GLANVILL

1. What are the principal actions concerning land that Glanvill describes?

2. Who seem to be the real parties at interest in those actions?

(p. IV–10): "The king to the sheriff, greeting. Command N. to render to R., justly and without delay, one hide of land in such-and-such a vill, which the said R. complains that the aforesaid N. is withholding from him. If he does not do so, summon him by good summoners to be before me or my justices on the day after the octave of Easter, to show why he has not done so. And have there the summoners and this writ. Witness Rannulf Glanvill, at Clarendon."

(12.3, p. IV–20, Baker p. 613 (A.i)): "The king to Earl William, greeting. I command you to do full right without delay to N. in respect of ten carucates of land in Middleton which he claims to hold of you by the free service of one hundred shillings a year for all service (or by the free service of one knight's fee for all service, or by the free service appropriate when twelve carucates make up one knight's fee for all service; or which he claims as pertaining to his free tenement which he holds of you in the same vill or in Morton by the free service, etc., or by the service, etc.; or which he claims to hold of you as part of the free marriage portion of M. his mother, or in free burgage, or in frankalmoin; or by the free service of accompanying you with two horses in the army of the lord king at your expense for all service; or by the free service of providing you with one crossbowman for forty days in the army of the lord king for all service): which Robert son of William is withholding from him. If you do not do it the sheriff of Devonshire will, that I may hear no further complaint for default of right in this matter. Witness, etc."

(13.2–12, pp. IV–26): "The king to the sheriff, greeting. If G. son of O. gives you security for prosecuting his claim, then summon by good summoners twelve free and lawful men from the neighbourhood of such-and-such a vill to be before me or my justices on a certain day, ready to declare on oath whether O. the father of the aforesaid G. was seised in his demesne as of his fee of one virgate of land in that vill on the day he died, whether he died after my first coronation, and whether the said G. is his next heir. And meanwhile let them view the land; and you are to see that their names are endorsed on this writ. And summon by good summoners R., who holds that land, to be there then to hear the recognition. And have there the summoners and this writ. Witness, etc."

(13.32–39, p. IV–31): "The king to the sheriff, greeting. N. has complained to me that R. unjustly and without a judgment has disseised him of his free tenement in such-and-such a vill since my last voyage to Normandy. Therefore I command you that, if N. gives you security for prosecuting his claim, you are to see that the chattels which were taken from the tenement are restored to it, and that the tenement and the chattels remain in peace until the Sunday after Easter. And meanwhile you are to see that the tenement is viewed by twelve free and lawful men of the neighbourhood, and their names endorsed on this writ. And summon them by good summoners to be before me or my justices on the Sunday after Easter, ready to make the recognition. And summon R., or his bailiff if he himself cannot be found, on the security of gage and reliable sureties to be there then to hear the recognition. And have there the summoners, and this writ and the names of the sureties. Witness, etc."

3. What is the difference between 'upward-looking' claims and 'downward-looking' claims?

4. Why might a lord bring a downward-looking claim in the central royal courts rather than simply dealing with the matter in his own court?

Glanvill 10.9 (Hall ed., p. 125): “The king to the sheriff, greeting. Command N. to restore, justly and without delay, so much land (or, certain specified land) in such-and-such a vill to R., of a term which is now past, as R. alleges; and to accept payment from him (or, which he alleges he has redeemed by payment). If he does not do so, summon him by good summoners to be before me or my justices at a certain place on a certain day to show why he has not done so. And have there the summoners and this writ. Witness, etc.” This can lead to a recognition whether gage or fee.

