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Edited and Translated by Luke Owen Pike

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### Rolls Series

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 Trinity Term, 20 Edward III, to Michaelmas Term, 20 Edward III.

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# Year Books of the Reign of King Edward the Third

*Year XX (Second Part)*

EDITED AND TRANSLATED BY  
LUKE OWEN PIKE



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RERUM BRITANNICARUM MEDII ÆVI  
SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN  
AND IRELAND

DURING

THE MIDDLE AGES.

Wt. 5322.

*a*

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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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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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**Year Books**

OF THE REIGN OF

**KING EDWARD THE THIRD.**

**YEAR XX. (SECOND PART.)**

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**YEAR XX. (SECOND PART.)**

EDITED AND TRANSLATED

BY

**LUKE OWEN PIKE,**

OF BRASENOSE COLLEGE, OXFORD, M.A., AND OF LINCOLN'S INN, BARRISTER AT LAW ;

AUTHOR OF " A HISTORY OF CRIME IN ENGLAND,"

" A CONSTITUTIONAL HISTORY OF THE HOUSE OF LORDS,"

" THE PUBLIC RECORDS AND THE CONSTITUTION," ETC.

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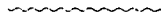
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## INTRODUCTION.



## I.

## THE PRINTED YEAR BOOKS.

EXCEPT the Glossary or Dictionary of the French Language spoken in England before the year 1363, this is the last volume by the present Editor which will be published in the Rolls Series of Year Books. It completes the work of filling in the gaps in the old editions which existed between the tenth and seventeenth years, and between the eighteenth and twenty-first years of the reign of Edward III. The reports of the seventeenth and eighteenth years have also been re-edited and republished, so that the Rolls Series (in fifteen volumes) is now complete from the eleventh to the twentieth year of the reign inclusive.

It may now, perhaps, be permissible to review briefly the treatment of the Year Books by successive editors. Firstly there were the old black-letter editions, which extended (though with several gaps) from the reign of Edward III. to that of Henry VIII. The reports of the reigns of Edward I. and Edward II. were untouched, and one of the gaps included the whole of the reign of Richard II. The abridgments of the reports of the reign of Richard II. which were scattered in Fitzherbert's Abridgment and in the Abridgments of Statham and Brooke were brought together by Richard Bellewe, of Lincoln's Inn, and published in one volume in the year 1585. Reports of the reign of Edward II. were printed, apparently from a single MS., under the auspices of Serjeant Maynard, in the year 1678.

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No critical edition of any of them before the 19th century. Down to that time, however, no attempt had been made to produce a really critical edition of any of the Year Books. Some one MS. seems in each case to have been carelessly transcribed, the transcript to have been carelessly printed, and the proofs never to have been properly revised. There was no collation of MSS., no comparison of the reports with the records, no translation, and not even any trustworthy extension of the abbreviations which occur in the original MSS.

The Rolls Series : Mr. Horwood and the Year Books of the reign of Edward I., &c. Some time before the year 1863 Mr. A. J. Horwood was entrusted by the then Master of the Rolls (Sir John Romilly) with the task of editing the unpublished Year Books of the reign of Edward I., and afterwards of filling in, from original MSS., the gap existing in the old editions of Year Books between the tenth and seventeenth years of the reign of Edward III. Of the reign of Edward I. he published five volumes—one including the twentieth and part of the twenty-first, one the rest of the twenty-first and the twenty-second, one the thirtieth and thirty-first, one the thirty-second and part of the thirty-third, and one the remainder of the thirty-third, the thirty-fourth, and three terms of the thirty-fifth years. He left unfinished a volume including the reports of the whole of the eleventh and of the first three terms in the twelfth year of the reign of Edward III., which was brought out with a preface by the present Editor.

