

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

MICHAELMAS TERM
IN THE
SEVENTEENTH YEAR OF THE REIGN OF
KING EDWARD THE THIRD
AFTER THE CONQUEST.

18141

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

MICHAELMAS TERM IN THE SEVENTEENTH YEAR
OF THE REIGN OF KING EDWARD THE THIRD
AFTER THE CONQUEST.

No. 1.

A.D. 1343. (1.) § In Detinue of a writing it was pleaded to the country on a traverse of the detinue, and now it is found by verdict that the charter has been burnt by the defendant.—SHARDELOWE. The plaintiff is possibly in such a case that he suffers disherison unless he has the charter, because in some actions a party is not entitled to an answer without showing a specialty; or even where he was possibly tenant, and had warranty, and his specialty was lost, his land would be lost without any recovery of the value, and therefore it seems that regard must be had to this, and enquiry made as to the value of the land included in the charter, &c.—But afterwards SHARDELOWE said that the issue is only on the detinue, which detinue is found, and therefore the Court adjudges that the plaintiff do recover the charter, and damages assessed at one half-mark, and that the defendant be distrained to give up the charter.

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

DE TERMINO MICHAELIS ANNO REGNI REGIS
EDWARDI TERTII POST CONQUESTUM SEPTIMO
DECIMO¹

No. 1.

(1.)² § En Detenue descript plede fut a pais sur A.D. 1343. travers de⁴ la detenue, et ore est trove par verdit Detenue descript, ge la chartre est ars par le defendant.—SCHARD. ou sur Par cas le pleintif est⁵ en tiel cas qil est desherite travers de la detenue, sil nust la chartre, qar en ascun accion la⁶ partie ge fut nest pas responsable⁷ sanz especialte; ou mesqe il trove, le pleintif fut tenant par cas, et avoit garrauntie, et sa recoveri especialte fut perdu, sa terre serreit perdu sanz value, damages. Et nota par quei semble qa ceo il covient aver⁸ regarde, et ge lescrip্ত enquest⁹ de la value de la terre compris¹⁰ deinz est ars, et la¹¹ chartre, &c.—Mes puis SCHARD. dit ge lissue nest est de- streint del rendre.³ quei¹² agarde la COURT ge le pleintif recovere la [Fitz., chartre et damages taxes¹³ a demi marc, et ge le Jugement, defendant soit destreint¹⁴ a rendre la chartre. 115.]

¹ The Reports of this Term are from the Harleian MS. No. 741, the Additional MS. in the British Museum numbered 25,184, and the MS. in the University Library at Cambridge Hh. II., 4. In 25,184 and C. are inserted, before the general heading to the Term, the words "Paruyng murrust en la "Vacacion," and after it the words "Sadynstone fust fait Chauncellier."

² From Harl., 25,184, and C.

³ The marginal note, subsequent to the word Detenue, is from 25,184 alone.

⁴ 25,184, a. The words travers de are omitted from C.

⁵ est is omitted from 25,184.

⁶ la is omitted from Harl. and 25,184.

⁷ C., resonable.

⁸ C., avoir.

⁹ 25,184, enquist.

¹⁰ 25,184, comprist.

¹¹ C., en, instead of deinz la.

¹² C., here and commonly elsewhere, qai.

¹³ 25,184, taxeez.

¹⁴ C., distreint.

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

No. 2.

A.D. 1343. (2.) § Executors brought a writ of Debt, and *profert* was made of the testator's acquittance, which was found by verdict to be false.—KELSHULLE to the Jury. To what damages? And sever the damages, that is to say, how much since the testator's death, and how much in case the Court shall award damages for the whole time since the debt was incurred.—And they assessed the one period at ten marks, and the other period at five marks.—SHARDELOWE. It has not been seen that damages have been recovered except since the time at which the action accrued to the party.—*R. Thorpe*. Executors do not recover to their own use, and they shall recover the whole of the damages for the same reason as that for which they recover the debt.—STONORE. The heir will recover the principal in a plea of land, and damages only since his ancestor's death.—*Thorpe*. The case of the heir who recovers his own right is not similar to that of executors who represent the testator's estate.—SHARDELOWE. Certainly, you say what is true.—*Thorpe*. And it is seen every day that a successor recovers on an obligation made to a predecessor, and damages for the whole time. *A fortiori* in this case.—And nevertheless, on account of STONORE's opinion, five marks only were awarded for damages.

