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Reports of Cases in the Court of Exchequer in the Middle Ages (1295-1496)

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**REPORTS OF CASES
IN THE COURT OF EXCHEQUER
IN THE MIDDLE AGES
(1295-1496)**

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IN THE COURT OF EXCHEQUER
IN THE MIDDLE AGES
(1295-1496)**

Edited by

W. H. BRYSON

RICHMOND, VIRGINIA

2019

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This book is dedicated to

CAROL F. LEE

INTRODUCTION

The basic and original jurisdiction of the Court of Exchequer, which was a part of the royal Treasury,¹ was to decide legal disputes over the revenues of the king and the Kingdom of England, Wales, and the Town of Berwick. The substance of this jurisdiction was the financial rights of the crown according to the common law of England and the equity thereof.² The Court of Exchequer also decided legal disputes between private parties where one of the parties was an officer of the court, an accountant to the crown who was under the active jurisdiction of the court in the process of accounting for and paying money due to the crown, or a debtor to the crown who could not pay his debt because his own debtor refused to pay him.³ The reports of cases

¹ See generally F. S. Thomas, *Ancient Exchequer of England* (1848); H. Rosveare, *The Treasury* (1969).

² See generally H. Jenkinson and B. E. R. Formoy, *Select Cases in the Exchequer of Pleas*, Selden Soc., vol. 48 (1932), 'Introduction', Part VII: Jurisdiction of the Exchequer in Pleas; J. Manning, *Practice of the Court of Exchequer, Revenue Branch* (2nd ed. 1827).

³ See generally H. Wurzel, 'The Origin and Development of Quo Minus', *Yale Law Journal*, vol. 49, pp. 39-64 (1939); P. Burton, *Practice of the Office of Pleas in the Court of Exchequer* (1791).

published here illustrate all of these types of access to the Court of Exchequer in the middle ages.

I would like to thank the Selden Society and the Ames Foundation for their kind permissions to publish several of their case reports.

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REPORTS OF CASES IN THE COURT OF EXCHEQUER IN THE MIDDLE AGES

1

Rex v. Bude (Ex. 1295)

A rector of a church who wrongfully excommunicates one of the king's villeins for non payment of tithes is liable to penalties, including imprisonment.

1 Eagle & Younge 5

Trinity term, 23 Edw. I; Yorkshire.

Master William de Buda, rector of the church of Preston in Holderness, was attached to answer what should be objected to him on behalf of the king. Wherefore, he was put to answer for this, that the villeins of the king in the manor of Preston, which formerly belonged to the countess of Albemarle and which is in the king's hand after her death, in times past

have always been accustomed, as well in the lifetime of the said countess as after, to give to the church aforesaid for the tithes of hay of every bovat of land in the vill aforesaid 6d. only, [yet] the aforesaid William has caused the said villeins of the king to be cited before the ordinary of the same place for tithes of hay in the same vill and to be excommunicated, notwithstanding the payment of the said 6d. as if they had not paid the same in the name of the tithes, in contempt of the king and to the grievous damage of his villeins, etc.

And the said William came and said that he had not excommunicated the villeins aforesaid, but that, as, by decrees of the synod long since published, all obstructing the rights of the church and detaining its tithes unjustly are excommunicated *in genere* four times in the year, as well throughout the archbishopric of York, as elsewhere in the kingdom. His chaplain, according to the duty of his office, had generally excommunicated all such, and not the said villeins of the king by name. And this he prayed might be inquired of etc.

Therefore, it is ordered to Thomas Weston, clerk, that, by the oath of good and lawful men, by whom etc. and to have that inquisition before the treasurer and barons etc., and the same day etc. to the said William by manucaptors etc.

The jury found that one of the villeins only was excommunicated for the tithes of hay etc. and that, being under sentence forty days, he was taken by the king's writ and imprisoned and that the aforesaid villeins of Preston have used to pay etc. and that they offered at the altar of Preston 26s., *viz.* 6d. for the tithes of the hay of each bovat, which the chaplain of the parish church of Preston received, and, afterwards, the said villein S. was excommunicated, and still is, at the suit of the said William.

Therefore, the said William is ordered to be imprisoned, and, afterwards, was fined for his said offence 40s.

2

Prior of Christchurch v. Russell

(Ex. 1304)

The Court of Exchequer has the jurisdiction to decide disputes concerning tithes.

1 Gwillim 109, 1 Eagle & Younge 6

To the petition of the prior and convent of Christchurch, praying a remedy hereupon that, whereas Isabella de Fontibus, late countess of Albemarle, granted to them by her deed the tithe of all conies in the manor of Thorle in the Isle of Wight, William Russell, the now keeper of the king of the Isle aforesaid, does not permit them to take any tithe of this sort.

It is answered let a writ go out of Chancery to the Treasurer and barons that they inspect the deed and make inquiry of the seisin and further do what shall be just.

[Other copies of this report: *Rotuli Parliamentorum*, 33 Edw. I, no. 3, p. 159; P. Brand, ed., *Parliament Rolls* (2005), vol. 2, p. 53.]

3

Countess of Kent, *qui tam* v. Abbot of Ramsey
(Ex. 1340)

A grantee of the king can sue in the Court of Exchequer to settle disputes concerning the king's grant.

YB Pas. 14 Edw. III,
Rolls Series 31b, vol. 4, p. 126, pl. 54

Margaret, countess of Kent [d. 1349], for herself and the king, sued in the Exchequer a garnishment against the abbot of Ramsey to show cause why the lady should not have £50 *per annum*. And it was expressed in the writ that the lady was endowed of £50 issuing from the farm of the fair of St. Ives by the endowment of her husband, the earl of Kent,¹ and by the assignment of the king.

An exception was taken to the writ, for that the Court of Exchequer ought not to take cognisance of anything which touches a freehold.

¹ S. L. Waugh, 'Edmund [Edmund of Woodstock], first earl of Kent (1301-1330)', *Oxford Dictionary of National Biography*, vol. 17, pp. 760-762.

And inasmuch as a farm issuing from a fair does not properly issue from certain soil so that an assize lies for it and also inasmuch as she holds by assignment from the king so that she shall deraign it is the king himself would, therefore, the court will take cognizance of it. And the writ was held to be good.

Wherefore, as to one term, *Pole* produced an acquittance, which was acknowledged. And as to another term, he offered to aver at first that nothing was in arrear.

Whereupon *Parving*, demurred in judgment as to whether he should be admitted to that averment since the £50 are not issuing from certain soil respecting which the country could have knowledge.

And afterwards, on another day, *Pole* produced an acquaintance and said that, at first, he could not know from the writ to what he had to answer. Therefore, he could not by law have had the deed ready then.

Wherefore, he was allowed to produce that acquittance, and that deed was acknowledged.

And, as to the rest, *Pole* said King Henry, the progenitor of the king, granted to the predecessor of the abbot and his successors the residue of the fair, that is to say for the whole of the time that the merchants chose to remain there, rendering £50, whereof the countess is now endowed in allowance etc. And, in the king's charter, it is contained that, if the merchants should be disturbed by reason of war in his realm, so that they could not come there nor make their profit, the suit of the fair should cease for the time. And we will tell you that, by reason of the war between the king and the French, the merchants etc. have been hindered from coming there. [We pray for] judgment whether, for that time, we shall in opposition to the charter be charged.

Parving: The charter purports 'by reason of war in his realm.' And now, it is of record in this court that there has not been war in this realm, but that the king has always guided and governed his people by the law of this land and thus the realm has been at peace and not at war. [We pray for] judgment whether, to this plea, you should be admitted.

Wherefore, it was adjudged that the countess should recover etc. and her damages, according to taxation.

Quaere as to the damages, for it is not usual for damages to be recovered in such a case in that court. And note that, in Easter term in the 15th year,

the abbot sued in the same place before the king's council to reverse the judgment, and, there, the judgment was affirmed by award.

YB Pas. 14 Edw. III,
Rolls Series 31b, vol. 4, p. 130, pl. 54

Margaret, countess of Kent, sued for herself and for the king a garnishment in the Exchequer against the abbot of Ramsey in respect of £50 *per annum*, whereof she was endowed by the endowment of the earl of Kent and by the assignment of the king and which £50 were issuing out of the farm of the fair of St. Ives.

Pole took exception to the jurisdiction of the court, for that this was a freehold whereof it could not have cognizance.

And, because the £50 were not issuing from any freehold in certain, but from a farm, so that an assize could not be had in respect of them and, because also they were to be recovered as in the right of the king, he was put to answer.

And he [*Pole*] took exception to the writ for that it wanted certainty, for the party could not be informed by it to what he had to answer.

And this exception was not allowed.

And then *Pole* said, as to the first term, nothing was in arrear. Ready etc.

Parving: These £50 are not issuing from any freehold in certain so that the country can have knowledge in respect of this issue; wherefore, it is not admissible. And, thereupon, they demurred in judgment.

And, afterwards, *Pole* produced an acquittance in respect of that term. And he said that he should be admitted to do so, because he was not informed by the writ to what he had to answer and so he could not have had his acquittances ready etc.

And, for that reason, he was admitted.

Parving acknowledged the acquittance.

Quaere, for a party is not apprised by a writ of debt whether a debt is to be demanded against him upon a deed or without a deed, and yet he shall give but one answer to the action.

Pole produced an acquittance in respect of another term, which was acknowledged also. And, with respect to the rest, he said that the king's progenitors had granted to the abbot's predecessor the farm of the fair of St.

Ives at a rent of £50 for the time during which the merchants should stay there and that these are the £50 which the plaintiff demands. And he said also that [the king's ancestor] granted by his charter there, if the merchants were disturbed by war in his realm so that they should not come or stay there, the payment of the £50 should cease for that time and the king's father confirmed this charter to this abbot.

And, said *Pole*, we tell you that they have been disturbed by war between the king and the French. [We pray for] judgment etc.

Parving: You shall not be allowed to say that, for it is of record in this court that, in this realm, there is no war, but that the king's people are governed according to the law of the land and the charter shall discharge you only by reason of war in his own realm. Wherefore, we demand judgment.

And, afterwards, COSHALE [B.Ex.], with the assent of the justices, rehearsed the process, and adjudged, for the reasons above, that the countess should recover etc. and her damages taxed etc.

But *quaere* with regard to the damages, for, in such a case, it has never been seen that damages were awarded.

4

Anonymous
(Ex. 1340)

In this case, an acquittance was denied and an account was enforced.

YB Mich. 14 Edw. III,
Rolls Series 31b, vol. 5, p. 192, pl. 75

An *ex parte* [proceeding] was sued in the Exchequer to recite an account and to cause the [debtor's] body to be there. And, there, the plaintiff in the writ was charged with a certain receipt, and he produced an acquittance, which was denied. And, thereupon, they were at issue.

And, at another day, he produced another acquittance made since the last continuance. And, thereupon, they were again at issue, because the defendant in the writ denied the deed.

And it was found that it was not the defendant's deed, wherefore, it was adjudged that the plaintiff in the writ should be charged with that with which he was charged by the first account and that he should remain in custody until he had made satisfaction. And it was said that the last deed ought not to have been tried unless by consent.

5

Anonymous
(Ex. 1346)

When a debtor to the crown sues an action of debt in the Court of Exchequer, the defendant cannot plead by wager of law.

The king can garnish the debts of his debtors.

YB Hil. 20 Edw. III,
Rolls Series 31b, vol. 14, p. 16, pl. 4

[An action of] debt was sued in the Exchequer by one who is the king's debtor in respect of the king's wools and who alleged that he sold part of the wools to the defendant and that the defendant had not paid him.

The defendant proffered his law, which was counterpleaded on the ground that the king was in a manner party, for, if the plaintiff should recover, the king would have execution in satisfaction of the debt due to him. And for that purpose and no other was the suit maintained in the Exchequer. And, even if the plaintiff were nonsuited or would now release to the defendant, the king would nevertheless have the suit because, when anyone is the king's debtor and he has not wherewithal to make satisfaction, the court will give directions to inquire as to the debts which are owing to him and, by process, cause them to be levied to the king's use etc. And, on the refusal of this wager of law, they were adjourned.

And now, the defendant tendered the averment that he owed nothing to the plaintiff.

And because the defendant could not be admitted to wage his law, for the reason above, and the last issue was also inadmissible and as he could not

be admitted to either, judgment was given that the plaintiff should recover the debt etc. and that the king should have execution etc.

6

Anonymous
(Ex. 1346)

Servants of barons of the Exchequer, when they sue in the Court of Exchequer, need not have pledges to prosecute.

YB Pas. 20 Edw. III,
Rolls Series 31b, vol. 14, p. 202, pl. 24

In the Exchequer, a yeoman of one of the barons sued a writ of trespass for battery.

R. Thorpe: [We pray for] judgment of the writ, for, if the plaintiff were nonsuited, he and the pledges to prosecute would be amerced and, according to the writ, there are no pledges found to prosecute. [We pray for] judgment.

Skipwith: The custom of the court it is that no pledge shall be found for the barons or for their servants.

For that reason, as to that point, the writ was adjudged good.

Green: [We pray] again judgment of the writ, for the writ supposes the plaintiff to be the yeoman of one of the barons and he might be the baron's yeoman and not his servant. And you ought not to hold a plea in this court unless he be of the baron's household. And, inasmuch as the writ does not make him the baron's servant, [we pray for] judgment.

Skipwith: We suppose that he is the baron's yeoman, which will be understood to be the baron's servant unless the reverse is pleaded, and, inasmuch as you do not deny it and allege nothing else in fact which would disprove our action, [we pray for] judgment.

Therefore, they caused to be read the Statute¹ relating to this franchise, which purported that King Henry III had granted it to the barons that

¹ Note Stat. 12 Edw. I (SR, I, 70); Stat. 5 Edw. II, c. 25 (SR, I, 163).

trespasses committed against them and their men should be determined in the Exchequer before them. And, for that reason, the defendants were put to answer over.

Therefore, *Green* said not guilty, and the other side said the contrary.

7

Lord Fauconberg's Case (Ex. 1352)

In this case, the defendant was possessed of certain land as an heir and not as a remainderman, and, thus, was liable to pay a relief to the king.

YB Mich. 26 Edw. III, f. 17, pl. 11

Lord W. of Fauconberg was made to come into the Exchequer, and, among other things, it was challenged of him [to pay] his relief to the king for certain tenements etc., where the matter was thus. It was found and returned by the escheator that Lord J. of Fauconberg, father of W., who held of the king in chief, had a charter of license that he could enfeoff two chaplains, on condition that the chaplains should re-enfeoff J. for a term of life to hold of the king and, after his death, the remainder to W., his son, and to the heirs of his body and, if he died without an heir of his body, that the tenements should remain to the right heirs of J.

And the deed was found to be such, and all was performed, and that J. was dead, and that W. was son of Lord J., and it was said that J. was the tenant of the king of the freehold and also of the fee simple, which was the fee of the king, so having the fee as of the estate that he had by the remainder of the fee tail, so all is in him, and he is tenant of the king of all. Therefore, it seemed that he should pay relief for the right that is descended to him etc.

Moubray: This could not be, because, when the chaplains were seised and enfeoffed, *ut supra*, the remainder to W., son of J., etc., by which remainder, W. is tenant, although he was under age, he would not be in wardship, because he is a purchaser in the case and, although the fee simple be in him, this is by nature of a remainder, *scil.*, if he die without heir. Therefore,

notwithstanding this remainder of his estate, that he has by purchase in fee tail, he should not pay relief.

HUSE, Baron: A man had seen that, where the father gave land to his son and his wife and the heirs of their bodies on condition that, if they died without an heir of their bodies, the land would revert to him and to his heirs; the father died; the son was adjudged to pay relief by the whole Council on account of the right descended to him, notwithstanding the estate that he had jointly with his wife by purchase.

Moubray: Non est simile, because, in your case, if he be under age, he would be in wardship. *Non sic hic*.

THORP [B.Ex.]: If the feoffment had been made to W. by J., his father, in tail and the fee had descended to him, he would pay relief. Therefore, when the estate of W. is by a remainder limited by the chaplains, I say that the estate of the chaplains was on such condition to re-eneoff J., *ut supra*, the remainder, *ut supra*, as is proven by the charter of license, where, if the chaplains had not re-eneoffed J. or W., his son could have entered and ousted the chaplains. Therefore, I say that the estate of W. of right is adjudged to be by J., his father, and, consequently, also as enfeoffed by him. Therefore etc.

8

Anonymous (Ex. 1352)

An action lies against a sheriff for improperly quashing a party's essoin.

YB 26 Edw. III, Lib. Ass., f. 129, pl. 45

A bill [was filed] in the Exchequer against a sheriff, because he had quashed the plaintiff's essoin now in a plea of the taking of cattle, without the assent of the suitors, because the essoin is not valid for such a default etc.

Skipwith: You will have a writ of false judgment etc.

But, because the bill alleged that he did it without the assent of the suitors, in which case, [an action of] false judgment does not lie, he was compelled to answer; by the judgment [of the court].

Anonymous v. Sheriff of Norfolk
(Ex. 1352)

In this case, an action for negligence was sufficiently pleaded against the defendant.

YB 26 Edw. III, Lib. Ass., f. 129, p. 48

One brought a bill in the Exchequer for himself against the sheriff of Norfolk, because an [action of] formedon was brought against him and because he undertook the business and returned the summons on the quindene of Easter etc., where no summons was made. Upon this, a default was recorded on the quindene of St. Michael etc.

Skipwith: It was not alleged of which tenements the tenant made default etc. Judgment etc.

Et non allocatur.

Skipwith: He alleged that the summons was returned on the quindene of Easter etc. and the default was recorded on the quindene of St. Michael, which was not entered.

Pole: It could be that he was essoined to the quindene of Easter etc.

Skipwith: The bill should make mention of this etc.

Et tamen non allocatur.

Anonymous
(Ex. 1355)

A bailee is not liable to the bailor where the goods bailed are stolen out of the bailee's possession.

YB 29 Edw. III, Lib. Ass., f. 163, pl. 28

There was a suit in the Exchequer by the debtor of the king etc. for a goblet that was bailed by him to the defendant etc.

And the defendant said that the plaintiff had bailed the goblet to him in pledge for certain money etc. and he put it among his other goods etc., which were stolen from him.

To this, the plaintiff was compelled to answer. He said that he had tendered the money before the theft and the defendant had refused it. Judgment etc.

And he tendered to aver that he did not tender before the taking, and the other was compelled by the judgment [of the court] to aver the tender before the theft etc., because W. THORP [B.Ex.] said that, if one bail to me his goods to keep and I take them in hand and they be stolen, I will not be charged etc. *Quod nota.*

11

Seton v. Cokeside (Ex. 1357-1358)

*A plea of the plaintiff's excommunication cannot be supported by a papal bull.
Falsely accusing a judge of treason is actionable slander.*

YB 30 Edw. III, Lib. Ass., f. 177, pl. 19

Sir Thomas of Seton¹ sued a bill in the Exchequer against Lucy, who was the wife of one Cokeside. And he showed how he is a justice of our lord the king, yet the defendant, in the presence of the Treasurer and of the barons of the Exchequer, openly called him a traitor, felon, and robber etc., wrongfully and in contempt of the king and in slander of the court and to his damages of £1000, of which he prayed a remedy.

And the woman put forward a bull of the pope proving that the plaintiff was excommunicated. And she said that she did not think that he should be answered etc.

¹ R. W. Kaeuper, 'Seton, Thomas (d. 1359/60)', *Oxford Dictionary of National Biography*, vol. 49, p. 812.

But, because she did not show any writ of excommunication nor another thing sealed by the archbishop of England proving this or other seals that were authentic, it was not allowable. Therefore, without reading the bull or taking regard to this, she was compelled to answer.

And *Wichingham*, for her, pleaded not guilty.

The inquest was taken by the attorneys of the Common Pleas and of the Exchequer etc. And she was found guilty, to the damages of 100 marks. Therefore, it was awarded that she be taken [in custody] to remain at the will of the king etc. But the court advised itself of the damages etc. and of the arrest.

THORP [B.Ex.] said that, in the time of the king's ancestor, because one had notified an excommunication etc. of the pope to the Treasurer of the king, so that the king wanted that he had been drawn and hanged, and notwithstanding that the Chancellor and the Treasurer knelt for him before the king, still, by award [of the court], he abjured the realm etc., and that the woman was in a hard case for putting it forward now, if the king wanted it etc. And [in] the same matter in a similar bill in the Common Pleas between the same parties, it was said by Green [J.C.P.] that the bulls were disallowed without having them read. And also, in the same manner in a similar bill between the same parties in the King's Bench, it was spoken to by the justices, and the bulls were disallowed, *ut supra*.

58 Selden Soc. cxxxvi

Thomas of Seton, justice of the king of the Common Bench, came into the court of the barons of this Exchequer the 16th day of November this year [1358] personally and complained by a bill of Lucy, who was the wife of Robert Cokeside, present in court on the same day of this, *viz.* that the aforesaid Lucy on Wednesday next after the feast of St. Martin in the winter in the 31st year of the now king [15 November 1357] in the Exchequer of the king before the barons of the same Exchequer sitting in the same court, publicly, *vultu protervo*, and with a malevolent intent and with contumacious words called the said Thomas, [who was] coming by the precept of the king to the Council of the same king for divers affairs of the same king with others summoned to the Council, a false traitor of the same king and unfaithful in the hearing of the people, immoderately, and that he should be drawn

and hanged; for this cause, fame, estate, condition, and person of the same Thomas thus hurtfully diminished, in contempt and disrespect of the king and his aforesaid court and *ad damnum* the aforesaid Thomas £1000. And this, he offers etc.

And the aforesaid Lucy, present in court, of the premises read by the barons, denies the damage and all etc. And she said that, of the aforesaid tort, she is not guilty. And, of this, she puts herself upon the country. And the aforesaid Thomas *similiter*. Therefore, let a jury come thereon. And it is ordered to the usher of this Exchequer that he *venire faciat* here on the aforesaid 16th day of November twelve etc., by whom etc., who not etc. for enquiring etc. And the same usher, *viz.* John of Stokesby, delivered to the court a certain panel of named jurors etc., which is among the papers of this term. And the same jurors came by John Butterwick, Robert Power, and other jurors, whose names are noted in the aforesaid panel, which some jurors, elected, tried, and sworn with the assent of the aforesaid parties, say upon their oath that the aforesaid Lucy is guilty of all and single [matters] alleged against her by the aforesaid bill *ad damnum* the aforesaid Thomas of 100 marks. Therefore, it is considered that the aforesaid Thomas recover against the aforesaid Lucy the aforesaid damages thus taxed at 100 marks, for which the same Lucy is committed to the Fleet Prison on the aforesaid day of November to remain in the same place until etc.

12

Earl of Arundel v. Anonymous (Ex. 1364)

A sheriff who negligently empanels a jury whose verdict is quashed can be sued for damages by a party to the suit.

YB 38 Edw. III, Lib. Ass., f. 224, pl. 13

A bill was sued in the Exchequer against a sheriff by the earl of Arundel, that, whereas the earl had sued an [action of] *quare impedit* against the bishop of Chichester and process was sued until they had pleaded to the inquest, that

whereas the sheriff should have made execution of this writ, he sent it to the bailiff of the City of Chichester, who returned the panel, where he was not bailiff of the franchise and he had no warrant to return. And, for that reason, his panel was quashed, to the damage of the said earl of £100.

Upon this, *Percy*, for the sheriff, said that, at the time that the writ came to him, he was at thirty leagues from the City of Chichester, and knew nothing of the said suit, and that the writ was delivered to his undersheriff, and, by the assent of certain men of the earl himself, who were retained by way of livery, and, by their advice, this return was made (and he named their names), and by information from them and for the favor and benefit of the earl and of his business, and, at the time of the return, the earl did not challenge this panel, but, by agreement, allowed it etc. And we say also that, for this reason, the sheriff was amerced and, although the earl then had recovered, he recovered only 40s., as he has done to now. [The sheriff] demanded judgment, since this panel was made at the advice of the counsel of the said earl and in favor of him and of his business, and not by malice, in fraud of the sheriff, if tort etc.

SKIPWITH [C.B.Ex.]: If the earl himself had quashed the panel, then something would be colorable to [the sheriff], but, as nothing was done by the earl and he was damaged by this return etc. and it appeared by the amercement that he was amerced towards the king, therefore, it seemed that there was default in him. Therefore, the court awarded that the earl recover his damages assessed by the court at 20 marks, and the sheriff [be] in mercy etc.

13

Anonymous

(Ex. 1364)

The question in this case was whether the defendant, a clergyman, was liable to the king for a certain rent.

YB 38 Edw. III, Lib. Ass., f. 226, pl. 17

Note that, in the Exchequer, an abbot was accused of this, that he should have purchased a release of a certain rent of a tenant of the king, who

was mesne between the king and him. And he was compelled to answer why he should not be attendant for this service to the king and that he would make a fine.

Kirkton, for the abbot, said that the same person whom he had alleged should have released, by a deed that he put forward, had enfeoffed the abbot's predecessor, to hold in pure and perpetual alms, so he was tenant to the king as before. [He prayed] judgment whether the king could demand anything etc.

14

Prior Francis's Case (Ex. 1364)

The Court of Exchequer will enforce the payment of tithes where the owner of the tithes is a debtor of the crown.

YB 38 Edw. III, Lib. Ass., f. 227, pl. 20,
1 Eagle & Younge 17

One Prior Francis was made to come into the Exchequer to answer to the king for certain moneys that were in arrears for his farm for the time when the possessions of aliens were in his hand. He came, and alleged that there was a parson who held a parcel of tithes that were of the possessions that he had, wherefore [he was less able] to answer to the king without having that which was in his hand. Therefore a writ was granted to him to make him come to answer, both to us [the king] as well as the aforesaid prior etc.

Kirkton, for the parson: Sir, this suit is taken at the suit of a common person, and not at the suit of the king, nor of a minister of the same place, because although he [the parson] be acquitted, the prior answers. Therefore, we understood that this suit should be taken at the common law. Judgment if the court etc.

SKIPWITH [C.B.Ex.] [told the parson to] answer, because we will take cognisance of all that which touches the king, and it could turn to his advantage to hasten his business.

Wichingham: We say that we are the parson of C., and the same goods for which we are prosecuted are our tithes growing within the hamlet of T., which is within our parish, and we and our predecessors from time of which memory does not run have been seised of these goods as of ours tithes, except one time, in which time the prior had disturbed us, of which we had recovered against him for misappropriation. And we demand judgment if the court will etc.

SKIPWITH [C.B.Ex.]: The court has often accepted such a plea for the king, and was not ousted of the jurisdiction. Therefore, say further.

Therefore, the prior tendered to aver that these were his tithes. [And thus he was] ready [etc.]. And he alleged that they were his tithes. And so to the country.

Quod mirum, et nota that, in the Common Pleas nor in the King's Bench, the courts would not hold cognisance of tithes etc.

15

Anonymous

(Ex. 1364)

A clerical error on a record cannot be corrected upon a simple motion, but there must be a certiorari.

YB 38 Edw. III, Lib. Ass., f. 227, pl. 21

Certain men were outlawed in the King's Bench in the time of Sharesull [C.J.K.B. 1350-1361], and their chattels were forfeited, and the names of the men thus outlawed were sent into the Exchequer with the sum of their goods,¹ among whom there was a man sent among the others by a mistake of the clerk, who was not outlawed, who had chattels to the value of £6. A writ issued to the sheriff where the chattels were to levy them to the use of the king, who returned that a lord had seized the same goods. And, upon this, a writ issued to him out of the Exchequer to make him answer the king for the same goods.

¹ dies MS. for biens.

He came and alleged that the same person whose goods he had in his hands was not outlawed.

And GREEN [C.J.K.B.] came with the defendant into the Exchequer, and testified that he was not outlawed, but it was a mistake of the clerk.

SKIPWITH [C.B.Ex.] said that, although all the justices would reverse the record when they had the record before them, they will not be allowed. Therefore, he should make the record come out of the [King's] Bench by [a writ of] *certiorari* from the Chancery.

16

Anonymous (Ex. 1365)

An action of detinue for a chest full of muniments must allege that the chest was locked when it was given to the defendant.

YB Pas. 39 Edw. III, f. 7, pl. [6]

A writ of detinue for a chest full of muniments was brought against one Thomas. And he pleaded that his ancestor had delivered the chest to the defendant to keep.

Usflet: You see well how he [the plaintiff] complains of a chest full of muniments and he had not pleaded that the chest was locked or sealed, in which case, he should have a writ of detinue of charters. [He prayed for] judgment of the count.

Claymond: Sir, we have pleaded that the chest was delivered to the defendant, and whether it was closed or open, we will demand it in such manner as it was delivered to the defendant.

Finchden: You will not do that, because, if it was open, the plaintiff would know what charters were inside, and so could the one to whom they were delivered, but, if it was closed, he could not know.

SKIPWITH [C.B.Ex.]: If the plaintiff had brought his writ and had demanded the charters, he should declare which charters, and, if any charters belonged to the defendant, he could not justify by such a cause.

And then the plaintiff amended his count, and said that it was locked.

Charleton: The plaintiff's ancestor had delivered him a chest not locked or sealed, *absque hoc quod* he had delivered to him a chest locked or sealed. Ready etc.

17

Anonymous
(Ex. 1365)

Where a defendant is in default, the jury will find a verdict of the plaintiff's damages, and this verdict is the basis of any execution against the defendant.

YB Pas. 39 Edw. III, f. 8, pl. [9]

One John sued execution for £30 of damages recovered in a writ of cosinage on the default of the tenant [defendant].

Claymond: Sir, we say that, in the writ of cosinage, the tenant made a default after the default, so that one T. came and was allowed to defend his right, because the tenant held his lease for a term of life, which lease was counterpleaded because he was tenant in tail, so that a *nisi prius* issued. And it was taken before Sir Thomas Ingleby, knight [J.K.B.], and it was found that he was tenant in tail, so that he was not allowable, where, by the same inquest, the damages were assessed at 20 marks. Therefore, we do not think that the plaintiff should have execution for more than for the 20 marks.

Finchden: Sir, you see well how we are to sue execution of a judgment, and the judgment was rendered on the default of the tenant, and, on this default, a writ issued to inquire as to damages, and the damages were assessed at £80, on which judgment, the plaintiff's writ is founded, and that which the defendant spoke to is only in traverse of his action, *scil.*, that there had been no such record. Therefore, the plaintiff prayed execution.

Claymond: You have shown how the inquest was taken at *nisi prius* and this at the submission of the party, of which the party could have an [action of] attain, and, on which, it was necessary that the judgment be rendered. And of that which the judgment was rendered by the default of the tenant,

this was without warrant, because the judgment should always refer to that which was found by the inquest.

Finchden: Our writ should be warranted by the judgment, and when the judgment is rendered on the default of the tenant, this judgment is executory. And, out of the plea, the plaintiff showed you how the case was when the tenant made default. And Thomas prayed to be allowed, and the allowance was counterpleaded (as was said before), and, at *nisi prius*, it was found that he was not allowable, and, on the day that they had in court, the *nisi prius* was not returned, and Thomas did not come. Therefore, judgment was rendered on the default of the tenant. And a writ was sent to the sheriff to inquire as to damages, who returned the damages at £80. And the judgment was rendered on this, on which judgment, the plaintiff's writ was warranted.

SKIPWITH [C.B.Ex.]: If the inquest at *nisi prius* had passed against the plaintiff and it had not been returned before the justices of this court on the day and the tenant had made default on the same day and the plaintiff had had judgment on the default, perhaps, the judgment would be good. But, when the inquest passed for the plaintiff, although he sued before and had judgment, this should always refer to the verdict found, and not to the default made.

Finchden: Although it was found at *nisi prius*, the judgment rendered is executory, and now the damages are levied of the principal, and although the *nisi prius* is found for the plaintiff and judgment is rendered on a default of this judgment, the plaintiff's writ was warranted, or, otherwise, he would not have execution, and, if the judgment was erroneous, this should be reversed in another place. But, here, it would stand in its force and be executed until it be reversed by a writ of error etc.

18

Anonymous v. Clerk (Ex. 1366)

A debtor to the crown who is present in court can be sued as a defendant upon a suggestion without service of any process.

A pecuniary legacy to the king can be levied out of any leaseholds that were held by the decedent.

YB 40 Edw. III, Lib. Ass., f. 248, pl. 35

Note that LODELOW [C.B.Ex.] said in the Exchequer that, although no process be made against one who is a debtor to the king, nevertheless, if he be found before us in the Exchequer, he will answer to the king forthwith.

Fitz-John said that, in case it be of record that he is a debtor to the king, it is reasonable, but not upon a surmise nor a suggestion made, because, there, he must be brought in to answer by process etc.

And LODELOW [C.B.Ex.] said that, of a devise made to the king without a deed by words and without a testament, the king would have an action for this by a suggestion. And he awarded by judgment against W. Clerk, who was executor of Robert Clerk, his father, who had devised his goods to the king by words, because execution would be made of the goods of the deceased in whosoever's hands they be found and in whatever manner anyone held the goods, because holding against the king charges the party etc.

And note, that W. Clerk was accused by Walter, his brother, to the king that Robert Clerk, their father, had assigned on his deathbed to the king 1000 marks, which were in a coffer and delivered to W., and that Robert Clerk had made his executors this same W. and Walter and J., his mother, etc.

And W. Clerk was made to come and to answer. Who said how, at the time that his father died, he was at London, and he had never held the goods of the king, but his mother, in her life, had made full administration, and Walter, after her death etc. And he held the goods of his mother, *absque hoc quod* he had held the goods of Robert Clerk.

And, then, he was examined upon his oath, and acknowledged etc. that he had held two farms of two manors which Robert, his father, had taken and paid in advance etc.

Therefore, there was judgment by LODELOW [C.B.Ex.] awarding that the king have execution of the 1000 marks of the goods of the deceased and that execution would be made first of the farms that W. had acknowledged, and the other averment that he had acknowledged against his own admission would be held as null etc.

Rex v. Abbot of Ramsey
(Ex. 1369)

Alluvion is a riparian right that can be a part of a manor.

S. Moore, *Foreshore* (1888), p. 158

It was presented by an inquisition taken in 42 Edw. III, 1368, before Edmund Thorp and his fellows, assigned by a patent dated 12 May, 41 Edw. III, 1367, to inquire in the counties of Norfolk and Suffolk concerning certain purprestures made upon the king and concerning wardships, marriages, reliefs, escheats, lands, tenements, rents, profits, and emoluments, belonging or appertaining to the king in the counties aforesaid, concealed, withdrawn, occupied, and unjustly detained from the king that the abbot of Ramsey appropriated to himself and his house sixty acres of marsh in Brancestre without the license of the king. And, thereupon, the Abbot was summoned to show why the said marsh should not be seized into the king's hands.

And the abbot comes, and says that the marsh ought not to be seized, because he and his predecessors, from before the time of memory, have held the manor of Brancestre, which is situate next to the sea, and there is there a certain marsh, which is sometimes diminished by the influx of the sea and sometimes increased by the deflux of the sea, and that he and his predecessors have held the said marsh as parcel of their manor, *absque hoc* that he appropriated it without the license of the king.

The King's Attorney [*Skilling*] replies that he did appropriate it.

The jury found that he did not appropriate it, but that he held the manor of Brancestre, and the marsh increases and decreases by the influx and deflux of the sea, and it is part of the manor.

And he is discharged.

[See also addendum at end of book.]

Prior of Ogbourne, *qui tam* v. Anonymous
(Ex. 1370)

The king can sue in whatever court he pleases, and, thus, a private plaintiff can bring a qui tam action in any court.

