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TRINITY TERM

IN THE

TWENTIETH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

(SECOND PART.)

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TRINITY TERM IN THE TWENTIETH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST (*continued.*)

No. 38.

A.D. 1346. *Scire facias.*

(38.) § In the time of King Henry (the third) a fine was levied between one A.[1] and B.[1] his wife, of the one part, and C.,[1] of the other part, in respect of two carucates of land in D.,[1] by which fine C. rendered the land to A. and his wife, to hold to them and their heirs for ever (which was extraordinary), and for that render A. and his wife granted and rendered two messuages in another vill, which messuages were not included in the writ of Covenant, to C.[1] for his life, with remainder of a moiety (without expressing which moiety) to one R.[1] and the heirs of his body begotten. And R.'s heir[1] sued to cause the fine to be brought into the Chancery, and it was thence sent by *Mittimus* into this Court. And a *Scire facias* was sued for R.'s heir[1] to have execution in respect of the two messuages. And the words of the *Mittimus* were that the King sent to the Justices "*transcriptum cujusdam finis inter*" such an one and such an one in respect of tenements in such a vill. And it gave the name of the vill as it was given in the writ of Covenant, and not that of the vill in which the messuages were supposed to be.—*Thorpe.* You

[1] For the names see p. 3, note 4.

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[ADHUC] DE TERMINO TRINITATIS ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU VICESIMO.[1]

No. 38.

A.D. 1346 *Scire facias.* [Fitz., *Briefe*, 686.]

(38.)[2] § En temps le Roi Henry une fyne fust leve entre un A. et B. sa femme, dune part, et C., dautre part, de ij carues[3] de terre en D., par quele fyne C. rendi la terre a A. et sa femme, a eux et a lour heirs a touz jours (*quod mirum fuit*), et pur cel rendre A. et sa femme graunterent et rendirent ij mesuages en une autre ville, et queux mesuages ne furent pas compris en le brief de Covenant, a C. a sa vie, le remeindre de la moite, saunz dire quel moite, a un R. et a ses heirs de soun corps engendrez. Et le heir R. suist de faire venir la fine en la Chauncellerie, et par le *Mittimus* maunde ceinz. Et le *Scire facias* fust say pur le heir R. daver execucion de les deux mesuages. Et le *Mittimus* voleit qe le Roi maunda les Justices *transcriptum cujusdam finis inter* un tiel et un tiel des tenementz en tiele ville. Et noma la ville qe fust nome en le brief de Covenant, et ne mye la ville en quele les mesuages furent supposez.[4]—*Thorpe.*

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[1] The reports of this term are from the Lincoln's Inn MS. (called L.), the Harleian MS. No. 741 (called H.), the MS. in the University Library at Cambridge Hh. 2, 3 (called C.), and the Isham transcript called I.

[2] From H. and I., until otherwise stated, but corrected by the record, *Placita de Banco*, Trin., 20 Edw. III., R° 314.

[3] H., acres.

[4] The entry on the roll is as follows:—"Præceptum fuit "Vicecomiti quod, cum quidam "finis levasset in Curia domini "Henrici quondam Regis Angliæ, "proavi domini Regis nunc, ". . . . inter Johannem "le Flemenge et Hawisiam "uxorem ejus, querentes, et "Thomam de Blakepenne, de-

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Excerpt
More information

No. 38.

A.D. 1346.

see plainly how he sues execution of tenements in a vill other than that which is supposed in the *Mittimus*, and in respect of which the fine was levied, and therefore this suit is not warranted by the record which is caused to come before you; therefore we do not understand that you will put us to answer to this suit.—*Birton.*