Debt for executors, who recovered damages only for the time subsequent to the testator's death.

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

XVII. EDWARD III.

5

No. 2.

(2.)¹ § Executours porterent bref³ de Dette, et A.D. 1343. acquitaunce fut mys avant del testatour, et trove par Dette pur execu-
verdit faux.—KELS. a Lenqueste. A queux damages? tours, qe
Et severez⁴ les damages, saver,⁵ puis la mort le recoverir-
testatour, et si⁶ Court agardera⁷ damages de tut ages forsqe
temps puis la dette encorue.—Et assistrent lun⁸ puis la mort le
temps a x marcs et lautre temps⁹ a v marcs.—testatour.²
SCHARD. Homme nad pas vewe qe damages furent [Fitz.,
recoverez forsqe puis le temps qe accion luy fut Damage,
acru.—R. Thorpe. Executours recoverent pas a lour 85.]
oeps demene, et par mesme la resoun qils recoverent
la dette ils recoveront tous les damages.—STON. Le
heir recovers le principal en plee de terre, et damages
forsqe puis la mort son auncestre.—Thorpe. *Non est
simile* de heir qe recovers son dreit demene, et
executours qe representent lestat¹⁰ le testatour.—
SCHARD. Certes, vous dites verite.—Thorpe. Et
homme veit¹¹ tut le jour qe successor¹² recovers par
obligacion fait a predecissor, et damages de tut
temps. A plus fort en ceo cas.—*Et tamen, propter
opinionem* STON., v marcs pur damages furent soule-
ment¹³ agardes.¹⁴

¹ From Harl., 25,184, and C.² The marginal note, except the word Dette, is from 25,184 alone.³ bref is omitted from C.⁴ C., severs.⁵ saver is omitted from Harl.⁶ si is omitted from C.⁷ C., ajugera.⁸ C., en.⁹ temps is from Harl. alone.¹⁰ lestat is omitted from C.¹¹ 25,184, voet.¹² successor is omitted from C.¹³ C., taunsoulement.¹⁴ C., ajuges.

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

No. 3.

A.D. 1343. (3.) § A debt, heretofore, as appears above,¹ was demanded against three executors. At the Grand Distress one came, and the others did not. And he traversed the obligation, and the finding was for the plaintiff. Therefore it was then adjudged that the plaintiff should recover against him and the others out of the goods of the deceased. And a *Fieri facias* issued in respect of the goods of the deceased, which is not yet served.—*R. Thorpe*. We pray execution in respect of their own goods: for he who pleaded such manner of plea was, when the issue was found against him, chargeable in respect of his own goods, and consequently they all were.—*SHARDELOWE*. I grant you that he who pleaded in that way is charged in respect of his own goods, even though he have not any goods of the deceased, but it does not therefore follow that the

Debt
recovered.
*Fieri
facias*
against
executors
on the
plea of one
of them.
And exe-
cution was
heretofore
awarded of
the goods
of the de-
ceased. So
was the
judgment,
and never-
theless
now,
because
the COURT

¹ Hilary Term No. 53, and Easter Term No. 1.

No. 3.

(3.)¹ § Dette autrefoith, *ut patet supra*,² demande A.D. 1343. vers iij executours. A la Graunt Destresse un vint ^{Dette} et les autres nient. Et il traversa lobligation, et ^{recovery.} Fieri trove fut pur le pleintif. Par quei fut agarde³ ^{Fieri} adonques qe le pleintif recoverast vers luy et les ^{vers exe-} autres des⁴ biens le mort. [Et *Fieri facias*⁵ des ^{cutours} biens le mort]⁶ issit,⁷ gore nest pas servy.—*R.*⁸ ^{sur plee} *Thorpe*. Nous prioms execucion de lour biens demene: ^{un deux.} *Et fut* gar celuy qe pleda tiel manere de plee, quant la ^{agarde} *autrefoith* mise fut trove countre luy, il fut chargeable⁹ de ^{execucion} ses biens propres, et, *per consequens*, touz.—*SCHARD*. Issi fut le ^{des biens} *judgement*, ^{le mort.} *et tamen a* Jeo vous graunte qe cely qe pleda par cele voie est ^{ore, pur} charge, coment qil neit pas des biens le mort, de ^{ceo qe} ses propres, mes *ergo* les autres *non sequitur*.—*COURT*