YB Mich. 44 Edw. III, f. 43, pl. 54

The prior of Ogbourne, an alien, whose possessions had been seized into the king's hand by reason of war and delivered to him, rendering to the king a certain farm *per annum*, who was in arrears in his farm and came into the Exchequer of our lord the king, and alleged how there was the Priory of War', which should pay annually to the said prior a pension, which was in arrears for forty years. And he prayed a writ for the king and himself and that he would be made to come to answer to say why the arrears should not be levied from him, in payment of his farm to the king.

He appeared by *Percy* and *Fitz-John* and said how that which he [the plaintiff] demanded was a chose in action and a freehold in demand, and the king, in this case, would not be made a party, if the party could not show that he is indebted to the king or that he is a debtor to him against whom, to the benefit of the king, the debt could be levied to the advantage and profit of the king. And this sum is not a thing due as a debt, nor would the king have an action of debt for this, so that he demanded judgment of the court in this case if a matter is lying in action and which fell in freehold and was pleadable in the Common Bench, if the court would take cognisance, because, even if the prior had been disseised of parcel of his possessions before the king's seisin and another had come to this by title, so that the entry of the prior was taken away, the king would not have an action, nor profit from this portion; no more did it seem here and, particularly, as the fine of the king would not be reached by the return.

Belknap: If it would be so, and I say that, in this case, so the suit of the king. Thus, as the king is a party, he will be allowed in whatever court it pleases him. [He demanded] judgment if our writ not be good enough.

Newport v. Horseman
(Ex. 1388)

Servants of the officers of the Exchequer have a privilege to sue in the Court of Exchequer.

Where one co-plaintiff has a privilege to sue in the Court of Exchequer, the action will not be sent to another court.

All of the co-executors of a decedent's estate need not be co-plaintiffs.

Surplusage in describing one of the plaintiffs will not abate a writ.

A question in this case was whether an executor's action against a co-plaintiff who was a debtor to the testator is extinguished by the testator's making this debtor an executor.

YB Pas. 11 Ric. II,
Ames Found., vol. 5, p. 187, pl. 3

John, the servant of William Ford [d. 1408], one of the barons of the Exchequer, and Katherine, his wife, and two others, executors of the will of J. de Shard, sued a writ of debt in the same Exchequer against Thomas Horsman, and claimed £10 etc. And the reason why they sued the writ in the Exchequer is because the custom of the Exchequer is that all those who are officers of the same Exchequer, or their servants, can bring their action in that court, which is to be noted. And on behalf of Thomas Horsman, it was pleaded that the two others who are plaintiffs who sued as executors were not officers of the said Exchequer nor servants of officers, wherefore judgment was asked whether the court would take cognisance of the case.

And be it noted that Thomas Horsman was one of those who sued the writ, because he was both the testator's debtor and one of the executors, and so was named plaintiff and defendant, as ought to be done in these circumstances etc.

And afterwards the two other plaintiffs defaulted, and were called and did not come etc., wherefore John, the servant, and his wife prayed that the other plaintiffs might be severed and that they might be allowed to sue alone.

Therefore, *Brenchley* said a severance cannot be made in these circumstances, for, if two executors bring a writ of debt, and one is summoned and severed and the other sues and recovers, although the latter die before execution etc., nevertheless the other who was severed will have execution etc. But, in this case, if the other plaintiffs were severed, although this plaintiff and his wife should recover and die before execution etc., the other plaintiffs will never have execution here, because they are not officers of this court nor servants of officers. Therefore, it will be improper to make a severance in these circumstances; but it is proper that the court be ousted from jurisdiction etc.

Wadham: If a man be a debtor to another and his creditor makes the debtor and another his executors, in these circumstances, the action is extinguished, because, when the debtor administers, he accounts in respect of the administration before the ordinary and he accounts also in respect of those moneys wherein he is the debtor etc. But, if the testator be a debtor to a man and makes this man and another his executors and they administer, nevertheless, the right of action is not extinguished in these circumstances, because he cannot be his own judge. Wherefore etc.

PINCHBECK, C.B.: I fully grant that, in the case where a man makes his creditor and another his executors, that it is proper to name the creditor both plaintiff and defendant etc. And it is provided by the Statute¹ that he who comes first by distress shall answer in respect of the whole amount and judgment shall be given against him and the other defendants in respect of the testator's goods when there is only personalty. And, in cases when it is a matter of personalty, it has not been usual to make a severance for the executor etc. But, in cases where executors have brought a writ of wardship in common (as they very well can where their testator was seised of a wardship as of a chattel etc.) on the ground of wardship etc., I have seen a severance made in such a case, because the matter is one that touches realty etc. And so, when any persons who are plaintiffs are not officers or servants of this court, it will be improper to make a severance. And it is better to oust a man from his action and recovery in a case where he cannot have recovery without making an impropriety in law, than it is to make an impropriety. Wherefore etc. (And this was disallowed etc.)

¹ Stat. 9 Edw. III, stat. 1, c. 3 (SR, I, 271).

CLOPTON [C.J. K.B.]: Sir, a severance cannot be made in this case, for let us put it that, when we had pleaded to the jurisdiction of this court, that the other plaintiffs had made default etc., I say that a summons *ad sequendum simul* cannot be awarded against them, because the action taken by them in this court was never good etc., since they were not officers or servants etc. And it seems no more so in this case, for, although the plaintiffs appeared and now default, a severance cannot be made because the action was never good etc. And also I say that, if two executors bring a writ of debt and one of them is excommunicate or outlawed, a severance cannot be made in such circumstances because the action brought by them was never good; so it is in these circumstances etc. No more is the wife an officer or servant of this court etc.

And, afterwards, by award, the other two plaintiffs were severed, and the husband and wife were allowed to sue alone. And, because they were allowed to sue alone, they counted a new count, and claimed the same sum *ut supra*, as a loan made by the testator, and so a contract [was made] with him without a deed.

And, afterwards, *Wadham* demanded judgment of the writ, for he said that John de Scherd. the testator had in his will made the other plaintiffs and Thomas Horsman his executors, and, in the will, he is named Thomas Horsman, to wit 'I constitute' the other plaintiffs and Thomas Horsman 'my executors' etc., and the writ agrees with the will where he is named defendant, but, where he is named plaintiff, the writ runs 'to answer the other plaintiffs and Thomas Horsman of Dartford, executors, etc.' And so there is variation in the writ, and it does not agree with the will, wherefore [we demand] judgment of the writ.

And, thereupon, the writ and the will were read etc., and so it was that, where he was named plaintiff, [he was described as 'Thomas Horsman] of Dartford, there being more in the writ than in the will. And the writ was adjudged sufficiently good despite the surplus, because there was as much in the writ as in the will. And so the writ is not abated on account of the surplusage, as in the case of a writ of debt brought on an obligation etc.; *tamen quaere etc.*

And it was further pleaded to the action that, since the testator had made the two persons and also Horsman his executors, he had given as full power by his will to Horsman as to the others, and he had powers of administration.

And, in those circumstances, one executor will not have an action against the other, and so the action is extinguished. And [Horsman] will account to the ordinary on oath in respect of what he owes the testator, wherefore judgment was demanded whether an action etc.

And so to judgment on both sides, which is to be noted.

YB Trin. 12 Ric. II,
Ames Found., vol. 6, p. 1, pl. 1

And now *Wadham* came into the Exchequer and prayed judgment etc.

Wadham: Sir, it seems clearly that this action cannot be maintained etc. because it was in the power of the testator to make his executors those whom he wished and, then, when the testator made his debtor and another his executors, he gave as much power to the one as to the other. And, when the two administered in common, as you have said expressly in your complaint, it would be inconvenient to give this action by the one executor against the other, his companion, who administered with him in common, but, of this, he is accountable to the ordinary by his oath, and it lies in his conscience to discharge him because he is as much bound to administer this as the other goods of the testator. So the ordinary can compel him to account for this, wherefore it seems that the action is extinct.

Penrose: Sir, it seems to us that it would be inconvenient to maintain this action, for, suppose that the testator had had other property besides this sum and he had made, as he did here, his executors, his debtor and another and had given as much power to the one as to the other, then, if such an action shall be maintained by the one executor against the other, and he sued execution, the other can never administer this against the other after execution sued, so that the other would be ousted from the administration. Wherefore, etc.

Skelton: It is not inconvenient because I say that of goods (held) in possession in common, for example merchandise between merchant and merchant, an action of account by the one merchant lies against the other if he takes the entirety, although they hold in common. And so it has been seen that a writ of account has been maintained of a dove cote which belonged to two in common by the one against the other for the pigeons. And so it seems that as to choses in action held in common, as the case is

here, when the testator makes his executors his debtor and another, the one can be severed, as he is here, and the other allowed to sue to recover to the use of the testator, because, if he were bound to the testator in the entirety, the action is temporal and the ordinary cannot interfere nor compel him to make execution of that which is temporal, but only of things spiritual, so that, if this action be not maintained it is lost forever, and there is a greater reason to maintain the action than to put him to such mischief. And then, when it is received out of the possession of the debtor, the two can have the money and administer in common and put the moneys in a common chest. Wherefore etc.

Wadham: I admit well in his case between merchant and merchant that a common writ of account lies, but I say that, in his case between merchant and merchant, the one cannot have a writ of debt against the other although he has a right to have the half, because it is not severable. And so, in this case, although the obligation were made to two and payment were made to one of them, in this case, the other will not have a writ of debt against him who has received the debt and still the half of the money is due him, but, peradventure, a writ of account might be brought against the other. And the reason is because he cannot be severed. And so, in this case, the executors cannot be severed; wherefore it seems that the action is extinct, and he shall be charged upon the account upon his oath before the ordinary.

Penrose: Suppose that he recovered upon this suit against the other who is thus the executor and has judgment; I say that, then, we have by our law, by a statute, that he who recovers after judgment can choose to have a [writ of] *feri facias* of the goods of the defendant or to have half of his land. But, after execution sued by [a writ of] *elegit*, can the other executor, who was defendant, enter and hold in common with him? No indeed. Then it seems inconvenient to give an action against the other who is executor. And, also, suppose that the testator had no other goods except this sum which the defendant owed him and the testator had made the said defendant his executor, who would have an action of debt after the death of the testator? No one. But it is extinct; so in this case.

Skelton: He died intestate in this case, and still Burgh said in this case that he should account to the ordinary. But query how?

PINCHBECK, Chief Baron of the Exchequer: Suppose that the testator in his life had brought a writ of trespass or another action against the defendant and had recovered damages and, afterward, before execution, he had made the defendant and another his executors, and died, as the case is here, would not execution be sued of the moneys so recovered by the testator? (As if to say 'By the Lord, certainly!') And so, in this case, which is on all fours. (Query.)

And they were adjourned.

Bellewe 270, 72 E.R. 118

One John, a servant of one of the barons of the Exchequer, and his wife and two others, executors, sued a writ of debt in the same Exchequer for a duty to their testator.

The defendant said that the other two plaintiffs were not officers of the Exchequer nor servants of officers of the Exchequer. [They prayed] judgment if the court etc.

And, afterwards, the two plaintiffs were made defendants. And they were called, and did not come, for which, for John, the servant, and his wife, it was prayed that the others be severed by a rule [of the court] and he be allowed to sue alone.

Brenchley: It cannot be here, because, if two executors bring an action and one is severed and the other recovers and dies before execution be sued, the one who is severed may sue execution. But, here, even though the husband and his wife recover [and] die, the others who were severed cannot sue execution, because they are not officers of this court nor servants of officers.

CLOPTON: A summons *ad sequendum simul* cannot be awarded against those that are defendants, because the action taken by them in common at no time was good as they were not officers nor servants.

And, afterwards, by a rule [of the court], the other two were severed, and the husband and wife were allowed to sue alone. And they counted a new count etc.

Rex v. Holland
(Ex. 1388)

If a tenant commit a felony and be attainted, the king cannot take goods previously distrained for rent in arrear unless he pays the rent.

If a man pledge goods to another, who commits a felony and is attainted, the king will never have these goods, because the ownership of the goods remains always in the pledgor.

YB Trin. 12 Ric. II,
Ames Found., vol. 6, p. 3, pl. 2

A writ issued out of the Exchequer against one M. Holand of G. to compel him to come and answer of certain goods and chattels to the king which were forfeited to the king because of certain forfeitures made by one M. of G. for false money, for which he was attainted, which goods belonged to him on the day of the attainder. And it was found by the inquest in the hands of the defendant.

And it was said by *Wadham* that the earl of Kent was seised of the manor of S. in his demesne as of fee a long time before the felony was done or anything was spoken of the said M. of G., who was the same person who made false money, and he leased the said manor to him who was thus attainted at a rental yielding £40 a year to pay at four times of the year in equal portions, and he showed how the rent was in arrears for three terms before the felony committed, which amounts to £30. And we say that this M. Holand, as bailiff of the said earl, came a long time before the said M. was attainted or indicted for the said felony, and took his goods for the rental to the value of £3 in the name of distress for the rent in arrear etc. and so detained the goods for the rental as bailiff and [there is] nothing wherefore of these goods our lord the king should hinder us.

PINCHBECK, Chief Baron: You have admitted that you took the beasts and the goods only in the name of distress, in which case, the property of the goods was in him who was so attainted, so that the king has a right to have the goods.

Skelton: We rest in your judgment whether the king should have the goods and chattels or the earl for the rental etc. And it seems that, inasmuch as the rental was thus due as above, and the distress was so taken before the attainder or he was indicted of the felony, that the earl should have the goods for the rental, and, if the king would have the goods, it behooves that he should pay the rental etc., and this is £30, and the value of the goods only £3, wherefore, etc. and so to judgment.

And it was said that, if a man put certain goods in pledge to another, who commits a felony and is attainted, it is said that the king shall not have these goods, because the property in the goods remains always in him who pledged them, and so in this case, since the rent was in arrears, as above, and the goods were taken for the rent etc., the king cannot have his goods and chattels etc.

Bellewe 149, 72 E.R. 63

A writ issued out of the Exchequer to receive certain goods which belonged to one Holland, who was attainted of treason.

The defendant said that he himself leased certain land from the said Holland for the term of his life, rendering a certain rent, and, for so much in arrear before the attainder and before the treason was done, he took the goods. [He prayed] judgment etc.

Wadham: And, inasmuch as you have acknowledged the property to him at the time, [he prayed] judgment etc.

Et sic ad iudicium.

Query if he must have said [it was] before the treason.

23

Anonymous
(Ex. 1396 x 1397)

A debt to the king and his suitors will be sued by all of them as co-plaintiffs.

20 Ric. II.

If an obligation be made to the king and his suitors, they shall join in an action with the king, as was adjudged in the Exchequer in [an action of] debt etc.

24

Note

(Ex. 1399)

An issue in tail will not be prejudiced by the deed of a life tenant except in a special case.

YB Mich. 1 Hen. IV, f. 5, pl. 10

Note by THIRNING [C.J.C.P.] in the Exchequer that, if my ancestor, tenant in tail general, holds of our lord the king by way of estoppel, as by a confession in a court of record or by livery sued or otherwise (*sicut contingit* recently in the Case of Adam Ramsey, who held his lands of the king as of his honor of Walingford etc.) and dies, this estoppel is avoidable by this way, in a *diem clausit extremum*, the jurors upon the office found before the escheator are free according to their conscience to find that the land is not held of the king, as the estoppel purports, and the issue in the tail after the death of his father will not be estopped, because he does not claim anything by his father [and is] in *per formam doni*. And the issue in tail will not be prejudiced by the deed of his father. And it is by the Statute *De Donis Conditionalibus*.¹ But he said in any special case, the issue in the tail will be prejudiced by his father, as, if I give lands in tail to hold of me by knight's service and the donee die, his heir under age, and I tender to him a marriage and he refuses it and marries without my consent, still being under age, and, afterward, dies, in this case, I will retain the land for the forfeiture of

¹ Stat. 13 Edw. I, Westminster II, c. 1 (SR, I, 71).

the double value, according to the Statute, and the next heir to the tail will not have a remedy etc.

25

Rex v. Bishop of London
(Ex. 1419)

The question in this case was whether the defendant had a right of wreck.

S. Moore, *Foreshore* (1888), p. 165

In 7 Hen. V, 1419, a commission was issued to inquire concerning concealments and taking of wreck in the County of Essex. And the bishop of London is sued by the king for taking wreck at Clacton.

The bishop pleads his title, and sets out charters of Edward the Confessor and William the Conqueror, which grant to the bishops all liberties 'by strand and by land, on tide and off tide', and also letters patent of *inspeximus* and a confirmation of 25 January, 12 Edw. II, 1319, whereby King Edward II confirms to them wreck and royal fish in their lands or waters. The bishop says that Clacton is part of his bishopric and that he and his predecessors had had chattels of wreck of the sea *infra eandem villam per mare projecta seu evenientia* and that the wreck in question was thrown by the sea *super terram ipsius episcopi apud Clacton*.

The judgment is not entered up.

26

Anonymous
(Ex. 1420)

A pardon of a fine does not pardon a debt based on the non-payment of a fine.

Process issued out of the Exchequer against a man to answer to the king for a fine for an escape. He came, and alleged a charter of pardon, by which the king had pardoned him for all manners of escapes.

BABINGTON, Chief Baron: The charter cannot be allowed, because the [fine for the] escape was stayed and assessed before the Justices of Gaol Delivery of an earlier date and before the date of the charter. Thus, at the time of the pardon, no escape [fine] was due to the king, but only a debt. Thus, notwithstanding that the escape [fine] was pardoned, which was not due at that time, the debt remained due as before, for, if a man be attainted for a contempt to the king, and, afterwards, he dies, this contempt is pardoned and extinguished. But, if the fine for this contempt be taxed and assessed and he die, the action for this fine remains upon his heirs and executors because, afterward, it had taken on the nature of a debt. *Quaere etc.*

Anonymous
(Ex. 1420)

Neither a 'church' nor the parishioners of a church can hold property, but an abbot or a rector of a church can, being definite legal persons.

A [writ of] *feri facias* issued from the Exchequer for the king against a parson for tithes due to the king from an abbot, from which church of the parson, he was charged 20 marks. And for 2 marks of the tithes, a [writ of] *feri facias* issued to the sheriff upon these words, *feri facias de bonis et cattalis provenientibus de spiritualibus et temporalibus rectoriae de D.*

The sheriff, by his bailiff, took two books in the church, and has sold them for the debt of the king. And this matter is pleaded in a writ of trespass brought against the bailiff by the wardens of the church. And upon this, Rolf and Juyn have demurred in judgment whether this distress was tortious or not.

Rolf: It seems to me that the bailiff committed a tort because he did not have a good warrant, but [only] to make a levy of the issues of the spirituality and temporality of this parsonage, and the books are the goods of the parishioners, and not issuing from the spirituality nor from the temporality, as are the bells. And notwithstanding that the parishioners will not have an action for them, the wardens will have [one] in their names, and not the parson, because, if he bring a writ, it will be abated. And this way, I have seen one time before Gascoigne.¹ And this well proves that they were not issues of the parsonage. Thus, he is beyond his warrant, to another intent, because the abbot himself, to whom the church was charged, cannot have distrained [them], and, by consequence, no more the king, who claims in his right.

Juyn: In many cases, the king will be in a better condition than him in whose right he claims, because, if a *fieri facias* issues from this place [the Exchequer] for the king against a man who has nothing but a rent seek the king will distrain for this rent. And, also, in this case, as you say, that the books belonged to the parishioners and thus the distress was tortious, it is not so because, if your land be charged to me with a certain rent and it takes in the cattle of others, manuring this land, the distress is droitural. And so it is in this case. And since the church is charged, notwithstanding that the books belong to others, the distress is good.

Rolf: In your case of distress, you say truly. But this is a *fieri facias*. And, Sir, if a *fieri facias* issues against you and my cattle are manuring your land, it is not well permissible to the sheriff to sell my cattle, no more, in this case, the goods of the parishioners.

BABINGTON [C.B.Ex.]: A commonalty cannot use the action, because, if I will give all my goods to the parishioners of St. Martin's, the gift cannot vest in them. But, if I will give my goods to the Church of St. Peter of Westminster, the abbot and convent will have an action for it. Thus, it seems good that a gift can vest in a church. Thus, if the books were given to the church and vested in a church and the church is charged with an annuity, the distress for the books appears good.

Rolf: If a man give land or devise by a testament *Deo et ecclesiae beati Petri de Westmonasterio*, his gift is good, because the church is not well the house nor the walls, but it is understood the *ecclesia spiritualis, scil.*, the abbot

¹ YB Mich. 11 Hen. IV, f. 12, pl. 25 (1409).

and the convent, and, because the abbot and convent can receive a gift, the gift is good. But, if the abbot be dead, the gift is worth nothing, because the convent is not well a person capable to receive a gift. But a parochial church cannot well otherwise be intended but a house made of piers and walls and a roof, which could not take a gift nor a feoffment. And so it is like a conventual church etc.

28

Anonymous v. Mayor of Coventry
(Ex. 1420)

Where an accountant who is in the Exchequer upon his account is sued in the Court of Exchequer by a bill, the action will not be removed out of the Exchequer.

A bill in the Court of Exchequer can be amended, but an original writ cannot.

YB Hil. 8 Hen. V, f. 5, pl. 23

A woman brought a bill against the bailiffs of Coventry [present] upon their account. And she alleged by her bill that they imprisoned her tortiously and detained [her] in prison until she had made a fine for to have deliverance.

Weston, for the Mayor and the bailiffs of Coventry, demanded conusance of the plea and [for her] to show cause.

BABINGTON [C.B.Ex.]: You should not have the conusance because it is a bill against the accountants for their account, because it is a special thing out of the common and you cannot determine this matter in the manner as the matter of this bill demands, because no process will be made against him. But it will not go out of this court before it be ended and for several other causes and, for that, you should answer.

Weston: [We demand] judgment of the bill because it is to recover damages for the imprisonment and also for [her] fine. And it is not alleged by the bill by what [amount] of time [she] was imprisoned nor to whom [she] paid the fine.

Grey: The bill is good enough because the imprisonment is not the cause of our action, but only the fine. And that which we speak of the imprisonment is not to [any] other intent but to show why the fine was paid, because, if a man takes my beasts tortiously and I have them back in hand, I can bring my writ of trespass and will not allege the value in certain because the value is not the cause of my action, and, if I have not there the beasts, I will say in my writ *precii* so much, because I sue to recover damages for the value. But, here, the imprisonment is not the cause of my action. And I think that there is no need to allege the time in certain. And, as to the fine, it will be intended that it was paid to the Mayor and the bailiffs.

BABINGTON [C.B.Ex.]: In your case, if he avers the beasts, he will plead by what times he detained them, because he is to recover damages for the taking, because you complain of it as well as of the fine. But it has been the usage here in this place [the Court of Exchequer] to amend a bill, because there is a diversity between a writ and a bill, because when a writ comes as an original [writ] to a judicial court, as from the Chancery into the Common Bench, they cannot amend it, because it is not made by them. But the bill takes its birth here among us. And we can amend it, as well as make it *ab initio*.

Weston: If a [writ of] *scire facias* be returned into the Chancery or *alibi*, the garnishee come, and he demand judgment for a variance between the writ and the record, they of the Chancery cannot amend, because it is a matter of a writ. But a fault of form, they can amend. But, here, the fault was of matter, and a continuance has been made upon this bill. So, after a continuance, an amendment cannot be made, any more than they can in the [Court of] Common Place, because those of the Common Place cannot amend a count for a default of form after a continuance.

Grey: In the Common Place, it is not a mischief, because, if my writ abate, I can purchase a new writ and have the same remedy as I had before. But, if our bill abate, I must go into the Chancery. And so, without this remedy, always. And this court will not have a conusance hereafter. Therefore etc.

Notwithstanding that you cannot have a new bill, because the court is completely ended, you can have an original writ out of this place against him, because he is as a minister in this court; thus are all of the accountants of this realm. But, as a continuance makes itself, *scil.* a day *prece parcium*, the writ

was affirmed. Thus, it does not lie in your mouth to plead in abatement of the writ but only to inform the court of a thing that appears.

Weston: The record is *dies datus est prece parcium salvis partibus juribus et exceptionibus suis*. Thus, there is no affirmance of the writ. And we can plead in abatement of the writ of our given right.

BABINGTON [C.B.Ex.]: In the Common Bench, if a day be given *ad interloquendum* in a writ of trespass and, at that day, the defendant make default, a [writ of] distress will issue *ad audiendum judicium*, and, if, then, he make default, a writ will issue to the sheriff to enquire of damages. And, in a writ of debt, no distress will issue, but the plaintiff will have a judgment to recover *incontinenti* and his damages will be taxed by the court. Now, it is here of record that the defendants have made default after this continuance. What will be done here?

Weston: There is a diversity where a day is taken *prece parcium* and where a day is given *ad interloquendum*, because the one is given for the advantage of one party and the other is given at the prayer of both.

Flete: It seems to me that, notwithstanding that this bill was abated, that [she] will have a bill against the same accountant, because, if [an action] *quare impedit* be brought against a man and, after the lapse, the writ abates and he purchases another writ immediately, the writ will be maintained notwithstanding that the six months are passed before the writ was purchased. And thus here.

BABINGTON [C.B.Ex.]: I grant your case where the writ abated by an act of God, but where it abates by the default of the party, as by false Latin, he will be put to his writ of right etc.

1 Statham, Abr., *Conusance*, pl. 17, p. 349

Where an accountant in the Exchequer upon his account is sued in the [Court of] Exchequer by a bill, a man shall not have the conusance, because this is a private liberty out of the common law etc.

Query, if I have a bill against a man in the King's Bench in the custody of the Marshall, shall the conusance be granted? And this in a bill etc.

Anonymous

(Ex. 1420)

Where a plaintiff sues by a bill and is nonsuited, he can refile his action only by means of a writ.

2 Statham, Abr., *Nonnsute*, pl. 10, p. 905

Hilary term 8 Hen. V.

[It was held] by BABINGTON [C.B.Ex.] that, if a man has a bill against another in the Exchequer upon his account and is nonsuited, that he shall not have more bills, but shall be put to sue by a writ etc. And the law is the same if a bill be abated etc.

Query, if the law is the same in the King's Bench etc.

Anonymous

(Ex. 1420)

Where the king grants a debt to a monk, that monk can sue for it without joining his abbot as a party.

YB Hil. 8 Hen. V, f. 6, pl. [24]

BABINGTON, Chief Baron: In certain cases, a monk will maintain an action of debt, not naming his abbot, as, if the king grant in certain cases, *scil.*, the temporalities of an alien prior to a monk, rendering the true value or less, and to be accountable in the Exchequer. Thus, the monk will maintain in his own name a writ of debt, *quo minus debitum domini regis solvere [non] poterit*.

And DIXON, Clerk of the Pipe, said that he had in the Exchequer twenty such actions etc.

Anonymous

(Ex. 1420)

Where a creditor sues in the Court of Exchequer for a debt, the defendant cannot plead a wager of law.

YB Hil. 8 Hen. V, Fitzherbert, Abr., *Ley*, pl. 66

Where a debtor of the king brings a *quo minus* in the Exchequer, the defendant does not have his [wager of] law, albeit that he declares upon a simple contract. And [this is] for the advantage of the king.

Anonymous

(Ex. 1420)

A defendant in an action of wardship can interplead other claimants of the same wardship.

Attorneys at law cannot interplead on behalf of their clients without a warrant so to do.

YB Mich. 8 Hen. V, f. 9, pl. 11

Note that *Paston* said in the Exchequer that, in a writ of wardship of the body, if the defendant says that another has a writ pending against him for the same wardship, returnable the same day, and he [the defendant] claims nothing in the wardship, but is seised by reason of nurture and is ready to deliver [the infant heir] to whom the court will award, the attorneys for the plaintiffs in both writs will be commanded to have their masters [in court] at a certain day to interplead, because they [the attorneys] have no warrant to interplead.

And there, it was said by *Juyn* that, in that case, the infant will remain with the defendant until it be [adjudged] to whom he will be delivered, as he will of a writing in a writ of detinue. But it ought to be shown to the court at the time of the plea pleaded etc.

33

Anonymous
(Ex. 1420)

A simple commission to enquire does not by implication give the commissioners the power to execute upon their findings.

YB Mich. 8 Hen. V, f. 10, pl. 15

Note that the Chief Baron [BABINGTON] said that, if it be found for the king before commissioners that any land is seizable, the commissioners cannot seize it, nor make execution for their inquiry etc.

1 Statham, Abr., *Commission*, pl. 1, p. 402

If it be found before commissioners that land is seizable into the hand of the king, still they cannot seize it unless their commission extends to it by express words, for they have no power to execute their inquiries. And note this.

34

Anonymous
(Ex. 1420)

The quo minus jurisdiction of the Court of Exchequer cannot be used by an executor to enforce a debt due to his decedent because any recovery will not be payable to the crown.

YB Mich. 8 Hen. V, f. 10, pl. 19

A man brought a writ of debt in the Exchequer *quo minus etc.* as executor where he was a debtor to the king of his own deed.

And because, of this money that he will recover as executor, the king will not have execution, it was ruled that he take nothing etc.

1 Statham, Abr., *Dette*, pl. 50, p. 488

A man brought a writ of debt in the Exchequer '*quo minus*' etc. And he counted upon an obligation as executor etc.

And it was said that, since his writ alleged that he could not pay the king unless he was paid by the defendant and by the intendment of the law, he cannot satisfy the king with such money as he received as executor, wherefore it was adjudged that he take nothing by his writ etc.

And so see that, if a man be accounting in the Exchequer, that this is a good way to get his debt, for the defendant cannot wage his law in this action, albeit he declares upon a simple contract. And this is to the advantage of the king etc.

35

Briton v. Sheriff of Berkshire
(Ex. 1421)

An action must be brought in the county where the principal fact occurred.

YB Pas. 9 Hen. V, f. 6, pl. 18,
YB Pas. 9 Hen. V, Rogers, p. 12, pl. 20

John Briton of London sued a bill in the Exchequer against J. of T., sheriff of Berkshire. And he alleged by his bill that had recovered certain damages in a writ of debt. And he put the record of all in certain. And he had [a writ of] *elegit* to have the moiety of all his goods and chattels. And he showed that the writ of *elegit* was delivered to the same sheriff in

London in a certain place and ward etc. Afterwards, the sheriff embezzled his writ etc.

Now, the sheriff appeared and said that the attorney of the plaintiff and he were together at Aylesbury in the County of Buckingham a long time after the delivery alleged in London. The attorney of the plaintiff said to him to rebail the writ to him, and so it was. And he demanded judgment whether an action [lies].

And by his bill, he put in certain where the embezzling was, *scil.* in the County of Buckingham.

John Briton now, of his own knowledge, prayed a writ to enquire of the damages to the sheriff of London.

Cottesmore: It seems to me that he will have a writ to enquire of damages to the sheriff of London because, at London, he began the contract. And where the contract begins, it is reasonable that the damages be enquired [there], as in a case that a writ of debt be brought against me and the plaintiff pleads of the borrowing in London payable in another place, if the borrowing be not denied, as in the case it is here, they will be enquired where the borrowing itself was. Thus in our case etc.

Fraye [argued] to the same intent, because, as the delivery of the writ itself was in London, there, the contract began, and receipt of the writ was acknowledged in London. Therefore, it is reasonable that the damages be enquired of in London, because, I put it, that they are at issue upon the receipt of the writ. This will be tried in London. On account of this, it will be well reasonable that, then, the damages will be enquired of there because it is also a good reason where he acknowledged the embezzlements. Therefore etc.

Westbury: It seems to me to the contrary, because the receipt is not well the principal cause of his action, but the embezzling of the writ. And, in many cases of damages, it will be enquired of where the contract is not well alleged, as in the case where I bring a writ of trespass against you in the County of M. and you plead a release in bar, which is denied that it bore a date in another county; now, the damages will be enquired in the county where the release bore date. And yet the contract is not well alleged there. Thus it is the same in this case etc.

Rolf [argued] to the same intent that the damages will be enquired of where the wrong is alleged and in the county where the embezzling is alleged,

because if a man assesses¹ a fine in my name here at Westminster without my consent, I will have my writ of deceit at Westminster, notwithstanding that the land is in another county, because the deceit and wrong began there. And also, in the other case, if a man be received as my attorney before any justice in the County of B. and he loses my land in his default here at Westminster I will have any writ of deceit here at Westminster and not in the County of B., because there was the wrong begun. And this has been adjudged here recently before my lord Hankford in the King's Bench, because in every case where a man is to bring a writ of deceit, he must bring the writ where the deceit is alleged. Thus, it is in this case.

To which BABINGTON, then Chief Baron, agreed, and he made the same reason.

Paston: It seems to me that it will be tried in London, because those of London can better know of the receipt of this writ than those of B., because it is of record in the Common Bench that such a writ issued out of that place and the party has acknowledged the receipt; so they can better tax the damages than those of B.

BABINGTON [C.B.Ex.]: We will advise.

Et sic pendet etc.

36

Anonymous

(Ex. 1421)

Where a party is already personally under the jurisdiction of a court, he cannot afterwards appear by an attorney.

YB Mich. 9 Hen. V, Rogers, p. 17, pl. 2

[A writ of] *scire facias* issued out of the Exchequer against a Lombard, which writ rehearsed the Statute² that orders that one who receives any

¹ arrere MS. for affeer.

² Stat. 8 Hen. VI, c. 18 (SR, II, 254-255).

money for an exchange made beyond the sea must deliver the merchandize of the staple within three months next following upon pain of forfeiture of the money taken in exchange.

And the Lombard prayed to make an attorney.

And it was not allowed because the Chief Baron [BABINGTON] said that, notwithstanding that he could have appeared by an attorney, nevertheless, since his person is now in court and, if he be found guilty, he will stay in prison in execution for the king, he will go by mainprize and he will not make an attorney. And, in the same manner, it will be done in a writ of debt for the king, as he said.

37

Anonymous

(Ex. 1421)

Where a person is under the jurisdiction of the Court of Exchequer, he can be sued there as a defendant by a bill rather than a writ.

YB Mich. 9 Hen. V, Rogers, p. 18, pl. 5

A man was commanded in the Exchequer to remain in court until he had found a surety to appear at another day until the plea brought against him be ended. And another, because he was present in court, put into the court a bill upon him.

And the Chief Baron [BABINGTON] said that, if he were upon his account or condemned in the court and put into the Fleet [Prison], the bill would be sufficiently maintainable. But he is not in any of those two cases.

Strangways: He is now also, as he was in the Fleet. Because he is in prison and should we wish to sue against him in any other place, he would have a [writ of] *supersedeas* from this place. Thus, we must have filed the suit here.

Anonymous

(Ex. 1421)

An officer of the crown can be sued in the Court of Exchequer for malfeasance by writ process at any time, but not by a bill after his account has been settled.

YB Mich. 9 Hen. V, Rogers, p. 18, pl. 6

The Chief Baron [BABINGTON] said that, if a sheriff or escheator has fully accounted, nevertheless, for any misprision in his office, a man will have an action against him in the Exchequer by a writ twenty years afterwards. But not by a bill, unless he come before he be dismissed out of the court. And they make in the Exchequer writs in the second return *die lune proximo etc.*

Anonymous

(Ex. 1421)

Where an officer of the crown is within the personal jurisdiction of the Court of Exchequer, he can be examined there as to forfeited goods in his custody without a further writ of process.

YB Mich. 9 Hen. V, Rogers, p. 19, pl. 9

Westbury came into the Exchequer, and said that process issued against one J., because it was found by an inquest of office that a certain person was for felony remanded into his hand. And, because the office was not mentioned or the goods left in his hand, he did not think that the king should be answered.

The Chief Baron [BABINGTON] said that a writ issues to enquire of one where the goods remain in his hand.

Westbury: This has not been seen upon an inquest of office, but it is otherwise of an inquest taken by virtue of a writ.

