ERRING JUDGES OF THE THIRTEENTH CENTURY.

The Royal Historical Society (of London) has published much material of great interest to lawyers—a humble Fellow, I think none is more interesting than that published in 1906: "State Trials of the Reign of Edward the First, 1289-1293."

The subject is the investigation into the alleged cruelty, injustice and venality of the Royal Officers, great and small, in England, during the absence of the King in Gascony, 1286-1289—among them some of the Judges. It is well known to students of legal history that several Judges were accused and some convicted and severely fined—some losing their Commissions as well.

It is, however, gratifying to know that examination of the extant official records enables the learned editors to say that very many charges were found to be without real basis in fact—nevertheless there was a drastic and dramatic weeding out of the judicial Bench which made a great impression; and since that time while there has been in England a sporadic case from time to time until comparatively recent years, of judicial corruption—as witness the deplorable case of Bacon—there has been no complaint of wholesale impropriety.

The earlier instance of drastic and extensive punishment of Judges by King Alfred we now know to be entirely mythical, depending wholly for authority on the lying "Le Mireur a Justices."[1] The transactions in King Edward's time, however, are authenticated by extant records, and are mentioned by reliable historians.[2]

It is not the purpose of this Paper to discuss the matter at large; but only to give some account of certain of the proceedings before the Commissioners or Auditores. I shall not transcribe the original Latin but translate as literally as the idioms of the two languages permit, abbreviating in unimportant matters.

All the Justices of the Bench and especially William de Brompton[3] were accused by the Abbot of Roche (a Cistercian Abbey near Rotherham in Yorkshire) and the investigation took a wide course.

The complaint was that one John Paynel, by the maintenance of John of Kirkby then Bishop of Ely whose niece[4] Paynel had married, had a writ of *precipe in capite*[5] against William the preceding Abbot of Roche concerning certain land in Roxby in Lincolnshire, and that the writ was returned into Court on the Octave of St. John the Baptist. On this day the Abbot aforesaid was essoigned[6] and had "a day" 15 days after Michaelmas—("15 days"

meant a fortnight at the Common Law) on which day he craved a view of the land and had a day 15 days after St. Martin's on which day the Abbot was essoigned and had a day 15 days after St. Hilary's on which day the parties pleaded—so that within the half year four days were given to the said Abbot—against the law and custom of the Realm, according to which in one year only three or in two years only five days could be given in a Writ of Right—to the damage of the said Abbot, etc. This was the first ground of complaint—a status being claimed by the complaining Abbot under the penultimate Chapter of the Statute of Marlborough.[7]

The second ground of complaint was more serious:

When the Justices had on the day last named given Abbot Walter a day the morrow of Ascension Day, Walter died shortly before the return day at Beaulieu (a Cistercian Abbey in the New Forest)—and on the day, monks of Roche came before the Justices and informed them that he was dead "which was testified by true and lawful men and the letters of the Abbots of Beaulieu and of Netley (a Cistercian Abbey on Southampton Water) that they had buried him on Tuesday; but the said Justices did not admit or enrol this evidence,[8] against the Statute of Westminster II.[9] but by error and favor adjudged default[10] against the said Abbot after his death. And they directed the issue of a writ called *parvum cape* to seize the land into the King's hand and to summon the Abbot to be before them on the Octave of St. John the Baptist to hear judgment on his default made after appearance. On this day monks of Roche came with monks of Beaulieu before the Justices and said that no default could be made because the Abbot was dead which they were ready to prove—notwithstanding this, the Justices adjudged Seisin of the land to Paynel, no inquisition being had[11] and the said Abbot in mercy."[12]

Damages were claimed for the existing Abbot and his House of £1,000.[13]

William de Brompton, brought before the Commissioners, pleaded that the plea between the (former) abbot and Paynel was before him and his fellows of the Bench and judgment was rendered therein according to the law and custom of the realm—and afterwards on Royal Writ[14] they sent the Record and Process before Ralph de Hengham and his fellows holding Pleas of the Crown[15] "and he says that the said judgment was there affirmed as good according to the law and custom of England—whence it appears that he ought not to be called upon to answer without the said Ralph and his fellows who affirmed the said judgment as good. And he said that

if the Auditores so directed he would answer without them." His dilatory plea was ineffective: he was asked about the essoigns—four days in half a year—and he said that heretofore the Justices of the Bench were accustomed of their own volition to give to the parties more than three days in a year "according to the nearness of the County (Court) before duel waged or the sending of the Grand Assize."[16]

As to the evidence of the death of Abbot Walter, predecessor of the present Abbot, he said that he did nothing against the law and custom of the realm—for he said testimony of this kind by letters of Bishops or Abbot is not admissible as authentic (*tanquam autentica*) in the King's Courts except in special cases, that is to say, when the Bishop writes to the Justices of the Bench that a certain person is excommunicated for contumacy or absolved if previously excommunicated and the like.

