WOMEN AT LAW SEVEN CENTURIES AGO.

The two volumes recently published by His Majesty's Stationery Office, London: "Curia Regis Rolls of the Reigns of Richard I. and John . . . ," are a delight to all who take an interest in the Common Law of England—and what Canadian or American lawyer does not?

It is the purpose of this paper to give some account—necessarily imperfect—of actions at law by or against woman in the Curia Regis in the last years of the 12th and the first of the 13th Centuries.

The well-known Common Law doctrine that husband and wife are one was, of course, in full force. Consequently, when a married woman sued without her husband it was a sufficient answer to say that she had a living husband; and if this was admitted, the defendant—or she—would "go without a day." It was seldom that the admission was made. In Hilary Term[1] 10 Richard I. (1199) we have: "Hunted—*"Angnes filia Gileberti portavit breve de nova disseisina versus Hugonem de Scalariis de XX acris cum pertinenciis in Teddeworth': et Hugo dixit quod assisa esse non debet quia ipsa habet virum qui non nominatur in brevi. Et quia incertum erat de viro suo utrum vivat necne, concesserunt justiciarii ut concordarent se: et concordati sunt per sic quod ipsa Angnes quietum clamavit predicto Hugoni totum jus et claimium suum quod habuit in terra illa pro j marca quam ipse ei dedit."* Huntingdon. Agnes,[2] daughter of Gilbert, brought a writ of novel disseisin against Hugh[3] de Scalariis, concerning twenty acres with one messuage and appurtenances in Toddeworth:[4] and Hugh said that an Assize should not be had, (*i.e.*, Agnes could not claim a Grand Assize) because she has a husband who is not named in the writ. And inasmuch as it was uncertain about her husband whether he was alive or not, the Justices allowed that a settlement should be made and they agreed, on the terms that the said Agnes cried quits (quit-claimed) to the said Hugh all her right and claim in the land for one mark (13/4) which he gave to her."

Another case contains elements of humour.

In H. T., 4 Jo., (1203):—*"Buk'—Euticia qui fuit uxor Gervasii per Robertum filium suum petit versus Abbatem de Nutele racionabilem dotem suam scilicit j virgatam terre cum pertinenciis in Wichendon' unde predictus Gervasius quondam vir suus eam dotavit ad*

hostium ecclesie: et Radulfus atornatus abbatis venit et dicit quod ipsa Euticia habet virum, et sine eo non vult respondere nisi curia consideraverit: et atornatus Euticia quod ideo non debet placitum remanere quia ipsa diu post placitum mutum maritavit se: et atornatus abbatis non potuit hoc negare. Consideratum est quod quia mulieres quandoque cum maritantur animum mutant, ipsa veniat cum viro suo apud Westmonasterium a die Pasche in j mensem: et simul sequantur si voluerit vel atornatum faciant."

Buckingham. Euticia,[5] who was the wife of Gervase suing by her son Robert claims against the Abbot of Nutley[6] her reasonable dower, that is one virgate of land[7] with appurtenances in Winchendon whereof the said Gervase, formerly her husband, endowed her at the Church door:[8] and Ralph, the Attorney[9] of the Abbot, comes and says that the said Euticia has a husband and that he does not wish to plead without him unless the Court should so direct: and the Attorney of Euticia says that the action should not abate for that reason, inasmuch as she married long after the action began and the Attorney of Abbot could not deny this:[10] It was considered that, inasmuch as women sometimes change their mind when they marry, she should appear with her husband at Westminster in one month[11] after Easter, and let them sue together if he[12] wishes or constitute an attorney.

While the husband was *dominus litis,* the wife in a proper case was not wholly without protection.

Thus, in M.T., 2 Jo., (1200), when Godfrey of St. Martin,[13] sued by Wandrillus of Corcelles over certain land in Fisherton, Wiltshire, was summoned to hear judgment, he appeared and defended for himself and Constance his wife, a day was fixed in the Octaves of All Saints and *" Godefridus habeat Constanciam uxorem ejus tunc apud Westmonasterium ut sciatur si ipsa voluerit tenere se ad defensionem viri sui."* Let Godfrey have Constance, his wife, then at Westminster, that it may be known if she wishes to abide by the defence of her husband.[14]

