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Tenure: services and incidents

(1) Services

STANFELD v BREWES (1199)

Rotuli Curiae Regis, I, p. 366.

Surrey. An assize comes to declare whether Simon de Brewes and Luke the clerk and Peter de Brewes unjustly and without judgment disseised Odo de Stanfeld and Juliana his wife of their free tenement in Mitcham within [the limitation period of] the assize.

Simon says the assize should not be taken because he took that land into hand by judgment of his court, which he produces and which attests this, for failure of service.

And it was attested that Odo holds that land of this Simon.

Simon is commanded to replevy that land to Odo together with his chattels, and to deal with him rightly in [Simon's] own court.

LUCY v ADAM SON OF JOHN (1203–04)

(a) *Curia Regis Rolls*, II, p. 273.

Cumberland. Richard de Lucy claims from Adam son of John that he should do the services and customs that he ought to do for him in respect of the free tenement he holds of him in Briscoe, namely… [an elaborate recital of services mostly concerning the forest and the collection of tolls].

And Adam comes and expressly acknowledges that he owes [some of these services]; and he puts himself upon the grand assize of the lord king and asks that it be declared whether he ought to hold his tenement just by the services that he acknowledges or by the service that Richard demands…

(b) *Curia Regis Rolls*, III, p. 206.

Adam son of John, who placed himself upon the grand assize in a plea concerning the service which Richard de Lucy demanded from him in respect of the free tenement which he held of him in Briscoe, has come and surrendered to

[Richard] the tenement from which he demanded the service, and has quit-claimed it for ever for himself and his heirs in favour of Richard and his heirs…

(2) Incidents

NEREFORD v WALTER SON OF HUMPHREY (1200–01)

(a) *Curia Regis Rolls,* I, p. 177.

Essex. Peter son of Geoffrey [de Nereford] claims from Walter son of Humphrey that he should do homage and service for one knight's fee in Great Yeldham with the appurtenances, which [Peter's] father Geoffrey and Peter himself granted to Walter's father Humphrey by fine agreed in the king's court.

And Walter comes and says that the earl of Clare has disseised him for the default of this Peter, because Peter has not done homage for this land or paid relief to the earl; and the earl's steward attests this and says the earl still holds the land because of Peter's default.

And Peter says that Walter is not yet disseised because he is still seised…

(b) *Curia Regis Rolls*, II, p. 61.

Essex. Walter son of Humphrey, from whom Peter de Nereford claimed homage and relief for one knight's fee in Great Yeldham, has come and done homage and paid him his relief.

VAVASSUR v BEC (1218)

Rolls of the Justices in Eyre for Lincolnshire, 1218–19, and Worcestershire, 1221, Selden Soc. vol. 53, pl. 141.

[Lincolnshire]. An assize comes to declare whether Henry Bec unjustly and without judgment disseised Goda daughter of Gilbert Vavassur of her free tenement in Saltfleetby [within the limitation period of the assize].

And Henry comes and says that she never had seisin because immediately on the death of Goda's brother Robert, who died seised of that land, [Henry] as lord of the fee took the land into hand by reason of the infancy of Robert's son and heir Gilbert.

And Goda says that the same Robert had no son by his wedded wife; and she was herself in seisin of that land for half a year after Robert's death, and behaved as heir and sowed the land and took other issues; and she asks that her assize [be taken].

And Henry says that she never had seisin [of the land]; and thereof he puts himself upon the assize, and Goda likewise.

The jurors say that after Robert's death [Goda] remained in seisin of that land as heir, and was seised of it and took issues; and that, on the order of the same Henry, John Bec unjustly and without judgment disseised her.

And so it is adjudged that [Goda] have her seisin; and Henry is to be amerced. Damages 15 marks.

CLAVERDON v EARL OF WARWICK (1221)

Rolls of the Justices in Eyre for Gloucestershire, Warwickshire and [Shropshire], 1221–22, Selden Soc. vol. 59, pl. 406.

[Warwickshire]. An assize comes to declare whether Henry earl of Warwick and Thomas de Hethe unjustly and without judgment disseised Richard son of Richard of Claverdon of his free tenement in Claverdon [within the limitation period of] the assize.

