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## YEAR BOOKS AND PLEA ROLLS AS SOURCES OF HISTORICAL INFORMATION

BY H. G. RICHARDSON, M.A., B.Sc., F.R.HIST.S.

*Read December 8, 1921.*

EIGHTEEN years ago F. W. Maitland edited for the Selden Society the first volume of the *Year Books of Edward II.* In his introduction to that volume, moved by a pardonable enthusiasm, he wrote—perhaps not altogether advisedly—“It will some day seem a wonderful thing that men once thought that they could write the history of mediæval England without using the Year Books.”<sup>1</sup> Since then that sentence has been frequently repeated, although it is to be feared that for the most part historians have turned a deaf ear to its warning: and lately Mr. W. C. Bolland, who has himself edited several volumes of Year Books for the same Society, has reiterated Maitland’s plea and, going further, has drawn a damaging comparison between the Year Books and the Plea Rolls.<sup>2</sup> The Year Books, we are told, “are the living body, acting and speaking and thinking

<sup>1</sup> *Year Books of Edw. II*, i, xx. I do not think, however, that any candid reader of the context will give the sentence the extreme meaning which some of Maitland’s followers seem disposed to give it: cf. the reference to the Plea Rolls in his introduction to *Bracton’s Note Book*, p. 11; below p. 69. For an extreme view see T. F. Tout, *Political History of England* (1216–1377), p. 461. Mr. L. O. Pike at one time expressed a high opinion of the value of the YBB. for social history (see especially *YB. 18 and 19 Edw. III*, pp. xxvi ff.), but he was careful to add “and the corresponding records,” and in his latest statement his opinion had changed substantially: “the records as a whole reveal an entirely different state of affairs” (*YB. 20 Edw. III*, ii, xlvii). See also his reference in *Report of R. Commn. on Public Records*, i, iii, 166, to “the unique value of the details supplied by the rolls for historical purposes, and especially for social history, and the history of civilisation.”

<sup>2</sup> *The Year Books, Lectures delivered in the University of London.*

and wrangling and changing its mind on the pressure of the moment": while the Plea Rolls present "the skeleton, the dry bones of the bare facts." It is true that Mr. Bolland is careful to explain that the Year Book and the Roll each contain matter which is absent from the other, and that for historical purposes neither is complete without the other: but there is no doubt that the general impression left by Mr. Bolland's lectures is that the Year Books are of high historical value, that they contain, in his own words, "innumerable matters of interest, legal, historical, constitutional and social, about which the record is entirely silent."<sup>1</sup> Now the danger of such statements is not that they may beguile a *Times* reviewer to remark of the Year Books, "they are of extraordinary value in their vivid presentation of the life of the time . . . their unique value is scarcely yet recognized by historians,"<sup>2</sup> but that they may beguile the student to spend on the study of the Year Books time that might be more profitably occupied in studying many another neglected source.<sup>3</sup>

It is perhaps desirable to say a few words in explanation of what the Year Books are. The Year Books are collections of reports of cases argued in the central courts: they are written in French—very exceptionally in Latin—and as they now survive begin in the reign of Edward I and continue, with some serious gaps, well into the sixteenth century.<sup>4</sup> Whether they were in origin students' notebooks or professional publications, is not a question of importance in the present connexion.<sup>5</sup> Suffice it to say that they were unofficial compilations by lawyers for lawyers, which

<sup>1</sup> *Op. cit.*, pp. 29, 30.

<sup>2</sup> *Literary Supplement*, February 24, 1921, p. 130.

<sup>3</sup> Cf. Prof. A. F. Pollard's statement in *History*, vi, 217: "the Year Books remain the great unexplored source for constitutional history down to the Tudor period."

<sup>4</sup> Turner, *YBB. of Edw. II* (Selden Soc.), vi, xi.

<sup>5</sup> The principal contributions to the discussion are the Introductions to volumes i, vi and xiv of the *YBB. of Edw. II* (Selden Soc.) and the *YB. of 20 Edw. III* (R.S.), Pt. ii. See also Holdsworth, *Hist. of English Law*, ii, 451 ff.; Bolland, *op. cit.*, pp. 31 ff.

gradually acquired greater and greater authority<sup>1</sup> and were the ancestors of the present Law Reports. It has even been suggested that by the beginning of the sixteenth century they were regarded with so much respect that it was worth while falsifying them in order to get a respectable precedent for the Court of the Lord High Steward.<sup>2</sup>

The Plea Rolls constitute, of course, the official record : they are of greater antiquity than the Year Books, the earliest extant fragment being an extract from a roll of the twenty-seventh year of Henry II,<sup>3</sup> but the series actually begins in Richard I's reign and continues to the present day. From the earliest period until well into the eighteenth century the entries on the Rolls were made in Latin.

Before making any detailed examination of the claims of the Year Books and the Plea Rolls as sources of historical information, let it be said at once that without the Year Books we should know much less about mediæval law, much less about mediæval courts of law and about the mediæval lawyer. But that without these reports we need know less about other aspects of history is an extremely difficult proposition to sustain. The Year Books may occasionally be of great use in giving us an indication of the information we may find in the Plea Rolls, for vile as the text of the old editions of the Year Books may be, the Abridgments and the indexes to the Year Books themselves do enable us to run down cases, and from that point we may, with difficulty, find our way to entries on the Plea Rolls, baffling as the lack of indexes to those records certainly is. Sometimes the Year Books may obviate the

<sup>1</sup> Cf. Maitland, *YBB. of Edw. II*, iii, x ; Pike, *YB. 12-13 Edw. III*, p. xxiii ; Turner, *op. cit.*, xiv ff.

<sup>2</sup> Vernon Harcourt, *His Grace the Steward and Trial of Peers*, pp. 416 ff. See Pike's criticism, *Law Quarterly Review*, xxiii, 442 ff., and Harcourt's reply, *ibid.*, xxiv, 43 ff. Harcourt's theory cannot be regarded as proved, but the difficulty still remains that "the records of that time falsify the book" : Holdsworth, *op. cit.*, i, 389 (3rd edition).

<sup>3</sup> Maitland, *Select Pleas of the Crown*, p. xxvi.

necessity for consulting the records, if they happen, as they sometimes do, to have preserved the item of information we require, and time or circumstance does not permit of the identification of the case on the rolls. And life being but brief and the rolls very long and the reports very doubtful guides, it is too often Year Book or nothing.

Yet, when we have said so much in praise of the Year Books we have said nearly all that it is safe to say, and the seeker who, without a solid grounding in mediæval law, turns to them for entertainment may look long for scant reward.<sup>1</sup> "It would be an eminently good deed," as Maitland said with another reference, to print for the use of the general student of history an annotated selection of cases from the Year Books, but it would need to be amply supplemented from the Rolls before even the picture of the mediæval court of law were tolerably complete.<sup>2</sup> And although it might be conceded that without the Year Books we might know something less about constitutional history<sup>3</sup>—remembering that the claim can only safely be made where an examination of the corresponding records has been scrupulously carried out—the contribution which the Plea Rolls have already made to the study of constitutional history, particularly of the King's Council,<sup>4</sup> suggests how valuable the records are and how much more there is yet to be learnt from them. Of the value of the Plea Rolls for political history no testimony is more eloquent than the complete rewriting of the history of the rebellion of 1381, which the last generation has witnessed, based largely, if

<sup>1</sup> Cf. Maitland, *YBB. of Edw. II*, i, xx: "Reports must be read in considerable quantities if they are to be appreciated. They cannot be tasted in sips. Placed in the hands of a foreigner or of a beginner, what could be worse material than the last number of the Law Reports? It is of necessity a jumble of odds and ends. . . . Even so it is in the Year Books."

<sup>2</sup> Cf. Pike, *YB. 20 Edw. III*, ii, xlvii ff.

<sup>3</sup> See Vinogradoff, *Constitutional History and the Year Books*, *Law Quarterly Review*, xxix, 273 ff.; below Appendix A.

