

## I.

*Attaint.*

Frank Scoland brought an attaint against Sir W. de la Grauntson which he sought to attaint the jurors of the assize which had previously passed between them<sup>1</sup> and the other parties named in the original writ etc. The verdict of that assize and the judgment consequent thereupon were pleaded in bar of the action upon writ of formedon which the same Frank Scoland brought against the same Sir W., as appears in the plea etc. And the writ ran as follows :

Edward by the grace of God etc. to the Sheriff of Kent greeting. If Frank de Scoland shall give you security for the prosecution of his suit, then summon by good summoners twenty and four law-worthy knights from the venue of Horton that they be before our Justices at the first assize when they shall come into those parts, ready by oath to recognize whether the said Frank and Walter de Gloucester, Hugo de Causton, Roesia, formerly the wife of Richard de Scoland, Walter Paschal, and Reginald Fuller unjustly and in default of judgment disseised William Grandison of his freehold in Horton after the first passage of King Henry into France, seeing that the said Frank complains that the jurors of the assize of novel disseisin which the said William aforetime by writ of our father arraigned against the said Frank, Walter, Hugh, Roesia, Walter and Reginald, before our beloved and faithful Robert de Ratford and Henry Spigurnel, then being the Justices of the lord Edward our father, formerly King of England, assigned to take assizes in the said county, such assize between the said parties being subsequently summoned to be held and being actually held before our said father at Canterbury, have made false oath ; and in the mean time you shall diligently inquire who were the jurors of that assize, and them you shall have before our said Justices at the said assize ;

<sup>1</sup> I.e. Frank Scoland and his co-plaintiffs.

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you shall summon by sufficient summoners the said William to be present for the hearing of that recognition; and you shall have there the summoners, the names of the knights, and this writ. I will be myself at Westminster, the fourteenth day of October in the fifth year of our reign.

Scoland came and prayed the jury. Sir W. Grandison was summoned and came; and seven of the original jurors came, and the Sheriff returned as to three that they were dead; and, as to the two others, he said he had distrained them but they had not come. Whereupon the Justice commanded the Sheriff to oust their wives and children and to take their lands into the King's hand, and to arrest their persons and have them before the Court on a certain day; and then he ordered the parties to plead.

*Malberthorpe*, for Scoland, recited the proceedings of the assize and the verdict, and alleged that the jurors had made false oath in saying that G. the uncle of Scoland, had made a quitclaim to R. etc.; for, said he, no acquittance was ever made, nor view had or sued for; and also in assessing the damages at £15, without having regard to the growing crops on the land, which were worth £20; and, further, in saying that Richard held of William de Grandison.

*Stonore* for Sir William. Sir, you see plainly enough how we are brought here at the suit of Frank Scoland, who brings action against us and the jury of the original assize to be heard by this jury; and, Sir, you see likewise that some of the original jury are not here; and therefore we do not suppose that, without their presence, you will think it fair that we should be obliged to go to this jury, and we submit that the quality of the court does not require us to make our defence without them.

*Hartlepool*, *ad idem*. You cannot, in their absence, proceed to award the jury, for if the absentees were here we should have the advantage of their arguments both in their own favour and in ours. Wherefore etc.

*Passeley*, *ad idem*. If they were here it may be that they would be able to show some good cause why this jury should not be awarded; as, for instance, that Frank was nonsuited on a writ of this sort after appearance. Again, it may fall out that, whatever answer we may

make now, they may subsequently come and say something quite different, and so you will have two different pleas to the same issue.

SPIGURNEL J. What could the twelve say except that they had made true oath?

STAUNTON J. Plead whatever you have to plead in bar, or we shall straightway award the jury. When the others come, if they have anything to say, we will listen to them etc.

*Stonore.* We submit that for yet another reason we cannot now be called upon to reply to this writ; for, Sir, there is a certain statute which enacts that at the beginning of every Eyre the Justices are to make proclamation that all who intend to deliver any writ within the Eyre must deliver it by a certain day. In accordance with that statute you made proclamation and fixed a certain day etc. Now the date of this writ is a month after that day, and so etc.

STAUNTON J. The King sent his commands to us that, notwithstanding the terms of our proclamation, we were to receive writs delivered up to a certain further day after that limited by our proclamation; and within the time so assigned Scoland has purchased his writ.

ORMESBY J. Your argument is tantamount to challenging and disputing the King's authority, and that is what we cannot do.

*Passeley.* The statute enacts that where the writ is received after the day limited by the proclamation the proceedings fall to the ground.

STAUNTON J. We hold the King's authority for what we are doing, and so we must go on with the case. If you allege error, sue out a writ.

*Stonore.* Once again, Sir, we submit that you ought not to award this jury; for, Sir, you see that Scoland's object is to reverse the judgment founded on the original verdict; now that original judgment, we say, has never been executed, for we have never received a penny of our damages.

Then the Justices referred to the record of the original assize, and found that the damages were taxed at £15, of which the complainant had given five marks to the clerks. And upon this, all the rest of the £15 Scoland did then and there tender at the bar and pay into court;