

Concerning a message in a borough, thus :

3. We command you that, without delay, you do full right to A. concerning one message or more in that borough (*or* in the suburb of that borough or city) which he claims to hold of you by the free service of so much per year for all service, of which B. deforces him, unless the rent or buildings are valued at more than forty shillings per year. And if not, etc. Witness, etc.

Concerning land or concerning a fee which is held of the lord king in chief, let the writ issue which is called *precipe* before the chief justices at a fixed day ; for the quantity mentioned above, without payment, thus :

4. The king to the sheriff, greeting. Command B. that, justly and without delay, he render to A. half a knight's fee (*or* so much land *or* so much burgage tenure with appurtenances) in N. which he claims to hold of the lord king for so much service (*or* which he claims belongs to his barony which he holds of the lord king) and whereof he complains that this B. has deforced him ; and if he does not do this and the said demandant shall have given you security for prosecuting his claim, then summon, by good summoners, the tenant that he be before our justices on that day to show why he has not done this, and have there the summoners and this writ. Witness, etc.

Note that the writ of right ought to be patent, and the writ which is called *precipe* ought to be close.

Concerning a free tenement. Writ of novel disseisin.

5. The king to the sheriff, greeting. A. de N. has complained to us that B., unjustly and without judgment, has disseised him of his free tenement in N. after our last crossing from Ireland to England.¹ And therefore we command you that if the said A., demandant, shall have given you security for prosecuting his claim, then you shall cause that tenement to be reseised with the chattels which were taken in it, and shall cause the said tenement with the chattels to be in peace until the first assize when our justices shall have come into those parts ; and in the meantime cause twelve free and lawful men of that neighbourhood to view that tenement and cause their names to be recorded in writing, and summon them by good summoners that they be at the aforesaid assize before the aforesaid justices prepared to make recognition thereof ; and put by gage and safe pledges the aforesaid B., or his bailiff if he shall not have been found, that he be there at that time to hear that recognition ; and have there this writ and the names of the pledges. Witness, etc.

¹ See Commentary, p. xxxv.

o mesuagio
t tenere de
orciat, nisi
Teste etc.

od dicitur
no, sic :

eddat .N.
n .N. que
ad baron-
; et nisi
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e etc.

lebet esse

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said B. has no entry save through C., the father of the said A., whose heir he is, who mortgaged (*or demised*) them to him for a term which has passed, as he says; and if he does not do so etc. that he be before our justices at the first assize when etc.

Otherwise. Concerning the land of a woman alienated by her husband.

12. Which she claims to be her right and her marriage portion and into which the said B. has no entry save through C., formerly the husband of the said A., who mortgaged them to him (*or gave, or handed them over, sold, or demised them*) whom she was not able to contradict in his lifetime, as she says; and if he shall not have done this etc. that he be in the presence of our justices etc.

De homagio capiendo.

13. The king to the sheriff. Command B. that, justly and without delay, he take the homage and reasonable relief of A. for his free tenement which he holds and claims to hold from him in such a vill; and if he does not do this, then summon by good summoners etc.

Novel disseisin.

14. The king to the sheriff. A. has complained to us that B., unjustly and without judgment, has disseised him of his free tenement, in such a vill, after the last return of the lord John, our father, from Ireland to England; and therefore we command you that, if the said A. shall have given you security to prosecute his claim, then you cause that tenement to be reseised of the chattels which were taken in it and the said tenement with the chattels to be in peace until the first assize when our justices shall come into those parts. And in the meantime cause twelve free and lawful men of that neighbourhood to view that tenement, and their names to be recorded in writing; and summon them, by good summoners, that they be at the aforesaid assize before the aforesaid justices, prepared to make recognition thereof; and place under gage and safe pledges the aforesaid B., or his bailiff if he himself has not been found, that he shall be there at that time to hear that recognition; and have there the summoners and this writ, and the names of the pledges. Witness, etc.

Novel disseisin of pasture.

15. A. has complained to us that B., unjustly and without judgment, has disseised him of his common of pasture in such a vill, which pertains to his free tenement in the said vill, after the return of the lord John, our father, from Ireland to England; and therefore

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ficiariis

essum,
radidit
fecerit

um et
nat in

eisiuit
nostri
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1 ipso
sisam
egales
sum-
efatis
legios
turus
orum.

com-
adem
preci-
tellis.

Dower in money.

164. The king to his bailiffs of such a place, greeting. We command you that you justice B. that justly etc. he render to A., who was the wife of C., a hundred marks which the aforesaid C. assigned to her as dower at the church door when he espoused her, whereof she has nothing, as she says; if she can reasonably show that he ought to render it to her. That no further etc.

Dower in London.

165. The king to the mayor and sheriffs of London, greeting. We command you that you justice B. that justly and according to the custom of our city of London he render to A., who was the wife of E., her reasonable dower which belongs to her from the free tenement which belonged to the aforesaid E. formerly her husband, in London, whereof she has nothing, as she says, and whereof she complains etc., if she can reasonably show etc. That no further etc. Witness, etc.

Admeasurement of dower.

166. The king to the sheriff, greeting. A., the son and heir of B. (or the brother and heir, or the kinsman and heir of B.), has complained to us that E., who was the wife of the aforesaid B., has more dower from the free tenement in N. which belonged to the aforesaid B. than she ought to have and belongs to her to have. And therefore we command you that, justly and without delay, you cause that dower to be admeasured so that the aforesaid E. shall not have more dower from the inheritance of the aforesaid B. than she ought to have and belongs to her to have as reasonable dower; and that the aforesaid A. shall have from that dower that which he ought to have and belongs to him to have. That no further outcry etc.

For disseisin.

167. The king to the sheriff, greeting. A. has complained to us that B., unjustly and without a judgment, disseised him of his free tenement in N., after the first crossing of the sea into Brittany of lord Henry, king, our grandfather¹. And therefore we command you that, if the aforesaid A. shall have given you security etc., you then cause that tenement to be reseised of the chattels which were taken therein, and cause the said tenement with the chattels to be in peace until the first assize when our justices come into those parts. And in the meantime cause twelve free and lawful men of that neighbourhood to view that tenement and cause their names to be recorded in writing. And summon them by good summoners that they be at the said assize before the said justices ready to make recognition thereof. And put by gage and safe pledges the aforesaid B., or his bailiffs if he shall not have been found, that he be there at that time to hear that recognition. And have there the summoners, the names of the pledges, and this writ. Witness, etc.

¹ See Commentary, p. xlviij.

.A. quod
gnavit in
cit, sicut

is quod
ie reddat
emento¹
licit. Et
c. Teste

frater et
habet in
ad ipsam
mensurari
e predicti
m dotem,
pertinet

ne iudicio
omni .H.
fecerit te
a fuerunt
iusticiarii
le visnetu
per bonos
rati inde
balliuos
nem. Et

Attachment.

644. If A. shall have given etc. then put etc. B. that he be etc. to show why, whereas by the common counsel¹ etc. that if several inheritances descend to one heir etc. *as above up to separate suits* [ought not etc.], the said B. has distrained the aforesaid A. to do separate suits at the court etc. at N. against the form etc. *as above*.

Novel disseisin.

645. The king to the sheriff, greeting. A. has complained to us that B., unjustly and without a judgment, has disseised him of his free tenement in N. since the first voyage into Gascony of the lord Henry, king, our grandfather. And therefore we command you that if the aforesaid A. shall have given you security for prosecuting his claim, then you shall cause that tenement to be resealed of the chattels which were taken therein, and cause the said tenement with the chattels to be in peace until the first assize when our justices come into those parts. And in the meantime cause twelve free and lawful men of that neighbourhood to view that tenement and their names to be recorded in writing. And summon them by good summoners that they be then at the aforesaid assize before the aforesaid justices ready to make recognition thereof. And put by gage etc. the aforesaid B., or his bailiff if he shall not have been found, that he be there then to hear that recognition. And have there the summoners, the names of the pledges and this writ. Witness.

Before justices assigned.

646. And [cause] the said tenement with the chattels to be in peace until a certain day which our beloved and faithful C., D. and E. shall make known to you. And in the meantime etc. *as above*. And summon etc. *as above* that at that time they be before the aforesaid C., D. and E. and those whom they shall have associated with themselves at a certain place which the said C., D. and E. shall make known to you, ready to make recognition thereof. And put etc. *as above*.

Otherwise for common of pasture.

647. Disseised him of his common of pasture in N. which pertains to his free tenement in the said vill (*or in another*) since the first etc. And therefore we command you that if the aforesaid A. shall have given etc. then cause twelve free and lawful men of the neighbourhood of T. to view that pasture and tenement and cause their names to be recorded in writing. And summon etc. that they be before our justices at the first assize etc. (*or before our faithful and beloved R. and S. and those whom they shall have associated with themselves at a certain day and place which the said R. and S. shall make known to you*) ready to make recognition thereof. And put etc.

When there are joint feoffees.

648. A. and C., his wife, have complained to us that B., unjustly etc. has disseised them of their free tenement in N. since the first etc. *as above*.

¹ Presumably the Statute of Marlborough (1267), c. 9, which does not say this.

And if she was disseised before marriage, then thus, otherwise :

649. A. and C., his wife, have complained to us that B., unjustly etc. has disseised the aforesaid C. of her free tenement in N. since the first etc.

Patent.

650. The king to his beloved and faithful R., S. and T., greeting. Know that we have constituted you our justices, together with those whom you shall associate with yourselves, to take an assize of novel disseisin which A. has arraigned before you by our writ against B. concerning a tenement in N. (*And if there are several disseisors, then thus : against B. and C. and others contained in our original writ concerning a tenement in N.*) And therefore we command you that at a certain day and place which you shall appoint for this purpose you take that assize, doing therein what pertains to justice according to the law and custom of our realm, saving to us the ameracements proceeding therefrom. We have also commanded our sheriff of B. that at a certain day and place which you shall make known to him he cause that assize to come before you. In witness whereof we have caused these our letters patent to be made. Witness.

For common of pasture on the boundary of counties.

651. Disseised them of their common of pasture in N. (*or of their free tenement*), on the boundary of your county and the county of Wiltshire, which pertains to their free tenement in the said vill (*or in another*). *Or thus :* disseised them of their common of pasture in N. in your county which pertains to their free tenement in K. in the county of W., since the first etc. *Or thus, otherwise :* of their common of pasture in C. in the county of N. which pertains to their free tenement in K. in your county, since the first etc. *as above up to view that pasture etc.* And summon etc. at a certain day and place on the boundary of the aforesaid counties which the said etc. *as appears above.*

Patent in such a case.

652. To take an assize of novel disseisin which A. has arraigned before you by our writ against B. concerning his common of pasture in H. and K. on the boundary of the counties of Derby and Nottingham. And therefore we command you that at a certain day and place which you shall appoint for this purpose you take that assize on the boundary of the aforesaid counties, doing etc. *as above (or thus, otherwise :* which A. has arraigned etc. concerning his common of pasture in C. in the county of N. which pertains to the free tenement of the said A. in K. in the county of D. And therefore we command you that at a certain day and place on the boundary of the aforesaid counties which you shall appoint for this purpose you take that assize, doing etc.), saving etc. We have also commanded etc. that at a certain etc. on the boundary aforesaid which you shall make known to him [he cause] that assize etc. *as above.*

Assisa nova disseisina.

Ex, vic Ley salutem. Questus est nobis A. quod B. injuste & sine iudicio disseisivit eum de libero tenemento suo in E. post primam transretatione domini H. regis fil' regis Johannis in Vascon. Et ideo tibi precipimus, quod si predictus A. fecerit te securum de clamore suo prosequendo: tunc facias tenementum illud reseisiri de catallis que in ipso capta fuerint, & ipsum tenementum cum catallis esse in pace, usque ad primam assisam cum iusticiarii nri in partes illas venerint. Et interim fac 12 liberos & legales homines de visnetu illo videre tenementum illud, & nomina eorum imbrevari. Et summonneas eos per bonos summonitores, quod tunc sint coram prefatis iusticiariis ad prefatam assisam, parati inde facere recognitionem. Et pone per vadium & salvos plegios predictum B. vel ballivum suum, si ipse inventus non fuerit, quod tunc sit ibi ad audiendum illam recognitionem. Et habeas ibi sum, nomina plegiorum, & hoc breve, T. me ipso apud Westm primo die Februarii anno regni nostri quintodecimo.

Regula. Quant home arraigne une assise de novel disseisin de rent charge: y coviet q' tous les tenants des tenes charges soient nommes en l'assise, & tout la tre charge mys en view, tout soit il fuisse disseisine per un foul tenaunt. Mes auter est de rent service: car de tiel rent le seignour poet distrein & avower la distresse, p' cause de tiel service a lui duez, &c.

Aliter coram rege. Rex vic, &c. salutem. Questus est nobis A. capellanus Cantar in ecclesia de N. qd B. injuste, &c. usq; ibi, esse in pace, usq; ad diem sabbati proximum post crastinum Animarum pxime futur. Et interim, &c. Et summonneas, &c. qd tuac sit cora nobis apud Eboru, vel cora iusticiariis nris apud Westm parati inde, &c. Et habeas, &c. T. &c.

Regula. Et nota q' p' le statut Richardi secundi anno 7. c. 10. ass. no. dist. ferra graut & fait de rent aderer due, des tenements esteants en diverses countees a tenir en la confine des countees deins queux les tenementes sont, & sur ceo l'assise prise & trie p' gents des dits countees, en meime la maner come est fait de comune de pasture esteat en un countee & appendant as tenements en auter countee, &c.

Nota. Et nota q' en cas q' home arraigne plusours assises en un countee ou diverses countees: il poet avoir un patent as iustices d'assises prendre assise en meimes les countees, de prendre t's les assises quil ad issint arraigne ut patet in statutis.

Nota. Nota q' tous les assises de novel disseisin & de mortdancerter, q' cheront de deins le countee ou le comune bank est: ferront retornables en le dit comune bak, Et si le bak le Roy soit en autre countee q' le comune bak: adonques tous les assises en ceo countee ou le bak le Roy est ferront retornables en ceo bank, &c.

Regula. Et in assisa nova disseisina cora iusticiariis de banco vel coram rege: ferra mys certain jour issint, usq; ad diem jovis in 15, &c. Mes en la mortdancerter commune jour come en autre ples, &c.

Regula. Et en assise de novel disseisin cora iusticiariis & cora rege, poet home mettre jour hors de terme sic, usq; ad diem jovis pximum post festu sancti Luce, & de doner jour 4 jours devant le Roy, & ceo voet le statut articuli sup cartas, c. 15.

Nota. Et nota quod in huiusmodi brevibus, si disseisitores alienaverint, & non habeant bona, &c. unde damna solvi possunt: tunc illi, ad quoru manus tenementa huiusmodi devenierint, onerabuntur de damnis, ita quod quilibet p' suo tempore respondebit, ut patet per statutum Glouc' cap. primo.

Regula. Et en assise de novel disseisin home ne doit ny voucher nul home, si ne soit none

nome en le brief, & voet tatoft garranter & soit present quant il est vouche. Mes en la mort dauncester home poet voucher a large, &c.

* Et nota qu' en assise in itinere coram rege vel coram iusticiariis de banco, non Nota sunt patentes, &c.

* Et nota q' assises de novel disseisin & mortdauncester, ferront pris en le cou: ec Nota. ou les tenements sunt. Magna Carta, cap. 12.

Et quia predictus A. fecit nos securos de clamore suo prosequendo per C. & D. de comitatu tuo: tibi precipimus quod tenementum illud reseisiri facias, &c. Quando fecuritas invenitur in cancellaria.

Questus est nobis A. quod B. major civitatis Eborum & comunitas eiusdem civitatis, injuste, &c. Aliter.

Questus est nobis A. quod I. abbas ecclesie beate Marie Eborum & frater F. de C. commonachus eiusdem abbatis, & frater I. de R. conversus eiusdem domus injuste, &c. Aliter.

Questus est nobis A. executor testamenti B. quod C. & D. p'positi villæ de B. ac comunitas eiusdem villæ, injuste, &c. Aliter pro executoribus.

Questus est nobis A. quod R. de C. decanus ecclesie sancti Pauli London' & capitulum eiusdem ecclesie, & I. de S. canonicus ecclesie sancti Pauli London', injuste, &c. Aliter versus decanum & capitulum.