And moreover, he said that an Inquisition was had on precept of the King concerning the death of Abbot Walter by which Inquisition it was found that he was alive on the day of judgment rendered.[17]

The Abbot complainant admitted that it might be that the judgment had been afterwards affirmed by Ralph de Hengham in the (King's) Bench—but claimed nevertheless that it was not good but that Ralph had increased not corrected the wrong done thereby to the Abbot.

William de Brompton then said that if there was any error in the process, it should be corrected by the Auditores: they sent for Record and Process and issued a Precept to the Sheriff of Lincolnshire to have Philip Paynel[18] tenant of the land present before them on the Quinzaine of St. Hilary's Day to hear the Record, etc.—it was accordingly read. Afterwards on the Octave of St. John the Baptist came before the Auditores, the Abbot and also Philip Paynel and Robert de Rowelle the tenants of the land. The Abbot asked that if any errors were found in the Record, the Auditores should correct them. And now came the dramatic climax. I translate literally:

"And inasmuch as on inspection of the aforesaid Record and Process had before Thomas de Weylaunde[19] and his fellows, it appears that a certain Inquisition held at the suit of the Abbot himself was returned into the Bench at Westminster before the Justices aforesaid by which it was found that the said Abbot, whom the monks of Roche asserted to be dead on the Tuesday next before Ascension Day in the 13th year of the present King at Beaulieu in the County of Southampton, was there alive three weeks after St. John the Baptist Day of the same year, crossing over Hamble Water[20] — and

also, inasmuch as the said Record was at the suit of the said Abbot brought before the King when John Paynel better proved the life of the said Abbot than the present Abbot the death of his predecessor, in that the said John (Paynel) proved by men in religion, Knights and servants worthy of belief and the Abbot by monks and his household whose evidence was not so good as that which the said John produced—whereby the Court of the King was sufficiently satisfied that the said Abbot predecessor of the present Abbot was alive at the time that seisin of the said tenements was given (to Paynel) by default of the said Abbot—and inasmuch as the said judgment which was rendered by the Justices of the Bench was afterwards confirmed by the Judges sitting for the King and by the whole Council of the King[21] and inasmuch as the parties who are now in judgment are not the same as those when judgment passed, it is considered that the said William de Brompton) Philip (Paynel) and Robert (de Rowelle) go hence without a day and that the said Abbot take nothing by his plea but be in mercy for false plea. And let him sue by Writ if he thinks he can better himself."[22]

Ralph de Hengham, Chief Justice of the King's Bench,[23] was equally fortunate. William de Camville, a merchant of Bristol, complained of him that when he brought the Record and Process of a false judgment of the Mayor, Bailiffs and Commonalty of Dublin[24] under the seal of the Chief Justiciar of Ireland before de Hengham and also brought before him Adam Hundred and William de Beverley then Bailiffs of Dublin, to hear judgment concerning the said Record and Process, de Hengham refused to hear him, drove him from the Court and threatened him that if ever thereafter he produced this Record and Process before him he would have him imprisoned for a year and a day where he would see neither hand nor foot.

William further complained that when he offered himself against Adam Hundred and asked judgment on the Record and Process, de Hengham made him count (Narraret) *de novo* against the Attorney of Adam Hundred, so that he impeded William unjustly lest he could recover against the Dublin Court by reason of the false judgment and the said Court lose its franchise—he vouched the Rolls of Easter Term, 16 Edw.[25]

A third complaint was that when judgment was given against Adam Hundred by de Hengham as for want of defence (tanquam pro indefenso), and William procured a Writ from de Hengham to the Chief Justiciar of Ireland to deliver to de Camville £40 and 1 mark then in the custody of the Chief Justiciar of Ireland and to

distrain Adam by lands and chattels to the value of £200 claimed by de Camville of him—"then came the said Ralph and wholly annihilated (adnichilauit) his judgment formerly before him rendered."

