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978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

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Rerum Britannicarum Medii Aevi Scriptores, or The Chronicles and Memorials of Great Britain and Ireland during the Middle Ages, usually referred to as the 'Rolls Series', was an ambitious project first proposed to the British Treasury in 1857 by Sir John Romilly, the Master of the Rolls, and quickly approved for public funding. Its purpose was to publish historical source material covering the period from the arrival of the Romans to the reign of Henry VIII, 'without mutilation or abridgement', starting with the 'most scarce and valuable' texts. A 'correct text' of each work would be established by collating 'the best manuscripts', and information was to be included in every case about the manuscripts used, the life and times of the author, and the work's 'historical credibility', but there would be no additional annotation. The first books were published in 1858, and by the time it was completed in 1896 the series contained 99 titles and 255 volumes. Although many of the works have since been re-edited by modern scholars, the enterprise as a whole stands as a testament to the Victorian revival of interest in the middle ages.

Year Books of the Reign of King Edward the Third

The records of the medieval English courts were compiled into manuscript 'year books', organised by regnal year of the monarch, and further subdivided into the four law terms. The year books of the reign of Edward III (1312–77), beginning at the eleventh year (1337) and continuing to the twentieth (1346), were to have been edited for the Rolls Series by Alfred Horwood (1821–81), who had previously edited the year books of Edward I, but he died while the first volume was in proof. The work was taken over by L.O. Pike (1835–1915), the set of fifteen books being published between 1883 and 1911. (Horwood chose his start date because the year books of Edward II and the first part of the reign of Edward III already existed in modern editions.) This volume contains reports from Hilary Term, 11 Edward III, to Trinity Term, 12 Edward III.

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Frontmatter

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Frontmatter

[More information](#)

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Years XI and XII

EDITED AND TRANSLATED BY
ALFRED J. HORWOOD
AND LUKE OWEN PIKE



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Frontmatter

[More information](#)

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Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

RERUM BRITANNICARUM MEDII ÆVI
SCRIPTORES,
OR
CHRONICLES AND MEMORIALS OF GREAT BRITAIN
AND IRELAND
DURING
THE MIDDLE AGES.

Q 966. Wt. 768.

a

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Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

THE CHRONICLES AND MEMORIALS
OF
GREAT BRITAIN AND IRELAND
DURING THE MIDDLE AGES.

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

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

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

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

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

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978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

4

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

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

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

*Rolls House,
December 1857.*

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978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD

YEARS XI AND XII.

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

Year Books
OF THE REIGN OF
KING EDWARD THE THIRD.
YEARS XI AND XII.

EDITED AND TRANSLATED

BY

ALFRED J. HORWOOD,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

WITH PREFACE AND INDEX BY

LUKE OWEN PIKE, M.A.,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

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—
1883.

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Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

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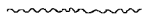
978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

CONTENTS.



| | | | | |
|---|---|---|---|------------|
| PREFACE | - | - | - | Page ix |
| TABLE OF NAMES | - | - | - | xli |
| REPORTS OF CASES IN HILARY TERM, 11 EDWARD III. | | | | 3 |
| REPORTS OF CASES IN EASTER TERM, 11 EDWARD III. | | | | 47 |
| REPORTS OF CASES IN TRINITY TERM, 11 EDWARD III. | | | | 107 |
| REPORTS OF CASES IN MICHAELMAS TERM, 11 EDWARD III. | - | - | - | 177 |
| REPORTS OF CASES IN HILARY TERM, 12 EDWARD III. | | | | 347 |
| REPORTS OF CASES IN EASTER TERM, 12 EDWARD III. | | | | 421 |
| REPORTS OF CASES IN TRINITY TERM, 12 EDWARD III. | | | | 527 |
| INDEX | - | - | - | 661 |

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

P R E F A C E.

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

P R E F A C E.

MR. HORWOOD, whose unexpected death will be deplored by workers in many fields of antiquarian research, wrote and passed through the press the whole of the text and translation contained in the present volume. He also prepared the "Table of Names"; and his successor is responsible only for this preface and for the index.

