

SECTION 7. THE AGE OF TRESPASS: THE DEVELOPMENT OF A WRIT

A. A YEARBOOK CASE

PARIS V. PAGE¹

Y.B., Pasch., 1 Edw. II, pl. 1 (1308)

ed. F.W. MAITLAND, *YEARBOOKS 1 & 2 EDW. II: 1307-9*, Selden Society, 17 (London, 1903), pp. 11-12[†]

Action for assault and imprisonment. Plea, arrest of a villein in his villein nest. An attempt to reply that the plaintiff is a free citizen of London fails; but the defendant is compelled to assert seisin of the plaintiff as a villein at the time of the assault.

Simon of Paris brought a writ of trespass against Walter Page, bailiff of Sir Robert Tony, and divers others, and complained that on a certain day they took and imprisoned him etc. wrongfully and against the peace etc.

Passeley for all, except [Walter] the bailiff, answered that they had done nothing against the peace. And for the bailiff he avowed the arrest for the reason that Simon is the villein of Robert, whose bailiff Walter is, and was found at Necton in his nest,² and Walter tendered to him the office of reeve and he refused and would not submit to justice etc.

Toudeby rehearsed the avowry and said that to this avowry he ought not to be answered, for that Simon is a free citizen of London and such has been these ten years and has been the king's sheriff in the said city and has rendered account at the Exchequer;³ and this (said he) we will aver by record; and to this very day he is an alderman of the town, and we demand judgment whether they can allege villeinage in his person.

Herle. With what they say about his being a citizen of London⁴ we have nothing to do; but we tell you that from granddam and granddam's granddam he is the villein of Robert, and he and all his ancestors, grandsire and grandsire's grandsire, and all those who held his lands in the manor of Necton; and Robert's ancestors were seised of the villein services of Simon's ancestors, such as ransom of flesh and blood, marriage of their daughters, tallaging them high and low, and Robert is still seised of Simon's brothers by the same father and same mother. And we demand judgment whether Robert cannot make avowry upon him as upon his villein found in his nest.

Toudeby. We are ready to aver that he is a free man and of free estate, and they not seised of him as of their villein.

BEREFORD, J. I have heard tell that a man was taken in a brothel and hanged, and if he had stayed at home no ill would have befallen him. So here. If he was a free citizen, why did not he remain in the city?

At another day *Toudeby* held to the assertion 'not seised of him as of his villein nor of his villein services.'

¹ Proper names are taken from the record.

[†] <Public domain?>

² For this phrase, see Y.B. 21-2 Edw. I, p. 449; 33-5 Edw. I, p. 205.

³ Simon of Paris was sheriff of London in 1302-3. For his election see R. Sharpe, *Letter Book C*, p. 114. It appears from the civic Letter Books that he was mercer, alderman, chamberlain and a very active citizen. For his will see Sharpe, *Calendar of Wills*, i, 309.

⁴ Or 'a citizen of the king.'

Passeley. Whereas he says that we were not seised of him as of our villein, he was born in our villeinage, and there our seisin began, and we found him in his nest, and so our seisin is continued. We demand judgment.

BEREFORD, J. One side pleads on the seisin, and the other pleads on the right; in that way you will never have an issue.

Herle. Seised in the manner that we have alleged.

BEREFORD, J. The court will not receive such a traverse. You must say that you are seised of him as your villein and of his villein services.

And so [the defendant's counsel] did. Issue.

Note from the Record⁵

Walter Page of Saham, Nicholas of Walwayn, Geoffrey son of Richard of Nocketone [Necton] and Geoffrey de Tony [or Tany] are attached to answer 'Simon of Paris of London' in a plea of assault and imprisonment. The alleged wrong was done at Necton in Norfolk on [14 Aug., 1306] the Sunday next before the Assumption of the Virgin in 34 Edw. I. The usual charges of beating, wounding etc. are made in the count, and damages are laid at 100*l.* The defendants, other than Walter, plead 'not guilty' (*nullam transgressionem fecerunt*). Walter pleads as set forth [in the report] that he was bailiff of Robert de Tony of his manor of Necton, that the plaintiff is Robert's villein, holding villeinage and born in the same villeinage, that Robert and his ancestors from time immemorial were seised of Simon's ancestors as their villeins, that Simon was found in his nest and refused the office of reeve, and that Walter, as well he might, attached Simon by his body for rebellion and disobedience.

The attempt to plead a special replication concerning Simon's status as a free citizen of London has left no trace on the record. He at once pleads ... 'free man and of free estate, and Robert not seised of Simon as his villein.' The record then states that the bailiff was unable to meet this averment without his lord, and that Robert de Tony, who was present in court, joined himself to the bailiff in answering. And Robert and the bailiff said by way of rejoinder ... that Robert's ancestors were seised of Simon's ancestors as their villein, and that on the day of the trespass Robert was seised of Simon as of his villein by tallaging him among his other villeins. Upon this Simon joins issue. The record is silent as to the attempt of Robert's counsel to obtain an issue more favourable to their client ('he was born our villein and was found in his nest'). They are committed to 'seised of him as of our villein when the arrest was made.'

A jury was ordered for the octave of Michaelmas [1308]. A verdict, however, was not obtained until Trinity quindene 5 Edw. II [June, 1312]. By that time Robert de Tony, Nicholas Walwayn, and Geoffrey son of Richard were dead. The jurors say upon their oath 'that on the day and year aforesaid Simon was a free man and of free estate, and that Robert never was seised of him as his villein, and that Walter and the others on the day and year aforesaid in the King's highway at Necton took Simon and led him against his will to Robert's manor in the same town and detained him there in prison from the hour of terce [about 9:00 a.m.] until vespers [about 6:00 p.m.], to his damage of 100*l.*' Judgment for 100*l.* is given against Walter Page and Geoffrey de Tony, and they are in mercy. The heavy damages given for a few hours' imprisonment will not escape attention: nor the lapse of four years between the *venire facias* and the verdict.

⁵ [Based on London, Public Record Office, CP/40/170/45, the Common Bench plea roll for Easter, 1 Edw. II.]