# INDEX OF MATTERS

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## A

ABATEMENT OF WRITS:

(Attaint.) The writ will abate for "false Latin," as *e.g.* for the use of the words *prædicta mesuagia* where the word *mesuagia* ought to be used alone, 212; 214.

(*Audita Querela.*) A writ was brought on the ground of an indenture made in defeasance of a statute merchant, and conditioned for the grant of a term of years to the obligee, his peaceable possession during the term, and his immunity from the levying of any debt owing by the obligor, or of any "Green Wax." In the writ of *Audita querela*, as well as in the following *Venire facias*, mention was made only of peaceable possession and not of the other conditions, and this omission was pleaded as a cause for the abatement of the writ, but the Court held that they were included in the peaceable possession, and adjudged the writ to be good, 424–428.

(*Cessavit.*) If in one *Præcipe* against one tenant land be described as being in "A. *juxta* B." and in another *Præcipe* against another tenant land be described as being "*in eadem villa*," the writ is bad for want of certainty whether the last mentioned land is in A. or B. If, however, the tenant takes a *Prece partium* with the demandant he thereby affirms the writ to be good, 82–88.

If the demandant takes a distress for any service, pending the writ, the writ abates, 84.

Where it was supposed in the writ that a prebendary held of the plaintiff, and had ceased to render the services, and that the plaintiff had been seised of the services by the hand of the prebendary's predecessor but not that the predecessor held of the plaintiff, the writ was held good, 458–462.

(Darrein Presentment.) If the plaintiff alleges in his declaration that he is seised of the advowson, while the words of the writ are that the defendant "*advocationem illam ei deforciat*," the writ does not on that account abate, because the words are the ordinary form in which the writ issues from the Chancery, 178.

If the defendant claims as guardian of an infant, and is not described as guardian in the writ, and the infant is not mentioned therein,

ABATEMENT OF WRITS—*cont.*

that is no ground for the abatement of the writ, where the plaintiff has not supposed the defendant to be tenant of the advowson, 178–180.

(Debt.) Executors described themselves in their writ as executors of A.B. "of Eastham," whereas the testator was described in his will as A.B. only, the words "of Eastham" being omitted. In the obligation, however, on which the action was grounded he was described as in the writ. The Court held, on a plea in abatement of the writ, that, as the words in excess of those in the will were in accordance with the specialty, the writ was good, 428.

(Entry *sine assensu Capituli.*) Where one writ was brought in the *post* against two persons in respect of a manor, one pleaded that she held two-thirds of it in severalty, and the other that she held the other third in severalty in dower. The facts not being denied, the writ abated, 368–370; 371, note 1.

(Formedon.) If, while the writ of Formedon is pending, a writ of Dower is brought against the tenant, and he confesses the action, and the demandant in Dower recovers, the writ of Formedon abates in respect of the third part of the tenements recovered as dower, though not in respect of the two other parts, per WILLOUGHBY, J. One of the reporters, however, adds, as to the abatement in respect of a third part, that the judgment was wrong, and contrary to law, 28–40.

(Formedon in the descender.) Where the land is claimed by the son and heir of a woman (A.) to whom the gift has, according to the writ, been made in the form "*A. et heredibus de corpore ipsius A. per B. procreatis*," the writ is as good as if the word "*suis*" had been introduced after "*heredibus*," 248–252.

In the writ no one ought to be mentioned except those who are in the inheritance by the limitation, 252–254.

Where the writ was brought against husband and wife, and they pleaded several tenancy in abatement of the writ, on the ground that they held in virtue of a fine, by which part of the tenements was rendered to the husband in fee simple, and the rest to the husband and wife in fee tail, the writ was held to be good, 264–268.

(*Per quæ servitia.*) The writ does not abate through the death of the conusor, as the note of the fine is executory, 50–52.

(Plea of land in general.) Where a writ has been abated on the ground that the land demanded has been described as being in A., when it should have been described as being in B., and a second writ is brought which correctly describes the land as being in B., the tenant may plead joint tenancy with another person, though he has not so done in the case of the first writ, and if there be joint tenancy, the writ will abate, 334–336.

(*Præcipe quod reddat.*) *See* NON-TENURE.

(*Quod permittat.*) The writ was brought by one who alleged that

ABATEMENT OF WRITS—*cont.*

his father had been seised of certain common of pasture. It was pleaded in abatement that the plaintiff had himself been seised of the common, that he could have a writ in virtue of his own possession, and that the *Quod permittat* which he had brought was therefore bad. It was admitted that the plaintiff's beasts had fed on the land on which the common was claimed, which feeding was held to be seisin of the plaintiff, but he alleged that the feeding was not with his knowledge or consent, and could only have been through the escape of the beasts from those who had charge of them. The Court held that God alone could know whether the seisin was with the plaintiff's knowledge and intention, or not, but as the seisin was confessed, and a writ of Novel Disseisin lay in respect of it, the writ abated, 390–396.

(*Scire facias* on Fine.) The writ must be in accordance with the fine, and when so in accordance will not abate by reason of a variance between it and a *Mittimus* by which it has been sent into the Common Bench from the Chancery, or between it and a *Certiorari* by which it has been removed into the Chancery, when there is less in the *Mittimus* or *Certiorari* than in the fine. Nor will it abate because a hamlet is described in it as a vill, when the description is the same in the fine, 2–12.

Where a remainder was limited to A. and B. his wife, who brought the writ of *Scire facias* in respect of rent, and the words of the

ABATEMENT OF WRITS—*cont.*

*Scire facias* were "*predictum redditum præfatæ B. deforciat*," the writ abated because the husband was not mentioned in that clause, 114.

If the *Scire facias* supposes land claimed as part of a manor to be in a vill not mentioned in the writ of covenant, it will abate, but not because the manor is in divers vills and the *Scire facias* omits to mention in which vill the land is which is claimed. What is necessary is that the *Scire facias* should agree with the fine, 246–248.

Where the form of the fine has been that A. acknowledged rent to be the right of B., as that which B. and his wife C., being seised, had by A.'s gift, for B. and C. to hold to them and the heirs of B., the fine is not executory after the death of A. and C. and a *Scire facias* brought by B. will abate, 466–468.

*See* VARIANCE.

(*Scire facias* to have execution of judgment.) If several demandants have had judgment, and one of them dies, and the rest sue a *Scire facias* to have execution, without mentioning the death in the writ, it abates, 118.

(Trespass.) A writ brought in the Common Bench while a writ in respect of the same trespass is pending in the King's Bench will not abate on that ground, because the action is personal, though it would be otherwise if damages had been recovered in respect of the same trespass, 370.

ABBOT:

Relation of to Prior of same House. *See* QUARE IMPEDIT.

ACCOUNT :
Where the defendant produced certain acquittances and certain tallies showing payments, and the plaintiff denied that the acquittances and the tallies were his, issue was joined to a jury with regard to the acquittances, and the plaintiff was allowed his wager of law as to the tallies. The defendant was let out on mainprise, 470.
If the writ is brought by executors against an Abbot as Abbot, in respect of the time during which he was the testator's bailiff and receiver, and the declaration is that, when he was co-monk with his predecessor, the predecessor made him bailiff and receiver of the testator's moneys, the declaration is good, though the defendant was not Abbot during the time, 474–476.
Where the defendant pleaded that he had already accounted before auditors appointed by the plaintiff, and issue was joined on that point, and the defendant made default on the day given, a writ of *Capias ad computandum* was awarded against him, because his plea was a confession of the receipt of the money, 498.
*See* OUTLAWRY ; PROTECTION.

ADMEASUREMENT OF PASTURE :
Continuation of pleadings in, from previous years, 62–66.

ADMISSION TO DEFEND :
*See* RECEIPT.

AGE :
If aid is prayed in a *Scire facias*, and it is also prayed that the parol may demur on the ground of the non-age of the prayee in aid, and an averment is tendered that he is of full age, the point cannot be tried by jury, but must be decided by inspection of the prayee's person by the Court, 284.

AID :
Aid of reversioner granted to defendant in *Scire facias* on Fine, 10 ; 11, note 2.
Tenant for life may have aid of those who are in remainder in fee tail, when the limitation is by fine, but not when it is by deed *in pais*, 214, nor when the remainder is in fee tail male, 268.
Where a writ of Formedon was brought against a woman who alleged that the King had by charter granted a manor, of which the tenements demanded were part, to her and her late husband and her husband's heirs, she prayed aid, as tenant for life, of the husband's heir as reversioner. The demandant tendered the averment that the tenements were not part of the manor. It was held, however, that issue could not be taken on that point, as that would be to enquire whether they were included in the King's charter, which was not permissible, because it would tend to make the King's charter void. The aid was therefore granted, 258–262.
In Annuity the plaintiff claimed against a Prior as parson of a particular church, showing that the annuity commenced with the consent of the patron and the Ordinary. The Prior prayed aid of himself as patron, and of

AID—*cont.*

the Ordinary. It was granted, although the Prior held the church *in proprios usus* (and so could be a party to charge or discharge it), because he was entitled to have aid of the Ordinary, and could not have that without aid of the patron, 470–472.

Where a Bishop brought a writ of Entry *sine assensu Capituli* against a prebendary, the latter pleaded that he held the land in right of his prebend, which was of the patronage of the same Bishop, and prayed aid of him as patron, and of him and the Dean and Chapter as Ordinary. It was held that the tenant could not have aid of the Bishop because the Bishop was demandant, and that, as he could not have aid of the Ordinary without having aid of the patron, he could not have aid at all, 518–520.