It is much to be regretted that no preface by Mr. Horwood has been found amongst his papers. His work must necessarily appear at a disadvantage when another editor has to explain by inference or conjecture those preliminary details which he would have explained directly.

The present volume contains reports of the whole of the eleventh year and of three terms in the twelfth year of the reign of Edward III. The last volume edited by Mr. Horwood concluded with the thirty-fifth or last year of the reign of Edward I.; and it may be asked why the next term selected for publication is Hilary in the eleventh year of the reign of Edward III. Mr. Horwood, it may be presumed, was not in possession of sufficient materials for another volume of Year Books of any portion of the reign of Edward I., and (finding that the old editions of the Year Books extend uninterruptedly from the first year of the reign of Edward II. to the tenth year of the reign of Edward III.) proceeded to fill up the first gap in the printed series. No complete Year Books of dates between the tenth and the seventeenth years of the reign of Edward III. appear to have been hitherto published, though there are manuscripts from which the whole of the deficiency may be

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

made good, and from which some extracts have been made for Fitzherbert's and other Abridgments.

Some reason, too, ought perhaps to be assigned for concluding the present volume with Trinity instead of Michaelmas term, 12 Edward III. It certainly was, at one time, Mr. Horwood's intention to complete the year, as reports of Michaelmas term were sent to the printers and even set up in type, but subsequently withdrawn. It is no less certain that he afterwards decided to end with Trinity term, as his directions to that effect appear upon the proofs with his final corrections. Possibly the great bulk of the volume deterred him from making any addition to it.

The MSS. The whole of the MSS. used by Mr. Horwood have, it is believed, been identified. One belongs to the Honourable Society of the Inner Temple, one to the Honourable Society of Lincoln's Inn, and one to Sir Charles Isham, Bart.; the rest are "Additional MSS." in the British Museum, numbered respectively 16,560, 25,184, and 25,185.

The Temple MS. The Inner Temple MS., which bears a press-mark No. 510, is, for the most part, of a handwriting which is within a few years contemporaneous with the reports contained in the volume. It consists of 129 folios or leaves of vellum carefully numbered.

The volume, like many of the best MSS., is imperfect at the beginning, the first word of the first page being in the middle of a sentence. At the forty-second line, however, is the heading, "De Termino Paschæ Anno "Regni Regis Edwardi Tertii a Conquestu Decimo," and, from Easter in the tenth year to Hilary in the twelfth year, there are reports under clearly marked and contemporaneous headings for each term. Near the end of folio 44*b* is a space upon which is written in very small letters, but in a contemporary hand, "De termino "Paschæ Anno Regni Regis E. etc. xii in aliis libris." There has also been here some other writing which has

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

PREFACE.

xi

been erased. The reports next succeeding are distinctly attributed, in Sir Charles Isham's MS., and in the additional MS. 25185, to Easter term, but, as will hereafter be explained, some of them are assigned to another term in another MS. They extend from fol. 44*b* to fol. 47*a*.

Fol. 47*b* and the whole of fol. 48 contain copies of records which have been printed by Mr. Horwood as of Easter term 12 Edward III. at pp. 465-487 of the present volume. There are no cases assigned to Trinity or Michaelmas term.

From Hilary term 13 Edward III. to Michaelmas term 16 Edward III. consecutively, there are reports of cases in each term under contemporary term-headings in large and distinct writing. They end at fol. 126*b* of the MS.

Folios 127 and 128 are about an inch shorter, and an inch narrower than the rest of the MS. Fol. 127*a* has the word *nono* at the top; fol. 127*b* the letters "*hill*." and fol. 128*a* the word *nono*. A word has been erased at the top of fol. 128*b*. Fol. 127*a* begins in the middle of a sentence. The report beginning on the third line appears in the printed Year Book as the fourth case in Hilary term in the ninth year of the reign of Edward III. It is, however, incomplete, and fol. 128 begins in the middle of another report, which has been identified as the third case (*a quare impedit*) in the printed Year Book of Trinity term, 9 Edward III.

