of such expenses except those of his ancient barony, etc.

Case 1.

Reported in Y. B. Mich. 11 Hen. IV, p. 2, pl. 4.

⁷⁷ One of the privileges of the boroughs was to send knights to Parliament, and one of the penalties was to pay for sending them there. In this case there was an attempt to allege that this vill was in ancient demesne and therefore did not have to pay for sending the knights. It is apparent, as one reads this case and others like it, that the payment for sending knights from the vills or boroughs was felt to be a burden not to be compensated for by any services the knights might render to their paymasters. In the history of representative government it is clear that rights originally secured for certain classes of persons gradually got lost through the desire of such persons to get rid of the attendant burdens, but in this case, if we may judge by the legislation enacted through the efforts of the knights, the game was not worth the candle. [12 Ric. II, cap. 12.]

PROTESTACION ⁷⁸

Statham
144 b.
Paschal
9 Hen. VI.

(1) **See, by Paston**, if a man makes a protestation, and the issue is taken upon his plea, and it is found against him, that he shall never have the advantage of the protestation, etc. And he also said that a protestation contrary to the plea is of no value; and that in Debt, etc. And I believe that he spoke truly, for if my villein brings an action against me, and I say by way of protestation that he is my villein

and plead a plea in bar, he is then enfranchised for the above reason, for the protestation is void. And that is as was adjudged in the 26th year of Edward the Third in Trespass, etc.

Reported in Y. B. Hilary, 9 Hen. VI, p. 59, pl. 8 (in a writ of Case 1. Debt). See also Brooke, Protestation, 14; and Fitzh: Protestation, 1.

(2) **In a praecipe quod reddat** against two. At the summons one made default and the other disclaimed. ^{Trinity} 15 Hen. VI. NEWTON: You shall not say anything until the return of the Grand Cape. BROWN: If this plea is not recorded here and the same day given to him, he will be estopped at the Grand Cape from pleading a separate tenure, non-tenure, and such pleas. JUVN: You say truly, wherefore we will record that as a protestation, etc. Which note.

There is no printed year of 15 Hen. VI. The case has not been identified in the early abridgments. Case 2.

(3) **In trespass** the defendant made a defence, and then said by protestation that the plaintiff was his villein regardant to his manor of B, of which he is seised, and he and all whose estate he has, etc., have been seised, etc., and saving to us the advantage of this villenage we say that we are not guilty, etc. PRISOT: Your protestation is not to the purpose, but if you wish to have advantage of the villenage you should say in fact that he is your villein, and saving to you (as above). And so it was adjudged in the case of *Duddesham* now lately, etc. Wherefore DANBY amended his plea as above. ^{Paschal} 27 Hen. VI.

There is no printed Paschal Term of 27 Hen. VI. The case has not been identified in the other printed terms, or in the early abridgments. Case 3.

(4) **Robert Hillibrond** brought a *Scire Facias* against one M to have execution of certain lands of which one H granted the reversion after the death of one T, who held for life. And T is dead, etc. GOWER: Execution you should not have, for one J was seised of these same lands and gave them to one W, and to his wife in free marriage; ^{Paschal} 32 Ed. III.

between whom issued the said H, and this M, now tenant. After M and A died, H entered as son and heir, and leased to T, etc., and then granted the reversion as the fine alleges and died without an heir of his body. T died, and M, as sister and heir of H, entered claiming by force of the tail. And the plaintiff, alleging the reversion to be in him, ousted us, so the fine was executed, etc. FYNCHEDEN challenged the doubleness. GOWER: We took the tail by protestation, and rest upon this that the fine is executed, etc. FYNCHEDEN: We say that this same M brought an Assize against us for this same entry and recovered, by which recovery our possession was annulled, and on that account our action by a *Scire Facias* is saved to us, and we pray execution, etc. GOWER: Since you do not deny the tail, etc. (for by that recovery we were in by the tail), judgment, etc. FYNCHEDEN: And since at first you did not allege the tail, except by protestation, and we have destroyed the substance of your bar, judgment, etc. THORPE: It is hard to resort to the protestation, when he could have had that matter by a plea at the beginning. GRENE: The protestation is part of the plea which is never answered. And that was the opinion of the COURT, wherefore the plaintiff said that he did not give, etc. (Study well, for it seems that the law is the other way.)

Case 4. There is no printed year of 32 Ed. III. The case is not found in the early abridgments.

Trinity
21 Hen. VI.

(5) **If the villein** brings an action of Trespass against his lord, and he says, by protestation, that he is his villein, etc. And then at the [trial of the] Trespass, [he pleads] not guilty, then the protestation is to no purpose. But if he brought an action of Debt against him, upon an obligation made by the lord, then the lord should say (as above), and that the obligation is not his deed; for he cannot say that he is his villein generally, but he should answer to the deed, because by the deed he is enfranchised. And the law is the same in a writ of *Ejectione Firmæ* against his lord, etc. The reason is apparent, etc. Query, how shall he plead in such a case, because of the defence,

etc.? [By] PASTON, in Trespass. *Contra* in the case of *Duddesham, supra*.

The case has not been identified in Y. B. Trinity, 21 Hen. VI. Fitzh: Case 5. Protestation, 10, has the case. The case of *Duddesham* is alluded to in case 3, *supra*, but is not reported there.

⁷⁸ In the books we often find the phrase "and this he did by way of protestation." This protestation was a way of pleading so that more than one point could be set forth without incurring the vice of duplicity in the pleading. Reeves says that a protestation was likewise necessary where the party would otherwise be concluded by the force of the plea [Reeves, Hist. of Eng. Law, Vol. 3: 437]; as if a lord pleaded *nil debet* to debt brought by his villein, this would operate as an enfranchisement, because it admitted him capable of having property; he might, therefore, protest that the plaintiff was his villein, and for plea say, that he owed him nothing. For these reasons a protestation in after times was very significantly termed 'the exclusion of a conclusion.' [Ib., 437.] A protestation should not be repugnant to the facts stated in the plea. That there were many fine points in the matter of the protestation appears by the arguments in many of the cases, but few of these arguments are retained in the abridgment. The protestation was not confined to any certain class of cases, and it may be noted as a peculiarity that three out of our six cases have to do with villeins, and that Coke's phrase cited above is from his title of villenage. I have not been able to find that any of the modern writers have traced any relation between the pleading of a protestation and the tenure in villenage, but it would seem that his pleading might have been admitted in order to save the lord from enfranchising his villeins.

QUOD PERMITTAT

(1) A man shall not have a *Quod Permittat* for a road over the land of another, unless he claims it is a road to his freehold,¹ etc. No more than an Assize, etc. But he is put to his writ of Covenant, etc.

Statham
145 a.
Paschal
45 Ed. III.

Reported in Y. B. Paschal, 45 Ed. III, p. 8, pl. 11. See also Fitzh: Case 1. *Quod Permittat*, 3.

(2) In a *quod permittat*, the defendant said that the plaintiff was seised after the death of his ancestor, of this

Michaelis
20 Ed. III.

¹ From his freehold to the high street, or to the church.

same common, to pasture his cattle, in which case he should have an Assize on his own possession, etc. And it was adjudged a good plea, etc.

Case 2. There is no early printed Year Book for 20 Ed. III. The case is reported in the Rolls Series, 20 Ed. III, pt. 2, pp. 390-396.

Michaelis
30 Ed. III.

(3) **An abbot** brought a *Quod Permittat* against one J, and the defendant demanded judgment of the writ, because the tort was alleged to be done to his predecessor and not to him, etc. And the writ was "*Quod permittat ipsum reducere cursum cujusdam aqua qua 'one such' divertit ad nocumentui B,*" his predecessor. And the writ was adjudged good, etc. Query, if the heir will be in the same position, etc. And the tenant would have vouched to warranty and could not, because the tort was alleged to be done by him, etc.

Case 3. Reported in Y. B. Mich. 30 Ed. III, p. 26, pl. 53. See also Fitzh: *Quod Permittat*, 4. (He gives the citation as p. 3, which is an error; there is a case of *Quod Permittat* there, but it is not this case.)

Hilary
25 Ed. III.

(4) **A man** shall have a *Quod Permittat* in the nature of an Assize of Mort d'Ancestor, writ of Cosinage, writ of Entry, and like writs. As appeared in a *Quod Permittat* for estovers, etc. (But yet see the Register, because there one may learn, etc.)

Case 4. The case has not been identified in Y. B. Hilary, 25 Ed. III. Fitzh: *Quod Permittat*, 5, has the case.

QUID JURIS CLAMAT

Paschal
46 Ed. III.

(1) **In a quid juris clamat**, the tenant said that as to part he was not tenant, and as to the remainder he pleaded another plea, and the demandant was forced to maintain his writ, to wit: that he was tenant as the note alleged. *Simile* Michaelmas Term in the same year¹ where the *Quid Juris Clamat* was for forty pounds of rent. He said it was only for forty shillings; and PERSHAY said that if the issue

¹ Y. B. Mich. 46 Ed. III, p. 27, pl. 17. See Brooke, *Quid Juris Clamat*, 19.

was found against the tenant he would lose his tenancy. FYNCHEDEN: Certainly not, he shall do nothing but attorn, etc. (It seems that he shall have a *Per que Servicia* against the tenant of the lands, also), etc.

Reported in Y. B. Paschal, 46 Ed. III, p. 13, pl. 15. See also Brooke, Case 1. *Quid Juris Clamat*, 6; and Fitzh: *Quid Juris Clamat*, 19.

(2) **In a quid juris clamat**, the tenant said that he did not hold of the conusor the day the note was levied. THORPE: That is no plea, unless you show what estate you claim. Wherefore he said that he held for life of the lease of one B, without this, etc. Query?

Paschal .
30 Ed. III.

Reported in Y. B. Hilary (not Paschal), 30 Ed. III, p. 6, pl. 5. See also Fitzh: *Quid Juris Clamat*, 6. Case 2.

(3) **In a quid juris clamat**, the tenant said that the land was held of the manor of B, which is ancient demesne. And the opinion was that it was a good plea, etc. (I believe that the reason is that is it defeasible afterwards by a writ of Deceit, etc.) Query?

Hilary
31 Ed. III.

There is no printed year for 31 Ed. III. The case has not been identified in the early abridgments. Case 3.

(4) **In a quid juris clamat** against a woman she said that she was covert at the time the note was levied, and had a husband, one H, who is still living in D, in the county of M, and she demanded judgment, if, upon such a writ she should attorn. And the plaintiff demurred upon the plea. YELVERTON: The plea goes to the writ and she concludes to the action. And, sir, by the fine, the reversion is granted by him, so it should agree. FORTESCUE (to the same effect): This writ is not like a *Præcipe quod Reddat*, for if two bring a *Quid Juris Clamat* and one dies, the writ shall not abate, but the woman shall not have anything but an attendancy, which of right should be made. And if, after such a note, the tenant for life grants over his estate, the writ shall be brought accordingly. NEWTON: If, at the time of the note, she should be sole, and before the purchase of the writ, she had taken a husband, the writ should be brought against her alone, because

Paschal
18 Hen. VI.

Statham
145 b.

the writ was once good against her alone, which shall not be changed by her act; but it is otherwise here, etc. And to this that it should agree, etc., if one recovers against an unmarried woman, and then she takes a husband, and her husband and herself have a writ of Error, albeit she was covert at the time, etc., still the reversion passes by the grant. ASCOUGH: If I grant the reversion of my tenant in tail, and by the note I recite that he holds for life, the reversion will pass, and still upon such a note he shall not attorn. But it seems in this case that the reversion will not pass, because the freehold was in her husband immediately upon the marriage, which was before the grant, etc. FOR-RESCUE: Yes, sir, the reversion will pass. But it seems that she should not attorn while her husband lives; for if I lease lands for a life term, the remainder over for a life term, and I grant the reversion by a fine to the first tenant, not mentioning the other, the reversion will pass and still he will not be forced to attorn while the remainderman lives, etc. PASTON: But he will after his death, as it seems to me. YELVERTON: The plea is double, for she says that the day the note was levied she was covert, etc. Which matter by itself proves that nothing passed, etc. And she said still further that she is still covert, etc., which goes in abatement of the writ. And she also relies upon, etc. And inasmuch as no mention of her husband was made in the writ or in the note, "judgment if she should attorn," so double, etc. PORTYNGTON: By the conclusion to the action, to wit: "judgment if she should attorn," the plea in abatement of the writ is waived. And although it be not waived, still one depends upon the other. PASTON: Although the tenant pleads in abatement of the writ and concludes to the action, still the demandant should maintain his writ. As in a *Præcipe quod Reddat* against two, one pleads separate tenancy, and pleads over to the action, etc. (But they are not alike, for there is no need to plead over to the action), etc. And they adjourned, etc.

Case 4.

Reported in Y. B. Paschal, 18 Hen. VI, p. 1, pl. 2. See also Fitzh: *Quid Juris Clamat*, 11. See further, Y. B. Mich. 18 Hen. VI, p. 25, pl. 10, a very long argument upon the case, which ended as did the case in Paschal Term, in an adjournment.

(5) **In a quid juris clamat** against a woman, she said that she had nothing, etc., the day the writ was purchased nor ever since. **FORTESCUE:** That is no plea; no more than in a writ of waste, for you should show how your estate was defeated, when you have admitted that you were tenant on the day the note was levied; for although you be disseised, still this writ lies well enough against you, etc. And they adjourned. Michaelis
18 Hen. VI.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments. Case 5.

See as to quid juris clamat, in the title of Attornment; and also in the title of *Per que Servicia*, etc. Note.

Statham, title of Attournement, *supra*, p. 18a to 18 b. Title of *Per que Servicia*, *supra*, p. 142 b.

(6) **Where there are two** in the reversion and one grants his part by a fine, the tenant shall not be forced to attorn. And that in a *Quid Juris Clamat*. Trinity
5 Ed. III.

Reported in Y. B. Mich. 5 Ed. III, p. 38, pl. 23. See also Fitzh: *Quid Juris Clamat*, 40. Case 6.

(7) **In a quid juris clamat**, the tenant in dower was forced to attorn; and the justices said that she had lost her warranty and also her privilege of being newly endowed, etc. (Query, if she could have saved [herself] by a pro- testation?) etc. Michaelis
10 Ed. II.

Reported in Y. B. Mich. 10 Ed. II (Maynard), p. 303, pl. 24. Case 7.

(8) **A quid juris clamat** brought by an infant under age was adjudged good. Michaelis
23 Ed. II.

The case has not been identified in Y. B. Mich. 23 Ed. III, or in the early abridgments. The citation to 23 Ed. II is a patent error. Case 8.

(9) **In a quid juris clamat** it is a good plea that he who granted had nothing except jointly with his wife, etc. Paschal
27 Ed. III.

Reported in Y. B. Paschal, 27 Ed. III, p. 1, pl. 4. See also Fitzh: *Quid Juris Clamat*, 34. He gives p. 77, but there is no such page for that term in the printed Y. B. Case 9.

- Michaelis
25 Ed. III. (10) **In a quid juris clamat** the defendant claimed a fee, which was found against him, and the demandant had judgment to recover seisin of the land.
- Case 10. The case has not been identified in Y. B. Mich. 25 Ed. III. Fitzh: *Quid Juris Clamat*, 43, has the case.

QUARE IMPEDIT

- Michaelis
2 Hen. IV. (1) **In a quare impedit**, if the defendant makes default after appearance, the plaintiff shall have a writ to the bishop immediately, and recover his damages. But if they have a day by continuance, and the defendant makes default, the plaintiff shall have only a distress. As appeared Paschal, 6 Ric., etc. And that is understood to be before the declaration, so that he cannot emparl, but after emparlance his default is peremptory.
- Case 1. Reported in Y. B. Mich. 2 Hen. IV, p. 1, pl. 3. See also Brooke, *Quare Impedit*, 43.
- Michaelis
2 Hen. IV. (2) **A quare impedit** was brought against the chapter of B, without naming the dean or the provost, and it was not challenged. Therefore, query, etc.
- Case 2. Reported in Y. B. Mich. 2 Hen. IV, p. 7, pl. 33.
- Paschal
40 Ed. III. (3) **In a quare impedit** against a bishop, they were at issue upon "able or not able." And while the issue was pending the bishop admitted the clerk of the plaintiff; and upon showing this matter the plaintiff recovered his damages. And yet it might be that the clerk was not able at the time, and had become able, etc.
- And in the same plea the writ was brought against the bishop alone leaving out the incumbent.
- Case 3. Reported in Y. B. Paschal, 40 Ed. III, p. 25, pl. 32. See also Brooke, *Quare Impedit*, 22; and Fitzh: *Quare Impedit*, 128.
- Hilary
41 Ed. III. (4) **If a parson** be created a bishop, by his creation his benefices are not vacant until he is anointed or consecrated, etc. Query, if he is not installed, for one is not

a rector before the induction, etc. But yet that is not to be understood except in the case of the king; for if another patron presents one who is instituted, and before the induction the patron dies, his heir cannot present another clerk, etc., but the king can, etc.: By HANKFORD, in the year ten of Henry the Fourth.

And it was said in the same plea, if the king grants to a parson the temporalities of a bishopric, etc., and then the same parson is created a bishop of the same place, he shall not sue the temporalities out of the hand of the king, because he is himself seised, etc. And by that grant of the temporalities he shall not have the advowson and the prebend that pertains to it. (It seems that the contrary, etc.)

Reported in Y. B. Hilary, 41 Ed. III, p. 5, pl. 13. See also Fitzh: Case 4. *Quare Impedit*, 129.

(5) **The king** brought a *Quare Impedit* against one W, and counted that one E was seised of the manor of D, to which, etc., and he presented one F, who was received, etc. E died and the manor descended to one R, who was in the wardship of the king. And then the church was vacant by the death of F, and the king presented one H, who was received, etc. And then the church was vacant by the death of H, and the defendant disturbed him, etc. CANN-DISH: F was not received or instituted before the death of E: Ready, etc. BELKNAP: That is nothing, because the presentation of the king gave title to the heir, which he has not denied, etc. FYNCHEDEN: The title of the king is the presentation of E, which is destroyed, then the king should bind seisin in the heir of the feoffee, and therefore the averment seems good, etc. And they adjourned.

Hilary
42 Ed. III.

Reported in Y. B. Hilary, 42 Ed. III, p. 4, pl. 15. See also Fitzh: Case 5. *Quare Impedit*, 130.

(6) **In a quare impedit**, the defendant said that he was in by the presentation of the bishop through a lapse, without wrong, etc. And because no patron nor disturber was named, the writ was abated. Hilary, 42 Ed. III.

Hilary
42 Ed. III.

Reported in Y. B. Hilary, 42 Ed. III, p. 7, pl. 28. There are two cases of *Quare Impedit* on p. 7; one is placitum 27, the other 28.

Case 6.

In the margin opposite pl. 27 there is a reference to Statham, *Quare Impedit*, 6. But in reality it is the succeeding case which is abridged by Statham in case 6. See also Brooke, *Quare Impedit*, 24.

Paschal
42 Ed. III.

(7) **In a quare impedit**, the plaintiff counted that he recovered the advowson against one H, and then he presented one R, who resigned, etc., wherefore the church became vacant, and the defendant disturbed him, etc. BELKNAP: The church was filled by the defendant, of your own presentation after the recovery. CANNISH: That is no plea, unless you say, "after the resignation," etc. But he dared not demur, but said that he did not present him: Ready, etc.

Case 7.

Reported in Y. B. Paschal, 42 Ed. III, p. 8, pl. 5. See also Brooke, *Quare Impedit*, 25; and Fitzh: *Quare Impedit*, 132.

Hilary
43 Ed. III.

(8) **The king** brought a *Quare Impedit*, and counted that one B was seised of the manor of A, to which, etc., and presented one J, who was received, etc. From B the right descended to E, and from E to R, who is in the wardship of the king. CANNISH: There never was such a person as E living. Ready, etc. FYNCHEDEN: Although he took the name of E, that is not at all to the purpose, for E is not named except to convey the right to R, and you do not deny the presentation of B, nor that R is in the wardship of the king, etc., wherefore, etc. But if R had been misnamed your exceptions perchance had been good, wherefore answer, etc.

Case 8.

Reported in Y. B. Hilary, 43 Ed. III, p. 7, pl. 22. See also Brooke, *Quare Impedit*, 26; and Fitzh: *Quare Impedit*, 133.

Hilary
43 Ed. III.

(9) **In a quare impedit**, if the six months have passed although the bishop does not present for the lapse, but at the time the plaintiff has his judgment, the church is vacant, still the plaintiff shall recover his damages for two years. And still the Statute is "*Si tempus semestre transierit ita quod episcopus*," and afterwards, "*conferat*," etc. But that shall not be meant where he has "*jus conferendi*" although he does not confer, for he can be presented when he wishes, etc.

And the Court did not decide whether he had the presentation or not, etc., because it is no plea to say that the bishop had presented, etc. Wherefore it was adjudged that the plaintiff should recover his damages for the two years.

Reported in Y. B. Hilary, 43 Ed. III, p. 10, pl. 33. See also Brooke, Case 9. *Quare Impedit*, 27.

The Statute of Westminster the Second, 13 Ed. I (1285), cap. 5, Stats. at Large, Vol. I, p. 163 (175-179).

(10) **The advowson of a manor** was given to a man and his wife, in tail. The husband died, leaving his heir under age, and in the wardship of the king, and the advowson was vacant, and the king presented as guardian. And that presentation put the widow out of possession all her life, since the king had [no] right to present; in which case that was a usurpation. Wherefore at the next vacancy the king had a writ to the bishop against the woman, etc. Paschal
43 Ed. III.

Reported in Y. B. Paschal, 43 Ed. III, p. 14, pl. 8. See also Brooke, Case 10. *Quare Impedit*, 29.

(11) **One R brought *Quare Impedit*** against one F, and upon that it was agreed between them that R would admit the right that he had in the said advowson to be the right of F, by a fine, for which admission F granted to this R that he should present one time, and he another time, and so an interchangeable impropriation. And then one who was heir to F, because it came to his turn to present, brought a *Quare Impedit*, and counted as appendant, etc. And the said count was adjudged good, notwithstanding the other presentation was in gross, etc. Michaelis
43 Ed. III.

Reported in Y. B. Mich. 43 Ed. III, p. 35, pl. 48. See also Fitzh: Case 11. *Quare Impedit*, 134.

(12) **In a quare impedit** brought by the issue in tail, he can bind the presentation in each one who was seised by force of the tail. Query, if he could [do so] *rigore juris*? But if the heir in fee simple binds two presentations, it is double, etc. If an advowson is appendant to a manor, and a man alienates one acre which is part of the manor, with the Michaelis
43 Ed. III.

Statham
146 b.

advowson, the advowson is appendant to the acre. [It was said in the same plea] if the tenant in tail aliens the manor with the advowson, his heir cannot present, but he shall have Formedon. But of an advowson in gross, he shall present after the death of his father, because he cannot have Formedon. And if the tenant in tail aliens an advowson to one who presents, etc., that presentation does not put the heir out of possession, for it cannot be called a usurpation, because he is in by title.

[It was said] in the same plea, that if the tenant in tail suffers a usurpation of an advowson in gross, and his issue brings a *Quare Impedit*, he shall show that the church became vacant by the death of the presentee of his father, albeit it became vacant after the death of the presentee of the usurper, because the presentation of his father gave him title, and not the other presentation, notwithstanding the six months were passed, etc. In the same plea. (But yet, query?)

And in such a *Quare Impedit* for an advowson in gross, the tenant shall plead the warranty of his father, with assets by descent, etc. (In the same plea, etc.)

Case 12. Reported in Y. B. Mich. 43 Ed. III, p. 24, pl. 4. See also Brooke, *Quare Impedit*, 31; and Fitzh: *Quare Impedit*, 135.

Trinity
44 Ed. III. (13) **The incumbent** shall not have an answer to the title of the plaintiff unless the king is plaintiff, because the Statute says that the king, etc. And that in a *Decies Tantum*.

Case 13. Reported in Y. B. Mich. (not Trinity), 44 Ed. III, p. 35, pl. 24. For the Statute, see case 9, *supra*.

Trinity
44 Ed. III. (14) **In a quare impedit** on an advowson in tail, although the plaintiff omits some of his ancestors who presented, by whom he conveyed [the descent], still the count is good, for it is not like a Formedon, etc. (But yet it seems that in a *Quare Impedit* for an advowson in gross, the law is otherwise, for the warranty of the ancestor with descent is a bar, and consequently so in a collation to the warranty without descent, and especially when the possession is bound in his ancestors, and not in himself, etc. Query?)

Case 14. Reported in Y. B. Trinity, 44 Ed. III, p. 21, pl. 21.

(15) **In a quare impedit**, the defendant said that there was no such church known by such a name within that county. And the plea was adjudged good, etc. The law is the same where a manor is in demand, etc. Paschal
45 Ed. III.

Reported in Y. B. Paschal, 45 Ed. III, p. 6, pl. 2. See also Brooke' Case 15. *Quare Impedit*, 33; and Fitzh: *Quare Impedit*, 138.

(16) **In a quare impedit**, against one who was an incumbent, and against the bishop, the incumbent told how an exchange took place between one L, and himself, of this advowson and a chapel, etc. And how he who is now plaintiff agreed, etc. And he wrote a letter to the bishop to present, etc. And he told how, *per viam permutationis*, they were admitted and inducted. And the bishop pleaded the same plea, etc. The plaintiff said [his presentee] died before the defendant was inducted, so the exchange was invalid in law, etc., and then we presented one R, and the bishop would not, etc. BELKNAP (for the bishop): Sir, he was inducted, and he who is now defendant was admitted, and we wrote to our archdeacon to induct him, so there was no default in us, although he died before the induction. And then it was adjudged that the plaintiff should have a writ to the bishop. But how, and against whom, he should recover his damages they were not advised, for the incumbent was not a disturber by that plea, etc. Nor the bishop nor the plaintiff, as it seems, etc. And so see in this case how the incumbent pleaded in bar, etc. But yet he did not traverse the title of the plaintiff, etc. Michaelis
45 Ed. III.

The case has not been identified in Y. B. Mich. 45 Ed. III, or in the early abridgments. Case 16.

(17) **The incumbent** shall have an answer to the title of the king, in a *Scire Facias* to execute a judgment in a *Quare Impedit*; as he shall have in a *Quare Impedit*. Well argued, etc. Paschal
46 Ed. III.

Reported in Y. B. Paschal, 46 Ed. III, p. 13, pl. 18. Case 17.

(18) **The Abbess of C** brought a *Quare Impedit* against one E for a prebend, and [she told] how it was vacant by Trinity
46 Ed. III.

the death of one J. TANK: This writ was purchased in the lifetime of J, judgment of the writ. FENCOT: He pleads in abatement of the writ, and does not claim anything in the patronage, and that has never been seen, etc. FENCOT: The reason that no other than the patron can allege "plenitie" is because it goes to the action, and puts him to a writ of right, but here it gives him a writ of the same nature, wherefore answer, etc.

Case 18. Reported in Y. B. Trinity, 46 Ed. III, p. 19, pl. 22. See also Brooke, *Quare Impedit*, 37. But the printed report says, "And then the writ was abated."

Hilary
50 Ed. III. (19) **A man who was** seised of an advowson, as in right of his wife, and whose wife had made a composition with her parceners to present by turns, had a *Quare Impedit* in his own name, leaving out his wife; as appears in a *Quare Impedit*, etc. And they took it, perchance because it appeared by his declaration that the defendant was not out of possession, etc. From this it follows that another man who is seised of an advowson in the right of his wife shall not have a *Quare Impedit* unless his wife be named, etc. Query?

Case 19. Reported in Y. B. Trinity (not Hilary), 50 Ed. III, p. 13, pl. 4. See also Brooke, *Quare Impedit*, 41.

Paschal
31 Ed. III. (20) **In a quare impedit** brought by the king against the Archbishop of C, and a vicar incumbent, the king made title [showing] how one S, predecessor of this archbishop, was seised as in the right of his church and presented, etc., and he showed how the temporalities, etc., and that by the death of one H, formerly vicar, etc., it became vacant. And the bishop said that he did not claim anything in the patronage except by lapse; and he said that this S, our predecessor, never had anything, etc., but this presentation which was made was by lapse, etc. SKIPWITH demanded judgment for the king, inasmuch as the archbishop did not claim anything in the patronage, so he could not traverse the title of the king, unless he were patron or incumbent. And then the vicar said that the vicarage was not vacant while the temporalities were in the hand of the king. Ready, etc. SKIPWITH (for the

king): This vicar had dismissed himself from the vicarage, pending the writ. And the Statute says that no one shall have a traverse, as above, unless he is patron, or in possession. FYNCHEDEN: Between common persons it shall always be awarded [to the one] in possession. But a writ was awarded to the bishop for the king.

There is no printed year of 31 Ed. III. Fitzh: *Quare Impedit*, 161. Case 20. has the case.

The Statute is West. II, cap. 5, 13 Ed. III (1285), Stats. at Large vol. 1, p. 163 (175).

(21) **A prebend** is not permutable because it is a lay thing, etc. As appeared in a *Quare Impedit* brought for the king, etc. But yet some are spiritual and permutable, etc. Hilary
21 Ed. III.

See in the same plea, by WILLOUGHBY, that if a man traverses the title of the plaintiff and does not make title to himself, he shall not have a writ to the bishop. As in a *Quare Impedit* brought for the king the defendant said that it was not vacant while the temporalities were in the hand of the king, etc. Query?

Reported in Y. B. Mich. (not Hilary), 21 Ed. III, p. 31, pl. 14. See Case 21. also Brooke, *Quare Impedit*, 73.

(22) **One brought** a *Quare Impedit* as guardian, and bound the presentation in one J, who held the advowson of him: and also in another as guardian. And the count was adjudged good, because the presentation of the guardian by itself was not a sufficient title, etc. Hilary
24 Ed. III.

Reported in Y. B. Trinity (not Hilary), 24 Ed. III, p. 30, pl. 27. Case 22. See also Brooke, *Quare Impedit*, 98; and Fitzh: *Quare Impedit*, 11.

(23) **Where a composition** is made between parceners, that one shall present at one time, and another another time, although one of them, when it comes to her turn, suffers a usurpation, that does not injure the others, but they shall present in their turn, etc. But when it returns to her turn who suffered the usurpation, she shall not present, etc. Query, if she presented and brought a *Quare Impedit* against Trinity
30 Ed. III.
Statham
147 a.

the usurper, could the usurper entitle himself? And this in a *Quare Impedit*, etc.

Case 23. Reported in Y. B. Mich. (not Trinity), 30 Ed. III, p. 14, pl. 15. See also Fitzh: *Quare Impedit*, 3.

Michaelis
3 Hen. IV.

(24) **In a quare impedit**, the plaintiff counted that he himself was seised of the manor of H, to which, etc., the presentation. The defendant said that a long time before he had anything one F was seised of the same manor, and the advowson, as appendant, and presented, etc., and the plaintiff disseised him, and he re-entered, whose estate we have, and our presentation was mesne, etc. And he was forced to show how he came to his estate, because he had become an actor, etc. And it was the opinion that the plea was good, for by his entry all mesne presentments were void; but it is otherwise of an advowson in gross, etc. And so see that a usurpation is only where one suffers a presentation, he himself being seised of the lands to which it is appendant. Study well, etc.

Case 24. Reported in Y. B. Mich. 3 Hen. IV, p. 7, pl. 33. See also Brooke, *Quare Impedit*, 45.

Hilary
3 Hen. IV.

(25) **If a man** sues a *Quare Impedit*, and sues a *Scire Facias* to have execution, etc., the *Scire Facias* does not lie against the incumbent, leaving out the patron, no more than the *Quare Impedit*, etc. For by that *Scire Facias* the patron will be put out of possession, etc. In a *Quare Impedit*.

Case 25. Reported in Y. B. Hilary, 3 Hen. IV, p. 11, pl. 12.

Michaelis
14 Hen. VI.

(26) **The Lord of Cromwell** brought a *Quare Impedit* against one B, and counted that one H was seised, to which, etc., and presented, and gave the same manor to one E, in tail, the reversion to one F. And E presented and died without issue. And F presented and enfeoffed the plaintiff, and [he said] that by the death of one C the church is vacant, etc. (And so note many presentations, where each presentation giving him title is good, etc. It is other-

wise of a presentation to a stranger, which does not give him title, etc. Study well, etc.)

CANNISH: To that we say that B was seised of the same manor, etc., and presented and died; after whose death the manor with the advowson descended to one K, who is still alive, not named, etc., judgment of the writ. FULTHORPE: That is no plea, for we have counted that the church became vacant by the death of one C, and he says that it is vacant by the death of H, etc. And it was not allowed, for PASTON said that it was sufficient for him to make title, and to answer to no point of the title of the plaintiff, etc. Query as to that? For it seems that the plea was in bar, and not in abatement of the writ, because it was only in the personalty. Which was conceded, etc.

And it was said by JUYN in the same plea, that if my father be disseised of a manor to which, etc., and the disseisee presents, and then my father dies, and I enter, I can present well enough, if the six months are not passed; and the presentee of the disseisor shall be ousted, etc. (It seems that the executors shall present in that case, etc.)

Reported in Y. B. Anno 14 Hen. VI, p. 23, pl. 69. See also Brooke. Case 26. *Quare Impedit*, 108.

(27) **If the husband** be disturbed in presenting to an advowson which he has in the right of his wife, and dies, the woman shall have a *Quare Impedit* for that disturbance. By HERLE, in a *Quare Impedit*, etc. Paschal
13 Ed. III.

There is no early printed year of 13 Ed. III. The case has not been identified in the Rolls Series for that year and term. Fitzh: *Quare Impedit*, 57, has the case. Case 27.

(28) **In a quare impedit** brought against one who made title to himself and another, to the advowson. And then the plaintiff was nonsuited and the defendant had judgment to have a writ to the bishop for himself and not for the other, according to his title, etc. Michaelis
13 Ed. III.

There is no early printed year of 13 Ed. III. The case has not been identified in the Rolls Series for that year and term. Case 28.

(29) **In a quare impedit** against two; one came on the first day, and was put to answer, and it was found against Michaelis
5 Ed. III.

him by an inquest; and still the plaintiff could not have judgment against him, for the other could bar him of the entirety when he came, etc.

- Case 29. Reported in Y. B. Mich. 5 Ed. III, p. 36, pl. 11.
- Paschal
7 Ed. III. (30) **If before partition** the eldest presents in her own name, that puts the other parceners out of possession. In a *Quare Impedit*, etc.
- Case 30. Reported in Y. B. Paschal, 7 Ed. III, p. 20, pl. 27. See also Fitzh: *Quare Impedit*, 20.
- Michaelis
6 Ed. III. (31) **See in** the *Quare Impedit* of Lyndesey, that the Statute of Westminster "*cum de advocacionibus*," etc., is to be understood as applying to a presentation, as well before as after the Statute.
- Case 31. Reported in Y. B. Mich. 6 Ed. III, p. 52, pl. 51 (55 as printed is an error). See also Fitzh: *Quare Impedit*, 39.
Statute of Westminster the Second, 13 Ed. I (1285), cap. 5, Stats. at Large, Vol. 1, p. 163 (175).
- Hilary
15 Hen. VI. (32) **In a quare impedit**, the plaintiff counted that his ancestor presented as appendant. And the defendant said that a long time after that presentation, he himself was seised of the advowson, and presented one F, who is dead, by whose death, etc. And the incumbent said that the defendant was seised of the advowson in fee, and presented the said F. who is dead, and he presented us, so we are in of the presentation of the defendant, who is patron, etc. NEWTON: We have shown that the advowson is appendant and his plea proves that it is in gross. MARTYN: He has said that after your presentation he himself was seised and presented, so he is out of possession, and the advowson is in gross until you have recontinued; wherefore answer him, etc. Query?
- Case 32. There is no printed year of 15 Hen. VI. The case has not been identified in the early abridgments.
- Hilary
7 Ed. II. (33) **In an assize of Darrein Presentment**, a strange purchaser of the reversion of a tenant in dower was received

to render the usurpation void, which was made upon the tenant in dower, etc.

The case has not been identified in Y. B. Hilary, 7 Ed. II, or in the Case 33. early abridgments.

(34) **A man cannot plead** in bar nor in abatement of the writ, except to the form of the writ and matter apparent, in a *Quare Impedit*, unless he himself makes title to the advowson, for if he does not claim anything in the patronage, he shall not say anything else but to excuse himself of the disturbance; as to plead a release or an arbitrement, or something of that sort, etc. But he cannot plead in destruction of the title, unless he entitles himself, as above. And that in a *Quare Impedit*. Hilary
13 Hen. IV.

Reported in Y. B. Mich. 13 Hen. IV, p. 7, pl. 17.

Case 34.

(35) **In a quare impedit** the writ was "*Quod permittat ipsum nominare*," etc. And the writ was abated because there was no such form in the Chancery, etc. But if his writ had been "*Quod permittat ipsum presentare*," it had been good enough, notwithstanding he had only the nomination, for he was patron, "*hac vice*." And he who presented him over to the bishop was only his minister to execute his nomination, etc. Michaelis
14 Hen. IV.

And it was said in the same plea, that when the king gives to one a free chapel, and writes to the sheriff to put him in possession; if he be disturbed he shall have a *Quare Impedit quod permittat ipsum presentare*, and yet he shall not present to the bishop, etc.

And it was said in the same plea that where a writ of *Quare Impedit* or an Assize of Darrein Presentment is abated for false Latin, etc., that the defendant shall not have a writ to the bishop, for it is not like a nonsuit. By HANKFORD, etc. (I believe that the reason is because when the writ was abated it was never good, etc., although it were otherwise if he were nonsuited, etc.) Statham
147 b.

Reported in Y. B. Mich. 14 Hen. IV, p. 10, pl. 9. See also Brooke, Case 35. *Quare Impedit*, 56; and Fitzh: *Quare Impedit*, 122.

- Hilary
38 Ed. III. (36) **In a quare impedit** against the bishop of C, he said that the plaintiff presented one H, his clerk, to him, which H admitted before him that he was a criminal and a perjurer, wherefore we commanded him to go to you to warn you to present another, etc. And it was challenged, because by such an admission he could not disable himself, without process of law. But yet the plea was adjudged good, wherefore the plaintiff said that he did not admit himself to be a perjurer. Ready. And the other alleged the contrary, etc. Note, etc.
- Case 36. Reported in Y. B. Hilary, 38 Ed. III, p. 2, pl. 9. See also Brooke, *Quare Impedit*, 64; and Fitzh: *Quare Impedit*, 124.
- Trinity
39 Ed. III. (37) **The bishop** shall not go on to present for a lapse, where he himself is named in the writ as disturber, etc. (That is the reason that the bishop is so often named, etc.)
- Case 37. Reported in Hilary (not Trinity) 39 Ed. III, p. 2, pl. 5. See also Brooke, *Quare Impedit*, 102.
- Michaelis
39 Ed. III. (38) **A lay man** cannot have a *Quare Impedit* of a vicarage because it is wholly in spirituality; but an abbot or a parson can, because it belongs to them. By THORPE. For a lay man cannot be patron to a vicar, etc.
- Case 38. Reported in Y. B. Mich. 39 Ed. III, p. 33, pl. 38. See also Brooke, *Quare Impedit*, 105.
- Michaelis
39 Ed. III. (39) **In a quare impedit** against two, one traversed the presentation of the plaintiff, and made title to himself. And the other showed that he was incumbent through the presentation of the other, and he traversed the title of the plaintiff also. THORPE: When the other has traversed the title, none shall plead as patron: and that was the evil [that the Statute was meant to cure]. KYRK: At the common law, if a *Quare Impedit* had been brought against three or four, each of them could have traversed the title of the plaintiff without claiming anything in the advowson. THORPE: You say truly, because it could be understood that they had the advowson in common, by separate titles. But if one had admitted that he was the incumbent, and

no other had [claimed] anything, he could not have traversed the title, and the Statute was made on that account, etc. But yet the issue was received for both, etc. Query? For the Statute speaks only of the king, and not of any other patron, etc.

Reported in Y. B. Mich. 39 Ed. III, p. 30, pl. 31. See also Brooke, Case 39. *Quare Impedit*, 104.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 5, Stats. at Large, Vol. 1, p. 163 (175).

(40) **In a quare impedit**, the defendant said that pending the writ, the clerk of the plaintiff was admitted and instituted. CLOPTON: For anything, etc. BELKNAP: If your clerk be admitted you cannot have a writ to the bishop which is the effect of your suit. WADHAM: He does not deny the disturbance, etc. And then the plaintiff had a writ to the bishop; and as to the damages they would be advised, etc. Trinity
11 Ric. II.

There is no early printed Year Book for the reign of Ric. II. Fitzh: Case 40. *Quare Impedit*, 144, has the case.

(41) **A quare impedit** was brought against the prior of C, and one A, incumbent. The prior pleaded in bar, upon which they were at issue, and the incumbent pleaded the same plea, and [said] that he was in of his presentation, etc. And upon that they were at issue. HALLS: Judgment of the writ, for after the last continuance the prior died, so no patron was named, etc. MARTYN: The writ shall not abate, for if so the plaintiff cannot have another writ for there is no disturber. And this action lies merely by reason of the disturbance, etc., and also the six months will be passed, wherefore, etc. HALLS: He should have the *Quare Impedit* against the incumbent alone if there were no patron, etc. And then the writ was adjudged good, etc. Michaelis
9 Hen. VI.

And it was said in the same plea that a writ of right of an advowson clearly lies solely against the patron, leaving out the incumbent, etc.

And it was said in the same plea that if two are indicted for felony: one as principal and the other as accessory,

and the principal dies, the accessory is acquitted, etc. And then the issue was found for the incumbent, wherefore he prayed his damages. MARTYN: You are not patron; and also you have at all times continued in possession, wherefore, etc. HALLS: Still he shall recover his damages for the serious annoyance that he has had, etc.

Case 41. Reported in Y. B. Mich. 9 Hen. VI, p. 30, pl. 1. See also Brooke, *Quare Impedit*, 6; and Fitzh: *Quare Impedit*, 75.

Michaelis
11 Hen. IV.

(42) **In a quare impedit**, the plaintiff showed how one, his ancestor, was seised of the advowson and presented, etc. HORTON: One J was seised of the same advowson in gross with other lands, etc., and by a fine he gave them to one F, and to K his wife, in tail; who presented, and had issue A and M, and died; and they made purpart, so that the advowson, among other things, was allotted to M, who married G, who had issue this present defendant and died, after whose death it descended. And the presentation on which the plaintiff has taken his title was during the coverture of our mother, etc. Judgment. And he produced the fine. And it was challenged, because he did not show a deed of the partition. And it was not allowed. SKRENE: The advowson was allotted to A, and not to M: Ready. HORTON: You see clearly that he is a stranger to the purpart, and he has admitted the descent to our mother and to A, and he does not show how he came to the advowson by the grant of A. HANKFORD: He has shown that he was in possession of the advowson by the last presentation of his ancestor, wherefore it suffices for him to say (as above). Wherefore HORTON said that it was allotted to M, Ready, etc.

Case 42. Reported in Y. B. Mich. 11 Hen. IV, p. 3, pl. 7.

Michaelis
11 Hen. IV.

(43) **The king** brought a *Quare Impedit* against the bishop of Lichfield, and counted how such a one, his predecessor, was seised, etc., and presented one J, who died, wherefore the church was vacant, and remained vacant until the temporalities fell into the hand of King Edward, son of King Henry, and conveyed to him by mesne degrees, as

to the king of England. NORTON: There is a statute of the year twenty-five Edward the Third, which says that the king nor his heirs cannot take any title to present, nor other right, except in his own time, etc., which statute means that if a church is vacant during the temporalities, and then one is made bishop, and has livery of his temporalities; and then the king dies, and did not present, the heir of the king does not present by reason of that vacancy, etc. But there is a clause in the end of the same statute which says, "Saving to the king and to his heirs [all such presentments in another's right] when vacancies in his time, and in future times," so the king can bind seisin in [the same] King Edward the Third, and for all time after, when he makes title in another's right, as above. It is otherwise by reason of a wardship.

And see in the same plea, that if a bishop makes a collation to a prebendary, who is not inducted until the bishop is dead, that the king shall present, etc. And the confirmation of the king made to him before the induction is void. In the same plea, etc. (See the plea, for it is long, deep and profound.) And then the king departed from his title, and showed how it was vacant, as above, in the time of King Richard.

Reported in Y. B. Mich. 11 Hen. IV, p. 7, pl. 20. See also Brooke, Case 43. *Quare Impedit*, 50; and Fitzh: *Quare Impedit*, 118.

Statute of 25 Ed. III (1350), cap. 1, Stats. at Large, Vol. 2, pl. 38. Statham 148 a.

(44) See that tenants in common of an advowson shall present, and they shall have a *Quare Impedit* together, notwithstanding they have the advowson by separate titles. (And it is strange that they have a writ to the bishop together, where they have made separate titles, but the reason is because the advowson is entire. All the same it seems that nothing is recovered in a *Quare Impedit* for the advowson, for the writ to the bishop is only to execute the presentation, which gives him title to the advowson, so the advowson is not recovered; and so the action is merely personal, and then it lies well for both, etc.) And it was so adjudged in a *Quare Impedit*. Paschal 11 Hen. IV.

The case has not been identified in Y. B. Paschal, 11 Hen. IV, or in Case 44. the early abridgments.

Trinity
11 Hen. IV.

(45) **In a quare impedit** they were at issue. The jury sang for the plaintiff. SKRENE prayed that it be inquired as to when the church was vacant, and if it be full or not; and if it be full, of whose presentation it is full, and of what value the church is, to the intent that we may recover our damages accordingly, etc. THIRNING: Excellent! Wherefore they inquired, and found the church was vacant for a year past; and that after the six months were passed, the title devolved on the ordinary of the place, and one week after the metropolitan made a collation to the same church. SKRENE: We pray a writ to the bishop to receive our clerk, inasmuch as the ordinary of the place had not presented. HANKFORD: That cannot be, for since the metropolitan has presented the [church is full], and we think that he had the right to present, in default of the ordinary; for it may be that the law of Holy Church is such that we cannot take a recognizance. And the Statute is "*Ita quod si episcopus Ecclesiam conferat,*" for it may refer to the metropolitan as well as to the ordinary. THIRNING: If it be as you say, that would come in question on a *Quare non amisit*, etc. Wherefore, *ex assensu*, etc., this writ to the bishop was adjudged good. Well argued.

Case 45.

Reported in Y. B. Trinity, 11 Hen. IV, p. 79, pl. 22. See also Brooke, *Quare Impedit*, 53.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 5, Stats. at Large, Vol. 1, p. 163 (179).

Trinity.
18 Ed. III.

(46) **In a quare impedit**, the plaintiff counted that one R was seised of the manor of B, to which, etc. And the same manor with the advowson was given to our father in tail, etc. YELVERTON: Judgment of the count, for he said that one K was seised, and did not say of what estate, etc. PORTYNGTON: This suit is in the nature of a Formedon, and in Formedon such a count is good. FORTESCUE: It is not in the nature of a Formedon, for the heir shall never have Formedon unless his father was seised, and in this case he was not seised of the advowson, for this is the first time it was vacant after the gift, etc. In Formedon on a rent charge he counted that he was seised of the lands of

which, etc., in fee, and gave to, etc., and not that he was seised and gave. NEWTON: This suit is taken at the common law and he binds a presentation in the donor, consequently he shall say of what estate he was seised, etc.

The case has not been identified in Y. B. Trinity, 18 Ed. III, or in Case 46. the early abridgments.

(47) **In a quare impedit**, the defendant said that the plaintiff enfeoffed him and one F, of the same manor with the advowson, to enfeoff one G, by a certain day; and we offered a deed of the feoffment to F, before the day, etc., and he refused, etc. And so the said F is patron with me, and is alive, not named, etc., judgment of the writ. And he had the plea. But yet it seems that it goes to the action, for it is hard for [a plea of] joint tenancy to abate a *Quare Impedit*, etc. And the said defendant and the said F had another *Quare Impedit* for the same advowson, against the same plaintiff, returnable the same day, and they counted against him. And the justices were perplexed as to whether he should answer to that, or whether one should abate for the inconvenience, because the title could be found for one, in one writ, and for the other in the other writ.

Paschal
19 Hen. VI.

Reported in Y. B. Paschal, 19 Hen. VI, p. 67, pl. 14. See also Case 47. Brooke, *Quare Impedit*, 79; and Fitzh: *Quare Impedit*, 80. See more of the case in Y. B. Trinity of the same year, p. 75, pl. 5.

(48) **In a quare impedit**, the plaintiff counted that such a one was seised of the manor, to which, etc., and presented one J, who was admitted, etc. And J died, wherefore, etc., and he conveyed the descent, etc. DANBY: Before the death of the said J, this same plaintiff leased the said manor to one H, for life, who is still alive, judgment if action. POLE: That amounts to nothing more than that he did not disturb, wherefore we pray a writ to the bishop, for when a man pleads nothing except to excuse himself of the disturbance, and does not claim anything in the advowson, the plaintiff shall have a writ to the bishop immediately before the issue is tried. Which was conceded.

Michaelis
30 Hen. VI.

Wherefore DANBY pleaded, as above, "whose estate he had." PRISOT: You are an actor, wherefore it is hard for you to entitle yourself, "by whose estate." DANBY: I will not say more. POLE: He did not lease. Ready, etc. And the other alleged the contrary. It seems that the plea is good enough, to wit: to say "whose estate," as above. As well as in Trespass, where the plaintiff entitles himself by "whose estate." As appeared in the case of *Duddesham*, etc.

Case 48. The case has not been identified in Y. B. Mich. 30 Hen. VI, or in the early abridgments.

See as to **quare impedit**, in the title of Incumbent, and in the title of Writ to the Bishop; in the title of Darrein Presentment, and in the title of *Scire Facias*, Hilary, 31 Ed. III; and in the title of Damages, Michaelmas, 31 Ed. III; good matter. And in the title of Presentment to a Church; and in the title of Aid to the King, Hilary 4 Hen. VI, and in the title of Provision, Hilary 11 Hen. IV. And in the title of Count, Michaelmas, 30 Hen. VI. And in the title of Descent, Michaelmas, 27 Hen. VI. Truly good material.

Statham, in the following titles: Incumbent, Statham has no such title; Briefe al Evesque, *supra*, p. 31 a. Darrein Presentment, *supra*, p. 76 b. *Scire Facias*, *infra*, p. 164 b, case 16; Presentment à Eglise, 141 a. Damages, *supra*, p. 60 a, case 16. Title Aide de Roy, *supra*, p. 8 a, case 7; Provision, *supra*, p. 143 a, case 6; Connte, *supra*, p. 38 a, case 2; Discent, *supra*, p. 69 a.

Michaelis
10 Hen. IV.

(49) **The incumbent** shall not have a traverse to the title of the plaintiff, unless the king be pleading. And that is by the Statute of Ed. III. And the evil [that was to be cured] was that although an incumbent had continued in possession twenty years, still if the king brought a *Quare Impedit* against him and another as patron, that it would not appear in that case, because as no time runs against the king, he would oust the incumbent, etc. And because of that the Statute was made, etc.: By HANKFORD.

Case 49. The case has not been identified in Y. B. Mich. 10 Hen. IV, or in the early abridgments.

The Statute of 25 Ed. III (1350), Stat. 3, Stats. at Large, Vol. 2, p. 38.

Query. Can the patron alien the glebe of the church? Note. And query, to whom does the glebe belong in a time of vacancy? And shall he have an action for waste made in the glebe, etc.?

(50) **It is a good plea in a *Quare Impedit***, that before the purchase of the writ the clerk of the plaintiff was instituted and inducted. Hilary
12 Hen. IV.

Reported in Y. B. Mich. (not Hilary), 12 Hen. IV, p. 11, pl. 21. See also Brooke, *Quare Impedit*, 54; and Fitzh: *Quare Impedit*, 121. Case 50.

(51) **In a *quare impedit*** brought by the guardian, who was not named guardian, it was abated, etc. Statham
148 b.
Trinity
9 Ed. III.

Reported in Y. B. Trinity, 9 Ed. III, p. 25, pl. 24. Case 51.

(52) **A *quare impedit*** was abated because it was purchased in the lifetime of him by whose death the church was vacant. And this matter was pleaded by the incumbent. Trinity
6 Ed. III.

The case has not been identified in Y. B. Trinity, 6 Ed. III, or in the early abridgments. Case 52.

(53) **A *quare impedit*** was brought by the king by reason of the lapse which accrued to the bishop, and the temporalities came into his [the king's] hand. And that was adjudged good, etc. Michaelis
25 Ed. III.

Reported in Y. B. Mich. 25 Ed. III, p. 97, pl. 20. See also Fitzh: *Quare Impedit*, 29. Case 53.

(54) **A *quare impedit*** against the incumbent, leaving out the patron, brought by the king, was adjudged good, *Coram Rege*. Michaelis
7 Hen. IV.

Reported in Y. B. Mich. 7 Hen. IV, p. 25, pl. 3; and Y. B. Hilary of the same year, p. 37, pl. 7. See also Brooke, *Quare Impedit*, 47; and Fitzh: *Quare Impedit*, 115. Case 54.

(55) **In a *quare impedit***, it is good plea that there is no such vill [church] in the county. Paschal
45 Ed. III.

Reported in Y. B. Paschal, 45 Ed. III, p. 6, pl. 2. See also Brooke, *Quare Impedit*, 33; and Fitzh: *Quare Impedit*, 138. Case 55.

- Hilary
3 Ed. III. (56) **If the defendant** in a *Quare Impedit* be essoined, he cannot plead afterwards that he did not disturb, etc., for by the throwing of the essoin he becomes a disturber, etc.
- Case 56. Reported in Y. B. Hilary, 3 Ed. III, p. 3, pl. 6.
- Anno
3 Hen. V. (57) **Two husbands** and their wives, as in right of their wives, brought a *Quare Impedit*. One husband died, and the writ abated, for otherwise his wife would lose her presentation at that time. And so it is not the same as where one of the plaintiffs dies, etc. By the opinion of HALLS and HANKFORD.
- And it was said in the same plea, that if [one] of the women marries while the writ is pending, the other shall have a writ to the bishop for the whole, since that is the deed of the woman, etc. Query?
- Case 57. There is no printed year of 3 Hen. V. Fitzh: *Quare Impedit*, 71, has the case.

QUALE JUS

- Michaelis
44 Ed. III. (1) **A prior** recovered lands in a *Præcipe quod Reddat* by default. And before the *Quale Jus* was returned the prior died. And his successor came and prayed the *Quale Jus*. FYNCHEDEN: He cannot have it without suing a *Scire Facias* against the tenant; no more than the heir can after the death of his ancestor. And THORPE said: But now the king is seised, against whom then shall the *Scire Facias* issue? And they adjourned.
- Case 1. Reported in Y. B. Mich. 44 Ed. III, p. 41, pl. 42. See also Brooke, *Quale Jus*, 2.
- Trinity
24 Ed. III. (2) **A prior** brought a *Quare Impedit* and recovered by default. And he could not have a writ to the bishop before he had sued a *Quale Jus*, etc. Query? For in the year sixteen of Edward the Third, one recovered an annuity by default, and had judgment without suing any *Quale Jus*.
- Case 2. Reported in Y. B. Trinity, 24 Ed. III, p. 27, pl. 2.

(3) **If an abbot** recovers an annuity by default, no *Quale Jus* shall issue, because no freehold is charged by that annuity, but the person only. By NEWTON and PASTON in [a writ of] Annuity. See the Statute. Michaelis
19 Hen. VI.

The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the early abridgments. Case 3.

The Statute is West. II, cap. 32, 13 Ed. I (1285), Stats. at Large, Vol. 1, p. 163 (206).

(4) **A quale jus** shall issue upon an action of covenant brought by a man of religion to levy a fine, etc. But yet it seems that the lord can enter, for that is only a feoffment, etc. Michaelis
1 Ed. II.

The case has not been identified in Y. B. Mich. 1 Ed. II (Maynard), Case 4. or in the early abridgments.

(5) **If an assize** of Novel Disseisin, brought by an abbot, be taken for default, they will inquire into nothing except the seisin and disseisin, because no right or title is alleged in his writ, except possession only, etc. By the opinion of BELKNAP, in a *Juris d' Utrum*, etc. (But yet the contrary has been the custom, etc.) It seems that where a man of religion recovers by a tried action, the collusion shall be inquired into by the same inquest, for it may be a false issue by assent, or an issue which does not try the right, and is peremptory. But yet it is not within the terms of the Statute. But perchance the lord can enter by the other statute, to wit: "*Arte vel ingenio*."

There is no printed Year Book for 6 Ric. II. The case has not been identified in the early abridgments. Case 5.

Statute of Marlbridge, 52 Hen. III (1267), cap. 28, Stats. at Large, Vol. 1, p. 55 (73). "The other Statute" is 7 Ed. I, Stat. 2, a Statute of Mortmain, Stats. at Large, Vol. 1, p. 133 (134).

See as to quale jus, in [the title of] Collusion, etc. Note.

Satham, title of Collusion et Covyne, p. 47 b, case 2.

QUOD EI DEFORCEAT

- Statham
149 a.
Hilary
41 Ed. III. (1) **In a quod ei deforreat**, the tenant said that we ourselves brought a writ of Waste against you, where a writ issued to the sheriff upon your default to inquire as to the waste; and we recovered; judgment if action, etc. And the demandant emparled, etc. If it be a plea he shall recite the title of that writ by which he is ready to maintain, etc.
- Case 1. Reported in Y. B. Hilary, 41 Ed. III, p. 8, pl. 17. See also Brooke, *Quod ei Deforreat*, 2.
- Michaelis
46 Ed. III. (2) **Two heirs in gavelkind** brought a *Quod ei Deforreat*, and counted that the land was given to their father, etc. TANK: Judgment of the writ brought by them in common, where their right and inheritance is separate, for if a writ be brought against two tenants for life, and one loses his part on one day by default, and the other on another day, they shall have separate *Quod ei Deforreat*'s; so here. And the opinion was that the writ was good, etc.
- Case 2. Reported in Y. B. Mich. 46 Ed. III, p. 21, pl. 1. See also Brooke, *Quod ei Deforreat*, 5; and Fitzh: *Quod ei Deforreat*, 7.
- Michaelis
4 Ed. III. (3) **If the husband** and his wife lose by default lands in the right of the wife that she had for her life, they should not have a *Quod ei Deforreat*, for after the death of the husband the wife shall have a *Cui in Vita*, and that is in law called the deed of the husband. But yet the contrary was adjudged Hilary, 5 Ed. 111.
- Case 3. Reported in Y. B. Mich. 4 Ed. III, p. 38, pl. 5. See also Fitzh: *Quod ei Deforreat*, 12.
- Michaelis
11 Ed. III. (4) **The tenant** in a *Quod ei Deforreat* pleaded a recovery and maintained the title, etc. And the demandant vouched to warranty, etc. (Query, if he showed cause, for it seems so, because the Statute says that he shall vouch him in the reversion, and consequently, he shall show that the reversion is in him, in his voucher, etc. And then the voucher enters into the warranty. And shall the tenant

in that *Quod ei Deforceat* plead the release that the vouchee made after the recovery or not? Because the vouchee is now tenant. And if he pleads it, shall he maintain the title of his recovery against the demandant or not? See, because there are diverse opinions. FITZ: It seems he shall not be barred, because this vouchee had only the reversion, consequently it cannot extend further, etc. And then he prayed seisin of the land for the demandant. STOUFORD: You are out of Court, and have put the plea in another's mouth, against whom you will recover in value if the plea be good, wherefore he has not to say anything to you, etc. HERLE: He shall never recover in value, for he cannot have judgment, for if the vouchee is not able to bar the demandant, the first judgment will remain in force, so no judgment shall be given against the plaintiff, consequently he shall not recover over, etc. And also the Statute does not give the voucher, for the evil of warranty. As appears by the Statute.

There is no early printed year of 11 Ed. III. This may be the case reported in the Rolls Series, 11 & 12 Ed. III, pp. 238-252. There are likenesses and differences, but the points made in the abridgment are made in the reported case. Case 4.

The Statute of Westminster the Second, 13 Ed. I (1285), cap. 4, Stats. at Large, Vol. 1, p. 163 (171).

(5) A **tenant** departed in despite of the Court, upon which judgment was given for the plaintiff. And the tenant brought a *Quod ei Deforceat*. And it was adjudged good, etc. Hilary
15 Ed. III.

There is no early printed year of 15 Ed. III. The case is found in the Rolls Series, 14 & 15 Ed. III, pp. 306-307. Case 5.

(6) A **man shall not have a *Quod ei Deforceat*** where the land is recovered against him by a writ of *Cessavit*, because by the Statute if he does not come before judgment rendered, the lands follow the remainder, so the loss of the lands is the penalty of the Statute, etc. But yet, in Michaelmas 6 Ed. III, in a *Quod ei Deforceat*, the tenant pleaded a recovery in a *Cessavit*, and he was driven to maintain Hilary
5 Ed. III.

the title of his writ. (From that it follows that the law is the other way, etc.) Study well.

Case 6. The case has not been identified in Y. B. Hilary, 5 Ed. III, or in the early abridgments.

Statute of Gloucester, 6 Ed. I (1278), cap. 4, Stats. at Large, Vol. 1, p. 117 (121).

Hilary
12 Ed. III.

(7) **In a quod ei deforceat**, the tenant pleaded a recovery against the demandant, the title of which writ he was ready to maintain. To which the demandant said that he who pleaded that recovery never had anything in the lands except jointly with one B, etc. And the opinion was that he should not get to plead in abatement of the first writ, for it was not warranted by the Statute, etc.

Case 7. There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series.

For the Statute of Westminster the Second, see note to case 4.

Anno
5 Hen. V.

(8) **If land** be given to a man for the term of another's life, the remainder to him and to him and the heirs of his body begotten, and he loses by default; now, living him in whose life he shall have the *Quod ei Deforceat quam clamat tenere ad vitam*, etc., and after the death of him in whose life he can have a writ *quam clamat tenere sibi et heredibus suis de corpore suo exeuntibus*, ergo he was seised of both estates simultaneously and together: By LUDINGTON, in an Assize, etc.

Case 8. The case has not been identified in the printed Year Book of 5 Hen. V. But there is a case of *Quod ei Deforceat* in Y. B. 7 Hen. V, pp. 2-5, which may be the case from which the point is taken. See also Fitzh: *Quod ei Deforceat*, 11.

(9) **A quod ei deforceat** does not lie if the tenant makes default in a writ of right after the plea is joined, since the final judgment is given. As was said. Query?

Case 9. There is no citation for this case in Statham, and it has not been identified. It appears like a stray note.

QUINZIME

(1) **If I have land** in a vill to which I have common appendant in another vill, I shall be taxed for the cattle where they are fed and folded. As appeared in a writ of Replevin, etc. Statham
149 b.
Paschal
18 Ed. III.

The tenant for a term of life shall pay the fifteenths. By SHARSHULL, in the same plea, etc.

Reported in Y. B. 18 Ed. III, p. 11, pl. 39. See also Fitzh: Quinzime, 7. Case 1.

(2) **If an abbot** be seized of the lands of the temporalities in his own hand, he shall not pay the fifteenth, because he pays tithes. Then if that which is in his hand becomes a vill afterwards and inhabited by people, [it was said] that they shall pay. And if afterwards it comes to the hands of the abbot, query if he shall pay? etc. In the case of the *Abbot of Glastonbury*, well argued, etc. Those who are tenants and hold of a baron of the Parliament, as of that same barony, by reason of which barony he comes to the Parliament, shall not contribute to the expenses of the knights, etc. In the same plea, etc. Michaelis
11 Hen. IV.

Reported in Y. B. Mich. 11 Hen. IV, p. 34, pl. 66. (See page 36.) See also Brooke, Quinzime, 3; and Fitzh: Quinzime, 5. Case 2.

(3) **Where different tenants** hold of an abbot or prior, and they pay the fifteenths by their tenure, and then the tenements come to the hands of the abbot by escheat or by any other manner; in that case the abbot shall pay the fifteenths for those tenements, notwithstanding his lordship over those tenements is extinct, because of which lordship he paid tithes, etc. By the opinion of the COURT. Paschal
29 Ed. III.

And it was said in the same plea that the tenants in bondage to an abbot shall not pay the fifteenths, because that is in a manner the land of the abbot, for the fee and the freehold are in him, etc. No more than where the abbot leases his lands for years or for life, etc. But yet it seems that the abbot should pay the fifteenths for all

those temporalities the same as any other man, etc. Then the above mentioned reasons do not apply to those who are exempt from paying the fifteenths, etc. Query?

- Case 3. Reported in Y. B. Paschal, 29 Ed. III, p. 28, pl. 31. See also Fitzh: Quinzime, 9.

QUARE INCUMBRAVIT

Michaelis (1) **Quare incumbavit does** not lie except where the
31 Ed. III. *ne admittas* is directed to the bishop, pending the writ. By STONFORD, in a *Quare Incumbavit*. (But yet the *Natura Brevium* is contrary to that, therefore query?)

- Case 1. There is no printed Year Book for 31 Ed. III. Fitzh: *Quare Incumbavit*, 3, has the case.

Hilary (2) **In a quare incumbavit**, the bishop was found
31 Ed. III. guilty, to wit: that he had encumbered, etc., to the damage, etc. THORPE prayed his damages, and that these temporalities be seised, because he had encumbered against the prohibition: as was done the other term in the case of the abbot of N, in an attachment upon a prohibition. And he prayed a writ to the bishop to oust him who had encumbered, and he had judgment accordingly, but not that his temporalities should be seised, etc.

- Case 2. There is no printed year of 31 Ed. III. Fitzh: *Quare Incumbavit*, 4 has the case.

Michaelis (3) **A man had recovered** in a *Quare Incumbavit* against
21 Ed. III. the bishop, and had a writ to the sheriff to distrain the bishop to disencumber, etc., who returned twenty shillings issues. And the party said that he could have returned larger issues; and he prayed a writ to the justices of the Assize to inquire into it, and also a writ to distrain the bishop again, and to demand that he should be here on a certain day to answer why he had [not]¹ disencumbered; and had it, etc. In a note.

- Case 3. Reported in Y. B. Mich. 21 Ed. III, p. 30, pl. 12. See also Brooke, *Quare Incumbavit*, 2.

¹ "Not" in the case.

(4) **In a quare incumbavit**, the plaintiff counted that he brought a prohibition to the bishop that he should not admit any as clerk pending a plea which was pending in the Common Bench, not yet argued, between me and one H. Notwithstanding this the bishop had encumbered that same church, etc. The defendant said that the prohibition was delivered to him on another day, before which day he had admitted one T, because he did not know of any plea pending, etc., without this that he had received T to the church after the prohibition. And issue was taken, etc. So it seems that a man shall not have a *Quare Incumbavit* pending the plea, unless he has a *ne admittas* before, etc. Query, if the bishop should receive one of their clerks after the six months, for he himself shall present by lapse, notwithstanding the prohibition. (But I believe that he cannot receive another clerk, etc.)

Michaelis
21 Ed. III.

Reported in Y. B. Mich. 21 Ed. III, p. 42, pl. 50. See also Brooke, Case 4. *Quare Incumbavit*, 3; and Fitzh: *Quare Incumbavit*, 5.

(5) A **quare incumbavit** was adjudged good where the bishop encumbered within the six months, notwithstanding no action was begun before, for the same church.

Trinity,
21 Ed. I [III].

Reported in Y. B. Hilary (not Trinity), 21 Ed. III, p. 3, pl. 7. See also Fitzh: *Quare Incumbavit*, 6. Case 5.

QUARE NON ADMISIT

(1) **In a quare non admisit**, it is a good plea that the church was in litigation through the presentation of a stranger, etc.

Statham
150 a.
Paschal
9 Ed. II.

The case has not been identified in Y. B. Paschal, 9 Ed. II (Maynard), or in the early abridgments. Case 1.

(2) **In a quare non admisit**, it is a good plea that he made collation through a lapse in the time before the writ was delivered to him, etc. (It seems that he should say, "before the writ was awarded," etc.)

There is no citation to this case in Statham, and it has not been identified. There is a close resemblance to case 4 in the title of *Quare Incumbavit*, *supra*, p. 148 b (1033), and the point may have been taken from that case. Case 2.

QUARENTYN ⁷⁹

Michaelis
18 Hen. VI.

(1) **Where a woman** has her quarantine after the death of her husband, she cannot kill an ox or sheep to eat, etc., for the Statute is "*habeat rationabile estoverium suum interim de communi*," which is only meant as to such stuff as is in the house, to wit: beef, bacon, pots, pans, and such like things, etc. And if the executors of her husband bring a writ of Trespass against her, and [she] would justify by reason of her quarantine, she should show in her plea that her husband was seised of the lands of which she is dowable, for otherwise she had no reason to have her quarantine. By NEWTON, in Trespass, etc. Query? If the husband had but one mansion of which she is dowable, shall she have her quarantine of that, etc.?

Case 1.

The case has not been identified in Y. B. Mich. 18 Hen. VI. But in Y. B. Mich. 19 Hen. VI, p. 14, pl. 34, there is a case which closely resembles the case abridged. See also Fitzh: Quarantyn, 1.

The Statute is Magna Charta, 9 Hen. III (1225), cap. 7, Stats. at Large, Vol. 1, p. 1 (4).

⁷⁹ The law has been supposed to be particularly partial to widows. Why, except that through the provision for her dower she is not thrown wholly naked upon a cold world, it would be difficult to say. In the case from which it may be this abridgment was made, Newton says, "The husband is not held to find a living for his wife after his death." Since a woman at that time, and for the greater part of the time since had but one occupation — that of a wife, which occupation she was trained to look forward to; exhorted to attain, and condemned if she did not accept, it seems strangely illogical that if this occupation ceased, be the years of the widow twenty, forty, sixty or more, she was left without any honorable or lucrative occupation or support. Widows were provided for we know; men have been said very truly to be better than their laws, but if it were not for the deadening, suppressing power of the customary thought, could such a condition have survived for centuries? The girl is brought up for marriage — all other possible careers concealed from her as an honorable probability. She marries; her husband — of average means — dies. She has forty days — her quarantine — to live in her house, to whose keeping she has been trained — in the keeping of which her whole life has gone; she may use the pots and pans, — not hers, her husband's, so, after his death, his

heirs' — she may feed herself from the food on the premises, but if she feeds the funeral guests, as in this case, it is at her peril. She must not overstep the bounds of a meager living, and then she must go forth, if of a wealthy or titled English family, to the dower house, a house of a lesser degree, of an inferior state, even though she be the queen of England and protests with all the power that is in her; if of a poor family to no home at all, to work for her bread with the hands that have been taught to do quite other tasks than any that she can secure. In many ways the law of England has been harsh and ungenerous; in many ways has it upheld the strong and put down the weak, but no clearer light is shed upon the weaknesses, the unnatural and yet unperceived injustices of the law, than in this one case of the widow's tarrying forty days in the house which had been "her own" — most ironical of ownerships!—until her husband died, when her "ownership" suddenly ceased, and she became a stranger, and in some respects was treated as an interloper and one who was to be suspected of designs upon the eatables and moveables in and about it. The endowment at the church door was indeed necessary lest the mothers of the English race should end their lives in poverty. That honor to wifehood and to motherhood, which it is claimed is always paid to them by the English race, is nowhere so set at naught, flouted and utterly belied, as in this one age-old and dishonoring custom.

QUARE EJECIT INFRA TERMINUM

(1) **In a quare ejecit *infra terminum***, the plaintiff recovered his term and his damages, etc., where "*occasione venditionis.*" Hilary
3 Ed. I.

There is no early printed Year Book for this reign. The few years of Ed. I that have been printed in the Rolls Series are all late years. Case I.
Fitzh: *Quare Ejecit infra Terminum*, 4, has the case.

(2) **In a quare ejecit *infra terminum***, the plaintiff will recover his term, if it be not passed. By the opinion of DEVON. See the plea, because it is a good one. Michaelis
20 Ed. II.

There is no Year Book for this short year of Ed. II. The case has not been identified elsewhere, so we are deprived of the pleasure of seeing this good plea. Case 2.

(3) **A quare ejecit *infra terminum*** is good against the disseisor, to whom the disseisee had released, etc. Paschal
18 Ed. II.

Reported in Y. B. Paschal, 18 Ed. II, p. 599, pl. 6. See also Fitzh: *Quare Ejecit infra Terminum*, 6. Case 3.

REPLICACION ET REJOYNDRE

- Statham
150 b.
Michaelis
30 Ed. III.
- (1) **In a writ of false imprisonment**, the defendant said that he was villein to one B, and he, as bailiff, etc., took him because he would not justify, etc. The plaintiff said that he was free, etc. SETON: You shall not have the plea to try the right in a personal action, where you can have another answer, to wit: to say "of his own tort, without such a cause," for if the liberty be tried between you, it will be a great [inconvenience], etc. But yet he had the plea, etc.
- Case 1. The case has not been identified in Y. B. Mich. 30 Ed. III, or in the early abridgments.
- Hilary
14 Hen. VI.
- (2) **In trespass**, the defendant said that the plaintiff held of him, and for his rent in arrear, etc. NEWTON: He does not hold of him, etc. PASTON: That is no plea, for you can plead "out of his fee." And that was the opinion, etc.
- Case 2. Reported in Y. B. Anno 14 Hen. VI, p. 24, pl. 72.
- Trinity
15 Hen. VI.
- (3) **In a writ of entry** in the nature of an Assize, the tenant said that his father was seised and died seised, and the plaintiff claiming, etc. To which the plaintiff said that a long time before your father had anything therein, one H was seised and gave it to us in tail, by force of which, etc., until by your father, etc., disseised, upon whom we made a continual claim all his life; and then he died, and we entered, and we were seised until, etc. To which the tenant said that his father died seised in the manner he had alleged, without this that H gave in the manner, etc. JUYN: It is not to the purpose to traverse the gift: no more than where the plaintiff traverses your bar, in which case it is enough for you to maintain your bar. And the law is the same now in this case, for he has confessed your bar and avoided it, which is as strong, etc., wherefore it is enough for you to maintain that your father

died seised, without saying more, etc. And they adjourned (for *ambo deficiunt*, as it seems), etc.