A stronger case with some interesting features began in H. T., I Jo., (1200), when Henry de Deneston[15] sued Nicholas de Wineston and Avice his wife, by Writ of Right for four bovates of land with appurtenances in Butterton, Staffordshire. Avice came and said that the land was her hereditament *" et quod per pecuniam et fraudem Henrici, Nicolaus vir suus absentat se et eam deseruit ita quod timet per fraudem exheredari,"* and that through the money and fraud of Henry (the plaintiff) Nicholas, her husband, absents himself and

deserted her, so that she fears to be deprived of her hereditament by fraud. She prayed the Justices to take care therein and moreover offered to place herself on the Grand Assize of the King "which of them had the better right in this land." A day was fixed one month after Easter for hearing judgment.

Easter came around and Michaelmas Term; Henry and Avice appeared to hear judgment, but a new day was fixed for the Morrow of St. Edmund, Avice still contending and Henry denying "*quod vir ejus eam reliquit et non vult defendere terram suam corruptus dono ipsius Henrici,*" that her husband abandoned her and does not wish to defend her land, corrupted by a bribe from the said Henry.

Hilary Term arrives and matters come to a head, H. T., 2 Jo., (1201). Henry offers 40 shillings to the King for judgment in his favour: Avice: "*venit et dixit quod terra illa est hereditas sua et quod ipse Nicholaus vir ejus corruptus donis ipsius Henrici absentavit se ita quod nunquam voluit comparere post placitum motum*" came and said that the land was her hereditament and that her husband the said Nicholas corrupted by gifts of the said Henry absented himself, so that he never was willing to appear after action brought. She was not at all oblivious to the danger of the plaintiff's offer: so she countered "*et offert xl solidos ut habeat mangnam assisam scilicit utrum ipsa majus jus habeat in terra illa an ipse Henricus*"—and offered 40 shillings (i.e., to the King) that she might have a Great Assize that is whether she has the better right to this land or the said Henry. The usual offering, *oblatio, oblatus,* for having a Great Assize was half a mark, 6/8; but Avice took no chances and offered as much for a trial by recognitors as Henry did for judgment.[16] Nor was this a paltry sum in those days—the usual fee of half a mark had by the time the Writ of Right was abolished in the 19th Century become of small moment, say $3.00 of the present value of money, but early in the 13th it was worth $40.00 or $50.00 of the present value: and the fee offered of 40/ was six times as much.

What the result would have been had the woman not been able to equal the plaintiff's bid we can only conjecture, but as it was, '*dominus rex motus misericordia et per consilium recipit oblacionem ipsius Hawisie. Habeat ergo mangnam assisam,*' our Lord the King, moved by pity and by council, accepts the gift of the said Avice. Let her, therefore, have a Great Assize. A day was fixed: "*et tunc veniant iiij ad eligendum xij*" and then let twelve milites) come to select twelve (recognitors). Avice must, however, give security for the 40 shillings—William of Wrattesle becomes her bondsman for it

and she *"ponit loco suo Willelmum filium suum,"* makes her son William, her Attorney.

In E. T., 2 Jo., (1201), the four Knights came and selected recognitors *"ad faciendum mangnam assisam inter Henricum de Duneston' petentem et Hawisiam de Waterfal tenentem"*—to make the Grand Assize between Henry de Duneston, claimant, and Avice de Waterfal, tenant.[17] The name of the faithless husband is dropped from the action and Avice proceeds alone: the Knights select sixteen persons[18] from whom the twelve recognitors will be taken and *"dies datus eis in adventu justiciarorum: et tunc veniat jurata"*—a day is given them on the coming of the Justices (in Eyre into the County of Stafford) and then let the Jury come. Nothing more appears of this interesting action—it is not unlikely that the parties came to an agreement; but that lies in the realm of conjecture.

The husband does not seem always to have been the erring one. When in M. T., 3 Jo., (1201), Robert de Coleville, suing for himself and his wife, Alice de Frostendenne (who had formally before Geoffrey Fitz Peter, the Chief Justiciar, constituted him her Attorney *pro hâc vice*), brought an action against Alexander de Pointell and Alice of London, his wife, for the dower of the female plaintiff in certain lands in Westminster which were the property of her late husband, William of London, Alexander came and defended, but *"Alicia uxor ejus non comparuit"*—Alice his wife did not appear. Robert asked that her default should be noted ;and Alexander *"dicit quod ipsa nunquam fecit se essoniari per ipsum et quod ipsa non fuit cum ipso iij annis elapsis'*—said that she never had herself essoigned by him[19] and that she had not been with him for three years back.