Rex vic Ley salutem. Questi sunt nobis A. & B. uxor ejus quod C. injuste, &c. disseis. eos vel prefatam B. de libero tenemento suo in N. post primam, &c. Et ideo tibi precipimus quod si predicti A. & B. fecerint, &c. esse in pace, usq; ad certum die, quem dilecti & fideles nostri R. & I. tibi scire fac. Et interim, &c. Et sum, &c. quod tunc sint coram prefatis R. & I. & hiis quos sibi assoe ad certum locum, quem iidem R. & I. tibi scire faciant, parati inde facere recognitionem. Et p'one, &c. Et habeas, &c.

Rex dilectis & fidelibus suis R. & I. salutem. Sciatis qd constituimus vos iusticiarios nostros una cum hiis quos vobis assoe, ad assisam novæ disseisinae capiendam, quam A. & B. uxor ejus arrainerunt cora vobis per breve nostrum versus C. vel sic, versus C. & A. uxorem ejus & I. de B. vel sic, versus I. & C. & A. uxorem ejus, vel sic, versus T. & alios in brevi nostro originali contentos de tenementis in N. Et ideo vobis mandamus quod ad certos diem & locum quos ad hoc provideritis, assisam illam capiatis: facturi inde quod ad justitiam pertinet secundum legem & consuetudinem regni nostri Angl': salvis nobis a merciamenis inde provenientibus. Mandavimus enim vic nro Leyc, qd ad certos die & locu quos ei scire fac: assisa illa cora vobis venire fac. In cujus, &c. has literas nostras fieri fecimus patentes, T. &c.

Indo. sentur hm' di br. & fiat finis si ten exceedat val. xl s. per annum, &c. Patens inde.

Ad assisam novæ disseisinae capiendam, quam, &c. de tenementis in E. & ad assisam nove disseisinae capiendam, quam idem A. arrainavit coram vobis per aliud breve nostrum versus, &c. de tenementis in eadem villa, & sic si plures fuerint, &c. Regula. In patente nove disseisinae per diversa br.

Rex vic salutem. Questus est nobis, &c. disseisivit eum de comunia pasturæ suæ in N. quæ pertinet ad liberu ten suum in eadē villa vel in alia, post primam, &c. Et ideo, &c. de clamore suo prosequendo: tunc fac' 12.

De comunia pasturæ.

fac 12 liberos & leg' homines de visinetu illo videre pasturam illam & tenentem, & nomina eorum imbrevari. Et sum, &c. quod sint coram iudiciariis nris apud Eborum, vel coram nobis apud W. die Jovis proximo post octavas sancti Michaelis proximo futuro, vel coram iudiciariis nostris ad primam assisam cum in partes illas venerint. Vel sic, coram dilectis & fidelibus nostris R. & S. & hiis quos sibi assoe ad certos diem & locum quos iidem R. & S. tibi scire fac, parati, &c. Et pone, &c. Et habeas, &c. T. &c.

Regula. Et si pastura no sit pertinens ad liberu teni sed p speciale factum: tunc sic, De communia pastura per speciale factum. **¶** Dissolvit eu de communia pastura: sua in N. post primam, &c. usq; ibi de visinetu illo videre pasturam illam, & nomina eorum imbrevari, &c. De hoc vide statutum Westm secundi cap. 46, &c.

Patens inde. Rex dilectis & fidelibus, &c. ut in alio patente usq; ibi versus B. & alios in brevi nostro originali contentos de communia pastura in N. Et ideo, &c. ut in alio patente de libero tenito.

Regula. Nec mutatur forma patentis sive pastura sit pertinens sive non. Sed eode modo quo fiant brevina de communia pastura, possunt fieri de communia piscariae, turbariae & hiis similibus, quas quis habet pertinentes ad tenementum suum vel per speciale factum.

Affisa in confinio duorum comitatuum. Dissolvit eum de communia pastura, vel turbariae, vel piscariae suae in N. quae pertinet ad liberum tenitum suum in R. & K. quae sunt in confinio comitatus tui & comitatus Lincoln, post primam, &c.

Regula. Et nota quod in istis casibus & consimilibus, debent fieri duo brevina, quorum unum vicecomiti unius comitatus, & alterum vicecomiti alterius comitatus dirigi debet, &c.

Aliter de affisa, &c. De communia pasturae suae in N. in comitatu tuo, quae pertinet ad liberum tenitum suum in K. in comitatu Norf. &c.

Aliter de eode in confinio duorum comitatuum. De communia pasturae suae in N. & K. quae sunt in confinio comitatus tui & comitatus Lincoln, quae pertinet ad liberum tenitum suum in K. in praedicto comitatu Lincoln in eodem confinio post primam transfretatione, &c. T. &c.

Regula. Et fiant ista tria brevina proxima praecedentia post se Et ideo tibi praecipimus, secundum formam de via arcata in confinio, ut patet paulo post mutatis mutandis: & vide bene differentiam, &c.

Patens inde in confinio. Rex dilectis & fidelibus suis, &c. salutem. Sciatis, &c. usq; ibi p brevina nostra versus B. de communia pasturae in R. & K. quae sunt in confinio comitatus Nottingham & Lincoln. Et ideo vobis mandamus quod ad certos diem & locum in confinio comitatuum praedictorum vel in confinio praedicto quos ad hoc provideritis, assisam illam capiatis: facturi, &c. salvis, &c. mandavimus enim vicecomitibus nris eorundem comitatuum, quod ad certos diem & locum in confinio comitatuum praedictorum vel in confinio praedicto quos ei scire facietis, assisam illam coram vobis venire faciant. In cujus, &c. T. &c.

Aliter in confinio de stagno exaltato ad nocumentum. Rex vic salutem. Questus est nobis A. qd B. injuste, &c. exaltavit quoddam stagnum in C. in comitatu tuo, ad nocumentum liberi teniti sui in L. in comitatu H. post primam, &c. usq; ibi, legales homines de visinetu illo videre stagnum illud, & nomina eorum imbrevari.

Et sum, &c. quos sibi assoe ad certos diem & locum in confinio comitatuum praedictorum quos iidem, &c. parati inde, &c.

* Nota quod in alio brevi ubi liberum tenementum est: debet dici videre tenementum illud, &c.

¶ Rex dilectis & fidelibus suis salutem. Sciatis, &c. ad assisam capiendam, qua P. arrainavit coram vobis per brevina nostra versus N. de quodam stagno exaltato in C. in com S. ad nocumentum liberi teniti sui in N. in com K. Et ideo vobis mandamus, qd ad certos diem & locum in confinio comitatuum praedictorum quos ad hoc provideritis assisam illam capiatis: facturi, &c. salvis, &c. Mandavimus enim vic nostris comitatuum praedictorum quod ad certos diem & locum in confinio praedicto quos ei scire facietis, assisam illam coram vobis faciant. In cujus, &c.

¶ Rex vic salutem. Questus est, &c. arcavit quandam viam in K. in com Suf. ad nocumentum liberi teniti sui in S. in com tuo, post primam, &c. Et ideo tibi praecipimus, &c. videre viam illam & nomina eorum imbrevari. Et sum eos, &c. ad certos diem & locum in confinio comitatuum praedictorum, quos idem, &c.

¶ Rex vic salutem. Questus est, &c. arcavit quandam viam in B. in com tuo, ad nocumentum liberi teniti sui in S. in com H. post primam, &c. videre viam illam & nomina eorum imbrevari. Et sum, &c. ad certos diem & locum in confinio comitatuum praedictorum, quos iidem, &c. parati, &c.

¶ Rex dilectis & fidelibus suis salutem. Sciatis, &c. ad assisam capiendam, qua C. &c. per brevina nostra, &c. de quadam via arcata in K. in comitatu B. ad nocumentum liberi teniti sui in S. in com Norf. Et ideo vobis mandamus, quod ad certos diem & locum in confinio comitatuum praedictorum quos, &c. facturi, &c. salvis, &c. Mandamus enim vic nostris comitatuum praedictorum quos, &c. assisam illam coram vobis venire faciant. In cujus, &c. T. &c.

¶ Eodem modo fiat si hujusmodi levata transferantur in aliam personam versus utraque personas ut patet per statutum W. 2. cap. 24.

¶ Rex di' & fi' suis A. & B. iudiciariis ad assisas in comitatu N. capiend' assignatis salutem. Sciatis qd admisimus W. & R. custodes I. infra etate existens, ad psequend' & defendend' assisam novae diff. quam idem I. arrainavit coram vobis per b' nrm versus L. de teni in N. Et ideo vobis mandamus qd praedictos W. & R. vel alterum ipsorum, &c. non possint, custodes vel custode ipsius I. ad hoc admittatis, T. &c.

¶ Eten le dedimus potestate dicatur custode infra etate existens ut dicitur. Sciatis qd I. infra etatem existens, amovit coram nobis R. quem prius custodem ipsius I. admisimus, ad psequend' & defendend' assisam, &c. usq; ibi, de teni in N. et loco ipsius R. admisimus M. custodem ipsius I. ad psequend', &c. assisam praedictam. Et ideo vobis mandamus qd praedictum M. custodem ipsius I. ad hoc recipiatis.

¶ Rex dilectis, &c. salutem. Sciatis qd A. attorn coram nobis, &c. ad lucrum vel perdend' in assisa novae diff. qua ide A. arrainavit coram vobis per b' nrm versus N. de tenementis in C. Et ideo vobis mandamus, &c.

¶ Rex,

G. J. Turner & T. F. I. Pluchonell ed. *Breua Placitata*
(Selden Society, 1951)

A Sire il *nous* est auis ke *nous* ne sumes pas tenu a respondre ne a luy ne a son bref *par* la reson ke meymes cele A. e cele D. aueynt vn autre soer ke mort est ke auoyt a noun Peronele ke aueit vn fiz ky vncore est en vie ke ad noun G. E Sire de si com il deyt estre *parcener* de la *terre* e ieo ne puisse pas respundre sanz luy *pur* ceo kil est *parcener* e *pur* ceo kil nest pas mis en le bref e est *parcener nous* demandoms iugement de luy e de son bref.

E *dunkes* dist Gilbert de Prestone:—

Dionise *vous* ne poez auer nulë renable partie sanz G. *pur* ceo kil est *parcener* E *pur* ceo kil nest pas mis en le bref e il est vostre *parcener* dont ceste court agarde ke A. voise a meson sanz iour e D. en la *mercie* e sey querge meillur bref si ele velt pleider.

Bref de nouele disseisine.

Le Rey salue le visconte &c. Pleint est a *nous* R. de N. ke W. de C. atort e sanz iugement luy ad desseisi de son franc tenement en N. puis nostre primer passage en Bretagne E *pur* ceo *nous vous* comandoms ke si leuantdit W. *vous* face enseur de *purseuer* son cleym *dunc* fetes ceo tenement [estre reseysi] de¹ les chateus ke leinz furent² [pris e meyme ceo tenement] estre en pes iekes as *primers* assises kant nos Iustiz vendrunt en celes parties E lendumtres fetes xij francs homes e leaus de cel viegne veer ceo tenement e lor nouns enbreuer e les somonez *par* bons somonurs kil seient *ileokes pur* fere cele reconissance E mettez *par* gage e sauue plegges leuantdit W. ou ses baillifs sil ne seit troue kil seyt *ileokes* de oyer cele reconissance E eez *ileokes* les somonurs e les nouns des pleges & ceo bref &c.

Ceo est le bref de mort de auncestre.

Le Rey &c. Si G. *vous* face enseur de *purseuer* son cleym *dunkes* somonez *par* bons somonurs xij francs homes & | leaus del

¹ MS.—e.

² MS.—sunt.

| Fo. 121 r^o.

le bref de mort de ancestre ne gist pas entre freres suers oncles aunes si C en cas nen la ou il chalengeant *par diuerse* decente¹.

En le bref de mort de ancestre si le demandant seit en *present* e li tenant face defaute, ieo demand si lasise passera ou non? Nanal, mes le tenant *serra* resomons e le assise aiornee a vn autre ior. Purquei ne *sera* la tere prise en la meyn le Rei? Pur ceo ke le mordancestre ad tant de *natures* en sey com le bref de nouele disseisine e en cel bref le assise *serra* resomons e les *parceners* autresi. E autresi en le bref de mort de ancestre tot ne vienge le tenant al autre ior lasise passera; e si ele pase *pur* ly tot eit il fet defaute il ne sera point amercie; mes tot ne vienge il al autre ior il ne pora rien dire *pur* quei la assise remeine a prendre.

Cest le bref de nouele disseisine.

* * * * *

| Vn home vent a vn autre vn mies & vne verge de tere oue les *apurtences* e il se met en seisine. Vient le chef *seigneur*; si engette tant tost hors celi ki est feffe & dit ke il est plus *procheyn* a cele tere ke nul autre. Ieo demand *par* quel bref sera le chef *seigneur* engete & *par* ki. *Par* le bref de nouele deseysine & *par* le feffour; e par la raison ke il nest iames hors de seisine auant ke le feffe seit en pesible possession par lui.

²Vn home vent a vn autre vne verge de tere oue les *apurtences* rendant a lui *par* an xij deners; e il vent cele tere auant a vn autre rendant a lui *par* an ij deners. Vient le chef vendour e demande sa rente. Rien ne lui veut rendre; einz ly dyt "Destreinez vostre fe." Il ne puet son fe destreindre, ou lem ne ly veut pas suffrir. Coment deit il sa rente *par*-chacer e par quel bref e sour ki. *Par* nouele deseisine sour le vn e sour le autre e iames *par* nul autre bref.

* * * * *

Bref de eschete.

* * * * *

| Nul home ne puet porter bref de eschete si le tenement ke il demande ne seit tenu de ly, e ke tel tenant morust vestu e seisi de memes le tenement.

* * * * *

¹ Instead of this last sentence E. has:—E de autrè part le bref de mort de auncestre ne gist fors del *pere mere* frere suer oncle aunte & nient plus auaant.

| Fo. 105 r^o. line 10.

² This paragraph occurs again in this MS. between Le bref de ateinte and Le bref de reddeseisine.

| Fo. 106 r^o. line 11.

nostre pere ly dust auer fet vne chartre de feffement de denz meme le *terme* ke cele conissaunce nus seit allowe. Sire estre ceo nus dioms ke cel escrit ke fu fet entre N. e M. fu ars kaunt le maner M. fu ars e ke vn escrit com cyrographe fu fet entre eus de meme¹ la *terre* e de meme le *tenement* e de meme² le *terme* ke passe est ke prest est de metre a ueyr.

E M. dit ke nay e de ceo se mystrent il en enqueste &c.

* * * * *

Bref de nouele disseisine.

| Le Rey salue le viscounte Pleynt est a nus A. de B. ke C. de D. atort e saunz iogement ly ad disseysi de son fraunc *tenement* en N. pus le *premer* passage *nostre* seignur le Rey *Henri*³ en Gascoyne E pur ceo nus *vus* comaundoms ke si le auaunt dit A. *vus* face sur de sure son cleym dunke facez cel *tenement* estre⁴ reseysi de les chateus ke leynz furent pris e meme ceo *tenement* estre en pes dekes a la *premere* assise kaunt nos Iustices vendrunt en pays E endementers facez xij frauncs e leaus homes de cele vigne ver cel *tenement* e lur nouns facez estre enbreuez e somonez eus *par* bons somonurs ke il seient a la auaunt dite assise deuaunt les auaunt ditz Iustices prestz a fere de ceo reconissaunce E metez *par* gage e sauue plegges le auaunt dit C. ou son baillif si il ne seit | pas troue ke il seit adunkes iluekes a oyer cele reconissaunce E eyez iluekes les nouns des plegges les somenours e cest bref. *Testmoigne* &c.

Counte.

Ceo *vus* mustre A. ke cy est ke C. ke la est atort e saunz iogement ly disseisist de son fraunc *tenement* en N. pus le *premer* passage *nostre* seignur le Rey *Henri* en Gascoyne nomement de *cent* acres de *terre* e de xl acris de pre e de xx acris de boys od les apurtenaunces en N. A ses *damages* de x *liueres* Si il veult dedire &c.

¹ This word is omitted in H., I., K. and L.

² The ten following words are omitted in K. and L.

| Fo. 171 v°, line 29.

³ In I. the words "pere le rei ke ore est" are here inserted.

⁴ The thirteen following words are omitted in H. and K.

| Fo. 172 r°.

Defense.

