EASTER TERM IN THE TWENTY-FIRST YEAR OF THE REIGN OF KING RICHARD THE SECOND

1. ANON. *v.* J.

<Translate abridgement>

Trespass was brought against J for trees cut and his land dug, where it was alleged for the defendant that the plaintiff had nothing in the land where the trespass is alleged other than in right of his wife, not named in the writ, and so judgment of the writ was asked, where it was alleged for the plaintiff that this trespass was a personal matter, of which the husband would recover but damages, which action belongs to the husband alone, and so judgment was asked whether the writ was not perfectly good, and this notwithstanding, because the writ was for trees cut and land dug, which was a trespass in disinheritance of the wife, and seeing that the wife was not named, since the plaintiff does not deny that the land where the trespass was alleged was not [held] in the right of his wife, it was adjudged by the court that he should take nothing by his writ etc.[1]

[1] The marginalia in Ms. W (n. 6, opposite) read: "See how a writ of trespass was brought by the husband for trespass done on the land of the right of his wife and on that account the writ was [not] allowed." A negative has clearly been omitted by mistake.

2. DIERE *et ux. v.* TONER, *et al.*

An assize was brought by a husband and wife against several, etc. The tenant said that the plaintiff's wife entered into religion in the house of B. etc. and was professed as a nun there. Judgment whether she should be answered. And so the assize was adjourned into the Common Bench. A writ was sent to the bishop to certify, and he certified that she was professed, wherefore the defendant prayed that the husband and wife be barred forever. And it was held by the whole court that because this was a plea only about the incapacity of the wife – in which case if the husband and wife had purchased jointly, the husband would still have the assize of the whole – the judgment would not be that the husband would be barred. And it was said that if the husband and wife brought an assize and a deed of feoffment or release of the wife was pleaded in bar, or that of the ancestor of the wife, then both would be barred. And also on the contrary if a release be pleaded in bar against the husband or by his ancestor it seems that the husband and his wife would both be barred. And

THIRNING said that if a husband and wife brought an assize against several and it was alleged that she is not the wife of the husband, the husband would not be barred from having another assize alone. And

WADHAM said that if two men brought an assize and profession was alleged against one, still the other would have another assize afterwards. And then

RICKHILL with the advice of the whole court judged that the husband and wife take nothing by their writ but be in mercy. (Fitzherbert, *Jugement* 263.)

An assize was brought by a husband and wife against several, and the tenant said that the plaintiff's wife entered into religion in the house of B. and was professed there, etc. Judgment whether she should be received, etc. And so the assize was adjourned into the Common Bench. A writ was sent to the bishop to certify, and he certified that she was professed, wherefore the defendant prayed that the husband and wife be barred forever. And the opinion of the court was to the contrary; note this. See the whole case in the title 'judgment'. (Fitzherbert, *Assise* 369).

I

An assize was brought in the country by the husband and his wife against several men in the county of Dorset, where one answered as tenant and said that the plaintiff's wife entered into religion in the house of B in the county of Wiltshire on a certain day and year, and there was professed as a nun. And judgment was asked whether she should be answered, and so the assize was adjourned to the Common Bench, and a writ was sent from that place to the bishop of the place where the profession was alleged. And now the bishop certified that the wife was professed, whereby it was prayed on the defendant's behalf that the husband and wife should be barred forever. And this notwithstanding, it was held by the whole court that because this plea was made at the outset only to the incapacity of the person of the wife – in which case if the husband and wife had been joint purchasers, the husband would still have the assize of the whole alone – and it was held that the judgment should not be that the husband should be barred.

And it was said in this matter that if the husband and wife had brought the assize and a deed of feoffment or release of the wife or of her ancestor were pleaded in bar, both shall be barred, and also the opposite: if any plea was pleaded against the husband [either a deed of feoffment or release by the husband] or by his ancestor, in this case too it seems that both the husband and his wife shall be barred.

And it was said by THIRNING, C.J. that in a case in which the husband and his wife bring an assize against certain persons and it is alleged that she is not the wife of the plaintiff and it is pleaded that she is the wife of the plaintiff, this will be tried immediately by the inquest. And although it is found that she is not the wife of the plaintiff, still the husband will not be barred but will have another action alone.

And also, WADHAM, J. said that if a secular man[1] and a professed monk purchase jointly, the purchase is void so far as the monk is concerned and everything accrues to the secular man. And in this case if both are ousted and both bring the assize together and profession is alleged in the monk, in this case both will not be barred by judgment, but the writ will abate and the secular man will have an action alone in his own name. Thus, in this case it seems that the judgment will be that the husband and the wife will not be barred.

And then RICKHILL, J., by advice of the whole court, adjudged that the husband and the wife should take nothing by their writ but would be in mercy, etc.

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[1] I.e., a layman or a secular clerk.

II

In an assize brought by the husband and the wife, it was alleged by the tenant that the wife was professed, etc. And [a writ] was sent to the bishop, who certified that she was professed. And so it was argued whether the action should be abated in part or in whole, because it was said that if the husband and his wife bring an action, every plea against one of them is a plea against the other, because they are one person in law. And if a married woman is attainted, and she and her husband purchase jointly, the purchase will operate solely in respect of the husband; but it is different with joint tenants, because although one forfeits, the other will have the moiety. But if they hold of the king, the king shall have the whole during his life, and after his death the other may sue out the moiety etc.

THIRNING, C.J. it is to be looked into here whether the plea goes to the action, in which case the husband shall be barred, or that it goes to the writ and not to the action. And it seems that it goes solely to the writ by this plea pleaded as a demurrer, because if the defendant had pleaded in bar against them, and they had made their title against the bar, and then it had been replied on the defendant’s behalf that she had been professed as above, that then the plea shall be taken to the action against them both. But in this case, the defendant alleged this exception at the beginning, as to the

incapacity of the person of the wife and in abatement of the writ. The husband, after the writ has been abated, shall have his writ by himself, as if the defendant had said at the outset that she was not his wife, ready, and the others that she was his wife, etc, this matter should have been tried by the assize, and goes only to the abatement of the writ, because the husband made a mistake with his writ, by bringing the writ with somebody without capacity.

And it was adjudged that they should take nothing by their writ, etc.

And here it was said that a warranty of the wife's ancestor, pleaded in bar, shall act as a bar against both of them for all purposes, and not in abatement of the writ. But it is impossible for a professed nun to be a man's wife at one and the same time, and so the result of this plea goes to the incapacity of the person, as above. So he has made a mistake with his writ by naming the wife etc.

Translation of the Record
Public Record Office, CP40/547/116[1]

William Rickhill and William Brencheley, justices of the lord king assigned to take assizes in the county of Dorset, sent here the record and process of a certain assize of novel disseisin held before them in these words:

Pleas of assize at Dorchester, taken before William Rickhill and William Brencheley, justices of the lord king assigned to take assizes on [26 July 1397] the Thursday next after the feast of St Margaret the Virgin in the 21st year of the reign of Richard, king of England and of France. *Dorset*: The assize comes to make recognition whether Nicholas Toner and Nicholas Latimer wrongfully disseised William Dyer and his wife Alice of their free tenement in Alton Pancras after the first *etc.* And whereof they complain that they disseised them of the moiety of a messuage, two carucates of land, one acre of meadow, 30 acres of wood, six shillings and eightpenceworth of rent and a rent of a pound of cumin with the appurtenances *etc*.

And the aforesaid Nicholas Latimer comes in person and the aforesaid Nicholas Toner does not come, but a certain John Broad answers for him as his bailiff. And he says on his behalf that he did no wrong or disseisin thereof to the aforesaid William and Alice. And of this he puts himself on the assize, and the aforesaid William and Alice likewise; so let the assize be taken thereof between them. And the aforesaid Nicholas Latimer answers as tenant of the aforesaid moiety of the aforesaid tenements placed in the view and receiver of the aforesaid moiety of the aforesaid rents. And he says that Alice entered into religion in the order of nuns of the house of Kington [St Michael] in the county of Wiltshire, in which order the same Alice was professed; and this he is ready to prove where and whenever *etc*. and as the court *etc*, whereof he seeks judgment whether the aforesaid William and Alice should be answered on their aforesaid writ in this regard or ought to maintain their assize aforesaid in these circumstances.

And the aforesaid William and Alice say that they ought not to be prevented from having their assize by anything before alleged, because they say that the same Alice is a secular person and not professed in the aforesaid order as the aforesaid Nicholas Latimer has alleged above, and this they are ready to prove when and where and as the court *etc*. And thereupon a day is given both to the aforesaid William and Alice and to the aforesaid Nicholas Latimer and likewise to the aforesaid bailiff before the aforesaid justices at Westminster on [15 October 1397] Monday next after the quindene of St Michael next coming in the present state etc. On which day before the aforesaid justices at Westminster come

[1] http://aalt.law.uh.edu/AALT4/R2/CP40no547/aCP40no547fronts/IMG_0242.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/aCP40no547fronts/IMG_0243.htm.

both the aforesaid William Dyer and Alice by their attorney Richard Gould and the aforesaid Nicholas Latimer by his attorney John Fauntleroy. And the bailiff likewise comes. And because the cognizance of the aforesaid case belongs to the ecclesiastical forum, and the aforesaid justices have no power to send to the ordinary in the county of Wiltshire to enquire into the truth of the premises and to certify it to them, a day is given both to the aforesaid William Dyer and Alice and to the aforesaid Nicholas Latimer and likewise to the aforesaid bailiff before the lord king's justices of the bench at Westminster in a month from Michaelmas [22 October 1397] in the present state. And be aware that the record and process of the aforesaid assize and the original writ of the same assize, together with the panel and patent thereof are being sent before the aforesaid justices of the bench at Westminster for that day.

And now here on this day, that is to say on the aforesaid month of St Michael, come both the aforesaid William and Alice by their aforesaid attorney and the aforesaid Nicholas Latimer by his aforesaid attorney; and likewise the bailiff comes. And because the cognizance of the aforesaid case belongs to the ecclesiastical forum, Richard [Mitford] bishop of Salisbury is ordered, having called together before him the people necessary in this regard, that he should carefully enquire into the truth of the matter on the basis of what has been put before, and that he should notify what he discovers about it to the justices here on [28 January 1398] the quindene of St Hilary by his letters patent and close. The same day is given both to the aforesaid William Dyer and Alice and to the aforesaid Nicholas Latimer by their aforesaid attorneys and likewise to the aforesaid bailiff here *etc*.

On which day come both the aforesaid William and Alice and the aforesaid Nicholas Latimer by their aforesaid attorneys and likewise the aforesaid bailiff comes. And the aforesaid bishop sends here a certain enquiry by which the same bishop found that in the fifteenth year of her age, the aforesaid Alice willingly entered into religion in the aforesaid house of nuns of Kington [St Michael][2] in the aforesaid county of Wiltshire of the order of St Benedict in the diocese of the same bishop, and that she there with great devotion took the veil and habit of religion, and that she thereafter wore such veil and habit therein for fifteen continuous years, and was professed in the same house into the regular order of St Benedict as the aforesaid Nicholas Latimer has alleged above.