A fourth complaint was that after he had prosecuted his said action before de Hengham for two full years and even half a year after judgment obtained from de Hengham, the latter sent the Record and Process to the Court of Dublin for determination. A fifth complaint renewed this in different words.

De Hengham came and said that William did not have the original Writ of the King with Record and Process but some sort of a Writ under a seal he did not know and that he could not proceed without the original Writ—he vouched the Rolls and Writ to Warranty.

De Camville said that he produced the original Writ under the seal of the Chief Justiciar of Ireland and he also vouched Rolls and Writ—consequently the parties were at issue on the first complaint.

On the second there was a straight denial and vouching of Record by both parties.

As to the third and fourth, de Hengham said that the Writ issued by him was for distress only; and that he had a Writ of the King to send the Record of the plaint to Ireland. The Writ is copied *in extenso:* condensed, it sets out that on behalf of the Mayor and Citizens of Dublin it was shown that the King's predecessors had granted to them that if error or injustice were claimed by either party in pleas heard before them, the same might be corrected by "Our Chief Justiciar, or Council or our Justices of the Bench,"[26] that he Camville had averred error in an action in Dublin between him on the one side and William de Beverley and Adam Hundred on the other and had caused the said plea to be brought before de Hengham in England "contrary to the said concessions and liberties by Our progenitors granted and to the no small damage and detriment of the said citizens." The Judge was ordered no further to intromit in the said plea but to send it to Ireland.[27]

"And inasmuch as it is found that the said Ralph had not an Original Writ whereby he could proceed and moreover it is found by the said Writ of the King that the said Ralph could not proceed in the said plea to the prejudice of the said citizens but that he must remit the said plea to Ireland: Therefore it is considered that Ralph go quiet (recedat quietus) from the plaint of the said William: And that William take nothing by his plaint but be in mercy for false claim. And he is pardoned inasmuch as he is poor."[28]

Let us mention one who was not a Judge.

Roger of Lincoln, Constable of Devon, was accused by Thomas Silvester that on Monday next before St. Denis' Day, 16 Edw. I., he caught Silvester on St. Peter's Cemetery in Exeter and dragged him by the legs to gaol shackled by four fetters and afterwards threw him head first without a ladder into the bottom of the gaol a depth of not less than fifteen feet, manacled, on the neck—so that by the fall, he bled all night at the nose, "os suum et fundamentum eius." He kept him in this dungeon from Tuesday till Friday after seven o'clock without meat or drink so that he was nine times in a faint and as though dead.

He also complained that Roger had seized some cattle of his. Roger pleaded that Silvester had previously been the King's Bailiff and had come of his own accord to render account of his receipts as such—that he was found in arrears £36, and that he was arrested and sent to the King's prison until he should pay his arrears. Afterwards certain friends of his came and became bail for the debt and he was released: and later he came and delivered the cattle in payment. Silvester stuck to his story.

The Commissioners directed the Coroners to summon twenty-four jurors to try the fact: the result is not given.

A whole tragedy appears in the plaint against William de Saham,[29] a Justice in Eyre in Huntingdonshire. The story as told is a long one but the salient features are as follows: Simon of Fenstanton (near St. Ives, Huntingdonshire) was said to be insane and incapable of disposing of his property—a writ was obtained directed to Richard de Holebroke, Royal Seneschal,[30] commanding him to commit the insane man with his lands and chattels to the care of some of his reliable relatives or friends who would be willing to treat him well and answer for his sustenance from the property. After a finding of insanity by an Inquisition by the Counties of Huntingdon and Cambridge, de Holebroke delivered the guardianship to Robert and the other sons of Simon. Simon however escaped from them and without their knowledge sold part of his property to Nicholas de Segrave, whereupon Robert obtained a Writ directed to the Earl of Cornwall ordering him if he found that de Holebroke had made Robert and his brothers Committee, to replace Simon in their custody and take any lands sold by Simon into the King's hands.