Tort & forcè e ses damage de x liures e de checun denier defent C. ke cy est e ben *vus* mustre ke il ne put pas estre¹ disseisi e *par* la resun ke il ne fu vnkes en seisine com de fe parunt ke il dust estre fraunc tenaunt Kar apres la mort H. son frere T. entra en meme cel tenement e meme celi T. com frere e heir H. en peisible seisine ad este E ke vnkes vnkore A. peisible seisine ne eust prest est de mettre a veir par pais e par assise².

Response.

Sire, vnkore respund C., e *vus* mustre ke il nad fet nul tort ne nule disseisine ke meme cely [T.³] ke sa peisible seisine vsa de meme le tenement apres la mort H. son frere vendy la moyte de cel tenement a C. ke cy est saunz nul countredit e ke ceo seit veirs prest sumes de mettre a veyr par lassise.

Response.

Sire, fet A.⁴ H. out deus freris vn Thomas e vn autre R.⁵ T fu menaunt en loyntime pays Si out vn fiz de sa femme espuse A. par noun ke cy est Morust premerement T. frere H. e pere A. e pus morust H. ke fu eygne frere Si tost com A. oyt dire ke H. son vnkle fu mort vient il en le pays e entra meme le tenement com heyr. R.⁶ pusne frere vient a ceo tenement e troua leynz celi A.⁷ e li demaunda quey il fist leynz E il ly respundit et dit ke il fu le fiz T. ke fu le frere H. e fu venu a conustre son heritage ke a ly fut descendu par H. deske⁸ a T. son pere com a frere e heyr H. De T. decendi a ly com a fiz e a heyr e issi demora il en seysine tut ceo iour e lautre e le tierce saunz nul countredit de nul home A quart iour ly prist talent ke il voleit aler vers son pays e reuenir e lessa en son lu vn son home en la seisine kil out kaunt il ala E kaunt il fu ale vient R. le⁹ pusne frere e enietta le home¹⁰ A¹¹ e ly disseysist E ke ceo seit veirs prest sumes de mettre a veir par assise.

e en autre manere.

¹ The eleven following words are omitted in L.

² The words "e par assise" are omitted in G., K. and L.

³ The "T." is omitted in all the MSS.

⁴ MS.—W.

⁵ MS.—H.

⁶ MS.—T.

⁷ MS.—W.

⁸ MS.—de ky.

⁹ MS.—son.

¹⁰ The word "a" is here inserted in the MS. in error.

¹¹ The initial A. is omitted in I.

Ex
Sire,
ou en
Sire a
chartre e
Sire,
mustre l
memes l
certeyn
de denz
lur deuo
countrec
certeyn
a eus e
aauant
terme d
fait lur
voides e
ke eus a
lur part
lur asse
cele cha
ben cor
a certe
mustra
auer
ment
de iour

¹ All

³ In

⁴ In

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| Fo.

⁵ In

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⁶ Th

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letters &

"ces."

⁷ Th

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possessi

Excepcio.

Sire, fet C., lassise ne deit passer kar il est vilein G. de C.
ou en autre manere.

Sire atort dit il ke il est disseisi kar il memes nus feffa par cele chartre e ke ceo seit veirs prest sumes de auerrer.

Sire, fet le countur A., ben conust il la chartre escripte e *vus* mustre ben ke la chartre ne fu vnkes enselee par la reson ke A. memes la terre ke est contenue en la chartre auoyt engage a eus a certeyn terme ke est passe par cele fourme ke quel heure e kaunt de denz le terme ke A. fu prest a fere lur assez de taunt com il lur deuoit il auereit sa terre² en tel estat com il la trouerunt³ saunz countredit de eus ou de autres par eus sauue lur custages E si le certeyn terme passast ke il ne feist lur assez ke la terre demorreit⁴ a eus e a lur heyrz aremenaunt e par ceste chartre ke il mettunt auaunt E de ceo fut fet vn escrit par entre eus ke taunt com le terme durast la chartre serreit nule e si le terme passast | ke il ne fait lur assez solum les escriptz ke meme les escriptz demorassent voides e la chartre prise a li tut⁵ a [peur] com pur le terme passe e ke eus auereient en lur garde ausi ben la chartre de feffement cum lur parties des escriptz e quel heure ke il out de denz le terme fet lur assez ke eus saunz fraude e saunz countredit delyuereient a ly cele chartre ensemblement od la terre ces⁶ de lur possessioun ausi ben come de hors la vile⁷ Meme cety A. vient de denz le terme a certeyn iour e lur offri lur paye e la paye de les escriptz Lur mustra pur quey eus deyuent la chartre a ly deliuerer e il la terre auer Eus lur paye refuserunt e les escriptz dedistrent tut pleinement E nent le meins il lur offri a fere cele paye solom les escriptz de iour en iour deke ataunt ke le terme fu passe pleinement E

¹ All the MS. have "W."

² MSS.—terre.

³ In place of this word L. has "lessa."

⁴ In place of this word L. has "deuereit" and the word "remeindre" is inserted after "aremenaunt" at the end of the sentence.

| Fo. 172 v°.

⁵ In G. a space is left for this and the two following words. In H. and I. the reading is "tut a pur." In K. "tut iours com," and in L. "tut peur com."

⁶ The text in all the manuscripts is corrupt here. In G. and K. "ces" is omitted, but in G. the next word "de" has been emended into "deinz" by the interlineation of the letters *inz*. In H, I and L the reading is as above except that I. has "ses" instead of "ces."

⁷ The meaning of this passage is very obscure. The manuscripts agree in substance in their readings. It would seem that the words used are intended to express the delivery of the lands in the constructive possession of the bailee as well as those in his actual possession.

eus pleinement refuserunt lur paye e les escritz dedistrent pur quey ke cety A. apres le terme passe si prist son *tenement* e enporta la vesture sicom son *tenement* demeine e ben avowe le soyl pur sun E ke eus de cel *terme vnkes*¹ ren² ne aueyent par cele chartre ne en autre manere for par les escritz com a terme ke passe est parunt ke cele *terre* deit estre lur fraunc *tenement prest* est de auerrer par pays ne ke eus ceste chartre ne aueyent fors ke par la fourme des escritz e par fraude ke il les vnt detenuz prest est de mettre a ueyr.

Excepcio.

Sire ke A. ne fu vnkes en seysine com de fe ne ren ne prist ne enporta ne nule³ seisine ne out parunt ke il put estre disseisi⁴.

Sire, fet le countur A., ke il fu mys en seisine par vn T. de C. ke cele terre vendy a ly e il sa seysine vsa e sa *terre* maynouera cum⁵ son fraunc *tenement* solom la seison del an prest est de mettre a veir par assise.

Sire ke vnkes A. en seisine ne fu ne ren ne prist ne enporta ne ren ne maynouera prest est de de mettre a ueyr.

Sire, fet le countour A., ke T. de C. a ky le *tenement* decendi⁶ e ke⁷ cel *tenement* com le soen put auer done ou vendu la ou bel ly fut ke vendy a cely A. par sa chartre e il ly mist en seisine e en meme la possessioun ke il memes out.

Racio.⁸

G.⁹ nus *vus* mustroms reson¹⁰ tut ne prenge home ren e tut saunz maynouerer put hom estre disseisi Kar desicom la *terre* fu le dreit T. e Thomas en son tens auoyt la seisine e la possessioun ke vn iour e¹¹ le iour ke T. se demist e dona sa possessioun a A. e

¹ In I. the reading is "vnques ne auient par cel chartre seisine."

² This word is omitted in I., K. and L.

³ In L. the reading is "nule faussine ne fist."

⁴ This paragraph is unfinished in all the MSS.

⁵ The words "cum son...ne maynouera" are omitted in L.

⁶ In place of this word G. has "est," and H. and I. have "fu." In K. the word is omitted. In L. the reading is "a ki le *tenement* etc. e qe."

⁷ The word "de" is here inserted in F.

⁸ This word is so extended in F. and H.; but L. has in its place "Replicacion."

⁹ The initial indicates the speaker. The word "si" is substituted for it in G.

¹⁰ In I. this word is followed by "ke homme put estre disseisi," and the last four of these words are omitted in the next line. They are also omitted in H.

¹¹ This and the two following words are omitted in G, K and L.

a W. me
e de sa p
son esta
ke il fu
T. out a
fu mis⁴ l
son pre
possessio
e ke il
com en

N

E Si
possessio
ne put
cresciou
ataunt l
par assi
Sire
mettre a

F

E dit
Il i
seisine
com esc
feffemer
heure l
en men

¹ This
is inserted

² This

³ In p

⁴ K. a

⁵ The

⁶ The

in I.

⁷ MS.

⁸ This

| Fo.

⁹ MS.

¹⁰ Thi

¹¹ The

a W. meme¹ le iour e meme la heure ke T. issit hors de sa seysine e de sa possession meme le iour e meme le heure *entra* iceo A. en son estat *com* en seisine e en possession issi ke [si²] T. apres ceo ke il fu demis e ke A. fu en son estat e en meme la possession ke³ T. out auant *com* son dreit e T. memes fu venu a force pus ke il fu mis⁴ hors de seysine e de sa possession e pleinement mis hors de son *premer* estat e mist iceo A. hors de son⁵ estat e hors de sa possessioun Si semble a G. e a *nus* ke T. auet fet tort a cesti A. e ke il pleinement ly auet disseisi desicom A. est en le estat T. com en seysine e en possessioun⁶ e T. nient⁷

Nota.

E Sire kaunt le feffur se demet ne put estre ke la seisine e la possessioun du *tenement* apent al feffe par la reson ke le *tenement* ne put estre saunz seignur dunt *nus* mettoms ben en vos discresciouns ke⁸ | cesti A. fu en la possessioun e en le estat T. dekes⁹ ataunt ke N. e R. ly mistrent hors prestz sumes de mettre a voyr par assise.

Sire ke il vnkes nule manere de seisine ne out prestz sumes de mettre a voyr.

Rac'o¹⁰.

E dit le countur A :—

Il i ad de auer seisine en manere ausi com home se met en seisine com heir apres la mort son auncestre ou com gardein ou com eschete ou en autre manere Mes il cleyme leynz seisine par feffement e nus *vus* auoms mustre ke meme le iour e meme la heure ke le feffour cesti A. se demist ke meme cesty A. entra en meme la seisine e en meme la possessioun ke¹¹ T. out.

¹ This and the seventeen following words are omitted in G., I., K. and L.; but "ke" is inserted in their place in K.

² This word occurs here in all the MSS. except F.

³ In place of this word H., I., K., L. have "com."

⁴ K. and L. have "demys" in place of "mis."

⁵ The word *premer* is here inserted in K.

⁶ The text from this word as far as the word "ke" seventeen lines lower is omitted in I.

⁷ MS.—tient.

⁸ This word is repeated in F.

| Fo. 173 r^o.

⁹ MS.—de E. ke.

¹⁰ This word is omitted in H. and G.

¹¹ The text in I. begins again with this word.

E taunt dit lassise e pur ceo agarde ceste curt ke A. recoeure seisine e son estat.

* * * * *

Bref de cosinage.

Le Rey salue le viscounte. Comaundez a A. le fiz B. ke adreit e saunz delay rende | a W. vn mis e vne carue de terre od les apurtenaunces en C. des queus I. cosin le auaunt dyt W. en fu vestu e seysi en son demeine com de fe le¹ iour ke il morust sicom il² dit E si il ne face dunke &c. *Testmoigne* &c.

Counte.

Ceo *vus* mustre W. ke cy est ke A. ke la est atort ly deforce vn mys e vne carue de terre od les apurtenaunces en C. E pur ceo atort ke ceo est son dreit e son heritage dunt vn I. cosin le auaunt dit W. en fu vestu e seysi en son demeine com de fe En³ tens de pees &c. Les esplez enprist &c. com en blez en prez en lowage des mys e en autre manere de issue de terre muntaunt a demy marc e a plus com de fe e de demeyne E pur ceo ke Ion morust saunz heyr de son cors resorty le fe e le demeyne e deuoyt resortyr a H. par noun frere G. pere Ion com a vncl e a heyr⁴ De H. decendi le fe e le demeine e deuoit decendre a W. ke ci est com a fiz e a heyr cosin le auaunt dit I. ky heyr il est ke ore demaunde Si il le veut dedire &c.

Defense.

Tort e force defent A. ke cy est e son dreit defendra la ou e kaunt deuera e ben *vus* mustre ke il tient adreit e nent atort par la reson ke N. de R. ly enpleda de meme la terre par vn bref de dreit e taunt amena⁵ le play ke le auaunt dit N. ly freit vne quite clamaunce de son dreit e leuerit vne fin en la curt le Rey de ceo deuaunt teu Iustices tel an en tel lu nomement a ly e a ses heys e a ses assignez aremenaunt Dunt nus demaundoms iogement si

| Fo. 173 v^o.

¹ The text from this word as far as the word "fe" six lines lower is omitted in I.

² The word "est" is here inserted in the MS. in error.

³ The text in I. begins again with this word.

⁴ The twenty-two following words are omitted in K. and L.

⁵ I. has "demena" in place of this word.

il le put ou
pas son cl
prisone ne
Dunt nus
nostre dreit
la curt le I
E veez la f

E dit le

Sire O
maunder p
dedenz e t

E dit N

Sire N:

E dit le

Sire le
heys Du
forbarrer l
fors souler
demaunde

[Aut

Tort e
nest pas te
il dit par b
seysi en so
son talent
le teneme
parunt ke
fe le iour k

[Aut

Tort e
tenu a res
est le bref

(3) The passage "del terce membre..." (Woodbine, 93) as far as "...veue de tere" (Woodbine, 95, line 4).

(4) The passage "del quart membre...disseysy" (Woodbine, 104 and note 13).

(5) The passage "plai de trespas..." for a few lines, but somewhat modified (Woodbine, 112).

(6) Here the borrowing from *Fet Asaver* ends, and the compiler next draws upon *Articuli ad Novas Narrationes* for a passage on the king's greater and lesser courts; in Rastell's collection of tracts *Natura breuium*, etc. (1534), this matter occurs at p. 177 at the marks E, H, I and K.

(7) A short passage with the prophetic title "les natures des brefs"; this is in *Articuli*, 178B. Our manuscript then proceeds thus: "Comencoms donc dire del bref de dreit quest original bref de touz brefs. Car de touz brefs poez a ly sortir, e de luy a nul autre. Ore donc de ly e de ses membres."

(8) Immediately following is a problem question:¹

Cas sur bref de dreit.

Une dame fu dowe de un maner entier; en le maner y ad un vilein qe se lessa morir e aveit deus fiz. La dame prist la terre en sa mein qe son vilein tint, e demanda a son eyne fiz sil voet la terre tenir qe son pere tint e fere le service qe son pere fist. E il dist oyl, e pur ceo fere ly promist xl souz; de [ceo] payer jour ly assist, a queu jour rien ne ly fist, dont la dame se coruca, e lenjetta. Puis demande a pune fiz sil voissist la terre tenir que son pere tint e fere le service que son pere fist, e il dist oyl. E pur ceo fere ly dona xl souz e les paya tantost; e la dame ly mist en seisine, e puis sen ala outre mer en pelerinage, e lessa le maner saunz garde.

Puis vient avaunt le eyne frere e porta le bref de novele disseisine sur le puisne frere et dit quil li avoit disseisi. Lassise fu [joure] e dient issint; parunt il recoveri. Qaunt il ad cele terre recoveri, il la vent a un estraunge tout outre en fee, e puis sen va outre mer; le feffe se lessa morir; son fiz entre e est dedeinz age, e tient. Revient la dame de outre mer e trova son vilein enjette de son vilenage par bref e par jougement, e qe lautre vilein avoit aloigne de sa terre a un estraunge dedeinz age tenaunt que ne voet respoundre ne ne deit saunz commaundement le Rey. Donc fet a demaunder coment la dame purra cele terre recoverir, e par queu bref.

Une gent dient que la dame ne la poet pas recoverir, mes son heir apres ceo houres par un bref de dreit; e cel est le bref.

¹ Modern punctuation has been added. Square brackets show emendations, often based on Dunn 33.

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shall agree in making the Writ, or [the Plaintiffs may adjourn it¹] until the next Parliament, and [let the Cases be written²] in which they cannot agree, and [let them refer themselves until³] the next Parliament⁴ by Consent of Men learned in the Law, a Writ shall be made, lest it might happen [after⁵] that the Court should long time fail to minister Justice unto Complainants.

XXV.
Of what
Things an
Assise of
Novel
disseisin shall
lie, whereof
it lay not
before.

Remedy on
Alienation
by Tenant
for years, or
in Ward.