<sup>4</sup> It will suffice to refer to Hale, *Jurisdiction of the Lords House*; Pike, *Const. Hist. of the House of Lords*; Baldwin, *King's Council*.

not principally, on the Plea Rolls and subsidiary records.<sup>1</sup> If we were to search the Year Books of Richard II for the faintest glimmer of new light on that story, we could hardly hope to find it. True, some accident appears to have befallen the reports for that reign, and to have left us with little more than fragments for many of the terms, while only the reports for the twelfth year have been put into print:<sup>2</sup> but a more kindly fate has befallen the Year Books of Henry VI, which are in print for all to read and, although some years are missing, are complete for the 1450's, and we may not unfairly judge their value for political history by what they tell us of Jack Cade's rebellion. There is a short story, interesting enough, of an uprising at Bath,<sup>3</sup> which seems hitherto to have escaped the notice of historians of that rebellion, and there may be a few other incidental references: but with the story of 1381 before us, dare we venture to say that we shall get any gleanings of consequence from the Year Books when the time comes to tell the story of 1450 as the earlier story has been told? <sup>4</sup>

The modern editor of a Year Book collates the report and the record, and we may adopt a similar method in endeavouring to get some more definite indication of the relative value of the two sources. Let us first look at two cases which are of more than legal interest taken almost at random from the reports of the fourth year of Edward II.<sup>5</sup> In one case the Year Book tells us that a certain A. brought a writ of detinue against Master John Pamppan to recover a book of the value of one hundred shillings and claimed ten pounds damages. The defendant failed to appear when he should have waged his law, and judgment was given

<sup>1</sup> Réville, *Le Soulèvement des Travailleurs d'Angleterre en 1381*; Powell, *Rising in East Anglia*; Powell and Trevelyan, *Peasants' Rising and the Lollards* (p. 18 of which gives further references).

<sup>2</sup> Ed. G. F. Deiser: see pp. xvi ff. for account of MS. material for YBB. of Richard II.

<sup>3</sup> YB. 35 *Hen. VI* (ed. 1601), Hil., ff. 44b, 45a.

<sup>4</sup> There is a good deal of information in the *Coram Rege Rolls* Nos. 758-762 about Jack Cade's rebellion and other civil disturbances.

<sup>5</sup> Ed. G. J. Turner (Selden Soc.).

against him. Here, as often, the reporter is not sufficiently interested in the names of the parties to give them correctly, nor does the modern reader seek particularly to learn them ; but he would be interested to know what manner of book it was, worth a hundred shillings, about which men went to law in the early years of the fourteenth century. The record will tell him when the report is silent : the book was called *Saintgrahel* ; and who shall say that Robert of Wulghes, the rightful owner, did not suffer ten pounds' worth of damage in being deprived of its delight and solace ?<sup>1</sup> The other case has a very legal flavour and interested the Court mightily : three separate reports of it have been preserved. The particulars of the case, which was one of dower, need not detain us : the peculiar circumstance was that the tenant's attorney on his way to Court happened to pass through Ashton-under-Lyne just when John Miles was wounded by unknown men. The wounded man raised the hue and cry and the constables of the town—who bore the pleasing names of John Hackepenne and John Blot—"because," says the record, "John Miles' life was despaired of," charged the innocent lawyer with the crime and arrested him. After being kept in prison some weeks the attorney was released, too late to put in an appearance in the case. Although one report gives us the story in more detail than the others, it lacks much that lends charm to the story as we find it in the record. At the same time it must be admitted that the reports tell us what the record does not, that the attorney alleged that in his absence a fraud was committed whereby his name appeared upon the rolls as present in Court ; and what the Chief Justice said when the attorney attempted to raise the point is well worth the while of any one to read in the Year Book itself : but this story of fraud adds to our knowledge of mediæval lawyers rather than to any other matter of history, and its omission from the record does not invalidate what has already been said.<sup>2</sup>

<sup>1</sup> *Op. cit.*, *Wulghes v. Pepard*, pp. 13, 14.

<sup>2</sup> *Ibid.*, *Chaumberleyn v. Combes*, pp. 20 ff.

Magic and alchemy share in that perennial interest which attaches to every aberration of the spirit of man, but the Year Books know little of these matters: not because such unlawful arts were unknown to the Courts, or because the reporters and their readers had no share in our common human curiosity, but because the Year Books were strictly professional compilations. If any stories are admitted they must needs have a professional flavour, and short of a lawyer turning magician or alchemist—like Chaucer's canon, of whom more anon—there was little excuse for the reporter to note a case touching magic or alchemy, unless indeed some interesting point of law arose.

We may certainly find in the report of cases in the Trinity Term of the forty-fifth year of Edward III a few lines on a case of suspected sorcery:

Note, that a man was taken in Southwark with a head and a visage of a dead man and with a book of sorcery in his bag: and he was brought before Sir J. Knivet, Justice of the King's Bench, but no indictment was preferred against him, because the clerks made him swear that he would never be a sorcerer: and he was delivered from prison, and the head and the book were burnt at Tothill at the prisoner's expense.<sup>1</sup>

This is tantalizingly brief. Let us, however, turn to the record and we shall find—not it is true in the Trinity Term, for the report and the record do not always agree as to term—the story told, not perhaps with all the detail we might wish, but with sufficient colour and life to enable us to picture the mediæval magician at home. John Crok of Tetteworth had been arrested and imprisoned by the bailiffs of Southwark for certain deceptions and seditious practised on the people of our lord the king: a bag containing the head of a dead man had been found in the prisoner's possession and had been remitted to the charge of the bailiff of the liberty of the Archbishop of Canterbury in Southwark—as being, possibly, by reason of his associa-

<sup>1</sup> *YB. 45 Edw. III* (ed. 1679), p. 17.



tions, in some measure better protected from assaults of the Evil One. The circumstances coming to the notice of the King's Council, prisoner and bag were brought before John Knyvet and his fellow justices on the King's Bench, where the bag was found to contain a book as well as a head. The prisoner, on being questioned, told this story. The head was that of a Saracen, and he had bought it in the City of Toledo in Spain for the purpose of enclosing therein a certain spirit which would reply to questions. As for the book, that was merely for experimental purposes. He had, however, as yet done nothing with the head. Since John Crok admitted no more and nothing with which he had been charged could be proved in any other way against him, he was made to take his oath, with hand upon the gospels, that he had never used this kind of thing or anything else against the faith of Holy Church. Then he was let go, the marshal being told to burn the bag and the head and also certain scrolls (*scrowettas*) of paper diversely painted, which apparently had been found on the prisoner. The record says nothing of Tothill, but that place was near at hand: nor does it note the recovery of the cost of the burning. Was this, dare we suggest, colour put in by the reporter, a little jest to entertain the profession? <sup>1</sup>

The record of a witchcraft trial in 1325 has been more than once printed.<sup>2</sup> The necromancer, one Master John of Nottingham, had, so it was alleged, made, at the instance of a number of people of Coventry, seven images of wax and canvas: the first of the king crowned with wax; five of other notables; and the seventh of one Richard de Sowe, a humble neighbour, upon whom it was decided to test the efficacy of the method to be employed upon the six persons of importance. The necromancer and his

<sup>1</sup> *Coram Rege Roll* No. 443 (45 Edw. III, Mich.), Rex, m. 23d. The reader may be warned that Mr. Bolland's statement (p. 27) with regard to rolls marked "Rex" applies only to the Common Bench. It is not true of the *Coram Rege* Rolls: cf. Scargill Bird, *Guide*, p. 259.

<sup>2</sup> *Parliamentary Writs*, II, ii, App., pp. 269 f.; *Proceedings against Dame Alice Kyteler* (Camden Soc.), pp. xxiii ff.

assistant—a certain Robert le Mareschal, who subsequently turned king's evidence—took up their quarters in an old lonely house half a league from Coventry. After some months of preparation, one Friday about midnight, Master John ordered Robert to plunge a sharp pin two inches into the forehead of Richard de Sowe's image. On the morrow Robert called at Richard's house and found him raving and crying "harrou!" And so Richard languished until the Sunday three weeks later, when Master John drew forth the pin from the forehead of the image and plunged it in the heart, where it remained until the Wednesday following, when the victim died. Apparently the other intended victims were spared: perhaps Robert le Mareschal was horrified at the success of the experiment and fear of his revelations caused Master John and Master John's employers to hold their hands: perhaps the whole tale was a fabrication, for all the defendants who stood their trial were acquitted after the necromancer had died in gaol.

It is perhaps rash in the absence of a modern edition of the Year Books of 18 Edward II to say that no trace of this case appears in the reports: but there seems certainly to be no mention of it in the old edition printed from Serjeant Maynard's manuscript.