The Chief Baron [BABINGTON]: Then we will examine him on this matter because he is present here.

40

Anonymous
(Ex. 1421)

A sheriff has the discretion to summons more veniremen than the writ to him specifies.

YB Mich. 9 Hen. V, Rogers, p. 19, pl. 13

In a [writ of] *octo tales* in the Exchequer, the sheriff returned eleven names. *Paston* said that he well could, if as, in a [writ of] *venire facias duodecim*, he could return twenty-four.

And the Chief Baron [BABINGTON] granted it good, and the inquest was taken.

41

Anonymous
(Ex. 1421)

A party without challenging the entire array can exercise a peremptory challenge to a juror except at the very end of the empaneling of the jury.

A person of insubstantial means can sit on a jury where the damages at issue are small.

YB Mich. 9 Hen. V, Rogers, p. 19, pl. 14

The Chief Baron [BABINGTON] said by a ruling that, notwithstanding that two or three be sworn on a panel, that a man could challenge all the others without showing cause unless he come to the end of the panel if he had not challenged the array at the beginning.

Item, he adjudged that a juror was sworn who could not spend but 10s., because the plaint was not but 20 marks. And he said that, before the Statute,¹ a man will be sworn in an assize if he could spend 10s.

42

Anonymous
(Ex. 1421)

If a denizen imports goods before paying customs duties, he will pay double duties, but not forfeit the goods, but a foreigner's goods will have his goods forfeited.

YB Mich. 9 Hen. V, Rogers, p. 20, pl. 16

One said in the Exchequer that certain customers have seized a roll of goods and certain sacks of fish² because they were put on the ground before they were customed. And he said that the owner of it is a denizen and denizens of all wares do not pay small customs, *scil.* 3d. per pound, but great customs, *scil.* subsidies, *scil.* 12d. per pound. And, in this case, he should not forfeit these wares, but, for the offense, he will double his customs [payment].

And, for this cause, it was commanded to the customers who were present by their attorneys to deliver the wares to the importer³ [upon] receiving from him the double customs, *scil.* 2s. per pound.

And *Juyn* said that, if a foreigner, in this case, he must have forfeited the merchandize because he must pay as well the small customs, *scil.* 3d. per pound, as the subsidy, *scil.* 12d. per pound, thus, for each pound, 15d.

¹ Stat. 2 Hen. V, stat. 2, c. 3 (SR, II, 188).

² dogen MS.

³ vanour MS.

Anonymous
(Ex. 1421)

A venireman cannot be challenged because he was a juror on a former jury which enquired of the same matter in issue.

YB Mich. 9 Hen. V, Rogers, p. 24, pl. 32

Before the escheator of Berkshire, it was found by an inquest of office that certain goods of one who was a debtor to the king and died came to the hands of one who died after process issued out of the Exchequer against one as terre tenant of him in whose hands etc., who came and traversed the office, and he was allowed. And, notwithstanding his father was sworn in the first inquest and now the inquest comes upon the *venire facias* and was allowed to pass, nevertheless, the Chief Baron [BABINGTON] said that the inquest will not be taken upon the *venire facias* where the king is a party and one was sworn in a second inquest who was sworn in the first inquest, because he was neither challenged by the party nor by the king, he cannot be challenged because, by this reason, it will be intended that he would serve the king the better.

And, afterwards, it [the verdict] passed against the king and against the first oath of one of them.

Anonymous
(Ex. 1421)

A sheriff who defaults in his accounting can be fined, arrested, and have his property seized.

YB Mich. 9 Hen. V, Rogers, p. 25, pl. 39

The Chief Baron [BABINGTON] said that the law of the Exchequer is that, if the sheriff make default when he is called to account, he will lose at the first time 100s., and so three days next following each day 100s. until he has lost £20. And, then will issue [a writ of] attachment to take his body and to seize his lands, goods, and chattels. And to this were all of the barons sworn. And this is contained in the Red Book in the Exchequer.¹

45

Anonymous

(Ex. 1421)

An undersheriff cannot issue writs of distress against jurors, but the court can.

YB Mich. 9 Hen. V, Rogers, p. 28, pl. 50

The Chief Baron [BABINGTON] would not allow a [writ of] distress against certain jurors by the hand of one who was an undersheriff because the return was not sealed (by the hand of the sheriff or under his seal) and, under the sheriff, there is not an officer of record. But he amerced the sheriff, and adjudged this return for null, and he awarded a new [writ of] distress.

46

Anonymous

(Ex. 1421)

Royal assarts cannot be leased because their value is uncertain.

YB Mich. 9 Hen. V, Rogers, p. 29, pl. 56

¹ Public Record Office E.164/2, H. Hall, ed., *Red Book of the Exchequer* (Rolls Ser. 1896).

The Chief Baron [BABINGTON] said that the assarts of the king, *scil.* land improved from forest or from woods will not be leased to farm because the rent of it is entirely uncertain and no rent will be leased to farm by the king except where the value is certain in name.

47

Anonymous
(Ex. 1421)

Members of Parliament who sue for their expenses must sue severally and not jointly.

YB Mich. 9 Hen. V, Rogers, p. 29, pl. 58

Two sued a bill against a sheriff [who was] upon his account because they were knights in a Parliament. And, at the end of the Parliament, they had a writ to the said sheriff to levy a sum from the county and to deliver it to them for their expenses, which sum he made a levy but did not deliver it to them.

And the Chief Baron [BABINGTON] held that the bill will abate because they should have separate bills because the duties arise from separate causes and, if one releases, it will not bar the other and neither of them can have it all.¹

48

Anonymous
(Ex. 1421)

The successor of a franchise is liable for the wrongdoings of his predecessors in regard to the franchise.

YB Mich. 9 Hen. V, Rogers, p. 29, pl. 59

¹ par somme MS.

Process issued out of the Exchequer against an abbot for that which was found by an office for the king that his predecessor *cepit et habuit certa bona domino regis spectantia* by reason of wreck of the sea.

And *Rolf* said that the successor could not be charged for the act of the predecessor unless it be that the goods taken by him came to the successor and the office alleges *cepit et habuit* and does not allege that they came to the successor, for which he prayed that the successor be discharged.

BABINGTON [C.B.Ex.]: If the predecessor take any goods that belong to the king and it is found by inquest of office that the predecessor took them claiming by reason of some franchise, the successor will be charged, similarly to rent taken by the predecessor claiming in the right of his church.

Rolf: You say well, but, it is not so here.

BABINGTON [C.B.Ex.]: Then, we will command that it be more fully enquired of.

49

Anonymous

(Ex. 1422)

Where the king has a joint right to hold the lands of the co-parceners of a tenant in capite, he will be put into possession of the entirety.

YB Mich. 9 Hen. V, Rogers, p. 46, pl. 5

BABINGTON [C.B.Ex.] said that, if a man die who holds of the king and several others and has several daughters and heirs of full age, who are delivered into the Chancery and are co-parceners, the course of Chancery is thus, that that parcel that is held by the king will be the whole part, and will not be allotted to any of them solely, notwithstanding that it was only one acre.

Darcy v. Abbot of Rowham
(Ex. 1424)

*A third party cannot move to quash an execution based on a default judgment.
An action of trespass lies against a sheriff for a wrongful execution.*

YB Hil. 2 Hen. VI, f. 5, pl. 1

William Darcy sued a *scire facias* in the Exchequer against the abbot of Rowham in the County of Surrey for a recognizance made by the said abbot in the Exchequer to this same action in £100 by the name of John, abbot of Rowham. And the sheriff returned the writ served. Upon this, the said John, abbot etc., was garnished.

For this, *Paston*, for the plaintiff, prayed that the said abbot be called. And so he was.

And *Rolf*, appeared. Sir, you have here one Robert, whom you say that he is the abbot of the same place. And he says that, where the sheriff has returned this John to be garnished, we say that this John, a long time before this writ was purchased, was deposed and this same Robert was elected abbot of the same place and so he was the same this Robert, abbot of Rowham, before the writ was brought, this time and all times since, and this John is his co-monk. And he demanded judgment of the writ.

Paston: Sir, you see well that we have brought our writ against John, abbot of Rowham, and the sheriff has returned that this same John is the abbot against whom our writ was brought. And he was garnished according to our writ. And, even though this same Robert appears now as a stranger to our writ and he has not any day in court by the return of the sheriff, thus, as to him, no law puts us to the answer. And, inasmuch as this John was garnished and called and he did not appear, we pray, for his default, execution.

JUYN, Chief Baron: It seems to me that the plaintiff will have execution for the default of John etc. and that Robert will not be well allowed to plead, inasmuch as it has been well said that he is a stranger to the writ and he had no day [given to appear] by the return of the sheriff. In this case, it will be against our law to allow him to plead unless he have a day by the return etc.

or [. . .].¹ And I say that, notwithstanding that he be not allowed to plead, yet he is at no harm, because, if Robert was the abbot at the time of the writ purchased and John who was garnished and the plaintiff for the default of John adjudged of record and he sues an execution of the goods of Abbot Robert, I say that the said abbot will have a good writ of trespass against the plaintiff, and, there, it will come in debate who was the abbot at the time of the writ [that was] brought. And I have consulted with the justices of the one bench and of the other, and their opinion is in the same manner. Therefore, plaintiff, sue out your execution. *Quod nota.*

51

Anonymous
(Ex. 1429)

In this case, a bond for the appearance of a defendant in court was enforced even though it was alleged that the defendant did appear.

YB Pas. 7 Hen. VI, f. 26, pl. 17

A man was bound to the king in a recognizance in the Chancery. And the conditions were thus, that, if the conusor had such a one before the Chancellor in the Chancery at such a day, that the recognizance will be held for nothing, and, if not, that it will stand in its force.

And now, came the conusor into the Exchequer by the force of [a writ of] *fieri facias* sued against him for the king.

Fulthorpe: We say that, at the day comprised within the recognizance, we had this same J. in the Chancery according to the tenor of the conditions, which matters we will aver, and so the conditions are performed, and it is not well said that our lord the king would sue execution.

Babthorpe, Attorney General: Seeing that, in the Chancery, there is no matter of record of his presence in proving etc., and as to the averment tendered for him, no rule puts us to answer, on account of this, we pray execution.

¹ pur roll' MS.

Fulthorpe: It seems to me that you should not have execution, because, as no suit was pending against him to which he should appear, he will not have any day in court, nor was there anything demandable and he would have nothing to do there but to be there. And you do not see ever such a record as J. at Stile was here on such a day. Therefore, it seems to me that the averment is acceptable.

Cottesmore: It seems to me the contrary, because I put it, that issues were returned upon a man and he appeared at the day (and [so] it is in the Common Place), if he answers nothing, he will lose his issues and yet he was there at the day etc., but his appearance is not by an entry of record. So it is in this case.

Babthorpe, to the same intent, [said] by as high a thing must one be disseised as he is bound. But the defendant to be in the Chancery, it is a thing of record that cannot be avoided by an averment. Therefore etc.

And the opinion of JUYN [C.B.Ex.] and FRAY [B.Ex.] was clearly that the defendant will be charged etc.

52

Lord of Cromwell v. Anonymous
(Ex. 1430)

The question in this case was whether the defendant had pleaded a sufficient justification or not.

YB Hil. 8 Hen. VI, f. 34, pl. 38

The lord of Cromwell sued a [writ of] attachment out of the Exchequer against a man including such matter, that, where the king has committed by his patent certain land in the vill of A. to him to farm, rendering a certain rent *per annum*, the defendant has entered into this same land and has wasted it so that he could not pay the farm of the king, to his wrong and to his damage for it.

And now, the defendant appears and says that a stranger [to the action] was seised of certain land in the vill of B., and he leased this same land to

[him], the defendant, to hold at his will, by force of which lease, he entered and occupied this land, as well as he pleased. And as to any trespass done in the vill of A., [he pleads] not guilty etc.

Fulthorpe: It seems to me that this is not a [good] plea, because this plea amounts to nothing other but [a plea of] not guilty in the vill of A., which is not an issue, but he must take an issue, to say not guilty generally, because, Sir, this issue is a negative pregnant, which includes divers things within it, one is that he is guilty but not guilty in the vill of A. And, Sir, I know well that the place in the writ of trespass is not traversed without a material cause, and this cause gives the plaintiff color of action in this place in which he justifies. And then it will be a good plea, as in a case that I bring a writ of trespass for my grass trampled in Iseldon and you say that you are seised of a house in Pancras, in which vill, I, who am the plaintiff, have twenty acres of pasture in which you have a common appendant to your house and you should use it as you wish and, as to any trespass in Iseldon, not guilty. This is a good order of pleading, because you give to me a color of action in this place in which you have justified. But so you have not done it in this case.

Goderede: If I demand land against a man and he pleads a receipt against me of certain land by him received, this is not a [good] plea unless he will plead the receipt of the same land that I demand against him. The same rule is where one justifies in a writ of trespass, he must make a justification of the same thing that is taken, and not of another. And, if he does not do so, his plea refers it to my action. So, in this case, he has justified the trespass in another place, and he has not well said that it is of the same thing. Thus, his plea refers nothing to us. And I have never seen that the place in a writ of trespass will be put in issue in the same county, because I put it that, in a writ of trespass for a battery in J., the defendant says that the plaintiff made the assault on him at Dale the same day that he has pleaded and the damages that he had was for his own assault, and he demands judgement *si actio* and does not well say *absque hoc* that he beat him at J., because the people of the county could have notice of all this that is done within the same county.

Radford, barrister, to that which Master Fulthorpe has said that our justification was not a [good] plea because we have not given any color to the plea to have an action in this place where we have justified, it seems to me that he need not, because there are many cases where it will be a good justification and give to the plaintiff no color of the action. I put it that had

the defendant said in this plea that he had been seised of certain land in the vill of B. in his demesne as of fee and he entered into it and occupied it and, as to any trespass in A., not guilty, this is a good justification, and yet it does not acknowledge any color to the plaintiff's action in this place. And, if the plaintiff has mistaken in his writ the vill, if I plead generally not guilty and the inquest will say that I was guilty of a trespass done in another vill, yet the plaintiff recovers, because it was not their issue, [*i.e.*] in what place the trespass was done, but the issue was if he was guilty or not, and this was found. Thus, as the law is such that the action will be brought in that vill, where the trespass was done, if the party plaintiff would not have a traverse to it, it would be a great mischief.

And, to that which Master Goderede has said, that the place is not by the traverse within the same county, as in the case of a battery, as he has put, I grant that this is [good] law, because the battery cannot be continued from the place in which the plaintiff alleged the battery to be done to the place in which the defendant has justified, because all of it is only one trespass. But the trampling of the grass in one vill cannot be the trampling of the grass in another vill. And, in this case, the battery will be the issue. But in a writ of trespass for battery or for *bonis asportatis* within a county, the place will not be an issue. It is otherwise for grass cut and for other trespasses that are done upon the soil etc.

53

Attorney General v. Rector of Edington
(Ex. 1441-1442)

A royal grant of exemption from future taxes is valid and enforceable.

YB Pas. 19 Hen. VI, f. 62, pl. 1

The King Henry IV granted by his letters patent to the rector of Edington and his brothers and to their successors forever, from which time that any tax or tallage by the commonalty or tenth by his clergy of his kingdom are granted to him, that the rector and his successors, their goods, chattels, lands, tenements,

and possessions be discharged of them completely. And, further, he granted to him license to appropriate and hold in [their] own use two parochial churches (and he named their names). After which, he entered into the same churches. And then, in the time of the king who now is, a tenth was granted to the king by his clergy. And the collectors, upon their payment, prayed to be discharged of a sum to be levied of the same rector, which he could not levy because of the grant of the Parliament to the aforesaid made etc.

Therefore, now, the same rector came, and put in into the Exchequer a plea containing all this matter, and prayed to be dismissed from the court.

Upon this, the King's Attorney [General, Vampage] demurred, as it appears there of record.

Fortescue, for the king: It seems to me that he will not be dismissed for two causes: one is because the grant made is not valid by the manner; the other is that, even if the grant was effectual, still the rector has disabled himself to have availed of this grant.

And I will prove that the grant is not valid, because I understand the law [to be] that one will not grant anything unless [it be] such a thing that is in him at the time of the grant, as in the case we put that I will grant to you by a deed that, if you make to me any obligation of any sum, it will be void; now, if you make to me such an obligation afterwards, now the first grant is void, because the grant was of a thing that was not in me at the time of the grant, because everyone has the power to bind himself to what thing that he will. And the same law is if I lease to you a manor for a term of years and, afterwards, I grant the reversion by a fine to another, who brings a *quid juris clamat* against you to attorn, and you claim the freehold by force of the grant and the matter be found, now you have lost your term, because the aforesaid grant was void. Thus here, the king did not have any cause to have a tenth or a fifteenth except by a grant of his people; then, when he granted that one of his people will be discharged of it where he himself had nothing in the same except after such grant, such grant is void.

And, as for the other point, although such grant be good, yet as the rector himself was one of the clergy and granted to the king afterwards to have such tenth to be levied *modo solito*, he has estopped himself to have availed of the first grant.

Yelverton: Where it is said that the king cannot grant except a thing that is in him at the time of the grant, I say yes, because we put it that the king

may grant to his tenant that, when he dies, his heir could enter without suing livery; this is effectual. And yet this thing was not in him at the time of the grant. Thus [it is] in our case.

Markham [argued] to the same intent. There is a diversity between the nature of a release or a confirmation and a grant, because a release or a confirmation are not valid unless the one who releases or confirms had a right in him at the time of the making of them. But a grant will be good even though the grantor did not have any right in the thing granted *in esse* at the time of the grant, as, if I lease to you land for a term of life, now, if I grant to you that you will not be ever punished in waste or the lord grants to his tenant that he will not be punished by a *cessavit*, these are good grants. Thus, in our case, even though the king did not have the right *in esse* to have the fifteenth at the time of this grant, yet because it is a thing that lies in grant, it is valid enough. Therefore etc.

And, as to that which is said that he will be estopped because he himself had granted as one of the clergy to give to the king a fifteenth after the grant of the king, it seems to me not, because the king will be estopped by the grant made to him to demand this part of the fifteenth as well as he will be estopped against the king by his grant in the last Parliament to demand to be discharged. And thus, I understand where each is estopped against the other, nothing would have availed by such estoppel, as we put it that, [if] I plead a joint tenancy in [an action of] formedon brought against me by you and you rejoin that I was the sole tenant and then you enter pending the writ and I reenter and you bring an assize and I take on the sole tenancy, I will not be estopped to do this, because each of us is estopped against the other. Thus here.

Vampage [said] to *Markham* I see well that your case of waste and of *cessavit* is good law, and yet it does not prove our case, because, in those cases, you are inherited in law to punish such waste and such cesser as well as you are inherited in your land. And also, in the other case of the tenant of the king, that he will not sue livery *ut supra*, but the king is not the heir of the fifteenth, nor had he any cause to have it before his people had granted it to him. And this is the cause that the grant is good in your case, but, in our case, not.

FRAY [C.B.Ex.]: You have well moved to two points, *scil.* whether the grant will be void or not and whether the rector will be estopped or not. But speak to the third point also, whether the grant takes effect so that the lands

and benefices will be discharged of the tenth that he will appropriate after the grant.

Haydok: Sir, as to that, it seems to me that the grant will be good enough, because the king has granted that he will be discharged to pay the tax by cause of his lay chattels. And, of this, the grant will be effectual, having regard to the possessions or benefices that he has afterwards as well as of the chattels, which etc.

Quod nulla est ratio.

AYSCOUGH [J.C.P.]: It seems the grant made to the rector is void, because it is impertinent and inconvenient in law to grant to one that he will not charge himself and this fifteenth is a grant by himself after the grant of the king made to him. *Ergo etc.* And, if the king had granted that he will not be punished for any felony nor trespass to be done by him in the future, this grant is void, because it is against common right and justice and it cannot stand with [good] law, that it will be inconvenient in law to be allowed, because rather a mischief will be allowed than an inconvenience. And, if the king himself had granted that he will not accept nor receive ever any gift himself, this grant is void; as if I grant to you that, if you enfeoff me of a manor, I will not ever take an estate or advantage by this feoffment and, then, you enfeoff me, this feoffment is good and effectual notwithstanding the grant made before. It is the same manner here.

HUNT [B.Ex.]: Sir, where it is said that the king cannot grant a thing that he does not have, Sir, I say that such a thing lies more properly in the grant of the king, because the king could grant a thing that he could not ever have, because he could grant to me a fair in my vill and the tolls of it or a warren within my demesne lands, and this fair, toll, [or] warren, the king never had, not having existed, this grant is in force.

FRAY [C.B.Ex.]: Sir, it seems to me that the grant is good. And it is a thing in the king at the time of the grant, because the Parliament is the king's court and the highest court that he has. And, there, the law is the highest inheritance that the king has, because, by the law, he himself and all his subjects are ruled. And, if his law did not exist, [there would be] no king¹ nor would there be any inheritance. Thus, by his law, he is to have all

¹ *Bracton on the Laws and Customs of England* (S. E. Thorne, trans., 1968), vol. 2, p. 33 (*lex facit regem*).

ameracements and revenues of his courts, as in the King's Bench, the Common Place, etc. And, by his authority and his writ, the parties are to be called into his court to answer. Thus are the lords called by his writ to come to his Parliament and others as knights and burgesses etc. to be elected by his writ. And attainders and forfeitures that are adjudged in the same Parliament are the revenues of this court, and also are the fifteenths by this grant of revenues, as it will be of another person to whom the king has granted the fines and ameracements of his tenants made in other courts that are revenues of this court. *Quod nulla est ratio*, as it is an inheritance also as strong in the law to have the one court as the other. But yet it seems to me that the rector will not be dismissed by the plea, because, upon this grant, he is to have an action of covenant if it was against another person than the king. Therefore, here, he will have a writ directed to the barons of the Exchequer to discharge him, and not by this way.

Fortescue: It seems to me that the grant is not valid, because, if the king grant a thing that is not prejudicial to another person, except only to the king himself and the king is apprised of this prejudice at the time of the grant, it is good. But, if it be a prejudice to another person, then, the grant is not valid, as, if the king grant to me that, if I kill a man, I will not ever be accused of it, this grant is not valid, because it is a prejudice to another, *scil.* the one who sued an appeal for his death and also him who is dead. Thus, in our case, if the rector will be discharged of his part of this grant, it will be prejudicial to others of the same vill because the entire [sum] will be levied of them.

Quod tota curia negavit unless they will be discharged of this part.

PASTON [J.C.P.]: If anyone be a suicide, the ordinary will not interfere with his chattels unless he die intestate, because the king will have them by his law, *quia quod non capit Christus capit fiscus*. Also, if one charge his land in mortmain, because a rent charge is not held of anyone who could enter, by the Statute,¹ the king will have this charge so made in mortmain. Where, if he has granted this thing before, this grant is effectual when such thing escheats. *Ergo, sic hic*. And yet it was not in the king at the time of the grant.

NEWTON [C.J.C.P.] *gratia argumenti*: It seems to me that he will be estopped, as has been well said, by the grant afterwards by his deed as one of the Parliament, because the king could disinherit a man and put him to

¹ Stat. 7 Edw. I (SR, I, 51); Stat. 18 Edw. I, c. 3 (SR, I, 106).

death, which is against the law if the Parliament not do it. Therefore, then will it not estop the king, by his Parliament, the rector to have a benefit of this grant by another Parliament which wills that everyone will be charged with the tenth or fifteenth to which he himself is a party in law? (*Quasi diceret non est ratio.*) And by the same reason, he could grant to anyone that he will be discharged. And, thus, no fifteenth will be granted, which is against the law that the king would not have a subsidy of his lieges in his necessity etc.

HODY [C.J.K.B.], to the contrary: Sir, even if the king, by his Parliament, could disinherit a man or that a Parliament could defeat an estate made in another Parliament, yet this does not prove this case, because, in the first case, the Parliament made special mention that such thing will be annulled; in our case not. And also, notwithstanding that they granted that a fifteenth will be granted, yet one of his people will be discharged and, also, it will be inconvenient that he will be estopped when it could not aid him, because if he will say in Parliament that he would not agree to such grant, this will be of no value, because the grant is effectual enough if the greater part agrees to it. But, if the grant makes itself [apply] to all of the people, this was against the law and contrary in itself, because it is contrary that a fifteenth will be granted and yet no levy will be made of it.

At another day, *Fortescue*: If I grant to you that, if you make to me an obligation, it will be void. This grant is valid enough, because it is not contrary that the obligation will be for part void *simul et semel*. But, in our case, the grant of the king wills that, as to the rector of Edington, the grant made by all of the Parliament with his clergy will be void, which is inconvenient that it will be effectual as to the grant of his Parliament and also void by his own grant.

FULTHORP [J.C.P.]: Sir, it seems to me, even if the king's grant be good, yet the rector will not be dismissed by this way, because we put it that [if] I lease certain lands for a term of life and, afterwards, I grant that you will not be impeached of waste by any act, now, if I bring a writ of waste, you would not have my grant by way of a plea, but you will be aided against me by a writ of covenant. Thus here, the rector will be aided by way of a petition to the king, and not by way of a plea.

Fortescue [said] to Fulthorp: Truly, Sir, such a grant in a writ of waste is a common plea by way of bar among us.

PASTON [J.C.P.]: If I lease land to you *absque impetitione vasti* or lease to you and, then, confirm *absque impetitione vasti* or, after the lease, I grant

that you will not be impeached of waste, in all those cases, it is a good bar to plead this grant or confirmation. And, if the king grant that, if it happen that any title be devolved to him afterwards in land of which I was seised, he will not impeach me of it and, afterwards, a title is devolved to him, now, if it will be the law that he recover and, then, I will be put to my petition in lieu of [an action of] covenant, then this impertinence will ensue, *scil.* that the king will recover my land and, then, by a petition, he will make to me so much in value, which is impertinent, as in another case, if you have warranted against me for any land and a stranger impleads you, you could deraign this covenant against me. And the cause is because it is impertinent that you will recover against me and then I recover against you. Thus here, it is impertinent when the king demands this tenth or fifteenth by his collectors that this will be levied against his grant and, then, afterwards, the other, by a petition, will recover it from the king etc.

HODY [C.J.K.B.]: Where it is said that the king could not grant a thing except that which is in him at the time of the grant, yes, Sir, because we put it that, [if] the king, now, this day, grant to me by his letters patent that, [at] what time I levy a fine of my manor, that I will not make a fine to him and, afterwards, I levy a fine of it, I will be discharged of the king's fine by the grant, which proves etc. And this fine now due to the king is a profit of his court of which he is inherited by the right of his court as he is of other issues. And it is by my livery. Thus here, even though the fifteenth was not in him at the time of the grant, yet the grant is well valid. And also is a profit of his court of Parliament. Even though it be not due to him unless by the grant of his people with the assent of the lords assembled in one place deputed to it, which makes the Parliament, and so, to my understanding, the king could grant the profits of his court of Parliament as he could of his other courts before the thing granted be in him, because the right of this court is an inheritance to him. And, also, if one make a recognizance in the Chancery of the king, this is a profit of his court, and the king could grant it to a stranger before the recognizance be made, *scil.* if any such be made. And, also, he could grant that one who will make such recognizance will not be impeached of it, and the grant is good enough.

FRAY [C.B.Ex.] [said] to Fortescue: In your case of an obligation where the party had a grant before the making that, if any such be made to him, it will be void, I see well that such grant will be void for the cause that you have

moved well. But we put it that, [if] I grant to A. that, if it happen that the said A. and several others are bound to me, there, the said obligation will be void against the said A., this grant is effectual, because the obligation has its force against the others. Thus here, all of the community is bound to pay this fifteenth, thus, even if the king, before the grant of the fifteenth, wills that this grant will be void *in toto*.

NEWTON [C.J.C.P.]: Sir, *gratia argumenti*, this fifteenth granted to the king by his people could not be said [to be] perquisitions nor profits of his court of Parliament, because issues or perquisitions of his courts are things accrued to him by cause of a forfeiture made by his law, as of issues lost by my disobedience to the command of the king to appear in court, by cause to have a license to do another thing, as to fine for a fine levied, but this fifteenth is a grant *de voluntate populi sui spontanea*, which proves that it is not a right in him before the grant by inheritance that he has in his courts, as issues and other profits are. Nor [is it] the case that has been put of a recognizance; it is not a profit or a perquisition of his court. But it is a penal sum lost to the king himself by cause of his person, because the recognizance was to the king himself, because such recognizance could be made to me or to another person as well as to the king in the same court. And also, to the other intent, that the grant will be void etc., *scil.* before the Statute that wills that land not be sold in mortmain but by the [terms of] the Statute they were restrained and yet the Statute does not speak of the tenths, and thus, by this Statute, they remain bound unless, by another statute, it was afterwards provided for them that they could well use their ancient custom. Thus here, even if the king had made such a grant as before to a person, still, the grant of the fifteenth made afterwards by the Parliament will bind everyone generally, even if no special mention be made to bind him who the king has made his grant. And thus he remains bound until it be provided to him by another Parliament.

HODY [C.J.K.B.]: Sir, there is a great diversity between your case and this case, because, in your case, the nature of the tenancy was changed by the Parliament where its nature beforehand was to be devisable; now, by the Statute, it was changed, *scil.* that it will not be devised. And, in such a case, I see well that the tenant will not return to his former course afterwards unless by the provision of another statute made afterwards. But, in our case, it is not another thing except the king has granted that a levy will not be made of the goods of the said rector for a tax or tenth granted or to be granted. Therefore, no nature is changed. Therefore, by the grant made by the king himself by his

letters patent to restrain the Statute as to him to whom the king has made it. And also, Sir, the Parliament is the highest court that the king has, and it is an inheritance in this court to have such a fifteenth as it is in another court to have his issues, because the same law that wills that the king will defend his people, the same law wills that the people will grant to him [some] of their goods in aid of this defense, which proves the inheritance. And, where it is said that such a grant takes its effect from his people, I say not. But it must after such a grant had by his people as the lords of the kingdom approve it and also as the king accepts. Therefore.

And, afterwards, the Chief Baron [FRAY] prayed that all of the justices and serjeants will be well advised upon this judgment so that he could by their advice give judgment according to law, because many abbots of the kingdom are in a similar case.

Et adjornatur ad alium diem.

Markham: Sir, where it is said that the general grant was made by the Parliament of a fifteenth to the king in which all of the clergy of the kingdom was a party and thus, *per consequens*, the rector was a party to his grant, this will exclude the special grant by which the rector was discharged, I say not, because, even if a grant of a fifteenth to the king be made in Parliament, yet everyone will not be bound by it. And also, we put it that, [if] one of the commonalty of London be disseised by a stranger of his freehold and, afterwards, the Mayor and the commonalty release to the disseisor, this release made by all of the commonalty will not bar him of his special inheritance, because he does not claim this inheritance as one of the commonalty, but as a private person. And this proves it, because, if the commonalty was disseised, then every person by himself releases to the disseisor; this is not valid, but they must release by their common seal. And, thus, it is, if a certain rec[eipt] be taxed against the commonalty, the goods of no private person will be put in execution, but the goods of the commonalty. Thus here, although the rector was a party to this general grant of the fifteenth, yet it is a special grant that was made to him; he is not ousted by it unless done by special words, *scil.* 'notwithstanding any special grant granted beforehand' etc.

Fortescue, who this¹ term was elected Chief Justice [K.B.] [held] to the same intent, because the Statute of Westminster II, *De Donis Conditionalibus*,²

¹ igo MS.

² Stat. 13 Edw. I, Westminster II, c. 1 (SR, I, 71).

which gives an [action of] formedon to recover land in tail, in which there is nothing etc., yet this does not bind those of London, but, there, in such case, they will have a writ of right and have process. And the cause is because such a general thing will not exclude any special of which express mention be made, but such a general statute will bind everyone who is [bound] at the common law. But it could not defeat any special privilege in which it will be used as it was beforehand.

Vampage: The cause that everyone is excepted from such a general grant is because the grant itself is made by such words, ‘*modo solito levandum*’, and there has not had a usage to be levied there.

FORTESCUE [C.J.K.B.]: No, Sir. This is not the cause, but the cause is because everyone is privileged and exempt from such a general grant and he will not be bound except specially. And this is well proved by the case that I have put, because, in the Statute of Westminster, there is not any word similar to these words ‘*modo solito*’. And yet it will not bind those of London.

Et adjornatur.

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Attorney General v. Prior of Leeds (Ex. 1441)

The question in this case was whether the king can exempt a member of the clergy from collecting a temporal tax to the crown that the archbishop ordered him to collect.

51 Selden Soc. 84,
YB Mich. 20 Hen. VI, f. 12, pl. 25

The bishop of Canterbury, the clergy of his province having been summoned, granted a tenth to the king, and certified the king of this grant in his Chancery. Whereupon, the king wrote to the same bishop to levy the said tenth. The bishop wrote letters to the prior of Leeds to collect this same grant and to pay it to the said king in his Exchequer at the octave of Saint Martin [19 November] next following etc. At which octave, the prior was summoned

to make payment of the proceeds. He appeared, and put forward the king's letters patent, by which the king recites the debility and physical infirmity of the said prior and also [grants], in order that he may more peaceably attend to divine service, that he shall be discharged from all collections and from the collections of tenths and fifteenths etc. during his lifetime. And he prayed that it (the patent) should be allowed.

And, because the barons were in doubt whether it should be allowed or not, it was adjourned into the Exchequer Chamber before the Chancellor and all the justices etc.

And now *Portington*, one of the king's serjeants, says, Sir, it seems to me that the patent shall not be allowed, for, since Convocation was composed of all the clergy, the prior was one of them, and this grant was to be levied as appears by the bishop's certificate, provided that no parson to whom a privilege has been granted shall be excused from being a collector of the same. Which grant and also the levying of the same are spiritual matters and the king's patent, which is contrary to this and is a temporal matter, shall not be prejudicial to this grant. And also, although the king's patent might be effectual in this case, yet inasmuch as the prior was one of those who made the grant and he made no protest at the time of the grant of the privilege granted to him, he has renounced his grant. Therefore etc.

FRAY [C.B.Ex.]: When you say that the levying of this grant was spiritual, I say no, for, although the treating about the grant among the clerks may be a spiritual matter, yet, when the tenth is granted, it is a thing temporal in the king. And this is proved clearly, for, in former times, the king commanded the sheriff to levy this, but, because this tenth is concerned with temporalities annexed to spiritualities and the sheriff in former times wrote of this to the Chancery that it was a spiritual matter and that the parson has no lay chattel etc., the king, thereupon, commanded the ordinary by a writ to make a levy because he did not wish to usurp the function of Holy Church through his lay ministers, in which case, there was a delay in the payment of this money to the king, which delay is a ground in law why the king, at the present time, shall write to the ordinary to raise the whole levy so as to avoid this delay. And, thus, the levy is a temporal matter. Therefore, then, shall not the king grant by his letters patent to the prior that he shall be discharged from this temporal act (as though to say there is no reason etc.) and, as to what is said that he has renounced his privilege because he made no protest etc., no,

for, even though he had said that he would not agree to this, it would have been to no purpose, because such a grant is effective if the greater part of Convocation has granted it. Therefore etc.

AYSCOUGH [J.C.P.]: It seems to me that, when this grant was granted by Convocation with a proviso etc., as is now shown by the bishop's certificate, he ought to have shown his patent there and prayed in Convocation that it might be allowed. He did not do this. Therefore, it seems that he shall now be estopped from availing himself of this etc., for, if the grant in Convocation had been general, then, to my mind, there would have been no question but that the prior ought now to have the advantage by his patent.