Penalty for
failing of an
Exception
pleaded by
Defendant;
Double
Damages, and
Imprison-
ment.

Proceedings
on pleading
Exceptions
by a Bailiff.

In what Case
a Certificate
of Assise doth
lie.

FORASMUCH as there is no Writ in the Chancery whereby Plaintiffs can have so speedy Remedy, as by a Writ of Novel disseisin; Our Lord the King, willing that Justice may be speedily ministred, and that Delays in Pleas may be taken away or abridged, granteth that a Writ of Novel disseisin shall hold place in more Cases than it hath done heretofore; and granteth, that for Estovers of Wood, Profit to be taken in Woods by gathering of Nuts, Acorns, and other Fruits, for a Corody, for Delivery of Corn and other Viſuals and Necessaries to be received yearly in a Place certain, Toll, Tronage, Passage, Pontage, [Pawmage,] and such like, to be taken in Places certain, keeping of Parks, Woods, Forests, Chases, Warrens, Gates, and other Bailiwicks, and Offices in Fee, from henceforth an Assise of Novel disseisin shall lie; and in all Cases afore rehearsed, according to the accustomed Manner, the Writ shall be De libero tenemento; and as before times it hath lien and holden Place in Common of Pasture, so shall it from henceforth hold Place in Common of Turf-land, Fishing, and such like Commons, which any Man hath appendant to Freehold, or without Freehold by special Deed, at the least for Term of Life. In case also when any holding⁶ for Term of Years, or in Ward, alieneth the same in Fee, and by such Alienation the Freehold is transferred to the Feoffee, the Remedy shall be by a Writ of Novel disseisin, and as well the Feoffor as the Feoffee shall be had for Disseisors, so that during the Life of any of them the said Writ shall hold place; and if by the Death of the Parties, Remedy happen to fail by that Writ, then Remedy shall be obtained by a Writ of Entry. And albeit that above mention is made of some Cases wherein a Writ of Novel disseisin held no Place before, let no Man think therefore that this Writ lieth not now where it hath lien before; and though some have doubted whether a Remedy be had by this Writ in case where one feedeth in the Several of another, let it be had for certain, that a good and a sure Remedy is given in that Case by the said Writ. And let them which be named Disseisors beware from henceforth that they alledge not false Exceptions, whereby the taking of the Assise may be deferred, saying, that another Time an Assise of the same Land passed between the same Parties, or saying, and falsly, that a Writ of more high Nature hangeth between the same Parties for the same Land, and upon these and like Matters do vouch Rolls or Records to Warranty, to the end that by the same vouching they may take away the Vesture, and receive the Rents and other Profits, to the great Damage of the Plaintiff. And where before none other Pain was limited against him that falsly had alledged such untrue Exceptions, but only that, after such false Surmises disproved, the Assise should pass; our Lord the King, to whom such false Exceptions be odious, hath ordained, That if any being named Disseisor do personally alledge the Exception at the Day to him given, if he fail of the Warranty that he hath vouched he shall be adjudged for a Disseisor without taking of the Assise, and shall restore the Damages before inquired of, or to be inquired after, to the Double, and shall nevertheless have a Year's Imprisonment for his Falshood. And if that Exception be alledged by a Bailiff, the taking of the Assise shall not be delayed therefore, nor the Judgement upon the Restitution of the Lands and Damages; yet nevertheless, that if the Master of such a Bailiff that was absent, come after before the same Justices that took the Assise, and offer to prove by Record or Rolls, that another Time an Assise passed between the

¹ shall adjourn the Plaintiffs

² write the case

³ and

⁴ a Tenement

⁵ refer them to

⁶ hereafter

clici de Cancellaria in brevi faciendo, vel at⁷minent querentes in pximo parlamento, et scribant casus in quibz concordare non possunt, & referat eos ad proximū pleamentū, & de consensu jurispitoꝝ fiat breve; ne contingat deceſo qđ curia diu deficiat querentibz in justicia pquirenda.

Quia non est aliquod breve in Cancellaria p quod querentes hent tam festinū remediū sicut p breve Nove disseite; Dñs Rex voluntatem hens ut celeris fiat justicia & ditones in placitis motis amputent⁸ vel abrevient⁹, concedit qđ breve Nove disseite locum heat in pluribus casibus qm p'us fuit, et concedit, qđ de estov'is bosci, pficuo capiendo in bosco, de nucibz & glande & aliis fructibz colligendis, de corrodio, libacōe bladi, aut alioꝝ viſualiu aut necessariōꝝ in cto loco annuatim recipiendoꝝ, tolneto, tronagio, passagio, pontagio, & hiis similibus in ctis locis capiendis, Custodiis parcoꝝ, boscoꝝ, forestaꝝ, chaceaꝝ, warenaꝝ, portaꝝ, & aliis battis & officiis in feodo, jaceat deceſo assia Nova disseite, & in omibz supradcis, modo consueto fiat breve de libero tenē; et sicut p'us jacuit & locū fuit in cōmuna pasture ita deceſo locum heat in cōmuna turbaꝝ, piscaꝝ, & aliis cōmunis hiis similibus, quas quis heat ptinentes ad liberum tenē vel eciam sine tenē p spale factum ad minus ad tminū vite. In casu eciam quando quis tenens tenē ad tminū annoꝝ, vel in custodia, illud alienat in feodum & p illam alienacōem t'nsfert libum tenē in feoffatum, fiat remedium p breve Nove disseite & heatur p disseisitoribz tam ille qui feoffat qm feoffatus, ita qđ vivente altero coꝝ, locum heat predcū breve; Et si p mortem psonaꝝ cesset remedium p pdcū breve fiat remedium p breve de Ingressu. Et q'mvis supius fiat mencio de aliquibz casibus, de quibus locū non fuit prius breve Nove disseite, non pp hoc credat aliquis illud breve non compete ubi prius competebat; et licet dubitavint quidam utrum in casu quo quis pascit alterius sepale, fieri potit remediū p pdcū breve, teneatur p cto qđ in casu illo p pdcū breve bonū & certum est remediū. Et caveant deceſo qui nōlati sint disseisitores, qđ non pponant falsas excepōnes p quas capcio assie differatur, dicendo qđ assisa alias t'nsivit in casdem ptes de eodem tenē, vel dicendo & menciendo qđ breve de alciori natura pendet in casdem ptes de eodem tenē, & sup hiis & consimilibz vocēt rotulos vel recordum ad warantū ut p illam vocacōm asportare possit vesturam, levare redditus, & alia pficua ad magnū detrimentū querentis. Et quia licet prius aliam penam non fuit qui hujusmodi falsas excepōnes mendaciū pposuit, nisi tantū qđ post mendaciū suū convictū pcessum fuit ad capcōm assie, Domin⁹ Rex, cui odiose sunt hujusmodi false excepōnes, statuit qđ si quis disseisitor nōiatus psonaliter pponat illam excepōm, ad diem sibi datum, si defecerit de waranto qđ vocavit, heat¹⁰ p disseisitore absq, recognicōne assie, & restituat dampna ipius, prius inquisita, vel post inquirenda in duplo, et n'omin⁹ p falsitate sua puniatur p prisonam unius anni. Et si illa excepō pponatur p battiū non pp hoc differatur capcio assie & judicium sup restituōm tenē & dampnoꝝ; Ita tamen qđ si dñs illius Batti, qui absens fuerit postmodum veniat coram Justic qui ass'm cepint, & offerat verificare p recordum vel rotulos qđ assia alias t'nsivit, de eodem

teñ in^l eadem ptes, vel qđ querens alias se retraxerit de consimili brevi, vel placitum pendet p breve de alciori natura, fiat ei breve de faciendo venire sup hoc recordum; Et cum illud hñit et [videat¹] Justic qđ recordum ita [ei²] missum valeret ante judiciũ, qđ p illud excluderet querens ab accōne sua, statim fac Justic scire pti que prius recuperavit qđ sit ad certum diem, ad quem refreat defendens seisinam suam & dampna si que p'us solvit³ post primũ judiciũ redditum, que ei restituant⁴ in duplo ut supradcẽm est, & n'omin^o puniat⁵ ille qui primo recuperavit p p'sonam scđm discređm Justic. Eodem modo si defendens, cont⁶ quem t'nsvit assia in sua absencia ostendat cartas vel quietas clamancias sup quaz confecđne non fuerunt juratores examinati nec examinari potunt, p eo qđ de eis non fiebat mencio in placitando, & pbabiliter ignorare potunt confecđnes hujusmodi scriptoz, Justiciař visis scriptis illis, faciat scire pti que recuperavit, qđ sit ad certum diem, & venire fac juř illius assie, & si p veredcẽm juř vel forte p irrotulamentũ scripta illa verificaverit puniatur ille qui afs'm [ppet'vit⁷] cont⁸ fẽm suũ p penam supradcẽm. ¶ Et non capiat deceřo Vič bovem a disseisito, set a disseisitore tantũ, set si plures sint disseisitores in uno brevi nōiati n'omin^o de uno bove sit content⁹; nec exigat bovem nisi de p'cio quinq; solidoz & quatuor denar, vel p'cium.

In Brevibz de Redisseisina adjudicent¹⁰ deceřo dampna in duplo, & sint redisseisitores deceřo irreplegiabiles p cōe breve; et sicut in statuto de M'toñ p'visum fuit illud breve de hiis qui disseisiti fuerunt postq'm recuperaverunt p assias Nove disseie, Mortis antecessoris, aut p alias juř, ulterio¹¹ heat deceřo illud breve locum illis qui recuperaverunt p defaltam, reddicđm, vel alio modo sine recognicđne assiaz vel jurataz.

Postq'm aliquis posuerit se in inquisicđm ad pximũ diem allocet¹² ei essoniũ, set ad alios dies sequentes p essoniũ non differatur capcio inquisicđis, sive prius hñit essoniũ sive non; nec admittatur essoniũ post diem datum p'ce p'ciũ in casu quo ptes venire consenciant sine essonio.

Cum [p statutum Glouc statuat¹³] qđ postq'm tenens semel compuerit in curia, non allocet¹⁴ ei essoniũ in brevibus assiaz, eodem modo deceřo obđvetur de petentibus.

Breve de Transgressionem ad audiendum & p'minandũ deceřo non concedatur coram aliquibz Justic, exceptis Justic de utroq; Banco, & exceptis Justic itiniantibz nisi p enormi t'nsgressũ ubi necesse est festinũ appone remediũ, & Dñs Rex de spali gĩa hoc duxerit concedendum: Nec eciam concedatur deceřo breve ad audiendũ & p'minandũ appella coram Justic assigni nisi in casu speciali & ceta causa Dñs Rex hoc p'cepit: set ne huj' modi appellati vel indictati diu detineant¹⁵ in p'sona, heat breve de Odio & Atya, sicut in Magna Carta & aliis statutis dcẽm est.

Assignent¹⁶ deceřo duo Justic jurati coram quibz & non aliis capiant¹⁷ assie Nove disseie, Mortis antecessoris & Attincte, & assoč sibi unũ vel duos de discrecoribz

¹ videant Rot. Bodl. ² eis Rot. Bodl.
³ que habuit Rot. Bodl.
⁴ p primũ judiciũ, simul cum dampnis que hñit Reg. A.: Lib. Horn: Lib. Rub. Scacc. Dubl.
⁵ impet'vit Reg. A.: inpetravat Lib. Horn.
⁶ in statuto p'mo Westm nuper statutũ sit Rot. Bodl.

same Parties of the same Land, or that the Plaintiff at another Time did withdraw his Suit in a like Writ, or that a Plea hangeth by a Writ of more high Nature, a Writ [of Venire facias shall be granted unto him to cause the same Record to be brought;'] and when he hath the same, and the Justices do perceive, that the Record so [shewed by him'] would have been so available before the Judgement, that the Plaintiff by force of the same should have been barred of his Action, the Justices shall presently cause the Party to be warned that first recovered, that he appear at a certain Day, at the which the Defendant shall have again his Seisin and Damages, if he before paid any by the first Judgement ('¹) given, which shall be restored him to the Double, as before is said; and also he that first recovered shall be punished by Imprisonment according to the Discretion of the Justices. In the same manner if the Defendant, against whom the Assise passed in his absence, shew any Deeds or Releases, upon the making whereof the Jury were not examined, nor could be examined, because there was no mention made of them in pleading, and [by probability'] might be ignorant of the making of those Writings; the Justices upon the Sight of those Writings shall cause the Party to be warned that recovered, that he appear at a certain day, and shall cause the Jurors of the same Assise to come; and if he shall verify those Writings to be true by the Verdict of the Jurors, or by Inrollment, he that purchased the Assise contrary to his own Deed, shall be punished by the Pain aforesaid. And the Sheriff from henceforth shall not take an Ox of the Disseisee, but of the Disseisor only; and if there be many Disseisors named in one Writ, yet shall he be contented with one Ox; nor shall receive any Ox but of [v.s.'] Price, or the Value.

IN Writs of Redisseisin from henceforth double Damages shall be awarded, and the Redisseisors shall not be repleviable hereafter by the common Writ; and like as in the Statute of Merton the same Writ was provided for such as were disseised after they had recovered by Assise of Novel Disseisin, of Mortdauncestor, or other [Jurates;'] even so from henceforth the same Writ shall further hold place for them that shall recover by Default, Reddition, or otherwise, without Recognition of Assises or [Jurates.']

AFTER any hath put himself [to an Inquest,'] an Essoin shall be allowed him at the next Day; but [all'] the other Days following, the taking of the Inquest shall not be delayed by the Essoin, whether he were essoined before, or no; neither shall any Essoin be allowed after Day given Prece partium, in case where the Parties consent to come without Essoin.

WHEREAS by the Statute of Westminster the First, it was provided, That after the Tenants have once appeared in the Court, no Essoin should be allowed them in Writs of Assises; In like Manner it shall be from henceforth observed against the Demandants.

A WRIT of Trespass, ad audiendum & terminandum, from henceforth shall not be granted before any Justices, except Justices of either Bench, and Justices in Eyre, unless it be for an heinous Trespass, where it is necessary to provide speedy Remedy, and our Lord the King of his special Grace hath thought it good to be granted. And from henceforth a Writ to hear and determine Appeals before Justices assigned shall not be granted but in a special Case, and for a Cause certain, when the King commandeth. But lest the Parties appealed or indicted be kept long in Prison, they shall have a Writ of Odio & Atia, like as it is declared in Magna Charta and other Statutes.

FROM henceforth Two Justices sworn shall be assigned, before whom, and none other, Assises of Novel disseisin, Mortdauncestor, and Attaints shall be taken, and they shall associate unto them one or two of the

¹ shall be made for him for the same Record,
² sent ³ with the Damages also that he hath sustained after the first Judgement
⁴ probably they ⁵ five shillings and four-pence
⁶ Juries ⁷ upon Inquest
⁸ at

Proceedings on Deeds not pleaded by reason of Defendant's Absence.

Sheriff's Fee.

XXVI. Double Damages in Writs of Redisseisin. Writs of Redisseisin on Recovery by Default, &c.

XXVII. Essoin after Issue, but none after Day given Prece partium.

XXVIII. Stat. Westm. 1. 3 Ed. 1. c. 42. No Essoin for Demandant.

XXIX. To whom and in what Cases Commissions to hear and determine shall be granted.

A Writ of Odio & Atia.

XXX. Assignment of Justices of Nisi prius.

that if any servant, of whatever estate or condition that he be, is retained in any service, and before the end of the term depart from the same service without leave or rightful cause, he must undergo penalty of imprisonment, and that no one under the same penalty be so bold as to receive or retain any such in his service; [and] whereas one J. atte Noke was retained in the [service of this same John de W. in such an office, being paid by him according to the statute of our lord the king in this case] provided, in such a vill from such a day until such a day for a whole year, within which term this same J. atte Noke on such a day without leave or rightful cause departed from this same service; and J. W. de W., who is there, received and retained this same J. atte Noke in his service, wrongfully and in contempt of the king and to the damages of this same John de W. of one hundred shillings and against the provision aforesaid. And if [J. W. de W.], who is there, will deny it, John de W., who is here, has good suit. *Defence as above.*

Plaint

CX 8. Of the manor of Foxham *or of half of the manor or the third part* with the appurtenances, a messuage, a water-mill, a garden, a dove-cote, a carucate of land, twenty acres of meadow, one hundred acres of heath, two hundred acres of woods, twenty acres of moor, one hundred acres of brushland, twenty acres of marsh, forty shillings of rent of a messuage with the appurtenances, twenty-three shillings and one penny [worth] of rent, and the rent of one cock and three hens and twenty eggs with the appurtenances etc.

