

Cambridge University Press

978-1-108-05168-2 - De Legibus et Consuetudinibus Angliae: Libri Quinque in Varios Tractatus

Distincti: Volume 4

Edited by Travers Twiss

Excerpt

[More information](#)

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUEUDINIBUS ANGLIÆ,

HENRICUS DE BRACTON
ON THE
LAWS AND CUSTOMS OF ENGLAND.

Q 1302. Wt. 2164.

A

Cambridge University Press

978-1-108-05168-2 - De Legibus et Consuetudinibus Angliæ: Libri Quinque in Varios Tractatus
Distincti: Volume 4

Edited by Travers Twiss

Excerpt

[More information](#)

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUETUDINIBUS ANGLIÆ,
TRACTATUS SECUNDUS LIBRI QUARTI:
IN QUO TRACTATUR DE ASSISA ULTIMÆ PRÆSENTATIONIS.¹

CAP. I.

1. Cui competat hujusmodi assisa. f. 237 b.
- Dictum est supra qualiter subveniendum est ei, qui injustè & sine iudicio disseysitus fuit de aliquo teñto vel de servitute aliqua quæ pertineat ad teñtum in fundo alieno, & quæ consistit in jure: Nunc autem dicendum est de pertinentiis quæ consistunt in jure & in proprio, sicut de seysina præsentandi, ubi s. quis impeditus fuerit quo minùs uti possit seysina propria vel alicujus antecessoris sui. Cùm autem præsentaverint ad aliquam ecclesiam vacantem, ad quam ipse vel antecessores sui præsentaverint tempore pacis, cùm propriam seysinā habere debeat quis, vel antecessoris sui qui ultimò præsentaverit, nisi ille qui ipedit vel deforceat docere possit certis ratiōibus quare nō debeat, q̄ quidē decidi et determinari poterit p̄ assisā ultime præsentationis utraq̄ parte vel altera tātū id in curiā postulāte. Sed vidēdū est primò cui cōpetit hujus-
- f. 238.

¹ Hic incipit Secundus Tractatus Libri Quarti de Assisa Ultime Præsentationis. M.S. Rawl. C. 160.

Cambridge University Press

978-1-108-05168-2 - De Legibus et Consuetudinibus Angliae: Libri Quinque in Varios Tractatus

Distincti: Volume 4

Edited by Travers Twiss

Excerpt

[More information](#)

THE FOURTH BOOK
OF
HENRICUS DE BRACON
ON THE
LAWS AND CUSTOMS OF ENGLAND.
THE SECOND TREATISE,
WHICH TREATS OF THE ASSISE OF LAST PRESENTATION.

CHAPTER I.

It has been above explained in what manner succour is to be afforded to him, who has been disseysed tortiously and without a judgment from any tenement or from any servitude in another's ground, which appertains to a tenement, and which consists in a right. We must now explain concerning the appurtenances, which consist in a right and in property as concerning the seysine of presenting, where, for instance, a person has been impeded from using his own seysine or the seysine of an ancestor. For when they have presented to a vacant church, to which he himself or his ancestors have presented in time of peace, when he ought to have his own seysine or that of his ancestor, who has last presented, unless he who impedes or deforces him can show by certain reasons wherefore he ought not, which indeed may be decided and determined by an assise of last presentation, each party or one of them only demanding that in court. But we must see first, who is entitled to

1
Who is
entitled to
an assise
of this
kind.

f. 237 b.

f. 238.

Britton, iv. modi assisa, quia non competit cuilibet de populo, nisi
ch. i. §§ 2 ei qui semel nomine pprio presentaverit, ut heredes¹
and 3. nomine successionis, de seysinā ppria vel alicujus āte-
Fleta, 317. cessoris sui jure hereditario succedit, ad q̄ ptinet advo-
catio. Et q̄ dicit̄ de uno, dici poterit de pluribus &
contra plures, cū sint quasi unus hæres: quia nullus
sine particeps vel cohærede assisam portare poterit vel
respōdere, nō magis quā in aliis assisis. Et si plures
participes p̄ assisam recuperaverit, nullus sine alio
præsentabit, nec ratione æsnecię, nec majoritatis, nec
pluralitatis: q̄a aut omnes cōmunicant aut nullus. Aliis
autē qui tenēt p̄ feoffamentū & nō p̄ descensum nun-
quā competit, antequā semel præsentaverint: q̄a de
seysina eorū quorū heredes nō sunt petere non possunt
p̄ assisam, nō magis quā p̄ breve de recto. Itē nec ei
qui tenet ad vitā quocūq̄ modo & non p̄ descensum,
sicut nomine dotis vel ad terminū. Subveniūt eis tamē
alio modo ut infrā diceť.

