THE ROYAL PREROGATIVE AND THE LEARNING OF THE INNS OF COURT

MARGARET McGLYNN

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THE EARLY READINGS

The military importance of feudal tenures became subsidiary to their financial importance little more than a century after the Conquest. Richardson and Sayles argue that, by the time of Glanvill, "those who render and those who accept homage have no thought of arms, of service in the field: they think of reliefs, marriage and wardship, the profits, not the remotely ancient obligations, of military tenure."[1] Developments through the thirteenth century continued this trend. A royal ordinance of 1256 attempted to protect the incidents of feudal tenure by restricting the right of tenants-in-chief of the king to alienate lands held of him. Alienation at will meant that the king's control over his lands was weakened by sub-infeudation, as the feudal ladder was stretched. Moreover, his dues were often reduced by the division of land into parcels too small to return the appropriate services. After 1256, alienation was only permitted by licence of the king. There is little evidence of the effect of this change under Henry III, but the records from the late thirteenth century suggest that licences were not easily available until the mid-1290s.[2] At this point, Edward I reversed his previous policy of opposing alienation of lands held in chief. Instead, he granted licences to alienate, under which the alienee would hold the land in chief of the king and for which a fine was paid. Thus the king's financial incidents were safeguarded and he made money from the licence. Bean sees this as part of the growing consciousness of the

[1] H. G. Richardson and G. O. Sayles, *The Governance of Medieval England from the Conquest to Magna Carta* (Edinburgh: Edinburgh University Press, 1963), 111. Susan Reynolds' discussion of the confusion between some military and socage tenures suggests that the distinction was no longer considered crucial to the safety of the realm. Susan Reynolds, *Fiefs and Vassals* (Oxford: Oxford University Press, 1994), 355.

[2] J. M. W. Bean, *The Decline of English Feudalism 1215–1540* (New York: Manchester University Press, 1968), 71–73.

royal prerogative in this period and the increased interest in defining the king's rights.[3] The statute of *Quia Emptores* of 1290 played a part in this process by conferring freedom to alienate on all men, but abolishing the process of sub-infeudation.[4] Throughout this period of change, there is no mention of any military drawbacks to alienation or sub-infeudation.[5] Both the king and the mesne lords are concerned with protecting the financial value of the wardships, reliefs, and escheats due from their tenants. Richardson and Sayles argue that, by this time, "the state is independent of feudalism, and if, perforce, its organization must at some points be accommodated to certain feudal ideas and forms, it cannot at any period be justly termed a feudal state."[6]

Thus it can be argued that, from the reign of Edward I and before, England was not a feudal state, but that her kings used the feudal forms as a source of income. The importance of the income garnered from the king's tenants-in-chief varied over the centuries. Wolffe argues that the royal estate was of little economic importance to the Angevin kings, whose "political power as kings was so great that, by comparison, their financial resources as landlords were insignificant."[7] He believes that English kings from the Conquest onwards relied mainly on taxation to finance their government and that contemporaries expected nothing else. In the thirteenth and fourteenth centuries, it was understood that the king would use the income from his own estates primarily to support his family, secondly to provide patronage, and finally, and only intermittently, to contribute to the expenses of government.[8] Wolffe points out that the idea that the king should live of his own is relatively late and that the phrase occurs for the first time in 1311. At that time,

[3] *Ibid*., 70.

[4] Bean concludes that *Quia Emptores* did not apply to tenants-in-chief. He argues that the ordinance of 1256 had settled the question of their ability to alienate and the fact that they continued to need licences to alienate demonstrates that the new statute did not affect their position. *Ibid*., 81–83.

[5] Richardson and Sayles, *Governance of Medieval England*, 112.

[6] *Ibid*., 40. Pocock makes a similar point when approaching the issue from the vantage point of the seventeenth century. He comments that Coke "knew all there was to know about feudal law in England, except the single fact that it was feudal." J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (New York: W. W. Norton, 1967), 66.

[7] B. P. Wolffe, *The Royal Demesne in English History: The Crown Estates in the Governance of the Realm from the Conquest to 1509* (London: George Allen & Unwin, 1971), 22.

[8] *Ibid*., 65.

contemporaries were arguing that the king should live on his rightful income and avoid the evil of purveyance, which was impoverishing the countryside. When they argued that the king should live of his own, they considered "his own" to include all the royal income, including direct and indirect taxation, not just the income of the royal estates.[9]

It was only with the accession of Henry IV and the addition of the Lancastrian family lands to the royal income that the importance of the revenue of the crown lands increased substantially. The overseas preoccupations of Henry V and the weakness of Henry VI meant that these resources were not exploited to their full extent, and the crown continued to rely heavily on parliamentary taxation to fund government. Wolffe maintains that, when Edward IV became king, he began a concerted effort to administer the crown lands effectively. He applied the principles of private estate management to the crown lands and resumed many of the estates granted away by his predecessors. Wolffe suggests that Edward IV was the first king to believe that the king should "live of his own" in the later sense of the phrase, rather than relying on taxation, and that he proposed to do so by the effective development of the crown's landed base.[10] Edward succeeded in making the royal estates profitable, but it was left to Henry VII to take the next logical step. Edward exploited the lands in his grasp effectively, but he made little progress in seeking out tenants-in-chief of the crown who had managed to slip through the feudal net in the chaos of the fifteenth century or in extending the services due to the king.[11]

Edward also made little progress in dealing with the problem of uses, which meant that the crown was consistently being deprived of income from the lands of its tenants-in-chief. In its simplest form, a use was where a tenant enfeoffed another with his land,

[9] *Ibid*., 40–51.