There is no printed year of 15 Hen. VI. The case has not been identified elsewhere. Case 3.

(4) **In trespass** for one H, his servant, wrongfully taken. Hilary
SKRENE: The father of this same H held of one A by 14 Hen. IV.
knight's service and died, and we, by his command, took
him because he was under age, etc. HORTON: Of your own
tort, without such a cause. HANKFORD: That is no plea,
for it refers as much to the command as to the tenure, and
it is a good plea to traverse either. CHEYNE: He justifies
as servant, wherefore the plea is good enough against him.
HANKFORD: Make your decision. Wherefore HORTON
dared not demur, but said, by way of protestation, that
he did not hold of him as above. But he said "of his own
tort, without this that he commanded him." Ready.
And the other alleged the contrary, etc.

The case has not been identified in Y. B. Hilary, 14 Hen. IV, or in the early abridgments. Case 4.

(5) **In trespass**, the defendant said that the place where, Michaelis
etc., was his freehold. To which the plaintiff said that 14 Hen. VI.
the father of the defendant whose heir he is, enfeoffed him,
etc. And he was forced to conclude, "and so his freehold,"
etc. Query, to what effect he said "whose heir he is?" for
the feoffment of a stranger is as good a title, etc. (Unless
his warranty was in the deed.)

The case has not been identified in Y. B. Mich. 14 Hen. VI, or in the early abridgments. Case 5.

(6) **In trespass** for a close broken, the defendant said Michaelis
that one H enfeoffed him, etc., and he gave color to the 31 Hen. VI.
plaintiff. ILLINGWORTH: We were seised until the defend-
ant came and committed a trespass, without this that H
enfeoffed him. FORTESCUE: That is no plea, unless you
proceed to make title and traverse the bar, etc. Which
YELVERTON conceded; wherefore he made title and tra-
versed the bar, etc.

Reported in Y. B. Mich. 31 Hen. VI, p. 12, pl. 10.

Case 6.

Michaelis
9 Hen. VI.

(7) **In trespass** for a close broken, the defendant said that a long time before the plaintiff had anything therein, he himself was seised, etc., until disseised by one A, who enfeoffed the plaintiff; upon which he entered and made the trespass. The plaintiff said that a long time before the said A, or the defendant, had anything therein, one H, ancestor of this A, was seised and died seised, after whose death the defendant abated, upon which A entered as heir, etc., and enfeoffed us. And it was the opinion that that was no plea, unless he traversed the disseisin. (But yet in an Assize, it had been a good title, etc.) But if in an Assize the tenant pleads, as above, and the plaintiff says that the same tenant enfeoffed the said A, who enfeoffed him, that is no title without traversing the disseisin, etc.

Case 7. Reported in Y. B. Mich. 9 Hen. VI, p. 32, pl. 2. See also Fitzh: Replicacion et Rejoynder, 5.

Michaelis
9 Hen. VI.

(8) **In trespass**, if I justify because I leased the land to the plaintiff for a term of years, which still lasts, rendering a certain rent, and for rent in arrear, etc. He shall not plead "out of my fee": By PASTON, because I am seised of the freehold, so I cannot have seignory, and "out of his fee" is [meant to be used] when one avows for a seignory. And from this it follows that the termor shall have a writ of trespass *vi et armis* against him if he distrains for the rent when no rent is in arrear. And the same action was brought in that case, and the lessor pleaded, as above, and demanded judgment of the writ *vi et armis*, and the plaintiff waived the plea, "out of his fee" and said that the defendant had nothing, etc., at the time of the lease, except in the right of one A, his wife, who was dead before the trespass, without issue between them; judgment if our writ is not good enough, and we pray our damages. MARTYN: That is no plea, without showing that the heir of the wife had entered, for the possession of the husband is good against everyone, until it is defeated by him who has a right in it. PASTON: The writ is dependent upon the reversion, and he has lost the reversion by the death of his wife, and, consequently, the rent, for by that no reversion

was reserved to the husband, therefore it was a discontinuance, etc. And they adjourned.

And it was said in the same plea that if I lease lands for the term of twelve years [to one who] leases them over for a term of eight years, that the second lessor has no seignory, etc.

Reported in Y. B. Mich. 9 Hen. VI, p. 43, pl. 21.

Case 8.

(9) **In trespass** for his swans taken, the defendant said that he was lord of the manor of S, within which he and all, etc., have had estrays from time, etc. And so soon as we had notice that they were yours we delivered them, judgment, etc. CANNDISH challenged the doubleness, etc. MARTYN: It is single enough, etc., for he has not said that the year is passed, so the property is vested in him, so that the first matter of his plea is but to excuse him of the tortious taking; and the delivery to you is his bar, wherefore you cannot recover the value of the birds, etc., wherefore. CANNDISH said: We were seised of the manor of B, etc., and we and all, etc., have had swans swimming in the place where, etc. And we put in the swans, and gave you notice that they were ours, and we pray our damages. MARTYN: That is no plea unless you say, "without this that they were estrays." STRANGE: It seems to me the other way, for he has admitted, in a way, that they were estrays, but he has shown matter that they were not estrays in fact, wherefore the defendant should answer him; as when in trespass for cattle taken, the defendant justifies as "estrays"; the plaintiff says that he has common appendant in the same place, without traversing the defendant, and the defendant answers him: so here, etc.

Michaelis
7 Hen. VI.

Statham
151 a.

Reported in Y. B. Paschal (not Mich.), 7 Hen. VI, p. 27, pl. 21.

Case 9.

(10) **In trespass** for the breaking of two houses, the defendant said that he enfeoffed the plaintiff of the said houses, upon condition that he would re-enfeoff him when he required him to do so. And he said that he required him to do so on such a day, etc., and he would not, wherefore he entered and broke, etc. To which the plaintiff, as to one

Michaelis
7 Hen. VI.

house, pleaded the confirmation of the defendant after the feoffment, and before the request. And as to the other house he demurred in law, because he did not show a deed containing the conditions, etc. And it was challenged, because by his replication he had admitted the whole plea to be good; then to demur in law for part was repugnant, etc. And they adjourned, etc.

Case 10. Reported in Y. B. Mich. 7 Hen. VI, p. 7, pl. 10.

Hilary
9 Hen. VI.

(11) **Trespass** for trees cut in D. NEWTON: The plaintiff leased us an acre of land in the same vill, for a term of years, which still continues, which is the same place where, etc., wherefore we entered, etc. To which the plaintiff replied, and admitted the lease of that land; but he said he was seised of another acre in the same place, in which you made the trespass, etc. NEWTON: That is no plea, for you should say "without this that you had leased that acre of which you brought your action," because we alleged that the trespass was made in the same acre which was leased, etc. But yet the plea was adjudged good, etc. And I believe the reason was because no one could have notice of what trespass he had brought his action until he came to show it, and the defendant could then answer him in good time, etc. Query, shall a man plead thus in a plea of land, to wit: in actions in which the tenant has not the view? etc., for it is as uncertain as in this case? etc. Study well.

Case 11. Reported in Y. B. Hilary, 9 Hen. VI, p. 64, pl. 18.

Trinity
9 Hen. VI.

(12) **If, in an assize**, the tenant pleads in bar the feoffment made to a stranger, and the plaintiff to make title says that another enfeoffed his father in tail, by force of which, etc., and died seised; the tenant can traverse the gift without answering to the dying seised, because he cannot die seised of an estate in fee tail, unless there was a precedent gift. But it is otherwise of a feoffment in fee, for he can die seised of a fee without a feoffment, to wit: by a disseisin. By STRANGE, etc.

Case 12. The case has not been identified in Y. B. Trinity, 9 Hen. VI, or in the early abridgments.

(13) **One F** sued a *Scire Facias* out of a fine by which the land was given to one B in tail, the remainder to one J; which B died without issue, and he, as cousin and heir to J, to wit: son to W, brother of the said J, demanded execution. **FORTESCUE:** This same J had issue one Isabel, who married one R, at S, in the county where the writ is brought, and had issue the tenant born and begotten in this same vill. And then this same J, and Isabel, and R, died, after whose death the reversion descended to him, etc. And B died without issue, and he entered and is seised, etc. Judgment if execution. **MARTYN** (by way of protestation), said that Isabel was not the daughter of J; but we say that a long time before the marriage of which you speak, the said R married one A, in the county of D, which marriage they continued all their lives. And then the said R withdrew himself from the said A, and took this J to wife, as you have said, and had issue the tenant, while A was living. And then Isabel died, and the aforesaid A survived him, etc., which matter, etc. **FORTESCUE:** Inasmuch, etc., and so to judgment. **MARKHAM:** It seems to me the plea is good for this R is dead, in which case they of the county of D can have better knowledge wherewith to try it, inasmuch as it is triable by the inquest, etc. And I know well that your meaning is that it is no plea because I do not conclude, "and so a bastard," inasmuch as you have shown a special marriage, proving that you are legitimate; but I should not do that, for this which I show is matter in law — whether he is a bastard or not — of which lay people cannot have cognizance. And also if I conclude "and so a bastard," it will be tried before people of that county who cannot have knowledge, wherefore you can rejoin and maintain the marriage between Isabel and R without this, etc. **FORTESCUE:** You have not answered me, except by an argument, for you should say "and so a bastard," for it may be that there was a marriage, as you say, and that the said A, before carnal copulation, entered into religion, in which case the espousals are defeated, and then the second marriage is good, and so it is consistent with our plea. And suppose that in an Assize the tenant pleads my

Trinity
18 Hen. VI.

feoffment in bar, with warranty; I say that at the time I delivered the deed one G had lands of the lease of my father for a term of years, without this, and that the tenant did not attorn. That is no plea unless I say "so nothing passed," for that is only an argument to prove that nothing passed, etc.; so here. PASTON (to the same effect): Sir, to my mind, that which the defendant alleges is matter of fact to prove him a bastard, and not matter of law, in which case he shall say, "and so a bastard," for the second marriage is good in our law until it is defeated, for she is his wife in possession; but as to a matter of law it is otherwise; as if in a *Præcipe quod Reddat* the tenant pleads non-tenure, and I show that he has made a feoffment pending the writ, or before the writ, to persons unknown, and he takes the profits, etc.; I shall not say further, "and so tenant," for that is a matter in law, but it is otherwise here. NEWTON: It is a matter in law, for the second marriage is void in law. And in an Assize of Mort d'Ancestor, if the tenant says that the father of the demandant, whose possession, etc., was at the time of his death only of the age of three years, he shall not say further "and so a bastard," and yet his plea amounts to no more but that at such an age he could not have issue, therefore he is a bastard. And yet the plea is good because it is a matter in law whether he is a bastard or not, of which lay people cannot have knowledge, etc. See the plea because it was truly well argued, etc. And see that the plea which MARKHAM pleaded is not good, for other reasons; for he said that a long time before, etc., and he did not show any day in certain, for in the plea that FORTESCUE pleaded, there was not any day; then it was necessary for him to say that on such a day, a long time before, etc., for otherwise it could not be tried what marriages there were before, etc. And they adjourned. And then the tenant died, wherefore the writ abated.

Case 13.

Reported in Y. B. Hilary (not Trinity), 18 Hen. VI, p. 30, pl. 3. See also Fitzh: *Replicacion et Rejoyndre*, 8. Fitzherbert gives only a very short abridgment of this long case, which apparently lasted until the tenant, getting very weary of it all, died.

(14) **In a writ** of Forcible Entry the defendant said that a long time before the plaintiff had anything therein one T was seised in fee, etc., and enfeoffed the tenant, and he gave color to the plaintiff by S, etc., upon whom we entered peaceably, without this that we entered with force. To which the plaintiff said that the said T enfeoffed one H, who suffered the said T to hold at his will. And then T enfeoffed S, who enfeoffed you, and we as servant of H, and by his command, entered to his use, and he suffered us to hold the same lands at his will. And then by this deed, etc., the said H confirmed our estate in fee, so we were seised until, etc. To which the defendant said that [T] was seised, etc., and enfeoffed S, who enfeoffed us, without this that you entered by command of the said H: Ready, etc. FORTESCUE: That is no plea, for it is not denied by you that he was in possession of the land at the time of the confirmation. And if he had possession the confirmation is good; for if a man makes title that one H enfeoffed him in fee, and then released, etc., it is no plea to say that at the time of the release he was not seised in fee, for if he was seised of any estate the release is good: so here. NEWTON: It seems to me that the plea is good, for he has destroyed the possession which he had alleged to make the confirmation good, which is sufficient. And, sir, to that which you say, that upon every possession a release or confirmation is good, it is not so, for if I be disseised, and the disseisor leases to you for a term of years, and I release to you, nothing passes, etc. So it seems in this case, for the tenant said that he entered to the use of H, who suffered him to hold at his will, which is not such a privity as to make a confirmation to the use: but if he had said that he leased to him at his will it had been a sufficient privity. And they adjourned, etc. Note the diversity.

Statham
151 b.
Michaelis
18 Hen. VI.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments. Case 14.

(15) **In trespass** for sheep taken, against one B. YELVERTON: Before one such, servant of the Admiralty, the plaintiff was garnished for a trespass made on one C, on

Michaelis
18 Hen. VI.

the high seas, and he made default, for which default, according to the custom of the same Court, he was mulcted for his contumacy in five marks, to be levied on his goods, to give to the plaintiff for his damages, because of that delay; and they alleged the custom to be such. Upon which one D, servant of the same Court, by a warrant out of the same Court, took the sheep in the place where, etc., and he asked the defendant to go with him to aid him, and so he did; judgment, etc. FORTESCUE: The power of the Admiralty reaches only to the high seas, which proves that the minister of that Court had no power to take the sheep of any man in the County of D. NEWTON: Yes, sir, he could execute their judgment in any county. But they cannot take jurisdiction of this plea, except for a thing done on the high seas. FORTESCUE: Then we say "of your own tort" without such a reason. YELVERTON: That is no plea, for you should answer to the matter in the record. NEWTON: If the action had been brought against the minister of the Court, that had not been a plea without answering to the record, but against a stranger, as the case is here, the plea is good, etc. Which note.

Case 15. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Michaelis
18 Hen. VI.

(16) **In trespass** for a close broken. MARKHAM: Our freehold at the time, etc. YELVERTON: A long time before you had anything in it, one A was seised and enfeoffed us, etc., so we were seised until disseised by you. We entered and the trespass was mesne, etc. MARKHAM: A long time before A had anything in this, one B was seised until disseised by the said A, who enfeoffed you; and then B re-entered and enfeoffed us, and so our freehold at the time, etc. YELVERTON: That is no plea, unless you say "without this that you disseised us." Which was conceded, etc.

Case 16. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

(17) **See by** NEWTON, in Trespass, to wit: in the case of the *Count of S*, that if the defendant said the place where, etc., was his freehold at the time, etc., and the plaintiff said that a long time before the defendant had anything in it, one H was seised, and enfeoffed him, by force of which he was seised until the defendant entered and committed the trespass, and he prayed his damages: that is no plea unless he shows a disseisin and re-entry, and that the trespass was done in the meantime, etc. But yet, if he pleads thus, it is not the same plea, for it may be that the trespass was done a year before his entry, and after the disseisin; and he cannot have an action except for the trespass upon the disseisin, etc. But yet, query? For the contrary has been held. But he said that if the defendant said that his father died seised, after whose death one J abated and enfeoffed the plaintiff, upon which the defendant as son and heir entered and made the trespass, that it were a good replication to say that this J was the elder son of the father of the defendant, and he entered and made the feoffment, as above, and so he was seised until the defendant entered and committed the trespass, without showing any re-entry, for the defendant has admitted a possession in the plaintiff, which it is sufficient for him to make good. But in the other case he admitted no possession, but said in fact that it was his freehold, etc., but by the other plea he does not allege that it is his freehold, but that he entered and committed the trespass, etc.

Michaelis
18 Hen. VI.

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments. Case 17.

(18) **In trespass**, the defendant said that it was his freehold the day, etc. The plaintiff said that he was seised until disseised by a stranger, upon whom he entered, and the trespass was done in the meantime, etc. And the opinion was that his replication was of no value, because he did not allege in fact that the defendant made the trespass, etc., for it is uncertain who made the trespass, etc.

Michaelis
18 Hen. VI.

And see, by NEWTON, in the same plea, that if in an Assize the tenant says that he was seised until one W

disseised him, who enfeoffed the plaintiff — to which the plaintiff says that W did not disseise the tenant: Ready, etc., that that is no plea unless he makes title to himself, etc., notwithstanding the defendant had admitted a possession in him, etc.

Case 18. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Michaelis
18 Hen. VI. (19) **In trespass**, the plaintiff can, in his replication, entitle himself by "whose estate," without showing how, etc., for if he voids or traverses the bar of the defendant, it is sufficient for him to acquire possession for himself by one who has a title, to wit: whose estate, etc.

Case 19. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Paschal
20 Hen. VI. (20) **If a man** would entitle himself to lands by reason of a re-entry for non-payment of rent, he should show that he demanded the rent, etc. As appeared in Trespass. (But yet the defendant shall not have any answer to that, as I believe.)

Case 20. The case has not been identified in Y. B. Paschal, 20 Hen. VI, or in the early abridgments.

Michaelis
12 Hen. VI. (21) **In trespass**, the defendant said that the plaintiff held of him, etc., and for rent in arrear, etc. The plaintiff said, "out of his fee. Ready." And the other alleged the contrary. (That would be a jeofail, for he could well say that he did not hold of him.)

Case 21. Reported in Y. B. Mich. 12 Hen. VI, p. 2, pl. 5.

Statham
152 a.
Anno
29 Hen. VI. (22) **In an assize** before YELVERTON and others, at Oxford, the tenant, by ILLINGWORTH, pleaded the release of the plaintiff of all actions bearing date at F, in the county of Middlesex. And the plaintiff said, by POLE, that the defendant menaced him at D, in the county of Oxford, with imprisonment, etc., by force of which menace he came to the said vill of F, and made the release, etc. To which the tenant said that on such a day, before the release and

the alleged menace, the plaintiff and the defendant put themselves into an arbitration before certain persons in the said vill of F, as to all quarrels and demands, etc., who awarded, at the same vill of F, for certain offences, etc., that the said plaintiff should give to us one hundred pounds and should also make a release to us of all actions. And after that we came to D, aforesaid, and said to the plaintiff that unless he would pay us the said one hundred pounds and make the release, we would sue a writ of Debt against him for the money. And if the sheriff returned that he had nothing, etc., we would sue a *Capias*, etc., and by force of that *Capias* we would put him in prison, etc., which is the same menace, etc. And so see that he struck back¹ at him, for if he would say that he menaced him of his [own] tort, he could answer to the other matter which is triable in the county of Middlesex, etc. And still it seems that the plaintiff could have struck back at him, as to have said that before the award was made, he discharged himself of the arbitrators in the county of Oxford, etc.

There is no printed year of 29 Hen. VI. The case has not been identified in the early abridgments. Case 22.

(23) **In trespass** for a close broken, the defendant said that it was his freehold. The plaintiff said that one B was seised, etc., in fee, and leased to one A, for the term of his life, who granted his estate to H. Filongley, who leased to the plaintiff at will, wherefore he was seised until the defendant entered and disseised the said H F, and thus upon the said [H F] the trespass was made, and the plaintiff entered, without this that he would aver that the said A is still alive. And the plea was adjudged good, notwithstanding he did not say that H F, was alive, for it was said that although it should be understood that H F was dead, still, as no one had a title to have the lands while A lived, but his occupation was conceded, it

Paschal
38 Hen. VI.

¹ The phrase "*trica arremain*" is found only in this case in Statham, and is not wholly clear. We have chosen what may be called a paraphrase of the term.

would be understood that his [tenancy] at will had lasted if he had been alive, and so the plaintiff had no title, and it shall be adjudged only a freehold estate. And they also said that although the plaintiff had not [averred], still he should have a writ of trespass, because he could not re-enter, etc. In the case of *Fynderne*, etc.

Case 23. Reported in Y. B. Paschal, 38 Hen. VI, p. 27, pl. 8. See also Fitzh: Replicacion et Rejoyndre, 23.

REPLEDER

Statham
152 b.
Michaelis
15 Hen. VI.

(1) **If the defendant pleads** a good plea and the plaintiff replies, and the replication is not good, and issue is taken upon that, and the inquest passes, etc., and before judgment the exception is taken so that it is a jeofail; then the parties do not plead all anew, but the plaintiff shall have a new replication, and the bar shall stand; for where the fault commences, to that point do they return. As it appeared in Debt, etc.

Case 1. There is no printed year for 15 Hen. VI. The case has not been identified in the early abridgments.

Hilary
14 Hen. IV.

(2) **On the return of the venire facias** the plaintiff said that they should not proceed, and showed cause, because he himself had not well pleaded, to wit: well replied to the bar; wherefore the inquest was discharged. And the plaintiff amended his replication, and HANKFORD said that the plaintiff could plead new matter, if he would. And that in Dower, etc.

Case 2. The case has not been identified in Y. B. Hilary, 14 Hen. IV, or in the early abridgments.

Anno
1 Hen. V.

(3) **In a praecipe quod reddat**, the parties were at issue; and at the *Nisi Prius* the tenant made default, wherefore the petty cape was awarded; and then by the death of the king the plea was discontinued. And then the demandant was resummoned. HORTON, for the defendant, prayed a new *Venire Facias* upon the plea pleaded

before, etc. HEUSTER: You should count anew, and replead, but you cannot vary from the first plea, etc. PASTON: The issue shall not stand; for suppose that before the death of the king they had been at issue, and that process had been made against the inquest, and then the king had died? I say that after the resummons was sued, the demandant should have a new process: so here. HALLS: It is not the same, for in your case the process was continuous; but in the case here, when the tenant made default, the process was discontinued, and that before the demise of the king. And I say that if the tenant pleaded in bar, and then the Assize stayed for lack of jurors, the first issue is discontinued, and the tenant shall plead anew: so here. HALLS: The cases are not alike. (But he did not say why, etc.) ROLFF: Suppose that the parties in a *Præcipe quod Reddat* demur in judgment, and then a day is given to the parties to hear their judgment: on which day the tenant makes default; wherefore the petty cape is awarded. And then the plea is put without day through the death of the king, and the demandant sues a resummons. I say that he shall not plead anew, but the judgment shall be given upon the first demurrer. LUDDINGTON: It is to be looked into in that case, for the issue which was taken in the first original was only dilatory, to wit: that there was no such a vill or hamlet, etc., wherefore they could replead without any harm done, etc., but if the plea had been peremptory, to wit: to the action, peradventure it would be otherwise. And then the demandant of his own free will counted anew.

There is no case of a *Præcipe quod Reddat* in the printed year of 1 Hen. V. The case has not been identified in the early abridgments. The second speech credited to Halls was probably spoken by some one else, as he had just spoken. This error is frequent in the Year Books and it is impossible to tell who may have made the speech. Case 3.

(4) **In debt** upon an obligation, the defendant said that he [commanded A to write] the same obligation and he sealed it, and ordered the scrivener to deliver it to the plaintiff, when the plaintiff had performed certain conditions — and he Michaelis
9 Hen. VI.

showed what, etc. And he said that the plaintiff took the obligation out of his [A's] possession — the conditions not being performed, and so not his deed, etc. WESTON: His deed: Ready. And upon that they were at issue. And it was found that it was his deed, and then the plaintiff prayed judgment and to recover his debt, and had it, for although his plea was not good, still, when he had admitted the deed, albeit he concluded, "and so not his deed," which is contradictory, the judgment will be given on the admission. And the law is the same albeit the issue be found against him, to wit: that it is not his deed, and that is because of his admission, etc., for the plaintiff could have demurred upon his admission, and although he took issue with him, that is merely a delay for himself. And if one pleads a double plea, and issue is taken upon one point, and it is found for the plaintiff, he shall recover without repleading, for when they have taken the issue upon one point, they have refuted the doubleness. And that was granted by the COURT, etc. But if the issue be taken upon a plea which is not sufficient, be it found for the one or the other, that is only a jeofail, unless it be as is the case above, to wit: by reason of his admission, etc. (But yet it is hard to prove that it is law, for in the Exchequer Chamber, FORTESCUE and all the justices said that this was not the law, when the plaintiff refused the admission and took issue, etc., although it be found for the plaintiff, he shall never have judgment upon the admission, etc. And also the plea in bar with one word more had been good, to wit: that he delivered the writing, as above, and if not that he did not keep it as an escrow, etc. As appeared Michaelmas 27 of the king aforesaid.)

Case 4. Reported in Y. B. Mich. 9 Hen. VI, p. 37, pl. 12. See also Fitzh: Repleder, 9.

Trinity
20 Hen. VI.

(5) **If the inquest** be taken for the default of the defendant and found for the plaintiff, and the justices are moved by an *amicus curiæ* that they shall not give judgment because it is only a mispleader, query, what process shall issue against the defendant to replead? inasmuch as he is out of Court, etc. And if the plaintiff shall be put to a

new original? etc. Because they were of different opinions, etc. In Debt.

Reported in Y. B. Trinity, 20 Hen. VI, p. 31 (32). See also Fitzh: Case 5. Repleder, 14.

(6) **See by Fortescue**, in the Assize of Wenlock, that if the tenant pleads a plea in bar, in an Assize, which is not good, and the plaintiff answers it, and his replication is not good (for the above reason), still, if the Assize be taken, and the seisin and disseisin found, the plaintiff shall have judgment, for when the bar is not good the plaintiff can have an Assize, without more. But if the bar be good, and the replication bad, although the seisin and disseisin be found, still he shall not have judgment, since the bar was not well answered. And so see it is a jeofail, in an Assize, etc. Michaelis
30 Hen. VI.

The case has not been identified in Y. B. Mich. 30 Hen. VI, or in the early abridgments. Case 6.

(7) **In an assize**, if the bar is not good, and the plaintiff makes title and traverses the bar, so that they are at issue upon the bar, and it is found for the plaintiff, they should replead. But it is otherwise if the plaintiff makes his title at large, and the defendant prays the Assize upon the title, etc. Query, if he traverses the title in that case? etc. In an Assize which was adjourned into the Bench, etc. Michaelis
22 Hen. VI.

Possibly the case reported in Y. B. Mich 22 Hen. VI, p. 18, pl. 35. Case 7.

RESCOUS ⁸⁰

(1) **In a writ of rescous**, the plaintiff counted that the defendant held of him one messuage, etc., and for so much rent in arrear he took the distress; and the defendant made a rescous upon him. **CANNDISH**: Whereas he says that he took them in an acre of land which is within his fee, he took them in another acre which is out, etc., without this that he took them in the acre which he has counted, etc. **KYRTON**: The place where we took them is within our fee: Ready. **CANNDISH**: That is nothing, for although you took them in an acre of land which is held of you for one Statham
153 a.
Trinity
40 Ed. III.

penny, and you avow for twenty pence, if you have that plea, that acre which is held of you by one penny, and you avow on for twenty pence, will be charged for all, which is not reasonable. FYNCHEDEN: You speak truly, if it were in an avowry, but it is otherwise in this writ, which is only a writ of Trespass, in which case he shall recover nothing except his damages, etc.

Case 1. Reported in Y. B. Trinity, 40 Ed. III, p. 32, pl. 14. See also Fitzh: Rescous, 7.

Trinity
44 Ed. III. (2) **If a man** comes to take a distress in a place within his fee, and his tenant sees him, and drives the cattle out of his fee, and the lord takes them there; if he makes a rescue he shall have a writ of rescous "in a place within his fee," well enough, etc.

Case 2. Reported in Y. B. Trinity, 44 Ed. III, p. 20, pl. 18. See also Brooke, Rescous, 3; and Fitzh: Rescous, 9.

Hilary
18 Ed. III. (3) **In [a writ of] rescous**, THORPE demanded judgment of the writ because he "*rescusserat*," and by the writ nothing was put in evidence of which a rescue could be alleged, but only against a man whom he would have attached, etc. As in the case of sheep taken, the writ says, "*capere voluisset*." And then the writ was abated, for it was said he should have an action on the case, if the case was as represented. And so see that such an officer [bailiff] shall have a writ of rescous.

Case 3. Reported in Y. B. Hilary, 18 Ed. III, p. 3, pl. 11. See also Fitzh: Rescous, 19.

Michaelis
7 Hen. VI. (4) **In [a writ of] rescous**, the plaintiff counted how he, by one such, his servant, took certain cattle in A, within his several, doing damage, and the defendant with force and arms, took them, etc. CHANTRELL: As to the coming with force and arms, etc., and as to the rescue, we say that your servant took them within our several in B, and we made a rescue upon him, without this that your servant took the cattle in A, in the manner, etc. PASTON: That is no plea, for he shall say, "As to any trespass in A, not

guilty," as in Trespass, etc. MARTYN: You speak truly, in Trespass, but it is not like this case, etc. But yet it seems that he shall plead, as above, with a "without this," in both cases, because he said in the beginning, "as to the coming with force, etc., not guilty," for if that clause be out of the writ of Trespass, he can say that he did not take, etc., as in Replevin. Then, when he has answered it once, he can say, as above, etc. Study [this] since the plaintiff shall have title to the land in that writ, in a manner, etc.

Reported in Y. B. Mich. 7 Hen. VI, p. 1, pl. 5. See also Brooke, Case 4. Rescous, 9; and Fitzh: Rescous, 1.

(5) **In a writ of rescous**, the plaintiff should count at what term the rent is payable, and how much is in arrear, albeit he declares that he distrains within his fee, for the defendant shall have an answer to that, etc. Query, if he shall bind seisin of the services in his count, etc.? Query, if I distrain for a rent charge, and a rescue be made on me, how shall I declare? Michaelis
8 Hen. IV.

Reported in Y. B. Mich. 8 Hen. IV, p. 1, pl. 1. See also Brooke, Case 5. Rescous, 7; and Fitzh: Rescous, 5.

(6) **In [a writ of] rescous**, "nothing in arrear" is a good plea, and also "never seised," etc. By the opinion, etc. The contrary was held by all the Court, Anno 6 Ric. II. In Trespass and in Rescous, etc. Trinity
2 Hen. IV.

Reported in Y. B. Trinity, 2 Hen. IV, p. 22, pl. 5. See also Brooke, Case 6. Rescous, 6.

(7) **A writ of rescous** is good for one where he has distrained for damage feasant in the land which he and another held in common, without naming his companion, etc. Paschal
16 Ed. II.

The point appears in the case reported in Y. B. Paschal, 16 Ed. II, Case 7. p. 474, pl. 4.

⁸⁰ Our later authorities all treat this writ of rescous as the writ used "where there is a distress for rent, and the other party doth rescue them, then the lord shall have the said writ." The distress being usually levied upon cattle, there was such a mass of cases of this sort they naturally came to be taken as typical. But the old *Natura Brevium* gives another sort of *brief de rescuser*. "If any bailiff or minister of

the king or any other lord, to whom special authority is given to distrain and a rescous be made on them, they shall have the said writ. And in the same manner the sheriff or other bailiff who has power to take any man by command of the king can have the said writ if a rescous be made on them." [Old *Natura Brevium*, fo. xlix, 6.]

Littleton says [Coke. 1st Inst. sec 237]: "There be three causes of disseisin of rent service, scil. rescous, replevin, and enclosure. Rescous is when the lord distrains upon the land held of him for rent in arrear if the distress be rescued from him." Coke [See note to 1st. Inst. sec. 237] says it "is a taking away, and setting at liberty against law, a distress taken, or a person arrested by the process or course of law."

Thus while the old law was chiefly occupied in the rescue of cattle distrained for rent or services, the development of the rescous into the more modern rescue brings the subject-matter to be chiefly the rescue of the criminal from the custody of the law. [Russ. Crim. Law, Vol. 1, cap. 34; Hawkins: Pleas of the Crown, Rescous, Vol. 2: 201; Hale: Pleas of the Crown, Vol. 1: 606 and Viner's and Bacon's Abridgments.]

The subject has been the object of statutory enactment, beginning with the statute of 23 & 24 Victoria, c. 75, sec. 12. Of course the case law has been developing side by side with the statute law. The writ does not appear in the earliest Register of Writs, or at least is not found in those edited by Maitland [Mait. Reg. of Orig. Writs, Essays in Anglo-American Law, Vol. 2: 549] and I have found none in Bracton's Note Book. In the *Registrum Brevium* [pp. 117-125] there are a number of writs *de Rescussu* given.

RESPONDRE

Statham
153 b.
Hilary
44 Ed. III.

(1) **In trespass against the husband** and his wife, at the exigent the sheriff returned that he had taken them, and the husband came in custody and the wife did not come. And he was made to answer immediately and pleaded to an issue. And a writ issued to the sheriff to bring in the body of the wife on the return of the *Venire Facias*, etc.

Case I.

Reported in Y. B. Hilary, 44 Ed. III, p. 2, pl. 4. See also Fitzh: Respondre, 34.

Paschal
44 Ed. III.

(2) **In formedon**, the tenant said that the plaintiff was outlawed in Debt, at the suit of one H, etc. The demandant produced a charter of pardon. BELKNAP: The charter is not allowable, for no *Scire Facias* was issued against the

party, etc. THORPE: At least he is now [within the] law, wherefore answer, etc.

The case has not been identified in Y. B. Paschal, 44 Ed. III, or in the Case 2. early abridgments.

(3) **In debt** against two executors, process continued until the *Pluries Capias*. And then one came, and the opinion was that he should not be made to answer without his companion. And so it was adjudged. And the reason was because the Statute which says that "those who first come by distress shall answer" was [enacted] a long time before the Statute which gave a *Capias* in a writ of Debt; so he has taken his process upon another Statute, wherefore he has waived the advantage of the first Statute. (But yet see that the contrary to that has been adjudged, etc.) Michaelis
30 Ed. III.

Reported in Y. B. Mich. 30 Ed. III, p. 9, pl. 1. See also Fitzh: Case 3. Respondre, 74. The first statute is that of 9 Ed. III (1335), cap. 3, Stats. at Large, Vol. 1, p. 449 (454). The second Statute is that of 25 Ed. III (1350), cap. 17, Stats. at Large, Vol. 2, p. 45 (59).

(4) **A woman** brought a writ of Detinue against executors, and counted by LUDDINGTON, that she should have the half of the goods of her husband, since he had no issue, etc. And one of them came at the distress, and was made to answer alone, because by the death of her husband that accrued to her; so it was in the nature of a Debt. Michaelis
30 Hen. VI.

The case has not been identified in Y. B. Mich. 30 Hen. VI. Fitzh: Case 4. Respondre, 95, has the case.

(5) **In detinue** against a husband and his wife, the husband came by the exigent and the wife was outlawed; and the plaintiff counted against him. BELKNAP: He counts of a bailment made to our wife before the coverture; judgment if we shall be made to answer without our wife. THORPE: You say that which is reasonable, and you cannot remain in prison, to wit: receive corporal punishment for your wife, wherefore go to the devil. Trinity
43 Ed. III.

Reported in Y. B. Trinity, 43 Ed. III, p. 18, pl. 1. See also Fitzh: Case 5. Respondre, 32. The case in the Year Book ends with the conventional "*allez à Dieu*." Some one — the printer, perhaps — over four hundred years ago played a joke on Statham.

- Michaelis
21 Hen. VI. (6) **In trespass** against the husband and his wife, the husband came in at the *Capias*, and was received to plead not guilty. PORTYNGTON: When his wife comes she can plead at another time, in bar for herself. NEWTON: It may well be, for in Trespass they can plead separate pleas in bar of the trespass. But in Debt he should not plead until his wife comes, because he cannot plead any plea, but it will bar the plaintiff of the whole action, etc.
- Case 6. Reported in Y. B. Mich. 21 Hen. VI. p. 4, pl. 7. See also Brooke, Respondre, 19; and Fitzh: Respondre, 46.
- Note. **See as to response**, in the title of Executors, etc.
Statham, title of Executours, *supra*, pp. 87 a to 88 b.
- Michaelis
12 Hen. IV. (7) **A man** came in by a *Capias Capi Corpus* on one writ, and on another writ he had a day by distress; and to that writ to which he came in in custody he answered; and on the other writ he would have lost [saved] his issues. BABYNGTON: You should answer both, since you have come in guard. But if the sheriff had returned "*non est inventus*," and you had come of your free will on the same day, you could have lost [saved] your issues as to the other writ well enough, but now you should answer all the writs which are against you. And so it was adjudged, etc.
- Case 7. The case has not been identified in Y. B. Mich. 12 Hen. IV, or in the early abridgments.
- Michaelis
40 Ed. III. (8) **In trespass** against the husband and his wife, at the exigent the wife came, and the husband was outlawed. And the wife went without day, because she could not answer without her husband. And THORPE said, that if the husband sued a charter of pardon and had a *Scire Facias* against the plaintiff, then he should bring his wife with him, etc.
- Case 8. Reported in Y. B. Mich. 40 Ed. III, p. 34, pl. 1.
- Michaelis
2 Hen. IV. (9) **A married woman** who was a fermor to the king answered without her husband, as to that which, etc. (But yet, query, for it was only an opinion, etc.) In Trespass.
- Case 9. The case has not been identified in Y. B. Mich. 2 Hen. IV, or in the early abridgments.

(10) A **monk** had brought an action in a certain case without his superior, for a thing which belonged to his ferm, etc.

There is no citation to this case in Statham, and it has not been identified. Case 10.

RESCEIPTE ⁸¹

(1) **In a writ of waste** against the husband and his wife, a writ issued to the sheriff, upon their default, to inquire as to the waste. And the waste was returned and found. The woman prayed to be received to defend her right. Statham 154 a. Michaelis 2 Hen. IV. HALLS: neither in an Assize, nor in this case, shall she be received after verdict, for then she defeats a thing found by the verdict to which she is a party. SKRENE: In an Assize, I grant you, because she can have an Attaint, but not in this case, etc. THIRNING: She can have an Attaint in this case, for the sheriff is commissioned, and is a judge of record; and that is well proved, for the parties shall have their challenge, and they have not one in an inquest of office. And then she was ousted of the receipt. And then the justices looked at the original, and the writ which issued to the sheriff did not agree with it, wherefore they thought best to award a new writ to the sheriff to inquire as to the waste. And then the woman prayed to be received back again, and could not, but a new writ was awarded, etc., to the sheriff to inquire as to the waste.

Reported in Y. B. Mich. 2 Hen. IV, p. 2, pl. 7. See also Brooke, Case 1. Resceipte, 26; and Fitzh: Resceipte, 77.

(2) **In a praecipe quod reddat** against the husband and his wife, who made default after default, one H came and said that he leased to this husband and wife, and to one J, who is still alive, and prayed to be received, etc. Hilary 40 Ed. III. WYCHINGHAM: He prays to be received on the plea that he may not lose, etc. CHR: He shall be received because of the mischief to the warranty, and other things

which could estop him afterwards, etc. And the demandant maintained his writ, for if he had granted the receipt he would have abated his writ.

Case 2. Reported in Y. B. Hilary, 40 Ed. III, p. 12, pl. 26. See also Brooke, Resceipite, 16; and Fitzh: Resceipite, 86.

Hilary
41 Ed. III. (3) **A woman prayed** to be received by attorney, and she had a special writ, witnessing that she was sick, etc. The same term a woman prayed to be received for default of her husband, and pleaded a misnomer of herself, etc., and the demandant was made to answer, etc.

Case 3. Reported in Y. B. Hilary, 41 Ed. III, p. 8, pl. 18. See also Fitzh: Resceipite, 87.

Michaelis
45 Ed. III. (4) **The wife was received** for default of her husband, and then made default, and another woman came and prayed to be received, because the woman who made default was tenant in dower, the reversion to her, etc. And she was received, notwithstanding the lands would not be lost by default of the first woman who was received, etc. Which note, etc.

Case 4. Reported in Y. B. Trinity (not Mich.), 45 Ed. III, p. 19, pl. 20. See also Fitzh: Resceipite, 92.

Trinity
47 Ed. III. (5) **It is a good plea** for the demandant to say that he upon whose default the defendant prayed to be received was seised in fee, etc. In a *Præcipe quod Reddat*.

Case 5. The case has not been identified in Y. B. Trinity, 47 Ed. III, or in the early abridgments.

Michaelis
42 Ed. III. (6) **In a writ of wardship**, the wife shall not be received for default of her husband notwithstanding she may lose her seignory, etc. By THORPE, in Waste.

Case 6. The case has not been identified in Y. B. Mich. 42 Ed. III, or in the early abridgments.

Michaelis
48 Ed. III. (7) **If a wife** be received for default of her husband, although he has taken a day by *prece partium* before they [become tenants in] fact, or did any thing as tenant; that

will not estop the woman from saying that they were not tenants, or something of that sort, because she was covert. But they who are in the reversion shall be precluded by the acceptance of the tenant, unless it be for the mischief to the warranty. But yet it was said that he can say that the demandant had taken a husband after the default, or before, because it may be that her husband had released to the tenant for life, etc. And in the case here, he who was received said that the tenant was not tenant of the lands the day, etc., but that the lands had come to him by course of law, pending the writ, etc. And he could not have the plea, because the tenant for life had taken a day by *prece partium*. And KYRTON said that although the lands had descended pending the writ, and the demandant had recovered by default, still he could not falsify the record, unless he entitled himself by an elder title, etc. Which was conceded.

Reported in Y. B. Mich. 48 Ed. III, p. 25, pl. 9. See also Brooke, Case 7. Resceipte, 24; and Fitzh: Resceipte, 93.

(8) **When a man** prays to be received, immediately he may plead in bar, or in abatement of the writ, or vouch, all in the same breath, for the Statute is "*parata petenti respondere*." Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments. Case 8.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 3, Stats. at Large, Vol. 1, p. 163 (170). "*Si uxor ante iudicium venerit parata petenti respondere*."

(9) **In a writ of entry** in the *post*, against the husband and his wife, the wife was received and demanded judgment of the writ, for her husband found her seised, in which case you should not allege any entry as to the husband, etc. FYNCHEDEN: She does not plead in abatement of the writ, except for the mischief to the warranty; and here she can vouch at large, etc. THORPE: It is different in regard to a husband and his wife, than as to two other persons, for she is a party, etc. STONORE: If the writ had been in the *per* that exception had been good, for there Trinity
31 Ed. III.

he alleges that they entered by such a one, and that is false; but in the *post* he alleges their entry by no one, and therefore, although they entered at different times, the writ is good enough, etc.

Case 9. There is no printed year of 31 Ed. III. The case has not been identified.

Michaelis
31 Ed. III. (10) **See in the title of error**, good matter of Receipt, where in a writ of Error one was received for a default made in a franchise after jurisdiction granted.

Case 10. There is no printed year of 31 Ed. III. See Statham, *supra*, title of Error, pp. 88 b to 92 a.

Hilary
21 Ed. III. (11) **In a quid juris clamat** he claimed a fee, and upon that they were at issue; and on the return of the *Venire Facias* the husband made default, and the wife was received by award. And as to part, she said that she was tenant in tail; and as to the remainder, she was ready to attorn. And because she could not attorn without a *distringas* to attorn, it was adjudged against her husband and herself as to that part; and as to the remainder they were at issue, etc.

Case 11. Reported in Y. B. Hilary, 21 Ed. III, p. 1, pl. 2. See also Fitzh: Resceipte, 130.

Hilary
21 Ed. III. (12) **In formedon**, one prayed to be received, and he said that his father died seised of the tenements, etc., after whose death they descended to him as son and heir, within age, etc. And that such a one, his guardian, assigned dower to her who now makes default, whereas she was never the wife of his father, and, saving to him his action of Assize against the woman, he prayed to be received to defend his right. FYNCHEDEN: By his own showing he has no reason to be received, nor is there any reversion in him, etc. SHARSHULL: She shall be adjudged tenant in dower until her estate is defeated, wherefore let him be received, etc.

Case 12. Reported in Y. B. Hilary, 21 Ed. III, p. 4, pl. 12. See also Brooke Resceipte, 50; and Fitzh: Resceipte, 131.

(13) **If the husband** and his wife are joint tenants, the wife shall be [endowed] of all, etc. She shall also have a *Cui in Vita* for all. And that in a note. Paschal
21 Ed. III.

The case has not been identified in Y. B. Paschal, 21 Ed. III, or in the early abridgments. Case 13.

(14) **In a praecipe quod reddat** against the husband and his wife, who made default after default, one J came and, showing that the reversion was in him, prayed to be received. And he said that the husband was dead, judgment of the writ, etc. THORPE: You cannot have such a plea before you are received. Wherefore he was received, and then he had the plea, etc. (But yet the contrary was adjudged elsewhere, as appears.) And the same day a tenant by his warranty said that the tenant [husband] was dead, etc. Hilary
18 Ed. III.

Statham
154 b.

The case has not been identified in Y. B. Hilary, 18 Ed. III. Fitzh: Resceippte, 109, has the case, and a citation to Paschal Term of 18 Ed. III. No case of a *Praecipe quod Reddat* appears in the printed term, however. Case 14.

(15) **In a praecipe quod reddat**, one showed how the king gave the same lands to her father in tail, and that her father leased the same lands to him who made default, for the term of his life, and died, wherefore the reversion descended to her, and she prayed to be received. THORPE: She who prays to be received is married, as appears by her plea, and if she is received it is in affirmance of the estate of the tenant for life, which is a discontinuance of the reversion in tail. And she does not entitle herself in any other reversion: so for those two reasons it seems that she should not be received, etc. But yet she was received. Paschal
18 Ed. III.

The case has not been identified in Y. B. Paschal, 18 Ed. III. No case of a *Praecipe quod Reddat* appears in the printed report of that term. Case 15.

(16) **He who prayed** to be received pleaded a misnomer of him who made default; and he had the plea for the mischief as to the warranty. Paschal
30 Ed. III.

The case has not been identified in Y. B. Paschal, 30 Ed. III, or in the early abridgments. Case 16.

Trinity
24 Ed. III.

(17) **In an assize** for rent against one J, who answered as tenant of the lands of which he, etc.; and he pleaded the release of the ancestor by a fine, to which the plaintiff said, "no such record," wherefore a day was given, etc., on which day the tenant made default, wherefore the Assize was awarded, upon which one J came and said that one H was seised of the reversion of the lands and granted to him, etc., and he was forced to show how the reversion commenced. WILLOUGHBY: The tenant has failed of his record. And he also prays to be received for another thing which is not in demand, etc. And the Assize is also awarded for his default, wherefore he cannot be received, etc. And note that he was received in the writ, as it appears, etc.

Case 17.

The case has not been identified in Y. B. Trinity, 24 Ed. III, or in the early abridgments.

Paschal
30 Ed. III.

(18) **In a writ of mesne** against three husbands and their wives, who pleaded "not distrained for their default." And at the *Nisi Prius* they made default, wherefore the inquest was taken, and it was found for the plaintiff. And then in the Bench one of the wives prayed to be received, etc. NORTON: It is hard to receive her, because this action is only a personal action; and also the judgment will not be given upon the default, but upon the verdict. And also she prays to be received for the third part, and the acquittance is entire and cannot be severed, etc., wherefore, etc. THORPE: It seems to me that the inquest should not have been taken for her default, but a distress should have been awarded in place of the petty cape, because the freehold is to be charged; and if so she shall be received: for inasmuch as she is a party to the writ the judgment will bind her. But in the case of a tenant for life, he who is in the reversion shall not be received, for his admission will not bind him, except for his own life. And in a writ of Mesne against a husband and his wife, a man shall not have fore-judgment, etc. But I say that in that writ, writs of customs and services, and the *Quid Juris Clamat*, the inquest shall not be taken for a default. WILLOUGHBY: It is not the same as a writ of customs and services, for in that writ

he does not demand lands nor rent, but a personal thing. And to that which you said, that the inquest should not have been taken for default, it is not so; for when they pleaded, "not distrained," "for their default," they admitted the acquittance, in which case the plaintiff could have prayed judgment of the acquittance immediately, so that the taking of the inquest was only for the damages; and she also came too late after the inquest was awarded, etc., and especially since she did not pray to be received *in pais*, etc. And she also cannot be received for the whole, but for her portion, and it is convenient to sever the acquittance, etc. THORPE: She shall be received for all; as in a writ of Wardship of the body against two; one is nonsuited, the other shall continue the suit and recover the entirety; also as the default of one, if she shall not be received, hurts all the others, as it seems to you, so she can as well be received to save all, etc. And then she was received, etc. Well argued.

Reported in Y. B. Mich. (not Paschal), 30 Ed. III, p. 28, pl. 63. Case 18. See also Fitzh: Resceipte, 127.

(19) **In a scire facias** against the terre-tenant, one F, ^{Michaelis} against whom the plaintiff had recovered damages in an Assize, the writ was awarded against the heir and the terre-tenant, etc. And the sheriff returned that he had garnished one J and his wife as terre-tenants, and J made default, and the wife came and prayed to be received to defend her right; and she was received notwithstanding no land was to be lost through her default, etc. ^{24 Ed. III.}

Reported in Y. B. Mich. 24 Ed. III, p. 31, pl. 7. See also Fitzh: Case 19. Resceipte, 26.

(20) **In a scire facias** against the husband and his wife, ^{Hilary} out of a fine, they pleaded to issue, and on the day of the ^{3 Hen. IV.} *Nisi Prius* the husband made default. And then, in the Bench, the wife was received, notwithstanding she did not offer herself at the *Nisi Prius*, etc.

Reported in Y. B. Hilary, 3 Hen. IV, p. 13, pl. 21. See also Brooke, Case 20. Resceipte, 27; and Fitzh: Resceipte, 78.

Paschal
3 Hen. IV.

(21) **In an assize** for an infant under age against the husband and his wife, they pleaded in bar the release of the ancestor of the plaintiff, bearing date in another county. And the Assize was adjourned to try the circumstances. And at the *Nisi Prius* the husband and his wife made default, wherefore the inquest was taken, and on the day in the Bench the wife prayed to be received. TYRWHIT: She shall not be received, for the reason for adjournment is ended, wherefore we have nothing to do but remand it. MARKHAM: *Contra*. For if we see that she should be received "*in pais*," it is in vain to remand it, for then "*in pais*" she can plead the same release, so the Assize shall be again adjourned to try the circumstances; and the Assize was never awarded for her default, wherefore, etc. HANKFORD: Then she should plead upon the receipt immediately according to the Statute, etc. And then by advice it was adjourned, and she pleaded the same plea, etc.

Case 21. Reported in Y. B. Paschal, 3 Hen. IV, p. 18, pl. 15. See also Brooke, Resceipte, 28; and Fitzh: Resceipte, 79.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 3, Stats. at Large, Vol. 1, p. 163 (170), "*Si uxor ante iudicium venerit*," etc.

Michaelis
6 Ric. II.

(22) **In formedon**, the masters and the scholars of a college of Oxford were received to defend their right by attorney. (Study the reason), etc.

Case 22. There is no printed Year Book for 6 Ric. II. The case has not been identified elsewhere.

Trinity
33 Ed. III.

(23) **Two were** received jointly, and were at issue with the demandant. And then one of them died and the other could not maintain the issue, but was newly received for all, etc.

Case 23. There is no printed year for 33 Ed. III. Fitzh: Resceipte, 149, has the case.

Michaelis
2 Ed. III.

(24) **In formedon** against a man who made default after default. And his wife came and prayed to be received, and she showed that she held jointly with her husband. And because she was a stranger to the writ she was ousted of

the receipt, etc., for if she be ousted by force of that record, she shall have an Assize for all, etc. By HERLE, etc. Query?

Reported in Y. B. Mich. 2 Ed. III, p. 14, pl. 6.

Case 24.

(25) **If one coparcener** comes and the other does not, still she shall be received for her portion, albeit it is before partition, because their right is several, etc. Query as to joint tenants? etc.

Hilary
29 Ed. III.

Statham
155 a.

Reported in Y. B. Paschal (not Hilary), 29 Ed. III, p. 26, pl. 22. See also Fitzh: Resceipte, 150.

Case 25.

(26) **In a praecipe quod reddat** against two, one disclaimed, and then he prayed to be received, and the opinion was that he should not be received. For the above reason.

Paschal
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Resceipte, 151, has the case.

Case 26.

(27) **At the return** of the Grand Cape the tenant waged his law, etc., and on the day, etc., she was essoined, and on the day, etc., the tenant made default and the demandant was essoined, and one H came and demanded to be received. HALLS: The demandant is not here, etc. MARTYN: The essoignor can pray seisin of the land. HALLS: But he cannot counterplead the receipt; wherefore we will record his [presence] and no more, etc.

Hilary
1 Hen. VI.

Reported in Y. B. Mich. (not Hilary), 1 Hen. VI, p. 4, pl. 13. See also Brooke, Resceipte, 80; and Fitzh: Resceipte, 48.

Case 27.

(28) **In a praecipe quod reddat** against the husband and his wife, the husband disclaimed for his wife, and then made default, and the wife was received notwithstanding the disclaimer, etc.

Paschal
34 Ed. III.

There is no printed year of 34 Ed. III. The case has not been identified elsewhere.

Case 28.

(29) **In a per que servicia**, a woman was received for default of her tenant for life. And she had a special writ be received by attorney, because she was a cloistered prioress.

Hilary
43 Ed. III.

Reported in Y. B. Hilary, 43 Ed. III, p. 8, pl. 24. "In a note." Case 29.

Case 29.

Michaelis
9 Hen. V.

(30) **In a praecipe quod reddat**, one prayed to be received: and the demandant said he had nothing in the reversion. And upon that they were at issue. And on the return of the *Venire Facias*, the one who prayed said that the demandant had entered after the last continuance. ROLFF: You are not yet received, wherefore, etc. STRANGE: He has found security, and if the demandant entered it is not reasonable that he should answer for the issues, etc. And then it was adjudged that the demandant should recover seisin of the lands.

Case 30.

Reported in Y. B. Hilary (not Mich.), 9 Hen. VI, p. 58, pl. 5. See also Fitzh: Resceipte, 54. It is evident that the printer made an error in the citation of this case in the margin of the abridgment. It should be 9 Hen. VI.

Paschal
9 Hen. V.

(31) **In a praecipe quod reddat**, at the return of the Grand Cape the tenant waged his law of non-summons, and on the day, etc., the tenant made default, and the demandant was essoined, and one prayed to be received. PASTON: He shall not be received for two reasons: one, because he has gone over his time; another, because he has shown the grant of the reversion from the first year of Richard until now, and he has shown that the lease was four years after the grant, to wit: Anno 4 of the same king as appears by the deed, which he has shown, etc. And the opinion was that he should be received. Study well, etc.

Case 31.

Reported in Y. B. Mich. (not Paschal), 9 Hen. V, p. 10, pl. 8. See also Brooke, Resceipte, 43; and Fitzh: Resceipte, 76. The facts in the different abridgments and in the case are not exactly alike, but there seems to be little doubt that this is the case.

Hilary
38 Ed. III.

(32) **In dower** against one who vouched the husband and his wife to warranty. The husband made default after default, and the wife was received. Which note, etc. But he who is in the reversion shall not be received for default of the vouchee, who is tenant for life, because the recovery in value binds only while his estate lasts. (Query?) And the wife entered into the warranty of her own free will, and said that she was "never seised, so that [she could be] endowed," etc. And then the tenant showed that which

bound the woman,¹ and prayed that it be entered, etc. THORPE: We have nothing to do with the deeds, since she has warranted of her free will. FYNCHEDEN: But look, my Lord, it is reasonable that the deed be entered² for if a man lease lands to me for the term of my life, and a stranger releases to me with warranty, and he who released purchases the reversion and I am impleaded and vouch him in the reversion, if he enters of his own free will I shall not recover, except for my life term; whereas by the release I shall recover a fee, etc. Wherefore the deed was entered. (And note that the truth was that this very woman who was vouchee had a writ of *Dum fuit infra ætatem* pending for the same alienation of which she was vouchee, and the tenant vouched her with the intent that she should admit the deed, which admission would estop her in the *Dum fuit infra ætatem*.)

Reported in Y. B. Paschal (not Hilary), 38 Ed. III, p. 9, pl. 9. Case 32.

(33) **One prayed** to be received because his father leased to the tenant, etc. FYNCHEDEN: You yourself entered pending our writ, and leased to the tenant and to another, so you are in by a new reversion. And it was not allowed, because, although the tenant aliened, still he remained tenant to the demandant, and consequently the demandant could take no advantage against him who prayed, etc.

Hilary
38 Ed. III.

Reported in Y. B. Paschal (not Hilary), 38 Ed. III, p. 10, pl. 18. See also Brooke, Resceipite, 119. Case 33.

(34) **In an assize** against the husband and his wife, who pleaded bastardy in the plaintiff. And the bishop certified that he was legitimate, on which day the husband made default, and the wife prayed to be received, and could not, because the certification is as strong as an issue tried against them.

Hilary
13 Ric. II.

There is no printed Year Book for 13 Ric. II. Fitzh: Resceipite, 99, has the case. Case 34.

¹ "Lien" is the word in the case, not "lieu" as in the abridgement.

² Words from the case.

- Hilary
13 Ric. II. (35) **In a praecipe quod reddat**, one prayed to be received for default of his tenant for life. HANKFORD: You have entered in the lands pending the writ, so you are tenant of the freehold, judgment, etc. THIRNING: Although the tenant for life surrenders to him in the reversion, pending the writ, and then makes default, still he shall be received, for by the same reason that he remains tenant to the plaintiff the plaintiff shall not have the plea, wherefore let him be received, etc. (But yet it seems that it shall be entered in that case that he entered of his own tort, etc. Study well.)
- Case 35. There is no printed Year Book for 13 Ric. II. Fitzh: Rescepte, 98, has the case.
- Trinity
2 Hen. VI. (36) **One was received** upon a feigned plea of his tenant for life, and he did not show how the plea was feigned. And when he was received he pleaded the same plea,¹
- Case 36. Reported in Y. B. Trinity, 2 Hen. VI, p. 14, pl. 11. See also Brooke, Rescepte, 2.
- Michaelis
9 Hen. VI. (37) **In a praecipe quod reddat** against the husband and his wife, they made default after appearance, upon which the petty cape issued, returnable on the quindene of St. Michael, etc., on which day the woman prayed to be received by attorney; and she had a special writ relating that she was "great with child, and therefore you are commanded that she be received by her attorney; and if it so be that her husband make default at the said quindene" [etc.]. On which day no writ is served, wherefore a *Sicut Alias* was awarded, returnable on the quindene of Saint Hilary, on which day he prayed, as above. And because the writ spoke only of the quindene of Saint Michael, in which case she should have had a new writ, she was ousted of the receipt, etc.
- Case 37. Reported in Y. B. Mich. 9 Hen. VI, p. 37, pl. 11. See also Brooke, Rescepte, 8; and Fitzh: Rescepte, 53.

¹ The law in the case seems to be much doubted by the reporter.

(38) **In a praecipe quod reddat** against the husband and wife, they departed in despite of the Court; and still the wife was received, etc., and pleaded a plea upon being received. As appears. Hilary
9 Hen. VI.

Reported in Y. B. Hilary, 9 Hen. VI, p. 58, pl. 5. See also Fitzh: Case 38. Resceipte, 54.

(39) **In a writ of entry** upon a disseisin *de quibus*, brought against the tenant and his wife, the wife was received upon the default of her husband, and said that she did not disseise the demandant. Ready. GODEREDE: You cannot plead except for yourself. BABYNGTON: In another [writ than] a *Praecipe quod Reddat* she might plead in bar of all, or traverse the point of the writ [as] to all, for the law adjudges her to be tenant of all. But in this case it may be that she did not disseise the demandant, but that her husband disseised him, and that she was tenant; as in an Assize. And they adjourned, etc. Trinity
9 Hen. VI.

Reported in Y. B. Trinity, 9 Hen. VI, p. 26, pl. 24. See also Brooke, Case 39. Resceipte, 7; and Fitzh: Resceipte, 55.

(40) **In formedon**, he who held only for a life term in the remainder was received by himself. And it was said that if the other who was in the remainder in fee did not then come he would never be received afterwards. And he showed how the remainder was granted to him by a fine, and the remainder over, etc. And the demandant said that he had nothing in the reversion, and he was received to that general averment against the fine, because he was a stranger to the fine. Hilary
11 Hen. IV.
Statham
155 b.

Reported in Y. B. Hilary, 11 Hen. IV, p. 42, pl. 11. See also Brooke, Resceipte, 38.

(41) **If one who holds for life**, the reversion to the king, be impleaded, and makes default after default, the king shall direct a writ to the justices in the nature of a receipt, by force of which they will discontinue, etc. But they will not discontinue without such a writ, or unless matter of record be shown proving that the reversion is Trinity
11 Hen. IV.

in the king. And that in Formedon, etc. And therefore it is better in such a case to sue the king in the first instance, etc. Query well.

Case 41. Reported in Y. B. Trinity, 11 Hen. IV, p. 71, pl. 5. (See the latter part of the case.)

Michaelis
18 Hen. VI. (42) **A man shall be** received by reason of a reversion purchased pending the writ. And so it was adjudged, etc.

Case 42. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Trinity
19 Hen. VI. (43) **If the tenant prays aid** of him who is in the reversion; who is summoned and who does not come, he shall not be received afterwards. By the opinion of PASTON and MARKHAM, in [a writ of] Annuity.

Case 43. The case has not been identified in Y. B. Trinity, 19 Hen. VI, or in the early abridgments.

Paschal
20 Hen. VI. (44) **In a praecipe quod reddat**, a woman was received for default of her husband, and she prayed aid of a stranger, and had it. And NEWTON said that in the ancient books, in such cases, if it appeared by her aid prayer that she could vouch him, for that same reason she shall be ousted of the aid, because the demandant shall not be twice delayed, etc.

Case 44. Reported in Y. B. Paschal, 20 Hen. VI, p. 23, pl. 4. See also Brooke, Resceipte, 10; and Fitzh: Resceipte, 59.

Michaelis
4 Hen. IV. (45) **A woman** prayed to be received for default of her husband. And she told how, while the writ was pending, one H had brought a formedon against her husband, and had recovered [against] him, and sued execution, so their tenancy was lost; judgment of the writ. HANKFORD: That plea is contrary to your receipt; wherefore she waived the plea.

Case 45. The case has not been identified in Y. B. Mich. 4 Hen. IV, or in the early abridgments.

Hilary
5 Hen. IV. (46) **One prayed** to be received for default of his tenant for life. The demandant said that he had nothing in the

reversion; upon which they were at issue. And the inquest said that at the time of the first default, he who prayed, etc., had the reversion, and that he had purchased the estate of the tenant for life before his prayer, etc., and they prayed the discretion, etc. And it was adjudged that the demandant should recover seisin of the land, etc. But it had been otherwise if the matter had been disclosed in the pleadings of either party; but now the issue was found against him, because it was his folly, etc.

Reported in Y. B. Hilary, 5 Hen. IV, p. 2, pl. 4. See also Fitzh: Case 46. Resceipte, 153.

(47) **In an assize** against two, who pleaded a record; and on the day, etc., if they failed, one of them could be received if the reversion was in him, notwithstanding the Statute "*habeatur pro disseisitore*": By HANKFORD and HALLS. Query? etc. ^{Trinity} 7 Hen. IV.

Reported in Y. B. Trinity, 7 Hen. IV, p. 16, pl. 7. See also Brooke, Case 47. Resceipte, 33; and Fitzh: Resceipte, 82.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 25, Stats. at Large, Vol. 1, p. 163 (200) and 13 Ric. II (1389), cap. 17, Stats. at Large, Vol. 2, p. 308 (321).

(48) **In [a writ of] waste**, after the writ was awarded to the sheriff to inquire as to the waste, the woman prayed to be received and was ousted, etc. ^{Michaelis} 8 Hen. V.

Reported in Y. B. Hilary (not Mich.), 8 Hen. V, p. 1, pl. 3. See also Case 48. Fitzh: Resceipte, 154.

(49) **In a praecipe quod reddat**, the tenant vouched the husband and his wife, who entered, etc. Then the husband made default, and the petty cape issued "*in terra petita*," on which day the woman was received to defend her right. And yet it was not certain what lands he lost by his default. ^{Hilary} 27 Hen. VI.

The case has not been identified in Y. B. Hilary, 27 Hen. VI, or in the early abridgments. Case 49.

(50) **In a praecipe quod reddat** against the husband and his wife and a third, who made default; wherefore the Grand Cape issued; on which day came a writ out of the Chancery to receive the woman by attorney. And the

writ related how the husband and his wife were tenants of the entirety, without this that the third had anything therein; and how the husband wished to make default by fraud, etc. "And if he thus do make default, that then you shall receive the woman for the entirety." And the husband made default, wherefore POLE prayed to be received for the woman for the entirety. DANBY: That cannot be, for a *feme covert* shall never be received without her husband, unless by the default of her husband. And in this case no more is to be lost by his default than the half. POLE: If she shall not be received except for half, nor plead in bar for more than half, then she shall not have *Cui in Vita* for the other half, for she will be estopped to say "although the other was tenant," etc., in which case she is injured, etc. MOLE: If we grant the receipt we will abate our writ, wherefore we will aver that they were tenants on the day the writ was purchased; as the writ alleges, etc. Query, if the issue be found against the defendant, shall she be received for any part, etc.?

Case 50. This case has no citation in Statham, consequently it has not been identified.

Note. **See as to receipt**, in the title of Issue, Paschal, 48 Ed. III.

Statham, title of Issue, *supra*, p. 116 a, case 15.

Michaelis (51) A **woman** was received by attorney by a writ of 22 Hen. VI. *dedimus potestatus*, because she was ill, etc. In Dower against J de R, etc.

Case 51. The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the early abridgments.

Iter de (52) **The grantee** of the reversion by a fine was received, Northampton notwithstanding there was nothing to show the attorn- Folio 10. ment.

And in the same Eyre the tenant upon being received said that the lands were in ancient demesne, and he had the plea, etc. *Simile* held by SHARSHULL, Hilary, 6 Ed. III, placitum one, etc.

Case 52. This Eyre has not as yet been printed.

(53) **The remainderman** was received, notwithstanding Michaelis
22 Hen. VI. he did not show a deed for the remainder, because he had only to defend his right, and not to demand the remainder. And that in a *Præcipe quod Reddat*, etc.

The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the Case 53. early abridgments.

(54) **In a scire facias**, one was received to defend his Paschal
7 Ed. III. right, etc. *Simile*, 13 Ric. II, etc. In the Eyre of Northampton, folio 12, etc. Query, if the king shall be received, and how, etc.?

Reported in Y. B. Paschal, 7 Ed. III, p. 15, pl. 9. See also Fitzh: Case 54. Resceipte, 33.

(55) **A woman** shall not be received upon the default of Paschal
6 Ed. III. the tenant for life, of a lease made by her husband to him of the lands of the woman, etc. By the opinion of the COURT; because she could have a *Cui in Vita*, etc. In Formedon.

The case has not been identified in Y. B. Paschal, 6 Ed. III, or in Case 55. the early abridgments.

(56) **In dower** against the husband and his wife as guar- Hilary
15 Ed. III. dians, the wife shall not be received for the default of her husband, etc., because she is not within the purview of the Statute.

There is no early printed year of 15 Ed. III. The case is to be found Case 56. in the Rolls Series, 14 & 15 Ed. III, p. 312, No. 26.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 3, Stats. at Large, Vol. 1, p. 163 (170).

(57) **In formedon**, the tenant for life prayed aid of him Hilary
23 Ed. III. in the reversion, and joined himself to him, and then was received for default of the tenant for life. *Simile*, Statham
156 a. Michaelmas, 22 Hen. VI. But there the tenant pleaded one plea, and he who prayed, another plea, and then he was received, etc. But if he joined in a plea with the tenant it was hard for him to be received afterwards, because it was his own plea, etc.

The case has not been identified in the very short printed year and Case 57. Michaelmas Term of 23 Ed. III, or in the early abridgments.

- Michaelis
23 Hen. VI. (58) A **woman** was received for default of her husband, and she pleaded a plea, and then made default, and the reversioner was received. In the case of *John de Routhe*, etc.
- Case 58. There is no printed year of 23 Hen. VI. Fitzh: Resceipte, 156, has the same short abridgment.
- Trinity
16 Ed. III. (59) **The inquest** passed against the tenant at the *Nisi Prius*. And on the day in the Bench he made default, and he in the reversion wished to be received and could not, because the inquest was taken. And that in the case of *Tregoos*.
- Case 59. There is no early printed year of 16 Ed. III. The case has not been identified in the Rolls Series, although the case printed in that series, 16 Ed. III, Pt. 2, p. 58, No. 17, is much like it.
- Trinity
19 Ed. II. (60) **He who is in the reversion** shall not be received upon [a plea of] not defended by the tenant for term of life, nor upon a departure in despite of the Court, etc. Query, if a woman shall be received in those cases in a *Cui in Vita*?
- Case 60. The case has not been identified in Y. B. Trinity, 19 Ed. II. Fitzh: Resceipte, 158, has the case.
- Anno
4 Hen. V. (61) **In a writ of mesne**, the wife was received to defend her right, for default of her husband; by the advice of all the justices in the Exchequer Chamber, because she is to have a perpetual charge, etc.
- Case 61. There is no printed year of 4 Hen. V. Fitzh: Resceipte, 157, has the case.

⁸¹ This receipt of the wife when the husband makes default is one of the features of Year Book pleading. Everywhere, throughout all the centuries, we find the husband defaulting in his appearance, the wife coming in and "defending her right," as in our first case. It is one of the marvels of this old procedure that everywhere we find women greatly in evidence, married women — supposed to have their identity almost totally submerged in that of their husband — are coming constantly to court. Of course in many instances they are mere tools of the skilled pleader — the husband defaults and the wife comes, the wife then defaults and the husband appears; there was that old evil of the "*fourcher by essoïn*," the husband being one prong of the fork, the wife the other, which was cured by the Statute of Gloucester

[cap. 10] and there were many other cases in which a long delay could be caused by this using of the supposedly one in law, as two quite separate entities, when haled into court against their desire.

Coke speaks [Coke: 1st Inst. sec. 668] of this receipt of the wife, and says: "It is also called '*defensio juris*,' and in this case the wife may be received by the statute [20 Ed. I (1292), *de Defensione Juris*] and yet ancient authors who wrote before the Statute do speak of a kind of receipt at the common law." Bracton and the *Mirroir* are the ancient authors alluded to [Bracton, Lib. 5, fo. 393, b; *Mirroir*, Lib. 3, cap. 3.] Bracton is not very clear, but the *Mirroir* says [*Mirroir*, cap. 3, § 1, fo. 129, of Exceptions]: "The law forbiddeth married women to answer without their husbands, but then we are to put a difference in the cases, for if she be within the age of one and twenty years, she is not admitted to plead in any case without her Husband, but in Case where her disheriting or that which doth amount to as much doth appear by the malice, or negligence of her husband; and if she be of full age, then she shall so answer alone in cases of death and felony; and so it is of men within the order of Religion, and of Villains, and of all those who are in custody, and are not delivered." [*Mirroir*, ed. 1768.] The *Mirroir* thus brings in other classes who may be received, who, it may be remarked, are all among those who are not otherwise *sui juris*, the villein and the man of religion, as well as those in custody.

Reeves says [Reeves: Hist. of Eng. Law, Vol. 2: 151] that the Statute of Gloucester was the "first statute that gave receipt in any case"; "the principle upon which a person interested was allowed to interfere in a suit that was likely to affect his interest, is to be found in the old practice at common law. Heirs and those entitled to the reversion were also to be received, if they came in time." [*Ib.*, 191. See West. II, cap. 3.] This statute seems to have been powerless to prevent abuses creeping in, and this statute *De Defensione Juris*, before mentioned, provides that the person received shall "find sufficient surety (as the court will award) to satisfy the demandant of the Value of the Lands so to be recovered." It is assumed that this was to prevent frivolous or designing persons from claiming to be received, to the delay and damage of the demandant. Everywhere we find this constant taking advantage of every possible plea for delay, and the equally constant attempt of the courts and the legislature to circumvent it. All through the cases there is a never ceasing attempt at these circumventions and delays, creating an atmosphere which shows that "the power to receive another person than the person against whom the case was instituted was opening the door to fraud and delay." Cases cannot easily be cited to show that injustice was done, because the judgments are fair upon their face, and it is only between the lines of case after case that one can read the fact that the husband, or other person asking to be received, is defaulting of set purpose, and that the wife is asserting her claim, not as an injured person who will lose her estate if she is not received, but that she is asking, in many cases, for the privilege in order to defeat the ends of justice.