5. Why do the lords’ courts regularly default in actions on the writ of right?

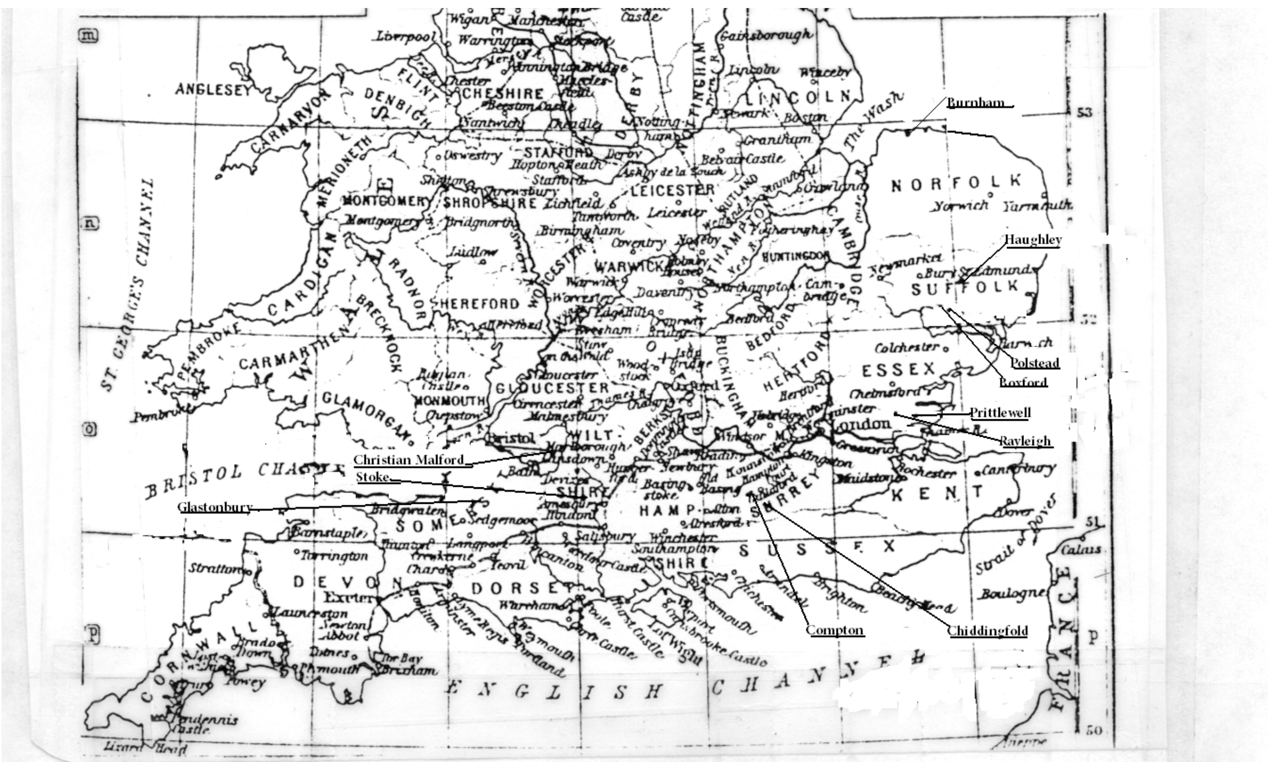
3.1 (p. IV–18): “The presence of the third party ... is required ... if the tenant says [the land] is his, but that he has in respect of it a warrantor from whom he got it as a gift, or by sale, or in exchange, or some other such way.” In the situation where the warrantor defaults *escambium* (p. IV–19).

There are more pieces of Glanvill that may help in answering these questions at the end of the outline.

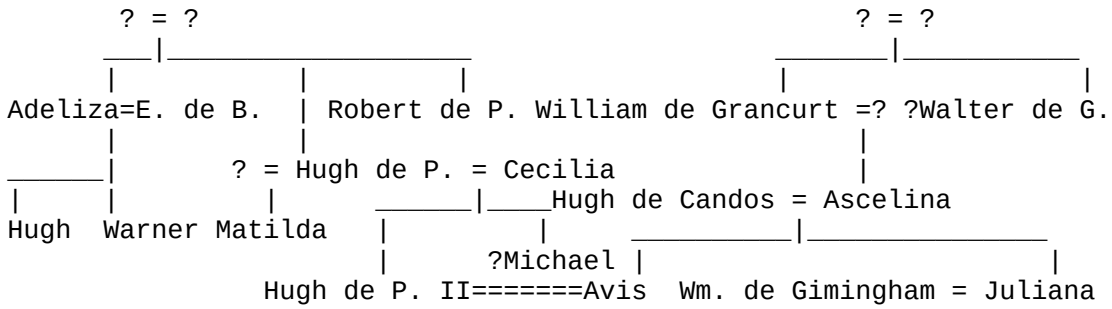
THE POLSTEAD SAGA AND THE ASSIZES OF HENRY II

For some pictures of plea rolls, visit http://aalt.law.uh.edu/.

For the places mentioned, see the map on *Mats.* at IV–33 and below:



The Cast of Characters:



(There is some ambiguity as to whether William or Walter was Ascelina's father. See Nos. 18, 45–6. William seems the more plausible.)