In M. T., 4 Jo., (1202), Robert appeared but the defendants did not—and as Alexander had his day in Court and Alice never appeared, reasonable dower was awarded.

It was not always plain sailing for a widow claiming dower even when she did marry again. In M. T., 3 Jo., 1201), Agnes de Croxton, claiming to be the widow of Philip de Dive (Rich?) sued his son Philip for dower *unde nichil habet* in lands in Holywell, Witham and Twyford, Lincolnshire; he appeared and said that she had never been married to his father, *"ipsa econtra dicit quod legitime desponsata fuit,"* she, on the other hand, says that she was lawfully married: and it was ordered that she should have a writ to the Official of the Bishop of Lincoln to inquire whether she had been lawfully married or not.

Agnes was successful in her claim to have been lawfully mar-

ried—this, of course, was tried in the Ecclesiastical Court of the Bishop of Lincoln—but she failed to keep the land because it had been deeded to her husband by the Canons of Croxton, who failed to make good the title when vouched to warranty: accordingly, in H. T., 4 Jo., (1203), she sued them to make compensation, *escambium,* for the lands so lost and had a writ to the Sheriff of Lincoln to have valued "*per visum legalium hominum,*" by view of lawful men, the land she had lost. Then, in T. T., 5 Jo., (1203), the Abbot of Croxton gave her three bovates of land in Croxton to hold *in escambium*—and if that should be more in value than what she had lost "*amensurabitur per amicos suos*"—it will be measured off by their friends.[20]

Another stepmother who had her marriage disputed, was Cecilia de Cressi: she, in E. T., 2 Jo., (1201), sued her stepson William, for dower in the land of his father, Roger de Cressi: William came into Court and objected that she never was married to Roger; the cause was transmitted to the Archbishop of York "*ventilanda,*" to be enquired into: he reported that it was established by competent witnesses that she had been legally married. Then William was summoned to hear judgment in M. T., 3 Jo., (1201): he appeared and said that if His Lordship of York did certify this to the Justices, he did it of his own volition and that if he did take evidence, he took it unjustly and against law and ecclesiastical custom: he offered gages and pledges therein to deraign either in the King's Court or elsewhere: "*adjecit etiam quod, si eam desponsaverit, eam desponsavit in lecto suo egritudinis et postquam se religioni contulerat et conceserat*"—he added, moreover, that if he did marry her he married her on his sickbed[21] and after he had devoted and vowed himself to religion. A day was given them to hear judgment "*in XV dies post festum sancti Yllarii*"—the Quindene (or Quindecim) of St. Hilary, that is, a fortnight[22] after St. Hilary's Day.

Cecily must have been successful: we find her sued later on, in E. T., 4 Jo., (1203), under the name Cecilie de Cressy, by her stepson, William, acting by his Attorney about some chattels: the case was adjourned "*quia Cecilia petiit audire breve per quod posita est in placitum, quod est in itinere justiciarorum itinerantium*"—because Cecilia asked to hear the writ by which she was brought into the action, which was in the Eyre of the Justices Itineraut. She knew her rights, and knowing, dared maintain: perhaps we should not hold it against her that she was married by a man on his deathbed under the urging of his spiritual advisers: we rather rejoice that the marriage was held valid.[23]