Of another case of magic, pretended indeed, but ending in tragedy, there seems to be no trace in the reports. On the 11th August, 1354 (the dates should be noted), a Devon jury, before William de Sharesull and his fellow justices of oyer and terminer, presented three men, Gervase Worthy, Geoffrey 3epeswych and William Kele, on a nine-year-old charge. Their story was that these three men had on the 7th April, 1345, come to the house of Rowland Smalecombe of Barnstaple and had told his wife that they had once been pagans and had been converted to the faith. They could, they said, tell the fortunes of any man or woman and everything they would do to their lives' end and how long they would live. So by their cunning and false craft

the men so worked with the woman that she brought out all the gold and silver and jewels she had in her charge—silver plate, mazer cups, bracelets (*zonas*), rings and buckles of gold and silver, worth two hundred marks—and Gervase wrapped all in a linen cloth and made as if to put them in a certain chest. The woman indeed believed that they had been put there. Gervase then locked the chest and took away the key, enjoining the woman that for nine days she should go daily to church and have three masses celebrated and that she should in no wise open the chest until the nine days were fully past. Gervase promised to return on the tenth day with the key, when the woman would find in the chest not only all her own jewels intact but would find them doubled. So he and the others went away with the key and did not return. The woman broke open the chest, to find nothing of jewels therein as Gervase had promised, but only the linen cloth filled with lead and stones, whereupon in the sudden realization of the fraud and deception practised upon her she fell sick and in a brief space died.

Eight years after the presentment of the jury Gervase was finally acquitted in the Court of King's Bench. William Kele was outlawed in 32 Edward III (the exact date is not given), but sixteen years later surrendered. Being brought before the Court he alleged that he had been improperly outlawed and was thereupon released on mainprise. What finally happened to him or the other accused does not appear, but since the last proceedings against William Kele were in 1374, it is quite likely that old age and death overtook them before their guilt or innocence could be established.<sup>1</sup>

We may learn in the Plea Rolls, if not in the Year Books, something of the vexations of mediæval alchemists as well as the practices of fraudulent magicians, and may even find a king dabbling vicariously in the art of alchemy. The story that Edward III had employed an alchemist to

<sup>1</sup> *Coram Rege Roll No. 455* (48 Edw. III, Mich.) Rex, m. 29.

make gold<sup>1</sup> was current in the seventeenth century. "The Rose Noble," Camden remarks, "our Alchemists do affirme (as an unwritten verity) was made by projection or multiplication Alchymical of Raymond Lully in the Tower of London, who wold prove it as Alchymically, beside the tradition of the Rabbies in that faculty, by the inscription."<sup>2</sup> Tyrwhitt, in his notes upon the *Canterbury Tales*, comments that this is a "ridiculous story,"<sup>3</sup> and indeed to father the "projection Alchymical" upon Lully was ridiculous, for he had been in his grave many years before Edward came to the throne. But if we change the name of the alchemist the story seems to be not so very ridiculous.

Early in 1350 there was an enquiry into the reason for the long imprisonment of certain persons in the Tower, among them being John de Walden who had lain there for seven years and a half, that is, from about the date when the preparations for the gold coinage must have begun.<sup>4</sup> He said that he was arrested because he had received from the king's treasure by the hands of Philip de Weston, five hundred crowns of gold and twenty pounds of silver to work thereon by the art of alchemy for the benefit of the king.<sup>5</sup> We get no more details, and we may presume that he had failed, but the story throws a curious sidelight on seventeenth century tradition.

Of another alchemist who also had dealings with the

<sup>1</sup> His government had early tried to get into their power two alchemists who professed to make silver "per artem alkemonie": *Fœdera (Record Commn.)*, II, ii, 762 (9 May, 1329). That the profession was not at this time a disreputable one and that the Government was inclined to look on it with a kindly eye is indicated by the curious case of Thomas of York (1337) who asked for, and was apparently given, an opportunity to demonstrate "la science de Alconemie": Palgrave, *Original Authority of the King's Council*, pp. 28 ff.; Baildon, *Select Cases in Chancery*, pp. 127-8.

<sup>2</sup> Camden, *Remaines* (1636), p. 187: see also Selden, *Table Talk* (1689), p. 22, where the alchemist is called Riply; Ashmole, *Theatrum Chemicum* (1672), p. 443; Ruding, *Annals of the Coinage*, i, 62-3.

<sup>3</sup> Quoted, Skeat's *Chaucer*, III, 493.

<sup>4</sup> Ruding, *op. cit.*, i, 217.

<sup>5</sup> *Coram Rege Roll No. 362* (25 Edw. III, Hil.), Rex, m. 4d.

Crown we learn more : we are given indeed something like a formula for alchemic gold, but unfortunately the process cannot be regarded as successful. William de Brumley, chaplain, lately dwelling with the Prior of Harmandsworth, was arrested, by order of the King's Council, with four counterfeit pieces of gold upon him. He expressly acknowledged that he had, by the art of alchemy, made these pieces from gold and silver and other medicines, to wit *sal armoniak*, *vitriol* and *golermonik* (whatever that may be).<sup>1</sup> The process had occupied him five weeks, and he had taken the pieces to Gautron, the keeper of the king's money at the Tower, and offered to sell them to him if they appeared to him of any value. William had before sold to Gautron a piece of this sort of metal for eighteen shillings, but of what weight it was he did not know. He said that he made the metal according to the teaching (*per doctrinam*) of William Shuchirch, canon of the king's chapel of Windsor.

Can this, we ask, be the canon whom Chaucer had in mind when he wrote the Canon's Yeoman's Tale : had William Shuchirch earned the poet's resentment and, as Tyrwhitt suggested, "determined Chaucer to interrupt the course of his work in order to insert a satire against the alchemists" ?<sup>2</sup>

But to return to William de Brumley. His four counterfeit pieces were valued at thirty-five shillings by two separate juries (an interesting legal point), one of six, impanelled by the marshal, and another of three, namely Adam Chaungeour, Gautron de la Toure and John of Norwich, goldsmith, of London, all evidently possessing expert knowledge. The jurors stated further, that had the pieces been pure gold they would have been worth six and a half marks. The pieces were thereupon delivered to Robert de Isham, keeper of

<sup>1</sup> At a guess, I suggest that the word should begin with *b* not *g*, and that the substance is Chaucer's *bole armoniak* : Canon's Yeoman's Tale, l. 790 (Skeat's *Chaucer*, IV, 534). Cf. p. 45, n. 3, below.

<sup>2</sup> Skeat, *op. cit.*, III, 493.

the rolls, and the prisoner committed to the custody of the marshal. Afterwards he fined with the king and took an oath and found four sureties in £40 each not to place on sale any plate made by alchemy in deception of the people of our lord the king, but only pure gold and silver. The four sureties were all goldsmiths, whence we may deduce that our alchemist, albeit a chaplain, was in some way connected with the craft. One of the sureties was John of Norwich, who had previously figured as a juror, and to whom the alchemic gold was later delivered in consideration of the sum of thirty-five shillings to be paid to the king.<sup>1</sup>

Not only do the Plea Rolls provide material for social and for political history, out of all proportion more varied and detailed than the material supplied by the Year Books, but the record rivals the report in presenting intimate pictures of the life of the Courts. Here are three incidents in the history of the Courts at Westminster which bring home forcibly the violence and lawlessness of the Middle Ages even in the shadow of the judgment seat.<sup>2</sup>

In the presence of the Justices of both Benches, William Daunay of Wasshyngton was taken in the Hall of the Pleas at Westminster (*Aula placitorum Westmonasterii*) by the marshal of the King's Bench on suspicion of cutting the purse of Thomas Simond, with which crime he was charged by popular clamour. However, no mainour<sup>3</sup> was found on William, and Thomas would not prosecute. But now came Roger de Blaykeston and said that he had knowledge of the person of William who had been charged, before the Justices of Gaol Delivery at Carlisle, with divers felonies and had as a clerk convict been delivered from prison into the custody of the Bishop of Carlisle. And Roger said, on behalf of our lord the king, that William had escaped from prison without making any purgation, and

<sup>1</sup> *Coram Rege Roll No. 448* (47 Edw. III, Hil.), Rex, m. 14d.

<sup>2</sup> See also *YB. 15 Edw. III* (R.S.), pp. 274-5, for an account of a brawl in Westminster Hall.