And thereupon a day is given both to the aforesaid William and Alice and to the aforesaid Nicholas Latimer and likewise to the aforesaid bailiff here on [22 April 1398] the quindene of Easter because the justices are not yet advised *etc*. On which day come both the aforesaid William and Alice and the aforesaid Nicholas Latimer by their aforesaid attorneys and likewise the aforesaid bailiff comes. And thereupon it is adjudged that the aforesaid William and Alice should take nothing by their aforesaid writ but be in mercy for their false claim; and the aforesaid Nicholas and Nicholas should go thereof without day etc.

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[2] <Insert reference to Knowles and Hadcock here.>

3. WOODCOCK *v.* ADMINISTRATORS OF LORD TALBOT

<Write abridgement>

Debt was brought against four administrators of the goods and chattels of Richard Lord Talbot. Process was sued against them as far as the *pluries capias* now returned. And now three of them came by attorney and the fourth made default.

Brenchley counted against the three.

Rede. The statute[1] provides that in a case in which a writ is brought against executors, that he who first comes after the great distraint has been returned shall answer alone. And now this action is taken against administrators, in which case he

who first comes shall not answer without his fellows, because the statute does not say anything about [actions] against administrators. And also the process is sued here against us by *capias*, and so we are not within the scope of the statute. And so we pray a day until our fellow [comes].

CURIA. Although the statute says nothing about administrators, but about [actions] against executors, that he who first comes after the distraint has been returned shall answer, nevertheless the law is the same in this case against administrators as against executors, because it is one and the same situation. But it remains to be seen in this case whether those who came shall be made to answer or not, because the statute subsequently provides for a *capias* in a writ of debt against executors and administrators, provided that the plaintiff is not in default, because he could not sue his process in any other way than is given by the statute upon the sheriff's return.

THIRNING. This statute which gives process against executors, that he who first comes after the great distraint has been returned [shall answer], was made in the ninth year of Edward III, at which time no process was available against executors other than distraint. But since that time it has been provided by a statute of the 25th year [of Edward III][1] that one may have a *capias* in a writ of debt against executors and administrators and also in replevin, since the plaintiff cannot sue his process in any other way than is given to him by the statute, and so this *capias* is in place of distraint, and in the same situation as the statute addressed; so answer.

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[1] The statute to which Rede is referring is probably 9 Edw. 3, stat. 1, ch. 3 (1335). Later Thirning refers to this statute and to 25 Edw. 3, stat. 5, ch. 17 (1352). The case casts some light on the question of statutory interpretation in the fourteenth century.

Translation of the Record
Public Record Office, CP40/547/609d, 646d[1]

London § Angharad who was wife of Richard Talbot, knight, lord of Irchenfield and of Blackmere, John Burley of Shropshire, William Falconer of Wiltshire, John Sergeant of Monmouth and Hugh, parson of the church of Malpas, administrators of the goods and chattels which belonged to Richard Talbot, knight, lord of Irchenfield and of Blackmere, who died intestate as it is said, were summoned to answer John Woodcock, citizen and mercer of London, of a plea that they pay him £40 which they wrongfully withhold from him.

And whereof the same John Woodcock, by his attorney John Empingham, says that whereas the aforesaid Richard, on the sixteenth day of January in the fifteenth year of the present lord king [16 January 1392], at London in the parish of St Alban in Wood Street in the Ward of Cripplegate Within,

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[1] http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2698.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2699.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2774.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2775.htm.

by a certain writing obligatory of his granted himself to be bound to the aforesaid John Woodcock in the aforesaid £40, to be paid to the same John Woodcock there on the feast of Easter then next following [14 April 1393], the aforesaid Richard in his lifetime, although frequently asked, nor yet the aforesaid administrators after the death of the same Richard, although frequently asked, have not yet paid the aforesaid £40 to the aforesaid John Woodcock, but hitherto have denied and still deny the payment to him, whereof he says that he has suffered loss and has damage to the value of £100, and thereof he produces suit. And he brings forward here in court the aforesaid writing obligatory which bears witness to the aforesaid debt in the aforesaid manner, whose date is on the day and year abovesaid. And the aforesaid Angharad, John Burley, William, John Sergeant and Hugh, by their attorney Simon Harpsfield, come and deny force and wrong whenever etc; and seek oyer of the aforesaid writing; and it is read to them. They also seek oyer of the endorsement of the same writing; and it is read to them in these words:

> the condition of this obligation is such that if the said Richard within written should pay to the said John within written £29 6s 8d on the day within written that then the obligation of £40 within written should be void, otherwise that it should be in its force and virtue.

which having been heard, the same Angharad, John Burley, William, John Sergeant and Hugh, making protest that they are not the administrators of the goods and chattels which belonged to the aforesaid Richard, say that the aforesaid John Woodcock ought not to maintain his aforesaid action against them, because they say that the aforesaid Richard paid to the aforesaid John Woodcock the aforesaid £29 6s 0d contained in the aforesaid endorsement at the feast of Easter in the fifteenth year of the reign of the present king [14 April 1392] according to the form and effect of the same endorsement, that is to say at Blackmere in the county of Shropshire. And this they are ready to prove, whereof they seek judgement whether the aforesaid John Woodcock ought to maintain his aforesaid action against them in this regard.

And the aforesaid John Woodcock says that he ought not to be barred from having his aforesaid action by anything before alleged, because he says that the aforesaid Richard did not pay to the same John Woodcock the aforesaid £29 6s 0d on the aforesaid feast of Easter in the fifteenth year of the reign of the present lord king according to the form and effect of the endorsement of the aforesaid writing, as the aforesaid Angharad, John Burley, William, John Sergeant and Hugh have alleged above, and he asks that this might be enquired into by the country. And the aforesaid Angharad, John Burley, William, John Sergeant and Hugh likewise. So the sheriff of Shropshire is ordered to cause a jury of the view of Blakemere to come here on the octave of the Purification of the Blessed Mary [9 February 1398] by whom, etc, who neither, etc, to acknowledge, etc, because both, etc.

Afterwards, process between the aforesaid parties was continued by juries between them put in respect thereof to this day, that is to say the quindene of St Michael in the twenty-second year of the reign of the present king [13 October 1398], unless the justices of the lord king assigned to take assizes in the aforesaid county by the form of the statute should first come to Shrewsbury on Wednesday next after the feast of St Margaret the Virgin next following [24 July 1398]. And now on this day the aforesaid parties come by their aforesaid attorneys. And the aforesaid justices of assize before whom etc sent their record here in these words:

> Afterwards on the day and at the place contained within, before John Hull and Hugh Huls, justices of the lord king assigned to take assizes in the county of Shropshire, come both the within-named John Woodcock, citizen and mercer of London, and Angharad who was wife of Richard Talbot, knight, John Burley of Shropshire, William Falconer of Wiltshire, John Sergeant of Monmouth and Hugh parson of the church of Malpas, administrators of the goods and chattels which belonged to Richard Talbot knight, lord of Irchenfield and of Blakemere, who died intestate as it is said, by their within-named attorneys; and the jurors likewise come. And thereupon the administrators challenge the array of the panel, because they say that that panel was arrayed by Adam de Peshale, sheriff of the aforesaid county, in a suspect manner in favour and at the nomination of the aforesaid John Woodcock and his counsel, which challenge is found to be true by the triers chosen and sworn therein; so let that panel be altogether removed and quashed. And the keepers of the pleas of the crown of the lord king in the aforesaid county of Shropshire are ordered to cause a jury to come here on the octave of St Hilary [20 January 1399] to acknowledge in the aforesaid form.

4. WALLERNE *v.* JARDON, *et al.*

<Write abridgement>

Trespass of trees cut.

Tyrwhit. We tell you that the place where you allege the trespass to have occurred is the free tenement of the lord of M, who leased to us for a term of years etc, and we ask for judgment whether an action [lies].

Gascoigne challenged that a plea to justify the free tenement in another person was not available to him, in that it amounted to a plea of not guilty, to which MARKHAM agreed, and said that such a justification was never seen in such a case, to try the free tenement of a stranger.

And it was held by THIRNING, RICKHILL, and WADHAM that the justification was good, so *Gascoigne* pleaded 'our free tenement'; ready etc.

Tyrwhit. Now we seek the aid of the lord of M who granted the lease etc.

Gascoigne said that by his delay in praying aid he waived his plea, and that the defendant may have no benefit from M's lease; ready etc. And we ask for judgment; and the others the opposite, etc.

RECORD: De Banco Roll, Trinity 20 & 21 Richard II (no. 547), rot. 243 (CP40/547/243).[1]

[1] http://aalt.law.uh.edu/AALT4/R2/CP40no547/aCP40no547fronts/IMG_0503.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/aCP40no547fronts/IMG_0504.htm.

5. ANON.

<Translate abridgement>

Debt was brought against two by different writs of *precipe* and the plaintiff counted against them separately on a bond in this form: *Know all people etc that we A and B are bound etc, to which payment we bind ourselves and each of us* without other words in the bond showing them to be bound each in the whole amount.

And so *Tyrwhitt*[1] asked judgment of the writ brought against them separately upon such a bond, which showed them to be bound only in common.

WADHAM. Suppose that the bond was *we bind ourselves separately* or *separately*, the writ in this situation should be brought by separate writs of *precipe*, as it was in this case. And later the writ was adjudged good.

[1] The reading in MS. W, opposite n. 4, is repeated in the abridgements. Ms. A has what must be right if we are to assume that that case is to be dated any time after 1388, when Thirning became a justice.

6. GROVE, *et al*. *v.* CLIFFORD, *et al.*
6A. SPENDELENE, *et al. v*. CLIFFORD, *et al*.

<Write abridgement>

Trespass was brought against James Clifford and others for goods taken away.

Skrene for the defendants said that the same goods belonged to a certain J Forwood, who was a villein of James Clifford belonging to his manor of M, of which he was seised, and seised of this same J Forwood as his villein. And he said that this same James was seised of the same goods, and afterwards the villein gave them to the plaintiff, who tried to take them by force by virtue of the same gift, and [James] did not allow it. And we ask for judgment if an action [lies]. And for the others he said that they came to assist him.

Rede. We protest that we do not acknowledge that he is his villein, but we tell you that this same J Forwood, whom he alleges is his villein, gave the same goods to the plaintiff at C, without that that this same James seized the goods before the gift. Ready, etc, and we ask for judgment and seek our damages.

Skrene. He has still not answered us, for we have alleged that this same J Forwood was our villein and that the goods were his and we seized them; and in that case, for all that he alleges, it is possible that they were our goods at the time of the seizure, which we wish to aver, that they were our goods at the time of the seizure, so judgment etc.