RETOURNE

- Michaelis
2 Hen. IV. (1) **In a writ of ejectment from a wardship**, a distraint with proclamation issued to the sheriff in the county, and the sheriff returned "*mandavi ballivo libertatis de L, qui mihi retornum exitus xl d.*," and besides this the sheriff returned from himself a proclamation made in two counties, and gave the dates of the days, etc., and lastly he returned that he did "nothing more because of lack of time." And the opinion was that the sheriff should be amerced, for he himself should have sued all the writs, notwithstanding the franchise, etc. And yet he could excuse himself to the lord of the franchise, if he brought an action against him by the showing of the matter aforesaid; which could not be denied.
- Case 1. Reported in Y. B. Mich. 2 Hen. IV, p. 1, pl. 2. See also Brooke' Retourne de Brieff, 26.
- Michaelis
2 Hen. IV. (2) **The sheriff** returned "*tarde*" in a *Capias*; and he was amerced, for he could have returned, "*non est inventus.*" And if such a return in that case shall be received, the plaintiff shall never have a process of outlawry, etc. (But yet that is a foolish reason!)
- Case 2. Reported in Y. B. Mich. 2 Hen. IV, p. 7, pl. 34.
- Hilary
2 Hen. IV. (3) **If the sheriff** takes a man by force of a *Capias*, and while leading him to the Court of the king he takes sanctuary, and the sheriff returns this matter, he shall be amerced, for it was his folly to lead him to the sanctuary; but if he took him into a vill which is a sanctuary, and he demanded the privilege, that is a good return, etc.
- Case 3. Reported in Y. B. Hilary, 2 Hen. IV, p. 15, pl. 14. See also Brooke, Retourne de Brieff, 29; and Fitzh: Retourne de Vicount, 45.
- Hilary
46 Ed. III. (4) **In a scire facias** out of an annuity, the sheriff returned "*Scire Feci*" and because he did not say, "by such and such [garnishers]" he was amerced, etc.
- Case 4. Reported in Y. B. Hilary, 46 Ed. III, p. 6, pl. 19.

(5) **In a writ of *Homine Replegiando***, it is a good return that the defendant claimed him as his villein, etc. From this it follows that a writ of *Proprietate Probanda* shall issue, etc. Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments. Case 5.

(6) **If a *capias*** issues to the sheriff to take a man, he should write to all the bailiffs of the franchise within his county, if he cannot find him, and return the writ accordingly, etc. By WILLOUGHBY, in Replevin. (But yet the contrary is law.) Michaelis
30 Ed. III.

The case has not been identified in Y. B. Mich. 30 Ed. III, or in the early abridgments. Case 6.

(7) **In a *summoneas ad warrantizandum***, "*nihil habet [in balliva mea] nec est inventus in eadem*," etc., is a good return in a *Præcipe quod Reddat*. The reason appears [above] etc. Paschal
14 Hen. VI.

Reported in Y. B. 14 Hen. VI, p. 19 (20), pl. 60. See also Brooke, Retourne de Brieff, 62. Case 7.

(8) **In *detinue***, the defendant was outlawed and had a charter of pardon, and a *Scire Facias* against the plaintiff who was an abbot. And the sheriff returned that before the *Scire Facias* came to him the abbot was deposed, so he could not garnish him according, etc. HALLS: That is no return, for the sheriff cannot take notice of that, etc. And then it was adjudged that the defendant go without day. Hilary
1 Hen. VI.

Reported in Y. B. Mich. (not Hilary), 1 Hen. VI, p. 2, pl. 6. See also Brooke, Retourne de Brieff, 63; and Fitzh: Retourne de Vicount, 1. But see further, Y. B. Mich. 2 Hen. VI, p. 5, pl. 1. Case 8.

(9) **In a *scire facias***, the sheriff returned "*mandavi ballivo libertatis de B, qui [mihi respondit]*," etc. ROLFF: The writ was not served, for it shall be (as above) "since the aforesaid lands are within the liberty," etc. And it was not allowed. NEWTON: It was not served, for he has not put the name of the lord of the franchise in the return, for Statham
156 b.
Hilary
1 Hen. VI.

otherwise it shall be understood to be in the hand of the king, etc. And it has been adjudged that where the sheriff returns "*mandavi ballivo libertatis ducis Lancastris,*" etc., and because the duke had various franchises within the same county, the return was not good: so here. Which the Court conceded, etc.

Case 9. Reported in Y. B. Mich. (not Hilary), 1 Hen. VI, p. 6, pl. 28. See also Brooke, *Retourne de Brieff*, 64; and Fitzh: *Retourne de Vicount*, 2.

Trinity
47 Ed. III.

(10) **In an appeal**, the sheriff returned that he had sent to the bailiff of the franchise of B since he could not find the defendants within his bailiwick "*qui mihi respondit quod cepit corpora,*" etc., "*et erunt ad die hic,*" etc. One came in the keeping of the ministers of the bailiff, and the other did not come. And the opinion was that the sheriff should have been amerced because he is the immediate officer, and not the bailiff. And the plaintiff counted against the one who came, etc. Query, what process shall issue against the other?

Case 10. The case has not been identified in Y. B. Trinity, 47 Ed. III, or in the early abridgments.

Paschal
48 Ed. III.

(11) **In an attaint**, the sheriff returned that one who was not one of the petty twelve, etc., [was put in, and one was left out,] and the plaintiff prayed that the sheriff be amerced. CANNISH: The writ of attaint does not put any name in certain, but says, "*diligenter inquiras qui fuerunt juratores primæ [inquisitionis],*" and he has done this to [the best of] his knowledge, so he shall not be amerced. Wherefore the plaintiff prayed process against those who were left out, etc.

Case 11. Reported in Y. B. Paschal, 48 Ed. III, p. 15, pl. 9. See also Brooke, *Retourne de Brieff*, 115.

Hilary
13 Hen. IV.

(12) **At the grand cape** the sheriff returned "*quod nullus venit ex parte querentis ad monstrandum mihi visum.*" THIRNING: Is he the same sheriff who made

the summons? HILARY: Yes, sir. THIRNING: In a writ of *habere facias visum* it is a good answer, but not here.

Reported in Y. B. Mich. (not Hilary), 13 Hen. IV, p. 8, pl. 22. See Case 12. also Fitzh: Retourne de Vicount, 104 and 122.

(13) **In an appeal** against two, at the exigent the sheriff returned that one was dead. And the opinion was that the return was not good, etc. <sup>Michaelis
10 Hen. IV.</sup>

Reported in Y. B. Mich. 10 Hen. IV, p. 5, pl. 16. See also Fitzh: Case 13. Retourne de Vicount, 104 and 121.

(14) **At the capias** the sheriff returned that the defendant was so sick that he could not take him out of his house. And it was adjudged good, etc. <sup>Michaelis
10 Hen. IV.</sup>

Reported in Y. B. Hilary (not Mich.), 10 Hen. IV, p. 7, pl. 3. See Case 14. also Fitzh: Retourne de Vicount, 105 and 122.

(15) **The sheriff** returned an octo tales. CANNDISH challenged it, because he sent the first panel to the bailiff of the franchise who returned it. He should have done so here. THORPE looked at the return, and said that the sheriff had returned one reason, to wit: because there were not many within the franchise except those who were suspected, etc. CANNDISH: The sheriff shall not be the judge in that case, but he should have sent to the bailiff and let the party have that by way of an exception. THORPE: The writ says "*qui nec*" [who were not under suspicion]. CANNDISH: That is nothing to the sheriff, unless to judge, etc. And we will aver the reverse if he can do so. THORPE: That you cannot do against the return. And if he has made a false return, sue against him in the Exchequer, for we will adjudge the return to be good. Which note. In a *Quare Impedit*.

And in the same plea another tales was directed to the coroner, because the sheriff was challenged, etc. And one coroner answered the tales in his own name, with the reason, to wit: that his companion was tenant to the sheriff. CANNDISH: That should come in by an exception

of the party, and not by you, etc. Yet all the same the return was adjudged good. Which note well.

Case 15. The case has not been identified in Y. B. Hilary, 38 Ed. III. Brooke, *Retourne de Brieff*, 44, cites the case as on page 5 of that term and year, but it does not appear there in the printed Y. B.

Trinity
39 Ed. III. (16) **In dower**, the tenant pleaded "never married," wherefore they sent to the bishop who certified that an inhibition came to him out of the Arches, wherefore he could not do that, etc. FYNCHEDEN: We pray a writ to require his presence for his bad return. THORPE: That you cannot have, but sue a *Sicut Alias*, etc. Query, what remedy is there for such a defect?

Case 16. Reported in Y. B. Mich. (not Trinity), 39 Ed. III, p. 20, pl. 3. See also Brooke, *Retourne de Brieff*, 112; and Fitzh: *Retourne de Vicount*, 62.

Michaelis
8 Hen. VI. (17) **In an assize**, the sheriff returned that "*mandavi ballivo libertatis de B*," who replied, etc. And they returned a panel in which there were only eleven. MARTYN: It is reasonable that the sheriff be amerced, for he should have returned "*mandavi*" as above, "*qui nullam*," etc., for that return is not sufficient. BABYNGTON: Then a *Sicut Alias* should issue and not a *non omittas*. And they adjourned, etc. Query?

Case 17. Reported in Y. B. Mich. 8 Hen. VI, p. 9, pl. 18. There are some differences here, but it is apparently the case which is abridged.

Michaelis
2 Hen. VI. (18) **One was outlawed** at the suit of an abbot, and had a charter of pardon, and a *Scire Facias* against the abbot. And the sheriff returned that before the writ came to him the abbot was deposed and another chosen, so that he could not garnish him. And by advice the charter was allowed, etc.

Case 18. Reported in Y. B. Mich. 2 Hen. VI, p. 5, pl. 3. See also Brooke, *Retourne de Brieff*, 4; and Fitzh: *Retourne de Vicount*, 1.

Michaelis
9 Hen. VI. (19) **At the grand [cape] ad valenciam**, the sheriff [returned] that the vouchee had nothing by which, etc.,

neither lands nor tenements, which could be taken into the hands of our lord the king. And it was adjudged a good return. But yet it was contrary to the return of the summons when he returned that he was summoned, etc. Query, what shall be done in that case?

Reported in Y. B. Mich. 9 Hen. VI, p. 41, pl. 17. See also Brooke, Case 19. Retourne de Brieff, 7; and Fitzh: Retourne de Vicount, 10. The case says, "*Quod mirum.*" Fitzherbert seems also to question the law in the case.

(20) **One had recovered** ten pounds of a debt against executors, and had a *Fieri Facias* for the goods of the deceased. And the sheriff returned that there were not enough goods within his bailiwick after the delivery of the writ "*prout si constare poterit.*" And because he would not take jurisdiction upon himself he was amerced, for he should have returned that they were carried away, and then the plaintiffs could have execution of their own goods, etc., because the plaintiff could have a special writ, to wit: for the goods of the deceased, and if he should find that they were sold or carried away, then of their own goods, etc.

Reported in Y. B. Hilary, 9 Hen. VI, p. 57, pl. 2. See also Fitzh: Case 20. Retourne de Vicount, 9.

(21) **A writ of nativo habendo** was brought in the county of Bucks, which was a viscontiel writ. And it was removed by a pone. And the sheriff returned "*non est inventus.*" And there was a long debate as to what process should issue; and at last a *Capias* was awarded. And the sheriff returned as before, and upon that the party prayed a *latitat* to the sheriff of London, who returned that the City of London is an ancient city and *camera Regis* and ancient demesne, etc., and had had such a custom from time, etc., that if a man had tarried within the said city for a year and a day, he shall not be cited, nor taken by a writ *de nativo habendo*, nor any process dependent upon that, even though he has remained there over a year, etc.; so they could not sue the writ "*salvis libertatibus suis.*"

Hilary
9 Hen. VI.

Hilary
7 Hen. VI.

Statham
157 a.

And upon that the plaintiff showed the record of Domesday, which did not prove that London was ancient demesne; and he prayed that the sheriff be amerced. And he also said, by COTTESMORE, that that return was not good, for that matter should come in by the plea of the party, and not by the return of the sheriff; as in a *Præcipe quod Reddat* for lands in ancient demesne, the sheriff does not return as above, but the party when he comes in shall have that by way of an answer, etc. GODEREDE: That showing of the record of Domesday is not to the purpose, unless it comes in at the plea of the parties; as if in an ancestral action the defendant wishes to show a certification of the bishop proving that the demandant is a bastard, that is not to the purpose until it comes in at the plea of the parties. And it seems that the return is good, for in Replevin the sheriff returns that the party claims the property, etc., and also "*mandavi libertatis*," etc., and in a writ *de habere facias seisinam*, the sheriff returns that the demandant was seised of the lands the day the writ was purchased, and at all times, since, etc. And they adjourned, etc.

Case 21. Reported in Y. B. Paschal (not Hilary), 7 Hen. VI, p. 31, pl. 27. See also Brooke, *Retourne de Brieff*, 46; and Fitzh: *Retourne de Vicount*, 7.

Hilary
11 Hen. IV. (22) **In debt** against one who was in the sanctuary. The sheriff returned that proclamation was made [three times.] weeks. HORTON prayed allowance [for five weeks].¹ THIRNING: By what law? HORTON: By the equity of the common law, upon proclamation of an exigent in the county. THIRNING: The Statute provides that proclamation shall be made for five continuous weeks, wherefore sue a new writ, etc.

Case 22. Reported in Y. B. Hilary, 11 Hen. IV, p. 40, pl. 2.
Statute of 2 Ric. II (1379), cap. 3, Stats. at Large, Vol. 2, p. 225 (226).

Michaelis
11 Hen. IV. (23) **In replevin**, the sheriff returned that such a one claimed the property to be in such a one, his master. And it

¹ Words from the report of the case.

was adjudged a good return; and a writ of *Proprietate Probanda* was issued,¹ etc. Contrary elsewhere, etc.

Reported in Y. B. Mich. 11 Hen. IV, p. 4, pl. 10. See also Brooke, Case 23. Retourne de Brieff, 108.

(24) **In debt**, the sheriff returned "*mandavi ballivo libertatis de B,*" who returned that he had taken the body, and that he would have it here on that day; but the body did not come, wherefore they were determined to amerce the sheriff, for he himself should bring in the body and not the bailiff, because the sheriff is the immediate officer of the Court, etc. And if the bailiff does not bring the body to the sheriff, he can return "*mandavi,*" etc., "*qui nullam,*" etc. But whether a *non omittas* should be awarded or another writ to distrain the bailiff to have the body here, they were uncertain, etc.

Hilary
11 Hen. IV.

Reported in Y. B. Hilary, 11 Hen. IV, p. 43, pl. 13. See also Brooke, Case 24. Retourne de Brieff, 35.

(25) **Upon an issue** the sheriff returned the *Venire Facias*, and at the distress, as to four of the jury, he returned the writ served; and as to the remainder he returned "*quod mandavi ballivo libertatis de B, qui nullam,*" etc. FORTESCUE prayed that the sheriff be amerced, for no writ can be served by two officers, to wit: part by the sheriff and part by the bailiff, etc. NEWTON: It seems that he should not be amerced, for the *Venire Facias* was not served except by parol, to the jurors according to the writ. But the distress should be served for their lands, and it may be that they have no lands which are geldable, or they are in a franchise; or it may be that at the time of the *Venire Facias* they had geldable therein, and also property in the franchise, and that they had sold that which was geldable, so the sheriff could not distrain them, etc. ASCOUGH: Then he should return "*nihil,*" etc. PASTON: It may be that there are not many who have sufficient within the geldable, and if so it is not improper that those of the franchise join with

Hilary
19 Hen. VI.

¹ The reporter says, "and then the writ of *Proprietate Probanda* was awarded, as was said, but I did not hear it."

those of the geldable; as in a case where, within a hundred, there are only four who are sufficient, then he takes from the next hundred adjoining, etc. And then by the advice of all the justices the sheriff was amerced, etc. *Simile*, Michaelis, 31 Hen. VI, where that case was argued in the Common Bench, etc. PORTYNGTON said that inasmuch as he served the first writ he could not afterwards write to the bailiff of the franchise, unless he alleged in his return a special reason, etc. To which it was said, by DANBY, that the sheriff could summon them out of the franchise, in which case he does no wrong to the lord of the franchise. And when he comes at the distress he can write to the bailiffs, because he cannot enter the franchise. And then FORTESCUE came into the place, and the case was repeated to him; and he said he could serve a writ and write to the bailiff of the franchise to serve another writ, or to sue a tales. But he cannot serve the writ in part, and as to another part write to the bailiff, for the writ is entire and cannot be severed; no more than in a writ of Wardship, if the sheriff returns that he "*mandavit ballivo*," and further that he himself has made the proclamation, he shall be amerced for the above reason, wherefore it was adjudged that the sheriff be amerced, etc.

Case 25. Reported in Y. B. Hilary, 19 Hen. VI, p. 48, pl. 1. See also Fitzh: Retourne de Vicount, 14. See also the note, Y. B. Paschal, 19 Hen. VI, p. 67, pl. 12.

Trinity
19 Hen. VI. (26) A **habeas corpus** was returned by the sheriff, and then a distress issued to his successor, who was a new sheriff; who returned the writ, and that one of them "*nihil habet*," and twelve appeared. FORTESCUE: We pray that the sheriff be amerced. MARKHAM: That shall not be, for twelve appeared. And also it may be that that juror was sufficient at the time, etc., and now is not sufficient. And if he shall be forced to return him as having issues, whereas he has nothing, the sheriff himself will be charged twice. FORTESCUE: Although enough appear, if the writ be not served as to one, all are discontinued. FULTHORPE: It may be that that juror had nothing except in the right

of his wife, and that she died without issue, or that one had recovered the lands which he had at the time of the *habeas corpora*. FORTESCUE: Then he shall make a special return, and shall say, "So he had nothing," so that the Court can be affected.¹ And if he had aliened the lands which he had at the time, etc., still the sheriff shall not return "*nihil*," for the land is charged with the issues into whose-soever hands it comes. As if a sheriff had lands and aliened them before he accounted to the king, and the sheriff be found in arrears, that land shall be charged; so here. And this suit is the suit of the king, for at the suit of the party no juror shall be forced to come; but the king has sworn to do right to his people, and of right he shall send to his people to make an end of the business between party and party, and so the lands shall be charged, etc. MARKHAM: If one of the parties is nonsuited, the inquest is discharged, *ergo* it is at the suit of the party. FORTESCUE: Your argument does not prove anything. Which NEWTON conceded.

The case has not been identified in Y. B. Trinity, 19 Hen. VI, or in Case 26. the early abridgments.

(27) **In a writ of right**, after the plea was joined, a writ issued to the sheriff to summon four knights, "to be at the Grand Assize on a certain day," and he returned that they were not knights, etc., but burghers, wherefore he was amerced, etc. Michaelis
7 Hen. IV.
Statham
157 b.

Reported in Y. B. Mich. 7 Hen. IV, p. 3, pl. 21. See also Fitz: Case 27. Retourne de Vicount, 50. See further Y. B. Trinity, 7 Hen. IV, p. 20, pl. 28, for the residuum of the case.

(28) **If a man** had recovered damages, and had a *Capias ad Satisfaciendum* to the sheriff of London; query, how would they make their return? Because they were of different opinions, etc. In a note, etc. Michaelis
8 Hen. V.

Reported in Y. B. Mich. 8 Hen. V, p. 7, pl. 3.

Case 28.

(29) **In an assize**, a *habeas corpora* issued against the jurors, and also an octo tales, etc. And then the sheriff returned that he had sent to the bailiff of the franchise, Michaelis
8 Hen. IV.

¹See Cowel: Interpreter, as to the use of this word; and also 25 Ed. III. Stat. 7 (p. 71).

who had sued the *habeas corpora*. And as to the tales, the sheriff returned his precept, since there were no more sufficient within his franchise; wherefore the sheriff serve the octo tales on the other, etc. And the opinion of the COURT was that the sheriff should be amerced; for when the bailiff could not serve the tales the sheriff should have served all, etc. Query?

Case 29. The case has not been identified in Y. B. Mich. 8 Hen. IV, or in the early abridgments.

Michaelis
8 Hen. IV. (30) **In replevin**, the sheriff returned that the cattle were driven into a park which was enclosed and locked, so that he could not get to his cattle. And for that return he was amerced, for it was said that it was no answer to say that the cattle were led away into a stronghold; for if it be so, the sheriff can take with him the *posse comitatus*, and abate it, etc. Query, how shall he make his return in that case? etc. (He could have returned that they were carried away, etc.)

Case 30. The case has not been identified in Y. B. Mich. 8 Hen. IV, or in the early abridgments.

Michaelis
8 Hen. IV. (31) **In a writ of *Homine Replegiando***, the sheriff returned that the defendant claimed him as his villein. NORTON: That is no return, for he cannot try the property. HANKFORD: The return is good and does not injure you, for you can find security to have him here on the day, etc., and then the liberty shall be tried between them. NORTON: We pray that we may find security in the county where he is imprisoned. HANKFORD: It cannot be, wherefore find your security here, etc. And see in the Register the same case, and a writ upon that to replevy him, and further than that to summon the parties [to show] for what cause he detained him. And if he claims him as his villein, the other shall say, "free," etc., and it shall be tried here in the Bench, etc. And so note that the return is good, and still he shall not be detained in prison.

And see in the same plea, that it is a good return to say that the defendant claimed him against whom the replevin was sued as in his wardship, etc. Query?

Case 31. Reported in Y. B. Mich. 8 Hen. IV, p. 2, pl. 3. See also Brooke, *Retourne de Brieff*, 104; and Fitzh: *Retourne de Vicount*, 47.

(32) **In debt** against two, on the return of the exigent the sheriff returned that one was dead and the other was outlawed. And because he returned that one was dead, he was amerced, for if such a return shall be admitted, the plaintiff shall never have the effect of his suit, etc. And also the sheriff had not any authority by the exigent except to call him from county to county. And the law is the same as to a *Capias*, etc. Paschal
32 Hen. VI.

Reported in Y. B. Hilary (not Paschal), 32 Hen. VI, p. 28, pl. 20. See also Fitzh: Retourne de Vicount, 106. Statham and Fitzherbert give practically the same abridgment of the case, but neither gives any fair idea of the law or the arguments in the case, which it is necessary to read in order to comprehend the points involved. Case 32.

(33) **In a praecipue quod reddat**, it is a good return that the tenant had no lands or tenements the day the writ was purchased, etc. (But yet it seems that he shall say "nor ever afterwards.") Paschal
25 Ed. III.

Reported in Y. B. Paschal, 25 Ed. III, p. 82, pl. 4. See also Fitzh: Retourne de Vicount, 97. But Statham seems not to have understood the case, for he did say, "nor ever afterwards." Case 33.

(34) **The sheriff** returned that he "languished in prison," and to another writ that he was "dead in prison." And because he did not say that the coroner had viewed him, he was amerced, etc. Query? Anno
3 Hen. V.

There is no printed year of 3 Hen. V. Fitzh: Retourne de Vicount, 107, has the case. Case 34.

(35) **In a writ** of *Extendi Facias*, it is a good return for the sheriff that he could not make execution because another had his lands in execution by an *elegit*, or because another was in by descent, notwithstanding the Statute is that he shall have execution of all the lands that he had on the day the conusance was made, into whosoever hands they come. And the reason is because they shall not be put out of possession without a *Scire Facias*, etc. Query? Trinity
9 Ed. III.

Reported in Y. B. Trinity, 9 Ed. III, p. 24, pl. 20. See also Fitzh: Retourne de Vicount, 112. Case 35.

Statute of 13 Ed. I (1285), Statute 3, cap. 1, Stats. at Large, Vol. 1, p. 236 (240).

Paschal
14 Ed. III.

(36) **In [a writ of] waste** against two, a writ issued to the sheriff to inquire as to the waste. And he returned that one of them had made waste, and the other had not, and the plaintiff had judgment to recover damages against him who made the waste, and not against the other. And from this it follows that where an action is brought against one alone, it is a good answer that he did not make the waste, etc. As where a writ issues to inquire as to the damages, in Trespass, "which damage," etc., and if so he will be driven to find waste as to all, etc.

Case 36. There is no early printed year of 14 Ed. III. The case has not been identified in the Rolls Series. Fitzh: *Retourne de Vicount*, 111, has the case.

Trinity
15 Ed. III.

(37) **In a scire facias**, the sheriff returned "*Scire feci*," etc., "to come before the justices at Westminster, according to the tenor of the writ." And because he did not say "to do what the writ required," he was amerced. *Simile*, Hilary, 16 Ed. III.

Case 37. There is no early printed year of 15 Ed. III. The case has not been identified in the Rolls Series, 15 Ed. III. Fitzh: *Retourne de Vicount*, 108, has the case.

Paschal
15 Ed. III.

(38) **A good return** upon a writ of execution on a statute merchant [is] that he had no lands except in ancient demesne, etc.

Case 38. There is no early printed year of 15 Ed. III. The case is reported in the Rolls Series, 15 Ed. III, p. 130, No. 48. Fitzh: *Retourne de Vicount*, 109, has the case.

Hilary
16 Ed. III.

(39) **At the capias utlagium**, the sheriff returned that he had taken the body and sent him to Court by two of his men, and in coming to Court he was taken from them by force, etc. And he was amerced, for they said the sheriff took him at his peril, if it were in time of peace. And also the sheriff could have a writ of rescous, and recover that of which he shall be amerced, etc. But yet, if he returned that he was taken by persons unknown, it seems that the return is good, for then it does not appear that he

could have a writ of rescous, etc. See such a return, Trinity, 33 Hen. VI, in the King's Bench.

There is no early printed year of 16 Ed. III. Fitzh: Retourne de Case 39. Vicount, 110, has the case.

(40) **Although the return** that the bailiff of the franchise made to the sheriff is not sufficient, they will not amerce the bailiff, because he is not an officer of that Court. In a *Præcipe quod Reddat*, etc. Query, if the *non omittas* shall issue, etc.? Trinity
20 Ed. III.

There is no early printed year of 20 Ed. III. The case has not been identified in the Rolls Series for that year. Fitzh: Retourne de Case 40. Vicount, 113, has the case.

(41) **In a writ of covenant** to levy a fine, the sheriff returned "*nihil*," and the opinion was that he should be amerced, because he could have summoned him in the lands on which the fine would have been levied. (But the action is merely personal), etc. Michaelis
13 Hen. VI.

There is no printed year of 13 Hen. VI. The case has not been identified in the early abridgments. Case 41.

RETOURNE DEZ AVERZ

(1) **In replevin** before avowry, the plaintiff sued a recaption. And then the defendant avowed for the first taking, and for the second he said that he took them for another cause. The plaintiff disclaimed to the avowry, and maintained his writ of recaption, to wit: that he took them for the same cause, and he prayed that the defendant wage his deliverance for the first taking. The other said that they died in the open pound. And the opinion was that he should wage his deliverance, etc. Statham
158 a.
Trinity
47 Ed. III.

The case has not been identified in Y. B. Trinity, 47 Ed. III, or in the early abridgments. Case 1.

(2) **In replevin**, the plaintiff was nonsuited, and the defendant had answered without making an avowry, etc. Michaelis
18 Ed. III.

And he had a writ *de retorno habendo*, to which the sheriff returned that the plaintiff had carried away the cattle, wherefore he prayed a writ to make a return of the cattle of the sureties, etc. And because the deliverance was made by a plea in the county, so that it did not appear here who the sureties were, he could not have it. (It seems that the plaint should be removed and the pledges also.)

Case 2. The case has not been identified in Y. B. Mich. 18 Ed. III, or in the early abridgments.

Michaelis
24 Ed. III. (3) **In replevin**, the parties were at issue after the avowry, and then the plaintiff was nonsuited. And the opinion was that the defendant should have answered here, because the plaintiff had admitted seignory in him, etc., albeit this was the first writ, etc. See the Statute.

Case 3. Reported in Y. B. Mich. 24 Ed. III, p. 34, pl. 33. Continued on p. 71, pl. 82. The latter part of the abridgment is taken from what Thorpe said "in secret" in the case. Statute of Westminster the Second, 13 Ed. I (1285), cap. 2, Stats. at Large, Vol. 1, p. 163 (166).

Hilary
16 Hen. VI. (4) **In an avowry**, the plaintiff was nonsuited, and the defendant had a return without making an avowry; for NEWTON said that it was not like a *Quare Impedit*, for there the plaintiff shall have a judgment, to wit: a writ to the bishop, but in this case he had only a return, and then it is only as above, for he keeps them as a distress. And the plaintiff shall have a writ *de secunda deliberatione*, and then the defendant can make an avowry in sufficient time, for if the plaintiff be nonsuited in the second writ, the defendant shall not have a return here unless he makes an avowry, etc. *Simile*, Trinity, 21 Hen. VI, where FORTESCUE gave the same reason, etc.

Case 4. There is no printed year of 16 Hen. VI. Fitzh: *Retourne des Avers*, 1, has the case.

Paschal
16 Hen. VI. (5) **If in replevin** the defendant avows for *damage feasant*, and upon that he has a return; in that case he retains the cattle until the party himself makes sufficient amends. And if the party offers him sufficient amends

and he refuses them, then the party shall have a writ to the sheriff of the same county, commanding him to make an inquisition of the good men and true, in the presence of the parties, "if he had interests involving so much damage." And if the party pays him these same damages thus found, then he shall deliver to him the cattle, according to the evidence, as to their value at the time of the return of the judgment, etc. (And there is such a writ in the Judicial Registry.)

There is no printed year of 16 Hen. VI. Fitzh: *Retourne des Avers*, Case 5. 2, has the case.

(6) **A man of religion** shall have a return in an avowry, without inquiring as to the collusion. As appeared in a Replevin. Michaelis
5 Ed. III.

Reported in Y. B. Mich. 5 Ed. III, p. 67, pl. 120.

Case 6.

(7) **It is a good return** in a *recordare* for sheep, that the cause alleged is not true. Anno
30 Ed. I.

There is no printed year for 30 Ed. I. The Rolls Series skip from 22 Ed. I, to 32 Ed. I. I do not find any reason for this omission, although it may be no good manuscript reports for the omitted years were found. Cases are frequently found in the early abridgments which were adjudged in the omitted years, and there must have been manuscript reports for them. Case 7.

(8) **If in an avowry** the issue be tried against the plaintiff, the defendant shall have a return here by the common law. And the law is the same if it is adjudged against him. As appeared in a Replevin, Mich. 16 Ed. III. Michaelis
16 Ed. III.

There is no early printed year of 16 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments. Case 8.

(9) **In replevin**, the plaintiff avowed because the defendant held certain lands of him, of which, etc., for twenty shillings, payable annually at the Feasts of Easter and Saint Michael. And for twenty shillings, being in arrear at the Feasts of Michaelmas and Easter, in the year ten of the present king, he avowed, etc. And on the same day on Anno
11 Hen. VI.

which the plaintiff had alleged the taking, etc. And the plaintiff pleaded against him a release of rent, upon which they were at issue, and pending the issue the plaintiff was nonsuited, and then the defendant prayed a return. CANNISH: It appears by his avowry that he took the cattle four days before the said Feast of Easter, so his taking was wrongful, wherefore he shall not have a return. But BABYNGTON said that he should have a return because it was due at the Feast of Saint Michael; for if he had pleaded "nothing in arrear," and then there had been found nothing in arrear at the Feast of Easter, but at the Feast of Saint Michael [there was], he should have had a return for Michaelmas: so here. MARTYN: It seems to me that he shall not have a return, for by his avowry he is an actor. And if one admits part of his action to be false, all the writ shall abate. As in debt upon a lease for a term of years, if it appears by his declaration that one day of payment has not yet come, all the writ shall abate: so here. COTTESMORE: He could have made separate avowries, to wit: for one ox at Easter and another for Michaelmas, and then he should have had a return for one although the other appeared false. And it appears that this avowry is to the same effect, since he says "for twenty shillings in arrear at the Feasts of Easter and Michaelmas," wherefore, etc. PASTON: No, sir, there is a great difference. As in a writ of Debt upon separate obligations, if the day of payment of one has not come, all the writ shall abate, and yet if he demanded them by separate writs one would not abate the other: so here. But this case is not like the other cases where a man shall have judgment to recover his demand, for although he has a return yet there is no judgment; it is as if it was before the replevin was sued, because he shall have a return upon a nonsuit without making an avowry, etc. And they adjourned, etc.

Case 9.

Reported in *Y. B. Mich.* 11 Hen. VI, p. 5 pl. 9. See also Brooke, *Retourne des Avers*, 35.

RELEASE

(1) **Release of all actions personal** is no bar in a writ of Annuity. By the opinion of the COURT, etc. And that in [a writ of] Annuity, etc.

Statham
158 b.
Michaelis
2 Hen. IV.

Reported in Y. B. Mich. 2 Hen. IV, p. 13, pl. 54. See also Fitzh: Case 1. Release, 48.

(2) **Where the tenant** holds of the lord by fealty and four marks per year, and he releases to him all actions, services, and demands, saving the four marks, etc., and the lord distrains for reasonable aid; the opinion was that the release should not be a bar, because the aid was not sued at the time of the release. And also, notwithstanding the release, his tenure was socage, to which reasonable aid belongs, etc.

Paschal
40 Ed. III.

Reported in Y. B. Paschal, 40 Ed. III, p. 22, pl. 21. See also Brooke, Case 2. Release, 5; and Fitzh: Release, 23.

(3) **A release** made to him who is tenant by the warranty will bar the demandant, albeit he was not in possession at the time, etc., because he can [answer] the action of the demandant when he has entered, etc. But a release made before the entry is not good, unless it be between the tenant and the vouchee, etc. But yet, query, what sort of a release can be sued between them?

Hilary
15 Ed. III.

There is no early printed year of 15 Ed. III. The case has not been identified in the Rolls Series for that year, or in the early abridgments.

Case 3.

(4) **If two joint tenants** be disseised by two, and they release to them by a joint deed, then the disseisees hold jointly. By WILLOUGHBY, in a note.

Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III. Fitzh: Case 4. Release, 40, has the case.

(5) **See all the right**, etc., annulled by reason of certain conditions made by an indenture after the release was broken, etc. (Which is strange, for if this right be once

Trinity
31 Ed. III.

extinguished it is hard to revive it. And that in an Assize.) But if the indenture be delivered at the same time that the release is, and the conditions bound, then it is as good as if it had been comprised within the deed, etc. And the law is the same as regards a feoffment; but it is otherwise as regards an obligation, since, at the declaration, etc.

Case 5. There is no printed year of 31 Ed. III. Fitzh: Release, 41, has the case.

Paschal
14 Hen. VI. (6) **In a writ of detinue**, the defendant prayed a *Scire Facias* against the garnishee, who came and entitled himself to the writing. And the plaintiff pleaded a release by the same garnishee, of all actions. And the opinion was that it was a good bar.

Case 6. The case has not been identified in Y. B. 14 Hen. VI, or in the early abridgments.

Michaelis
19 Ed. III. (7) **If two have** a warranty from me, and one releases to me, that will not bar the other. But if I am bound to two, and one releases, that will bar both.

Case 7. There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year and term, or in the early abridgments.

Hilary
3 Ed. III. (8) **A release made** to a tenant by his warranty is good. And it was said in the same plea, that he could levy a fine to the demandant for the same land. Query, then what judgment shall be given, so that the tenant can recover in value?

Case 8. The case has not been identified in Y. B. Hilary, 3 Ed. III, or in the early abridgments.

Hilary
33 Ed. III. (9) **A release made** by him who had no right in the land shall not serve, except according to the estate that the tenant had at the time of the release, although it be the ancestor who demands, etc. As appeared in an Assize.

Case 9. There is no printed year of 33 Ed. III. Fitzh: Release, 42, has the case.

(10) **Where two joint tenants *pro indiviso*** have a release made by one to the other, of all his right, that does not make his part pass, as between joint tenants. As appeared in a writ of Waste, etc. Paschal
35 Ed. III.

And see, in the same plea, that where two have a reversion jointly, and one of them releases to the other all his right, all his part of the reversion passes by that, etc.

And see, in the same plea, by WILLOUGHBY and THORPE, that if there are three joint tenants, and one releases to one of his companions, that he enters in by him, because there are two parts. But if there are two joint tenants, and one releases to the other, the release does not have any effect in that case, but he is adjudged in by the feoffor, etc.

But yet FORTESCUE held in the Assize of Wenlock, Trinity, 30 Hen. VI, that in both cases his entry shall be adjudged by the feoffment, and not by the release, etc.

There is no printed year of 35 Ed. III. Fitzh: Release, 43, has the case. Case 10

(11) **In debt** upon an obligation against one J. STRANGE: The obligation was made by this same J and one A, at which time the said A was married to one F, to whom you, by this deed, have released, etc. HALLS: It appears by his plea that the obligation was void as to the woman, consequently the release made to her husband is not to the purpose, etc. And for that reason it was adjudged that the plaintiff should recover his debt, etc. But it is otherwise as to an obligation made by one under age, because it may be made good by agreement afterward. Paschal
2 Hen. V.

The case has not been identified in Y. B. Paschal, 2 Hen. V, or in the early abridgments. Case 11.

(12) **If a man [leases]** lands to me for a term of years, and I am ejected by a stranger, who leases over to one B for a term of years, and I release to B, that release is good albeit there is no privity between us; because I have only a chattel and that can pass without privity. But it is otherwise where a fee or a freehold should pass to the Michaelis
9 Hen. VI.

tenant for a term of years, for if I who release have not the freehold; although I have the right, it cannot pass. But if either of us have the freehold, although there is no privity between us, still the release is good. As if one disseises me and leases over for life, during whose possession I release, that is good; yet there is no privity between us, yet since he has the freehold, I can extend my right to him. But it is otherwise when my disseisor leases for a term of years and I release, for then the freehold is not in him, nor in me, but in the disseisor. And that in [a writ of] Trespass, at the end, etc.

Case 12. Reported in Y. B. Mich. 9 Hen. VI, p. 43, pl. 21. See also Fitzh: Release, 44.

Michaelis
18 Hen. VI.

(13) **Land was given** to a man and his wife and to three others, and to the heirs of the three and the husband; so that the woman had only a freehold, and the three a fee. And the three released all the right, etc., to the husband and to the wife, and to the heirs of the husband, etc. Then the question was, Did the woman by that release have a fee or not? And upon that point an Assize was adjourned out of the County of Hertford. HODY: There is a distinction where a release enlarges an estate, and where it does not. As if I lease lands for a term of years, or for life, and then release to him all my right, and do not speak of his heirs; that does not pass anything except according to his estate; as a confirmation, etc. For when a release or a confirmation enlarges an estate, it shall be taken according to the words of the deed, to wit: where I lease for a term of years, and then release for the term of his life, or in the tail, or in fee, his estate shall be accordingly. (But yet, query as to the tail?), etc. And query, if I be disseised and then release in tail, has he an estate tail? For if so I have a reversion of a fee, which was out of me by the disseisin, etc. Wherefore it is wrong, because he who has nothing in the reversion has assuredly a lesser estate than a fee, etc. For if a man disseises me, and I release to him without speaking of his heirs, he has a fee, because he ought to convey according to his estate, etc.

Statham
158 a.

And it was said in the same plea, that if I lease lands for a term of years, and then release to one, without speaking of his heirs, he shall have the lands for the term of his life. And this was granted by the Court, because such a lease and release countervails a feoffment. But many say it is otherwise as to a lease for a term of life, and a release, as above, for his estate is not improved. And PASTON said that if I release my right for one day that it is gone forever, etc. (See the plea, for I think they are still arguing about it.)

The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments. Case 13.

(14) **A release** made to the husband and his wife and to the heirs of the husband is good, notwithstanding he had nothing except in the right of his wife, who was tenant in dower. Paschal
22 Ed. II.

There can be no Year Book for the year 22 Ed. II, as his reign ended in his 20th year. The case does not seem to be taken from Paschal, 22 Ed. III. Case 14.

(15) **A release** by a general receiver is no bar to his master, etc. In Debt. Michaelis
5 Ed. III.

Reported in Y. B. Mich. 5 Ed. III, p. 63, pl. 104. Case 15.

(16) **A release** made by him who is in the reversion to him who married the tenant in dower, of the right of the same tenant, for life to the husband, was adjudged good for his whole life. And in Anno 2 Ed. II, in an Assize, and in Hilary, 12, of the same king, in an Assize, it was adjudged good as to the husband, and to the wife holding dower, and to the heirs of the husband; and the husband had a fee simple, etc. Anno
2 Ed. II.

The case has not been identified in Y. B. Anno 2 Ed. II, or in the early abridgments. Case 16.

(17) **If I hold** of a man one hundred acres of land in two vills, and he releases to me all the services that he had in Trinity
19 Hen. VI.

one vill, the opinion of MARKHAM and PASTON was that all the services are gone; and that in a release.

And it was said in the same plea that if my tenant be disseised, and then I release to my tenant all the right, etc., and then my tenant enters, my rent is gone, albeit he had nothing in the lands at the time, etc., because he was at all times my tenant, so as to make an avowry, etc. Study well, etc.

Case 17. The case has not been identified in Y. B. Trinity, 19 Hen. VI, or in the early abridgments.

Michaelis
12 Hen. VI.

(18) **In debt against** executors who pleaded a release made by the plaintiff to their testator. And the release bore date after the purchase. And as to that they said that it was delivered in the lifetime of their testator; and the plaintiff demurred upon the plea. PASTON: Every deed that bears date shall be understood to have been written on the day whose date it bears. But this was not made before the delivery; for if a man brings a writ of Debt against me, upon an obligation, I shall plead a release bearing date before the obligation and that it was delivered afterward, because it can well stand together that it was made before and delivered afterwards. But a deed cannot be delivered before it is written. And in this case the release bears date after the death of your testator, so that it cannot be understood that it was delivered to your testator, wherefore it is no bar, etc. And so it was adjudged.

Case 18. Reported in Y. B. Mich. 12 Hen. VI, p. 1, pl. 3. See also Fitzh: Release, 7.

Note.

See as to release, in the title of Feoffments et Faits, and also in the title of Bar, Mich. 30 Hen. VI, in the case of the *Duchess of Suffolk*. Fine material, etc.

Statham, title of Feoffments et Faits, *supra*, pp. 97 a to 97 b. Title of Barre, *supra*, p. 33 b, case 34.

Paschal
16 Hen. VI.

(19) **Where a man** leases land to a woman for the term of her life, who takes a husband, and the lessor releases to

the husband, by that release the husband has the reversion: By PASTON in Debt, etc. Query, in that case, if the release be with warranty, and if he and his wife are pleading which of them shall vouch? etc. For both cannot vouch, to wit: one, by reason of one warranty, and the other by reason of the other warranty.

And see in the same plea, that the opinion of the COURT was that a release made by an infant under age as executor is good enough, and he cannot invalidate it, etc. The law is the same as to a release made by a married woman who is executrix, etc. And if so, then the release of her husband has no value, etc.

There is no printed year of 16 Hen. VI. Fitzh: Release, 8, has a Case 19. short abridgment of the case, where he also refers to the case in Y. B. Paschal 18 Hen. VI, p. 4, pl. 4, for the same point.

(20) A **release** of all actions personal and real is a good Anno
bar in an Appeal. And that *Coram Rege*. 9 Hen. IV.

Reported in Y. B. Mich. 9 Hen. IV. p. 2, pl. 8. See also Fitzh: Case 20. Release, 46. An interesting case with a good discussion on the difference between real and personal actions.

(21) A **release** of all personal actions is a good bar in [a Hilary
writ of] Annuity, notwithstanding the plaintiff claimed the 2 Hen. IV.
annuity to be to him, and to his heirs, etc. And the release
of real actions was [held] good because it was mixed, etc.

Reported in Y. B. Mich. (not Hilary), 2 Hen. IV, p. 13, pl. 54. See Case 21.
also Fitzh: Release, 48.

(22) **The release** of the demandant is a good bar in a Paschal
writ of right, but final judgment will not be given. As 22 Ed. II.
appeared in [a writ of] right of an advowson, etc.

There can be no year for 22 Ed. II, as his reign ended in the twentieth Case 22.
year. The case has not been elsewhere identified.

(23) A **release** made to the taker of the rent is good, by Michaelis
the opinion of the COURT. Query, if the tenant of the 22 Hen. VI.
lands shall plead the release? etc.

Reported in Y. B. Mich. 22 Hen. VI, p. 12, pl. 16. See also Brooke, Case 23.
Release, 24; and Fitzh: Release, 5. They give much longer abridg-
ments than Statham gives.

- Michaelis
25 Ed. III. (24) **A release** made to the tenant by execution is good. And that in a note. (But yet that is meant as to the release by him who had the freehold, etc.)
- Case 24. The case has not been identified in Y. B. Mich. 25 Ed. III. Fitzh: Release, 47, has the case.

REMITTERE

- Statham
159 b.
Michaelis
41 Ed. III. (1) **If the lands** are given to a man in tail by a fine, and then he makes a demise and retakes an estate to himself and to his wife, and to the heirs of their two bodies begotten, and they have issue under age, and the wife dies, and the husband takes another wife and dies; the opinion was that the second wife shall not be endowed, for the issue can choose to claim either. And that in a *Quod ei Deforceat*.
- Case 1. Reported in Y. B. Mich. 41 Ed. III, p. 30, pl. 34.
- Trinity
44 Ed. III. (2) **If the husband** aliens the right of his wife, and retakes an estate to himself and to his wife, and to a third, and then the husband and the wife alien the entirety by a fine, if the wife survives the husband, her alienation keeps the third out; and still in the lifetime of her husband that third [person] could have had the Assize, etc. In an Assize. Well argued.
- Case 2. Reported in Y. B. Trinity, 44 Ed. III, p. 17, pl. 7. See also Brooke, Remitter, 6; and Fitzh: Remitter, 10.
- Michaelis
21 Ed. III. (3) **Land was given** to a woman in tail, who took a husband and had issue. Then the husband aliened, and retook an estate to himself and to his wife, and to the heirs of the husband, by a fine. The woman died. He took another wife and died, and the issue entered, against whom the second wife brought a writ of dower; and the opinion was that she should recover her dower, and that the heir should be put to a Formedon, for it was said the entry of the heir in that case shall be adjudged as heir to his father, because the fee descended to him from his

father, and he could have had a Formedon against his father, etc. Well argued.

Reported in Y. B. Mich. 21 Ed. III, p. 85, pl. 28.

Case 3.

(4) **Where a man is** seised of lands in the right of his wife, and enfeoffs the heir of the wife in tail and dies, and his wife dies, the law will adjudge the heir to be in in his remitter¹ of fee, etc. In Formedon, and then the tail is ended, etc. Query?

Hilary
11 Hen. IV.

Reported in Y. B. Hilary, 11 Hen. IV, p. 50, pl. 26. See also Brooke, Case 4. Remitter, 10; and Fitz: Remitter, 5.

(5) **An assize** was arraigned by James Kelomme and K, his wife, against one Eleanor, who said that W, his father, and Alice, his mother, admitted it by a fine, etc., to be the right of one H, by a grant and render to them in tail, to wit: to them and to the heirs of their two bodies begotten. Which he showed. And the tenant entered as daughter and heir, and the plaintiff, claiming by color of a deed of feoffment, etc. To which the plaintiff said that a long time before that fine D was seised, and gave the same lands to one J, and to that same Alice, your mother, and to the heirs of the body of the said Alice begotten, between whom the said K issue. And then J died; Alice took the said W for her husband, and had the tenant and died. And the tenant entered under age, claiming to his use and to the use of the said K, his sister, in which case that was a remitter of one half, by force of which the said James and K entered as in right of K, claiming to hold the said moiety in coparcenery, and so they were seised until, etc. And they demurred upon the plea because the entry of the plaintiff was not legal, for that was no remitter to the plaintiff, inasmuch as no possession descended to the plaintiff. And as to that which was said, that the tenant claimed to him and to his sister; that is not to the purpose, since she is under age, for to that claim you cannot have an answer. But the law will adjudge him, as to

Hilary
19 Hen. VI.

¹ Remitter: "Where the heir has two titles, and he is adjudged in by force of his elder title, and that shall be said to be to him a remitter."

the half, in by force of the first tail, and yet that is no remitter to the plaintiff until the discontinuance be made, for the above reason. And as to the other half, she is in by force of the second tail. And it may be that the tenant had a collateral warranty, which is a bar; or a warranty of another person, which he has lost if the entry of the plaintiff be suffered. FORTESCUE: If the tenant in tail had issue two daughters and each of them had issue and died; one issue brought Formedon and recovered her half; the other shall not enter with her because their actions are severed. But after the other has recovered her part also, then they hold in common, and it is no severance. But in our case if they have Formedon it will be on the possession of their mother, in which case the law is thus: when one of them is in her remitter by entry, it is a remitter to both, as well as in the case of the recovery, and especially when the other has not done anything to bar herself. As if one daughter released, and then she brought an action. And if she who released is severed and the other recovers, she cannot enter with her by reason of that release, etc. But there is no such matter here, etc. ASCOUGH: She cannot enter in any manner to my mind, for it is not a remitter to both unless the right and the demesne descend to both together, and at once. And in this case the right descended to K, but not the demesne, therefore she is put to her action, etc. As in case the tenant in tail enfeoffs his son and another, and dies, his son does not oust the other, but is put to his action. And still the half descended to him, etc. And consequently K cannot enter upon Eleanor albeit she be remitted to the half, because of that descender of the demesne, etc. And if W, who was the father of the tenant, had charged, in that case the tenant as to half would hold, and the other half be discharged, so she has a several right, and still that is nothing to the plaintiff. FORTESCUE: If one half be discharged, all is discharged. ASCOUGH: She can alien the half which is charged, and retain the other half discharged. FORTESCUE: That cannot be, to my thinking, etc. And all the Bench held clearly that the entry of the plaintiff was not lawful. And

the plaintiff, seeing this opinion, etc., was nonsuited, and brought Formedon in both their names, etc.

And it was said in the same plea, that if a man had issue a son and a daughter, and the son purchased lands and died without issue, the sister entered as heir to him, and then the father had another son, that son could oust the daughter, and yet the daughter was lineally seised, etc. Well argued.

Reported in Y. B. Hilary, 19 Hen. VI, p. 59, pl. 26. See also Brooke, Case 5. Remitter, 12.

(6) **It was a remitter** to an infant under age where he aliened and retook an estate back for the term of his life, and died, and his heir could enter as well as a *feme covert* or tenant in tail. And better, for he is not estopped under age, etc. As appeared in a *Cui in Vita*, etc. But yet the tenant in tail shall not be received in his remitter, in such a case, against his alienee. But against a disseisor he shall be, etc.

Hilary
19 Ed. III.

There is no early printed Y. B. for 19 Ed. III. The case is printed in the Rolls Series 18, 19 Ed. III, p. 514. Case 6.

RESUMMONS ET REATTACHEMENT

(1) **See that a resummons was sued** after the demandant was nonsuited in the franchise; and the writ was adjudged good, because since the Court of the franchise had failed in right toward him before, the nonsuit afterwards would not injure him, etc. (The reason is apparent.) And the bailiff of the franchise traversed the cause, etc. THORPE: The defendant should join himself to the bailiff or to the plaintiff, so that he can be a party to the issue. And it was not allowed, etc.

Statham
160 a.
Hilary
40 Ed. III.

Reported in Y. B. Hilary, 40 Ed. III, p. 11, pl. 23. See also Fitzh: Case 1. Resom. 15.

(2) **If a protection** *quia profecturus, non quia moraturus* be allowed, the party shall not have a resummons within

Hilary
43 Ed. III.

the year, albeit he who threw the protection comes back within the year, etc. As appeared in a *Præcipe quod Reddat*.

Case 2. Reported in Y. B. Hilary, 44 Ed. III, p. 4, pl. 16. Statham cites the case as in 43 Ed. III, but the case does not appear in that year. Fitzh: Resom. 18, has the case, with the citation to the right year.

Hilary
50 Ed. III. (3) **Where the plea** is stayed for the nonage of the tenant, it is in the election of the demandant to sue a ressumons or a new original, etc. And the law is the same in every case where the plea is put without day, for the plaintiff can delay himself, etc.

And it was said in the same plea, that if the tenant be restored to the lands by a writ of Deceit, where no land was taken into the king's hand at the Grand Cape, nor any summons made, that the demandant can have a ressumons, etc. In Deceit.

Case 3. The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments.

Hilary
31 Ed. III. (4) **One vouched** one J, who was under age, wherefore the plea was stayed, and then the demandant was ressumoned and the tenant said that the vouchee was still under age, etc. And the demandant said that he was dead; and he was forced to show whether he died before the purchase of the writ, or afterward. And he said "before," etc. FYNCHEDEN: Now, judgment of the writ, which alleges him to be of full age, thus alleging him to be *in esse*, etc. HALT: We cannot have any other writ. THORPE: We will hold the plea upon the original, wherefore answer, etc. Which note.

And it was said in the same plea, that the tenant can now vouch out of the Bench, etc. Query?

Case 4. There is no printed year of 31 Ed. III. Fitzh: Resom. 29, has the case.

Trinity
31 Ed. III. (5) **In a writ of Warranty** of Charters, the sheriff returned that he had nothing of which to be summoned, etc., whereupon a *testatum* issued to summon him, in

another county until the grand distress. And then the defendant produced a protection, and then the plaintiff came to have a resummons. THORPE: It seems that the resummons shall issue to the sheriff where the original was brought, for it may be that he has assets now, etc. SHARSHULL: You can choose to have your resummons in either county. Which was conceded, etc. Query?

There is no printed year of 31 Ed. III. Fitzh: Resom. 28, has the case. Case 5.

(6) **In a writ of wardship** the defendant died, and he [the plaintiff] brought a resummons against his heir. And note that he did not mention in his writ nor in his count that the execution was not sufficient, for that comes from the part of the defendant. And he would have pleaded non-tenure, and could not, although he said that his father made one J and B his executors, who had sufficient to make a settlement after the death of their testator, etc. Judgment of the writ. THORPE: You shall say that he had assets the day the writ was purchased. And it was not allowed, for it would be the folly of the plaintiff not to bring his action within the proper time, etc. (But yet it may be that the father of the plaintiff died in vacation time, and that he purchased this writ as quickly as he could, etc., before which time he had administered, etc. And I believe that if he had shown such special matter, it would have been well received, etc.)

Reported in Y. B. Hilary, 18 Ed. III, p. 4, pl. 15.

Case 6.

(7) **An assize** was brought in the King's Bench, and the wife was received on the default of her husband, and then it was discontinued; and then it was discontinued for the non-coming of the justices, and then the plaintiff sued a reattachment against the husband and his wife, and it was adjudged good, for it was said that it was in his election to sue against both, or against the woman alone. And the reattachment was "*Die Jovis usque quindene Sancti Hilarii ubicunque,*" etc. NOTTINGHAM: The Statute is that the Assize shall be taken in their counties, etc., judgment if we

shall be forced to answer. And it was not allowed, because the Assize was procured in his own county; but yet the original of the Assize [and] when it was sued was uncertain, for it was returnable *ubicunque*, etc.

And it was said in the same plea, that the tenant can then plead anew or keep himself to his first plea at his election. It is otherwise where the plea is put without day by a protection, for there a time is made certain, etc. Query? And if so, note that he who makes default shall then plead. And that was the folly of the plaintiff, for he could have had a special reattachment against the wife alone, etc.

Case 7. Reported in Y. B. Hilary, 24 Ed. III, p. 23, pl. 7. See also Brooke, Reattachment, 7; and Fitzh: Reattachment, 17.

Statute of Magna Charta, 9 Hen. III (1275), cap. 12, Stats. at Large, Vol. 1, p. 1 (6).

Paschal
24 Ed. III.

(8) **One brought a writ of wardship** against one H, who died after the plea pleaded. And then the plaintiff sued a resummons against his executors, who came, etc. And the opinion was that they could not vary from the plea of their testator, where the plea was to the action, etc., wherefore they said that they had fully administered, etc. And they had the plea, and upon that they were at issue, etc. And then the plaintiff prayed judgment of the principal, to wit: of the wardship, because they had not denied his right, and he had it before the issue was tried, etc.

Case 8. Reported in Y. B. Paschal, 24 Ed. III, p. 25, pl. 14. See also Brooke, Resom. 43.

Michaelis
21 Ed. III.

(9) **In a praecipe quod reddat**, the tenant vouched one H, who entered into the warranty and vouched one F. And then the demandant said that F was dead, and he prayed a resummons against H, who was the first vouchee, and had it. Query? For it seems that he should have a resummons against the tenant, to the intent that he should have his judgment against him, and another resummons against the vouchee; or else no resummons against the

vouchee, but only against the tenant. Query as to that?
etc.

The case has not been identified in Y. B. Mich. 21 Ed. III, or in the Case 9.
early abridgments.

(10) **In debt**, one came at the attachment and had conu- Paschal
sance. And because he failed of part of his right he sued a 45 Ed. III.
reattachment and not a resummons. Which note.

And see in the same plea, that a man shall not have re-
summons or reattachment unless he shows a special cause
and a sufficient cause, for to that the bailiff shall have an
answer. Query, if the plaintiff can show another cause
when the bailiff comes? And it seems that he can show
twenty causes, etc. Query, if it be found against the
plaintiff, if it shall be remanded, etc.?

Reported in Y. B. Paschal, 45 Ed. III, p. 7, pl. 7. See also Fitzh: Case 10.
Reattachment, 15.

(11) **Where the defendant showed** that the plaintiff Hilary
was excommunicated, still the original stood. And when 13 Hen. IV.
he has his absolution he shall sue a resummons or a
reattachment. As appeared in an Assize, etc.

Reported in Y. B. Mich. (not Hilary), 13 Hen. IV, p. 2, pl. 7. See Case 11.
also Fitzh: Reattachment, 14.

(12) **In an assize**, the array was challenged by the Hilary
defendant and affirmed, and then remained for default of 13 Hen. IV.
jurors; and then for the non-coming of the justices; and
then he sued a reattachment, and the defendant chal-
lenged the array. HANKFORD: The array was once
affirmed, wherefore, etc. THIRNING: Nothing remains of
record now, except the original and the panel, wherefore
let the challenge stand, etc.

The case has not been identified in Y. B. Hilary, 13 Hen. IV, or in the Case 12.
early abridgments.

(13) **Jurisdiction** was granted, and in the franchise the Michaelis
tenant made default, wherefore one J, who was under 32 Ed. II.
age, was received to defend his right, wherefore the plea

stayed. And upon his coming of full age a resummons was sued against the infant in the franchise, who vouched a foreigner to warranty, wherefore the demandant sued a resummons because the Court had failed in doing right to him; and he would have had a resummons against him who was received, and could not, but against the tenant; and then the tenant came and vouched to warranty. TILLESLEY: You made default in the franchise, wherefore, etc. THORPE: What was done in the franchise is not recorded here. And that was the opinion, etc. Query, if in the resummons a day shall be given to the bailiff of the franchise? See the Register, etc.

Statham
159 b.

Case 13. There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. The error in the citation to 32 Ed. II is so patent that it seemed best to take the citation as meant for Ed. III.

Michaelis
9 Hen. VI.

(14) **The plaintiff and two garnishees** were at issue in a writ of Detinue, and one of the garnishees died, and the Court was in doubt if they should award a resummons against the defendant, or a *Scire Facias* against the executors of him who was dead. And if the first issue should stand, or if they should plead, etc. (Query, because there were different opinions.)

Case 14. Reported in Y. B. Mich. 9 Hen. VI, p. 36, pl. 10. See also Brooke, Resom. 2.

Paschal
3 Hen. VI.

(15) **In debt** against one under age, who threw a protection; and within the year the plaintiff sued a repeal because he had come back, and he prayed a resummons. MARTYN: It is within the year, wherefore, etc. PASTON showed two precedents, where a resummons had been sued in such a case. MARTYN: Sue a resummons, etc. (But yet the contrary is the custom now, by the law, etc.) And in such a case the plaintiff can have an action on the case, etc. But within the year the plaintiff can sue a writ out of the Chancery, directed to the sheriff, to inquire if he be "*attend-ant circa negocia sua propria*" and if he answers "yes" then they will make an *innotescimus* to the judges of the Bench; and upon that they will award a resummons within

the year. As was adjudged Anno 28 Hen. VI, in a *Scire Facias*.

Reported in Y. B. Paschal, 3 Hen. VI, p. 40, pl. 8.

Case 15.

(16) **The bailiffs of a franchise** demanded jurisdiction, and had it, and the tenant vouched a foreigner to warranty, wherefore the demandant came and showed this matter, and prayed a resummons. SKRENE: It is necessary that you have a *Certiorari*, for otherwise we cannot know if your statement be true. HANKFORD: If it were true they would proceed in the franchise, in which case he would nonsuit him. And also the party shall have it by way of answer whether it be true or not. Wherefore it was adjudged that he should have a resummons, etc. Query, if the bailiff shall have an averment to the cause as well as to the party, etc.? And query, if the plaintiff be nonsuited in the franchise after the resummons is sued, and then the cause is found to be false, wherefore it is remanded, will the nonsuit be good, etc.?

Michaelis
11 Hen. IV.

Reported in Y. B. Mich. 11 Hen. IV, p. 27, pl. 52. See also Brooke, Case 16. Resom. 9.

(17) **In a writ of right**, one was received for default of his tenant for life, and vouched one who entered into the warranty and died. Wherefore the resummons issued against the party, and not against the tenant. (Contrary above, etc.)

Michaelis
7 Hen. IV.

Reported in Y. B. Mich. 7 Hen. IV, p. 3, pl. 21. See also Brooke, Case 17. Resom. 7; and Fitzh: Resom. 11.

(18) **Where one** is essoined for being on the king's service, the plea is not put without day, but a day is given to him after the year and the day, by the Court, wherefore no resummons shall be sued in that case, but he shall keep the day, etc. As appeared in a *Præcipe quod Reddat*.

Paschal
27 Hen. VI.

There is no printed Paschal Term for the year 27 Hen. VI. The case has not been identified elsewhere. Case 18.

See good matter as to resummons in the title of Note. Estoppel, Trinity, 31 Ed. III.

Statham, title of Estoppel, *supra*, p. 81 b, case 6.

- Michaelis
30 Hen. VI. (19) **And see** in the case of *Cheyne*: a *Scire Facias* [issued] against four, and three made default, and the fourth pleaded in bar as tenant of the whole. And then the plea was put without day by a protection. And a resummons was sued against him who pleaded, and not against the others. And the opinion was that it was good enough because the writ was special reciting all the matter, etc. (He shall be said to make a reseisin.)
- Case 19. The case has not been identified in Y. B. Mich. 30 Hen. VI, or in the early abridgments.
- (20) **The clerk** of the Assize made a reattachment, etc. As appeared in an Assize, etc.
- Case 20. Statham has no citation to this very short case, and it has not been identified. It was probably merely a note jotted down, and not meant to appear in print.

REPLEGIARE ⁸²

- Statham
161 a.
Hilary
41 Ed. III. (1) **In replevin**, the plaintiff counted of his cattle wrongfully taken in Sale, in a place called K. The defendant said that K was in the vill of Dale, and not in the vill of Sale, and to have a return he made an avowry, etc. And the plaintiff was forced to maintain his writ, etc. Query if he ought to make an avowry in that case, *rigore juris*, etc., since the plea went to the writ?
- Case 1. Reported in Y. B. Hilary, 41 Ed. III, p. 4, pl. 10. See also Brooke, Replevin, 7; and Fitzh: Replevin, 29.
- Trinity
31 Ed. III. (2) **In replevin** against two, one came and avowed upon the plaintiff for rent in arrear. The plaintiff said, "nothing in arrear" and he prayed process against the other. THORPE: There is no need, for you shall recover your damages against him who has avowed, etc.
- Case 2. There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.
- (3) **In replevin**, the defendant avowed for *damage feasant* in another place, etc. The plaintiff maintained that he

took them in the same place. And upon that they were at issue, and the inquest passed for the plaintiff. HAMMON: You should not go to judgment, for it is of record that the writ was brought against three, and two appeared, and one of them did not say anything. Also no process was made against him who did not appear, so it is a discontinuance, etc. THORPE: If the one who appeared had made an avowry, there was no need to make process, unless the plaintiff will pray process, in order to be sure of his damages, in case he who avowed was not sufficient. And the law is the same although one appears and does not say anything. But in this case where he justifies for *damage feasant* in another place, and has not agreed with the plaintiff, that cannot be called an avowry, nor a justification, but is a traverse of the place; in which case, if the other appeared, they could avow; or if process had been made against him who made default, he could avow, etc. Study well.

Satham has no citation for this case, and it has not been identified. Case 3.

(4) **If the cattle** of my villein be taken in the name of a distress, I shall have replevin, albeit I was never seised of them before, for the property remains in my villein, so that by the serving of the replevin, that is a claim which vests the property in me, etc. But it is otherwise if he who takes the cattle claims property, etc. And also if the cattle of a *feme sole* be taken in the name of a distress, and I marry her, I shall have replevin for the above reason. And this in Replevin. Trinity
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Replevin, 43, has the case. Case 4.

(5) **It is a good plea** in Replevin to say that the property of the same cattle was in another at the time, etc., and not in the plaintiff, etc. A man shall have replevin against his lord although he himself received the cattle, because he cannot have a writ of Trespass, etc. (In the same plea.) Paschal
33 Ed. III.

It is a good plea to say that the plaintiff had nothing in the same cattle except in common, etc. (In the same plea.)

There is no printed year of 33 Ed. III. Fitzh: Replevin, 44, has the case. Case 5.

Hilary
17 Ed. III.

(6) **Executors** shall have replevin for cattle taken in the lifetime of their testator, and if the taking is for a rent service, the defendant shall not have an avowry — for he cannot, because his tenant is dead — but he shall have a justification, in a way to excuse him of the damages, and the plaintiff shall recover the cattle. And this by the common law, albeit the Statute of Marlbridge was not yet passed, for the property always remained in them.

And in the same manner an abbot shall have replevin for his cattle taken in the time of one such, his predecessor. And that in Replevin. *Simile*, Hilary, 15 Ed. III.

Case 6.

There is no early printed year of 17 Ed. III. The case has not been identified in the Rolls Series for that year. See Brooke, Replevin des Avers, etc., 59.

Statute of Marlborough, 52 Hen. III (1267), Stats. at Large, Vol. 1, p. 55.

Paschal
10 Ed. III.

(7) **In replevin**, the plaintiff counted upon three oxen taken on three different days. The defendant said that he took them all on the first day on which the plaintiff had counted, etc. And he avowed upon the plaintiff for services in arrear. And the plaintiff said that he took them on three days, as above. Ready. And he was not received to take issue upon the day. Query as to the reason, etc.? But it was said that it is otherwise for *damage feasant*, etc.

Case 7.

Reported in Y. B. Paschal, 10 Ed. III, p. 26, pl. 46.

Michaelis
3 Hen. VI.

(8) **A replevin** was removed out of the county by a pone. And the pone ran: "On the aforesaid day, John," where he returned "Robert," etc., wherefore the plaintiff prayed his damages, inasmuch as he had come in without a warrant, etc. MARTYN: It cannot be remanded, no more than when a record comes into the King's Bench by a writ of Error, and the writ is abated; they will not remand the record, but the party shall have a special writ of Error in the Chancery. And these are the words that shall be in the writ: "*que coram nobis residet*," etc. And then a *Scire Facias* shall issue out of the King's Bench to garnish the party, etc. So here, all is good except that the plaintiff was

not garnished, wherefore we can make a writ to garnish him, for the plea shall not be held upon the pone but upon the answer of the plaintiff. So the pone in a manner is ended, for the plaintiff cannot find new pledges here. Which the Court conceded; wherefore a writ issued to garnish the plaintiff, etc.

Reported in Y. B. Mich. 3 Hen. VI, p. 2, pl. 2. See also Fitzh: Case 8. Replevin, 2.

(9) **If a man** allows me his cattle to manure my lands, and they are taken, I shall have replevin, etc. Michaelis 11 Hen. IV.

Reported in Y. B. Mich. 11 Hen. IV, p. 17, pl. 39. See also Brooke, Case 9. Replevin, 20; and Fitzh: Replevin, 19.

See as to replevin in the title of Avowry, etc. Note.

Statham, title of Avower, *supra*, pp. 22 b to 25 b.

(10) **In replevin** or *Recordare*, if the plaintiff says that the defendant still detains the cattle, he shall state the price of the cattle in his count. Which note, etc. Michaelis 12 Hen. IV.

The case has not been identified in Y. B. Mich. 12 Hen. IV, or in the early abridgments. Case 10.

(11) **Replevin** is maintainable for the lord for the cattle taken from his villein, etc. Query, if the lord shall have replevin for his villein, to wit: "*Replegiare Facias*" one such, "*nativum*," etc.? Hilary 19 Ed. III.

There is no early printed year of 19 Ed. III. The case is reported in the Rolls Series, 18 & 19 Ed. III, pp. 500-502, No. 32. The "query" is Statham's. Case 11.

⁸² This is the "Remedy given the Party to controvert the Legality of such Caption, in order to bring back the Pledge to the Proprietor in Case that the Distress were unlawfully taken, and without just cause; and this being a writ of great use, and every Day's Practice, deserves a very full Consideration." [Gilbert: Law of Replevins, 60.] It was, indeed, a writ of "great use"; sometimes in reading the Year Books it seems as if every man's hand were against every other man's cattle, and that the business of distraining and replevying them was the predominant activity of the time. This writ is a Justicial or a Justices' writ. Because of this fact it has been said that "the king's courts and officers are much concerned when it is abused." [P. & M. Hist. of Eng. Law,

2d ed, Vol. 2: 577.] The distrainer must deliver the cattle when gage and pledge have been offered, if not the sheriff must deliver them, for, says Bracton, "where gage and pledge fail, peace fails." [Bracton, fo. 217, b.] Gilbert says [Gilbert: Replevins, 68] that the "ancient method of trying the legality of the detention was very inconvenient, for the Plaintiff in Replevin was to have his suitors ready to prove *instante* that he offered a pledge." The lord then said that the pledge was insufficient, and waged his law. Thus the lord's conscience was the only judge. And the writ called the *vetitum namium* was the way that was "found out" to remedy the evil.

Yet many evils remained, more especially in the practice, which it seemed necessary to correct. The first statutory enactment was that of the Statute of Marleberge [c.21] which provides that "if the beasts of any man be taken and wrongfully withholden, the sheriff after complaint made to him may deliver them without any let or Gainsaying of him that took the beasts if they were taken out of liberties. And if the beasts were taken within any liberties, and the Bailiffs of the liberties will not deliver them, then the sheriff shall cause them to be delivered." The sheriff was also allowed to command his bailiff to replevy the plaintiff's cattle either by word or precept since replevin by writ was often delayed, "for possibly the sheriff cannot write (which was frequently the case in these days) or had not the materials of writing with him." [Gilbert: Replevins, 73.]

The Statute of Westminster the Second, cap. 2, gave the lord a writ to remove the cause into the King's Court, "*a recordare* to remove a plaint"; the county court not being a court of record could not proceed where the freehold came into question. It also gave the sheriff power to take pledges for the return of the cattle, whereas before they could only take pledges for prosecuting the suit, and the tenant getting his cattle back sold the cattle, spent the money, and went into insolvency, thus escaping from the clutches of the law by the aid of the law, while the lord could not take payment where nothing remained with which to pay.

The power to replevy *in infinitum* was taken away by the same Statute.

The strong and the powerful were also often the ruthless and pitiless, and they had a habit "especially after the Baron's wars, [Gilbert: Replevins, 82] of driving the distress into castles and strongholds where they could not be followed," and the poorer sort suffered so much from the men of power that the Statute of Westminster the First, cap. 17, gave the power to the sheriff to break into castles and fortresses, and that such places may be "beaten down." (One almost hears the indignant cry of the outraged people in the phrase.) Gilbert says, "razed and thrown down, the French is, '*face abatre le chastel.*' " But this is in a suit on behalf of the king, so that after all it may be but the voice of a defied monarchy.

There is another sort of replevin and a nobler sort of "beast" may be replevied. A prisoner may be replevied, but not if charged with homicide. This was by the writ *de homine replegiando*. If a man

were taken upon special command of the king or his chief justices, or for the death of a man, or "for our forest" or for "some other cause which rendered him not repleviable by the law of England." [Bracton, fo. 154.] The latter phrase throws the whole matter into some doubt. The sheriff might hold almost any man under this clause if he chose. The Statute of Westminster the First, cap. 15, put the matter into definite shape — Maitland thinks into a severer form [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 586], but it seems that even a known severity might be better than the average sheriff's mercy. The statute (or this chapter of it) is often called the "Statute of Bail." [Stephen: History of the Criminal Law, Vol. I: 234.]

Stephen in his History of the Criminal Law [Vol. I: 234–242] describes the general course of the writ in later times, but its early history, in spite of the labors of Bracton and Glanville, of Reeves and Gilbert, Hale, Stephen and Maitland, has not been made very clear. We have not been able to reach the underlying causes and find the reasons for the trend it took; yet upon this action is based the history of the liberty of the subject, as it was the forerunner of the *habeas corpus*; leading up to it and to the other "palladiums of liberty" upon which so much stress is laid.

RECAPCION

Statham
161 b.