<sup>3</sup> *I.e.*, "The thing that a thief taketh away."

he prayed that William might remain in the custody of the marshal until the Court should be more fully informed thereon. Later, because no one prosecuted him nor was there any mainour found on him, he was released on mainprise to stand his trial if any wished to proceed against him.<sup>1</sup>

William Daunay was so fortunate as to escape trial and may perhaps be given the benefit of the doubt. Of the guilt of another accused of picking pockets there can be no doubt. A Middlesex jury presented John Knyghton and Matthew ap Howell in that they on the 11th February, 1373, in the Great Hall at Westminster feloniously took from John Chaupeneys a rosary<sup>2</sup> worth twenty-pence. On the following Monday, being St. Valentine's day, the accused were brought up for trial and both put themselves upon the country. The jury found the Welshman innocent and the Englishman guilty, and the rosary to be worth tenpence only,<sup>3</sup>—"as to which," says the record, "let the aforesaid Chaupeneys answer." John Knyghton was committed to the custody of the marshal and remained in prison until the 15th October, when he was again brought before the Court. "And because it seemed to the Court that the said John had been sufficiently punished" in prison for the offence, he was liberated.<sup>4</sup>

So much for a glimpse inside Westminster Hall: in the

<sup>1</sup> *Coram Rege Roll No. 342* (19 Edw. III, Mich.), Rex, m. 60.

<sup>2</sup> *Unum par de paternostres de Aubre*: this last word can hardly mean anything but amber, which was so commonly used for rosary beads as to give rise to the term *ambre de paternosters*: cf. Cotgrave, *s.v.*

<sup>3</sup> The offence is therefore petty larceny only.

<sup>4</sup> *Coram Rege Roll No. 448* (47 Edw. III, Hil.), Rex, m. 18d. I may note some other cases of pickpockets in Westminster Hall. In 1329 a man is taken in the King's Bench "pro abscissione cuiusdam cultelli precii iid. Roberti Walshale superfacto et pro suspicione cissoris bursarum": there being no suit (*secta*) or indictment he is liberated (*Coram Rege Roll No. 275*, Rex, m. 15). In 1451 a cutpurse takes the purse of John Rede, Sergeant, "iuxta barram banci ipsius Regis": the purse is worth 3d., but its contents are valuable: a gold ring worth 3s. 4d., "vnum par precum de corall" worth the same amount, and 20s. in money (*Coram Rege Roll No. 762*, Rex, m. 20). For a similar case see *ibid.*, Rex, m. 18.

next case we may see how officers of the law respected the precincts of the Palace and the rolls of the Court. In the Easter Term, 1346, an inquisition was held in the Court of King's Bench into alleged assaults upon officers of the Court. John de Pelham, sheriff of Middlesex, John de Asshewell his under-sheriff, Ralph the beadle, with others unknown, had come, it was said, with force and arms and in unseemly manner, and had, outside the gate of the Palace of Westminster, seized Thomas Sayer of Langetoft, who was carrying a bag containing the rolls of the King's Bench. This they did without having consideration either to the rolls or to those who have the custody of those rolls. And thereupon Thomas de Methelay, keeper of the rolls, asked the sheriff by what warrant he had attached Thomas Sayer with the said rolls, and the sheriff said by a writ of our lord the king, which he was prepared to show then and there. Whereon one of the serjeants who was attending the sheriff, with his assent drew sword on Thomas de Methelay. Another of the sheriff's company fitted an arrow into his bow and made ready to shoot. And then in the scuffle to and fro Thomas Sayer—who apparently held tight to the rolls—was drawn inside the palace gate, and there the sheriff seized him and led him away. At the trial of the sheriff and his associates it appeared that Sayer was accused of robbery and that after the sheriff had effected his arrest unknown strangers released him from custody.<sup>1</sup>

Beside these pictures of Westminster Hall we may put one of the Court of Exchequer and of Fleet Prison. It may be premised that officers of the Exchequer had the privilege of suing in that Court, and it will be observed that no punishment is meted out to one of them who enters into a conspiracy to defeat the ends of justice.

William de Dounebrigge, one of the auditors of the Exchequer, brought an action of debt against Henry Gerard, tailor. The story told to the Court was that William had lent Henry twenty marks which he had failed to repay.

<sup>1</sup> *Coram Rege Roll No. 344* (20 Edw. III, Easter), Rex, m. 38d.



The defendant admitted the debt but was unable to pay, and was therefore committed to Fleet Prison. The next day a certain Thomas de Bettenham, shearman, came into Court and presented a bill to the effect that Henry had been condemned in a sum of £20 in the Court of Common Pleas at the suit of Thomas for the rape of Emma his wife : he had, however, paid neither damages nor the fine inflicted upon him : for the latter omission he had been outlawed, and Thomas was taking proceedings to have him outlawed in respect of the damages. Now Henry, scheming to delay paying both the fine and the £20 he owed to Thomas, had procured William de Dounebrigge to bring a collusive action in the Court of Exchequer, so that he might be committed to the Fleet. Once there he could arrange with his warder to go daily about his business in the City as he pleased. William and Henry confessed that this story was true, and that all the latter owed was five marks. The Court, very sensibly, came to the conclusion that the action was fictitious and handed Henry over to the sheriff to be brought before the King's Bench, in order that, having satisfied the King in respect of the fine and Thomas in respect of his damages, he should return to the Fleet until he had satisfied his debt of five marks to William.<sup>1</sup>

It must not be supposed that the rolls from which these cases with a legal flavour have been taken are barren of cases of more general interest. There is hardly a roll that will not yield an abundant harvest of historical material. On this same Exchequer Plea Roll, for example, we have a sidelight on recruiting in the Hundred Years War. On one membrane there are two pleas of debt, one arising out of an engagement entered into by an esquire to serve with a number of men-at-arms and archers to safeguard the sea, the second out of an engagement by another man to serve, well horsed and armed, in the king's wars, in a company

<sup>1</sup> *Exchequer Plea Roll No. 95* (49 Edw. III), m. 9. Out of this case apparently arose St. 1 Ric. II, c. 12 : *Rot. Parl.*, III, 25 (No. 107) ; *Statutes of Realm*, II, 4.

of twenty men-at-arms and thirty archers under the Earl of Suffolk. In both cases a sum of money—100s. for the esquire and twenty-two marks for the man-at-arms—had been delivered to a third party as surety, on condition that it should be returned if the engagement was not fulfilled: and in both cases the men are alleged to have defaulted and the sureties to have failed to repay the sums advanced.<sup>1</sup>

From the roll which supplies the story of William Daunay, we may give, in barest outline, a few stories of contemporary Westminster outside the Palace precincts.

John de Hotone, a brother of the Hospital of St. James, near Westminster, was charged with the murder in that hospital of Joan, daughter of Roger de Bayham. Indicted before the steward of the abbot at a view of frankpledge held at Westminster, he was taken by the abbot's bailiffs and lodged in the king's gaol. Here he broke prison at midnight, but prisoners and neighbours gave the alarm, and he was retaken at prime the following morning. In court he produced a royal pardon for both offences on condition that he stood his trial if any one wished to proceed against him and that he found security for his good behaviour.<sup>2</sup>

A number of criminous clerks in the custody of the abbot escaped from his prison and proceedings were therefore taken against him. However, by a present of ten sacks of wool offered at a meeting of the Council at Westminster, the abbot is fortunately able to make his peace with the king and goes quit.<sup>3</sup>

A whole series of charges are brought against various monks of Westminster: pleas of debt had been heard in a Court Christian; the Archdeacon's Court had been held before daybreak and in their absence the defendants in a case of defamation had been adjudged contumacious and

<sup>1</sup> *Exchequer Plea Roll* No. 95, m. 3.

<sup>2</sup> *Coram Rege Roll* No. 342, Rex, m. 25. Cf. *V. C. H. London*, i, 544; *Cal. Pat. Rolls* (1343-5), p. 544.

<sup>3</sup> *Ibid.*, Rex, m. 39.

excommunicated; an extortionate sum had been exacted for proving a will; unlawful tolls had been levied at St. Edward's fair at Westminster; houses had been let to loose women by the sacrist; and so the catalogue of enormities goes on, including the punishment of a usurer in the Archdeacon's Court, to which it is somewhat surprising to find a Middlesex jury taking exception.<sup>1</sup>

These are but a few examples from one roll of the infinite wealth of information available for the local historian.