When de Holebroke returned to England he heard that de Segrave was trying to have a Fine between him and Simon of the land bought, levied before the Court; he appeared before the Justices, showed them the King's writ and opposed the Fine as did the Royal Attorney, Gilbert de Thorntone[31]; but nevertheless the Justices allowed

the Fine to be levied. De Segrave first appeared before the Commissioners bringing with him Godfrey Pickeforde and Thomas de Belhus formerly Sheriff of Cambridge—he said that the sons of Simon had been holding him in chains and depriving him of the management of his property although he was of sound and disposing mind, and that the King sent his Writ to Pickeforde directing him to go to the house of Simon with the Sheriff of Cambridge and other good and lawful men of the County and if they found him of sound mind and good memory they should cause him to have full control of himself and his property. Pickeforde stated that he received the Writ, and went along with the then Sheriff ("now present in Court and who asserted the same") and other lawful men of the County to Simon's house found him in irons in his chapel[32] but of sound mind and good memory, and so he had the irons removed and took him into his Hall before the Sheriff and the other faith-worthy men before whom he answered all questions well and wisely and bade them to dinner and spoke on all other matters sanely. As it seemed to Pickeforde and the others that he was of sound mind they delivered to him free administration of his estate.

On the Commissioners examining the Records, it was found that neither the objection of Robert nor that of Gilbert de Thorntone, the King's Attorney, had been entered or anything else than the *licentia concordandi* between Nicholas de Segrave and Simon. The Judge, William de Saham, then appeared and said that Robert did frequently object in the Eyre to the Fine being levied on the ground that his father Simon was *non compos mentis* and Gilbert de Thorntone for the King alleged the same—saying that Simon many times naked and girt with a sword visited the ladies of the country and did many other things such as those so afflicted do. The Judge said that on such representations the Justices in Eyre superseded the proceedings and refused to go further. Then Nicholas took Simon to the Exchequer at Westminster, where he was examined by Privy Councillors and found by them competent to levy a Fine—the Earl of Cornwall, the King's representative, then directed the Court to proceed with the investigation.

The King put an end to the proceedings before the Commissioners by a Writ dated at Berwick-on-Tweed as de Segrave was employed in his service in Scotland—and "predicta querela remansit sine die."[33]

Toronto. WILLIAM RENWICK RIDDELL.

[1] This "Le Mireur a Justices," "Mirreur des Justices," "Speculum Justiciarorum," "Mirror of Justices," long considered of authority was put in its true place by Frederic William Maitland in his edition published by the

Selden Society, London, 1895. The very learned editor calls it "an enigmatical treatise," devoured by Coke with "uncritical voracity" and considered by him "a very ancient and learned treatise of the laws and customs of the Kingdom" (Coke, 9 Rep., Preface), which has done much harm "to the sober study of English legal history"—speaking of the author, whoever he was, the editor truly says: "The right to lie he exercises unblushingly. A good instance is given us by the daring fable about the forty-four false judges whom King Alfred hanged in the space of a year . . . unless fortune has served him or us very ill, we must hold that he did not scruple to invent tales about times much later than those of Alfred."

Those interested are referred to two Papers by J. S. Leadam, *Transactions Royal Historical Society*, 1892, pp. 192-262, and 13 *Law Quarterly Review* (January, 1897), pp. 85-103; my article "King Alfred's Way with Judges," 16 *Illinois Law Review* (June, 1921), pp. 147-149, is of lighter calibre, but may be interesting to some.

[2] Maitland's *Mirror of Justices, ut suprâ*, Introduction, xxiv.: "the only or almost the only time in English history when a sweeping denunciation of the King's Justices as perjurers, murderers and thieves would have had enough truth in it to be plausible and popular . . . our one great judicial scandal . . . a unique event": Stubbs, *Constitutional History of England*, vol. ii., p. 125: Pauli, *Geschichte von England*, vol. iv., pp. 50, 51: Seeley, *Life & Reign of Edward I.*, pp. 75, 76: Lord Campbell, *Lives of the Chief Justices of England*, Murrray, London, 1849, vol. 1, p. 75: Edward Thompson Co.'s new revised and very beautiful edition. Northport, L.I., 1894, vol. 1, p. 111: Lord Campbell, *Lives of the Lord Chancellors* . . . Lea and Blanchard, Philadelphia, 1847, vol. 1, p. 147: Foss, of course, speaks of it under the name of each of the accused judges.