Documents from the 1230's and 1240's suggest that Hugh de Polstead, who is probably the son of Hugh de P. II in the genealogy, holds between 4½ and 7½ knights' fees in Burnham (Norfolk), Polstead (Suffolk), Prittlewell (Essex), and Compton (Surrey).

Now the only problem is to figure out who was doing what to whom when. Of the numerous cases mentioned or reported, we will focus on three in this class:

6. 10:AssOct98–Hugh de P. one of the knights of the grand assize: "These twelve knights Roger de 'Ginnes', Robert de 'Bounton', Pain de 'Stanford', Hugh de Polstead [and seven others with a space for a name the clerk didn't get] ... were chosen to make a recognizance between Roes daughter of Roger and Simon de 'Bures' tenant about a half a hide of land and fifteen acres of land with appurtenances in Mucking [Essex] and Tilbury [Essex] about which the aforesaid Simon, tenant, puts himself on the grand assize of the lord king and asks that a recognizance be made about it whether she has greater right in that land or this Simon." F. Palgrave (ed), *Rotuli curiae regis* [RotCR] 1 (Record Comm'n, London 1835) 198

   11:Id.-Hugh de P. one of the four to choose the twelve: "These four knights, Hugh de Polstead, Laurence de 'Plumberg' Julian de 'Lefteneston', Robert de 'Trindeia', summoned to choose twelve knights to make a recognizance between Christopher de 'Berking' and Worthina de Hockley [Essex] about forty acres of land with its appurtenances in Hockley about which Worthina who is the tenant put herself on the grand assize of the lord king and asked for a recognizance [as to] who of them has greater right in that land, chose these: [six names given] .... A day is given to them at Greenwich and in the meantime let there be a view. The sheriff was ordered that he summon the knights to be present there at that time." *Id*. 201.

   For the process involved here, see *Glanvill*, p. IV–12 ff.

7. Christian Malford and Winterbourne Stoke:

   3:M95—G. de M. owes one mark for right: "Geoffrey de 'Maisi' [? Mayfield, Sussex] owes one mark for right about four hides of land in Winterbourne [Winterbourne Stoke, Wilts]. And about a half a hide of land in Christian Malford [Wilts] against Hugh de Polstead." Pipe Roll 7 Richard I.

   4:P96—fine: G. de M. to hold of H. de P. "This is a final concord made in the court of the lord king at Westminster on the Saturday after the Invention of the Holy Cross in the seventh year of the reign of King Richard before H[ubert] archbishop of Canterbury, R[ichard fitz Neal] of London, G[ilbert Glanvill] of Rochester, bishops, H[enry] of Canterbury, R[alph ?Foliot] of Hereford, R[ichard Barre] of Ely, archdeacons, G[eoffrey] fitz Peter, William de Warenne,

Ric[hard] de Herriard, Osbert fitz Hervey, Simon de Pattishall, Thomas de Hurstbourne and other barons and faithful of the lord king then present, between Hugh de Polstead demandant and Geoffrey de 'Maisil'' tenant, about four hides of land with its appurtenances in Winterbourne and a half a hide of land with its appurtenances in Christian Malford which are of the fee of the abbot of Glastonbury about which there was a plea between them in the court of the lord king, to wit: that the same Hugh de Polstead granted to the aforesaid Geoffrey de 'Maisil'' and his heirs all the aforesaid land with its appurtenances to hold of him and his heirs for the service of one knight. And for this grant and concord the aforesaid Geoffrey de 'Maisil'' gave forty marks of silver to the aforenamed Hugh de Polstead and did him homage for the aforesaid land." Feet of Fines, Richard I.

Final concords are the topic of book 8 of Glanvill, but version used here may be an invention of Hubert Walter, who was chief justiciar from 1193–1198.

6:M96—G. de M. pays his one mark. Pipe Roll, 8 Richard I.

8:P98—H. de P. appoints H. de P. attorney. "Somerset. Hugh de Polstead puts his son Hugh in his place against the court of Glastonbury to gain or lose." Curia Regis Rolls (CRR) 1.

9:P98—Four members of the court of Glastonbury to bear the record. "A day is given to Gerard de 'Brohton'', Richard son of Robert, Geoffrey de 'Stawell'' and Hugh Travet who ought to bear record of the court of Glastonbury between Hugh de Polstead and Geoffrey 'del Meisi' on the octave of St. John [1 July], and let them come then and bear record, and let Geoffrey be summoned that he might be there then to hear that record." CRR 1.