And it was held by the court that he may not have this general averment without answering to the gift. And it was said that a villein could give his goods before the seizure of his lord, as he could with land, and the gift would be perfectly good. So in this case he must answer to the gift or otherwise show how the villein subsequently came by the goods.

So on account of the opinion of the court, *Skrene* said that this same James seized the same goods at C before the gift; ready; and the others the opposite.

RECORD: De Banco Roll, Trinity 20 & 21 Richard II (no. 547), rot. 341d, 342d (CP40/547/314d, 342d).[1]

[1] http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2126.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2127.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2128.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no547/bCP40no547dorses/IMG_2129.htm.

7. PRIOR OF BATH *v.* COURTENAY, *et ux.*

<Translate abridgement>

An assize of *darrein presentment* was brought by the Prior of Bath against Hugh Courtnay, knight, and his wife Elizabeth, concerning the advowson of the church of Bampton, returnable now, when the sheriff returned that the wife was dead, and an essoin was cast for this same Hugh.

Hornby for the plaintiff prayed that the essoin be adjudged and adjourned.

Rede. Judgment of the whole writ because the wife is dead, so etc.

THIRNING. This assize is brought upon a disturbance, in the nature of *quare impedit*, and if he had brought *quare impedit* against the husband and wife, the writ shall not abate in any way by the wife's death, because there can be a disturbance by the husband, so etc. And query if the writ will abate in this event entirely or not, because in a writ of trespass brought against a husband and wife, although the wife dies, the writ is good against the husband, so etc.

And afterwards the essoin was ajudged and adjourned until the octave of Michaelmas.

RECORD: De Banco Roll, Hilary 21 Richard II (no. 548), rot. 98 (CP40/548/98).[1]

[1] http://aalt.law.uh.edu/AALT4/R2/CP40no548/aCP40no548fronts/IMG_0198.htm.

8. DE LA HAYE, *et ux. v.* BROWNYNG[1]

<Write abridgement>

Dower was brought against a man, and the claim was for the third part of a manor, when after the view *Thirning*[2] said for the tenant that a certain parcel of the same claim is in another vill, which is not included in the writ, and we ask for judgment of the whole writ.

Crosseby. We would like to withdraw our claim in respect of this part.

THIRNING. It seems that the whole writ will abate, because if *Precipe quod reddat* be brought concerning land in one vill, and the demandant counts that the land is in

[1] The significance of *Hexte*, which appears twice in the running head of MS. W here and once again on. fol. 59r is unclear. It may the English surname 'Hext'. See Reaney, s.n. That name reappears in conjunction with a William Fortescue in a mysterious note that follows the *Explicit* on fol. 59v.

[2] This is very strange. Thirning had been a justice since 1388, but here he seems to speak as counsel for the tenant. Whether this means that the whole case should be backdated for ten years or whether this is just mistake on this particular line is unclear. The rest of the speeches attributed to Thirning could be his as a justice, as could the speech of Markham reported later. There is, however, nothing about any of them that requires that they be made by justices. The record that we have found from the following Trinity term, could be, but does not have to be, the record of this case.

this vill and there are parcels in another vill, the writ will abate entirely. And likewise in an assize of novel disseisin of a free tenement in one vill, and parcels mentioned in pleading which appear upon the view to be in other vills, or if an assize be brought of a free tenement in two vills, and the tenements are in the one vill only, the writ will abate entirely. And I have never seen it otherwise, and this is because of the false assertion in the writ. And it seems likewise in this case, that when he made his claim of the third part of a manor, which claim is in lieu of his count, and now it is alleged that parcel is in another vill, it seems that the writ shall abate entirely.

MARKHAM. There is a great difference between a writ of dower and an assize of novel disseisin, for in an assize of novel disseisin brought concerning a free tenement in one vill, and parcels of the tenements are in another vill, in this case [the wording of] every assize is to summon a jury from the venue which the writ specifies; and in the event that parcels of the tenements are in another vill which is not included in the writ, the sheriff cannot summon a jury of that venue. So in such a case it is not surprising that the writ will abate entirely, and likewise if an assize be brought in two vills, and the tenements are wholly in the one vill. But in *Precipe quod reddat* at the common law, [although] in some cases the writ will abate entirely, as in non-tenure of parcels and tenure of parcels in severalty – and now non-tenure is helped by the statute[3] – joint tenure of parcels shall abate the writ at the common law for part only. And in a case of *Precipe quod reddat* brought for a carucate of land in one vill, although it be alleged that parcel is in another vill, the writ will not abate except for the part. And so in this case, because in this writ of dower is *Precipe quod reddat de libero tenemento* in a particular vill, and there is no word in the writ of summoning a jury of any venue on the first day, so etc.

THIRNING. The venue is not the reason in the case of an assize, nor in a case such as this, but rather the false assertion in the writ, so etc.

RECORD: De Banco Roll, Trinity, 21 & 22 Richard II (no. 551), rot. 336 (CP40/551/336).[4]

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[3] The statute to which Markham is referring may be De Conjunctim Feoffatis, 34 Edw. 1 (1306).

[4] http://aalt.law.uh.edu/AALT4/R2/CP40no551/aCP40no551fronts/IMG_0666.htm.

9. ANON.

<Write abridgement>

An avowry was made because someone held of him certain land of which the place [where the taking is alleged was part] by fealty and by the services of sixteen pence a year, of which services he was seised by the hand [of the lord] etc, which services the same lord granted to another in fee simple. And the tenant attorned, and afterwards the grantee bought the land in demesne as of fee, by force of which purchase he became his tenant of the same services, which estate the plaintiff has, and he avowed for the same rent in arrears for a certain time.

Skrene for the plaintiff said that the same lord granted to him the same services of the rent of sixteen pence from his tenant as above by a deed, which he produced, to hold of him by the services of a halfpenny or a pair of gloves, payable at fixed terms for all kinds of services and demands, which is the estate we have in the same rent, and we ask for judgment whether he ought to maintain this avowry for other services. And as for the services of a halfpenny or a pair of gloves, we have always been ready to pay.

And for the avowant judgment was claimed since he did not deny the grant of the same services nor the purchase of the land as above, and he prayed return [of the distress].

MARKHAM. It seems that such a reservation is void, because when he granted the services of sixteen pence in fee, reserving to himself lesser services from those services so reserved, the tenant of the land shall not be charged by way of distraint, nor may he make an avowry for those services because no land is charged, so etc.

10. ANON.

<Write abridgement>

Precipe quod reddat was brought against a tenant for life, who on another occasion had prayed the aid of the reversioner, and the aid was granted. And process was made by summons against the reversioner, who did not come to join with the tenant, so it was adjudged that the tenant should answer alone. So the tenant traversed the demandant’s action and they were at issue, and then at *Nisi prius* in the country the tenant made default, so on the day in court the *Petty Cape* was adjudged, returnable now.

And now the demandant released the default, so the tenant again prayed the aid of the same reversioner, as above, and the aid was counterpleaded for the above reason, since on the same original writ the tenant was adjudged to answer alone without his

aid. And by his subsequent default the demandant shall not be put to delay, so it will not be right for him to have the aid again.

11. ANON.

<Translate abridgement>

Replevin was brought by a man against two for the wrongful taking of his draught animals.

Hornby for one defendant avowed the taking of the same draught animals against the plaintiff, because he found the same animals in the place where he [the plaintiff] pleaded, which was his own property, and he as lord of the soil took them for doing damage in his own property, and so avowed it.

Tyrwhitt for the other defendant avowed the taking of the same draught animals against the same plaintiff, because he showed that the same defendant had common rights in the same place where the taking is alleged, and because he found the same animals doing damage in his common, he as a commoner took the animals, and so avowed it.

And this matter was argued by the court, whether by law these separate avowries could be maintained by the two men on this one original writ or not. And it was adjudged by THIRNING C.J. and his fellows that, [since] the avowries are made by the two men separately upon one original writ and against one person – in which case the two could not have return [of the distress] should it be found for them in accordance with their avowries – and also because the avowry cannot be maintained by the law in the way mentioned for several reasons which would ensue to the inconvenience of the law without showing any special matter, that the plaintiff should recover his damages against them, taxed by the court at £3 6s 8d, and that they should be amerced.

12. DEL KERRE *v.* SAMAGE, *et al.*

<Write abridgement>

Precipe quod reddat was brought against many by separate writs of *Precipe*. And with respect to one *precipe* the tenant came and the other tenants made default, so the demandant counted against the one who came, and *Grand Cape* was adjudged. Whereupon came the mayor and bailiffs of the town of Hull and claimed cognisance of the plea of the tenant who appeared in the one *Precipe,* and produced their charter of franchise, and alleged that it had been allowed and claimed cognisance, which was

counterpleaded because this was an original writ, in which case if the franchise was granted in the one *Precipe* it would be possible for the demandant to be nonsuited in the franchise, which nonsuit will terminate the entire original writ, or else the demandant could recover his claim here in the other *Precipes* or vice versa, which would be error. And also the demandant shall not be amerced but once on one same original writ. And so, for the inconvenience which would ensue to the law, the franchise shall not be granted, but the opinion was that the writ will abate, as in the case of a writ brought of tenements partly within a franchise and partly outside. And note that all the tenements claimed were within the franchise of Hull, so query the law.

RECORD: De Banco Roll, Easter, 20 Richard II (no. 545), rot. 195 (CP40/545/195).[1]

[1] http:/aalt.law.uh.edu/AALT4/R2/CP40no545/aCP40no545fronts/IMG_0400.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no545/aCP40no545fronts/IMG_0401.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no545/aCP40no545fronts/IMG_0402.htm.

13. ANON.

<Translate abridgement>

Replevin was brought in the common bench in the county of Surrey.

Brenchley counts the taking to have been made in a particular vill in a place in the county of Kent.

Markham.[1] Judgment of the writ upon his own confession, since he has counted the taking as above, and the writ was brought in another county, and to have return we say that the place where etc is our own property and we took the draught animals for doing damage, and so we avow.

Brenchley. If the writ be abated you cannot have return.

THIRNING C.J. the writ is abated by the court ex officio and the plea comes from yourselves and not from him, so the case is other than if he had pleaded the same in abatement of your writ, in which case perhaps by the law he should not have return. But it will be harsh law that he should be ousted of return by your own deed and by a bad writ, because in that way one would never have return in any circumstances, so etc.

[1] Markham was a justice in Easter term of year 21. The fact that he appearrs here as counsel suggests that this case belongs to an earlier term. See the Introduction.

Hankford. If I bring *Quare impedit* in one county and I count that the defendant disturbed me afterwards in this county at a church which is in another county, the writ is abated in such a case, and still the defendant will not have a writ to the bishop, any more than in this case.