Another form: for common

CX 9. Of commoning in one hundred acres of pasture and moor with all manner of beasts in all seasons of the year from year to year, and in three acres of [arable] land for three hundred sheep, twenty cows, and a bull, [to wit] in

two parts of the land every year after the grain is carried away until the land is again sown and in the third part throughout the whole year, [and] in one hundred acres of meadow with all manner of beasts every year after the hay is made until mid-March.

Rule for a plaint

CX 10. *And this plaint should be made without [claiming] appurtenances.*

Nuisance

CX 11. Whereas he has a messuage in the vill named in the writ, to which messuage he ought to have a way across ten acres of land which are called S., which belong to this same defendant, to the free tenement of this same plaintiff in W., to go with horses and on foot, and to carry out and back hay and [fodder] and grain by a direct route, [whereas] now he must go half a league around; and so he has erected etc. to the nuisance etc.

Plaint of corrody

CX 12. Whereas the aforesaid N. and J. are bailiffs [in fee] of the foreign bailiwick of W. in Surrey, where the abbot ought to have return of all manner of writs except the green wax when it is to be levied; and by reason of which bailiwick the aforesaid N. and J., whenever a writ comes which is to be returned at any set time, ought to make the summons which appertains to the writ, so that whenever any such writ or other summons comes, on each day that they are to make (56v) a royal summons, they are to receive from the kitchen a white loaf, a brown loaf, a gallon of good ale, four servings of meat if it be a day for meat and two servings of fish if it be a day for fish, and whenever the court of this barony is to be summoned, so that they ought to make the summons, [then] on the day when the court is to be held ought they with their bailiffs to eat at the table of the steward of the barony, or to have the loaves *as above*; and [thereof] were they seised until etc., disseised.

Another form of the same

CX 13. Of a corrody to receive each day of the year two loaves, three gallons of convent ale, two servings of pottage, three servings of broth from the kitchen,

and two doles, [namely] two servings such as the convent is served, and [to have] a house to live in and forty shillings of rent for a robe for the said A. to be paid every year at Michaelmas for the whole life of the said A. with the appurtenances etc.

Another form

CX 14. Of one hundred and twenty-four acres of land and twenty acres and the half of one acre and one rod of land with the appurtenances, of the rent of a bushel of mixed grain to be received every week of the year from a mill put in view.

Another form

CX 15. To receive his sustenance in food and [drink] whenever they repair the [wheels] of the mill, while they are repairing etc.

Plaint of turbary

CX 16. To dig turves in one hundred acres of turbary or of moor and to [leave them to dry and to carry them away] at his will, belonging to his free tenement etc.

Another form: of estovers

CX 17. William de W. complains that he is disseised of rightful estovers to be taken in the wood of the abbot of N., namely housebote and haybote without delivery etc. *Scope: Estovers of common right belong to free tenement, and he has not specified by writ or by plaint the free tenement to which etc. Huntingdon.* This writ is warranted by statute, [and the statute] does not say quod pertinet etc. but only de libero tenemento, and the [plaint] ought not to vary from my writ; [and] rightful estovers are [themselves] free tenement and can[not] be appendant to other free tenement; judgment whether this plaint is not [good enough.] (57r) Spigurnel: By what title do you claim free tenement? Huntingdon: Our father died seised and we [were] seised until disseised by you etc. Spigurnel: You affirm*

* The names in this case must be accepted with reserve. But if Ber' is indeed Bereford, Huntingdon is the earliest of them to disappear; and his name is not found in the plea rolls after 1312 (cf. the Legal Calendars of Y.B.B. 5 Ed. II, Seld. Soc. Y.B. Series, vol. XII; 6 Ed. II, Seld. Soc. Y.B. Series, vol. XIII; 6 Ed. II, Seld. Soc. Y.B. Series, vol. XIV, part i; 8 Ed. II, Seld. Soc. Y.B. Series, vol. XVII).

no title that affirms right of estovers etc., nor do you demand common appendant; judgment whether there ought to be an assize. Bereford: One must say appendant or show a specialty. Huntingdon: If I said appendant, I should abate my own writ. Bereford: Show that the statute saves it. Huntingdon: Appendant to our free tenement in N. The abbot answered and said that he found his church seised of this wood [and] discharged [of any right of estovers], ready etc. And the other side said the opposite. Therefore let the assize be taken.

Plaint of fishery

CX 18. To fish in the water of G. from the [confluence] of the water of C. as far as F. and to take [fish with] every kind of device in all seasons of the year, except in four perches [of water] at various places.

Appeal of receiving [brought by] an infant within age

CX 19. John de Hottoun, son of William Noelle [the brother of Thomas Noelle,] who is here, appeals Robert Gaffaire, who is there, of receiving William Gaffaire, his son, which William Gaffaire feloniously as a felon of king [Edward] who now reigns, whom God preserve, and against his peace and his crown and his dignity, killed Thomas Noelle; which William Gaffaire, if he were [here], the aforesaid John would appeal of this: that the aforesaid Thomas Noelle was in the peace of God and in the peace of our lord king Edward who now reigns, whom God preserve, the Friday in the feast of the translation of St. Wilfred the Confessor in the 20th year of the reign of our lord king Edward etc. at the hour of vespers, to wit as dusk was falling, in the high town of Ripon in an open space in the high street of our lord the king, to wit between the house of H. le Taverner on the north side and the house of the aforesaid H. on the south, there came the aforesaid William Gaffaire feloniously as a felon of our lord king Edward etc. in premeditated assault, on the same day, same year, at the hour

Therefore the issue they have tendered, specifically, that their testator died [seised] as above, might well be consistent with the deed. But if you had taken issue on the delivery made by the plaintiff to you after the death of their testator, perhaps this would have helped you, or if you had concluded to the deed and asked "judgment whether against the deed," as above, "you will be received to say that your testator died seised etc., without showing how he got the goods at a later time etc." This would have been a good conclusion for you—to have demurred in this fashion, and not to ask "judgment whether an action lies against this deed etc.," as above.

BELKNAP, C.J. It seems to me that they have refused an issue which is accepted at law; therefore give the judgment etc.

And then, with the assent of FULTHORPE, SKIPWITH, and ASTY, JJ., he gave judgment that the plaintiff recover his damages, taxed by the court at twenty marks, and that the defendants be taken because they refused the issue etc.

34. ANON. v. GARNON

In Michaelmas term in the sixth year of Richard in an assize, the defendants pleaded in bar that one J. and R. his wife acknowledged by fine the tenements to be the right of one W., as being those which W. and J., ancestor of the plaintiff whose heir etc., had of their gift, to have and to hold to them and to the heirs of W. W. died, and J. died, and one Isabel who was the daughter and heir of W. entered and enfeoffed them etc. And the plaintiff said that before this fine J. and R. his wife enfeoffed these same W. and J., our ancestor whose heir etc. W. died, and J. survived, and we entered as children and heirs. And no law compels us to respond etc. to the fine levied etc. Thus to judgment. And after adjournment the assize was adjudged [good]. Note this. And nevertheless it was said that if I bring a writ of waste against a tenant in fee, and he pleads "no waste done," he will be estopped from claiming any estate other than a life-term. And if I give you certain tenements in fee and then acknowledge them by fine to be your right and the right of a stranger, the stranger will enter and will hold in common with you despite your [claim]. But the cause of the judgment was that the words of the fine were not repugnant to their preceding estate, for the fine confirmed the estate of one in fee, and, before, both had a fee. And it is not the practice to levy a fine to two people and their heirs but only to the heirs of one, unless the tenements be held of the king and that by license of the king as has heretofore been done. And here it was said that in a writ of right, estoppel is not a plea because the action is taken on the right alone. And here it was said that a conditional fine cannot be levied, for example, a [right of] entry for default of payment.

In an assize which was brought against W. Garnon and his wife K. before SKIPWITH, J. and *Burgh* and was adjourned from Northamptonshire, both W. and K. pleaded a fine in bar and said that one J. and R. his wife were seised of these same tenements in their demesne as of fee and acknowledged the same tenements to be the right of one W. as being the lands which W. and J. had of their [J. and R.'s] gift, to have and to hold to the same W. and J. (which J. was ancestor of the plaintiffs) and to the heirs of W. And they said that W. and Joan died, and one Isabel, who was

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the daughter and heir of W., entered and enfeoffed them. And they asked judgment whether an action [lies] against this fine etc.

The plaintiff. Sir, we say that a long time before this fine was levied J. and R. his wife enfeoffed W. and J. (who was our ancestor) in fee etc., to them and their heirs. And then we say that W. died, and Joan survived and died, and we entered as heir of J. And no law compels us to answer to the fine, since this fine is a fine upon a release, in which event they were not in by dint of the fine, for this fine is made during possession and does not require an execution etc. And, further, this fine was only a confirmation of their estate, in order to cause the wife to be acknowledged, and a release in their possession for an insurance of the estate of the tenants. And we ask judgment and pray the assize.

Hammer. And since your ancestor Joan etc., accepted an estate by the fine for a life term, we ask judgment whether you shall be received to claim another estate, or a higher estate, one which your ancestor did not take by the fine. And so to judgment.

Holt. It appears that we have an assize, for it is not the custom in this court to make a fine to two persons and their heirs unless the tenements are held of the king, and that by leave of the king, as it has been done before now. But as for other kinds of fines, none is made except by an acknowledgment of right made to a person. Therefore although she [Joan] accepted such a fine, which was only to extinguish a right of the wife, since they were joint tenants previously, and, if the right was erased in one, it was erased in the other, it was therefore immaterial which of them took the right by the release etc.

Hammer. If I bring a writ of waste against a tenant in fee, and he pleads "no waste," he shall never be received afterwards to claim an estate which is not alleged in my writ, because he accepted this form of tenancy at one time etc.

Burgh. If I give you certain tenements in fee, and later I admit the same tenements to be the right of you and a stranger, to have and to hold to you and the stranger and your heirs, the stranger shall enter and shall hold in common with you despite your claim.

SKIPWITH, J. (with the assent of BELKNAP, C.J. and his companions etc., of the Common Bench). Sir, before the fine was levied, the two had a fee, and by virtue of the fine, since this is a fine upon a release, they took no estate by the fine, for they were seised in fee prior to the fine, as is alleged etc. For the fine is no more than this, that the husband and the wife acknowledged the tenements etc. to be the right of the one, as those which the two of them had of their gift etc., to release from the husband and the wife and the heirs of the wife to the two and the heirs of one, which words etc. might well be consistent with the estate which the two had before the

fine, for, since they acknowledged the tenements to be the right of the one, this is true, for the tenements were of the right of both, *ergo* the right of one. Therefore their estate is not changed by the fine;¹ therefore it is a fine of release, which must be made during possession; therefore they took no estate by the fine. And, furthermore, the usual rule here is this: that nobody can take another fine, as stated before.² And the fine is not executory, but rather for the purpose of extinguishing the right of the wife only, and if the plea shall be taken for any purpose, it shall be taken in estoppel, and this is not the case here. Therefore you plaintiffs, sue the assize etc.

And it was agreed *per curiam* that if this matter had been found by verdict, they would without difficulty be adjudged in possession by dint of the deed etc., and their estate would not be reduced by the fine etc. For, at the strongest, the fine could be taken only by way of estoppel, and this he cannot do where he came into possession by verdict etc., not by way of a plea, as above. His mouth etc. cannot be stopped by the fine, because he took no estate by the fine, as from another party etc. And it was agreed that in a possessory action the party could be estopped by matter admitted by him or by his ancestor in a court of record etc., or in other such similar cases etc. In such actions estoppels are good pleas etc., but in a writ of right estoppel is not a plea, for the action is brought upon the right alone. And it was said that a fine upon a condition, e.g., an entry reserved in case of default of payment, shall not be taken, for a fine ought to be final and not defeasible etc.

¹ See note 6 opposite. The translation also repeated by dittography.
assumes that the third *etc relessor etc* is

² See the introduction.

35. ANON.

Debt. The defendant came in custody and proffered a writ of protection on his behalf. SKIPWITH, J. The law is such that it will be allowed, but it seems contrary to reason. BELKNAP, C.J. I see another thing in this matter. The protection is "because he is about to go upon the sea with J.R., admiral," and you never see a protection allowed if the party is not to go beyond the liegeance of the king of England, for example, into Scotland, Gascony or France. But the sea is of the liegeance of the king as of his crown of England. Therefore it seems that the protection is not allowable, and you have never seen such a protection allowed before these days. And then a writ came from the Chancery to allow the protection.

In a writ of debt the defendant came into court in custody and proffered a writ of protection in his behalf.

Bretton (clerk of the court). It seems to me wholly unreasonable that, where the party is in prison, he shall be suddenly released without [making] an answer.

SKIPWITH, J. So it seems to me, but this is the law in force.

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r'nqils ent soient atteintz ou acquitez; & q̄ mesmes les Justices y eient poair doier & p̄miner, sibien a la suyte le Roi come a la suyte de p̄tie. Purvez toutz foitz q̄ si les ditz villeyns ou l're tenantz rebealx ent soient atteintz a la suyte des ditz f's, ne soient ils acunement delivrez, tanq̄ ils aient fait fin a Roi & avec ceo ils eient lassent de lo's dites Seigno's; et quant as dites conseillos p̄curo's, meynteno's & abetto's, soit autiel p̄ces & sembleablement fait de eux qi ent front atteintz issint qils ne soient acunement delivrez du prison tanq̄ ils a'vont fait fin au Roi & gree as f's issint grevez, selonc ceo q̄ lo' estates & la quantite de lo' malfait demandent, si mesmes les f's veullent suyr en'vs eux p̄ brief ou p̄ bill; savant toutdiz quant as ditz fines les franchises & libtes des Seigno's qont fines & amciementz de leur tenantz: & q̄nt a les dites exemplificacions faitz & p'chacez come desus est dit, les quelx furent faitz venir en plement, est declare en dit plement q̄ celles ne poient ne deyvent vailer, ou lieu tenir, as ditz villeyns & l're tenantz, q̄nt a la franchise de lo' corps ne a chaunger la condicion de leur tenure & custumes auncienement duez ne faire p̄judice as ditz f's davoit leur vices & custumes come ils soleient dauncien temps; et ordeigne est q̄ sur cest declaracion les ditz f's a'vont l'fes patentes soulz le g'nde seal tantz & tieux come lo' ent busoignera sils les vorront demander.

vij. Item p' ce q̄ pluso's gentz de petit garison de l're rent ou dau's possessions font g'ntz retenuz des gentz, sibien desquiers come dau's en pluso's pties del roialme, donantz a eux chapons & autre li'vre dune suyte p̄ an repreignantz v's eux la value de cel li'vre, ou p̄ cas la double value, p̄ tiel covenant & assurance q̄ chescun de eux mayntendra autre en toutz querelles soient eles resonables ou noū resonables a g'nt meschief & opp'ession du poeple; Ordeigne est & assentuz, q̄ les estatutz & ordenances faites en tieu cas avant ses heures, soient gardez & duement executz; & outre ce le Roi defend estroitment q̄ desormes nul tiel li'vre ne soit done a nully pur mayntenance as querels nautre confederacie, sur peyne denprisonement & grevoue forfait'e au Roi; & enquergent diligement les Justices des Assises des touz ceux qi se coillent ensemble en frat'neitez p̄ tiel li'vre, affaire meyntenance, & ceux qi ent front trovez coupablez, soient duement punys chescun selonc la q'ntite de sa desert.

vij. Item est assentuz, q̄ desore nul pteccion ove clause de Volum^o soit allowe devant ascun Juge, p' vitailles pris ou achatez sur le viage ou v'vice dont la pteccion fait mencion; nauxint en ples de v'spas ou dautre contracte fait ou ppetrez puis la date de mesme la pteccion.

ix. Item p' ceo q̄ pleint est fait a Roi q̄ pluso's gentz de dite Roialme sibien greyndres come meyndres ciantz droit & verrois titles sibien as l'res teitiz & rentz come en au's accions psonels, sont torcenusement delaiez de lo' droit & accions, pmy ceo q̄ les occupiours ou defendants, p' estre sustenuz & mayntenuz en lo' tort, font cōement donnes & feoffementz de lo' l'res & teitiz q̄ sont en debate, & de lo's au's biens & chateux as f's & au's g'ntz du roialme, v's queux les ditz p'suantz, p' g'nt manace q̄ lo' [est] fait ne poient ne ne osent faire leur p'suytes; & auxynt dautre pt pleint est fait q̄ meyntfoitz pluso's gentz disseisent au's de lo' teitiz & tantost ap's la disseisine fait, font div'ses alienacions & feoffementz, ascunfoitz as f's & g'ntz de Roialme p' meyntenance avoir, & ascunfoitz as pluso's psones de qi nouns les disseisez

¹ Interlined on the Roll.

till they thereof be attainted or acquit; and that the same Justices have Power to hear and determine as well at the King's Suit, as at the Suit of the Party. Provided always, That if the said Villaines or Landtenants, Rebels, be thereof attainted at the Suit of the said Lords, they shall in no wise be delivered, till they have made a Fine to the King, and also they to have the Assent of their Lords aforesaid; and as to the said Counsellors, Procurers, Maintainers and Abettors, such Process in like Manner shall be made of them, which thereof shall be attainted, so that they be in no wise delivered from Prison, till they have made a Fine to the King, and gree to the Lords so grieved, according as their Estate, and the Quantity of their Offence doth require, if the same Lords will sue against them by Writ or by Bill; saving always, as to the said Fines, the Franchises and Liberties of Lords, which have Fines and Amerciaments of their Tenants: And as to the said Exemplifications made and purchased as afore is said, which were caused to come in the Parliament, [and to be] declared in the said Parliament, that the same may not nor ought to avail or hold place to the said Villaines or Landtenants, as to the Franchise of their Bodies; nor to change the Condition of their Tenure and Customs of old Time due; nor to do Prejudice to the said Lords, to have their Services and Customs as they were wont of old Time; and It is ordained, that upon this Declaration the said Lords shall have Letters Patents under the Great Seal, as many and such as they shall need, if they the same require.