The legality of an alleged marriage was brought in question by the woman herself, in an Essex case, in T. T., 5 Jo., (1203). The Record is somewhat longer than usual, but by reason of its interest I transcribe it in full. "Essex.—*Assisa venit recognitura si Willelmus Basset injuste et sine judicio disseisivit Biatriciam de Taenden de libero tenemento suo in Parva Waberg' infra assisam: et Willelmus venit et dicit quod ipsa Biatricia est uxor sua et intravit in terram illam ut in suam propriam et uxoris ejus: et ipsa dicit quod revera ipse desponsavit eam set non legitime; unde cum lis esset inde coram R. archidiacono Colestr' Ricardo de Stortford' magistro scolarum Lond' et magistro Benedicto de Sauseton de matrimonio eorum auctoritate literarum domini pape judicatum fuit coram eis divorcium quia cum alia nomine Matillide adhuc vivente prius contraxerat; et inde protulit literas patentes predictorum judicum idem testancium; econtra Willelmus dicit quod injuste illud judicaverunt super appellacionem suam, ita quod ipse impetravit super hoc literas domini pape quibus ipse committit causam illam fine debito terminandam abbati de Betlesden' et prioribus Saneti Andree Norbt' et de Essebi. Et quia Willelmus negare non potest quin divorcium factum fuerit inter ipsos Willelmum et Beatriciam, ut patere potest per querelam ipsius Willelmi quam dominus papa per literas suas signnificat predictis judicibus, et quia congnovit se predicto modo ingressam fuisse in terram illam, consideratum est quod Willilmus sit in misericordia et Biatricia sine jurata habeat seisinam suam: et juratores quesiti dicunt quod dampum est xiiij marce. Willelmus de Fifhid' cepit in manum quod Willelmus Basset non recessurus est a curia antequam Biatricie fecerit de dampno"*—

Essex.—An Assize comes to find if William Basset unjustly and without adjudication disseised Beatrice de Taidenne of her free tenement in Little Wakering (in Essex County) since the (last) assize, and William comes and says that Beatrice is his wife and he entered on the land as his own property and that of his wife: and she says that in truth he did marry her but not lawfully; that when the case had been tried therein before R. Archdeacon of Colchester, Richard de Storteford Master of the Schools of London and Master Bennet de Sauseton concerning their marriage by authority of our Lord the Pope a divorce was adjudged inasmuch as he had previously contracted with another woman, Maud by name, still living—and therein she produced the Letters Patent of the said judges testifying the same: on the other hand William said that they adjudged this unjustly against his appeal so that he sued out against this decision letters of Our Lord the Pope by which he committed the

cause for proper adjudication to the Abbot of Biddlesdon and the Priors of St. Andrew's, Northampton, and of Ashby, And inasmuch as William is not able to deny that a divorce had been made between them, William and Beatrice, as might appear by the complaint of the said William which Our Lord the Pope signified by his Letters Patent to the said Judges and inasmuch as he admits that his entry was made in the manner aforesaid in the land, it is considered that William be in mercy and Beatrice have her seisin without the jury and the jurors being asked said that the damage is 13 marks (£8-16-8). William de Fyfield took it in hand that William Basset should not go from the Court until he had given satisfaction to Beatrice for her damages.[23] The other contemporary Record adds: "*Postea plegiatus fuit quod gratum . . . faceret infra festum sancti Michaelis*" after he became bound that he would satisfy the judgment after Michaelmas.

Occasionally the lady litigant came in for judicial rebuke. For example in T.T., 5 Jo., (1203), Leviva, who was the widow of William the son of Constantine, sued Richard de Brethram (i.e. Brettenham in Norfolkshire) for her dower in certain lands in West Winez (Winch) and Lenna (Lynn), the property of her deceased husband—the case was adjourned "*Et sciendum quod ipsa Leviva produxit Constantin filium et warrantum suum qui infra etatem est; et preceptum est quod remaneat domi*"—and be it known that the said Leviva produced Constantine her son and warrantor who is under age; and it was ordered that he should stay at home.[24]

Women were not always too friendly with those of their own sex. In H.T., 10 Ric. I., (1199) we read:

"*Norf'—Angnes uxor Odonis Mercatoris appellavit Gillenam de sorceri: et ipsa liberata est per judicium ferri et ideo Angnes remanet in misericordia,*" Norfolk—Agnes wife of Odo Merchant appealed Gillian of sorcery and she was cleared by ordeal of hot iron and so Agnes remains in mercy. Unless poverty or some other excuse could be urged Agnes would have to pay a fine to the King; but she who was accused of witchcraft could count herself lucky and (probably) thank the officiating priest. This case, by the way, shows that the law writers, including Blackstone, are in error in their enumeration of the kinds of felony in which appeal could be had—but that is another story.

Equally fortunate was another woman Appellee in Norfolkshire, in T.T., 5 Jo., (1203).