2. Rex vic. salutē. Si talis fecerit te securum de cla-
more suo psequēdo, tunc suṃoneas &c. xii. liberos &
Breve de legales homines de visineto tali q̄ sint corā justiciariis
assisam ul- nostris ad pximā assisam cū in partes illas venerint,
timæ pre- vel apud Westminster immediatē, vel alibi tali die,
sentationis. parati sacramēto recognoscere quis advocatus tēpore
paxis præsentavit ultimā psonā quæ mortua est ad
ecclesiā de tali loco, quæ vacat (ut dicit̄) & cujus ad-
vocationē idē talis dicit ad se ptinere. Et interim
ecclesiā illā videāt & nomina eorum imbrevari faciāt.
Et suṃoneas p̄ bonos suṃmonitores talem, qui advoca-
tionē illā ei deforceat, q̄ tunc sit ibi auditorus illā
recognitionē, & habeas ibi suṃmonitores & hoc breve.

¹ "vel hæres," MS. Rawlinson, C. 159.

Cambridge University Press

978-1-108-05168-2 - De Legibus et Consuetudinibus Angliae: Libri Quinque in Varios Tractatus
Distincti: Volume 4

Edited by Travers Twiss

Excerpt

[More information](#)

an assise of this kind, because it is not allowable to any one of the people, excepting to him who has once presented in his own name or as heir in the name of his succession, of his own seysine or who succeeds by right of inheritance to the seysine of his ancestor, to whom the right of advowson belongs. And what is said of one may be said of several, and against several, when they are as it were one heir, for no one without his parcener or coheir can bring an assise or reply to one, no more than in other assises. And if several parceners recover [the advowson] by an assise, none shall present without the others, neither by reason of seniority, nor of majority, nor of plurality, because they all communicate or none. But for others, who hold a tenement by feoffment and not by descent, it is never competent, before they have once presented, because they cannot claim by an assise the seysine of those, whose heirs they are not, no more than by a writ of right. Neither is it competent for him who holds for life in any way, and not by descent, as in the name of dower or for a term. They are aided, however, in another way, as will be explained below.

The king to the viscount greeting. If so-and-so has given you security to prosecute his claim, then summon &c. twelve free and loyal men of such a neighbourhood to be before our justiciaries at the next assise when they shall come into those parts, or at Westminster immediately, or elsewhere, on such a day, prepared to recognise on oath what advocate presented in time of peace the last parson who is dead to the church of such a place, which is vacant (as is said), and of which the said so-and-so says, that the advowson belongs to him. And in the mean while let them view that church and cause their names to be entered on the writ. And summon by good summoners such a person, who deforces him of that advowson, that he be there to hear the recognition, and have there the summoners and this writ.

2.
A writ concerning an assise of last presentation.

6 DE ASSISA ULTIMÆ PRÆSENTATIONIS.

Teste &c. Per hoc autē qd' dicī deforc. videt̄ quibusdā q̄ querens innuat p̄ hoc q̄ deforcians sit in seysina, sicut in brevi de recto, sed revera non est ita, sed satis deforceat qui possessorem uti seysina non pmiserit omninò vel min^o comòdè impediāt præsensando, appellando, impetrando, secundū q̄ dicī, satis facit disseysinā, qui non permisit possessore vel comòde, licet omninò non expellat.

3.
De modo
procedendi
in hujus-
modi pla-
cito.

Ad primum diem poterit uterq; se essoniare si voluerint, si autem ambo fecerint defaltā, vacuū erit placitū & cadit breve. Si autē impediens tantū præsens sit, p̄ judiciū recedet sine die. Si autē querēs tantum præsens sit & impediēs nō, tūc vidēdū erit inprimis an impediēs sūmonit^o sit vel nō. Si autē sūmonit^o fuit & sūmonitio testata p̄ idoneos sūmonitores, qui examinati testentur sūmonitionē, tūc resūmoneat̄ impediens. Si autē nō fuerit sūmonit^o vel sūmonitio testata vel fortè præsēs fuerit primo die & causat^o fuerit q̄ nullā omninò habuit sūmonitionē vel minus ratiōabilē sūmonitionē habuerit, habeat aliū diē ratiōabilē. Testata igit̄ sūmonitione vel nō dedita ab aliquo resūmoneat̄ p̄ tale breve.

