"THE MYSTERY OF THE SEAL."

We have all heard of the "Mystery of Seisin": the interest in Seisin is almost a thing of the past, but the Seal is a living thing which raises its head every day in our Courts. Why a Seal or a red wafer should be so important is often puzzling: were an intelligent legislator to be called upon to frame a Code of Laws, *tabulâ rasâ* and unhampered by the past, he would never think to place so much importance on a token.

Of course much of our learning on the subject derives from times when few could write and many made their contracts, evidenced by a seal and not by a signature.

We are taught that even yet a specialty sealed need not be signed, although one would be very unwise not to insist on signature as well.

In two recent volumes published by the King's Printer, London, of the *Curia Regis Rolls of the Reigns of Richard I and John*[1] are a number of cases of Seals—I extract a few to show how the subject was considered when the Common Law was in the making.

In Trinity Term, 7 Richard I, (1196) in a Northampton case, an Assize[2] was held to determine whether William de Courtenay and others had unjustly disseised Richard de Blukeville of certain lands in Newton—William's bailiff appeared and pleaded that William had seisin "per dominum G. filium Petri cujus breve protulit sine sigillo" —through Lord Geoffrey FitzPeter whose writ he produced without seal. As FitzPeter was Chief Justiciar, his writ would be a perfect answer,[3] but unfortunately for de Courtenay, the document had no seal; it was so much waste paper "et ideo non omittitur quin assisa capiatur," and consequently it is not omitted to take the assize.

In the result the jury[4] found that William did not disseise Richard but his bailiff and his co-defendants did: Richard was given his land and 40 shillings damages,[5] the bailiff and the co-defendant were fined 6s 8d each—all for the want of a seal.

The importance of the seal in judicial process is well shown in a Hereford case in Michaelmas Term, 4 John, (1202).

Walter Tyrrell had been summoned to hear judgment in a plea he had entered in an action concerning certain land: he neither appeared nor essoigned—but judgment was delayed to the Quindene

of St. Hilary, "quia sigillum justiciariorum non fuit apud Lond'" —Because the seal of the Justices was not at London.

These were in the Superior Court; but the seal was equally important to process in the Inferior Courts, the Comitatus or County Court, in which when acting judicially the Vicecomes, Sheriff, was Judge, if the action was begun by writ—for as *The Mirror* says, i, 15, "E celez courz sunt appellez countiez ou les jugemenz se funt par les sieuters si bref ne isoit"—and these Courts are called Counties where the judgments are made by the suitors if there is no writ.

The judicial decree of a Comitatus acting without the Sheriff could be certified by four Milites thereof; but that of the Sheriff only by writ sealed with his seal.

In Michaelmas Term, 4 John, (1202), in a Cornwall case, John de Lifton (Liston) sued Richard de Marisco for half a Knight's fee—Richard neither appeared nor essoigned,[6] but judgment was delayed to the Octaves of St. Hilary "quia idem Johannes tulit brevia sua quibus placitat sigillata sigillo vicecomitis, ut dicit"—because the said John had his writs under which he claimed, sealed with the seal of the Sheriff as he says.

The Court could not take judicial cognizance of the seal of a mere Vicecomes as it must of that of a Chief Justiciar: and John was given a chance to prove "brevia sua." However the Pleadings were noted closed: "et tunc alocetur ei quod ipse Ricardus non venit, etc" —and, then, it was awarded in his behalf that the said Richard did not appear, etc. So that unless Richard purged his neglect, paying a smart fine to the King, all John would have to do would be to prove the seal of the Vicecomes.

When an Inferior Court had proceeded upon the writ of a former Chief Justiciar after "sigillum et justiciarius sunt . . . mutati,"[7] its Milites coming to "make a Record," *i.e.*, certify its judgment, found themselves in trouble—"curia illa inquisita fuit qua racione tenuit placitum . . . antiquum factum tempore domini Rothomagiensis tunc justiciarii, cum sigillum et justiciarius sunt postea mutati"—the said Court (of Arnold de Bosco) was asked for what reason it held plea (on a writ) made of old in the time of Lord (Walter de Constanciis, Archbishop) of Rouen then Justiciar when seal and Justiciar were afterwards changed. No wonder, "obmutuit" —it had nothing to say: the judgment of the Inferior Court went for nothing and the defendant William, son of Sweyn, kept the land.

That it was not safe for the Judge of an Inferior Court to meddle with the seal of writs: the Prior of Repedon' (Repton) learned this in Hilary Term, 10 Richard I, (1199). He had a local Court and one

Aldred, son of Ralph, brought him a writ of the King and two of the Archbishop of Canterbury—as he says himself, "ipse ut simplex," he like a fool, took off the seals.