"*Norf'—Matillis de Rames' appellat Margerim uxorum Radulfi Kellac quod in pace domini regis eam imprisonavit et in firmina*

tenuit et verberavit ita quod abortivit, et hoc offert probare versus eam, etc.: et Margeria venit et defendit totum et dicit quod alia vice coram justiciariis appellavit Radulfum Kelloc virum suum de eodem facto transactis X annis; quod non potuit negare. Unde Margeria recedit quieta, et Matillis in misericordia. Pauper est. Misericordia perdonatur." Maud de Ramsey appeals Margery, wife of Ralph Kelloc,[25] that in the King's peace she imprisoned her and kept her in close confinement and beat her so that she aborted, and this she offers to prove against her, etc.; and Margery comes and defends the whole; and she says that at another time before the Justices she (Maud) appealed Ralph Kelloc, her husband, of the same deed ten years ago: which she could not deny. Consequently Margery went away acquitted and Maud in mercy. She is poor. The fine is remitted.

In T.T., 2 Jo., (1200), we find the following interesting case:

"Oxon'—Ascelina Vidua petit versus Hugonem de Chishamton' unam virgatam terre in Chishamton' sicut jus suum et hereditatem quam Hugo frater suus dedit ei in liberum maritagium et quam ipse ei injuste deforciat: Hugo venit et dicit quod vir suus et ipsa alia vice tulerunt breve de nova disseisina versus eum in curia domini regis tempore archiepiscopi Rotomagensis et jurata dixit quod ipse non disseisivit eos sine judicio sed per judicium comitatus cujus recordum venit per preceptum justiciariorum apud Westmonasterium et inde vocat rotulos domini regis; et Hugo requisitus si aliud dicere vellet dixit quod poneret se super visnetum inde. Et quia non defendit jus suum nec quod terra illa non esset maritagium predicte Asceline et si quid actum fuerit tempore viri sui in illa assisa de maritagio suo, non videtur quod ipsa ideo debet amittere jus suum inde. Ideo consideratum est quod ipsa habeat inde seisinam." Oxford. The widow Ascelina sues Hugh de Chishamton for one virgate of land in Chishamton as her right and hereditament, which Hugh her brother gave to her *in liberum maritagium,* and of which he unjustly deforces her; Hugh comes and says that her husband and she at another time brought an action of Novel Disseisin against him in the Court of Our Lord the King when (Walter de Constantius) the Archbishop of Rouen was Justiciar and the Jury said that he did not disseise them without judgment, but by the judgment of the County Court the record of which came by order of the Justices to Westminster—and therein he vouches the records of Our Lord the King; and Hugh, being asked if he wished to say anything else said that he put himself upon the vicinage therein. And inasmuch as he does not defend his right or deny that the land was the *maritagium* of Ascelina aforesaid—and if

anything was done in the lifetime of her husband in the Assize concerning her maritagium it does not appear that she should thereby lose her right therein: Therefore it is considered that she had her seisin therein.

The following in M.T., 2 Jo., (1200), has its interesting side:

"*Glouc'.—Willelmus de Novo Mercato, summonitus ad ostendum quod jus clamat in uxore quam rex Ricardus dedit Roberto de Tresgoz et in baronia sua, venit et dixit quod duxit eam tempore regis Ricardi et ex dono Roberti Dewias patris predicte uxoris. Capietur. Traditur est Reginaldo de Balun in custodiam.*"

Gloucester.—William of New Market summoned to show what right he claimed in the wife whom King Richard gave to Robert de Tresgoz and in her barony, came and said that he married her in the time of King Richard and on the gift of Robert Dewias, father of the wife aforesaid. He is attached. She is given in custody to Reginald de Balun.

The question at the altar: "Who giveth this woman?" had then some significance, and one cannot but think that Robert had more interest in "*baronia sua*" than in "*predicta uxor.*"

Toronto. WILLIAM RENWICK RIDDELL.

[1] Hereafter the following contractions will be employed: H. T., Hilary Term; M. T., Michaelmas Term; T. T., Trinity Term; E. T., Easter Term; the regnal years will be given thus: 10 Ric. I., 10th of Richard I.; 1 Jo., 1st of John, &c.—the date will be given in Arabic numerals in parenthesis.

[2] In these records, it is very common to insert an "n" before "gn," i.e.: *Angnes, congnouit, congnitura, mangua, frengni, significat,* &c. This was to soften the sound; cf., the insertion of "p" before "n" in "dampnum."

[3] Or Hugo.

[4] Now Tetworth.