And it was held to be different, and it was the clear opinion of the court in this case that the defendant shall have return, so THIRNING [said]: take nothing by your writ but be in mercy; and you, defendant, sue return; which note.

14. HOO *v.* FORSTER

<Write abridgement>

Scire facias was sued out by William Hoo, knight, against Richard Forster to have execution of a fine of the manor of Knebworth in Hertfordshire, which fine was levied between Beatrice Perers and one Richard Perers and his wife Joan, daughter of the said Beatrice, by which fine the said Richard acknowledged the same manor to be the right of Beatrice, by force of which acknowledgement the said Beatrice gave and granted the said manor to the said Richard and his wife and to the heirs that the said Richard shall beget of the body of the said Joan, for failure of issue saving the reversion to the said Beatrice. And the said William sued execution of the reversion as kinsman and heir to Beatrice, namely son of Thomas, son of Richard, son of this same Beatrice.

And the writ was: and now by the report of the aforesaid William, kinsman and heir of the aforesaid Beatrice, we have learnt that the aforesaid Richard and Joan died without heirs begotten of the body of the aforesaid Joan, and that the aforesaid Richard Forester has entered the aforesaid manor and holds it against the form etc. And that after the death etc it ought to revert to the aforesaid William because the aforesaid Richard Perers died without heirs begotten of the body of the aforesaid Joan.

Gascoigne. Judgment of the writ because in the perclose of the writ, namely in this clause because etc Joan the wife of Richard was never made out to be dead, because the writ shall be consistent with what they alleged before, and ought to be because the aforesaid Richard and Joan died without heirs procreated of the body of the aforesaid Joan. And nevertheless the writ was adjudged good because the said Joan was stated to be dead earlier in the writ in the clause and now by the suggestion etc.

So *Gascoigne* by protestation [said]: we say to you that concerning two messuages called etc, and two acres of wood, they are not part of the same manor, nor were they at the time the fine was levied. And concerning the whole manor except a messuage and a certain amount of land, on the day the writ was purchased, we held to us and to our heirs forever jointly with Thomas Thornburgh and others of the gift etc, [who are] not named in the writ; judgment of the writ.

And concerning the messuage and a certain amount of land, you ought not to have an action because we say to you that one Edmund de Perers was seised of the same manor in his demesne as of fee, and gave etc the same manor to one Walter Mawny in fee, with warranty, and then a fine was levied between this same Walter, plaintiff, and one Isabel, [John de la] Rivers and Margaret his wife and one Joan, by which fine the same people acknowledged the same manor to be Walter's right, and released and quitclaimed it to the said Walter and his heirs forever, from them and from the heirs of the wives forever, and they bound themselves and the heirs of the wives to warrant.

And we say that Margaret and Joan died without heirs of their bodies, Isabel survived and died without heir of her body, by which the warranty of this same Isabel descended to Walter, and we ask for judgment whether you ought to have an action against the warranty of this same Isabel, your aunt, whose heir you are, namely daughter of Joan daughter of Beatrice mother of Richard father of Thomas father of this same William, whose estate we have; and he produced the fine.

Tyrwhit. Where he says by protestation that two messuages and two acres of wood are not part of the manor, by protestation we say that they were part at the time the fine was levied. And as to the messuage and certain land, we say to you that Edmund was seised and gave as he has alleged, and also that a fine was subsequently levied as he has alleged, and although he wishes to bar us by the warranty of this same Isabel, we say to you that there is one Richard de Perers alive who is heir to this same Isabel, namely son of Richard son of Edmund the brother of Isabel, and we ask for judgment whether we ought to be barred by the warranty of this same Isabel, and we seek seisin of the land.

RECORD: De Banco Roll, Easter, 20 Richard II (no. 549), rot. 297, 279d (CP40/549/279, 279d).[1]

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[1] http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0567.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0568.htm;

http://aalt.law.uh.edu/AALT4/R2/CP40no549/bCP40no549dorses/IMG_1543.htm;
http://aalt.law.uh.edu/AALT4/R2/CP40no549/bCP40no549dorses/IMG_1544.htm.

15. FOXLEGH *v.* PLESYNGTON

A.F., parson of the church of St Andrew Holborn, sued an *ex gravi querela* against R.P. for certain tenements that were devised to one for a term of his life, the remainder to another for a term of his life, the remainder after his decease 'to the church of St Andrew in Holborne', etc. And because the tenant for life and he with the remainder for life were dead, etc., the parson sued this writ, where it was pleaded in judgment that this remainder, so limited to the church of St Andrew, was void because the church was not a *persona capaax*. And it was adjudged by THIRNING[1] that the plaintiff sue execution and the devise was adjudged good. (Fitzherbert, *Devise* 27)

[1] See report translation n. 1.

Adam Foxlegh, parson of the church of St Andrew in Holborn, sued a writ of *Ex gravi querela* against Sir R Plessington for certain messuages and tenements which were devised to a man for the term of his life, with remainder to another man for the term of his life, the remainder after his death to the church of St Andrew in Holborn. And because these life-tenants in remainder were dead, the parson sued the writ, where it was pleaded in judgment that this remainder so limited *to the church of St Andrew etc* did not take effect because the church was not *persona capax* etc. And so to judgment, where it was adjudged by THIRNING[1] that the plaintiff should sue execution, and the devise was adjudged good.

[1] The attribution in Ms. W (n.4, opposite [that in the abridgements, 'Trew', would seem to be a corruption of this]) is probably to the John Tremaine who was created serjeant in 1401, but was never a justice. As appears below, the only record of this case that has been found is one in the Hustings of London from 1391. Perhaps Tremaine was involved in that proceeding. If the case was brought to the Common Bench, however, it is far more likely that the judgment rendered there was by Thirning, CJ, as Ms. A reports.

HERE ENDS EASTER TERM IN THE TWENTY-FIRST YEAR
OF THE REIGN OF KING RICHARD THE SECOND

TRINITY TERM IN THE TWENTY-SECOND YEAR OF THE REIGN OF KING RICHARD THE SECOND

1. ANON.

In a writ of wardship the defendant wished to have vouched, and the court asked what estate he who wished to vouch claimed in the wardship, who said for term of life.

MARKHAM, justice: then you will never have the voucher, because the reason that one will never have voucher in a writ of dower brought against the guardian by deed is because the claim of the woman is for the free tenement and the estate of the defendant is only a chattel. So the voucher will be of something other than what is claimed, which cannot be etc. And in the same manner, *vice versa*, if a writ of wardship is brought by a guardian by deed against a tenant for term of life or in fee he will never have the voucher for his claim is only a chattel and the voucher is to recover a free tenement or fee, and thus to recover something other than what is claimed, and there there is no mischief from [not having] warranty. But in a writ of wardship brought against a guardian by deed who has the deed leasing his wardship to him, then he will have the voucher on this same deed for mischief from [not having] warranty; for there their estate is alike on both sides, because one requests a chattel and the estate of the other is but a chattel. And *sic nota* that in the same way he may claim joint tenancy and non-tenure.[1]

[1] The marginalia, opposite, read: ‘From Trinity term in the 22nd year of Richard 2’ and ‘Wardship where the defendant vouches to warranty’.

ERROR! MAIN DOCUMENT ONLY.. ANON. *v*. COUNTESS OF HEREFORD

<Write an abridgement.>

The Duke of Gloucester was seised *etc* and leased to the Archbishop of Canterbury, the Bishop of L[ondon] and to J Bray[1] and to the heirs of J Bray, who assigned the lease to the Countess of Hereford. The Countess was impleaded and

[1] Between 1381 and 1404 the bishop of London was Robert Braybrook (1336/7-1404); ‘J Bray’ almost certainly indicates the bishop’s brother Sir Gerard Braybrook (c1332-1403), who was to be an executor of Joan, Countess of Hereford: E. F. Jacob (ed.), *The register of Henry Chichele* (Canterbury and York Society 42, 1937), p. 322.

prayed in aid those three who joined with her and vouched to warrant Thomas, Duke of Gloucester. Process was sued until the sheriff answered that he was dead; and now the tenant comes and says how the Archbishop has now forfeited his estate by a judgement given against him in parliament and the King is seised of his estate of which this is part, as a result of which she prayed aid from the King; and as for the remainder she prayed aid from the Bishop and from Bray; and it was said to her that she had the aid before this time when they joined in aid; judgement if on another occasion *etc*. And there it was mentioned that even though the King was seised of that parcel in reversion nevertheless he is not a joint tenant of the reversion but a tenant in severalty because the King may not be a joint tenant in demesne, nor in reversion, nor in service because if the King and another enfeoff someone and he is impleaded for that which belongs to the King he will pray aid and for the other part he will vouch the stranger and this proves their estate several. And the aid is given to make a person privy to plead a thing which another person may not or of which he does not have cognisance, and to defend his right. And in the case at the bar all the deeds and muniments which were the Archbishop's now belong to the King to defend his tenancy. And it was adjudged that in right of this part that she will have the aid of the King for his reversion and also of Bray in whom the fee and the right rest. And in right of the remainder [it was adjudged] that the tenant ought to answer because she had aid of it before and they joined and vouched *ut supra etcetera*.[2]

[2] The marginalia, opposite, read ‘See concerning praying of aid’.

2. T.W. and A. *v.* ANON.

<Write an abridgement.>

TW and his wife A brought a writ of dower on the endowment of JT formerly husband of the said A and the claim was for the third part of a carucate of land with the appurtenances in D whereof the said J was seised and whereof the said Alice *etc.* And the tenant said they ought not to have an action because one N *etc* was seised of this same land and leased it to two for term of life of four, and then the two leased their estate to the four and one of them died and the three leased their estate to the said JT from whom the endowment *etc* who was the reversioner and to this same A plaintiff *etc*, at that time his wife. And then the husband died and she continued her

estate for six years and took to husband this same TW *etc* and so she acknowledged the lease made to her and to her first husband; and afterwards the second husband and she were in possession of the same estate; judgement whether contrary to this acknowledgement *etc.* And for the wife it was said that she was under age at the time that he supposes that she was single and acknowledged, in which case she can acknowledge and not acknowledge under age; and, even though her second [husband] and she acknowledged this lease at her full age, this could only be called the acknowledgement of the husband alone, who was not privy to the lease, other than by coverture, and so we pray our dower *etc*. To this the tenant said that she acknowledged when she was under age, and then at her full age and continued the same estate, without this that she had other estate in the land; to which it was said for the wife that she did not acknowledge, being under age, and then took to husband this same man *etc* he being under age, without that they had anything or continued their estate by the lease *etc*. And then they were at issue, for the tenant said that one of the four lessors survived, in whose life the wife continued her estate for six years and took to husband TW, who was also under age, and then at the full age of the husband both took possession and continued their estate by virtue of the said lease and so acknowledged, without this that they had other estate; ready. And the husband for the wife said that she did not acknowledge *ut supra* without this that the husband and wife had anything or took possession by virtue of the lease after the full age of TW; ready, and the others the opposite *etc.*[1]

[1] The marginalia, opposite, read: ‘Dower’.