Glanvill p. IV–19 tells us that a process of tolt may bring a case from a lord's court into the county court 'for default of right'. From there a writ of *pone* will bring the case into the central royal court. Glanvill does not describe that, but it seems to have been totally standard from the time of the first plea rolls.

Tentative conclusion: Hugh tries to sell land to Geoffrey and gets into trouble because he has bypassed his lord's court (the abbot of Glastonbury)

8. Burnham (somewhat abbreviated).

15:P99—? covenant. The record is badly damaged but it suggests that that one Walter de Grancurt and Hugh son of Hugh de Polstead are litigating about a covenant that has something to do with a woman named Juliana. Rotuli Curiae Regis 1.

16:M99—suggests that the writ is "to show why" (*ostensurus quare*) he made her a nun. "Hugh de Polstead [and Hugh his son essoin themselves] against Walter de Grancurt about a plea why he made his granddaughter a nun by Robert son of Adam." Pleas before the King or his Justices 1.

The initial proceedings are not described in our extracts from Glanvill. Elsewhere he describes an action of covenant, which may be involved here. In entry 16 languge is used that will later be found in the writ of trespass, but that does not appear formally until the middle of the 13th century. The archbishop of Canterbury, mentioned in entry 18, was Hubert Walter, who was also chief justiciar until 1198.

18:M99—Walter G. tells his story: "Walter de Grancurt complains that Hugh de Polstead, when Juliana his granddaughter and his heir was in the custody of the same Hugh by the lord of Canterbury and he before him and the other justices faithfully promised that he would not marry her without the assent of this Walter and of his progeny, he [Hugh] of his own will

made her a nun unjustly. Hugh came and defended that she was never made a nun by him but he says that the steward of the count of Perche [Normandy], as is said, sent for her to his house, and he doesn't know what he did with her. Walter says that this Hugh against the will of the same Juliana and while she was under age made her take up the habit of religion so that he might obtain the portion of the inheritance of this Juliana along with her first born sister whom he took to wife. Hugh proffered a charter of the count of Perche and of M[____] his countess which testified that they had given the same Hugh Avis the first-born with her inheritance and that this Juliana before this count and countess and many others asked if she could with their permission take up the habit of religion. And Walter says that this could not be because she never crossed [the Channel] nor spoke with the count or the countess. A day was given, one month after St. Hilary [13 February] to hear their judgment." Rot CR 2.

20–24:HPM00—Juliana appears, suggesting that she is out of the convent; various essoins and constitutions of attorneys and the case fizzles out.

The five entries suggest that there are probably at least three lawsuits going on here: Walter (with Juliana) v. Hugh (father and son). Juliana v. Hugh and Avis. The count of Perche v. Walter (about the wardship 'custody'). The plea rolls are virtually complete for the next six years, but nothing appears on them until:

39–41:P06—Hugh de P. wins a novel disseisin brought against him by William de G., but a case brought by William and his wife Juliana against him continues

40. "The assize comes to recognize if Hugh de Polstead unjustly and without judgment disseised William de Gimingham of his free tenement at Burnham within the assize. The jurors say that he did not disseise. Judgment. William is in mercy for a false claim." CRR 4.

This is, of course, the famous assize of novel disseisin, described in Glanvill on p. IV-29 ff.

41. "Hugh de Polstead [and Avis his wife] essoin themselves [with regard to the matter] that is before the king against William de Gimingham and Juliana his wife about a plea of land … ."

45–6:P06—More of the story comes out; the parties have paid for a special jury to be taken on the question whether Walter de G. "intruded" himself on the land at the time of the death of Ascelina de Candos; the jury says that he did. The writ here is a variant of the assize of mort d'ancestor, described in Glanvill on p. IV–24 ff.