[5] "Euticia" is a variant of "Eustacia" or "Eustasia." The action began in M. T., 3 Jo., (1201), when Euticia "*ponit loco suo Robertum filium suum,*" i.e., made her son Robert her attorney "*ad lucrandum vel perdendum,*" win or lose. The Abbot by his attorney, Radulfus de Treg, craved a view; he was granted it and a day was given to hear the cause one month after the Feast of St. Hilary—it was after this, that the plaintiff married again.

[6] In Long Crendon, Buckinghamshire; with that freedom in spelling—one can hardly call it orthography—enjoyed by the language until Dr. Johnson put it in fetters, the name appears in these records as Nutele, Notele, Nutelee, Nutle, Nutles—it is also called Newehus.

[7] It must be borne in mind that in these as in many mediæval MSS., the termination of nouns, pronouns and adjectives of the First Declension in the genitive and dative singular and nominative and vocative plural is written "e" and not "ae"; even the nominative and vocative plural neuter of qui and —and, generally where we write "ae" the single letter "e" was employed. See Du Cange, *passim.*

Terra was thus declined:—

	Singular.	Plural.
Nom.	*terra*	*terre*
Gen.	*terre*	*terrarum*
Dat.	*terre*	*terris*
Acc.	*terram*	*terras*
Voc.	*terra*	*terre*
Abt.	*terra*	*terris*

[8] For the dower *ad ostium ecclesiae,* see Blackstone, *Comm.* Bk. 3: the form "*hostium*" is as common as "*ostium.*"

[9] Variously written "*Atornatus,*" "*Attornatus,*" "*Aturnatus.*" The Attorney was generally *pro hac vice,* but occasionally a general Attorney was appointed, e.g., by an Abbott, Master of Templars, Bishop, etc. I find, *inter alia,* such appointments by the Bishop of Ely, the Prior of the Templars at London, E. T., 9 Ric. I., (1198), the Abbott of Seez, H. T., 10 Ric. I., (1199). Sometimes a woman acted as Attorney, e.g., in E.T. 4 Jo., (1203), Robert of Ybernia and Edith, his wife, claimed certain land in Southwark held by "Cristiane." Christiana made her husband Robert her attorney, while Robertus de Ybernia "*ponit loco suo Editham uxorem suam.*" In M.T., 4 Jo., (1202), Hugo Golding and Maud his wife sued Juliana de Brocton for certain land—"*Hugo ponit loco suo Matillidem uxorem suam,*" etc.; *Juliana ponit loco suo Simonem filium Simonis,* etc.: Hugo made Maude his wife his attorney, Juliana made Simon Simonson her attorney. So, too, in T.T., 5 Jo., (1203), Ancelina mother of William son of Simon was made his attorney by her son in an action against Richard son of Alvred about two and a half virgates of land and one toft with appurtenances in Asgarby, Lincolnshire.

[10] If this were denied, there must have been a trial—probably by the witnesses present at the marriage.

[11] One month at the Common Law was 28 days—"*iiii Septimanas.*"

[12] She had nothing to say about it—non *voluerint* sed *voluerit.*

[13] "*Godefridus de Sancto Martino*"—his wife was "*Constancia*"—his opponent "*Wandrillus de Curcell*" and the land in "*Fisserton.*"

[14] There is a variant reading "*ad defensionem suam vel ad defensionem Godofredi*"—her own defence or Godfrey's defence; Godfrey's defence was that he had never been summoned in the action; obviously the wife might have a good defence on the merits and it would or might be in the highest degree unwise to rely upon the husband's technical defence alone.

[15] *Deneston, Donestan, Duneston; Wineston, Winestre, Winste* (alias Waterfal); *Hawis, Hawise, Hawisie, Hawisia; Boterdon, Burteston, Buterdon,* are the variant spellings.

[16] The Grand Assize, Assisa magna, was the alternative provided by Henry II. with the assent of his "Magnates" for trial by Battel on a claim for land—the usual fee-offering for a Great Assize continued to be 6/8 until the Writ of Right was abolished in 1826. It was solemnly adjudged in M.T. 3 Jo., (1201) that "*ubi nullum fit duellum, non jacet magna assisa*"—where there is no duel, grand assize does not lie. An action had been brought for certain land in Wallingford, Berkshire; the tenant, defendant, "*posuerat se in magnam assisam conditionaliter, scilicet si libertas ville quam habent . . . sufficeret*" had placed himself upon the Grand Assize conditionally, that is to say if the liberties of the ville extend that far. It was found that there could be no Wager of Battel, no "*duellum,*" in Wallingford, consequently the Grand Assize could not proceed.