[3] William de Brompton was found guilty on other charges, imprisoned and fined — he had been a Judge of the Common Pleas from 1274. Foss in his *Biographica Juridica* places the fine at 6,000 marks, i.e. £4,000: Tyrell in his *History* makes it 3,000 marks, £2,000—the Receipt Book shows the true amount paid to have been £3,666 13s. 4d., i.e., 5,500 marks. He seems to have been reinstated as Judge, but this is uncertain.

[4] The word "neptem," "neptis," in Classical Latin was generally "granddaughter;" e.g., Ovid in his Metamorphoses, 4.530, speaks of Ino as "neptis Veneris." But like the corresponding "nepos," "grandson," it became even in Classical but post Augustan times in use for the child of a brother or sister. The "nephews" and "nieces" of ecclesiastics were not infrequently suspected of closer relationship to the cleric.

[5] *Præcipe in capite, or Præcipe quod reddat in capite* was a *Writ of Right* issued at the instance of a claimant of any land: it was directed to the Vicecomes or Sheriff and began (after the address "Rex Vicecomiti, &c.) "Præcipe. A. quod juste, &c., reddat B." and describes the land claimed—then it proceeds to direct the Sheriff if B. does not deliver up the land to A. to summon him to Court, A. having given security, &c.

For all the learning on the Writ see Fitzherbert *De Naturâ Brevium*, 4, 6, 10. It corresponded to our (former) Writs in Ejectment.

[6] Essoigns were an integral and important element in practice at the Common Law—the rules were intricate and in many cases uncertain. An essoign corresponds in substance to our adjournment or continuance.

[7] "Statutum Marlebergie" (the genitive and dative singular, nominative and vocative plural of the First Declension was in most mediæval MSS. written with an "e" not our "æ") or "Statutum de Marlebergie" or "Statute of Marlborough, made at Marlborough, alias Marlberge, November 18, 1267, 52 Hen. III., by cap. 28 provides that "if any Wrongs or Trespasses be done to Abbotts or other Prelates of the Church and they have sued their Right for such wrongs and be prevented with death before judgment therein, their Successors shall have actions . . . moreover the Successors shall have like actions for . . . things . . . withdrawn . . . from their House and Church before the Death of their Predecessor though their said Predecessor did not pursue their Right during their Lives: And if any intrude into the Lands . . . of such Religious Persons in the time of Vacation . . . the successors shall have a Writ to recover their Seison."

This is called the penultimate chapter as there are 29 chapters in the Statute, this being the 28th.

[8] In other words, did not enter a "Suggestion of Death."

[9] Statutum apud Westmonasterium editum," the "Statute of Westminster the Second," 1285 13 Edw. I., St. 1, by chapter 51, provided for the Judge "sealing an Exception."

[10] "Sic per errorem et fauorem et manutenementum predictum" seems to have been an almost formal and technical way of alleging misconduct.

When a tenant was duly summoned and failed to appear, unless he could essoign "*de malo lecti*," "*de malo veniendi*," "*de malo ventris*" "*de malo ville*," "*de ultra Mare*," or some other good excuse properly presented in Court, "defaltam adjudicauerunt Justiciarii"—the Justices adjudged default, and directed the lands claimed to be taken by the Sheriff "into the King's hand," *in manum Regis;* this they commanded by the writ *parvum cape*. The seizure by the Sheriff was mesne, minor, *parvum*, and not final. The tenant whose land was thus taken by the Sheriff, had the right to claim "per plevinam," and upon showing good cause might (not necessarily would) receive back the land until trial. Woe unto the litigant who rashly essoigned double. In Hilary Term, 1 Joh., 1200, as assize was held to determine if "Eudo the uncle of William de Takele had been seized in his domain and of fee of the quarter of a military fee in Hertherst of which land Herevicius de Geddinges and his son Thomas were in possession." "Ipsi essoniaverunt se de malo venidendi et postea de malo lecti: et capta fuit assisa per defectum"—they essoigned for difficulty in travel (i.e. bad roads, swollen fords, broken bridges, outlaw robbers, &c.) and then for sickness, and the assize was taken by default. Fortunately for them the Jury found against the plaintiff "quod Eudo non fuit inde saisitus," that Eudo was not then seized, and judgment went that Willelmus nichil capiat per assisam illam," William should take nothing by that assize.