[10] In his review of Wolffe's *The Crown Lands 1461 to 1536: An Aspect of Yorkist and Early Tudor Government* (New York: Barnes & Noble, 1970), G. L. Harriss argues that Edward's promise to live of his own was part of an attempt to soften up parliament in preparation for a request for taxation. *English Historical Review* 88 (1973): 172.

[11] Lander notes that, under Edward IV, exchequer officials made extensive searches for information. He points out that in 3 Edw. IV, the clerks of the Treasurer's Remembrancer were paid £20 for special work in compiling rolls of farms, wards, and marriages at the king's disposal, and the clerks of the Great Roll were also paid £20 for searching the rolls and books of the exchequer from Edward III to Henry VI. J. R. Lander, *The Limitations of English Monarchy in the Later Middle Ages* (Toronto: University of Toronto Press, 1989), 67–68, n.12.

thus transferring seisin, but kept the profits of the land for his own use, or for the use of a third party, known as the *cestui que use*. Since the king's prerogatives were due only on land held of him which passed by descent from a tenant-in-chief to his heir, if the tenant-in-chief enfeoffed another of his land, keeping the use of it for himself or for another, and then died, the king could not claim his feudal incidents, for neither the feoffor nor the *cestui que use* held the land at the time of the feoffor's death. The *cestui que use* would have the use of the land but, since the land itself had not passed by descent, the king lost his prerogative rights in it.[12] Not only did this practice rob the king of profit in the short term, the complex conveyancing which accompanied it also quickly obscured titles to land.

The responsibility for keeping track of the king's rights and his lands fell on the escheator. Each county had an escheator responsible for safeguarding the feudal incidents due to the king from his tenants-in-chief in that county, and it was this official's job to hold inquisitions.[13] The inquisition was the first step in claiming the king's feudal dues by establishing who his tenants were, when exactly they died, what they held, of whom and how it was held, what it was worth, who the heir was, and how old he was. This provided the necessary information to establish the king's rights over the land in question. The escheator was then responsible for seeing that these rights were protected. All of the surviving readings deal with the inquisition writs and, while important to an understanding of the process, they are generally not complicated. For these reasons, we can consider them here, before moving on to the more complex elements of both law and procedure.[14]

The escheator could carry out an inquisition either *virtute officii*, by virtue of his office, or *virtute brevis*, by virtue of a writ issued from chancery. An inquisition held *virtute officii* was returned by the

[12] The owner would usually convey the land to a group of co-feoffees, thus ensuring that the land would not fall to the king through the death of the feoffee. The feoffees in turn would pass the land on to others before the last one of them died and so it would continuously change hands through conveyance without ever passing by descent. Simpson notes that eminent lawyers were often used as feoffees to secure the conveyance and reduce the likelihood of fraud on the part of the feoffees. A. W. B. Simpson, *A History of the Land Law* (Oxford: Clarendon Press, 1986), 182–83.

[13] Bean, *The Decline of English Feudalism*, 19.

[14] We will return to the methods for dealing with problematic inquisitions at pp. 128–40 below.

escheator to the chancery or the exchequer. Having been returned, this writ meant that the lands in question were in the hands of the king as a matter of record. This was important, for in order for an aggrieved tenant to challenge the king's right to any seized land, he had to be able to object to information on record. An inquisition *virtute brevis* could be called by one of four writs. The most common was the *diem clausit extremum*, which had to be issued from the chancery within a year of the death of the tenant-in-chief. As with the inquisition *virtute officii*, when it was returned to chancery it became a matter of record and the land was properly in the hands of the king.[15] The second writ used to call an inquisition was *mandamus*. This was much the same as the *diem clausit extremum*, but it was issued after a year if there had been no *diem clausit extremum*, or if the first writ had not been returned to chancery. The third writ was used if the king had an heir in ward and the heir died. This writ of *devenerunt* ordered the escheator to enquire what lands were in the king's hands because of his wardship, and it was effectively a new enquiry into the reasons why the king had the ward in the first place. It also sought the heir of the ward and the heir's age. The fourth writ was *amotus*. This was sent out when the first writ issued had not been returned. *Amotus* rehearsed the first writ and required that it be returned. Beyond these four writs, there were two others, but these could not be issued unless one of the four had first been issued and returned. *Que plura* was applicable where, after the first writ was returned, the king was informed that his tenant held more lands than were named in the return. *Melius inquirendum* was used when the first writ had been returned with some necessary information missing, as for example when the inquisition jury did not know of whom the land was held, or how, and it ordered a second inquisition to discover the missing information.[16]

[15] The writ of *diem clausit extremum* could only be sued once. In a case of 2 Hen. VII before the justices in the exchequer chamber, a plaintiff sought a commission to enquire concerning his title to land in tail of which his brother had died seised, and the justices concluded that such a commission was in effect nothing but a *diem clausit extremum*, and so his request was denied. M. Hemmant, ed., *Select Cases in the Exchequer Chamber before All the Justices of England*, vol. 2: 1461–1509, Selden Society vol. 64 (London: Bernard Quaritch, 1948), 128.