Punishment of such Villaines; and their Abettors.

Declaration as to the said Exemplifications.

ITEM, Because that divers People of small Revenue of Land, Rent, or other Possessions, do make great Retinue of People, as well of Esquires as of other, in many Parts of the Realm, giving to them Hats and other Liveries, of one Suit by Year, taking of them the Value of the same Livery, or percase the Double Value, by such Covenant and Assurance, that every of them shall maintain other in all Quarrels, be they reasonable or unreasonable, to the great Mischiefe and Oppression of the People; It is ordained and assented, That the Statutes and Ordinances made in such Case before this Time, be kept and duly executed; and moreover the King doth straitly defend, that from henceforth no such Livery be given to any Man for Maintenance of Quarrels, nor other Confederacies, upon Pain of Imprisonment and grievous Forfeiture to the King; and the Justices of Assises shall diligently enquire of all them that gather them together in Fraternities by such Livery to do Maintenance; and they which thereof shall be found guilty, shall be duly punished, every Man after the Quantity of his Desert.

VII.

Statutes against Maintenance confirmed. Punishment for giving Liveries for Maintenance. Justices of Assise shall enquire of Offences.

ITEM, It is assented, That from henceforth no Protection, with the Clause of Volumus, be allowed before any Judge, for Victuals taken or bought upon the Voyage or Service whereof the Protection maketh mencion; nor also in Pleas of Trespass, or of other Contract, made or perpetrate after the Date of the same Protection.

VIII. Protections with the Clause Volumus, in what Case not allowable.

ITEM, Because it is complained to the King, that many People of the said Realm, as well great as small, having Right and true Title as well to Lands, Tenements, and Rents, as in other personal Actions, be wrongfully delayed of their Right and Actions, by Means that the Occupiers or Defendants, to be maintained and sustained in their Wrong, do commonly make Gifts and Feoffments of their Lands and Tenements which be in Debate, and of their other Goods and Chattels, to Lords and other Great Men of the Realm, against whom the said Pursuants, for great Menace that is made to them, cannot nor dare not make their Pursuits; and also on the other Part Complaint is made [to the King.] that oftentimes many People do disseise other of their Tenements, and anon after the Disseisin done, they make divers Alienacions and Feoffments, sometime to Lords and Great Men of the Realm to have Maintenance, and sometime to many Persons of whose Names the Disseisees

IX. Gifts of Lands, Goods, &c. in Fraud, or for Maintenance.

Such Gifts
declared void.
Disseisees
may recover
against
Disseisors
after such
Alienation,
where they
take the
Profits.

X.
Pardon in
51 Edw. III.
confirmed.

XI.
No Sheriff
shall be
re-elected
within Three
Years.

Warden of
the Fleet
shall not let
at large
Prisoners in
Execution.

Punishment,
by Loss of
Office.
Action of
Debt at the
Suit of the
Plaintiff.
Penalty for
confessing
a Debt to
the King,
to delay
another's
Execution.

can have no Knowledge, to the Intent to defer and delay by such Frauds the said Disseisees, and the other Demandants and their Heirs, of their Recovery; to the great Hindrance and Oppression of the People: It is ordained and established, That from henceforth no Gift or Feoffment of Lands, Tenements, or Goods be made by such Fraud or Maintenance; and if any be in such wise made, they shall be holden for none and of no Value; and the said Disseisees shall from henceforth have their Recovery against the first Disseisors, as well of the Lands and Tenements, as of their Double Damages, without having Regard to such Alienations; so that the Disseisees commence their Suits within the Year next after the Disseisin done: And It is ordained and established, That the same Statute shall hold Place in every other Action [in'] Plea of Land where such Feoffments be made by Fraud or Collusion, to have their Recovery against the first such Feoffor: And it is to wit, that this Statute ought to be understood where such Feoffors thereof take the Profits.

ITEM, Our Sovereign Lord the King, desiring the Quietness of his People, will and granteth, of the Assent aforesaid, That the general Pardons and Graces, which the Noble King Edward, Grandfather to our Sovereign Lord the King that now is, made to his People of England in the [L.] Year of his Reign, shall hold Place, and be allowed in the Exchequer aforesaid, and elsewhere, for all People comprised within the same Pardons and Graces; as well of Ships, Victuals, Artillery, Armour, and Vessels, not expressed specially in the same, as of all Debts and Accompts and other Things there comprised in general.

ITEM, It is Ordained, That none that hath been Sheriff of any County by an whole Year, shall be within Three Years next ensuing chosen again, or put in the same Office of Sheriff; if there be other sufficient in the said County of Possessions and Goods to answer to the King and his People.

ITEM, Whereas divers People, at the Suit of [the Party'] commanded to the Prison of the Fleet, by Judgement given in Courts of our Lord the King, be oftentimes suffered to go at large by the Warden of the Prison, sometime by Mainprise or by Bail, and sometime without any Mainprise with a Baston of the Fleet, and to go from thence into the Country about their Merchandises and other their Business, and be there long out of Prison Nights and Days, without their Assent at whose Suit they be judged, and without their Gree thereof made, whereby a Man cannot come to his Right and Recovery against such Prisoners, to the great Mischief and Undoing of many People: It is ordained and affented, That from henceforth no Warden of the Fleet shall suffer any Prisoner there being by Judgement at the Suit of the Party, to go out of Prison by Mainprise, Bail, nor by Baston, without making Gree to the said Parties of that whereof they were judged, unless it be by Writ or other Commandment of the King, upon Pain to lose his Office, and the keeping of the said Prison; and moreover, if any such Warden from henceforth be attained by due Process, that he hath suffered or let such Prisoner to go at large against this Ordinance, then the Plaintiffs shall have their Recovery against the same Warden by Writ of Debt: And also It is ordained, That if any at the Suit of [the Party'] judged to another Prison for Debt, Trespass, or other Quarrel, will confess himself voluntarily, and by a feigned Cause, Debtor to the King, and by that Means to be judged to the said Prison of the Fleet, there to have greater [Sweet'] of Prison than elsewhere, and so to delay the Party of his Recovery, the same Recognisance shall be there received, and if he be not (') Debtor to the King of Record, his Body shall incontinently be remanded to the Prison where he was before, there to remain till he hath made Gree to the said Party; and the same Gree made, he shall be immediately sent again to the Fleet, there to abide, till he hath made Gree to the King of his Recognisance aforesaid.

¹ or
partie *M.S. Tr.* 2. ¹ Fifty-fril
liberty otherwise

ne poent avoir connaissance, au fin dalloigner & delaier p tieux fraudes les ditz disseisez, & les aut's demandantz & lo' heirs de lo' recov'er; a g'nt anientissement & opp'ssion du poeple: Ordeigne est & estably, q̄ desormes nulle doū ou feoffement des lres teñtz ou biens soit fait, p tiel fraude ou mayntenance; et si ascuns soient faitz tielment, soient tenuz p' nulles & de nulle value; et eient desore les disseisiz leur recov'er vs les priñs disseiso's sibien des lres & teñtz come de lo' doubles damages, sanz avoir regard as tielx alienacions; pissint q̄ les disseisez comencent leur suytes deinz lan pschein ap's la disseisine fait: et est ordeigne & assentuz q̄ mesme cest estatut teigne lieu en chescun autre accion ou ple de lre ou tiels feffementz sont faitz p fraude ou collusion davoit leur recov'er vs le priñs tiel feffo': et est assavoir q̄ cest estatut doit estre entenduz la ou tieux feffours ent peignent les pfitz.

Item n're f' le Roi desirant la quiete de son poeple voet & g'nte del assent avandit q̄ les gen'al p'doñ & g'ces, queles le noble Roi E. aiel a n're f' le Roi qorest fist a son poeple Dengleterre lan de son regne cynquantisme primer, teignent lieu & soient allowez en leschequer avandit & aillours p' totes gentz comprises deinz ycelles p'doñ & g'ce; sibien cestassavoir des niefs vitailles artillerie armures & vesselmentz nient exp'ssez p especial en ycell, come des toutes dettes & accomptes & aut's choses [y'] comprises en gen'al.

Item ordeigne est q̄ nully qad este Viscont dune conte p un an entier, ne soit deinz les trois anz pscheins ensuantz reesluz ou remys en dite office de Viscont; si y soit autre suffisant en dite Contee des possessions & biens p' respondre a Roi & a poeple.

Item p' ce q̄ di'ssez gentz, a suyte de ptie cōmandez a la prisone de Flete, p jugement renduz en les Courtes n're dit f' le Roi, sont pluso's foitz soeffertz aler a large p la gardein de la dite prisone, alefoitz p maynpris ou baill, & alefoitz sanz ascun maynpris avec une bastoñ de Flete, & senvont en paüs ento' lo' marchandise & aut's lo' bosognes, & y sont longement hors du prison noetz & jo's sanz lassent de ceux a qi suyte ils ysont ajugez & sanz lo' gree ent faire; pont hōme ne poet jamais venir a son droit recov'er de's tieux enprisonnez, a g'nt meschief & anientissement de pluso's gentz: Ordeigne est & assentuz q̄ desormes nul Gardein de la dit prisone de Flete soeffre ascun prisoner illeoqs esteantz p jugement al suyte de ptie, aler hors du prisone p maynpris baill ne p bastoñ sanz gree faire as ditz pties de ceo p' quoi ils y estoient ajugez, si ne soit p brief ou autre mandement du Roi, sur peyne de pdre son office & la garde de dite prisone; & enoutre, si nul tiel Gardein soit desore atteint p due pces qil a'va soeffert ou lessetz tiel prison aler a large encontre cest ordeinance, adonques y eient les pleintifs lo' recov'er vs mesines les Gardeins p brief de dette: et auxint est ordeine q̄ si nully a suyte du ptie ajugez a autre prison p' dette r'pas ou autre querell se voille conustre voluntrement & p feynt cause detto' a Roi, & p tant estre ajugez a la dite prisone de Flete p greyno' [suete'] y avoir de prisone q̄ aillo's, & issint delaier la ptie de son recov'er, soit cell reconissance resceu illeoqs, & sil ne soit autre pt detto' a Roi de recorde soit son corps tantost remandez a la prisone ou il estoit devant a y dem'r'er tanqil a'va fait gree a la dite ptie; & cell gree fait soit immediat remandez a Flete, p' y dem'r'er tanqil a'va fait gree a Roi de sa reconissance avandite.

¹ Interlined. ¹ suite *Rot. Parl. nu 107*: Printed Copies.

Translation of the Record—Continued

inducted into the same church. And afterwards because of his rebellion and because he was a schismatic the same Robert, cardinal-priest, by process duly conducted in the Roman court, was deprived by the same Roman court from in any way obtaining or occupying any ecclesiastical benefice. Through his deprivation the said church became vacant, in time of peace in the time of the present lord king, and was vacant until the temporalities of the said diocese came into the hands of the present lord king by the death of aforesaid Thomas de Hatfield, the late bishop. And for this reason it pertains to this present lord king to present to the said church, and the said Master Peter unjustly impedes him, to the damage of this present lord king of a thousand pounds. And this he is ready to aver on this present lord king's behalf.

And the said Master Peter comes by John Killinghall, his attorney. And he denies force and wrong when etc. And he says that by virtue of a certain provision made of the said church to him by the lord pope Gregory he was instituted and inducted in the same church after the deprivation of the aforesaid Robert, cardinal-priest, and by virtue of that provision obtained corporal possession of the same church in the time of Urban, the present pope, and during the lifetime of the aforesaid Thomas de Hatfield, late bishop etc. And by virtue of that provision he has always hitherto continued his said possession in the said church and is still parson of that church in the said form. Without this, that the said church was vacant while the temporalities of the said diocese were in the hands of the present lord king, as is supposed in the lord king's demonstration. And this he is ready to aver; wherefore he submits that no obstruction can be assigned to his person in this matter.

And the said William who sues etc. says that the said church was vacant while the temporalities of the said diocese were in the present lord king's hands, as is supposed in the lord king's demonstration. And on the lord king's behalf he asks that this be inquired into by the country etc. And the said Master Peter does likewise.

Therefore the sheriff is ordered to cause to come here on the octave of St. Hilary twelve etc., by whom etc., and who shall not etc., to recognize etc., because both etc.

On which day the said jury was placed in respite here until this day, specifically, the quindene of Easter then next following. And now on this day comes the said William who sues for the lord king etc. And the said Master Peter, though solemnly exacted on the fourth day of the plea, does not come. And he had a day therein on this day, as appears above.

Therefore it is decided that the lord king recover his presentation to the said church against the said Master Peter by default etc. And he shall have a writ to J. bishop of Durham, diocesan of the said place, that notwithstanding the claim of the said Master Peter he shall admit a suitable parson to the said church at the presentation of the lord king. And the same Master Peter is in mercy etc.

11. ANON. v. WINDSOR

Assize of land and rent. The assize found that William Windsor and others named in the writ disseised the plaintiff of the land, but as for the rent, it was found that there was no tenant named in the writ from whom the rent etc., and that a bailiff who was not named in the writ levied the rent from the land by distress at the order of one William Windsor and to his use. So because it was found that the rent was levied to the use of William Windsor and that he took the rent—thus he is a pernor of the rent—it was awarded that the plaintiff recover the rent and her damages by the assize.

debito
ab omni
m curia
tempore
scopatus
Hatfeld'
m nunc
s ipsum
Et hoc

suam
virtute
papam
esbiteri
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dicta. -4
redicti
domini
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A poor woman brought an assize of novel disseisin against W. Windsor, knight,¹ and others etc., in Middlesex in the Common Bench. And the assize came and passed for the woman, and it was found that the said W. Windsor and the others disseised the woman of the land. But as to the rent, it was found that there was no tenant of the land whence the rent was issuing named in the writ, and that a certain bailiff, who was not named etc., levied the rent of the tenements by distress and by order of W. Windsor and to his use. Therefore, because the rent was levied to the use of W. Windsor, and he took the rent, he is thus pernor of the rent etc.² It was ruled that the woman recover etc., and her damages were assessed by [the] assize etc.

¹ William de Windsor, knight, was the husband of Alice Perrers, mistress of Edward III. McKisack, 386.

² See Stat., 1 Ric. 2, c. 9 (1377), and the introduction.

12. BISHOP OF CHICHESTER v. WYN

Will the king have a fine of ten pounds where the king has granted a warren by charter, the charter declares that anyone who interfered would be subject to a penalty of ten pounds, and someone is found guilty of hunting in the warren? BELKNAP, C.J. replied that the king would have a fine fixed by the determination of the justices.

Note that BELKNAP, C.J. was asked this question: Where the king granted a man a charter of warren, and it is comprised within the charter "that no one may interfere with the grantee's enjoyment on penalty of ten pounds," in case anyone be found guilty of hunting within the same warren, shall the king have these ten pounds for the fine? And he said that he never observed this to be the law, but that [the king shall have] a fine fixed by determination of the justices etc.