" forciantem, de uno mesuagio " et una carucata terræ, cum " pertinentiis, in Horyngeforde, " unde placitum Conventionis " summonitum fuit inter eos in " eadem Curia, scilicet, quod " prædictus Thomas recognovit " prædictum tenementum, cum " pertinentiis, esse jus ipsius " Johannis, et illud eis reddidit " in eadem Curia habendum et " tenendum eisdem Johanni et " Hawisiæ et heredibus eorum " de capitalibus dominis feodi " illius per servitia quæ ad illud " tenementum pertinent in per- " petuum, et pro illa recognitione, " redditione, fine, et concordia " iidem Johannes et Hawisia " concesserunt prædicto Thomæ " omnia tenementa, cum per- " tinentiis, quæ ipsi Johannes et " Hawisia tenuerunt in Blake- " penne, Suttone, Rocle, et Suth " Stendham die quo illa con- " cordia facta fuit, exceptis " decem solidatis terræ, cum " pertinentiis, in Rockle, quam " Willelmus Coke et Walterus " Godefrey aliquando tenuerunt, " habenda et tenenda eidem " Thomæ de prædictis Johanne " et Hawisia et heredibus eorum " tota vita ipsius Thomæ, faci- " endo inde ad scutagium ejus- " dem proavi Regis quando " evenerit quantum pertinet ad

" illa tenementa pro omni ser- " vitio, consuetudine, et exac- " tione, Et prædicti Johannes et " Hawisia et heredes eorum " warrantizarent, acquietarent, " et defenderent eidem Thomæ " prædicta tenementa, cum per- " tinentiis, quæ eidem Thomæ " per finem illam remanebant, " sicut prædictum est, per præ- " dictum servitium contra omnes " homines tota vita ipsius " Thomæ, et post decessum " ipsius Thomæ prædicta tene- " menta, cum pertinentiis, quæ " eidem Thomæ per finem illum " remanebant, sicut prædictum " est, æqualiter dimidiarentur, " ita quod una medietas eorun- " dem tenementorum integre " remaneret eisdem Johanni et " Hawisiæ et heredibus eorum, " tenenda de capitalibus dominis " feodorum illorum per servitia " quæ ad illam medietatem " pertinent in perpetuum, et al- " tera medietas eorundem tene- " mentorum, cum pertinentiis, " integre remaneret Thomæ de " la Mare et Roesiæ uxori ejus " et heredibus ipsius Roesiæ, " tenenda de prædictiis Johanne " et Hawisia et heredibus eorum " per servitia quæ ad illam " medietatem pertinent in per- " petuum, Ac jam ex insinuatione " Johannis filii Willelmi Martre,

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More information

No. 38.

Vous veietz bien coment il suist execucion de tenementz en autre ville qe par le *Mittimus* nest suppose, et qe la fine fust leve, et par taunt ceste sute nent garranti del recorde qest fait venir devant vous; par quei nentendoms pas qe vous nous voilletz a ceste sute mettre a respoundre.—*Birtone*.

A.D. 1346.

" consanguinei et heredis præ-
" dictæ Roesiæ, accepit dominus
" Rex quod prædicti Thomas
" de Blakepenne, et Thomas de
" la Mare et Roesia uxor ejus
" jam obierunt, et quod quidam
" Ricardus atte Sterte unum
" mesuagium et duodecim acras
" terræ, cum pertinentiis, in
" Rockle, quæ sunt parcella
" prædictæ medietatis præfatis
" Thomæ de la Mare et Roesiæ
" per finem prædictum secun-
" dum formam ejusdem con-
" cessæ de tenementis prædictis,
" modo ingressus est, et ea tenet
" contra formam finis prædicti,
" Et quia dominus Rex vult ea
" quæ in Curia prædicti proavi
" Regis acta sunt debitæ exe-
" cutioni demandari, quod per
" probos et legales homines de
" comitatu suo scire faceret
" prædicto Ricardo atte Sterte
" quod esset hic . . . .
" ostensurus si quid pro se
" haberet vel dicere sciret quare
" prædicta mesuagium et duo-
" decim acræ terræ, cum per-
" tinentiis, prædicto Johanni filio
" Willelmi, post mortem præ-
" dictorum Thomæ, Thomæ, et
" Roesiæ, juxta formam finis
" prædicti, remanere non debeant
" si sibi vidisset expedire."

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More information

No. 38.

A.D. 1346.