[16] All of the readers cover this material: e.g. Bodleian MS Rawlinson C. 294, ff.205v–06v (this text does not discuss the writ *amotus*); CUL Ee.5.22, ff.342v–43; CUL Hh.3.6, ff.55v–56; Robert Constable, *Prerogativa Regis: Tertia Lectura Roberti Constable de Lincolnis Inne Anno 11 H. 7*, ed. S. E. Thorne (New Haven: Yale University Press, 1949, 42–45.

An inquisition held *virtute officii* gave the king title, but it did not give the heir title and the heir had to go through the process of an inquisition sued on a chancery writ. If the heir to the land was found to be a minor, he would become a ward of the king until he reached his majority, according to the age in the inquisition. He would then prove his age and retrieve his lands from the king. An heir found of full age in the inquisition avoided wardship, but the king still seized his lands and he had to pay relief before following the same process as a minor heir in swearing homage and getting livery of his lands.[17]

Although this process sounds fairly straightforward, by the late fifteenth century there were a number of problems with it. One was that inquisition juries were not always knowledgeable enough about the land under consideration, largely because of the growing complexity of land transfers. Worse still, they were not always impartial. They could be intimidated by the heirs of the deceased, or by the sheriff of the county, or they could be biased towards the heirs. In any of these cases, an injustice could result.[18] Thus, by the end of the fifteenth century, both the ongoing practice of enfeoffment to use and the turmoil of the civil wars, meant that the king had very little idea of who his tenants-in-chief actually were. The last feudal aid collected by a king was in 1428, when the commons made a grant of tonnage, poundage, a tax on parishes and towns, and a levy on knight's fees.[19] The next attempt to collect a feudal aid would be in 1504. Over the seventy-six years between them, much changed, both in the tenurial map of England, and in its politics. This was also the period in which readings on *Prerogativa Regis* began.

The first of the two anonymous fifteenth-century readings on *Prerogativa Regis* is CUL Ee.5.22, which probably dates from the

[17] The details of this process are covered in chapter 3, pp. 142–49, below.

[18] See D. A. Luckett, "Henry VII and the South-Western Escheators," in *The Reign of Henry VII: Proceedings of the 1993 Harlaxton Symposium*, ed. Benjamin Thompson, Harlaxton Medieval Studies V (Stamford: Paul Watkins, 1995), 54–64, for a consideration of the problems associated with inquisitions and some of the ways in which the administration dealt with them.

[19] H. C. Maxwell-Lyte, ed., *Calendar of Feudal Aids 1284–1431*, vol. 1 (London: HMSO, 1899), xxvii. Another similar aid was voted in 1431, but parliament petitioned for a remission, arguing that it was too complicated for assessment. *Ibid*., xxviii–xxix.

1440s or 1450s.[20] As with every other reading on *Prerogativa Regis*, it opens with the question of whether the text is a statute, and answers with the assertion that it is, and is "made solely for the advantage and profit of the king."[21] From this assertion it moves on to consider what lands are held of the crown, for only lands held of the crown bring the full weight of the prerogative. The reader begins by arguing that, if an earldom or barony held of the crown escheats to the king, any tenant who holds of the barony will owe only the same service that he would owe his lord, so the king will not have his prerogative in these lands. The discussion which follows is rather confusing, but the reader seems to be arguing that, if the king grants escheated lands out again, they will once more carry the full weight of the prerogative for their new holder; thus, he argues that a modern grant of crown lands carries the same burden as an ancient grant.[22]

This issue will come up again in later readings, but this early reading does not linger over the problem, but moves on to the next element of the statute, the need for the king's tenant to die seised in his demesne as of fee. The reader points out that the words of the statute are not always taken literally, and his discussion of this point turns into an examination of the difference between reversion and remainder.[23] He argues that, if the king's tenant has leased the lands he holds of the king to another for term of the other's life, with the king's licence, and then dies with his heir under age, the king will still seize the wardship of the infant, and the wardship of any lands his tenant held of other lords, and will have any rent reserved on the

[20] The third anonymous fifteenth-century manuscript, Bodleian MS Rawlinson C. 294, is too short for effective dating, and its brief discussion adds little to our knowledge of the topic in any case. See pp. 23–25 above for the dating of these texts.

[21] CUL MS Ee.5.22, f.338. It cites 43 Edw. III in support of this point.

[22] *Ibid*., f.338v.

[23] Land leased or alienated in fee tail often carried the condition that, if the donee died without issue, it should revert to the donor or his right heirs, an estate known as a reversion. Although the reversioner might not actually hold the land, a reversion was not considered to be a future estate in law, for the reversioner or his ancestor had held the land and maintained a continuous interest in it, though he was neither lord nor tenant. A remainder is created when land is alienated to someone for a stated term, and at the end of the term is to pass to a third individual. The recipient, the remainderman, had no previous connection with the land, and so a remainder, unlike a reversion, is a future estate.

leased land.[24] The reader does not give his reasons immediately, but when he returns to the point he says that some argue that, when the king's tenant leases his land in this way,[25] the king has the choice of taking the lessee, i.e. the tenant in possession, or the lessor, i.e. the tenant in law, as his tenant.[26] However, the reader disagrees with this and argues that the relationship between the king and the lessor remains the same, and so the lessor must remain the king's tenant. His reasoning is that the fee simple remains in the lessor, and so, if the lessee were to become the king's tenant, the holder of the fee simple would not hold of anyone, which would be unreasonable.[27] However, if the king's tenant leased the lands with the remainder over in fee, the tenancy did change, because the fee simple left the lessor, and the tenant in possession became the king's new tenant until the remainder was determined.[28] Therefore, if the potential remainderman died leaving an heir under age before the lessee died, the king would not have the infant in ward, since he already had a tenant, and the remainder was not determined.[29]