In the same Term, Reginald de Leham had been sued for forty shillings claimed by Petronella, widow of Humphrey Robertson—suing by her Attorney Walter Robertson as dower given by her husband "ex dono viri sui." "Reginaldus . . . essoniavit se de malo veniendi et de malo lecti et non jacuit essonium)"—Reginald essoigned himself *de malo venidendi et de malo lecti:* and he did not cast an essoign. See *Curia Regis Rolls . . . Richard I. and John*, King's Printer, London, 1922, pp. 135, 146.

[11] "Inquisitia" has a wide signification in Common Law proceedings—here it means an inquiry by the Grand Assize. See note 16, *post*.

[12] "In misericordia"—in mercy. When a complaint proved baseless or a defence failed the unsucessful litigant was *in misericordia* and was liable to pay a fine to the King. The fine was not uncommonly half a mark, 6s. 8d., but sometimes much higher. I find one of 40s—worth about $175 or $200 at the present value of money. No small part of the Royal revenue came from these fines. We in Ontario still compel a litigant to pay at every step by stamp or in money.

[13] A tremendous sum in those days equivalent to some $80,000 to $100,000 at the present value of money.

[14] Of course a writ of Certiorari.

[15] Ralph de Hengham was Capitalis Justiciarius, Chief Justice of the King's Bench, which Court had supervision over all the Common Law Courts of the Realm: he became C.J. in 1274 and continued as such till 1289 when he was succeeded by Gilbert de Thornton mentioned in the Text. We shall come across him again. The story runs that his whole offence was to alter a Record and make a poor man's fine 6s. 8d., instead of 13s. 4d.

As the Year Book, Michaelmas Term, 2 Richard III. (1484) 10 (A) pl. 22, has it—after speaking of the gravity of the offence of erasing a Record, the Report proceeds: "p. talibus actibus Justic. pantea deinde fuer. psentat & convict,. & unus fecit finem de octingentis is marc.' videlicet Ingham: Justic alii &c., Et tantum fuit pro eo quod vdam paup fecerit finem p. quodm. debito ad. 13s. 4d. & idem Justic, fecerit rasari & pro pietat' fecit inde 6s. 8d."—for such acts Justices were long ago presented and convicted and one paid a fine of 800 marks, i.e., Ingham and other Justices &c. As to him the offence was that a certain poor man was to have paid a fine of 13s. 4d. for a certain debt and this Justice from sympathy caused it to be erased and to be inserted therein, 6s. 8d.

Coke, 4th Inst., f. 255, says that Ingham built the Clockhouse and supplied the Clock at Westminster Hall for his fine of 800 marks, (£533.6.8.) but Blackstone with unusual skepticism points out that "the first introduction of clocks was not till an hundred years afterwards about the end of the 14th Century." *Black. Comm.*, Bk. iii, p. 408, n(x): Original ed., Oxford, 1770. Blackstone was probably in error, for clocks had been in use from the 11th Century. This very clock with the motto "discite justitiam, moniti" is said to have been gambled away by Henry VIII, *Ency. Brit.*, Vol. 6, pp. 536, 537. At all events, it was a tradition at Westminster Hall—Coke, 4th Inst., p. 255, tells us that in the reign of Queen Elizabeth. Chief Justice Sir Robert Catlin (C.J., Q.B., from 1559 to 1572) accused Mr. Justice John Southcote (Justice, Q.B., 1563-1577) with altering a Record—the Judge denied it in open Court and said "he meant not to build a clock house."

De Hengham paid £4303 6s. 8d. 6455 marks of his fine of 7000 marks—perhaps the balance, 545 marks, went for the clock and clock house.

He figured in nine cases and was acquitted in five—he was taken into favour again to and by 1300 he was a Judge once more—and the next year became Chief Justice of the Common Pleas—he retired in 1309 and died in 1311, being considered worthy of burial in St. Paul's. Campbell says: "He may be truly considered the father of Common Law Judges: he was the first of them who never put on a coat of mail— . . . contented with the ermined robe," *op. cit.*, p. 113.

[16] I can find no rule against the number of "days" to be given in a year, &c: and the Commissioners treated the objection of the Abbot as baseless, passing it over *sub silentio.*

Before the time of Henry II, the only method of trial of right to possession or property in land was by Duel—that King by the assent of his nobles allowed the question to be tried by a "Grand Assize" of 12 Juratores and 4 Milites, on payment of a small fee to the Crown, generally 6s. 8d.