AID OF THE KING:

The Prior and Convent of an alien Priory had granted an annuity to a certain person until he should be provided with an ecclesiastical benefice. Upon the outbreak of war with the French the King seized the possessions of the Priory into his hand. He afterwards, however, committed the possessions of the Priory (except knights' fees and advowsons), to the Prior, who had succeeded the grantor, at a certain rent *per annum*, and on condition that he should pay all the charges which were due from the House. The annuitant subsequently brought a writ of Annuity

AID OF THE KING—*cont.*

against the Prior on the ground that the annuity had been withdrawn. The Prior stated the circumstances in his plea, and prayed aid of the King, which was granted, 296–302; 303, note 1.

Though, as a general rule, delays are not allowed in cases of *Nuper obiit* or Novel Disseisin, yet aid of the King is allowed when he might otherwise lose his wardship, and that even when he has leased the wardship to another, 404.

ANCIENT DEMESNE:

When it is pleaded that tenements are Ancient Demesne, it must be stated that they are parcel of some particular manor, or that they are in some particular vill. If, however, it is stated that the whole of a Hundred is Ancient Demesne, and that the vill in which the tenements are is within that Hundred, the demandant must answer, and issue will be taken on the question whether the Hundred is Ancient Demesne, or not, 320–322.

As Domesday Book is the only evidence that tenements are Ancient Demesne, no averment in general terms will be admitted, 320.

Where damages had been recovered in the Common Bench on a writ of False Judgment, the Sheriff returned to a writ of *Elegit* that the party had no lands except lands in Ancient Demesne. The Court held that no execution of them could be had, but it was otherwise where the lands had been rendered in that Court by fine, because the nature of the

ANCIENT DEMESNE—*cont.*
tenancy was thereby changed, and had become frank fee, 520.
*See* FALSE JUDGMENT.

ANNUITY:
Where arrears of an annuity are claimed, it is necessary that seisin of the annuity in the person of the claimant, or (in the case of an ecclesiastical person) of his predecessors, should be shown, even though the annuity may appear to have been included in a grant by statute, 90–98.
Where the annuity was to continue only until the plaintiff should be advanced to a suitable benefice, and the defendant pleaded that a vicarage had been tendered to him at a certain place, that he had refused it, and that so the annuity was extinguished, the plaintiff denied that the vicarage had been offered to him at the place mentioned. The averment touching the place was not admitted, and the plaintiff had to deny the tender of the vicarage, as alleged, but, upon issue joined, the *Venire* was for a jury from the neighbourhood of the place mentioned, 380–382.
Where the annuity was to continue only until the plaintiff should be advanced to a suitable benefice, and the defendant pleaded that a certain vicarage had been tendered to him and that he had refused it, he objected that the value of the vicarage had not been stated so as to show that there had been a suitable tender for the purpose of extinguishing the annuity. It was held, however, that it was for the plaintiff to show that

ANNUITY—*cont.*
the vicarage was of too small value to extinguish the annuity, and, as he could not say what the value was, he was non-suited, 406.
*See* AID; AID OF THE KING; VARIANCE.

ASSISE:
*See* DARREIN PRESENTMENT; MORT D'ANCESTOR; NOVEL DISSEISIN; NUISANCE.

ASSISE, JUSTICES OF:
Their record sent into the Common Bench cannot there be contradicted by Counsel, 274.

ASSISE, RECOGNITORS OF:
Where one disagreed with the rest, and declared that he never would agree with them, he was sent to prison, and the verdict of the other eleven was taken, but it was said that he could have an Attaint against them, 554–556.

ATTAINT:
Writ of following verdict in *Cui in vita*, 208–214.
Difference between procedure on a writ of Attaint and procedure on a writ of Error or False Judgment, 312–314.
Where the demandant was non-suited, a writ of *Capias* against him was awarded, but it was said that if another person, without his knowledge, had sued the writ of Attaint in his name, he would have a writ of Deceit, 310.
*See* ABATEMENT OF WRITS; ASSISE, RECOGNITORS OF; COGNISANCE OF PLEAS.

TTORNEY :
If an attorney is appointed on a *Scire facias* to have execution of a judgment in a plea of land, and the parol is put without day by reason of the non-age of the defendant, and a new *Scire facias* is afterwards brought, the old warrant of attorney remains in force, 282.
*See* ESSOIN.

UDITA QUERELA :
Where the obligor in a statute merchant has had execution sued against him, and has sued an *Audita querela* and had a *Supersedeas* of execution awarded, and has been non-suited on the day given in Court by a *Venire facias*, and afterwards sues a second *Audita querela* and prays a second *Supersedeas* and a second *Venire facias*, he cannot again have a *Supersedeas*, though, according to one report, he may have a *Venire facias*, 56.
*See* ABATEMENT OF WRITS.

B

BARON AND FEME :
*See* CUI ANTE DIVORTIUM ; ABATEMENT OF WRITS (*Scire facias* on Fine).

BARONY :
Tenure by. *See* NOVEL DISSEISIN.

ASTARD :
If, in a deed, a bastard is described as A. son of B., B. being his mother, he takes a remainder limited to him in the deed under which he purchases, and he can

BASTARD—*cont.*
give aid to a tenant for life, because he is correctly named, and although the law denies him a father, it allows him a mother, 517.

BILL OF EXCEPTIONS :
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CASTLE-WARD :
Avowry for, 498–500.

CERTIFICATE OF ASSISE :
Given only after the assise has been taken, and judgment rendered, 274.
Not given when the party claiming it was present in Court when the assise was taken, 276.

CESSAVIT :
Where the tenant said that he held of the demandant by services less than those alleged, and that the land was open to distress, the issue taken was upon the question whether the land was so open or not, a protestation only being entered as to the quantity of the services, 70.
*See* ABATEMENT OF WRITS.

CHALLENGE :
Where an action of Wardship was brought by the Prince of Wales, and issue was joined in respect of land in Cornwall, the array of jurors was challenged on the ground that the Sheriff was appointed by the Prince, whose robes he bore, and that the panel had been returned by him on the nomination of persons who were of the Prince's counsel. The challenge was found to be true by triers. Judgment was given that the panel should be destroyed, and a new *Venire* was then sent to the Coroners of the County, 319, note 1.

CHANCELLOR, the :
Can personally deliver a document in the Common Bench, and need not send it by writ of *Mittimus*, 6.

CLERKS OF THE COMMON BENCH :
Authority and practice of, 512.

COGNISANCE OF PLEAS :
A writ of Entry *dum fuit infra ætatem* having been brought in the Court of Common Pleas, the Mayor and Bailiffs of a town intervened, and claimed cognisance of the plea. They alleged that the King had granted to his mother, Queen Isabella, cognisance of pleas within the precinct of a manor within which the town was, that she had granted the same franchise to them, and that her grant had been confirmed by the King. A Prior then intervened, alleging that he was mesne lord holding of the Queen, and the so-called Mayor and Bailiffs were his tenants and not the Queen's, and that therefore they could not be in possession of the franchise. The grant to the Queen, however, related to all those who were resiant within the precinct of the manor, and not exclusively to her tenants, and it was held that if wrong had been done to any one by the King's grant it could not be redressed in the Common Bench, and that the Prior had no *locus standi*. The parties in the action were asked whether they could show any cause why the cognisance should not be allowed, and said they could not. Judgment was given with the assent of the whole Council that the Mayor and Bailiffs should have the cognisance, 98–112.
Where cognisance of a plea of *Cui in vita* had been allowed to the Mayor and Bailiffs of a city in whose court judgment was afterwards given, one of the parties sued a writ of Attaint. Cognisance was again claimed on behalf of the same Mayor and Bailiffs, but not until after oyer had been had by the other party of the original writ of Attaint and of the record. It was held, on that ground, that the claim had been made too late, and further,

COGNISANCE OF PLEAS—*cont.*

COGNISANCE OF PLEAS—*cont.*
that, even had it been made in time, it could not have been granted, because the Mayor and Bailiffs had not power to award the proper punishment to the jurors, or to carry out the judgment proper on a writ of Attaint, 206–214.
If the King's charter purports that certain persons shall plead and be impleaded in a certain place, and before a certain judge, but does not contain the words "not anywhere else," no exclusive jurisdiction is granted, and the Common Bench will have concurrent jurisdiction, 562.

COMMON OF PASTURE:
Will not pass, by deed, under the general term "tenement," nor by the words "*de tenementis et de pastura*," without express mention of common, 568.

CONTEMPT:
A writ of Contempt was brought by the King against a provisor, alleging that he had intruded into a church on pretence of a provision made to him, and had caused the rightful incumbent to be several times cited to the Court of Rome in contempt of the King's Prohibition duly read and delivered to him. The provisor traversed the whole of the facts alleged on behalf of the King, and pleaded Not Guilty, 58-62.
*See* EXCOMMUNICATION.

COSINAGE:
Where the resort was made by the demandant through the mother of A., the *consanguineus*, to

COSINAGE—*cont.*
A.'s great-aunt, B., and the descent from B. to the demandant, it was pleaded by the tenant that the tenements had, in part, descended to A. from his father and had, in part, been purchased by A. Issue was joined on the replication that the tenements had descended to the demandant from B., *absque hoc* that they had descended to A. from A.'s father, or that A. had any of them by purchase, 12–16; 17, note 1.

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113; 127; 140.

COUNTY PALATINE:
If one is outlawed on a writ of Trespass in a county outside the Palatinate, but is known to be dwelling within the Palatinate, a *Capias utlagatum* can be directed to the holder of the Palatinate, commanding him also to answer as to the outlaw's goods and chattels, 314.