In the case above, the reversioner did not die seised, but his heir was still in ward. In the next case, the tenant's not dying seised changes the wardship. If the tenant is disseised, and the disseisor dies with an heir under age, and is found to be the tenant, the king will have his heir in ward. The right heir cannot enter on his lands during the wardship, because he cannot disturb the king's possession, but he can enter after the disseisor's heir sues livery. The reader's main concern is to maintain that "this descent does not defeat the entry, since he could not enter and thus no default or laxity may be adjudged in him [the heir of the diseissee]."[30]

In the third example, the king loses wardship of lands when the ancestor does not die seised. Thus, if the king has the wardship of an infant and afterwards other lands, not held of the king, descend to the infant from another ancestor, the king will not have the lands, because the tenant did not die seised. Instead, the lord of the lands will have them.[31] The reader goes on to point out that this is not

[24] CUL MS Ee.5.22, f.338v.
[25] He also uses the example of land given in tail, but I have stayed with the lease for clarity of exposition.
[26] CUL MS Ee.5.22, f.338v. [27] *Ibid*. [28] *Ibid*. [29] *Ibid*., ff.338v–39.
[30] *Ibid*., f.339. The same applies if a husband and wife are disseised during coverture or if the disseisee is under age at the time of death of the disseisor.
[31] CUL MS Ee.5.22, f.339v.

peculiar to the king, but works in the same way for any lord. Conversely, if a lord has the wardship of his tenant's heir and then land held of the king descends to the same infant, the king will have the wardship of the land, but he will not be able to claim the infant, since the body had legally vested in the first lord, and as a chattel it cannot be divested.[32]

The reader also points out that, although the statute says that the king will have all the lands of which his tenant dies seised, that does not always work. This is because the prerogative applied to land which passed by descent, but only when land passed by direct descent from the tenant-in-chief to his heir, whether an heir to land held in fee tail or fee simple. Land held in fee simple passed from the tenant to his heir without restriction. Land in fee tail passed from the tenant to the heirs of his body, but it could not go to a brother or cousin. This restriction was known as a fee tail general, but it could be further refined to a fee tail special, in which land would pass only to the heirs male of the tenant's body, or to the heirs of the tenant begotten on the body of a particular woman.[33] Thus, if a man held land in tail to the heirs of his body begotten on his first wife, any children born of his second wife would have no claim to it. It was fairly common for the heir general and the heir in tail to be the same person. For example, when a tenant-in-chief held land in fee simple and land in tail to the heirs of his body begotten on the body of his first wife, and the couple had a son, this son would be heir general of the land in fee simple and heir tail of the land in fee tail. In this case, the king would have his prerogative in all the land held. However, if the king's tenant was given lands in tail female, and he died leaving an heir male and female, the king would have the wardship of the heir male and the lands held of him, but the donor would have the wardship of the heir female and the lands held of him.[34] If the tenant died with no heir female, the lands would simply revert to the donor, and the king would still not have them,

[32] *Ibid*.

[33] Littleton states that "if a man give lands or tenements to another, to have and to hold to him and his heirs males, or to his heirs females, he, to whom such a gift is made, hath a fee simple, because it is not limited by the gift, of what body the issue male or female shall be." Thus the fee tail had to state that the heirs be begotten on the body of the tenant, but it could then go on to limit the inheritance to heirs male or female. Sir Thomas Littleton, *Littleton's Tenures in English*, ed. Eugene Wambaugh (Washington: John Byrne, 1903), § 31.

[34] CUL MS Ee.5.22, f.339.

even though his tenant was seised in his demesne as of fee on the day he died.[35]

However, if the tenant had married twice, and with each marriage he had received land in tail female, and he died leaving a daughter from each marriage, the king would have the wardship of both daughters, since both were co-heirs for the tenant's land held of the king. If one of them was of full age at the time of the tenant's death, the king would not have her in ward, but he would still seize all of the land of which the tenant died seised, since the king cannot be a joint tenant with anyone.[36] However, the elder daughter could sue by petition for her part, and the king would give her her lands.[37]

The reader completes his interpretation of chapter one with a note on the final branch, which deals with lands held of the archbishop of Canterbury, the bishop of Durham, and the lords of the March. He argues that their exception from the statute refers only to lands which have been held from time immemorial, and does not refer to any recently granted lordships.[38] This is in clear contrast with the extension of the royal prerogative to recent grants.

The second chapter deals with the king's rights to the marriage of his tenant's heir, and this prerogative is broader, for the king has it whether the tenant held of the crown, as of an escheat, or whether he is a ward by reason of wardship, and whether the king's tenant held of him by priority or posteriority.[39] The reader notes that this is simply an affirmation of the common law, for at the common law the king will get priority in those things which cannot be divided, like the body of an heir, or his marriage, thus reinforcing the point that the king cannot be a joint tenant made in the previous chapter.[40] For his illustration of this point, he returns to the example he had used above, and argues that, if land is divided between the king and

[35] *Ibid*.

[36] The reader has already made this point above, in an apparent non sequitur: he gives the example of the division of lands between Henry V and Anne Stafford.

[37] CUL MS Ee.5.22, ff.339–39v.

[38] *Ibid*., ff.339v–40.