3. ANON.

<Write an abridgement.>

In *precipe quod reddat Skrene* said that if *precipe quod reddat* was brought against two and one says that he is tenant of the whole, without the other having anything *etc* and the other says [to say] that he is tenant *etc* without the other *etc* is not a plea without pleading over to the action, as by voucher or other plea *etc*; but if the one says that he is several tenant of part without this *etc* and the other says that he is several tenant of the remainder without *etc* in this case the plea is good without pleading to the action or saying more, because in the one case the writ is good if there is a tenant who can surrender what is claimed; and because the one has accepted the

whole tenancy upon himself, he will be compelled to answer over to the action or otherwise he will be adjudged as without defence, like he who says nothing; but in the other case of tenancy in severalty the plea of each goes to the abatement of the writ and because without saying more the demandant must maintain his writ or otherwise the writ will abate *etc*.[1]

[1] The marginalia, opposite, read: '*Precipe quod reddat* where it is necessary to maintain the writ and *econtra*.

MICHAELMAS TERM IN THE TWENTY-SECOND YEAR OF THE REIGN OF KING RICHARD THE SECOND

1. BONET *v.* SMYTH, *et al.*

<Translate abridgement>

John Bonet brought a writ of trespass against John Smith and Richard Gyntre for three horses worth 100 shillings wrongfully taken, where the defendants justified the taking for the reason that a certain William Crawstoke held of a certain Reynold de Cruce a messuage with the appurtenances in Walton on Thames, of which the place [where the taking is alleged was part], by homage, fealty and the service of eighteen shillings and ten pence rent, payable yearly on the feast of St Michael, of which services this same Reynold was seised by the hand of this same William as by the hand etc. Reynold gave and granted the aforesaid services, by a deed which was produced, to a certain Sampson son of Sampson in free marriage with Isabel the daughter of the said Reynold, to have to themselves in free marriage.

They were seised by force of the gift in tail, and from them the descent proceeded lineally by force of the entail to a certain Elizabeth and Margaret as daughters and heirs, which Elizabeth married a certain Robert, and Margaret married a certain Nicholas, and they conveyed the tenancy of the land to the plaintiff. And because the plaintiff's homage was in arrears, both to the husbands and their wives, the aforesaid defendants as their servants, by their orders, took the same horses in the same place as in parcel etc, by way of distraint, and we ask for judgment whether this was wrongful.

And the plaintiff made protestation that he did not acknowledge the tenements to be held by such service, and said that a certain Hamlin, father of the said Elizabeth and Margaret through whom the descent is made, by a deed which he produced, gave and granted the same rent to a certain Peter and Agnes his wife and to the heirs of Peter, together with the services and appurtenances which he was accustomed to take from the lands and tenements which had belonged to a certain John de Bridgeford, and bound himself and his heirs to warrant, by force of which grant John Bonet, the plaintiff's uncle, then the tenant, attorned to those same Peter and Agnes, and set out in what way he was uncle; the which Peter and Agnes are dead. And from Peter the services descended to Nicholas as son and heir, and from Nicholas to William as son and heir. And the aforesaid John the plaintiff is now attendant to the said William son

of Nicholas for the said services.[1] And he says that sufficient descended to the aforesaid Elizabeth and Margaret through this same Hamlin their father in fee simple at Molesey in the county of Surrey.[2] Ready, and we ask for judgment whether the defendants can maintain their justification against the aforesaid matter; and so to judgment.

And the opinion of all the judges and serjeants was that the entail was discontinued, except THIRNING chief justice and *Gascoigne*. And so THIRNING said: and I will hold an opinion and speak against you all.

And so on another day THIRNING [said]: it seems that the entail is not discontinued, and I say that there are many things to consider in this case. To begin with, if the tenant in tail of rent services grants the rent and the services to a man in fee with warranty, and the tenant attorns, I say that at the outset the grant alone does not discontinue the entail, nor is the warranty of much relevance, because the warranty does not cause a discontinuance, except in a case where warranty with discontinuance is pleaded. And I say that inasmuch as it is said that before the statute,[3] a tenant in tail after issue will have a fee simple because the condition is fulfilled, that is changed by the statute, which says expressly that the issue of the tenant in tail shall not be disinherited by his deed. So that there is a great difference [between] when the tenant in tail grants by word of mouth which is his act, and where he alienates entailed land, because [an alienation of] land is always by livery, and when a tenant in tail makes a feoffment and delivers seisin, so that person is in possession by livery because of the possession delivered to him, the entail is discontinued, and the issue cannot enter. And that is because of the livery, because even though somebody makes a deed of land, without livery it is void. So that livery of seisin discontinues the entail in such a case, be it by deed or without deed. But it is otherwise in various cases which pass by grant without livery, as in the case of an advowson, if a tenant in tail seised of an advowson grants the advowson by deed, it will pass entirely without livery, and also if he grants his villein or common of pasture, which passes in such a case by word of grant. By the deed of the tenant in tail

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[1] For ‘attendant’ in this sense, see *O.E.D* s.v. meaning II.5.b; compare mod. Eng. ‘attendant physician’. It is interesting that this relationship, whatever it precisely was, allowed Bonet to sue in his own name without objection being raised. <Revisit with the record.>

[2] From the record.

[3] De Donis Conditionalibus, Westminster II, ch. 1 (1285).

without livery the entail will not be discontinued nor the issue put to his action, because in effect the tenant in tail has only a life estate, and his heirs are purchasers with him, so that his grant by word cannot last longer than his time and for his own life. And so it seems to me in a case of rent, because I say that rent cannot pass without a deed of grant, so that when a tenant in tail grants the entailed rent to another in fee, which grant cannot take effect without the attornment of the tenant of the land, it would be unreasonable that by the attornment of the tenant of the land, who is a stranger to the issue in tail, that by his attornment the issue should be put to his action.

Because I submit that, should the tenant in tail of a reversion grant the reversion to a man in fee, [and] the tenant for life attorns, if the grantee of the reversion dies and the life tenant survives without the reversion vesting in the grantee, I maintain that the issue in tail may enter after the death of his father, notwithstanding such grant and attornment, because such a grant lies wholly by the word of the grant of the tenant in tail, and so it seems to me in this case of rent, which was wholly by word of mouth and the grant of the tenant in tail and thus his act, that by such a grant the issue will not be put to his action, but that he may distrain after the death of his ancestor, so that etc.

MARKHAM. It seems to me that the entail is discontinued and that the issue will be put to his action both in this case of rent as in a case of land, because if a tenant in tail grants and surrenders this entailed land to a man by fine, and has issue and dies with the fine unexecuted, I say that if the person to whom the grant was made sues out a *scire facias* of the same fine against the issue in tail, he will successfully avoid the execution of it. But if the fine was executed in the ancestor's lifetime, the issue is put to his action of formedon, and still the fine is only by word of grant and surrender.

And also should the tenant in tail be disseised, whether of rent or of land, if the tenant in tail dies, the issue can enter upon the disseisor. But if an ancestor who is collateral to the issue in tail, or his own ancestor, releases to the disseisor with warranty, so that the warranty descends to him with the descent in fee simple by the same ancestor, I say that he will be barred forever and cannot enter, and this is only by the release and by the deed of the tenant in tail; and so it seems to me in this case of rent.

BRENCHLEY. It seems that the entail is discontinued both when the tenant in tail of rent service grants the rent in fee and the tenant attorns, as when land is alienated in fee, because should a tenant in tail of a reversion grant the reversion to a man in fee

and the tenant does not attorn, but subsequently the life tenant surrenders his estate to the grantee of the reversion, so that the free tenement and the fee are united in the person of the grantee by the deed of the life tenant, I say that in this case the issue in tail cannot enter upon the grantee of the reversion. And yet this grant of the reversion was only by the grant of the tenant in tail, and also the life tenant is a stranger to the issue, and so it seems to me that the entail is discontinued in this case.

HANKFORD. It seems that the entail is discontinued both with alienated rent service and with land, because the tenant in tail has as much power to make alienation of rent as of land, so that when he has exercised his power and granted the rent in fee with warranty, and the tenant has attorned, it is right that the issue should be put to his action and that he cannot distrain. And I say that in the cases put by my master THIRNING, in a case in which the tenant in tail alienates an advowson which he has in tail in gross by himself, or grants his villein or alienates common of pasture, that in all such cases which pass by grant, that the issue of the tenant in tail shall not be put to his action nor the entail discontinued. I say that in that situation it is not surprising, because in such a case of an advowson or of a villein or of common of pasture, the issue in tail makes attornment in that situation, and has no action except by entry or by seizure of the villein, so that although the grant in such a case is effective only for his own life, it makes good sense. And I say that it has been observed that in a writ of *quare impedit* of an advowson brought by the issue in tail, that his ancestor's warranty with descent has been pleaded in bar and held a good plea, and the issue will be barred. So it seems in this case, because when the tenant in tail grants the rent in fee and the tenant attorns, I say that the grantee will have a fee simple and inheritance in the rent and in consequence the entail is discontinued.

THIRNING to HANKFORD. I think you are correct. And since you make a distinction between an advowson, a villein and common of pasture, and rent service alienated in fee, I will say [something] to you. And I say that, inasmuch as you say that the issue in tail in the case of an advowson or of a villein or of common of pasture lacks an action, I disagree. The issue in this case can have an action, and also in other such cases, for example if a tenant in tail of certain knights' fees alienates the fees or grants them in fee, I say that the issue after his death shall have a writ of *precipe quod reddat unum feodum militis et dimidium feodi militis* and more according to the case. And this is still by grant and the entail is not discontinued in this case.

And I also say that with common of pasture, the issue shall have *quod permittat*, so that an action lies in this case for the issue, and yet this does not prove that the entail is discontinued in a case of common of pasture. And inasmuch as it is said that when the tenant in tail grants the rent in fee and the tenant attorns, that the grantee will have a fee in the rent, I quite agree that he will have a fee of a kind at the outset, but not of perpetual duration, because I say that forthwith, by the death of the tenant in tail, having regard to the issue in tail, this fee will cease and is determined, as in the case of godsips.

Should the tenant in tail to himself and to his wife and to the heirs begotten between them alienate in fee and receive back an estate to himself and to his wife and to their heirs, [and] the wife dies whereby the father remains in possession and dies seised in such an estate of fee simple, and the issue between him and the wife enters, I say that the fee simple was gone immediately by his death just as it does between godsips, and the issue in tail shall be adjudged in possession in his own right by the entail. And also if the husband alienates land held in the right of his wife, and takes back an estate to himself and to his wife and to their heirs, [and] the husband dies and the wife survives, she shall be adjudged in possession in her right of fee simple, and immediately by the husband's death the fee simple in him was gone, so etc.