Mr. Bolland bears testimony to the value of the Year Books for the philologist,<sup>2</sup> but the Plea Rolls, covering a century before the reports begin and embracing an infinity of human interests, hold out scarcely inferior prospects to the student of Middle English and Anglo-French. The Latin vocabulary of the clerks of the courts was limited: any unusual word is likely to go down in plain English or perchance in French. Those medicines which William de Brumley used for his alchemy have a philological value, even if they could not transmute silver into gold<sup>3</sup>: but let us take another case at random. We may leave on one side the legal aspect, but it is necessary to explain that the important question was whether a certain boat was a deodand in that it had caused the death of an unfortunate Richard by Southe of Shepperton. Richard was drowned in the Thames "sicut venit in vno punte contra le rother vnus shoute"—as he came in a punt against the rudder of a shout—belonging to John Lightfoot and Robert Rus of London, and the jury of presentment said that the shout was the cause of Richard's death, because "le shouteman," whose name they did not know, negligently moved the shout against the punt.<sup>4</sup> In a very brief space we have

<sup>1</sup> *Ibid.*, Rex, m. 49.

<sup>2</sup> *Op. cit.*, pp. 24-5.

<sup>3</sup> The Canon's Yeoman's Tale "belongs to the very latest period of Chaucer's work": Skeat, *op. cit.*, III, 492-3. The mention therefore of sal armoniak, vitriole and bole armoniak (ll. 790 ff.) must be dated a good many years after the Plea Roll.

<sup>4</sup> *Coram Rege Roll No. 443* (45 Edw. III, Mich.), Rex, m. 31.

three words, "punte," "shoute" and "shouteman," all very rare in Middle English literature: "rother" is a common enough word. The *Oxford English Dictionary* appears to know of no example of "punt" between 1100 and 1500: one example of "shout," not precisely dated, is quoted from the fourteenth century. But the great value of the Plea Rolls to the philologist lies in the fact that an exact date can be given to every word which he may find; <sup>1</sup> and if he is lucky he may find a whole poem and learn the whole circumstances of its composition.

In the eighties and nineties of the fourteenth century there was in the East Riding of Yorkshire a large company of malefactors, a hundred and more, who, clothed all in one livery, maintained each other in all quarrels true or false, and perpetrated many acts of violence. To serve their ends they made an English rhyme which they publicly proclaimed in Beverley, Hull and elsewhere. This rhyme, which is noteworthy as a political poem, if not as poetry, the Plea Roll sets out in full. But we get no more of the side of the story which the company of malefactors might have told, for in court they all produced royal pardons and went quit.<sup>2</sup>

With the exception of the first three, none of the cases which have been used here for the purpose of illustration have

<sup>1</sup> Some eighteen months later we find "batella vocata botes" which carry "ostres, muskles, risshes et faget et alia victualia" to the Watergate in Southwark: *Coram Rege Roll No.* 449 (47 Edw. III, Easter), Rex, m. 111: in the same roll there is also a reference to a "shouta": *ibid.*, Rex, m. 17. There are, however, many earlier references to "shoute" or "shouta" in the records of the City of London: e.g. Riley, *Memorials*, p. 262 (1350); *Cal. Letter Book G.*, pp. 97, 99, 206.

<sup>2</sup> *Coram Rege Roll No.* 525 (16 Ric. II, Easter), Rex, mm. 57 ff. The verses are printed from the *Ancient Indictments* by Powell and Trevelyan, *Peasants' Rising and the Lollards*, pp. 19-20. It is perhaps hazardous to state that the case is not mentioned in the reports, since only one year's reports of Richard II's reign have been printed: but there seems to be nothing like it in *Add. MS. No.* 32087, which contains all the cases for 16 Richard II that appear yet to have come to light: cf. G. F. Deiser, *YB. of 12 Richard II*, p. xix.

For examples of other passages in the vernacular, contained in *Coram Rege Roll No.* 507, see Powell and Trevelyan, *op. cit.*, pp. 36, 38.

been found in the Year Books, although, needless to say, all have been taken from the period which the Year Books cover. It will not have escaped notice that many of them are cases heard in the Court of King's Bench, and it is the fact that while the records of that court are of the greatest value for social and political history, the Year Books devote much the greater part of their space to cases in the Court of Common Pleas, for the very sufficient reason that the reporters were serving the interests of their profession, and not those of future historians.<sup>1</sup> Not that it is suggested that the records of the Court of Common Pleas are not of very great value, particularly for economic history,<sup>2</sup> but they contain a vast amount of matter presenting but minute variants upon a constant theme, and this, it must be confessed by their greatest admirers, is an aspect of the Year Books also. This statement made, we may be so bold as to assert that, except for those particularly interested in legal history, there must be many dull pages even in the best edited of the Year Books.<sup>3</sup>

Having said so much to the advantage of the Plea Rolls, it is only just to indicate the value the Year Books may have to the historical student who has interests besides legal history. We may take two subjects, usury and the Statutes of Labourers in relation to the clergy, subjects which have an equal interest for the economic and ecclesiastical historian.

The Year Books tell us that under Edward III there were attempts to get the Court of Common Pleas to set aside a bargain on the ground that it was usurious, but the Court refused to accept such a plea : <sup>4</sup> this is important because it helps to explain the considerable volume of litigation concerning alleged usurious contracts which, in

<sup>1</sup> Cf. Holdsworth, *Hist. of English Law*, II, 456 ; Maitland, *YBB. of Edward II*, iii. xi.

<sup>2</sup> Cf. Pike, *YB. of 20 Edward III* (R.S.), ii, xxviii ff.

<sup>3</sup> Mr. Bolland has himself drawn some of his most interesting stories from record sources : *op. cit.*, pp. 75-6.

<sup>4</sup> *YB. 20 Edw. III* (Rolls Series), i, 320 ; *YB. 26 Edw. III* (Mich.) (ed. 1532), f. 71.

the latter part of the fourteenth century and during the fifteenth century, came before the Chancery.<sup>1</sup> A principal reason certainly was, as the petitioners to the Chancellor stated, that remedy could not be had at common law.<sup>2</sup> True it is that the cases as recorded on the Plea Rolls might give the same information as the reports, but unfortunately in the one instance the modern editor has been unable to trace the record of the case and in the other we have to rely upon the old edition of the Year Books. It would have been singularly useful if the Year Books had noticed any cases where the King's Bench had treated usury as a crime : there is at least one such instance recorded on the Plea Rolls,<sup>3</sup> and the protest of the clergy in 1341 indicates that there may be others,<sup>4</sup> but the reports seem to be silent.

Miss B. H. Putnam has used the reports very effectively as a guide to the entries in the Plea Rolls relating to actions under the Statutes of Labourers during the reign of Edward III.<sup>5</sup> From the evidence she has adduced it is clear that there was a tendency to regard stipendiary clergy and even, for some purposes, beneficed clergy, as falling within the scope of the statutes,<sup>6</sup> but it was apparently settled law in 1376 that the statutes did not apply to chaplains.<sup>7</sup> With the help of Fitzherbert's Abridgment we can find our way to two later cases in the Year Books, and may learn that it was necessary to reaffirm this decision in 1402<sup>8</sup> and again so late as 1431.<sup>9</sup>

<sup>1</sup> The best known case is that of Elryngton v. Elryngton (Abram, *Social England*, pp. 215 ff.). Many other cases will be found among the *Early Chancery Proceedings*.

<sup>2</sup> E.g. *Early Chanc. Proc.*, 11/307, 19/264, 28/452.

<sup>3</sup> *Coram Rege Roll* No. 327 (16 Edw. III, Hil.), Rex, m. 28.

<sup>4</sup> *Rot. Parl.*, II, 129.

<sup>5</sup> *Enforcement of the Statutes of Labourers*, Pt. II, ch. 2, pp. 166 ff. App. F. 3-6, pp. 416 ff.

<sup>6</sup> *Ibid.*, pp. 81, 186 ff., App., pp. 147, 194, 432 ff. A vicar is presented for exacting extortionate marriage fees, p. 171. See also her *Wage-laws for Priests after the Black Death*, *Amer. Hist. Rev.*, xxi, 12 ff.

<sup>7</sup> *Enforcement of St. of Labourers*, pp. 189, App., 433.

<sup>8</sup> YB. 4 Hen. IV (Mich.) (ed. 1562), f. 2b.

<sup>9</sup> YB. 10 Hen. VI (Mich.) (H. Smith's edn.), f. 9.