The practice was for the defendant to take out a writ to the Sheriff to select four Knights "*milites,*" these selected twelve recognitors "*qui discreti sunt et qui rei veritatem sciant et quorum nullus predictos affinitate contingat*"—who are discreet and who know the truth of the matter and none of whom is of affinity with the said parties—E. T., 4 Jo., (1203).

The case in Wallingford had gone so far that the four Milites had been selected by the Sheriff,

[17] In the Writ of Right, *Breve de Recto*, the plaintiff was called Petens, the defendant, Tenens—it thus appears that Avice was in possession of the land claimed.

[18] The Knights were *Hamo de Weston, Mansel de Pattesbull, Nicolaus de Burteston and Paganus de Parles*—the names of the persons selected are given at length in the record. While generally the names of only twelve are given, occasionally we find more as here.

The case immediately before this is curious. Gilbert the son of William de Ria (i.e., of Rye) charged Adam of St. Quentin with the murder of his (Gilbert's) brother Hugh; Adam denied the charge and on the "Appeal of Felony" offered to defend himself in the "*duellum*" by Gilbert the son of Nicholas whom he claimed to be his nephew. The Appellor denied the relationship and contended that the proposed champion was not "*adeo propinquus ei* (*Adame*) *in parentela quod possit de jure et secundum consuetudinem Anglie ipsum super hoc defendere*" so near of kin to him that he might defend himself thereby according to law and the custom of England. A writ of enquiry was issued and the jury (13 names are given) said that there was no kinship between Adam the Appellee, and Gilbert, the son of Nicholas, "*nec ex parte patris, nec ex parte matris*"—on either the father's or mother's side. It is not unlikely that Gilbert was one of the professional champions, *campiones conductitii*, of whom we read in H. T., 10 Ric. I., (1199), in an Appeal of Felony of Philip of Bristo against Robert Bloc, charging him with wounding him in the head with the club of an opposing champion whom Philip had felled.

[19] The doctrine of Essoigns was of great importance in the Common Law. One could essoign himself, i.e., excuse his non-appearance in Court *de malo lecti* (sickness), *de malo veniendi* (difficulty of travel) *de malo ville* (sickness after arriving at the Assize town) &c.; but he must send an essoniator, essoigner, to make the excuse or he would be *in misericordia*, in mercy, and liable to a fine, his land might be taken *in manum regis*, &c., &c.

[20] The Abbot had made his Attorney, Warren, his Canon, Agnes had appointed Arnold de Bilesdon. Where lands were to be given *in escambium*, if the parties did not agree, the Sheriff had a writ to make the *escambium*—H. T., 1 Jo., (1200), Roger Nicholson v. William de Din—and if given in dower, it was held only for life.

[21] In an action in the M.T., 2 Jo., (1200), between Peter de Sandiacre and Walter Malet, Roger de Cressi was one of the recognitores selected; however, he did not attend the Court but essoigned himself; he was probably ill at that time.

[22] At the Common Law the first and last days are inclusive: "*XV. dies*," 15 days, is a fortnight.

[23] Giving oneself to religion was not unusual—there are several instances in these records. In M. T., 3 Jo., (1201), Saer de Audeham left Court without a day because Walter de Benetestede whom he had impleaded concerning a military fee in Biddlesdon, Essex, "*reddidit se religioni*"—rendered himself to religion. In E. T., 4 Jo., (1203), Eudo de Baillol in an action with Reginald Basset over certain land in Yorkshire essoigned himself on the ground of sickness, *de malo lecti*. Basset was sceptical about the illness and sued out a writ to the Sheriff of York to send four Knights to view the alleged invalid—the Sheriff selected Robert de Buleford, Philip de Bilingee, Osmund Crozere and Geoffrey de Etton; they reported that he was not sick and that they had given him a day a fortnight after Easter, "and be it known that a certain man of Eudo's comes and says that he took the habit of religion after the view by the Knights. Alan de Hatton, also in litigation with Eudo, was alike sceptical, and when Eudo's man stated that he had taken the religious habit *pre nimia infirmitate*, he doubted it and had the land seized by the Sheriff and Eudo resummoned, E. T., 4 Jo., (1203).