[39] As it became more common for tenants to hold land of many lords, the question of wardship was aggravated. It was easy enough to settle the wardship of the land by agreeing that each lord should have the wardship of the land held of him. The body of the heir was not divisible, however, and a rule had to be established to determine where the body of the heir would go. The obvious choices were the lord of whom the deceased tenant held the most land or the lord by whom he was first enfeoffed. The latter was known as the lord by priority, in contrast to the lord by posteriority.

[40] CUL MS Ee.5.22, f.340v.

his aunt, and a man who holds of a manor divided in this way dies with his issue under age, the king will have the body of the ward because of his prerogative, even if he came to the land through the younger sister.[41]

The reader goes on to reiterate this point, arguing that, if someone gives the king the lordship of his tenant by knight service, who also holds of another lord by knight service, the king will again have the wardship of the body by his prerogative, even though he is the lord by posteriority.[42] This takes him into another detour, and from here he discusses the transfer of land to and from the king, arguing that the king can only receive and grant land by matter of record, "because otherwise the king may seize the lands of each man when it pleases him and the party would have no remedy except to sue to the king by petition, which would be a great mischief."[43] The only exception he allows is when lands descend to the king by inheritance, in which case he can proceed as a common person would.[44] The reader had earlier mentioned limits to the king's ability to grant, arguing that the king can only grant out things that he has in possession, and not things that he has in right; thus he cannot grant to his tenant that his heir will never be in ward, but when he has the possession of a wardship he can grant it out from heir to heir during his nonage; i.e. if the heir dies before he reaches his full age, the grantee will automatically get the wardship of the next heir, if he is under age.[45]

After this detour, the reader returns to wardship, opening with the general point that no lord will have the wardship of an infant except where the infant's ancestor died in the lord's homage, and died seised in fact or in right.[46] This latter point is important, because he argues that, if the tenant is disseised, the lord can seize the wardship of the body of the heir and enter on the disseisor.[47]

[41] *Ibid*. [42] *Ibid*.

[43] *Ibid*. This issue arises several times in the year books. See YB Mich. 37 Hen. VI, ff.9–11, pl.20; and Mich. 7 Edw. IV, ff.16v–18, pl.11. It was also discussed in an Inner Temple moot in the late fifteenth century, when Brudenell said that the king could have all chattels and everything which came to the king by his lordship, such as escheats and wardships, without an inquisition, but not other prerogatives, such as year, day, and waste. Sir John Port, *The Notebook of Sir John Port*, ed. J. H. Baker, Selden Society vol. 102 (London: Selden Society, 1986), 153.

[44] CUL MS Ee.5.22, f.340v. [45] *Ibid*., f.339.

[46] *Ibid*., f.340v. [47] *Ibid*.

He goes on to argue that, if the king has the wardship of an infant who does not sue livery of his lands when he comes to full age, and then a wardship by reason of wardship falls in to the king, even if the first heir sues livery immediately he will not have the second ward from the king, because the wardship is a chattel, or a profit which accrued to the king while he had possession of the lands.[48] The law is the same if someone leases a manor which has *villeins regardant* and during the term of the lease one of the villeins purchases lands; the lessee could seize the villein's lands and hold them in the same way as the villein would, for "during my term I shall do to him and with him in chastising, imprisoning or in taking his goods and all other points which the lord may do to him as well as the lord himself."[49] Furthermore, when the lease ends, the lessor will not retrieve from the lessee the profits which fell to him during his term.[50] If the king's ward does not sue livery of his lands out of the king's hands when he reaches his full age, the king will continue to take the profits from the land until he does, even if it takes him twenty years, "because the king's possession was lawful and it will be because of the heir's laxity that he did not sue livery before."[51] If some of the lands in the king's hands are held of other lords, they will suffer if the infant does not sue livery, since they will continue to lose their rents and other services, which will go to the king instead. The reader says that their only remedy is by petition to the king.[52]

In the next section, the reader examines the difference between the king's grant of a wardship, and the king's grant of land on which a wardship falls in. He argues that, in the first case, i.e. where the king grants a wardship but retains the lordship of the ward's land, the king's committee will have the same rights in the ward as the king would have, because he is the king's bailiff. Thus he will have the land until the ward sues livery from the king and if he is impleaded for the ward he can pray aid of the king. The law is the same for the committee of the committee. However, the committee also has his own rights in the wardship, for he can sue a writ of ravishment of ward or ejectment of ward against one who seizes the ward from him or ejects him.[53] However, when the king grants lordship of the

[48] *Ibid*., ff.340v–41. [49] *Ibid*., f.341. [50] *Ibid*. [51] *Ibid*., f.338v.

[52] *Ibid*. If a ward by reason of ward is in the king's hands, on the other hand, he can sue livery of his lands so as not to be prejudiced by the first ward's negligence.