(1) **In a writ of recaption** against two they demanded judgment of the writ because the deliverance should be a part of the return; so the writ was not served. And it was not allowed, because if it be so, he shall show it by the plaintiff, who is injured by that, etc. (Does he wage his deliverance in that case, as in Replevin, etc.?) **SKIPWITH:** This writ does not lie, except between lord and tenant; and it appears here that the distress was for not coming to his leet, etc. And it was not allowed, wherefore one of the defendants said that he took them for another cause, without this that they were taken for that same cause. And the other said that the plaintiff was nonsuited before the writ was purchased, so no writ was purchased when the plea was pending. Judgment, etc. **FYNCHEDEN:** This writ was purchased before judgment was given upon the nonsuit, etc. Judgment, etc.

Paschal
31 Ed. III.

There is no printed year of 31 Ed. III. The case is digested by Fitzherbert, Recapcion, 5. Fitzherbert gives a longer and somewhat different digest of the case, showing that he did not copy it from Statham, but from some manuscript case. Case 1.

- Hilary
45 Ed. III. (2) **In a writ of recaption**, if the defendant says that he took them for another cause, and shows what cause, the plaintiff shall not have an answer to that, but shall maintain his writ, etc. As appeared in a writ of Recaption, etc.
A man shall have a recaption before avowry. (In the same plea), etc.
A man can have a prohibition that he shall not distrain for that same cause, *pendente placita*, and upon that he shall have a reattachment, and recover his damages, etc. (In the same plea.)
- Case 2. Reported in Y. B. Hilary, 45 Ed. III, p. 4, pl. 8. See also Brooke, Recaption, 2; and Fitzh: Recaption, 3.
- Trinity
47 Ed. III. (3) **A man shall have** [a writ of] Recaption out of the Chancery, if the plea be not removed out of the county. And if, etc., then out of the Common Bench into the Kings' Bench, etc. (In the same plea, in an Avowry, etc.)
See that the writ is a contempt, and also is in the nature of a replevin, for in the end of the writ there is a clause like this: [*"et interim averiam sine dilacione deliberare facias,"*] etc.
- Case 3. The case has not been identified in Y. B. Trinity, 47 Ed. III, or in the early abridgments.
- Anno
14 Ed. III. (4) **In a [writ of] replevin** which was removed into the Bench, the bailiffs of a franchise demanded jurisdiction, which was granted to them. And then they failed to do right to the party, and he distrained, because no writ was given to him by the Register to remove the plea. And the defendant sued a recaption in the Bench, reciting all the matter, and it was adjudged good. Query, if in that recaption the defendant justified for another cause, should it be a justification or an avowry? And shall he have a return, etc.? (And yet it seems that that recaption was not good, since it was not purchased pending the plea, etc., to wit: for a distress which was taken pending the plea, etc.)
- Case 4. There is no early printed year of 14 Ed. III. The case has not been identified in the Rolls Series for that year and term. Fitzh: Recaption, 7, has the case.

(5) **The lord shall have** recaption for the cattle of his villein. And it was adjudged good, etc. (This may be distinguished, etc.) Hilary 19 Ed. III.

Case 5.

There is no early printed year of 19 Ed. III. The case is printed in the Rolls Series, 18 & 19 Ed. III, p. 506, No. 34.

(6) **If the defendant** avows in replevin, and the plaintiff says "out of his fee," and pending the plea another day [for the payment] of the rent has accrued, and the defendant distrains, and the other sues a recaption, the defendant cannot justify; by the opinion of the same COURT, because the law implies that it is out of his fee until the issue is tried, etc. Query? Paschal 18 Ric. II.

There is no printed Year Book for 18 of Ric. II. Fitzh: Recaption, 8, Case 6. has the case.

REDISSEISIN

(1) **In a redisseisin**, joint tenancy is a good plea in abatement of the writ: By SHARSHULL and WILLOUGHBY, etc. Hilary 33 Ed. III. For the *Scire Facias* shall issue against all the terre-tenants, etc., and they plead in bar, etc. Query, if he who made the redisseisin be tenant, and pleads a plea in bar, confessing the redisseisin, should the jury be taken [to pass upon] the damages, as in an Assize where the tenant confesses an ouster, etc.?

There is no printed Year Book for 33 Ed. III. The case has not been identified in the early abridgments. Case 1.

(2) **If I recover** lands against a *feme sole* by an Assize, and she takes a husband, and they redisseise me, I cannot have a redisseisin, since the husband is not a party, etc. Hilary 9 Hen. IV. And the law is the same where the *feme sole* redisseises me, and takes a husband before I bring my writ of redisseisin. As was adjudged in the same plea, etc. In Error, etc. Query, if he could have had a special writ, etc.?

Reported in Y. B. Mich. (not Hilary), 9 Hen. IV, p. 5, pl. 19. See also Brooke, Redisseisin, 1; and Fitzh: Redisseisin, 1. Case 2.

(3) **Redisseisin** is not maintainable upon a recovery by an Assize of fresh force, etc. But yet it seems that a man shall have a writ of redisseisin, or post-disseisin in London, Michaelis 14 Ed. III.

where he recovers by a writ of right and makes his protestation, for there there are coroners, etc. Query?

Case 3. There is no early printed year of 14 Ed. III. The case has not been identified in the Rolls Series for that year and term. Fitzh: Redisseisin, 8, has the case.

Statham
162 a.
Anno
40 *Liber
Assisarum.*

(4) **See the** Book of the Assizes, 40, [where] in an Attaint, it was held that the defendant in the redisseisin should plead no plea in bar, for if she had released after the redisseisin she would have an *Audita Querela*. But yet, it seems that the tenant of the lands, who is in by title, shall plead, etc. Query, if the plaintiff had taken a husband after the redisseisin, if he would plead it? And if not, if he could assign it for error?¹

Case 4. Reported in the *Liber Assisarum*, 40 Ed. III, p. 243, pl. 23. See also Brooke, Redisseisin, 5; and Fitzh: Redisseisin, 5.

Hilary
40 Ed. III.

(5) **Land was given** to one A for life, the remainder to B, his son, and E, his wife, in tail, and for default of issue the remainder to the right heirs of A. The father died, B and E entered, and died without issue; and one G, son of the said A, the father, entered as in his remainder. And it was adjudged that he should pay the relief. (In an Avowry, etc.,) because he was in as heir to the father, since his father had a possession, etc. But where land is given to a man in tail, the remainder to the right heirs of one B, which B, at the time of the gift, is dead, in that case, since he is in by force of that remainder, he shall not pay the relief, because he is a purchaser, and there was never any possession in his father, as in the other case, etc. As appeared in Trinity, 11 Hen. IV, in a *Scire Facias*. Well argued, etc.

Case 5. Reported in Y. B. Trinity, 11 Hen. IV, p. 74, pl. 14. The reference to 40 Ed. III appears to be an error.

Hilary
20 Ed. III.

(6) **An abbot** who is in by succession shall not pay the relief. By WILLOUGHBY. He took for a reason because he comes in by election. (But yet, that is not the reason.)

Case 6. There is no early printed year of 20 Ed. III. The case has not been identified in the Rolls Series for that year and term.

¹ It would appear that the title of Redisseisin should end with this case and a title of "Relief" begin with our case 5. The arrangement of the abridgment is followed here.

(7) **If I receive** the homage of my tenant after the death of his ancestor, I cannot avow for relief: By **WILLOUGHBY**, etc. In a Replevin. Paschal
16 Ed. III.

There is no early printed year of 16 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments. Case 7.

(8) **If my tenant** enfeoffs his son, who is of full age, and dies before his son gives notice to me, I shall have the relief from him, because his father died my tenant, since he had made an Avowry, etc. (But yet I believe that is not the law, for the other is my tenant in fact, etc.) Study well, for it was well argued. In an Avowry, but not adjudged, etc. Michaelis
7 Ed. III.

The case has not been identified in Y. B. Mich. 7 Ed. III, or in the early abridgments. Case 8.

(9) **An abbot nor** a prior shall pay relief. By the opinion of the COURT, in an Avowry, etc. (It is true, since the house does not die.) Paschal
3 Ed. III.

Reported in Y. B. Paschal, 3 Ed. III, p. 13, pl. 8. In a writ of Waste, in which the plaintiff avowed for a relief. Case 9.

RENT REVYVE

(1) **W. Gascoigne** leased certain lands to one R for life, reserving twelve pounds of rent; and then R released his estate to W E, and two others. And W E died, his heir being of full age,¹ and that matter was found by an office. Now if the king shall seize, that, is one matter; and if the rent be revived, that is another matter. **CHEYNE** (for W E, deceased): The rent is revived, for if rent be reserved upon a lease for a life-term, and the tenant enfeoffs the reversioner, reserving the rent to him, and an entry for default of payment, and he enters because the rent is in arrear, the first rent is revived. **ROLFF**: It seems that the rent is extinct, for there is a difference when a man purchases the land, and when he comes to the land by course of the law; for if the party holds of one of his daughters² and dies, and

¹ The case has it "under age."

² "Grants the rent to one of his daughters."

they enter in common, then the rent is in suspense, and after the purpart she shall have her rent for her portion immediately, and the other sister shall avow upon her for the half, without any partition, etc. But if the tenant enfeoffs his lord and another, and the lord dies, and the other has the whole by survivorship, the lordship is extinct. (Which CHEYNE denied.) JUYN: It seems to me that the king should not seize in this case, for the Statute of *Prærogativa Regis* says that "the king shall seize when his tenant dies seised" [*in dominico suo ut de feodo*], and in this case W G died seised of no estate in the rent, for during his life the rent was in suspense. And if he had died seised of the rent, still the king is not seised, for the king shall have only for the term of the life of another, and his wife shall not be endowed of that in which the rent was determinable by the death of a person, etc. Which was denied. And also the reversion is not a thing seisable, for if the heir be within age the king shall have the rent reserved; but he shall not seize the lands until after the death of the tenant in demesne, for a man cannot sue livery of a reversion, etc. See the plea, for it was excellently argued.

Case 1.

Reported in Y. B. Mich. 7 Hen. VI, p. 2, pl. 7. See also Fitzh: Rent Revive, 1. It is necessary to "see the case" to understand it, as it is incorrectly abridged.

Statute of 17 Ed. II (1324), cap. 3, Stats. at Large, Vol. 1, p. 376 (377).

RETRAXIT ET DEPARTIER IN DESPITE⁸³

Statham
162 b.
Hilary
8 Hen. V.

(1) **Where a man** declares in debt, and the defendant wages his law, and has a day to make his law in the same term, on which day the plaintiff does not come, that shall be termed a retraxit. And if the defendant has a day until another term, on which day the plaintiff does not come, that shall be called a nonsuit: By HALLS. And he said in the same plea, that a retraxit shall not be used for one under age, etc. Query as to a *feme covert*? etc. And so note that where one departs in despite of the Court, it is

on the part of the defendant; and on the part of the plaintiff it shall be called a retraxit. [And the one is allegorical and the other too illogical!!]

Reported in Y. B. Hilary, 8 Hen. V, p. 3, pl. 14. See also Fitzh: Case I. Retraxit et Departier, etc., 16. (The words I have placed within the brackets seem to have been added in jest!) The law of the case can only be cleared by reading the case. It is too greatly abridged here to convey the meaning; such as it does convey is not correct.

(2) **In a praecipe quod reddat**, the tenant alleged non-tenure, upon which they were at issue; wherefore the inquest was taken and charged, and they came back and delivered their verdict, and the parties were demanded, and the tenant made default, and the demandants had judgment to recover seisin without taking the verdict. Because they withdrew. Hilary
8 Ed. III.

The case has not been identified in Y. B. Hilary, 8 Ed. III, or in the early abridgments. Case 2.

(3) **In a writ of ejectment [from a wardship]**, the defendants emparled and did not return, wherefore judgment was given for the plaintiff, because they withdrew, etc. The law is the same if he had emparled until another term, if it be in a plea of lands. But yet it seems that the petty cape shall issue, since he had a day to another term, etc. But it is not so on an emparlance. But if he vouches, or prays in aid, or pleads a plea, then if he makes default in another term the petty cape shall issue, etc. Paschal
18 Ed. III.

Reported in Y. B. Mich. (not Paschal), 18 Ed. III, p. 41, pl. 40. The case does not state that the cause of the decision was the retraxit. Case 3.

⁸³ The double title here is because of the pleading. "A retraxit is when the Demandant or Plaintiff is present in Court (as regularly he ever is by intendment of Law until a day be given over, unless it be where a verdict is to be given, for then he is demandable). And this is in two sorts; one privative and the other positive. Privative as upon demand made, that he made default, and departed in despite of the Court." [Coke, 1st. Inst. Lib. II, sec. 208.] So that the departure is a part of the retraxit. The retraxit is so called because "that word is the effectual word used in the entry." [*Ib.*, sec. 208.] It is contrasted with a nonsuit, because "the retraxit unlike the nonsuit is a bar of all other

actions of like or inferior, nature." [*Ib.*] However, it has been held that "a retraxit cannot be entered before the plaintiff has declared, and if entered before it has only the effect of a nonsuit." [Cunningham, Law Dict., Retraxit.]

The idea would seem to be that when a judgment for a nonsuit was given there might be error, or it might be that the case was badly conceived; or new facts might be discovered which would impugn the decision. But where the litigant himself retreats from the struggle it may be supposed he has decided his cause is too weak or too poor to bring before the court, and that may well end the matter. Coke gives us what little knowledge there appears to be on the subject, but he is obscure, and we are left without much light upon the actual procedure in such cases. There is a good deal of departing in despite of the court throughout the Year Books — one does not wonder at it — and it is not by any means all involved with the retraxit; but it is always a contempt.

RECORDE

Michaelis
24 Ed. III.

(1) **If a man** pleads in bar by a deed enrolled in the hustings of London, against an infant under age, in an Assize, he shall [make his] title, etc., for by the custom it is of record and the lands pass by such a deed without livery of seisin, by the custom, and therefore it is strong as a fine in the common law. But as to a deed enrolled in the Chancery or in the Bench, it is otherwise, for there he can say that nothing passed by the deed, etc. In an Assize, etc.

Case 1.

Reported in Y. B. Mich. 24 Ed. III, p. 64, pl. 65.

Michaelis
18 Hen. VI.

(2) **If a man** pleads a record in a lower Court, in bar of the action, to wit: in London, or before justices of the peace, which is denied, those of the Bench will issue a *certiorari* to produce the record. But if it is pleaded in a Court which is higher, to wit: the King's Bench, the Chancery, or the Exchequer, they will not say to the defendant that he shall have the record on a certain day at his peril, because they cannot write to those higher Courts. By the opinion of the COURT, in a writ of Conspiracy, etc.

Case 2.

Reported in Y. B. Mich. 19 Hen. VI, p. 19, pl. 39. See also Brooke, *Recorde*, etc., 24; and Fitzh: *Recorde*, 4. Fitzherbert gives the case

as in 18 Hen. VI, as does Statham, but he gives no further reference, while he also gives the reference to 19 Hen. VI, with the page. If the case is reported in 18 Hen. VI, I have not been able to identify it.

(3) **See, by Paston**, if one pleads a record in a writ of Michaelis
Trespass on one day, and the plaintiff says "no such record," 19 Hen. VI.
and the record is brought in, which shows that it was on
another day; still he has not failed of his record, because
the trespass could be continued from one day to another.
And that in [a writ of] Conspiracy.

Possibly the case reported in Y. B. Mich. 19 Hen. VI, p. 34, pl. 69, Case 3.
but it may be merely a similar case.

See as to record, in the title of Monstrans, Hilary, Note.
7 Hen. VI.

Statham, Title of Monstranz dez Faitz Recordez Fynez et Chartres,
supra, p. 126 a, case 30.

(4) **In an assize** against one under age, he pleaded a Michaelis
record; and on the day, etc., because he failed of that 36 Ed. III.
record, he could plead another matter, and he shall not be
called a disseisor, etc. (But it seems he shall not plead
that at the Assize, etc.)

There is no printed year of 36 Ed. III. The case has not been iden- Case 4.
tified in the early abridgments.

RECORDARE

(1) **In a recordare** the writ was, "The King etc., to the Statham
Mayor and Bailiffs of L." And it was challenged because 162 a.
the mayor was not named by his baptismal name; for it was Trinity
said that process should lie upon that writ, etc. (But yet 14 Hen. VI.
process of outlawry should not lie against the mayor upon
that writ, since it was directed to him, etc. Query?)

Reported in Y. B. Trinity, 14 Hen. VI, p. 21, pl. 62. Case 1.

(2) **A plea** shall not be removed out of a court of record Trinity
by a *recordare*, but by a *certiorari* or a *corpus cum causa*, 9 Hen. VI.
etc. For if it comes in by a *recordare* it shall be remanded,

albeit this court be seised of it, because it is not legally seised, etc. By the opinion of the COURT in a *Recordare*.

Case 2.

Reported in Y. B. Hilary (not Trinity), 9 Hen. VI, p. 58, pl. 7. See also Brooke, *Recordare*, 3; and Fitzh: *Recordare*, 3.

(3) **A writ of right** was sued against two in ancient demesne, who sued a *Recordare*. And then they were demanded and one appeared and the other did not. MARKHAM (for the defendant): We pray that the plea be remanded for, in a writ which is merely personal, no severance lies, but the nonsuit of one is the nonsuit of both. And, sir, this writ is personal, for it is only to bring the record before you. FORTESCUE: *Contra*. For if two be condemned in Trespass, and they sue [a writ of] Error, and one of them appears and assigns an error, which appears, and the judgment is reversed, the other shall have the advantage of that. So here, for it appears of record that the land is a free fee, for he who appeared has shown a fine to prove it. ASCOUGH: It seems that this *recordare* is of the same nature as is the original, as well as a writ of Deceit, in which case summons and severance lies; and in a writ of Error as well, etc. And they adjourned.

And it was said in the same plea, that they should not hold a plea upon that *recordare* here in the Bench, albeit the lands were in free fee, but the party shall be made to sue at the common law, etc. *Simile*, Hilary, 8 Ed. III.

Case 3.

Statham has no citation for this case. Fitzherbert, *Recordare*, 5, gives a short abridgment and notes the case as in 39 Hen. VI, but gives neither term nor page. It is apparently not in 39 Hen. VI as printed.

REPELLE

Hilary
14 Hen. VI.

(1) **At a nisi prius** in a personal action, a protection was produced for the defendant, but yet the justices took the inquest, which sung for the plaintiff. And before the day in the Bench a repeal was sued, and then the plaintiff prayed judgment upon the verdict and could not have it, wherefore he prayed to have the inquest by default, and

could not; but he had a new *Venire Facias*, for it was said that through the powerlessness of the judges of *Nisi Prius*, who had no power to allow the protection, it was not reasonable that the defendant be forced to lose. And so see, for the taking of the inquest was without warrant. But yet it seems when the protection was repealed in the Bench, and as the day in the Bench and the day in *Nisi Prius* are all one day in law, and they sang for the plaintiff, that the inquest was well taken, and that he should recover, etc. Query?

Reported in Y. B. Anno 14 Hen. VI, p. 2, pl. 8.

Case 1.

(2) **In a quare impedit**, the defendant pleaded a ratification by the king, and the plaintiff produced a repeal before the same ratification, etc. Query as to that, etc.?

Paschal
7 Hen. IV.

The case has not been identified in Y. B. Paschal, 7 Hen. IV, or in the early abridgments.

Case 2.

(3) **In a scire facias** to repeal a patent made to the defendant, [it was alleged for the defendant] that the plaintiff had another writ pending against him for the same thing, "judgment of the writ purchased while the other is pending." RIKHILL: This writ is not like another *Scire Facias*, or a *Præcipe quod Reddat*, where a man demands lands or things which the writ proves him to be possessed of; so no damage to anyone, etc. And the reason that other writs are abated in such cases is because a man shall not be twice damaged [for one deforcement], etc. Query, if this writ be returnable in the Bench?

Michaelis
3 Hen. IV.

Reported in Y. B. Mich. 3 Hen. IV, p. 6, pl. 29.

Case 3.

(4) **In detinue**, the plaintiff and the garnishee were at issue, and at the *Nisi Prius* a protection was thrown for the garnishee; and then in the Bench the plaintiff sued a replevin, and prayed judgment, since the garnishee made default at the *Nisi Prius*, etc. BABYNGTON: His default was excused by the protection, notwithstanding it be repealed now, etc. JUVN: Suppose there had been a variance between the protection [in] the name, etc. And

Michaelis
4 Hen. VI.

then for that reason you had disallowed the protection, should not the plaintiff have judgment? PASTON: It is not the same, etc. NEWTON: We pray a new *Nisi Prius*. JUYN: That you cannot have, for all is discontinued. BABYNGTON: It is not so. Wherefore a new *Nisi Prius* was granted, etc. Like matter in the Exchequer, in the case of *Gerome Spigornel*, Mich. 31 Hen. VI. Study well. And query, if in debt upon an obligation the defendant pleads a release, and at the *Nisi Prius* throws a protection which is repealed in the Bench, shall he be condemned? For if the protection had not been thrown he had been condemned, etc.

Case 4. The case has not been identified in Y. B. Mich. 4 Hen. VI, or in the early abridgments.

RECONUSANNZ

Statham
163 b.
Trinity
27 Hen. VI.

(1) **Executors brought a scire facias** to have execution of certain lands which were in one H, father of the tenant, whose heir he is; which H made a recognizance to their testator, etc. DANBY showed that the land was given to his father in tail, and that he is heir in tail, etc., without this that the said defendant holds or held, or is tenant, or was tenant, the day of the purchase of the writ, of any other lands or tenements of which his father was seised in his demesne as of fee the day the recognizance was made, or ever since, in the said county of E. POLE: That is no plea, for several reasons. For it may be that his father was seised of the lands in fee simple in his lifetime, before the recognizance, and was disseised; and after his death the tenant as his heir entered, in which case these lands shall be liable to our executors. Or that his father had leased his land for life, etc., as above. And also he said, "without this, that he was seised of any other lands within the same county," which shall not be said, for he shall say generally that he had no lands, etc., for if he had lands in every county in England, all are liable. MOILE: Then you should have brought a separate *Scire Facias*. As if a man

recovers in value against the vouchee, he shall not have execution except where he prays that he be summoned upon the voucher, etc. PORTYNGTON: One *Scire Facias* is sufficient in this case, and [your] plea is of no avail for other reasons, etc. DANBY: Then we say, as above, without this that we were seised of any lands or tenements on the day the writ was purchased, nor ever since, which were in the said reconusor in fee simple, or in freehold, the day the recognizance was made or ever since. Ready. And the other alleged the contrary. And note that he said "in freehold," because it may be that land was given to his father and to his heirs for the term of another's life, and that he for whose life it was given is alive. But yet, if the case be so, it seems that such land is not liable, for "*occupanti conceditur*," etc.

The case has not been identified in Y. B. Trinity, 27 Hen. VI, or in the Case 1. early abridgments.

See as to recognizance, in the title of Execution; and Note. also in the title of *Scire Facias*.

Statham, title of Execucion, *supra*, pp. 92 b to 93 b: Title of *Scire Facias*, *infra*, pp. 163 b to 166 a.

SCIRE FACIAS ⁸⁴

(1) **Land was given** to B for the term of his life, the remainder to C in tail, the remainder to the right heirs of B. C died without issue, and B survived and died, after whose death D, as son and heir of B, sued a *Scire Facias* to execute the remainder. And the opinion was that it was executed since B survived C, in which case he could have an Assize of Mort d'Ancestor on the possession, etc. Well debated. Paschal
40 Ed. III.

Reported in Y. B. Paschal, 40 Ed. III, p. 20, pl. 15. See also Brooke, Case 1. *Scire Facias*, 16.

(2) **A scire facias** was sued out of a fine by which one E admitted the manor of B to be the right of U, as that which Trinity
41 Ed. III.

he had of his gift, to have to him and to the heirs of his body issuing. BELKNAP: Judgment of the writ, for it is "if to the aforesaid A it ought not to descend." FYNCHEDEN: A judicial writ is not abateable, if it is [good] in substance, albeit, etc. BELKNAP: Those words prove that it is executed, etc. FYNCHEDEN: Answer. BELKNAP: The writ is, "*Ac jam ex insinuatione consanguinei*," etc., and he does not say in the writ how he is cousin, etc. FYNCHEDEN: In Formedon such an exception were good, but not here, etc. But yet, if the writ were so, he was not the father. But yet as to that answer, etc. (Query as to the difference, etc.) BELKNAP: The fine says that "E admits the manor of T to be the right of U, as that which he had of his gift to have to himself and to the heirs of his body issuing," thus proving that U was in possession at the time, etc., so the fine was executed, judgment, etc., for you cannot say that which is contrary to the allegation of the fine, etc. CANNISH: If our ancestor was not seised in fact by force of a fine, nor by any gift before the fine, we cannot have Formedon, nor any remedy except this action, for if the conusance had been made in fee and our ancestor died before he entered in fact, and our entry is barred by the tenant, we cannot have an Assize of Mort d'Ancestor, since our ancestor did not die seised, for though the fine alleges it to be that which he had of his gift, one who is a stranger to that may say "he did not give," notwithstanding the demandant declares upon the fine, since he does not need to show the fine; consequently this record does not conclude him. But he may say that he did not give, for if he was not seised by force of the fine the fine is void, except in case it can be executed by a *Scire Facias*, etc. And I say that in this case, where the conusee died before he entered, his wife shall not be endowed, consequently his heir shall not have any action on his possession, since he could not have had an Assize, nor could any man have maintained an action against him for the lands, but against the conusor who was tenant in fact, etc. FYNCHEDEN: If the case be so it is hard for you to have a remedy, for it seems to us that the *Scire Facias* does not lie, etc. And they adjourned, etc.

(I think that he was seised in fact by the fine, although he was not seised before, and action against him, etc.)

Reported in Y. B. Trinity, 41 Ed. III, p. 13, pl. 4. See also Brooke, Case 2. *Scire Facias*, 18; and Fitzh: *Scire Facias*, 80.

(3) **In a scire facias** out of a fine, by which the tenements were rendered by J to one A B for the term of his life, to hold of J and the heirs of his body begotten. And after the decease of the said A, the remainder to the said J and his heirs aforesaid. And for default of issue the remainder to S in fee. And one H, as heir of S, demanded execution, because all were dead without issue. **BELKNAP:** J, A and S were brothers and A surrendered to J, and then S died without issue, and J also, and A was seised by force of the fine as brother and heir of S, thus the fine was executed; which estate of A we have, etc. Judgment, etc. **WYCHINGHAM:** If S or his heir brought a *Scire Facias* to have execution after the death of J, would it be a good answer to say that J was alive, notwithstanding the surrender? (As if he meant "yes.") So by the same reasoning the possession, after the death of J and S, which shall be taken as his first possession, to wit: for life, keeps out the heir from the execution, etc., for the occupation is conceded in A. And it has been adjudged very lately before you, that where land was given to a man and his wife in tail, the remainder to the right heirs of the husband, they have a son, and the wife dies, and he has issue by another wife and dies, and the son of the first wife enters and dies without issue, it was adjudged that the son by the second wife should have a *Scire Facias*, because during the estate tail the remainder cannot take effect, etc. So here. But yet it was clearly the opinion of the COURT that the remainder was executed by reason of the surrender, etc. Well debated. Wherefore the plaintiff said that S had no such brother as A. Ready. And the other alleged the contrary.

Paschal
42 Ed. III.

Reported in Y. B. Paschal, 42 Ed. III, p. 9, pl. 11. See also Brooke, Case 3. *Scire Facias*, 21; and Fitzh: *Scire Facias*, 82.

Paschal
43 Ed. III.

(4) **In a scire facias** out of a fine, the demandant demanded two parts of a manor, as heir in tail, and of the third part, a fee simple, and all in one writ. And the writ was adjudged good. And by the fine it was alleged that the land was rendered to one A for the term of his life, and after his decease the remainder to the donor, and to the heirs of his body begotten, and for default of issue the remainder to his right heirs. And the writ was challenged, because by that word "*reverti*" the fine was executed, in which case he should have had Formedon in the remainder, etc. And it was not allowed, unless he would allege in fact that the fine was executed, etc.

And it was said in the same plea, that before the Statute which gave a *Scire Facias*, a man could have no other writ to execute the fine but a writ *de fine factum*, which was a writ of Covenant, etc. And it was moved that the fine was not good because a man cannot reserve a lesser estate, etc. But yet, if it be good it seems that it is because the fine is the deed of both parties, etc. But yet it is merely a reservation, for the fee was never divested out of the person of the grantor by that fine, etc. See the plea because it is long, etc.

Case 4.

Reported in Y. B. Paschal, 43 Ed. III, p. 11, pl. 3. See also Brooke, *Scire Facias*, 24; and Fitzh: *Scire Facias*, 83.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 45, Stats. at Large, Vol. 1, p. 163 (224).

Paschal
43 Ed. III.

(5) **One brought** a *Scire Facias* to execute a fine, as issue in tail. BELKNAP: The fine is an admission of the right, as that which he had of his gift, "to have to himself and the heirs of his body issuing," which estate we have, etc. So the fine is executed. FYNCHEDEN: You cannot say that you have his estate, unless you show in fact that he was seised, etc. Which was conceded. Wherefore he relied upon the first matter, and waived the "*que*" estate. (But yet many say now that that is no plea, unless he conveyed the tenancy to him, etc. Query?) CHR.: We will aver that he was never seised by force of the fine. BELKNAP: Demur upon him, etc. FYNCHEDEN: His idea is that he shall have the averment because he does not claim by his

father, but by the gift, etc. And they adjourned. (It is not within the purview of the Statute, as it seems.)

The case has not been identified in Y. B. Paschal, 43 Ed. III, or in Case 5. the early abridgments.

For the Statute see case 4, *supra*.

(6) **In debt** against the husband and his wife, [process continued] until they were outlawed, and sued separate charters of pardon, as it appeared, and had a *Scire Facias*, and the sheriff returned "*tarde*," on which day¹ the husband came and the wife did not; and the husband prayed a *Scire Facias sicut alias*, for himself, and could not have it without his wife, etc. See [the case] for it was well argued. And so see that there was but one *Scire Facias* upon two charters [of pardon], etc.

Hilary
44 Ed. III.

Reported in Y. B. Hilary, 44 Ed. III, p. 3, pl. 15. See also Fitzh: Case 6. *Scire Facias*, 86.

(7) **A scire facias** which issues out of a record shall not mention upon what writ the record was made, but shall be "one such *recuperasset seisinam suam*," etc. And such a writ was adjudged good, etc. In a *Scire Facias* out of a fine, omission of the descent does not abate the writ, etc. The reason is apparent.

Paschal
44 Ed. III.

Reported in Y. B. Paschal, 44 Ed. III, p. 11, pl. 13. See also Brooke, Case 7. *Scire Facias*, 31.

(8) **In a scire facias**, it was alleged that one H had granted to him the reversion of one B, tenant for life; and of one A, tenant for life; and of one F, tenant for life; and that all were dead. BELKNAP: He demands, by his writ, execution after the death of all, where none is tenant of the other part, etc. And it was not allowed. BELKNAP: F, one of the tenants for life, is alive; judgment of all the writ. And it was not allowed except for that part, etc.

Michaelis
44 Ed. III.

Reported in Y. B. Mich. 44 Ed. III, p. 39, pl. 40. See also Brooke, Case 8. *Scire Facias*, 34.

¹ The day of the return of the *Scire Facias*.

Paschal
45 Ed. III.

(9) **In a scire facias** by a woman to have execution out of a recovery, in a writ of Dower against the husband and his wife, who were garnished, and the husband came and the wife did not. And the husband said that he was tenant of the entirety, without this, etc. And because the land was on the point of being lost, he had the plea, as in the case where the Grand Cape is awarded, etc. And he said that the demandant had entered on the same third part, judgment of the writ; and the demandant demanded judgment, inasmuch as his entry was not lawful unless the third part be delivered to him by metes and bounds, for she cannot hold in common with the heir, etc. **BELKNAP**: It seems that it is a good plea: as well as where a guardian in socage brings a writ of Dower, it is a good plea to say that he is guardian in socage of other lands, and he can endow her of the best. **FYNCHEDEN**: That is a good plea for the guardian in chivalry, but it is not the same, etc. Query, if she brought a writ of Dower against the heir, where his guardian in chivalry would not enter, should she have the plea?

Statham
163 b.

Case 9.

Reported in Y. B. Paschal, 45 Ed. III, p. 5, pl. 1. See also Brooke, *Scire Facias*, 36.

Trinity
15 Ed. III.

(10) **In a scire facias** out of a fine, for the issue in tail to have execution of a mill and twenty acres of land, the tenant as to part, to wit: two parts of the mill, pleaded non-tenure, etc., and as to the remainder, that one H was seised of the mill in fee, and took one Alice to wife, and died, and one R entered and endowed Alice of the third part of the profits of the said mill; which A leased to the tenant her part, at will, so no tenant of any part of the mill is named, etc. And that was challenged, because she was endowed of the profits and not of the mill, in which case the heir remained the tenant of the mill, and not Alice. But the plaintiff dared not demur, but said that he was tenant as the writ alleged. Ready, etc. **BELKNAP**: He should answer our special matter. **FYNCHEDEN**: It is sufficient for him to maintain that you are tenant. And as to the acre

of land the tenant said that S, who was his grantor, had nothing at the time, except [by] one H, whose estate, etc. BELKNAP: That is no plea, unless he says that those who were parties, etc., for if either party had anything the fine is good, etc. FYNCHEDEN: If he whose estate he had, was seised at the time, etc., it is true that none of those who were parties were seised, etc. And as to the other part, he said that the father of the plaintiff brought a *Scire Facias* against our father to have execution, etc., at which time our father said that this S, who rendered, had nothing at the time, etc., except [by] one H, whose estate, etc.; to which your father said that this H had only a term for life, the reversion to S; so the right passed by the fine. And H is dead, etc. And upon that he demurred in law, and it was adjudged that your father was barred. And we demand judgment, etc. BELKNAP: And we, judgment, since we were issue in the tail; besides this that we will aver that those who were parties to the fine were seised. CHR.: He does not answer to the possession of H, wherefore, etc. FYNCHEDEN: If it had been found by verdict that H was seised at the time, etc., you would not now have the averment that those who, etc. THORPE: But his conusance, which was that he was only tenant in tail, is not so strong, etc. And as to another part he said that the father of the plaintiff brought [a writ of] Formedon against our father, for the same gift, to which our father appeared; so possession was admitted to be in him, judgment, etc. CHR.: His conusance was only an allegation to estop us, since we were the issue in tail. FYNCHEDEN: If the tenant vouched to warranty and the demandant granted the voucher, the issue of the demandant shall not be received to counterplead the voucher. Which was denied. THORPE: I have seen, in an Assize, the tenant plead that the plaintiff had brought against him a writ of a higher nature, to which he had appeared, etc., judgment, etc.; and they voided that record by special matter. And then the tenant pleaded another plea, notwithstanding that which he had pleaded before, because the first plea was only in abate-

ment of the writ, etc. See this matter, because it was argued at length.

Case 10. We are unable to "see this matter," as there is no early printed year of 15 Ed. III, and the case has not been identified in the Rolls Series for that year and term, or in the early abridgments. It is hoped that the case may be printed later in the Rolls Series or it may be identified in the manuscript reports, in order that the case as it stands in the digest may be compared with the original and corrected.

Michaelis
46 Ed. III. (11) **A man can have a *Scire Facias*** out of a recognizance against the executors of the recognizor and his heirs and the terre-tenants all at one time, and in one writ. And if the recognizance be made in the Common Bench he shall put the names of the terre-tenants in certain in the writ; but if it be in the King's Bench, or in the Chancery, he shall not do so, but only the terre-tenants. And because the writ did not mention the terre-tenants whom the recognizor had on the day the writ was purchased, the writ was abated, etc.

Case 11. Reported in Y. B. Mich. 46 Ed. III, p. 29, pl. 24. See also Brooke, *Scire Facias*, 42.

Michaelis
46 Ed. III. (12) **If a man admits** an acquittance, by a fine upon a writ of Mesne, the party shall have a *Scire Facias* upon that. And if he be garnished and does not come, a distress shall issue with proclamation. But if one admits the acquittance in a court of record, without levying a fine upon that, I shall have only a distress against him, as the Statute provides. And that in a *Scire Facias*.

Case 12. Reported in Y. B. Mich. 46 Ed. III, p. 31, pl. 31.
Statute of Westminster the Second, 13 Ed. I (1285), cap. 9, Stats. at Large, Vol. 1, p. 163 (182).

Paschal
48 Ed. III. (13) **In a scire facias** out of a fine, which was levied on the manor of D, the plaintiff demanded execution of twenty acres of land, part of the said manor. HAMMON: The tenements are not comprised within the fine. Ready. FYNCHEDEN: That is no plea.

And FYNCHEDEN said in the same plea: if a manor which is part in demesne and part in service be granted by a fine,

if the lands of which, etc., come into the hands of the lord after the fine, and before it is executed, he to whom the manor was rendered shall have a *Scire Facias* for the lands, since it has come in place of the rent, and still it is not comprised within the fine, etc. But then it has become part of the manor, etc.

Reported in Y. B. Paschal, 48 Ed. III, p. 11, pl. 2. See also Brooke, Case 13. *Scire Facias*, 47.

(14) **In a scire facias** out of a fine to execute a remainder, etc., the tenant said that the tenant for life, after whose death you claim the remainder, enfeoffed you in fee, which was a surrender, etc. But he dared not demur, but said that he was seised by force of the fine, etc. Hilary
50 Ed. III.

Reported in Y. B. Hilary, 50 Ed. III, p. 6, pl. 13.

Case 14.

See also Brooke, *Scire Facias*, 53; and Fitzh: *Scire Facias*, 2. Statham does not finish his digest of the case.

(15) **S admitted**, etc., to be the right of one J, as that, etc., granted and rendered to S, in tail, the remainder over to the right heirs of S. And one H, as heir of J, by force of the remainder in the tail, sued a *Scire Facias*. And because that fine was levied before the Statute "*De donis conditionalibus*," at which time, if lands were given in tail and he had issue, he would have a fee simple; and at the time of the gift this S had issue, as was alleged by the plaintiff, in which case he had a fee immediately. And then this render was a new grant, and because the words of the fine are the words of both parties, the opinion of WILLOUGHBY was that a *Scire Facias* lay well enough. THORPE held the contrary, because he could not reserve a lesser estate, etc. Query? For it is more properly a reversion, if it be good. And then it seems that it is executed by reason of the first possession, etc. Hilary
50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments. Case 15.

Statute of Westminster the Second, 13 Ed. I (1285), Stats. at Large, Vol. 1, p. 163.

Hilary
31 Ed. III.

(16) **Where certain parceners** made the partition of an advowson in the Chancery, by the Statute of Westminster the Second, etc.

Statham
164 a.

And one of the parceners had granted her part to one H in tail, who died, his heir under age, and in the wardship of the king. Whereupon the party was summoned to the King's Bench, and upon that the king had a *Scire Facias* against one of the parceners, to have process against the partition, and also against the other [to show] if he had anything to say, etc. And the writ rehearsed all the partition, and that the heir was in his wardship, etc. And the writ was challenged because it did not lie by the Statute, except for the parties, in which case the king should have a *Quare Impedit*, because he claimed the presentation in his own right. And the writ was adjudged good. And the infant traversed the title of the king. And because his patron could not have had an answer to the title of the king against the partition, and consequently the infant could not have it, the parties demurred in law, etc. See the Statute, etc.

Case 16. There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.

Statute of Westminster the Second, see case 15, *supra*.

Trinity
31 Ed. III.

(17) **Where a scire facias** issues upon a suggestion, the suggestion shall be entered of record, etc.

And see, in the same plea, that "separate tenancy" abated the *Scire Facias*, etc.

Case 17. There is no printed year of 31 Ed. III. Fitzh: *Scire Facias*, 146, has the case.

Michaelis
31 Ed. III.

(18) **It is no plea** in a *Scire Facias* to say that the land is out of the vill or hamlet, if the fine be according to the writ, for he cannot have another writ, etc. Query? *Simile*, Paschal, 21, of the same king.

Case 18. There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.

Trinity
21 Ed. III.

(19) **In replevin** one had a return for rent, and then he sued a *Scire Facias*, to have execution for the same rent

and for the arrears which had accrued in the meantime. SHARSHULL: That judgment in Avowry is not the same as a writ of Annuity, for you recover nothing except the return of the cattle until you are paid, etc., wherefore you do not take anything by your writ, etc. But he was not amerced, etc.

And it was said in the same plea, that, although he had returned "irrepleviabie," yet that is no such seisin as that he should have an Assize.

Reported in Y. B. Trinity, 21 Ed. III, p. 21, pl. 12. See also Brooke, Case 19. *Scire Facias*, 99; and Fitzh: *Scire Facias*, 110.

(20) **The king brought a *Scire Facias*** against one H to have execution of a prebend, out of a judgment given for him to recover the temporalities against the bishop of Dale, by reason of an account, etc. It was alleged by the writ that this prebend was annexed to the temporalities, etc., and that it became vacant after the judgment, etc. To which he said that a writ of Error was sued on the first judgment by the same bishop, and was still pending, wherefore he did not think, etc., until it be affirmed, etc. And it was not allowed, because he was a stranger, etc. Wherefore the king had execution. And it was also challenged because the king had not the temporalities only until fine be made to him for the contempt, etc. And it was a not allowed, etc. Michaelis
21 Ed. III.

Reported in Y. B. Mich. 21 Ed. III, p. 29, pl. 7. See also Brooke, Case 20. *Scire Facias*, 101; and Fitzh: *Scire Facias*, 114.

(21) **A man is outlawed** at the suit of the party and taken by a *Capias Utlagium*, and the king pardons him the outlawry; he shall have a *Scire Facias* against the plaintiff to pursue his suit, etc. Query, if he be garnished and does not come, what shall be done, etc.? (And see such a writ in the Judicial Register.) Hilary
10 Hen. IV.

The case has not been identified in Y. B. Hilary, 10 Hen. IV, or in the early abridgments. Case 21.

(22) **In a *scire facias*** against two, the writ read, that now *ex insinuatione* of the plaintiff, we understand that a Michaelis
21 Ed. III.

certain H took the aforesaid messuages, except one messuage; and the aforesaid J entered the aforesaid message, and then the writ read, "And I command you that, by, etc., *Scire Facias* the aforesaid J and H, if anything," etc., why the aforesaid manor, together with the aforesaid appurtenances, should not remain the right of the plaintiff. FYNCHEDEN: Judgment of the writ, for in the first of the writ he has alleged a separate tenancy, and in the ending a tenancy in common. And for that reason the writ was abated, etc., contrary to the opinion of many.

Case 22. The case has not been identified in Y. B. Mich. 21 Ed. III, or in the early abridgments.

Michaelis
1 Ed. III.

(23) **In [a writ of] annuity**, if I recover the annuity and the arrears which have accumulated while the writ is pending, and then I bring a *Scire Facias* to have execution of that and for the arrears which have accrued after the judgment, that writ is worthless, for those are two separate things; but I shall have separate writs, etc. And HERLE said that for that which has accrued after the judgment I can have a *Fieri Facias*, if it be brought within the year. (Which I do not believe), etc.

Case 23. The case has not been identified in Y. B. Mich. 1 Ed. III, or in the early abridgments.

Paschal
24 Ed. III.

(24) **In a writ of wardship** one had judgment to recover, and then he sued a *Scire Facias*, etc., against the same person from whom he recovered, who said that the king was seised of the body, etc. THORPE: He does not show for what cause the king is seised; and also he is the same person against whom we recovered. And also "non-tenure" is no plea in this writ, for the plaintiff can pray execution at his peril. THENG: I shall say to such a writ that one had recovered against me by a tried action, which THORPE denied, etc. TRENCH: If he recovers the body against me, I shall be distrained to deliver it to the party of whom the king is possessed, so I am damaged, etc., because it is not like non-tenure of land; and also the king is not like any other person, etc. WILLOUGHBY:

As to that, we will write to the escheator to certify us, etc. What do you say as to the damages? TRENCH: If he cannot recover the body, he shall not recover damages, which are accessory, etc. WILLOUGHBY: It is not so, wherefore answer as to the damages.

And he said in the same plea, if one recovers by default against a *feme covert*, that the husband and the wife shall have the Assize; and if the husband dies, the woman shall have the Assize; which THORPE denied, because the judgment stands in its full strength until [etc.].

Reported in Y. B. Paschal, 24 Ed. III, p. 43, pl. 27. See also folio Case 24. 24, pl. 6, of the same year and term.

(25) **Lands were given** to one H for life, the remainder to one B, and K, his wife, in tail. B died while H was living; then H died, and K entered and died, and one F, as son and heir of B and K, brought a *Scire Facias* out of a fine, etc. And the opinion of WILLOUGHBY was that it was maintainable, because he could not have Formedon, and that he should make himself heir to the said B and K, whereas B, not being seised, his writ would be false, etc. (Study, because there were diverse opinions.) Trinity
24 Ed. III.

The case has not been identified in Y. B. Trinity, 24 Ed. III, or in the early abridgments. Case 25.

(26) **In a scire facias** out of a recovery against the terre-tenants, they came and said that there was one G, who was tenant of part, not named, etc. And the plaintiff was obliged to answer that, etc. Michaelis
31 Ed. III.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 26.

(27) **One had recovered** a debt against another, who was taken by a *Capias ad Satisfaciendum*, and he said that the plaintiff had delivered the same obligation to him, upon which he recovered, in place of an acquittance, and he prayed a *Scire Facias* against him, and had it. Study well, etc. Hilary
13 Hen. IV.

Reported in Y. B. Mich. (not Hilary), 13 Hen. IV, p. 10, pl. 29. See also Fitzh: *Scire Facias*, 147. Case 27.

- Michaelis
10 Hen. IV. (28) **Where the king** is seised by force of an office, by which it was found that his tenant died seised, and committed the wardship, etc., and then the office was traversed and found for him, upon which he had a *Scire Facias* against the patentee of the king, although the same patentee was ousted by a stranger, who was tenant in fact, etc. Query, if the patentee had made a demise of his estate, against whom should the *Scire Facias* issue, etc.?
- Case 28. Reported in Y. B. Mich. 10 Hen. IV, p. 2, pl. 3. See also Y. B. Mich. 9 Hen. IV, p. 6, pl. 20.
- Paschal
32 Ed. III. (29) **The king** brought a *Scire Facias* to have execution out of a judgment given for him in a *Quare Impedit*. The defendant said that after the judgment the church became vacant, and the king presented one R, who was admitted, so the judgment was executed. And because he did not say that he was instituted and inducted, the opinion was that it was no plea, etc.
- Case 29. There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments.
- Trinity
31 Ed. III. (30) **The reversion** of the tenant by Statute Merchant was granted by a fine, and he attorned. And then the grantee came into Court and prayed a *Scire Facias*, because he had raised the money by chance. THORPE: You cannot have a *Scire Facias*, etc. And then he was forced to show how he had raised the money by chance¹ and upon showing that he had a *Scire Facias*, and not upon the record, etc.
- Statham
165 b. (30) **The reversion** of the tenant by Statute Merchant was granted by a fine, and he attorned. And then the grantee came into Court and prayed a *Scire Facias*, because he had raised the money by chance. THORPE: You cannot have a *Scire Facias*, etc. And then he was forced to show how he had raised the money by chance¹ and upon showing that he had a *Scire Facias*, and not upon the record, etc.
- Case 30. There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.
- Trinity
38 Ed. III. (31) **If a fine be levied of lands**, and there is no mention in the fine of a vill or hamlet, still the *Scire Facias* shall mention the vill.
- Case 31. Reported in Y. B. Trinity, 38 Ed. III, p. 19, pl. 34. See also Fitzh: *Scire Facias*, 76.
- Michaelis
38 Ed. III. (32) **The Prior of B** brought a *Scire Facias* against one T, and made the suggestion that he was lord of the manor
- ¹ The word is "casuelte." It may mean almost anything that one wishes to force it to mean.

of H, which manor was ancient demesne, and that a fine was levied of the tenements, etc., between one W and one R. And he prayed a *Scire Facias* against this T, who is terre-tenant, because he will not [restore]; who came and said, "Sir, this is in the nature of a writ of Error, which does not lie except against the party or privy, and we are a stranger," etc. FENCOT: The party is dead without an heir. THORPE: No, for then you should sue against him, and that should come in by the return of the sheriff, and peradventure then you should have such a writ, etc.

The case has not been identified in Y. B. Mich. 38 Ed. III, or in the early abridgments. Case 32.

(33) **In a scire facias** against an abbot, to have execution out of a corody granted to him by one H, who was seised of the corody by a fine, the abbot said that those who, etc., had nothing except, etc., but he found the church discharged of it. And the opinion was that the plea was good, etc. Trinity 18 Ed. III.

The case has not been identified in Y. B. Trinity, 38 Ed. III, or in the early abridgments. Case 33.

(34) **In replevin**, the avowant had a recovery because the plaintiff was nonsuited, and had a writ to another sheriff who was chosen in the meantime, to have the return; who returned that the pledges had nothing, neither were they found, wherefore he prayed a *Scire Facias* against the former sheriff. PASTON: He shall not have a *Scire Facias*, but a writ of Detinue, for the Statute is that if he returns no pledges the party shall have a writ that he shall "restore unto him so many beasts or cattle"; and in this case the sheriff has returned pledges, in which case, although the pledges are not sufficient, it is not reasonable that he [the sheriff] be in a worse condition than he shall be when he returns no pledges. BABYNGTON: He can have either. And then a *Scire Facias* was granted, and the sheriff returned that he was garnished and he did not come, wherefore he had judgment to recover all his cattle, etc. Trinity 2 Hen. VI.

Reported in Y. B. Trinity, 2 Hen. VI, p. 15, pl. 15. See also Brooke, Case 34 *Scire Facias*, 3.

Statute of West II, 13 Ed. 1 (1285), cap. 2, Stats. at Large, Vol. 1, p. 163 (168)

- Michaelis
11 Hen. IV. (35) **If one recovers** an annuity and dies, his executors shall have a *Scire Facias* for the arrears which there were at the time of the recovery and comprised within the judgment, but not for the arrears which have accrued after the judgment and in his lifetime, for that would be in affirmance of the annuity, which was ended by his death, etc. But in that case they shall have a writ of Debt. By THIRNING. And that in a *Scire Facias*. Well debated.
- Case 35. Reported in Y. B. Mich. 11 Hen. IV, p. 34, pl. 65. See also Brooke, *Scire Facias*, 75; and Fitzh: *Scire Facias*, 67.
- Michaelis
18 Hen. VI. (36) **In debt**, the defendant was condemned and his body put in execution in the Fleet, and then he came into Court and showed how the plaintiff had released to him all suits and demands; and he prayed a *Scire Facias* against him, and had it. Which note, etc. And then the plaintiff came, and because there were no words of execution in the release, he did not think the release should bar him. ASCOUGH: If I recover against one, and then I release him from all actions, and then I bring a *Scire Facias* against him, that release bars me, because the *Scire Facias* is an action, but here the plea is not by way of an action, for he had him in execution, etc. And they adjourned. And in the same manner he shall have a *Scire Facias* against the plaintiff where he had released to him before execution, and he can put him in prison by a *Capias ad Satisfaciendum* [in spite of] the release. Which the Court conceded. (And yet he could have an *Audita Querela* in that case), etc.
- Case 36. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.
- Hilary
20 Hen. VI. (37) **W. de B., butcher**, was attainted in trespass at the suit of the party. And he was taken by a *Capias ad faciendum finem cum Rege*. And then he came by the *Capias* and said that the day of the purchase of the writ he was of D, and not of B, and that he was a husbandman and not a butcher, and that he never appeared to that suit in his own person, or by attorney; and he prayed a *Scire Facias* against the plaintiff, and had it. Which note. And the

plaintiff came and said that the defendant appeared by his attorney, "as appears here of record," etc. MARKHAM: We never appeared. Ready. NEWTON: You shall have no such issue against the record to which you are a party. ASCOUGH: You should show that another appeared to that suit; without this that you ever appeared, etc. MARKHAM: If there were another within the county of the same name, I could very well plead as you say. As, if there are two men, and both of them are named J. Markham, and one comes here and levies a fine of lands which belong to the other, if he be ousted he shall say that one J. M. of Dale levied the fine, etc., "without this that I was ever a party to that fine." But here there is none within the county of the same name, wherefore it is enough for me to say as above. NEWTON: No, sir, for if you bring a *Quare Impedit* in my name, and put in a warranty, and then I am nonsuited and the defendant has a writ to the bishop, I shall be bound by the record, whether it be my name or not, because I made my attorney by such a name; wherefore, take counsel. MARKHAM: One W. de B., butcher, of the same vill, appeared to this same suit and made this P his attorney, without this that we ever appeared to that suit. PORTYNGTON: We will emparl, etc. Query, to what effect he showed so much of the matter when he prayed the *Scire Facias*, for he showed three matters, etc.?

Reported in Y. B. Hilary, 20 Hen. VI, p. 19, pl. 13.

Case 37.

(38) A man was outlawed for felony, and was taken by a *Capias Utlagium*, and said that at the time, etc., he was in Bordeaux in the service of the king, under the mayor of that same vill. And a writ issued to the mayor to certify that, who certified as above, and he prayed that he might be arraigned, etc. GASCOIGNE: That shall not be, before you have a *Scire Facias* to the lords, to learn if any lands be held of them, etc. Query, in what county that *Scire Facias* should issue? For nobody knew where he had lands, etc. So it seems that a *Scire Facias* shall issue in any county of England. Query well, etc.

Hilary
9 Hen. IV.

Reported in Y. B. Mich. (not Hilary), 9 Hen. IV, p. 3, pl. 12. See Case 38. also Brooke, *Scire Facias*, 68; and Fitzh: *Scire Facias*, 64.

- Hilary
8 Hen. IV. (39) **In a scire facias** out of a fine, as cousin and heir, etc. He did not show how he was cousin in the fine, but he showed how, outside the fine, etc. It is otherwise in a Formedon, etc. (Query as to the difference?), etc.
- Case 39. Reported in Y. B. Hilary, 8 Hen. IV, p. 22, pl. 4. See also Brooke, *Scire Facias*, 67; and Fitzh: *Scire Facias*, 62.
- Michaelis
12 Hen. VI. (40) **One A was** condemned at the suit of one B, in Trespass, and before execution was awarded the plaintiff released to the defendant all actions and executions, etc. And notwithstanding this the said A was taken by a *Capias ad Satisfaciendum*. And upon that matter he had a *Scire Facias* against the plaintiff to answer to the release, returnable on a certain day, on which day he came and said that it was not his deed; upon which they were at issue; and on the return of the *Venire Facias* the said B made default. NEWTON, for the said A, prayed to be dismissed. CHAUNTRELL: You shall have naught but the inquest by default, for it is not the same as where a man confesses the action of the plaintiff, and voids, it etc. BROWN: It seems that he should be dismissed, for the nature of the *Scire Facias* is: when the defendant is garnished and makes default, on any day thereafter the other shall have execution. For the same reason in this case, he should be dismissed, etc. In which BABYNGTON concurred, wherefore it was adjudged that he should go quit, etc.
- Statham
165 a.
- Case 40. Reported in Y. B. Hilary (not Mich.), 12 Hen. VI, p. 7, pl. 6. See also Fitzh: *Scire Facias*, 148.
- Michaelis
27 Hen. VI. (41) **A scire facias** issued against one R, as son and heir of B, to have execution out of a recognizance made to the plaintiff by the said B. POLE: Judgment of the writ, for the writ does not allege that we have lands by descent, and if we have no lands by descent the writ does not lie against us. PRISOT: In debt against the heir, he shall not say that he has [anything] by descent. ASCOUGH: Not the same, for his declaration shall be contained in the *Scire Facias*; and not so in your case, wherefore the writ shall be sued against him as terre-tenant; if he does not know

anything he can say wherefore he shall not have execution of the lands which his father had on the day the recognition was made, for of that you should have execution and of no other lands. Which the Court conceded, etc.

The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the Case 41. early abridgments.

See as to *Scire Facias*, in the title of False Judgment. Note. Good matter, Hilary, 3 Hen. VI.

Satham, title of Faux Jugement, p. 98 b, case 6. (4 Hen. VI.)

(42) **When a man** is adjudged to account, and because Anno he will not account he is put in the Fleet, afterward when 17 Ed. III. he is willing to account he shall have a *Scire Facias* against the plaintiff to hear his account. As appears by the *Registrum*, etc.

The case has not been identified in Y. B. Anno 17 Ed. III, or in the Case 42. early abridgments.

(43) **A scire facias** upon a writ of Error was adjudged for Hilary the terre-tenant, without naming him by his proper name 18 Hen. IV. [and it] was adjudged good, etc.

There is a patent error in the citation given by Satham here, as the Case 43. reign of Henry the Fourth lasted only fourteen years. The case has not been identified.

(44) **A scire facias** for the arrears of rent given by a Paschal fine upon a conusance of right cannot be maintained. 16 Ed. II. In a *Scire Facias*, etc.

The case has not been identified in Y. B. Paschal, 16 Ed. II, or in the Case 44. early abridgments.

(45) **One was condemned** in the King's Bench and his body taken in execution. And then the defendant showed to the Court that the plaintiff was dead, and that the co-executors of his executors had released him by the deed which he showed to the Court, and he prayed a *Scire Facias*, etc. FORTESCUE: You cannot have a *Scire Facias* against the executors, unless we are assured that their

testator is dead. And then you cannot have a *Scire Facias* against the other testator, for you have no release from him, wherefore, etc. And then they were counselled to make a special writ to the sheriff to garnish the executor, if the testator were dead, etc.

Case 45. Statham has no citation to this case, and it has not been identified.

⁸⁴ The learning upon the writ of *Scire Facias* is considerable, yet when an author like Reeves says [Reeves: Hist of Eng. Law, Vol. 2: 190] that "It should seem that this Statute [West. II, cap. 45] from the mention of contracts, covenants, and the like, first gave a *scire facias* in personal actions, (that writ being, as we have seen, not uncommonly used in personal actions); and that before this act, it had been usual to bring a fresh action upon the judgment," and no argument appearing for or against the assumption in the other authorities upon the subject, it would seem that there is still a field for research upon this matter. The Statute of Westminster the Second, chapter 45, of course placed the *scire facias* upon a firm footing, and from that time, while there may be disputed points, there is a plenty of data upon which to found an opinion. It is only in regard to the status of the writ before the statute that there is any vagueness. The later abridgments, like those of Viner and Bacon—the dictionaries, like Cowell and Cunningham, especially the latter, and the histories of the law, all treat of the law as it was after the statute.

SEVERANS

Statham
166 b.
Michaelis
2 Hen. IV.

(1) **In a writ of waste** brought by two, one would not sue, and she was severed by award, etc., because otherwise she would lose.

Case I.

Reported in Y. B. Mich. 2 Hen. IV, p. 2, pl. 6. See also Brooke, Sommons et Severans, 9 (B): and Fitzh: Severans, 4. The case ends, "And a writ was awarded to inquire as to the waste."

Michaelis
44 Ed. III.

(2) **In a mort d'ancestor** brought by two, one did not come, wherefore a summons *ad sequendum simul* issued against him, to which the sheriff returned "*nihil*," wherefore it was adjudged that he [issue] a summons *in terra petita*.

Case 2.

Reported in Y. B. Mich. 44 Ed. III, p. 27, pl. 2. See also Fitzh: Severans, 11.

(3) **In a quid juris clamat**, *Per que Servicia*, a writ of Waste, writ of Wardship, writ of Warranty of Charter, and in a writ of Detinue of Charters, summons and severance lies. As appeared in a writ of Mesne, etc. And so it seems that severance lies in every action mixed with the realty, etc. And it also lies in a *Quare Impedit*; and also when the action is conceived on a tort, etc., as an Assize of Novel Disseisin, etc. But in no action which is merely personal does severance lie, except for executors, etc. (In the same plea.)

Paschal
18 Ed. III.

There is no early printed year of 18 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments.

Case 3.

(4) **Severance lies** in a writ of Error and Attaint; as was adjudged in the same term. And the judgment was the same in Error, Hilary, 29 Ed. III, where it was said that there is a difference between a writ of Error conceived upon a merely personal action, and a writ of Error conceived upon a real action, for if it is conceived upon a merely personal action, severance does not lie. By WILLOUGHBY, because it does not lie in the original, etc. Query?

Hilary
19 Ed. III.

There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series or in the early abridgments.

Case 4.

(5) **If partition** be made of a manor to which an advowson is appendant, and no mention is made of the advowson, the advowson is appendant, and they shall all present as appendant. And if an action for the lands to which, etc., be brought against them by separate *præcipes*, if exception be not made of the advowson in each *præcipe*, the writ shall abate, etc.

Trinity
31 Ed. III.

And it was said in the same plea, that if one joint tenant aliens that part of an advowson that belongs to him, still, a writ of right of an advowson lies against both by one *præcipe* notwithstanding they are tenants in common, because they cannot be severed. And that in a *Quare Impedit*, etc.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.

Case 5.

(6) **In a writ of wardship** of the body by two, one was nonsuited after appearance, wherefore it was adjudged

Hilary
38 Ed. III.

that the other sue alone. Which note, for he recovered all [the wardship of] the body, etc. The law is the same in a *Quare Impedit*.

Case 6. Reported in Y. B. Paschal (not Hilary), 38 Ed. III, p. 9, pl. 12. See also Brooke, Sommons and Severans, 12; and Fitzh: Severans, 6.

Hilary
5 Ed. III. (7) **Summons and severance** lie in a writ of Wardship, and also in forfeiture of marriage. By opinion. And that in a writ of Wardship, etc.

Case 7. Reported in Y. B. Hilary, 5 Ed. III, p. 9, pl. 30.

Anno
11 Hen. VI. (8) **Summoneas ad sequendum simul**, in a *Quare Impedit* was awarded, etc. And it seems that he shall be attached, etc.

Case 8. Reported in Y. B. Trinity, 11 Hen. VI, p. 55, pl. 25.

Michaelis
2 Ed. III. (9) **Summoneas ad sequendum simul** was awarded in a writ of Warranty of Charters.

Case 9. The case has not been identified in Y. B. Mich. 2 Ed. III. Fitzh: Severans, 19, has the case.

Iter of
Northamp-
ton. (10) **Severance** by process shall not be allowed until the party be garnished, or summoned, etc. As appeared in Debt, etc. *Simile*, Michaelmas, 44 Ed. III.

Case 10. The Eyres have not been printed. The case has not been identified.

Note. **See as to summons**, in the title of Nonsuit.

Statham, title of Nonnsute, *supra*, p. 129 a.

Paschal
15 Ed. III. (11) **In an audita querela** by several, one of them was nonsuited, and yet the others were admitted to sue, by award. And see that it is reasonable, for they are obliged to sue in common, wherefore it is not reasonable that the nonsuit of one should harm the other, etc. (But yet, query, etc.?)

Case 11. There is no early printed year of 15 Ed. III. The case is probably that printed in the Rolls Series, 15 Ed. III, pp. 45 (46-48). The original writ was an execution on a Statute Merchant. Fitzh: Severans, 23, has the case.

SAVER DE DEFAUTE ⁸⁵

(1) **In formedon**, the petty cape issued. And then the plea was put without day by the death of the king. And a resummons was sued against the tenant, who made default again, wherefore the Grand Cape was awarded, and on the day of the return of the Grand Cape the tenant waged his law of non-summons, and was received, without saving the default as to the petty cape, etc. Query, if the plea had been put without day by a protection, etc.? And see the year 18 Hen. VI, in a resummons, such matter was well debated, etc.

Michaelis
2 Hen. IV.

Reported in Y. B. Mich. 2 Hen. IV, p. 8, pl. 43. See also Brooke, Case 1. Saver de Defaute, 16.

(2) **In formedon** on the return of the petty cape, the tenant said that the demandant had entered after the last continuance, and because he did not save his default seisin of the lands was awarded.

Michaelis
40 Ed. III.

And it was said in the same plea, that he need not plead a release after the last continuance, for if he be ousted by the judgment he shall have an Assize, etc. And so he shall have in the case here, as it seems, for his protestation was entered with the intention of having the Assize. But yet it seems that he shall plead a misnomer of himself, and such like things, for the mischief to the warranty, etc. As appeared in that same year in Hilary Term, etc. Query, if he shall say that the demandant had taken a husband afterward, etc.?

Reported in Y. B. Mich. 40 Ed. III, p. 42, pl. 25. See also Fitzh: Case 2. Saver de Defaute, 19.

(3) **At the return** of the Grand Cape the tenant would have pleaded joint tenure in abatement of the writ, and could not, for FYNCHEDEN said that he was not injured, for in the second writ he shall have the view, consequently he will plead the joint tenure when he comes to the view, etc.,

Paschal
42 Ed. III.

wherefore he waged his law. But query, if he had been summoned, etc.?

Case 3. Reported in Y. B. Paschal, 42 Ed. III, p. 11, pl. 15. See also Brooke, Saver de Defaute, 14; and Fitzh: Saver de Defaute, 22.

Hilary
43 Ed. III. (4) **At the return** of the petty cape, the tenant said that his attorney had died in such a place before the petty cape was adjudged, etc. And he had the plea, etc.

Case 4. Reported in Y. B. Mich. (not Hilary), 43 Ed. III, p. 31, pl. 21. See also Fitzh: Saver de Defaute, 24. The case ends, "Query, if it be law that the death of my attorney abates my writ?"

Trinity
47 Ed. III. (5) **In a praecipe quod reddat** against the husband and his wife, and a third, who made default. And at the return of the Grand Cape the husband and his wife made default, and the third appeared, and said that he was tenant of the whole, without this, etc. And the plaintiff maintained his writ. Query, why he did not save his default?

Case 5. Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 14, pl. 18. See also Fitzh: Saver de Defaute, 26.

Statham
167 a.
Hilary
50 Ed. III. (6) **In a praecipe quod reddat** at the return of the petty cape, the plaintiff said that his attorney had died at such a place, before the petty cape was adjudged; he not knowing of his death, etc. HOLT: You knew it well enough, and that we will aver. WYCHINGHAM: You have admitted the death, wherefore if you do not allege that he was garnished, or special matter, you shall never come to that plea. Wherefore the demandant released the default, etc. And so note that he released the default at the petty cape, etc., which is contrary to the opinion of most, etc.

Case 6. Reported in Y. B. Hilary, 50 Ed. III, p. 9, p. 19. See also Brooke, Saver de Defaute, 15; and Fitzh: Saver de Defaute, 27.

Trinity
33 Ed. III. (7) **At the grand cape ad valenciam**, the vouchee does not save his default, for it is not reasonable that he should abate the writ by such a saving of default before he is made a party to the demand, to wit: before he has

entered into the warranty. And then if he makes default afterwards, to wit; at the petty cape *ad valenciam*, he shall save his default, because he is made a party, etc. Query, if the demandant and he are at issue upon the saving of the default at the petty cape, and it is found against the demandant, if the writ shall abate, etc.? And this petty cape *ad valenciam* shall always be awarded *in terra petita*, etc.

There is no printed year of 33 Ed. III. Fitzh: Saver de Defaute, 72, Case 7. has the case.

(8) **In formedon** at the return of the Grand Cape, the tenant alleged a discontinuance in the process. And the opinion was that he should have the plea, but he should save his default, etc. And then HALLS said that the demandant was essoined, wherefore the default was saved, wherefore the same day was given to him, etc. Query, if on the day of the essoin he should save his default, or should the demandant count against him, etc.? And it seems that he should save his default, for on the day of the essoin he shall be in the same degree as he would have been on the day the essoin was thrown if the demandant had appeared; for the essoin excuses his absence, and on that day he should have saved his default, and, consequently, on the day that he had by the essoin, etc.

Paschal
2 Hen. V.

Reported in Y. B. Paschal, 2 Hen. V, p. 2, pl. 7. See also Fitzh: Case 8. Saver de Defaute, 13.

(9) **At the return** of the Grand Cape the tenant can plead the release of the demandant, made to him after the default, because it excuses the default. By the opinion of GRENE: and that in a *Præcipe quod Reddat*, etc. Query, if he can say that the demandant is outlawed, or excommunicated, or that he is his villein, etc.?

Hilary
32 Ed. III.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 9.

(10) **In dower**, the tenant vouched, and at the Grand Cape *ad valenciam* the vouchee appeared, and the tenant

Trinity
32 Ed. III.

was essoined, and a day given over for the essoin, and the same day, etc.; on which day the vouchee made default, and the defendant prayed seisin of the lands, and could not have it, but the petty cape was awarded. And see that if the tenant had appeared the lands would have been lost: By THORPE. (But yet I believe that it is not so), etc.

- Case 10. There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments.
- Michaelis
38 Ed. III. (11) **At the return** of the petty cape, it is a good plea to say that he was imprisoned, etc.
- Case 11. The case has not been identified in Y. B. Mich. 38 Ed. III, or in the early abridgments.
- Paschal
39 Ed. III. (12) **In a praecipe quod reddat** against three, who made default. And on the return of the Grand Cape they came, and one of them was under age. BELKNAP would have taken advantage of the default against the second, who was of full age. THORPE: That cannot be: no more than where you release the default of one, that shall be a release against every one; and in the same manner here, for the default of one of them is a release by law, wherefore the demandant is released as to all.
- Case 12. Reported in Y. B. Paschal, 39 Ed. III, p. 9, pl. 12.
- Michaelis
39 Ed. III. (13) **At the return** of the Grand Cape, the tenant said that he held in mortgage, and after the default the mortgagor had entered, etc. And the justices were in *limbo*, etc.
- Case 13. The case has not been identified in Y. B. Mich. 39 Ed. III, or in the early abridgments.
- Trinity
2 Ric. II. (14) **At the return** of the Grand Cape, the tenant said that the lands were ancient demesne. RIKHILL: You should save your default. And they adjourned, etc.
- Case 14. There is no printed Year Book for Ric. II. The case has not been identified in the early abridgments.

(15) **In a writ d'aiel**, at the return of the Grand Cape, Trinity
the tenant said that he was imprisoned, and showed at 3 Hen. VI.
whose suit, etc. And he had the plea.

Reported in Y. B. Trinity, 3 Hen. VI, p. 46, pl. 3. See also Brooke, Case 15.
Saver de Defaute, 4; and Fitzh: Saver de Defaute, 1.

(16) **In a writ of entry** against two, at the return of the Michaelis
Grand Cape, they waged their law, and on the day, etc., 19 Hen. VI.
one came and said that the other was dead, and he had the
plea, because "*Mors solvit omnia*," etc. But he shall not
have any other plea in abatement of the writ: By AS-
COUGH, etc. Query?

The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the Case 16.
early abridgments.

See as to saving of default, in the title of Process, etc., Note.
and in the title of Discontinuance, many matters; and in
the title of Mort d'Ancestor, Hilary, 10 Hen. IV, where on
the second summons the tenant did not save his default.

Statham, title of Processe, *supra*, pp. 138 b to 141 a. Title of Discon-
tinuanz Diversez, *supra*, 63 b to 64 a; title of Mort Danncester, *supra*,
p. 127 b, case 7.

(17) **The husband** said at the return of the Grand Cape, Trinity
that his wife was carried off by the demandant, so that she 10 Ed. III.
could not come, and so he saved the default. And that in a
Cui in Vita, etc.

Reported in Y. B. Trinity, 10 Ed. III, p. 40, pl. 34. See also Fitzh: Case 17.
Saver de Defaute, 58.

(18) **At the return** of the petty cape, the attorney Michaelis
said that his master could not come, because of the floods. 6 Hen. IV.
It seems that that is no plea unless he says that his master
nor himself either, etc. In a *Præcipe quod Reddat*.

There is no printed Mich. Term for the year 6 Hen. IV. The case Case 18.
has not been identified in the early abridgments.

(19) **A default** cannot be saved at the return of the Michaelis
petty cape by the outlawry of the demandant, etc. In a 14 Hen. IV
Præcipe quod Reddat.

Reported in Y. B. Hilary (not Mich.), 14 Hen. IV, p. 15, pl. 6. See Case 19,
also Brooke, Saver de Defaute, 19; and Fitzh: Saver de Defaute, 15.

- Michaelis
7 Ed. III. (20) **A default** at the petty cape cannot be saved by the essoin of the demandant. Query as to this? And this in a note.
- Case 20. Reported in Y. B. Mich. 7 Ed. III, p. 44, pl. 2. See also Fitzh: Saver de Defaute, 51.
- Michaelis
12 Ed. III. (21) **On the day** that the tenant has to make his law, the demandant cannot release the default unless the tenant will agree, etc. But at the return of the Grand Cape he can, for otherwise the tenant could delay him interminably, etc.
- Case 21. There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series for that year and term, or in the early abridgments.
- Michaelis
3 Ed. III. (22) **Query**, if the demandant can release the default of the vouchee at the Grand Cape or the petty cape? And unless it is so, can the tenant do so? etc.
- Case 22. The case has not been identified in Y. B. Mich. 3 Ed. III, or in the early abridgments.

⁸⁵ It is from Bracton that we may gain an idea of this procedure, which is so important in the Year Books. Always and everywhere litigants are defaulting, and always and everywhere are they, or some one for them, coming in to save their defaults. It is allied to the procedure on essoins, because an essoin saved the default in appearance, but after all the essoins were allowed there came the question as to whether there was a default or not.

The entire fifth book of Bracton's Treatise is devoted to defaults, so that we do not have far to seek to find the early learning. Reeves digests Bracton and gives his chapter in a short form. [Reeves, Hist. of Eng. Law, Vol. 1: 417-424.] Bracton [fo. 364-5] gives the form of the writ, which was a Great Cape.