The last folio (No. 129) bears writing in later hands, and includes miscellaneous notes in Latin and English. Among them are a copy of a charter, the great philosophical maxim "*Mediocria firma*," and a hexameter line:—

"*Omnibus est notum quod multum deligo potum*," in which, perhaps, *deligo* is used in the sense of *diligo*. There is also a prescription in English for use in case of fever, and some other memoranda.

The MS. is in excellent preservation throughout, and is of very great value. It is now in a handsome modern

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

binding, but the letters of an older binding have been retained upon a fly-leaf of the volume and show the following title:—

“ Year Booke, x., xi., xii., xiii., xiv., xv., xvi., Edward
“ Ye 3^d. Never Printed.”

The Lin-
coln's Inn
MS.

The Lincoln's Inn MS. (numbered in the Catalogue XL. (CLXXXVI.) is a bound volume of great thickness. The writing is upon vellum, and by hands approximately of the period of the reports. The skins or folios are not numbered consecutively from the beginning to the end of the volume, but there is an ancient numbering of them for each year, commencing anew where one year ends and another begins. Next the cover are a few fly-leaves of paper, upon one of which is written:—“ N.B. In this book are the terms from 10 to 17
“ Ed. 3, which are not printed.” Upon another appear the words:—“ Ex dono Rogeri Owen, Militis, unus [*sic*]
“ Magistrorum de Banco xiiii^o Maii, Anno Regni Regis
“ Jacobi xiiii^o.” This Sir Roger Owen, of Conover, was a son of Thomas Owen, who was a Justice of the Common Pleas in the reign of Elizabeth.

The reports commence in Easter term in the first year of the reign of Edward III. They are followed by reports in Michaelmas term of the same year, and in consecutive terms as far as Easter in the sixth year. This is succeeded by Michaelmas in the sixth year, Trinity being omitted. Then appears one copy of reports in Hilary term in the seventh year, and after it a second copy. The first of these appears to be incomplete, the second complete. Easter term in the seventh year begins on the folio or skin on which the second copy of cases in Hilary term ends. The terms are then in due order as far as Hilary in the eighth year; but, if the page headings are to be trusted, there is nothing between that and Hilary in the ninth year. There is a page heading to indicate reports in the next Easter term, and a substantive heading for those in Trinity, and another for

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

PREFACE.

xiii

those in Michaelmas term in the ninth year, as well as a statement showing where that year ends. A few legal notes then fill up the folio or skin. For the tenth and eleventh years there are reports in every term; but Michaelmas term in the eleventh year is imperfect, and the twelfth year is wholly wanting. The first three terms in the thirteenth year seem to be complete, but Michaelmas ends abruptly at the foot of a skin, shortly after the heading which marks it, and is succeeded by a portion of a second copy of Michaelmas term in the eleventh year. From the fourteenth year to the seventeenth there are no terms missing except Michaelmas in the seventeenth. There are, according to page headings, reports for every term in the eighteenth year, but the last case in Michaelmas term ends in the middle of a sentence. There are cases in every term in the nineteenth and twentieth years; but Michaelmas term in the latter is unfinished and is followed by Trinity term in the twenty-first year, as shown by a page heading. The beginning of the last-mentioned term is also wanting. The volume concludes with Michaelmas term in the twenty-first year.

The MS. is of high value, and the writing in which some of the first reports appear is of the very earliest part of the reign of Edward III.

The writing of Sir Charles Isham's MS. is in several hands. It is a large volume of parchment, but wants a cover, and is defective at the beginning. The first leaf commences imperfectly with a portion of a term which may be Easter in the seventh year of the reign of Edward III., but, as will be seen from the description of the latter portion of the contents, the skins or folios are (as frequently happens) bound in wrong order. Cases, however, under distinct headings for successive terms from Trinity in the seventh to Hilary in the eighth year of the reign of Edward III.