HODY [C.J.K.B.]: If a juror has the king's writ to discharge him from serving on any jury, if the sheriff empanels him contrary to the effect of this writ, shall he then compel the sheriff to take him off the panel by showing him this writ, I say no, for the sheriff has no power either to allow or to disallow this, because he is not a judge of this act. But, when he comes into court before the judge who has the power to swear him in, then, he shall pray an allowance by his writ, for the judge can determine that [point]. So it is in our case. Even though the prior had prayed an allowance by his letters patent in Convocation, it would be to no purpose, because they had a power only over things purely spiritual. But now, when he is summoned to the Exchequer etc., there is time enough then to pray an allowance. And, Sir, it seems to me that the king's letters shall be allowed, for, when the bishop has certified the grant of his clergy, then, the king shall order the bishop to levy it. And this command is purely temporal. And the ordinary, by virtue of this command, ordered one of his subjects to make the levy, in which case, the ordinary's order must be temporal since the king's command, which gave him authority to make this order, is temporal, and the king can exempt the prior by his letters from such thing as is temporal. Therefore etc.

NEWTON [C.J.C.P.]: The ordinary in his Convocation has the power to appoint holy days and fasting days, but not to allow or disallow the king's patents. Although they have the power to make provincial customs by which they of Holy Church shall be bound, yet they cannot do anything which shall bind the temporalty etc.

HODY [C.J.K.B.]: If the sheriff makes a return on a writ in the Common Pleas that 'he is a beneficed clerk having no lay fee', the king shall command the ordinary of the said clerk to cause him to come etc. Is this act, by which

he causes his clerk to appear, a spiritual act? I say, no, but it shall be of the same nature as was the authority by which he caused him to come, and that was the king's command, which is temporal. And this is clearly proved, for, if the clerk comes into court because of the bishop and is condemned when he has no lay chattel, a writ of execution shall issue to the ordinary to bring into the said court the money from his spiritual goods etc., in which case, every means by which a temporal judgment shall be executed must be of the same nature as the judgment. So it is in our case. Therefore etc.

AYSCOUGH [J.C.P.]: Although this act of collecting the tenths may be temporal, as you say, yet, notwithstanding that the king, by his letters patent, has discharged the prior of the same act, which discharge is good in law, it seems to me, since the grant was special, *proviso ut supra*, and the said prior was one of the said Convocation and he did not wish to claim any advantage by these letters patent in the presence of Convocation, that, although they had no power to allow or disallow the letters, yet the prior himself had renounced any advantage by the same patent, in the same way as in the following case. A lay patron presents his clerk to a bishop to be admitted to some church; the presentment is a temporal matter. Suppose now, when he comes before the bishop, he shall renounce any advantage to be had by this presentment, I say that, through this renunciation, the patron can present afresh etc. So, to my mind, it is in our case. When the prior did not claim any benefit by his patent etc., it seems that he renounced it etc.

The Chancellor of England [STAFFORD]: You say truly, for, when a man is present and *tacet videtur quod ipse renunciat etc.*

Quaere because the gloss is *qui tacet consentire videtur*¹ to wit, where the discussion concerns his interests etc. But, here, the discussion did not concern the prior's interests.

PASTON [J.C.P.]: There is no presentation until the clerk be received etc.

Fortescue: I fully allow that this collection is a temporal act, and yet the prior shall not have advantage by this patent, for I understand the law to be such that a bishop ought by right to have submission from his servants in order to collect such things as are for the discharge of his own person. And it is, as it were, his inheritance. Just as a layman has an inheritance in his land to collect rent where the land is held by such service, if, in a case like that, the

¹ *Liber Extra*, 5, 12, 43.

king discharges my tenant from collecting my rent, it will be to my prejudice and to my disherison, a thing the king cannot do. So, in this case, the king can for the same reason for which he has discharged the prior discharge every other person from the bishop's service, and, then, the bishop himself would have to collect this. To deprive the bishop of the submission of his subjects is against the law, and this patent, which the prior has now shown, tends to this end. Therefore etc.

1 Statham, Abr., *Exempcion*, pl. 1, p. 683

The archbishop of Canterbury, in his provincial convocation, granted a tenth to the king in the Chancery, of which grant, he notified the king, upon which the king wrote to the said archbishop to deliver the said tithes, on which the archbishop wrote his letters patent to the prior of Leeds to have this same grant collected and to pay it to the king in the Exchequer on the octave of St. Michael etc. On which day, the prior came into the Exchequer, and showed the letters patent of the king, by which he was exempt from such a collection during his life. And the letters patent bore a date before the grant of the tithes.

Portington: It seems that they shall not be allowed, for the prior is one of the clergy who granted the tithes, and the grant is as follows: 'provided that no privileged person be discharged from the collection of these same tithes', in which case he has renounced the benefit of the letters patent.

AYSCOUGH [J.C.P.] [held] to the same effect, for he should have shown his letters to the clerks, and prayed to be discharged.

NEWTON [C.J.C.P.] [held] that cannot be, for they cannot allow it, no more than if I have a charter of exemption that I shall not be put on the jury and I show it to the sheriff, he will not allow me [not] to be impaneled, for he has no power to allow it. But, when I come before the justices, who have the power to allow it, then, I shall have the benefit from them etc. So here.

Fortescue: It seems that the king cannot grant such an exemption as in the case here, for the archbishop had power over his subjects to compel them to collect such tithes. And, for any such exemption, the archbishop himself will be forced to collect them etc., which is not reasonable, as, if a man hold of me to collect my rent, the king cannot exempt him from that, because that would be prejudicial to me; so here, etc.

And they adjourned, etc.

51 Selden Soc. 87,
Public Record Office, E.159/218, Mich. 20 Hen. VI, rot. 21

Be it remembered that, by virtue of a writ of the lord the king who now is under his great seal bearing date the eighteenth day of April in the eighteenth year of his reign, directed to the reverend father in Christ, Henry, archbishop of Canterbury, primate of All England, to cause sundry trustworthy men among the clergy of his diocese for whom he would be ready to answer to be assigned and deputed in accordance with custom to levy and collect according to the form of the aforesaid grant, to wit, in the city and diocese of Canterbury and in the immediate jurisdictions of the archbishop of Canterbury, the one tenth granted to the same lord the king by the clergy of the province of Canterbury in the cathedral church of Saint Paul, London, on Sunday the twenty-first day of the month of November in 1439, being in the said eighteenth year, on whatever goods, benefices, and ecclesiastical possessions of the said province had been taxed and were wont to pay tenths, to be paid to the same lord the king upon the following amongst other conditions, to wit, the first moiety thereof on the eve of Saint John the Baptist then next to come and the second moiety of the same tenth to be paid on the feast of Saint Martin in the winter in 1441, being in the twentieth year of the aforesaid king, provided *inter alia* that no collector to be deputed of the said moiety and moiety or of any part of the same by virtue of any immunity or royal privilege granted or to be granted in that matter ought, according as he shall happen to be deputed collector to be excused in any way from the collection of the said moiety and moiety or any part of the same, so that account shall be rendered to the lord the king concerning the same moieties in the form aforesaid etc. And the Treasurer and barons of this Exchequer are to be certified plainly and openly before the morrow of the Ascension of the Lord in the said eighteenth year of the names of those whom the said reverend father, the archbishop of Canterbury, shall depute for this purpose.

The same archbishop, by his letters patent of certification, bearing date the fourth day of the month of May in the year of our Lord 1440, which are in the custody of this Remembrancer, to wit, among the bishops' certificates of the names of the collectors of the aforesaid tenth, has certified here *inter*

alia to the same Treasurer and barons that he has assigned and deputed, according to custom, the prior and convent of the priory of Leeds, members of the religious order of Saint Augustine, of the said diocese of Canterbury, as collectors to levy and collect the said second moiety of a tenth in the city and diocese of Canterbury and in the immediate jurisdictions of the aforesaid archbishop, according to the form of the grant specified in the aforesaid writ. And he has given orders to them, the collectors, that they should be diligent and careful to answer faithfully to the said lord the king for the said second moiety of a tenth, according to the form of the grant of the same, on the feast of Saint Martin above specified, as in the same letters of certification is more fully contained.

Whereupon, the sheriff of the aforesaid county was ordered by writ under the seal of this Exchequer dated the seventh day of October in this term, not to fail etc. and to distraint the aforesaid prior by his lands etc. so etc. to render an account to the king concerning the said second moiety of a tenth on the morrow of Saint Martin in this term. On which day, the sheriff returned the writ, and sent word that the aforesaid prior was distrained, whereof the issues etc. Thus it is contained in the endorsement of the same writ which is on the file of writs for this term in Kent.

And the same prior comes on the same day by Robert Shamell, his attorney, and says that he ought not to render an account to the lord the king for the said second moiety of the aforesaid tenth nor is he bound [to do so] nor ought the lord the king thereupon to molest him, for he says that the lord the present king by his letters patent, shown here to the court, dated at Windsor Castle on the twenty-fourth day of October in the eighteenth year of his reign, of his special grace and for the honor and reverence of Mary, the most holy Mother and Virgin, and of Saint Nicholas, in whose honor the said church is dedicated, and also in order that the aforesaid prior and canons may the more peaceably and devoutly have leisure to direct their thoughts to divine praise, granted, forasmuch as in him lay, to the said prior, by the name contained in the aforesaid letters patent, that he alone should be quit and utterly discharged towards him during his lifetime from all collection, levying, gathering, and receiving of tenths, taxes, tallages, or whatsoever other quotas or subsidies or of any part or such parcel of tenths and other premises, granted to him by the clergy of the province of Canterbury or in any other way whatsoever. And if the diocesan of the place should have assigned and

deputed him the prior, on any cause arising, to collect, levy, gather, or receive tenths, taxes, tallages, quotas, or subsidies of this or of any part or parcel or any parts or parcels of them and should have sent and certified the name of the same prior to the Treasurer and his barons of his Exchequer on account of such cause or causes, yet he, the prior, shall be fully and utterly quit and discharged by the said Treasurer and barons upon the sole exhibition of these the letters patent before the king without suing thereupon any writ or warrant, from all collection, levying, gathering, and receiving of tenths, taxes, tallages, and subsidies, and also of any part or parcel whatsoever of the same, he [the king] not wishing that the same prior for the term of his said life should be vexed, disturbed, hindered, molested, or in any way annoyed (as it is set forth more fully in the same letters patent) by him or by the Treasurer and barons of his aforesaid Exchequer, the justices, escheators, sheriffs, or other of his bailiffs or servants, by reason of the non-collection, non-levying, non-gathering, or non-receiving of the same. And further the same prior says that the lord the king who now is, after the making of his aforesaid letters patent to the same present prior, sent to Henry, the present archbishop of Canterbury, his writ close containing all the premises contained in his said letters patent instructing him by the same writ henceforth not to certify in his Exchequer the aforesaid prior for the collecting of tenths, taxes, tallages, or any other quotas or subsidies whatsoever or any parts or parcels of the same. And this writ was delivered to the said present archbishop by John Grenestede, the prior's own servant, and by his order at Lambeth in the County of Surrey, before the same archbishop sent word to the Exchequer of the lord the king or certified him, the prior, for the collection of the aforesaid moiety of a tenth. And he asks judgment and that he should be discharged from the collecting, levying, gathering, and receiving of the aforesaid moiety of a tenth. And, further, the aforesaid prior exhibited to the court here over and above the aforesaid letters patent to discharge him the prior and his aforesaid convent from the aforesaid account a writ of the lord the king under his great seal directed to the Treasurer and barons of this Exchequer, which is enrolled elsewhere in these memoranda, to wit, among the writs of this term directed to the barons, rot. [*blank*]. And the tenor of the writ follows in these words:

Henry, by the grace of God, king of England and France
and lord of Ireland, to the Treasurer and his barons of the

Exchequer, greeting. Whereas our well beloved poor orators and chaplains the prior and convent, canons of the church of Leeds in the County of Kent, celebrating daily in our castle of Leeds six masses specially for our royal estate and for the much desired peace and prosperity of our kingdoms of England and France and also for the eternal repose of the souls of our ancestors, have prayed us of our innate goodness to deign to regard in piety the weakness and debility of the said prior who, as is well known, is broken by old age and burdened by divers infirmities, and we, on the twenty-fourth day of October in the eighteenth year of our reign by our letters patent of our special grace and for the honor and reverence of Mary, the most holy Mother and Virgin, and of Saint Nicholas, in whose honor the said church is dedicated, and also in order that the aforesaid prior and canons may the more peaceably and devoutly have leisure to direct their thoughts to divine praises, have granted for ourselves, so far as in us lay, to the said prior that he, as for his life, should be quit and utterly discharged towards us from all collection, levying, gathering, and receiving of tenths, taxes, tallages, or any other quotas or subsidies whatsoever or any part or such parcel of tenths and other premises granted to us by the clergy of the province of Canterbury or in any other way whatsoever. And, if the diocesan of the place, for any cause arising, should assign and depute him, the prior, to collect, levy, gather, or receive tenths, taxes, tallages, quotas, or subsidies of this kind or any part or parcel or any parts or parcels of the same and should send and certify the name of the same prior to the Treasurer and our barons of our Exchequer for any such cause or causes, yet he the prior shall be utterly quit and discharged by the said Treasurer and barons from all collection, levying, gathering, and receipt of tenths, taxes, tallages, and subsidies and also from any part or parcel whatsoever of the same, upon the mere exhibition before us of the aforesaid letters patent without suing thereupon any writ or warrant, as in the aforesaid letters patent is more fully contained. We order

you to cause the demand which you are causing to be made upon the said prior by a summons of our Exchequer for the collection of the second moiety of the one tenth recently granted to us by the clergy of the province of Canterbury in the city and diocese of Canterbury and in the immediate jurisdictions of the archbishop of Canterbury, to surcease and the prior himself to be quit thereof as to our aforesaid Exchequer, according to the tenor of our aforesaid letters patent, not molesting or vexing him in any way contrary to the tenor of the same. And any distraint of the same prior which you have caused to be made by reason of the premises, you shall cause to be remitted to him without delay. Witness myself at Westminster on the twenty-fourth day of October in the twentieth year of our reign.

And the tenor of the letters patent mentioned above in the writ follows in these words [*blank*].

And, further, the same present prior says that he has neither collected, levied, gathered, nor received the aforesaid moiety or any part or parcel thereof. One and all of which things the same present prior is ready to aver in whatever way the court etc.

Afterwards, to wit on the twenty-eighth day of November in that same term, the same prior, in order to have his discharge in the premises, brought here another writ of our lord the king under his great seal, directed to his Treasurer and the barons of this Exchequer, which is enrolled elsewhere in these memoranda, to wit, among the writs of this term directed to the barons, rot. xxxvii [d]. And the tenor of this writ follows in these words.

[*blank*] The aforesaid archbishop, however, lightly esteeming our aforesaid mandate directed to him has delayed to obey our same mandate and still delays. And you also have delayed in obeying our said mandate likewise directed to you, as it is said, and you still delay, in contempt of us and to the no small damage and grievance of him the prior, as he asserts, whereof he has besought us to provide an appropriate remedy for him in this matter. We wishing what is just to be done in this matter

and to give due effect in all things to our said letters, looking with favor upon the petition aforesaid, we herewith command you to cause the demand which you are causing to be made on the aforesaid prior by summons of the aforesaid Exchequer for the collection of the said moiety of a tenth in the city, diocese, and jurisdictions aforesaid to surcease, and the prior himself to be quit thereof as to the same Exchequer according to the tenor of our aforesaid letters patent, not molesting or annoying him in anything contrary to the tenor of the same, duly making process also against the said archbishop to assign and depute another suitable collector from his said diocese to collect, levy, gather, and receive the aforesaid moiety and, for the reason aforesaid, to send and to certify you without delay. Witness myself at Westminster the twenty-sixth day of November in the twentieth year of our reign.

And, thereupon, the aforesaid prior asks judgment and that he may be discharged in the premises in the matter of the account to be exacted from him against the said lord the king, and, furthermore, that, by virtue of the same writ, such action be taken against the aforesaid archbishop on behalf of the king as the court etc. Whereupon, the same writ having been seen by the barons and further understood by the same, it is awarded that the same archbishop be distrained by his lands etc.; so etc., on the morrow of Saint Hilary, to assign and depute another suitable collector from his said diocese to collect, levy, gather, and receive the said second moiety of a tenth and, for the cause aforesaid, to send and certify to the court here without delay. And because the court wishes to deliberate in the meantime in the premises as to the aforesaid prior before further etc., a day is given here to the same prior in the same state as now until the same morrow of Saint Hilary, to hear and to do in the premises as the court etc. On which day, the same prior comes by his said attorney.

And John Vampage, who sues for the lord the king, not admitting anything alleged above in pleading by the aforesaid prior, says on behalf of the same lord the king that, by the law of the land, he has no need to answer to the plea of him, the prior, pleaded by him in the form and manner above. Whereupon, he asks judgment for the same lord the king and that the said

prior shall account for the abovementioned second moiety of a tenth and give satisfaction thereof to the lord the king.

And the aforesaid prior says that, because he has pleaded sufficiently (and this plea the aforesaid John Vampage, who sues for the lord the king, does not deny), he asks judgment and that he shall be discharged from rendering an account to the same lord the king for the abovementioned second moiety of a tenth or from giving satisfaction thereof to the same lord the king and that, thereof, he should go quit from the court.

And, thereupon, because the court wishes to deliberate in the premises as to the aforesaid prior before further etc., a day is given here to the same prior in the same state as now until the quindene of Easter to hear their judgment in the premises. But because, while the aforesaid plea is pending undiscussed, it seems to the barons that the lord the king will suffer great delay touching the levying and payment of the said second moiety of a tenth in the diocese and jurisdictions aforesaid, unless, in the meantime, a suitable remedy thereof be provided for the same lord the king, it is awarded by the advice of the king's justices of both benches that the sheriff of the said County of Kent and the sheriffs of the counties of Surrey, Sussex, Norfolk, Suffolk, London, Middlesex, Essex, and Buckingham be ordered by writs under the seal of this Exchequer to cause the said second moiety of a tenth to be levied and collected in the aforesaid counties, to wit, in the said diocese of Canterbury and in the immediate jurisdictions of the aforesaid archbishop, to wit, in the deanery of Croydon in the diocese of Winchester, in the deaneries of South Malling and Pagham, and in the deanery of Tarring in the diocese of Chichester, in the deaneries of Sudbury, Fordham, and Bosmere in the diocese of Norwich, in the deaneries of London and Middlesex, in the deanery of the Arches, London, and [in the deanery of] Bocking in the archdeaconry of Essex in the diocese of London, in the deanery of Risborough in the archdeaconry of Buckingham in the diocese of Lincoln, and in the deanery of Shoreham in the diocese of Rochester, from the goods, benefices, and ecclesiastical possessions taxed and wont to pay a tenth in the said diocese of Canterbury and in the said jurisdictions of the said archbishop recited above, the goods, benefices, and possessions of divers poor members of religious orders being excepted from the payment of the same moiety of a tenth according to the form of the said grant of the aforesaid tenth set out more fully in a certain schedule touching such exception, annexed to the said letters certificate of the aforesaid

archbishop and that they shall have here etc. the money levied and collected etc. from the same moiety. And the said sheriffs of the aforesaid counties are ordered in the form aforesaid. So etc. to the same quindene of Easter.

And, on the aforesaid morrow of Saint Hilary, the aforesaid sheriff of the said County of Kent returned here the writ directed to him in the premises as to the aforesaid archbishop and sent word that the same archbishop was distrained, whereof the issues etc. Thus it is contained in the file of writs for this year in Kent.

And the same archbishop, on the same day, came here into court by John Holme, his attorney, but he did not certify here the names of any collectors assigned and deputed by the same archbishop to collect and levy the said second moiety of a tenth in the city, diocese, and jurisdictions aforesaid, in the place of the said prior and convent, according to the form of the said later writ directed to the same archbishop, nor does he say anything nor allege any sufficient matter why he ought not to certify in the premises.

Whereupon, John Vampage, who sues for the lord the king, comes here and asks on behalf of the same lord the king a writ to attach the aforesaid archbishop by his body etc. and to seize his temporalities into the lord the king's hand for his contempt in this matter until he shall have paid a fine etc.

Afterwards, to wit, on the twenty-fourth day of February in the said twentieth year, the aforesaid archbishop in order to have his discharge in the premises, exhibited here to the court a writ of the king under his privy seal which is enrolled elsewhere in these memoranda, to wit, among the writs directed to the barons for Hilary term, rot. [*blank*], in these words:

Henry, by the grace of God, king of England and of France and lord of Ireland, to the Treasurer and barons of our Exchequer, greeting, forasmuch as for the gathering of half a tenth to us granted by the clergy of the province of Canterbury in the Convocation held at London in the cathedral church of Saint Paul's the Saturday the xxi day of November the xviii year of our reign, the right worshipful father in God, Henry, archbishop of Canterbury, has by our commandment by virtue of our writs to him directed assigned and deputed the prior and convent of Leeds of the order of Saint Augustine for to gather, take, and receive in the diocese of Canterbury and the immediate

jurisdictions of the Church of Canterbury the second moiety of a whole tenth to us of the said clergy granted whose name as collector for the said half tenth in form accustomed, the same archbishop has by his letters under his seal certified unto you, we, therefore, having consideration unto the premises, grant by these presents that the said archbishop shall not be forced neither constrained to depute or certify any other person than the said prior and convent of Leeds to gather, take, and receive the said half tenth in the said diocese and jurisdictions, we will, therefore, and charge you that, of any process made or to be made against the said archbishop out of our said Exchequer for to depute or certify any other person or persons for the said cause than the said prior and convent, you utterly surcease and thereof hold the said archbishop fully discharged and quit against us forever in the same our Exchequer, given under our privy seal at Westminster the xxiii day of February the year of our reign xx.

Whereupon, the same writ having been viewed by the barons and more fully understood by them, it is awarded that any process whatever made or to be made against the said archbishop to depute or certify here for the cause aforesaid any other person or other persons besides the aforesaid prior and convent of Leeds shall utterly surcease and that the same archbishop be discharged thereof against the lord the king and be quit by reason of the same writ under the privy seal.

And at the aforesaid quindene of Easter, the aforesaid prior came by his said attorney. And, at the aforesaid quindene of Easter, the sheriffs of the said counties of Kent, Surrey, Sussex, London, and Middlesex returned the writs, directed to them separately in the premises, which are on the file of writs for this same twentieth year. And the same sheriffs, to wit, John Warner, sheriff of Kent, Walter Strickland, sheriff of Surrey and Sussex, William Combes and Richard Riche, sheriffs of London and Middlesex, came and rendered account separately for the said second moiety of a tenth, both in the city and the diocese of Canterbury and in the jurisdictions of the said archbishop in the dioceses of Canterbury, Rochester, and Chichester and in the archdeaconries of Surrey in the diocese of Winchester, and also in London and Middlesex in

the diocese of London. Thus, in the roll of accounts of tenths, it is contained. And Edmund Hampden, sheriff of Buckingham, and Ralph Asteley, sheriff of Essex and Hertford, come and are charged separately concerning the same second moiety of a tenth in the jurisdictions of the said archbishop in the archdeaconry of Bucks in the diocese of Lincoln, and in the archdeaconries of Essex and Colchester in the diocese of London, as is contained elsewhere in these memoranda, to wit, among the records for Easter term in the ninth and sixteenth rolls, and in the Great Roll [of the Pipe] for the twenty-first year of this king in Bedford and Bucks, Essex, and Hertford. Therefore, let not execution further be done here against the same sheriffs in the premises. And the sheriff of the said counties of Norfolk and Suffolk, to wit, William Calthorpe, returned the writ directed to him in the premises and sent word that that writ had been delivered to him at Ipswich on Monday the feast of Saint Gregory the Pope in the said twentieth year. Therefore, he could not execute that writ on account of the shortness of time. So the same sheriff is ordered as before etc. So etc. to the octave of Saint John the Baptist. And the same day is given to the aforesaid prior of Leeds.

On which day, the same prior comes by his said attorney. And the aforesaid William Calthorpe, the sheriff, did not return the writ. Therefore, he is ordered as before etc. So etc. until one month from Michaelmas. And the same day is given to the aforesaid prior of Leeds. On which day, the same prior comes by his said attorney, and the said William Calthorpe, the sheriff, returned the writ.

Therefore, it is awarded that the same William Calthorpe be distrained by his lands etc. to render account to the king concerning the said second moiety of a tenth in the immediate jurisdiction of the aforesaid archbishop in the said County of Suffolk. And, because the same William has been removed from the office of sheriff of the said counties of Norfolk and Suffolk, therefore, the sheriff of the same counties is ordered to distrain the same William in the form aforesaid. So etc. to the morrow of Saint Hilary. And the same day is given to the aforesaid prior of Leeds, on which day the same prior comes by his said attorney. And the sheriff of the said counties of Norfolk and Suffolk returned the writ and sent word that the aforesaid William was distrained whereof the issues etc. And the same William does not come on the same day. Therefore, the sheriff is ordered to distrain him, William, as before etc. So etc. to the morrow of the close of Easter. Thus it is contained in the file of writs

for the twenty-first year of this king in Norfolk [and] Suffolk. And the same day [is given] to the aforesaid prior of Leeds.

Afterwards, the same William is charged against the king for the said second moiety of a tenth touching spiritualities and temporalities which are in the jurisdiction of the said archbishop of Canterbury in the said deaneries of Sudbury, Fordham, and Bosmere in the diocese of Norwich, to wit, £8 7s. 11d. ob. q^a.

Thus, it is contained in the memoranda of the twenty-second year of the aforesaid king, to wit, among the records for Easter term, rot. 7, in a certain process touching the same William, and in the Great Roll [of the Pipe] for the twenty-first year of this king in Norfolk [and] Suffolk. By reason of which accounts and also because the king is answered concerning the said second moiety of a tenth in the said city and diocese of Canterbury and in the aforesaid jurisdictions as is more fully contained above, it is awarded by the barons that the aforesaid prior, as to the account touching the same second moiety of a tenth to be exacted from him in the same place, as is premised, go without a day.

55

Anonymous
(Ex. 1448)

A protection does not lie after a juror has been sworn.

YB Mich. 27 Hen. VI, f. 4, pl. 29

An action was brought in the Exchequer by a denizen against an alien. They were at issue. And [a writ of] *venire facias* issued to make to come twelve men, of whom the one half will be denizens and the other aliens. And so the sheriff returned; the process continued until the jurors appeared. And all were tried out except certain ones who made default who were not for sufficient [means] within the venue or hundred. And it was prayed that it was tried by the three who appeared, which of those aliens that made default were sufficient or not and if there were more sufficient [persons] within the venue or not.

Vampage [Attorney General] said that, if the party will surmise when the jurors all appear and some are challenged and tried out, so where it remains etc. that the party plaintiff can surmise that there are not more sufficient [persons] within the hundred or venue, and the cause was to oust the delay etc.

Prisot: That which you show now will never be tried, because, if it were tried, sufficient [persons] upon this process, it could be that they will be found not sufficient etc. when they appear. And if they were found not sufficient, they could be found sufficient when they appear. And now, they have made default and their issues are forfeited and they cannot be now tried out. And, if you will challenge them, because they are aliens at the default, this will not be now tried. And it cannot be to have a new [writ of] *venire facias*, because there are not more who are not of law in default within the hundred or venue. Therefore, it seems to me [a writ of] *distrain* will issue and you could pray for a *decem tales* if you wish etc.

And so it was ruled.

And, afterward, in this case aforesaid, at the day of the return of the jurors, the plaintiff was called and he appeared, and the defendant also. And the jurors appeared. And because the justices did not have time, they adjourned the jurors until the next day to appear under pain of etc., at which day, the inquest was called to be sworn.

And one of the defendants put forth a protection bearing date the first day, and the other defendant put forth a protection bearing date the second day. And they prayed that the parol would be put *sine die*. And the plaintiff prayed for the inquest.

And the opinion [of the court] was that the two protections will be allowed.

Moyle: When the parties were called and they appeared and no protection was then cast, but the jurors were called and appeared, then, afterwards the tenant or defendant is not called, then, if he will not be called, no protection will issue for him. And, if they had proceeded to the trial of any parol nor to the trial of the array, there is not then a question that the protection does not lie then.

And another manner¹ was the next day after in the [Court of] Common Place, *scil.* that the parties were called and appeared and the jurors were called

¹ *I.e.* proceeding.

and appeared. And because it had not time to take the inquest, they were adjourned until the next day and the jurors also upon pain of etc. At which day, the defendants when they would have proceeded to take the inquest put forth a protection bearing a date a long time before.

And the justices were of divers opinions. And some said that he should plead a release *puis le darrein continuance* at the second day notwithstanding that he is not callable.

Quaere bene de ista materia. Vide talem materiam Paschae 4 et 18 Hen. VI, termino Sancti Michaelis that the protection will be allowed as it was held by all the justices of the one bench and the other in the case of Lord Hungerford. *Vide bene* the years and terms *supradictos*.

2 Statham, Abr., *Protection*, pl. 29, p. 943

In the Exchequer, the parties were at issue, and on the return of the *venire facias*, the parties appeared and the jury also. And the defendant challenged the array, which was affirmed. And, then, he challenged a poll. And, for certain reasons, the barons of the Exchequer rose, and they gave a day until the next day.

And the next day, the defendant produced two protections, one bearing date the same day and the other bearing date eight days before etc. And whether either of the protections should be allowed or not, the justices assembled in the Exchequer Chamber to decide.

PORTINGTON [J.C.P.]: They shall not be allowed, for he has passed that step, since he challenged the jury, so he has done an act etc. And, also, he is not callable, for this day and the other day on which he appeared are all one and the same day in law.

ASHTON [J.C.P.] [held] to the same effect, for it is different where a man has pleaded to the issue and where he has not pleaded, for, when he has not pleaded any plea, he shall be called any day until he has pleaded a plea, in which case, he can cast a protection, which cannot be cast without a plea, for the casting of it is a plea. But, in that case, after issue, although a day be given to the jurors to the next day, still no day is given to the party, but yet the plaintiff can be nonsuited on every day, but the defendant shall not be called etc.

FORTESCUE [C.J.K.B.]: We are agreed that the other day and this day are all one day; then, the protection which bears date before this day shall not be allowed, for he has lost the advantage of it. And the protection that he has cast this day shall not be allowed, since this day and the other day when the jury appeared are all one and the same day and the same day he himself has agreed to appear at the inquest, for, if the plaintiff had made a release to him the same day and, afterwards, he had agreed to appear at the inquest, he shall not plead, but he should have a [writ of] *audita querela* for that because he had no time to plead it. And, if they had demurred in law upon the challenge, could they come now to cast the protection? (As if he said they could not.) And, if the jury shall make default now, then they will lose the value of their lands to the king, because it is all one and the same day etc.

YELVERTON [J.K.B.]: In the Common Pleas, if the parties appear and the jury also and the justices rise before the inquest is sworn, on another day, the defendant can cast a protection, and a special entry shall be made of it, *scil. ad quem diem nihil exactus fuit et ideo etc.*

Brown: In the case here, the jury shall be called the next day, but not the defendant. And the reason is because, if it be in a plea of lands and the defendant is called and does not come, then the [writ of] *petit cape* issues and the inquest is not taken for default, which cannot be.

PORTINGTON [J.C.P.]: If the jury at the *distringas* makes default and the defendant is allowed to cast a protection, then, their issues will be saved, which is not reasonable when he suffered the inquest to be appealed.

And they adjourned, etc.

Jenkins 108, 145 E.R. 76

[It was ruled] by all the judges of England, in [an action of] trespass. The parties are at issue. At the trial, some of the jurors appear, and some make default. A [writ of] *distringas* with a *decem tales* is awarded. Upon this *distringas*, a full jury appears. At this day, a protection cast for the defendant shall be allowed, for he is then callable, and the end of a protection is to excuse his default. A protection does not lie after a juror is sworn.

56

Anonymous
(Ex. 1450)

In this case, a writ issued to an archbishop to levy a grant to the king from a clergyman who had a pardon of exemption from taxes.

YB Trin. 28 Hen. VI, f. 11, pl. 22

In the Exchequer, a [writ of] *feri facias* issued against the abbot of C. to levy 2s. per pound of his temporal lands and tenements, which were granted by the last Convocation to the metropolitan [bishop], that those who have purchased any letters or charters of pardon from the king to be quit of the payment of the tenths or discharged of the collection of the tenths that they will pay to the metropolitan 2s. per pound of the temporal lands and tenements and 2s. per pound each pound for the tenths in defense of the church of England, which 2s. the metropolitan granted to the king. And upon this, issued this commission to make a levy of so much from the said abbot, because he had such charters etc.

57

Anonymous
(Ex. 1454)

A lessee of the crown can sue a trespasser or disseisor in the Court of Exchequer for losses to the leasehold.

YB Hil. 32 Hen. VI, f. 24, pl. 7

Note that it was held that [a writ of] *quo minus* lies where anyone usurps upon the king's franchise, where the king has a fee farm, so that the bailiffs of the franchise could not pay their fee farm, the said writ will be directed to him

who thus usurped etc., reciting the matter, *quo minus rex feodi firmam habere non potest*. And this writ issues out of the Exchequer etc.

58

Anonymous
(Ex. 1454)

After the death of a bishop and an office found thereupon, the cathedral chapter can traverse that office.

2 Statham, Abr., *Office*, pl. 3, p. 917

Hilary term, 32 Hen. VI.

The bishop of B. died, and a writ issued out of the Exchequer in the county where he died to inquire on what day he died. And it was certified that, on such a day, etc. And then another writ issued in another county, where the cathedral church was, to inquire as to the value of his temporalities and what day he died. And it was certified on another day, which was a long time before the first day. And, because the chapter should have the temporalities during the vacancy, they wished to traverse the second office.

FORTESCUE [C.J.K.B.]: Since it was certified what day he died, the second writ was wrongly awarded. And, if it were well awarded, the chapter shall not traverse it, but that which is to the greatest advantage for the king shall be taken, as if it be found by different offices in different counties, *scil.* by one office that the heir of the tenant of the king is of one age and, by another office, of another, that which is best for the king shall be taken, and the heir shall not have any traverse to that when he wishes to sue livery, because he will affirm the same office by his suit etc.

Which all the justices conceded.

And then FORTESCUE [C.J.K.B.] changed his opinion, and said that it was not the same as the case of the heir, inasmuch as the heir is found heir by an office and, afterwards, affirms the office by the suing of the livery, in which case, he shall not have a traverse etc. But it is otherwise in the other case etc. The reason is apparent etc.

Attorney General, *ex rel.* Grimsby v. Eyre
(Ex. 1456)

*Goods belonging to another person cannot be pledged for one's own debts.
The king cannot be bound by a local custom.*

51 Selden Soc. 114,
YB Mich. 35 Hen. VI, f. 25, pl. 33

The case was as follows. John Marston, keeper of the jewels of our lord the king, pledged certain jewels of the said lord to one J. Shipton, who pledged them to Simon Eyre.¹ And then the said John Marston was dismissed, and one T.B. was elected keeper. T.B. came into the Exchequer, and showed this matter to the barons of the Exchequer, and prayed a remedy for the king. And, upon this suggestion, proceedings were taken against the said Simon Eyre, who came and said that the king ought not to have an action, and, by way of protestation, that the jewels were not worth so much, and also that they had not the king's mark on them or that of any of his forefathers. For his plea, he says that the City of London is an ancient city and that it has been the custom from time immemorial if a man pledged his own goods or the goods of any other person, that he shall not deliver them until the money is paid, and he shows how they were pledged to him for £300 and that he is not yet satisfied of that amount. This was the matter etc.