The person is first summoned, and if he is not essoined, and makes no appearance on the first, second, third or fourth days, then, the plaintiff offering himself to join issue, the land or thing claimed is taken into the king's hand. The action seems to have stayed the suit for fifteen days, and if the defendant could then come into court and save the default, he might regain possession. If he did not come, as before, on any of the four days, and if the default was not saved, judgment would be given for the demandant to recover seisin of the land taken by the Great Cape. There were remedies provided for the tenant who thus lost by default. [Bracton, fo. 367; Reeves, 1: 421.] This method of losing

or gaining land seems to have been very general. Maitland says [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 592]: "An almost infinite number of other cases are conceivable as we permute and combine all the possibilities of essoin and default."

But while the litigant, as we have said, can reopen the suit by a variety of writs [Reeves, Hist. of Eng. Law, Vol. 1: 480], the land does pass to one or the other by the aid of this process, and we see it being done all through the Year Books, and the seisin of chattels is being passed in the same way. Bracton [Note Book, 900] has an early case of an action of debt where the judgment was given by default. In this case the process only takes us as far as the taking of the chattels — the grain for that year, and five oxen — into the king's hands, and the giving of the day to the parties.

We have, of course, to save our defaults as of old, in our modern procedure, but the phraseology and much of the old procedure have departed from the law courts of to-day.

SUPERSEDEAS

(1) **If the exigent** be awarded, etc., and the defendant comes in vacation time, and renders himself in the Chancery, they will accept mainprise, and grant him a *Supersedeas*. As appeared in a writ of imprisonment, etc.

Statham
167 b.
Michaelis
45 Ed. III.

Reported in Y. B. Trinity (not Mich.), 45 Ed. III, p. 19, pl. 15. See also Brooke, *Supersedeas*, 5; and Fitzh: *Supersedeas*, 13.

Case 1.

(2) **If an exigent** be awarded and the defendant comes and finds mainprise, and has a *Supersedeas*, and on the day, etc., he does not come, then a *Capias* shall issue against the mainpernors, and an *exigi de novo* against him. And although he comes and prays another *Supersedeas*, the Court will [not] grant it, because of his misprision, etc. And although he goes into the Chancery and purchases a *Supersedeas* there, and notwithstanding that, he is outlawed, because they do not know all this matter, etc., the outlawry is good. By THIRNING and HANKFORD: for the *Supersedeas* issued erroneously, etc. But yet it seems whether it issued wrongfully or rightfully, the outlawry is void, etc. Query?

Michaelis
7 Hen. IV.

Reported in Y. B. Mich. 7 Hen. IV, p. 5, pl. 32; and Y. B. Mich. 7 Hen. IV, p. 1, pl. 2. See also Brooke, *Supersedeas*, 8; and Fitzh: *Supersedeas*, 10.

Case 2.

- Hilary
8 Hen. V. (3) **One was outlawed** and had a charter of pardon, and he prayed a *Supersedeas* to the escheator. And the Court would not grant it, because if the escheator took his goods, he should have a writ of Trespass, etc.
- Case 3. Reported in Y. B. Hilary, 8 Hen. 5, p. 5, pl. 22. See also Fitzh: *Supersedeas*, 15 and 20.
- Michaelis
9 Hen. VI. (4) **Where a man** is arrested coming to Court, if it be for felony, or in any other manner at the suit of the king, he shall not have a *Supersedeas*. And that in a [writ of] *Corpus cum Causa*, etc.
- Case 4. Reported in Y. B. Mich. 9 Hen. VI, p. 44, pl. 24. See also Brooke, *Supersedeas*, 1.
- Trinity
11 Hen. IV. (5) **In debt**, after the defendant had made a full defence he produced a *Supersedeas*, proving that he was a clerk of the Chancery, and it was allowed; but it was said that after the parties are at issue, or demur in law, they will not allow such a *Supersedeas*, etc. *Simile*, Trinity, 11 Hen. IV, in Account, where such a *Supersedeas* was produced after the parties were at issue, etc. But it was not adjudged there, etc.
- Case 5. The case cited by Statham as a writ of debt, Y. B. Trinity, 11 Hen. IV, has not been identified. The case mentioned in the text as a writ of account is to be found in Y. B. Trinity, 11 Hen. IV, p. 68, pl. 1.
- Hilary
13 Hen. IV. (6) **A man sued an action** against another upon an obligation made at Bordeaux, who sued his action before the constable and marshal. And the defendant had a *Supersedeas* to the said constable and marshal, and then the plaintiff prayed a *procedendo*, etc. A doctor of the civil law said that it seemed that the *Supersedeas* was not well granted, inasmuch as the King's Court cannot have jurisdiction of the plea. THIRNING: In our law a man shall not have a Formedon in the Remainder unless he shows a deed; nor shall a man have an action against executors without a specialty, and yet, although he loses his specialty and sues an action in your Court, we will allow a *Supersedeas*: so here. And various doctors of your law

hold that [as to] a contract made within the legiance of the king, and in another realm, your Court shall not have jurisdiction, but he shall be made to sue in the same country, etc. And they adjourned, etc.

The case has not been identified in Y. B. Hilary, 13 Hen. IV, or in the early abridgments. Case 6.

See as to supersedeas, in the title of Privilege. Note.

Statham, title of Privelege, *supra*, p. 141 b.

(7) **They would not** allow a *Supersedeas* for a clerk of the Chancery in the King's Bench, etc., because it is not an inferior court. And that in Debt, etc. Hilary
4 Hen. V.

There is no printed year of 4 Hen. V. The case has not been identified in the early abridgments. Case 7.

(8) **After the parties** were at issue, and the inquest was at the bar ready to pass, a *Supersedeas* was produced by one of the defendants, proving that he was a clerk of the Chancery, and it was allowed. In Trespass, etc. (The contrary was held before, etc.) Anno
11 Hen. VI.

Reported in Y. B. Mich. 11 Hen. VI, p. 8, pl. 14.

SUERTIE

(1) **In a cessavit**, the tenant found surety that if he ceased for a year the lands should be liable for the remainder, and that he would pay ten pounds. Michaelis
41 Ed. III.

Reported in Y. B. Mich. 41 Ed. III, p. 29, pl. 29. Case 1.

(2) **In a praecipe quod reddat** against two joint tenants, one made default and the other was received, etc. He found surety for that half, although he was named in the writ. But it is otherwise as to a husband and his wife. But they are not joint tenants because they are but one person. And if her husband alienates she shall have a *Cui in Vita* for the whole, etc. Query, if she and her husband purchase the lands before the marriage, and she Hilary
23 Ed. III.

is received, shall she find sureties for half? For in that case she shall not have a *Cui in Vita*, except for half, etc.

- Case 2. There is no printed Hilary Term for 23 Ed. III. The short printed Michaelmas Term for that year contains no case of a *Præcipe quod Reddat*. Fitzh: Suretie, 7, has the case, but has no reference to any page.
- Hilary
3 Hen. IV. (3) **A constable** can arrest a man for surety of the peace,¹ but he cannot take any surety from him, but shall take him to jail, etc.
- Case 3. Reported in Y. B. Hilary, 3 Hen. IV, p. 8, pl. 3. (A case of Trespass.)
- Note. **See as to surety**, in the title of Error, in the case of *Robert Wingfield*, Trinity, 18 Hen. VI, good material, etc.
Statham, title of Errour, *supra*, p. 91 a, case 24.

SURRENDRE

- Statham
168 a.
Paschal.
40 Ed. III.
Case 1. (1) **Surrender by parole** is good enough without a deed, etc.
Reported in Y. B. Paschal, 40 Ed. III, p. 23, pl. 24. (Point on p. 24, near end of case.) See also Brooke, Surrendre, 1; and Fitzh: Surrendre, 7.
- Hilary
12 Ed. III. (2) **Surrender in another** county than that where the land lies, is not good. By HERLE and STONORE, in Formedon, etc.
- Case 2. There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series.
- Hilary
13 Hen. IV. (3) **If there be** a lord and a tenant, the tenant cannot surrender to the lord; as was adjudged in an Assize adjourned from Southampton.
And it was said in the same plea, that where the lord is entitled to have the lands of his tenant the surrender is good: as if the tenant ceases for two years, then if he
¹ See in the end of the case, "Power is not given to the constable to make a man find surety."

surrenders it is good, because the lord had cause to have the lands, etc. *Simile Liber Assisarum*, etc.

And see in the same plea, by FRAMPTON, that if the tenant for life surrenders to him who is in the reversion, to which he agrees, that the writ is maintainable against him who is in the reversion, albeit he had never entered in fact, for the land was in him without entry by the surrender. Which THIRNING denied, in the Chancery, etc.

Reported in Y. B. Hilary, 13 Hen. IV, p. 13, pl. 5. See also Fitzh: Case 3. Surrendre, 10.

SEVERALLE TENANNCY

(1) **In a scire facias** out of a fine, against three; one said that he was tenant of the entirety, without this that, etc. And the others took the tenancy according to the writ, and pleaded in bar. And the demandant was driven to maintain his writ against him who pleaded a separate tenancy, and also to answer to the plea in bar of the other two. Michaelis
2 Hen. IV.

Reported in Y. B. Mich. 2 Hen. IV, p. 7, pl. 28.

Case 1.

(2) **In a scire facias** out of a fine, against two, the sheriff returned that they were garnished. One made default; the other came and pleaded separate tenancy in abatement of the writ. THORPE: You cannot plead separate tenancy in abatement of the writ, unless the other is in Court: no more than in a *Præcipe quod Reddat*, where half is to be lost by default, wherefore answer, etc. (But yet it seems that he pleaded separate tenancy of the entirety, etc. But if he pleaded over in bar the demandant could answer to the bar, if he would, etc.) Paschal
42 Ed. III.

Reported in Y. B. Hilary (not Paschal), 42 Ed. III, p. 8, pl. 34. See also Brooke, Several Tenancy, 5; and Fitzh: Several Tenancy, 5. Case 2.

(3) **In a præcipe quod reddat** against two, who pleaded separate tenancies in abatement of the writ, the demandant told how, in another writ, they waged their Paschal
42 Ed. III.

law in common, wherefore the writ abated, judgment if to this writ, etc.? FYNCHEDEN: They shall have the view in the second writ, and, consequently, this plea, which comes of the view, etc., wherefore maintain your writ, etc. Wherefore the demandant said that the first writ was brought against these two and another two; and at the return of the Grand Cape, these two, now tenants, came and said that they were tenants of the entirety, without this that, etc., and they waged their law, etc. And inasmuch as they accepted the tenancy jointly in the first writ, judgment, etc. And the opinion was that that was a good plea. Wherefore they waived their exception, and one of them vouched one B to warranty for the half that belonged to him. And it was debated for a long time if they should have such vouchers; and the opinion clearly was that they could not, etc. But if one pleaded a plea in bar for his part, the other could vouch, etc. And it is for the same reason that they vouch separately, etc. Well debated.

Case 3. Reported in Y. B. Paschal, 42 Ed. III, p. 16, pl. 30. See also Brooke, Several Tenancy, 6.

Michaelis
21 Ed. 111. (4) **In a per que servicia**, "separate tenancy" does not abate the writ, for it does not appear by the writ whether they are joint or separate tenants.

And in the same plea the tenant would have the plaintiff show by what services the tenant held of the conusor, and could not, but the tenant was driven to show it, etc.

Case 4. Reported in Y. B. Mich. 21 Ed. III, p. 48, pl. 71. See also Fitzh: Several Tenancy, 15.

Michaelis
12 Hen. VI. (5) **If a man** pleads separate tenancy, and pleads over in bar, and the other pleads in the same manner, if the pleas in bar are not sufficient, or are double, still the plaintiff may demur in law upon them, and yet he shall not answer them, but maintain his writ. By the opinion of the COURT in a writ of Entry, etc. Well debated.

And see, in the same pleading, that the pleading over can as well be in abatement of the writ as in bar, etc.

Case 5. Reported in Y. B. Mich. 12 Hen. VI, p. 4, pl. 11. See also Fitzh: Several Tenancy, 19.

(6) **In an assize** of Mort d'Ancestor for a rent service, separate tenancy of the lands is a good plea, etc. Hilary
9 Ed. III.

Reported in Y. B. Paschal (not Hilary), 9 Ed. III, p. 8, pl. 19. See Case 6. also Fitzh: Several Tenancy, 14.

SEQUATUR SUB SUO PERICULO

(1) **In a praecipe quod reddat**, the tenant vouched to warranty. And at the *Sequatur* the writ was not returned, wherefore the demandant prayed seisin of the lands. NEWTON, for the tenant, said that pending the writ the vouchee had died, and he prayed that he might re-vouch. MARTYN: That comes in by the return of the sheriff, and not by you, who are out of Court. NEWTON: In a *Praecipe quod Reddat*, if the tenant dies pending the writ, the sheriff does not return the writ, for the writ is abated in fact, etc. No more here, etc. HODY: If in Formedon the tenant vouches and the sheriff returns that he is summoned, wherefore the Grand Cape *ad valenciam* issues, and the sheriff does not return the writ, the tenant shall say that the vouchee is dead; for otherwise there will be a judgment against a dead person, which is of no avail, etc. Which WAMPAGE denied, since the tenant was out of Court, etc. PASTON: He shall have the plea, and he can also plead the release of the demandant at the *Sequatur*, etc., made after the last continuance, or that the demandant had entered, etc. Statham
168 b.
Paschal
14 Hen. VI.

Reported in Y. B. Anno 14 Hen. VI, p. 7, pl. 31. See also Brooke, Case 1. *Sequatur sub Suo Periculo*, 3; and Fitzh: *Sequatur sub Suo Periculo*, 1.

(2) **At the sequatur** the writ was not returned, and the tenant was essoined, and the essoiner of the tenant prayed a *Sequatur sicut alias*, and had it, etc. Trinity
11 Hen. IV.

The case has not been identified in Y. B. Trinity, 11 Hen. IV, or in the early abridgments. Case 2.

See as to sequatur, in the title of Process, etc. Note.

Statham, title of Processe, *supra*, pp. 138 b to 141 a.

SUB PENA ⁸⁶

- Anno
31 Hen. VI. (1) **If I enfeoff a man**, etc., to perform my will, and he enfeoffs another man, I cannot have a subpœna against the second feoffee, because he is a stranger. But by the opinion of YELVERTON and KYRKBY, clerk of the Rolls, I shall have a subpœna against my feoffee, and recover in damages for the value of the lands, etc. And KYRKBY said at the same time, that if my feoffee in trust enfeoffs another in trust of these same lands and dies, I shall in that case have a subpœna against the second feoffee. But it is otherwise where he enfeoffs *bona fide*, for there I am without a remedy, etc. And so it was adjudged in the case of the *Cardinal of Winchester*, etc. In a Subpœna in the Chancery.
- Case 1. The case has not been identified in Y. B. Anno 31 Hen. VI. Fitzh: Sub Pœna, 19, has the case.
- Anno
32 Hen. VI. (2) **A man** who is tenant at will shall have a subpœna if he be tenant by copyhold, against his lord, if he ousts him, etc. By the opinion of KYRKBY and POLE. [In a] Subpœna in the Chancery.
- Case 2. The case has not been identified in Y. B. Anno 32 Hen. VI. Fitzh: Sub Poena, 21, has the case.
- Michaelis
35 Hen. VI. (3) **If I come** into the Chancery and inform the Chancellor that I wish to have sureties of the peace for a lord, and that it does not lie in the power of the sheriff to arrest him by a writ of *supplicavit*, the Chancellor, of common right, will grant me a writ of Subpœna in that case, directed to the same lord; as was held by all the justices in the Exchequer Chamber, in the case of the *Duchess of Suffolk*, etc.
- Case 3. The case has not been identified in Y. B. Mich. 35 Hen. VI. Fitzh: Sub Pœna, 20, has the case.

⁸⁶ We have here a very small and inconsequential division to be devoted to so large a subject. We have entered the jurisdiction of the chancellor, or the king's council. This command that a person should

come before the king, "*sur greve pœne*," or before the king's council, when judgment had already been given against them, was greatly disliked. It was held to be in subrogation of the common law, and was a great burden upon the people.

It is supposed (again we are brought to a supposition when it would seem we should have more specific knowledge) that the writ originated "about the 5th of Richard II" [Reeves, Hist. of Eng. Law, Vol. 3: 192, relying on Rot. Parl. 3 Hen. V, which I have not seen], and John Waltham, Keeper of the Rolls, is accused of having invented it and to have been the first to use the writ in the Chancery. It had been used by the council and had been legislated against in the twenty-fifth year of Edward III [25 Ed. III, cap. 4] as an evil, and as infringing the liberty of the subject. This did not end the matter; probably the wording of the statute was not sufficiently clear, possibly the court was too strong for the legislature as it has been many times since, and the commons again complained that persons were brought before the king's council upon grievous pain, against the law [Reeves, Hist. of Eng. Law, Vol. 2: 419], so that a statute of 42 Ed. III [c. 5] declared that "at the request of the commons by their petition put forth in this parliament, to eschew the mischiefs and damages done to divers of his commons by false accusers, which oftentimes have made their accusations more for revenge and singular benefit than for the profit of the king or of his people, which accused persons have been taken and sometime caused to come before the king's council by writ, and otherwise, upon grievous pain against the law: it is assented and accorded . . . that no man be put to answer without presentment before justices, or matter of record, or by due process and writ original." The last words have a very familiar sound to students of our constitutional law, and it is not often brought so clearly to us that these phrases were used against the abuses of the court of Chancery, and that the evil to be thus corrected by statute was once a process adopted by the Keeper of the Rolls [Waltham] of Richard Second as eminently adapted for the purposes of his court. Once more the courts were too much for the legislature, for the council continued in the exercise of all its old authority, and in the use of the writ. In the fifteenth year of Henry Fourth we find that it was necessary to enact further laws, and a statute was passed providing that none should sue a subpœna until he found surety to satisfy the defendant for the damage caused him if he did not verify his bill. [15 Hen. VI. c. 4 (1436).] This last act was passed just prior to the date of our cases, which are all in the latter part of the reign of Henry Sixth. The later development of the writ is not, of course, a part of our subject.

TRAVERSE

(1) **Where the king** seizes lands for cause, the cause is traversable by him who is ousted for that cause, if it be

Statham
168 a.
Michaelis
2 Hen. IV.

of record. But if the king seizes, or resumes, without cause [or] any matter of record, there the party is put to his petition, etc.

Case 1. Reported in Y. B. Mich. 2 Hen. IV, p. 10, pl. 47. See also Brooke, Traverse de Office, 5.

Hilary
45 Ed. III. (2) **A man shall show** cause in various cases to which a man shall not have a traverse. As appears in the title of Recaption.

Case 2. Reported in Y. B. Hilary, 45 Ed. III, p. 4, pl. 8.
Statham, title of Recapcion, *supra*, p. 160 b.

Michaelis
31 Ed. III. (3) **In a recordare** out of the county [Court] the party shall not have a traverse to the cause, because the county [Court] is the Court of the King, and he can remove the plea when he will. But out of the Court of a lord it is otherwise, because the lord may have lost by that, etc. *Simile*, Michaelmas, 26 Hen. VI.

Case 3. There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments.

Hilary
50 Ed. III. (4) **A man shall not** have a traverse to a thing presented before the seneschal and verderors of the forest, because it is taken by more than twelve, etc. (But yet that is not the reason, etc., for in every inquiry for the king there can be as many, etc.)

Case 4. The case has not been identified in Y. B. Hilary, 50 Ed. III. Brooke, Traverse, etc., 347, has an allusion to the case, as Fitzherbert has it in the title of Assize.

Paschal
18 Ed. III. (5) **If an office** be found for the king, he who is ousted by the office shall not have a traverse, etc., before another office shall be found for him, etc. As appeared in an Office, etc.

Case 5. Reported in Y. B. Paschal, 18 Ed. III, p. 15, pl. 14.

Paschal
24 Ed. III. (6) **If a man** shows a charter by which the king has seisin of lands, and demands judgment if, the king not being

advised etc., a man shall not have a traverse to say that the tenements in demand are not comprised. By the opinion of WILLOUGHBY and THORPE, in a writ of Entry upon a disseisin, etc.

The case has not been identified in Y. B. Paschal, 24 Ed. III, or in the Case 6. early abridgments.

(7) **Where a man prays** to be received to defend his right, and he shows a lease made to the tenant for life by himself or by his ancestor, the demandant shall have a traverse to the lease. But it is otherwise where he claims the reversion by the grant of a stranger. By the opinion of the COURT, etc. (But yet I think that a man shall not have a traverse to the cause in any case, but he shall answer as to whether he had anything in the reversion, etc.)

Paschal
3 Hen. IV.

Reported in Y. B. Paschal, 3 Hen. IV, p. 17, pl. 13. See also Brooke, Case 7. Traverse sans Ceo, 46, for further citations.

(8) **Where the defendant** does not wage his law, he shall have a traverse at the beginning, to the action of the plaintiff, etc. As appeared in [a writ of] Debt upon the arrears of an account, etc.

Hilary
34 Ed. III.

There is no printed year of 34 Ed. III. The case has not been identified in the early abridgments. Case 8.

(9) **A man shall have** a traverse to a presentment in a leet, which goes to the jurisdiction of the leet; as where he is amerced for not coming to the leet, [as] to say that he was not recreant, etc. In a Replevin, by THORPE. And in the same manner he shall have a traverse to things presented in a leet which touch his freehold, or inheritance. But in other things, as bloodshed and brawling against the Assize, and such like things, he shall not have a traverse, because the Seneschal of the Court cannot make process against him to answer, etc., wherefore the amercement ought to be sufficiently maintained by the affeerers; and also *de minimis non curat lex*, etc. And the law is the same as to presentments in the sheriffs torn, etc. But as to presentments before justices of the peace, it is otherwise,

Michaelis
41 Ed. III.

because they can make process; in which case, when he comes he can make a fine, etc. But in the other Courts he is amerced, in which case, if the amercement be excessive, he shall have a good remedy by a writ of *moderata misericordia*, and in no other manner, etc.

Case 9. The case has not been identified in Y. B. Mich. 41 Ed. III, or in the early abridgments.

Hilary
38 Ed. III. (10) **In formedon**, where the defendant counts that the gift was made by a fine, the tenant shall have a traverse to the gift, to wit: that he did not give; for the action is not conceived upon the fine, but in the Chancery, etc. But it is otherwise in a *Scire Facias*, which is conceived upon the fine, etc. Query, how should that be tried?

Case 10. The case has not been identified in Y. B. Hilary, 38 Ed. III, or in the early abridgments.

Michaelis
9 Hen. VI. (11) **A man shall not have** Trespass on the Case in *Corpus cum Causa*.

Case 11. The case has not been identified in Y. B. Mich. 9 Hen. VI, or in the early abridgments.

Trinity
11 Hen. IV. (12) **W. Cheyne** and others sued a *Scire Facias* against J. Pelham to repeal certain letters-patent made to him for the wardship of certain lands and tenements, which it was found by an office that one P held of the king by knight's service, and he died seised in fee, his heir being under age. And the writ said that the said U and others were enfeoffed by the said P, in his lifetime, without this that he died seised as the office alleged. And then the writ was delivered out of the Chancery into the King's Bench, and then SKRENE [said] there was another office found for the king, by which it was found that the feoffment to the plaintiff was by collusion, which office you should traverse also. CHEYNE: That matter was alleged in the Chancery and not allowed, by all the justices, because that office was taken after our writ was purchased. TYRWHIT: This writ is their original, and although such an office be found afterward, still their original stands good. As if an heir in tail

sues by petition to be restored to his inheritance, which was seized into the king's hand because of the forfeiture of his father, although by another office afterwards there is an older title found for the king, the suit of the heir shall not abate for all that, for nothing deprives the king; but if he has the right he shall put the heir to a new traverse after his suit is ended, wherefore, etc. NORTON: If, after the taking of the first office, and pending this suit, such a [title] in fee had been found for the king, he shall be put to traverse it, without going forward by this writ. TYRWHIT: It is true, because the king has the higher right by the second office than by the first, to wit: a fee. But in this case, not so, for neither of the two entitles him, except as to the wardship, etc. SKRENE: At the common law, before the Statute of Lincoln, if the king had made restitution to anyone and there had been a new title found, he should have seized, and by that Statute it is ordained that he shall not seize without process, etc., upon the office found, after restitution made. But in this case since the last office was found before restitution, it is at the common law, wherefore if it be found against the king, still he should retain it by reason of the second office; so, inasmuch as by their suit they cannot be restituted, it is reasonable that they be put to traverse the second office. And if both offices had been found before the purchase of the writ, they should have traversed both. CHEYNE: Both of the offices cannot be maintained for the king, for one is contrary to the other; for one is that the tenant died seised, and the other that he made a feoffment by collusion, which cannot stand together. But if it be found for the king that his tenant died seised, and that he did not make a feoffment by collusion, therefore that will be an end of all. GASCOIGNE: If it be found that he did not die seised, then the king shall have an answer to the second office, as to the collusion. Which CHEYNE conceded, because it allowed them to go primarily to that office which could make an end of all. Wherefore he said to the defendant: "Answer," etc. NORTON, for the terre-tenant, averred that the feoffment was made by collusion, etc. (Query, if that be a departure? For it seems that he should maintain

Statham
169 b.

the first office, to wit: that P died seised, etc. Query also, if he can maintain such a plea without the king? For although the king had discharged him during his nonage, still the heir shall sue livery, etc. And if it be found against the king, then he has lost his advantage, etc.)

Case 12. Reported in Y. B. Trinity, 11 Hen. IV, p. 80, pl. 23. See also Fitzh: Traverse, 16.

Statute of "*De Escheatoribus*" made at Lincoln, 29 Ed. I (1301), Stats. at Large, Vol. 1, pl. 303.

Michaelis
27 Hen. VI.

(13) **A woman shall have** a traverse to the case where a plea is removed out of ancient demesne. And if it be found for her, the plea shall be sent back, etc. But where the plea is removed out of the county [Court] or from a Court Baron, a man shall not have a traverse to the case. And yet the writ is, "If the cause be true," etc. But yet some hold in that case that the sheriff can return that the cause is not true; as he can that the party cannot find pledges to prosecute, etc., for he has as much warrant by the writ in one case as in the other.

Case 13. Reported in Y. B. Mich. 27 Hen. VI, p. 3, pl. 25. See also Fitzh: Traverse, 3. In a Recordare.

Paschal
36 Ed. III.

(14) **If it be found** by an office that one F held of the king in chief and died seised, and that one J is his heir, etc., and is of full age; and it is found by another office that another is heir to F, and is under age; who comes into Court and prays that the lands remain in the king's hand until his full age. And the other who was found heir says he is the same heir, and that he who is under age is by another marriage, or that he is younger; in that case he shall be put to answer, notwithstanding he is under age, for each of them is an actor against the king. And so note that the claimant, as heir to the person who died seised, cannot traverse the office unless another office be found for him, but a stranger shall have a traverse to the office if he be ousted by the office, although no office be found for him, etc., for he can say that he whom it was

alleged by the office died seised, enfeoffed him, without this that he died seised, etc.; or he can say that a stranger was seised and enfeoffed him, without this that he died seised, etc.

There is no printed year of 36 Ed. III. Fitzh: Traverse, 44, has Case 14. the case.

(15) **If an office** be found, to wit: that one enfeoffed a husband and his wife, to have to them and to the heirs of the husband, and the same husband is dead. In that case if the woman comes and shows the deed of feoffment, which deed is to "the husband and to the wife and to their heirs," then she shall be received to traverse the office, without any other office found for her, because mention is made of her in the office, for it is [not] necessary then that another office be found for her before she has traversed the office. By MARTYN, etc. But that is intended to be where the woman is not ousted by the office, and otherwise not, etc. As appeared in an Assize adjourned out of the County of Norfolk, etc.

Paschal
12 Hen. VI.

The case has not been identified in Y. B. Paschal, 12 Hen. VI, or in Case 15. the early abridgments.

See as to traverse, in the title of Office.

Note.

Statham, title of Office, *supra*, p. 131 a.

(16) **If a man** comes into the Chancery after an office which found that the tenant of the king died seised, and shows a deed by which the same tenant enfeoffed him, he shall not have a traverse to the office, unless he shows a license from the king. And that by the opinion of HANKFORD, in the Chancery.

Anno
6 Hen. VI.

There is no printed year of 6 Hen. VI. The case has not been identified in the early abridgments. Case 16.

(17) **When an office** is found by which the king shall have the fee or the freehold, he who is ousted by the office shall not have a traverse to that, but is put to his petition. By BABYNGTON in the Exchequer Chamber. Which no one denied, etc.

Anno
8 Hen. V.

And it was held at the same time, that where the king had cause to seize by matter which was found; that a tenant for life had forfeited his estate, and the tenant for life died before the king seized, he who is in the reversion could enter, and the king could not seize afterwards, because he had overpassed his time, etc.

Case 17. The case has not been identified in Y. B. Anno 8 Hen. V, or in the early abridgments.

TRANS ⁸⁷

Statham 170 a. Hilary 42 Ed. III. (1) **In trespass because** the defendant had taken wild beasts, etc., in his free chase. The defendant said that this was in the forest of S, and demanded judgment, etc., unless he could show how that was his free chase. And it was not allowed; wherefore he said that the plaintiff gave him leave, etc. BELKNAP: That sounds in covenant, and he does not show anything of the license. And it was not allowed, wherefore he said "of his own tort, without such a cause," etc.

Case 1. Reported in Y. B. Hilary, 42 Ed. III, p. 2, pl. 8. See also Fitzh: Trespass, 184.

Hilary 42 Ed. III. (2) **If a man** takes my horse, and then I give another man all my goods and chattels, it was the opinion of THORPE that he can take the horse, etc. In Trespass, etc.

Case 2. The case has not been identified in Y. B. Hilary, 42 Ed. III, or in the early abridgments.

Hilary 42 Ed. III. (3) **In trespass** for a battery, it was found by verdict that the defendant made an assault on him, but he did not beat him; still the plaintiff recovered his damages for the assault.

Case 3. Reported in Y. B. Hilary, 42 Ed. III, p. 7, pl. 25. See also Fitzh: Trespass, 185.

Hilary 42 Ed. III. (4) **In trespass** against one J, and Alice. BELKNAP: Alice says that she is the wife of J, not named as his wife, judgment of the writ. And J pleaded the same plea. FENCOT: As to Alice—sole the day the writ was pur-

chased, etc. (Query, if he should say, "And still is, etc., and as to J, since he does not say anything, etc., judgment.") FYNCHEDEN: If Alice did not appear to this plea, the plaintiff should not have the plea; no more shall he have it now. In which the COURT concurred, wherefore he pleaded not guilty.

Reported in Y. B. Mich. (not Hilary), 42 Ed. III, p. 23, pl. 4. Case 4.

(5) **Where the king** seizes for no other cause but to have a fine; when the party has made the fine and received his lands, he shall have a writ of Trespass against one who cut trees while the land stood in the hands of the king. By the opinion of the COURT in Trespass for a park broken, etc. Well debated.

Hilary
43 Ed. III.

Reported in Y. B. Mich. (not Hilary), 43 Ed. III, p. 30, pl. 20. Case 5.

(6) **In trespass** for his fishery broken, the defendant said that he and all those his ancestors, have had from time, etc., six pounds of rent out of the same fishery annually. And that he was seised by the hand of the father of the plaintiff, etc. And that when the rent was in arrear, they were used to break the fishery, and for so much in arrears, etc. FYNCHEDEN: Show that the fishery had been broken, and in whose time, etc. BELKNAP: Sir, perchance the rent was not in arrear before. FYNCHEDEN: Such a breaking is against the common law, wherefore if you do not show it, your plea is of no value. And then he showed that it was broken in the time of one, his ancestor, etc. And the plaintiff said that it had not been accustomed to be broken in the manner, etc. Ready. And the other alleged the contrary.

Hilary
43 Ed. III.

Reported in Y. B. Mich. (not Hilary), 43 Ed. III, p. 31, pl. 22. See also Fitzh: Trespass, 189. Case 6.

(7) **In trespass**, the defendant said that he, in the presence of B, made satisfaction to the same plaintiff for the same trespass, by a tunnel of wine, which he received, etc. And the opinion was that that was a good plea, etc.

Paschal
43 Ed. III.

Reported in Y. B. Mich. (not Paschal), 43 Ed. III, p. 33, pl. 36. Case 7.

Paschal
43 Ed. III.

(8) **In trespass**, if the writ is brought in a known place, although it be not in a vill or hamlet, still the writ is good enough.

And see, in the same plea, that a man shall have a writ of Trespass [for a trespass] done in a mine which is under ground, and also an Assize of Novel Disseisin, and he shall make his complaint accordantly, etc. (In the same plea, etc.) But that is meant where I have the mine in another's soil, for otherwise my complaint shall be of lands, etc. Query?

Case 8.

Reported (as to the mine) in Y. B. Mich. (not Paschal), 43 Ed. III, p. 35, pl. 53. The first proposition does not appear in the case. See also Fitzh: Trespass, 195, where the abridgment is evidently from a case not in the printed year.

Trinity
43 Ed. III.

(9) **A man** shall have a writ of Trespass for his wife ravished and goods carried away, although the wife be dead. And the same plea is allowed to the defendant when a divorce is made between him and the plaintiff, because of frigidity, in which case he cannot have his wife back. And it was not allowed, because it might happen that he would be restored, etc.

Case 9.

The case has not been identified in Y. B. Trinity, 43 Ed. III, or in the early abridgments.

Hilary
44 Ed. III.

(10) **In trespass** against several, one came and was found guilty by the inquest. The plaintiff had judgment to recover against him, and the execution ceased until the others were attainted. Which note, etc.

Case 10.

Reported in Y. B. Hilary, 44 Ed. III, p. 3, pl. 12. See also Brooke, Trespass, 44.

Hilary
46 Ed. III.

(11) **If a man** takes a woman who is my villein, although he marries her, I shall have a writ of Trespass against him.

Case 11.

Reported in Y. B. Hilary, 46 Ed. III, p. 6, pl. 17. See also Brooke, Trespass, 53.

Michaelis
45 Ed. III.

(12) **A woman** brought a writ of Trespass for two charters which came into her possession after the death of her husband, to wit: one by which her husband enfeoffed the defendant; another by which the same defendant enfeoffed our husband and us. CANNDISH: To this that we enfeoffed

your husband and you, there never was such a deed. And the opinion of all the Court was that it was no plea. And as to the other, inasmuch as by your admittance it belongs to us, judgment, etc.

The case has not been identified in Y. B. Mich. 45 Ed. III. Fitzh: Case 12. Trespass, 200, has the case.

(13) **In trespass**, the defendant said that the plaintiff had leased the lands, of which, etc., to one B, for a term of years, which still lasts. And it was the opinion that it was no plea unless he justified, etc. Query, etc.?

Trinity
47 Ed. III.

Reported in Y. B. Trinity, 47 Ed. III, p. 5, pl. 11. See also Brooke, Case 13. Trespass, 57.

(14) **Where a coparcener** before partition had aliened that which belonged to her to one H; the other parcener brought a writ of Trespass against the said H, and for ancient dovescotes taken, "*per quod volatum columbare suum amisit et alia enormia ei intulit,*" etc. The other demanded judgment, inasmuch as they were tenants *pro indiviso*. FYNCHEDEN: Where two have a wood, *pro indiviso*, an action has been maintained; and also where two have a wardship in common. But in those two cases, because the action was brought in the realty, peradventure the action was maintainable. But it is difficult in this case. THORPE: He cannot have an action of waste. And if tenants *pro indiviso* or parcnens seed lands, and one carries away all the grain, the other shall have such an action, wherefore answer, etc. (That is against the opinion of many), etc.

Trinity
47 Ed. III.

Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 22, pl. 54. See Case 14. also Brooke, Trespass, 63; and Fitzh: Trespass, 204.

(15) **One H**, Prior of B, brought a writ of Trespass, *quare vi et armis bona et catalla domus et ecclesia de B J, predecessoris nunc prioris tempore praedicti J apud C, cepit, et [exportavit]*, etc. Query, if the writ be good? For he alleged the property to be in the house, and also in the predecessor, etc.

Trinity
47 Ed. III.

Reported in Y. B. Mich. (not Trinity), 47 Ed. III, p. 23, pl. 55. See Case 15. also Brooke, Trespass, 64; and Fitzh: Trespass, 205.

- Hilary
48 Ed. III. (16) **In trespass** for a close broken and a mare taken. The defendant said that he leased the place where, etc., to one B, for a term of years which still lasts; who leased his estate to the plaintiff, judgment of this writ *vi et armis*.
- Statham
170 b. WYCHINGHAM: You do not justify for rent in arrear? BELKNAP: There is no need, etc., for then we should affirm the writ to be good, etc. (Query?) FYNCHEDEN: Answer to the breaking of the close, etc. And so note, etc. It seems that he justified for rent in arrear. And it is no plea for the plaintiff [to say] "nothing in arrear," although nothing be in arrear. The Statute is, "*non ideo puniatur dominus per redemptionem*." But the other shall sue a Replevin, and not a writ of Trespass *vi et armis*, etc. But he shall say as to the breaking of the close, "not guilty," for that is not within the purview of the Statute.
- Case 16. Reported in Y. B. Hilary, 48 Ed. III, p. 5, pl. 10. See also Brooke, Trespass, 65.
Statute of Marlbridge, 52 Hen. III (1267), cap. 3, Stats. at Large, Vol. 1, p. 55 (57).
- Hilary
50 Ed. III. (17) **A man shall have** a writ of Trespass for his son (or daughter) carried away, although he be not his heir, or his servant, etc. In Trespass, etc.
- Case 17. The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments.
- Hilary
19 Ed. III. (18) **Misnomer** of a vill is no plea in Trespass. By WILLOUGHBY, etc. Query as to the cause?
- Case 18. There is no early printed year of 19 Ed. III. What may be the case has been printed in the Rolls Series, 18 & 19 Ed. III, p. 522, No. 43.
- Hilary
21 Ed. III. (19) **In trespass** for trees cut and grain carried away, the defendant said that he held the place where, etc., in common with the plaintiff, judgment if action. THORPE: For trees cut he can have an action of waste, by the Statute of Westminster the Second, wherefore in right of that you will not take anything. But for grain carried away the writ was adjudged good, etc.
- Case 19. Reported in Y. B. Hilary, 21 Ed. III, p. 9, pl. 26. See also Brooke, Trespass, 116.
Statute of Westminster the Second, 13 Ed. I (1285), cap. 22, Stats. at Large, Vol. 1, 163 (196).

(20) **In a writ** for a close broken, and a horse taken, etc., the defendant justified, because the plaintiff held the same close of him by twelve pounds of rent, etc., of which, etc. And the plaintiff said that he held of him by two pounds, which he had paid him, without this that he was seised of the twelve pounds, etc. And so note that he did not say, "without this that he held of him," etc.; no more than in Replevin. Michaelis
15 Hen. VI.

There is no printed year of 15 Hen. VI. The case has not been identified in the early abridgments. Case 20.

(21) **If I hold** lands in one county of a manor which is in another county, and the lord distrains me for rent in arrear and drives the cattle into another county, I shall have an action of Trespass *vi et armis*. By the opinion of HALLS and MARTYN, because I cannot sue a Replevin in either county, etc. Query? Hilary
1 Hen. VI.

And it was said in the same plea, that against the bailiff or the servant of a lord the tenant shall have a writ of Trespass *vi et armis*, albeit they justify in right of their lord for rent in arrear; for the Statute shall be taken strictly. And that in a note.

There is no printed Hilary Term of 1 Hen. VI. The case has not been identified in any of the printed terms or in the early abridgments. Case 21.

Statute is that of Marlbridge, 52 Hen. III (1267), cap. IV, Stats. at Large, Vol. 1, p. 53 (58).

(22) **In trespass**, the plaintiff declared for his close broken the eighth day of December. FULTHORPE: The tenth day of December in the same year, the place where, etc., was our freehold, without this that we were guilty before or after, etc. NEWTON: To that we say that a long time before, etc., such a one was seised, etc., and enfeoffed us, etc., so we were seised until, etc. COTTESMORE: You should maintain your writ, to wit: that he was guilty the eighth day, etc. NEWTON: If I bring a writ of Trespass against you, and you plead a release made by me on such a day, and demand judgment if, of any trespass before that day, action, etc.; and as to any trespass after Trinity
15 Hen. VI.

that day, "not guilty," I shall answer to the release. Which all denied, etc. But they said that he ought to maintain that he was guilty, etc. PASTON: If you bring an action of battery against me in A, and I say that you made an assault on me in B, within the same county, and the wrong, etc. You shall say of my own tort, etc. COTTESMORE: Not the same. And then NEWTON said, "Guilty the eighth day." Ready, etc. See that in the case that PASTON put, the plea amounts to no more than not guilty, for the plea is not traversable when he justifies within the same county. And see by that plea the plaintiff mistook his day, and the defendant tricked him, etc.

Case 22. There is no printed year of 15 Hen. VI. The case has not been identified in the early abridgments.

Michaelis
30 Hen. VI. (23) **In trespass** the defendant pleaded not guilty, upon which they were at issue. And at the return of the *Venire Facias* the defendant said that after the last continuance the plaintiff and himself had put themselves into the arbitration of certain persons, who awarded, etc. And the plaintiff demurred in law upon him, etc. Query as to the judgment, etc. It seems good.

Case 23. Reported in Y. B. Paschal (not Mich.), 30 Hen. VI, p. 4, pl. 6.

Michaelis
21 Hen. VI. (24) **In trespass** for entering his warren and taking certain conies, etc. The defendant pleaded not guilty, etc. The inquest said that he was guilty of entering in his warren, in which case it clearly appears that the plaintiff should have had a general action for the conies taken, in which case he should show the value of the conies, but no value is now put on them. And that was the reason that such an action was found against the plaintiff, wherefore, etc. And they adjourned, etc.

Case 24. The case has not been identified in Y. B. Mich. 21 Hen. VI, or in the early abridgments.

Michaelis
21 Hen. VI. (25) **In trespass** for a horse, the defendant justifies, etc.; the plaintiff shall say that he brought his action

for another horse, etc.: as well as where an action is brought for a close broken. And this, as it appeared in Trespass.

The case has not been identified in Y. B. Mich. 21 Hen. VI, or in the Case 25. early abridgments.

(26) **In trespass** for grain and sheaves of corn continually, etc. YELVERTON: Such a trespass cannot be continued, etc. NEWTON: In trespass for a house broken, such a writ was adjudged good here lately, for he can break part on one day and part on another day: so here; wherefore, etc. To which PASTON agreed.

The case has not been identified in Y. B. Paschal, 21 Hen. VI, or in Case 26. the early abridgments.

(27) **In trespass.** PORTYNGTON: Judgment of the writ, for the writ is *bona et catalla*, and he has declared for forty pikes and forty tenches. YELVERTON: Pikes and tenches are goods and chattels. NEWTON: So is a horse, and yet if my horse be taken, I shall have an action "*quare quendam*," etc. (And there is no such writ.) And the law is the same as to everything that has life, etc. Which PASTON conceded, etc.

The case has not been identified in Y. B. Paschal, 21 Hen. VI, or in Case 27. the early abridgments.

(28) **One brought** a writ of Trespass, and counted that he was lord of B, and had a free chase, etc., and there had the defendant, etc. BELKNAP: Judgment of the writ, since the plaintiff had no answer in that manner, etc., except jointly with his wife, who is alive and not named, etc. And the writ was adjudged good. See the plea, for the defendant justified the chasing as within his own lands, with little dogs, out of his corn, etc.

Reported in Y. B. Hilary, 43 Ed. III, p. 8, pl. 23.

Case 28.

(29) **In trespass** for trees cut and a close broken. FENCOT: The plaintiff leased the place where, etc., to us, for the term of our life, reserving to himself the larger trees; judgment of this writ *vi et armis* in our own freehold.

Michaelis
46 Ed. III.
Statham
171 a.

And the opinion of the COURT was that the writ was good,
As to the trees, etc., query?

Case 29. Reported in Y. B. Mich. 46 Ed. III, p. 22, pl. 3. See also Brooke, Trespass, 55.

Trinity
30 Hen. VI. (30) **Tenant at will** where land is leased to him at will, can have a writ of Trespass against a stranger. But tenant at will who occupies the land by sufferance of him who has the freehold, and not by his lease, cannot have a writ of Trespass, for he cannot entitle himself to the lands by such a sufferance, for he cannot make an issue, etc. In the case of *Wenlock*, etc.

Case 30. The case has not been identified in Y. B. Trinity, 30 Hen. VI. Fitzh: Trespass, 10, has the case.

Michaelis
46 Ed. III. (31) **In trespass** against two, one came on one day, against whom the plaintiff counted, and another came on another day, against whom the plaintiff counted. And he demanded judgment of the count, because he alleged [the trespass to have been made] on another day than that of the first count. And it was not allowed because he was a stranger to the first count, etc.

Case 31. Reported in Y. B. Mich. 46 Ed. III, p. 25, pl. 12. See also Brooke, Trespass, 56; and Fitzh: Trespass, 202.

Michaelis
44 Ed. III. (32) **If a man** leases a house for life, which [house] is blown down by the wind, he who is in the reversion can take the timber of it, for it belongs to him; and the tenant for life shall not have a writ of Trespass against him.

Case 32. Reported in Y. B. Hilary (not Mich.), 44 Ed. III, p. 5, pl. 23.

Michaelis
30 Ed. III. (33) **In trespass** for a pound broken, and cattle which the plaintiff had taken and carried away for *damage feasant*. SETON: Justified, because he had common appendant in the same place where, etc., and he made fresh suit and came to the pound and found the bullock, and he took that beast, judgment if wrong, etc. And it was held a good justification, etc.

Case 33. The case has not been identified in Y. B. Mich. 30 Ed. III, or in the early abridgments.

(34) **In trespass** for a close broken the first day of May, the twenty[-sixth] year of the present king. The defendant said that Richard, Duke of York, was seised of the lands of which, etc., in his demesne as of fee, and he leased them to the defendant for a term of years, the term commencing the first day of August, in the year 24 of the same king, to last for ten years, etc., by force of which he entered and made the trespass, without this that he was guilty of any trespass before the said first day of August. MOILE: That is no plea, for it does not give us any color. And it is not the same as where a man pleads that the freehold was in one A, and he, by his command, made the trespass, for there he justifies in another's right in whom the freehold is. But in this case he justifies in his own right. And to that which he pleads we are wholly strangers, wherefore his plea amounts to no more than to "not guilty before the first day of August," which is no plea, etc. DANBY: We justified on another day, without this that we were guilty before. And so we cannot give you color as to any other thing which justified us. As if you brought a writ of Trespass for your close broken in Dale, and I justified in Sale, without this that I am guilty in Dale; I do not give you color in Dale, for I have traversed you; and the law is the same as to days, etc. And the opinion was that the plea would not avail, etc. But see, in the case which DANBY put, he should give the plaintiff color in Sale, or else say that the plaintiff leased him an acre of land in Sale, without this that he is guilty in Dale, for he claimed the land in Sale by a stranger, "without this," as above. That amounts to no more than that he entered in his own freehold and cut trees in Sale, without this that they were cut in Dale, which is no plea, etc.

The case has not been identified in Y. B. Mich. 30 Hen. VI, or in the Case 34. early abridgments.

(35) **In trespass** for corn in sheaves, against a prior, who justified because he and his predecessors had been seised of the tithes from time, etc., in the same place, and that they were severed, etc., and that he did not claim

Michaelis
30 Hen. VI.

Paschal
46 Ed. III.

them as parson to any church, etc. And the plea was held good. And the plaintiff said [they were] his "lay chattels." Ready; without showing how, to wit: by attachment or gift, etc. (But yet that averment between parson and parson is ousted by the Statute, etc.)

Case 35. Reported in Y. B. Paschal, 46 Ed. III, p. 9, pl. 3.

The Statute is referred to in the case as "*Anno primo Richardi*, cap. 13." The reference is correct for 1 Ric. II, c. 13, and must have been added to the manuscript case by the editors of a former edition of the Year Book.

Michaelis
44 Ed. III.

(36) **In trespass** for trees cut, the defendant said that the plaintiff sold to him all the trees growing in the woods of B, which is the same place, etc., except twenty trees at the election of the plaintiff. And that he had the space of a year to cut them and carry them away. And he came to the plaintiff and told him to show him the twenty trees, etc., and he would not, wherefore, for shortness of time we cut them, etc., and let twenty of the best trees be, judgment, etc. CANNDISH: You cut down our trees, without this that we were notified. Ready, etc. And the others alleged the contrary, etc.

Case 36. Reported in Y. B. Mich. 44 Ed. III, p. 43, pl. 53. See also Brooke, Trespass, 50.

Trinity
45 Ed. III.

(37) **In trespass** for hay carried away. CANNDISH: The land where the hay was growing is our freehold, and we took it, etc. Query, if that be a plea? For it appeared by the declaration that it was only for chattels dissevered from the freehold, as for other goods carried away, for he says nothing of mowing the grass, etc., and therefore, query if the plea be good, etc.? for the plaintiff said that it was his freehold, and not, etc.

Case 37. Reported in Y. B. Mich. (not Trinity), 45 Ed. III, p. 11, pl. 6.

Trinity
46 Ed. III.

(38) **In trespass** for a certain sum in gold and silver, and other goods carried away to the value, etc. THORPE: State the value of the goods, and not of the silver, for that is certain, etc. And he did so. FENCOT: The goods were thrown in the sea by a tempest, and we took them and

carried them to land and put them in care of one J, who was general attorney to the plaintiff, to the use [of etc. plaintiff] without this that he took other goods, etc. (Query, if he need to say, "without this, etc.") TANK: We have counted of goods taken out of our possession, to which he does not answer, judgment, etc. FYNCHEDEN: Answer him, etc.

Reported in Y. B. Trinity, 46 Ed. III, p. 15, pl. 1. See also Brooke, Case 38. Trespass, 54.

(39) **In trespass** for a gutter broken, the defendant said that the vill of Rochester is an ancient city, and has been so from time, etc., in which it had been the custom from time, etc., that when a man had any house which was ruinous, that it should be repaired by the view of the mayor and other people, etc. And he said that there was a house of the plaintiff where, etc., adjoining [his house], wherefore he broke the gutter of the plaintiff in mending his house, and he put back the same gutter as well as it was before, etc. It was held a good justification, etc. ^{Hilary} 50 Ed. III.

The case has not been identified in Y. B. Hilary, 50 Ed. III, or in the early abridgments. There is a case of a gutter between houses in Paschal, 2 Hen. V, p. 3, pl. 12. The issue was on a matter of fact. Case 39.

(40) **In trespass de parco fracto** and his cattle wrongfully taken, the defendant said that he came to the wife of the plaintiff and offered her sufficient amends, and brought pledges with him, and delivered them to the woman and she delivered the cattle to him, without this that he broke the pound, etc. And it was adjudged a good justification. Query? For if my wife delivers my goods to a man, I shall have a writ of Trespass *vi et armis* against him, etc. ^{Michaelis} 30 Ed. III. ^{Statham} 171 b.

Reported in Y. B. Mich. 30 Ed. III, p. 23, pl. 45. See also Fitzh: Case 40. Trespass, 12.

(41) **In trespass** for a close broken and trees cut in Dale. NEWTON: The same day, etc., we entered in our own freehold in Sale, and cut our own woods, as well we might; and as to the breaking and cutting in Dale, not guilty. MARTYN: No more shall be entered than "not guilty," for it amounts to no more, etc. But as spe- ^{Trinity} 14 Hen. VI.

cial pleading the place is traversable; as to say that the plaintiff leased him one acre of land in Sale, within the same county, by force of which he entered and cut, etc. And as to any trespass in Sale, "not guilty." And so, as the place will be part of the issue, it ought to give color to the plaintiff, or to claim by him. PASTON: I agree that the plea which NORTON pleaded amounts to no more than "not guilty." But your pleading is not general, as you said,¹ for in trespass for a battery in Sale, the defendant said that one H sued a writ of Debt against the plaintiff, and that a *Capias* issued to the sheriff, and he, as bailiff to the sheriff, took him in Dale, and as to any trespass in Sale, not guilty; that shall not make the place a part of the issue, for it excuses him in every place within the same county. And the law is the same if I justify because you are my villein, for it is legal for me to take you in every county in England, *prima facie*, etc. And the law is the same for a horse taken in Dale: I say that you gave me the same horse, by force of which I took him in Sale — I shall not have any "without this," etc., for my taking is legal in every place, etc. But if you brought your action of battery in Sale, in the county of Lincoln, and he said that you took him by force of a complaint decided against him in the same vill, as bailiff of the sheriff, and as to any trespass in Sale, not guilty; that is good, because his justification cannot be good out of that same franchise of Lincoln. And as to that which is said, that if a man justifies in another place, that it is no plea to say, "which is the same trespass," it seems that it is; for in Formedon for an acre of land in Dale I shall not say that the same acre is in Down and not in Dale; judgment of the writ. MARTYN: That is after the view, for it comes from the view. PASTON: It is a good plea in a writ of Entry, where no view lies, etc. MARTYN: There he is summoned upon the land. And then NEWTON said that he himself was seised of an acre of land in Down until disseised by the plaintiff, etc., upon which he entered and made the

¹ See the report of the case, as the abridgment does not state what he said.

trespass, and as to any trespass in Dale, not guilty, etc. PASTON: If a man cannot have the plea that NEWTON pleaded in the beginning he is injured, for he may be found guilty and not have an Attaint, etc. MARTYN: A man could make a good plea upon such a matter if he were a clerk, etc.

Reported in Y. B. Anno 14 Hen. VI, p. 21, pl. 63.

Case 41.

(42) **In trespass** for a woman abducted with the goods of her husband, etc. CANNDISH: Action, etc., for the plaintiff beat his wife, where the writ was brought, and she came to S, in another county, to us, and prayed us to take her to her mother in the same vill, and we did so, etc., without this that he took her at B in the county where, etc. Ready. And the other alleged the contrary. Study well, for as to a close broken such a plea is of no avail, etc.

Paschal
15 Hen. VI.

There is no printed Year Book for 15 Hen. VI. The case has not been identified in the early abridgments.

Case 42.

(43) **In trespass**, the defendant justified because he was seised of an acre of land in B, and that he had common appendant in the place where, etc., without any prescription, etc. And it was adjudged good, for it is included in this word "appendant" that he had had it from time, etc.

Hilary
4 Hen. VI.

Reported in Y. B. Hilary, 4 Hen. VI, p. 13, pl. 10. See also Fitz: Trespass, 23.

Case 43.

(44) **In trespass** for a horse, the defendant said that one H affirmed a plea of debt in a Court Baron against the plaintiff, and recovered, etc., and we, as bailiff, by command of the Seneschal, took the same horse out of the possession of the plaintiff, and we delivered it, etc., in execution, etc. And the opinion of MARTYN was that this was no plea, for in a Court Baron, if a man recovers there, they have no power to make execution, but they can distrain him until he makes satisfaction, etc.

Paschal
4 Hen. VI.

The case has not been identified in Y. B. Paschal, 4 Hen. VI, or in the early abridgments.

Case 44.

(45) **In trespass** for a horse taken, the defendant said that one H came riding upon this same horse to Dale,

Hilary
13 Hen. IV.

etc. And the defendant affirmed a plea of debt against this same H and recovered, and this same horse was put in execution, judgment if action? And the plea was adjudged good. (And I believe that the reason was because he did not deny that the property in the horse was in the plaintiff.) (Study well. Blank Fitz.)

Case 45. Reported in Y. B. Mich. (not Hilary) 13 Hen. IV, p. 2, pl. 5. See also Fitzh: Trespass, 55. The "blank Fitz." must have been a reference to Fitzherbert, left blank to be filled in later. The hand of the reviser never reached this point. It is another straw to show that the compiler never lived to complete his task.

Hilary
13 Hen. IV. (46) **If a bailiff** attaches goods in the possession of a man, and the property in the goods is in another man, he in whom the property is shall have a writ of Trespass against the bailiff, for the bailiff shall assume at his peril in whom the property of the beasts is; as well as in a *Capias* he shall take notice of the person at his peril. And this by THIRNING in Trespass, etc.

Case 46. See case 45, *supra*. It is merely a second point in the same case.

Michaelis
13 Hen. IV. (47) **In trespass** for cattle taken, the defendant justified as sheriff by force of a replevin sued by one H, against one R. And H showed us the same cattle and said that they were his cattle, and we delivered them, etc., judgment, etc. And the opinion was that this was a good plea, etc. But they said that it is otherwise when a *Capias* comes to him to take the body of a man, etc. Query?

Case 47. The case may be a part of cases 45 and 46 *supra*. See for this point, Fitzh: Trespass, 243.

Michaelis
14 Hen. IV. (48) **See** how one had an action of Trespass against another who was tenant in common with him, because he had carried away certain stones which were boundaries between their lands; and still no partition was made except for a certain time. And the writ was adjudged good, etc. Query?

Case 48. The case has not been identified in Y. B. Anno 14 Hen. IV, or in the early abridgments.

(49) **In trespass** for cattle taken, the defendant showed how one U was seised of an acre of land, of which, etc., and held it of the defendant, etc., and for rent in arrear he took those same cattle; and the plaintiff answered him, etc. So see that he did not admit in fact that there was any possession in the plaintiff, etc. Query as to that? Paschal
2 Hen. V.

The case has not been identified in Y. B. Paschal, 2 Hen. V, or in the early abridgments. Case 49.

(50) **In trespass**, the writ was challenged because he did not put the price of the cattle in the writ. THORPE: If a man takes my cattle wrongfully, and then I have delivery of my cattle, etc., when they come to me I shall have such a writ, wherefore answer, etc. But yet, query? For the writ shall be general, or else more special than this is, etc. Hilary
32 Ed. III.
Statham
172 a.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 50.

(51) **In trespass** for a close broken, and battery; the defendant said that formerly the same plaintiff brought a bill of Trespass against him in the Marshalsea, and recovered for the same trespass, etc. And the plaintiff denied the record; and then the record came in *sub pede sigilli*, and it was challenged because it was on another day than that in the writ. And also as that writ was for a close broken, and the record only a battery, so he had failed of his record. CLAIM: As to the battery, it is proved by the record that you recovered your damages. And although it be on another day, if it be the same trespass it is good enough. KYRTON: It cannot be considered the same trespass when it is on another day. THORPE: Well enough. And if you recovered for another trespass, and not for this trespass, you should have shown that when he vouched the record, wherefore in right of the battery, take nothing by your writ; and as to the breaking of the close, because he failed of his record, sue a writ to the sheriff to inquire as to the damages, etc. *Nota bene*, etc. Trinity
38 Ed. III.

Reported in Y. B. Trinity, 38 Ed. III, p. 17, pl. 24.

Case 51.

Michaelis
38 Ed. III.

(52) **In trespass** for a horse taken. FYNCHEDEN: One H had waif, etc., and we, as bailiff, etc., because the horse was stolen, took him, judgment, etc. SHARSHULL: That is no plea, for you do not give us any color, etc. FYNCHEDEN: You cannot have it, since the horse was stolen, etc. Query?

Case 52. The case has not been identified in Y. B. Mich. 38 Ed. III, or in the early abridgments.

Trinity
7 Ric. II.

(53) **In trespass** for digging of lands, the defendant said that the plaintiff leased to him a piscary, etc., and because he could not get to the fish he made a trench to the piscary, which is the same digging, etc. And because the COURT thought that he could get to the fish by other means, it was adjudged that the plaintiff recover his damages, etc. Well debated.

Case 53. There is no printed Year Book for 7 Ric. II. The case has not been identified in the early abridgments.

Trinity
7 Ric. II.

(54) **In trespass** for a boat and certain merchandise taken. WADHAM: We took them on the high seas from the Normandes who were enemies of the king, judgment if action. MARKHAM: That amounts to no more than not guilty. CHARLETON: The plea is good, wherefore answer, etc.

Case 54. There is no printed Year Book for 7 Ric. II. The case has not been identified in the early abridgments.

Michaelis
9 Hen. VI.

(55) **In trespass** for digging in a turbary in E, the defendant said that E is in the adjoining county of Nottingham, and one H was seised of the vill of F, which is in the adjoining county of Lincoln, next to E; and the said H and all, etc., had had common of turbary for their tenants at will from time, etc. And they, as tenants at will, cut turfs in the said vill of E, without this that they are guilty of any digging in E, etc., in the manner as, etc. PASTON: That is no plea, for the jury cannot find you guilty of a trespass made in another county; and if they did you should have an Attaint, etc. But within the county it would be a good plea to make the place part of

the issue, for otherwise they would have found him guilty, and he could not have the Attaint, etc., so because of the mischief the plea would be allowed; but here there is no such mischief. Which the Court conceded, etc. But it was said that for goods carried away, if he justifies in another place within the same county, he shall not have the "without this" because they can be carried from one place to another, etc. And the law is the same in regard to a battery, etc. But if he justifies for goods carried away or a battery in another county, then I believe that he should have the "without this." Query? For an assault can be continued from one county to another, etc. Well debated.

And STRANGE said in the same plea, that in Debt, if the plaintiff counts that the defendant bought a horse of him for a certain sum at Dale in the county of Middlesex, the defendant may say that he bought the same horse upon certain conditions at Sale, in the county of Kent, and that he has performed the conditions, etc., without this that he bought him at Dale, etc. But yet, query? But in London such a plea is used with the intent to have the venue in another parish, etc.

Reported in Y. B. Hilary (not Mich.), 9 Hen. VI, p. 62, pl. 16. See Case 55. also Fitzh: Trespass, 26.

(56) **In trespass** for trees cut in B. ROLFF: There are two B's in the same county, and none without an addition; judgment of the writ. PASTON: If the defendant be found guilty in one vill or in the other, the plaintiff shall recover, and he shall have the venue where he pleases, for that is no wrong to any one, except to the plaintiff, wherefore answer, etc. *Nota bene*, for in any other action except trespass that is a good exception, etc.

Paschal
9 Hen. VI.

Reported in Y. B. Paschal, 9 Hen. VI, p. 5, pl. 12. See also Brooke, Case 56. Trespass, 14; and Fitzh: Trespass, 28.

(57) **If an infant** under age gives me his goods, and I take them by force of that gift, he shall have a writ of Trespass against me, etc. By NEWTON and PASTON, in a

Michaelis
8 Hen. VI.

writ of Entry, etc. But if he gives me his goods and delivers them to me, it is otherwise as it seems, for it is good plea to say that he delivered them to me. And the law is the same if he makes a feoffment under age; he shall not have the Assize, because he delivered seisin, etc.

Case 57. The case has not been identified in Y. B. Mich. 8 Hen. VI, or in the early abridgments.

Paschal
9 Hen. VI. (58) **In trespass** for twenty wagon loads of lumber carried away. GODEREDE: The lumber was in one H, and he gave it to us, by force of which we took it, without this that we took the lumber of the plaintiff. All the COURT: Nothing shall be entered except "not guilty." But yet if he had given color to the plaintiff, it had been a good bar, etc.

And it was said in the same plea, that executors can enter on the lands that their testator had in fee, or for life, and take their goods; and so can a stranger, by their command.

Case 58. Reported in Y. B. Paschal, 9 Hen. VI, p. 11, pl. 31. See also Fitzh: Trespass, 31.

Trinity
9 Hen. VI. (59) **In trespass** for cattle taken in Dale. NEWTON: We say that the defendant was seised of a manor called H in the same county. And the same manor is known by the said name. And the said manor with the appurtenances is without any vill and hamlet. Ready to aver it if he can make an issue. And for plea we say that in a separate close, part of the same manor, we found them doing damage, wherefore we took them and led them through the said vill of Dale to the same manor, which is the taking upon which he has conceived his action, judgment, etc. GODEREDE: That is double. MARTYN: That which he says — that the manor is out, etc., — is merely protestation. WESTON: He took them in Dale, etc., without this that he took them in the place where, etc., *damage feasant*. PASTON: That is a negative pregnant, etc. Wherefore he said "without this that they did damage in the place where, etc." And the opinion of many was that the venue should

Statham
172 b.

come from the place where the doing damage was alleged, and not from the place where the writ was brought, etc. Query? And note that justification, because it is a good one.

Reported in Y. B. Trinity, 9 Hen. VI, p. 28, pl. 31.

Case 59.

(60) **In trespass** for cattle taken, to wit: two oxen at Dale; the defendant said that the place where, etc., was the freehold of one H, and he, by his command, took them *damage feasant*; and he gave color to the plaintiff. But yet, there was no need in that case. But it is otherwise where the writ is, "*Clausum suum fregit*": by MARTYN, etc. The plea was challenged because he did not state exactly how much land there was in the place where, etc. BROUN: The entry has nothing else but "*quod solum ubi*, etc., *fuit liberum tenementum*," etc. But it is otherwise where the writ is, "*Clausum suum fregit*," etc.

Hilary
3 Hen. VI.

Reported in Y. B. Hilary, 3 Hen. VI, p. 34, pl. 29. See also Fitzh: Case 60. Trespass, 22.

(61) **In trespass** for trees cut, the defendant said that the father of the plaintiff leased the same lands to him for the term of his life, judgment, etc. And it was held a good bar, and yet he gave no color to the plaintiff, save by reason of the reversion, etc. The plaintiff said that his father died seised as of fee, and he did not answer as to the lease, etc. Query, if that be a good replication, etc? It seems by his plea in bar that it is a good bar, in trespass for a close broken, to plead the feoffment of his ancestor with warranty, etc. Query, if it be a plea to plead a recovery tailed against his ancestor, whose heir he is, in a fine, etc.?

Paschal
3 Hen. VI.

Reported in Y. B. Paschal, 3 Hen. VI, p. 43, pl. 18.

Case 61.

(62) **In trespass** for trees despoiled in A. The defendant said that there was no such vill as A without an addition. And he had the plea. Contrary elsewhere, etc.

Paschal
11 Hen. IV.

Reported in Y. B. Paschal, 11 Hen. IV, p. 61, pl. 12. See also Brooke, Case 62. Trespass, 94; and Fitzh: Trespass, 174.

(63) **In trespass**, the defendant justified as bailiff of his master for rent in arrear, and he demanded judgment of the

Trinity
11 Hen. IV.

writ *vi et armis*. And it was not allowed, for the bailiff or the servant are out of the terms of the Statute of "*non ideo puniatur dominus*," etc.

Case 63. The case has not been identified in Y. B. Trinity, 11 Hen. IV, or in the early abridgments.

Statute of Marlbridge, 52 Hen. III (1267), cap. 3, Stats. at Large, Vol. 1, p. 55 (57).

Michaelis
18 Hen. VI. (64) **In trespass** for a close broken with force, etc., and a continuation of the aforesaid trespass, etc. And the writ was adjudged good, etc.

Case 64. The case has not been identified in Y. B. Mich. 18 Hen. VI, or in the early abridgments.

Hilary
19 Hen. VI. (65) **In trespass** for a close broken and all the pears and apples carried away, etc. MARKHAM: We are parson of the church of B, and the land where, etc., is within, etc., and is part of our glebe, and was at the time, etc., and the king is patron. And the plaintiff made a suggestion to the king that the church was vacant, and he presented him, etc. And the plaintiff entered, and we ousted him, and took the apples, etc. FORTESCUE: That does not amount to any more than that it is your freehold, etc. Which the Court conceded, etc. Wherefore MARKHAM waived the plea, and said that it was his freehold, etc. And so note, etc.

Case 65. Reported in Y. B. Hilary, 19 Hen. VI, p. 51, pl. 12.

Paschal
19 Hen. VI. (66) **In trespass** for corn in sheaves carried to Dale, the defendant showed that he was parson of C, which adjoins, etc., and is in the same county. And he took them as his tithes, because they were severed in a place which is called H, within his parish, without this that he is guilty of any trespass made in D, etc. FORTESCUE: He has justified in another place within the same county, in which case he shall not have any "without this" since the action is for goods carried away. For it is not like the case where a man justifies upon his freehold, and a man cannot have tithes by reason of any freehold, wherefore he should say "not guilty," and put that matter in evidence, etc., for

if we rejoin to that plea, we shall say "guilty in D. Ready," etc. And yet if he takes my goods in any place, he does me a wrong, etc. And they adjourned. Query as to this matter? And it seems if he shall have a "without this," that he shall say, "without this that he is guilty in any other place within the same county"; just as he shall when he justifies on another day, etc. Study well.

Reported in Y. B. Paschal, 19 Hen. VI, p. 20, pl. 41. The abridgment gives a very faint idea of the case, which was fully argued. Case 66.

(67) **In trespass** for corn in sheaves carried away, and for a horse wrongfully taken in F. MARKHAM showed how they were his sheaves severed, to wit: tithes, etc., and the plaintiff took them and carried them to a place called F, of which the place where, etc., is a part. And the defendant came and found the same horse doing damage among the sheaves, and he took the horse and the sheaves; judgment if action. FORTESCUE: It appears by his plea that the property in the sheaves was out of him, for he has said that we took them and carried them away to another place, in which case the property was in us; then how can he justify the taking of the horse for doing damage in the sheaves? etc. NEWTON: He can choose whether he wishes to waive the property or not. And that is clearly proven, for it is within his election to have Replevin or a writ of Trespass; and by his plea now it appears that he did not waive the property, wherefore the plea is good. And if you take my goods in A, and take them to B, and from thence to C, I can have a writ of Trespass that you took them in A, B, or C; and yet, by your interpretation, by the first taking the property was out of me. And that was the opinion of the COURT. Wherefore FORTESCUE said, "of your own tort, without such a reason," etc. PASTON: That is no plea against that special matter. FORTESCUE: Take it for what it is worth. Paschal 19 Hen. VI.

Reported in Y. B. Paschal, 19 Hen. VI, p. 65, pl. 5.

Case 67.

(68) **In trespass** against one J for goods carried away, who said that formerly the same plaintiff brought an action Michaelis 19 Hen. VI.

for the same trespass against the defendant and one H, and had judgment to recover, which [H] is still alive and not named, etc. PORTYNGTON: That is no plea, for I can bring as many writs as I wish; and if it be a plea, it is to the action, etc., and then it is no plea without saying that we have sued execution, etc. NEWTON: Yes, truly, it is a plea as well as when in Trespass I have pleaded an arbitrement by which I shall pay you twenty pounds at the feast of Easter next ensuing, still you are not satisfied in fact nor will be until Easter; and this is a stronger case than the case put, etc., for the plaintiff can sue execution when he will, etc., but in this case he pleads a plea to estop you, etc.

And it was said in the same plea, that in debt against one upon a contract, it is no plea to say that the contract was made by him and one H, not named.

And it was said in the same plea, that in trespass against one who said that the trespass was made by him and another, to whom the plaintiff by this deed had released, etc., and the plaintiff said not his deed, then his writ shall abate, inasmuch as he had admitted it to be false, etc.

Statham
173 a.

Case 68.

Reported in Y. B. Mich. 20 Hen. VI, p. 11, pl. 14. See also Brooke, Trespass, 20; and Fitzh: Trespass, 40.

Michaelis
19 Hen. VI.

(69) **In trespass** for a battery. MARKHAM (for the defendants): Whereas you alleged the trespass to be made on the first day of August, the year sixteen of the king who now is, we say that the fourth day of March, in the year seventeen of the same king, the plaintiff made an assault on us in the same vill, and the harm that he has, etc., without this that he beat him the first day of August, etc. NEWTON: That is no plea, for the jury can find you guilty of a trespass made in the meantime, between the said first day of August and the fourth day of March, etc., of his own assault, for which battery he has cause of justification, etc. PASTON: In trespass for cattle taken or goods carried away the first day of May, I shall say that the plaintiff held an acre of land of me by ten shillings of rent, payable on the

Feast of Michaelmas; and for rent in arrear at the feast of Saint Michael next after that first day of May I took them, etc., the said first day. NEWTON: No, sir, for if you have common in my land of M until Easter, and I bring a writ of Trespass against you for my grass trodden down at the feast of Pentecost, it is no plea for you to justify for your common, without this that you are guilty of the trespass made at the feast of Pentecost; for if you are guilty on any day between Easter and Michaelmas you will be attainted, etc. For although the plaintiff has mistaken the day, you shall not take advantage by such pleading unless you show that the plaintiff is satisfied, to wit: that on such a day he released to you; or else that you put yourselves into arbitration, etc., and as to any trespass after that, not guilty. By such special matter you will be aided and not otherwise, etc. And then MARKHAM justified, as above, and as to any trespass before that day, not guilty, etc. NEWTON and PASTON: You shouldsay, "As to any trespass before or after, not guilty." MARKHAM: I will say no more. FORTESCUE: Demur upon the plea, etc.

The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the early abridgments. See, however, Y. B. Mich. 20 Hen. VI, p. 14, pl. 27. See also Brooke, Trespass, 41; and Fitzh: Trespass, 41. Case 69.

(70) **In trespass** for trees cut. YELVERTON: A long time before the alleged trespass one A was seised of the same lands, etc., and sold us the trees growing upon the land, by force of which we entered at the time of the alleged trespass and cut the trees, judgment, etc. And no exception was taken to the plea, etc. (And still it seems that he did not give any color to the plaintiff.) MARKHAM: To that we say by protestation that we do not admit the purchase, but we say that the said A enfeoffed us with the said trees annexed to the freehold, by force of which we were seised until, etc., judgment, etc. YELVERTON: To the plea pleaded in the manner, and so to judgment, etc. Hilary
20 Hen. VI.