Hornby. Should the tenant in tail have an office, such as the keepership of a park or other office, I say that if he grants this office in fee by deed, that it will pass immediately without livery, and if he grants in fee with warranty, I say that the issue in tail in this case will be barred if he had it by descent; and so in this case it seems to me that the entail is discontinued.

Tyrwhit. It seems that the entail is discontinued, because should a man have a rent-service in tail in a vill, and another rent-service in tail from another man in another vill, and he grants the service from the one to a man in fee with warranty, and the grantee is impleaded by a stranger, and vouches the tenant in tail to warranty, who enters and pleads and loses, so that the other rent-service in tail is put in value, I say that if the tenant in tail dies, his issue cannot distrain for the rent thus put in value, and so it seems to me that he can no more distrain in this case, but that the entail is discontinued.

THIRNING. It is a good argument for you who are a great purchaser, and I heard GREEN,[4] who was such a wise judge, say that he held that there was no question in this case of rent-service that the entail is not discontinued by the grant of the tenant in tail, and *Finchdean* who was then at the bar, said: Sir, then anyone who buys any rent-service in fee can say by maintenance in the country that the rent is entailed. And he [GREEN] replied: and are you a maintainer as well, and say that the rent is a fee simple? Because I hold that there is no question.

And THIRNING also said that it was held by all the wise men in days gone by that the issue may distrain in this situation, and it was never adjudged to the contrary.

And it was observed by *Gascoigne* that if the tenant in tail of a rent-service grants the service of his tenant to a man in fee by fine, that the tenant will never be compelled to attorn by this grant, so etc.

Hill. It seems that the entail is discontinued by the grant of the rent made by the tenant in tail and the attornment of the tenant to the grantee, just as if the tenant in tail makes a deed of his land and afterwards makes a letter of attorney to a stranger to deliver seisin by force of the same deed. And I say that this deed, and the livery of a stranger, discontinues the entail as fully as if he had delivered seisin himself. And so it appears in the case of rent and by the attornment of the tenant.

De Banco Roll, Hilary, 20 Richard II (no. 548), rot. 439, 439d (CP40/548/439, 439d).548.[5]

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[4] Henry Green was JCB from 1354 to 1361, when he became CJKB. William de Finchdean, to whom Thirning refers later in the sentence was a serjeant from 1354 until he was appointed JCB in October of 1365. (He later served as CJCB from 1371 to 1374.) Hence, we can date this discussion to sometime between 1354 and 1361. Assuming that we are now in 1398, Thirning is remembering something that would have occurred at least 37 years previously. Thirning himself must have been at least 20 at the time. He did not die until 1413 when he would have been at least 73, and may well have been older than that. <Check ODNB on Thirning.>

[5] http://aalt.law.uh.edu/AALT4/R2/CP40no548/aCP40no548fronts/IMG_0892.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no548/aCP40no548fronts/IMG_0893.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no548/bCP40no548dorses/IMG_1817.htm.

2. ANON.

<Translate abridgement>

A writ of conspiracy was brought against three people.

Gascoigne. Judgment of the writ, because we say that two of those against whom the writ is brought have died, so we pray that the writ should abate; and he said this on behalf of the third defendant.

Tyrwhit. We make protestation that we do not acknowledge that they are dead, but we tell you that they were alive on the day on which the writ was purchased, which you do not deny; and since you make no answer, we ask for judgment whether our writ be not perfectly good, and we pray that you be attainted.

THIRNING. It seems that the writ is abated in this situation, since when the two have died, the third cannot be attainted of conspiracy, because a single person cannot possibly conspire. And should a writ of conspiracy be brought against two people, and one of them comes, pleads and is found guilty, and later the other dies, I say that judgment will not be given against the other, because the other is dead, and on that account he is acquitted; so etc.

Tyrwhitt. I saw the same thing before Sir Robert CHARLTON[1] and yourselves in a writ of conspiracy brought against two people, where one came and pleaded and was found guilty, and the plaintiff released his suit against the other and he shall have judgment against the one. And so in this case, when the writ was good at the outset, although the two died while the writ was pending, which is an act of God and no fault on the part of the plaintiff, it seems that the writ will not abate at all.

RICKHILL. There is a great difference between the two cases, because in your case, if a writ of conspiracy is brought against two people, and one pleads and is found guilty, in effect the other is attainted by his plea, although he might have a subsequent answer. And I question whether a writ of conspiracy can be maintained against one person or not; I rather think not, any more than when a writ is brought against two people and one dies, because he cannot conspire by himself.

Hornby. There is a great difference when the writ is invalid at the time of purchase, and when the writ is good when purchased, because in your case if a writ of conspiracy is brought against one person, the writ is always invalid. But in this case, when the writ was brought against the three, the writ was initially good. It is unreasonable that, if two of them die while the writ is pending, which is only an act of God, the action should fail. And I maintain that the third person could well be attainted, because he had conspired with the other two; so it seems that the writ is perfectly good.

Gascoigne. It seems that the writ is abated, because should a writ of conspiracy be brought against two people, and one of them comes and pleads and is found not

[1] Robert Charlton was CJCB from 1371 to 1374. He was Thirning's predecessor.

guilty, I say that the other is acquitted and the writ will be abated, because the former process cannot continue against the other, any more than in this case, because when the two are dead, they are absolved and cannot ever be attainted, and so it seems that this writ against the third person is abated.

MARKHAM. There is a great difference when the writ is good at the outset, and when it was always invalid. Because in a case in which a writ of conspiracy was brought against two people, and one of them comes and says that he was one of those who had indicted the plaintiff, in which circumstances it is excusable by law, in such circumstances the writ is abated against the other person, because the writ was always invalid. But in this case, when the writ was good at the outset, although one of them dies after the writ was brought, the other may still be perfectly well attainted, as when a writ of attaint is brought, and some of the first jurors are dead, if some are alive then attaint is maintainable. So that if those who are alive are attainted as much as those who are dead, it appears that when the writ was good at the outset, that the death of the two will not abate this writ.

3. PRIOR OF BERMONDSEY[1] v. BROKE, *et al*.

<Translate abridgement>

The prior of Bermondsey brought an assize of novel disseisin before justices in the country against certain persons concerning tenements in Southwark, where it was pleaded in the country for the tenants that the same prior had been made abbot of the same place while the writ was pending, at his own suit, by the pope and by the king, so he had abated his own writ, so judgement was asked of the writ. The other side

[1] John Attilburgh was the last prior of the alien Cluniac priory of St. Saviour at Bermondsey, Surrey, from 3 December 1390 and became the first abbot of Cluniac abbey of St. Saviour Bermondsey on 13 August 1399. The priory had been erected into an abbey by Pope Boniface IX at the request of the king and the prior. Dugdale, *Monasticon*, 5:92. Attilburgh obtained a dispensation in 1397 from Boniface IX to hold a benefice with cure, in addition to the priory, in consideration of the great quantity of money that he spent against schismatics and rebels against the Roman church. He acted as president of the chapter-general of the Cluniac order in England. According to Dugdale, relying on the chronicle of Bermondsey, Attilburgh resigned 20 January 1400 in order to become bishop of 'Athelfeld' ('Athelfelden' in the chronicle), the name of no known see. Attilburgh is probably to be identified with the Joannes Arcilburgh, a monk of Bermondsey, whom Eubel reports as having become bishop of 'Kerry' in 1405. In *British Chronology* the name of the diocese is given as 'Ardfert' (prov. Cashel, near Tralee in co. Kerry) and the name of the bishop as 'John Attilburgh (Artilburch), O.S.B.'. His death is recorded as before Jan. 1411. Attilburgh's successor as abbot, Henry Tompston, alleged that the abbey was overburdened by Attilburgh's bad government and committed it to the custody of the king's delegates. A commission ordered the arrest of Attilburgh. *Victoria County History of Surrey*, ed. H. E. Malden (London 1967) 2:64-77.

demurred in judgement whether the writ was not perfectly good; and thereupon they were adjourned to the common bench.

And now *Cokayn*. It seems that the writ is perfectly good, because when it was good on the day it was purchased, although he is made abbot while the writ is pending, by the pope and by the king, which is only an act of God and not of his doing, it is not good sense that the writ should be abated by such things, because neither the house nor the possessions are changed, although the name is changed; so it seems to me that the writ is good.

Skrene in agreement. It seems that the writ is good, because should a parson of a church be disseised of his free tenement, I say that he may bring an assize by the name of J, clerk, or by the name of parson, and although he is made parson of another church while the writ is pending, the writ is still good. And also if a bishop brings a writ, and while the writ is pending he is translated to another diocese, the writ will not abate for such a thing. And although a man brings a writ, and while the writ is pending he is made an earl, the writ is still perfectly good; and so it is in this case.

MARKHAM. Your cases are not like this case, because in your case a bishop or a parson can have a hereditament by way of inheritance, and if he is disseised of it he may have the assize or an action by whatever name he wants, and although he is a bishop and is translated while the writ is pending, the writ is perfectly good. But an abbot or a prior may never have an action except in the right of his house ‘as the right of his church’, so that his action is on account of the house. Suppose that the writ was a writ of right, in which the abbot may have final judgement after the mise is joined, in which he will recover to himself and to his successors forever quit etc, the judgement in such a case cannot be given for the abbot, because he is called prior; by which it seems that the writ is abated.

THIRNING. I think you are correct, and that the writ is abated, because should a chaplain of a chantry or the warden of a chapel be made abbots, just as in former times many of the Templars were, I say that in such a case, had they been created while the writ was pending, the writ would be abated, because the nature of their possession is utterly changed and, as has been observed, everything is in the right of the house; so it seems that the writ is abated.

HANKFORD. It seems that the writ is good, because although he may be made abbot while the writ is pending, the possessions of the house are still of the same nature as they were before, and they are not changed even though the name of the

prior may be changed by way of dignity. For it was held that when Henry of Lancaster brought a writ, and while the writ was pending he was made duke of Lancaster,[2] the writ was still held perfectly good, and despite the fact that he was made duke and his possessions were turned into a duchy and changed, nevertheless in this case the writ was held perfectly good. And suppose that tenements are entailed to a man by fine by the name of Joce, and after the fine is levied he is confirmed by the bishop by the name of Jocelyn, as recently happened in this court,[3] then in such a case he ought to have execution by the name of Jocelyn, although it is not consistent with the fine; so, etc.

MARKHAM. A writ is not maintainable against a duke by that name, *precipe duci*, without putting in his own name, but a man may bring a writ against an abbot by the name *precipe abbati* of such and such a place, and also an abbot may bring a writ by the name of abbot, without putting his own name, because the action is always in the right of his house. And it is not so in the other case, by which it seems that the writ is abated.