Choke: Sir, it seems to me that, for several reasons, the plea is not good. To begin with, the prescription is not valid, for a man cannot have a prescription in anything unless its beginning be lawful and based on reason. And, Sir, I am well aware that a city can prescribe to devise land; this is a good prescription, for a man can give his lands as well as his goods. But, Sir, where the thing prescribed is contrary to reason and in prejudice to another person, it is otherwise. For instance, a man may prescribe that the custom of the City of London is to devise land in tail; this prescription is not valid;

¹ C. M. Barron, 'Eyre, Simon (c. 1395-1458)', *Oxford Dictionary of National Biography*, vol. 18, pp. 855-856.

or if the tenant for life or a term of years or the tenant at will shall prescribe that they can make a lease for a longer term than the lease they have or if the tenant at will shall prescribe so as to put his land in mortgage, all these prescriptions are invalid, for it is against reason and common right and in prejudice to another person. And so here, it is contrary to reason that one to whom my goods are pledged shall hold them by a stranger, and it is against right that this shall be prescribed, and that, though the property is mine, it shall be chargeable by another person. Thus the prescription is void. And, Sir, although the prescription may be good, yet it is void as against the king because he is exempt from any custom, for his right of entry is not barred although a descent [has] accrued against him. And, although six months have elapsed, he shall have a *quare impedit*. And, Sir, if a man has right of toll on a highway, the king's carriage shall pay no toll. So it is here.

FORTESCUE [C.J.K.B.]: Sir, a man cannot prescribe in through toll and this is where a highway lies alongside a lord's land. But, when a road lies on a lord's land, it is possible to prescribe and this is called a toll traverse. And, because it is contrary to right to have a road on my land, prescription is possible because it can have a lawful beginning, for it might begin at first by each man who wants to take his carriage on my land paying 1d., and thus it would grow into a custom.

Billing: Sir, it seems to me the contrary, and, Sir, there are many customs observed in this country which are more opposed to the common law than this is, for instance, borough English, gavelkind, where the wife has dower of a moiety, and where the sons divide the land, all these are contrary to the common law and yet they are observed and sanctioned. And, Sir, as to what Choke has said that no one shall be in a more favorable position than he by whom he claims to be in. Sir, this is not so, for, if a man has stolen a horse and then, at an open fair, he sells it to someone else, no action lies against him who has bought it, if he has paid a toll for it.

FORTESCUE [C.J.K.B.] and PRYSOT [C.J.C.P.] concur with this, and they said that they are chargeable unless a toll has been paid, for oftentimes issues have been joined because a toll has not been paid; so the prescription is good enough etc.

Hingeston, to the contrary: And, Sir, as has been said, each custom ought to have a lawful beginning, as for instance borough English etc. And, Sir, there is a custom that the daughters ought to have a share in the land with

their brothers, and, Sir, this is quite right, for the daughter is just as much her father's child as the son is, and he can give his land to his daughter. But, in cases which are against reason and law, it is otherwise. Suppose, in a writ of *nativo habendo* brought in London, they shall allege a prescription that, if a villein has remained within the said city for a year, he shall on this account be enfranchised; this prescription is not valid, for it is against right that I shall lose my inheritance by prescription. So here, the prescription is not good.

Laken: To the contrary: And, Sir, the custom that the youngest son shall inherit before the eldest is as much against common right and law as this is. And suppose that the king had granted before time of memory that, if any of his goods were pledged, that they should not be handed back until the party should be satisfied, this grant would have been good. Therefore, it [the prescription pleaded] can have a lawful beginning.

But all the justices said that such a grant ought to be shown in the prescription.

And FORTESCUE [C.J.K.B.] says that, if the king had before time of memory granted to a man all rights of justice by these general words or had released to an abbey all the pasturage, if they want to avail themselves of the grant, they ought to show this charter and the continuance, but the continuance without the charter is of no value. So here, if the king had granted such a thing, they ought to have shown it specially in their plea. And, Sir, as to what Choke has said, that one who is 'in' by another shall not be in a more favorable position than he by whom he is in, Sir, this is not so, for the disseisor in an assize shall not have the view, nor shall the vouchee at large, but the alienee in a writ of entry shall have it.

Choke: And, Sir, if one of the king's horses is sold in a market, the king shall not have an action. (With this the whole court disagreed.) But, Sir, if a man shall prescribe that he can wound anyone who comes on his land, this prescription is not valid, for it is against law and right. But here, it is not so, and so the plea is good enough.

FORTESCUE [C.J.K.B.]: Argue and show us a custom which is contrary to reason, for several customs have been cited, but not one of them is contrary to reason, and the law is based on reason and reason is law, for, if land shall be divided between male heirs or if the youngest son shall inherit, this is within reason. But, Sir, if the City of London shall prescribe that, if any stranger in the city protects any man, it shall be lawful to do him violence,

this prescription is against right and reason, for it is lawful to resist violence. And so show us a prescription which holds good and yet is fundamentally unreasonable. And, Sir, in the Isle of Man, there is a custom that, if anyone steals a sheep or an ox, he shall be hanged, but, in the case of a horse, it is otherwise, and the reason is that a horse cannot be carried beyond the island etc.

Wangford: Sir, in the City of London, they have this custom that, if a man is in debt to another in the said city and someone else is in debt to the debtor, they will arrest this debt at the hands of him who is in debt to the debtor, and a *scire facias* shall issue against the party to come within the year and show if there is any matter etc.

Nottingham, the King's Attorney: Sir, recently, in the King's Bench before My Lord Fortescue, it was adjudged [as follows] in a writ of trespass. The defendant justified by a *capias* directed to him from Windsor Castle and showed a prescription how, by virtue of such a *capias*, it has been the custom from time beyond which etc. to arrest a man in whatever county in the realm he may be. And this was adjudged to be no prescription. So here etc.

MOYLE [J.C.P.]: Sir, it seems to me that this prescription is not good, for it is quite contrary to right, for, if they shall prescribe that if anyone comes to the city with another man's goods, those goods shall be put in execution, this prescription is not good for it is against right that my goods shall be put in execution for his debt. Or if anyone comes to the city on my horse, shall it be a good prescription to prescribe that my horse may be taken for his debt? No, surely. And the law is the same here. The property is always the king's, for he is entitled to a writ of detinue against the other. Consequently, if this prescription had been good, he would be obliged to pay a duty [for] another, which is not right. And, Sir, even if this prescription were good, yet it does not apply as against the king, for, Sir, there is a difference between a custom which puts a charge on the land and one which does not, for, if land which is in gavelkind comes to the king by escheat or in another way, the brother of him who before had the land shall share with the king. But it is otherwise with a custom which puts a charge on chattels or the person, for instance, if a man has prescribed that he has [a right of] waif, yet the king is not bound by this, for nothing which belongs to him can be said to be a waif. Thus is the king discharged. So it seems clear to me that the plea is not good.

PRYSOT [C.J.C.P.] to the same effect: And, Sir, before the Statute of claims¹ if a man had made no claim within a certain day, he had no remedy by a fine levied at common law, yet this was not prejudicial to the king, and so there is little question in this case but that the king's jewels shall be discharged.

And, in this plea, it was said by FORTESCUE [C.J.K.B.] that, if the king granted to a man that he shall be exempt from pontage, he shall be exempted [from paying toll] for any carriages but not from repairing the bridge (which was allowed). And also he says that if the king gives any goods to me, such as a pearl or an ornamental trimming or any jewel, without matter of record, I cannot justify the taking of them. And also, if a man shall prescribe that he shall have a fine from everyone who lives on his seignory when his daughter or his son marries, this prescription is void among freemen (which was agreed). And he says that nothing is subject to a toll except things which are alive such as horses, oxen, sheep, and such like. *Vide* in the ninth year of the present king in a writ of trespass of toll.²

And PRYSOT [C.J.C.P.] says that such prescriptions as shall cause the king to travel or to be in attendance are not valid against himself, such as suit of court and the like.

And then, by the advice of all the justices, it was awarded in the Exchequer that the king should have his jewels back again. Which note.

51 Selden Soc. 118

Choke rehearses in the Exchequer Chamber before all the justices of both benches and the barons of the Exchequer how an information was laid in the Exchequer in the interest of the king by one J. Grimsby that the king had certain jewels at Windsor. And he showed in particular what they were, and that they were there in the charge of one John Marston, keeper of our lord the king's jewels on such a day etc. the year etc., the which jewels, afterwards, in London, on such a day and year, came into the possession of Simon Eyre. Whereupon process issued against the said Simon Eyre to make

¹ Stat. 34 Edw. III, c. 16 (SR, I, 368).

² Perhaps *Prior of St. Bartholomew v. Barton* (1430), YB Mich. 9 Hen. VI, f. 45, pl. 28.

an answer to the king on this information. Whereupon he came into court, and said that the said City of London is and has been from time etc. an ancient city, in which city there is and has been a certain custom from time immemorial, to wit, that, if any man puts in pledge any goods, whosoever they might be, for any debt, he to whom such goods are put in pledge shall keep them until he is paid and satisfied of his debt for which the goods are put in pledge. And he said further that one T. Shipton was in possession of the same jewels in London and the said T., on the same day that he [the informer] has supposed that the said jewels came into our hands in London, borrowed £60 from the said Simon Eyre to pay etc. and he delivered the said jewels to the said Simon in pledge for the same sum etc. without the said jewels coming into the hands of the said Simon in any other way. And also he said further that the said sum is not yet paid to him etc., which matter etc. And he demanded judgment whether he ought to deliver up the jewels, his debt not being satisfied or paid etc. And he said further by way of protestation that he did not know that the said jewels were the king's property and also that the said jewels were not marked with any imprint or arms of our lord the king etc. Whereupon the king has demurred in judgment that this plea is not sufficient etc. And, Sir, it seems to me that this plea is not sufficient, for this matter that he has pleaded as a custom does not lie in custom, for it can have no lawful beginning, and also it cannot be in reason, for he alleges as the custom that, if anyone puts any goods, whosoever they might be, in pledge, then he shall keep them until etc. Then, if this custom be good, I can put in pledge all My Lord Fortescue's goods, even though they are not in my possession, for he has alleged the general custom and has not spoken of 'such goods as he has in his possession,' in this wise quite against reason, although of 'such goods as he has in his possession' should be understood. Yet the custom that a man shall put the goods of another in pledge etc. cannot be in reason, but a devise can well lie in custom, for it is within reason, inasmuch as he might have aliened earlier and it is not in prejudice of anyone etc. But if it be a custom that a man can devise his land which is in tail or such land as he has only for a term of his life or that the tenant for a term of years can devise, such custom will be to no purpose, because it is against reason and in prejudice of those in the reversion. So is the custom in this case in prejudice of those to whom the property of such goods belongs; therefore, the custom is not good etc. And, even if the custom be good, yet the king shall not be bound by it, for, if a

man shall prescribe that he shall have a toll in a certain place from every man that comes there etc., yet the king shall not pay, should he come there. And the law is the same also of pontage etc. And, likewise, if the king has the right of presentation to a church and a stranger presents and his clerk is instituted and inducted and the six months have passed, yet it shall not be said to be out of the king's possession, but he shall still present to the same church, for *nullum tempus occurrit regi*. Thus it seems to me that, although the custom may be good between commoners, yet it shall not bind the king. And so, to my thinking, the plea is not good.

Billing, to the contrary: And I think that such thing as can have a lawful beginning may well lie in custom. And as to what is said concerning a custom to the effect that the tenant in tail or tenant for a term of life or years can devise, Sir, I fully grant that such a custom is not valid, for, to my mind, to alienate a better estate than they had can have no lawful beginning. But it may well lie in custom that a man can devise his lands or tenements, because this might have a lawful beginning and lie within reason, inasmuch as he could have alienated them. And also, in gavelkind, all the males are heirs jointly and this is by custom, and also, in borough English, the youngest son shall by custom be heir before the eldest, and yet it is contrary to the common law, but, because it has a good and lawful beginning, the custom is good enough. So, in this case, this custom can have a good beginning, for it may be that the king, by authority of Parliament, granted to the City of London before time etc. that they should have such a custom etc. and that this has been continued until now, in which case, this custom is good. And, if it be now granted to the City of London that they shall have such a custom, I say that the custom shall be good. Therefore, for the same reason, it may be that they had such a beginning before time etc. and if a man can conceive of a good beginning for a thing, such thing can well lie in custom etc. And so the plea is good.

Hingston, to the contrary: And that this matter cannot lie in custom, for it is against reason. The party does not deny that the goods continue to be the king's property; therefore, the king shall be said to be without possession. If a man then can put the goods of a stranger in pledge, it shall be against reason, for, recently, in a writ of neifty, the defendant said that it was the custom in London that, if a villein dwelt peaceably for a year in London, he should be enfranchised etc. and this custom was held to be void, inasmuch as it is against reason and in prejudice of others, for a villein is an inheritance

etc. And so it is here. This custom is against common right and in prejudice of others to whom the property etc. belongs, and, because of this, it cannot lie in custom, and, even if it could, yet, against the king, it does not avail, for the king is above the law. And, as has been said, if a man shall have a toll of each man who comes by a certain way, yet the king shall pay nothing, either for himself or his carriage etc. And the law is the same if a man has the profits of a ferry; although the king passes over, yet he shall pay nothing there for his passage, inasmuch as he is above the law and no man can hold him to account. So it seems to me that the custom is not good, and, even if it be good, it shall not bind the king. And so the plea is not good.

Laken, to the contrary: And that the custom is good enough, for I think that such thing as can have a lawful beginning may well lie in custom. For example, there may be a devise which has a good beginning and is clearly in reason and yet it is contrary to the common law. So here, in this case, it can well be imagined that the king, before time of memory, granted that, if any of his own goods were put in pledge that they to whom etc. might keep them until etc., in this wise, it has been continued from time etc., then, inasmuch as it can thus be presumed that it had such a beginning, the custom is good enough, as much against the king as against a stranger. So, in divers places in England, the wives shall have dowry of the half and of some part of the principal mansion that the husband had, and this custom is good enough as much against the king as against a stranger, inasmuch as it may be presumed that it had a good beginning etc. So it is here.

Littleton to the contrary: And that the matter cannot lie in custom, for it is against reason that, if I deliver certain goods to a man to keep in safety, he may by such custom put my goods in pledge, or that, if a man robs me and goes and puts my goods in pledge, I cannot either take them or seize them etc. or have action for them etc. Therefore, such a thing as can be within reason can well lie in custom, such as a devise or that the youngest son shall be heir or that all the males shall be heirs jointly. Such customs are good enough because they are in reason, to wit, that a man shall devise lands, inasmuch as he can alienate them or that the youngest son shall be heir because he is the least able to help himself and is as near of kin to the father as the eldest son and also that all should be heirs jointly, for all are equals next to the father and each one as much a gentleman as the other. Thus, such custom[s] may well be within reason and, because of this, they are good enough and yet are not

according to the common law. But it is otherwise here, for the custom alleged is quite against reason and in prejudice of another person, and, because of that, the custom is not valid any more than it is in another case. For example, a writ of trespass of battery is brought against one who comes and says that the custom in such a town where etc. is and from time etc. has been that, if anyone comes upon the land in such place, that it shall be lawful for him to beat him, and the plaintiff came there and he beat him etc. as it was lawful for him to do etc., this plea is not valid, because the custom is wholly against reason. And so it is here etc. And, although the custom be good, yet the king shall not be bound by it, for, if a man shall prescribe to have waif or stray within his seignory, even though a horse belonging to the king comes straying within the seignory and he seizes it and makes proclamation in the markets etc., notwithstanding that the king does not come within the year nor anyone on his behalf to claim the horse, yet the king may take his horse, although it be twenty years afterwards, for *nullum tempus occurrit regi*. And the law shall be the same if the king has a villein who purchases and aliens before any seisin by the king, yet, notwithstanding this alienation, the king shall have seisin when he wishes etc. And, further, the king shall have an entry on a descent notwithstanding that there be twenty descents, for *nullum tempus occurrit regi*. And it is not so with any other person. So it is here. Although this custom may be good, which I do not allow, yet it is not to the purpose as touching the king. Therefore, the plea is not good.

Wangford, to the contrary: And, in the first place, it seems to me that the information is not good, for the information is in the place of an action of detinue. Now, in an action of detinue, the plaintiff ought to show that he has a cause of action, and he must mention how the said thing which he demands came into his possession, for example, by bailment, by trover, or as executor etc. Now here, it is shown that the jewels were on a certain day etc. in the keeping of a certain person at Windsor and came into the defendant's hands etc. in London, and it is not shown how etc., for example, by bailment, by trover, or as executor etc., now, in a writ of detinue, it is no good to say that the goods came into the defendant's hands without showing how. No more is it here in this information which is in the place of a writ of detinue; for it may be that the defendant has the jewels by the gift of the king or by a purchase from him, and then the king has no cause of action. And I think also that this matter ought to come into court by a presentment, which would

provide matter of substance to put the party to an answer and not by such a nude information. And further, to my mind, it is a good enough plea and the custom suffices, for it is good enough according to reason, for, when a man is in possession of goods, how can one know whose property they are if not the property of him who has possession of them, for, if a man robs me of my goods and sells them to a stranger in open market, by such sale, the property [in the goods] is altered and changed and I cannot take such goods, notwithstanding that, afterwards, I come to such place where my goods are. And this proves that the property should more properly be adjudged in him who has possession. Therefore, I think, in this case, when a man has possession of certain goods, that, just as he can sell them and, by his sale, he loses possession of the property, so also can he put them in pledge. And it is not against reason any more than in another case. There is, for instance, a custom in London that, if a man owes me £20 and a stranger owes my debtor a certain sum, I can lay a plaint for my debt, and this debt that the stranger owes to my debtor shall be attached in his hands for my debt, and yet it is against the common law, for this is nothing but a chose in action, and if he can show proof that he does not owe my debtor the said sum nor any part of it, he shall be discharged, and if he cannot, he shall be charged. And there is also another custom in London, that, if a man owes me £20, I can cause such goods as he has in his possession to be attached for my debt and if no one comes within the year to make a claim to the goods thus attached, they shall be taken for my debt. And these customs are good enough, and so, to my mind, they shall be in this case. Therefore, it seems to me that the plea is good.

Nottingham, the King's Attorney, to the contrary: And, as to what is said that the information will not be sufficient either to put the party to his answer, inasmuch as it does not show how the goods came into his hands etc. or to prove that the king has a right to have them and also it will not be sufficient inasmuch as this information has not come to the court by a presentment etc., Sir, as to the first reason, to my mind, the information is good enough, for I think that the law is as has been stated if it be between ordinary persons. But, where the king is a party, it is quite otherwise, for the king shall never show how such goods came into his hands etc., for it does not matter whether they came into the defendant's hands by one means or another; the king shall proceed against him who has them. For instance, if

a man shall come into the Exchequer and inform the barons that so-and-so was outlawed and that certain goods of him who is outlawed came into the hands of a stranger and he shall pray process against him [the stranger], this information shall be construed for the king's benefit as well without showing why and without any presentment, but he who thus gives information to the court shall swear that the information is true. And the law shall be the same in the case of one who steals the king's custom.

(As to this, the barons said that this was the common course in the Exchequer.)

Wherefore etc. And, as to the plea, to my mind, it is not valid, and this custom is not good, for it is against reason that a stranger shall have the power to put my goods in pledge and that I shall not be able to take them etc. Therefore, it seems quite against reason, as it is in the following case: I put it that the people of London shall say that they have a certain custom from time etc. and have had it etc. that, if I or anyone else have a cause of action against a stranger, if the defendant shall get a release from another stranger, this shall bar me or anyone else who has thus a cause of action against him, I say that this custom shall in no way be valid, inasmuch as it cannot be within reason, but is quite against reason, and, likewise, is it in this case with the custom that a stranger shall put my goods in pledge etc. And, even though the custom be good, yet it shall not bind the king, for, if a man claims wreck of the sea within a certain radius because of a custom in force from time [etc.], even though the king's goods are wrecked at sea and come to land within that radius and the king does not come within the year to give proof that they are his goods, yet he can take them twenty years afterwards and within the year or afterwards without giving proof, and it shall not be adjudged wreck. Thus, where the king is a party, it is quite otherwise than it is between party and party. And so, it seems to me that the plea is not sufficient etc.

Needham, to the contrary: And that this custom is good enough, for I think that a thing continued from time etc. becomes a custom although it may be contrary to law, for I say that the coroners by the common law have not power to make an enquiry into any felony except the death of a man, yet, in Northumberland, the coroners have power to make an enquiry of all felonies just as the sheriff in his tourn, and this is by custom. And this custom is quite sufficient, for it has a good beginning, and such a thing can begin at the present time, yet it is contrary to the common law. And also, in the Isle of Man, there

is a certain custom that, if a man steals a horse, he shall not be hanged, but he shall pay a fine for it and shall go quit, inasmuch as he [the owner] can have his horse back, because it cannot be eaten. But, if he steals a hen or a capon etc., he shall be hanged for that, because it shall be presumed that he took it to eat, and, therefore, he [the owner] shall never have them back again; and this custom is good. And there is also a custom in London that the wife of a merchant only shall plead and be impleaded without her husband. And these customs are good, and yet they are contrary to the common law, but they might have a lawful beginning before time of memory, for instance by a grant etc., and have been always so continued since until now, which continuance has made it a custom which, to my thinking, is quite sufficient. And as to what is said that the king shall not be bound by it, Sir, I say, yes, for it may be that, before time of memory, the king granted to the City of London that, if any of his goods were put in pledge to anyone, he to whom such goods were pledged should keep them until etc., then, if it has such beginning before time of memory, as may well be, I say that the king shall be bound by it. And such a thing for which a good beginning may well be imagined can full well lie in custom. So it seems to me that the custom is good enough, and also that the king shall be bound by it. And the plea is, therefore, good.

Boef, to the same effect: And that the custom is good and that the king shall be bound by it, for, as has been said, such a thing as can have a good beginning may quite well lie in custom, for instance it is quite reasonable for a devise to lie in custom, inasmuch as it might have a lawful beginning before time of memory. Therefore, in this case, it may be presumed that the king before time of memory granted to the City of London by authority of Parliament that, if the goods of anyone were put in pledge, they etc. to whom etc., or that, if his own goods were put in pledge by himself or by another, he to whom etc., should keep them until etc. then, if the beginning be one which may full well be imagined, then the king shall be as much bound by it as a stranger. And so it seems to me that the plea is good.

MOYLE [J.C.P.], to the contrary: And that the custom is not good, for such a thing is neither reasonable nor can it lie in custom. Therefore, this matter here, that a stranger shall charge my goods, is not reasonable, for I put it that the people of London shall prescribe that they have a custom in the city that, if any man comes on horseback to London that the horse on which he comes, whosoever it might be, shall be seized for this debt that he

owes, in order to satisfy the party etc. Shall this custom be good? I say, no, for it cannot, in any way, be in reason. Likewise, therefore, is it in this case. It is against reason that anyone shall pledge my goods and I shall be bound to pay the money before I have my goods; this cannot be the custom, and, even though it be the custom, yet the king shall not be bound by it. And, to my mind, there is a difference where a custom is in consequence of land and arises about land and where it is in consequence of a person or of goods, for, where the custom arises about land, the king shall be in no more favorable position than another person. For instance, where lands in gavelkind descend to the king and to his brothers, in this case, the king shall be in the same condition as another person, for he and his brothers shall be joint heirs. But it is otherwise if the custom be by reason of a person or touching goods. For example, in the case which has been put, the king shall not pay toll, pontage, or passage. No more shall he in this case be bound by the custom. So it seems to me that the custom is not good, and, even though it be good, it shall not bind the king. And so the plea is not good.

DANBY [J.C.P.], to the same effect: And I think that this custom. is not good, for it is clearly against reason and cannot lie in custom, for I put it that the custom might have been cited in this way, 'if anyone pledges the goods of a stranger, that he to whom etc. shall keep them etc.' Shall this custom be good? I say, no. No more shall it be here, for it cannot have a lawful beginning. And as to what is said that it may be that, before time of memory, the king granted by authority etc. that the people of London should have such a custom etc. and, inasmuch as this was done, the custom should be good. Sir, I say that it shall not be so, for, if it had such a beginning, you ought to have shown in your plea how, before time etc., the king granted etc. and that, since then, it has been continued etc. or otherwise the custom cannot be good. (To which FORTESCUE [C.J.K.B.], PRYSOT [C.J.C.P.], and HALTOFT [B.Ex.] agreed.) So it seems to me that the plea is not good.

DANVERS [J.C.P.], to the contrary: And that the custom is good, for it may be that it had a lawful beginning, then, such a thing as shall have begun lawfully may well lie in custom. Therefore, as has been said, it may be that the king before time of memory granted to the City of London by authority etc. that, if any of his or anyone else's goods be put in pledge, that he to whom etc. shall keep them until etc. Therefore, inasmuch as it may be imagined that it had such a beginning, the custom is good enough.

HALTOFT [B.Ex.], to the contrary: And, as has been said, this custom is not good, for he has put forward as a general custom what, in a way and in part, is according to common right etc., for it is lawful for a man to put his own goods in pledge and he to whom etc. shall keep them until etc. by the common law; therefore, this custom is in part according to law etc. And he has further alleged as the custom 'that, if any goods were put in pledge whosoever they might be' [etc.], which is absolutely against reason. And as to what is said that it may be that the king granted to the City of London before time of memory that they should have such a custom etc., Sir, if this be so, you should have mentioned it and alleged a special custom. And, seeing that he has only put forward a general custom, it cannot be good, inasmuch as it cannot be within reason. Thus the custom put forward in this form is not good. And if it so be, as has been said, that the king before time etc. granted that if any of his goods were pledged etc. then you have ignored your own custom, for, if it were so, the custom should have been specially put forward. Thus, the custom in this form is not good. And, even though it be good, yet it is not valid against the king, for, if a man steals my goods and sells them in open market, by this sale, the property changes hands and because I do not come and claim them before the sale, I cannot afterwards seize them. But it is otherwise if a man steals the king's goods and sells them in open market; notwithstanding this, the king shall take them back again when he wills, for, even though there may be twenty sales one after the other in open market, yet it shall always be said that the king is in possession and the property is in him, because, by common intendment, the king cannot be obliged to come to market to make a claim. And so it is here.

PRYSOT [C.J.C.P.], to the same effect: And I think that a thing cannot lie in custom unless that same thing can be within reason, and if it can be within reason, notwithstanding that it may not be in accordance with the common law, yet it may quite well lie in custom, for a carucate of land is larger in one part of the country than it is in another, and, although one may be less than another, yet each by itself is a carucate, for a plough can plough up more land in a year in one part of the country than it can in another, for this stands to reason. And the law shall be the same in the case of an oxgang. In this case, therefore, the custom alleged is expressly against reason, for, if anyone shall have custody of my goods, if he shall further pledge them to another and then he further to another and so on to several others, then, if I cannot have my

goods unless I pay all the sums for which the goods are pledged, I shall suffer a great mischief, for, perchance, the sums will mount up to more than the value of the goods. Therefore, this matter cannot lie in custom, and, even if it can, yet it shall not bind the king, for the king shall not be held to be so obedient as to be bound by such a custom. For, in many places, there is a custom that, if anyone aliens his land, he shall pay a fine to his lord at each alienation; then suppose that such lands are aliened to the king, I say that the king shall not pay a fine for this alienation, and yet, if the alienation be made to another person, he shall pay a fine etc. So it is here. Even though the custom be good, it shall not bind the king etc. And, as to what is said that it may be that this custom began before time of memory by a grant from the king by authority of Parliament or in some other way, Sir, this shall not be presumed, as has been said, for, if it had begun in such a way, it should have been definitely shown how before time of memory etc. such a grant was etc. or, otherwise, it shall never so be presumed. And further, as to what is said that, if a man steals my goods and sells them in open market, that the property by this sale shall be altered, Sir, I say that it shall not be, unless he paid a toll for it. And so it is held in our books, and issue is always taken on the payment of a toll etc. But, if he did pay a toll, then the property is changed; otherwise not, and, after this, he to whom the property formerly belonged, cannot seize it, seeing that he might have come before and might have made his claim before the sale. And the law was the same in the case of a non-claim at common law, for, if a man had levied a fine of my lands, if I had not come and made a claim to the land within a certain time, I should be barred forever, inasmuch as I did not come to make my claim when I might have done. And so it is of goods sold in open market if toll be paid etc. Thus, the custom is not valid, and, even if it be good, yet it shall not bind the king.

ARDERN, Chief Baron, to the same effect: And [he said] that the custom is not good. For I think that, for the same reason that anyone may by this custom put my goods in pledge on condition of paying a sum of money, he may for the same reason pledge them for the performance of any other condition. Therefore, I put it that the goods might have been delivered to the defendant on condition that he who had put them in pledge, should enfeoff the defendant of his manor of D. Then, perchance, he will not enfeoff him. Then, because of this, the king will lose his goods in spite of their being his etc. and he will have no remedy, for the goods are pledged on a condition

which is such that the king cannot perform it, for he cannot enfeoff him. And he can pledge them just as well on the one condition as on the other, if the custom be good, which it is not to my thinking etc. The custom is not good in another sense, for I do not think that the law will suffer a man to charge my goods or the goods of any other person, any more than it will suffer a man to charge the land of someone else, for I put it that there are two joint tenants and one charges the land; although the beasts of his fellow tenant go on the land, yet he to whom the charge is made, cannot distrain by his beasts, inasmuch as it is against reason that a man shall charge the goods or land of others etc. Then, in this case, this custom is general 'if the goods or chattels whosoever they might be', which is against reason, and so, to my mind, it cannot lie in custom, and even though it may lie in custom, yet the king shall not be bound by it. And so the plea is not good.

FORTESCUE [C.J.K.B.], to the same effect: And, as to what is said that if anyone steals my goods and sells them in open market, the property does not change unless he pays a toll for it. Sir, I fully grant that this is the law, and if he does not pay a toll, I can seize them afterwards; thus it is held in our books. And yet the citizens of London claim to have open market in each shop, which God forbid, for if it be so, everyone will be able to buy secretly in their shops goods which have been stolen, so that the party will never have time to seize his goods or to claim them, and he will thus be without remedy, which will be a great mischief. Therefore, in this case, this custom is absolutely against reason, and so it cannot lie in custom. And, even though it can, yet the king shall not be bound by it, for, in such a case, the king shall be in a more favorable position than any other common person. But, in the matter of the setting aside of his will, he is in a worse position than any other person, for he can give nothing except what he has in his possession and also he cannot devise land by his will etc. And further, as has been said, if a man shall prescribe to have a toll, yet the king shall not pay a toll. And, Sir, to my mind with respect to one kind of toll, such as a through toll, no man can prescribe to have this, but a man can quite well prescribe with respect to a toll traverse; and thus there is a difference. And, if anyone ought to pay pontage to another and the king shall pardon him the pontage, yet he shall pay for the repair of the bridge etc.

PRYSOT [C.J.C.P.]: Yes, Sir, the king can prescribe with respect to a through toll, for it may be that it was arranged that a road should be there, because of the toll.

FORTESCUE [C.J.K.B.]: Sir, I think not; yet no other person shall prescribe. Therefore etc.

And then HALTOFT [Second Baron] in the Exchequer awarded that the king should have his jewels restored, and he further awarded a [writ of] *capias* against the defendant etc.

51 Selden Soc. 129,
Public Record Office, E.159/232, Mich. 35 Hen. VI, rot. 9

Be it remembered that William Grymesby, Treasurer of the Chamber of the lord the king and custodian of the jewels of him the lord the king, came in person before the barons of this Exchequer this term on the fifth day of November and, on behalf of the lord the king, gave the court here to understand that, whereas a certain Richard Merston, recently Treasurer of the Chamber of the lord the king and custodian of his jewels, to whom it pertained by reason of his aforesaid office to have the custody of the jewels of the lord the king, at the Town of Windsor in Berkshire on the twentieth day of September in the thirty-third year of the reign of the said lord the king, he, Richard, then being Treasurer of the Chamber of the said lord the king and custodian of his jewels, had in his charge certain jewels set forth below of the said lord the king to the value of a thousand marks, to wit, one cup of gold covered and chased with a knob studded with divers small pearls weighing per pound troy thirty-two ounces, one gilded cup covered and ornamented with precious stones and pearls, weighing per pound aforesaid thirty-nine and a half ounces, one cup of jasper covered and ornamented with precious stones and pearls, weighing per pound aforesaid twenty-five ounces, one spice plate and one base of a silver gilt cross, weighing per pound aforesaid thirteen marks and six ounces, one silver gilt layer and one standard of a silver cross, weighing per pound aforesaid four marks and four ounces, two silver gilt basins weighing per pound aforesaid twenty marks and three ounces. The aforesaid jewels, however, came into the hands of Simon Eyre, citizen and alderman of London, on the twenty-fourth day of September in the said thirty-third year in London, to wit, in the parish of the Blessed Mary Woolnoth in Langbourne Ward and there they still are in his custody. And, although the said William Grymesby, the present Treasurer of the Chamber of the said lord the king and custodian of his jewels, by order of the same lord

the king, has often come since to the said Simon Eyre and requested him, on behalf of and in the name of the said lord the king, to hand over the aforesaid jewels to the use of him the lord the king, yet the same Simon has refused to hand over those jewels to the use of the lord the king, and he still refuses and still unjustly retains those jewels in his possession. Wherefore, the same William asks advice of the court in the premises.

Whereupon, it is agreed that the aforesaid Simon do come here to answer to the said lord the king *inter alia* concerning the aforesaid jewels which are in his hands (as is premised) and are withheld by him from the said lord the king and to receive further in the premises as the court [etc.]. And the sheriffs of London and Middlesex are ordered to cause the same Simon to come in the manner aforesaid. So etc. to the morrow of Saint Martin. On which day, the sheriffs, to wit, Ralph Verney and John Stewarde, returned the writ and sent word that the aforesaid Simon is distrained, whereof the issues etc. Thus, it is contained in the endorsement of the same writ which is on the file of writs in London [and] Middlesex for this year.

And the aforesaid Simon does not come on that day. So the sheriffs are ordered to distrain the same Simon by his lands etc. So etc. until Friday the seventeenth day of November next to come. On which day, the said sheriffs returned the writ and sent word that the aforesaid Simon is distrained, whereof the issues etc. Thus it is contained in the endorsement of the same writ which is in the aforesaid file.

And, on the same day, the aforesaid Simon Eyre comes here by his attorney, John Hillington, and asks to hear the aforesaid information. And it is read to him etc. The same Simon, when he has heard and understood it, protests that the matter contained in the aforesaid information is not sufficient in law, to which matter, he Simon has no need by the law of the land to answer. He protests also that the aforesaid jewels are not nor were of such value and weight as is supposed above. He also protests that he, Simon, had not any notice, either on the said twenty-fourth day of September in the said thirty-third year or at any time before, that the property of the aforesaid jewels or of any of them was at any time in the said lord the king, and that the same jewels on the same twenty-fourth day of September were not marked nor was any one of them marked with any arms or crests of the said lord the king who now is or of any of his ancestors, for he says as his plea that the aforesaid London is and since time within the memory of

man has been an ancient city in which it is and ever since the aforesaid time has been held to be the custom that, if anyone has put in pledge within the aforesaid city any goods, merchandise, or jewels of any kind, whosoever they might be, to any person for any sum of money to be paid to him, that, then, such person to whom such goods, merchandise, or jewels had thus been put in pledge, would be allowed to hold the same goods, merchandise, and jewels thus pledged and to retain them in his possession until he should be paid and satisfied of that sum. And the aforesaid Simon says further that, on the said twenty-fourth day of September in the said thirty-third year, a certain John Shipton in the aforesaid parish and ward in London aforesaid was in possession of the aforesaid jewels and the same John, being thus possessed thereof in London aforesaid in the same parish and ward on the same twenty-fourth day of September within the aforesaid city, did pledge the same jewels to the said Simon for the sum of £135, which he, John, then and there, had borrowed from him Simon, the same jewels to be held and retained by the same Simon until satisfaction or payment in full of the same £135 should be made to the same Simon. By virtue of which, he, Simon, then and there took and held the same jewels. And the same jewels, then and there, by virtue of this, came into the possession of him, Simon, and he, Simon, ever since, has retained the same jewels in his hands and possession, and still retains them. And, by reason of this, the same jewels are still in his hands and possession. And [he says] that, as yet, he has not received any satisfaction or payment of the said £135 or of any parcel thereof, *absque hoc quod* the aforesaid jewels or any parcel thereof have ever come into the hands or possession of him Simon in any other way than in that way and form alleged above by him, Simon. One and all of which things, the aforesaid Simon is ready to aver as the court etc. Whereupon, he maintains that he ought not to answer or to give satisfaction to the said lord the king who now is, touching the aforesaid jewels or any one of them or touching the price or value of the same or any parcel thereof. And he asks judgment, and that he, as to the premises, may be discharged from this court etc.