Q 966.

b

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Frontmatter

[More information](#)

follow consecutively. A portion of a leaf or folio has been cut away at the end of the reports of Hilary Term; and upon this may have been written cases in the beginning of the following Easter Term. Some reports which (according to the page headings) are of that term, precede the substantive heading for Trinity Term, 9 Edward III. Thence onwards there are reports (under distinct headings) of every term as far as Easter, 12 Edward III. This last term, however, is incomplete, as shown by the catchword at the foot of a page. It is succeeded abruptly by Hilary Term, 20 Edward III., to which there is a clearly marked heading as well as to consecutive terms as far as Trinity, 21 Edward III. This is followed by a term entitled in the main heading Michaelmas, 20 Edward III. The date should obviously be 21 Edward III., and is so given in the page headings. At the end of this term is a skin which appears to have served, at some time, as the outside folio or cover of a book.

The remainder of the MS. should have been bound at the beginning of the volume, or separately, as it is nearly all of earlier date. The Northampton iter, eyre, or circuit, commencing in Michaelmas Term (Monday next after the Feast of All Saints), 3 Edward III., is reported at great length, occupying no less than thirty-one skins or leaves. Next comes a Nottingham iter, and after that a Derby iter, each occupying eleven skins or folios, and each being defective in respect of date. In both, however, Sir William Herle is mentioned, and the time may therefore be readily fixed as certainly not later than July 1335, and most probably not later than 1329, or 3 Edward III. The Derby iter is followed by reports of the usual kind, in Trinity term, 5 Edward III. According to the page heading there are some cases also in Michaelmas term of the same year, and there are reports with clearly marked headings of successive terms, from Hilary, 6 Edward III., to Michaelmas,

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

PREFACE.

xv

7 Edward III. The volume thus concludes very nearly at the point at which it commenced, and gives a double set of reports for Trinity and Michaelmas terms, 7 Edward III.

One of the most important features of Sir Charles Isham's useful MS. in relation to the present volume, is the date (Easter term) which it assigns to certain cases of the twelfth year of the reign of Edward III. In this, as will hereafter appear, it differs from the additional MS., No. 16,560, though it agrees with others.

The Additional MS., No. 16,560, in the British Museum, consists of 323 skins or folios of vellum, of which the first 120 contain "placita," or copies of records with references to the rolls by number. The Year Books or Reports begin, at fol. 121, with Hilary term, 3 Edward III., and there are cases in consecutive terms as far as Michaelmas, 4 Edward III., which ends at fol. 156, where the MS. becomes imperfect. Folios 157-168 consist of fragments. Folios 169-178 contain cases of which a part are apparently of Michaelmas term, 7 Edward III., and the rest are of Hilary term, 8 Edward III. At fol. 179 begins another copy of Reports of Hilary term, 8 Edward III., and there are reports in successive terms as far as Michaelmas in the same year, which extends to fol. 202*b*. At fol. 203 is a portion of a third copy of cases in the same Hilary term continued to fol. 208. This is succeeded by a second copy of the reports of the three next terms, ending at fol. 218*b*. Next come Hilary and Easter terms in the ninth year (according to the date assigned in a hand which is not contemporary), and they are followed at fol. 225 by Trinity term in the same year, with the date marked in a contemporary hand. At fol. 226*b* the MS. again becomes imperfect. Folio 227 seems to contain a portion of Hilary term, 10 Edward III., as Easter term in that year begins on fol. 227*b*. The terms then follow continuously as far as Hilary in the twelfth year, but the

b 2

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

date is not always in contemporary writing. The last-mentioned term is incomplete, and ends abruptly at fol. 263*b*, after which there is a narrow strip instead of a complete skin or folio. At fol. 264 (beginning in the middle of a sentence) are cases assigned by page heading to Easter term, 12 Edward III.

In the middle of fol. 265 is a considerable space, but no heading as of a new term. At the top of fol. 265*b* Trinity appears as a page heading, and on the opposite page (fol. 266) "a^o. 12." It is from this portion of the MS. (fol. 265 to fol. 272) that Mr. Horwood has printed a great portion of the cases assigned to Trinity term in the twelfth year.