Translation of the Record

Public Record Office, CP/40/487/414d¹

Sussex. § Richard Wyn was attached to answer William, bishop of Chichester about a plea why, with force and arms, he entered the free warren of this bishop at Sidlesham, and hunted in it without his license and will, and took and carried away hares, conies, pheasants and partridges. And committed other outrages, to the grave damage of this bishop and against the king's peace etc. Whereof the same bishop by John Blest, his attorney, complains that on Monday next after the feast of the Nativity of St. John the Baptist in the first year of the present lord king's reigns² the said Richard, with force and arms, specifically, with swords, bows and arrows, entered the free warren of this bishop at Sidlesham and hunted in it without the license and will of the same bishop, and took and carried away hares, conies, pheasants and partridges, continuing the said trespass from time to time, from the said Monday until the day the said writ was impetrated. And other outrages etc., to the grave damage etc., against the king's peace etc.

¹ There being no firm connection between this record and our rather skimpy report, the record should be taken as

representative of the type of case that produced the report.

² 29 June 1377.

Wyndesor
ise vint et
lez auters
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ne fut pas
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piscopo
pi apud
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iberam
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redicto
l grave

[FIRST READING OF HENRY SPELMAN OF GRAY'S INN,
LENT VACATION 30 HENRY VI, 1452.]

Westminster 2, ca. 25

*Quia non est aliquod breve in cancellaria per quod querentes habent tam festinum remedium sicut per breve nove disseisine etc.*¹ Observe and note that in an assise of novel disseisin neither an essoin nor a protection lies, nor other such dilatory pleas, for the tenant or defendant, though the plaintiff may be essoined on the first day. Nor shall the tenant in the assise vouch, but a person named in the writ who wishes to do so voluntarily may enter into the warranty. Even then, on such voucher nothing shall be recovered in value, *quod nota* etc. The plaintiff of a messuage is good, but not of a house. The plaintiff of 20 acres or a wood is good, but not of 20 trees or a wood, nor of a wall, for a man may have houses, trees and walls yet no free tenement, for these things pass by gift without livery [of] seisin etc. If a man has a rent service or a rent charge payable at several days in equal portions and is seised of the first payment, if he be disseised of the second he shall have an assise for the entire rent and make his plaintiff of the entire rent. If a grant be made in fee, *scilicet*, paying a rose for a certain time and afterward 20s. in fee, if the grantee be seised of the rose and not of the rent, he shall have an assise for the 20s. nevertheless, and make his plaintiff upon the seisin of the rose. If the plaintiff be not formal it shall abate etc., as to make plaintiff of one acre of land and of one messuage, for the

¹ B, fol. 231 : *Quia non [est] aliquod breve in cancellaria.* Sur ceo fuit reherce que al comen ley assise gisoit lou home fuit disseisi de son franctenement et ceo fuit especialment de terre ou de rent pur ceo que le rent est perceivable per auter mayne per reason de le tenur et ceo poit este dit de auters chosez que de rent, come sil tient de luy per homage feaute et un rose et auters tiels semblablez de queux il avoit assise al comen ley, mez de comen, estovers come husbote haybote et huiusmodi assise ne gisoit pur ceo qil est un [profit] apprendre per son mayn demesne, *scilicet*, person couper et cariage demesne, et issint nient perseivable per auter mayn come rent est, et en mesme le maner si un fuit disseisi de tolne assise ne fuit pur ceo

qil ne fuit paie per reason de tenur ou de franctenement etc. Auters divers profitez apprendre come apparist per lestatut ils navoient remede sinon quod permittat ou breve de covenant le quell fuit mischevous qils furent mys a ceo graund delay et pur ceo que lassise est le plus hasty remede lestatut voet que lassise serra graunte en lez cases avaunt ditez et dautres profitez en certain lieu apprendre come apparist per lestatut. Lestatut voet *quia ut supra per quod querentes habeant ita festinum remedium sicut breve nove disseisine* et issint il entende per lez parols del estatut que le pleintiff nest mye delaye en cell accion come en auters accions qar lessoin ne proteccion ne gisont pur le tenaunt.

messuage ought to be first in the plaint.¹ See the verse in the Register etc.² The plaint of an office or of estovers in gross is good, but not of a way in gross.³

Dominus rex voluntatem habens quod celeris fiat iusticia quod dilaciones in placitis amputentur, concedit quod breve nove disseisine locum habeat in pluribus casibus quibus priusquam non habuit. Et concedit quod de [etc.] In an assise before the justices of the bench or *coram rege* there shall be no patent. In these assises the common day may be given or a day certain out of term. But if it be begun by a common day, this shall be followed throughout; if a day certain, as on Monday after the quindene of St. Martin, then days certain shall be given during the whole plea.⁴

De estoverijs bosci. Observe this diversity. If a man has common of estovers in another's wood of which he has been seised, if then he be interrupted from taking his estovers he shall have the assise. But if he who has the wood cuts and destroys it completely, after this destruction of the wood he who claims the common of estovers shall not have the assise for he cannot be put in seisin of his estovers. In this case his remedy shall be by a writ of quo minus etc.⁵

De proficuo capiendo in bosco. If a man has the office of being bailiff in a manor, or seneschal, in fee or for life,⁶ receiving for his office 40s., if he be disseised of the office he shall have [an assise] for the office only, without making plaint of the fee, yet in itself it is no profit but a charge.⁷ Furthermore, by the recovery of the office the arrears of the fee shall not

¹ B, fol. 232: Et si le pleint soit fait de terre et de rent, le terre covient estre mys devant le rent en le pleint ou auterment le pleint abatera et mesme le ley est si le pleint est fait duun meason et un tofte de terre, le meason serra mys en le pleint devaunt le tofte ou auterment le pleint abatera pur le fourme, quod nota.

² *Registrum*, fol. 199.

³ B, fol. 231v: Et si home eit un voie ouster le francnement dautre home en fee ou a terme de vie et soit distorbe de la voie il navera assise mez breve de covenaunt. Auter est si le voie soit appendaunt a son francnement.

⁴ 27 Lib. Assis. [pl. 33].

⁵ B, fol. 231v: Et lestatut done assise destovers. Et nota que si le boys lou il disoit aver et prendre lez estovers sount coupez et outerment waste le graunte navera assise mez un quo minus, mez en cas que le boys soit en tiell degree qil poit aver resonable estovers et soit denyer dez lez estoverz il avera assise.

⁶ B, fol. 232: Et lestatut done lassise . . . de gardenz de boys, parke, foreste, chacez, wareinez et auterz officez en fee, et issint per parole del estatut ils ne purra aver assise sinon qils ount fee en lez ditez officez qar lestatut est *in feodo*, mez il [le reder] entende que pur ceo que lestatut est fait a lavauntage de le pleintiff que le estatut ne serra pris stricte iuris, mez sils ount francnement a meynez en lez ditez offices assise gist pur eux.

⁷ B, fol. 231v: Et lestatut voet que assise girra dascun profit apprendre en certain lieu, donquez mettoms quun baillewyk ou seneschalce soit graunte a un home a term de son vie saunz ascun fee pur le ocupacion de le dit office, sil soit disseisi de le dit office il avera assise et unquore il nad null profit mez un labour sinon casueltez que purrount eschuer per mesme loffice le quel est en noun certain.

be recovered by the judgment, if the office and fee began by a new grant etc., as I believe.

De nucibus et glande et aliis fructibus colligendis. As I understand it, if a man grants to me in fee by deed 12 bushels of nuts out of a great wood, in that case, upon such grant, the grantor shall be bound by law [fol. 42] to gather the nuts, so that I be satisfied at my term of payment, as where a man grants me 20s. of rent out of his manor he is bound at his peril to see that I am content. But if a man grants me a licence to take and collect 12 bushels of acorns in his wood each year, in such case it is my duty to gather the acorns.¹ In the first case, though he, *scilicet*, the grantor, destroy the wood, nevertheless I shall have an assise upon a denial, as of rent in a like case. But in the second case, after the destruction of the wood, I shall have no remedy except by writ of *quo minus* or by writ of covenant, or so it seems to me etc.

De corrodio, liberacione bladi, aut aliorum victualium vel necessariorum. It is said by some that nothing may be called a corrody unless it issues out of a house of religion which is established and by common understanding shall endure forever. If a layman grants such profit à prendre in his manor, out of his kitchen there, in perpetuity, [they say] that this shall not be called a corrody but a profit, and that the plaint in an assise for this profit shall be made specially on the grant, not calling it a corrody. But others say it is [a corrody], at the pleasure of the plaintiff. Therefore *quere* etc.² And *quere* if a man has a corrody by deed for bread, beer and meat, if he be seised continuously of one and not of the others, whether he shall have an assise for the whole or only for the part of which he is disseised. It is said an assise lies of part at his pleasure.³

Tolneto, Tronagio. If a man claims to be quit of toll and a toll be levied upon him, he shall not have an assise but an action on his case,

¹ B, fol. 231v: Et fuit dit que si un home ust graunte a un auter xx busshellys de nucibus et huiusmodi apaier a certain a tiel [iour] a quel terme si le graunt fuit denie assise gisoit al comen ley quar il fuit perceivable per auter mayn, scilicet, per le mayn le grauntor, mez si home done conge ou licence a un auter de coiler certainz bussels de nucibus etc. et il fuit distorbe assise ne gisoit al comen ley mez est done per cest estatut.

² B, fol. 231v: Et lestatut done ouster que assise girra pur un corodie et ceo covient estre entenduz lou il est graunte hors de tiel meason que per possibilitie poit perpetuellement endurer come abbey ou priorie ou tielz semblablez et nemi hors de le meason dun ley home ou auter person que poit changer son

meason a volunte. Et nota per cest estatut que si un annuite soit graunte hors dun maner si le graunte [soit] disseisi il avera assise quar lestatut est *in certo loco capiendorum*.

³ B, fol. 232: Et nota si un corrodie soit graunte hors dun abbey de iij payns et v galonz de servoyz et le graunte soit seisi de tout le corrodie et puis il ad le payn a luy delivere mez le servise luy est denye il navera assise de tout le corrodie mez de servoyz tantum et ferra le pleint de tauntz galounz de servoyz et nemi de tout le corrodie. Et en cas qil soit paie dun galon ou ij et le remainder luy est denye il navera ascun remede quar il serra aiuge son follie demesne lou il resceust parcell ou il avoit lentierte.

for he is not to recover anything but only to be quit. On a refusal to pay toll, or where a man has an office for life, as bailiff of a franchise, in the course of which he shall execute all writs, and one within the franchise does not obey him, to my mind it is difficult to say, in either of these cases, that the assise shall lie. If it shall lie, then *quere* against whom for, as I understand it, he [the demandant] must name a pernor or a tenant of free tenement. Study these cases etc.

In certo loco annuatim percipiendorum. Note that of an office in the common pleas or the king's bench, as that of protonotary, marshal or filacer, or other similar office, an assise lies in the same place, yet the king's bench and the common pleas are removable. But in my view that [assise] in truth is not given by this statute, but only by usage within those places, because an assise does not lie for the office of seneschal of the king's household, or for that of privy seal or for a secretaryship with another lord, even though a man has such office granted for life etc., nor [does it lie] for a rent granted out of other coffers for they are not *in certo loco percipiendorum* etc.

If a man grants me out of his manor a robe or 10s. payable, at my election, at Christmas, in that case, since the election is given to the grantee, he shall make his plaint of one in certain and not in the disjunctive. But if the election be made and given by such grant to the grantor, then the grantee must make his [fol. 42^v] plaint in the disjunctive, according to the grant, for otherwise the grantor's election would be taken from him, which is unreasonable where he has reserved it to himself by express words.¹

If a man grants me a certain rent out of his manor of D. to be taken in one acre of meadow within the manor, here nothing is charged except that acre alone, and it only shall be put in view. But if a man grants me 20s. of rent from his manor of D., *videlicet*, taking 10s. from one such, his tenant, and 10s. from another, his tenant, in that case the entire manor remains charged because subsequent words may not change the tenancy of the free tenement and therefore the [interpretation] most beneficial for the grantee shall be taken where all the words may not take effect together. But it is otherwise in the first case, therefore observe the diversity. If a man grants me 20s. of rent to be taken from his manor of D. and that, if the rent be in arrear, I may distrain for the same rent in D. and S., in that case an assise shall be maintainable in D. only, if the disseisin be founded on a denial, for D. is principally charged with the rent and distraint in D. and S. [provided] only by way of penalty for default. But if the assise be founded on a disseisin, by rescuing a distress, then both must be put in view because, as to the distress,

¹ *Infra*, p. 9, n. 1.

both manors are principally charged etc., as it seems to me. Some say that nothing shall be put in view except D., which is principally charged, and that is the law, as I understand it.¹

If a man distrains for his rent pending an assise for it, the writ shall abate, as is said in 29 [Liber Assisarum, pl. 52] *in fine*, in an assise of rent. *Quere*, for it seems that the distraint shall not put him into possession.²

[An assise] does not lie for a rent granted out of a rent, nor for one out of an advowson, but it lies for a rent out of a reversion.

If a man be disseised of common appendant, and brings an assise, his writ of assise for that common must make mention of [the appendancy], yet the appendancy shall not be expressed in the patent of the assise and the grantee of the common may grant it over and the grant good without attornment.³ It is otherwise of rent. In an assise of common appendant voucher does not lie, it is otherwise if it be of common in gross.⁴ In an assise of darrein presentment there is no voucher. If the common be in one vill and the tenement to which it is appendant in another vill, the writ of assise shall make mention of that of necessity; if [the common be] in several counties, then the assise shall be in *confinio comitatus*.⁵ If a tenant for years of common be disturbed,

¹ B, fol. 232: Si un home graunt xxs. de rent hors del maner de D et il graunte per mesme le fait que pur le rent arere le graunte distreinerà in ycell maner et en le maner de S, si le graunte port assise de cell rent quere si ambideux maners serrount mys en vieu ou tauntsollement forsque le maner de D, et ascunz teignent si lassise soit porte sur un denier que nient plus serra mys en vieue forsque le maner de D et si lassise soit porte per cause dun rescous que ambideux maners serrount mys en vieu. *Mez per lectorem* en ambideux casez nient plus serra mys en vieue forsque le maner de D etc. de quell le rent est issuaunt [et] que lauter maner nest pas charge mez pur un penalte, come si un rent soit graunte hors del maner de D et si le rent soit aderere que le grauntour paiera xxs. nomine pene et que le graunte distreinerà pur cell penalte en le maner de S, si assise soit porte de le rent le maner de S ne serra myse en vieue.

² B, fol. 233^v: Et nota qen assise de comen si le pleintif use le comen pendaunt le breve le breve abatera et mesme le ley en assise de rent si le pleintif distreine pur le rent pendaunt le breve. *Quere* tamen qar per cell distreint il nest my seisi del rent etc.

³ 22 Lib. Assis. [pl. ?].

⁴ B, fol. 233^v: Si un assise soit porte de comen appendaunt vers deux lun ne vouchera lauter de le terre discharge qar le cause de voucher covient estre puis temps de memorie et le tittle del pleintif est devaunt temps de memorie et si le voucher serra graunte come de terre discharge deinz le temps de memorie ceo serroit contrarie al suppossell del pleintif. Et mesme le ley en assise de rent service porte devers ij, le voucher ne gist de la terre discharge qar est encontre comen droit que ascun terre serra discharge de rent service. *Mez* ascouns diont que en primer cas le voucher gist qar poit este que le vouche fuit seisi de le maner a que le comen est appendaunt et auxint de le terre de quel le comen issuaunt a un temps et issint discharge enfeffe le tenaunt en quell cas il avera le voucher. *Ideo quere*.