And William Nottingham, who sues for the king, not admitting anything pleaded above by the said Simon Eyre, [says that], by the law of the land, he has no need to answer. And because the aforesaid Simon has not denied that the aforesaid jewels belong and belonged to the said lord the king,

as is submitted above by the aforesaid information, he asks judgment for the lord the king, and that the said Simon shall answer to the said lord the king for the aforesaid jewels, and that they shall be restored to the possession of him the lord the king etc.

And the aforesaid Simon Eyre, because he has alleged sufficient matter to exonerate himself to the said lord the king concerning the premises pleaded above, to which matter the aforesaid William Nottingham for the said lord the king makes no sufficient answer, asks judgment and that he shall be exonerated in the matter of the aforesaid jewels or any parcel of the same to the said lord the king and that, as to the premises, he be discharged from this court etc. So to judgment.

And because the court wishes to deliberate in the premises before etc., so a day is given to the same Simon in the same state as now until Saturday the twenty-seventh day of November next to come to hear their judgment in the premises here etc.

On which day, William Nottingham, who sues for the lord the king, asks judgment for the lord the king in the premises and that the aforesaid Simon be chargeable concerning the aforesaid jewels to the said lord the king and that the same jewels be restored to the said lord the king.

Whereupon, the aforesaid plea and process having been viewed and carefully read and mature deliberation in the premises held among the aforesaid barons, it is awarded by the said barons that the aforesaid Simon be chargeable to the said lord the king in the matter of the aforesaid jewels and any one of them and that the said lord the king shall have the same jewels restored to him. And, thereupon, the sheriffs of London and Middlesex are ordered, at the petition of the aforesaid William Nottingham, to take the said Simon wherever etc. So etc. on Monday the twenty-ninth day of November next to come to hand over the aforesaid jewels to the said lord the king etc.

On which day, the aforesaid sheriffs, to wit, Ralph Verney and John Stywarde, returned the writ etc. and [sent word] that the aforesaid Simon was not to be found etc. Thus it is contained in the file of writs in London [and] Middlesex for this year.

Nevertheless, the aforesaid Simon did come here on that day by his aforesaid attorney and he brought here into court one and all of the jewels specified above except the cover of the aforesaid cup chased with gold. And

the said sheriffs are ordered to take the said Simon as before etc. so etc. on the morrow of Saint Hilary to hand over to the said lord the king the said cover of the aforesaid cup chased with gold, on which day, the sheriffs did not return the writ nor did the aforesaid Simon come on that same day . . . Friday the thirteenth day of October next to come.

On which day, the sheriffs returned the writ and sent word that the aforesaid Simon Eyre was dead. Thus it is contained in the endorsement of the same writ which is in the file of writs for that year in London [and] Middlesex. And, thereupon, it is agreed that the executors of the will of the aforesaid Simon Eyre and the heirs and tenants of the lands and tenements which were his be distrained by their lands etc. to make answer to the said lord the king on behalf of the aforesaid Simon Eyre for the aforesaid cover. And the sheriffs of London and Middlesex are ordered to distrain the aforesaid executors and heirs and tenants of the aforesaid lands and tenements in the manner aforesaid. So etc. until three weeks after Michaelmas, on which day the sheriffs returned the writ and sent word.

60

Anonymous
(Ex. 1456)

In an action of formedon where the defendant pleads assets by descent, the plaintiff can reply that those assets came by a disseisin.

1 Statham, Abr., *Assetz par descent*, pl. 3, p. 221

Michaelmas term, 35 Hen. VI.

Where assets by descent are pleaded in [an action of] formedon, the demandant can say that the same ancestor had nothing in the same land which descended to him, except by a disseisin made on another who had entered or else he can say that, after the death of his ancestor, he waived the possession, for the above reason. [This was said] by HALTOFT [B.Ex.], in [an action of] debt in the Exchequer etc.

Anonymous
(Ex. 1458)

A pardon must be specially pleaded.

The question in this case was whether a royal pardon pardons an informer's share in a recovery in a qui tam action.

51 Selden Soc. 144,
YB Mich. 37 Hen. VI, f. 4, pl. 6

In the Exchequer Chamber before all the justices, this was the case upon the Statute¹ which allows no one to ship wool etc. except to Calais, and, if any shall do this, he shall lose double the value. And, further, by the same Statute, he who shall inform against him shall have a third after [the offender] is duly attainted or confesses this in a court of record etc.

Thereupon, one J. came into the Exchequer, and made his suggestion that one H. had shipped certain wools and fleeces contrary to the Statute. And he had process against him. H. came and pleaded the king's charter. And, now, whether his charter of pardon shall be a bar against the king or not and, if it be a bar against the king, whether it be bar against J. or not has been much argued here, but not adjudged.

Choke: It seems that the king's charter does not bar the king, for he [H.] says that the king, by his charter of pardon, granted since the shipment, had pardoned him '*sectam pacis*'. This shall be taken to mean surety of the peace and those actions which are against the peace. But this action is not against the peace, but upon the Statute. Therefore etc. And, further, if the king be barred by this pardon, of necessity, the party must be barred, inasmuch as the party has his interest through the king. Therefore etc.

Westbury: We plead the charter of pardon as it stands, and we cannot otherwise plead. Therefore, we ought to have the advantage by whatever

¹ Stat. 8 Hen. VI, c. 17 (SR, II, 253-254).

words may be in the charter. And, Sir, there are other words in the charter which suffice for us.

And the charter was read. And, in the charter, was '*pardonamus sectam pacis nostrae et pardonamus omnimodas demandas, debita, et forisfacta etc.*', and these words are sufficient to bar the king.

FORTESCUE [C.J.K.B.] agreed to this and that he should have the advantage of every word in the charter, but yet he must state what words he wishes to take advantage of in order to make his plea definite.

And so it was the opinion of the justices that the charter should be a bar against the king. But whether it be a bar against the party was here argued at length, and, likewise, it was argued whether this suit should be called the king's suit or that of the party. If it should be said to be the king's suit and the party shall have his interest through the king, then the king's charter shall be a bar against the party. And if it should be said to be the party's suit, then the king's charter is no bar against him. So in a *decies tantum* if the party takes up the suit and then the king pardons this, it shall be no bar against him who sues it, because the suit is common, for the writ runs '*ad respondendum tam nobis quam parti*'. The law is the same where the sheriff takes money for serving a [writ of] *venire facias*.¹ But, in this case, the Statute² does not give any action to the informer, but the Statute provides that, if he [the offender] be duly attainted, the informer shall have a third. Thus, the Statute proves that he must thus be attainted at the suit of the king before the party can have the third part, and so, in this case, no suit is given to the party. And also, the Statute does not say that the party shall sue, and also, if he shall sue, it must be by a bill or an original writ, and not by a suggestion. Therefore etc.

YELVERTON [J.K.B.]: The Statute says that the informer shall have a third; therefore, if the Statute gives him a third, he must perforce have an action to recover it or, otherwise, the Statute will be void, which cannot be. Therefore, he must of necessity have a suit to recover his third part. And then he asked at whose suit did process issue, and he said at the suit of J. Very well then, it shall be said to be his suit. For I put it that had the said J. made a suggestion in accordance with the said Statute, as he did, and done nothing more, and then the said H. had been indicted of this [offence] and attainted,

¹ Stat. 4 Hen. VI, c. 1 (SR, II, 229).

² Stat. 8 Hen. VI, c. 17 (SR, II, 253-254).

or else that someone else had made a similar suggestion in the Exchequer and had sued process until he was attainted, now, this J., in no one of the aforesaid cases, would ever have a third, notwithstanding that he had been the informer and had made a suggestion. And the reason of this is that he [the defendant] was not attainted at his suit. Therefore, this clearly proves that it is the party's suit, for, if he does not wish to sue, he shall have no part. Consequently, it seems that this charter shall not be a bar against the party.

MARKHAM [J.K.B.] to the same effect: And he says that it is usual in the Exchequer in such cases for whoever wishes to sue in order to have an advantage by the Statute to come to the Exchequer and make his suggestion. And, thereupon, he shall have process without any other bill or writ, and it shall be called his suit. And so, it is in the case of the Statute of Sheriffs *ut supra*. And he cannot do otherwise.

ASHTON [J.C.P.] to the contrary: And he says that the party cannot have an action unless the Statute gives it to him or else says that he who shall sue shall have so much. Thus it is in the Statute of Sheriffs 'if he who shall sue' etc., and it is not so in this Statute, but 'he who shall inform shall have' etc.

FORTESCUE [C.J.K.B.] and PRYSOT [C.J.C.P.] said that they cannot possibly see how this can be called the party's suit. And [they said] also that no action or suit is given to the party by the Statute. Therefore etc.

But PRYSOT [C.J.C.P.] said that, although it shall be called the king's suit, yet the charter of pardon does not bar the party from the interest which the party had before the granting of the charter. In like manner, if the king grants me all the fines and amercements in a certain place although the king may wish to remit them, it does not bar me, and so it is here. Therefore etc.

And, in the same plea, it was said that, if a man brings a *decies tantum* and then the king pardons or releases him [the offender], this shall not abate my writ because I have an interest, but I shall sue and recover the half, and the king, because of his charter of pardon, shall be barred from his half. Yet it was said that, if the king pardons him before anyone sues, the charter is a good bar against whoever wishes to sue. Note the difference. And also, if the jurors can bar one man in a *decies tantum*, it shall be a bar in this matter against all others hereafter. Of which take note.

FORTESCUE [C.J.K.B.] said in this plea that, if anyone makes a recognizance to the king for the surety of the peace, the king's charter or his release made to the recognizor is not of force until he has broken the peace,

so that, if the recognizance be forfeited, then the king can pardon and remit, and not before.

And it was also said that, if it were found that a certain one is bound to repair a bridge and then the king excuses him, this does not apply except solely to the fine that the king shall have; notwithstanding this pardon, the party shall be driven to make and repair the bridge because it is a danger to all the lieges of the king and to all his people and, because of this danger his charter shall be no bar, although it is the king's suit for the above reason. And so take note that the king cannot release his suit where it shall be prejudicial to others and they can have no other remedy. And yet, if the party were nonsuited in a *decies tantum*, the king shall have no advantage by his suit, though, in that case, the king can have an advantage in other ways, such as by an indictment or averment, and so he suffers no mischief etc.

And [the case] is adjourned etc.

62

Anonymous, *qui tam* v. P.L.

(Ex. 1459)

A sheriff can amend his return in order to correct a negligent falsity therein.

Where goods are loaded into a ship with the intent to export them illegally or if the customs duties had not been paid, they are forfeited to the crown.

YB Hil. 37 Hen. VI, f. 12, pl. 2

Choke: The steward sued for the king and himself in the Exchequer Chamber against P.L. because he had shipped¹ certain wools and fleeces and it was on purpose to have carried them into a certain place in Flanders, and not to Calais. And likewise because they were not customed. And, upon this, they were at issue. And [a writ of] *venire facias* [issued] to make an inquest come, which was returned. And a *tales* was prayed for, and it was returned.

¹ *I.e.* loaded into a ship.

And upon the return of the writ of the inquest, the sheriff had left out three of the jurors together. And when four were sworn of the principal, *Laken* said to the court that we will go to you now. And he showed this matter to the court, and he prayed for a new [writ of] distraint.

Choke: You are not allowed to after taking the inquest, inasmuch as you swore four upon the principal. But this matter could be shown after the verdict to extort us from a judgment.

The Chief Baron [ARDERN] said that this matter appears to us vicious, and we will not go forward, because it will be in vain. *Quod nota*.

And he made the writ to be read and the record [?]. And the first writs were good and the return likewise. And the last writ was good, but in the return upon this writ, four jurors together [were] left out.

Choke, *Littleton*, and *Billing* prayed that this return could be amended because it was only the negligence of him who made the return. And they prayed that he [the Chief Baron] would examine the sheriff.

Laken: This will not be amended now, but a new writ must issue.

And the barons advised whether it will be amended or not. And for this, the Chief Baron [ARDERN] went to the Common Bench, and showed this matter to the justices, and asked of them whether it will be amended or not.

And the opinion of them was that the sheriff will be examined and, if they could find by the examination of the sheriff that the jurors who are left out in the return were summoned and that his intent was that they would be so returned and it was done and if it was found that they were left out [and] it was only by his own negligence, the return will be amended. And they said that such a case came before them in the Common Bench within two years that the sheriff returned upon a [writ of] distraint against the jurors that he had distrained T. where, in the writ and all other writs before, he had named R. and likewise, upon two other jurors, he had returned no issues and the sheriff was examined and his intent was to have returned R., and not T., and similar issues upon the others, 2s. 40d. upon each of them, and upon this, we made the sheriff amend his return in court.¹ And so they thought here.

And then the Chief Baron [ARDERN] came back and showed this matter to the court and that he [was] advised to examine the sheriff *ut supra*.

¹ YB Mich. 37 Hen. VI, f. 11, pl. 22 (1458).

Billing said that he knew well the case in the Common Bench, because he was [of counsel] with the defendant, and, after the inquest passed, he would have extorted the plaintiff from his judgment, *et non potuit*, because, by the examination of the sheriff, it appeared to them that it was only his negligence and it could be amended by the Statute.¹

And then, the Chief Baron [ARDERN] examined the deputy of the sheriff upon a book if he summoned the jurors who made default or not and if it was his intent to have returned those who were so left out, who said yes.

And afterwards, one of the three jurors who were left out was called, and he appeared, and was examined upon his word if he was summoned to be there or not, who said yes. And it was asked of him why, and he said by his bail[iff] of the hundred where he was living upon pain of 40s., because he was the deputy of the sheriff, demanded the return and put in the four names, and so made mention.

And then *Laken* said that those who appeared should be sworn.

Choke: Certainly not. We have sufficiently of the rest. Then we will go to the beginning of the panel again, but we will not go before we have perused the panel.

And this matter was well debated. And then, by the award [of the court], they went again in the panel, and they were sworn until eleven, and none were called after the name of the said juror in the said panel who had appeared except those who were the three outside. And, on account of this, he began anew to the swearing of the panel, and they were sworn to *voir dire*. And then the said juror was called and appeared and was sworn. (*Nota* this point well.)

And the Chief Baron [ARDERN] said to the jury when they were sworn when the said twenty packs of wool were shipped with the intent to be sent to Flanders, and not to Calais, *de facto* they will be forfeited notwithstanding that they were not carried out of the haven and the seizure of them was lawful and, if they were shipped with the intent to go to Calais and not elsewhere, then, if they were shipped without being customed or agreed for and the appointment with the customer, they were now forfeited, notwithstanding that he will agree with the customer to account for it to the king etc. And so, upon these two points, was the charge of the jury and that they enquire

¹ Stat. 8 Hen. VI, c. 15 (SR, II, 252).

of the intent at the time of the shipping of the wools and not what was done afterwards. *Quod nota.*

And upon this, the parties showed their evidence to the justices.

And it was said in the same plea by *William Jenney* that, where *decem tales* was awarded, the sheriff returned *octo tales*, and the sheriff was examined, and, because his intent was to have returned *decem tales etc.*, it was only his negligence, and the return was amended. *Quod nota.*

63

Anonymous (Ex. 1459)

Where a defendant in the Exchequer is sued there because he is an accountant to the crown, the plaintiff must allege the type of debt for which the defendant is accounting.

YB Trin. 37 Hen. VI, f. 38, pl. 27

In a bill brought in the Exchequer, *Billing* pleaded against such a one *nuper* of such a county *praefatus hic in curia super computum suum.*

And the bill was challenged because it is not *ratione officii sui praedicti etc.*

Jenney: This is not necessary, any more than it will be in the King's Bench in a bill upon one being *in custodia Marescalli* he will not say at whose suit he is in the custody of the Marshal, because, at [someone's] suit, he is in the custody of the Marshal is sufficient. And so [it is] here. Be he an accountant by reason of his office or in another manner, it is not *a propos* if he be an accountant.

Et non allocatur, for which he was commanded to amend his bill. And the other [party] emparled.

Bishop of London v. Nory
(Ex. 1460)

Where a defendant is sued for his own fault, a description of him as an agent is surplusage and not a misnomer.

YB Hil. 38 Hen. VI, f. 23, pl. 8

The bishop of London complains against S. Nory of London, merchant, *nuper* attorney of Piero de' Medici and the Society of Merchants of Florence in the Roman Curia because the aforesaid S. would not reasonably render to the same bishop his account for the time when he was the receiver of the moneys of this bishop in London and he has not yet rendered an account to him and for this unjustly that as the same S. was receiver of the moneys of the same bishop in London, *viz.* in the Parish of St. Gregory in the Ward of Baynard's Castle in London, *viz.* from the 26th day of July *anno* 35 [Hen. VI] until the 2d day of August then next following, and, by this time, he received the same moneys of the said bishop by the hands of W.R £3400 8s. 2d. ob., *viz.* £400 of the aforesaid £3400 8s. 2d. ob. he received 27th day of July in the aforesaid year and £1313 5s. of the aforesaid £3400 8s. 2d. ob. 29th day of July then next following and £180 8s. 4d. of the aforesaid £3400 8s. 2d. ob. 30th day of July then next following and £984 8s. 10d. ob. the aforesaid etc., the residuum etc 1st day of August then next following to the use and profit of the said bishop and thereafter to the same bishop render a good and faithful account what and when the aforesaid S. for the aforesaid bishop to which he was required to make that is lawful the said bishop afterwards at London in the parish and ward aforesaid required the aforesaid S. ever since to render a reasonable account and, however, the same S. *licet saepius requisitus* an account thereof to the same bishop has not yet rendered nor for this would, but refused to do this and still refuses *quo minus* the said bishop will satisfy the lord king of the debts and accounts of which the same bishop is held to the lord king, and whereof the same bishop said that he is impoverished *ad damnum* £4000 and thereof *producit sectam*.

Choke, for the defendant, demanded judgment of the writ, because it said that the defendant has the name S. Nory of London, merchant, only, *absque hoc quod* it has named S. Nory of London, merchant, attorney of Piero Medici, [he is] not known by such name, which matter, he is ready etc.

Billing: For that he has said nothing, [we demand] judgment etc.

Choke: It seems to me that the writ will abate because he is misnamed, and, as he is misnamed, the writ will abate. And that he is misnamed, I will prove, because you have named him S. Nory throughout, *ut supra*. And now all will be intended his name alleged by you. Thus, when our traverse is confessed by you, then it well appears that he is misnamed, because S. Nory of London, merchant, and S. Nory of London, merchant, attorney etc. cannot be intended one and the same person, and so, by consequence, different. And so here. Thus it is a misnomer.

Billing: It seems to me the contrary and that the writ is good enough, because all that comes after the '*nuper*' will be taken as void and to no purpose because it has his name before, because his name is S. Nory of London, merchant. And the other [words] will be said [to be] surplusage and taken as void. Thus, to take issue upon it will be to no purpose because it will not be said part of his name. Therefore.

ARDERN, Chief Baron: It seems to me that the writ is good enough and that all that comes after the *nuper* will be said to [no] purpose, because it is not material, nor will there be any estoppel of the party, nor is it to any mischief. But, when that which comes after the *nuper* is material, then it is traversable, as if a bill be sued against a sheriff upon his account for a tort that he did when he was the sheriff of the County of T. or *nuper* escheator, customer, and such like, there, it is a good plea to say that he was never sheriff of the County of T. or *nuper* escheator, customer, and such like, because, by reason of that which comes after the *nuper*, the action is founded and, for this, it is material and traversable, and in all similar cases. But thus it is not. Here, the act is for nothing founded of this that he was the attorney of Piero de' Medici, but the action is founded upon the receipt by his own hands. Therefore, it is not similar to the other cases, because if one bring an action against J.D., yeoman, *nuper* servant of R. Choke, what is *a propos* to say that he was never the servant of R. or known by such name when the action is founded upon a trespass done by him? It is the same

law if I bring an action of trespass or such like against one J.D., yeoman, *nuper* executor of such a one or administrator or *nuper* escheator of such a county or such like and I declare on a deed between him and myself and, upon this, we are at issue; there, the *nuper* is not traversable, because it is not material nor to any purpose, but it will be taken as void. But, when the action is founded because of that which comes after the *nuper*, then it is material and traversable. And so [there is a] diversity when it [is] traversable and when not.

But this matter was well argued before by the barristers, but I was not there then. And, afterwards, he awarded that the writ was good. And he put them to answer.

They said by protestation that he was never his receiver *ut supra*. But, for a plea, he said that to the two first parcels, he has fully accounted before the plaintiff the 10th day of August the 38th year of this same king at London in the parish of G. in the ward of the Ancumbre. And, as to the third, he pleaded by protestation that, the said 10th day of July in the same year and in the same parish and ward, the said plaintiff paid the said third sum to the said defendant in satisfaction of so much that the said defendant was in surplus to the plaintiff upon an account had between the plaintiff and the defendant, and the said plaintiff delivered the said sum by the hands of one J. for this cause, and he received them. But for a plea, he said that he did not receive the said third sum, nor any part, by the hands of the said W.R. to the use and profit of the plaintiff or for an account rendered to the plaintiff in the manner. Ready.

Quaere of this protestation, because he took the matter of the plea by protestation at first, but, afterwards, he relinquished this protestation, and took the traverse upon his matter. And, as to the remainder, he said that he was not ever his receiver by the hand of the said W.R. of the said sum or of any part or by an account rendered in the manner; ready. And, as to his traverse, he said that he was his receiver in the manner as he had alleged by his count and writ; ready. *Et alii e contra*.

Attorney General v. Lord Fauconberg
(Ex. 1464)

The repeal of the grants of export duties on wool did not repeal the requirement in those statutes that the exporters import so much bullion in return.

YB Pas. 4 Edw. IV, f. 3, pl. 4

In the Exchequer Chamber before the justices of the king of the one Bench and of the other, except that the Chief Justice of the King's Bench, *scil.* Markham, and also Danby, the Chief [Justice] of the Common Bench were not there, and before the aforesaid justices and the Chief Baron.

And a great matter was rehearsed by ILLINGWORTH [C.B.Ex.] how an information and surmise was made in the Exchequer that, in such a year etc., a merchant had shipped¹ certain merchandises, *scil.* sacks of wool to such a port and that he had not found a surety according to the Statute of *anno* 14 Edw. III,² *scil.* to carry bullion, *scil.* plate of silver of 2 marks for a sack within three months to take 2 marks in coin back etc. And this writ issued to the customer of such a town for this same matter aforesaid. And it gave to him a certain day *sub poena mille librarum deferens secum* all the sureties, and they named the sureties found of such merchant etc.

And to another manner, the certificate in the writ was continued, at which day, the customer returned the writ. And it was thus returned in effect, rehearsing such a Statute made *anno* 36 Edw. III, c. 11,³ how the commons of the kingdom of England had granted to the king for each sack of wool a great subsidy. And it showed the certainty of the grant for three years next following. And the king granted by this same Statute that, after the three years, no imposition nor charge will be taken nor demanded of the commons etc. except only the subsidy of the old custom of a half mark per sack. And

¹ *I.e.* loaded into a ship.

² Stat. 14 Edw. III, stat. 2, c. 4 (SR, I, 291-292).

³ Stat. 36 Edw. III, c. 11 (SR, I, 374).

the return rehearsed further the effect of another Statute made *anno* 45 Edw. III¹ of another such matter that willed that no imposition nor charge be made upon the wools etc. other than the custom and subsidy granted to the king etc., without the assent of Parliament, nothing be put, be repealed, and held for nothing etc. And by the cause of certain statutes aforesaid and upon the matter of them, he made his return etc. And, upon this, it was demurred by the King's Attorney.

Which matter was well argued by the king's counsel, *scil.* the serjeants of the king's counsel and by his Attorney [General, Sotehill] and also by the counsel of the other party. And, then, it was argued by divers of the justices etc.

NEEDHAM [J.C.P.] and ARDERN [J.C.P.] were of the opinion, that, by such return, the customer will be excused and the surety is repealed because of those statutes by those general words, as it has been repealed by express words, because in effect these last statutes defer the charges of the merchandises except that which is of the old customs, *scil.* the half mark per sack of wool, because he who is surety is well charged to him and also it is at the election of the customer here to take his advantage upon these two statutes against the king as well as upon the one and the king, at his election, to respond or rely upon one. And also here, it seems that there were such in all this matter and two statutes the party will have the advantage against the king, because a man could plead double matter against him and also, upon such an information, the customer will not be put to answer without an original, as by a writ or bill sued upon the matter against him. And also, this Statute was not ever put into operation etc.

And the opinion of CHOKE [J.C.P.], ILLINGWORTH [C.B.Ex.], and YELVERTON [J.K.B.] was that, by these statutes aforesaid, the surety is not repealed, because every statute made must be taken according to the intent of those who made it, there, where the words of it are [not] doubted and not uncertain, and, according to the rehearsal of the statute. And here, it seems that, by the rehearsal of the Statute *anno* 36 [Edw. III] etc., it was the intent of them etc. that, of such subsidies and impositions, they will not be put charged upon the wools as it is of the grant of the aforesaid subsidies or other such without the assent of Parliament and where, before the Statute of *anno* 45 Edw. III, c. 4, the

¹ Stat. 45 Edw. III, c. 4 (SR, I, 393).

merchants of the staple have by imposition and charge entered themselves for each sack 2 groats. And then upon this and upon other such causes *per annum* forty-five such impositions would be defeated besides the said subsidy. And also the Statute of *anno* 36 [Edw. III] wills that there be no such charge of subsidy afterwards without Parliament. In which case, by these statutes and the intent of them, the surety aforesaid is not repealed nor determined, because, there, it is not a charge to the merchant, because he will have a *quid pro quo* for his bullion imported etc. But, if those statutes had been contrary to the Statute of surety aforesaid or had repealed the aforesaid statute of the surety in this point, then it would be otherwise. But they are not. But they stand well enough with the Statute of surety aforesaid. And even though this Statute here has not been put into execution, it does not matter, because so there are in the books of statutes many articles which are not put into execution, but it does not matter because they still are law and can be executed by every man who is aggrieved contrary to them and thus heretofore good enough.

And ILLINGWORTH [C.B.Ex.] said that it is at the election here of the king or his counsel to sue his remedy by such way aforesaid or by another manner. And also here it is necessary that the matter of the return be double. And it lies in the election of the king to demur or to answer to the one at his will, as another common person will, because, in several cases, divers matters will be in one plea and yet, after, will be made sufficiently single, because in a writ of covenant upon a deed being of divers matters, the defendant must traverse the plaintiff that he has performed all of the conditions and covenants, but then the plaintiff must take his issue upon one certain point. And, thus, it could be for the king, in [an action of] *quare impedit*, divers presentments could be shown and declared for him for his title and yet be sufficiently single etc.

YELVERTON [J.K.B.]: As to the matter of doubleness, he thought that it is double because it must comprehend two matters of two statutes which could have divers responses. And the king cannot be made in a worse condition than a common person will be. And a common person must demur upon a double matter, and thus can the king well enough.

NEEDHAM [J.C.P.]: The party could waive one matter and take his advantage upon the other.

YELVERTON [J.K.B.]: This cannot be after the demurrer. But the king even though he traverse one or demur upon one, yet he could change and take advantage upon the other before etc. But the party cannot do so etc.

CHOKE [J.C.P.] was of the same opinion etc. that the return was double, because, if a plea includes two matters, even though none of them by itself be a sufficient matter in bar, yet the plea is double, because it includes double matter and, thus, even though none of the matters of the aforesaid statutes by itself be sufficient to bar the king or to excuse the customer, yet the matter is double etc., because it demands several responses etc. And the king has the advantage of such matter in a plea as well as every other common person etc.

ARDERN [J.C.P.] thought that, even though the matter includes two matters of two statutes, yet, against the king, it is good enough, because, if a man had twenty matters to plead or show against the king, he shows them well, as, of a contrary party, the king could have two matters or four in his plea or title and no man will take advantage of doubleness against him etc.

YELVERTON [J.K.B.]: As I have said before, I think that you should not put the king in a worse condition than another common person, because a common person will have an advantage of the double plea, and so will the king have it etc.

And other judges were in the place, and they could not argue because the day was passed etc. And, in this matter, many good cases were put not rehearsed here etc.

And it was said at this same day that the cause for which this Statute of surety aforesaid was not put into execution in the time of King Henry V and the King Henry VI, as it seems, is, because in the time of the King Henry V and, afterwards, in the time of the King Henry VI until now within, that is to say, sixteen or seventeen years, the wools passed the staple at Calais and, there, the bullion was taken and carried to the Mint, and, there, the payment was made. And, thus, the money came into this land by this commodity out of the other land. And, for this same cause, before the time of the King Henry V or Henry VI, *scil.* in the time of the King Edward III, the same cause and remedy was made to make the bullion to come into this same realm, for merchandises of wools and other such merchandises, the bullion to be conveyed here. And then, after, the King Edward III acquired the town of Calais. And, then, the bullion began there by statute and ordinance, and the wools will be sold at the staple, and the bullion there had been taken and is to be conveyed. And, after partition is to be made of the coin, any merchant could share it, as it was in the time of King [Edward III] this merchant and the mayor of the staple had there. Then, after this, the partition was lost and

broken, and the bullion did not come there, so that the partition and bullion and all that¹ by divers causes done by the duke of Burgundy and other causes and for that, to now, the bullion for the use and for the necessity of the realm here must be begun again upon the aforesaid Statute to bind the surety for the importation of bullion or otherwise to import bullion. And thus not to put the merchant to find surety, so that the Statute of *anno* 14 Edw. III, aforesaid, being in force and not repealed, as is proved by the making and the intent of the words of the Statute of *anno* 36 [Edw. III] and 45 [Edw. III] aforesaid etc., because the intent of those statutes was not as it seems by them to discharge the surety for the bullion aforesaid, but only to discharge after the three years aforesaid the great subsidies and other such subsidies and charges upon their wool or upon the merchants selling wools, one or the other, unless such subsidies or charges be granted by the authority of Parliament. And, if they be otherwise granted, such impositions or charges will be revoked and annulled and void etc.

And this matter was held by the opinion of YELVERTON [J.K.B.] and ILLINGWORTH [C.B.Ex.] aforesaid in their reasoning of the case aforesaid.

And it was said in this same matter aforesaid by YELVERTON [J.K.B.] and ARDERN [J.C.P.] that the customer cannot release the obligation or its surety etc. And this case of release comes in by the question asked, because ARDERN [J.C.P.], in this same plea above asked by Yelverton [J.K.B.] and said to him I will ask of you a question. If the customer could release such a surety etc.

YELVERTON [J.K.B.]: He could not release, because it is not made to the use of the customer, but for the benefit of the realm and in manner *est actio popularis*, this surety, if he does not import bullion; thus, this surety is not to the use of the customer.

ARDERN [J.C.P.]: If such surety be good, notwithstanding the aforesaid statutes, it seems that thus it will be that he could not release, because it does not belong to him nor is it his entry etc. and passes over etc., *ut supra*.

And also, it was said by divers of the aforesaid justices that the aforesaid return was not good, because he has returned part of the Statute and has not returned all of the entire record. But he said in his return part of the Statute and said further that the Statute remained further as more appeared by the record of the Statute, and so that the court will not adjudge that which is

¹ selle MS.

in the Statute now according to that which is within the Statute, but only according to that which the party himself pleaded, because the court did not adjudge the title or matter good for the plaintiff, but only the title or matter for the party pleaded and allowed etc. And, for this, if the court should adjudge according to the effect and intent of the Statute, then the Statute must be put in his matter and pleaded or returned. And, otherwise, the party will not have the benefit. Thus, it seems that he will not have the advantage unless of that which is alleged by him, because the court does not give or judge a matter for him unless it is alleged before them.

And of this see after, more of this matter etc.

YB Pas. 4 Edw. IV, f. 12, pl. 19

In the case of a surety, *supra*, case 4, folio 3, according to the Statute *anno* 14 Edw. III, all the justices were assembled in the Exchequer Chamber again to hear the opinions of the justices who did not argue the day before etc. And now, at this day, [the Statute of] *anno* 14 Edw. III, stat. 1, c. *ultimo*, was shown to the court, which gives for each sack of wool shipped here in this land to go to parties that are beyond the sea that the merchant will find a surety to the customer of the town or port where the shipment is to bring silver plate to the value of 2 marks, which will be delivered to the Master of the Mint etc. and the merchant will have 2 marks back and this importation of bullion will be within three months after the shipment. And, then, the Statute of *anno* 36 Edw. III was shown also which rehearsed the grant and subsidy granted to the king by the Commons for three years and the king willed that, after the three years passed, nothing would be taken nor estreated [?] of the Commons for a sack of wool except the old custom of a half a mark per sack nor that this aforesaid grant not be taken in example for other times etc. And, then, the Statute of *anno* 45 Edw. III willed that no imposition nor charge will be put upon the merchants nor upon others from now in the future unless by the assent of Parliament, and, if any be made, it is revoked and annulled. And, then, another Statute was shown and read with the Statute aforesaid, *scil.* of *anno* 11 Ric. II, c. 10,¹ that no imposition nor charge be put upon etc. unless by the assent of Parliament, and, if any be made, it is repealed etc., as formerly it is ordained etc.

¹ Stat. 11 Ric. II, c. 9 (SR, II, 54).

And then the record upon which the statutes were argued was shown, and it was a record of the Exchequer. And it began in manner in this form, and it was of such substance. *Memorandum quod in Parlamento domini regis Edwardus III anno 14, inter alia, ordinatum sit quod quilibet Anglicus aut alius residens etc.* ship from any port within the realm any sacks of wool to have them exported beyond the sea, that within three months after, he will import one silver plate of the value of 2 marks to the Master of the Mint and he will coin it and deliver it to the Warden at the exchange that he will deliver to the merchants 2 marks and that the party who ships any such sack or sacks will find a surety to the customer of the town or port where the customer of the shipment is that he will bring his plate within three months after etc.

And, upon this, the barons of the Exchequer for their advice awarded a writ to the Master of the Mint of London to certify them of how much plate was delivered to the Mint by force of the Statute of *anno 14* [Edw. III], *supra*, by any such merchants passing with wool, *scil.* from the first day of the reign of our lord the king who now is until the fourth year of the same king. And, upon this, it was certified by him how one J.B., merchant, had on such a day delivered gold plate for so many sacks shipped and that no other plate was delivered to him by any man for such cause of sacks carried and shipped beyond the seas. And, upon this, the barons of the Exchequer awarded a writ of subpoena to J. Potrell and H. Waifers, customers of London to come into the Exchequer on a certain day upon the penalty of £100 bringing with them *omnes securitates* according to the Statute *anno 14* Edw. III. At which day, they brought in the writ with a schedule annexed that they did not have any sureties taken of any aforesaid person etc.