And the earl comes and says the assize should not be taken because he readily acknowledges that the aforesaid Richard's father Richard held the tenement of him and did him homage, and this Richard should be his man; but when the father Richard died his widow stayed on in the house and is still there; and because she would not at [the earl's] summons deliver up the heir Richard to him, he took the land into his own hand by judgment of his court; and [to attest this] he produces his court of Warwick where this was done, namely . . . [six names] who record that when [the father] Richard died his widow remained in the land with the aforesaid heir, so that the heir was in seisin with his mother; and the earl ordered the mother to deliver up the heir; and because she would not, he asked his court what was to be done about it, and the court adjudged that she should be summoned to come to his court on a certain [day] to answer; and she was summoned by . . . [two names] who are present and attest this. At that day she neither came nor essoined herself, and the earl asked his court what was to be done about it; and the court adjudged that she should be distrained to come to the next court. At that [next] court, because it was attested that she had no chattels by which she could be distrained, the court adjudged that the earl should betake himself to his fee until the heir should do what he ought to do. And so he took that land into his hand by way of distraint [as well he might].

And Richard who is within age says he was seised of that land for three years after his father's death; and after the disseisin the earl enfeoffed the aforesaid Thomas of nine acres for five shillings to be paid to the earl. And Thomas acknowledges this. And Richard says also that the land is socage and no wardship attaches to it. And he says that on the earl's authority Thomas cultivated the land and took the fruits for four years. And the earl acknowledges that indeed his bailiffs caused the land to be cultivated, but not on his authority.

And so it is adjudged that Richard should recover his seisin, and that the earl should be amerced . . . Damages one mark . . . Afterwards the earl came and made fine of 40 marks for himself and his court.

BISHOP OF CARLISLE v WIGENHALE (1236–37)

(a) *Bracton's Note Book*, pl. 1175.

Norfolk. Adam de Wigenhale was summoned to answer to the lord king by what warrant he holds himself in one carucate of arable with the appurtenances in Garboldisham which [his brother] William de Wigenhale held of John de Jarpenvilla the father of his heir John de Jarpenvilla who is within age and in the king's wardship, which land should escheat to the heir because the aforesaid William was a bastard and died without heir of his body etc.; the bishop of Carlisle has this wardship by grant from the king.

And Adam comes and is unwilling to answer without writ and he says that he was in seisin of the same land and is disseised of it, and he claims his seisin.

And the bishop, as the king's grantee of the wardship of the aforesaid heir, says that [Adam] never had seisin: it is true that the bishop took Adam's fealty and ordered his bailiff to make seisin to him of the aforesaid land; but before seisin was made, the bishop was given to understand that Adam's brother William was a bastard, because born before his father married his mother.

And Adam as before asks judgment whether he need answer. And because the sheriff has not sent the writ, they are given such a day before the lord king; and meantime let the writ come, and the sheriff is to have the writ on that day . . .

(b) *Curia Regis Rolls*, XV, pl. 1882; also *Bracton's Note Book*, pl. 1181.

Norfolk. Adam de Wigenhale was summoned to answer to the lord king by what warrant he holds himself in one carucate of arable with the appurtenances in Garboldisham which [his brother] William de Wigenhale held of John de Jarpenvilla the father of his heir John de Jarpenvilla who is within age and in the king's wardship, which land should escheat to the heir because the same William was a bastard and died without heir of his body, so it is said. And as to this the bishop of Carlisle, who sues for the king, says that the land should revert to the aforesaid heir because Adam's brother William was a bastard because born before William's father married his mother.

And Adam comes and says that that William was legitimate; and he asks judgment whether bastardy should be imputed against him after his death. And he says that his dead brother William, on the death of [William's] father, came to the chief lords and did them homage for his father's lands and tenements without any challenge of bastardy. And when William died, [Adam] himself likewise did homage to the chief lords without challenge; and he went to this bishop

and offered him homage, and [the bishop] answered that he would not take his homage until [the bishop] knew whether [Adam] was heir or not. And later, having inquired into the matter, [the bishop] took his fealty and made him letters patent telling [the bishop's] bailiff to put [Adam] in seisin; and the bailiff did put him in seisin; and [Adam] says that he is disseised by the bishop, and he asks judgment whether he need answer while disseised. And he will show that the same William was legitimate in whatever way the court shall adjudge.

Afterwards came Adam and acknowledged that William died seised, and claims seisin as [William's] brother and heir . . .