The Chancellor could have delivered the transcript to you without any writ, in which case our suit would be maintainable; and, although the *Mittimus* mentions only one vill, yet, since tenements in the other vill are mentioned in the fine which is sent before you, you have sufficient warrant to give us execution.—WILLOUGHBY. If there were less in the fine than in the *Mittimus*, we should not have warrant; but, since there is more in the fine, and that is now before us, we have sufficient warrant; therefore answer.—*Thorpe*. Again, although the fine may have come into this Court by warrant at the suit of a person other than the one who is suing execution, you ought not to grant execution without a writ from the Chancery which will give you a warrant to do so. And now we say that the writ of *Certiorari* by which the fine came into the Chancery says nothing of the tenements in respect of which he would have execution, but mentions other tenements, and that cannot be understood to be his suit; therefore without warrant from the Chancery you cannot adjudge execution for him.—And this exception was not allowed, for the reason above.—*Thorpe*. Again judgment of the writ, for by the fine a moiety of the land is limited by way of remainder, and now he demands an entirety which is not warranted by the fine; judgment.—*Huse*. We have supposed by our writ that this entirety is part of the moiety; therefore, &c.—*Thorpe*. This entirety could not be part of one moiety any more than of the other moiety, unless your father had been seised of it as of a moiety, and a severance had thereby been effected, and that matter ought to be pleaded; therefore you ought to have demanded only a moiety of this entirety.—WILLOUGHBY. Then this plea is to the action with regard to a moiety of this entirety; and with regard to the other moiety execution may be awarded.—*Thorpe*. No Sir; the plea is to the

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No. 38.

A.D. 1346.

Le Chaunceller le poait aver livre a vous saunz brief, en quel cas nostre sute serreit meyntenable; et mesqe le *Mittimus* ne parle mes del une ville, puis qen la fine qest maunde devant vous tenementz en lautre ville sont motez, assetz avetz garrant de nous doner execucion.—WILBY. Sil y avoit meynz en la fyne qen le *Mittimus*, nous naveroms pas garrant; mes, puis qil yad plus en la fine, et ceo est ore devant nous, nous avoms garrant assetz; par quei responez.—*Thorpe.* Unqore mesqe la fine soit venu ceinz par garrant a la sute dautre persone qe ne le suyt, ne devetz granter execucion saunz brief de la Chauncellerie qe vous durra garrant a ceo faire. Et ore dioms qe le *Certis de causis* par quel ele vint en Chauncellerie ne parle rienz des tenementz des queux il voet aver execucion, mes des autres tenementz, quel ne put estre entendu sa sute; par quei saunz garrant de la Chauncellerie vous ne devetz execucion pur luy ajugger.—*Et non allocatur, ratione qua supra.*—*Thorpe.* Unqore jugement de brief, qar par la fine la moite de la terre est taille par remeindre, et ore il demande un entere, quel nest pas garranti par la fine; jugement.[1]—*Huse.* Nous avoms suppose par nostre brief qe ceste entere est parcelle de la moite; par quei &c.—*Thorpe.* Ceste entere ne put estre parcelle del une moite plus qe del autre moyte, si vostre pere nust este seisi de cele come de la moite, et par taunt la severaunce faite, quele matere covent estre plede; par quei vous deveretz aver demande mes la moite de ceste entere.—WILBY. Donqes est ceo al accion de la moite de ceste entere; et del autre moyte execucion agardable.—*Thorpe.* Sire, nanil; il est al brief, qar le brief covent estre

[1] jugement is omitted from I.

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No. 38.

A.D. 1346.

writ, for the writ must be warranted by the fine, and since by the fine his estate commences by a moiety, he ought not to limit that to something in particular in gross, unless he can show matter in fact by which that particular thing in gross was severed from the other moiety.—HILLARY. If I limit a remainder to you in respect of a moiety of twenty acres, and limit the other moiety to another, and, after the death of the tenant, that other enters upon ten acres, and you are in possession of a part of the other ten acres, and a stranger is in possession of the rest, you cannot have a writ against him by the description of a moiety, for whatever he has it belongs to you to have.— Therefore the writ was adjudged good.—*Thorpe*. Then we tell you that, whereas he supposes by his writ that L.[1] is a vill, it is a hamlet of R.[1]; judgment of the writ.—*Skipwith*. It is supposed by the fine that L. is a vill, and it is necessary that this writ should be in accordance with the fine; therefore we demand judgment whether the writ is not sufficiently good.—*Thorpe*. Just as much as this writ is in accordance with the fine, a Formedon in the remainder will be in accordance with the specialty; and though tenements in a hamlet be mentioned in the specialty, your writ will mention the vill, and otherwise the writ is abated. And, moreover, we have a seen *Scire facias* sued in a vill which was not mentioned in the fine, and exception taken to the variance; and in order to maintain his writ the plaintiff said that what was mentioned in the fine was a hamlet of the vill mentioned in his writ, and for that cause shown the writ was maintained; and for the same reason this writ is abatable.—And, notwithstanding this, because

[1] For the names see p. 9 note 2.