¹ From Harl., 25,184, and C., but compared with the record, *Placita de Banco*, Mich., 17 Edw. III., R^o 532 d. It there appears that a writ of *Fieri facias* issued to the Sheriffs of London, “quod tam de terris et catallis Martini Roke de Borstede, executoris testamenti Ricardi de Borstede, quam de bonis et catallis quæ fuerunt ejusdem Ricardi tertio die Maii anno regni domini Regis nunc Angliæ quinto-decimo, tam in manibus prædicti Martini quam in manibus Ricardi Chaunterel, capellani, Simonis atte Gate et Johannis Olyver coexecutorum prædicti Martini testamenti prædicti tunc existentibus in balliva, &c., fieri facerent viginti libras, et illas haberent hic ad hunc diem ad reddendum Willelmo de Claveryng et Margeriæ uxori ejus, et Katerinæ filiæ ejusdem Margeriæ, quas iidem Willelmus, Margeria, et Katerina in Curia hic per considerationem ejusdem Curia, &c., recuperaverunt versus eos; et etiam quod tam de terris

“et catallis prædicti Martini quam de bonis et catallis quæ fuerunt prædicti Ricardi de Borstede, prædictis die et anno, tam in manibus prædicti Martini quam in manibus prædictorum coexecutorum tunc existentibus in balliva, &c., fieri facerent decem et novem marcas, et illas haberent hic ad hunc diem ad reddendum prædictis Willelmo, Margeriæ, et Katerinæ, de viginti marcis quæ eis in eadem Curia adjudicatæ fuerunt pro damnis suis, quæ habuerunt occasione detentionis prædicti debiti.”

² The words *ut patet supra* are omitted from Harl.

³ C., *ajuge fut*, instead of *fut agarde*.

⁴ des is omitted from C.

⁵ After *facias* there are inserted in 25,184, the words *par quei fut agarde*.

⁶ The words between brackets are omitted from Harl.

⁷ 25,184, and C., *issint*.

⁸ *R.* is omitted from 25,184.

⁹ C., *charge*.

No. 3.

A.D. 1343. others are.—*R. Thorpe*. I prove to you that they are: for, if they had all appeared, but had not agreed in one answer, they would have lost immediately; and so it is in a *Præcipe quod reddat* brought against two joint tenants.—*SHARDELOWE*. Where did you learn that law?—*HILLARY*. That which he says is not law.—*SHARDELOWE*. Suppose one executor cannot deny the action, will not another be admitted to deny it?—*R. Thorpe*. No, Sir: for then it would follow that if one took one issue, and another another, and it were first found against the one, the plaintiff would recover either the whole or a portion; he would not recover the whole, because the other has pleaded to issue, which is pending, in respect of the same debt, nor a portion, because debt cannot be severed.—*SHARDELOWE*. Judgment as to the whole will be delayed until enquiry has been had as to the whole, and then the Court will give a good judgment.—*Pulteney*. If we cannot have execution in respect of their own goods great mischief follows: for, in that case, where a writ is brought against several executors, one who has nothing will come by covin at the Grand Distress, and the others, who had assets of the goods of the deceased, and sold them, will absent themselves, and so execution will never be had.—*SHARDELOWE*. I tell you plainly that if they had assets of the goods of the deceased on the day of the purchase of the writ, even though they may have sold them since, they will be charged; and if you waited, before purchasing your writ, until all was sold, that is your own folly.—*HILLARY*. How can execution be effected otherwise than in accordance with the judgment?—*SHARDELOWE*. The judgment seems to be extraordinary; but we can well award

XVII. EDWARD III.

9

No. 3.