RICKHILL. Suppose the assize went against him in this case, must he have the attaint in this case by the name of prior? – I should say not. And also a writ is not maintainable against him now other than by the name of abbot, so *etc*.

And the opinion of the court was that the writ would abate, *etc*. Query *etc*.

RECORD: De Banco Roll, Trinity, 21 & 22 Richard II (no. 551), rot. 202d (CP40/551/202d).[4]

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[2] Henry Bolingbroke, later Henry IV, succeeded his father John of Gaunt as duke of Lancaster on the latter's death on 4 February 1399. The case referred to must date from at least Hilary term of year 22.

[3] David Seipp notes that no 'Joce' or 'Jocelyn' was mentioned in reported cases of Ric. 2. This may be the scire facias case to which Bellewe refers in the Appendix.

[4] http://aalt.law.uh.edu/AALT4/R2/CP40no551/bCP40no551dorses/IMG_0395.htm.

4. PROVOST OF BEVERLEY[1] *v.* WANDISFORD, *et al*.

<Translate abridgement>

The provost of Beverley bought a writ of conspiracy against certain persons of the city of York, and counted against them concerning a conspiracy made in the county of

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[1] Robert de Manfield was provost of Beverley from 1381 until his death in 1419. R. T. W. McDermid, The Constitution and the Clergy op [sic] Beverley Minster in the Middle Ages (thesis,

Middlesex to indict him in the king's bench, when it was at York, as a result of which conspiracy he was indicted and then acquitted; and he counted that the conspiracy was made in the parish of St Clement Danes outside the Temple Bar of London. And last term the parties were at issue upon a specific point and now, upon the *habeas corpora [juratorum]*, the inquest comes, ready to give its verdict, and the return of the *venire facias* was inspected by the court, and the return of the sheriff of Middlesex was *I have ordered the bailiff of the duke of Lancaster's liberty of the Savoy who has answered me thus, and returned* four persons, and that there were not more within the franchise who could be returned, so the sheriff himself returned, besides the four qualified men, a panel from his own bailiwick and upon his own authority. And also on the return of the *venire facias* eight *tales* were granted.[2] Because the jurors did not come, as appears by the record, the sheriff returned them himself without giving any order to the bailiff. So

Markham. It clearly seems that all is void, and that the inquest shall not be taken. For when the sheriff gave an order to the bailiff of the franchise and the bailiff returned to him the four persons, the sheriff should have returned it without having returned any men on his own authority, and thereupon a *non omittas* should have been awarded in this place by the court. And inasmuch as he did not, but the sheriff made himself judge of the franchise, all is void, because it could be that there are enough people of the same franchise, notwithstanding the bailiff's return.

THIRNING. It seems that the return is perfectly good, because the *venire facias* went out to the sheriff to return a panel, under which circumstances it is up to him to serve the writ. And although he gave an order to the bailiff of the franchise, when the bailiff returned that there were only four persons in the franchise (which as we understand it is true), and perhaps in truth there were not more in the franchise, so when the bailiff's return was good, and he returned no more than four persons, then the sheriff's return is perfectly good because he must serve the writ. So it will not be right that the party shall be delayed, and it is also not right that the franchise will be

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University of Durham 1980) vol. 2, p. A.24 (online http://etheses.dur.ac.uk/7616/), who adds that he was keeper of the writs and rolls of CB from 1397 to 1410.

[2] These eight seem to be different from the eight whom the sheriff returned from his own bailiwick when the the bailiff of S. returned only four. These eight seem to have authorized by the initial *venire facias* and were apparently authorized in anticipation that some of the those called first would not come. Compare the modern practice of empanneling alternate jurors.

lost by the award of a *non omittas*, where the bailiff had done his duty and returned four persons, where it might be the case that there are not others in the franchise.

Markham. I shall prove clearly that all is void; for when the sheriff gave an order to the bailiff of the franchise, and the bailiff returned only four persons and that there were not others, it follows that the bailiff should have lost the franchise by his return on account of the decay of the franchise. And upon this return, a *non omittas* should have been awarded to the sheriff in this place by the court, so that the sheriff should have had a warrant to enter into the franchise and to return a panel within the franchise and outside it. And he could not make himself judge and oust the franchise. And I say that when the sheriff took upon himself by his return 'that I have ordered the bailiff of the liberty', at that time the sheriff excluded himself, and hoped subsequently to make some return on his own authority, without another writ or *non omittas*, so etc. To which there was no answer.

Later THIRNING rose from the bench and went to CLOPTON in the king's bench, and asked this question of him. And he returned and said that he had asked CLOPTON about this matter, and what he would want to do in such a case. He said that if such a case were before him he would take the inquest, and also that it had often been done. And he also said that he had asked the sheriff of Middlesex about the return, who said that he had often made such a return in this situation.

So THIRNING asked the plaintiff's serjeants: do you want the inquest to be taken? They asked for the inquest, whereupon *Tyrwhitt* challenged the array on behalf of the defendants, which was confirmed by two triers. And then he challenged the individual jurors, and six were sworn and all the others were removed, because they had eaten and drunk at the plaintiff's expense during the plea. And ten *tales* were granted and a day given until the quindene of St Michael.[3]

RECORD: De Banco Roll, Easter, 20 Richard II (no. 549), rot. 278 (CP40/549/278).[4]

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[3] The challenge of the array seems to be different from the challenge of the individual jurors. The *tales* are probably to take the place of the ?six jurors who were removed. The fact that the case was put over to the quindene of Michaelmas suggests that at least this case dates from Michaelmas term. <Check for refs.>

[4] http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0565.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0566.htm. <See spreadsheet for earlier refs.>

5. CROS *v.* COTON

<Translate abridgement>

A writ of intrusion of ward was brought by the husband and his wife in the county of Stafford against a certain John, and they counted that how the ancestor of this same man held of the wife's ancestor by knight service and died while this same John was under age, as a result of which she seized the wardship of this same John. And they said that the husband and wife tendered marriage to this same John at B in the county of Derby, and this same John there refused the marriage, and afterwards, on his coming of age, entered into his land, not having made satisfaction to them for the marriage.

Rede. Judgement of the writ, because you see clearly how the husband and the wife have brought the writ in common, and have even shown that the wardship was vested in the person of the husband, which is only a chattel, in which case the husband should have an action alone, leaving the wife out; so we pray that the writ will abate.

THIRNING. We will not grant your request, because we hold one writ and the other perfectly good, whether it be brought in such a situation by the husband alone or by the husband and the wife, because it is a chattel real. And THIRNING asked MARKHAM what he thought about this case, who said that one writ and the other was perfectly maintainable, and that it is not an error. In such a situation the writ must be maintainable, because the wife may have execution of damages in this case by the death of the husband. And he further said that in this case, the writ would have been perfectly good had it been brought by the husband alone; also a writ of ejectment of ward and a *quare impedit*, even if concerns the wife's right, [may be brought] for the wrong done to the husband; to which THIRNING agreed.

So *Rede*. Again, judgement of the writ, because he has brought this writ in the county of Stafford where the land is, and they have put forward by their count that the refusal was made in B in the county of Derby, which is the cause of the action; so judgement of this writ, brought in the county of Stafford. And it was not allowed by the court, because the refusal was not the cause of the action of intrusion of ward, but solely the entry into the land, without satisfaction being made for the marriage, so that the writ in this case must be brought in the county where the land is.

And it was observed by HANKFORD in a situation which occurred in a writ of forfeiture of double marriage, and there was a tender of marriage to the heir who was under age, and that the heir refused to be married by the lord, and married independently elsewhere in a different county from where the land is, this is a still

worse case, and if in this case the heir enters into his land without satisfaction of double value being made for the marriage, still the writ ought to be brought in this situation in the county where the land is.

THIRNING to *Rede*: Answer. So he said that the plaintiff's same wife, when she was single before coverture, granted the marriage of this same John, the defendant, to his mother A, and said that this same John was of full age before the entry into his land, and we ask for judgment whether action.

Cokayn. You see clearly how he has alleged that, before coverture, the plaintiff's wife granted the marriage to the defendant's mother, which could not have been done without a deed, and of this grant he does not show anything; so judgement whether any law compels me to answer such a plea.

RICKHILL. It is only a chattel, so she may grant and give it as well as a man may give his horse.

Rede. And since he does not deny that the wife, at the time that she was single, gave and granted the same marriage to the infant's mother at B in the county of Stafford, which we wish to aver if he would deny this matter, which he does not deny, we demand judgment and pray that he might be barred.

Cokayn did not dare to demur but said that he did not grant the marriage in the manner in which he had counted, ready; and the others the opposite, etc.

RECORD: De Banco Roll, Trinity, 21 & 22 Richard II (no. 551), rot. 98 (CP40/551/98).[1]

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[1] http://aalt.law.uh.edu/AALT4/R2/CP40no551/aCP40no551fronts/IMG_0194.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no551/aCP40no551fronts/IMG_0195.htm.

6. ABBOT OF WESTMINSTER *v*. MOLEYNS

<Translate abridgement>

The abbot of Westminster brought a writ of ravishment of ward against Lady Moleyns, where the parties were at issue whether the infant's ancestor had made a feoffment of the same land which the abbot claimed that the infant's ancestor held of him, to certain persons, who continued their estate throughout the life of the infant's ancestor, without this that the infant's ancestor held of him at the time of his death. And thereupon issue was joined, process sued as far as a jury until now, which jury came and were sworn and found in favour of the abbot, the plaintiff, namely that the infant's ancestor held of the abbot at the time of his death.

THIRNING asked the jury whether the infant was of age or not, who said that he was around the age of twenty years, and so under age. And he asked them whether the infant was married or not, who said that they had no idea, and prayed that they might give a conditional verdict about the infant's marriage.

THIRNING AND THE WHOLE COURT. That you may certainly do, because that has been done in the past. So he asked them the amount at which they would value the infant's marriage in the event that he had been married, who said 'Sir, at £40 besides their damages', and for their costs and expenses they said £10, query by what law, because the statute says nothing about damages.[1] But it was said by the court that this had often been done.

And HANKFORD, justice, observed that there had to be an enquiry whether the defendant was sufficient or not, because the statute requires it etc.

And MARKHAM said not, and that that had never been seen.

THIRNING. Still the statute requires it, but he said that the Lady was perfectly sufficient.

Rede. We pray that it be entered that it is found that the infant is of the age of 20 years.

THIRNING. To what purpose, because it is found that the infant is past the age of 14 years, and that he is in no way under age; which note.

MARKHAM said that although it were found that the infant was below marriageable years, and that he had been married by his abductor, still in this case the lord may not compel the infant to marry again against his will, because in this situation the infant may accept his wife by reason of conscience, in that nobody may force him to leave his wife against his will. Thus in such a case the lord would receive only the value of the marriage against the abductor, so etc. If he be married, it is all the same whether the infant is within marriageable years or beyond marriageable years.