45. "Hugh de Polstead and Avis his wife by Hugh de 'Ylleg'' demand against Walter de Grant Curt one carucate of land with its appurtenances in Burnham, of which Ascelina de Candos, whose daughter and heir the aforesaid Avis is, died seised as of her *maritagium* given by William de Grancurt and in which he intruded himself by force and arms while Ascelina lay in the infirmity of which she died, and he held it thus violently after her decease and by that intrusion he took from it chattels which were on that land to the value of twenty marks, and that Ascelina thus died seised of that land as of her *maritagium* and that Walter so intruded himself in that land he [sic] offers to deraign by consideration of the court. And Walter defends his right, and he says that Avis has a sister who is not named in the writ and therefore he does not wish to reply without her unless the court shall have considered, and since there was mention in the writ of intrusion and he does not know if the sister wanted to follow. It was considered that he reply because Hugh and Avis offer the lord king forty shillings for having a jury by lawful men [on the question] whether this Ascelina died seised of that land as of a *maritagium* given her by the aforesaid William and whether this William [?sic] intruded himself in that land by force and while she lay in the infirmity of which she died, or not, and

the offering is received. And Walter offers forty shillings for the same … and let William de Gimingham [Norfolk] and Juliana his wife, the sister of the aforesaid Avis be summoned to come to follow the jury if they will. … .” CRR 4.

In later law an “abator” was sometimes distinguished from an “intruder” in that the latter was a stranger who got onto the land after the ancestor had died and before the heir could take seisin, while the former was a relative who did the same thing. The distinction does not seem to be being made here.

46. “The jury comes to recognize if Ascelina de Candos, mother of Avis, wife of Hugh de Polstead, was seised on the day on which she died of one carucate of land with its appurtenances in Burnham as of her *maritagium* which was given to her by William de Grancurt, father of the aforesaid Ascelina, and if Walter de Grancurt with force and arms intruded himself on that land while this Ascelina was in her sickness of which she died and though that intrusion remained on that land after the decease of this Ascelina. The jurors say that William de Grancurt gave the aforesaid land to Hugh de Candos in *maritagium* with the aforesaid Ascelina, and she held that land as her *maritagium* all her life; and while she lay in her infirmity of which she died, fifteen days before her death Walter came with a multitude of people and put himself on that land and thus he held it from then to now. It was considered that Hugh de Polstead and Avis his wife and William de Gimingham and Juliana his wife have seisin of that land of which Avis and Juliana are the heirs of this Ascelina. And Walter is in mercy.”

Maritagium took various forms, but the version involved here was probably a grant to a husband and his wife for their joint lives with a remainder for life in the survivor and the inheritance passing to the heirs of the marriage. The issue here may be whether the inheritance would pass to the children of the couple when they had only daughters or would return to the wife’s family from whence it had come.

49–52:TM06—Wm. and Juliana attempt to raise the ante by bringing an attaint proceeding against the jury.

52. “A day is given to William de Gimingham and Juliana his wife by their attorney and to Hugh de Polstead about a plea of rent and about a jury for convicting the twelve on the octave of St. Hilary by the request of the parties. And let it be known that all twenty-four are to be attached. And Hugh removed his attorney and wishes to prosecute in his own person.” CRR 4.

55:H07—the countess of Perche demands her court

55. “The countess of Perche demands her court by William ‘Pachche’ her bailiff on Thursday before the octave of St. Hilary [18 January] about the suit between William de Gimingham and Juliana his wife demandants and Hugh de Polstead and Avis his wife tenants about land in Burnham.”

56–7, 59–63:HM07, P08—various essoins

66-70, ET08, P09—various proceedings leading to the compromise

71:P09—Compromise

Tentative conclusion: The marriage settlement goes awry because the lord’s arrangements for Juliana cannot be enforced after the break with Normandy in 1204.

All of this looks as if we're talking about horizontal relationships, two sisters and their husbands squabbling. There are some hints of vertical relationships upward in the previous generation and involving the count of Perche, but nothing to suggest that anything is going on below the tenurial level of the litigants. That that is not true, however, is apparent when we come to no. 71, which we'll do next week.

MORE GLANVILL

1. A piece of Roman law: (1.3, p. IV–9):

"Pleas concerning baronies; pleas concerning advowons of churches; the question of status; pleas of dower, when the woman has so far received none; complaints that fines made in the lord king's court have not been observed; pleas concerning the doing of homage and the receiving of relief; purprestures; debts of laymen. All these pleas concern solely claims to the property (*proprietas*) in the disputed subject-matter: those pleas in which the claim is based on possession (*possessio*), and which are determine by recognitions, will be discussed later in their proper place"

2. Suppose your client claims a virgate of land in Puddle Parva in 1200. What more do you need to know and how would you go about suing for it?

    a. Free vs. serf — this system is not available to the unfree. (See IV–9:)

"When anyone complains to the lord king or his justices concerning his fee or free tenement, and the case is such that it ought to be, or the lord king is willing that it should be, tried in the king's court, then the complainant shall have the following writ of summons:")

    b. Of whom do you claim to hold? Of whom does the tenant claim to hold?