COVENANT:
Where a plaintiff had, in his declaration, alleged a covenant, and produced no specialty, and though exception was taken, the court below had decided that the plaintiff must be answered without producing any specialty, the judgment was reversed in the Court of King's Bench, 148.

CUI ANTE DIVORTIUM
A. conveys tenements to B. and C. his wife in special tail, with remainder to C.'s right heirs. After her divorce C. brings her action of *Cui ante divortium* against D., the tenant, alleging that he had not entry but after

CUI ANTE DIVORTIUM—*cont.*
a demise which B. made to A. Thereupon D. pleads in bar that, after the conveyance by A. to B. and C., a fine was levied between B. and C., plaintiffs and A. deforciant, in which B. acknowledged the tenements to be the right of A., and A. granted and rendered them in special tail to B. and C., with reversion to himself quit of other heirs of B. and C.; and D. says that C. was thus restored to her original estate, and prays judgment whether she ought to have the action on any previous title of right. C. replies that the fine itself proves the alienation by B. to A., that there was no divesting of her estate by C., that she was not examined, that she was not restored to her first estate by the fine, as a lesser estate was limited therein, and that the acknowledgment of right and the alienation ought to be adjudged to be the act of B. alone, which could not prejudice C. The Court held that, as there was no seisin alleged to be in C. after the divorce, or agreement on her part, and the fine was on the acknowledgment of B., and C. was not examined, the whole must be adjudged to be the act of B. alone, just as much as if C. had not been mentioned in the fine, and judgment was given for C. to recover seisin, 72–80.

CUI IN VITA:
It was pleaded that the wife had made partition with a sister, who enfeoffed the tenant of her share, which was the land in demand, and that the wife had

CUI IN VITA—*cont.*
thereafter no interest in it, but the alienation by the husband was not denied in the plea. It was held that the tenant must either confess and avoid the alienation or else deny it, 506–510.
Pleadings in, where it was alleged that the tenant had entered by lease from the husband, and the tenant alleged that he had entered through another person, 514.
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## D

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DARREIN PRESENTMENT:
Pleadings in Assise of, 176–196.
In what cases an Assise of Darrein Presentment lies, and in what cases a *Quare impedit*, 180–186.
Where the defendant shows a title to a fourth part of the advowson, originating in a certain feoffment made to his ancestor, and the plaintiff alleges an earlier feoffment made by the same feoffor to his own ancestor, and makes *profert* of the deed, the defendant, being a stranger to it, is not compelled to answer as

DARREIN PRESENTMENT—*cont.*
to the deed, but his allegation that the feoffment was made to his ancestor, and that the plaintiff's ancestor had nothing before that feoffment, will be tried by the assise, without any denial of the feoffments either on one side or on the other, 180–196; 197, note 2.
*See* ABATEMENT OF WRITS.

DEATH, PROOF OF:
*See* JURATA UTRUM.

DEBT:
A plaintiff proceeded by two plaints of Debt in an inferior court, which had not jurisdiction above forty shillings, and each plaint was in respect of 39*s.* 11½*d.*, and it appeared from the declaration that the two plaints were in respect of one and the same contract and debt, and though exception was taken, judgment was given for the plaintiff to recover. A writ of Error was brought in the King's Bench, where the judgment was reversed, and the plaintiff in Error had restitution, 146–148.
The action was brought as being in one county, and issue was joined in the Common Bench on a deed or writing purporting to be dated in another county, which had been produced on the one side and denied on the other. The issue was sent to be tried at *Nisi prius*, and the *Nisi prius* record was entitled as of the first county, but the *Venire* was directed to the Sheriff of the second county. The finding was for the plaintiff, for whom judgment was prayed in the Common Bench. It was objected that the verdict of the jurors of the second county had been taken without warrant, but the Court held that it had been properly taken, and judgment was given for the plaintiff, 204–208.
Where the action was brought on an obligation conditioned for the enfeoffment of the plaintiff by the defendant of a certain messuage and land within a certain time, the plaintiff pleaded that he had been ready to enfeoff the plaintiff within the time limited, and still was. This was held to be a good plea, though the feoffment was still unmade, 456–458.
An action was brought against a Prior on the ground that his predecessor borrowed money of the plaintiff for the purpose of maintaining the election as bishop of a monk of the Prior's House, which money was then spent for the profit of the House. The Prior pleaded that there had been no such loan, and that the Prior did not owe any money to the plaintiff, 552–554; 555, note 1.
Where the action was brought against one of the King's moneyers, he pleaded the King's charter giving jurisdiction to the Warden and Master of the Mint, but as the charter did not contain the words "not anywhere else" the cognisance of the plea by the Warden and Master was not allowed, 562.
*See* ABATEMENT OF WRITS; EXECUTORS; NOVEL DISSEISIN.

DECEIT:
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DETINUE :
A writing or deed had been delivered by A. and B. to C. on condition for redelivery to A. if A. should enfeoff B., within a certain time, of certain land, and should not during the same time commit waste in lands of B. s inheritance held by A. A. brought his action against C. for redelivery. C. alleged that he did not know whether the conditions had been fulfilled, or not, and had a *Scire facias* to bring B. into court. B. then appeared, and, in answer to A.'s declaration that A. had performed the conditions, said that B. had performed the covenants on his side, but that A. had failed to perform them on his side. He was not allowed to take issue on both points, because it was sufficient for him to aver that A. had not performed the conditions. B. then tendered the averment that A. had not fulfilled the conditions, (1) because he had not enfeoffed, and (2) because he had committed waste. He was, however, put to elect on which of the two points he would take issue, as he could not have both, 198–202.

DISABILITY :
*See* QUARE IMPEDIT.

DISCONTINUANCE :
In a plea of land brought against husband and wife both made default, and a *Cape* was awarded in respect of a moiety only of the land, instead of the whole. The demandant prayed seisin of the land. The Court held that there had been a discontinuance, and refused to give a judgment which would be reversible, but, on the prayer of the demandant, awarded a new *Cape* in respect of the entirety, 262–264.

DISCONTINUANCE—*cont.*

DOWER :
Where the tenant pleaded that the demandant's husband had previously assigned the tenements in demand as dower to his own mother, who survived him, the demandant, not acknowledging the alleged assignment, replied that her husband was seised of the tenements in his demesne as of fee, and died so seised. It was objected that such an averment could not be accepted unless it was shown how the husband became seised, but the Court held that the averment should be accepted, 322.
It was pleaded in bar that the custom of the town in which the dower was claimed was that, if the husband died seised as of fee of tenements therein, his wife should have his capital messuage as free-bench so long as she remained unmarried, but that, if the husband sold any tenement, and the money was converted to the use of the husband and wife, she should not have dower of that tenement, and that the demandant's husband had so sold the tenements of which dower was demanded. It was replied that, as the alleged custom was out of the course of common law, no answer need be made to it, but the Court held that the demandant must answer as to whether there was such a custom, or not, and issue

DOWER—*cont.*
was joined on the question whether the money had come to the common benefit of the husband and wife, 348–350; 351, note 2.

The writ was brought against one who vouched to warrant. The vouchee vouched the husband's heir, who entered into warranty, as one who had nothing by descent. Judgment was prayed against the heir, but as the heir had not been vouched directly by the tenant, judgment was given that the demandant should recover against the tenant, that the tenant should recover to the value against the first vouchee, and he in turn against the heir, 372–374.

Where dower was demanded of a third part of a bailiwick (A.) which was alleged to be in B., C. and D., it was pleaded in abatement of the writ that C. and D. were only hamlets of B., and issue was joined on that plea. The demandant then prayed an answer as to that which was in B., but this could not be allowed before the issue had been tried, and there could not be any recovery by parts, 414–418.

Where the action was brought by husband and wife on the seisin of the wife's first husband, a release executed by the wife while she was sole was pleaded in bar by the tenant. The husband and wife confessed the deed, but the confession was held to be worthless because, after the husband's death, the wife would be able to deny the deed, 452.

DOWER—*cont.*
The tenant having vouched the late husband's son and heir and, on the appearance of the supposed vouchee, tendered the averment in the previous Trinity Term that it was not the same person, assigning diversity of father and mother, issue was joined on the replication that it was the same person. On further argument the Court held that the issue was wrongly taken, and that a *Summoneas ad warantizandum* ought to have been awarded against the person whom the tenant alleged to be the real vouchee. The issue was therefore quashed, and the *Summoneas*, &c., awarded, 462–466.

*See* VIEW.

DRENGAGE:
Tenure by, 44; 45, note 4; 384.

## E

EJECTMENT FROM WARDSHIP:
Process and essoin in, 160–166.
The writ is of the nature of a writ of Trespass, and if there are two defendants, one of whom appears and the other does not, the one who appears will answer in the absence of the other, and the plaintiff must count against him, 162–164.

ENTRY:
Where it was pleaded that the demandant (in respect of a disseisin effected on whose ancestor the action was brought) was a bastard, it was held that

ENTRY—*cont.*
the plea could not be admitted if the tenant had already demanded and had view, 388.
Y., the demandant, claimed land, alleging that Z., the tenant, disseised X., who was Y.'s father; Z. pleaded in bar that X.'s father, J., after having had issue X., by his first wife, had, by a second wife, issue R., to whom he gave the land in fee simple, that, after the death of J., R. died seised without heir of his body, that X., being of the half-blood, then abated on the land as heir to J., and that Z. ousted him. Y. replied that J. gave the land to R. in fee tail, and, as Z. had admitted that R. had died without heir of his body, prayed seisin of the land (as heir to the reversioner). Issue was joined on the question whether J. gave in fee simple, or not, 480.
*See* DAMAGES.