HANKFORD. If the infant be within marriageable years, although he be married, he can refuse to agree to this marriage, and if the lord offers him a marriage in these

[1] 'The' statute was, in fact, three: Merton, c. 6–7, Westminster I, c. 22, and Westminster II, c. 35. All the speakers are correct when they say that 'the' statute does not provide for damages, at least not for what we would call 'incidental' damages, as opposed to the value of the marriage itself. Single vs. double the value of the marriage under Merton c. 6–7 of Merton depends on whether the ward has simply refused a marriage or has gone out and married someone else. The reference to sufficiency of the defendant seems to depend on language in Westminster II, c. 35, considerably expanded. The basics are discussed by Milsom, in *Novae Narrationes*, p. clv–clvii. <This needs disucssion in the Introduction, beginning, probably, with Plucknett on statutes.>

circumstances and he refuses it, that is the infant's fault and the wrong is his, and on that account it is right that the lord shall receive double the value against him; so query the law about it.

Rede. It appears that he shall not recover any damages in these circumstances, because the statute does not provide for any damages in a writ of ravishment.

THIRNING. He shall recover damages by the common law in these circumstances, and also the statute wills that, although he surrenders the marriage, he may still be punished for the offence. So, taking one thing with the other, it is right that he shall recover damages; and thus was the opinion of RICKHILL and HANKFORD, namely that he may recover damages by the common law.

Rede. In a case in which a tenant in tail had issue and died, at the common law, if a stranger intrudes upon the issue, the tenant in tail shall have an action of *mort d'ancestor* and recover damages. *Formedon en le descender* is now provided by the statute, in which writ he shall not recover any damages because the statute does not provide any damages. Nevertheless at the common law the issue shall recover damages in *mort d'ancestor*, and so in this case it appears that when the action is provided by the statute, and that without damages, that he shall not recover any damages.

HANKFORD. Not alike.

And later, by the opinion of all the justices and MARKHAM.

RICKHILL. Because the issue has been found for the abbot, the court awards that he should be restored to the body [of the ward], and that he should recover his damages taxed by the jury at £10, and if it turns out that the infant be married, the value of the marriage which is taxed at £60, and if not etc, the damages without anything further. And because the fine and redemption had been pardoned by the king's pardon, the defendant was told that she should go quit [of the fine].[2]

RECORD: De Banco Roll, Easter, 20 Richard II (no. 549), rot. 213, 410 (CP40/549/213, 410).[3]

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[2] The reference in the marginalia opposite would appear to be to Anon., Mich. 45 Edw. 3, fol. 16b, pl. 19 (CB 1371) (Seipp No. 1371.087).

[3] http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0432.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0433.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0831.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0832.htm; http://aalt.law.uh.edu/AALT4/R2/CP40no549/aCP40no549fronts/IMG_0833.htm.

7. ANON.

<Write an abridgement.>

Debt against a woman as executrix *etc* and he counted that in respect of part she herself had rendered account before certain auditors after the death of her husband who was her testator, and for the arrears *etc*. And as for the other part he counts that her testator was bound by a sealed tally *etc* and by these words cut to such a one by such a one *de denariis resceptis prout patet in tallia, solvendis eidem etc tali facto, ad quam quidem solutionem etc obligo me etc.*

Horton **:** Sir he has counted in respect of an account made by the woman since the death of their testator which will be accounted her own contract, so the writ ought to have been *debet et detinet* and not *detinet* only, if an executor sells goods *etc*, the writ of debt shall be *debet et detinet* because although it be about the goods of the testator, still the contract is [between] the executor and the other *etc.*

Skrene **:** the debt did not have its origin upon the contract of the woman but on the contract of the plaintiff and the testator, and from a debt owed by the testator, and so the writ is used against the woman as against a person who has administration of another's goods and the account was for another's goods. And I say although he had released to the woman all manner of actions and contracts between the two of them, still this action against her, as against an administrator or executor, remains.

HANKFORD, J. : the woman as executrix was not compelled by the law to account and although she account freely, still it is not according to the form of account specified by the statute, because the statute deals with receipts to their own use and profit, and the auditors in this case are outside the procedure of account and outside the form, and they do not have authority to send him who is found in arrears to prison, any more than an heir who accounts after the death of his ancestor for a receipt of his ancestor which is found [to be] in arrears *etc* and in the action of debt *ut supra* upon all the facts presented the court adjudged that all is outside the form of the statute, and if the executor and the heir are sent to prison in such a case, they will have a good action of false imprisonment.

CURIA : it seems to us that upon this matter the writ will be in the form of *debet*, because the account will be adjudged her own contract *etc.* And as for the tally without making the words in the first person in the tally according to the words of an obligation, and also to include the sum in the writing of the tally and not in the

notches, for otherwise it is not a speciality in law. As a result of which for the one cause and the other,the court adjudged that the writ will abate *etc.*[1]

[1] The marginalia, opposite, read: ‘Michaelmas [term] in the year abovesaid’.

[EASTER TERM IN THE TWENTY-SECOND YEAR OF THE REIGN OF KING RICHARD THE SECOND]

1. ANON. *v.* MAYOR AND COMMONALTY OF LONDON

<Write an abridgement.>

In the hustings of London a writ of right was brought against Nicholas Exton, mayor of London,[1] and the commonalty whereas another is mayor now, and so it was said that the writ was now abated. And the court said that the better writ would be against the mayor and commonalty, leaving out his name, but it does not follow from this that this [writ] is bad. And the other party said because this writ is sued in the nature of an assize, if the mayor is attached as disseisor it is necessary for him to be named *etc* because he will not have *capias* against the commonalty. Also if it is brought against A prior and the convent of T and the prior dies or is deposed the writ will stand because the freehold and the inheritance is in the convent, and the writ was at one time good *etc.* And this was conceded by all the court. And the other party said it was not alike, because a prior and an abbot and others such are perpetual, and when the writ is brought against them and the convent and they die while the writ is pending or are deposed, still the writ is good, because the plaintiff had purchased a good writ at one time and it cannot be known how long he will live, and in the event that the writ abates at each death, it may be that he will never have a good writ, therefore the writ will stand in the time of the successor, but in this case everyone knows that the mayor of London will be each year newly elected or changed, so that the said mayor is removable each year, so is not perpetual, and so not alike; but nevertheless it was said that the mayor of London is perpetual without name *etc* because the city cannot be without a mayor, and both are one and the same person, the mayor and the commonalty, and the commonalty is perpetual, *ergo etc.* And also if Nicholas is dead the writ is and will be abated, so it appears that the writ is false in itself because *etc.* And if he had been named mayor and nothing more and died, still the writ would stand, *ergo etc.* And adjourned *etc.*[2]

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[1] Served two terms as mayor, 1386–1387 and 1387–1388. <Get ref.>

[2] The marginalia, opposite, read ‘From Easter term in the same year’ and ‘Right in London’.

2. ANON.

<Write an abridgement.>

In annuity the count was challenged because it was supposed that the predecessor of the parson had withheld the annuity and not the present parson, so no wrong [was] assigned to the defendant. CURIA **:** the withholding can be supposed in the predecessor and in the successor or in one of them. And the successor will answer for the arrears of the predecessor. Wherefore the count and the writ were adjudged good.

[1]More of this year at the end of year 12 of the same king

[fol. 336r] In a writ of annuity brought against a parson for £20 which is in arrears, the defendant: sir, we were not parson of this church except for six years before the writ was purchased, judgement of the writ. The plaintiff: sir, if I bring a writ of debt and I count that he holds from us a lease for a term of years paying 20 shillings a year, and I say that the rent was 6 years in arrears and so accrued the action *etc.* If the defendant says that he has paid the rent for 3 years *etc* so there are only three years in arrears *etc* this will not abate my writ, but he will answer for the remainder *sic hic etc.*

CURIA **:** in a writ of debt he may count in different ways because the reason for the debt is not included in the writ, but the writ of annuity includes the debt in particular, and for an annual debt which arises upon a continuous debt from year to year *etc.* And if it is void in part it is void in all, because if the parson can say that he is not parson there, in that case he will discharge himself for his time, because the church is charged and this charge, false in part as regards him, then is false in all, because the debt is not subsequent to any contract made between themselves, but because the church is charged and that he is parson there. And if he can avoid that he is not the parson there he will avoid all the action, because the other maintained that he was parson *etc*, or otherwise *etc.*

[2]See concerning Receipt in the same year

If *precipe quod reddat* is brought against a tenant for term of life; see in the black book concerning this receipt.[3]

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[1] Note of the reporter. What follows seems more like a different report of the same case rather than a continuation of what has come before.

[2] Notes of the reporter.

[3] The marginalia, opposite, read: ‘Easter term of the same year’, ‘Annuity’ – fol. 323v; ‘Writ of annuity’ – fol. 336r.

3. COMBE *v.* GYLLE, *et al.*

<Write an abridgement.>

In an assize of *novel disseisin* the tenant pleaded in bar the plaintiff's release from all personal actions. And the plaintiff said [he was] seised and disseised after the making *etc.* And thereupon the assize [was] taken without making title, which passed for the plaintiff *etc* that he recover *etc.* And on this awarding of the assize without making title, error was assigned and the record for the plaintiff was upheld inasmuch as he who pleaded the release at no time entered into the tenancy and even if he had, still this release is no bar in law, because if a man is disseised and releases every personal action to the disseisor, still his action of right is not extinguished in the land, so that if he afterwards enters upon his disseisor and is ousted, he will have the assize for this ouster. And consequently in this assize there is no need to establish title for him who is plaintiff, but to say that after the release, seised and disseised. And against this it was mentioned that by this release, action in respect of the disseisin is extinguished, and consequently an assize may not be awarded without seisin being had by a subsequent title.

And *non obstante* the record was confirmed by judgment.

[Latin:] The beginning of this plea in year eleven of the same king in Michaelmas term: [French:] ‘And now comes *Hille* and recited the facts how a writ of besael was brought against another.’[1]

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[1] The quotation is from Easter term 12R2, except that *Hille* should read *Rickhill*. George F. Deiser (ed.), *Year Books of Richard II: 12 Richard II*, Ames Foundation, 1914, p. 170–172. The beginning of the plea, Combe *v*. Gylle and Buttokishyde, from Michaelmas 11R2, is found in Isobel D. Thornley (ed.), *Year Books of Richard II: 11 Richard II*, Ames Foundation, 1937, p. 103–109. The record, which Thornley prints in full, shows continuations from term to term until Hilary of 1398 (year 21). Hence, it is possible that the case was argued again, and perhaps decided, in Easter of 1399. There is, at least, no reason to doubt the attribution of the case to the years of this volume.

The marginalia, opposite, read: ‘Assize where release is pleaded’.