And upon this, the King's Attorney [General, *Sotehill*] showed how the Lord of Fawconbridge and another J.T. and R.B. etc., on such a day and year of the king who now is, had shipped here at London 300 sacks of wool and this according to the Statute *anno 14* Edw. III, *supra*.

And, for the customers, [it was] pleaded the substance of the Statute *anno 36* Edw. III and 45 of the same king and *anno 11* Ric. II, by which statutes, they were discharged to take such sureties.

And, upon this, the King's Attorney *Henry Sotehill* demurred in law, *scil.* whether the aforesaid statutes, *scil.* 36 [Edw. III], 45 Edw. III, and 11 Ric. II be a sufficient discharge for the Statute *anno 14* Edw. III.

And it was well argued by the justices. But the better opinion was that the Statute of *anno* 14 Edw. III is still in force, not repealed by the aforesaid statutes etc.

And, first, by the opinions of ARDERN [J.C.P.] and NEEDHAM [J.C.P.], it was held that, by the Statutes of *anno* 36 [Edw. III] and 45 Edw. III, that the Statute *anno* 14 [Edw. III] was not repealed etc. (But see well the words included in the statutes of *anno* 36 [Edw. III] and 45 Edw. III.) And also, it was held that the Statute *anno* 14 Edw. III was as well for merchant denizens as strangers or foreigners, *scil.* that the one and the other bring bullion and find a surety etc.

And, afterwards, at another day, it was the opinion of YELVERTON [J.K.B.] and BINGHAM, Justice of the King's Bench, and of ILLINGWORTH, Chief Baron of the Exchequer, and of CHOKE [J.C.P.] and other justices of the Common Bench; it was held that the Statute *anno* 14 Edw. III, *supra*, is not repealed but still remains in force. But it was said, to the contrary, because the Statute *anno* 45 [Edw. III] willed the contrary of the Statute *anno* 14 [Edw. III] and, by it, it is repealed, to which, it was said that the express words of the Statute 45 [Edw. III] is in accord. And it is said that no imposition nor charge be put upon the wools, fleeces, etc. other than the custom and subsidy granted to the king etc. without the assent of Parliament, and, if any be put, it is repealed and held for nothing. And thus was the intent of those who made the Statute to defeat such manners of charges and no other and not to defeat such aforesaid surety given by the Statute *anno* 14 Edw. III.

ILLINGWORTH [C.B.Ex.]: We have heard your opinions in this matter and, on account of that, we will do in this as it seems to us.

ARDERN [J.C.P.] and NEEDHAM [J.C.P.]: In this case, it is good to have good advice in this matter, and we lack here two of our masters, the Chief Justice of the King's Bench, Markham, and Danby, Chief Justice of the Common Bench. And we do not know of the opinion of them, which, perchance, they will be as we are here.

ILLINGWORTH [C.B.Ex.]: We have heard your opinions, you who are here. And this is the cause of our assembling etc. And, in this case, we are two against one in our opinion etc. And we will do in this case as it is to do according to the better opinion etc.

And divers other good cases were put to the aforesaid justices not written nor remaining here, that studied well the statutes of both etc.

And, afterwards, the matter was adjudged for the king, as I heard the Chief Baron, *scil.* ILLINGWORTH, say etc. And also further that, for the contempt done to the king, a fine was made to the king by the customers and others and, further, that, in the year 2 or 3 Edw. IV, a new Statute¹ was made upon the same matter that 5 marks in coin or to the value of the bullion will be brought in for each sack of wool and also further that, for certain causes, the king has dispensed with the merchants and customers for a certain time because of a loan [?] taken of money and treasure given to the king by way of the loan. And this I heard from the aforesaid Chief Baron [Illingworth] in Michaelmas 8 Edw. IV, *scil.* in the year 1468.

66

Anonymous (Ex. 1465)

Where goods are seized by an officer of the Exchequer and a proclamation has been made of the seizure, the owner of the goods is not entitled to any further notice or process.

YB Pas. 5 Edw. IV, Long Quinto, f. 1, pl. [1]

In the Exchequer Chamber before all the justices, a matter of the Exchequer for the king was shown, how a searcher had made an information in the Exchequer, how one J.B., a Lombard, had shipped in such a ship, among other things and merchandises, 6 score marks of old groats, and he was in passing and going into another land with them etc. And, upon this matter, they were assembled [to say] whether a *scire facias* will issue against this Lombard to have his answer and to save his goods by it, *scil.* the groats, or not, because the groats were brought into the Exchequer by the aforesaid searcher of London upon his information made in the Exchequer etc.

And, according to the opinion of the Chief Baron of the Exchequer, *scil.* ILLINGWORTH, a *scire facias* will not issue because, by the new statutes,

¹ Stat. 3 Edw. IV, c. 1 (SR, II, 392-395).

the forfeiture for the shipping of money without a license of the king is given etc., and for the cause of the shipment of money or bullion against these statutes without a license of the king of it and upon this information made, the forfeiture of the Statute is given of any such shipment. And one Statute is in the time of Richard II,¹ that no man will ship money or bullion to be carried, other than to Calais, and, if he do it, it will be forfeited, and he who sees it will have the third part. Then after this, was another Statute made in the days of Henry IV,² rehearsing the aforesaid Statute, and it gives a further remedy etc. Thus, the statutes give generally a forfeiture to the king, and, by the statutes, no *scire facias* is given against anyone to plead with the king upon such a matter etc. But the usage of the Exchequer here is and has been after the aforesaid statutes upon the information, such as before, by anyone who search and find such a thing done against the statutes etc., to make a proclamation here in the Exchequer against him upon whom the information is made. And if the information be general, of no certain person, but of such thing shipped etc., the same form and usage is thus that him to whom the ownership belongs will come in and will plead for his title and right etc.

And this opinion was held by others also, that no *scire facias* will issue in the aforesaid case, any more than where the information is given against no certain person, as where it is done against a certain person by name. And so it has been the usage in the Exchequer after the statutes. And the course of a place makes a law etc.

But, according to some, it was held that a *scire facias* will issue in the case before named, where a person is named in certain in the information, because it is not reasonable that he be put to lose his goods without any [process]. And he cannot have a day by a proclamation used in this court before now, because the law will not coerce him to take cognizance of it unless the statute specially has given it. But in case if he was not named, anything will be at his peril to come and prefer him after the proclamation within a certain time afterwards, as is the usage that he will have a certain day after the proclamation to come and answer. And if such an information should be used without an award of process against the party to give a day to him [to appear], everyone by such manner [of proceeding] will lose his money or plate, which is not reasonable unless he be garnished and says nothing to it etc., and especially in the case

¹ Stat. 5 Ric. II, stat. 1, c. 2 (SR, II, 17-18).

² Stat. 2 Hen. IV, cc. 5, 6 (SR, II, 122).

here where the searcher has made an information upon a certain person etc. And the king is not at prejudice because there must be a *scire facias* awarded. If he be garnished and does not appear, then the king also will have the effect of the suit against him. And, if it be by the sheriff returned *nihil*, yet an *alias* [*scire facias*] will issue, and, if it be the second time returned *nihil*, then the king also will have the effect of this information and the party also, who made the information, to have the third part, because, in the King's Bench and in the Common Bench also, in a *scire facias* upon a charter of pardon, if the defendant be returned *nihil* two times, the plaintiff will have his charter allowed etc.

CHOKE [J.C.P.]: In the Common Bench, the usage is thus, but, in the King's Bench, I understand it is contrary.

MARKHAM [C.J.K.B.]: It is not so. But, in our place, as well as in the common law, the same course and usage is used and adjudged, and it is the same in both courts in this point etc.

And a precedent was shown to the justices there of a record containing the space of seven rolls of the Exchequer of such a matter and information between Humphrey, duke of Gloucester, and the Cardinal of Winchester where in truth that such a debate and variance was brought¹ against the Cardinal, who removed his plate and jewels, which were rehearsed in two rolls of the seven rolls aforesaid, and they were shipped with much of his money etc. and were upon the sea going into another land, and the vessel happened to be taken by a man from England. And because he was not of power to maintain with the cardinal, he delivered all of the jewels and the money etc. and the riches to the aforesaid duke, who was able to speak and plead with the bishop, showing to the duke that he found them upon the sea in a ship *eundo versus partes extraneas* to another land etc. And the duke took them and brought the goods to London. And an information was made in the Exchequer by the duke upon this matter, showing all of the matter before. And as they were taken upon the sea *eundo* to foreign lands etc. and this plea was pending there between them a long time, eleven or seven years or more. And there was a great opinion among the justices whether a *scire facias* will issue or not etc. But, pending the plea and before the determination of it, the cardinal, by agreement and mediation, gave £6000 to the king and appropriated to

¹ eschue MS.

himself the other £6000. And, by the authority of Parliament, it was restored etc. And it was a great matter [of dispute] also whether the duke would have the third part or not by his information etc. And they were in great doubt about this, as appears by the record, because it so long was pending between them and, at last, before the determination in law, the bishop was restored to all, as before. And this was entered *anno* 12 Hen. VI, because the plea began [then], as was said, and the matter was entered *anno* 12 or 13 Hen. VI, aforesaid.

And, afterward, by accord, he made a fine etc.

YB Trin. 5 Edw. IV, f. 4, pl. 11

An information was made in the Exchequer by a searcher against a Lombard because he had shipped £130 of groats to carry beyond the sea. And it was forfeited without suing execution by a *scire facias* because [there was a] proclamation in the Exchequer, because an information is good without naming to whom the groats belonged. And the Exchequer will have the two parts given to the king by the Statute 2 Hen. IV. Such a case of the Cardinal of Winchester was thus similar, 10 Hen. VI [1431 x 1432], etc.

67

Sivert v. Clifford

(Ex. 1473)

In this case, the defendant failed to plead a good defense, and the court found him liable to the plaintiff.

64 Selden Soc. 14

Hilary term, 12 Edw. IV.

John Sivert sues a bill of trespass in the Exchequer against William Clifford, esquire, who says that he was possessed of the same horse as of his own horse until one John Sivert of Gravesend took it out of his possession and gave it to the plaintiff etc., out of whose possession the defendant took it

etc. To which the plaintiff says that the said John Sivert of Gravesend and the said John Sivert, the present plaintiff, are one and the same person and not different, and that he was possessed of the same horse until the defendant took it out of his possession, the which matter he was ready to aver as the court etc. and, inasmuch as the said plea pleaded by the said William Clifforde upon the matter shown by the said John Sivert is not sufficient in law etc., he prayed his damages. And demurrer is joined etc. on the aforesaid pleading.

And then, this term in the Exchequer Chamber, this matter was rehearsed before all the justices, and they were clearly of opinion that the plaintiff should recover because, by this averment tendered by the plaintiff, to wit, that they are one and the same person (which is not denied by the defendant), he is in such case as if the defendant had pleaded that he was possessed until the plaintiff took it etc. and he took it back again etc., on which plea, the plaintiff could clearly have demurred (as was held by them all), because it amounted to the usual issue and no color was given to the plaintiff. And, although, in the aforesaid case, the plaintiff does not deny that the property of the said horse is in the defendant and so the right to the horse is his, yet, inasmuch as he can make no answer to this, no heed of this shall be taken. In the same way, in a case which was put and agreed to by all, to wit, if the tenant in assize pleads a feoffment from the plaintiff by a different name and gives color to the plaintiff, if the plaintiff in this case shall say that they are one and the same person etc., he shall have an assize, and yet, in this case, his feoffment is not denied, but inasmuch as he can make no answer to this, no heed shall be paid to it. But, if he shall say that they are one and the same person and that he enfeoffed him, he shall be barred, seeing that he expressly recognized the feoffment.

And then, in the Exchequer, a writ to enquire touching the damages was awarded.

64 Selden Soc. 15,
YB Hil. 13 Edw. IV, f. 7, pl. 4

An action of trespass touching a horse, saddle, and bridle, seized and carried off, was brought in the Exchequer by one John Sharpe. The defendant justified, and said that he himself was in possession etc. of the said goods as of his own goods until one John Sharpe of Dale seized them and gave them to

the plaintiff; the defendant, therefore, at the time of the trespass, took them back again. And the plaintiff said that this same John Sharpe named in the writ and this John Sharpe, now the plaintiff, are one and the same person and not different. And, as to the plea pleaded [by the defendant] in this wise etc., no law etc. And upon this matter, he demurs in law. And this matter was now rehearsed in the Exchequer Chamber before all the justices of both benches.

Rogers: It seems that the plaintiff shall be barred for two reasons: one because the plea in bar when it was pleaded was a sufficient bar etc., then the plaintiff alleges matter in fact, and demurs on the plea. It seems that this matter in fact cannot make the same plea bad which before was good. And Sir, whether a plea shall be said to be good or not good shall be decided by the court and not by the jury. But here, this matter in fact makes the plea bad, to wit, if he be the same person, then the plea is bad and, if there be divers persons, the plea is good. The sufficiency of the plea is therefore determinable by the verdict of the jury etc. And, Sir, where an assize is brought against two persons and each takes the tenancy and pleads in bar, the plaintiff can elect one of them as his tenant, and shall say that, as to the plea pleaded by the other, no law etc. This is good, for, here, he disables him who pleads, etc., because he is not a tenant. Thus, the plea was never good, for, here, he disables his mouth from pleading, for it was never good. In another sense, the plaintiff has barred himself by his recognition, for we have said that we were possessed as of our own goods; J.S. took them, and the plaintiff says that he himself is that person; thus, although he takes our goods and we take them back again, he can have no action touching this.

BRYAN [C.J.C.P.]: If Thomas Bryan brings an assize and the defendant pleads a feoffment of one Thomas Bryan of Dale and gives color to the plaintiff, [and] the plaintiff says that he and Thomas Bryan of Dale are one and the same person, then he shall be barred, for this non-denial has as much force as though he had said that he himself is the same person. So it is here. And I am of opinion that one plea shall not have two trials, one by a jury, and the other by the justices upon a demurrer in law. But, if they had been at issue here as to whether he is the same person or not and it is found that he is the same person, yet it is necessary to have a determination by the justices upon the demurrer etc.

LITTLETON [J.C.P.]: It seems that the plaintiff shall recover. And, as to what is said that it cannot be evident to the court that they are the same

person, Sir, this can well be so by the non-denial of the defendant, and he could have taken issue on this, and when he does not wish [to do so] but demurs in law, he admits that they were one and the same person. And, Sir, as to what is said that he has admitted that he took the defendant's goods because he says he is the same person etc., this is not so, for a thing shall not be held as not denied where a man offers no answer to it. But, in the court here, there is no need for the plaintiff to make an answer to the bar, for now, when it is disclosed that they are one and the same person, the defendant's plea only amounts to 'not guilty,' thus there is no bar etc., hence the plaintiff's demurrer is upon the manner of pleading. And, Sir, the case of assize which is put and this case are all one, for, to begin with, the plea is good, but, when it is disclosed that he is not a tenant, then the plea is not good. And there shall be an enquiry about this by a verdict at an assize.

And the opinion of all the justices was that the plea was good; therefore, afterwards, in the Exchequer, the plaintiff had a writ to enquire touching the damages etc.

64 Selden Soc. 16,
Public Record Office, E.13/158, Pas. 12 Edw. IV, rot. 5

John Sivert, knight, comes before the barons of this Exchequer this term on the eighteenth day of April by William Castelton, his attorney, and makes his plaint by bill against William Clifford, formerly escheator of the lord the king who now is in the counties of Kent and Middlesex (he being present here in court on the same day to render his account in his own person here in this Exchequer touching his office), because the aforesaid late escheator, on the tenth day of March in the twelfth year of the reign of the said lord the king who now is, in London, in the parish of Saint Fawstar in the Ward of Cheap, London, with force and arms, to wit, with swords, staves, bows, and arrows, took and led away one horse, grey in color, of the value of five marks, the goods and chattels of the aforesaid complainant, then [and] there found, and he took and carried away one saddle, one bridle, and one poitrel with one crupper, to the value of 13s. 4d., the goods and chattels of the same complainant, then and there likewise found, against the peace of the said lord the king and to the damage of ten marks to the defendant. And this he offers etc.

And the aforesaid late escheator, present in person etc., asks to hear the aforesaid bill, and it is read to him etc. Having heard it, he says that he, at present, is not yet advised to answer the said John in the premises, and he asks for a day to make answer thereon until the octave of Holy Trinity within which etc., which is granted to him by the court, and the same day is given to the said John here etc.

On which day, the parties aforesaid come here, to wit, the said John by his aforesaid attorney and the aforesaid late escheator in his own person. And the aforesaid John prays that the aforesaid late escheator do make answer to him in the premises.

And, thereupon, the aforesaid late escheator says that he is not yet advised to answer the said John in the premises, and he asks a day further therein until Friday the tenth of June next to come, within which etc.; which the court grants him, and the same day is given to the said John here etc.

On which day, the parties aforesaid come here, to wit, the said John by his aforesaid attorney and the aforesaid late escheator in his own person. And the aforesaid John prays that the aforesaid late escheator do answer him in the premises. And, thereupon, the aforesaid escheator says that the aforesaid John ought not to maintain an action against him in this case, for, while protesting that the horse, saddle, bridle, and crupper are not nor were of such value as is supposed above by the aforesaid bill, he says, moreover, for his plea that, long before the aforesaid trespass supposed above, the same William Clifford, now the defendant, was in possession at Southwark in the County of Surrey of the same horse, saddle, bridle, and crupper as of his own goods and was thus possessed thereof until a certain John Sivert of Gravesend in the County of Kent unjustly took the same horse, saddle, bridle, and crupper out of his possession at the aforesaid Southwark and was possessed thereof by virtue of the aforesaid unjust seizure and, being thus possessed thereof at Southwark aforesaid, he gave the same horse, saddle, bridle, and crupper to the said John Sivert, now the complainant, by virtue of which gift, the same complainant was then and there possessed, and he took away from there the same horse, saddle, bridle, and crupper to London to the said place where it is supposed above that the aforesaid trespass was committed. The aforesaid William Clyfforde, now the defendant, at the time of the supposed commission of the aforesaid trespass in the place where it is supposed that the aforesaid trespass had

been committed, took the same horse, saddle, bridle, and crupper out of his possession, as being his own goods, as it was quite lawful for him to do. Which matter, moreover, the same William Clyfforde is ready to aver as the court etc., whence he does not consider that the aforesaid John Sivert ought to have or maintain his aforesaid action against him in this case.

And the aforesaid John Sivert says that the aforesaid John Sivert of Gravesend, named in the aforesaid bar, and the aforesaid John Sivert, now the complainant, are one and the same person and not diverse. And he says that he was possessed of the same horse together with the saddle, bridle, crupper, and poytel in London aforesaid until the aforesaid William Clyfforde there and on the aforesaid day unjustly took them out of the possession of the complainant in the manner and form as is supposed by the aforesaid bill. Which matter, moreover, the same John Sivert is ready to aver as the court etc. And he says that, because the aforesaid plea in the manner and form pleaded above by the said William Clyfforde upon that matter shown by the same John Sivert is not sufficient in law, he, the same John Sivert, has no need nor is bound by the law of the land to make answer to it; whereupon, he asks judgment and his aforesaid damages to be awarded to him in this behalf together with his aforesaid costs etc.

And the aforesaid William Clyfforde, because he has pleaded above sufficient matter in bar and to the exclusion of the said action of the aforesaid John Sivert (to which matter moreover the same John Sivert has made no answer), asks judgment and that he, John Sivert, be debarred from having his aforesaid action etc.

And the aforesaid John Sivert says as before etc. and asks judgment likewise. So to judgment.

And because the aforesaid court is not yet advised to render judgment in the premises, a day is therefore given to the parties aforesaid touching the premises in the same state as now until the octave of Saint Michael to hear their judgment thereon here etc.

On which day, the parties aforesaid come here, to wit, the said John Sivert by his aforesaid attorney and the aforesaid William Clyfforde in his own person. And the aforesaid John Sivert asks his judgment in the premises as before etc.

And, because the lord the king, who now is, wished the aforesaid barons to be informed what and of what kind and of what value were

the damages the aforesaid John Sivert had and suffered by reason of the aforesaid trespass and also what and of what kind were the costs and expenses the same John Sivert had and suffered in respect of his aforesaid suit incurred by him, John Sivert, in this matter by reason of the trespass, he ordered, before there is proceeding to judgment, the sheriffs of London, by his writ of his aforesaid Exchequer, to enquire diligently by the oath of honest and lawful men of their bailiwick what and of what kind and of what value were the damages the aforesaid John Sivert had and suffered by reason of the aforesaid trespass and also what and of what kind were the costs and expenses the same John Sivert had and sustained in respect of his aforesaid suit, incurred by him, John Sivert, in this matter by reason of that trespass. And [he ordered that], when they had taken that inquisition, they should distinctly and openly certify it before the Treasurer and barons of the aforesaid Exchequer at Westminster on Monday the eighth of February then next to come under their seals and the seals of those by whom it shall have been made, so that the same barons, thus informed touching the aforesaid damages, costs, and expenses, shall be able in the returning of the aforesaid judgment to do in the premises what of right and according to the law and custom of the realm of the said lord the king ought to be done. And [he ordered] that the same sheriffs should then have here the names of those by whom that inquisition had been made and that writ etc. as is further contained in the same writ which is in the file of writs for Hilary term in the twelfth year of the reign of the said lord the king who now is.

On which day, the parties aforesaid come here, to wit, the said John Sivert by his aforesaid attorney and the aforesaid William Clyfforde in his own person. And the aforesaid sheriffs of London, to wit, John Broune and Thomas Bledlowe, return the writ here etc. and [return] that the execution of the same writ is made clear by a certain inquisition sewn to the same writ. The tenor of which inquisition follows in these words:

Inquisition held in the Guildhall of the City of London before John Broune and Thomas Bledlowe, sheriffs of London, on the sixth day of February in the twelfth year of the reign of King Edward IV by virtue of a certain writ of the said lord the king directed to us and stitched to this inquisition, to enquire

what and of what kind and to what value were the damages a certain John Sivert named in the said writ had and suffered by reason of the trespass specified in the same writ and also what and of what kind were the costs and expenses the same John had and sustained in respect of his suit, incurred in this matter by reason of that trespass. [The inquisition was taken] by the oath of John Taillour, William Getter, John Abington, Thomas Pounce, Thomas Nicholle, John Palmer, Stephen Salisbury, John Ovingham, William Herest, John Wade, Robert Growelle, Walter Notall, and Robert Horsbeke, honest and lawful men of our bailiwick, who say upon their oath that the said John Sivert had and suffered damage by reason of the aforesaid trespass to the value of 26s. 8d., and also that the same John Sivert by reason of that trespass had and sustained as costs and expenses, incurred in this behalf by him, John Sivert, in respect of his aforesaid suit, the sum of 46s. 8d. In witness thereof to this inquisition, the aforesaid jurors have set their seal dated the day, place, and year above mentioned.

And, thereupon, the aforesaid John Sivert asks his judgment in the premises together with his aforesaid damages to be adjudged to him in this matter etc.

Whereupon, the barons having considered the premises and further deliberation thereon having been held among themselves, it is awarded by the same barons that the aforesaid John Sivert do recover against the said William Clyfforde his aforesaid damages by reason of the aforesaid trespass assessed and taxed above by the aforesaid inquisition at 26s. 8d. and also that he do recover the aforesaid 46s. 8d. likewise assessed and taxed above for his costs and expenses aforesaid incurred in this matter in respect of the aforesaid suit, which sums moreover amount in all to the sum of five marks 6s. 8d. And it is awarded that the aforesaid William Clifford be taken to pay a fine to the said lord the king in the premises etc.

Collins v. Stocker

(Ex. 1474)

Venue should be laid in the county where the principal fact of the case occurred.

An action of debt against a sheriff for an escape of a judgment debtor in execution can be sued either where the arrest or where the escape occurred.

YB Pas. 14 Edw. IV, f. 3, pl. 1

In the Exchequer Chamber, the case was thus. A writ of debt was sued against [William] Stocker and one R., former sheriffs of London for this, that where the plaintiff sued execution on a statute merchant against one B. directed to the said sheriffs, by which writ, they arrested the said B. in London, by which he was in their custody etc. until such a day that they, in Southwark in the County of Surrey allowed the said B. to escape and go at large out of their custody etc., by which escape, an action accrued to the plaintiff etc.

And note that the writ was sued against the said former sheriffs of London in London and not in Surrey, where the escape was etc.

And, afterwards, the parties were at issue. And it was found for the plaintiff. And, now, he prays for his judgment.

Fairfax: To judgment, you will not go, because this writ was brought in London where the cause of action, *scil.* the escape, was in Surrey, and, there, must the writ be brought, notwithstanding that two matters before the action [are] to be maintained, *scil.* the arrest and the escape, because there is a difference between the writ brought upon a tort done to the plaintiff and where not, because, if a man makes a lease of a term of years in this county of lands in another county, rendering a certain rent, he can perhaps bring his writ of debt in which county that he wishes etc. And thus, if one person has an annuity out of a church in another county and had seisin in this county etc., because those actions are not brought for any tort or trespass etc. But, if a man in this county makes a lease of land in another county etc., the action of waste will be sued in the county where the waste was done and not where the lease was made, because this tort, *scil.* the waste, is the cause of action, and not the lease, and yet, without the lease, he cannot have an action. But the lease

is only the conveyance of the action. And the same rule is for a conspiracy in one county and an acquittal in another county or maintenance in one county etc. or a jury took money from me in another county for giving their verdict etc. In these cases, the writs of conspiracy, maintenance, [or] *decies tantum* will be brought there where the conspiracy, maintenance, or taking of money was, because, upon those torts, the action is founded. And yet, without the recovery, the actions are not for maintenance, but the records are only the conveyance and means to the action etc., and not the cause of action.

And thus here, this arrest that was in London, does not give a cause of action to the plaintiff, but is the means and conveyances of the action, because, if the said B. had not been in their custody, he could not have escaped etc. But yet this escape is the tort and the cause of action etc. And, at common law, there was no action of debt against a jailer for such an escape [but] an action of trespass upon the case, which must be brought where the escape was. And, by the same reason, will be the action of debt that is in the place of the action of trespass, also ravishment of ward and forfeiture of marriage, upon it brought there, where the heir was ravished or where he married him, even though he be in a foreign county and not where the land is etc. Yet now, by the death of the ancestor, the heir is bound and held by the cause of this land to be married off by the lord etc. But the said actions are all upon the tort, *scil.* the ravishment or marriage etc. And other cases of repair of bridges were put in one county because of land in another county etc., *vide* 8 Hen. IV and 11 Ric. II, and, for the wardship, *vide* 40 Edw. III, in a writ of wardship etc.¹

Catesby thought to the contrary and that the action is well sued, because now, by the arrest, were the sheriffs held and bound in law to the plaintiff to guard the prisoner until the plaintiff was satisfied etc. And then, when they allowed him to escape in another county, now, upon these two points has the plaintiff a cause of action etc. And each of them is traversable etc. Thus, the plaintiff can elect in which county he wishes to sue etc. And more naturally it is to sue where the contract began etc. And it was by the arrest etc. And, Sir, to that which is said that there is a difference where the action is founded upon a tort or a trespass and where not, Sir, this is no difference etc., because,

¹ *Abbot of Stratford's Case* (1406), YB Hil. 7 Hen. IV, f. 8, pl. 10; *Skyrne v. Butolf* (1388), YB Pas. 11 Ric. II, Ames Found., vol. 5, p. 223, pl. 12; YB Hil. 40 Edw. III, f. 6, pl. 13 (1366).

if a man be retained in my service in one county and departs into another county, I can elect in which county I will sue etc. And yet the departure is the tort and there is no tort in the retaining etc., but, because he is bound by his covenant and retainer, the action can be sued there. *Vide hoc* Hilary [term] and Michaelmas [term] 41 Edw. III.¹ And the same rule is where a man makes a covenant with me to build my house in another county and he does it badly, I will have an action upon my case in which of the counties that I wish. *Vide* 11 Ric., of a surgeon etc.² And, Sir, as to the case of waste, the cause that he will be sued for is where the waste was done, because it is to recover the place wasted etc. And, even though the term was past, so that he should not recover the place wasted, yet he will recover damages for the waste, and this, in which place the jury should have the view of the waste etc. And, Sir, as to the cases of conspiracy or maintenance etc., nothing is done by the defendant except the conspiracy or the maintenance, and they are not parties to the record etc., because it is between persons etc. Thus, they are not the same etc.

Query of *decies tantum*, because they took money and also they gave their verdict etc. And, if a writ be brought in Essex etc. and *latitat* is awarded in Sussex and the sheriff takes the body there etc. and, then, here in Middlesex, it is returned *non est inventus etc.*, I could bring my action here in Middlesex or Sussex, and yet the entire tort was for his false return made. And the same rule is if the sheriff take the body in one county and return a rescue of him in another county, I could bring my action there where the arrest was etc. Thus, in this case, the plaintiff can at his election bring the writ where the arrest was or where the escape was.

And it was said that, where a man has a church in this county and is disturbed to present in another county, the [action of] *quare impedit* will be brought where the church is and not where the disturbance was done, because, there, he is to be put into possession of the church etc. And, thus, it is of things which touch the inheritance, as the repair of bridges in one county for the cause of land in another county etc., he will recover the repairs etc.

And, afterwards, by the advice of all the justices, the plaintiff had judgment to recover.

[On appeal: YB Hil. 15 Edw. IV, f. 18, pl. 8.]

¹ YB Mich. 41 Edw. III, f. 20, pl. 4 (1367).

² *Skyrne v. Butolf* (1388), YB Pas. 11 Ric. II, Ames Found., vol. 5, p. 223, pl. 12.

Anonymous v. Prior of Christchurch (Ex. 1475)

Where a royal accountant's term of office has ended, he should be sued as a former officer; such a misnomer can be cured by an amendment.

YB Trin. 15 Edw. IV, f. 27, pl. 4

A man sued a bill of debt in the Exchequer [against] the prior of Christchurch, collector of the tenths, etc., pleading all in certain.

Philpott: [We pray for] judgment of the bill, because the prior was made a collector by a certain commission and the commission was *ita quod haberet denarios hic in curia in festo Sancti Martini in hyeme* [11 November] last past, at which time, the prior came in and he was sworn to account. And this bill was sued against him on the first *die Novembris* last past; thus, at the time that the bill was sued against him, he was not a collector, because his power was ended before, in which case, he should have been named *nuper collector* of the tenths, as if a bill be sued against a sheriff upon his account, he will be named *nuper vicecomes; sic hic*.

Catesby: There is a great difference between these cases, because by the Statute,¹ a sheriff cannot have the office of a sheriff except for one year; so that, after the year, his authority and his power is ended. But, when a collector has his commission to collect the tenths, notwithstanding that, by the commission, a certain time is limited when he must pay the money to the king, yet, by such, his power is not ended, but he can collect the tenths after the day limited in the commission. And, for all this time, he will be said a collector. And notwithstanding that he has entered into his account before you here, still it could be that he had not levied the tenths, and [during] all the time that he has not levied the tenths, he will be said [to be a] collector. By which, as it seems to me, the bill taken against him as against a collector of tenths is good enough.

URSWICK [C.B.Ex.]: If there be a collector of tenths and his commission be that he should have the money at the Feast of St. Michael

¹ Stat. 14 Edw. III, stat. 1, c. 7 (SR, I, 283).

last past so before us and, during the time of his commission, he neither levies nor collects anything, after the said day, he does not have authority to levy anything if any default be in him. But, if no fault be in him, as the collector is in the collecting of the tenths and a rescue is done to him and the collector of it certifies us upon his account, then the party will have a *constat* directed to the sheriff of the same county where he should have levied the aforesaid tenths so that always the power of the collector is ended after the day accrues. And, by [this] reason, he will be named *nuper collector*. The law is the same of a customer. Therefore, it is well that you amend your bill.

And, afterwards by the course of the court, he amended his bill. And the bill was *versus priorem nuper collectorem, quod nota etc.*

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Anonymous v. Abbot of St. Alban's
(Ex. 1475)

A party can enter an appearance by an attorney.

Where an accountant to the crown is in the Exchequer upon his account, he can be sued as a defendant in the Court of Exchequer by a bill.

YB Trin. 15 Edw. IV, f. 28, pl. 5

The abbot of St. Alban's entered into an account in the Exchequer by his bailiff. And, pending the account, a stranger [to the account] sued a bill of debt upon an obligation against him, and prayed that the abbot be called and that he answer him.

And *Catesby* said sue your [writ of] process against him, because he has not yet appeared.

URSWICK [C.B.Ex.]: The abbot has appeared by his bailiff and has entered into his account by him so that, during his account, he must answer to him, because the appearance of his bailiff is his appearance. Therefore etc.

Catesby said that he wished to speak to the abbot's counsel etc.

Earl of Kent v. Shaw
(Ex. 1476)

A sheriff will be excused where his prisoner is rescued before he is taken to a prison, but not after he is in prison.

In this case, the prisoner in execution was not in the defendant sheriffs' custody at the time of the rescue.

YB Pas. 16 Edw. IV, f. 2, pl. 7

The earl of Kent sued his writ upon the case against Schawe and another, sheriff of London, concerning such a matter, that where the earl had brought a writ of account against one J. Moile, the process continued until judgment was given that he should account, by which the earl sued out a [writ of] *capias ad computandum* directed to the said sheriffs of London, by force of which *capias*, the said sheriffs took him and, from that day, he was in their custody until such a day at which they allowed him to go at large, by which, an action accrued.

Jenney: You cannot have an action, because, before the release at large alleged, *scil.* such a day a [writ of] *corpus cum causa* came out of the Chancery directed to the same sheriffs to have the body and the cause of J. Moile before the king in his Chancery, by force of which, on the same day that he must allege him to go at large, they brought the body with the cause alleged by the plaintiff, for which, for divers considerations, the Chancellor commanded him to the Fleet Prison. And, because the Warden [of the Fleet Prison] was not there present, he commanded the sergeants that they take the said J. Moile to the Fleet [Prison], by force of which, the sergeants took him towards the Fleet. And, at the Temple Gate, in going to the Fleet, certain persons (and he showed their names) rescued him. [And he prayed] judgment *si actio*.

And, upon this, the parties have demurred [and prayed] judgment.

Pygot: This is not a [good] plea, because, when the party has judgment against J. Moile and commits [him] to the custody of the sheriffs, they are charged to keep his body until the party be satisfied or, otherwise, the party will have an action against them, as if he was condemned in a certain debt

and delivered to their custody, if they allow the party to go at large by their agreement, they will be charged with the debt. And so here. Then, here, there is not another thing to excuse the sheriffs, to my understanding, than the rescue. And, Sir, this is not any matter, because, when once he was in their custody, they will be charged to keep him at all peril, because, I put it, that, [if], after this, they have him in their custody in a prison [and] that a stranger had broken the prison, in this case, they would be charged, notwithstanding that they broke with force and arms, because the law understands that they could have better guarded the prison. And, I put it, that, [if] I lease lands for a term of years or for life and a stranger enter and cut down the trees, I will have a writ of waste against my tenant for a term of years, because he was charged at the beginning if anyone makes waste, because he will be charged and he will not be excused that the stranger made the waste with force and arms etc. Therefore etc.

