

THE HOSPITAL OF
JERUSALEM.¹

23. THE KING v. THE PRIOR OF THE HOSPITAL OF
ST. JOHN OF JERUSALEM.¹

A writ of *quare impedit* brought on behalf of the King.

mpedit vers le priour de
ay desturbe et pas ne ly
R. qe voide est et a sa
ur le Roy Edward pers
l auoeson et presenta yn
ete. par qi eleccion en
de cely Edward descendi
le come a fiz et heir si le
ostre seynour le Roy.

sson ou autres auoweson
nt en la seisine le Mestre
seisi fut de cel auoweson
a chivalrie du Temple en
qui nostre seignour le
es fees et auoweson et
na le dit priour Gardeyn
oweson et si ad le Priour
hors de la seisine le Roy
ns mye qe saunz le Roy
lue.

iz vne escript ¹⁰de test-
aue a ly son dreit et a
escriit par le quel le Roy
Roy a recouerir son dreit

awoueson¹³ par son fet
anz luy qe fait le Roy ne

bref nous ad il done poer
mettez auant nul estat

ies from the Plea Roll. Text
X; charite M. ² proceys
ner M. ⁷ Supplied from X.
X. ¹³ From T; auowe M;

Our lord the King brought his *quare impedit* against the Prior of St. John of Jerusalem and counted that the Prior wrongfully disturbs him and does not permit him to present a fit person to the church of Holywell which is void, and to which it is his, the King's, right to present by reason that our lord the King Edward, father of our lord the King that now is, was seized of that advowson and presented one H. by name, his clerk, who on his presentation was received etc.; and by whose election as Archbishop of York etc. the church became void. From that Edward the right to present descended to Edward who now claims, as son and heir. And if the Prior etc. will deny this, we are ready to aver it for our lord the King.

Denham. Sir, we tell you that this advowson, together with other advowsons and lands and tenements and rents and fees, was in the seisin of the Master of the Knights of the Temple of all England who was seized of this advowson and presented one etc., his clerk; and this Order of the Knights of the Temple was suppressed by the Pope in a General Council, and our lord the King consequently assumed possession of all the lands and tenements, rents, fees and advowsons until the Pope provided and appointed the said Prior to be guardian of all the lands, tenements, rents and fees and advowsons; and the Prior consequently has and claims to have this advowson as one that was delivered to him out of the seisin of the King by the King's charter—which is here—and we do not think that without consulting the King you will care to hold this plea—and the charter was read.

ICE J. This is not a charter by the King but merely a writing in testimony of the fact that the King has relinquished possession, saying to himself and all others his and their rights; and, consequently, it is not necessary to consult with the King in respect of this writing in which the King [merely] saves his right to recover his right and by which you take nothing by the King's gift.

Toudeby. Out of the King's seisin we have the advowsons by his own deed, on which deed this Court is not competent to pass judgment without consulting the King whose deed it is; nor can any man give judgment of it without the King.

BENEFORD C.J. The King brings this writ and by his writ he has given us authority to hold this plea; and by the King's deed which

¹ See the Introduction, p. xix above.

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le Roy vst entre
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arrer le Roy de son
la seisine le Roy et
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is voille chacer taunt
e.⁵

m nostrum.
qe ne vssez vous suy
is taunqe vous vssez

al meschief ¹²qil est
e de ceste auoweson
graunt meschief.
nee qe ne vssez vous

: bien mes deuers le
la ley.

le transescript de la
: as Templers la moyte
re si fut enroule en la

rom T, X; respouns M.
itz M. ⁷⁻⁸ Supplid
r texts omit. ¹⁰⁻¹¹ From
erre M; viele ley entre T.
dre X.

you proffer no estate accrues to you. We shall not, by reason of it, delay trying the King's right as set out in his plaint, which, by his writ, he has empowered us to do. Further, if the Master of the Temple had wrongfully deprived the King of this advowson and then subsequently, by reason of the suppression of the Order, the King had entered, as he has now done, and was seised, and then, later, relinquished possession and you were seised, as you are now, would that be a sufficient reason to keep the King from his right?