And the bishop comes and says that the same Adam had no seisin and so was not disseised; although indeed it may well be that when William was dead the same Adam intruded himself into that land. But the same bishop on [William's] death took that land into his own hand as that of which he was entitled to the wardship because John de Jarpenvilla's heir was in his hand by the king's command, and he placed his serjeant [in that land]; and the aforesaid [Adam] had no seisin except such as [he acquired by] his own intrusion. But the bishop says that indeed [Adam] came to the bishop and made an agreement about his relief and did him fealty and had letters from the bishop to [the bishop's] serjeant ordering him, if Adam gave him security for that relief, to make seisin to him of that land. But because Adam did not give security, and also because [the bishop] heard that the aforesaid William was a bastard and so could have no heir except of his body, [the bishop] would not make seisin to [Adam], but he and his serjeant were in seisin until the lord king took that land into his own hand. And concerning this, if need be, he puts himself upon the country.

And Adam by his attorney says that he was [put] in seisin by the bishop's bailiff; but he says that the country knows nothing of the seisin made by the bishop's bailiff.

Afterwards the bishop comes and says that he ought not to make seisin to the aforesaid Adam because William was married to a wife, Agnes de Wigenhale by name, by whom he had an heir who is clearly heir and who claims William's inheritance; and indeed the aforesaid Agnes is claiming her dower and if need be is ready to prove the marriage between herself and William, and so it seems to [the bishop] that he ought not to make seisin to the same Adam or anyone else until it is certain who is the right heir. And he says that the same Adam on another occasion acknowledged that the aforesaid Agnes was holding herself out as William's wife and had children by William.

And Adam's attorney acknowledges that indeed this Agnes says she was married to William, but she says it falsely and to hinder and bar Adam's right. And because the same attorney acknowledges this, it is adjudged that Agnes is to be summoned to come [on such a day] to declare whether she is claiming dower from that land and whether or not she has children who ought to be William's heirs.

On that day Agnes comes and declares that she was William's wedded wife and that she has by him a son called Adam who ought to be William's heir, and that she is claiming her dower as one who was married to the aforesaid William; and if need be she has sufficient proof that she was so married.

And Adam says that so far as he knows the aforesaid Agnes was never married to his brother William; and that she was never married [to him] appears clearly from the fact that not long ago she was claiming as her husband a certain Nicholas son of Alan de Wigenhale; but [Adam] does not know what became of that claim.

And because it is not known whether or not the same Adam son of William [and of Agnes] intends to claim any right in that land, he is to be summoned to come [on such a day] to declare what right he claims in that land.

DE LA HETHE v LONDON (1241)

Curia Regis Rolls, XVI, pl. 1767.

Herefordshire. Edith de la Hethe claims from Master Gervase de London the wardship of the land and heir of Robert de la Hethe in Cradley, which belongs to her because the aforesaid Robert held his land in socage and because the aforesaid Edith is next of kin to the aforesaid heir.

And Gervase, who at another time vouched the bishop of Hereford to warranty in this matter, comes and says that he has the aforesaid wardship by gift from a certain Roger de Waure by [Roger's] charter, which [Gervase] produces and which attests this; and he says that the aforesaid Roger had it by gift from Ralph, formerly bishop of Hereford, by [bishop Ralph's] charter, which [Gervase] likewise produces and which attests this; and he says the bishop could well give that wardship to whomever he wished, because Robert de la Hethe, the aforesaid heir's father, held of [the bishop] by charter and by knight service and not merely in socage; and as to this he puts himself upon the country.

And the bishop of Hereford comes by his attorney and warrants [Gervase], and likewise puts himself upon the country.

And Edith says that the aforesaid Robert held his land merely in socage and not by knight service; and as to this she puts herself upon the country. And so the sheriff is ordered to hold an inquest…

On that day the inquest comes, which is as follows: that the aforesaid Robert held his land merely in socage and not by knight service. And the aforesaid Gervase knows of no other reason why the wardship should not belong to [Edith]. It is adjudged that the aforesaid Edith should recover her seisin, and that Gervase should be amerced.

(3) Legislation protecting lords' interests

ORDINANCE ABOUT ALIENATION BY TENANTS IN CHIEF (1256)

Calendar of Close Rolls, 1254–56, p. 429.

The king to the sheriff of Yorkshire, greeting. Because it is clearly to our most serious loss and to the insupportable harm of [our] crown and royal dignity that anyone should enter baronies and fees which are held of us in chief within our realm and power, at the will of those who hold of us those baronies and fees, so that we lose wardships and escheats, and [so that] our barons and others who hold of us those baronies and fees so decrease [in resources] that they cannot properly do the services due to us [from those baronies and fees], whereby our crown is seriously harmed, which we will bear no longer; we have by our council provided that from henceforth none shall enter a barony or any fee held of us in chief by purchase or in any other way without our consent and special licence.