Though there are in existence MSS. of Year Books of the reign of Edward I. which were not consulted by Mr. Horwood, and though he gave various readings with a sparing hand, his work was far in advance of anything which had gone before. He produced a text in fully extended and no longer in abbreviated French, and he added a translation which was obviously a necessity. Even in the best French editions of old French works it is now not unusual to find a translation into modern French.

New plan of the present Editor : comparison of the reports with the records, and how effected. When the present Editor succeeded Mr. Horwood as Editor of the Rolls Series of Year Books, in the year 1882, it occurred to him that the work could not be adequately carried on without reference to the records of

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the respective cases. The possibility, however, of identifying the reports with the corresponding records on any comprehensive scale was rendered doubtful by the fact that many of the reported cases omit the names of parties and places, or give them wrongly, and that there is no index or calendar to the rolls which would have to be consulted. In the end, however, a way was found of surmounting the difficulty. This has been fully explained in the Introduction to the volume of Year Books (Rolls Series) containing the reports of Easter and Trinity Terms 18 Edward III.<sup>1</sup>

It was not at first easy to decide what was the best use to make of the record even when discovered. Several plans were tried with more or less success, but after long experience a way was found which appeared to make the record illustrate the report as fully as possible. The several parts of the roll were brought to bear upon the corresponding parts of the report, the count upon the count, the plea upon the plea, the replication upon the replication, and so on. In this manner the argumentative parts of the report, or the attempts of counsel to establish something among the pleadings which was not in the end admitted, are clearly marked off from the pleadings finally accepted in French, and entered upon the roll in Latin.

It was discovered, too, by the present Editor, in the year 1897, that if the Plea Rolls of the Common Bench were examined with sufficient care and minuteness, the names of the Serjeants or Countors practising in that Court could be accurately determined. They often appear in an abbreviated form in the MSS. of the Year Books, and, even so, not always quite correctly. The countors are mentioned in the rolls as receiving the chirographs of fines, and it thus becomes possible to compile a list of them for every term.<sup>2</sup> Such a list has

<sup>1</sup> pp. xxxi-xxxiii.

<sup>2</sup> As to this, see further Y.BB., 16 Edw. III. (Second Part),

published in 1900, Introduction, pp. xi-xii.

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INTRODUCTION.

been given in every subsequent volume of Year Books of the Rolls Series.

Light thrown by the reports on the records as well as by the records on the reports.

While, however, the reports derive assistance from the records, they repay the obligation by throwing unexpected light on the records themselves. In the Introduction to the volume of Year Books containing the reports of Easter and Trinity Terms, 18 Edward III., is told the curious history of the custody and care of the Plea Rolls of the Common Bench.<sup>1</sup> In the Introduction to the volume of Year Books 16 Edward III., Part 2, it was shown how the present Editor discovered that there had been a double series of Plea Rolls of the Court.<sup>2</sup>

The double series of Plea Rolls of the Common Bench.

In a case in the last mentioned year it was stated that there were two rolls—one the “Roule des Justices,” the other the “Roule le Roi”<sup>3</sup>—and it became essential for the explanation of the report to ascertain what these two rolls were. The task was not easy, as nothing of the nature of a “Roule le Roi” of the reign of Edward III. appeared in any official list either printed or unprinted. It was known, indeed, that some of the rolls among the Common Bench Plea Rolls, like some of the Eyre Rolls,<sup>4</sup> had on them the word “Rex,” and that they could be traced back through the whole of the reigns of Edward II. and Edward I. There was, however, nothing whatever to suggest that any such rolls were in existence, or had ever been in existence, at any time after the reign of Edward II.

By following out a fortunate conjecture it was discovered that King’s Pleas Rolls for the first seventeen years of the reign of Edward III. were concealed under the name of “Extract Rolls” among the records of the Common Bench. The series, however, proved to be incomplete, and the required roll of the sixteenth year was not included in it. There was not the slightest indication in any list that any more such rolls were to be found anywhere among the records of the court, and all further search was apparently hopeless.