4.
Si deforcians vel impediens ad primum diem sūmonitionis non venerit, qualiter sit resūmonendus.

Rex vic. sal. Sūmoneas p̄ bonos sūmonitores A. q̄ sit corā justiciariis n̄ris apud talē locū auditurus recognitionem ultimæ præsensationis quā B. in eadē curia n̄ra corā eisdē justiciariis nostris versus eum arramavit, qui advocatus est tēpore pacis &c. ut supra. Et ad ostēdendū quare nō fuit corā eisdē justiciariis nostris apud talē locū tali die sicut sūmonitus fuit. Et habeas

Cambridge University Press

978-1-108-05168-2 - De Legibus et Consuetudinibus Angliae: Libri Quinque in Varios Tractatus
Distincti: Volume 4

Edited by Travers Twiss

Excerpt

[More information](#)

Witness &c. But from the circumstance that the word “deforces” is used, it seems to some that the plaintiff intimates that the deforcere is in seysine, as in a writ of right, but in truth this is not so, but he satisfies the word “deforces,” who shall not permit the possessor to use his seysine at all, or to his inconvenience impedes him by presenting, by appealing, by suing out a writ, according to what is said that a person sufficiently causes a disseysine, who does not allow a person to use his seysine at all or not conveniently, although he does not altogether expel him.

On the first day each party may essoin himself, if he wishes, but if both parties make default, the plea will be vacated and the writ falls. But if the disturber only be present, he shall retire without a day by a judgment. But if the plaintiff alone be present, and the dirturber not, then it is to be seen in the first place whether the disturber has received a summons or not. But if he has been summoned, and the summons is attested by fitting summoners, who having been examined testify to the summons, then let the disturber be resummoned. But if he has not been summoned or the summons has not been attested, or by chance he was present on the first day, and has alleged as an excuse that he has not had any summons at all, or not a reasonable summons, let him have another reasonable day. The summons therefore having been attested, or not gainsayed by any person, let him be resummoned by such a writ.

3.
Of the
mode of
proceeding
in a plea
of this
kind.

The king to the viscount greeting. Summon by good summoners A. that he be before our justiciaries at such a place to hear a recognition of last presentation, which B. in the said court before our said justiciaries has instituted against him, who is the advocate in time of peace &c. as above. And to show cause why he was not before our said justiciaries at such a place on such a day, as he was summoned. And have there the summoners and this

4.
If the de-
forcer or
disturber
has not
come on
the first
day of the
summons,
how he
is to be re-
summoned.

ibi suṃōn¹ & hoc breve. Ad quem diē si venerit, causari nō poterit suṃōn² quin ꝑcedat assisa, sive testeꝝ prima suṃōn sive secūda sive nulla, cū diē habuerit rationabilē & sciverit se esse suṃōn vel scire debuit. Si autem omninō non venerit, tunc capiatur assisa per defaltā si juratores præsentes fuerint, & sic terminetur negotium. Si autem præsentes non fuerint, tunc præcipiatur vic. quōd habeat corpora eorum ad alium diem. Ad quem diem sive venerint sive non, ante omnia capiatur assisa, cū tantum operatur ejus absentia quā præsencia, cū nihil dicere possit in odium defaltæ quare assisa remaneat, nisi fortè ad certificandum juratores, si chartā habeant vel aliquid tale intervenerit.