ENTRY, *ad terminum qui præteriit*:
The writ does not lie for an Abbot, who claims as parson of his church, in right of his church, on the seisin of his predecessor, and he has no remedy except by *Jurata utrum*, 58.
*See* ESSOIN.

ENTRY, *dum fuit infra ætatem*:
*See* COGNISANCE OF PLEAS.

ENTRY, *sine assensu Capituli*:
*See* ABATEMENT OF WRITS; AID.

ERROR:
*See* COVENANT; DEBT; EX GRAVI QUERELA.

ESSOIN:
Three days after issue joined on a writ of Entry *ad terminum qui præteriit* the demandant cast an essoin, to which it was objected, firstly that he had an attorney, and secondly that he could have an essoin only on the first day after issue joined according to the statute, Westm. 2, c. 27. Both objections were overruled—the first because the attorney might have been removed, and the essoiner could not be a party to try that question, and the second because the statute did not restrain a demandant from delaying himself as long as he pleased, 160.
Where exception is taken to an essoin on the ground that the party has an attorney in the plea, and he then appears by attorney and pleads, the essoin is quashed, 166.
*See* NONSUIT.

EXCUMMUNICATION:
A writ of Trespass having been brought against a Bishop and others, those others produced a letter from the Bishop testifying the excommunication of the plaintiff, and the Bishop himself pleaded Not Guilty. As the Bishop, being named in the writ, was supposed to be a party to the trespass, his letter of excommunication was disallowed with regard to all, 154–156.
A writ of Prohibition, having been directed to a Bishop, was delivered to him by the King's messenger, whom the Bishop's Commissary excommunicated for having delivered it. A writ of Contempt was thereupon

EXCOMMUNICATION—*cont.*
brought, in the names of the King and of the messenger, against the Commissary, to punish him for contempt of the King, and to obtain damages for the messenger. The Commissary pleaded first a disability in the person of the messenger in that he was an excommunicate, and therefore not in a position to be answered, and produced a letter from the Archbishop of Canterbury to the effect that the Archbishop had found in the Acts of the Court of Arches in London that the messenger was under various sentences of greater excommunication. The Court of Common Bench held that, as the letter did not specifically assign any other cause, the excommunication must be for the cause for which the action was brought, and that the defendant must answer. There was then a plea to the jurisdiction, on behalf of the Commissary, to the effect that the Common Bench could not have cognisance in respect of the cause of any excommunication, which must be tried and decided in Court Christian. The Court of Common Bench held that the excommunication was the ground of the action, and that (the King being a party) it could not be prosecuted in any court but the King's. The Commissary, being asked, declined to answer further, and judgment was given that his person should be taken, and that the messenger should recover damages as claimed in his declaration, 322–334; 335, note 1.

EXECUTION:
*See* ANCIENT DEMESNE; STATUTE MERCHANT.

EXECUTORS:
A writ of Debt was brought by A. against B. and C., as executors of D., on a deed by which D. bound himself to A. The executor B. pleaded *Plene administravit*, but alleged, as to a portion of the estate, that it had been recovered against him in another action of Debt grounded on D.'s obligation, which he confessed. A. replied that the plaintiff in the last mentioned action of Debt was C. (B.'s co-executor), and that B.'s confession of the obligation was by collusion. It was argued for B. that he was not legally compelled to deny a deed which was true *in esse*, but the Court held that he should have pleaded that, as C. was his co-executor, C. had had administration of the goods of the deceased, which plea would have barred C. The Court then required B. to answer whether C. had had administration, or not. B. tendered the averment that C. never administered as executor, but it was held that this was no denial of administration, and that administration charged C. as executor. In the end issue was joined on the simple averment that C. did not administer, 418–424.
Where a testator mentions in his will certain persons as his executors, and certain others to be their "co-adjutors," the latter will, if they administer, be charged as executors, but they need not be mentioned in any action which is brought, 428-430.

EX GRAVI QUERELA :
A citizen having, according to the custom of his city, devised certain rent "*tanquam catalla*" to his children begotten of the body of his late wife (named), the children brought an *Ex gravi querela* against one who had entered into possession of the rent. He made default in the city court, and judgment was there given for the demandants to recover the rent and damages. The tenant, however, had nothing within the liberty of the city of which the damages could be levied. The cause was then removed into the King's Bench by *Certiorari*, and a *Scire facias* issued to warn the tenant to appear in that Court to show cause why the damages should not be levied of his goods and chattels within the bailiwick of the Sheriff of the county. The tenant appeared and alleged that there was error in the judgment of the city court, and produced a writ from the Chancery to the Justices of the King's Bench "*ad errores illos assignandum.*" The errors assigned were as follows : Whereas in the writ of *Ex gravi querela* the city court was directed to do justice to the parties "*virtute tenoris testamenti prædicti*," no will or tenour of a will had been there produced, but only a letter from the Ordinary testifying the proof before him of the devise by a nuncupative will, while, according to the custom of the city, freehold could not be bequeathed by nuncupative will. Again, the demandants had sued by way of remainder, in which case damages ought not

EX GRAVI QUERELA—*cont.*
to be adjudged to them. A writ of *Scire facias* then issued to warn the demandants to hear the record and process before the Court proceeded to annul it. They appeared and prayed and had judgment of the writ on the ground of a grammatical error. They then prayed execution, but several adjournments followed without result, 114–124.

## F

FALSE JUDGMENT :
A. brought a writ of Right against B. in a Court of Ancient Demesne. B. pleaded in bar that he had previously brought against A., in the same Court, a writ of Right, but making protestation that his suit was in the nature of a Formedon in the remainder, that A. traversed the gift, and that B. recovered. The Court of Ancient Demesne gave judgment for B., notwithstanding the fact that the Formedon was for the purpose of destroying the possession and not the right. This was assigned as error in the Common Bench by A. After a dilatory plea that the Court should send for a fuller record, which was over-ruled, B. pleaded that, according to the custom of the manor, where any one had recovered, on any writ, by action tried in its Court, the judgment barred the party who lost, even though he might bring a writ of Right, unless he could show a subsequent title, and B.

FALSE JUDGMENT—*cont.*
tendered an averment to that effect. The Common Bench, however, held that, as the custom was not pleaded in the Court of Ancient Démesne, and no mention of it was made in the judgment, B. could not be admitted to aver the custom in order to maintain this judgment. The Common Bench, therefore, gave judgment that the judgment of the Court of Ancient Demesne should be reversed, and that A. should recover, but not as by final judgment on a writ of Right, because the mise had not been joined, 432–448.

FINES OF LANDS, &C.:
Forms of, 540–542; 542.
*See* CUI ANTE DIVORTIUM.

FORMEDON:
*See* ABATEMENT OF WRITS; AID; RECEIPT.

FORMEDON IN THE DESCENDER:
*See* ABATEMENT OF WRITS; WARRANTY.

FRANK-MARRIAGE:
Nature of tenure in, 358–360.

G

GRAND ASSISE:
When not awarded on writ of Right, 520–522.
*See* RIGHT, WRIT OF.

GUARDIAN:
If, on a *Scire facias* to have execution of a judgment in a plea of land, the defendant appears by guardian, and the parol is put without day by reason of the non-age of the defendant, and the plaintiff afterwards brings a new *Scire facias*, the old warrant of guardian is of no avail, and, if the defendant is called, and does not appear, judgment is given against him, 282–284.

H

HALF-BLOOD:
*See* ENTRY.

J

JUDGMENT:
*See* NONSUIT.

JURATA UTRUM:
Where the tenant vouched to warrant, and the vouchee made default, the tenant alleged that the vouchee was dead, though the Sheriff had not so returned. The demandant tendered the averment that the vouchee was alive, and the tenant offered to prove by witnesses that he had died in Brittany. It was held that where an action was brought by way of *assisa*, or of *jurata*, an alleged death in a foreign country could be tried by the assise or the jury and not by witnesses, but otherwise where actions were brought by other writs, 168–170.
*See* ENTRY *ad terminum qui præteriit*; RECEIPT.

JURY-PROCESS :
Where the King and a Bishop were at issue in a *Quare impedit* brought by the King, the Bishop sued out one *Venire facias juratores*, and the King's attorney another. The Sheriff returned the *Venire* sued out by the Bishop, and refused to receive that which had been sued on behalf of the King. The Court allowed the writ returned to be disavowed on behalf of the King, and awarded an *Alias Venire*, 342.

K

KING, THE :
Charters of the. *See* AID.
No final judgment against, on writ of Right of advowson, 520–522.
*See* QUARE IMPEDIT ; WARDSHIP.

L

LIBERTY :
A Sheriff returned a Summons to the effect that the tenements in respect of which an action had been brought were within a liberty, and that he had sent to the bailiff of the liberty, who had returned that the tenant had been summoned. The cause was afterwards put without day by a Protection. The demandant sued a Re-summons, and the Sheriff again returned that he had sent to the bailiff, who returned that the tenant had nothing whereby he could be summoned. The demandant prayed that the bailiff might be

LIBERTY—*cont.*
amerced for his contrariant return, but the Court of Common Bench held that it had no power to amerce the bailiff, because he was not an officer of that Court, but they granted a *Non omittas propter libertatem* to be directed to the Sheriff, 156.
Where the lord of a liberty (A.) has the franchise of having the execution of writs by his bailiff, and the bailiff, in accordance with the precept from the Sheriff, proceeds to distrain, within the liberty, one of the resiants, for the King's debt, but is interrupted by another person (B.), the latter commits a trespass, *vi et armis*, and A. will recover damages against B. It is no justification for B. to allege that he has, within the liberty, a manor in which there is a custom that, whenever the bailiff of the liberty effects any distress for the Green Wax, or other money owing to the King, upon any tenant of the manor, the bailiff ought to take the distress to B.'s pound within the manor to remain there for three days and nights, so that, if the tenant pays the money within the time, he can have his beasts quit, because such a custom could not be any profit to B., but rather the reverse, 522–538 ; 539, note 1.