<sup>1</sup> *Introd.*, pp. xviii–xxx.

<sup>2</sup> *Introd.*, pp. xxv–xxix.

<sup>3</sup> p. 121.

<sup>4</sup> *See below*, p. lxiii.



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Edited and Translated by Luke Owen Pike

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## INTRODUCTION.

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A conjecture still more fortunate than the first, however, led to the discovery of the missing roll. It was hidden away, with others of the same nature, among documents of the Plea Side of the Court of King's Bench under the curious title of "*Extracta de Banco.*" This series, it was found, brought the King's Rolls, the "Roules "le Roi" of the Common Bench down to the reign of Henry IV.

There is every reason to believe that the series was continued to a much later date. A duplicate plea roll is mentioned in a report of the "thirty-ninth" year of Henry VI.<sup>1</sup> An objection was then taken as to the omission from a roll of certain important words. Counsel replied:—"Sir, there are two rolls. One roll contains the "count and the plea, and a certain continuance. The "other roll, of which he (counsel on the other side) has "made *profert*, was made when the verdict had passed, "and in it the whole matter was entered *de novo* in another "term." It will be observed that the second roll could not have been what was in later times called the *Nisi prius* record, because that was copied from the Plea Roll of the Court before and not after verdict, and the subsequent verdict was endorsed upon it, the entry being preceded by the word "*Postea.*"

It can hardly be doubted, therefore, that, apart from any *Nisi prius* record, there were two sets of Plea Rolls in the Court of Common Pleas as late as the first deposition of Henry VI. It does not seem impossible that, if a search were conducted with sufficient technical knowledge and learning, many missing rolls might be found, and that a series of King's Rolls of the Common Bench from the beginning of the reign of Edward I., or earlier, to the end of the reign of Henry VI. might be constructed. Some useful light might then be thrown upon the manner in which plea rolls in general were prepared, and the corrections which they underwent.

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<sup>1</sup> Y.B., Mich., 39 Hen. VI., fo. 31.

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Comparison of unpublished Year Books with Fitzherbert's Abridgment, and the *Liber Assisarum*, a part of the new plan.

Another feature which it seemed to the present Editor desirable to introduce was a reference, wherever possible, to Fitzherbert's Abridgment. A considerable number of reports which do not appear in the old editions of the Year Books were known to him, and used by him for his important work. They thus became a part of the lawyer's learning, and passed into the body of English law. His more or less concise summaries, however, were obviously made from a single manuscript, and were printed little, if at all, better than the Black Letter Year Books themselves. A table of references was therefore placed in each volume of the Roll Series published by the present Editor, so that any one acquainted with a case in the Abridgment might see the form which it took in a full report, of which all the manuscripts had been collated, and which had been compared with the record.

So also the cases which are in the *Liber Assisarum* of any particular term and year were identified with the corresponding reports in the Year Books, and a table of references was given.

Similar plan afterwards adopted by Professor Maitland in editing Year Books of the reign of Edward II.

In the year 1903 appeared the first volume of Year Books of the reign of Edward II., edited by the late Professor Maitland for the Selden Society. He could not give references to the *Liber Assisarum* for the sufficient reason that it does not include cases either earlier or later than the reign of Edward III. He did, however, follow the present Editor's plan in making references to Fitzherbert's Abridgment, in comparing the reports with the corresponding records, and in ascertaining the correct names of counsel from the Plea Rolls of the Common Bench.

The points of difference.

In some respects, however, his scheme shows points of difference from that of the present Editor. In the Year Books of the reign of Edward III., in the Rolls Series, an endeavour has been made to establish as accurate a French text as possible by collation of all the materials, and to give a translation in strict agreement with the text, so

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that text and translation may be easily compared at a glance. Professor Maitland has worked on a different principle. His translation does not always agree with his text, and the materials for it have often to be sought in the notes. It is not for the present Editor to say which plan is the better; his own is certainly the more laborious.