The duel or Battel was generally waged in the County Court but sometimes (and in later years always) at Westminster before the Judges of the Court of Common Pleas and the Serjeants-at-Law.

[17] This fact makes it almost if not absolutely certain that the Abbott applied by *plevina* for the land seized into the hands of the King by the Sheriff; that an Inquisition was ordered and found against him. The complaint against the Judges was a *dernier ressort.*

[18] John Paynel was the original claimant to whom seisin was given; but he must have placed Philip Paynel in possession or perhaps Philip succeeded to the inheritance—one Robert de Rowelle was also in possession of the land or some of it. Both Philip Paynel and de Rowelle were interested and had a right to be present in Court on Oyer of Record and Process. The modern form of the names is "Pennell" and "Rowell."

[19] Thomas de Weylaunde (Weyland) had been Chief Justice of the Common Pleas since 1278 with Puisnés, Roger de Leicester, Walter de Helyun (or Elias de Beckingham), John de Lovetot and William de Brompton. When the King returned, de Weyland promptly fled, disguised himself as a monk and hid in a Monastery at Bury St. Edmunds. Discovered "wearing a cowl and a serge jerkin," he was starved into surrender; he obtained leave to abjure the Realm on forfeiting all his lands and chattels to the Crown—he was deported at Dover and died in exile leaving a name execrated like those of Jeffries and Scroggs for a time but now wholly forgotten.

[20] Hamble River rises near Bishops Waltham and after a short course forms a narrow estuary opening into Southampton Water on the east between Southampton and the English Channel.

[21] The Privy Council (or Star Chamber) sitting at the Common Law before the Statute of 1487, 4 Henry VII, c. 1—See my Paper: "*The Judicial Committee of the Privy Council,*" Missouri Bar Association, 1909.

[22] This was a not uncommon entry when a litigant failed for any reason, corresponding to our "without prejudice to an action"—it might even be granted during the course of an unfinished action. As an example of the latter, in Hilary Term, 10 Richard I, (1199), in an Assize Mort d'Ancestor, Reginald de Lenna and John his brother being Claimants (patentees), the proceedings were held in abeyance because Richard the elder brother did not prosecute the case and was in misericordia; but "*Johannes querat breve si voluerit versus tenentes*"—let John seek a writ against the tenants if he likes.

In another case in Hilary Term, 1 John, (1200), William son of Osbert sued his brother Thomas by writ of Mort d'Ancestor: the action "remanet quia ipsi sunt fratres," but William was allowed to have a Writ of Right, Breve de Recto.

In Hilary Term, 2 John, 1201, the Abbot of this same House, Roche, sued by his attorney Reginald the Monk, the Prior of Holy Trinity at York and his House about the advowson of the Church at Roxby claiming that not the Prior but one Walter de Scotenin had the last presentation. Walter did not appear and the Prior went without a day: "et Walterus perquirat se si voluerit." One Ralph Painel figures in this action.

[23] As to Ralph de Hengham, see n. 15 *ante.*

[24] William de Camville (de Canuile or de Kanuile), a Bristol merchant, sued Adam Hundred and William de Beverley (de Beuerlaco) in the City Court of Dublin (Dinelyna, Dieuelina, Dublinia—all these names appear in this case) and failed. He procured the Chief Justiciar of Ireland to certify the proceedings and brought it before de Hengham in the King's Bench of England without an Original Writ of Certiorari, a clear irregularity even if

the English Court had had jurisdiction to supervise the Dublin Court. This irregularity alone was fatal to de Camville.

Moreover this was before Poyning's Law, 1294-5, 10 Henry VII, c. 22, and Ireland was not subject to English Statutes—Poyning's Law was repealed, (1782), 23 George III, c. 28.

In Blackstone's time, a writ of Error lay to the English from the Irish Court of King's Bench, *Comm.* Bk. iii. p. 43 (original edition).

[25] 1289—Edward I came to the throne in 1274.

[26] That is, in and for Ireland.

[27] He had wrongly intermeddled with the action and the King's Writ dated at Cundac (i.e. Condat near Libourne, France), June 12, 1285, ordered him "remittere recordum illius loquele ad partes Hibernie," and he did so.