M

MAINPRISE :
One who sued out a writ of *Audita querela*, for the purpose of staying execution on a statute

MAINPRISE—*cont.*
merchant, could not be let out on mainprise after issue had been joined, but was delivered to the Sheriffs of London to be taken back to Newgate by them, because he had come out of the prison to prosecute his suit only in virtue of a writ of *Habeas corpus*, 428.
*See* ACCOUNT.

MESNE:
The liability to acquit of services was alleged by the plaintiff to be in virtue of a fine by which the defendant's ancestor undertook that he and his heirs should acquit a feoffee and his heirs of all services in consideration of an annual rent of one penny. The plaintiff, though holding the estate of the feoffee by subsequent conveyances, was not his heir, and it was objected that the defendant was therefore not bound to acquit him. It was, however, argued that the liability to acquit was acknowledged in the fine as being perpetual, and in the end the defendant confessed it, 350–366; 367, note 3.
The writ lies for tenant by the curtesy of England, and process thereon, as in the case of other tenants, 406–412.
Proceedings in, where in a previous action of like nature judgment had been given that the defendant was bound to acquit the plaintiff of services, but the defendant had not acquitted, though many times requested by the plaintiff, 500–506.

MINT, THE:
*See* DEBT.

MITTIMUS:
The writ of is not essential for the delivery of a document in the Court of Common Pleas, as the Chancellor may deliver it in person, without any writ, 6.

MONEYERS, THE KING'S:
*See* MINT.

MORT D'ANCESTOR:
Where the assise was brought against two persons who vouched, and the Sheriff returned that the vouchee had nothing, the tenants were called in Court, and one of them appeared, but the other did not. The plaintiff prayed seisin of the land, and the assise in respect of damages, but the Court awarded the assise at large, 370–372.

## N

NAIFTY:
When the demandant in a writ of Naifty has been non-suited, after appearance, final judgment will be given in favour of the *nativus* as between him and the demandant; and the *nativus* will be a free man for ever with regard to the demandant, and his heirs, or successors, 468.

NISI PRIUS:
*See* DEBT; PROTECTION.

NONSUIT:
Where a writ has been brought against several persons by several *Præcipes*, and the demandant has been nonsuited at *Nisi prius* with regard to one of the

NONSUIT—*cont.*

*Præcipes*, and the other tenants, having a day in the Common Bench, are essoined, and the essoiners claim that the demandant is nonsuited because a nonsuit with regard to one is a nonsuit with regard to all, the Court holds otherwise, 138.

Where a verdict had passed against a tenant, at *Nisi prius*, and the demandant did not appear on the day which the parties had in the Common Bench, judgment was given not on the nonsuit, but on the verdict, 172.

A writ was brought against two persons by different *Præcipes*, and one of them vouched to warrant, and the other traversed the action. The demandant was non-suited with regard to the latter, and the one who vouched was subsequently essoined, and had a day by the essoin. It was held that the nonsuit applied only to the one who had traversed, and not to the one who had vouched and been essoined, 376–378.

NON-TENURE:

In a *Præcipe quod reddat* the tenant pleaded, in abatement of the writ, that another and not he held a portion of the land demanded. The demandant replied that the tenant was tenant of the entirety of the tenements put in view, and tendered an averment to that effect. It was argued on behalf of the tenant, that the replication was not good, as it should relate to the tenements demanded, and not to those put in view. It was held by the Court that the replication was good because,

NON-TENURE—*cont.*

after view had been had, the demand could be understood to be only of that which had been put in view, and issue was taken on the averment, 252–258.

NOVEL DISSEISIN:

An assise was brought by an Abbot and it was found by verdict that he had been seised and disseised, but that since the disseisin he had, under threats, and duress (which duress, however, did not affect his person) executed a release of the tenements to the defendant. After adjournment into the King's Bench, the matter was brought before the Council, in the presence of all the Justices, who quashed the whole proceedings, because the release had not been produced in Court or pleaded, and it therefore did not fall within the cognisance of the jurors of the assise to enquire of it, or to mention it, 125–127.

Where there are several defendants, and one of them (A.) pleads, as to a moiety, a deed of the plaintiff's ancestor in bar, and the plaintiff replies as to that moiety that A. is not tenant, but that B. is tenant, and issue is joined on that question, and the assise finds that A. is tenant, the plaintiff is barred as to that moiety, 128–138.

An assise was brought by husband and wife (A. and B.) against C. and D. in respect of two thirds of 5 marks of rent. On D.'s default, C. was admitted to defend his right, as being in reversion after the death of D., who held a third part in dower, the reversion having been granted to him by D.'s previous

NOVEL DISSEISIN—*cont.*
husband E. The plea of C. in bar was that F. formerly lord of the barony of G., was seised of the tenements out of which the rent issued, as of parcel of the barony, and held of the King *in capite*. F., as alleged, in the reign of Edward I. enfeoffed H., in fee, of the tenements, to hold of F. by fealty and the service of one penny *per annum*. On H.'s death his son I. entered and rendered the services to F., as afterwards did I.'s son K., on I.'s death. After K.'s entry it was found by inquisition before the Escheator, in the reign of Edward III., that H., I., and K. had entered by purchase, without having obtained the King's license, and Edward III. caused the tenements to be seised into his hand. K. then, after paying a fine, had a grant from the King to the effect that he should have restitution of the tenements, and should hold them of the King in fee by the accustomed services. Afterwards K., with the King's license, enfeoffed C., the defendant, of the tenements in fee, to hold of the King and his heirs, and C. did homage, and rendered the other services to the King. C. further alleged that F. granted the rent of one penny and the service of H. to L. in fee, that H. attorned to L., that, after L.'s death, his son and heir M. was seised of the services, which after his death descended to his three daughters, N., O., and P., and that N. had issue B., who was plaintiff, with her husband A. On these alleged facts C. prayed judgment whether A. and B. ought to have an assise in respect of rent issuing from tenements held of the King *in capite*.

The plaintiffs (without admitting that the tenements were part of the barony or the other allegations) replied that a certain F., the elder, in the time of Henry III., and before the 20th year of his reign, enfeoffed one H. of the tenements in fee, to hold of F. and his heirs by homage, fealty, and the service of 5 marks *per annum*, and afterwards, but still before the year 20 Henry III., granted the services to one Q. at an annual rent of one penny, to be paid to F. and his heirs, and that H. attorned to Q. The services, including the 5 marks of rent, then descended successively to Q.'s son R. and to R.'s son S. Afterwards S. granted the services of H. to L. in fee, and H. attorned to L. On the death of H. his son T. entered the tenements, and attorned to L. in respect of the 5 marks and other services. After L.'s death the services descended to his son M., and after M.'s death to M.'s daughters N., O., and P., who made partition of the tenements which came to them from M. The rent of 5 marks was assigned to the purparty of N. She, being seised, endowed M.'s widow U., of a third part of the rent of 5 marks. After N.'s death, B. was seised, together with A., her husband, of two thirds of the rent, as daughter and heir of N., until C. and D. tortiously disseised them. The replication concludes

NOVEL DISSEISIN—*cont.*
with a traverse of the statement that F., mentioned in the plea, or any other person of that name, was seised of the tenements as parcel of the barony of C. in the time of Edward III., and with a prayer that the assise might be taken.
C. rejoined that A. and B. had not denied that the tenements were part of the barony of G., held of the King *in capite*, nor that they had been seized into the King's hand because they had been aliened without the King's license. As to the allegation of A. and B. that F. the elder had enfeoffed H. of the tenements to hold of F. by certain services, including the rent of five marks, in the time of Henry III., C. alleged that neither F. nor any other person could at that or any other time enfeoff any one, to hold of himself, of any tenements holden of the King's progenitors *in capite*, because in such case the feoffee became the immediate tenant of the King, and the tenements so aliened became entirely discharged of all services reserved by the feoffor. Therefore C. said, the time of feoffment made by F. could not rightly better the title of the plaintiffs, and he had no need to answer to it, and prayed judgment.
To this the plaintiffs pleaded that, inasmuch as C. did not deny that F. the elder enfeoffed H. in the time of Henry III. to hold of F. by the rent of 5 marks, &c., and did not maintain that F. the elder, or any other F., was seised of the tenements and aliened them in the time of