[53] CUL MS Ee.5.22, f.341. These points are argued in YB Hil. 12 Hen. IV, ff.18–19, pl.20; and Trin. 12 Hen. IV, f.25, pl.12, in the earl of Arundel's case.

land to a man in fee and then a wardship falls in on the land, the lord will have only the same rights as any other lord.[54]

From here, the reader moves on to an apparent diversion which results in one of his few points relevant to the avoidance of wardship. He argues that, if an infant purchases lands in knight service he will not be in ward for them, nor will the lands be in ward, unless he is already the king's ward and he purchased the lands without licence, in which case the king will seize them for the contempt and retain them until he sues livery of them.[55] From here, he moves on to a complex set of examples in which purchase also allows the heir to avoid wardship. He begins with the case where a tenant leases land held of a lord to another for term of life, with the remainder to a tenant of the king and his heirs in fee. In this case, the lessee becomes the lord's tenant. However, he argues that, if the king's tenant dies with his issue under age and the lessee then dies, the king will seize the lands held of the lord, "because these lands descended to the infant on account of the dying seised in fee of his father."[56] Thus, when the remainderman is the king's tenant, the remainder to the father and his heir is enough to bring the king's wardship, though in the discussion of chapter one, when the king's tenant leases land, the remainderman is not subject to the prerogative, since the fee simple has not yet passed to him.[57] The reader goes on to argue that, in the same case, if the remainderman held nothing of the king or any other lord in knight service, then the lord would have his heir in ward.[58] However, if the lease was for term of life, with the remainder to the heirs of X in fee, and then X died with his heir under age and then the lessee died, the infant would not be in ward, because the land did not descend to him through his ancestor, but instead "he came to them as a purchaser."[59] The reader is here making a distinction between conveying the remainder "to X and his heirs" and "to the heirs of X"; the former brings wardship, while the latter does not. This is, however, a cumbersome way to avoid wardship, with a clear practical problem: if the lessee died before X, the right heir would not be determined and the conveyance could fail. The reader's attention to this problem suggests that he is working in a period before uses had become the standard way of dealing with

[54] CUL MS Ee.5.22, f.341. BL MS Harl. 2051, f.39v makes the point that this also applies to the committee's rights to the heir of land held of the king by posteriority.
[55] CUL MS Ee.5.22, f.341. [56] *Ibid*., f.341v. [57] See pp. 33–34 above.
[58] CUL MS Ee.5.22, f.341v. [59] *Ibid*.

this issue. The whole discussion also suggests that the principles behind the king's right to the wardship of remaindermen was not at all clear.

From here, the reader moves back to some standard issues. He points out that sometimes the king will not have the wardship of the body of his tenant's heir, even though the tenant died seised in his homage. For example, if there is a grandfather, mother, and son and the mother dies first, when the grandfather dies the king will have the wardship of the land, but the father retains the custody of his heir, and his marriage "because the law always understands that the father wishes to provide and is more profitable for his son than any other will be, and therefore the father shall always have the wardship of his son or daughter."[60] The reader notes that "the mother shall never have the wardship of her issue, except for nurture and this is where the lands are held in socage &c. because the law understands that a woman cannot provide as well for an infant as a wise man."[61]

The reader goes on to note that priority or posteriority cannot be changed by the lord, for even if the lord aliens his lordship and takes it back again, this does not change the relationship between the tenant and the lord. However, he argues that the tenant can change the relationship, for if he makes a feoffment of all of his lands in fee and takes them back in fee all at once, there will be no priority or posteriority. This will not affect the wardship of the lands, but the wardship of the body becomes problematic; the reader argues that it will go to "the first to grab."[62] This is effectively a minor tangent, since it is not a problem for the king, who always has the right to the body. This is fairly typical though, for although the reading is focusing on the royal prerogative, the reader is aware that many of the issues that affect the king also affect lesser lords.

From the right to wardship and marriage, the reader moves on to the process of marriage. He argues that, although Magna Carta says that the heir should be married without disparagement, if the king marries a ward badly the heir has no remedy except by petition under the statute of Merton.[63] The reader also argues that, if the king does not tender the ward a marriage, he will still have the value of the marriage from him before he can sue livery of his lands, since the king is not restricted by time. This is part of the prerogative,

[60] *Ibid.* [61] *Ibid.* [62] *Ibid.* [63] *Ibid.*

since normally the lord must tender a marriage during the nonage of a male heir, or under the age of sixteen for a female heir.[64] If the heir marries himself against the will of his lord, the lord will have double the value of the marriage, and this applies equally to the king and any other lord.[65]

Next, the reader rehearses the statute of Marlborough, which says that, if a tenant enfeoffs others by collusion with the intent of defrauding the lord of his wardship, the lord can seize the heir and bring a writ of right of ward against the feoffees. If collusion is found, the lord will recover the lands and the heir.[66] If the king is defrauded, the reader says that he can simply seize the wardship of the body and the lands without a writ of ward. However, it is not clear if this is because the enfeoffment is without licence, or simply a procedural prerogative.

From here, the reader moves on to the third chapter, which deals with primer seisin. According to *Prerogativa Regis*, the king is able to seize the lands and tenements of which his tenant died seised in his demesne as of fee, and to hold them, with their issues and profits, until the heir makes his homage and sues livery. The logic behind this is clear: the heir will be the king's tenant and thus he must receive his lands directly from the king and swear homage to him as his lord. However, the reader immediately argues that the statute will not be taken literally, for the king will only take the lands which are held of him, and not those held of other lords.[67] This is a substantial abridgment of the king's rights, and makes his right to primer seisin much narrower than his right to wardship. For those lands held of the king, the heir will only sue livery of those to which the king is entitled by a matter of record, such as a writ of *diem clausit extremum*.[68]

Having argued that the king will not have primer seisin of all the lands of which his tenant died seised, the reader goes on to argue that in some cases he will have primer seisin where the tenant did not die seised. Thus, if the king's tenant grants land in tail, and afterwards the tail is determined so that it reverts to the donor's heir, the king will have primer seisin, "because he will be judged in the demesne immediately after his ancestor by descent and if