Eudo had in fact taken the habit of religion, as we find, T.T., 5 Jo., (1203). Geoffrey Fitz Peter, the Chief Justiciar, signifying to the Justices that they should not permit his son Eudo, who was under age, to be impleaded concerning any tenement "*quod pater ejus tenuit die qua habitum religionis*

suscepit donec heres talis sit etatis quod secundum consuetudinem rengni debeat placitari"—which his father held upon the day he assumed the religious habit, until such heir shall be of such age as by the custom of the realm, he may be impleaded.

Blackstone just touches on the custom as of course the civil effect which such an action had had in Catholic times had ceased.

[23] The names are variously written: *Tainden', Taidenn'; Beatricia, Biatricia; Stortford', Storteford'; Sauseton', Fausinton', Faufitun'; Colestr', Colecestr'; Betlesden', Botlesdon'.*

From another contemporary Roll one learns that the name of the Archdeacon of Colchester was Radulfus, i.e., Ralph, and that Richard de Stortford was Master of the London Schools and Chancellor of St. Paul's. This Roll also supplies the word "gratum" before the word "*Biatricie*" where it last occurs. The index-maker in the volume of Curia Regis Rolls considers that William Basset had a former wife, Maud (Matillis), living; this is an error, the impediment to lawful marriage was precontract, not previous marriage—the doctrine of precontract in the Canon Law is of course well known. The *divorcium* was *ab initio*... For the form "pope," "Andre," "marce," "Biatricie," see note 7, *ante*. The evolution of the Latin "ille," "illa," into the article (French le, la, etc.) is manifest in these Records.

Magister Benedictus de Faufiton (or Fausinton) figures as a litigant in a case in M. T., 4 Jo., (1202), H. T., 4 Jo., (1203), over 10 acres of land in Batburgam (Babraham), Cambridgeshire, elsewhere called Badburham.

Juries were not always able to determine the damages; in an action for disturbance of Market-right in M. T., 4 Jo., (1202), brought against Eustace, the Bishop of Ely, by the Abbot of St. Edmund's, claiming that the Bishop's Market at Lakingheath, Suffolk, was a damage to that of the Abbot at St. Edmund's, the jury of sixteen Knights was called on the consent and wish of the parties to try whether the Bishop's market "*ibi esse non debeat vel possit secundum consuetudinem Anglie*," should not or cannot be there by the custom of England. We are told "*Juratores dicunt quod mercatum de Lakinheia est ad nocumentum mercati Sancti Edmundi eo quod caro mortua et viva et piscis et bladum et plures mercature, que solebant aportari ad Sanctum Edmundum et ibi vendi, unde Abbas habuit consuetudines, modo deferuntur apud Lakingeh' et ibi venduntur, ita quod abbas perdit consuetudines, Et milites, requisiti quantum dampnum habeat per mercatum illud, dicunt quod nesciunt nec aliquis scit nisi solus Deus*"—the jurors say that the Market at Lakingheath is a damage to the market of St. Edmund's in that meat killed and on the hoof and fish and corn and many wares which were wont to be carried to St. Edmund's and there sold from which the Abbot had dues, were now taken to Lakingheath and there sold so that the Abbot loses his dues. And the Knights being required to find what damages he suffered from this Market, say that they do not know nor does anyone else know but God alone. A day was given to hear judgment at the Octaves of St. Hilary—the Abbot appointing William de Neketon and afterwards Gilbert de Stagno, his Attorney, and the Bishop, Simon de Insula (his Seneschal), or William Uncle or Thomas de Huntedon.

The result is not given in these records.

Every Ontario lawyer of my generation will remember that the text-book instance of *Damnum absque injuria* was the erection of a Market near to another without violation of legal right; here there was *injuria*, but the amount of *damnum* was not determined.

[24] Of course, the boy, the heir of the deceased William, was to be called upon to make good the donation of dower by his ancestor—being under age he "*non potest.*" This, Agnes the widow of William Baker (Pistor), found to her sorrow in T. T., 5 Jo., (1203), when her son who should have been her

[25] The name is variously spelled "*Kelloc,*" "*Kellac,*" "*Kellec*"; the modern orthography is generally "*Kellogg*" but "*Kellock,*" "*Killock,*" "*Kellick,*" &c'., are sometimes found.

warrantor, was "*filiaster ejus.*"