NOVEL DISSEISIN—*cont.*
Edward I., and inasmuch as C. alleged nothing in destruction of their title except by asserting that no one who held any tenements of the King *in capite* before the 20th year of the reign of Henry III. could enfeoff another to hold tenements of himself without the feoffee becoming the immediate tenant of the King, the plaintiffs understood that it was permissible for persons holding tenements of the King's progenitors *in capite* to alien them to be held of themselves. And, inasmuch as C. did not deny the seisin of the plaintiffs, they prayed judgment, and the taking of the assise in respect of damages.
At this stage the assise was adjourned into the Common Bench, *propter difficultatem*, and there the pleadings were repeated. It was remarked by Willoughby, J., that before the statute *De Prærogativa Regis*, any one holding of the King by barony could enfeoff another to hold of himself by other services, and would yet continue to hold of the King by barony as before, and that in this case the alienation, if made in the time of Henry III., was good. An averment was tendered on behalf of C. that the alienation was in the time of Edward I. and not of Henry III., but the tender came too late, as C. had already pleaded to judgment.
The judgment was as follows:—
"After hearing the record aforesaid and considering the statements of the parties, it has appeared to the Court, notwithstanding the statements of the

NOVEL DISSEISIN—*cont.*
aforementioned C. above alleged, that proceeding must be had to the taking of the assise. Therefore let the assise be taken. And it is sent back to the aforesaid Justices of Assise to be taken in the county aforesaid, , &c., together with the record thereof, and the original writ, and the panel, &c.," 220–246; 239, note 1.
An assise having been brought before Justices of Assise, against several persons, one of them, A., pleaded, in the absence of the others, as their bailiff, that they had committed no wrong and no disseisin, and issue was joined to the assise on that plea.
A. then, as tenant of the tenements put in view, pleaded, in bar of the assise, a fine to which the plaintiff's ancestor was a party, and alleged that he (A.) had the ancestor's estate. The plaintiff replied that A. was not tenant, but that B. (one of those on whose behalf A. had pleaded as bailiff) was tenant. A. rejoined that he was tenant, as before stated, and issue was thereupon joined, and the Justices gave judgment that the assise should be taken on that point.
Before the assise had been taken, but after the judgment of "*Assisa capiatur*," and on the same day, B. appeared in person and asserted that he was, as the plaintiff had asserted, tenant in virtue of the gift and feoffment of A. and pleaded the same fine in bar of the assise. The plaintiff prayed judgment whether B. ought to be admitted to this plea, as the assise had already been awarded

NOVEL DISSEISIN—*cont.*
with respect to him, on his previous plea by bailiff, and said that B. could not be called a second time in Court on the same day, after having failed to appear the first time.
The Justices of Assise nevertheless gave judgment that the assise should be taken "*super præmissis*." The assise found that A. was not tenant and that B. was tenant. The Justices of Assise then asked the jurors whether the plaintiff had been seised and disseised, and they said that certain others of the defendants had disseised him "*vi et armis*," and assessed his damages. The plaintiff then prayed judgment on the verdict and there was an adjournment into the Common Bench.
That Court held that, when it was found that B. was tenant, the Justices of Assise ought to have stayed the taking of the assise in point of assise until they had given judgment whether he had appeared in time to have his plea in bar admitted, and that by enquiring as to the seisin and disseisin they had forjudged him of his plea, but that judgment must be given on the verdict as found. Judgment was accordingly given for the plaintiff to recover seisin and damages, but it was regarded as subject to reversal by writ of Error, 268–282.
The assise being brought against husband and wife, they pleaded that the plaintiff had had execution of the lands on a statute merchant executed by the husband, and had subsequently granted back to them the estate

NOVEL DISSEISIN—*cont.*
which he had in virtue of the statute by an indenture with the condition that if they should pay him a certain sum before a certain date, the statute and the execution of it should be annulled, and that the husband had duly paid the money. For the plaintiff if was pleaded that the money paid was for a debt other than that mentioned in the indenture, but he was unable to produce any other obligation, and alleged that he had delivered it over by way of acquittance. The Court held that as he could not produce the obligation or anything to show that the payment related to anything not mentioned in the indenture, he should take nothing by his writ, 448–450.

The plaintiff being an infant, his father's release, dated in a county other than that in which the assise was brought, was pleaded in bar. The jurors found that it was not the ancestor's deed, and judgment was given for the plaintiff to recover seisin. It was said, however, that the decision was wrong, because the jurors could not know whether the deed was that of the plaintiff's ancestor or not, 540.

Where an assise was brought before Justices of Assise in respect of rent, the defendant pleaded in bar the plaintiff's release of all actions and demands both real and personal. The plaintiff alleged that at the time of the execution of the release, and before, and after, she was seised of the rent. The cause was adjourned into the Common Bench, *propter difficultatem*, and the plaintiff did not appear, but it was thought that she was barred by the word "*demandas*" in the deed, 556–560; 561, note 4.

In respect of twenty cart-loads of wood, to be taken in one hundred acres of wood, and pleadings thereon, 564–566.

In respect of common of pasture, and pleadings thereon, 566–568.

NUISANCE:
An Assise of Nuisance lies for the obstruction of a way *in alieno solo* from the plaintiff's meadow to the highway, (although he has not in the same vill any messuage or other freehold from or to which the way extends) because he can carry from the meadow to the highway, to make his profit at a market or elsewhere, 148–152.

NUPER OBIIT:
Two women (coparceners) brought *Nuper obiit* against two others who made default, but who afterwards proffered wager of law as to non-summons, and had a day to perform their law. On that day one of the tenants failed to appear, but the other was ready to perform her law. One of the two demandants also failed to appear, and was severed. Seisin was prayed for the other demandant of the whole of the tenements demanded. The tenant who appeared was allowed to perform her law as to non-summons in respect only of the portion which belonged to her. With regard to the rest, judgment was given

NUPER OBIIT—*cont.*
that the demandant who appeared should recover a moiety of a moiety against the tenant who made default, but should be in mercy with regard to the tenant who performed her law, 288–296.
The writ lies against parceners even though their tenancy may have become several, if they had, at any time, an estate by descent after the death of their common ancestor, 290, 294.
View, voucher, allowance of age, or other delays (except, in certain cases, aid of the King), are not permitted on a writ of *Nuper obiit*, 402–404.
*See* AID OF THE KING.

O

OUTLAWRY:
The defendant, B., in a writ of Trespass, in the Common Bench, pleaded that the plaintiff, A., had been outlawed at the suit of a third person, C., on another writ of Trespass in the King's Bench. A. produced a charter of pardon of outlawry. B. alleged that the pardon was according to the Statute 5 Edw. III., c. 12, conditional on the suing out of a *Scire facias* to warn C., which was not alleged to have been done. Though the interpretation of the statute was disputed, it was held that if A. did not sue a *Scire facias* to warn C. the charter of pardon lost its force, and that B. would go without day, 54–56.

OUTLAWRY—*cont.*
The like, where the plaintiff, who brought a writ of Account, had been outlawed, 152–154.

P

PER QUÆ SERVITIA:
Pleadings on writ of, 50–52.
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*See* ABATEMENT OF WRITS.

PLEADING:
*See* ABATEMENT OF WRITS (plea of land in general); ACCOUNT; ADMEASUREMENT OF PASTURE; AID; ANCIENT DEMESNE; CESSAVIT; CONTEMPT; COSINAGE; CUI ANTE DIVORTIUM; CUI IN VITA; DARREIN PRESENTMENT; DEBT; DETINUE; DOWER; ENTRY; EXECUTORS; JURATA UTRUM; MESNE; NON-TENURE; NOVEL DISSEISIN; PER QUÆ SERVITIA; QUARE IMPEDIT; RECEIPT; RELIEF; REPLEVIN; TRESPASS; VILLEIN; WARDSHIP; WASTE.

PRÆROGATIVA REGIS:
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PREROGATIVE:
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PRIOR:
Relation of to Abbot of same House. *See* QUARE IMPEDIT.

PROCESS :
*See* COUNTY PALATINE ; DISCONTINUANCE ; VOUCHER.

PROHIBITION :
*See* CONTEMPT.

PROTECTION :
Where process of outlawry had been commenced against a defendant in Account, and he surrendered before the outlawry was complete, and was held to mainprise, a Protection was produced for him on the day which he had in Court. It was objected that if the Protection were allowed the mainpernors would be discharged, but it was allowed nevertheless, 220.
After a verdict had passed, at *Nisi prius*, against a defendant in Trespass, a Protection for him was produced in the Common Bench before judgment, but was not allowed, 338–342.
Justices of *Nisi prius* have no power to allow or disallow a Protection, 342.
Where a defendant had a Protection, and the plaintiff produced a writ of later date in which the King recorded that the defendant was not in his service, the Protection was disallowed, 370–372.
Where a tenant had vouched to warrant, and the vouchee was described in his Protection as "knight," but was not so described in the voucher, it was held that the Protection was good, and not vitiated by the surplusage, 376–378.
Where, in an action of Account, issue had been joined by the plaintiff and defendant, and a Protection was subsequently

PROTECTION—*cont.*
produced for the defendant, it was disallowed, 388–390.
*See* STATUTE MERCHANT.

PROVISION, PAPAL :
Of Bishop to bishopric, 396–402.
*See* CONTEMPT.

## Q

QUALE JUS :
*See* QUARE IMPEDIT.