It is doubtlessly true, as indeed Miss Putnam has demonstrated within the range of her enquiries, that the Plea Rolls would in all cases tell us a good deal more than the entries in the Year Books if only time permitted an exhaustive search to be made.<sup>1</sup> The Year Books are no more than second best, but we must use such tools as we have: and we should be foolish to despise the report which preserves that comment of Justice Finchden on Edwardian labour policy. "Sir," said he, "the statute was made for the advantage of the lords, that they should not have any lack of servants."<sup>2</sup>

Particular reference is due to a class of reports which cannot strictly be termed Year Books at all, but which are among the most interesting of mediæval law reports, namely, those which deal with the proceedings of Justices Itinerant. Such a report tends to assume the character of a continuous narrative, and when it does so has a far higher value, especially for the student of administrative history, than isolated cases such as compose the terminal reports now known as Year Books. Reports, in full or in part, of six eyres from 20 Edward I to 4 Edward III have been put into print.<sup>3</sup> But in interest no report is likely to excel the yet unpublished report (or perhaps we should say "reports," since the versions differ) of the London Eyre of 1321. We possess among the Assize Rolls a voluminous record of the Eyre,<sup>4</sup> of which a fraction only has been published,<sup>5</sup> and Andrew Horn, the famous City Chamberlain, compiled a narrative account which is preserved in the City's books of remembrance.<sup>6</sup> That the report will greatly supplement these sources, regarded merely as material for

<sup>1</sup> For some statistics as to the proportion of various classes of cases in the YBB. and in the rolls see *YB. 20 Edw. III* (R.S.), Pt. II, pp. xlv ff.

<sup>2</sup> *YB. 40 Edw. III* (Mich.) (ed. 1679), p. 39.

<sup>3</sup> *YBB. of Edw. I* (R.S.): Hereford and Shropshire 20 Edw. I, Stafford 21 Edw. I, Middlesex 22 Edw. I; *Eyre of Kent*, 6 and 7 Edw. II (Selden Soc.); *Select Bills in Eyre* (Selden Soc.), pp. 152 ff.; Derby 4 Edw. III.

<sup>4</sup> *Assize Rolls Nos.* 546, 547 A.

<sup>5</sup> *Placita de Quo Warranto* (Record Commn.) pp. 445 ff.

<sup>6</sup> *Munimenta Guildhallæ Lond.* (R.S.), ii, 285 ff.

local and administrative history is highly improbable, although it is impossible to express a final opinion until the various manuscripts have been edited, a work which the Selden Society may be prayed to hasten. Still the report does enable us to get a clearer view of an eyre in progress at the Tower of London than we should get even with Horne's narrative before us. Incidentally we learn that the retiring sheriffs of London retained the rolls of their period of office, a practice that called forth the pungent comment of Justice Mutford, "Then those who plead before the sheriffs have grievous loss for their pains";<sup>1</sup> but for us it explains why only one roll of the sheriffs' court is to be found to-day at the Guildhall.<sup>2</sup>

The opening passage of the report gives an excellent idea not only of the report as a whole, but of Year Book reporting at its best.<sup>3</sup> *Hervi*, it should be explained, is Hervey de Stanton, the presiding justice: *Denom* is William de Denham, one of the counsel appearing in the Eyre. With this passage may be compared Horn's account of the incident.

When the Justices were seated on the bench, even then, before their commission had been read, William Denom came to the bar and prayed the Justices that they would hear what he would show them on behalf of the commonalty of London.

*Hervi*. To whom are you speaking?

*W. Denom*. To you Justices.

*Hervi*. You do not even know yet whether we are Justices or not. Therefore wait until you know that we are Justices and then say what you would to us and we will hear you.

And then the Justices made proclamation that archbishops, bishops, abbots, priors, earls, barons, knights, freeholders and all those who had come for the Eyre should hold their peace. And when the commission had been read—

*W. Denom*. Sir, we tell you that the commonalty of London

<sup>1</sup> Donques cels qe pledent deuant les viscontes perdent malement lor trauayle: quoted, *YBB. of Edward II* (Selden Soc.), xii, xviii.

<sup>2</sup> *Roll C.C.*—for, be it noted, 13-14 Edward II.

<sup>3</sup> The version followed is that in MS. Harl. No. 1062: cf. Horn's account, *Munim. Gildh. Lond.*, ii, 289.



has had and used, time out of mind, this custom, that in an Eyre of the Justices they are wont to send their messenger to the Court to know whether the Justices wish that they should come thither and if they could safely come and safely go at their will. And when they are assured by the reply of the Justices that the Justices wish them to come and that they may safely come and go at their will, then they are wont to come at the mandate of the Justices. And we pray that you will allow this usage.

Whereupon an argument follows in which Justice, counsel and mayor join.

Here we must bring to an end our extracts from rolls and reports, in the double hope that the claims of the Year Books will not be unduly exalted and that a demand may grow up for official recognition of the importance of the Plea Rolls as historical sources. If the neglect of the Year Books is, as Maitland said, a national disgrace, language has not yet furnished an epithet to be applied to the neglect of the Plea Rolls.

## APPENDIX A

### CONSTITUTIONAL HISTORY IN THE PLEA ROLLS

THE claim of the Year Books to be considered as a source for constitutional history is one of much greater validity than most of the claims made on their behalf for consideration other than that clearly due to them: and since constitutional history is but a short way of writing the history of constitutional law and custom, it would be strange if the claim were not a just one, for men cannot discuss and dispute about all manner of legal questions for more than two centuries without finding themselves from time to time involved in constitutional matters. Sir Paul Vinogradoff's Creighton Lecture<sup>1</sup> gives an excellent idea of the kind of information the Year Books afford: but other writers on constitutional history have used the Year Books to some extent<sup>2</sup>; and everyone now knows the comment of Chief Justice Hengham: "Do not gloss the statute; we understand it better than you do, for we made it"<sup>3</sup>—a sentence which brings home forcibly the gulf between a mediæval and a modern parliament. But not only is the range of the reports and the records very different, the point of view is different on matters where the point of view is important.<sup>4</sup> The relative value of the two sources considered in regard to the period of time covered or the bulk and variety of information afforded is a separate question.

Sir Paul Vinogradoff devoted a good part of his lecture to the narrative which the Year Books give of the doings of the judges at the accession of Henry VII.<sup>5</sup> It is instructive to turn to the

<sup>1</sup> *Law Quarterly Review*, xxix, 273 ff.

<sup>2</sup> E.g. Pike, *Constitutional History of House of Lords*; McIlwain, *High Court of Parliament*; Pollard, *Evolution of Parliament*.

<sup>3</sup> YBB. 33-35 Edw. I, p. 82: this, however, means no more than that the judges drafted it.

<sup>4</sup> This is well brought out by the Bishop of Winchester's case: *below* p. 59.

<sup>5</sup> Pp. 274 ff.: see also Pollard, *Reign of Henry VII*, II, 10 ff.

plea rolls of the King's Bench and the Common Bench and, by way of contrast, observe the marks which the constitutional changes have left on the record.

On the first membrane of the *Coram Rege* Roll of the Michaelmas Term 1485<sup>1</sup> is entered a writ addressed to Sir William Huse (or Hussey), appointing him Chief Justice of the King's Bench. The writ is dated 20 September, but he did not, of course, sit until 10 October,<sup>2</sup> when Sir Guy Fairfax<sup>3</sup> and John Sulyard came into court and presented their patents as justices of the King's Bench. On the same day Henry Harman came and presented the patent appointing him to the offices of coroner and king's attorney and was sworn and admitted. William Hody, the attorney general, also appeared and had his patent enrolled. A like procedure was followed in the Common Bench,<sup>4</sup> but all the Justices were appointed by patent, Sir Thomas Bryan, the Chief Justice, Sir Humfrey Starkey and Roger Touneshend on 20 September, but Richard Nele not until 13 October. The patents of the attorney general, the chirographer and the keepers of the writs and rolls were also enrolled with minutes of their appearance. Although in so many entries we may notice a greater regard for form than had hitherto been observed, there is nothing particularly remarkable: the custom had been growing up during the fifteenth century of minuting on the plea roll the appointment of judges on the accession of a new sovereign<sup>5</sup>: it is a note of formality with no constitutional significance. But the demise of the crown was one thing: a violent change of ruler was another. Technically by the death of Richard, if for no other reason, the judicial business of the country had come to a stop and needed to be restarted: but to insist upon such a

<sup>1</sup> *Coram Rege* Roll No. 897.

<sup>2</sup> *I.e.* when the term began, the fourth day of the Octave of St. Michael falling on a Sunday.

<sup>3</sup> His patent appears not to be enrolled on the Patent Roll.

<sup>4</sup> *De Banco* Roll No. 894, mm. 1, 2: John Catesby's patent dated 20 Sept. (Cal. Pat. Roll, p. 33) is not entered.