Reported in Y. B. Hilary, 20 Hen. VI, p. 22, pl. 20. See also Fitzh: Case 70. Trespass, 44.

Paschal
12 Hen. VI.

(71) **It is a good plea** in trespass for goods carried away, brought by executors, to say that their testator delivered the same goods to him to take care of, etc., judgment of the writ; for by that plea he gives them another action.

And see in the same plea, that it is a good plea in trespass for a close broken, that one H enfeoffed him, and the plaintiff claiming by color of a lease made to him for a term of years, where nothing passed, etc., entered, etc. (And yet it seems that that is no plea, for if there was such a lease it passed without livery immediately. For in an Assize it is no plea to say that one H enfeoffed him, etc., and the plaintiff claiming by a feoffment where nothing passed by that, entered, for the law holds that there is no feoffment without livery. And on that account they are accustomed to plead that the plaintiff claimed by color of a deed of feoffment, etc., as above.)

Case 71.

There is no printed Paschal Term of 12 Hen. VI. The case has not been identified in the short printed Michaelmas and Hilary terms for that year. Fitzh: Trespass, 98, has a very short abridgment of the case, giving, of course, no page citation.

Paschal
26 Hen. VI.

(72) **In trespass** for a close broken in U. PORTYNGTON: The Prior of J made a collation to the defendant of the chapel of T, and there was one acre of land in that same vill of T, which is part of our glebe, on which we entered, etc., without this that we were guilty in U. All the COURT: That is no plea, without color; wherefore he said as above. And the plaintiff, claiming the same acre as part of his glebe of U, which is adjoining, and of which he is parson, entered, and he re-entered and made the trespass, etc. (So note that he gave color to him in another place, etc.) MARKHAM: To that we say that the said T is a hamlet of U. Ready to aver it; and to that plea pleaded in the manner, etc. PORTYNGTON: And inasmuch, etc. NEWTON: If it be true, as MARKHAM says, that T is a hamlet of U, then his justification is void and nothing is left but the "without this," which amounts to no more than "not guilty in U," for it had been a good justification without any "without this," etc. ASCOUGH (to the same effect): For in

an Assize against me, if I say that one H was seised and enfeoffed me, and you claim by color of a deed, etc., made by the said H, and you say that you and this H are one and the same person, and we pray the Assize; now that which was a good bar before is waived, and you shall have an Assize to inquire as to the seisin and disseisin: so here, etc. And they adjourned. (See here that he showed title in his bar, — that such a one made a collation to him; for if he had said that he was prebendary of T, and that the place where, etc., was part of his glebe, and had given color to the plaintiff, as above, it seems that the plea were not good without entitling himself to the prebend; no more than in an Assize it is a plea to say that I am seised, etc., and give color to the plaintiff; but it is necessary to make title to myself in my bar on another's possession, etc.) Query well, etc.

There is no printed year of 26 Hen. VI. The case has not been identified in the early abridgments. Case 72.

(73) **In trespass** for a close broken, the defendant said that a long time before, etc., one A was seised of the same close in fee, and leased to one B, to hold at will, which B enfeoffed the plaintiff in fee; and A entered and leased to us to hold at will, which estate we continued to the time of the alleged trespass. And the plaintiff replied to that plea. (But yet it seems that it is no plea, because he had admitted no possession in the plaintiff after the entry of A, etc.) Query? Paschal 21 Hen. VI.

The case has not been identified in Y. B. Paschal, 21 Hen. VI, or in the early abridgments. Case 73.

(74) **In trespass** for a battery in A. TYRWHIT: No such vill in the hamlet, nor is the place known within the county. HANKFORD: That was never a plea in Trespass, wherefore answer, etc. Query as to the reason? Michaelis 4 Hen. IV.

Reported in Y. B. Mich. 4 Hen. IV, p. 3, pl. 10. See also Fitzh: Trespass, 133. Case 74.

(75) **If a man** disseises my father and then my father dies, and I enter as heir, I shall have a writ of Trespass Michaelis 7 Hen. IV.

for the occupation in the meantime. By the opinion of all the COURT; because my entry shall have relation to the time of the death of my father, etc. And the law is the same where my father dies seised and a stranger abates, and I enter, etc., in trespass. (All the same, I believe that the contrary is the law.)

Case 75. Reported in Y. B. Mich. 7 Hen. IV, p. 4, pl. 24. See also Brooke, Trespass, 80; and Fitzh: Trespass, 56. The case does not appear to fully sustain the abridgment.

Statham
173 b.
Trinity
7 Hen. IV. (76) **The Bishop of S** brought a writ of Trespass for goods carried away. And he told how such a one died intestate, and he sequestered the goods, and the defendant took them, etc. TYRWIT: This Court has no jurisdiction of such an action, but he should sue in the Court Christian; for no law gives an action for the ordinary, etc. THIRNING: This writ is good enough, wherefore answer. But if the ordinary be disturbed in his sequestration, so that he had no possession, he shall not have an action in this Court, but in the Court Christian. From this it follows that he shall not have an action of Debt as ordinary. And it seems that he could have had a general action of Trespass in this case, etc. But peradventure he would get back the goods in this action, etc. Query?

Case 76. Reported in Y. B. Trinity, 7 Hen. IV, p. 18, pl. 22. See also Brooke, Trespass, 83.

Michaelis
12 Hen. IV. (77) **In trespass** it was alleged that the defendant had put dirt and dung on the wall of the house of the plaintiff. SKRENE: We were amerced by your Court, to wit: at the leet held on such a day, etc., for the trespass, to the amount of four pence, which we have paid you, judgment, etc. HORTON: That is no plea, for it is not legal for us to amerce you, for it is only an extortion, for which you have an action, etc. HANKFORD: If he has paid you the money, you are satisfied for the trespass, etc. And the plaintiff dared not demur, but said that the amercement was for another cause, etc.

Case 77. Reported in Y. B. Mich. 12 Hen. IV, p. 8, pl. 15. See also Brooke, Trespass, 100.

(78) **In trespass** for goods carried away in the year one of the present king, the defendant said that in the sixth year of the same king one H affirmed a plea of debt against the plaintiff in the Court of H, and recovered. And a precept came to us as bailiff, etc., to make execution, wherefore we took these same goods and delivered them to the said H for so much, etc., and that they were taken; which is the same taking for which, etc. **CANNDISH**: That is no plea, for it cannot be taken for the same trespass. And that was the opinion of all the justices, etc. (But yet, contrary to this opinion is the year 38 Ed. III,¹ in Trespass.)

Michaelis
12 Hen. VI.

Reported in Y. B. Mich. 12 Hen. VI, p. 3, pl. 10. See also Fitzh: Case 78. Trespass, 147.

(79) **In trespass** for his servant wrongfully taken, the defendant said that he was his villein, and that he took him because he would not be [his servant],² etc. And it was the opinion that that was not a plea, for it is not legal to take him out of his service unless he shows a special reason, as to say that he had need of a servant; or that the villein disclaimed being his villein, because that is in the right, etc. (But I think that such a reason is not traversable, etc.)

Michaelis
27 Hen. VI.

Reported in Y. B. Mich. 27 Hen. VI, p. 2, pl. 15. See also Brooke, Case 79. Trespass, 401.

(80) **In trespass** for a close broken, and grass trodden. *Michaelis* "Transgressionem praedicta quo ad depastum, etc., diversus 27 Hen. VI. vicinibus continiando." **DANBY**: Judgment of the count, for he said "*diversus vicinibus*," etc., which shall be understood to be different trespasses. And it was not allowed, etc.

The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the early abridgments. Case 80.

(81) **In trespass** for goods carried away, the defendant said that he found the goods in his house, and he removed

Michaelis
35 Hen. V.

¹ *Supra*, case 51.

² Words from the report of the case. The abridgment is incorrect.

them from one place to another within the same house, which is the same trespass. And the plea was held good by all the COURT. And yet it does not entitle him to the goods, nor did he say that he found them doing damage.

Case 81. The case has not been identified in Y. B. Mich. 35 Hen. VI, or in the early abridgments. The annotation in the margin of Statham is to 35 Hen. V, which is a patent error.

Michaelis
28 Hen. VI. (82) **In trespass** for a close broken and trees cut the first day of May, the year, etc. The defendant said that the last day of May in the same year, the plaintiff gave him leave to cut trees, and he did so, etc., in the same place, etc., without this that he was guilty before or afterwards, etc. FULTHORPE: etc. If the defendant is acquitted now, and the plaintiff afterwards brings a writ of Trespass for trees cut before the first day of May, the defendant can estop him, because this issue is general, to wit: for every trespass before or afterwards. Which PRISOT and PORTYNGTON denied, because the plaintiff could not have replied otherwise, except by saying, "guilty: Ready," etc.

Case 82. The case has not been identified in Y. B. Mich. 28 Hen. VI, or in the early abridgments.

Note. **See as to trespass**, in the title of Office, Hilary, 1 Hen. VI, good matter; and in the title of Bar; and in the title of Replication and Rejoinder, many matters; and also in the title of Entry with Force; and in the title of Title.

Statham, title of Office, *supra*, p. 131 a. There is no citation to Hilary, 1 Hen. VI there, however. Title of Barre, *supra*, pp. 32 b to 37 b. Title of Replication et Rejoindre, *supra*, pp. 150 b to 152 a. Title of Entre, *supra*, pp. 85 a to 85 b. Title of Title, *infra*, pp. 174 a to 175 b.

Hilary
7 Ric. II. (83) **In trespass** for a close broken and his conies taken and carried away, it is no plea to say that the plaintiff had a warren there, etc.

Case 83. There is no printed Year Book for 7 Ric. II. The case has not been identified in the early abridgments.

(84) **In trespass** for goods, it is a good plea that he has delivered them to the plaintiff, etc. But yet it does not seem a plea unless he says more, etc. Hilary
7 Hen. IV.

Reported in Y. B. Paschal (not Hilary), 7 Hen. IV, p. 15, pl. 20. Case 84.
See also Brooke, Trespass, 82.

(85) **In trespass** for his servant beaten, it is a good plea that he was his fermor and not servant, etc. In Trespass, etc. Hilary
13 Ric. II.

There is no printed Year Book for 13 Ric. II. Fitzh: Trespass, Case 85. 210, has the case, slightly changed.

(86) **Trespass** is good against a servant where he suffered the [goods] and cattle of his master, which he had in his care, to enter into the close of the plaintiff, etc. And it is good against the master, etc. Anno
22 Hen. VI.

The case has not been identified in Y. B. Anno 22 Hen. VI, or in the early abridgments. Case 86.

(87) **In trespass** because the defendant "with other malefactors." The writ was abated because he did not state their names. But it is otherwise as to "others unknown," etc. Anno
8 Hen. V.

Reported in Y. B. Hilary, 8 Hen. V, p. 5, pl. 20.

Case 87.

(88) **Trespass** against a master and his "*confrères*"; and the trespass was assigned to be in the "*confrères*" and not in the master; and for that reason the writ was abated, etc. Michaelis
1 Ed. III.

Reported in Y. B. Mich. 1 Ed. III, p. 23, pl. 14.

Case 88.

(89) **In trespass** for an apprentice taken from his master, it is no plea that he discharged him from his apprenticeship that day, unless he shows a deed of the discharge, because he cannot be an apprentice without a specialty. Michaelis
22 Hen. VI.

The case has not been identified in Y. B. Mich. 22 Hen. VI, or in the early abridgments. Case 89.

- Michaelis
22 Ed. III. (90) **In trespass** for grass trodden and trees cut and carried away, the defendant said that they were growing in his soil, and the plaintiff cut them, and [we]¹ carried them away. And it was not allowed, etc.
- Case 90. Reported in Y. B. Mich. 22 Ed. III, p. 18, pl. 77.
- Michaelis
19 Ed. II. (91) **In trespass** for sheep, ploughs, and cattle taken in the high street, and in all cases where they are taken as distress, the value of the cattle shall not be put in the writ, because no property is affirmed in the defendant, etc., but he shall show the value in his count, etc.
- Case 91. A similar case is reported in Y. B. Mich. 19 Ed. II, p. 632, but nothing is said about the value of the cattle.
- Trinity
17 Ed. III. (92) **In trespass** for goods and chattels, etc., the plaintiff declared for twenty capons taken. And the writ was challenged because it should have been so many capons,² and it was adjudged good, etc.
- Case 92. Reported in Y. B. Trinity, 17 Ed. III, p. 41, pl. 19.
- Statham
174 a.
Michaelis
35 Hen. VI. (93) **An infant** under the age of five years, who had put out the eye of another with an arrow, was taken before FORTESCUE, PRISOT and DANBY, and other justices of Oyer and Terminer at Newgate. And it was asked of the same justices if an action lay against him for this cause. And they said "no," because the law could not punish him so that others of such an age would take an example from him, for if he answered for the damage, others of a like age would not take example from him. But they would more likely take example from him if he were beaten with a whip or rod. And the law for the punishment of trespass was ordained with the intent of punishing transgressors so that others might take example by them, etc. But they said that he was, before the age of seven years, in the same case as an ox or a dog which does damage to a man, in which case

¹ The word is from the report of the case.

² Because they were alive and not "*bona et catalla*."

no punishment lies against them; but peradventure against their master an action would lie, etc. Which query?

The case is reported in Y. B. Mich. 35 Hen. VI, p. 11, pl. 18, but the argument of counsel is not found there. The report of the case has a very human sound, coming in the midst of so much technical pleading. Case 93.

(94) **In trespass**, it is no plea to say that the freehold was in the king, and he as bailiff, etc. But he should show how the freehold was in the king, to wit: show the title of the king, and that he by his command made the trespass, and pray aid of the king. And then it seems that he gives color to the plaintiff, etc. As appeared in *Trespass Corem Rege*. And he also should show a writing for the command, for the command of the king by word of mouth, without a writing, cannot be justified in that case; as was clearly held in the King's Bench, Mich. 39 Hen. VI. Query, in what cases a man can take such a command, without showing a writing for it? etc. Hilary
35 Hen. VI.

The case has not been identified in Y. B. Hilary, 35 Hen. VI, or in the early abridgments. Case 94.

(95) **In trespass** for goods carried away, it is no plea to say that the plaintiff delivered the same goods in another vill, within the same county, or in another ward in London; for it is neither a gift nor a license. And this as it was clearly held *Coram Rege*. Hilary
39 Hen. VI.

The case has not been identified in Y. B. Hilary, 35 Hen. VI, or in the early abridgments. Case 95.

⁸⁷ "What did men before they had this action?" [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 525.] In other words, how did they get damages for an injury? The answer seems to be that they did not get them; or that they used special actions for the special damage; that they recovered for a theft by the old action of theft, and for bodily harm by the old "botes." "This fertile mother of actions was only beginning her reign in the last years of Ed. III." That is time enough for us. By the time the Year Books have gotten themselves written and put together in any sort of shape, the action is fully formed. How important it is all through the Year Books we may see by the cases in Statham. Fitzherbert has 258; Brooke, 443 against Statham's 95.

We cannot say that there is no new and important knowledge of this action. Two of our most indefatigable and valuable legal writers have delved deeply into what was indeed forgotten lore when they wrote of it. Ames and Maitland have gone back for us and traced the action to its origin, and so from that to its later development. Nothing, however, seems to have been traced back of John's reign. "In John's reign we find a few actions which we may call actions of trespass." [Maitland, *Reg. of Orig. Writs, Essays in Anglo-American Law*, Vol. 2: 580.] But it is not yet known as a trespass. We meet here our old friend of the writ of replevin, the "*vee de naam — vetitum naaii*," the writs are not fully formed, not yet hardened into the shapes they will bear for centuries,—“this fertile mother of actions was only beginning her reign in the last years of Henry III.” [P. & M. *Hist. of Eng. Law*, 2d ed., Vol. 2: 525.] Bracton's Note Book, however, gives us a case which is called by Maitland “a rare early example of trespass *vi et armis* . . . a writ of this kind seems to have been only used when there was a real and serious breach of the peace. The point that interests the annotator is that with such a writ as this one can proceed to outlawry against a recalcitrant defendant. It was just this fact which turned the writ of trespass into a desirable, and in course of time most common, remedy for private wrongs.” [Note Book, 85, note.] The story of the development of the writ is told by Maitland [“The Trespasses,” P. & M. *Hist. of Eng. Law*, 2d ed., Vol. 2: 511–543] in words of such charm, containing in every picturesque phrase so much insight, so deep a drinking at the springs of the early law, that the student must be sent to the inimitable pages themselves, not only to learn of the action of trespass, but to learn how fascinating and wonderful a thing can come from the dreary routine of early legal procedure.

A trespass had its criminal side. “The action of trespass is, we may say, an attenuated appeal” [P. & M. *Hist. of Eng. Law*, 2d ed., Vol. 2: 526] and it is probably due to the fact that it is a mixed action that its growth is double — into a misdemeanor on one side and into a civil action on the other. [Holdsworth, *Hist. of Eng. Law*, Vol. 2: 308.] Through the earlier reigns, when the line between the criminal and civil liability is as yet not very strictly drawn, it was used for offences which would now be punished by a criminal action: “Seeing that the criminal appeals were falling into disuse, it was necessary to enlist the injured man in the cause of law and order by holding out the prospect of obtaining heavy damages, or of using the speedy process available in the action of trespass.” [Holdsworth: *Hist. of Eng. Law*, Vol. 2: 377.]

In our cases we see, as Holdsworth says, the hopeless confusion between crimes, torts, and contracts. Nevertheless it was not the confusion which results from a fusing of hitherto separate actions becoming mixed; it is but the natural, and if one may say so, orderly confusion of that which has as yet never been disunited; that is, it did not create any confusion in the minds — masterly minds they were, too — which were dealing with these questions at this period.

Almost all of the cases selected by Statham are *de bonis asportatis*. It is an action semi-criminal in its nature. Britton apparently thought of the writ of trespass as being of a criminal nature as he advocated the substitution of the writ of trespass for the appeal: "But for avoiding the perilous adventures of battle the suit by our writs of trespass will better avail than by appeals." [Britton, Lib. 1: 49. Nich. ed. 123.] It was not superior to the appeal in other ways, however, and the appeal held its own for a long time. Yet the writ was indeed a long step in advance of any action which relied on "*la perilouse aventure de baytayles*," and in breaking with the reliance upon superstition and the strong arm,—both a factor in the appeal,—the step taken was a most momentous one.

If this writ is the mother of actions it is also an equally fertile mother of theories. No one to-day touches upon the subject without adding at least one pebble to the heap which men of many minds have thrown upon her monument as they have passed. This being so, it is well not to add a superfluous stone. We have no cases which need to be explained by any new theory, although perhaps one might be based upon them by a truly ingenious mind. On the whole they are simple enough, and do not reveal to an unsuspecting mind the innumerable questions which a future day will find enclosed within their seeming simpleness.

TITLE

(1) **In trespass** for corn in sheaves carried away, the defendant showed how his tenant for term of life aliened to the plaintiff in fee; and he entered and the corn was sown in the meantime, etc. The plaintiff said that he did not alien. And it was held a good title without showing how he came to the land, etc. (And I believe that the reason is, because if it be as the plaintiff said the defendant had no reason to have the land while the tenant for life was living. Query, if it be a good title in an Assize, etc.?)

Hilary
40 Ed. III.

Reported in Y. B. Hilary, 40 Ed. III, p. 5, pl. 10.

Case 1.

(2) **In an assize**, the tenant said that he brought a writ of entry "*dum fuit infra ætatem*" against one J, on a lease made by his father while under age, and recovered, and the estate of the plaintiff was mesne, etc. NORTON: After the death of your ancestor you were seised and enfeoffed this same J, so the recovery is false. And the plea was

Paschal
30 Ed. III.

adjudged good, without making any title, etc. But note that the recovery was for default or surrender, for otherwise it is no plea. (No more is it for other reasons!)

Case 2. Reported in Y. B. Hilary (not Paschal), 30 Ed. III, p. 7, pl. 14. See also Fitzh: Title, 1.

Hilary
14 Hen. VI.

(3) **In a writ of dower**, the tenant said that G enfeoffed him, etc., by force of which he was seised until the husband of the demandant disseised him, and they re-entered, judgment if dower? To which she said that a long time before G had anything therein, one H was seised and enfeoffed her husband, by force, etc., and she prayed her dower. And the opinion of MARTYN was that that was no title because it did not traverse his disseisin, for that was the substance of the bar; for it should be a good bar to say that he was seised until disseised by the husband of the demandant, and then the feoffment of G is not to the purpose.

Case 3. Reported in Y. B. Anno 14 Hen. VI, p. 5, pl. 27.

Hilary
11 Ed. III.

(4) **In an assize** against a woman she said that the ancestor of the plaintiff enfeoffed her husband by a fine upon conusance of the right. And then her husband died and one H, his heir, assigned her dower, etc. SCOTTE: You disseised us, without this that she has anything of his endowment. HERLE: That is no plea against the fine of your ancestor, without making title to yourself, etc. STONORE: The title is good, for the strength of his bar is but the endowment, etc. Study well, etc.

Case 4. There is no early printed year of 11 Ed. III. The case is printed in the Rolls Series, 11-12 Ed. III, p. 4, pl. 1.

Hilary
33 Ed. III.

(5) **See in an assize**, that the tenant pleaded a recovery against the plaintiff. And he said that a long time before, etc., he was seised until, etc. And it was received for a title. But yet it cannot be good, to my thinking, in any manner, etc. But when the tenant pleads in bar a recovery against the ancestor of the plaintiff, it is a good title to say that a long time before, etc., he himself was seised until, etc. And also to say that a long time after that recovery the

Statham
174 b.

same ancestor was seised and died seised. And (if it be so) that the tenant sued execution in the lifetime of the same ancestor, for then if the same ancestor entered after execution was sued, and died seised, the entry of the tenant is tolled. But if the tenant did not sue execution in the lifetime of the ancestor, then the title is not good, because the entry of the tenant is legal by force of the recovery. In the same plea, etc. But [if he says] say that a long time after he himself was seised, or that a stranger was seised and enfeoffed him, and does not show how the possession of the tenant is legally defeated, his title is of no value, etc. But yet many say that the law is the same in the other case of the dying seised; that that title is of no value, because that recovery binds the blood, etc.

And it was said in the same plea, that if the tenant pleads a recovery against the plaintiff by a stranger whose estate he has, it is a good title to say that a long time before he was seised, until disseised by this person who is now tenant, without falsifying the recovery, etc. But to say that a long time after, etc., that is not good, without showing how, etc. And the law is the same where the tenant says that his ancestor died seised, and he is in as heir, etc. I shall say that the same ancestor enfeoffed me, by force of which I was seised until disseised by the tenant, without saying more; for if the tenant disseised me that descent does not toll my entry, etc., since the tenant is the same person who disseised me, etc. But many say that in all these cases the plaintiff cannot make title by his own possession, but on the possession of another, to wit: a long time before, etc., one H was seised and enfeoffed him; or that his father was seised and died seised, and he entered, etc., and was seised until, etc. And not to say that he himself was seised until, etc., without making title, etc.

There is no printed Year Book of 33 Ed. III. Fitzh: Title, 3, has Case 5. the case.

(6) **In an assize** where the tenant pleads a recovery ^{Ed.} against a stranger, and that the estate of the plaintiff ^{33 Ed. III.} was mesne, etc., it is a good plea to say that a long time

before, he himself was seised until disseised by the tenant, etc. Likewise if the tenant pleads a matter of fact in bar, to wit: that one such was seised and had issue, the plaintiff, a bastard, and himself, legitimate, etc., it is a good title to say that a long time before, as above, etc.

And in the same plea: [it was said] if the tenant pleads in bar by a fine of the ancestor of the plaintiff, he does not plead generally that the same ancestor died seised, because although he died seised, still the entry of the tenant upon him is legal, albeit the year be passed: as well as against a recovery. But to say that a long time after the execution was sued his father died seised is good, etc. Or that the same ancestor died seised, etc. And if the tenant pleads in bar by a feoffment or release of the ancestor of the plaintiff, with warranty, it is a good plea that a long time after, etc., the same ancestor died seised, etc., without showing how the warranty was defeated, etc. (In the same plea.)

And it was said in the same plea, that if the tenant, in an Assize, pleads a recovery against a stranger, and that the estate of the plaintiff was mesne, etc., it is a good title that his father died seised, etc., without saying before or after, because he is a stranger to the recovery, etc., in which case although his father entered pending the writ against the stranger, and died pending the writ afterwards, still he cannot enter upon me. Study well, etc.

Case 6. There is no printed year of 33 Ed. III. The case has not been identified elsewhere.

Michaelis
10 Hen. IV.

(7) **In an assize**, the tenant pleaded a fine of the ancestor of the plaintiff, in bar; who said that a long time after, etc., the same ancestor was seised and died seised. And it was not allowed without showing how he came to the land after the fine, etc. The law is the same against a recovery, etc. Query, if it was a conusance of the right, or a grant and render? For it is distinguishable, as it seems. Query, if it be a title without showing how the estate of the tenant was defeated after the fine, etc.?

Case 7. Reported in Y. B. Hilary (not Mich.), 10 Hen. IV, p. 9, pl. 11. See also Fitzh: Title, 5.

(8) **In dower**, the tenant said that "your husband never had anything except with one J, who is still alive." Query if it be a plea, without entitling himself to the lands, etc. The demandant said that "our husband alone enfeoffed you of the same lands, and we pray our dower," etc. And the tenant demurred upon the plea, etc.

Michaelis
14 Hen. IV.

Reported in Y. B. Hilary (not Mich), 14 Hen. IV, p. 13, pl. 3.

Case 8.

(9) **In a writ of entry** in the nature of an Assize, the tenant said that the father of the plaintiff enfeoffed him simply, without conditions, and he gave color to the plaintiff, who said that the feoffment was upon condition — and he showed them — and he showed how they were broken, and he entered, etc. FULTHORPE: That is no plea unless he says "without this that the feoffment was simple," etc. All the COURT: Although you have pleaded that in your bar, it is void, and shall never be entered in the Roll, wherefore the plea is good, etc.

Michaelis
9 Hen. VI.

Reported in Y. B. Mich. 9 Hen. VI, p. 55, pl. 41.

Case 9.

(10) **In a writ of entry** in the nature of an Assize, the tenant pleaded the release of the demandant with warranty. And the demandant said that a long time after, one A was seised and enfeoffed him, by force, etc., until, etc. PASTON: That is a good title in an Assize, but not in this writ, etc. Query? For it seems that it is good in neither; for he does not show that the warranty is defeated, etc. And the warranty being in force he cannot have an action.

Paschal
9 Hen. VI.

Reported in Y. B. Paschal, 9 Hen. VI, p. 4, pl. 9.

Case 10.

(11) **In a writ of Forcible Entry**, the defendant said that he was seised as in the right of his wife, until disseised by the plaintiff, upon whom he entered peaceably, without this, etc. WESTON: A long time before, etc., one A was seised, etc., and enfeoffed us, upon which one B, claiming by color of a deed of feoffment made by the said A, before etc., where nothing passed, etc., entered and enfeoffed the wife of the defendant, upon whom we entered and were seised until the defendant entered with force, etc. PASTON:

Trinity
9 Hen. VI.

You do not answer to the disseisin made on the defendant, which is his bar, and is his matter of fact, etc. **STRANGE:** In an Assize if the tenant says that one A was seised until disseised by the plaintiff, upon whom the said A entered and enfeoffed the defendant, the plaintiff can say that a stranger was seised and enfeoffed him, and not answer to the disseisin: so here, etc. (All the same I believe that in neither case is the title of value, etc.) Query, if in an Assize the tenant says that he himself was seised until disseised by one A, who enfeoffed the plaintiff, upon whom he entered, can the plaintiff say that one B was seised as above, etc., and not answer to the disseisin, etc.?

Case 11. The case has not been identified in Y. B. Trinity, 9 Hen. VI, or in the early abridgments.

Paschal
3 Hen. VI.

(12) **In an assize**, the tenant pleaded a recovery against the ancestor of the plaintiff by one such, whose estate, etc. The plaintiff said that at the time, etc., his ancestor had nothing, but one such was seised, whose estate he had, and he prayed the Assize. And upon that the Assize was adjourned, etc. Albeit the matter be good to make the recovery void, still "whose estate" is not a good conveyance by way of title, unless he shows how he had his estate. And also it is hard to make the recovery void, when his ancestor was a party. (But in this case he did not claim by his ancestor, wherefore the title seems good), etc.

Statham
175 a.

Case 12. Reported in Y. B. Paschal, 3 Hen. VI, p. 43, pl. 17. The case as printed, however, does not wholly sustain the point made in the abridgment.

Trinity
11 Hen. IV.

(13) **In an assize**, the tenant said that the lands were rendered by a fine to W P and J S and to the heirs of W P in fee, by force of which they were seised, which estate one R. Turk had, and was seised by protestation; and they said that ¹ J S released all his right which he had etc., to R. Turk. W P died, after whose death J S entered upon the possession of R. Turk, and enfeoffed the plaintiff. And one named in the writ ousted him, upon which we as son and heir to R T entered, judgment if the Assize? **HALLS:** He does not show

¹Text slightly amended by reference to the reported case.

how he had the estate of W P and J S; and if he showed it we could have an answer to it, wherefore his plea is not good. SKRENE: And inasmuch, etc. MARKHAM: If it was of my own land I should dare demur upon the plea. And then HALLS, for the plaintiff: We make protestation that we do not acknowledge the fine; and we say that one J S of Dale was seised of the same lands in fee, which he purchased of W P in whose possession (by protestation) this same W P released all the right that he had, which J S enfeoffed us, without this that R. Turk ever had the estate of W P and J S, judgment; and we pray the Assize. SKRENE: This J of Dale and J S who took the estate by a fine, are all one and the same person, wherefore against the fine you will not be received to say that he had a fee, without showing how. No more than this same J S shall, who is a party to the fine, since you claim by him, etc. And if he has such a release as you speak of, plead that then. MARTYN: No, sir, I will not say more, for I know well where you would be. And although the said J S had only a life term, still he had such an estate that he could make a feoffment; then when he made the feoffment to us, of which we speak, our possession is good against everyone in the world except against him whose right [we had], to wit: W P who was his joint feoffee, etc. And especially when we have destroyed and traversed the possession which you claim by W P and J S, etc. Wherefore SKRENE dared not demur, but he said that the said R. Turk had the estate of the said W P and J S: Ready. And the others alleged the contrary. And see that the plaintiff in that case could not do otherwise except traverse "whose estate," since the substance of the bar was true, etc.; for it was true that there was such a fine, but it was not true that the tenant had their estate; then when the plaintiff had admitted the substance of the bar, and entitled himself by this same person whose estate the tenant claimed, he should traverse all whose estate, [etc.,] for nothing remained to be traversed except the "whose estate," etc. (But yet in that case it did not appear that he was the same person, etc.)

Reported in Y. B. Trinity, 11 Hen. IV, p. 81, pl. 24.

Case 13.

Trinity
11 Hen. IV.

(14) **In a writ of entry** against a prior, he alleged that he had no entry except after the disseisin that the predecessor of the tenant made on the plaintiff, etc. THORPE: This same [person], our predecessor, was seised, etc., and leased to one W, at will, which W aliened to you in fee, and our predecessor entered, judgment, etc. TILLESLEY: W was seised in fee: Ready. HANKFORD: That is no plea unless you answer to the lease. TILLESLEY: One J, our father, was seised in fee, and died seised and we entered as son and heir, and were seised until disseised by your predecessor; and we pray seisin of the land. HORTON: He does not answer us. HANKFORD: The action is brought on his own seisin, and you do not answer to the point of his writ, but give him a color, as in an Assize; and in an Assize such a plea is good. THIRNING: I grant it well, in an Assize, for an Assize does not follow any regular system, etc. Wherefore TILLESLEY said, as above, without this that he had anything of the feoffment of W; Ready. And the other alleged the contrary. HANKFORD: Still the issue is good. THIRNING: It is true, etc. But see the reason that a man shall make title in an Assize in such a manner without answering to the bar is because the tenant can pray the Assize upon the title, in which case, if the plaintiff makes a false title, it is more to the advantage of the tenant than to that of the plaintiff, etc. But a man shall not make a title in any other action, but he shall answer to the bar, etc.

Case 14. The case has not been identified in Y. B. Trinity, 11 Hen. IV, or in the early abridgments.

Trinity
20 Hen. VI.

(15) **In a writ of entry** in the nature of an Assize, the tenant said that one H was seised, etc., and died seised, after whose death one Isabelle, as daughter and heir, entered, whose estate the tenant has. To which the plaintiff said that Isabelle, after the death of H, her father, married one F, our villein, etc., and we entered, etc., without this that you have the estate of this Isabelle. And the plea was adjudged good, etc. (It seems that it is not good, because he did not show that Isabelle was still alive, etc., for if she were dead without issue he had no cause to have

the lands, etc.) But as to this that he traversed the "whose estate," he could not do otherwise, since he claimed by him by whom the tenant claimed the estate, etc. And with this agrees the year fifteen of the same king, and the *Liber Assisarum*, in different places.

The case has not been identified in Y. B. Trinity, 20 Hen. VI, or in Case 15. the early abridgments.

(16) **In an assize**, the complaint was for twenty-six shillings, eight pence of rent. The tenant said, "out of his fee." The plaintiff said that one H was seised of the land of which, etc., in fee, and by a deed indented enfeofed one B in fee, rendering five marks of rent; and the said H, by this deed which is here, recites that he has granted us twenty shillings for the term of our life, payable annually, etc. And if the said rent of twenty-six shillings, eight pence be in arrear, that it well lay in us to distrain in all the lands, tenements and rents in this same vill, of which rent we were seised; and for so much in arrear we came upon the land put in view, from which the said five marks is issuing, and took a distress, and the defendant made a rescue on us, so we were seised until, etc. ROLFF demurred upon the title, and said, Sir, that is no title, for that rent which he demands, by his showing is a rent charge, for the five marks of rent are only a rent seck, and he does not show the first deed by which the five marks commence. And it also appears by his title that there is no tenant, or taker named in the writ, for this H is tenant of the rent, etc. PASTON: It seems that he need not show the deed, for there is a difference when a man grants a lesser estate in the rent, and when he grants all his estate; for when he granted to us only for the term of our lives, then the deed did not belong to us, but to him, etc., and also the rent was issuing out of the rent of five marks. And so note that he need not show the deed by which the five marks commenced, for it could be reserved without a deed. And to prove that the rent could issue out of rent: it seems that if I hold of you a manor, part in demesne and part in service, and I grant all the demesne to a stranger, still I hold the services which remain of you for a part, and you

Michaelis
3 Hen. VI.

Statham
175 b.

shall avow upon me for that, etc. So, in my conceit, these two marks are issuing out of the five marks. MARTYN: If the two marks were part of the five marks, peradventure you could have the Assize, but rent cannot issue out of rent, in which case this grant does not charge anything except the person of the grantor, in which case you are put to your writ of Annuity and not to this Assize, etc. BABYNGTON to PASTON: It seems that albeit he avowed upon you in your case, that he shall say in his avowry that you hold the lands of him: as if a man avows upon the mesne, he shall say that he holds the lands, and yet it is not so, etc. MARTYN: But in PASTON'S case there is not any mesnalty, so it is not the same, etc. (All the same, it is not so, for those services which are part of the manor are issuing out of the land, so as to those services he is not mesne.) And they adjourned, etc.

Case 16. The case has not been identified in Y. B. Mich. 3 Hen. VI, or in the early abridgments.

Note. See many titles in the title of Assize, etc., and in the title of Replication and Rejoinder, and in the title of Issue, etc.

Statham, title Assizes, *supra*, pp. 14 a to 16 a. Title of Replication et Rejoindre, *supra*, pp. 150 b to 152 a. Title of Issue, *supra*, pp. 115 b to 117 b.

TRIAL

Michaelis
2 Hen. IV.

(1) **In formedon** in the county of E, against two; one said that his companion was dead in York. The demandant said that he was alive in Lincoln. And the opinion was that this should be tried where the land was, for that is certain, etc.

Case 1.

Reported in Y. B. Mich. 2 Hen. IV, p. 7, pl. 27.

Hilary
2 Hen. IV.

(2) **Institution** shall be tried by the bishop, and induction by the country, etc. Query, if the issue be taken upon both?

Case 2.

Reported in Y. B. Hilary, 2 Hen. IV, p. 17, pl. 25. See also Brooke, Triall, 18.

(3) **“Full” and “not full”** shall be tried by the bishop. Paschal
40 Ed. III.
And **“vacant”** and **“not vacant”** by the country, etc. In a *Quare Impedit*, etc.

See in the same plea, when the issue shall be taken upon one, and when upon the other, etc.

Reported in Y. B. Paschal, 40 Ed. III, p. 20, pl. 14. See also Brooke, Case 3. Triall, 7.

(4) **In trespass** the defendant said that the plaintiff Michaelis
40 Ed. III. was his villein regardant to his manor of Dale, which is another county. The plaintiff said **“free,”** etc. And it was tried where the writ was brought. (And that is in favor of liberty), etc.

Reported in Y. B. Mich. 40 Ed. III, p. 36, pl. 6.

Case 4.

(5) **“Profession in the order of the brothers.”** How shall that be tried? To wit: by the ordinary, since they are outside jurisdiction of the ordinary, or by the country? Or by the guardian of the brothers, or by the provincial of the order? These questions were well debated in a writ of Cosinage, etc. But not adjudged, etc. Query, if profession be alleged where one is a stranger to the writ, how shall that be tried, etc.? Or in a dead person, etc.?

Reported in Y. B. Mich. 40 Ed. III, p. 37, pl. 11. See also Brooke, Case 5. Triall, 9; and Fitzh: Triall, 44.

(6) **In a writ of ejectment** from a wardship, against a woman, she said that her husband, who was tenant to the lord and father of the infant, assigned to her certain lands at the church door, etc., in the name of dower, etc. And that was challenged, because she did not show a deed of the assignment. To which it was said that there was no need, for the manner of such an endowment is, that the husband, after the marriage, enfeoffs a man, who assigns to the woman without a deed. And that is the reason that such an assignment lies in another county, etc. But yet the issue was taken upon the assignment, and it was tried where the assignment was alleged, and not where the land was, etc. But it was said in the same plea, that dower *ex assensu patris* can be without a deed, etc.

Reported in Y. B. Mich. 40 Ed. III, p. 42, pl. 26.

Case 6.

Statham
176 a.
Hilary
43 Ed. III.

(7) **In a quare impedit** for the king against one who said that the predecessor of him from whom the king took his title granted him the advowson, by this deed, etc. And it was said for the king that he did not grant by the deed. And the deed bore date in another county. And the opinion was that that should be tried where the writ was brought, because the deed was denied, but the issue was taken solely on the grant. And it was also conceded by all the justices that an advowson can pass by livery without a deed, etc.

Case 7. Reported in Y. B. Hilary, 43 Ed. III, p. 1, pl. 4.

Hilary
43 Ed. III.

(8) **In trespass** against one J, who said that the plaintiff was villein regardant to his manor of Dale. The plaintiff said that his father was a bastard. Ready. And the other alleged the contrary. CHR.: The plaintiff was born in the county of E, and we pray a jury there. And it was granted, etc., notwithstanding the manor was in another county.

Case 8. Reported in Y. B. Hilary, 43 Ed. III, p. 4, pl. 8. His father was an "adventif," as the term is. And as to an "adventif," "one does not know from whence he came or where he was born."

(9) **In a quare impedit** for a prebend, they were at issue as to whether it became vacant while the temporalities were in the king's hand. And by advice it was tried in the county where the *corpus* of the prebend was, and not where the cathedral church was, etc.

Case 9. The case has no citation in Statham, and has not been identified.

Hilary
46 Ed. III.

(10) **If in an assize** the tenant says that part of the tenements are in another county, that shall be tried by the Assize, etc. And in a writ of right, where a man demands as elder son, and the tenant says that he is the younger, and born in another county, that shall be tried where the land is, because the right is to be tried, etc.

And see in the same plea, a distinction was made by FYNCHEDEN, where a man claims as heir to his mother, and where as heir to his father; for on the part of the

mother that lies in the jurisdiction where the birth was, rather than the other, etc.

And in the same Assize the defendant said that he was the son of one Alice and born in another county, and it was tried in both counties. See the plea, because it was well argued.

Reported in Y. B. Hilary, 46 Ed. III, p. 6, pl. 20. Case of *John Wike and Alice, his wife*. Case 10.

(11) **If one pleads** in bar of the Assize by a recovery against the plaintiff in another Assize, and the plaintiff says "not a part," or that that Assize was brought for another tenement, that shall be tried by the jurors of the first Assize [and] process made against them, etc., because the first recovery was by their view. But if he pleads in bar by a recovery in another action, which was not by the jury of view, no process shall issue against them, etc. But if it was such an action that the party shall have the view, then process shall issue against the viewers, who shall be joined to the Assize to give evidence, as in the case of witnesses, etc. Query, when process issues against the first jurors, shall they be joined to the inquest to give evidence as witnesses shall be, or shall the issue be tried by them and others? etc.

Paschal
21 Ed. III.

The case has not been identified in Y. B. Paschal, 21 Ed. III, or in the early abridgments. Case 11.

(12) **In an attachment** upon a prohibition, against one who pleaded not guilty; and at the return of the *Venire Facias*, he produced the letters of the bishop of B, witnessing that the plaintiff was excommunicated at the suit of this same J, but for what cause was not comprised within the letters; and for that reason it was challenged and not allowed, because if the plaintiff would take advantage of that it was for the same cause, etc. And so he did. [Offer to aver it was for the same cause.] And the other said it by reason of a disagreement as to tithes, and not for that cause: Ready. And the other alleged the contrary. TYRWHIT prayed a writ to the bishop to certify it. THIRNING:

Michaelis
3 Hen. IV.

Certainly not. But it shall be tried by the inquest. Wherefore the *Nisi Prius* was awarded on the first day, etc. Which query? For the Statute says that no *Nisi Prius* shall be granted before the names of the jurors are returned, etc. HANKFORD said that if this issue were found against the defendant it would be peremptory, which THIRNING denied. (And I believe that his thought was, because the issue came from the part of the plaintiff, and not from the part of the defendant, etc.)

Case 12. Reported in Y. B. Mich. 3 Hen. IV, p. 3, pl. 13. See also Brooke, Triall, 20. Statute of 42 Ed. III (1368), cap. 11, Stats. at Large, Vol. 2, p. 179 (183).

Hilary
49 Ed. III. (13) **See**, by FYNCHEDEN, in a writ of Annuity, where a man alleged seisin of the annuity in another county, and they were at issue upon this: whether it should be tried where the seisin is alleged, because the person is charged with the annuity; and not the land, albeit it is issuing out of the land, by the grant, etc. For when it is demanded by a writ of Annuity it charges the person, etc. But it is otherwise in Avowry or in an Assize for rent, etc.

Case 13. Reported in Y. B. Hilary, 49 Ed. III, p. 5, pl. 9.

Paschal
49 Ed. III. (14) **In an assize** by one H and K his wife, the tenant said that this K took for her husband one F, a long time before the purchase of the writ, so she is the wife of F and not the wife of H; judgment of the writ. To which the plaintiff said that at the time of the marriage this same K was under the age of three years, and we married her at the age of twenty years. Besides this, we will aver that she never accepted this F. And whether that should be tried by the Assize or by the bishop was the point on which they were adjourned. But it seems that that is no plea to maintain the writ, for the marriage was good until a divorce was made between them, or else she disagreed in fact, etc. Query? And the opinion was that it should be tried by the Assize, because the plea went in abatement of the writ, and the right to land should not be tried by such a plea, etc.

And it was said in the same plea, that in a *Cui in Vita* "never married" is no plea, because she does not demand on the seisin of her husband, but on her own right, etc., in which case such a plea goes in abatement of the writ, etc.

Reported in Y. B. Paschal, 49 Ed. III, p. 17, pl. 11. See also Brooke, Case 14. Triall, 16.

(15) "**Profession**" alleged in one who is a stranger to the writ shall be tried by the country. And the reason is because if it were certified by the bishop it would conclude him. (Which is not reasonable, etc., since he is a stranger, etc.) And the reason is the same in Bastardy, etc.

Hilary
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Triall, 90, has the case.

(16) **If one recovers** against me by a *Scire Facias* out of a recognizance, and he recovers by default, and I bring a writ of Deceit against the sheriff, who says that I was garnished by one such and one such, upon which we were at issue, it shall be tried by the garnishors, to wit: by their examination, but it shall [not] be tried by the inquest, because I do not sue to disprove the recovery, for I shall not be restored to anything, but recover all in damages against the sheriff. But it is otherwise in a writ of Deceit, where a man shall be restored to the land. And this in Trespass, etc.

Hilary
1 Hen. VI.

There is no printed Hilary Term of 1 Hen. VI. The case has not been identified elsewhere.

(17) "**Part**" and "**not part**," "comprised" and "not comprised," shall be tried by the inquest, and not by the record. And if he says "not comprised, nor put in view," it shall be tried by the first jurors. And that in an Assize, etc.

Paschal
33 Ed. III.

There is no printed year of 33 Ed. III. Fitzh: Triall, 91, has the case.

(18) **In debt** upon arrears of an account, the defendants said that they placed themselves on the arbitration, etc., who adjudged that he should pay to the plaintiff ten pounds, which he had paid to him at Sandwich, etc. MOILE: They

Statham
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Michaelis
13 Hen. VI.

awarded that he should pay us eight pounds only, which he has not paid, without this that they awarded in the manner, etc. PORTYNGTON: That is no plea, for you have admitted that he paid you ten pounds, which is more than you demand, etc. MOILE: It shall not be taken to be for the same cause. PORTYNGTON: That it shall be, unless you show that he paid the ten pounds for another cause, etc. To which PRISOT agreed. Wherefore MOILE said that he had not paid the ten pounds: Ready. And the other alleged the contrary. POLE: Sandwich is in the Cinque Ports, wherefore we pray a *Venire Facias* from the body of the county. PRISOT: You say well, for you cannot write to the Wardens of the Cinque Ports in this case. And I have seen where a man alleged payment in the Isle of Ely that the venue came from the next adjoining neighborhood, wherefore it is good to write to the sheriff of Kent. Which PORTYNGTON conceded, etc.

Case 18. There is no printed year of 13 Hen. VI. The case has not been identified in the early abridgments.

Michaelis
21 Hen. VI.

(19) **In a writ** of False Imprisonment, the defendant said that a commission issued to certain commissioners to inquire, etc., who made a precept to him to arrest the plaintiff, wherefore he was indicted before them. And the plaintiff said that he imprisoned him of his own tort, without this that there was such a precept. And the justices were in doubt whether he should be tried by the county or by certification of the commissioners, etc. See that he did not show his precept in his plea, etc. And yet he cannot have a precept unless it lies in writing, consequently he should show it, etc.

Case 19. The case has not been identified in Y. B. Mich. 21 Hen. VI, or in the early abridgments.

Hilary
13 Hen. IV.

(20) **Where a man** would reverse an outlawry; as to say that at the time, etc., he was out of the kingdom, the attorney of the king shall say that he was in such a place within the kingdom. And he shall not say, "without this that he was out," etc. Although he said, "without this," as above, still it shall be tried in the place where the attorney of the king

has alleged, etc. And the law is the same where the defendant in a plea of lands says that the demandant was born out of the allegiance, to wit: at Bruges, etc. By the opinion of THIRNING and HANKFORD, in a writ of Error.

The case has not been identified in Y. B. Hilary, 18 Hen. IV. Fitzh: Case 20. Triall, 92, has the case.

(21) **In formedon** against the husband and his wife, the tenant said, "not his wife." BELKNAP: They were married at Westminster, judgment if, against, etc.? But he dared not demur, but said, "And so his wife." And it was tried where the writ was brought, etc. Which note, etc.

The case has not been identified in Y. B. Hilary, 41 Ed. III. Fitzh: Case 21. Triall, 51, has the case.

(22) **In a quare impedit** they were at issue upon "ability" and "nonability." And because it was alleged on the death of the parson, it was tried by the country, and not by the certification of the bishop.

Reported in Y. B. Hilary, 39 Ed. III, p. 1, pl. 5. See also Brooke, Case 22. Triall, 52; and Fitzh: Triall, 39.

(23) **In trespass** for trees cut, against two. And one came and pleaded a plea in bar, upon which they were at issue. And a *Venire Facias* was awarded. And then, in another term, and before the *Venire Facias*, the other came and pleaded the same plea; and he came as servant to the other, upon which the plaintiff and he were at issue. SKRENE, for the defendant, prayed a *Venire Facias*. HANKFORD: One *Venire Facias* was awarded between the plaintiff and the other defendant, which can make an end of all, wherefore there is no need, etc. And if, in trespass against two, one alleges villeinage in the plaintiff, upon which a *Venire Facias* is awarded, and then the other comes and says, as above, that he came in aid, etc., upon which another *Venire Facias* issues, shall both inquests be taken? THIRNING: The first inquest shall be first taken, for that shall be an end of all. But if that be found against

the defendant, then the other inquest shall be taken, for he is a stranger to the first inquest, and could not have had an attaint of the principal. Wherefore it was adjudged that he should have another *Venire Facias*, etc. SKRENE: We pray process against the witnesses who are named in the deed which is denied by the plaintiff. HANKFORD: Process was awarded against them on the prayer of your master, upon the other *Venire Facias*, and you are not a party to the deed. THIRNING: We will consider, etc. Well debated.

Case 23. The case has not been identified in Y. B. Mich. 9 Hen. IV, or in the early abridgments.

Hilary
11 Hen. IV.

(24) **In debt**, the plaintiff counted that he leased a benefice to the defendant called "the part in the cathedral church of Durham"¹ rendering a certain rent; and that the lease was made in the county of Middlesex at T, etc., where the action was brought. The defendant pleaded a levy by distress. SKRENE: He pleads a plea which this Court cannot try, and he does not give us an action in another Court. HANKFORD: You can have an action in the franchise. But it seems the writ is not good, because it says that a part was leased, and he does not show exactly how much the part was. THIRNING: A man shall have a "*Præcipe quod reddat quandam porcionem terræ.*" Which was conceded, etc. Wherefore the writ was adjudged good. And then NEWTON, for the plaintiff: The part is all in tithes and not any lands of which the distress shall be made. HANKFORD: When the tithes are severed from the nine parts the plaintiff can take them in the way of distress, etc. Query? And the defendant would not demur, but said that part of the portion was land. And the other alleged the contrary. SKRENE: How shall that be tried? HANKFORD: If those of Durham have a foreign issue, they will send to us, and consequently we will send to them, and it has been done so many times, etc. But yet, query? For I believe that it is only in a plea of lands by the equity of the Statute of Gloucester; for in

¹ Where the king's writ did not run.

London if a man pleads a foreign plea in a personal action the Court is ousted of its jurisdiction: so here. But yet there is a Statute of Ed. III which says if a man pleads a release bearing date, where the writ of the king does not run, that shall be tried where the action is brought. (But I believe that cause cannot be tried by the equity of that Statute, etc.) See such matter in the year 49 Ed. III, in Formedon, brought in Chester, and in the year 50 of the same king. Well debated.

Reported in Y. B. Hilary, 11 Hen. IV, p. 40, pl. 4. See also Brooke, Case 24. Triall, 27.

Statute of Gloucester, 6 Ed. I (1278), Stats. at Large, Vol. 1, p. 117. Statute of 9 Ed. III (1335), cap. 4, Stats. at Large, Vol. 1, p. 449 (455).

(25) **In an assize**, the tenant pleaded in bar and the plaintiff showed how the father of the tenant was born in another county, before the marriage. And the tenant said that he was legitimate, and upon that he put himself upon the Assize, and the plaintiff said the same. And it was tried by the Assize, because the plaintiff had waived the advantage, etc. And upon that he put himself upon the country, etc. Query, if he had alleged a general bastardy, and the entry had been as above, how should that be tried? Michaelis
14 Hen. IV.

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177 a.

Reported in Y. B. Mich. 14 Hen. IV, p. 9, pl. 7. Case 25.

(26) “**Abbot**” and “not abbot,” “professed” and “not professed,” “wife” and “not wife,” “void” and “not void,” shall be tried by the country [and cannot be tried by lay people]. By BABYNGTON: in Debt. (But yet “*quo ad professionem distingo.*”) Michaelis
9 Hen. VI.

Reported in Y. B. Mich. 9 Hen. VI, p. 32, pl. 3. A case of Debt. Case 26.
The remark by Babyngton is near the top of p. 33.

(27) **In a writ of annuity** against a parson, the plaintiff prescribed in the annuity and bound seisin in another county, and the prescription was traversed. And it was tried where the seisin was alleged, etc. Hilary
11 Hen. IV.

Reported in Y. B. Hilary, 11 Hen. IV, p. 49, pl. 25. Case 27.

Michaelis
18 Hen. VI.

(28) **In debt**, the plaintiff counted on a lease made to the defendant in D, in the county of Middlesex, for lands in the county of Lancaster, for a term of years, etc. The defendant said that before the writ was purchased, to wit: on such a day, the plaintiff had entered upon him, etc. And the plaintiff said that he did not enter. FORTESCUE: prayed that the record be sent to the County Palatine of Lancaster, to be tried there. NEWTON: It seems that it shall be tried in the county adjoining, as it would be if the lands were in Wales. FORTESCUE: There is a great difference between Wales, which was at one time a kingdom by itself, and between Lancaster, Chester and Durham, which are derived out of the Crown, and were at one time under the common law; and because the king can send to those places, but not to Wales, and for that was the Statute made, to wit: which provides that a deed or other thing which should be tried in Wales shall be tried in the counties next adjoining, etc. NEWTON: If in the Court of a lord in Wales a deed be pleaded bearing date in another real seignory, they will send it here before us to be tried, and that is excellent proof that this Court has jurisdiction in Wales. ASCOUGH: If there be error in Wales it will not be reversed here, but error in a County Palatine will be. NEWTON: You say truly, and the reason is because in Wales judgment given in one Court will be reversed in another Court there, or by Parliament there, and they cannot do that in a County Palatine, etc. But if in Wales they have an issue, triable by the bishop, they will send it to us, etc. And they adjourned, etc.

Case 28.

Reported in Y. B. Mich. 19 (not 18), Hen. VI, p. 12, pl. 31. See also Brooke, Triall, 39; and Fitzh: Triall, 4.

Statute of 9 Ed. III (1335), cap. 4, Stats. at Large, Vol. 1, p. 449 (455). Wales is brought within the Statute by inference only. See case 30, *infra*.

Michaelis
18 Hen. VI.

(29) **In trespass**, the defendant said that the plaintiff was his villein regardant, etc. FORTESCUE (for the plaintiff): We are a bastard, etc. MARKHAM: Legitimate, and not a bastard. Ready. And we pray a writ to the bishop

to certify it. FORTESCUE: It shall be tried by the country, for there is a difference between a plea real, where the right of the land shall be tried, and a plea personal; for this trial, in this writ of Trespass, if it be by the bishop, will not conclude him in a writ of right, which is not reasonable. And, sir, the manner of trial is different, to wit: according to the nature of the action: for if in a writ *de homine replegiando* the defendant alleges villenage in the plaintiff, it shall be tried where the manor is, and yet in a writ of Trespass he shall be tried where the writ is brought, etc. NEWTON: It is by the Statute that it shall be tried where the writ is brought, in Trespass, etc. FORTESCUE: I do not remember any such Statute, etc. And if a man be found "free" in a writ *de homine replegiando*, the heir of the lord shall have attain; and if it be in trespass the heir of the executors shall have attain to reverse the damages, etc., and the heir shall have no attain, etc. Query?

Reported in Y. B. Mich. 19 (not 18), Hen. VI, p. 17, pl. 38. See also Fitzh: Triall, 6. The case says, "It was denied that there was any such Statute." Case 29.

(30) **In debt** upon an obligation which was endorsed upon various conditions. The defendant said that he had performed the conditions in the Bishopric of Durham. Upon which they were at issue. And the question was how that should be tried? NEWTON: It seems to us that we shall send to them to make an inquest come here. FORTESCUE: That cannot be, for their franchise is such that they do not go out. But you should write to them to try it there, and then they will send it back to you, as has been done in a voucher. NEWTON: By our writing they will be judges whether we have power. ASCOUGH: When we write to the sheriff to inquire as to waste, he is the judge. NEWTON: That is by the Statute. And if they give a false oath in the franchise of Durham the party cannot be attainted. PORTYNGTON: Yes, sir, he shall have attain in the franchise. NEWTON: Then they will defeat a judgment which is before us. And I do not see that we should write to a

Hilary
19 Hen. VI.

Court lower than ourselves to cause a thing to be tried; but a lower Court may write to us. As in London, if they are at issue upon bastardy, they will write to us to try it, and then remand it, but not *è converso*, for it is not like the case of the voucher, which is only to make process, etc. But it seems that by the equity of the Statute which speaks of a release in fact, etc., that it shall be tried where the writ is brought, or else by the common law, in the county next adjoining, etc. FORTESCUE: It has been seen that the justices of that place have written to Ireland to try such things there. NEWTON: But not in such a case, etc.

Case 30. Reported in Y. B. Hilary, 19 Hen. VI, p. 52, pl. 13. See also Brooke, Triall, 40; and Fitzh: Triall, 7.

Statute of 9 Ed. III, cap. 6, is given as a citation in the margin of the Year Book report. It is possibly cap. 4.

Michaelis
12 Hen. VI.

(31) **One brought** a writ of Debt against the Mayor of the Staple, and he counted that one A made an obligation to him in a statute merchant for twenty pounds, before the same mayor. And because the day had come he came to the same mayor and prayed that the body of the debtor be taken, etc., and he took him [*ad insinuationem dicti querentis eum capi fecit*].¹ Ready. And the other alleged the contrary. And by the advice of all the justices it was tried by the country, and not by the record, for the mayor could not have become his own judge, etc.

Case 31. Reported in Y. B. Mich. 12 Hen. VI, p. 2, pl. 9. The abridgment is incorrect. The case was brought before etc., Mayor of the Staple.

Michaelis
12 Hen. VI.

(32) **In debt** against an abbot, he counted one an obligation made by one H, his predecessor, for certain debts which came to the use of the house. NEWTON: At the time of the making of the obligation he was not abbot. Ready. And the other alleged the contrary. And the writ was brought in London, and the abbot was in the county of York; and the issue was tried in London, etc.

Case 32. Reported in Y. B. Mich. 12 Hen. VI, p. 5, pl. 13.

¹ Words from the report of the case in the Y. B.

(33) **One brought** a writ of Trespass, "*quare in ipsum*, etc., *insultum fecit apud Westmonasterium*." And he declared on an arrest made on him within the palace. The defendant pleaded not guilty. ROLFF: We pray a *Venire Facias* to the warden of the palace, for he is the immediate officer to the sheriff, and the sheriff has nothing to do in the palace. MARTYN: The *Venire Facias* ought to be sued originally. COTTESMORE: Where an action is brought by the sheriff himself, still the *Venire Facias* shall issue to the coroner, wherefore it does not follow, etc. BABYNGTON: The plaintiff has abated his writ, because he declares on a trespass made within the palace: as if a man brought a writ in a vill, of which part is in the Cinque Ports, and declares a trespass made in the Cinque Ports, all is abated: so here. And that was the opinion, etc.

Paschal
2 Hen. VI.

Statham
177 b.

Reported in Y. B. Paschal, 2 Hen. VI, p. 7, pl. 3.

Case 33.

(34) **In a writ of cosinage**, as cousin and heir to one R, etc. NORTON: This same R had issue U, born in H, in the county of K, who is living, etc. Query if that be a plea, without entitling himself by him, etc.? And it seems that the plea is good; and that by the Statute of Westminster the Second. SKRENE: R had issue no such son as U. Ready. And the other alleged the contrary. PORTYNGTON: We pray a jury where the birth is alleged. THIRNING: If he can allege that U was the son of a woman, and traverse his birth, the trial shall be where the birth was alleged. But since it is alleged that he is the son of a man, the place of his birth is not to the purpose; wherefore sue a writ to the sheriff where the land is. Which note.

Paschal
11 Hen. IV.

Reported in Y. B. Paschal, 11 Hen. IV, p. 56, pl. 4.

Case 34.

Statute of Westminster the Second, 13 Ed. I (1285), Stats. at Large, Vol. 1, p. 163.

(35) **One H brought** Formedon in the Descender on a gift made to one R, in tail. And the writ was brought in the county of Middlesex [and it alleged] that after the death of R, U, son of R, and this same H, etc. MARKHAM: One J married one A, in this same county where the writ

Michaelis
18 Hen. VI.

is brought, and there had issue this same U; so the said U was the son of J, and not the son of R. Ready, etc. FORTESCUE: R married one Alice, in the county of Northumberland, and had issue the said U, so he was the son of R. And the other alleged the contrary. FORTESCUE: We pray a *Venire Facias* to the sheriff of Northumberland. MARKHAM: That cannot be, for that is not the issue now, but whether U is the son of R, or the son of J; and we have alleged a special matter and have given him a father, for it would [not] have been a plea for us to have said that U was not the son of R, without giving him a father, because we have admitted his existence, etc.; wherefore it shall be tried where the writ is brought, etc. ASCOUGH: But you could have said that he never had any such son, without saying more. And albeit you have shown that he had a father, still your showing is no plea without answering to his writ as you have done. Then you have traversed, to wit: that he is the son of J, and not the son of R; then the affirmative comes from the part of the demandant, which you have traversed, which affirmative he has maintained by a special birth in another county wherefore it is reasonable that it be tried there, to wit: in the county of Northumberland, etc. NEWTON (to the same effect): And sir, the reason that the trial has many times been where the land is, in such a case [is] that a man shall have better knowledge of him who was seised of the land where the issue was taken, if such a one be his son, etc.: as in case I bring Formedon in the Reverter against you, because the tail is ended, and you say that you are the son and heir of the donee, and we are at issue that the donee died without issue in another county. Now the trial shall be where the land is, by reason of the possession of his father; but in the case here it might be that the donee aliened immediately after the gift, so that by reason of any possession of the lands they could not have jurisdiction. And in any case the venue shall come from both counties. As if I brought a writ of Aiel and made myself heir, to wit: son of F, son of G, the grandfather, etc., and you said that the same grandfather had issue your father,

the elder, and our father, the younger. To which I say that he had my father, the elder, in such a county without this that he had your father, the elder [younger]? etc. Now it shall be tried by both the counties, for there are two births, and both in the affirmative; and two births of two persons, so that those of one county can have knowledge of one, and those of the other county of the other. But in the case here, although there are two births alleged, still there is only one and the same person, who cannot be born twice, wherefore it is reasonable that the venue shall come from the county of Northumberland, which is in maintainance of the first affirmative. MARKHAM: Since the law compels me to give him a father, it is reasonable that it shall be tried there. As if I pleaded a release from you, and you denied the deed, now I shall say that it is your deed, and I shall not be forced to say where it was made, and then it will be tried there, etc. NEWTON: It is not so, for in that case you shall not be driven to show in what place the deed was made, for it shall be tried where the writ was brought, if you do not show, etc. Which PASTON conceded, etc.

From this it follows that although he shows that the deed was made in another county, still the venue shall come from the county where the writ was brought, for he comes too late to take advantage of that, unless he shows it in his plea, etc. So it was adjudged in the Common Bench, Trinity, 29 Hen. VI. And they adjourned, etc.

The case has not been identified in Y. B. Mich. 18 Hen. VI, although there is a citation to such a case in the index of the Year Book in the year 18; and also to the case in 29 Hen. VI, but no such case has been found. There is a citation to this case of Formedon in the index to the printed year, but Fitzherbert, Triall, 5, has a citation to a case in Y. B. Mich. 19 Hen. VI, p. 15 [pl. 36], which appears to be the case abridged by Statham; it is either the same case or one precisely like it. Case 35.

(36) **In a writ** on an annuity granted to him by the defendant until he should be promoted to a benefice; and that he never was promoted, etc. The defendant said that he tendered him a benefice and he refused it. And the other said that the benefice that he tendered was a vicarage in Hilary
19 Hen. VI.

which he should have the cure of souls, and that he at the time of the tender was under the age of twenty-four years, to wit: twenty-two years, at which age no one is able to take upon himself the cure [of souls], etc. And that he was born at F, in the County of B. PORTYNGTON: To that we say that he was born at G, in the county of H; without this, that we will aver that at the time, etc., he was of the age of twenty-four years. YELVERTON: It is necessary for you to say, "and not under age," And all the Court was against that. But they said that the "without this" should come from his part. Wherefore YELVERTON said that he was under age, as above, without this that he was of full age, and he prayed a *Venire Facias* to the sheriff of B. And PORTYNGTON prayed a *Venire Facias* to the sheriff of H. NEWTON: We will take counsel.

Case 36. Reported in Y. B. Hilary, 19 Hen. VI, p. 54, pl. 16.

Michaelis
27 Hen. VI.

(37) **In debt** upon an obligation in London, the defendant said that the obligation was endorsed upon the condition that if they would be at the arbitration of one H, etc., that then, etc., which H awarded at B, in the county of Essex, the first day of May, the year twenty of the king who now is, that the plaintiff should pay to us twenty pounds, and that we should release to him all the right which we had in the manor of D, which award we have been at all times ready, etc. PRISOT: To that we say that it is indeed true as you say. But we say that the same day of which you speak, and before that award, the said H awarded here in London in the parish and ward, etc., that you should release to us all the right that you had in the same manor of D; and we have very often requested you to do so, and you would not, judgment, etc. POLE: He made the award on the same day that I have said, at the hour of one in the afternoon, without this that he made any award before that hour, etc. PRISOT: That is no plea unless he says, "without this that he made the award at London before the said hour." PORTYNGTON: He has [said] enough, wherefore be advised. PRISOT: He made it in London, as we have said: Ready, etc. Query, then, from what county the venue would come? For it cannot come from both neighborhoods, because

Statham
178 a.

those of London cannot join with foreigners, etc. And see the subtilty of the defendant in this plea, for that day on which he pleaded the award was made was the same day that the obligation bore date, in which case, although no [?] such award was made afterward, the plaintiff could not have the advantage of that award made afterward, unless he said, "without this that he made any award before," etc., in which case it would be tried in the other county, etc. Study well, etc.

The case has not been identified in Y. B. Mich. 27 Hen. VI, or in the Case 37 early abridgments.

See as to trial, in the title of Issue, many matters. Note
Statham, title of Issue, pp. 115 b to 117 b.

(38) **In dower**, the tenant said that the husband of the demandant, of whose possession, etc., was alive in another county: Ready to avow it by provers. And it was tried by provers, etc. And the year thirty-six of the same king a woman brought an Assize, and the tenant said that her husband was alive, etc., and it was tried by provers. But if he had said that he was alive in the same county, I believe that he should have been tried by the Assize, etc.

The case has not been identified in Y. B. Hilary, 18 Ed. III, or in Case 38. the early abridgments.

(39) **The issue** was taken that the administration was not committed to them in the manner, etc. And it was tried by the country, and not by the ordinary, etc. Contrary, Anno 10 Hen. IV.

The case has not been identified in Y. B. Mich. 25 Ed. III. Fitzh: Case 39. Triall, 93, has the case.

(40) **In debt** against executors, who said that there was another executor, not named, who administered in Dale, in the bishopric of Durham. And the opinion of all the justices in the Exchequer Chamber was that they should send into the franchise to try it, and send it back, etc., as upon an issue taken in a plea real, etc. Also they were all

agreed that when an issue is taken whether such a one was coroner, etc., that shall be well tried by the country, and not by a certification to the sheriff, or to the executors of the sheriff who chose him, etc. See the writ of *Coronatore eligendo*, etc. And so see that an outlawry or attainder of felony before the coroner, can be annulled by such an averment, etc.

- Case 40. Reported in Y. B. Hilary, 32 Hen. VI, p. 25, pl. 13. See also Brooke, Triall, 146; and Fitzh: Triall, 94.
- Trinity
2 Hen. IV. (41) **“Prior” and “not prior”** shall be tried by the country; as was said in Trespass.
- Case 41. Reported in Y. B. Trinity, 2 Hen. IV, p. 24, pl. 14. See also Brooke, Triall, 19; and Fitzh: Triall, 35. The point abridged by Statham is a remark at the end of the case.
- Trinity
2 Hen. IV. (42) **“Perpetual”** and “not perpetual” shall be tried by the bishop; and that in Trespass.
- Case 42. The case is that abridged in case 41, *supra*.
- Anno.
44 Ed. III. (43) **“Profession”** alleged in one who was a stranger to the writ was tried by the Assize. And profession was also alleged in another county. Query as to that?
- Case 43. The case has not been identified in Y. B. Anno 44 Ed. III, or in the early abridgments.
- Trinity
1 Ed. III. (44) **“Profession” was tried** by the country, where the bishop had certified that this order was exempt from his jurisdiction. And that in a note, etc.
- Case 44. The case has not been identified in Y. B. Trinity, 1 Ed. III, or in the early abridgments.
- Paschal
34 Hen. VI. (45) **Neither counts** nor barons shall be tried by their peers in an appeal; for the Statute of Magna Charta meant only at the suit of the king himself, etc. As was adjudged in the case of the *Count of Devonshire*.
- Case 45. The case has not been identified in Y. B. Paschal, 34 Hen. VI, or in the early abridgments.
Magna Charta, 9 Hen. III (1225), cap. 14, Stats. at Large, Vol. 1, p. 1 (7).

TESTAMENT ⁸⁸

(1) A **feme covert** can make a will by leave of her husband; as appeared in *Trespas*, where the defendant showed that this plaintiff, and one Alice, his wife, made partition of certain goods, and that he gave leave to his wife to make a will, wherefore she made her executors and he showed that the testament was approved by the ordinary, and he did not show anything to prove the consent nor the partition.

Statham
178 b.
Michaelis
45 Ed. III.

The case has not been identified in *Y. B. Mich. 45 Ed. III*, or in the early abridgments. Case 1.

(2) **Executors** brought a writ of Debt, and they showed a nuncupative will under the seal of the ordinary; and it was adjudged good enough. Which note, for many hold that such a will is not good unless in a city or borough, where the custom is such, etc. And they were executors of a man of London, but they did not plead anything as to any custom, etc.

Michaelis
4 Hen. VI.

Reported in *Y. B. Mich. 4 Hen. VI*, p. 1, pl. 3. See also *Brooke*, Testament, 8. Case 2.

(3) **Executors** brought a writ of Debt, and they produced a will which was not proved by the ordinary, and because of that it was adjudged that they should take nothing by their writ, etc. Query as to that, to wit: whether that matter comes from the part of the defendant? And if it be a plea for the defendant to say that it was not approved by the ordinary, if the plaintiff declares it was so? etc.

Trinity
7 Hen. IV.

Reported in *Y. B. Trinity*, 7 Hen. IV, p. 18, pl. 19.

Case 3.

(4) **Executors** brought an action of Debt, and they set forth a will bearing date at Caen, in Normandy, and that it was proved in England by the Archbishop of Canterbury, etc. **POLE**: If an obligation bears date in Normandy, the party shall not have an action upon it, although the defendant will confess that it was [his]. No more here. **PORTYNGTON**: The reason there is because the Statute says that

actions shall be brought where the contract is made; but before that Statute I believe that a man could, etc. POLE: That is not the reason, for the real reason is, if the deed be denied it cannot be tried, etc. ASCOUGH: Your plea goes to the action, wherefore take counsel. And then POLE pleaded in bar, and dared not demur, etc.

Simile, the same year, in a *Scire Facias*, etc.

And see that it was said in the same plea, that a man shall have the averment to say that he died intestate against a will proved by the ordinary, etc.

Case 4. Statham gives no citation for this case. Fitzherbert, Testament, 6, gives it as in Trinity, 18 Ed. II, but it has not been identified there. Statute of 6 Ric. II (1382), c. 2, Stats. at Large, Vol. 2, p. 252 (253).

Note. See as to wills, in the title of Executors, etc. Statham, title of Executours, *supra*, pp. 87 a to 88 b.

Michaelis
1 Hen. V. (5) **When** King Henry the Fourth died, it was the opinion of all the justices and many doctors of the Canon and Civil Law, assembled in the Exchequer Chamber, that he could make a will and legacies of the goods he had acquired. But of goods of the kingdom, to wit: ancient crowns and ancient jewels, he could not, etc.

Case 5. The case has not been identified in Y. B. Mich. 1 Hen. V, or in the early abridgments.