Scrope. Sir, what we are pleading is not to keep the King out of his right, if any right he has; but, seeing that it is out of the King's right that we have this advowson and others, by his own deed which we show to the Court, we do not think that, in the face of that deed, you will be willing to accept cognizance of this plea without consulting the King, but, if you be so willing, then we shall have plenty to say on behalf of the Prior.

Isce J. The King by this deed has reserved his rights and now complains against you, to which complaint you make no answer. Say something further, therefore, or we shall give judgment.

Denham. Then we tell you that we had this advowson as of the right of the Templars, and we tell you that all the muniments and deeds by which their title could be proved and defended have been seized into the King's custody; and we submit that the Court ought not to force us to answer so long as the King retains possession of our means of defence.

Isce J. Neque iniquitas nostra neque peccatum nostrum.¹

Bereford C.J. Long as this plea has been pending here you have not made your suit to the King and brought us his writ to delay the hearing until you had sued the documents for your defence out of the King's possession.

Herle. The King ought not to force you into doing aught that is inequitable, for he is the maintainer of the law of the land, and to make us answer him as to this advowson while he retains the documents on which we rely would be most inequitable.

Isce J. But the King ought not to suffer from your negligence in not suing [for your documents].

Bereford C.J. [to Herle]. If you could appeal to legal principle what you say would be well enough, but against the King, who is above the law, you cannot rely on legal principles.

And afterwards, on the next day, Denham proffered the transcript of King Harry's charter, which witnessed that he had given to the Templars a moiety of the manor of H. together with the

¹ Isce is quoting the Vulgate, Psalm 140 (A.V. lix, 3). His meaning seems to be that it is not the Court's fault that the Prior has not got his documents.

advowson¹; and he said that the charter was enrolled in the Chancery, and he said further that King Edward, father of the King that now is, granted and confirmed that gift, which confirmation is now in the possession of the King, and allowed the appropriation. And, [he said,] we do not think that you will wish to force us into making immediate answer, seeing that these titles of ours, which would avail us much if we had them here in our hands, are in the possession of the King.

BEREFORD C.J. You tender the transcript of a charter of King Harry, grandfather of the King that now is who bases his title upon the presentation by King Edward his father. Can the earlier deed of King Harry avail to bar the King [that now is] from presenting by the later title of his father?

Russell desired to confirm the King's title by the presentation by King Harry.

BEREFORD C.J. You are in a *quare impedit* and not in a writ of latest presentation, and you have for the purposes of the present writ sufficiently affirmed the King's title; but badly was the King advised when he brought this writ of *quare impedit* instead of one of latest presentation.

Scrope. What we are pleading now we do not plead in avoidance of the King's title but to urge the Court that it ought not to force us to make so immediate a reply to the King's writ; for our defences are in his possession and he should not force any man in his Kingdom to suffer hardship.

INGE J. You have naught to show to the Court why the Court should not proceed; for [the King's representative] has counted of the presentation by King Edward, and the charter of King Harry, his grandfather, does not defeat his title; and so, unless you want to say something else, we shall give judgment for the King.

Toudeby. We have tendered the charter of King Harry, and you cannot defeat it without consulting [the King], for it is not for you to judge or make void a King's charter, but for the King himself and for none other.

Trevanion. Then you will put the King in a worse position than that of any of his subjects, for a grandfather's deed does not defeat the father's seisin.

Toudeby. There [i.e. on the Bench] is Inge² who can judge any other than the King, but the King's charter may not be judged by other than the King, for he is without peer and is above all law etc.

¹The date of this charter is 6 July 1231. See the *Calendar of Charter Rolls*, 15 Henry III, p. 135.