<sup>5</sup> *E.g.* *Coram Rege* Roll No. 646 (Mich., 1 Hen. VI), m. 3: No. 886 (Easter, 1 Edw. V), m. 1. On *Coram Rege* Roll No. 608 (Easter, 1 Hen. V), Rex, m. 1, is enrolled the patent of appointment of the coroner and king's attorney with a minute of his appearance and admission, but the appointment of judges does not seem to be minuted in any way. The practice was followed on the return of Henry VI (*Coram Rege* Roll No. 838, m. 1: the roll of the Common Bench is "unfit for production") and Edward IV (*Coram Rege* Roll No. 840, m. 1; *De Banco* Roll No. 839, m. 1), but I have not noticed any directions for a writ to continue process.

technicality would be an intolerable burden upon litigants at a time when the conciliation of all classes was elementary prudence. Henry's constitutional position rested on the assumption that Richard's reign was a usurpation, and he was reluctant to recognize any act done in the usurper's name. Forms of writ were therefore framed which would at once restart the judicial machine and serve as a political manifesto, and these were communicated to the judges on 16 October.<sup>1</sup> The effect was that all business was to be regarded as in the same state as on the Octave of St. John the Baptist or the Monday after that date when it stood adjourned until the Octave of St. Michael or the Monday after, "ante quem diem loquela predicta remansit sine die eo quod predictus nuper vt premittitur Rex diem suum clausit extremum." The parties were to be resummoned and the business concluded. A simple statement to this effect might however be regarded as recognizing Richard's legitimacy—predictus nuper vt premittitur Rex—and the many writs despatched to all quarters of the country dissipated this idea. Richard is "the so-called king of England, who for some brief while usurped the royal dignity and power in our realm of England without just title and has been possessed of this same royal dignity *de facto et non de iure*. . . . Richard whom thus we call king by reason of his possession aforesaid and without prejudice to our right."

It was not necessary to look far for a precedent on which to base this procedure. Richard himself had been more thorough than Henry: he had been swift in appointing his judges,<sup>2</sup> and he had disregarded all that had been done in the preceding reign, going back to the last term of the reign of Edward IV, "after whose death as true and undoubted king of the said realm of England, by law of God and man, we indeed took upon ourselves the government and royal dignity of the same realm . . . although a little while ago Edward the bastard lately called Edward King of England the fifth since the Conquest, by usurpation and without just title, wielded the same royal dignity and power in our realm of England, and remained for a brief space in possession of the government of the same realm."

But Edward IV had furnished the actual precedent for Henry VII: the phrases used by Henry are echoes of those used by Edward on his first occupation of the throne. These there is

<sup>1</sup> *Coram Rege* Roll No. 897, m. 1d.; *De Banco* Roll No. 894, m. 1d.

<sup>2</sup> *Coram Rege* Roll No. 888, m. 1. The appointments are dated 26 June and the court sat the same day.

no need to repeat, but the conclusion of his writ may well be quoted <sup>1</sup>: "wherefore we, as kin and true heir both of the lord Edward III and the lord Richard II after the Conquest, late true and undoubted kings of England, have lawfully removed the aforesaid Henry from the possession and exercise of the royal dignity and power, and as justice demands have taken upon ourselves the royal dignity and power, the rule and governance of the same realm."

These writs, it will be admitted, are documents of some constitutional interest; but if they are exceptional, they are so only because the circumstances were exceptional. There is no reign which will not afford documents of value, no roll that can be turned over without the expectation that it may yield something of constitutional significance <sup>2</sup>—although many things we must expect to find many times repeated. It would be easy to vouch the printed texts, the *Abbreviatio Placitorum*, *Bracton's Note Book* <sup>3</sup>: but unpublished rolls may be in this connexion of more interest.

Let us first look at two rolls <sup>4</sup> from a period well before the Year Books begin. Both are records of sessions held by the Justiciar of England—a title which seems to be used in preference to Chief Justiciar (or Justice)—apparently in fulfilment of the stipulation in the Provisions of Oxford that the Chief Justice was to go on eyre from county to county to determine all complaints of trespasses and injuries done by sheriffs, bailiffs and others.<sup>5</sup>

<sup>1</sup> *De Banco Roll* No. 801, m. 1d. It may be noted that St. 1 Edw. IV, c. i, gave parliamentary sanction to the procedure adopted: *Rot. Parl.*, V, 489; *Statutes of Realm*, II, 380.

<sup>2</sup> The examples given below are all taken from mediæval records. Dr. Hubert Hall draws my attention to the very interesting writs on the *Coram Rege Rolls* of Henry VIII, directing the justices to add "Defender of the Faith" to the king's title (Hil., 13 Hen. VIII, m. 14) and to insert "et in terra supremum caput Anglicanae Ecclesiae" in his title (Hil., 26 Hen. VIII, m. 1) and also to the enrolment of the proclamation (No. 219 in Steele's *Tudor and Stuart Proclamations*) notifying the adoption of the title of King of Ireland (Hil., 33 Hen. VIII, m. 1.).

<sup>3</sup> See below p. 68.

<sup>4</sup> *Assize Rolls* Nos. 362, 911.

<sup>5</sup> *Select Charters* (8th Edition), p. 387. Other Assize Rolls appear also to record similar eyres, as indicated by the nature of the *querele* and the presence of the Justiciar. But the precise relation of these rolls and the enquiry to be held under the Provisions of Oxford would require considerable study to elucidate. Cf. Cam, *Studies in the Hundred Rolls*, pp. 85 ff. The suggestion made by Prof. Tout (*Chapters in Administrative History*, i, 296) that the Justiciar's judicial duties were not onerous seems very

The whole county is present at these sessions<sup>1</sup> and the business is heavy and important and has a strong likeness to that transacted at a general eyre. Some of the business has to be adjourned and certain of these adjournments are of interest.

The first session with which we are concerned is one held at Canterbury on Sunday, 12 January, 1259, by Hugh le Bygod.<sup>2</sup> Some cases are adjourned *in primo aduentu*, or *in aduentu*, *Hugonis le Bygot*<sup>3</sup>: another case is adjourned *in Octabis Purificationis beate Marie coram domino Rege vbicunque*, etc., and a *postea* follows which gives us an illuminating glimpse of the King's Bench<sup>4</sup>: we turn to the next membrane and we find a case adjourned *ad parlementum* in order that the rolls of the Exchequer may be consulted, but no date is given and unfortunately no *postea* which might tell us where the parliament was held and when and what happened there.<sup>5</sup> The second roll is concerned with events two years later, in the winter of 1260-61: there is a new Justiciar, Hugh le Despenser, and he is sitting at Lewes on Sunday, 12 December, 1260.<sup>6</sup> Again there are adjournments: we notice one—*coram domino rege et iusticiario in*

dubious. The translation of *Justiciarius* by *justiciar* or *justice* is, of course, quite arbitrary.

<sup>1</sup> *Assize Roll No. 362*, m. 8: *testatum est per totum Comitatum; Assize Roll No. 911*, m. 12: *Totus comitatus Sussex' recordatur*.

<sup>2</sup> *Assize Roll No. 362*. This appears to be the more usual spelling of his name.

<sup>3</sup> *Ibid.*, mm. 4d, 5, 5d, 14.

<sup>4</sup> *Ibid.*, m. 7: *Postea ad diem illum apud Nouum Templum Londoniis venit predictus Prior et optulit se iiij<sup>to</sup> die uersus predictum Archiepiscopum. Et ipse non venit etc. Et visus fuit in Curia et recessit sine licencia Iusticiariorum. Ideo preceptum est vicecomite quod faciat eum venire a die Pasche in xv dies coram Rege vbicunque etc. ad audiendum recordum etc.*

The action is between the Prior of Christ Church and Archbishop Boniface. A well-known charter of William Rufus (Davis, *Regesta* No. 338) is produced in court: it is ascribed to the Conqueror, and Anselm is stated to be Archbishop at the time. The charter is made to begin: *W. dei gracia* etc. An excellent example of mediæval diplomatic.

<sup>5</sup> *Ibid.*, m. 8d. Printed below, p. 60.