⁸⁸ The disabilities under which a married woman rested during the period of the Year Books, as well as many years thereafter, are clearly shown in the reasons given why she could not make a will without license from her husband. One of these reasons, and the first given by Swinburne [Swinburne: Wills, Pt. 2: 79] as a reason why she could devise manors, etc., to her husband is: "If this gap were left open few children should succeed in the mother's inheritance. But by how much the husband were the more cruel, and the wife more timorous; he crafty, she credulous; by so much the more were the lawful heir in Danger to be disinherited and the cruel and deceitful husband in hope to be unworthily enriched and advanced." The other reason which was given up to the time the married women's property acts freed a married woman from this disability, and confirmed her in an independent status as to her property, was "because by the laws and customs of this Realm, so soon as a man and a woman are married, all the goods

and chattels personal that the wife had at the time of the Celebration of the marriage, or after, and also the chattels real, if he over-live his wife, belong to the husband, by reason of the said marriage." [*Ib.*, 80.] "Yet if her husband gave license or consent she could devise not only her own goods but his." But this rather startlingly liberal grant of power seems to have been rather to amuse the wife with than to have been of any great benefit to her, because if the husband does not inadvertently allow the goods devised in the will to the executors, or allow the will to be proved, he can revoke that will, not only at the making of the will, but after the death of his wife. [*Ib.*, 80.] Such license as this seems a grim commentary upon the chivalry of husbands, which, taken in connection with the first reason given, sheds a somewhat dubious light upon the domestic relations of the long period covered by these provisions of the common law and the Statute of Henry VIII. It seems only necessary, to make the picture complete, to add the list of persons not considered competent to make a will. These, as given by Swinburne, are: "Children; mad folks, and lunatic persons; idiots; childish old men; him that is drunk; slaves and villains; captives and prisoners; a woman covert; those who be deaf and dumb; a blind man; traitors; felons; hereticks; apostates; usurers; sodomites; libellous; him that killeth himself; him that is outlawed; an excommunicate person; prodigal persons; him that is at the very point of death; ecclesiastical persons." The list reads somewhat like a list of the condemned to Dante's Inferno. The married woman finds herself in a strange society for the angel of the household — the sainted mother — the noble wife, who figure so largely in the effusions of those to whom the position of women at this period of our history is the ideal position. Were it not for the ecclesiastical person and the child she would have been in wholly bad society; but most of these persons could make wills under certain conditions. The child grows out of his deficiency of age; the mad folk may become sane; the drunkard may not stay drunk; the slave may be freed, but the married woman, so long as her husband lives, belongs among the incompetent, the evil and the outlawed. It is true she regains a status as one of the respectable and will-making class by becoming a widow, but by that time she has lost her property; it has become her husband's and save for her dower it may all go to her husband's relatives. But our first case is consoling. The woman apparently got leave of her husband, and some one got the will approved by the ordinary, and the thing was done. Perhaps the ordinary was a relative. Our second case is that of a nuncupative will. Swinburne tells us [Swinburne: Wills, Pt. 1: 51] that a nuncupative will is of as great a force and efficiency (except for land, tenements, and hereditaments) as is a written testament. He cites our case of debt for the proposition that executors cannot have an action upon a nuncupative testament, unless it is put in writing "and therefore the use is to prove it by witnesses before the ordinary, and then to write it." [*Ib.* 51.]

The custom had evidently been followed in this case, although one has to refer to the reported case to prove it. In the next case [3], which is quite as short in the report as the abridgment, nothing had been done by the ordinary. The query is by Statham, or at least it is not in the report. There is nothing to show what the proceedings were, or that the plaintiff attempted to show that it was approved by the ordinary.

The last case is one that brings out the fact that kings came very near being persons who could not make wills, they being somewhat in the case of women, for that which they had was considered as being not wholly theirs, and the author whom we have before quoted, while conceding that kings have given away their kingdoms, contends that nevertheless "it is unlawful for a king to give away his kingdom from his lawful heirs" [*ib.*, Pt. 2: 109] and he cites our case [5]. Swinburne feared to venture further, saying: "But amongst all their reasons, I see none to induce me to adventure any further into the Examination of this deep and dangerous question; much less to proceed to the Conclusion not only because the same, being so high an Object, doth far exceed the slender Capacity of a mean Subject, but also for that this princely Controversy, as it hath seldom received ordinary Trial heretofore, so hereafter, if the Case were to be argued in very Deed, very likely it is to be urged with more violent Arguments and sharp Syllogisms, than by the unbloody Blows of bare Words . . . and in the End to be decided and ruled by the Dead Stroke of uncivil and martial Canons, rather than by any Rule of the Civil or Canon Law." [*Ib.*, p. 108.] Let those who fear to admit a fine phrase or an alliterative sequence into legal writing take notice that this paragraph is by one of the greatest authorities on the law of last testaments, and that his law lost nothing through his phrasing.

TOLLE

Hilary
50 Ed. III.

(1) **A man** cannot justify for toll of wagoners and such like; nor take toll for the passage of men by lands, nor by water, unless by the custom, or by prescription, etc.; for THORPE said that a man cannot justify by grant of the king, etc. But he can have toll by the grant of the king, for men who buy at his fair, or markets. And that in an Office, etc.

Case 1.

The case has not been identified in Y. B. Hilary, 50 Ed. III. Fitzh: Tolle, 2, has the case.

(2) **Trongtolle** is against the common law, to wit: Trinity 20 Ed. II. where a man takes toll on the highway which is common to every man. But toll traverse is an issue where a man goes on my land, which is not a highway, etc. And yet I cannot justify unless it has been a custom, time, etc., to take such toll, etc., for otherwise I could take cattle for *damage feasant*: By SHARSHULL and WILLOUGHBY in an Avowry, etc. Query, if prescription for such trongtolle be good, inasmuch as it is against the common law, etc.?

There is no printed year of 20 Ed. II. Fitzh: Tolle, 3, cites the case as in Trinity, 20 Ed. III. There is no early printed Year Book for that year, and it has not been identified in the Rolls Series. Fitzherbert in his abridgment of this case makes it a case of "Through-tolle."

(3) **Tenants** in ancient demesne do not pay toll for any of the cattle which graze on their lands; but if he be a common husbandman he shall pay toll. In Trespass, *Coram Rege*. By the opinion, etc. Paschal 7 Hen. IV.

But it was adjudged in the case of *Dermingham* against the tenants of Wednesbury, in the county of Warwick, which is ancient demesne, that although they were common merchants they need not pay toll. Trinity, 5 Hen. IV, Roll 300, etc.

Reported in Y. B. Paschal, 7 Hen. IV, p. 44, pl. 11. At the end of this colorful case there is a reference to Statham's citation of "Roll 300." The reporter appears to think that Statham meant that citation as a reference to the Roll in which this case of 7 Hen. IV appears. It seems more probable that Statham refers to a case not reported in the Year Books, but which was recorded on the Roll, and that he gave the name of the case in order that it might be the more easily identified there. There is no printed Trinity Term of 5 Hen. IV. Case 3.

(4) **Trongtolle** is where a man takes toll of the cattle and merchandise which pass through the vill, although they are not sold, etc. Iter de Northampton Anno 8 Ed. III, (or Anno 9)

The citation to this case is uncertain. We have not the printed case in the Year Books. Fitzh: Tolle, 4, has the case, with the same citation (omitting the reference to the year 9). Case 4.

(5) **The Miller of Matlock** has twofold toll, since he himself heard the master of that same vill say, placing his palm in that of the lord, "toll, toll," etc.

There is no citation in Statham to this brief case, which I have paraphrased.

TAILLE

Statham
179 a.
Note.

See as to tail, in the title of Gift; and in the title of Feoffments and Deeds, many matters, etc. And in the title of Devise, Trinity, 4 Hen. VI, good material.

Statham, title of Donne, *supra*, p. 71 a; title of Feoffments et Faitz, *supra*, 97 a to 97 b; title Devise, *supra*, p. 71 b, case 3.

Michaelis
9 Ed. III.

(1) **Land given** to a man and his wife in fee, saving the reversion, is a good tail, etc. In a note.

Case 1.

There is no case where this point has been identified in Y. B. Mich. 9 Ed. III, but there is a case in that term and year, p. 26, pl. 2, to which a marginal note of this sort could very well have been made. Fitzh: Taille, 21, has the case.

TOURN DE VICOUNT

Michaelis
31 Hen. VI.

(1) **In a leet or tourn** of the sheriff, if a man will not be sworn he shall be fined, and the lord can imprison him until he has made his fine; or he can amerce him and distrain him for the amercement.

And see in the same plea, if the style shall be "*Visum franciplegii domini regis tent, apud coram vicecomiti in turno suo,*" where the style was "*Turnum vicecomitis tent, tali die apud.*" And the opinion was that that was not good, for that word "*turnum*" is only the perambulation of the sheriff, etc.

And FORTESCUE said in the same plea, that by the Statute of Magna Charta they should not inquire as to any popular action at the tourn held after Easter, but only have the view, to wit: that "*Theothinga sit integra.*" But at the tourn held after Michaelmas they shall inquire as to such things,

for the Statute is "*ad illum terminum*," to wit: "Michaelis, fiat visus de franco plegio." And that is a process before the king, etc.

The case has not been identified in Y. B. Mich. 31 Hen. VI, or in the Case 1. early abridgments.

Magna Charta, 9 Hen. III (1225), cap. 35, Stats. at Large, Vol. 1, p. 2 (12).

See as to tourn, in the title of Leet, etc.

Note.

Statham, title of Lete, *supra*, p. 122 a.

(2) **The statute** is that if the sheriff shall hold his tourn after the month, etc., that he shall lose his tourn, etc. And if one be indicted at such a tourn, it is void; as was adjudged in the King's Bench, etc. Anno
38 Hen. VI.

Reported in Mich. 38 Hen. VI, p. 7, pl. 16. See also Fitzh: Tourn, 2 and 6. Case 2.

Statute of 1 Ed. IV (1461), cap. 2, Stats. at Large, Vol. 3, p. 335 (345). This is the only citation in Statham later than the last year of Hen. VI. This Statute, however, was actually passed in that same year, as the date of the last year of Hen. VI and the date of the first year of Ed. IV are the same, 1461. Always excepting the year of the return Hen. VI, for which we have a possible reference in Statham (1470-71).

See the statute Anno Primo Ed. IV, which says that the sheriffs shall have their indictments taken in their tourns before justices of the peace within two months, or they are void. Note.

See case 2, *supra*, for the citation to the Statute.

WASTE ⁸⁹

(1) **A dean had an action of waste** for waste made in the time of his predecessor; but it seems that the action does not lie, for there is a difference between a dean, a bishop, and a parson of a church, who can make executors, and an abbot by whose death seisin of the house does not change, etc. Statham
178 b,
Michaelis
2 Hen. IV.

And it was said in the same plea, that if lands be leased to the husband and his wife, the wife shall not be charged with waste done in the lifetime of her husband, etc. But if lands be leased to a woman and she takes a husband who makes waste and dies, then she shall be charged with the waste done by her husband, for it was her own folly to take the sort of husband who would allow waste to be made, etc.

Case 1. Reported in Y. B. Mich. 2 Hen. IV, p. 2, pl. 7. See also Brooke, Waste, 58.

Paschal 40 Ed. III. (2) **Cutting of willows** within sight of a manor or house — that shall be adjudged waste, etc.

Case 2. Reported in Y. B. Paschal, 40 Ed. III, p. 15, pl. 3. See also Fitzh: Waste, 68.

Trinity 40 Ed. III. (3) **A writ of waste** is maintainable against the tenants for life or for years, where they have leased over their estate, to wit: for waste made within the lease. And the writ shall be "*quas tenuit*." But for waste made afterwards, it lies against the lessee, etc.

Case 3. Reported in Y. B. Trinity, 40 Ed. III, p. 33, pl. 15. See also Brooke, Waste, 22; and Fitzh: Waste, 67, where different points in the case are abridged.

Hilary 42 Ed. III. (4) **Waste was assigned** for taking down a furnace. And it was the opinion that that could not be waste, because it was removable, etc.

Case 4. Reported in Y. B. Hilary, 42 Ed. III, p. 6, pl. 19. See also Brooke, Waste, 26. The case can hardly be an authority on this point, as they adjourned without decision.

Paschal 42 Ed. III. (5) **Waste by the husband** and his wife, on a lease made by the woman before coverture, for the life of the woman. And because it was not to the disinheritance of the issue of the woman, the writ was adjudged good, for if he alienated she could enter, etc.

And in the same plea the defendant pleaded the release of the husband upon certain conditions, and he did not show the release, because it was delivered into the plain-

tiff's own hands, etc. And the opinion was that he should have the plea, without showing it. And the opinion was that the release of the husband should be a bar, etc.

Reported in Y. B. Paschal, 42 Ed. III, p. 18, pl. 31. See also Brooke, Case 5. Waste, 27.

(6) **In waste** by an abbot, the release of his predecessor shall not bar him from the freehold, unless it be under the common seal, etc. Well debated. But he is barred as to the damages, etc. Michaelis
42 Ed. III.

Reported in Y. B. Mich. 42 Ed. III, p. 21, pl. 1. See also Brooke, Case 6. Waste, 29; and Fitzh: Waste, 72.

(7) **In waste** it was alleged that he held a life term of the lease of his father. The defendant said that the father of the plaintiff, after that lease, released all the right he had in the same lands for the term of our life, and bound himself and his heirs to warranty, etc. And they argued upon two points: one, inasmuch as at the time of that release no waste had been made, so one could not enlarge it by a release [or make an extent] except of a thing to which he had title, since the waste was made after the death of the father, etc. Another, if by that release the tenant should have a fee, etc. And upon those two points they are still arguing. Michaelis
42 Ed. III.

Reported in Y. B. Mich. 42 Ed. III, p. 23, pl. 7. See also Brooke, Case 7. Waste, 30; and Fitzh: Waste, 73. It makes the case seem a very recent event to hear that they are "still arguing."

(8) **In waste** against a guardian. BELKNAP: We were not tenant the day of the purchase of the writ, nor ever since. In which case the writ should be "*quas tenuit*" and not "*tenet*." FYNCHEDEN: Joint tenancy¹ is no plea in a writ of Waste, unless it be specially pleaded. And also he is under age, wherefore answer, etc. Paschal
43 Ed. III.

Reported in Y. B. Paschal, 43 Ed. III, p. 15, pl. 14. See also Brooke, Case 8. Waste, 33.

(9) **In a writ of waste** against an abbot as guardian, who said that the wardship fell in, in the time of his Hilary
42 Ed. III.

¹ Non-tenure is evidently meant.

predecessor, who is dead, after whose death no waste was made. And it was the opinion that that was a good plea, etc. Query, etc.?

Case 9. Reported in Y. B. Hilary, 43 (not 42), Ed. III, p. 8, pl. 25. See also Brooke, Waste, 32; and Fitzh: Waste, 75.

Hilary
43 Ed. III. (10) **If the life tenant** cuts trees, although he who is in the reversion carries them away, still he shall be charged with waste, for he can have an action against him who is in the reversion for the carrying off, etc. Query, if the trees fall in a great wind, if he who is in the reversion shall have them? And it was said he would, etc.

Case 10. Apparently the case reported in Y. B. Mich. 44 Ed. III (not Hilary, 43 Ed. III), p. 44, pl. 58. See also Brooke, Waste, 39; and Fitzh: Waste, 76.

Trinity
44 Ed. III. (11) **The tenant** for life, or for years, cannot excuse himself for waste¹ because of lack of timber if any timber be growing upon the land leased to him, for he can take it without leave.

Case 11. Reported in Y. B. Trinity, 44 Ed. III, p. 21, pl. 20. See also Brooke, Waste, 36; and Fitzh: Waste, 78.

Michaelis
44 Ed. III. (12) **If, after the death** of the ancestor of the infant, a stranger abates and makes waste against [the infant], and the guardian brings a writ and recovers, the heir shall not have an action of waste against the guardian for the waste made by the abator, etc. For they said that he shall have trespass against the abator, etc. Query? For it seems that the guardian shall have a writ of Trespass, etc.

Case 12. Reported in Y. B. Mich. 44 Ed. III, p. 27, pl. 4. See also Brooke, Waste, 37; and Fitzh: Waste, 80.

Hilary
45 Ed. III. (13) **In waste** on a lease made by his father, E, waste was assigned in a hall. The defendant said that the hall was uncovered in the lifetime of your father, and after the

¹ In allowing the house to fall for want of timber.

death of your father it fell down for feebleness, etc., judgment, etc. And it was held a good plea, etc.

Reported in Y. B. Hilary, 45 Ed. III, p. 3, pl. 6. See also Fitzh: Case 13. Waste, 84.

(14) **A man had leased** lands to another for life, and had issue two daughters, and died. One daughter had issue and died. The tenant made waste in the lifetime of the sisters, and also after the death of one sister. The aunt and the niece joined in an action, and recovered, and their damages were severed in accordance, etc. Hilary
45 Ed. III.

Reported in Y. B. Hilary, 45 Ed. III, p. 3, pl. 7. See also Fitzh: Case 14. Waste, 85.

(15) **In waste**, at the distraint the sheriff returned "*nihil habet*," and yet a writ was awarded to the sheriff to inquire as to the waste, etc. Paschal
21 Hen. VI.

Reported in Y. B. Trinity (not Paschal), 21 Hen. VI, p. 56, pl. 13. See also Brooke, Waste, 90; and Fitzh: Waste, 45. Case 15.

(16) **In waste** against a life tenant, who said that the plaintiff had entered upon him pending the writ, judgment of the writ, which alleged "*quas tenuit*," etc. **BELKNAP:** The lease was upon condition that if the rent was in arrear that I should then enter; and because the rent was in arrear I entered, judgment, etc. And so to judgment, etc. Paschal
45 Ed. III.

Reported in Y. B. Paschal, 45 Ed. III, p. 9, pl. 14. See also Brooke, Waste, 42. Case 16.

(17) **Four leased** for a term of life, and three released to the fourth, and he brought a writ of Waste, and alleged that he himself leased, etc. And that matter was well debated, and the writ was adjudged good. And the law is the same if two parceners lease and one dies without issue, etc. Trinity
46 Ed. III.

And it was said in the same plea, that if lands be leased for a life term, the remainder over for a term of years, the tenant for life shall be punished for waste, etc.

Reported in Y. B. Trinity, 46 Ed. III, p. 17, pl. 13. See also Brooke, Waste, 44; and Fitzh: Waste, 88. Case 17.

- Trinity
46 Ed. III. (18) **In a writ of waste**, it was alleged that the defendant was in of his own lease. The defendant said that he had nothing in the reversion, and he had the plea, etc.
- Case 18. Reported in Y. B. Trinity, 46 Ed. III, p. 20, pl. 24. See also Brooke, Waste, 45; and Fitzh: Waste, 89. The report of the case ends, "*Quod mirum fuit*"!
- Michaelis
46 Ed. III. (19) **If lands** be leased to a woman for life, who takes a husband, and a writ of Waste is brought against them, and the woman dies, the action of waste shall be brought against the husband during his occupation, etc. By PERSHAY, in a writ of Waste, etc. Query, how shall the writ be in that case?
- Case 19. Reported in Y. B. Mich. 46 Ed. III, p. 25, pl. 11. The case was on another point. The remark by Pershay is at the end of the case.
- Michaelis
46 Ed. III.
Statham
180 a. (20) **A man shall have** a writ of Waste against executors, alleging that their testator held "*ad terminum annorum*," and in his count he shall say that the lands were leased to their testator for life, and one year over¹ (if the case be so), etc., for he cannot have any other writ in the Chancery, etc. And if I lease lands for the term of half a year, I shall have a writ of waste, "*quas tenet ad terminum annorum*," etc. (In the same plea.) (But I believe that a man shall not have a writ of Waste against executors for waste made in the time of their testator, where he was the lessee to their testator for a term of years, etc.)
- Case 20. Reported in Y. B. Mich. 46 Ed. III, p. 31, pl. 32.
- Paschal
48 Ed. III. (21) **In a writ of waste**, where the reversion of a tenant for life was granted by a fine, the tenant pleaded, "no waste made after the attornment," and the question was if he should be punished for the waste made before the attornment, since he did not deny it himself? FYNCHEDEN: Before the attornment, albeit the right was in him, he could not avow, consequently he could not have a writ of Waste. And if the tenant for life, in that case, aliens in fee, he can enter. But he shall not have a writ of Entry

¹ "One half year" in the report.

in consimili casu. And if the services of a tenant be granted to me by a fine, and the tenant dies while his heir is under age, and before the attornment, I can seize the wardship, but I cannot have a writ of Wardship, etc. Query, since that is in the right? For in that case a man shall have a writ of Escheat, as it seems, albeit he did not make any attornment; and consequently, etc. PERSHAY: The attornment shall have relation to the grant, for if any rent be reserved upon the lease, the grantee shall avow for the rent incurred before the attornment. Which was denied. And if I lease lands for a term of life, the remainder for a term of life, the remainder over in fee, and the first tenant makes waste, that is not punishable; but if he who is in the remainder in fee releases to the second tenant for life, he shall have for that a writ of Waste. Which was denied. And if the reversion of a tenant for years be granted to me by a fine, if the termor be ousted before the attornment, I shall have an Assize, etc. But yet, query? etc. And if I recover land and die before I have entered, and after rent is incurred, I shall have that rent. Which was denied. THORPE: The reason that in the case here, to wit: if the services of a tenant be granted that the grantee shall not have the services before the attornment, is for two reasons: one, because there is not any privity; the other, because before the attornment he cannot have a writ of Mesne, wherefore, etc. And because of the opinion of the Court ROLFF said that he had made waste after the attornment: Ready. And the other alleged the contrary, etc.

Reported in Y. B. Paschal, 48 Ed. III, p. 15, pl. 10. See also Brooke, Case 21. Waste, 50; and Fitzh: Waste, 94.

(22) **In a scire facias** on a judgment given in a writ of Waste, where at the Grand Distress a writ issued to the sheriff upon the default of the tenant, to inquire as to the waste, which was found, etc. And then the plaintiff demanded execution of the place wasted and of the damages. Trinity
48 Ed. III. FULTHORPE: At the time of the first writ, etc., we were villein to one H, and held the same lands in villenage, and still hold them, judgment if an action lies against us?

HAMMON: And we, judgment, since you are the same person against whom, etc., in which case you could have come at the summons, or attachment, or distress, and have alleged this matter, etc. And also that is no plea, for neither attornment nor villenage is any plea in this writ. PERSHAY: If action be taken for default against one H, who is not tenant, who came to the land by purchase after the judgment, if he shall not have the plea in a *Scire Facias* to say that he had nothing at the time, etc., he has lost his lands, for he cannot have a writ of right; and the tenancy was not inquired into, etc. And if he does not have such an answer he has lost his warranty, for in a *Scire Facias* a man cannot vouch. And at least by this plea he can extort the damages from him, etc. And also it is hard for him, if he was not summoned, to have a writ of Deceit, since that action is personal, etc. And this action is maintainable against the lord notwithstanding he has leased the lands in villenage, as well for the waste made after as before. FYNCHEDEN: Then if the lord be ousted by force of this judgment he can have an Assize. PERSHAY: That proves that he should not recover damages against us, etc. And they adjourned.

And it was said in the same plea, that if one recovers against one who aliens pending the writ, or afterwards, etc., that he who recovers can enter within the year, if descent has not accrued to one who is a stranger to the recovery, etc.

Case 22. Reported in Y. B. Trinity, 48 Ed. III, p. 18, pl. 5. See also Brooke, Waste, 51.

Michaelis
48 Ed. III. (23) **If I lease** a house for a term of years, and the house is burned through negligence of the lessee, I shall have an action of waste, etc. It is otherwise if it be burned by misadventure, etc. But if I lease at will I am without a remedy, etc.

Case 23. Reported in Y. B. Mich. 48 Ed. III, p. 25, pl. 8. See also Brooke, Waste, 52. Interesting case of evidence given by the inquest.

Paschal
6 Ed. III. (24) **If my father** leases lands to a woman for the term of her life, and dies, and I confirm the estate of her husband

and herself for the term of their two lives, and die, my brother shall have a writ of waste, alleging that I made the confirmation. Query, how the writ shall be [brought], etc.

The case has not been identified in Y. B. Paschal, 6 Ed. III, or in the early abridgments. Case 24.

(25) **In waste** in the vill of K, the tenant said there was no such vill within the same county, without any addition. And it was adjudged a good plea, etc. Contrary, Anno 9 Hen. VI, in the case of the *Duke of York*, because the plaintiff can recover by a jury of view. But it seems that "no such vill" is a good plea, etc. Paschal 12 Ed. III.

There is no early printed year of 12 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments. The case of the *Duke of York* appears in Y. B. 9 Hen. VI, p. 65, pl. 21. Case 25.

(26) **In waste** against the husband and his wife on a lease made to the wife, alleging that they had made waste. SETON: No waste was made after the coverture. And as to the waste made before, the writ should say that the woman had made the waste, etc. And the writ was adjudged good. It is otherwise in a writ of Entry. (Query as to the difference), etc.? Michaelis 19 Ed. III.

See the plea that SETON pleaded, for it goes in bar, and also in abatement, of the writ.

There is no early printed year of 19 Ed. III. The case is probably that reported in the Rolls Series, 19 Ed. III, pp. 442-446. Case 26.

(27) **In waste** in two vills, the defendant said that one of them was neither vill nor hamlet, and upon that they were at issue, and it was found for the plaintiff. And they were forced to inquire as to the waste. KELSHULL: He has put this [plea of land] against our writ by an issue which is peremptory. SHARSHULL: If it seems to you that it is not good, sue a writ of Error. Paschal 18 Ed. III.

The case has not been identified in Y. B. Paschal, 18 Ed. III, or in the early abridgments. Case 27.

(28) **In waste** against the Abbot of D, and one J, formerly Abbot of C, co-canon of the aforesaid Abbot of D. And Michaelis 49 Ed. III.

they counted that they had made waste in lands which they had in wardship. HAMMON: You cannot have this action in that manner, for since the two abbots had the wardship in common, and one abbot was made co-canon with the other, you should have brought your writ against the Abbot of D, and the successor of the other abbot, etc., for the successor is charged with the waste made by his predecessor. THORPE: It seems that the abbot who survived shall be charged by the survivorship, for he had the wardship by survivorship. POLE: He does not show whether they had the wardship in common or jointly; for if they had it jointly, one shall be charged by the survivorship, for he shall have the wardship by the survivorship, because it is only a chattel. But it is otherwise as to lands, for if I give lands to two abbots and their successors, they have a joint estate and separate succession, but they have the wardship in common, and the "*jus accrescendi*" does not have place; for in London, where two have goods in common, one can devise his part. And the law is the same as to lands in common, but as to goods jointly or lands jointly, the law is otherwise. THORPE: It seems that the devise is good for a joint tenant; as well as if a joint tenant grants and renders that which belongs to him by a fine, and dies, the grantee can enter, and yet there was never any transmutation of possession in his lifetime. BELKNAP: It is not the same, for the fine is of record, which is as strong as a recovery tailed against him for his part. THORPE: The issue in tail holds himself in against such a fine upon a render made by his father, although execution was not sued in his lifetime. And still another [example] is of a recovery tailed against his father.

And he said in the same plea, if an abbot makes waste in lands which he has in wardship, and is deposed, a writ of waste lies against the successor; but if he who was deposed dies, the action is gone, etc.

Statham
180 b.

Case 28. Reported in Y. B. Mich. 49 Ed. III, p. 25, pl. 3. See also Brooke, Waste, 55; and Fitzh: Waste, 95.

Hilary
33 Ed. III.

(29) **In waste** against two, a writ issued to the sheriff to inquire as to waste, and it was found that one made

waste and the other did not. And it was adjudged that the plaintiff should recover all the lands wasted, because the waste of one shall be the waste of both, etc.

There is no printed year of 33 Ed. III. The case has not been identified in the early abridgments. Case 29.

(30) **In waste**, the defendant pleaded in abatement of the writ, upon which they were at issue, and it was found for the plaintiff. And it was adjudged by all the justices that he should be attainted of waste, without inquiring in regard to it, because an issue was found against him which was peremptory. Contrary before, etc. Michaelis
9 Hen. VI.

The case has not been identified in Y. B. Mich. 9 Hen. VI, or in the early abridgments. Case 30.

(31) **In waste** against the tenant in dower of the inheritance of her grandfather. She pleaded a release of his father, etc., who said that his father had nothing except in tail. And the opinion was that it was a good plea in avoidance of the bar, etc. Michaelis
18 Ed. III.

The case has not been identified in Y. B. Mich. 18 Ed. III, or in the early abridgments. Case 31.

(32) **Waste was assigned** in a hall and in a chamber. The defendant said that at the time of the lease there was no such chamber, etc. And it was held not a plea, without saying "nor ever since," etc. Michaelis
41 Ed. III.

And in the same plea the defendant said that a grange in which waste was assigned was burned, and he had built another, suitable, etc. Ready. BELKNAP: The other grange was of the value of forty pounds, and this is only of the value of twenty pounds. And the other said that it was of as great a value. Ready. And the other alleged the contrary.

Reported in Y. B. Mich. 42 (not 41), Ed. III, p. 21, pl. 1. See also Brooke, Waste, 29; and Fitzh: Waste, 72. Case 32.

(33) **One B leased lands** for a term of years, and then ousted his termor and enfeoffed another. And then the termor entered, claiming his term, and the feoffee brought Trinity
5 Hen. V.

an action of waste against him *ex assignatione*, the feoffor. ROLFF: This writ is not maintainable, for there is no privity between the feoffor and himself, in which case he cannot have an action without attornment. MARTYN: The feoffment, and afterwards the entry of the termor, is as strong as an attornment. And then it was adjudged that the plaintiff should recover. Which note, etc. But it is otherwise if I oust my tenant for life and enfeof another, upon which the tenant for life re-enters; the stranger shall not have an action of waste, etc. But yet, after the death of the tenant for life, he can enter. As appeared in a note, Paschal, 2 Hen. V. (But yet it seems that it is all one and the same case), etc.

Case 33. Reported in Y. B. Hilary (there is no printed Trinity Term in 5 Hen. V), 5 Hen. V, p. 12, pl. 30. See also Brooke, Waste, 72; and Fitzh: Waste, 56.

Paschal
2 Hen. V. (34) **In a writ of waste** brought by two, they showed how they leased the same lands to the defendant for the term of his life, and that he had made waste, to the disinheritation of one of the two, etc. And because they were in of different estates, they were driven to show of whose gift they were seised, etc. STRANGE: Judgment of the writ, for it should be "to the disinheritation" of both, because by the lease made by them generally a new reversion is reserved to them in common. LUDDINGTON: Their estate is by a fine, so that it cannot be otherwise than that the fee shall be in one, so they should count accordingly, etc.

Case 34. Reported in Y. B. Trinity (not Paschal), 2 Hen. V, p. 7, pl. 1. See also Fitzh: Waste, 54.

Hilary
32 Ed. III. (35) **If I grant** the reversion of my tenant by the curtesy, and the grantee brings a writ of Waste, the writ shall be "*quas tenet de eo ad terminum vitae ex assignatione H*," of whom he holds by the law of England, etc. See the Register.

Case 35. There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments.

(36) **In waste** by an abbot who had judgment to recover ^{Michaelis} by default, and before the *Quale Jus* he had judgment to ^{38 Ed. III.} recover damages, but not the place wasted.

The case has not been identified in Y. B. Mich. 38 Ed. III, or in the ^{Case 36.} early abridgments.

(37) **In waste**, it was alleged that he held for a term of ^{Michaelis} years, and the writ was "*quas tenet.*" ^{8 Hen. VI.} NEWTON: The plaintiff had entered upon us, before which entry no waste was made. Ready. And the other alleged the contrary. And it was found for the plaintiff. NEWTON: You should not go to judgment, for by the matter shown it is to be understood that the plaintiff entered of his own tort, so his writ, "*quas tenet,*" is false. And also if he entered of his own tort, he had no cause of action. BABYNGTON: But we understand that you have entered upon him. Wherefore it was adjudged that the plaintiff should recover. (Query, how he could have pleaded better), etc?

Reported in Y. B. Mich. 8 Hen. VI, p. 10, pl. 23. See also Brooke, ^{Case 57.} Waste, 84.

(38) **Where the reversion** of a tenant for life was escheated ^{Michaelis} to the lord, he brought a writ of Waste; and he rehearsed ^{3 Hen. VI.} the Statute [writ] and all the matter upon the case, etc. Which writ was adjudged good, etc. See, because it was well debated.

Reported in Y. B. Mich. 3 Hen. VI, p. 1, pl. 1. See also Brooke, ^{Case 38.} Waste, 6; and Fitzh: Waste, 34.

(39) **In waste**, the plaintiff shall assign the price of ^{Hilary} everything in which he assigns waste, to wit: hall, ^{9 Hen. VI.} chamber, etc. As appeared in the case of the *Duke of York*, etc.

Reported in Y. B. Hilary, 9 Hen. VI, p. 42, pl. 20. See also Brooke, ^{Case 39.} Waste, 9.

(40) **In waste**, the writ alleged that the plaintiff had rever- ^{Michaelis} sion of the assignment of one F, who had the reversion of ^{11 Hen. IV.} the assignment of one U; and he produced a fine of the

- first assignment, and a deed of the second assignment. TILLESLEY: The fine proves that U and R granted the reversion, and the writ is that of J alone, etc. NORTON: We say that R had nothing at the time, etc. THIRNING: J, by whom you claim, is estopped by the fine from having the plea, consequently, you, etc. And that was the opinion, etc. But against a deed he can have the plea, as was adjudged in the Eyre of Northampton before SCROPE. But yet the opinion of FORTESCUE was that he should not have the averment against a deed indented, etc. Anno 30 Hen. VI.
- Statham
181 a. Reported in Y. B. Mich. 11 Hen. IV, p. 1, pl. 1. See also Brooke, Waste, 64.
- Case 40.
- Michaelis
11 Hen. IV. (41) **If I lease** lands for life or years, he cannot cut oaks to build a new house, but can do so to repair another house, etc. By HANKFORD, in Waste. Query, if a house falls in the lifetime of my father, can his lessee cut oaks to rebuild it in my time, etc.?
- Case 41. Reported in Y. B. Mich. 11 Hen. IV, p. 32, pl. 59. See also Brooke, Waste, 67.
- Trinity
11 Hen. IV. (42) **If the sheriff** can enter into a franchise to inquire as to waste? That was the question, because the Statute is a *non omittas*, etc. As appeared in Waste, etc.
- Case 42. Reported in Y. B. Trinity, 11 Hen. IV, p. 82, pl. 25. See also Brooke, Waste, 119.
Statute of Westminster the First (1275), cap. 17, Stats. at Large, Vol. 1, p. 74 (86).
- Hilary
19 Hen. VI. (43) **One brought** a writ of Waste against one, tenant by the curtesy; and assigned for waste that he suffered a river that he should restrain, to flood a certain meadow, etc. NORTON: This waste is strangely assigned! MARKHAM: Sir, that is matter apparent — wherefore we say that our wife never had anything during the coverture. PORTYNGTON: That is merely argument, etc. Wherefore he said that such a one enfeoffed him, without this that

he held by the curtesy. Ready. And the other alleged the contrary.

The case has not been identified in Y. B. Hilary, 19 Hen. VI, or in Case 43. the early abridgments.

(44) **In waste**, the defendant pleaded a surrender with the consent of the plaintiff; and he was forced by the Court to say, "before which surrender no waste made," because the surrender was his own deed, etc. Michaelis
8 Hen. V.

Reported in Y. B. Mich. 8 Hen. V, p. 8, pl. 6. See also Fitzh: Case 44. Waste, 7.

(45) **Where a writ** issues to the sheriff to inquire as to waste; if he takes the jurors to the place wasted to have the view, he shall take the inquest where he will, within the same county, for the reason that the writ says, "*accedas ad locum vastatum,*" which is to no other effect but to cause the jurors to have the view. By HANKFORD, in a writ of Waste, etc. Michaelis
12 Hen. IV.

Reported in Y. B. Mich. 12 Hen. IV, p. 3, pl. 6. See also Brooke, Case 45. Waste, 68; and Fitzh: Waste, 62.

(46) **In a writ of waste** against the guardian by the heir, who was of full age, the writ was, "*quas habet in custodia,*" and it was touched that the action did not lie, since he was of full age. And it was put over, etc. See the Statute. And the sheriff returned to the summons, attachment and distress, "*nihil.*" And the plaintiff prayed a writ to the sheriff to inquire as to waste. SKRENE: That you shall not have before he be distrained. HANKFORD: If the action had been brought against my tenant for life, and the sheriff returned "*nihil,*" he shall be distrained in the same lands in which the waste is alleged, although he has leased over his estate, but here we understand that the plaintiff himself is seised of the lands; so when he has returned "*nihil,*" it is reasonable that the writ shall issue to inquire as to waste. And in an Assize, if the sheriff returns "*nihil*" upon the attachment, the Assize shall be taken, for neither in the Assize nor in this case is the Michaelis
12 Hen. IV.

defendant aggrieved, because nothing shall be done upon their default, but the jury shall be taken. And in a *Scire Facias* out of a conusance, if the sheriff returns "*nihil*," I shall have execution at my peril, and the defendant shall have an *Audita Querela*; but I shall have an action of deceit against the sheriff, etc. And they adjourned, Query, if in a writ of Mesne the sheriff returns "*nihil*," at the proclamation, shall the proclamation issue before the writ is served?

Case 46. Reported in Y. B. Mich. 12 Hen. IV, p. 3, pl. 6. Statute of Gloucester, 6 Ed. I (1278), cap. 5, Stats. at Large, Vol. 1, p. 117 (122).

Paschal
27 Hen. VI.

(47) **In a writ of waste**, the defendant said that the plaintiff himself made the waste. And the opinion was that he should have the plea, etc. In the case of *Penrose* against his mother, who was tenant in dower, she said that she had leased her estate to the plaintiff, before which lease no waste was made. And the opinion was that she should have the plea. And yet if she had leased the lands to a stranger she would not have had the plea, etc.

And it was said in the same plea, that if I lease lands to a man, without impeachment of waste, and a stranger cuts the trees, and he brings a writ of Trespass, he shall not recover damages for the value of the trees, because the property in them is in him who has the reversion, and he can give them; wherefore he [cannot] recover damages except for the breaking of his close, and for the damage that he had, to wit: for the cropping of them, etc. (But yet it seems to me that the law is the other way, for when the lands were leased to him without impeachment of waste, he himself could cut the trees, and consequently when a stranger cut them he should have a writ of Trespass, etc. Query?)

Case 47. There is no printed Paschal Term of 27 Hen. VI, and the case has not been identified in the Year Book for that year. Fitzh: Waste, 8, has a short abridgment of the case.

Michaelis
28 Hen. VI.

(48) **Guardian in socage** shall not be punished for waste, unless for voluntary waste, for if he suffers the

house to fall, he is not accountable for that. By PRISOT, in Waste.

The case has not been identified in Y. B. Mich. 28 Hen. VI, or in the early abridgments. Case 48.

(49) **In waste**, where the tenant appears at the Grand Distress and then makes default, the plaintiff shall not have a writ to the sheriff to inquire as to the waste, etc. It seems that he shall be attainted, etc. Paschal 7 Hen. IV.

Reported in Y. B. Paschal, 7 Hen. IV, p. 15, pl. 22. See also Fitzh: Waste, 61. Case 49.

(50) **Burning** of a house was adjudged waste, etc. Contrary elsewhere, etc. Trinity 19 Ed. III.

There is no early printed year of 19 Ed. III. The case is printed in the Rolls Series, Trinity, 19 Ed. III, p. 194, No. 27. Case 50.

(51) **Waste** was adjudged because the fermor built a house, and let it fall down. *Simile* Michaelmas, 42, placitum 1, etc. Hilary 11 Ed. II.

The case has not been identified in Y. B. Hilary, 11 Ed. II, or in the early abridgments. Case 51.

(52) **Waste** was adjudged good against an executor, his co-executors not being named, etc. Paschal 3 Ed. II.

The case has not been identified in Y. B. Paschal, 3 Ed. II or elsewhere. Case 52.

(53) **Waste** for fish in a pond was adjudged good, etc. Hilary 6 Ric. II.

There is no printed Year Book for 6 Ric. II. The case has not been identified in the early abridgments. Case 53.

(54) **In waste** against a guardian in fact, it is no plea that after the lease made to him, no waste was made, etc. Trinity 27 Ed. III.

Reported in Y. B. Trinity, 27 Ed. III, p. 5, pl. 14. See also Fitzh: Waste, 10. Case 54.

(55) **If a man** leases lands for a term of life, and then grants the reversion for a term of years, and the tenant Paschal 4 Ed. III.

attorns, and then makes waste; still the lessor shall have a writ of Waste; and yet it does not defeat the term. As was adjudged in Waste.

Case 55. Reported in Y. P. Paschal, 4 Ed. III, p. 18, pl. 12. See also Fitzh: Waste, 18.

Anno
11 Hen. VI. (56) **In waste**, it was alleged that he had made waste by cutting oaks, and other [trees], etc. The defendant said it was seasonable wood, to wit: under the age of twenty years, and that the custom had been in the same wood where the waste was alleged, from time, etc., for the tenants for a term of life or years, to cut such seasonable wood; oaks as well as other trees. And he showed how he held for a term of life, as the writ alleged, and that he cut the wood, etc. And the opinion clearly was that the plea was good; but they said that if he had [not] shown that the wood was under the age of twenty years, the plea had not been good, for if it had passed such an age the custom would not be allowed, but it should be considered waste, etc.

Case 56. Reported in Y. B. Mich. 11 Hen. VI, p. 1, pl. 3. See also Brooke, Waste, 134; and Fitzh: Waste, 42.

⁸⁹ For almost fifty years before the beginning of the Year Book cases the action of waste had been in use. There are a good many cases in Bracton's Note Book [See Vol. 1, 186, Waste] and he deals with it somewhat at large in the treatise [See ff. 315, 316, 317, against a dowress, and 253, 256, 275, in the case of a guardian]. In the Note Book ten of the twenty-six cases are against a dowress. [Cases 27, 56, 461, 527, 574, 580, 632, 640, 880, 1617.] In comparing the severity of the decisions in waste against the widow with the severity of those in the matter of the widow's quarantine, we are forced to the conclusion that the woman holding land in dower was held to a much greater strictness in the matter of waste than were the male tenants holding limited estates, although guardians were frequently also called to answer to the writ. [Reeves, Hist. of Eng. Law, Vol. 1: 384-387.] Coke, of course, devotes much space to the subject, both in the First Institute [Lib. I, sec. 67] and in the Second Institute, in chapter seventeen of the Statute of Marlbridge, chapter five of the Statute of Gloucester, and chapter fourteen of Westminster the Second; there and in the general histories of the law the subject of waste is apparently fully set forth, yet we get no exhaustive knowledge of the subject. Maitland says that "the orthodox doctrine of later days went so far as to hold that before

the Statute of Marlborough (1267) the ordinary tenant for life — as distinguished from tenant in dower and tenant by the curtesy — might lawfully waste the land unless he was expressly debarred from doing so by his bargain." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 9.] This is in reference to the statement quoted above in regard to the three classes who were liable for waste at the common law. Maitland adds, "This opinion seems too definite," and he quotes the Note Book cases [443, 540, 607, 1304, 1371] as showing that "for some little time before the statute actions for waste had occasionally been brought against tenants for life." [*Ib.*, 9.] May not the fact that this was only occasionally done show that such a writ was issued out of usual course of the common law, but that it was nevertheless so issued because of a growing recognition of the need for such a writ, and that the legislation naturally followed. Maitland acknowledges that "the action [at common law] shows strong signs of being new." [*Ib.*, Vol. 2: 9.] Bracton and Maitland also seem to be at variance in regard to the royal prohibition. Maitland says [*Ib.*, 9]: "The alleged wrong is not that of committing waste but that of committing waste after receipt of a royal prohibition. Breach of such a prohibition seems to have been deemed necessary, if the king's court was to take cognizance of the matter." Coke says, "Where in this writ it is said *Contra prohibitionem nostram*, the Plaintiff should well have maintained his writ, albeit no writ of prohibition of waste had been sued out before, for that the common law was a prohibition of itself," and Bracton speaks in the same way of the waste done by a guardian. [Bracton, Lib. 4, fo. 285; Coke, 2d Inst. Stat. of Gloucester, cap. 5.] Maitland cites "Bracton, f. 315," and takes no note of Coke's remark. One would gather from the passages in Bracton and the commentary of Coke that the prohibition when it comes to our knowledge, was a matter of formal allegation only, and that, while it was still alleged, there need not have been a writ of prohibition of waste sued out before the writ of waste issued. These differences between the masters of our law are important chiefly as showing that even in such well-worn and almost threadbare subjects as the law of waste we have not a well-grounded knowledge of the early history and development of the action.

VISNE

(1) **If a deed be admitted** in pleading, and the issue is taken upon collateral matter; as at the time, etc., he was imprisoned, or under age, the venue shall come from the place where that special matter is alleged; for it would be in vain to try it where the deed bears date since the fact is admitted, notwithstanding the date is put in the

Statham
181 b.
Trinity
31 Ed. III.

deed: By WILLOUGHBY, in a writ of Intrusion. Contrary hereafter.

Case 1. There is no printed year of 31 Ed. III. Fitzh: Visne, 62, has a fuller account of the case, with the facts set forth.

Trinity
18 Ed. III.

(2) **In debt** by one W, who counted on an obligation made by R, who is now defendant, bearing date the twelfth day of March, in the fifteenth year of the present king, in London. The defendant said that the plaintiff, by this deed which is here, bearing date the last day of February in the same year, first delivered to the defendant at H, in the county of Exeter, on such a day, etc., after the making of the said obligation, released, etc., judgment, etc. To which the plaintiff said that a long time before the making of the same deeds, the same defendant was indebted to our wife in [the sum of] twenty pounds; and as to these twenty pounds and other disputed matters, we put [ourselves] into the arbitrement of A and B, who awarded that the said defendant, in full satisfaction, etc., should pay the said plaintiff forty pounds, and that the plaintiff "should release to him all actions, *a principio mundi usque*," on the said last day of February; and that after the delivery of that, the defendant should be bound to the plaintiff in [the sum of] forty pounds, etc. And he said that he delivered the said release to the defendant at Westminster in the county of Middlesex, after which delivery he delivered to us the obligation at London the said thirteenth day of March, in the parish, etc., and then the defendant lost the said release, and the plaintiff found it and delivered it to the said plaintiff [defendant?] at H aforesaid, without this that the said release was first delivered to the same defendant in the manner as he has alleged, etc.: Ready. And the other [said] that it was first delivered in the manner, etc. FORTESCUE prayed a jury from both counties. NEWTON: That you shall not have, for nothing more shall be tried than that which comes after the "without this." ASCOUGH: If the plaintiff had said that the release was delivered to the defendant at W before the delivery of the obligation, without this that it was delivered to the defendant at H, after the delivery of

the obligation, then I should clearly say that the venue should be all in the county of Exeter; but in the case here the law forces him to plead in another manner, or else it will be found against him, because a delivery was made at H, as it appears by their pleas; then when the law makes him put the first delivery in issue, and the issue is taken upon the delivery, it is reasonable that the jury shall come from both counties. FORTESCUE: In the case of *Monsieur de Lowel*, he brought a *Scire Facias* to execute a fine in the county of N, and made himself cousin and heir to T. Lowel, to whom the remainder was tailed, and that he was begotten of the marriage celebrated between one B. Lowel and one A, etc., in the same county; and he showed that he was the son of B, son of the said T. And the tenant said that the said B took to wife one M, in the county of S, between whom he was the issue, a long time before the marriage took place in the county of N between the said B and A, which matter, etc. To which the lord rejoined that he was first married to A, without this that he was first married to M. And it was tried in both counties. So here. NEWTON: In your case no day of the marriage was alleged, wherefore it is not the same, etc. And then the *Venire Facias* was awarded for both counties, etc.

Reported in Y. B. Paschal, 18 Hen. VI, p. 10, pl. 9. Statham gives Case 2. the citation as Trinity, 18 Ed. III, but no such case is printed there; and as the case does appear in 18 Hen. VI, we may assume that this citation is one of the few assignable errors in Statham. Fitzh: Visne, 18, has the case as in 18 Hen. VI, which allowed it to be traced to that year.

See as to venue, in the title of Trial — many matters. Note. And also in the title of Issue. And see Trinity, 9 Hen. VI, in Trespass. Good matter in Venue, etc.

Statham, title of Triall, *supra*, pp. 175 b to 178 a. Title of Issue, *supra*, pp. 115 b to 117 b. Title of Trans, *supra*, p. 170 a, case 58.

VOUCHER ⁹⁰

(1) **One H was vouched** and entered into the warranty, and vouched himself and his brother, because their father

Statham
182 a.
Hilary
40 Ed. III.

was seised of the tenements, which are Borough English. And he enfeoffed this H, etc. And he did not show a deed for the feoffment, but yet he had the voucher. The demandant counterpleaded the cause, etc. And he would not abide thereon, but vouched one M to warranty. And it was moved that he could not vouch, for the Statute says, "be further compelled to another answer," which shall be taken to be to the action, etc. And it was not allowed.

Case 1. Reported in Y. B. Hilary, 40 Ed. III, p. 14, pl. 30. See also Brooke, Voucher, 13; and Fitzh: Voucher, 59.

Statute of Westminster the First, 3 Ed. I (1275), cap. 40, Stats. at Large, Vol. 1, p. 74 (100).

Paschal
40 Ed. III. (2) **In a praecipe quod reddat** against one K, who vouched to warranty himself and one A; and he showed cause, because T, his father, was seised and enfeoffed one W, and retook an estate in tail, so he vouched himself and A, daughter and heir of T, as assignees of W. KYRTON: W had nothing of the feoffment of your father: Ready, etc. And the other alleged the contrary.

Case 2. Reported in Y. B. Paschal, 40 Ed. III, p. 22, pl. 22. See also Brooke, Voucher, 14; and Fitzh: Voucher, 60. Note that the reporter in the case makes a remark in the first person, "when I have vouched other books for the last point here."

Trinity
40 Ed. III. (3) **In a writ of entry**, the tenant in tail vouched him in the reversion, and bound him by reason of a reversion. And it seems by their reasoning there that he could be mulcted in value if he lost, etc. See the Statute of Bigamies, etc.

Case 3. Reported in Y. B. Trinity, 40 Ed. III, p. 27, pl. 4.
Statute of Bigamy, 4 Ed. I (1276), cap. 6, Stats. at Large, Vol. 1, p. 114 (116). Statute of Westminster the First, 3 Ed. I (1275), cap. 40, Stats. at Large, Vol. 1, p. 74 (100).

Hilary
41 Ed. III. (4) **The tenant** vouched in a *Praecipe quod Reddat*, and the demandant counterpleaded him by the Statute, and on the return day of the *Venire Facias* the demandant said that the vouchee was dead; and he prayed that the tenant revouch, or plead in chief, and he had the plea because of the delay that might come to him, etc. And then

the tenant vouched one A. **BELKNAP**: This A is a stranger, and not an heir to the first vouchee. **FYNCHEDEN**: You would not grant him the first vouchee, wherefore answer.

The case has not been identified in Y. B. Hilary, 41 Ed. III, or in the early abridgments. Statute of Vouchers 20 Ed. I (1292), Stats. at Large, Vol. I, p. 261. Case 4.

(5) **In formedon**, the tenant vouched one R to warranty, who entered into the warranty and vouched one T. Process was continued against him until now, when this R says that one H had recovered the lands by a tried action, pending the process of this writ, etc. And the opinion was that he should have the plea, notwithstanding he was a stranger to the recovery, because he was tenant to the demandant, etc. Paschal
41 Ed. III.

Reported in Y. B. Paschal, 41 Ed. III, p. 10, pl. 8. See also Brooke, Voucher, 17. Case 5.

(6) **A man** shall not vouch in a *Scire Facias*, but he shall have aid, etc. As appeared in a *Scire Facias*, etc. Michaelis
41 Ed. III.

The case has not been identified in Y. B. Mich. 41 Ed. III, or in the early abridgments. Case 6.

(7) **In a praecipe quod reddat**, the tenant vouched one T, and the sheriff returned that he was dead, wherefore he vouched one K, as sister and heir of T. The demandant said that he never had any such sister as K. And at the return of the *Venire Facias* the tenant said that T at the time of the voucher was overseas, and now he had come back, etc. And notwithstanding this the inquest was taken, which said that K was sister, but not heir, because T was alive. And on the point whether the demandant should recover or not, they adjourned, etc. (It seems that their verdict as to this that T was dead was void.) Michaelis
41 Ed. III.

Reported in Y. B. Mich. 41 Ed. III, p. 28, pl. 26. See also Brooke, Voucher, 18. "And they did not know certainly whether he was alive or dead." Case 7.

(8) **In a writ of dower** in London, the tenant vouched a foreigner to warranty, wherefore the record was sent here, Michaelis
41 Ed. III.

and process was sued against the vouchee, who came and vouched one who entered into the warranty, as he who had nothing by descent, and he replied to the action of the demandant. The vouchee averred that he had [assets] by descent in the county of H, and upon that they were at issue. The demandant prayed judgment. THORPE: We cannot, etc. But we will send the record to London, and you shall have judgment there, etc. Query, if that shall be before the issue is tried? For if so, then there will be two judgments, and one shall be in the Bench, etc.

Case 8. Reported in Y. B. Mich. 41 Ed. III, p. 31, pl. 39. See also Brooke, Voucher, 20.

Hilary
43 Ed. III.

(9) **In a praecipe quod reddat** the tenant vouched one B, under age, as heir of K, wherefore the plea was delayed, and the vouchee died, and then a resummons was sued against the tenant, who vouched one F, as cousin and heir of B. BELKNAP: This B has a sister, etc. CANNISH: She is of the half blood. FYNCHEDEN: She shall be vouched, for she is heir to K; and the Court thinks that B was vouched because of the lineage of K, etc. And that was the opinion, etc.

And it was said in the same plea that a man shall not vouch by reason of the possession unless the heir be vouched with him, etc. Query, if he who makes the warranty dies without an heir, and has issue a bastard, who enters and has the possession; or if the brother of the half blood of him who died without an heir enters, how shall they be vouched? etc.

And it was said in the same plea, that where a man is vouched as heir within age, upon his full age the tenant can bind him by his own deed, etc. (I believe he cannot.)

Case 9. Reported in Y. B. Hilary, 43 Ed. III, p. 3, pl. 5. See also Brooke, Voucher, 21; and Fitzh: Voucher, 64.

Hilary
43 Ed. III.

(10) **In a praecipe quod reddat** against the husband and his wife, the wife was received for default of her husband and vouched one J K to warranty, who entered into the

warranty and vouched the husband, and was forced to show cause.

And it appeared in the same plea, that if a man enfeoffs me in fee, and I enfeoff him in tail, the first warranty remains to me, because he is enfeoffed of a lesser estate, etc.

See in the same plea, although a man enters into the warranty simply, afterwards he can well show matter as to why he should warrant a lesser estate, etc.

Reported in Y. B. Hilary, 43 Ed. III, p. 9, pl. 19. See also Brooke, Case 10. Voucher, 22; and Fitzh: Voucher, 65.

(11) **A man cannot vouch** two as heirs in gavelkind generally, but he can vouch one as heir at the common law; and both by reason of the possession. As appeared in a writ of Intrusion, etc. ^{Trinity} 43 Ed. III.

And it was clearly held, in the same plea, that if one co-heir enters, and not the other, he who does not enter shall not vouch with the other by reason of the possession, for the entry of the one is not the entry of the other, nor does it give him possession; as appeared in the same plea, where the possession of the younger was counterpleaded, etc.

Apparently the case reported in Y. B. Trinity, 43 Ed. III, p. 19, pl. 3. Case 11. See also Brooke, Voucher, 23; and Fitzh: Voucher, 66.

(12) **In the case where a man** enfeoffs his heir who is of full age, and dies, his heir shall have the warranty paramount: by the opinion of FYNCHEDEN, etc. (But I think that his intention was that he should have it as assignee, etc., for he cannot have it as heir; but if he enfeoffs him when he is under age, it is otherwise.) ^{Trinity} 43 Ed. III.

The case has not been identified in Y. B. Trinity, 43 Ed. III, or in the early abridgments. Case 12.

(13) **In formedon** against the husband and his wife, who vouched one who entered into the warranty and vouched the same husband and his wife, because they enfeoffed him in fee, and he re-enfeoffed them in tail, etc. ^{Michaelis} 44 Ed. III.

BELKNAP: He had nothing of their feoffment: Ready. And the others alleged the contrary, etc.

Case 13. Reported in Y. B. Mich. 44 Ed. III, p. 38, pl. 36. See also Fitzh: Voucher, 68.

Michaelis
44 Ed. III. (14) **In dower** the tenant vouched, and at the summons the vouchee was essoined and the demandant appeared, and the tenant made default, and the demandant would not hold himself to the default. And the essoignor of the vouchee prayed that the default be recorded, and that he might be discharged. FYNCHEDEN: If the vouchee appears in his own person or by attorney, it is reasonable that he be discharged, but not here, etc.

See in the same plea, that the tenant and the vouchee could fourch by an essoin, and in the same manner two vouchees could, since they are not in the case of the Statute, etc.

Case 14. Reported in Y. B. Mich. 44 Ed. III, p. 45, pl. 61.
Statute of West. I, 3 Ed. I (1275), cap. 43, Stats. at Large, Vol. I, p. 74 (103).

Statham
182 b,
Paschal
45 Ed. III. (15) **One vouched** one J to warranty, and at the summons came one J, chaplain, and demanded of the tenant what [he had to bind him] etc. And he produced a deed in which it was "J," and "chaplain" was left out. And the demandant would aver that he was the same person, and could not, wherefore he prayed seisin of the land, because he had failed of his voucher. FYNCHEDEN: It is not reasonable that where a stranger comes asking the tenant that, etc., by which he would lose [etc.] his lands, wherefore the *Grand Cape ad valenciam* was awarded, etc. It seems that the terre-tenant could have said that he was not the same person, etc. Query then if they were at issue upon that, and process could not be awarded against the other who vouched in fact, was the process discontinued, etc.?

Case 15. Reported in Y. B. Paschal, 45 Ed. III, p. 6, pl. 4. See also Brooke, Voucher, 29.

Michaelis
46 Ed. III. (16) **In a writ of wardship**, the defendant vouched without showing a deed, for FYNCHEDEN said that it might

be that he leased by parole, without a deed, and then made a warranty to him, etc. Well debated. But he should show cause; and he had the voucher, etc.

Reported in Y. B. Mich. 46 Ed. III, p. 25, pl. 9. See also Brooke, Case 16. Voucher, 35.

(17) **One prayed to be** received for default of his tenant for life, in a Formedon, and he vouched him to warranty by a strange name. STONORE: He who is vouched is the same person who made default; judgment if without cause? THORPE: If a man vouches himself it is reasonable that he show cause, for by common reasoning he can plead the same plea after the voucher that he can plead before. And the law is the same if he had warranted to the tenant and then vouched the same tenant. But here, albeit he made default, he is now to be in another course by the standing of the voucher. (Contrary Michaelis, 17, in a *Præcipe quod Reddat.*) Wherefore STONORE offered to aver that he who was vouchee never had any other seisin except such as he had of the lease of him who was received. Ready. And the other alleged the contrary. Query as to the said counterplea, for it is not warranted by the Statute, nor by the common law, as it seems.

Paschal
31 Ed. III.

There is no printed year of 31 Ed. III. Fitzh: Voucher, 26, has the case. Case 17. Statute of Vouchers, 20 Ed. I (1292), Stats. at Large, Vol. 1, p. 261.

(18) **In a cui in vita**, the tenant vouched to warranty the heir of him by whom his entry was alleged, and he had the voucher, etc. And if it be in the *per* and *que* he can vouch the heir of the husband. (In the same plea.) And still it seems that he is not within the purview of the Statute, which says, "within the line," etc.

Trinity
16 Ed. III.

There is no early printed year of 16 Ed. III. The case is probably that reported in the Rolls Series, 16 Ed. III, Pt. 2, p. 44. There seem to be two reports of the same case, neither wholly like our case, but sufficiently like for the probability to be that they are identical, although it is only probable. There is nothing said in the abridgment as to the reasons for granting the voucher, which the case gives as the nonage of the heir. Case 18.

The Statute is "None shall vouch out of the line." "*Ne vouch hors de la ligne.*" West. II, 13 Ed. I (1285), cap. 40, Stats. at Large, Vol. 1, p. 163 (218).

- Hilary
21 Ed. III. (19) **If one vouches** and the voucher is counterpleaded, and the tenant demurs in law upon the counterplea, and it is adjourned until another term, it is peremptory for the tenant, for the Statute says, "*soit boit outre a outre respounse*," with the intent that he shall answer immediately. And that in Wardship, etc.
- Case 19. Reported in Y. B. Hilary, 21 Ed. III, p. 10, pl. 34.
The Statute is West. I, 3 Ed. I (1275), cap. 40, Stats. at Large, Vol. 1, p. 74 (100). "He shall be further compelled to another answer."
- Trinity
21 Ed. III. (20) **In a praecipe quod reddat** against a woman, she said that her father died seised, after whose death the lands descended to her and to one M, her sister, etc., [and to one K,] against whom the writ is brought and A entered, claiming for herself and her sister. And that her sister, by her deed, had released to her all her right, etc., with warranty. And as to one half, she vouched her to warranty. And as to the other half, she prayed her in aid, etc. And the opinion was that she should have the voucher. But whether she should have the aid they were doubtful, etc. Wherefore the demandant said that she entered claiming to herself. Ready. And the other alleged the contrary.
- Case 20. Reported in Y. B. Trinity, 21 Ed. III, p. 27, pl. 22. See also Brocke Voucher, 63.
- Michaelis
21 Ed. III. (21) **In a praecipe quod reddat** against two, one disclaimed, and the other vouched to warranty the one who disclaimed. And the demandant would have counterpleaded and could not, for then he would have abated his writ.
- Case 21. Reported in Y. B. Mich. 21 Ed. III, p. 33, pl. 19.
- Hilary
22 Ed. III. (22) **In a praecipe quod reddat** the tenant vouched and he prayed that he be summoned in two counties, etc. One sheriff returned that he was summoned; the other returned that he had nothing, etc. And the judges were in agony as to what process should issue, etc.
- Case 22. The case has not been identified in Y. B. Hilary 22 Ed. III, or in the early abridgments.

(23) **Dower** in the hustings of London against the husband and his wife, who vouched a foreigner. Wherefore the plea was sent to the Bench by the Statute. And the vouchee came, and they asked the tenants what they had to bind him, and the tenants went by leave to seek their counsel until another day, on which day they were demanded and made default, upon which the woman prayed to be received. RIKHILL: That default is made in contempt of Court, and we cannot do anything except record the default and remand the plea, etc. KELSHULL: This default will cause loss, and therefore we will receive her, etc. Wherefore the woman vouched the same person to warranty who was vouched before. THORPE: That you cannot do, for we cannot hold the plea except upon the first warranty, for if the vouchee vouches over here, we cannot do anything, no more than when he pleads in bar, etc. (But yet, query? For it seems that this is incidental. They can make process against the second vouchee, for otherwise they would send it back to the franchise, and there she would vouch anew, and there would be a long delay.) SETON: If the tenant makes default here, after the plea be removed, you cannot award the petty cape. Which was conceded. And then they recorded the receipt and the voucher, and sent it back. Which note. Contrary elsewhere, etc.

Reported in Y. B. Hilary, 18 Ed. III, p. 1, pl. 5. See also Fitzh: Case 23. Voucher, 2. It was apparently not a writ of dower, but a Jure d'Utrum.

Statute of Gloucester, 6 Ed. I (1278), cap. 12, Stats. at Large, Vol. 1, p. 117 (126).

(24) **The queen brought** a writ of Wardship against S and his wife, and S alone vouched to warranty one who came and said that A, the wife, was dead, and demanded judgment of the writ. THORPE: You shall not have the plea before you have entered into the warranty. And afterward you shall not have the plea because you have entered into the warranty as a woman who is alive, etc. Query? (But yet she could enter by protestation, etc.) Wherefore B asked of S what he had to bind him? Who

showed a deed of this same wardship made by this B to A, the wife, [while she was sole,] and there was no warranty in the deed, etc. On which B demanded judgment, since S was a stranger to that, and also no warranty was comprised, etc. And so to judgment. And it was said that the demurrer was peremptory on both parties, etc. And then it was adjudged that the queen should recover the wardship against S, and he over in value against B. And THORPE said that the writ had been maintainable against S, leaving out the wife. And that was the reason that he had warranted alone without his wife, etc. And then a writ issued to the sheriff of T to extend the wardship; who returned the wardship and the marriage at three hundred pounds. And then S sued a *Scire Facias* against B to have the value: who came and said that at the time of the recovery of the wardship the marriage was not worth twenty pounds a year, and then certain tenements descended to him to the value, as above, etc. THORPE: All the wardship passed by the first grant; and although it had been annexed after the taking or before, he takes all, by which it seems that he shall recover according to the return of the sheriff, etc. And they adjourned. And note that that recovery in value shall be wholly in damages, etc. Query, to what intent he had the *Scire Facias* here, when he could have had an *habere facias ad valenciam*? To which writ he shall not have an answer, etc. (Peradventure it was after the year, etc.)

Case 24. Reported in Y. B. Hilary (as it is in the "Vulgate." This is the second Hilary Term printed, and the heading is probably an error for Paschal), 30 Ed. III, p. 6, pl. 9. See also a report of the case in Y. B. Mich. 30 Ed. III, p. 14, pl. 14.

Michaelis
30 Ed. III.
Statham
183 a.

(25) **In a praecipue quod reddat**, the tenant vouched two, and at the *Sequatur* one was essoined for service of the king. And the sheriff returned that the other was dead. SETON (for the tenant): We will vouch him who was essoined, anew, and he had it, etc.

Case 25. Reported in Y. B. Mich. 30 Ed. III, p. 31, pl. 68. See also Fitzh: Voucher, 104.

(26) **In ancient demesne** the tenant vouched a foreigner to warranty, and the tenant had a *Supersedeas* to the suitors, and a writ *de Warrantia Chartae* against the vouchee. Query if it be the law? For it was his folly; for he could have had a writ *de Warrantia Chartae* before, etc. And it is not reasonable to delay the demandant by such a suit, etc. From this it shall be understood that Ancient Demesne is out of the purview of the Statute, which says that a man can vouch a foreigner in London, etc.

Michaelis
21 Ed. III.

The case has not been identified in Y. B. Mich. 21 Ed. III. Fitzh: Case 26. Voucher, 222, has the case.

Statute of Gloucester, 6 Ed. I (1278), cap. 12, Stats. at Large, Vol. 1, p. 117 (126).

(27) **In a praecipe quod reddat**, the tenant vouched to warranty, and at the Grand Cape *ad valenciam* the tenant said that the vouchee was dead; therefore, since the Court could not know as to that unless it came in by the return of the sheriff, they awarded seisin of the lands for the demandant. (Against the law, as I believe, etc.) Query, shall the heir of the vouchee shall have a writ of Error, inasmuch as he had not entered into the warranty, etc.?

Michaelis
21 Ed. III.

Reported in Y. B. Mich. 21 Ed. III, p. 36, pl. 30. See also Brooke: Case 27. Voucher, 66.

(28) **In a writ of entry** in the *per*, the wife was received for default of her husband, and would have vouched out of the fine and could not, because she was a party to the writ, etc. But one who is received by reason of a reversion, and is not named in the writ, shall vouch at large, etc. And it seems reasonable, since it is all one; for when the woman was received she was in another course than she was before, etc.

Paschal
19 Ed. III.

There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year and term. Fitzh: Voucher, 221, has the case.

Case 28.

(29) **Although** a man vouches one who was named in an Assize, and has the voucher, he shall never recover in

Trinity
28 Ed. III.

value; and the reason is because the voucher is only in lieu of an aid prayer, for the voucher is not granted to him for the mischief to the warranty, but to put the plea in another's mouth by such a plea as he himself cannot plead. And also the writ alleged them all to be disseisors and in of their own tort, in which case no mischief to the warranty can be understood, etc. By WILLOUGHBY and SHARSHULL, in an Assize. Contrary, Anno 5 Ed. III, in the Eyre of Nottingham, where the tenant had judgment to recover in value against the vouchee, in an Assize.

Case 29. The case has not been identified in Y. B. Trinity, 28 Ed. III, or in the *Liber Assisarum*, where a case of an Assize very naturally might be found. Fitzh: Voucher, 147, cites the case as in Mich., 28 Ed. III, 100. There is no such folio in the printed Year Book, either in 28 Ed. III or the *Liber Assisarum* for that year.

Trinity
49 Ed. III. (30) **In formedon** in London, the tenant pleaded the warranty of the ancestor with assets in a foreign county. And upon that they were at issue, and the plea was put in the Bench to be tried, etc. And yet the Statute does not speak of any case except where a man vouches a foreigner, etc.

And it was said in the same plea, that if the demandant does not appear in the Bench, after the record has come there, they will award a nonsuit in the Bench. (But yet I believe that it is a default.)

Case 30. The case has not been identified in Y. B. Trinity, 49 Ed. III. Fitzh: Voucher, 223, has the case.

Statute of Gloucester. See case 26, *supra*.

Michaelis
11 Ed. III. (31) **If one vouches** another and binds him by reason of the reversion, and he disclaims in the reversion; the opinion was that the tenant had failed of his voucher. (But yet there was no default in him, etc.) Query, if the disclaimer lies in such a case? For it seems that if he himself leased, he could not disclaim, etc. But he answered to the lease, etc.

Case 31. There is no early printed year of 11 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments.

(32) **If the tenant** makes default after the vouchee has entered into the warranty, the vouchee shall immediately be discharged, for although at the petty cape against the tenant he comes and saves his default, still the writ shall abate, etc., for all is discontinued, etc. Query, if the defendant vouches him in any other writ than in a *Praeipere quod Reddat*, etc.?

Michaelis
14 Ed. III.

There is no early printed year of 14 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments. Case 32.

(33) **In a writ** of Admeasurement of Pasture, the defendant vouched, and had the voucher. Which note, etc.

Hilary
18 Ed. II.

The case has not been identified in Y. B. Hilary, 18 Ed. II, or in the early abridgments.

(34) **In a praecipere quod reddat**, the tenant vouched to warranty, and the summons was served; and the vouchee did not come, and the tenant was essoined but the essoin was not adjourned, etc. And the defendant had judgment to recover seisin of the land; and the lessor of the tenant prayed [judgment] over in value, and had it, etc. (I believe the reason that he recovered seisin of the land was because the process against the vouchee was discontinued, for there was no one in Court to pray a process against him, etc., except the lessor, etc. But yet many said that he could pray process, etc. And there was a better reason to award process at his prayer than judgment in value at his prayer, as before, etc. But it seems that the tenant should not recover in value until the process was ended against the vouchee, etc., so a new error worse than the first, etc.)

Hilary
24 Ed. III.

The case has not been identified in Y. B. Hilary, 24 Ed. III, or in the early abridgments. Case 34.

(35) **If a man sues** for a rent service, the tenant of the lands shall not vouch, for it is a good counterplea that it is a rent service, etc. But the taker of the rent shall vouch his grantor, etc. But if a man demands a rent charge, the

Michaelis
33 Ed. III.

tenant of the land shall vouch, but he should show cause, etc., for such a rent is against the common law.

Case 35. There is no printed year of 33 Ed. III. Fitzh: Voucher, 218, has the case.

Michaelis
35 Ed. III. (36) **In a dum fuit infra aetatem** in the first degree, the tenant vouched to warranty, and he had the voucher because he was not in by a tort, etc. (But yet that is contrary to the writ, etc.)

Case 36. There is no early printed year of 35 Ed. III. Fitzh: Voucher, 219, has the case.

Trinity
13 Ric. II. (37) **The tenant** vouched one under age to warranty, and he prayed that the plea delay. And the plaintiff said that he was of full age, whereupon a *Venire Facias* issued. The proceeding continued until the *Sequatur*, to which writ there was no service. And then the tenant would have vouched him as of full age, and could not, but seisin of the land was awarded; for THIRNING said that it was the folly of the tenant that the *Sequatur* was not served: as well as where process issues against the vouchee to warranty, etc. But yet if he had come by process, and had been adjudged to be of full age, it had been peremptory. Query as to the difference, etc.?

Case 37. There is no printed Year Book for 13 Ric. II. Fitzh: Voucher, 84, has the case.

Michaelis
15 Hen. VI. (38) **In formedon** the tenant vouched one H to warranty, who came and asked the tenant what [he had to bind him] etc? Who said that one F enfeoffed him for the term of his life, the remainder to him who is vouched; so he bound him by reason of the reversion. JUYN: That cannot be, for it is not the same as where the reversion of a tenant for life is granted and the tenant attorns, in which case the reversion is executed; or where tenant by the curtesy vouches by reason of the reversion; in all those cases they shall have the voucher. And still their voucher is only in the place of an aid prayer, for they never recover in value. But such a voucher in the place of an aid prayer is given to

them in order that those in the reversion can vouch over; for, to my mind, where one prays in aid, one who is prayed cannot vouch over; but in the case here it is reasonable not to execute it, except at the will of him in the remainder, for he can reserve the remainder, etc. But if he had once brought an action of waste, or a writ of Entry *in consimili casu*, affirming that the reversion was in him, then you could vouch him, as above, wherefore, inasmuch as you have failed of your voucher here, the Court awards that the demandant shall recover seisin of the land. Statham
183 b.

And it was said in the same plea, that if a man leases land for a life term, although there are no warranties or words of warranty, to wit: "*dedi*" or "*concessi*," in the deed, still the tenant shall recover in value against him, because he himself leased, etc. (But I believe he shall not recover in value against his heir in that case.)