And when a Sheriff made a return, "sed non per breve sigillatum"—but not by writ under seal, as did the Sheriff of Somerset in Trinity Term, 2 John, (1,200), he knew about it.

It was not at all uncommon to deny a seal—in which case the parties generally put themselves upon witnesses; but not always, or exclusively.

In an Essex case in Hilary Term, 10 Richard I, (1199), William, son of Randolph, being vouched to warranty in respect to certain land in Middleton held by Baldwin—Gilbert, son of Ailnoth, being the voucher—came and said that the alleged grant was not his deed, "et inde ponit se super plures testes vocatas in carta et super alias cartas quas ipse fecit tam Christianis quam Judeis; et Gilevertus offert probare quod cartam illam ei fecit per quendam filium suum Walterum, qui hoc offert probare per corpus suum et per alios si quid mali de eo acciderit: Willelmus defendere hoc offert per quendam. Consideratum est quod sciatur per testes nominatos in carta et per cartas Willelmi aliis ab eo factas si ipse cartam illam fecit nec ne"—and therein he puts himself upon the several witnesses mentioned in the grant and upon other grants which he had made to Christians as well as to Jews: and Gilbert offers to prove that he did make this grant to him by a certain Walter, his son, who offers to prove this by his body[10] and by others if any ill happen to him: William offers to defend this by a certain person. It is considered that it should be known whether he made the grant or not, by the witnesses named in the grant and by William's grants to others.

Baldwin was in possession of certain land in Middleton in Essex: Gilbert claimed it; Baldwin defended: Gilbert asserting that he had a warranty deed from William, "vouched him to warranty," *i.e.*, called upon him to make good his warranty: William said that he never made the deed and rested his defence on the witnesses named in the deed itself. Gilbert was not content with that but offered to prove the deed by his son Walter—he knew, of course, that Walter could not be allowed to give evidence, "propter sanguinitatem," and the only way he could prove it was by a duel: Walter offered to prove it by Battel in his own person, or if any harm happened to him so that he could not himself fight he would find another champion: William was content with this and undertook to find a champion: the Court, however, decided to try the issue by the witnesses named in the deed

and by comparing the seal with the seals on other deeds made by William.

So in Easter Term, 2 John, (1201), in a Canterbury case when Ralph, son of Hugo, (as "attornatus") claimed certain lands from Phillip de Sumeri, Phillip said that Hugo sold him his interest by Fine levied in the land for ten shillings and a green cloak in the Court of Roger de Sumeri, and gave him a deed—he said that if the deed was not sufficient he would produce witnesses who were present at the sale. Ralph said that as to the sale and deed he would put himself upon the Court of Roger de Sumeri if he could see it: and, besides, he says that he has made divers deeds to divers men and he puts himself upon these deeds that the seal on this deed is not true, and if that is not sufficient he will defend himself by a certain person. We do not know how this would have come out, for "Concordati sunt"—they settled.

An interesting case is in Hilary Term, 10 Richard I, (1199), in Southampton when Samuel Mutun and Muriella, a Jewess, sue Herbert, the son of Herbert, for £400 on a certain deed—and produce "two Christians and two Jews" ready to prove it—"Herebertus dicit quod carta illa falsa est, et ideo falsa quia sigillum illud nunquam suum fuit nec cartam illam fecit nec pecuniam illam mutuo recepit, et producit sigillum suum eburneum et plures cartas sigillo illo sigillatas tam de abbaciis quam de confirmacione terrarum"—Herbert says that this deed is false, and false in this that that seal never was his nor did he make the deed nor did he receive the said money as a loan, and he produces his ivory seal and several deeds sealed with this seal as well concerning abbacy matters as confirmation of title to lands. (We are not told anything more of this case).

Perhaps the most usual way was trial by witnesses, as in a Surrey case in Trinity Term, 5 John, (1203), when Walkelinus Kabus vouched to warranty Ralph Postell in respect of a warranty deed of a hide of land in Coombe. Ralph put himself upon the witnesses named in the deed "praeter quam in consaguineos Walkelini"—and the witnesses were summoned five weeks after Michaelmas "ad testificandum rei veritatem super cartam predictam"—to testify to the truth of the matter in respect of the said grant.