Again, although Professor Maitland has consulted the records of the cases, he has made a different use of them. He has placed at the end of a case, when the record has been identified, a "note from the record" in English, and, after his first twenty-seven reports, in English alone. The present Editor, as already explained, has used each part of the record in aid of the corresponding part of the report, and has given the actual Latin words.

## II.

## FORMS OF ACTION AS FOUND RESPECTIVELY IN THE RECORDS AND IN THE REPORTS.

The forms of writs employed for bringing an action are of considerable importance both in legal and in social history. It has been said, from the time of the earliest text-books, that there were four kinds of writs of Assise—that of Novel Disseisin, that of Mort d'Ancestor, that of Darrein Presentment, and that of *Utrum*. The form of action, however, which was at first called an Assise of *Utrum* is a good example of the pitfalls which are provided for the student of the law and of its development. The writ was known and described as an Assise down to the time at which the treatise of "Britton" first saw the light, but it went by another name very soon afterwards.

In the twentieth year of the reign of Edward I. the writ is called simply the writ of *Utrum*,<sup>1</sup> and so also in the

<sup>1</sup> Y.B.B., 20-21 Edw. I., Hereford Eyre, 20 Edw. I., p. 43.

The various forms of writs employed for bringing an action: the Assises and the writ of *Utrum*.

The Assise of *Utrum* loses that name in the reign of Edward I.

twenty-first year,<sup>1</sup> and twice in the twenty-second<sup>2</sup> year, though in the second of the last two cases the "assise" is mentioned by the judge. In the thirtieth year, however, we find that a plaintiff brings not an Assise, but a "Jure de *Utrum*" against the defendant, and the "jure" or jury is charged.<sup>3</sup> In the thirty-first year another plaintiff brings another "Jure de *Utrum*" against another defendant,<sup>4</sup> and yet another in the thirty-third year.<sup>5</sup>

How the action came to be called Jure de *Utrum*.

From this time downwards, so long as French continued to be the language of the Courts the action was uniformly, called in French a "Jure de *Utrum*" or a "Jure *Dutrum*," and the word corresponding with Jure on the rolls was *Jurata*. How, it will be asked, if the Assise of *Utrum* was early recognized and described as an *Assisa* in Latin, an *Assise* in French, did it lose its name and become transformed into a *Jurata* or Jure? The truth seems to be that it always could be brought as a *jurata*, or, at any rate, as early as the time of Bracton. He speaks of it as differing from other assises because including in itself the possession and the right, while the other assises were only possessory actions.<sup>6</sup>

How it differed from an Assise of Novel Disseisin, of Mort d'Ancestor, and of Darrein Presentment.

In an assise, properly so called, twelve men were summoned to give a verdict on a simple issue mentioned in the original writ. In an Assise of Novel Disseisin it was whether A. had tortiously disseised B. In an Assise of Mort d'Ancestor it was whether A. had died seised, and B. was his next heir. In an Assise of Darrein Presentment it was what patron had last presented to a church. In any of these assises questions outside the points of the original writs might arise and have to be put to a jury, in which case it was said *assisa vertitur in juratam*.<sup>7</sup>

<sup>1</sup>Y.B.B., 20-21 Edw. I., Stafford Eyre, 21 Edw. I., p. 449.

<sup>2</sup>Y.B.B., 21-22 Edw. I., Middlesex Eyre, 22 Edw. I., p. 337, and p. 455.

<sup>3</sup>Y.B.B., 30-31 Edw. I., Cornwall Eyre, 30 Edw. I., pp. 205-7.

<sup>4</sup>*Ib.*, Mich., 31 Edw. I., p. 483.

<sup>5</sup>Y.B.B., Easter, 33 Edw. I., p. 451.

<sup>6</sup>Bracton, fo. 287.

<sup>7</sup>See Y.B.B., Mich. 12—Trin. 13, Edw. III., *Introd.*, pp. xxxviii-lxx.