Fairfax thought to the contrary, because, if a *capias* issues to a sheriff to arrest a man and a rescue of him is made before he be taken to prison, if the sheriff returns the rescue, he will be excused against the party (*quod fuit concessum* by all of the justices). And the cause is that the law does not intend that the sheriff should be so strong that he should resist everybody. Thus, by the same reason, the sheriff should not be charged against the party in the aforesaid case. And he was commanded to take his body to the Fleet. The law does not intend that he will be so strong as to reduce the body to prison against the will of everyone, by which, by the same reason that he will be excused in the one case, he will be excused in the other. And I grant well the case of the lease of a term of years, because the lessor cannot have his action against anyone except against his lessee, because, against him who made the trespass or waste, no action is given for the lessor, but the lessee will have an action of trespass him and will recover as much as he is charged over to his lessor. But here, the plaintiff can have an action against the said J. Marshall.¹ Therefore, it would not be reasonable to charge the sheriffs, where there is no fault in them and also where the party has no disadvantage. Therefore [etc.].

Catesby: It seems [to me] that the action is well maintained and that this plea is not well pleaded, because I grant well that, during the time that the plea was pending in process, that the party will not have an action against

¹ Sic in MS. for Moile.

the sheriffs if a rescue is returned, because, there, the party could continue his process against the defendant by a *capias, alias* [*capias*], and *pluries* [*capias*]. But, when once a judgment is given and the defendant is put in execution by his body, a rescue will not be excused to the party, because it was advised by all the justices and serjeants at law when the bastard Fauconberg made the insurrection in Kent and broke the prison of the King's Bench and let the prisoners to go at large, that the warden of the prison could not discharge himself in any manner, but, by the advice of all his counsel, he sued to the Parliament. And, there was an act made that he will not be well charged by such reason.¹ Thus, here, as the party is not in process, but the judgment is decided against him, then it is reasonable that the sheriffs will be charged with my action now to render the body liable to my execution.

Vavasour: It seems to me the contrary. And I grant well when a man recovers by a writ of debt and the defendant is put in execution with the sheriff or another warden, that, if he be let to go at large, his warden will be chargeable, because the duty for which he is put in execution is put in certain by the record. But, here, in the case at bar, the judgment is not well otherwise but that the defendant, *scil.*, J. Moile, will account. Thus, it is indifferent whether J. Moile should be found in arrear to the seizor or otherwise in surplus with the lord. Thus to charge those who are his wardens by an action where, perhaps, there was nothing in arrear to the seizor, it will be against reason to charge them etc. And to say that the process is ended when judgment is given that the defendant will account, it is not so, because it has been adjudged *anno* 21 Edw. III² that, [if] a man has a judgment of record in a writ of account that the defendant account and he sue a *capias ad computandum* and, before he accounts, the plaintiff die and the executors have a *scire facias* against the defendant to know if he knows anything to say that he should not account and [it is] not maintainable. Michaelmas [term] 21 Edw. III, f. 3; there, in this case, the executors prayed a *scire facias*, and it was denied them, and they were compelled there to sue a new writ of account, because, there, Hillary [J.C.P.] said that the award that the defendant should account is an original judgment which cannot be warranted by an original which is annulled by the death of the testator. And, if this *scire facias* be maintained by

¹ YB Hil. 33 Hen. VI, f. 1, pl. 3 (1455).

² YB Mich. 21 Edw. III, f. 32, pl. 15 (1347).

the executors, then it is an original in manner pending in process. And, if so, by your rescue, the rescue will excuse the sheriffs.

And Master *Catesby* answered to this matter should not the lord of Kent have a new writ of account, *quasi diceret* yes, because *Catesby* said to *Vavasour*, that, if a man recover by a writ of debt, could not I have a new writ of debt?

Vavasour: Yes, truly.

Catesby: And so could the lord have a new writ of account. Therefore, your question is not to any purpose. And, as to your case of a *scire facias*, this proves for us, because the original is determined and does not pend in process. Or, otherwise, the executors would not have a *scire facias*. And in every case, the executors have a *scire facias* to execute the judgment given for their testator.

URSWICK [C.B.Ex.]: There has been a diversity where a sheriff is in the executing of his office. There, a rescue will excuse him against the party. But, when once the party is in execution, the law intends that the sheriff is as strong as the warden of a jail is, so that no man can make a rescue from him. And, therefore, in such a case, it will not excuse the sheriff or warden. And, Sir, there is another thing for which the action is not well maintained, because he has pleaded that J. Moile was in their custody by a [writ of] *capias ad computandum* and thus being in their custody, they allowed him to go at large and now it appears by both parties that, when the Chancellor commanded the sergeants to take him to the Fleet [Prison], that he was not in the custody of the sheriffs by reason of the *capias ad computandum* nor in any other manner, but he was out of their custody. And the sergeants, who were the executors of the commandment of the Chancellor, were as servants to the Chancellor or to the Warden of the Fleet for the time being. Thus, to charge the sheriffs by a rescue where the party condemned was out of their custody, it will be against reason to charge them. But we wish to be advised.

Attorney General v. Abbot of Shrewsbury
(Ex. 1484)

A patent of the king should be construed to have a reasonable meaning and not construed to be void.

The king can grant a member of the clergy to be excused as a collector of taxes of tenths.

64 Selden Soc. 102,
YB Mich. 2 Ric. III, f. 4, pl. 9

Be it remembered that, in the first year of King Richard III, the clergy of the province of Canterbury in Convocation granted the king a tenth to be paid at two times. And, after that grant, the record was sent into the Exchequer from whence also a writ of the lord the king [was sent] to the bishop of Hereford and to the other bishops, reciting *inter alia* the effect of the grant etc. directing the same bishop by the same writ to name one man, a regular, for the collecting of the aforesaid money in the diocese etc. for whom he would be willing to answer, and to certify his name to the Treasurer and barons of the Exchequer. And he, the bishop, named and certified the abbot of Shrewsbury, who pleaded that Edward IV, recently king of England, granted to the same abbot that, whenever the clergy of England granted to the king or to the kings of England, his successors, a tenth etc., he and his successors should be discharged from the collection of it etc. And, because the grant of the aforesaid tenth had been granted by the clergy of the province of Canterbury and they are excused by these words ‘to excuse from the collection of tenths granted by the clergy of England,’ the question was whether the answer was sufficient or not.

It was alleged on behalf of the king that the grant [of exemption] was not sufficient because the grant of a tenth was by part of the clergy of England and not by all the clergy of England, because a clerk of the province of York is part of the clergy of England. And any grant of the king ought to be taken strictly against the king when it can be understood in two ways etc. For instance, if two persons are indebted to the king and the king pardoned one of them all manner of debts etc., it is of no avail touching the joint debt but only touching such debts as he himself owed etc. And, in the same way, if the king granted the manor of Dale with appurtenances to which advowsons and a knight’s fee were appendant, that fee and the advowsons are not included under those letters [patent] of the king etc.

And, for the solving of this question, all the justices of both benches of the lord the king and the barons of the Exchequer were in the Exchequer

Chamber. And they all held as firm law that the grant of the lord the king by his letters patent by those words 'that the abbot should be excused from the collection of tenths granted by the clergy of England' is a sufficient grant and includes both the clergy of the province of Canterbury and the clergy of the province of York. And the name is collective and includes every individual, and letters patent of the lord the king shall not be void if, in any wise, they may be construed in a reasonable way. But if it were possible or, in some way, had before been the custom that a clerk of England should grant or had granted any tenth to the king, then, because the intention of the king is understood to be that the abbot should not be excused save only touching such grant etc., that grant [of exemption] would be void seeing that no such grant can be made by the whole of the clergy of England, to wit, by those two provinces but by one clerk in particular. And either one of the same provinces is the clergy of England, just as the archbishop of Canterbury is called primate of all England and the archbishop of York primate of England. And so any clerk is the clergy of England, and the lord the king's letters shall not be void if they can be construed reasonably. For instance, if the king granted to someone fines and ameracements of all his tenants, by virtue of that grant, he shall have fines and ameracements both of his tenants who are sole tenants and of those who are joint tenants, but not, however, if those tenants held of the king or of others. And so, there are such words touching tenants and those not holding by the entirety etc. contained in very many letters patent for the reason that, when the king has granted anyone a thing, if it [the grant] was against a stranger, he, the stranger, might have writ of covenant concerning it. And, against the king, he cannot have an action; he shall, therefore, plead matter in bar etc.

The second question was whether, because the bishop nominated the abbot to be collector, that nomination might thus be special, because the king cannot pardon etc. And this is not so, for the bishop has authority by virtue of a writ of the lord the king to nominate him, and thus the authority to nominate comes from the king and he can excuse this etc.

The third question was concerning the special clause in the deed of grant that, as soon as the bishop had nominated the collector and certified his name, although he, the collector, had been excused by the king, the bishop is not bound to nominate another etc. But this does not bind the king.

The fourth question was that he, the abbot, was a collector of a tenth in another diocese, and he entered into an account upon this and did not allege

his letters of discharge etc. But, according to all the justices, this may well be done, and yet, afterwards, it is possible to plead a second time; for example, touching a charter of exception and cognisance of pleas. Relation at one time shall have [effect] at another.

64 Selden Soc. 104,
Public Record Office, E.159/261, Mich. 2 Ric. III, rot. 8

It is found in the memoranda of the first year of this king, to wit, among the records for Easter Term in the twenty-fifth roll, that the prelates and clergy of the province of Canterbury at the last Convocation of such bishops and clergy in the cathedral church of Saint Paul, London, which started on the third day of February in the first year of the lord the king who now is and thence continued to and on the twenty-fourth day of the same month from day to day, granted to the same lord the king for the defense and safe keeping of the Anglican Church and the kingdom of England, subject to the manners, forms, conditions, and exceptions there specified, one whole tenth from whatsoever goods, benefices, and ecclesiastical possessions of the said province of Canterbury, taxed and not taxed and wont to pay a tenth, to be levied and paid in the manner and form specified in that grant, to wit, one moiety thereof at the feast of the Nativity of Saint John the Baptist then next to come and the other moiety of the same tenth at the feast of Saint Martin in the winter then also next following. And it is found that the venerable father in Christ, Thomas, bishop of Hereford, by virtue of a royal writ of his great seal, the date of which is the fifth day of March in the same first year, directed to the same bishop [ordering him] to cause to be assigned and deputed certain trustworthy men from the clergy of his diocese for whom he would be ready to answer to levy and collect the said whole tenth in his diocese at the aforesaid feasts according to the form of the aforesaid grant and to certify the Treasurer and barons of this Exchequer of the names of those whom he had deputed for this purpose before the morrow of the Lord's Ascension then next to come certified the same Treasurer and barons by his letters of certification *inter alia* that he assigned and deputed as collectors to levy and collect the said whole tenth in the oft-mentioned archdeaconry of Shrewsbury in the diocese of Hereford, the abbot and convent of the monastery of Shrewsbury, they holding the parish church of Stottesdon and other goods and ecclesiastical

possessions within his diocese of Hereford to their own use, as is more fully contained in the said letters of certification of the aforesaid bishop deposited of record here in court, to wit, in the custody of this Remembrancer.

Whereupon, the sheriff of Shropshire was ordered by writ under the seal of this Exchequer, dated the twelfth day of July last past, not to fail etc. and to distrain the aforesaid abbot by his lands etc. so etc. to render account this term to the lord the king touching the first moiety of the aforesaid tenth in the octave of Saint Michael. On which day, the sheriff returned the writ and ordered the aforesaid abbot to be distrained, whereof the issues etc. as is contained in the endorsement of the same writ which is in the file of writs for this year in Shropshire.

And the aforesaid abbot comes here on the same day by his attorney Robert Blagge and makes his plaint that he has been grievously distrained and disturbed by Thomas Hoorde, sheriff of the said County of Shropshire, to render account to the said lord the present king touching the first moiety of the said whole tenth and this without justice, because he says that the lord Edward IV, formerly king of England, brother of the said lord the king who now is, by his letters patent dated the twenty-fourth day of November in the sixth year of his reign, enrolled elsewhere in the memoranda of this Exchequer, to wit, among the records of Hilary term in the eighth year of the said late king in the third roll on the King's Remembrancer's side, on account of the sincere devotion which the same late king then bore and had to the holy apostles Peter and Paul, in whose honor the church of the aforesaid monastery is consecrated, and also being desirous that the said abbot and convent of the aforesaid monastery and their successors should peacefully enjoy more stable and lasting freedom from care in this matter, of his special grace granted *inter alia* to the said abbot and convent and to their successors that they henceforth should not be made tax collectors, assessors, or collectors of any tax, quota, or subsidy or of a fifteenth or tenth or other imposition or tallage whatsoever in whatsoever way granted to the same late king, his heirs, or successors, by the commonalty of the realm of England, but that they should be wholly quit and discharged in perpetuity and, likewise, that neither they, the abbot and convent, nor their successors should henceforth be made or deputed in any way by the said king, his heirs, or successors or by any others to be collectors of any tenth or part of a tenth of any gift or contribution whatsoever, granted thereafter to the same late king, his heirs,

or successors by the clergy of the aforesaid kingdom, but should be totally discharged thereof in perpetuity and that, immediately after the exhibiting and showing of the said charter of the said late king or of the enrolment of the same in any courts whatsoever of the same late king, his heirs, and successors, the same abbot and convent and their successors should not in any way be further distrained for the aforesaid payments or any one of the same, but that they should be discharged from the same courts, quit touching that payment and that they should be altogether excused from taxation, assessment, and collections of such kind and that any process whatsoever to be made in that matter should altogether cease, without suing any writ thereupon of the said late king, his heirs, or successors, notwithstanding the promulgation of any act, ordinance, statute, or restriction to the contrary, as is more fully contained in those letters patent. Which letters patent, moreover, and one and all things contained in the same letters, the lord the king, who now is, by his letters patent, which the same abbot proffers here in court the date of which is the twentieth of September in the second year of his reign, ratified and confirmed to the said abbot and convent and their successors, as in the same letters patent touching the confirmation is more fully contained. And the aforesaid abbot says further that neither he nor anyone else in his name has ever levied or collected any money arising from the said half tenth or from any part of the same tenth in the archdeaconry aforesaid nor has he in any way admitted the levying or collection of the same. One and all of which things the aforesaid abbot is ready to aver as the court etc. Therefore, he does not think that the said lord the king, who now is, would wish to accuse or molest him further in the premises, contrary to the tenor of the letters patent. And he asks judgment and that he, as to the premises, be discharged from this court etc.

And Morgan Kidwelly, who sues for the king, says on behalf of the same lord the king that he has no need by the law of the land to answer to the plea of the aforesaid abbot, pleaded above in the manner and form aforesaid, wherefore he asks judgment on behalf of the same lord the king and that the said abbot be compelled to levy and collect the aforesaid tenth in the archdeaconry aforesaid etc.

And the aforesaid abbot says that, because he has alleged in pleading above sufficient matter to excuse him in the premises, to which the said Morgan on the king's behalf has not made a sufficient answer in law, therefore,

because of the lack of a sufficient answer, he asks judgment and that he be discharged from this court as to the premises etc.

And because the court wishes to deliberate further in the premises before etc., a day is given here to the same abbot in the same state as now, until the octave of Saint Martin in this same term.

On which day, the said abbot comes here by his said attorney. And the lord the king sends here his writ under his great seal directed to the Treasurer and barons of this Exchequer, the tenor of which follows in these words:

Richard, by the grace of God, king of England and France and Lord of Ireland, to the Treasurer and his barons of the Exchequer, greeting. Whereas the lord Edward, our brother, late king of England, on the twenty-fourth day of November in the sixth year of his reign, by his charter which we have confirmed, had granted *inter alia* to his well beloved in Christ, Thomas, then abbot of the monastery of the holy apostles Peter and Paul at Shrewsbury, and to the convent of the same place and to their successors, that, henceforth, they should not be made tax collectors, assessors, or collectors of any tax, quota, or subsidy, or of a fifteenth or tenth, or of any other imposition or tallage whatsoever, granted in whatsoever way by the commonalty of the realm of England, but that they should be entirely quit and discharged in perpetuity and, likewise, because he had granted that neither they nor their successors from henceforth should in any way by our said brother, his heirs, or successors or by any others, be made or deputed collectors of any tenth or part of a tenth, gift, or contribution whatsoever, henceforth granted to our said brother, his heirs, or successors by the clergy of the aforesaid kingdom, but should be utterly discharged therein in perpetuity, as in the aforesaid charter and confirmation is more fully contained, we command you that you do not molest in any way or vex them, the abbot and convent, or their successors, contrary to the tenor of the aforesaid charter and confirmation. Witness myself at Westminster the twenty-ninth of September in the second year of our reign.

And, thereupon, the aforesaid abbot asks his judgment as before etc.

Whereupon, the premises having been considered by the barons, and mature deliberation having been held thereupon by the same barons, it is awarded that the said abbot be quit and discharged as towards the same lord the king, both touching the levying and collection of the said tenth in the said archdeaconry of Shrewsbury in the diocese of Hereford, and touching the aforesaid account exacted above from the same abbot to the use of the said lord the king who now is and that he now go thence without a day by virtue of the aforesaid letters patent and confirmation and the king's writ made thereon and of other premises, saving always to the king an action if otherwise etc.

And, because the said prelates and clergy of the said province of Canterbury willed and granted that, if any parson regular, charged and deputed by the ordinary for the levying and collection of the aforesaid tenth or moiety of the same, holds royal letters obtained or to be obtained for his exemption from the collection of such a tenth or moiety of the same, henceforth, the same parson regular, besides the aforesaid tenth granted in the aforesaid Convocation, shall be charged with another moiety of a tenth to be paid to the said lord the king at the time of the last payment of the said tenth, to wit, at the feast of Saint Martin in the winter in the second year of this king. And, because the said abbot of the monastery of the holy apostles Peter and Paul at Shrewsbury held royal letters for his discharge from the collection of the said tenth and moiety of the same and because he the abbot was discharged by virtue of the aforesaid letters from the collection of the aforesaid tenth as is contained above and also because the said abbot has not yet made answer to the said lord the king touching the said moiety of a tenth granted in the aforesaid Convocation besides the said whole tenth likewise granted in the same Convocation nor given satisfaction according to the form of the aforesaid grant, it is therefore agreed that the same abbot be warned by a writ of *scire facias* to be here etc. to show and declare whether he can show anything etc. why he ought not to make an answer and give satisfaction to the said lord the king for the said moiety of one tenth besides the aforesaid tenth granted touching his spiritualties and temporalties everywhere and to receive further in the premises what the court etc. And the sheriff of the County of Shropshire is ordered to send a *scire facias* to the said abbot in the form aforesaid. So etc. until the quindene of Saint Hilary.

On which day, the sheriff, to wit, Robert Cresset, returns the writ endorsed thus. 'According to the tenor of this writ, *scire feci* to the within mentioned abbot of Shrewsbury by these honest men, Richard Crump and William Butte.'

And the said abbot comes on the same day by Robert Blagge, his attorney, and asks to hear the aforesaid writ and process. And it is read to him etc. Having heard them, he says nothing to exclude the said lord the king from the said moiety of the aforesaid tenth.

Whereupon, the premises having been considered by the barons and mature deliberation held among the same barons, it is awarded that the said abbot be charged against the said lord the king for the said moiety of a tenth touching his spiritualties and temporalities everywhere within the said province of Canterbury and that he answer and make satisfaction to him therein.

And because the said spiritualties and temporalities within the said province are taxed at £255 0s. 23d., as is contained in the Register, a tenth thereof is £25 10s. 2d. q^a, a moiety thereof being £12 15s. 1d. ½q^a.

73

Anonymous
(Ex. 1486)

The question in this case was whether assignees of taxes granted to a king are liable to his successor king where the royal succession occurred before the date of the payment of the grant.

YB Hil. 1 Hen. VII, f. 8, pl. 5

In the Exchequer Chamber, a question was asked by the Chief Baron [STARKEY] about what ought to be done with those who had assignments on the collectors of tenths granted to King Richard, payable half at the Feast of the Nativity of St. John the Baptist last past [24 June 1485] and the other half at the Feast of St. Michael last past [29 September 1485].

And all the justices except Catesby [J.C.P.] and Townshend [J.C.P.] held clearly that the assignments were good and that the collectors would

be compelled to pay the assignments, as well for the Feast of St. John as for the Feast of St. Michael, notwithstanding that King Richard died in August, a long time before the said Feast of St. Michael. Catesby [J.C.P.] and Townshend [J.C.P.] did not argue at this day.

And, at the next day, *scil.* the Vigil of the Purification [1 February 1486], the Chief Baron [STARKEY] asked the question again.

And the Chief Justice [BRYAN, C.J.C.P., or HUSSEY, C.J.K.B.] said you know our opinions, except Catesby [J.C.P.] and Townshend [J.C.P.], who had never argued, and thus you should hear their opinions.

CATESBY [J.C.P.] thought that the assignment will not be good for the first day nor for the second day, because the collectors are not the debtors of the king, but abbots, priors, and such like. Thus, the collectors cannot be charged at the day because, then, they will be charged before they can collect, because, before the day, they cannot collect. Thus, they have not the money at the day. Thus, they must have time to collect. Thus, the collectors are not charged with the money when they have [not] collected it. And Brian Roucliff [B.Ex.] said yesterday that the fifteenth is a duty for which the king has collectors. And they will have process out of the Exchequer before the day of payment to drive them and constrain them to pay at the day. But he said that thus the collectors of the tenths would not have it, because they are made by the bishop, and so they cannot have such a process. And, if it he makes an archdeacon collector of the tenths, who dies, the bishop will make another, and not the king, because the making of the collectors belongs to him. And so they are not the same as collectors made by the king, *ut supra*.

TOWNSHEND [J.C.P.]: It seems to me, in the first case, *scil.*, when the day of the payment is passed, that the duty is fully with the assignee, and the collector is fully a debtor to him, and my reasoning is, because the assignment was good and the showing of the tally was good and, at the day, he had [sufficient] assets in his hand in fact or could have levied. Thus, he is charged even though he would not ever levy them, because the non-levying is adjudged his default in law. But it is otherwise in the case when the [payment] day has not come, because, before the day, the collectors are clearly not debtors to the assignee, except conditionally, *scil.* that if he live until the [payment] day, because, if a collector of a fifteenth die before the day of payment, the collector, his executors, and assignees, are clearly discharged. This proves well that they clearly are not debtors, or, if the collectors are discharged before the

day of payment, they are discharged. *Ergo*, they simply are not debtors.

Master HUSSEY [C.J.K.B.]: You argue for the discharge of the collectors before the [payment] day or when they are dead or discharged, but you argue only that the assignment is good and will bind the king when the [payment] day has passed. And, Sir, here, both days have passed [during which] they were collectors, because, as Brian Roucliff [B.Ex.] said yesterday, even though the abbot or prior collector dies before the day, yet the successor will be the collector and will be charged. And there is a distinction from other collectors who do not have successors.

TOWNSHEND [J.C.P.]: The truth is that there is a distinction between them *causa qua supra*. But I still will show my thinking that the collector will be discharged against the assignee when the king dies before the day, because, as I said before, the collector is not simply a debtor to the assignee until the day be incurred. So, if the king dies beforehand, it seems that the assignment is void, and it [the debt] accrues to the new king, because the old assignment did not entirely take force, nor is the collector before the day fully, without condition, a debtor. So, when the king, who made the assignment, dies before the collector be fully a debtor to the assignee, it seems that the assignment is void.

The Chief Baron [STARKEY] said that this is the course in the Exchequer, to allow for a past day in the time of the past king and to disallow for the day that has not yet come, but lies in the time of the new king, because the new king will have this etc.

TOWNSHEND [J.C.P.]: It seems, that when one makes a feoffment and a letter of attorney to deliver livery and seisin and before execution etc. [he dies], etc.

And it was adjourned.

Anonymous
(Ex. 1486)

A pardon should be construed according to the king's intention and not to the king's disadvantage.

Where an officer of the crown receives a general pardon, this pardon includes personal and official debts.

64 Selden Soc. 108,
YB Hil. 1 Hen. VII, f. 13, pl. 26

HUMFREY STARKEY, Chief Baron, asked this question of all the justices assembled in the Exchequer Chamber, to wit, where the king *ex mero motu et certa scientia* shall have pardoned A.B. all manner of debts, accounts, etc. by the name of A.B. only, and afterwards A.B. is brought into the Exchequer of the lord the king to render an account and, on the king's behalf, an action of debt is brought against him as sheriff of such a county and he pleads that pardon with the suggestion that he was in fact sheriff [*i.e.* at the time when the king pardoned him etc.], the question was whether that pardon should be allowed or not etc.

Some of the justices said that that pardon was not of common grace nor a general pardon, and so was not allowable.

And likewise BRYAN [C.J.C.P.] said that any pardon of the king ought to be taken according to the king's intention and not to the king's disadvantage. And it appears by the wording of the pardon that the king pardoned A.B. his own debts and not his debts by reason of any office, because if the king had so intended, then he would show his intention from the first by that word 'we have pardoned etc. A.B. sheriff or escheator all manner of debts etc. by reason of his office' etc. In the same way, to wit, suppose that A.B. be a sheriff or other official and that he be indebted to the king by reason of his office or otherwise and that he had made executors and died and that the king had pardoned the executors by their own names all their debts etc., they, as executors, shall never receive any advantage by that pardon, because, in effect, the debts are those of two separate persons etc.

CATESBY [J.C.P.] said that, if two persons were indebted to the king and the king had pardoned one of them, the other shall not receive any advantage by that pardon, because the intention of the king and of the law in this respect is that the king had pardoned his debt only. And so it is in the former case.

However HUSSEY, the Chief Justice [K.B.], and the rest of the justices held as firm law that, where the king *ex mero motu etc.* had pardoned anyone by his own name all manner of debts, accounts, etc., this pardon is by law understood to be general and every such pardon is understood to be general.

But, where the king shall have pardoned anyone on a *suggestio falsi* or by reason of some office, such pardon shall be taken strictly according to the letter only etc.

And, afterwards, in the Exchequer of the lord the king, the aforesaid pardon was allowed by the barons.

75

Anonymous

(Ex. 1487)

A grant of a fair will be forfeited for its misuse.

YB Hil. 2 Hen. VII, f. 11, pl. 10

And it was touched [upon] by BRYAN [C.J.C.P.] that, if the king grant to me a fair for one day of the week in the year and I hold the fair two days etc. and this is presented in the Exchequer and I answer and it appears by my answer that I claim to hold for two days by the patent, where my grant is only for one, I will forfeit all my patent. But, if I claim one day by this patent, and the other day by another means, as by prescription, and this [prescription] is false and [a verdict] is found against me, still I will not forfeit my patent, nor lose anything except this [additional day].

And he said also that a market will not be forfeit for the non-usage of it, but, [if it were] a thing that ought of necessity to be done, there, the non-user is a cause of forfeiture, as an office of clerk of the market or such like. *Quod nota bene.*

76

Anonymous

(Ex. 1490)

A claim of cognizance of jurisdiction must be made before the defendant makes an appearance.

One sued a bill of debt against an accountant in the Exchequer. And he pleaded against him, and the defendant made no defense nor pleaded any plea. But he [the defendant] took from the court a day in the same term to answer him [the plaintiff]. And this was entered in the papers. And, before this day, one appeared for the abbot of Battle, and demanded cognisance of the plea.

Hutton: It seems to me that it [cognisance of the plea] is not grantable, because this is not by an original [writ], but by a bill, on which no cognisance lies, because it is the usage here by prescription to sue an accountant by a bill. But such prescription cannot be before the abbot's bailiff by a bill, because no one accounts there, as if one demands cognisance of a plea on a bill [against a defendant] *in custodia Marescalli*. This will not be allowed, because, if he be not in the custody of the Marshal, he will not be sued by a bill; so, if he be impleaded by a cognisance, he is not there present in the custody of the Marshal. So, the cognisance will not be allowed. And this has been adjudged. And it is so, because the defendant is impleaded on a private custom, and not on an original [writ]. He thought that the cognisance is not allowable. And so he [the abbot's bailiff] comes too late, because the defendant took a day to imparl, which gave a lawful seisin to the court; so the bailiff comes now too late. Thus etc.

Oxenbrigge, to the contrary: And as to what is said, because this was on a bill, and not on an original [writ], by which cause the cognisance will not be granted, as to this, there is no great question, because oftentimes a cognisance had been granted in this court. And, here, one cannot be impleaded by another writ [other] than by a bill. And so, as to this, it will be allowed, because the abbot previously had had a cognisance allowed on a bill; so, as to this, it is allowable.

Which the court clearly conceded.

[*Oxenbrigge*, continuing:] And, as to an imparlance, this is not any imparlance, because nothing has been done except that the plaintiff has counted, because I would agree well enough that, if the defendant had made a defense or [if], after the count, he had imparled until another term, the cognisance will not be granted. But there is a big distinction between an imparlance in this term and an imparlance in another term, because, in this

term, all the term is only one day; so a cognisance is demanded after only the count before the defense, because, if he [the plaintiff] had counted and, immediately after the count and before the defense, a cognisance had been demanded, now it is allowable. And it is all the same to have a day the same term and to have another day the same term to plead. And, because he [the defendant] has not made a defense and all the term is only one day in law, so, there is nothing here to put the bailiff from the cognisance, except a count by the plaintiff, and no defense, which is not sufficient to my thinking. So it seems to me that the cognisance is allowable. Thus etc.

Bartlett, to the contrary: And, as to what is said, that it is all the same if the bailiff had appeared and demanded cognisance immediately after the count and demanded when the defendant had taken a day to answer the plaintiff, because albeit that he [the defendant] has not made a defense, yet this was an appearance. So, if there be any fault in the bailiff, so that he was not ready to offer himself when he was certain of the thing, and that the court could be seised at such time by the pleading of the defendant, so, even though the court gave a day to the defendant to plead at another day, this is a seisin of the plea, because the court could be advised to grant any day to the defendant, even though he will be compelled to plead forthwith. And, even though the court gave a day to the defendant to plead, this does not give the bailiff an advantage, because, now, there is fault in him, because he did not come in due time to offer and pray a cognisance when the count was made, because, in [an action of] trespass and in a plea of land, the bailiff ought to offer himself at the first day, even though the defendant makes default. And to say that all the term is only one day and so he appears in time, Sir, in this case, if the defendant did not want to appear, he will be condemned. And there will be an entry of a departure in contempt of court. And so, to such intent, the term is more than one day. And, so, if one casts a protection or an essoin after the jurors are called, in this case, if there be four days, or five, after the commencement of the term, the essoin will not be allowed. And so, in some respects, the term is only a day, and, to some respects, many days. Thus etc.

And, then, the cognisance was disallowed by the award of the court.

Nota et vide, in the same plea, that the bailiff cannot make an attorney to demand a cognisance as the bailiff's attorney to have a cognisance for his client. But the abbot himself can demand cognisance by anyone who will

be his bailiff for him, even though he be no bailiff to him, and also he [the abbot] can demand cognisance by an attorney.

77

Attorney General v. Capel
(Ex. 1494)

The question in this case was whether a merchant sold his goods to a foreign merchant and agreed to be paid at a future date.

YB Mich. 10 Hen. VII, f. 7, pl. 14

James Hobart, Attorney General, showed an information in the Exchequer for the king against Sir William Capel that, whereas, by the Statute 8 Hen. VI,¹ it was provided that ‘no English merchant will sell any merchandise to any foreign merchant, except for ready payment in money or otherwise for other merchandise’, there, had the said William, on such a day and place, sold so many pieces of cloth priced etc., [and] 300 pounds of pepper priced etc. and other merchandise priced etc. for £1000 to be paid to one J. at S., and not to be paid immediately, against the form of the Statute.

For which matter, all the justices were there assembled.

HUSSEY, Chief Justice [K.B.], said to the counsel for Sir William Capel, my companions and I have moved this matter among us previously; so show to us your opposition.

Kebell: Sir, the defendant has pleaded, as appears by the record, that he sold the said goods to the said merchant, *sans ceo* that the said goods after such delivery came to his hands. On this matter, it seems that the defendant will be discharged. And, firstly, for the sale of clothes, he will be discharged, because there is another Statute made 9 Hen. VI,² that gives liberty to every merchant to sell cloth without ‘ready’ payment, which repeals the other Statute on this point so long as the king pleases. And the second Statute

¹ Stat. 8 Hen. VI, c. 18 (SR, II, 254-255).

² Stat. 9 Hen. VI, c. 2 (SR, II, 263-264).

was made on three considerations, which appear in the same Statute, in which case, inasmuch as no proclamation was made to the contrary in time of the same king nor in the time of others, his successors, the Statute [9 Hen. VI, c. 2] remains in its force. And, as to the other goods, he will not be impeached, because it appears that he has delivered the goods to the vendee, to whom he was compellable by law to deliver, in which case he will be discharged, albeit that he once had possession, and is chargeable to the king. But, if he delivers this to one to whom he was not compellable to deliver them, he will be charged, as if I bail goods a man to keep and he delivers the goods to another and the second [bailee] delivers [the goods] to the third, the second bailee is chargeable to him who had the ownership, and [chargeable to] each of them who had possession. But, if the second bailee delivers back the goods to the first bailee, he is discharged. So it is if the Butler or any other officer of the king bails the king's goods to another and then the bailee redelivers the goods to the Butler, he [other bailee] is discharged. It is the same law, if I am possessed of deeds concerning the land of a stranger and I deliver them to my servant to show to my counsel and then my servant delivers back the deeds to me, my servant is discharged when he has delivered them to him to whom he was compellable. And so, if I am possessed of goods of one who is outlawed for trespass and I deliver them to the escheator, I am discharged.

BRYAN [C.J.C.P.] affirmed, because he said that the escheator is the king's minister, and he is chargeable for the goods. And he said also, in a manner [it was] agreed by all the court, if I sell goods to someone and no day of payment is delimited and nothing of the sum [to be paid] is delivered, yet this is a good contract, and, if the vendee pays the money afterwards, this will have relation to the first agreement to the bargain.

Mordaunt said also, and it was agreed by the court, if I sell certain goods to another for a certain sum, albeit that I have not paid the money, if a day of payment be delimited, this is a good contract, and the property is altered by reason of this sale.

HUSSEY [C.J.K.B.] said that a victualer will be compelled to sell his victuals if the buyer tenders ready payment to him; otherwise, not.

Which BRYAN [C.J.C.P.] affirmed.

Anonymous
(Ex. 1496)

A creditor by a simple contract of a deceased debtor can sue for the debt in the Court of Exchequer.

YB Trin. 11 Hen. VII, f. 26, pl. 9

Note, if a man be indebted to me upon a simple contract and dies, I have no remedy by the common law against the executors, but I will have [a writ of] *quo minus* in the Exchequer, alleging that I am in debt to the king and that he [the deceased debtor] owes to me so much as is in their testator's [estate], *quo minus debita recusat solve*.

Quod nota, by *Danvers*, the practice and common use.

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ADDENDUM

19a

Rex v. Abbot of Ramsey (Ex. 1369)

3 Dyer 326, 73 E.R. 738

See 43 Edw. III, Norfolk, of a certain process of the Exchequer made against the Abbot of Ramsay to show wherefore sixty acres of marsh should not be seised into the king's hands, which the abbot has appropriated to himself and his house without the king's license upon a certain presentation by virtue of a certain general commission concerning the lands concealed and detained from the king.

The abbot answers that he holds the manor of Brauncester, which is situated near the sea, and that there is there a certain marsh which, sometimes, is lessened by the influx of the sea and, sometimes, by the efflux of the sea, is enlarged, without this that he has appropriated to himself etc., as by the presentation aforesaid is supposed etc.

And the Attorney for the king [Skilling] maintains the presentment, and prays that this may be enquired of by the country.

And the abbot prays the like.

And by nisi prius before Amary de Shirland, one of the barons of the Exchequer, in the 45th year of Edw. III, it was found against the king, and the title aforesaid for the abbot. Therefore, the abbot went thereof without day, saving always to the king his right, if any, etc.

This is found in the register of Ramsay, in the keeping of H.C., knight, and agrees with the record, which I have seen.