At fol. 272 there is another space, but again without a heading, and the next page-heading is "Mich." The MS. is again defective at fol. 273*b*, where occurs in pencil the note "leaf gone." Hilary term, 13 Edward III., begins at fol. 275, and there are successive terms as far as Michaelmas in the same year, but once more there is a "leaf gone" after fol. 285*b*. Folio 286 has been assigned to year 14, but to no particular term. From fol. 287 to fol. 291*b* the reports are assigned to Michaelmas term, 15 Edward III. From fol. 291*b* to fol. 311*b* the cases appear to be of the four terms (in due order) of the year 16 Edward III.

From fol. 312 to the end (fol. 323) is another copy of reports for the whole of the eleventh year of the reign of Edward III., but it does not agree in all respects with the previous copy beginning at fol. 246*b*.

With the exception of a few later notes, such as the page-headings, &c., the MS. is in co-æval hands, and therefore of considerable value, but, as will be seen from the preceding description, the dates which appear in it must be received with caution.

The Additional MS., 25184 ("purchased of Lord Robert Montagu, M.P., 27 June 1863"), consists of 327 skins or folios of vellum. Its contents are exclusively

Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

PREFACE.

xvii

Year Books, which begin in Easter term, 1 Edward III., and continue without a break as far as Michaelmas term, 7 Edward III. (ending fol. 146*b*). At fol. 147 commences Hilary term, 10 Edward III., and there are reports in successive terms as far as Michaelmas, 14 Edward III. (ending fol. 236*b*). Hilary term, 16 Edward III., follows at fol. 237, and the rest of the MS. (to the end at fol. 327*b*) is occupied by the reports of that and each of the other terms in chronological order, to Michaelmas, 18 Edward III.

The handwriting is co-æval, and this is one of the most valuable MSS. of the Year Books of the period.

The Additional MS., No. 25185 ("purchased of Lord R. Montagu, M.P., 27 June 1863"), consists of 87 skins or folios of vellum. It commences with Hilary term, 9 Edward III., and contains full reports in due succession of terms as far as Michaelmas, 10 Edward III. (ending fol. 63*b*). Fol. 64 begins imperfectly with a part of Trinity term, 11 Edward III., after which follow successive terms as far as Trinity, 12 Edward III., with which the volume ends at fol. 87*b*.

This MS. also is in a co-æval hand, and useful for the period over which it extends.

The whole of the MSS. are thus approximately contemporary. Sometimes reference is made in one report to another of a subsequent date—a fact which shows that the Year Books were transcribed and retranscribed with notes accruing from time to time. There is, however, hardly any portion of the text of any of the MSS. in a later hand than that of the reign of Richard II., and very little in a hand that is so late.

Mr. Horwood has, when possible, uniformly made the Temple MS. the basis of his text. He has occasionally referred to it in the foot notes by the letter T. Various readings found in the Lincoln's Inn MS. are identified by the letter L., and those in Sir Charles Isham's MS. by the letter I.; these are the only MSS. which

The use
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Cambridge University Press

978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

xviii

PREFACE.

appear to have been collated at any part of the volume before page 387 (Hilary term, 12 Ed. III.).

The Temple MS. has been followed uninterruptedly through the whole of the first three terms (Hilary, Easter, and Trinity, 11 Edward III.) and through the next term (Michaelmas) as far as p. 339 of the present volume.

Two cases not existing in the Temple MS. are then introduced, one found in the Lincoln's Inn MS., as well as in Sir C. Isham's, and the other in Sir C. Isham's, but not in the Lincoln's Inn MS.

Through the earlier portion of Hilary term, 12 Edward III., the Temple MS. is still the foundation of the text, but the whole of the later cases in that term, beginning with the writ of Mesne at p. 387, are from the Additional MS., No. 16560.

The Temple MS. is again followed from the beginning of Easter term, 12 Edward III., as far as it contains any reports which can be assigned to that term, but other cases (beginning at p. 487) are (as stated in the foot note) printed from the Additional MS., No. 25184. There is a foot note showing collation with the Additional MS., No. 16560, at p. 505. From p. 509 to the end of the term the Additional MS., No. 25185, has served as the groundwork of the text, though a foot note at p. 519 shows that it has been collated with No. 25184.