Wrongful use of a seal admittedly genuine was occasionally charged. In a Northampton case in Easter Term, 9 Richard I, (1198), William de Plingen (Pinkeni, the modern Pinckney) when confronted with an alleged grant from his father and asked if he recognized the grant or seal said that it might well be his father's seal: That the mother of Robert, the plaintiff, had kept the seal from

him (William) for a long time until ordered to give it up by the King (*i.e.*, the Court) and that Robert's mother had made the deed to Robert after the death of William's father. Both parties put themselves upon the witnesses named in the deed and upon lawful men of the vicinage "utrum carta illa sit legitima an non," whether this grant is legitimate or not. (From another Record it would appear that Robert and William were brothers and the lady charged by William was the mother of Robert—it looks like another case of Jacob and Esau, or stepmother and stepson).

In Michaelmas Term, 2 John, (1200), in a Leicester case, William de Bosco claimed under a certain deed of warranty made by William de Coleville—the former put himself on the witnesses who were not "men" of the latter and the latter said the rest of the witnesses were consanguineous with the former and offered to deraign the agreement and deed by a certain free man of his—the Court reserved judgment until a month after Easter. The result we do not know, but if some of the witnesses were the "men" of one party and the rest were kin of the other, it would seem that there was nothing for it but Battel.

A suspicious deed was sometimes impounded.

In Michaelmas Term, 4 John, (1202), the Prior of St. Oswald's in York produced a deed purporting to be made by Robert Fossard giving the advowson of the Church of Lythe to his Priory: the attorneys of Robert attacked the deed in that "videtur esse recenter facta" it was obviously recently made, "et ideo arestatur et traditur custodie[13] domino G. filio Petri simul cum carta Willelmi Fossard donum confirmante"—and consequently it was impounded and given in charge to my Lord Geoffrey FitzPeter along with the deed of William Fossard confirming the gift.

Perhaps enough has been said to show the importance of the Seal "at the Common Law."

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[1] Volume 1, 1922; volume 2, 1924.
[2] I.e., a Grand Assize, Magna Assisa, on a Writ of Right.
[3] As it would be granted after adjudication.
[4] The twelve Juratores and four Milites would try the matter as a Jury.
[5] Say $200 in present values.
[6] "Essoigned," gave sufficient excuse for non-attendance as *de malo lecti, de malo veniendi, de malo ville de ultra mare*, &c., &c.
[7] After seal and Justiciar were changed."
[8] In our Province a Writ of *Capias ad Satisfaciendum* was tested in the name of the Honourable Archibald McLean who had resigned and to succeed whom, William Henry Draper had been appointed and gazetted. This was held irregular and amendable on payment of costs: *Nelson* v. *Roy*, (1863), 3 P.R. 226.

[9] Trial by Witnesses is one of Blackstone's seven species of trials in civil cases. *Commentaries, &c.,* iii, 331, 336, "by witnesses, *per testes,* without the intervention of a Jury . . . the only method of trial known to the Civil Law in which the Judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but it is very rarely used in our law which prefers the trial by jury before it in almost every instance." Trial by witnesses was never introduced into this Province—the Statute of 1792, 32 George III, c. 2 (U.C.) expressly directing that "every issue and issue of fact . . . in any action real, personal or mixed . . . shall be tried and determined by the unanimous verdict of twelve jurors . . .," sec. 1; sec. 2 allows Special Verdicts. At the Common Law, the witnesses to a deed did not sign it: they saw it sealed and then names were mentioned in the deed or endorsed.

[10] I.e., by Battel—Walter offering himself as his father's champion (the eventuality of his disablement provided against); but the Court declines to award Battel and the trial is *per testes,* although the Vouchee is also willing to try by Battel having *quendam,* a certain person, as his champion.

[11] Comparison by the Judges with other seals was allowed; while instances are alleged of a person having more seals than one, the practice was almost unknown and wholly reprobated—*prima facie,* a man had only one seal. So to-day comparison with admitted or proved handwriting is allowed.

[12] I.e., Trial by Record, Blackstone's *Commentaries, &c.,* iii, 331.

[13] It must always be borne in mind that in these mediæval MSS our dipthong "æ" was always "e."

Many witticisms of Westminster Hall, attributed to barristers of the Georgian and Victorian periods, are traceable to a much earlier date. There is the story of Serjeant Wilkins, whose excuse for drinking a pot of stout at mid-day was that he wanted to fuddle his brain down to the intellectual standard of a British jury. Two hundred and fifty years earlier, Sir John Millicent, a Cambridgeshire judge, on being asked how he got on with his brother judges replied, "Why, i'faithe, I have no way but to drink myself down to the capacity of the Bench." And this merry thought has also been attributed to one eminent barrister who became Lord Chancellor, and to more than one Scottish advocate who ultimately attained to a seat on the Bench.