[28] Sometimes an unsuccessful litigant was let off his fine because he was under age.

[29] William de Saham became a Justice of the King's Bench in 1272 and remained such till this scandal broke out—he seems to have been a muddle-headed man, but was fined 3,000 marks of which he actually paid £1666.13.4, 2,500 marks. He was not reinstated but survived until 1300 at least.

[30] "Seneschal" was a somewhat generic title—here "Senescallus" means the Chief Royal officer, *locum tenens Regis*, in a particular district. The writ was a writ *de lunatico inquirendo*, issued by the King as Parens patriæ.

[31] Gilbert de Thornton was Attornatus Regis, acting along with W. de Giselham from 1279: he became Chief Justice of the King's Bench in 1289-90, succeeding Raph de Hengham.

[32] "In capella sua in ferris, sane mentis et bone memorie existentem."

"Capella" in mediæval Latin was very ambiguous; Du Cange, *sub voc.*, gives eleven distinct and different meanings—it may be that the word here means nothing more than "house," *aedes ipsa*, the second definition given by Du Cange, vol. 2, p. 124.

[33] "And the said plaint stood over *sine die*." Very frequently the Kings even after Magna Carta directed a Writ to the Justices not to proceed in the case of person absent on the Royal, i.e. national, business. The writ said of de Segrave: "qui per preceptum nostrum in partibus Scotie in obsequio nostro moram facit"—and directed a stay "donec aliud inde precepimus"—until Our further order herein.

GENERAL NOTE.

It may be worth while to state the names of the Investigators, Commissioners, Auditores, and the result of this investigation.

Commissioners.

The original Commissioners were:—

1. Robert Burnell, Bishop of Bath and Wells, Lord Chancellor, 1273-1292.
2. Henry Lacy, Earl of Lincoln.
3. John de Portoise, Bishop of Winchester.
4. John de St. John.
5. William le Latimer.
6. William de March, afterwards (1293), Bishop of Bath and Wells.
7. William de Louth, afterwards, (1290), Bishop of Ely.

These seem to have continued in office.

There were added:

8. Peter de Leicester, (1292), Justice of the Jews.
9. Thomas de Searning, (1290), Archdeacon of Norwich.

There were also special Auditores for London.

Those investigated included 16 Judges, over 40 Sheriffs and Undersheriffs, many Coroners and Escheators and between 300 and 400 Bailiffs and Subbailiffs.

Judges:

1. Thomas de Wayland, C.J., C.P., abjured Realm, giving up all his property.
2. Ralph de Hengham, C.J., K.B., fined 7000 marks; paid £4303.6.8, i.e., 6445 marks.
3. Adam de Stretton of Court of Exchequer paid 500 marks; he is said to have been fined 32000 marks; he was a clerk and not really a Judge.
4. William de Brompton, J., C.P., fined 6000 marks, paid £3666.13.4, i.e,. 5500 marks.
5. Solomon de Rochester, Justice in Eyre, fined 4000 marks, paid £2100, i.e., 3150 marks.

6. William de Saham, J., K.B., fined 3000 marks: paid £1666.13.4, i.e., 2500 marks.

7. Richard de Boyland, Justice in Eyre, fined 4000 marks: paid £473.6.8, i.e., 726 marks.

8. Thomas de Sodington, do, do, 4,000 marks: paid £1126.13.4, i.e., 1690 marks.

9. John de Lovetot, J., K.B., fined 3000 marks: paid £1333.6.8, i.e., 2000 marks.

(Nos. 2, 3, 4 and 9 were pardoned.)

10. Henry de Bray, Justice of the Jews and Escheator, fined 1000 marks (and tried to commit suicide in the Tower): he paid £304.6.8, i.e., 456 marks.

11. Robert de Littlebury (or Lithbury), Master (Clerk) of the Rolls, hardly as yet a judicial position—fined 1000 marks: paid £364, i.e., 546 marks, afterwards pardoned.

12. Roger de Leicestor, M.R., or from K.B. (Foss makes him J., C. P., 1275-1289) fined 1000 marks, paid £253.6.8, i.e., 380 marks.

John de Mattingham (Mettingham) J., K.B., and Elias de Beckingham, J., C.P. (1284-1305) were honorably acquitted.

W. R. R.