[64] *Ibid*., ff.341v–42. [65] *Ibid*., f.342. [66] *Ibid*. [67] *Ibid*., f.342v.
[68] *Ibid*. At this point, the reader enters into a discussion of the six inquisition writs and their uses, as well as the process for proving age.

he was under age he will be in ward."[69] Similarly, when a tenant by the curtesy dies, the king will have primer seisin, even though he was not seised in his demesne as of fee.[70] However, the reader clearly thinks that these are peculiarities of the law, and argues that in general dying seised is necessary. Thus, if the king's tenant is disseised and after his death his heir brings a writ of entry against the disseisor and enters, the king will not have primer seisin, because his tenant did not die seised, even though the heir holds the land by inheritance.[71]

After covering the basics of inquisitions and proving age, the reader moves on to discuss traversing the inquisition. He argues that no one who is next in blood to the tenant can traverse, but only a stranger. Thus, if the king's tenant is found to have died seised of an acre held of a stranger, when in fact the stranger held it, he can traverse the inquisition immediately, or whenever he wishes.[72] The reader notes that, by a statute of Henry IV, if the stranger brings the traverse within a month after the inquisition, he will have the land to farm.[73] He further argues that, if the king had committed these lands within the first month, the traverser could enter on the committee. However, as long as the traverse remains at issue, the heir will not have livery of the lands, since the farmer is responsible to the king for the farm. If the traverse is successful, the stranger will be restored to the lands with all of the accrued issues and profits.[74] There are some cases where the stranger cannot traverse, but will be put to his petition. For example, when the king's tenant is attainted and it is incorrectly found by a *diem clausit extremum* that he died seised of an acre held of a stranger, in this case the stranger must petition the king against the record of attainder.[75] The reader notes that the king's tenant's feoffees will have the same process as a stranger.

If the stranger traverses in the case above, but during the traverse someone brings an action on his title to the same land, the reader considers against whom the writ will be brought: the king, the heir or the stranger. He argues that it is brought against the stranger,

[69] CUL MS Ee.5.22, f.343v. [70] *Ibid*. [71] *Ibid*., ff.343v–44. [72] *Ibid*., f.343.
[73] *Ibid*. There is no statute of Henry IV which deals with this issue. The reader is probably referring to 8 Hen. VI, c.16, *Statutes of the Realm* 11 vols. (London, 1810–22), vol. 2, 252, though he may also be thinking of 18 Hen. VI, c.6, *Stat. Realm*, vol. 2, 306–07.
[74] CUL MS Ee.5.22, f.343v. [75] *Ibid*.

since the freehold remains in the stranger, as evidenced by the heir's inability to sue livery during the traverse, and the stranger's right to *ouster le main* if the traverse is successful.[76]

From here, the reader moves on to consider the difference between *ouster le main* and livery, arguing that livery affirms the king's possession, in which case the heir will not get the issues with the lands. Since *ouster le main* does not affirm the king's possession, the king will generally not have the issues, though there are exceptions. Thus, if the king seizes the land because of an alienation or an attainder, he will keep the issues.[77] This is the extent of the reader's discussion of livery, which obviously is not an area of great interest to him.

This earliest reading is generally fairly simple. It does not pursue the prerogative into great complexity, and it does not seek to explain all the elements of process involved in the administration of the prerogative. It makes no mention of many of the elements which will play a role in later lectures, most notably uses, and instead its most obvious concern is with the king's rights over reversions and remainders. This is a substantive issue of some complexity and interest; the passage of the fee simple is one of the most important elements of land transfer, and, when it is divided between the passage of the right and the possession, the implications for descent become quite complex. After adding the variable of the king's prerogative rights to wardship and primer seisin, it is not surprising that the reader has some difficulty in presenting a clear and coherent exposition. He was not alone in his confusion on this issue, and in fact *Skrene's Case* of 1475 raised many of the same issues.

A manor was given to William Skrene and Elizabeth, his wife, and to the heirs of the body of William, and for default of issue to the right heirs of William. William had issue, John Skrene, who was seised of a manor held of the king in chief as of his crown. William died, and Elizabeth held the land as survivor. John Skrene had a son, Sir John Skrene, and died seised, so the king seized the wardship of Sir John. Elizabeth then died, and a *diem clausit extremum* was issued, which found the gift of the manor, held of the bishop of Ely, and that Sir John, in the king's ward, was the heir. On the basis of this inquisition, the king seized the manor held of the bishop. Sir John then died without issue, and another *diem clausit extremum*

[76] *Ibid.*, f.344. [77] *Ibid.*

was issued, which found the manor held of the king, the manor held of the bishop, and that John died without an heir.[78] The case raised two major questions. The first was procedural, and centred around the writ used in the inquisition: was the second *diem clausit extremum* appropriate, or should it have been *devenerunt*?