*R.*² *Thorpe*. Jeo vous proefe qu'il : qar, si touz ussent A.D. 1343.
 venuz, sils neussent acordez en un respouns, ils³ vist qe le
 ussent perduz tauntost; et auxi est ceo en un *Præcipe* jugement
quod reddat porte vers ij jointenantz.—SCHARD. Ou serreit qe
 avez vous appris cele ley?—HILL. Ceo nest pas cely qe
 ley⁴ qil dit.—SCHARD. Jeo pose qun executour ne pleda, par
 poet dedire laccion, ne serra autre⁵ resceu a dedire manere de
 la?—*R. Thorpe*. Noun, Sire⁶: qar donqes ensuera⁷ son plee,
 qe si lun prist un issue, et lautre un autre, et trouve fut charge
 fut primes⁸ countre lun qe le pleintif recoverast ou de ses
 tut ou porcion; tut nient, qar lautre ad plede en propres
 issue de mesme la dette qe pent, ne porcion nient, biens, et
 qar dette ne put estre severe.—SCHARD. Le jugement les autres
 de tut demura⁹ tanqe tut serra enquis, et donqes forsqe les
 fra Court bon jugement.—*Pult*. Si nous ne puissions biens le
 aver execucion de lour biens propres, il ensuist graunt testatour,
 meschief: qar donqes, ou bref est porte vers plusours execucion
 executours, par covyn un qe rien nad vendra a la fut agarde
 Graunt Destresse, et les autres sabsenteront¹⁰ qount *tam de*
 assetz des biens le mort, et les ount venduz, et *bonis* cely
 issi navera homme ja execucion.—SCHARD. Jeo vous qe pleda
 die bien sils avoient assetz des biens le mort jour *quam de*
 de bref¹¹ purchace, [tut les oient ils vendu puis, ils *bonis tes-*
 serront charges; et si vous attendistes de vostre *tatoris in*
 purchace]¹² tanqe tut fut vendu cest¹³ vostre folie.— *manibus*
 HILL. Coment fra homme execucion forsqe acordaunt *execu-*
 al jugement?—SCHARD. Il semble merveille du¹⁴ *torum*,¹
 jugement; mes nous¹⁵ poms bien doner execucion *[Fitz.,*
Execu-
tours, 76.]

¹ The marginal note, except the word Dette, is from 25,184 alone.

² R. is omitted from C.

³ 25,184, qils.

⁴ ley is omitted from C.

⁵ Harl. and C., lautre.

⁶ C., *Non sequitur*, instead of Noun, Sire.

⁷ C., ensueroms.

⁸ C., puis.

⁹ C., demanda.

¹⁰ Harl., sabsentirent; C., absenterent, instead of sabsenteront.

¹¹ Harl., vostre.

¹² The words between brackets are omitted from Harl., and the words from ils to purchace are repeated in 25,184.

¹³ 25,184, ceste fut.

¹⁴ Harl., en.

¹⁵ C., puis; the word is omitted from 25,184.

Cambridge University Press

978-1-108-04798-2 - Year Books of the Reign of King Edward the Third: Years XVII and XVIII

Edited and Translated by Luke Owen Pike

Excerpt

[More information](#)

No. 3.

A.D. 1343. execution in accordance with the effect of the judgment, though it be not in accordance with the exact words, and the party will never have a writ of Error thereupon; now it would be right that the executors should be diversely charged, that is to say, that he who pleaded should be charged in respect of his own goods or of the goods of the deceased without distinction, and the others in respect of the goods of the deceased alone; wherefore *Fieri facias* or *Levari facias* will be granted for a specific amount, as well of the goods, &c., of him who has pleaded, as of the goods, &c., of the deceased found in his hands and in the hands of the other executors.—*Thorpe*. That is right. SHARDELOWE. It is true. And they awarded execution in that manner.¹—*Herlastone*. Execution is to be effected in two counties; ought he then to have execution of the whole in each county?—SHARDELOWE. Yes; the writs are in the words *et habeas denarios hic*, so that even though each Sheriff sent the whole, he would only have that which is awarded.—And so it was done.—The Sheriffs returned that he who pleaded had nothing, nor had any of the others anything, and that the others had assets on the day of the purchase of the original writ, but that since the writ of execution they had nothing.—Thereupon a

Note as to execution of a debt in divers counties.

¹ For the precise words of the *Fieri facias* see p. 7, note 1.