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The writ of *Utrum*, on the other hand, did not present so simple an issue, though the twelve men were summoned before there were any pleadings. They had to say whether land, &c., in a particular place was frankalmoign belonging to the church of A., or the lay fee of B. It is obvious that all sorts of difficulties might lie in the way of an answer to such a question as this. There are only two possible direct answers to the question whether A. disseised B. (Yes or No), but land might not be the frankalmoign of A. and yet not the lay fee of B.; it might not be the lay fee of B. and yet not the frankalmoign of A.; and the pleadings might generally be expected to run off on side issues which would have to be tried by a *jurata* and not by an *assisa*. For this reason apparently the twelve men summoned came to be regarded and treated as a *jurata* with power to try any issue of fact which might be raised.

As we have seen, however, on a writ of *Utrum* the question of right was involved, as well as the question of possession, and the action was described as the parson's writ of Right.<sup>1</sup> Out of this fact seems to have arisen what seems to be the most curious mistake in the history of the law.

The parson's writ of Right: how *Jure de Utrum* became corrupted into *Juris Utrum*.

At some time after the proceedings in Court ceased to be in French, some copier of Year Books, or possibly even some lawyer, who was not acquainted with the history of the action, met with the *Jure de Utrum* in some MS. in the not uncommonly abbreviated form *Jur.* (with a curl over the letter *r* to indicate a contraction) *de Utrum*, or *Dutrum*. Having a better acquaintance with Latin than with French, knowing that *jus* meant right, and that *juris* was the genitive case of it, and proud of his learning on the subject of the parson's writ of Right, he converted *Jur.* into *Juris*. There still remained the *de* or *d* before *Utrum* to be explained, but he adopted the simpler and shorter course of omitting it.

<sup>1</sup> *Britton* (Ed. Nichols), Vol. II., p. 207.

No such writ as “*Juris utrum*” ever did exist, or ever could have existed.

Thus there crept into the text-books a writ of “*Juris utrum*,” which never existed, and which, in the nature of things, never could have existed. What reasonable translation into English could have been made of the words *Juris utrum* no one seems to have cared to enquire. There was the word *utrum*, and there was the word *juris*, and in some confused way it seems to have been thought that the words indicated a writ to settle whether a parson had a right or not. Apart even from the grammar, however, the word *jus* or *juris* was never used to express a writ of Right. In Latin that was invariably “*breve de Recto*,” in French “*brief*” or “*bref de Droit*.”

How Fitzherbert, J., himself transformed writs of *Jure de Utrum* into writs of *Juris utrum*.

It will, perhaps, be said that it is mere conjecture to assume that anyone converted *Jure de utrum* or *dutrum* into *Juris utrum*. It is no conjecture at all; and no less a personage than Fitzherbert, J., the revered author of the *Grand Abridgment*, and of a book *De Natura Brevium*, may be detected in the very act. It is not only the fact that he describes the writ as *Juris utrum*, and that *Juris utrum* is one of the titles or heads in his *Abridgment*, but also that he has actually gone out of his way to alter the words of the MSS. As it happens, a good illustration may be given from a case in the present volume.<sup>1</sup>

The Abbot of Malmesbury, as parson of a church, brought a writ of Entry *ad terminum qui præterit* in respect of a lease made by his predecessor, and counted that the land was his right, as of the church of which he was parson. Counsel for the defence objected that he had no remedy except by “*Jure de Utrum*,” and the Court held that he had no remedy but by “*Jure de Utrum*.” Fitzherbert has the report in his *Grand Abridgment* under the head of “*Juris utrum*,” (No. 5) and in both passages he has in his text converted “*Jure de Utrum*” into *Juris utrum*. The case is of great importance, because it is not printed in any of the old editions of the Year Books, and the mistake cannot have been copied from any printed book.

<sup>1</sup> *Below*, p. 59.