QUARE IMPEDIT :
Where two persons are named as defendants, and one of them, in pleading, disclaims all interest in the patronage of the church, he cannot traverse the plaintiff's title, but in the absence of any such express disclaimer, each of them may traverse the title just as much as if a separate writ of *Quare impedit* had been brought against each of them severally, 44–50. Further pleadings in the same case, 382–388.
Where the defendant confessed the action the plaintiff had judgment to recover his presentation and his damages, but as he was an Abbot, execution was stayed until the return of the *Quale jus* as to collusion, 52–54 ; 55, note 1.
The King claimed, against a Bishop, a presentation, on the ground that King John, having been seised of the advowson, had presented to the church, that King John had given the advowson to a Prior in frank almoign to hold of him and his heirs, and that the Prior's successor had

QUARE IMPEDIT—*cont.*
afterwards aliened to the Bishop's predecessor in mortmain without license, The Bishop in his plea traversed the seisin of King John, the admission of John's presentee, the gift to the Prior, and the alienation without license. It was objected, and the Court held that averments to the jury on the four points could not be allowed, and that the Bishop could have an averment on one only of the four, at his election. He elected to plead that the presentee was not admitted on King John's presentation, but made protestation on the other points. In the end, however, the King availed himself of his right to take issue on which point of his declaration he pleased, and issue was taken on his replication that the Prior did alien the advowson without license, 140–144, and Y.B., Hil.-Trin., 20 Edw. III., pp. 102–107, and pp. 290–292.
Where the action was brought by the Prior of an Abbey against the Abbot of the same Abbey, disability in the person of the Prior was pleaded on behalf of the Abbot, on the ground that the Prior was the Abbot's subordinate, and owed obedience to him. As, however, it appeared that the manor to which the advowson was appendant had (with other possessions) been granted by royal charters to the Prior and Convent and their successors to hold of the Abbot severally, and that previous Priors had presented, as sole patron, and that the Priors were elective, and per-

QUARE IMPEDIT—*cont.*
petual, and not subject to removal by the Abbot, it was held that the Prior was entitled to an answer. The right of the Prior to present being then not denied, he had, by judgment, a writ to the Bishop, 344–346.
Pleadings in, where the presentation to a precentorship was claimed by the King on the ground that it formed part of the temporalities of a bishopric which became vacant through the death of a Bishop after he had given the precentorship to one who became his successor as Bishop by a papal provision, 396–402.
Pleadings in, in continuation of preceding reports of an unfinished case, 452–456.
Where the King claimed a right to present an the ground of an alienation in mortmain to a Prior, without license, and the alienation was denied, and a title in the Prior by prescription was pleaded, it was alleged on behalf of the King that the alienation was made by fine, and *profert* was made of a fine. It was, however, held by the Court that the fine did not preclude a successor from saying the contrary of that which was affirmed by his predecessor, and the defendant was allowed to aver that the predecessor had nothing by the alleged alienation, 472–474.
*See* JURY-PROCESS.

QUEEN CONSORT:
May maintain an action brought by herself, without her husband, the King, in respect of her several possessions, 346.

QUID JURIS CLAMAT :
Where tenant for life had a deed in virtue of which his executors were to hold the land for ten years in the event of his death within twenty years after the date of the deed, the tenant consented to attorn, Sharshulle, J. dictating the mode of enrolment by which his estate would be saved, 550–552.

QUOD PERMITTAT :
*See* ABATEMENT OF WRITS.

## R

RECEIPT :
If tenant for life traverses the action when a *Jurata utrum* is brought against him, or traverses the gift when a Formedon is brought against him, an alleged reversioner will not be admitted to defend his right, 302–304.
Husband and wife (tenants) having put themselves upon a jury, the husband departed in contempt of Court when the jury came to give their verdict at *Nisi prius*. The wife prayed to be admitted to defend her right, but the verdict was taken and was for the demandant. When judgment for the demandant was prayed in the Common Bench the wife again prayed to be admitted, but her prayer was refused because judgment was to be given on the verdict and not by reason of the husband's default, 312.
Where a real action was brought against husband and wife there was a disclaimer on behalf of the wife. The husband, after vouching, made default, and the wife then prayed to be admitted to defend her right. The prayer was counterpleaded on the ground that the disclaimer put her out of Court, and made her no longer a party to the plea. The Court, however, held that her disclaimer must be held to be the husband's plea, and she was admitted, 412–414.

RELIEF :
Where the relief consists of double rent payable after the death of a tenant, it is not necessary, in making an avowry, to allege seisin of the relief itself, if seisin of the rent itself is alleged, because it is possible that by reason of successive feoffments of the land no tenant died seised since time of memory, 18.

REPLEVIN :
Where the avowry was for (*inter alia*) homage in arrear, seisin of it was alleged by the hands of the plaintiff's brother, whose heir the plaintiff was. The plaintiff pleaded that his estate in the land was only a fee tail, as his brother's had also been, and denied that the avowant or any of his ancestors, or of those whose estate he had in the seignory or the services, had been seised of the homage by the hands of the donor or any one whose estate the plaintiff had, and prayed judgment whether the avowant could charge his freehold by any seisin of homage by the hands of his brother who had no estate in the tenements but a fee

REPLEVIN—*cont.*

tail. It was, however, held that as the tenant was not supposed in the avowry, by express words, to be tenant in fee simple, and the defendant had avowed on his very tenant, the avowry was, so far, good. The plaintiff, however, also alleged that the donor held of one whose estate the avowant had by fealty and rent, without homage. The avowant thereupon tendered the simple averment that the donor held by homage, but it was ruled that this was insufficient, as seisin by the donor's hand was not alleged. The avowant then alleged that A., the ancestor of the person whose estate he had, enfeoffed the donor's ancestor, B., (before the statute of *Quia emptores*) to hold of A. by homage. The plaintiff had to answer to this, and alleged that B. was enfeoffed to hold without homage. Issue was joined on this question. The plaintiff subsequently made default, and the avowant had the return, 18–26; 27, note 4.

Where the plaintiff complained of the taking of ten oxen in a certain place in a certain vill, and the defendant avowed the taking of twenty oxen in another place in another vill, the plaintiff tendered the averment that the defendant had taken the beasts mentioned in the plaint in the place and vill in which he had laid his plaint, without denying the taking of the rest. The defendant thereupon prayed the return of the rest immediately, and it was held that he was entitled to it unless the

REPLEVIN—*cont.*

plaintiff denied the taking of them. In the end the plaintiff did deny the taking, and issue was taken on that point as well as on the question of place and vill, 218–220.

Question whether the taking must be alleged to have been in a vill, and whether it is sufficient to mention a hamlet, 390.

The defendant avowed on the ground that he was lord of a vill, in a field of which vill he found the beasts which belonged to another vill *damage feasant*, and that the two vills did not intercommon in that field. The plaintiff prayed judgment of the avowry on the ground that the intercommoning of the vills was not denied except in one particular place, and that in the absence of any evidence respecting that particular place, the avowry could not be maintained. It was, however, held to be good, and in the end issue was joined on the plaintiff's alleged prescriptive right to have common in the place of taking, 430–432.

A. (an Abbot) distrained B. for suit of court, and avowed. B. pleaded, in abatement of the avowry, that he enfeoffed C. of one portion of his land, and D. of another portion, and that they in turn leased to him (B.) for his life, so that B. was tenant of C. and D. and they were tenants of A., and that B. held the rest of the land of A. and that so the tenancy was not one, but several. It was held that the plea was not good, because the matter should have been pleaded by way of disclaimer. B. then pleaded that

REPLEVIN—*cont.*
A.'s predecessor had by fine acknowledged the tenements to be the right of B.'s ancestor to hold by fealty, and 10*s. per annum*, in lieu of all services, and that A. could not therefore avow for suit of court. This plea was held good after arguments as to the effect of the Stat. of Marlb., c. 9, 486–492.
To an avowry for castle-ward the plaintiff pleaded that one J. held the land of the avowant by services including castle-ward, and enfeoffed the plaintiff's ancestor, before the statute of *Quia emptores*, to hold by services not including castle-ward, that the avowant had purchased the seignory of J. and could not therefore avow for more services than were mentioned in the deed of feoffment. It was held that by the avowant's purchase of the seignory below his previous seignory was extinguished, 498–500.
The avowry was of a taking of chattels, by bailiffs of a town, for toll due for goods exposed for sale at the market of the town. It was pleaded that whatever franchise the burgesses might have had in respect of the toll, it had been interrupted, and seised into the King's hand in a previous reign. The Court held that as the plaintiff had not denied that the bailiffs had a market, and all things appertaining to a market. in the town, nor that the taking had been for the toll which properly appertained to the market, and as the bailiffs had not a day in Court to claim or try their franchises, the bailiffs should have the return of the chattels, and the plaintiff should be in mercy, 542–550; 551, note 1.
*See* VILLEIN.

REVOUCHER:
*See* VOUCHER.

RIGHT, WRIT OF:
The mise having been joined, four persons were returned as knights to elect the Grand Assise. It was alleged, on behalf of the King, that they were not knights; and being questioned by the Court, they confessed that they were not. The Court sent them to prison, there to remain during the King's pleasure. It was held further that if there were no knights in the county the sheriff should have so returned, and that the Sheriff of the next county should have been commanded to cause four knights to come, 374–376.
*See* FALSE JUDGMENT.

RIGHT OF ADVOWSON:
Proceedings in, where the King is a party, 520–522.

S

SCIRE FACIAS:
(On Fine.) Pleadings on adjourned, 480–486.
Where a fee tail had been created by fine, and the donor sued a *Scire facias* on the ground that the estate was at an end, an objection was taken to the form of the writ, but over-ruled, 496–498.
*See* ABATEMENT OF WRITS.

SCIRE FACIAS—*cont.*
(On Recognisance.) Where there is a clause in the recognisance to the effect that if the money is not paid on the appointed day, the Sheriff of one particular county may levy it of the obligor's lands and tenements, and the obligor subsequently purchases lands in another county, the obligee is not compelled to pray execution in the latter county as well as in the former, 492–496.

SCUTAGE:
Scutage is included in the words "homage and services" in a fine, though not expressly mentioned, 50.