Most of the reports of Trinity term, as printed by Mr. Horwood, *i.e.* from p. 527 to p. 649, are from the Additional MS., No. 16560, which, however, as some of the foot notes show, has been collated with the Additional MSS., 25184 and 25185. The rest, from p. 649 to the end, are from the Additional MS., No. 25184.

When the same cases appear in more manuscripts than one they are frequently in different order, sometimes even to the extent of appearing under one term in one MS. and under another term in another. It was, perhaps, with the intention of bringing this fact prominently into notice that Mr. Horwood printed from the Temple MS. some

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Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

PREFACE.

xix

reports which are there referred to Easter term, and reprinted them from the Additional MS., No. 16560, where they are referred to Trinity term. Thus the case beginning at p. 451, and three succeeding cases ending at page 459, and there printed as of Easter term, are printed again as of Trinity term, at pp. 565-573, with the addition of marginal notes, but otherwise with very slight variations. So also the five consecutive cases beginning at p. 461, and printed as of Easter term, are reprinted as of Trinity term at pp. 575-577. Mr. Horwood was certainly quite aware that there is sometimes a variation of date and order in the different MSS., as shown by his note at p. 587, where he prints from 16560 as of Trinity term a case assigned to Easter term in 25185, but not printed as of that term. It is, therefore, probable that the repetition has been made with a definite object in view. In one instance the name of a judge is extended from the contracted form Sch. in the original to Schardelowe in Easter term, and to Schardeburgh in Trinity.

If it be asked to what term the repeated cases really belong, it may be answered that the weight of evidence is much in favour of Easter. The heading of the Temple MS., under which they are included, "De Termino Paschæ anno Regni Regis E. etc., xii. in aliis libris," is made somewhat obscure by the last three words, but the meaning probably is that the cases are of Easter term, and that others of the same term are to be found elsewhere. The heading in Sir Charles Isham's MS. is perfectly distinct, and assigns them clearly to Easter term. The heading in the Additional MS. 25185, in which they all occur, also distinctly places them in Easter. Most of them are absent altogether from the Additional MS. 25184, but the case of attain, printed at p. 453 and p. 567, is found there under Easter term, in the form of a short note, of two lines, which is also printed at p. 501. There is no substantive heading to Trinity term in the Additional MS. 16560; and the only reason for attri-

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978-1-108-04789-0 - Year Books of the Reign of King Edward the Third Years XI and XII

Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

xx

PREFACE.

buting the cases to that term is that they are inserted in that MS. among some others which appear as of Trinity term in some of the other MSS., and that there are page headings "Trin. 12." The fact seems to be that a space was left in the MS. to be subsequently filled up with the title of the term, and that cases in Easter and Trinity were then copied as occasion served. It is, of course, quite immaterial whether they were argued in the one term or the other, except for the purpose of reference.

Mr. Horwood has in a note at p. 487 called attention to the fact that a case there printed is the same (though differently reported) as one at p. 443. At p. 443 it is from the Temple MS., at p. 487 from the Additional MS. 25184. It also occurs in the Additional MS. 25185, and in each MS. as of Easter term. Similar instances will be found commencing at pages 361 and 391, pages 441 and 489, pages 465 and 593, pages 497 and 577, pages 513 and 579, pages 515 and 581, pages 539 and 635, pages 543 and 633, pages 545 and 623, pages 547 and 617, pages 557 and 649, pages 563 and 639, pages 625 and 649, and elsewhere.

The reports: the common law and the canon law.

There are many cases in this volume which are of much interest both from a legal and from a historical point of view. At this period it was still the law of England, in accordance with the canon law, that divorce for consanguinity or affinity did not bastardise the issue of a marriage. According to Bracton¹ "Si quis primo "contraxerit cum aliqua consanguinea, vel alia affinitate conjuncta . . . et, inter eos celebrato "divortio, contraxerit cum alia, nihilominus de prima "erit proles legitima, non obstante divortio."