5. Breve quod vicecomes venire faciat juratam. Rex vic. salutem. Præcipimus tibi quōd venire facias &c. A. B. C., vel q habeas &c. corpora A. B. C. recognitorum assisæ ultimæ præsentationis, quæ summonita est in curia &c. coram justiciariis &c. inter A. querentem & B. impediētem de advocacione ecclesiæ de M. & ad ostendendum quare non fuerunt &c. ad talem diem & locum sicut summoniti fuerunt, & si ulterius defaltam fecerint tunc in fine brevis ita dicatur, & ad audiendum judicium suum de pluribus defaltis. Dicatur etiam in fine brevis (si opus fuerit) & tot & tales tam milites quā alios liberos, legales & discretos homines de ꝑximo vicineto in assisam illam ponas, & illos habeas coram præfatis justiciariis nostris ad præfatum diem, ad faciendam illam recognitionem simul cum juratoribus prius electis, & q interim illam ecclesiam viderint, & ita q assisa illa non remaneat pro defectu recognitorum. Vel sic: & aliter. Et loco talium

¹ "summonitores," MS. Rawl. C. |

² "summonitio," *id.*

Cambridge University Press

978-1-108-05168-2 - De Legibus et Consuetudinibus Angliae: Libri Quinque in Varios Tractatus
Distincti: Volume 4

Edited by Travers Twiss

Excerpt

[More information](#)

OF AN ASSISE OF LAST PRESENTATION.

9

writ. On which day if he has come, the party summoned may not allege any cause why the assise should not proceed, whether he calls in evidence the first summons or the second summons or none at all, since he has had a reasonable day, and knew that he had been summoned or ought to have known it. But if he has not come at all, then let the assise be held by default, if the jurors shall be present, and so let the business be terminated. But if they shall not be present, then let a precept issue to the viscount, that he have their bodies there on another day. At which day whether they have come or not, let the assise be held before all things, since his absence works the same effect as his presence, since he can say nothing in hatred of the default wherefore the assise should be stayed, except by chance to certify the jurors, if they have a charter, or something of the kind has intervened. f. 238 b.

The king to the viscount greeting. We enjoin you that you cause to come, &c. A., B., C., or that you have &c. the bodies of A., B., and C., as recognisors of an assise of last presentation which has been summoned in court, &c. before the justiciaries, &c. between A. as plaintiff, and B. impeding him in the advowson of the church of M., and to show cause why they were not, &c. on a certain day and at a certain place as they were summoned, and if they shall make further default, then in the end of the writ let it be so said, and to hear judgment against them for several defaults. Let it also be said at the end of the writ, if it be requisite, and place so many and such, as well knights as other free, loyal, and discreet persons of the nearest neighbourhood, on that assise, and have them present before our aforesaid justiciaries on the aforesaid day, to make that recognition together with the jurors already elected, and that meanwhile they should view that church, so that the assise shall not be stayed from failure of the recognisors. Or thus: and otherwise. And in the place of such as 5.
A writ
that the
viscount
cause a
jury to
come.

qui de assisa amoveantur, eo q̄ sunt certa ratione suspecti, vel quia sunt homines vel parentes talis, vel alio modo inutiles vel essoniabiles, vel loco talium qui mortui sunt, ponas tot & tales legales & discretos milites alios cū prius electis, & tales &c. ut supra. Et sumoneas per bonos summonitores talem, si fortè absens fuerit eo die, q̄ sit coram &c. ad audiendum assisam illam, & ad ostendendum quare non fuit &c. & talis summonitio fit ex abundantia. Et habeas ibi summoñ & hoc breve &c. T. &c. Et licet ultima clausula habeat locum in omnibus assisis quæ capiendæ sunt per defaultam, sicut assisa mortis antecessoris &c. & aliæ, si ad primum diem se essoniaverint & diem habuerint per essoñ suum, & ad quem non apparuerint, capiatur assisa per defaultam statim, non jacebit resummonitio. Item si comparuerint & juratores non, semper habebit unicum essoñ quotiens in curia cōparuerit, & diem habuerit.

6.
De essoniis
et resum-
monitioni-
bus et hu-
jusmodi
placitis.

Britton, iv.
ch. i. § 4.
Fleta, 318.

Ex præmissis satis apparet quando & quoties jacet resummonitio, & quotiens assisa capitur extra com̄ vel coram iij. justiciariis ad hoc assignatis: sed coram justiciariis itinerantibus in com̄ ad omnia placita non habet locū resummonitio nec xv. dierum diffusa dilatio, ubi tenens in assisa mortis antecessoris vel impediens & deforcians, ut hic manentes sint & etiam res de qua agitur in eodem com̄ tempore itinerationis, non magis quàm contra minorem, sed statim capiatur assisa post primā defaultā sicut assisa novæ disseysinæ. Et q̄ nulla debet fieri resummonitio in itinere justiciariorum in prædicto casu cū partes præsentis sint in com̄, & res