SEQUATUR SUO PERICULO:
*See* VOUCHER.

SEVERAL TENANCY:
*See* ABATEMENT OF WRITS (Formedon in the descender).

SHERIFF:
*See* STATUTE MERCHANT.

STATUTES CITED:
52 Hen. III. (Marlb.), c. 9, 490.
13 Edw. I. (Westm. 2), c. 1, 202.
———— c. 3, 414.
———— c. 5, 3; 53, note 1; 186.
———— c. 9, 408.
———— c. 25, 274.
———— c. 27, 160.
———— c. 35, 162.
———— c. 45, 94.
———— c. 48, 176; 514.
13 Edw. I. (*De mercatoribus*), 88.
18 Edw. I. (*Quia emptores*), 24; 27, note 4; 350; 360; 498.
17 Edw. II., St. 2, 90; 96.

STATUTES CITED—*cont.*
5 Edw. III., c. 12, 54; 154.
14 Edw. III., St. 1, c. 6, 198.
———— c. 17, 58.
*De Prærogativa Regis* (*incerti temporis*), 228; 230; 232.

STATUTE MERCHANT:
When the obligee has sued execution, and has had the debtor's lands delivered to him, he cannot afterwards have a *Capias* to take the debtor's body, 88.
Where the obligee sued a *Capias* to take the debtor's body, and the Sheriff returned that he had taken the body but that the debtor had paid the obligee and received an acquittance, the obligee took exception that this matter did not fall under the head of a Sheriff's return, and prayed that the Sheriff might be amerced. The Court, however held that the Sheriff had not acted wrongly, if the facts were as stated, and that, if he had taken the debtor and allowed him to be at large before the money had been paid, the obligee could recover against the Sheriff, 146.
When the obligee was suing execution, a Protection was produced on behalf of the debtor in the Court of Common Pleas, but it was not allowed because execution was prayed in respect of a matter adjudged, and the debtor had no day in Court. Execution was awarded, 172–176.
*See* AUDITA QUERELA; NOVEL DISSEISIN.

SUIT OF COURT:
Arguments as to the effect of the Statute of Marlborough, c. 9, in relation to, 490–492.

## T

TAIL:
By a gift to a woman and the heirs of her body begotten by her husband she takes a fee tail, 252.

TENEMENT:
*See* COMMON OF PASTURE.

TRESPASS:
Where the action was brought in respect of writings taken and carried off, and the defendant pleaded Not Guilty, and issue was joined thereon, and the jury was ready to pass its verdict, the defendant objected that the verdict could not be taken because the plaintiff had not specified what writings they were. It was held that the exception ought to have been taken when the declaration was made, and that, as issue had been joined, the verdict must be taken. The plaintiff recovered damages, 170–172.
Where the defendant was supposed to have broken the plaintiff's house, and carried off goods, he pleaded Not Guilty as to carrying off the goods. With regard to breaking the house he pleaded that he was assisting Sheriff's officers in the taking of one who had been indicted of felony, that they found the door of the house open, by which they entered, and took the accused. The plaintiff had to maintain that the defendant came with force and arms, and broke the house, 458.

TRESPASS—*cont.*
After the defendant had pleaded Not Guilty, he alleged on a subsequent day, that the plaintiff had been outlawed, but omitted to say since the last continuance. The plaintiff was, nevertheless, put to answer, 542.
*See* ABATEMENT OF WRITS; EXCOMMUNICATION; LIBERTY; OUTLAWRY.

## V

VARIANCE:
Where an *alias* writ of *Scire facias*, on fine, varies from its predecessor, or either of them from the roll, in the initial letter U or V or W of a surname, the writ is bad, notwithstanding the statute 14 Edw. III., St. 1, c. 6, which relates to mistakes in process, 196–198.
Where a plaintiff brought his action against a Prior, and made *profert* of a deed purporting that an annuity was granted to him by the Prior and Convent, and exception was taken to the variance, it was not allowed, 560–562.

VENUE:
*See* ANNUITY.

VERDICT:
*See* NOVEL DISSEISIN.

VIEW:
When a writ has been brought against a man and he has had view, and the writ has subsequently abated on the ground

VIEW—*cont.*
that he held jointly with his wife, and a new writ is brought against the husband and wife, and they pray view, they may have it, though it be counterpleaded on the ground of the husband's previous view, 40–42.
Where view was prayed on a *Cui in vita*, and counterpleaded on the ground that the tenant's entry had been by the demandant's husband, and that view was not allowed under the Statute of Westminster the Second, c. 48, it was held that the words of of the Act applied to writs of Dower and not to writs of *Cui in vita*, and view was granted, 176.
Although, under the Statute of Westminster the Second, c. 48, view is not granted in Dower to a tenant whose ancestor entered through the husband's alienation, yet it is granted to a tenant whose predecessor so entered, because there is a degree between ancestor and heir, but not between predecessor and successor, 512–514.
*See* ENTRY ; NON-TENURE ; WASTE.

VILLEIN :
If a manor has been seised into the King's hand, and he leases it to A. for a term of years, and B. brings an action of Replevin against A., and A. alleges that B. is his villein regardant to the same manor, it is a good exception, because, if B. is regardant to the manor, he is A.'s villein during the time of the lease, 304–306.

VOUCHER :
A tenant having vouched one A., and the *Summoneas ad warantizandum* having been returned, and a *Cape ad valentiam* having been awarded on A.'s default, the demandant alleged that A. was dead, and tendered an averment to that effect. As, however, the Sheriff had not returned that A. was dead, and the tenant had sued process against A. at his own peril, that process was continued by the award of an *alias Summoneas ad warantizandum*, 42.
Where, on a writ of Wardship, a tenant by his warranty vouched over, his voucher was not allowed without the production of a specialty witnessing the conveyance in virtue of which he vouched, 68–70.
Where a tenant had vouched husband and wife, who had entered into warranty, and the husband died, the tenant revouched the husband's heir alone, omitting the wife who was still living. Though exception was taken, and was supported by one of the judges, it was nevertheless held by the Court that the revoucher should be allowed, 214–218.
A. had enfeoffed B. in fee, and B. had given the land to A. and C. and the heirs of A. A writ was brought against C., who made default. D., son and heir of A., was then admitted to defend his right, and would have vouched himself as being B.'s assign, but the voucher was not allowed, 378–380.
A tenant cannot, in respect of the same estate, vouch one of whom he has already prayed aid, nor in respect of a different estate, when the prayee in aid has

VOUCHER—*cont.*
executed a release to the tenant while the writ was pending, and after the grant of aid, 404–406.
Where two persons, A. and B., were vouched, the Sheriff returned to the *Sequatur suo periculo* that A. had been and that B. could not be summoned. A. appeared, and the tenant was essoined. The Clerks of the Common Bench entered on the roll, as in accordance with common practice, that an *alias sequatur suo periculo* had been awarded, as to a moiety, against B., contrary to the opinion of the Justices. It was agreed, however, that no further *Sequatur suo periculo* should be awarded against A., but that he should have "*Idem dies.*" 510–512.
*See* DOWER; WARDSHIP.

W

WAGER OF LAW:
*See* NUPER OBIIT.

WARDSHIP:
Where it is alleged that the infant's ancestor held of the plaintiff as of a certain manor, and the defendant tenders the averment that the ancestor did not hold as of that manor, issue cannot be taken on that point because it is not of the substance of the action, but will be joined on a plea that the ancestor did not hold of the plaintiff, 66–68; 67, note 3; 69, note 1.
If a lord is in possession of the person of the heir, and of lands holden of him by knight's service, and if other lands holden of the King subsequently descend to the heir, and the King then claims the wardship of the lands and the heir in virtue of his prerogative, it is held by the whole Council that he cannot have either, 138–140.
Where the action was brought against two persons, A. and B., and A. disclaimed, and B. took the tenancy upon himself, B. vouched A. to warrant, but the voucher was counterpleaded and disallowed. A. and B. then pleaded that the infant's ancestor did not hold of the plaintiff but of another person. It was objected that a plea on behalf of the two defendants could not be admitted after the disclaimer, but the Court held that it could, and issue was joined on the replication that the ancestor held as alleged by the plaintiff, 316–318; 319, note 1.
*See* VOUCHER.

WARRANTY:
Where lands had been given in tail, and one brought a writ of Formedon in the descender, and made the descent from his grandfather to his father, and from his father to himself, the tenant pleaded a release with warranty made to himself by the father's brother. Although it was argued that such a deed by one who was issue in tail was restrained by the Statute *de donis conditionalibus*, it was held that the warranty of any one not mentioned in the writ as being in the entail remained at common law, and that, in order to

WARRANTY—*cont.*
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Question whether any in fish-ponds, 246.
Action of said not to lie for one in remainder in fee tail, 268.
Where the general issue "No waste committed" was pleaded, and issue was joined thereon, the Court awarded a *Venire facias juratores* with the addition *et interim tenementa vastata videant.* In the writ itself the clause relating to view was omitted. A jury at *Nisi prius* found the waste committed, and judgment on the verdict was afterwards prayed in the Common Bench. It was, however, held that there had been no warrant for the jurors to have view, and that there was no warrant for the Court to give judgment. A new *Venire* was therefore awarded, 308–312.
Tenant in dower and her second husband, against whom the action was brought, pleaded that she and her first husband had surrendered the tenements to the plaintiff, who was seised by virtue of the surrender. The plaintiff replied that they were seised on the day of the purchase of the writ, and his averment was admitted although he had not denied the surrender, 336–338; 339, notes 1 and 2.

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