²There may be some play intended here on 'Inge,' which can just as well

be read 'Juge'; and indeed, Toudeby's remark makes it not improbable that the Justice was known to his contemporaries as Wm. Judge and not as Wm. Inge, as later writers usually call him.

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ordini hospitalis predicti sicut predicti magister et tu Dominus Rex liberavit unum pertinentiis quod fuit una cum predicta ecclesia nat tenere sibi et hospitali et liberacionem Domini omni Regis patentes que capellas et alia huiusmodi per ipsum Regem quadam creditorum suorum in hac predicta mandavit inter unum iuxta vim et effectum iuris doni concessionis et domini Regis nunc factas occasione predicta quorum unum est devolutus in forma socium istud et alias terras que ad manus ipsius existunt in seisinam ipsius in Cancellaria temporibus etc. Et petit quod Curia colloquio cum Domino assultus per se et consilium circumspecte discrecioni omnia facta defensionem sue et fratres inde tempore habendo beneficium quod ei in eam suam predictam ipso iure semper salvo etc. Et dicit quod predictus beneficium predicti Edwardi seu institutus Et de hoc non sequitur etc. similiter a die Pasche in xv dies

Postea ad diem illum liter predictus Prior per sue Ideo sicut prius prestino Ascensionis Domini etc. Postea ad diem

Note from the Record—continued.

within his realm and dominion to the aforesaid Order of the Hospital aforesaid to hold to its own uses in the same way as the aforesaid Master and Brethren held them previously. And of this he says that on those grounds the lord King did deliver to the same Prior amongst other things the manor of Rothley with the appurtenances, the whole of which was held by the same Master and Brethren in their time together with the aforesaid church of Rothley, which same church this same Prior claims to hold to himself and his Hospital in appropriation in virtue of the aforesaid provision of the lord Pope and delivery of the lord King. And he proffers certain letters patent of the lord King which witness that the same lord King, after a formal reservation of the right of the realm and of his subjects in these matters had previously been made by the same King, commanded that the houses, churches, chapels and the other things aforesaid of like kind within his realm and dominion be released from his possession and delivered in whole to the Prior of the aforesaid Hospital, safe-guarding his own right and that of his subjects by the force and effect of his aforesaid formal act; and thereof he says that by the charters of gift, grant and confirmation of the aforesaid Kings, ancestors of the lord King that now is, made of the aforesaid advowson to the aforesaid Master and Brethren of the Order etc., whose estate has now devolved upon this same Prior in the form aforesaid, which charters and other documents touching that business and other lands that were the property of the aforesaid Brethren of the Knights etc. passed into the King's hands, and not having as yet been released, remain in the seisin of the same lord King etc. and from certain charters of the kings enrolled in the Chancery in the times of the aforesaid kings it can plainly be made manifest etc. And he asks that the Court here will consent to this plea standing over until speech having been had with the lord King etc., and the same lord King having been more fully consulted touching these matters both through himself and through his Council, he may make such declaration in the premises as shall fall in with his careful discretion; especially since the same lord King has in his possession all the deeds relating to the defence of the aforesaid plea which the aforesaid Master and Brethren of the Chivalry had thereof in their time. Afterwards the same Prior, while not waiving the advantage which may possibly accrue to him at some future time by his aforesaid allegation, the King having been consulted thereof when it shall please him, but always reserving it, makes further answer to the count of the lord King and says that the aforesaid Master Harry of Newark was not, upon the presentation of the aforesaid King Edward, father etc., admitted or instituted to the aforesaid church. And of this he puts himself upon the country. And James of Podmore who sues etc. does the like. So the Sheriff is commanded to make come here on the quindene of Easter twelve etc. by whom etc., and who are neither etc., because both etc. Afterwards, on that day the aforesaid James who sues etc. came, and the aforesaid Prior also came by his attorney. And the Sheriff did not send the writ, so *sicut prius* the Sheriff is commanded that he make come here on the Morrow of the Ascension of the Lord twelve etc. by whom etc. and who are neither etc., because both etc. Afterwards on that