And so we strictly command you, in the faith by which you are bound to us and as you love yourself and all that you have, that you do not permit anyone from henceforth to enter by purchase or any other way a barony or any fee held of us in chief within your bailiwick without our consent and special licence. And if contrary to this provision anyone enters a barony or any fee held of us in chief within your bailiwick, then you are to take into our hand the land so entered and to keep it safely until we give you some other command concerning it. And you are so to conduct yourself in carrying out this our order that we suffer no damage in this respect and no harm to our crown or dignity through your failure or neglect, for which we should have to betake ourselves seriously to you and yours. Witness the king at Bristol on the 15th day of July [1256].

A like order has been sent to every sheriff in England, witness as above.

STATUTE ABOUT EVASION OF WARDSHIP (1267)

Statute of Marlborough, 52 Hen. III, c. 6;
Statutes of the Realm, vol. I, p. 20.

Concerning those who make feoffment of their inheritance to their first-born sons and heirs under age, so that the lords of the fees thereby lose their wardships: it is provided, agreed and granted that no chief lord shall lose his wardship by reason of such feoffment.

Further concerning those who, wishing to hand over lands for a term of years so that the lords of the fees shall lose their wardships, make up false feoffments which allege that they are satisfied for the service reserved in [those feoffments]

up to a stated time, and that after that time the feoffees shall be bound to pay some amount much exceeding the value of those lands, so that after that time the lands will revert to [the grantors] because nobody will want to hold them for so much [service]: it is provided and granted that no chief lord shall lose his wardship by this kind of fraud. But still it shall not be lawful for [such lords] to disseise such feoffees without judgment, but they shall [proceed by] writ to recover such wardships, and by the witnesses named in the charters of such feoffments together with other free and lawful men of the countryside, and by [comparing] the value of the land with the amount of the service reserved after the aforesaid stated time, it shall be determined whether such feoffment was made in good faith or fraudulently to deprive the chief lords of their wardship. And even if the chief lords in such cases recover their wardship by judgment of the court, still there shall be saved to such feoffees their action against the heir when he comes of age to recover their term or their fee.

And if any chief lords maliciously implead any feoffees pretending that it is such a case, when the feoffments were made lawfully and in good faith, then there shall be adjudged to the feoffees their damages and the costs which they incurred by the aforesaid plea, and those claimants shall be heavily punished by amercement.

STATUTE *QUIA EMPTORES* (1290)

Statutes of the Realm, vol. I, p. 106.

Whereas the buyers of lands and tenements belonging to the fees of great men and other [lords] have in times past often entered [those] fees to [the lords'] prejudice, because tenants holding freely of those great men and other [lords] have sold their lands and tenements [to those buyers] to hold in fee to [the buyers] and their heirs of their feoffors and not of the chief lords of the fees, with the result that the same chief lords have often lost the escheats, marriages and wardships of lands and tenements belonging to their fees; and this has seemed to the same great men and other lords [not only] very hard and burdensome [but also] in such a case to their manifest disinheritance:

The lord king in his parliament at Westminster after Easter in the eighteenth year of his reign, namely a fortnight after the feast of St John the Baptist, at the instance of the great men of his realm, has granted, provided and laid down that from henceforth it shall be lawful for any free man at his own pleasure to sell his lands or tenements or [any] part of them; provided however that the feoffee shall hold those lands or tenements of the same chief lord and by the same services and customary dues as his feoffor previously held them. And if he sells to another any part of his same lands or tenements, the feoffee shall hold that [part] directly of the chief lord and shall immediately be burdened with such amount of service as belongs or ought to belong to the same lord for that part according to the amount

of the land or tenement [that has been] sold; and so in this case that part of the service falls to the chief lord to be taken by the hand of the [feoffee], so that the feoffee ought to look and answer to the same chief lord for that part of the service owed as [is proportional to] the amount of the land or tenement sold. And be it known that through the aforesaid sales or purchases of lands or tenements or any part of them, those lands or tenements must in no way, in part or in whole, by any scheming or contriving, come into mortmain contrary to the form of the statute lately laid down on this matter.[1] And be it known that this statute applies only to lands to be held in fee simple; and that it applies [only to sales to be made] in the future; and it is to take effect at the feast of St Andrew [30 Nov. 1290] next coming.

[1] Statute of Mortmain, *De Viris Religiosis* (1279).