

**Comparative Studies  
in Continental and Anglo-American Legal History**

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**Vergleichende Untersuchungen zur kontinentaleuropäischen  
und anglo-amerikanischen Rechtsgeschichte**

**Band 17/II**

# **Case Law in the Making**

**The Techniques and Methods  
of Judicial Records and Law Reports**

**Volume 2: Documents**

**Edited by**

**Prof. Dr. Dr. Alain Wijffels**



**Duncker & Humblot · Berlin**

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und anglo-amerikanischen Rechtsgeschichte**

**Herausgegeben von**

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**Prof. Dr. Dr. h. c. Knut Wolfgang Nörr**

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*Part One*

**English and American Traditions**





J. H. BAKER

## **The Common-Law Courts of Medieval England: Year Books and Plea Rolls**

### **Specimen Year Books**

#### **I. Chaloner v. Moresle (1329)**

##### **Report**

Bodl. Lib. Oxford MS. Tanner 13, p. 338.<sup>1</sup>  
Eyre of Northampton, 1329.

En bille de trespas les damages furunt taxes par enqueste a deus mars et demi. Pus les justices taxerunt les damages a x mars pur ceo qil virunt par inspection qe le trespas fut heignous.

##### **Translation of the Report**

In a bill of trespass the damages were assessed by the jury at two and a half marks. But later the justices assessed the damages at ten marks because they saw by inspection that the trespass was heinous.

##### **Record**

PRO, JUST 1/633, m. 191.

Convictum est per juratam patrie in quam Walterus le Chalouner de Northampton querens et Andreas de Moresle defendens se posuerunt quod idem Andreas in festo Nativitatis Beate Marie anno regni regis Edwardi nunc

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<sup>1</sup> Printed in 97 Selden Soc. 428. Cf. the variant report in Brit. Lib. MS. Add. 5924, fo. 13v: 'En une bille de trespas lenqueste taxa les damages le pleyntife en ii marc. et pur ceo qe avis fut a la court qe le trespas fut ground la court agard qil dust recoverir x marc. pur ses damages etc.'.

tercio horo vesperarum in suburbio Norhampton ex opposito domus Gilberti le Rode vi et armis in prefatum Walterum insultum fecit et ipsum verberavit et dedit ei duas plagas ex transverso duorum digitorum mediorum in manu sinistra et unam plagam ex transverso nasi contra pacem ad dampna que taxantur per discretionem justiciariorum ad decem marcas. Ideo consideratum est quod predictus Walterus recuperet versus predictum Andream de Moresle dampna predicta. Et predictus Andreas capiatur quod sit hic die Mercurii proximo post festum Sancte Katerine ad satisfaciendum ...

## II. Rex v. Bury (1321)

### Report

Brit. Lib. MS. Harley 453, fo. 32v,  
with some corrections from Royal MS. 10 B. VIII, fo. 32r.<sup>2</sup>  
Eyre of London, 26 February 1321.

Item quidam Isabella de Buri occidit quendam in ecclesia que se tenuit in ecclesia unde quidam dubitaverunt utrum privilegio clericali gaudere debeat. Justiciarii itineris super hoc consulentur qui mandaverunt ordinarium ut eis certificaret ac idem ordinarius rescripsit decretale eidem ordinatum in hec verba: Immunitatem ecclesiarum et jura non nulli impunitatem suorum excessium per [defensionem] ecclesie optinere sperantes homicidam [et] [mutilationes] membrorum in ipsis ecclesiis vel earum cimiteriis committere non verentur qui nisi per ecclesiam ad quam confugiunt crederent se defendi nullatenus [fuerant commissuri et] infra cum [in] eo in quo deliquerit puniri quis debeat [et frustra] auxilium legis invocat qui committit in legem mandamus quod puplice injungetur talis non debet gaudere immunitate ecclesie nec privilegio.

Ob quo extracta fuit ab ecclesia tam per clericos quam laicos et in Neugate imprisonata et ibidem per triduum detenta. Et quarto die ipsa Isabella simul cum aliis prisonibus coram justiciariis itineris ducebatur que coram eis occasionata se mutam tenuit. Unde curia exigit qualiter vocabatur [et] unde fuit et ipsa non respondit. *Ber.* Bon est qe homme enquerge si ele seit mute ou noun et quant ele parla drein. Et super hoc venerunt xii et super hoc fecerunt sacramentum de veritate dicenda et iverunt ad interloquendum. Et donqe *Pass.* Il vous vaudreit plus de parler qe si nous enquergoms et trusoums qe vous puset parler vous ne chalangerez pas lenqeste. Parlez et vous mettez et vous serret ben aquite. *Is.* Sire merci pur Dieu. *Pass.* Repe-

<sup>2</sup> Printed in 85 Selden Soc. 73, 83, which supplies the date of the first hearing from another manuscript.

lez les jurours quia ipsa loquitur. Et tunc fuit occasionata de morte ut prius et ipsa dixit: [Domine] ipse me percussit. *Pass.* Le tuastes vous vel ne? *Is.* Jeo fesoie moi defendaunt. *Pass.* Coment volez vous aquiter? *Is.* Sire jeo ne poi autrement fere. *Pass.* Donques volez vous dire qe vous ne le tuastes pas? *Is.* Sire jeo fesoie moi defendaunt. *Pass.* Il covent qe vous deditz la felonie. Et ita fecit et illa posuit se etc. et issint suspensa. Et nota quia mulier fuit curia voluit capere cognitionem et si masculus si sic dixisset suspensus fuisset sine inquisitionem.

### Translation of the Report

Likewise a certain Isabel of Bury killed someone in a church, and stayed in the church, and thereupon some doubted whether she ought to have the privilege of [sanctuary] ...<sup>3</sup>

Four days later, the same Isabel was brought before the justices in eyre, together with other prisoners; and, being charged before them, she remained silent. The court thereupon asked what she was called and where she came from, and she made no answer.

*Bereford.*<sup>4</sup> The proper course is to enquire whether or not she is dumb, and when she last spoke.

Thereupon twelve men came, took an oath to speak the truth thereupon, and went off to discuss the matter.

Then PASSELEY, J. said [to Isabel]: It would be better for you to speak; for if we make enquiry and find that you can speak you will not be allowed to claim a jury.<sup>5</sup> So speak, and put yourself upon a jury, and you may well be acquitted.

*Isabel.* Mercy, my Lord, for God's sake.<sup>6</sup>

PASSELEY, J. Call the jurors back, for she is speaking.

Then she was charged with the death, as above, and said: My Lord, he hit me first.

PASSELEY, J. Did you kill him, or not?

---

<sup>3</sup> The judges decide that she should not, after a decretal is cited to them by the ordinary. This passage is omitted here, since it is in Latin.

<sup>4</sup> Ralph of Bereford, clerk of the eyre. He was doubtless a relation of Chief Justice William of Bereford, who speaks in Case 3.

<sup>5</sup> This seems to be the more likely meaning of *challenger jurez*, which Miss Cam (85 Selden Soc. 73) translated as 'challenge the jurors', relying on the Royal MS., which reads *serretz mie receu a challenger jurez*.

<sup>6</sup> The Royal MS. reads, *Sire jeo vous cri merci*.