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A.D. 1346.

garranti de la fine, et puis qe par la fine son estat comence par moite, il ne deit pas tailler[1] cele a un gros en certein, sil ne puisse moustrer matere en fait par quele cel gros fust severe del autre moite.—HILL. Si jeo taille un remeindre a vous de la moite de xx. acres, et lautre moite a un autre, et, apres la mort le tenant, lautre entre en les x. acres, et vous estes einz en parcelle de les autres x., et un estraunge einz en le remenant, vous ne poetz aver vers luy brief par noun de moite, qar quantqil ad appent a vous a aver.—Par quei le brief fust agarde bon.—*Thorpe.* Donqes vous dioms qe la ou il suppose par son brief qe L. est ville, nous dioms qe ceo est hamel de R.; jugement de brief.[2]—*Skip.* Par la fine est suppose qe ceo est ville, et acordaunt a la fine covient qe cest brief soit; par quei nous demandoms si le brief ne soit assetz bon.—*Thorpe.* Auxi avant come cest brief est acordaunt a la fine auxi serra une Forme de doun en remeindre acordaunt al especialte; et, mesqe tenementz en une hamel soient donez en lespecialte, vostre brief nomera la ville, et autrement le brief est abatu. Et auxi nous avoms vewe un *Scire facias* suy en une ville qe ne fust pas nome en la fine, et la variaunce chalange; et pur meyntener son brief il dit qe ceo qe fust nome en la fine fust hamel de la ville nome en son brief, et pur cause fust le brief meyntenu; et pur mesme la resoun cest brief abatable. Et, *non obstante* ceo, pur ceo qe

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[1] I., toller.

[2] According to the record, "Et modo veniunt tam præ-"dictus Johannes filius Willelmi "Martre, in propria persona sua, "quam prædictus Ricardus atte "Sterte, per . . . attor-"natum suum."
"Et prædictus Ricardus atte "Sterte dicit quod Rockle, in "quo prædictus Johannes filius "Willelmi Martre supponit præ-"dicta mesuagium et duodecim "acras terræ esse, non est villa, "sed quoddam hamelettum de "parochia de Godeshulle, et hoc "paratus est verificare, unde "petit judicium de brevi, &c."

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More information

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A.D. 1346.

the writ was in accordance with the fine it was adjudged good.—*Thorpe.* We pray that our statement that it is a hamlet may be entered, in order that we may be able to maintain our writ of *Warantia Chartæ.*—And this was granted to him.—Thereupon he prayed aid, as tenant for term of life, of the reversioner.—And the aid was granted.

Scire facias.

§ A man sued a *Scire facias* to have execution of certain tenements in Easton.[1]—*Richemunde.* We tell you that Easton is a hamlet of Weston,[1] and we demand judgment of this writ which is brought in Easton.—*Huse.* We have taken our writ in accordance with the fine; and we could not have any other writ, because, if we were to bring our writ in Weston, that writ would immediately abate because it would be unwarranted by the fine.—*R. Thorpe.* And if you were to bring the writ in Weston, and the party took exception to your writ because it was not in accordance with the fine, you should be able to maintain your writ by saying that Easton is a hamlet of Weston, and because the writ is not maintainable in a hamlet you ought to be able to maintain it in a vill. And that was recently seen in this Court, and the writ was maintained on the matter, and I was myself a party to that, and therefore it is not right to maintain this writ, &c.—WILLOUGHBY. He has brought his writ in accordance with the fine, which is the foundation of this matter, and he cannot vary

[1] For the real names *see* p. 9, note 2.

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