3. We need one more piece from *Glanvill* before we try to solve the puzzle:

(12.6–7; p. IV–21): "These pleas," Glanvill says speaking of the writ of right, "are tried in the courts of lords, or of those who stand in their place, in accordance with the reasonable customs of those courts, which cannot easily be written down because of their number and variety. Proof of default of right in these courts is made in the following way when the demandant complains to the sheriff in the county court and produces the writ from the lord king, the sheriff will, on a day appointed to the litigants by the lord of the court, send to that court one of his servants, so that he may hear and see, in the presence of four or more lawful knights of that county who will be there by command of the sheriff, the demandant's proof that the court has made default of right to him in that plea; the demandant will prove this to be the case by his own oath and by the oath of two others who heard and understood it and who swear with him. With this formality, then, cases are transferred from certain courts to the county court, and are once again dealt with and determined there; and neither the lords of those courts nor their heirs may contest this or recover jurisdiction for their courts in respect of the particular plea." This procees known as tolt; I another place Glanvill tells us that once the case is in the county court either party may remove it to the central royal court by a writ known as pone (6.7, p. 61, Hall ed.).

4. What were these things originally?

    a. Mort d'ancestor — look at the Assize of Northampton (pp. IV–4 to IV–5)

> 4. Item, if any freeholder has died, let his heirs remain possessed of such "seisin" as their father had of his fief on the day of his death; and let them have his chattels from which they may execute the dead man's will. And afterwards let them seek out his lord and pay

him a "relief" and the other things which they ought to pay him from the fief. And if the heir be under age, let the lord of the fief receive his homage and keep him in ward so long as he ought. Let the other lords, if there are several, likewise receive his homage, and let him render them what is due. And let the widow of the deceased have her dow[er] and that portion of his chattels which belongs to her. And should the lord of the fief deny the heirs of the deceased "seisin" of the said deceased which they claim, let the justices of the lord king thereupon cause an inquisition to be made by twelve lawful men as to what "seisin" the deceased held there on the day of his death. And according to the result of the inquest let restitution be made to his heirs. And if anyone shall do anything contrary to this and shall be convicted of it, let him remain at the king's mercy.

b. Novel disseisin — look at the words:

The king to the sheriff, greeting. N. has complained to me that R. **unjustly and without a judgment** has disseised him of his free tenement in such-and-such a vill since my last voyage to Normandy. Therefore I command you that, if N. gives you security for prosecuting his claim, you are to see that **the chattels which were taken from the tenement are restored to it**, and that the tenement and the chattels remain in peace until the Sunday after Easter. And meanwhile you are to see that the tenement is viewed by twelve free and lawful men of the neighbourhood, and their names endorsed on this writ. And summon them by good summoners to be before me or my justices on the Sunday after Easter, ready to make the recognition. And summon R., **or his bailiff if he himself cannot be found,** on the security of gage and reliable sureties to be there then to hear the recognition. And have there the summoners, and this writ and the names of the sureties. Witness, etc.

c. Writ of right — must be the thing that makes the land heritable originally

d. If this is right then writs of entry, which are only hinted at in *Glanvill*, are a whole 'nother story, for which I can give you just the barest outlines: They may be the product of a development like the following:

e. Novel disseisin means that the lord can no longer justice his tenants.

f. *Glanvill* 2.6: Special mise (p. 146–7): taking an issue away from the grand assize by allegation that the demandant is of the same blood as the tenant. If tenant admits it, the case is pleaded verbally and goes to battle. If tenant denies it, the case is pleaded verbally and goes to inquest. There are a lot of these early in John's reign being used for claims like those that we looked at above, where the question was whether the tenant held in fee or gage or whether he held for a term of years that had expired.

g. The distinction between upward looking claims and downward looking claims.

5. Unburdened with knowledge of Roman law, it seems relatively clear that what we are dealing with here originally is three types of claims that may be made against a lord. Burdened with a knowledge of Roman law we see them as dealing with ownership and possession. *Glanvill* hints at this and *Bracton* develops it to a fare thee well. But the writs of entry are a problem in this scheme and like so much else in history it's the last development that gives the clue to the whole puzzle.