This statement of the law of England is in perfect agreement with *Decretal*. Gregor. IX., Lib. IV., Tit.

¹ *De Actione Dotis*, Cap. 5. In Sir Travers Twiss's edition, vol. iv., p. 472.

Cambridge University Press

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Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

PREFACE.

xxi

17, c. 2. "Cum inter I. virum et T. mulierem divor-
 " tii sententia canonice sit prolata, filii eorum non
 " debent exinde sustinere jacturam, cum parentes
 " eorum *publice*,¹ sine contradictione ecclesie, inter
 " se contraxisse noscantur. Ideoque sancimus ut filii
 " eorum, quos ante divortium habuerunt, et qui con-
 " cepti fuerant ante latam sententiam, non minus ha-
 " beantur legitimi, et quod in bona paterna heredi-
 " tario jure succedant, et de parentum facultatibus
 " nutriantur."

Not very long after the date of the Year Books in the present volume, however, there began to prevail among English lawyers an opinion that a divorce for pre-contract or affinity should have the effect of making the marriage void *ab initio*, and consequently of bastardising the issue.

In the Year Book of Michaelmas term, 47 Edward III., No. 78 (printed 1679), there is a note, of which the following is a translation:—

"Note that there may be a divorce in five different
 " ways, viz.: *causa professionis*, *causa præcontractus*,
 " *causa consanguinitatis*, *causa affinitatis*, et *causa*
 " *frigiditytatis*. And note that after divorce *causa profes-*
 " *sionis* the woman shall have her dower, and the
 " heir inherits, but in the other cases she shall not
 " have her dower and the heir does not inherit."

The doctrine is strangely expressed, for it is obvious that the heir must inherit, and that the question to be determined is the heirship. The meaning, however, clearly is that the issue which would inherit in the absence of a divorce, could not inherit in cases where the parents had been divorced for any cause except *causa professionis*. It is unfortunate that the first

¹ The issue of a *clandestine* mar- | was, however, illegitimate. *Decretal.*
 riage within the prohibited degrees | Gregor. ix., Lib. iv., Tit. 3, c. 3.

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Edited and Translated by Alfred J. Horwood and Luke Owen Pike

Frontmatter

[More information](#)

enunciation of the later opinion on this subject should be in the form of a note rather than in a case reported at length; but it is by no means impossible that some case between the years 12 and 47 Edward III., may yet be found in unpublished MSS., which will show the first decision in opposition to the views of Bracton, and of some generations of judges after his time.

It is probable that the change was not accepted without a struggle, for the point was raised and stubbornly contested in the reign of Edward IV. (Year Book, Hil. 18 Edw. IV., No. 28.) But Littleton (among others) upon that occasion inclined to the opinion that where there had been a divorce for consanguinity the issue was bastard. His great commentator Coke (*Co. Litt.* 235*a*), writing long afterwards, seems to have forgotten that there was ever a doubt upon the subject, much more that the earlier lawyers accepted the canon law as the law of the land. The statute of 32 Henry VIII. c. 38, had, it may be presumed, thrown all the old learning upon this matter into oblivion.

The issue of persons divorced for affinity held legitimate.

The record of an assise of Mort d'Ancestor, printed at pp. 481-487, is a very remarkable illustration at once of the old doctrine respecting divorce for consanguinity or affinity and of the manners and customs of the time. It was found by the jurors of the assise that one Robert, having married one Margery, had issue, a son P. (the claimant) and other children, and was afterwards divorced from Margery on the ground of affinity. He then lived in concubinage with one Sabina, by whom he had a son Thomas. He subsequently married one Agnes de A., from whom he was afterwards divorced. He then married Sabina, by whom he had a son William, born in wedlock. The illegitimate son Thomas died before his father, but left a daughter Alice, whom the chief lord of the fee placed in seisin of the tenement in dispute for a sum of money given to him by her friends. It was held that Alice, as the daughter of the bastard, had no