⁵ B, fol. 232^v: Et nota si assise soit porte de comen appendaunt, si le maner a quel le comen est appendaunt et le terre en que le comen est sount in diversez villez le breve ferra mencion de ceo et ambideux serront mys en view, et si le maner soit in un counte et le comen en auter counte lassise serra porte in *confinio comitatus*.

the lessor shall have an assise for that and recover seisin of his common, but no damages.¹ The assise of common does not lie against the disturber only, for the plaintiff must recover his seisin against one who may put him into seisin, which the disturber may not do. However, the assise does lie against the disturber and the tenant of the land, or against the pernor only,² but the tenant shall not render damages if the disturbance was not done at his command.³ It is otherwise in an assise of rent for, though he did not commit the disseisin, the tenant shall be charged in damages because it was his default if the rent was in arrear.⁴ Note that, to my mind, there can be no disseisin of common without a disturbance; it may not be by denial, as of a rent seck etc.⁵

[*Sicut etiam prius iacuit et locum habuit etc.* At common law an assise for common of pasture lay but not for common of turbary, fishery, etc., yet they were of the same nature and degree. It was unreasonable that an assise lay in one case and not the other and that [such disseisees] were put to quod permittat or covenant. Therefore the statute provides an assise for common of turbary and fishery, whether they be appendant or in gross, just as one may have the assise for common of pasture.]⁶

In an assise of common of pasture the writ must state whether it be common appendant or in gross and the plaint may not vary from the writ. But in an assise of common of estovers the writ always is de libero tenemento etc., yet the plaint may be made of estovers appendant or in gross etc. But in an assise of common of turbary or common of [fol. 43] fishery, the writ must be accordingly, *scilicet*, de communia turbarie or communia piscarie, and if it be appendant that shall be stated in the writ, but of common of estovers, *scilicet*, of housbote and

¹ *Infra*, p. 15, n. 2.

² *Infra*, p. 7, n. 3.

³ B, fol. 233: Et nota que en assise de comen port verz le tenaunt et le distourber et trove est per lassise que le tenaunt ne fuit partie a le disseisin, toutz lez damagez encurgera vers le distourber et le tenaunt ne serra charge mez pur le non sufficiency le disseisor.

⁴ B, fol. 233: eontra en assise de rent qar si un estraunge fait rescous a le seignior et issint est trove per lassise que le tenaunt ne fuit partie a le rescous unquore lez damagez serront recovez vers luy et le disseisor generalment qar son deteigner de le rent fuit le principall de le disseisin. Mez de comen de pasture ou autre comen null default poit este en le tenaunt sinon qil soit partie a le distourbaunce et sic nota diversitatem.

⁵ B, fol. 233: Et nota que assise de comen ne gist sur un denier qar il ne gist en paiement come rent, mez sil use le comen et lez bestez sount oustez ou il est distourbe de mettre cez bestez en le comen il avera assise.

⁶ B, fol. 232^v: *Sicut etiam [etc.]*. A le comen ley assise gisoit de comen de pasture mez nemi de comyn de turbarie, piscarie et huiusmodi et unquore ils furent de semblable nature et degre. Et il fuit encontra reson que assise gisoit en lun cas et nemi de lauter que fuit de semblable nature mez furent mys a quod permittat ou breve de covenant. Et pur ceo lestatut done assise de comen de turbarie et piscarie en mesme le maner come home avera de comen de pasture sil soit appendaunt ou engross etc.

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haybote, the writ shall be de libero tenemento and not de communia turbarie.¹

If I grant you reasonable turbary, or reasonable common of turbary, to be dug in my moor, this shall be said common of turbary and for it an assise lies and the writ shall be de communia turbarie. But if I grant you in fee two carts of turbary to be dug in my moor annually, if you bring an assise for that it shall be de libero tenemento and not de communia turbarie, because in my view such a thing granted in certain shall be called a rent.²

There is a question whether there can be a pernor of common. According to many there cannot be because common does not lie in pernaney but in sufferance, for the writ of common is quod permittat and not quod reddat etc.³

If I grant common of estovers or common of turbary to a man for his house and his hearth in such a vill, and in truth the grantee has neither house nor hearth, [it is asked] whether this is a void grant or not? It seems to me void, for although it be my deed, nevertheless by the grant he has no more [wood] than is necessary for his house, *scilicet*, housbote, nor more turbary than will suffice for his hearth. How may this sufficiency be [known] unless the other has a house? On the other hand, a grant of common for all, or for a certain number of beasts, is good though the grantee at the time of the grant has no beast. Therefore so in the other case etc., since he is able to have a hearth and a house.⁴ But in my view, if common of turbary or of estovers be granted to one who has neither house nor hearth, I say that he shall never have the assise until he has a house or hearth, for such grant may

¹ B, fol. 232v: Et nota que le breve d'assise ferra mencion si le comen de pasture vel turbarie soit appendaunt ou engross, mez nemi issint de comen destovers qar la le breve serra generall de libero tenemento suo. Mez le breve de comen de pasture de turbarie et piscarie serra disseisivit eum de communia pasture pertinent etc.

² 20 Lib. Assis. [pl. 9]. Y.B. 20 Edw. III (Rolls ser.) II, 566-8; 11 H. 6, 22, pl. 19.

³ B, fol. 232v: Et nota que le breve covient estre porte envers le tenaunt de le terre dont le comen est issuant et envers le perneur del comen qar envers auters persones il ne poit recover son demaunde, mez auterz diout que null perneur poit este de comen come il poit este de rent qar il nest tiel chose que gist en paiement come rent est. Mez

nient obstant que quaut estraunge mette einz cez bestes que null droit ad unquore celui que ad droit poit user le comen et prendre lez bestes del estraunge pur damage fesaunt, tamen quere qar si home ad issue ij fitz et devie seisi dun comen si le puisne use le comen il poit este dit perneur de le comen que le aigne dusoit aver perdre [read: per droit] de dissent etc.

⁴ B, fol. 233. Et si home graunt comen de turbarie ou estovers a un estraunge et le graunte ad null meason ne hostell en que il poit aver le fiewe al temps de le graunt, mez puis il purchase un meason en que il poit aver fiewe, dicitur que le graunt est bon et qil poit prendre turbarie a son fiewe per force de mesme le graunt et mesme le ley de comen de pasture nient obstant que le graunte avoit null bestes al temps de la graunte.

not be executed as common otherwise. It would be contrary if the grant had been made for a certain number, as in the case above mentioned where he shall have an assise ut de libero tenemento etc.¹

If I grant to one common of pasture in my land and I do not express for which beasts,² or if I grant common of turbary or of estovers and do not express to which free tenement he shall have the common, whether this grant is good and whether for this common of turbary an assise lies or not? An assise of a way does not lie unless it is claimed [as appendant] to some freehold.³ The same of turbary etc. Not similar, for a way is nothing but an easement and there cannot be an easement unless because of some tenement. But it is otherwise of turbary, for when it is dug he can sell it, just as in common of fishery, when he has the fish he may sell them, unless it be a common of fishery appendant. But I [deny] this. Nevertheless, some say that if the grantee once has full possession of the turfs severed from the soil, he may, in such case, sell them, but this is contrary to my opinion, because in my view when a thing is granted as common, it may not be used except as common, that is, only to burn in his hearth.

If a man has housbote and haybote, or common of turbary appendant, when he has cut the wood for housbote and dug the turfs he sells them. It seems to me that he to whom the soil of the wood and the moor belong shall have a writ of trespass, as where one took a distress lawfully and then killed them.⁴ If a man grants me common of turbary or, at his election, 10s. of rent annually, how shall the plaint [be made] and in which writ, for [because of] the election the recovery cannot be of one or the other, for a rent may not be recovered in an assise of common, nor vice versa, may common be recovered in an assise of rent.

¹ B, fol. 233: Et en le cas avautdit lou le graunte ad null meason a temps le graunte ne poit user le comen avaut qil ad meason, mez si le graunt soit de xij carettes de turbarie ou auters estovers et nemi per nome de comen il poit prendre le comen sil ad meason ou non, et lez doner ou vender a un autre a son volunte. Et si un graunte comen destovers a un autre a xij carettes il le usera per nome de comen et nient autrement et la il ne poit vender ou doner come en lavaunt dit cas.

² B, fol. 233: Et si home graunt comen a un autre en son soile et ne specifie en certain quell maner de comen le graunt est voide. Mez si le graunt est de comen de turbarie ou pasture nient obstant qil

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ore [ne] soit specifie a quell nombre le graunt est bon et il usera le comen ove tauntz que luy plese. Et dicitur si le graunte use le comen tout sa vie ove certain nombre que son heire serra lie de luy tener a mesme le nombre. Quere qar le graunt est general.

³ *Supra*, p. 2, n. 3.

⁴ B, fol. 233: Et si home graunt comen de turbarie piscare ou tiels semblablez a un autre le graunte ne poit soder lez turbes ou prendre lez pessons en le piscarie et donquez lez done ou vendre a un estraunge mez il usera le comen de turbarie a son fowell demesne et le comen de piscarie a son sustenance demesne et sil fait autrement le tenaunt avera breve de trespas, quere.

Yet the plaint must be made according to the specialty. *Quere* of this matter.¹

² In the case where two have common in gross for an indefinite number of beasts, if the two bring an assise for the common, in my view they may not be severed, but the nonsuit of one shall be the nonsuit of both. Obviously, if one be admitted to sue alone it must follow that he shall recover only half and also that the [fol. 43^v] defendant be discharged of the other half because of the nonsuit of the other. But that may not be, for the thing itself may not be severed, and it would be no mischief [to them] since they could use the common [as before].³ But perhaps it would be otherwise in a quod permittat because of the mischief of disinheritance etc. A release by one of all personal actions goes to all, in the said case of the assise, but not a release of right etc. In an assise for common appendant or in gross in 100 acres of pasture, a release of right in part of the pasture goes only to that part, for a man may be seised of his common in 40 acres and be disseised of his common in the remainder. It is otherwise of a rent charge,⁴ of common of estovers and common of turbary, as it seems. In an assise of

¹ B, fol. 233^v : Si un comen de turbarie ou piscarie soit graunte a un home de la fest de lamesse tanque a le fest de michelmasse ou auterment de xxs. de argent et soit disseisi de la comen il n'avera assise quar il est al eleccion del grauntor le quel il voet paier lez ditz xxs. ou auterment luy suffre d'aver le comen. Mez sil soit al eleccion del graunte il poit aver assise de comen ou de rent et sil ad un foitz arainye lassise de le comen il n'avera apres assise del rent nec econtra. Mez en cas qu'un graunt a un auter un robe per an paible a certain fest et lieu ou auterment xxs. d'argent et le robe luy soit denye il n'avera assise generalment de libero tenemento suo et le pleint serra dambideux et donques en eleccion del tenaunt le quell il voille paier. Mez en l'auter cas il ne poit ioigner le comen et le rent en un breve quar lez brevez de divers fourmez, scilicet, del comen quod disseisivit eum de communia pasture et del rent quod disseisivit eum de libero tenemento etc.

² B, fol. 233 : Et si home graunte comen de turbarie a ij homez a l'our fuez en un heyster le quel ils teignent en comen, si apres le graunte lez grauntez fount severaunz del heyste ils n'averont null estovers a l'our fuez qar il est enconter reason que le tenaunt per l'our severaunce

serra charge de deux fewes l'our son graunt extendroit forsque a un fiewe. Come seignior et tenaunt sount, le seignior ad issue ij filez et devie et si lez filez fount particion del seignorie le tenaunt ne serra charge de deux homagez per l'our severaunce.

³ B, fol. 233^v : Si un assise de comen dez avers en [nombre] noun certain soit porte per deux et lun soit nonsue il fuit dit que ne serra resceu de suer soul qar adonques le tenaunt ne avera null avantage per le nounsuyte del auter pur ceo que si celluy que appiert en court serra resceu de suer soul et fuit trove pur luy il recoversa lentier comen le quell serra encontra reson, et en mesme le maner le relese dun dez pleintifs serra barre pur toutz etc.

⁴ B, fol. 233^v : Et si home ad comen de xx acres de terre et purchase iij ou vj acres de mesme le terre unquore il avera le comen en le remainder, et est diversite perenter cest cas et l'our un home que ad rent charge hors de certain terre purchase parcell de mesme le terre, tout le rent est extient qar poit este entenduz que cell terre qil purchase fuit sufficient a son distres pur tout le rent, mez en l'auter cas il ne poit aver le comen sufficient sinon per my tout le terre.

common, the release of the plaintiff's ancestor with warranty, whose heir etc., is no bar.¹

Note that in my view just as common of pasture properly appertains to beasts, so common of estovers properly appertains to houses, fences and such like. Also, common of turbary properly appertains to the hearth, for the fire and the other necessaries of the grantee. Also, common of fishery properly appertains to the sustenance of his person. In the same way that common of pasture may not be used by beasts not one's own, taken for hire,² so each of the other commons may not be used except in the way the law intends them to be, for if a man has common of turbary by specialty under the name of communia turbarie etc., he may not take the turfs and sell them, for then the common is not used as the law intends it to be. But it is otherwise if a man by deed grants a profit of 20 carts of turfs annually, to be taken etc., and sic de similibus etc. It seems to me that a man may not join common of pasture and common of turbary or fishery in one assise, nor vice versa. Nor an assise de libero tenemento and one de communia pasture. But lands, rent, estovers, corrodies and offices may well be joined in one assise for there is no variance in the writ since all are included in the words 'de libero tenemento.' The same is true of land by elegit, by statute merchant, and of a free tenement in fact, they may be joined in one assise. But common of pasture appendant and common in gross may not be. Study the reasons for it is laborious to detail them.³

Festinum remedium, because if the plaintiff supposes [himself] to be delayed he may abridge his plaint.⁴

*Note of the abridgment of the plaint in assise.*⁵ If the plaint be of 20 acres in two villis, if joint tenancy by deed or a foreign release be pleaded as to all the land in one vill, the plaintiff may not abridge [his

¹ 22 Lib. Assis. [pl. 38].

² B, fol. 233: Et nota que le graunte ne poit user le comen ovesque auter estraunge, mez en cas que le graunte ad avers en comen ovesque autre estraunge ou ad lez avers dun autre a ferme il poit user le comen ovesque ceux bestez.

³ B, fol. 233v: Et nota que il fuit dit que assise ne poit este porte de comen de pasture que est a le comen ley et comen de turbarie quest done per lestatut [quar] ne poient este ioinez en un quar il nad tiel fourme en le Registre. Mez si un home soit disseisi de terre qil ad en execucion per elegit et dauter terre a le comen ley, la il avera un assise dambideux quar en ambideux casez le breve serra disseisivit eum de libero tenemento mez

nest issint de pasture et turbarie ou etc.

⁴ B, fol. 231: Et nota que si le tenant plede iointenaunce per fait de parcell en pleynt lassise ne serra pris de lauter parcell maintenaunt mez il demurre tanque proces soit fait verz lez testmoines a un venire facias et le iointenaunce trie qar lassise ne poit este pris per parcell, mez nota que le pleintiff poit abregger son pleint de cell parcell dountle iointenaunce est plede et pria lassise del remainder.

⁵ [Margin] See Magna Carta, ca. xij. *in fine*. And see the reading of [Morgan] Kidwelly on the abridgment of plaints. Kidwelly's reading on Magna Carta, cc. 11-12, precedes Spelman's in U.L.C. MS. Ee. 5. 18 (fol. 26-41). It was given at the Inner Temple, Lent vacation, 1483.

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CASES FROM THE SAVERNAKE MANUSCRIPT

[1]

Someone seised of certain land has issue two daughters by different marriages, and dies; a stranger intrudes and leases to the younger daughter for life; she leases over to her sister for term of her life [in mortgage] on condition that if she pays certain money at a certain day she shall have fee, and if not that [the elder daughter] may enter and hold [in common] with her; at the appointed day she does not pay, and so they hold in common; the rent is behind; the lord distrains; the two daughters make replevin; the lord avows, and they disclaim; the lord brings a writ of right upon disclaimer and recovers by default; the lessor brings a writ of entry *in consimili casu*, recovers by default, and leases to the younger daughter, against whom the elder daughter brings a writ of mort d'ancestor; the assize is taken by default and she recovers, and dies without issue; the younger daughter enters; the lord brings a writ of escheat against her.

[2]

Someone seised of a certain piece of water which is divided between two counties aliens half the water (with a spring) to a man and the other half to a single woman; [the alienees] marry each other; the husband and wife alien the wife's land to someone to hold of them by homage, fealty and the [services of] twenty shillings, and they have issue; the husband dies; the woman, reciting the former grant, confirms the tenant's estate, to hold of her by the services of five shillings; the woman dies; the issue enters and aliens the water to someone to hold of him by the services of finding him as many nets as he needs for fishing [on reasonable notice being given]¹ and that he might fish in the water at his will; the issue dies; the alienee aliens half of the water, as far as the middle line, over [to someone in fee]; the paternal uncle and the maternal uncle² find a boat on the water and an ox in the land, and take them; the others make replevin. *Ceux que droit.*

¹ See the variant reading.

² Or 'aunt': variant text.