The second question was substantive, and related to the issues raised by the first reader. Jenney, representing the bishop of Ely, argued that the king had no right to seize the manor, since "the manor of which Elizabeth died seised did not come to Sir J[ohn] Skrene through him by whose death he was in ward, but by the death of a stranger, for now he claims this manor as kinsman and heir of W[illiam] S[krene], son of J[ohn] S[krene], son of the aforesaid W[illiam] and not as heir of J[ohn] S[krene]."[79] Thus Jenney is arguing that Sir John received the land by remainder rather than reversion, since it came to him from his grandmother and not through his father. Danvers supports Jenney, making almost exactly the same argument as the reader, that "if my true tenant leased his land for term of life to a man, the remainder over in fee, now the remainderman does not hold of the lord, but the tenant for term of life, and if the remainderman dies with his heir under age, he will not be in ward, for his father did not hold of the lord, but it is otherwise if my true tenant leased his lands for term of life, saving the reversion to himself, now the lessor remains my tenant, and if he dies with his heir under age he will be in ward, for he held of the lord." He argues that, when William Skrene died, the fee simple descended to John, but Elizabeth held of the bishop, and "if there is no tenure then no-one can have the ward."[80]

Philpot quibbles, but Fincham agrees that "this is a maxim in our law, where the remainder is granted out and where the true tenant reserves a reversion in him, in the one case he holds of the lord, and in the other case not."[81] However, Brygges disagrees, arguing that the king will, on occasion, have the wardship of land where his tenant did not die seised, and he gives the same example as the reader: when one leases land for term of life, with the remainder over in fee to the king's tenant, and the king's tenant dies with his heir under age, the king seizes the wardship and then the tenant for term of life dies, in this case the king will have the manor, even

[78] YB Mich. 15 Edw. IV, ff.10–11, pl.16. [79] *Ibid*., f.11.
[80] *Ibid*. [81] *Ibid*., ff.11–12.

though his tenant did not die seised. Both Bryan and Littleton agree with this point.[82] This develops into a discussion on the nature of *Prerogativa Regis*, where the distinction between a statute and an affirmation of the common law is aired. Choke returns to the issue at hand, arguing that, even with the benefit of the prerogative, the king can only seize when his tenant has something "as possession in fact, or possession in law, but the king shall have nothing by the death of his tenant where there was nothing in him except only in right."[83] Bryan accepts part of Choke's point, but moderates it, arguing that the king will have the wardship when right and possession were joined, but, according to Bryan, if the heir recovered the land and entered, that was enough, for as long as "possession is joined to right, the king shall have the wardship."[84] In this view right and possession did not have to descend together: as long as they were joined at some point, the king would have his claim.

This raised a whole new set of problems. Allowing the king to have wardship wherever right and possession were joined would potentially extend his wardship over his disseised tenants. Digas recognizes this and challenges Littleton with a new case, where his tenant was disseised of lands he held of the king, and the disseisor died seised, and then his tenant died seised of an acre held of him, with his heir under age, and he seized the body and the land, and then the heir recovered the land held of the king by a writ of entry on disseisin. He accepts that the king would then have the wardship of the land held of him, but asks if he would also have the body of the heir and the other acre. Littleton answers that he would, "for by the recovery he is in the same condition as if the infant's ancestor had died seised of all." Digas responds that "this is a marvel, for I am seised and in possession of my ward."[85] Thus, by trying to draw out the implications of the king's rights to remaindermen, and more broadly to cases in which right and possession moved separately, Littleton ended up by challenging the lords' fundamental right to retain the body of an heir which had vested before the king's land descended.

This case clearly displays the complexity of the issues the readers were dealing with, and the difficulty of drawing out principles which would be consistent across a range of applications. As with most year book cases, there is no conclusion, and it is likely that

[82] *Ibid.*, f.12. [83] *Ibid.*, f.13. [84] *Ibid.*, f.14. [85] *Ibid.*

no agreement was reached. However, the discussion highlights the role of the readings in developing these points of principle, and the similarity of some of the arguments to the points of the reader is striking. The same issues returned in later readings and we will continue to see the interplay of reading and reported case as the law develops.

The next fifteenth-century reading, possibly by Edward Grantham, follows *Skrene's Case*, but it also deals with many of the same points as the earlier reading.[86] It opens with the question of whether the text is a statute or not, but it is much more ambiguous than the earlier reading, arguing that part of the statute is an affirmation of the common law, and part is not. Grantham goes on to say that the first article of the statute is clearly an affirmation of the common law, because the lands are in the lord's ward "for the defence of the realm, so that the power of the realm will not be enfeebled by the nonage of such an infant . . . Then if the lands shall be in ward for the defence of the realm and the king is the best protector and defender of the realm before any other, this was the cause and reason that the king shall have the lands held of him by knight service."[87] From here, he proceeds to a general consideration of the writs for inquisitions, and the use of commissions. Commissions could serve the same purpose as a *diem clausit extremum*, though they were usually used for broader inquiries into landholding.[88]

Next, Grantham follows his predecessor in considering the kinds of lordship that give the king prerogative wardship. Like the earlier reader, he seems to be arguing that the king would only have prerogative rights if the tenant's land is held of the crown. Thus, if there is a lord, mesne, and tenant, and the mesnalty escheats to the lord, who happens to be the king, the king will only have wardship of the lands that the tenant holds of him, and will have no rights in the lands he holds of other lords, since that tenant does not hold of him *ab antiquo ut de corona*.[89] He says that the law is the same for lands that the king has by reason of the duchy of Lancaster,

[86] The identity of the reader cannot be conclusively proved, but, since it seems likely, I will refer to this reader as Grantham.
[87] CUL MS Hh.3.6, f.55v.
[88] *Ibid*., ff.56–56v. He uses *Skrene's Case* as an example of the complications attendant on the use of writs and the proper use of the *diem clausit extremum*.
[89] CUL MS Hh.3.6, f.56v.