And it was said in the same plea, that if the tenant by the curtesy vouches, as above, the heir shall not be compelled to enter into the warranty, because the tenant by the curtesy is tenant to the lord and can vouch the lord by his ancestral, etc. But yet he has failed of his voucher, because the reversion is to the heir. Query, in that case, if the heir enters into the warranty, shall the tenant by the curtesy be out of Court, since that voucher is only in place of an aid prayer? etc. But tenant in dower shall vouch, as above, for she is tenant to the heir. And if the vouchee does not know how to bar the demandant, she shall be newly endowed of that which remains to the heir. And the law is the same when she prays aid of him, etc. Well debated.

There is no printed year of 15 Hen. VI. The case has not been identified in the early abridgments. Case 38.

(39) **In dower** the tenant prayed aid of four women, who were coparceners. And at the summons they did not come, wherefore the tenant said that two of them were dead, wherefore he vouched the other two to warranty, and the heirs of those two who were dead, etc. COTTON: That cannot be, for you cannot vouch the same persons whom you Michaelis
15 Hen. VI.

have prayed in aid before, unless you wish to vouch them as strangers, etc., wherefore answer without the vouchee, etc. Contrary, Hilary, 11 Hen. IV, in Dower. Study the difference in them, etc. (But I believe the reason he did not have the voucher in that case was because his aid prayer, to wit: of his coparceners, was a voucher in law, in which case it is not reasonable that he vouch twice, etc., for it is not like another aid prayer, etc., for in this case he recovers *pro rata*, etc.)

- Case 39. There is no printed year of 15 Hen. VI. Fitzh: Voucher, 33, has a short abridgment of the case.
- Trinity
15 Hen. VI. (40) **Where one** is vouched who is under age, who comes in by a *Venire Facias*, and is adjudged to be of full age, still a process shall issue against him to warrant. And so he can delay the plaintiff without cause, as here, etc. As appeared in Formedon, etc.
- Case 40. There is no printed year of 15 Hen. VI. The case has not been identified elsewhere.
- Paschal
12 Ed. II. (41) **A praecipe quod reddat** was brought against the lord and his villein. And the villein said, "*Salvum magistro meo libertate naevitatis unde voco ad warrantizandum J de B,*" etc. And see that both cannot vouch, for that is contrary to the plea, which was given to the villein only, etc. Wherefore query, etc.? Similie *Anno* 4 Ed. III, in the Eyre of Nottingham.
- Case 41. The case has not been identified in Y. B. Paschal, 12 Ed. II, or in the early abridgments.
- Hilary
38 Ed. III. (42) **The tenant** prayed aid, and he who prayed in aid came and vouched to warranty, and the tenant pleaded in bar, and the demandant answered both the pleas, etc. Query, why, etc.?
- Case 42. Possibly the case reported in Y. B. Hilary, 38 Ed. III, p. 2, pl. 10, but the identification is not certain.
- Paschal
32 Ed. III. (43) **In dower** against the husband and his wife, who vouched to warranty one R, who warranted to them and

vouched the husband. BURTON: You have warranted to the husband a fee simple, judgment if without cause, etc. MOWBRAY: It is well understood that the husband enfeoffed R, and that R re-enfeoffed the husband and his wife. FYNCHEDEN: Then the first warranty is gone. THORPE: No, my Lord, and that is to the advantage of the woman. And the opinion was that he should not show cause.

There is no printed year of 32 Ed. III. Fitzh: Voucher, 95, has the Case 43. case.

(44) **One prayed** aid of another, who came and would not join. (Query, if he could compel him to join, or if he should have answered to the cause or not? Because it does not appear.) And then he vouched him to warranty, etc. THORPE: When a man prays aid, and it appears by his aid prayer that he could vouch him, he shall be ousted of the aid. And you granted him the aid where he appeared, as above, wherefore it is reckoned your own folly, etc. And then the voucher was granted, etc. Michaelis
32 Ed. III.

There is no printed year of 32 Ed. III. The case has not been identified in the early abridgments. Case 44.

(45) **The tenant vouched** the demandant and a stranger, and he showed cause, etc. And the demandant would have entered into the warranty and [have rendered] the action to him and could not, but a summons issued against them, etc. From this it follows that one vouchee cannot answer without the other until the process is ended against his companion: no more than in a *Praeipere quod Reddat* one of the tenants can answer without the other until, as above. Michaelis
32 Ed. III.

See case 44, *supra*, note.

Case 45.

(46) **In a praecipere quod reddat** the tenant vouched, and the vouchee came, and the tenant produced a deed of a later date than the voucher, etc. And the demandant prayed seisin of the land, because he had failed of his voucher. And the opinion was that the demandant could Trinity
38 Ed. III.

not take advantage of that, but the vouchee, etc.; for although the demandant had been delayed, still he had not been injured, etc.

Case 46. Reported in Y. B. Trinity, 38 Ed. III, p. 13, pl. 13. See also Brooke, Voucher, 56.

Michaelis
38 Ed. III. (47) **In a writ** of entry upon a disseisin, the tenant vouched one J, "who shall be bishop"; and because the temporalities were in the hands of the king, he showed how his predecessor enfeoffed him of the lands which were in the right of his church. CLAIM: Your entry is alleged by this same person whom you allege enfeoffed you, wherefore show the deed proving that this is the right of his church, for it shall be understood to be the contrary, etc. THORPE: He need not show the deed to you, etc., but this is a strange voucher, etc. And I have seen that one has been vouched as heir in the womb of his mother, etc.

Case 47. Reported in Y. B. Mich. 38 Ed. III, p. 29, pl. 38. See also Brooke, Voucher, 61; and Fitzh: Voucher, 58. They give fuller reports of this long case than does Statham.

Paschal
39 Ed. III. (48) **In cosinage** against the husband and his wife, who vouched the husband to warranty because the husband enfeoffed one U, and retook an estate to himself and to his wife, and so as assignee of U he vouched him, etc.

Case 48. Reported in Y. B. Paschal, 39 Ed. III, p. 9, pl. 13.

Michaelis
39 Ed. III. (49) **In a praecipue quod reddat** the tenant vouched two, to wit: J and U, who came and asked, etc., who showed a deed by which U and the ancestor of J gave, etc., without a clause of warranty, and by this word, "*dedi*," he bound U. FYNCHEDEN: We pray seisin of the land, for he has failed of his warranty, etc. THORPE: It is not so. FYNCHEDEN: Yes, sir, for half of it, at least. THORPE: No. For he can recover the entire warranty against U by the survivorship. And if I vouch two by reason of a reversion, and one of them disclaims, I can recover the entirety against the other. FYNCHEDEN: If I vouch two, and show separate deeds, I have failed of my

warranty. THORPE: It is not the same; for in the case here he has color to vouch both, but not so in your case, etc. And they adjourned. And the opinion was that he should recover the entire warranty.

Statham
184 a.

Reported in Y. B. Mich. 39 Ed. III, p. 26, pl. 20. The report of the case does not show any adjournment but says, "It was adjudged that the demandant should recover against J B, and he over against J L; and J L be in mercy."

Case 49.

(50) **In a praecipe quod reddat**, the tenant vouched one who entered and vouched one A, who came and traversed the gift. And upon the return of the *Venire Facias*, the first tenant by the warranty said that his vouchee was dead. RIKHILL: You are out of Court, wherefore, etc. WADHAM: If we cannot have the plea we are injured, for we cannot recover in value. RIKHILL: You are not harmed, for you can have a writ of Error. Wherefore the inquest was taken.

Trinity
12 Ric. II.

There is no early printed Year Book for 12 Ric. II. The case has not been identified in the early abridgments. It is apparently the case printed in Y. B. Trinity, 12 Ric. II, Ames Foundation, ed. Deiser, p. 9.

Case 50.

(51) **One prayed** aid of the king in a *Praecipe quod Reddat*. And because his aid prayer was in lieu of a voucher, to wit: to have recompense, he was ousted from vouching any other person afterwards. And that in a *Praecipe quod Reddat*. But if he had prayed in aid of the king generally, it had been otherwise, for when he prayed aid by reason of recompense he showed the cause in his prayer, etc., otherwise he would not have recompense, etc. In that case the plea is put in the vouchee of the king, etc.

Paschal
9 Hen. VI.

It is otherwise when one prays aid of another person, etc. BABYNGTON: A *procedendo ad iudicium* is between the aforesaid parties, etc. And since the tenant has vouched another who has entered into the warranty, this word "parties" is false. And he was ousted of the voucher, etc., for the above reason.

The case has not been identified in Y. B. Paschal, 9 Hen. VI, or in the early abridgments.

Case 51.

Michaelis
II Hen. IV.

(52) **Formedon** in the Descender was brought against four coparceners, and one was summoned and severed. The tenant vouched one B to warranty. SKRENE: This B is the same person who was severed, judgment if without cause. And it was clearly the opinion that he should show cause, etc. And the reason that he had vouched one of the demandants without cause was because he could not plead the warranty in bar, etc., for the above reason. But where there is only one demandant the tenant cannot vouch him, etc. But if two bring the action, I can vouch one with cause. And I can also vouch him as others: as if a man has issue a daughter by one mother, and land is given to him and to his second wife in tail, and they have issue a daughter and alienate, and they die; when the younger daughter brings Formedon, she shall be vouched with the older daughter. Also if entailed land descends to two sisters; one enters and enfeoffs me of all, and an action is brought against me by them — I can plead her in bar for one half, and vouch her for the other half, etc. But I should show cause; so [here]. And then he showed cause, to wit: that one A, ancestor of this B, enfeoffed him, etc. SKRENE: We have conveyed the descent from this same person to the demandants, as daughters and heirs, in which case he cannot have the voucher of B without the others, upon the matter as shown, etc. HANKFORD: He can bind him by his own deed. THIRNING: In that case the cause is traversed, wherefore if it be not sufficient he may clearly demur in law, wherefore he should vouch all the demandants, and they should all enter into the warranty to have their warranty paramount, etc. HANKFORD: They shall not have their paramount warranty in that case, etc. THIRNING: He has the voucher of all and they have entered into the warranty and rendered the action to themselves, for if they pleaded in bar with warranty against those three, with [assets by] descent, and it was found they had nothing by descent, and he recovers, dying without issue; and then lands only to the value descend to this fourth, who is severed, they can have a *Scire Facias* against her, for

she is not heir to them for that land, but to the grandfather, etc. So that recovery is false against her, etc., for she is a stranger to the recovery, etc., wherefore answer without the voucher, etc. And so see that it is not peremptory. But it was said that if he had delayed until another term that it had been peremptory. Query? And also it is not within the provisions of the Statute which says, "Let him be further compelled to another answer," for that is where the voucher is counterpleaded, and the tenant will not await the averment, etc. And then, by the grace of the Court, he may show another cause, to wit: that this B released with warranty. THIRNING: In your case the possession of her father is the cause of the voucher, but not so here, for he shall say he did not release, and you never had a deed tried if it was not shown. NORTON: Yes, sir, between strangers and the demandants, if they are strangers to the deed. THIRNING: Answer without the voucher. And see the plea, etc.

Reported in Y. B. Mich. 11 Hen. IV, p. 19, pl. 44. See also Brooke, Case 52. Voucher, 49; and Fitzh: Voucher, 52. The case is a very long one and the points are closely debated. Statham's advice to "see the case" should be followed for the points adjudged to be thoroughly understood.

Statute of West. I, 3 Ed. I (1275), cap. 40, Stats. at Large, Vol. 1, p. 74 (100).

(53) **In formedon**, the tenant vouched two to warranty, who entered into the warranty and vouched one H, who entered into the warranty and vouched one F. NORTON: This F is one of those to whom you have warranted before, judgment if without cause? SKRENE: If one enfeoffs me, and I re-enfeoff him and a stranger, the first warranty remains to the advantage of the stranger, to wit: those two as assignees to me vouch one of them, who makes a warranty to me, etc. So here, for the warranty is not gone, except where I re-enfeoff the same person alone, and also of as high an estate, wherefore it is not reasonable to show cause when it appears that my warranty remains. But it would be different if we revouched both. NORTON: If he does not show cause we are injured, for we cannot have the counterplea in any other way. HILARY: Yes, sir, it is a

Hilary
11 Hen. IV.

good counterplea by the common law to say that he nor any, etc., ever had anything except jointly with the other, whose estate he had warranted to them before. Which was conceded. But yet he was forced to show cause, etc.

Case 53. Reported in Y. B. Hilary, 11 Hen. IV, p. 42, pl. 10. See also Brooke, Voucher, 50; and Fitzh: Voucher, 53.

Paschal
11 Hen. IV.

(54) **In dower**, the tenant prayed aid of one H, who was summoned and did not come, and then he vouched him to warranty. SKRENE: That cannot be, for the above reason. NORTON: The tenant now brings a voucher as assignee of him in the reversion, and consequently against him who is in the reversion. And also he can now vouch a stranger, which is as great a delay to the plaintiff as this is. And also if the person prayed in aid had joined in aid, they could vouch over, etc. And then the voucher was granted etc. It seems in that case that he should show cause upon the voucher, for it might be that he could bind him by reason of the reversion, which is only in place of an aid prayer; and so it were in vain to grant him the voucher.

Case 54. Reported in Y. B. Paschal, 11 Hen. IV, p. p. 59, pl. 9. See also Brooke, Voucher, 51; and Fitzh: Voucher, 54.

Michaelis
19 Hen. VI.

(55) **Formedon** was brought against a woman, who said that her father was seised, etc., and had issue this tenant and one K, and died, and they made purpart so that this land was allotted, as the purpart of this present tenant; and she prayed aid of K and had it. And K was summoned and did not come, wherefore it was adjudged that the tenant should answer alone. (Query, if the demandant recovered if she would recover against her coparcener *pro rata*, etc.?) And she vouched to warranty one U, who entered and vouched one K. FORTESCUE: This K is the same person of whom the tenant prayed aid, and we demand judgment if without cause. YELVERTON: There is no need, for it may be that there is a release from K. FORTESCUE: If the tenant vouches one who enters and vouches another, who vouches a third, and the third vouches the tenant or the first vouchee, he shall show cause. And the reason is because the demandant

Statham
184 b.

cannot have a counterplea, to the possession, because he granted the voucher, so here the demandant cannot have a counterplea, wherefore it is reasonable that he show cause. MARKHAM: There is a difference when a voucher can show cause for himself and when not; for if FORTESCUE brought an action against me, I could vouch him without cause, for my voucher purports a cause in itself, to wit: that I cannot vouch PORTYNGTON without it; so here it shall be taken that this U who vouched had a release from K. And they adjourned, etc.

The case has not been identified in Y. B. Mich. 19 Hen. VI, or in the early abridgments. Case 55.

(56) **In a praecipe quod reddat**, the tenant vouched two, and at the summons, etc., the sheriff returned that one of the two was dead, wherefore the tenant vouched a stranger to warranty. READ: That he cannot do, for that is contrary to the first voucher. THIRNING: It may be that his first voucher was false. Wherefore it was adjudged that he have the voucher of the stranger, etc. Michaelis 4 Hen. IV.

Reported in Y. B. Mich. 4 Hen. IV, p. 1, pl. 3. See also Fitzh: Voucher, 220 and 315. Case 56.

(57) **In a writ de quibus** for rent, the tenant pleaded "out of his fee," and the plaintiff entitled himself to the rent. And then the tenant said that one such was seised of the land of which, etc., discharged, and enfeoffed him; and he vouched him to warranty. And it was adjudged that he should not have the voucher, because he had pleaded in bar before, for such a plea, to wit: "out of his fee," is a plea in bar, and when the plaintiff has title he should answer it, etc. Michaelis 26 Hen. VI.

There is no printed year of 26 Hen. VI. Fitzh: Voucher, 224, has the case. Case 57.

See as to voucher, in the title of Several Tenancy, Easter, 42 Ed. III. And in the title of Showing of Deeds, etc., Hilary, 50 Ed. III; and in the title of Warranty; and in the title of Counterplea of Voucher; and also many matters in the title of Dower, to wit: when the heir shall be vouched in Wardship and how, etc. Also in the title of Wardship; Note.

and in the title of Ancient Demesne, Hilary 19 Hen. VI; and in the title of Warranty of Charter, etc.. And in the title of *Quod ei Deforceat*, good matter, Mich. 11 Ed. III, etc. And in the title of Process, different matters, etc.

Satham, title of Severalle Tenanncy, *supra*, p. 168 a, case 2. Title of Monstranz dez Faitz, etc., *supra*, p. 125 a, case 8. Title Garrantie, *supra*, pp. 104 b to 105 b. Title Countreplee de Voucher, *supra*, pp. 48 b to 49 b. Title Dower, *supra*, pp. 73 a to 75 b. Title Garde, *supra*, pp. 101 b to 103 b. Title Auncien Demesne, *supra*, p. 19 b, case 9. Title Garrantie de Charter, *supra*, pp. 103 b to 104 a. Title *Quod ei Deforceat*, *supra*, p. 149 a, case 4. Title Processe, *supra*, pp. 138 b to 141 a.

Paschal
3 Ed. III.

(58) **In [a writ of] mort d'ancestor** before a jury, the tenant vouched to warranty one J, and prayed that he be summoned in another county, wherefore the plea was adjourned in Banc, and a writ issued to summon the said J, returnable, etc., on which day he made default, wherefore the plea was remanded, because no Grand Cape lies in the Mort d'Ancestor, etc. And they said that if the Assize passed for the demandant before a jury, that they would give judgment against the tenant. And then the record would be sent here in the Bench to have judgment against the vouchee, etc.

Case 58. Reported in Y. B. Paschal, 3 Ed. III, p. 16, pl. 18.

Trinity
1 Ed. III.

(59) **Where a man** is vouched for lands partly in the wardship of the king, and partly in the wardship of others, process shall not be made until the king has indicated his will. And that in Dower, etc.

Case 59. The case has not been identified in Y. B. Trinity, 1 Ed. III, or in the early abridgments.

Michaelis
9 Ed. III.

(60) **In a quod permittat**, the tenant was ousted of the voucher.

Case 60. Reported in Y. B. Mich. 9 Ed. III, p. 29, pl. 14. See also Fitzh: Voucher, 163.

Hilary
5 Ed. III.

(61) **The wife** can vouch her husband for cause, to wit: that before the coverture he enfeoffed her, etc. In a note.

Case 61. The case has not been identified in Y. B. Hilary, 5 Ed. III, or in the early abridgments.

(62) **When a woman** is received for default of her husband she cannot vouch her husband and herself, by reason of the frank marriage. And this in [a writ of] Entry. Query as to the reason, etc? Hilary
5 Ed. III.

Reported in Y. B. Paschal, 5 Ed. III, p. 19, pl. 22.

Case 62.

(63) **If the vouchee** demurs in law upon the law, it is peremptory. And that in Formedon. Distinguish this, etc. Michaelis
6 Ric. II.

There is no printed Year Book for 6 Ric. II. The case has not been identified in the early abridgments. Case 63.

(64) **In dower** against the guardian, he shall not vouch, etc. Trinity
9 Ed. III.

Reported in Y. B. Trinity, 9 Ed. III, p. 21, pl. 13. See also Fitzh: Voucher, 161. Case 64.

(65) **In a quod ei deforceat** the demandant vouched without showing cause, etc. In [a writ of] Entry. Trinity
9 Ed. III.

The case has not been identified in Y. B. Trinity, 9 Ed. III, or in the early abridgments. Case 65.

(66) **The vouchee** shall say that the lands in demand are partible, and the demandant had a brother and entered, etc. Michaelis
9 Ed. III.

The case has not been identified in Y. B. Mich. 9 Ed. III, or in the early abridgments. Case 66.

(67) **In dower**, the tenant vouched the heir of the demandant who was under age, without showing a deed. But it is otherwise if he be of full age, etc. Trinity
20 Ed. II.

There is no printed year of 20 Ed. II. The case has not been identified in the early abridgments. Case 67.

(68) **He who is** received by reason of a reversion granted to him pending the writ shall not vouch him who is [in the reversion]. In [a writ of] Entry, etc. Michaelis
20 Ed. III.

There is no early printed year of 20 Ed. III. The case has not been identified in the Rolls Series. Case 68.

- Paschal
5 Ed. III. (69) **The tenant** of life cannot vouch the heir of the lessor without showing a deed of that reversion. And that in Dower.
- Case 69. The case has not been identified in Y. B. Paschal, 5 Ed. III, or in the early abridgments.
- Paschal
3 Ed. II. (70) **Voucher** of a house was admitted where a toft was warranted, etc. In a note.
- Case 70. There is no printed term of Paschal, 3 Ed. II. The case has not been identified in the early abridgments.
- Trinity
22 Ed. III. (71) **The vouchee** can appear at the *Sequatur* by attorney. And that in Dower, although no writ was served.
- Case 71. Reported in Y. B. Trinity, 22 Ed. III, p. 7, pl. 2. See also Fitzh: Voucher, 136.
- Trinity
19 Ed. III. (72) **The husband** and his wife should not enter into the warranty by voucher in an Assize of Novel Disseisin. And that in an Assize, in two places.
- Case 72. There is no early printed year of 19 Ed. III. The case has not been identified in the Rolls Series for that year, or in the early abridgments.
- Trinity
22 Ed. III. (73) **A man** shall not have the warranty which was made pending the writ; nor shall he vouch, for the same reason, because he has prayed the same person in aid. But he can vouch a stranger, etc.
- Case 73. The case has not been identified in Y. B. Trinity, 22 Ed. III, or in the early abridgments.
- Michaelis
20 & Hilary,
19 Ed. III. (74) **The husband** and his wife were vouched. The husband died, wherefore the demandant sued a resummons against the tenant, and he vouched the heir of the husband, notwithstanding the woman was a party to the first voucher, because it might be they were vouched by reason of a warranty made by the husband and herself during the coverture,¹ in which case it was void as to the woman, etc.
- Case 74. There are no early printed years of 19 & 20 Ed. III. The case is printed in the Rolls Series, 18 & 19 Ed. III, p. 550, No. 48.

¹ For the life of the husband and no further, the report adds.

(75) **He who is received** to defend his right shall vouch the tenant who makes default. But he should show cause, etc. Trinity
18 Ed. III.

Reported in Y. B. Trinity, 18 Ed. III, p. 30, pl. 41. See also Fitzh; Case 75. Voucher, 9.

⁹⁰ The cases as to vouching to warranty have already been partially collected under the title of Warranty, *supra* p. 747 (Statham, 104). But it would seem that there is much about the law concerning vouchers which is not wholly apparent to us of to-day. "This process of voucher may seem very curious to us." [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 663.] There has been, as a matter of course, a good deal said about the voucher in the previous pages of the invaluable history just quoted, but it is only in the last few pages that the process of vouching seems to have gotten out of its background in the real actions and become a fact in itself to Maitland. We are always dealing with voucher in certain defined ways, but here we get a little new light — Maitland has been thinking effectively, as always: "A clue to the original meaning of the voucher we shall perhaps obtain if we observe that even in Bracton's day it was a feature which the actions for land had in common with the antique *actio furti* . . . the process of voucher was at first a process in which the interest of plaintiffs strove to bring before the court the real offender in order that he might pay for his offence." There seems to be something in this character of a voucher which we do not find exactly paralleled elsewhere in our law. The voucher to warranty in the case of a chattel, if we may not now go any further, seems more like evidence — a witnessing — than a warrant. The voucher comes before anyone has "to pay for his offence"; it offers a means for tracing the real person who should pay. Persons vouch and they vouch over, and the vouchee and the voucher over both disappear. It is a queer business altogether, but it seems to answer its purpose. Had it not done so it would not have survived so long; something got done by it, and therefore its existence was justified. Bracton [Lib. 5, ff. 380-399] gives us in his chapter on Warranty the view of voucher which has been accepted by the historians of the law; it is the voucher as dominated by the thought of warranty; as it is everywhere so treated, except by Maitland in the passage above cited, and even there the exception is but slight. It is enough, however, to show that there is more to be said about voucher than has ever yet been said, and that the modern student of the law should be put on notice that there is much to be learned about it before we can state with authority what the law of voucher really was at the period covered by the cases of the abridgment.

VIEWE

- Statham
185 a.
Michaelis
2 Hen. IV.
Case 1. (1) **In dower** the tenant demanded the view. **HALLS:** You yourself disseised our husband, judgment if you should have the view? And it was not allowed.¹
Reported in Y. B. Mich. 2 Hen. IV, p. 1, pl. 1. See also Brooke, View, 30; and Fitzh: View, 32.
- Michaelis
2 Hen. IV.
Case 2. (2) **In a cessavit**, the tenant was ousted of the view, because it was of his own cessor, albeit the demandant bound seisin by the hand of the ancestor of the tenant, and not by the tenant.
Reported in Y. B. Mich. 2 Hen. IV, p. 5, pl. 19. See also Brooke, View, 31; and Fitzh: View, 33.
- Hilary
41 Ed. III.
Case 3. (3) **In a quod ei deforceat**, the tenant was ousted of the view albeit he was not the same person who recovered against his alienee, etc.
Reported in Y. B. Hilary, 41 Ed. III, p. 8, pl. 17. See also Fitzh: View, 51.
- Paschal
42 Ed. III.
Case 4. (4) **In a writ of nuisance** which is removed out of the county by a pone, the defendant shall have the view, because it is a summons, etc., and he shall have the view of the thing on which the nuisance is made. And the law is the same in a *Curia Claudenda*.
Reported in Y. B. Paschal, 42 Ed. III, p. 9, pl. 9. See also Brooke, View, 22.
- Michaelis
41 Ed. III.
Case 5. (5) **After the view** the tenant shall not say that there are two Dales, and neither without an addition, for he could have done so before the view.
Reported in Y. B. Mich. 41 Ed. III, p. 29, pl. 33.
- Michaelis
42 Ed. III.
Case 6. (6) **In a praecipe quod reddat** against the husband and his wife, they had the view, etc. And the husband died, and in the second writ the woman had the view, etc. And the

¹ The plea was not allowed; he had the view.

reason was because it is without the purview of the Statute, for the Statute speaks generally at the beginning, to wit: that the view shall not be granted "but in the case when view of Land is necessary"; but it does not stop there but goes on and says, "*sicuti*," etc., and so it decides in what cases, etc. And this case is none of those, etc.

Reported in Y. B. Mich. 42 Ed. III, p. 23, pl. 5. See also Brooke, Case 6. View, 18.

Statute of Westminster the Second, 3 Ed. I (1285), cap. 48, Stats. at Large, Vol. 1, p. 163 (228).

(7) **In dower for rent**, the tenant demanded the view of the land which, etc., and he was ousted, etc. Query as to the cause, for they said in the same plea that in a writ *de quibus* for rent, the tenant shall have the view of the lands of which, etc. Michaelis
44 Ed. III.

Reported in Y. B. Mich. 44 Ed. III, p. 31, pl. 10. See also Fitzh: Case 7. View, 54.

(8) **In a nuper obiit**, the tenant shall have the view. Michaelis
45 Ed. III.
The case has not been identified in Y. B. Mich. 45 Ed. III, or in the early abridgments. Case 8.

(9) **A man** shall not have the view after he has taken a day by *prece partium*. And that in a *Præcipe quod Reddat*. Hilary
46 Ed. III.

Reported in Y. B. Hilary, 46 Ed. III, p. 4, pl. 8. See also Brooke, Case 9. View, 23; and Fitzh: View, 56.

(10) **After the view** the tenant shall [not] say that the demandant is a bastard, or that another is next heir to him, of whose possession, etc., because such pleas go to the action, etc. Query, if he shall say after the view that the plaintiff was outlawed for felony, etc.? For the above reason. Trinity
46 Ed. III.

Reported in Y. B. Trinity, 46 Ed. III, p. 15, pl. 6. See also Brooke, Case 10. View, 24; and Fitzh: View, 57.

(11) **In trespass upon the case**, to wit: that the defendant by reason of his tenure should repair a certain fishery, Michaelis
46 Ed. III.

and for not doing so, etc., certain lands of the plaintiff were flooded. The defendant was ousted of the view. And still it is in the nature of a *Curia Claudenda*, etc.

Case 11. Reported in Y. B. Mich. 46 Ed. III, p. 27, pl. 16. See also Brooke, View, 26; and Fitzh: View, 59.

Michaelis
46 Ed. III.

(12) **In a writ of entry** by one who was under age, for rent on a lease made by his ancestor to the tenant, he demanded the view of the land of which, etc. FYNCHEDEN: The Statute is general, "In all writs, also where lands be demanded by reason of a lease, made by the demandant, or his ancestor, unto the tenant, and not to his ancestor," no view was granted. And you are the same person to whom, etc., therefore you shall not have the view. PRISOT: He demands the view for another thing which is not in demand, therefore it is outside the provisions of the Statute. FYNCHEDEN: Peradventure in a writ *de quibus* for rent, the law is as you say, because the Statute speaks only of tithes, etc. And then he was ousted of the view, etc. Query?

Case 12. Reported in Y. B. Mich. 46 Ed. III, p. 33, pl. 46. See also Brooke, View, 27; and Fitzh: View, 60. The Statute is that of Westminster the Second, 13 Ed. I (1285), cap. 48, Stats. at Large, Vol. 1, p. 163 (228), "*In omnibus etiam brevibus*," etc.

Hilary
50 Ed. III.

(13) **In formedon**, after the view the tenant said that the land was held of the manor of B, which is ancient demesne. And he had the plea.

Case 13. Reported in Y. B. Hilary, 50 Ed. III, p. 9, pl. 20.

Hilary
31 Ed. III.

(14) **In formedon**, the tenant demanded the view. FISHER: Formerly we brought a *Scire Facias* against you for the same gift, and you said that the fine was executed, etc., wherefore we have brought this writ, etc. THORPE; Have the view; for in the *Scire Facias* he could not have had the view.

Case 14. There is no printed year of 31 Ed. III. Fitzh: View, 143, has the case.

(15) **In a quod permittat** for a watercourse diverted, the defendant shall have the view, etc. Hilary
30 Ed. III.

Reported in Y. B. Hilary, 30 Ed. III, p. 3, pl. 10. See also Fitzh: Case 15. View, 88.

(16) **In a writ of dower** for rent, the tenant demanded the view of the lands of which, etc. And it was alleged by the demandant that her husband died seised of the rent, and on that account the tenant was ousted of the view. Contrary elsewhere, etc. Hilary
30 Ed. III.

Reported in Y. B. Hilary, 30 Ed. III, p. 3, pl. 14. See also Fitzh: Case 16. View, 85.

(17) **After the view** the tenant can say that he holds the same land in villenage, for that is only a non-tenure. Hilary
21 Ed. III.

The case has not been identified in Y. B. Hilary, 21 Ed. III, or in the early abridgments. Case 17.

(18) **In a praecipe quod reddat**, the tenant waged his law of non-summons, wherefore the writ abated, and in the second writ he had the view, etc. Michaelis
24 Ed. III.

Reported in Y. B. Mich. 24 Ed. III, p. 36, pl. 44. See also Brooke, Case 18. View, 61; and Fitzh: View, 122.

(19) **In a praecipe quod reddat** against two, one admitted the action of the demandant; the other demanded the view. And the opinion was that he should not have the view, because the demandant was to have seisin of the land, of the half, etc. (But yet it might be that he was tenant of the whole, etc.) And query as to that, for the law is the same where one of the tenants makes default at the Grand Cape; the other shall not have the view. Hilary
14 Hen. VI.

Reported in Y. B. Anno 14 Hen. VI, p. 5, pl. 23. See also Brooke, Case 19. View, 68; and Fitzh: View, 11.

(20) **In a praecipe quod reddat** for a manor, the tenant demanded the view. STONORE: You shall not have the view Trinity
30 Ed. III.

unless you say that there are two vills of the same name within the same county: no more than in a writ of right of an advowson, for he shall say that there are two churches of the same name, etc. But yet the view was granted, etc.

Case 20. Reported in Y. B. Trinity, 30 Ed. III, p. 7, pl. 3. See also Fitzh: View, 86.

Trinity
30 Ed. III. (21) **In a writ of dower** against the husband and his wife, they demanded the view. And it was counter-pleaded, since the husband leased these same lands to the wife of the husband who is tenant, so she is oustable by the Statute. And although she has taken a husband, that is her deed, therefore they shall not have the view. And then the view was granted, etc.

Case 21. Reported in Y. B. Trinity, 30 Ed. III, p. 8, pl. 6. See also Fitzh: View, 87.

Statute of Westminster the Second, 13 Ed. I (1285), cap. 48, Stats. at Large, Vol. 1, p. 163 (228).

Michaelis
8 Ed. III. (22) **In a praecipe quod reddat**, the tenant was ousted of the view in the second writ, since the first writ was discontinued after the view, etc. Still the Statute speaks only of a dilatory exception, etc.

Case 22. Reported in Y. B. Mich. 8 Ed. III, p. 55, pl. 4. See also Fitzh: View, 129.

For the Statute see case 21, *supra*.

Michaelis
14 Ed. III. (23) **The view** was granted in the second writ, where the first writ was abated after the view because the demandant admitted [etc.] other things, which did not come into view.

Case 23. There is no early printed year of 14 Ed. III. The case is printed in the Rolls Series, 14 & 15 Ed. III, pp. 242-246, No. 99. Fitzh: View, 95, has the case.

Michaelis
14 Ed. III. (24) **The tenant** was ousted of the view in a writ of right upon a disclaimer; but yet if he were not the same person who disclaimed, it seems that he should have the view, etc.

Case 24. There is no early printed year of 14 Ed. III. The case is printed in the Rolls Series, 14 & 15 Ed. III, pp. 14-15, No. 3. Fitzh: View, 94, has the case.

(25) **At the return of the grand cape** the demandant released the default of the tenant, and counted against him. And he demanded the view and had it, etc. Michaelis
31 Hen. VI.

The case has not been identified in Y. B. Mich. 31 Hen. VI. Fitzh: Case 25. View, 21, has the case.

(26) **In dower** against four; three said that they were ready, etc., and the fourth demanded the view, and could not have it, wherefore the demandant recovered seisin of the land against the three, and the fourth vouched to warranty. Statham
185 b.
Hilary
11 Ric. II.

There is no printed Year Book for 11 Ric. II. Fitzh: View, 66, has the case, which by his account ended thus: "And as to the fourth they awarded by good advice, that he should answer without the view."

(27) **A man** shall have the view in a writ of Admeasurement of Pasture, etc., to wit: of lands to which the common is appendant, etc. Hilary
34 Ed. III.

There is no printed year for 34 Ed. III. Fitzh: View, 89, has the case. Case 27.

(28) **If the writ** be abated for form, or for false Latin, although he had the view in the [first] writ, still he shall have the view in the second writ, because it is outside the provisions of the Statute, etc. Hilary
3 Hen. VI.

Reported in Y. B. Hilary, 3 Hen. VI, p. 33, pl. 25. See also Brooke, Case 28. View, 3; and Fitzh: View, 2.

For the Statute of Westminster the Second, see case 21, *supra*.

(29) **In dower**, the tenant demanded the view. HORTON: Our husband died seised. SKRENE: He did not die seised. Ready. HORTON: We pray now that he be ousted of the view, because he has [taken consance of the land] upon himself. And they adjourned, etc. Michaelis
11 Hen. IV.

Reported in Y. B. Hilary (not Mich.), 11 Hen. IV, p. 39, pl. 1. See Case 29. also Brooke, View, 40.

- Michaelis
12 Hen. IV. (30) **In a praecipe quod reddat** against two, one admitted the action, and the other demanded the view, etc. THIRNING: You have no right to arrest the judgment unless you accept the tenancy of the whole immediately, for it is reasonable that you grant the view when the law understands that you are tenant, as the writ alleges, etc., wherefore answer, without the view. And seisin of the lands was adjudged, of that which was admitted; and then he demanded the view, etc., of that which remained, and he had it. Which note. HANKFORD said that the whole should be put in view, for otherwise it could not be, etc. And so note the reason why the view was not granted in the case above, etc. And that in a *Cui in Vita*. Well debated.
- Case 30. Reported in Y. B. Mich. 12 Hen. IV, p. 19, pl. 4. The case is the *Cui in Vita* referred to. The case of the *Praecipe quod Reddat* does not appear in the printed term for that year. See also Brooke, View, 45; and Fitzh: View, 45.
- Paschal
18 Ed. III. (31) **The view** was granted of the lands of the plaintiff, in a [writ of] Admeasurement of Dower.
- Case 31. Reported in Y. B. Paschal, 18 Ed. III, p. 20, pl. 35.
- Trinity
22 Ed. III. (32) **In dower** for rent the tenant had the view of the land, notwithstanding the husband died seised of the rent, etc. Contrary, *supra*. (But yet they are not the same.)
- Case 32. Reported in Y. B. Trinity, 22 Ed. III, p. 8, pl. 23. See also Fitzh: View, 116.
- Hilary
7 Ed. III. (33) **In a writ of right** the view was granted in the Common Bench, notwithstanding that he had the view before in the lord's Court.
- Case 33. Reported in Y. B. Trinity (not Hilary), 7 Ed. III, p. 36, pl. 36.
- Michaelis
22 Hen. VI. (34) **In a writ of entry de quibus** for rent, the taker was ousted of the view, etc.
- Case 34. Reported in Y. B. Mich. 22 Hen. VI, p. 23, pl. 42. See also Brooke, View, 58; and Fitzh: View, 13.

(35) **In a writ of intrusion**, against the husband and his wife, it was alleged that the defendant intruded. The view was granted. Query as to the reason, for there was no tort in the husband, etc. Michaelis
3 Ed. II.

Reported in Y. B. Mich. 3 Ed. II, p. 58. Second placitum on the page. See also Fitzh: View, 140, who appears to be mistaken. Case 35.

(36) **View was granted** of a mill *de secta molendinum*. Michaelis
18 Ed. II.

Reported in Y. B. Mich. 18 Ed. II, p. 581, second placitum on the page. See also Fitzh: View, 161. Case 36.

(37) **After the view**, the tenant said that one H, by whom the plaintiff conveyed the descent, was a bastard, and he had the plea, etc. (I believe that the reason was because it went to the action, etc.) Anno.
7 Ed. III.

And it was the opinion in the same plea, that he should say that he had a remedy in Formedon, etc. In the Iter of Northumberland.

This appears to be a case taken from one of the Eyres. Case 37.

(38) **In a writ de quibus** against the husband and his wife, it was alleged that the woman disseised the father of the demandant; the tenant had the view, since no tort was alleged in the husband, etc. Michaelis
6 Ed. III.

Reported in Y. B. Mich. 6 Ed. III, p. 42, pl. 25. See also Fitzh: View, 131. Case 38.

(39) **In [a writ of] right of an advowson**, he demanded the advowson of the church of Dale; and the defendant demanded the view; and because he did not suggest that there are many churches in Dale, he was ousted of the view. Michaelis
7 Ed. III.

The case has not been identified in Y. B. Mich. 7 Ed. III, or in the early abridgments. Case 39.

(40) **In a cessavit**, the tenant had the view, notwithstanding it was of his own cesser, because it might be he had ceased as to different tenements he held of him in the Trinity
8 & Mich. 12,
Ed. III.

same vill; and that *bona ratio*, etc. And yet the contrary has been adjudged elsewhere. (Wrongly, as I believe.)

Case 40. Reported in Y. B. Trinity, 8 Ed. III, p. 38, pl. 1. There is no early printed year of 12 Ed. III. The case is reported in the Rolls Series, 11 & 12 Ed. III, pp. 196-198.

Michaelis
18 Ed. III. (41) **In a praecipe quod reddat** for two parts of the manor of B, the tenant had the view, notwithstanding that in another writ he had the view of the manor of which, etc., which was demanded of him by the same demandant, and he abated the writ for non-tenure, etc. And it was said that the reason was because that now he demanded the two parts, so it might be learned which parts they were of which he had the view, etc.

Case 41. The case has not been identified in Y. B. Mich. 18 Ed. III, or in the early abridgments.

Michaelis
21 Ed. III. (42) **In formedon** after the view, the demandant prayed leave to inquire as to a better writ, and he had it; and in the second writ the tenant was ousted of the view, etc. But yet it seems that he should have had the view in the second writ; because the first writ was not abated by a dilatory exception, but on the confession of the demandant, etc.

Case 42. The case has not been identified in Y. B. Mich. 21 Ed. III, or in the early abridgments.

VARIANCE

Statham
186 a.
Michaelis
41 Ed. III. (1) **In a writ of waste**, the writ alleged that the remainder was tailed to him and to his heirs, and the specialty said, "to him and to the heirs of his body begotten." And because of the variance the writ was abated, etc. And against the opinion of FYNCHEDEN, for he said that it is not like the case where a man should show a specialty upon the declaration, etc., for in that case he does not show the deed until the party demands it, etc. *Simile* Michaelis, 44 of the same king, where the plaintiff declared in debt upon a lease for a term of years; and he showed a deed

which varied from the writ. And because it was in his election to show the deed or not, the writ was adjudged good.

Reported in Y. B. Mich. 41 Ed. III, p. 23, pl. 15. See also Brooke, Case 1. Variance, 14; and Fitzh: Variance, 33. The report of the case; Brooke and Fitzh: all say that the writ was abated.

(2) **If an obligation** be made to A B, and he brings a *Præcipe quod Reddat*, "A B, *armigero*," the writ shall abate. (And the law was the same on the part of the defendant at the common law, but it is otherwise now on the part of the defendant, because he shall give him an addition by the Statute,) etc. Michaelis
3 Hen. IV.

The case has not been identified in Y. B. Mich. 3 Hen. IV, or in the early abridgments. The observation was made by an annotator at a date later than that of the case. Case 2.

The Statute is that of 1 Hen. V (1413), cap. 5, Stats. at Large, Vol. 3, p. 1 (3).

(3) **In trespass**, one justified as bailiff of the king, and he had aid of the king, and after the *procedendo* he would have pleaded new matter in bar. And the opinion was that he could not vary from the matter that he showed upon the aid prayer. Michaelis
30 Hen. VI.

The case has not been identified in Y. B. Mich. 30 Hen. VI, or in the early abridgments. Case 3.

(4) **In a decies tantum**, the plaintiff counted that they took, etc., to say their verdict between A B and D E. NEWTON: Judgment of the writ, for the record was entered "J B, gentleman, and D E, husbandman," so not according to the record. And it was the opinion of many that the writ was good, because it was not brought wholly upon the record, so the variance did not abate the writ: no more than in Formedon in the remainder, where there is a variance between the deed and the writ in the addition of a surname, for in such a Formedon he shall not have a traverse to the deed, but to the gift. Query as to the cause; for in the first case he could say "no such record," etc. See, because it was well argued. Paschal
9 Hen. VI.

Reported in Y. B. Paschal, 9 Hen. VI, p. 1, pl. 3. See also Brooke, Case 4. Variance, 6; and Fitzh: Variance, 6.

- Hilary
7 Hen. VI. (5) **In trespass** a protection was thrown for R Malones, and the writ was Molencys, and by the advice of all the justices it was not allowed; and properly, for thieves throw protections, etc.
- Case 5. Reported in Y. B. Paschal (not Hilary), 7 Hen. VI, p. 22, pl. 2. See also Brooke, Variance, 41; and Fitzh: Variance, 2. The names in the report are Moleneux and Molency; in Brooke, Molineax and Molyney; in Fitzherbert, Molones and Molloncis.
- Michaelis
3 Hen. VI. (6) **In a writ de secunda [de] liberacione**, the plaintiff cannot vary from the day, nor from the number, nor from the place, in his first declaration, etc. But if he be non-suited before any declaration, the law is otherwise. As appeared *Anno* 3 Hen. VI, in a *Secunda del Liberacione*. Well debated.
- Case 6. Reported in Y. B. Mich. 3 Hen. VI, p. 9, pl. 10. See also Brooke, Variance, 2.
- Michaelis
3 Hen. VI. (7) **A writ of estrepement** was brought against J de B, the younger. PASTON: The *Præcipe quod Reddat* is against J de B only, judgment of the writ, for it is not in accord, nor can he be understood to be the same person. MARTYN: This writ of Estrepement is an original writ which need not agree in every word if it agrees in substance: no more than a writ of Champerty or Maintenance. PASTON: A writ of Error is an original, and still it should agree, and especially in names, etc. COKAYN: As to that answer, etc.
- Case 7. Reported in Y. B. Mich. 3 Hen. VI, p. 16, pl. 22. See also Brooke, Variance, 3.
- (8) **If a protection** be thrown, bearing date after the date of the writ, it should be accordant. But if the protection be purchased before the writ was purchased, although it varies from the writ, it is good enough, etc. And it seems to be reasonable that it should not agree word for word; but [it is otherwise] where it is purchased after he has appeared to the writ, by the name comprised within the writ, etc.
- Case 8. The citation to this case is missing in Statham. It has not been identified.
- Note. **See as to variance** in title of Count, Hilary, 14 Hen. IV.

Statham, title of Connte, *supra*, pp. 38 a to 39 a. The case cited does not appear in the title.

(9) **Variance** between the pone and the writ of Replevin will abate the writ where it was removed at the suit of the plaintiff.

There is no citation to this case in Statham, and it has not been Case 9. identified.

WARREN

(1) A **man** can have a warren in another's lands by prescription, but not by the grant of the king, for the king cannot grant him a warren except in the demesne lands of the grantor, etc. As was adjudicated in Trespass, etc. And it may be that that was his land before, etc.

Reported in Y. B. Paschal, 44 Ed. III, p. 12, pl. 20. See also Brooke, Case 1. Warren, 1.

(2) **If one takes** a young hare out of my warren, my writ shall be "*cepit lepores perdices, [et] cuniculos,*" and all things which are beasts of warren. And if he be attainted for one of them, I shall have a fine for every one, etc.

The case has not been identified in Y. B. Hilary, 38 Ed. II, or in the early abridgments. It may be the case reported in Y. B. Paschal, 38 Ed. III, p. 10, pl. 16. Case 2.

WITHERNAM ⁹¹

(1) **Where the sheriff** takes cattle in withernam, he does not deliver them to the party, for the writ is "*detineas quousque,*" etc. But in the King's Bench the custom is contrary to this, and in the Common Bench also. See the *Registrum*.

Reported in Y. B. Mich. 2 Hen. IV, p. 9, pl. 44. In a writ of Debt. Case 1. The point appears nearly in the middle of the case. See also Brooke, Withernam, 3; and Fitzh: Withernam, 3.

(2) **If a man sues** a replevin for pots and pans, he shall have withernam for oxen and other cattle to the value.

There is no printed year of 31 Ed. III. The case has not been identified in the early abridgments. Case 2.

- Michaelis
21 Hen. VI. (3) **The sheriff** can award a withernam in his county, etc., and by the withernam he can take other cattle, to wit: according to the value, and not according to the number. And that in Trespass, etc.
- Case 3. The case has not been identified in Y. B. Mich. 21 Hen. VI, or in the early abridgments.
- Trinity
7 Ric. II. (4) **In replevin** after avowry, if the plaintiff is nonsuited, so that a return is awarded to the avowant, and he sues a writ of "*Retorno Habendo*," which is returned that they are carried off, he shall not have withernam before he has a *Scire Facias* against the pledges, etc. But yet query, if a man shall have withernam of a man, etc.? And if so of any other person, etc., than he who leads them into another county, or into a stronghold.
- Case 4. There is no printed Year Book for 7 Ric. II. Fitzh: Withernam, 11, has the case.
- Anno
23 Hen. VI. (5) **In withernam**, a man can take twenty thousand oxen notwithstanding the replevin was for only one ox, etc., and no punishment shall follow, etc. As was adjudged in the case of *Bronnfleet*.
- Case 5. There is no printed year of 23 Hen. VI. Fitzh: Withernam, 7, has the case.

⁹¹ "This Writ lieth where a Man taketh the Cattle or Goods of another Man, and the party sueth a Replevin by Writ, and an *Alias* and *Pluries*, and upon the *Pluries* the Sheriff doth return, that the Cattle or Goods, etc., are essoined, etc., by Reason whereof he could not replevy them, etc., then this Writ of Withernam shall issue out of that Court where the *Pluries* is returned, returnable in the King's Bench or Common Pleas." [Fitzherbert: "*Natura Brevium*," 169, Hale's ed., 1754.] Our old friend the "*Vee de naam*" of Britton [cap. 27, f. 53], the *vetitum namiam* or writ of *vetito namii* of Bracton [lib. 3, cap. 37, f. 155] and the later writers, which we met under the title of Trespass, meets us here again as an independent title. The origin of the word seems to be obscure, or rather the cross lights are too many for us to see clearly. Cowell, in his dictionary under the word Withernam, thinks that the word may be composed of the Saxon *wyther* (*altera*) and *nam* (*captio*), and says it is a forbidden taking, as the taking or driving a distress out of the county, so that the sheriff cannot upon the replevin make deliverance thereof to the party

distrained. It is always a pleasure to turn to the *Verborum Significatione* of Skene. See his title of Averia, "Averia is called animal, the quwich place is *de nominatione animalium*; that is, of pointing of cattle, or of moveable goods." Coke says, writing of the statute of Marlbridge, cap. 21, "Divers lords of hundreds and Court Barons have power to hold plea, *de vetito namio*, in old books called *De vee*; for the better understanding of this Act, and of divers ancient Acts of Parliament, Books and Records, it is good to know what the genuine sense of *vetitum namium* is, wherein many have erred. *Namium* signifieth a taking, or distress, and *vetitum* is forbidden, and properly it signifieth when the bayly of the Lord distraineth beasts or goods, and the Lord forbiddeth his Bayly to deliver them when the Sheriff comes to replevy them, and to that end to drive them to places unknown, or take such a course as that they should not be replevied: But it is also called a distress, that is, forbidden *vetitum namium*, when without any words they are eligned or so handled by a forbidden course, as they cannot be replevied, for then they are forbidden in law to be replevied.

"Now by this it appeareth how they err that take it, that beasts or goods taken in Withernam should be beasts or goods taken in *vetito namio*, for *vetitum namium*, or *vetitum namii*, is unlawful, for whether the distress were lawfully taken or no, yet the forbidding of them against gages and pledges to be replevied, out of question is unlawful. But the beasts in Withernam are lawfully taken by authority of law, in lieu of those that were distrained and forbidden to be replevied, and the writ or precept of Withernam reciteth, *Quod postquam praedict' B, averia praedict' A cepit & in Comit' tuo ea fugavit, &c., per quod ea eidem A, replegiari non potuisti, nos malitiae ipsius B obviare volentes in hac parte tibi praecipimus quod averia praedict' B in baliva tua cap' in Withernam, & ea detineas donec eidem A. averia sua praedict' secundum legem & consuetudinem Regni nostri replegier possis, &c.* So as the taking in Withernam is a lawfull taking by authority of Law, and therefore cannot be termed a taking forbidden, for that it is expressly commanded to be done, and this agreeth with our old Books." [Coke, 2d Inst. pp. 140, 141.]

"*Vee* is an old French word, and is as much as to say, as *vetitus*, or forbidden, *naam* is no other thing than a reasonable distresse, it cometh of the Saxon word, *nemman* or *nammem*, to take hold on, or distrain, whereof comes *namium*, *i. e.*, *captio*, and so *vetitum namium* signifieth in law a distresse, or taking forbidden to be replevied.

"Now seeing Withernam hath been mentioned, you shall find that the true sense of the word is a proof of the aforesaid matter, for it is compounded of two old Saxon words, *viz.*: *Weder*, which common speech has turned to *Oder*, or *other*, and *Naam*, that signifieth, as hath been said, a caption or taking, and therefore is as much as a taking, or a reprisal of other goods in lieu of them that were formerly taken and eligned or withholden, and this is *capere in Withernam*, whereof the Register

speakeeth and well expoundeth, which now you see clearly is just and lawfull." [Coke, 2d Inst., Marlebridge, cap. 21, p. 140.]

Now, after all this, comes the very interesting contribution made by Sir Thomas Smith, who, writing in his Commentaries on the Law of England [Lib. 3, cap. 10, p. 258], says, "The same Littleton was as much deceived in Withernam and divers other old words. This Withernam as he interpreteth *vetitum namium*, in what language I know not, whereas in truth it is in plain Dutch, and in our own Saxon language Withernempt, nemp, *alterum accipere*, or *vicissim rapere*, a word which betokeneth that which in barbarous Latin is called *represalia*, when one taking of me a distress, which in Latin is called *pignus*, or any other thing, and carrying it away out of the jurisdiction wherein I dwell, I take, by order of him that hath jurisdiction, another of him again, or of some other in that jurisdiction, and do bring it into the jurisdiction wherein I do dwell, that by equall wrong I may come to have equall right. The name of *represalia*, and that we call Withernam, is not altogether one; but the nature of them both is as I have described, and the proper signification of the words doe not much differ."

For a still further discussion of the word *nam* we find Houard [*Ancienne Loix des François*, tome 1, note 31, Preliminary Discourse p. 33] trying to show that the law of William the Conqueror [42], *De pignore quod namium vocant*, was one of those laws which William added to the laws of Edward, and that therefore it is not of Saxon but of Norman origin. Kelham, the translator of these laws, endeavors to refute this claim, and show that the word "namps," "though made use of by the Normans, comes from the Saxon word *namiam* — *capere* or take; and like many other of our Law Terms, which, although they seem to be French, are only disguised in a Norman Dress, and really have a Saxon Original; and as in the Grand Customiere of Normandy there is a chapter of *nampes* there is great reason to believe that the Normans borrowed this and many other of their laws from the English, instead of the English from them, as Mons. Houard would persuade us." [Kelham: *Leges Gulielmi Conquestoris*, 68. See Appendix to Kelham's Norman-French Dictionary. See also Brunner, D. R. G., II, 446, n. 5.]

Blackstone [Com. 3: 149] has another suggestion, which is that *de vetito namii* is not correct, but that it should be *de repetito namii*. Maitland says, "This is a needless emendation. If you refuse to give up a thing you are said to *vetari* that thing." [P. & M. Hist. Eng. Law, 2d ed., Vol. 2: 577.]

Nicholls, the annotator of Britton, says of the word *vee* that it is "from the old French *vier* or *vêer*, Latin *vetere*, and was the refusal to deliver the distress upon offer of surety" [Britton, Vol. 1, p. 136, note] and that *naam* is the Anglo-Saxon *name*, from *niman*, German *nehmen*, to take, a seizure or taking." [*Ib.*, p. 137, n.] He also gives us Withernam, Anglo-Saxon Wither-name, a counter-distress. [*Ib.*, p. 138.] The citation is wrongly given as chapter 27 of Britton; all the authorities

seem to agree upon it, but the matter is actually in chapter 28, Nicholls' ed., Vol. 1, §§135-8, p. 138:

"*Et si les bestes soient encloses de eynz messun ou de eynz park, ou si eles soient chacez hors del counté, ou si le baili autre destourbanse troeffe, tauntost face prendre des bestes del deforceor a le double value eum wythernam, et cele destresce teigne saunt lesser par plevine, jekes a taunt qe la destresce esloigné soit remené.*" [Britton, Nicholls' ed., Vol. 1, p. 138; Britton, ed. Redman, 54, b.] Fleta, lib. 2, c. 47, sec. 10, uses the word *Wythernamii*.

I can find no instance of any one taking up the cudgels for the Dutch origin of the word. Coke's argument, however, seems to be accepted, and the more careful authorities in our law point out that withernam is not the *vee de naam* or *vetitum namii*, but the remedy for them. So we must not say *vee de naam* or but *vee de naam and withernam*, and it must be remembered that they are not one and the same writ, but that the one follows the other. Most of the dictionaries make the error of considering them to be the same writ, but Burrill [Law Dict. Vol. 2, Withernam] gives a clear account, notes the confusion, and points out the confusing passages in Britton and Bracton. [Bracton, lib. 3, f. 156; Britton, Vol. 1, c. 28.] Maitland treats the writ as a replevin, but does not mean to wholly confuse it with the later action, as further on he mentions the *vee de naam*, not as replevin. He probably thought of it — as it was — an action in the nature of a replevin. [P. & M. Hist. of Eng. Law, 2d ed., Vol. 1: 587.] He does not get as far as the taking in withernam; for as Coke explains [2d Inst. 140] the *vetitum namii* was a prohibited taking; the offence, as Maitland says, [P. & M. Hist. of Eng. Law, 2d ed., Vol. 2: 577] of retaining the beasts "after gage and pledge have been tendered; — it stands next door to robbery." The *capias in Withernam* was the remedy for *vetitum namium*, and followed immediately after it; and from this close connection of the proceedings and the similarity between their names, the error no doubt arose of taking the one for the other.

The *capias in Withernam* also issued after the writ *de homine replegiando* had been issued, to get a person out of prison, and if that person is conveyed out of the sheriff's jurisdiction, the sheriff may thereupon return that he is eloigned and then the *capias in Withernam* issues to imprison the defendant until he produces the person eloigned. Instances of this writ are to be found in the *Registrum Brevium*, following the *homine replegiando* [p. 79].

While more of the Year Book cases are for cattle than for anything else, yet the writ *de homine replegiando* and the writ *homine capta in Withernam* are not uncommon. The statutes of the Year Book period regulating this matter are those of Marlbridge, cap. 21, and Westminster the Second, cap. 2.

Blackstone is one of those who confound the *vee de naam* and the *Withernam*. [Blackstone, Com. 3: 149.] He there speaks of a "writ of *capias in Withernam in vetito* (or more properly, *repetito*) *namio*,"

thus making one writ of the two separate writs, and giving rise to the error of the "*repetito*," which was noted by Maitland; the latter seems to have been the first to note this error of the commentator.

VERDIT

- Hilary
7 Hen. IV.
- (1) **In trespass**, they were at issue as to the freehold, and the jurors gave their verdict at large, and the judges would not receive it, because it was not within the purview of the Statute.
- Case 1. Reported in Y. B. Paschal (not Hilary), 7 Hen. IV, p. II, pl. 3. See also Brooke, Verdict, 10.
 Statute of Westminster the Second, 13 Ed. I (1285), cap. 30, Stats. at Large, Vol. 1, p. 163 (203).
- Note. **See as to verdict** given at large, in the title of Wardship, in the year 27 Hen. VI. In the title of Ravishment of Wardship, Skargill, etc. And see as to Verdict, in the title of Assize; and in the title of Receipt, *Anno* 5 Hen. IV.
- Statham, title of Garde, *supra*, p. 103 a, case 39. Title of Assize, *supra*, p. 14 a to 16 a. Title of Resceipte, *supra*, p. 155 b, case 46.

VILLENAGE

- Statham
187 a.
Hilary
41 Ed. III.
- (1) **In a praecipe quod reddat**, the tenant said that he was the villein of one J, and held the lands in villenage, judgment, etc. And he pleaded that plea by attorney, and that was against the opinion of many, etc. **FYNCH-EDEN**: He shall not have the plea, although he comes in his own person, because he has had the view, etc. But he can say that he holds in villenage, for a freeman can hold in villenage, etc. Query, if it be a plea to say that he holds in villenage, without saying that he is a villein, for it is simply a non-tenure, etc.
- Case 1. Reported in Y. B. Hilary, 41 Ed. III, p. 8, pl. 20. See also Fitzh: Villeinage, 4.

(2) **In trespass** against one J for breaking his house, and carrying away his goods in sheaves. The defendant said that that was his freehold; upon which they were at issue, and it was found that the defendant held of the plaintiff by Roll, at his will. And because that was villein land, and he would not do the services, the plaintiff seized it and put his seal on the doors; and the defendant broke them, and the sheaves were within the same house, and he carried them away. And it was adjudged that the plaintiff should recover forty shillings for the breaking of the house and his seal, but for the grain nothing. But if the lands had been sowed and he had carried away the grain thus sowed after the seizure, they said he should have recovered his damages for them, etc.

The citation here is an error. The case is reported in Y. B. Mich. Case 2. 42 Ed. III, p. 25, pl. 9.

(3) **In trespass**, the defendant said that the plaintiff was his villein regardant, etc. To which the plaintiff said that his father leased to the defendant a house etc., for the term of ten years, judgment if you shall be received to allege villenage. The defendant said, by protestation, saving to him the villenage, that he did not lease, etc. And so note that he pleaded such a lease without a deed indented.

The case has not been identified in Y. B. Hilary, 50 Ed. III. Fitzh: Case 3. Villeinage, 25, has the case.

(4) **If a man** dwells on land held in villenage from time, etc., he shall be a villein, and it is a good prescription, etc. And against that prescription it is a good plea to say that his grandfather or his father was an alien [adventif] after time, etc. Query?

The case has not been identified in Y. B. Hilary, 50 Ed. III. Fitzh: Case 4. Villeinage, 24, has the case.

(5) **In replevin**, the defendant said that the plaintiff was his villein, etc., on which the plaintiff demanded judgment, inasmuch as he had suffered the deliverance to be

made, "and also he has made an attorney against us," etc. And it was not allowed,¹ etc.

Case 5. Reported in Y. B. Hilary, 3 Ed. III, p. 6, pl. 18. See also Fitzh: Villeinage, 13.

Paschal
3 Hen. IV. (6) **If my villein** makes his executor and dies, I cannot take the goods out of the possession of the executor unless I make seisin, general or special, in the lifetime of the villein. By the opinion of the COURT, in Trespass.

Case 6. Reported in Y. B. Paschal, 3 Hen. IV, p. 15, pl. 8. See also Brooke, Villeinage, 14.

Paschal
33 Ed. III. (7) **If a man** marries a woman who is his villein, she is free during the marriage, but when her husband dies she is in the same status as before, and so she may be a villein to her own son: as appeared in Dower, etc.

Case 7. There is no printed year of 33 Ed. III. Fitzh: Villeinage, 21, has the case.

Paschal
35 Ed. III. (8) **If the villein** of the king purchases goods or chattels the property in them is in the king presently without any seisin, but it is otherwise for any other person, etc. But if he purchases lands, the king should seize, etc., for THORPE said lands remain lands always, but an ox or a cow can be killed and eaten, etc. Query, if the villein of the king purchases lands and alienates before the king seizes, shall the king oust his alienee, etc.?

Case 8. There is no printed year for 35 Ed. III. Fitzh: Villeinage, 22, has the case.

Hilary
9 Hen. VI. (9) **If the defendant** alleges villenage in the plaintiff, and he emparls until another term, he is enfranchised; for the entry of the emparlance is, "*ex assensu parcium*," etc.

Case 9. Reported in Y. B. Hilary, 9 Hen. VI, p. 67, pl. 12. See also Brooke, Villeinage, 1; and Fitzh: Villeinage, 1.

Trinity
24 Ed. III. (10) **Tenant in tail** of a manor to which a villein is appendant alienates the same land to the villein and dies;

¹ The report of the case says, "They adjourned, and on another day they were forced to answer."

the issue of the tenant in tail shall have Formedon against the said villein, and when he has recovered the land he shall seize the same villein, notwithstanding he brought action against him, because he cannot otherwise come to the land, etc. By THORPE, in Formedon.

And it was said in the same plea, that if a man grants a villein to me and to my heirs, and I die, the executor shall have the villein, etc.

The case has not been identified in Y. B. Trinity, 24 Ed. III, or in the Case 10. early abridgments.

(11) **If I enfeoff** a man of an acre of land, to him and to his heirs and assigns, with warranty accordant, and he enfeoffs my villein, it seems that thereby my villein is enfranchised, etc.

There is no citation for this case in Statham, and it has not been Case 11. identified in the Year Books or early abridgments.

(12) **A villein** shall not be enfranchised, by a suit of *recordare* upon a plea of replevin by his lord. And that in Replevin. ^{Hilary} 5 Ed. III.

The case has not been identified in Y. B. Hilary, 5 Ed. III. Fitzh: Case 12. Villeinage, 23, has the case.

(13) **An attorney** cannot acknowledge that his master ^{Hilary} 21 Ed. III. is a villein, but he can say that he holds in villenage at the will of another. And that in a *Præcipe quod Reddat*.

Reported in Y. B. Hilary, 21 Ed. III, p. 10, pl. 29.

Case 13.

(14) **If an action** be brought against the lord and the villein, where the lord had not seisin of the land, and the tenant pleads one plea and the lord another plea, the plea of the lord shall be received and not the plea of the villein: By the opinion of the COURT in a *Præcipe quod Reddat*. It is otherwise of the tenant in fact and taker of the profits. In an Assize, etc. But if the lord does not say anything, and the villein pleads in bar, the demandant shall answer to the plea of the villein, etc. In the same plea. ^{Michaelis} 21 Ric. II.

There is no printed Year Book for 21 Ric. II. The case has not Case 14. been identified in the early abridgments.

UTLARY

Statham
187 b.
Hilary
30 Ed. III.

(1) **Where a man is outlawed** in debt [or] in trespass, and has a charter of pardon, he shall have a writ of Trespass for battery or imprisonment made before his charter was purchased, for goods carried away, or debt. And for such things as were given to the king by the outlawry, he shall not have an action, etc. Query, if the outlawry be for felony?

Case 1. The case has not been identified in Y. B. Hilary, 30 Ed. III, or in the early abridgments.

Hilary
33 Ed. III.

(2) **If two bring** an action as heirs, if outlawry be alleged in one of them, yet he shall answer to the other, because it goes to the action for all time. But outlawry for debt or trespass acts only as a personal disability, wherefore, in that case, it disables both, etc. By WILLOUGHBY: In the first case, where one is attainted of felony the other may sue alone, for that is a severance in law, etc. In a writ of Entry.

And it was said in the same plea, that if an obligation be made to two, and one of them is attainted of felony, the other shall have an action, etc. See how an outlawry can be reversed in divers ways, in the title of Error, etc.

Case 2. There is no printed year of 33 Ed. III. Fitzh: Utlary, 5, has the case. See Statham, title of Errour, pp. 88 b to 92 a.

(3) **One was outlawed** upon a *Capias ad Satisfaciendum*, and came in by a *Capias Utlagium*, and said, "Sir, you have here J B, of N, who tells you that there was in this same vill of N one J B, a butcher, against whom this recovery was tailed. And J B is a husbandman." And he prayed to be dismissed. NEWTON: You shall say farther, "Who never appeared to that suit," for although you are another person, who did not make the trespass, still if you appeared to the suit, you have passed that step now, etc. PASTON: You shall not have the plea against the record. ASCOUGH: If I bring a *Præcipe quod Reddat*

against one A, and at the summons one B appears, I shall say that he is the same person; and the tenant shall say the same against the vouchee: so here. And they adjourned. Query?

There is no citation for this case in Statham. Fitzh: Utlary, 21, Case 3. has the case, with a citation to Hilary, 19 Hen. VI, p. 58 (24), which appears to be correct. The case, however, does not report an adjournment, or any decision on the point digested.

(4) **In trespass** the defendant said that the plaintiff was outlawed at the suit, etc., and he produced the record. ^{Hilary} 13 Hen. IV. HANKFORD: He who is outlawed is another person, who bears the same name. THIRNING: We understand him to be the same person until he has an "*idemptitate nominis.*" Wherefore he was adjudged to the Fleet until he had sued it, etc.

Reported in Y. B. Hilary, 13 Hen. IV, p. 11 (point on p. 12), pl. 38. Case 4. See also Fitzh: Utlary, 6.

(5) **In an appeal**, the principal was outlawed and the exigent was adjudged against the accessory. And at the exigent against the accessory the plaintiff was nonsuited; and then the principal purchased a charter of pardon and prayed that it be allowed, inasmuch as the original was ended by the nonsuit. GASCOIGNE: Before the nonsuit, it was ended against you by the outlawry, so the process of outlawry is good, and I would not be in your place for a hundred pounds, for you will be hung by the neck. ^{Hilary} 11 Ric. II.

There is no printed Year Book for 11 Ric. II. The case has not been identified in the early abridgments. Case 5.

(6) **If a man be outlawed** in debt or trespass, the king should not seize his lands, but he shall take the profits by the escheator, etc. All the same the writ is "*capias in manum nostram ita quod de exitibus nobis respondeas.*" And likewise, if the escheator seizes by force of that, one can have an Assize, "*secundam quosdam,*" etc., against him. ^{Trinity} 9 Hen. VI.

And it was said in the same plea, by MARTYN, that if a man leases land for a term of years and the termor is outlawed, the king may seize the lands during the term,

because that is but a chattel. But it is otherwise where a man has the freehold, etc. And in that case, after the end of the term the lessor can enter without suing livery: By MARTYN, etc. Query, if the lessor be outlawed, if the king shall have the rent reserved, etc?

And it was said in the same plea, that where a man leases land at will, and the lessor is outlawed, the king shall not have the emblements of the lessee, nor the profits; for if the lessee be outlawed, the king shall have them, [so] they belong to him. And he shall also have them against his lessor. In Trespass. Well debated, etc.

Case 6. Reported in Y. B. Trinity, 9 Hen. VI, p. 20, pl. 15. See also Brooke, Utlary, 36 and 59.

Hilary
7 Hen. IV. (7) **In debt**, the defendant said that the plaintiff was outlawed at the suit of one J, in Trespass. The plaintiff said, "no such record." And the record was shown, and the outlawry was at the suit of one B, wherefore the plaintiff prayed that the defendant answer, since he had failed of his record, etc. THIRNING: Whether he has failed or not, he shows a record by which you are outlawed. Wherefore he told the defendant to go quit.

Case 7. Reported in Y. B. Mich. (not Hilary), 7 Hen. IV, p. 2, pl. 6. See also Fitzh: Utlary, 13.

Hilary
38 Ed. III. (8) **If an infant** under age is outlawed, he shall not be imprisoned unless it be for felony. As appeared in a writ upon the Statute of Laborers. Query, if he shall forfeit his goods, etc.?

Case 8. Reported in Y. B. Hilary, 38 Ed. III, p. 5, pl. 18. See also Fitzh: Utlary, 14.

Statute of Laborers, 23 Ed. III (1349), Stats. at Large, Vol. 2, p. 26.

Michaelis
1 Ed. III. (9) **A man** who is outlawed for felony shall say that he rendered himself in the county, and he shall pray a writ to certify to that, etc., to the coroner, etc., "*in favorem vite.*" (But I believe that it is otherwise in Debt or Trespass.)

Case 9. Reported in Y. B. Mich. 1 Ed. III, p. 20, pl. 5. See also Fitzh: Utlary, 7. (He gives the page as 21.) There is a case in Y. B. Hilary,

1 Ed. III, p. 2, which seems to bear out the remark of Statham. It was an outlawry on a writ of account, and he went of his own accord to London and they asked what they should do with him. And they said he could make a fine to the king, or sue a charter of pardon.

(10) **Outlawry** alleged before coroners and not returned ¹ Anno. 28 Ed. III. does not disable the plaintiff. As appeared in an Assize. And that in the *Liber Assisarum*.

Reported in Y. B. *Liber Assisarum*, Anno 28 Ed. III, p. 154, pl. 49. Case 10. See also Fitzh: Utlary, 9.

(11) **The wife** was received to defend her right for default of her husband. And she said that the plaintiff was outlawed, and she had the plea, etc. But yet it seems that if she be received after appearance and speaks of her husband, so that her husband himself was at one time admissible, then it is otherwise. And that in an Assize, etc.

There is no early printed year of 13 Ed. III. This would appear to be the case printed in the Rolls Series, 13 & 14 Ed. III, pp. 56-60, No. 29. The year book says it was a writ of Account, not an Assize. See also Fitzh: Utlary, 9. Case 11.

(12) **The defendant** showed that the plaintiff was outlawed at the suit of one A. And the plaintiff produced a charter of pardon; and because it was allowed against that A, they would pay no regard to the charter, notwithstanding the defendant was a strange person, etc., because there was a condition in the charter, to wit: "*ita quod stet recto*," etc.

The case has not been identified in Y. B. Paschal, 21 Ed. III. There is no early printed year of 15 Ed. III. The case has not been identified in the Rolls Series, or in the early abridgments. Case 12.

(13) **In trespass**, the defendant pleaded "not guilty," and he was received to allege an outlawry for felony in the plaintiff, etc., notwithstanding it was not after the last continuance.

There is no early printed year for Mich. 20 Ed. III. The case has not been identified in the Rolls Series. Case 13.

¹ Not returned into a place of record, so one could not say it was of record.

Michaelis
3 Hen. V.

(14) **An outlawry** pronounced against an infant under the age of twelve years, be it for felony or trespass, is void, and there is no need to sue a writ of Error in that case: By HANKFORD. And he gave as a reason, because before the age of twelve years he cannot be sworn in a leet, in which case he is not within the law; consequently he cannot be put out of the law by an outlawry, etc. And the law is the same if he be not within the four seas at the time, etc., or if he was imprisoned at the time, etc. In all those cases the outlawry is void. And if he be taken by a *Capias Utlagium*, he can avoid it by an answer, without suing a writ of Error, etc. Query?

Statham
187 a.

Case 14.

There is no printed year of Mich. 3 Hen. V. Fitzh: Utlary, 11, has the case.

Anno
4 Hen. V.

(15) **Outlawry** was reversed because at the time, etc., he was so ill that he could not come; and that by advice of all the justices, etc.

Case 15.

There is no printed year of 4 Hen. V. But see also Fitzh: Utlary, 12.

Note.

Query, if one brings a *Decies Tantum* or an action upon the Statute of Liveries, or such an action as that where the king shall have the half, on the outlawry does the plaintiff disable himself by his plea, inasmuch as the king is in a manner a party, since his action is "*qui tam pro Domino Rege qua pro seipso sequitur*," etc.? For if he does not disable himself it follows that a monk can have an action, etc. Or a villein against the lord, etc.? Therefore query, etc.

There is no citation to this case in Statham. It appears to be merely a note.