<sup>6</sup> *Assize Roll No. 911*. In January he will sit at Chichester and take more Sussex business, but there will still be some left which he will hear at London: *Assize Roll No. 537*. The former roll in particular contains a great variety of information of historical interest. I may draw attention to an early reference to an organised legal profession in London (m. 6d.): *Symon . . . adiuit Londonias et ibi colloquium habuit cum quodam Ranulpho de Nassenton' et aliis aduocatis ad suscipiendum*

*Octabis Purificacionis beate Marie vbicunque, etc.*<sup>1</sup>: we turn over the membrane and find a case where Roger le Bygod, Marshal of England, is claiming his right to the custody of all prisoners adjudged to prison before the Chief Justice and see that it is adjourned *ad proximum parlementum quod erit in Octabis Purificacionis beate Marie*, when the matter will be considered by the "magnates de consilio Regis."<sup>2</sup>

Although we should have liked these two references to Parliament to have been much expanded, they yet supply valuable information. They are conclusive evidence that the regular judicial sessions of Parliament go back to the beginning of 1259, and, we may suggest, beyond that date. For if Parliament in its judicial aspect had been a new thing, the clerk who wrote the Kent roll of 1259 would surely not have contented himself with a brief and formal note: his entry would not have had an air of matter of course which seems to refute any idea of innovation.<sup>3</sup> The second entry tells us something more than the first: the Parliament to which the case is adjourned is clearly one of a recurring series—"the next Parliament, that is the one to be held at the octave of the Purification"—and indeed the date assigned would correspond with one of the sessions of Parliament provided for at Oxford in 1258,<sup>4</sup> for the Purification and la Chandelur are one and the same day. The session of the King's Bench, it will be observed, would coincide with that of Parliament: but nevertheless the two courts are sharply distinguished, however intimately they are related.<sup>5</sup>

We may, however, find in a Curia Regis Roll<sup>6</sup> a record of

defensionem predicte cause, ita quod idem Symon . . . apposuit in salariis aduocatorum et aliis expensis circa defensionem predicte cause . . . xx libras. The action was in a Court Christian.

<sup>1</sup> *Assize Roll No. 911*, m. 3.

<sup>2</sup> *Ibid.*, m. 6. Printed below, p. 61.

<sup>3</sup> Cf. *Liber de Antiquis Legibus*, p. 26: posuit eis diem inde usque ad parliamentum in media XL<sup>a</sup> apud Londonias (1257).

<sup>4</sup> *Select Charters*, p. 392.

<sup>5</sup> It is of interest to observe that even at the end of the fourteenth century a clerk of the King's Bench thought it worth while to note the coincident sessions of that court and Parliament. *Docket Roll 13-22 Ric. II, Ind. No. 1322*, m. 9d.: Memorandum de termino sancti Hillarii apud Westmonasterium anno regni regis Ricardi secundi decimo septimo, parliamentum tunc ibidem; see also m. 7d.

<sup>6</sup> No. 167, m. 26: printed *English Hist. Review*, xxxvii, 81, 320 (corrections).

proceedings at a parliament in 1260—*ad parlementum a die sancti Iohannis Baptiste in XV dies anno . . . quadragesimo quarto, scilicet die sancte Margarete*—which is not one of the three regular parliaments, if we may so term them<sup>1</sup>: it is an additional meeting, such as was to be summoned by the king “quant mester serra,”<sup>2</sup> the occasion being an attempted settlement of the *contentiones* between the king and Simon de Montfort, and possibly the Welsh war.<sup>3</sup> The same roll furnishes a reference also to the parliament immediately preceding, which had been called by the Barons to meet in three weeks from Easter<sup>4</sup>: whatever other matters claimed attention then, it is quite clear that there was every expectation that the business would include judicial work<sup>5</sup>—might we say the normal judicial work of Parliament?<sup>6</sup>

But we have passed over another reference in our Sussex roll to Parliament. At the session at Lewes on 12 December, 1260, a plaintiff complained of the infringement of that clause of the provisions of Westminster which prohibited the taking of fines for beaupleder: “cum per provisionem in generali parlemento domini regis nuper factam per consilium procerum et magnatum regni Anglie prohibitum sit ne aliqui denarii dentur pro pulcre placitando in curia regis uel in alia quacumque curia.”<sup>7</sup>

<sup>1</sup> Circumstances did not permit the faithful observance of the scheme for regular parliaments. The absence of the king, for example, prevented a parliament being held in February, 1260, much to the discontent of the baronial party. A parliament was therefore convened for 25 April: as a consequence the next parliament was not convened until 8 July (Shirley, *Royal Letters*, II, 155: *Liber de Antiquis Legibus*, pp. 44, 45). But that there was every intention to keep the scheme alive may be deduced from such a phrase as “in proximo parlamento nostro Londoniis primo die Iunii” to be found in a writ of 19 March, 1265: *Close Roll* No. 82, m. 7; *Fœdera*, i, 449.

<sup>2</sup> *Select Charters*, p. 392.

<sup>3</sup> So Stubbs, *Constitutional History*, II, 86: but the only evidence he cites is the writ printed in *Fœdera*, i, 398.

<sup>4</sup> *Liber de Antiquis Legibus*, p. 44.

<sup>5</sup> *Curia Regis Roll* No. 167, m. 10. Printed below, p. 62.

<sup>6</sup> In protesting to the Barons against a parliament being held in his absence, the king expressly concedes “quod iustitia communis omnibus et singulis in regno nostro per Hugonem le Bygod iusticiarium Anglie . . . exhibeatur, mediante consilio vestro,” but there is to be “nulla nova mutatio siue ordinatio . . . in regno nostro sine nostra presentia et consensu.” This indicates clearly what were understood to be the (dual) functions of parliament: *Close Roll* No. 76 (44 Hen. III), m. 3d.; Shirley, *Royal Letters*, II, 155.

<sup>7</sup> *Assize Roll* No. 911, m. 3d.



*Generale parleamentum* is not a term to be found on the Close Roll where the provisions of Westminster are enrolled<sup>1</sup>: but if it is not a term of art it is rapidly in process of becoming one, and the writs for the first parliament of Edward I<sup>2</sup> and the statute there made<sup>3</sup> will bear witness to the fact. And whether or not a general parliament<sup>4</sup> differs in any respect from a parliament *tout court*, it seems clear that the *generale parleamentum* which was sitting at Westminster on the quinzaine of St. Michael, 1259, was one of the three annual parliaments for which the Barons had stipulated.

But to return to the period common to Year Books and Plea Rolls. Not more than a passing reference is necessary to the many entries on the rolls which record the proceedings on petitions to the Council and to Parliament and which illustrate the relations of these courts with the King's Bench, the Chancery and the Exchequer.<sup>5</sup> Such entries may be found well into the fifteenth century.<sup>6</sup> A few cases of a different nature may be selected to supplement the illustrations already given of the kind of information which the rolls will afford. We may first notice the well-known action against the Bishop of Winchester who withdrew from Parliament without licence and who refused to plead "in minori curia quam in parlamento," when he was summoned before the King's Bench. This case is to be found both in the Year Books and the Plea Rolls<sup>7</sup>: but Mr. Pike observed, "There was an adjournment and the sequel does not appear."<sup>8</sup> The sequel does, however, appear in the Controlment Roll: "Cesset processus per breue Regis."<sup>9</sup> The bishop

<sup>1</sup> *Close Roll* No. 75 (44 Hen. III), m. 17d.; *Statutes of Realm*, i, 8.

<sup>2</sup> *Parliamentary Writs*, i, 1; *Engl. Hist. Rev.*, xxv, 236. Prof. Pollard is inexact in stating (*Evolution of Parliament*, p. 47) that "down to 1300 the word 'parliament' is not mentioned" in the writs printed by Palgrave.

<sup>3</sup> *Statutes of Realm*, i, 26.

<sup>4</sup> See *Liber de Antiquis Legibus*, p. 44, for another example of the term, applied to the Parliament convened for 25 April, 1260.

<sup>5</sup> E.g. *Exchequer Plea Roll* No. 54 (1 Edw. III), mm. 2, 3; *Coram Rege Roll* No. 283 (Hil., 3 Edw. III), m. 33, Rex, mm. 28, 29; No. 468 (Hil., 1 Ric. II) Rex, m. 17.

<sup>6</sup> *Coram Rege Roll* No. 646 (Mich., 1 Hen. VI), Rex, m. 25: this contains a good example of the interrogatory process employed in the Council.

<sup>7</sup> *YB. Easter*, 3 Edw. III (ed. 1562), ff. 81, 82 (No. 32); *Coram Rege Roll* No. 275 (Hil., 3 Edw. III), Rex m. 1, No. 276 (Easter), Rex, m. 9d. The latter entry is printed by Coke, 4 *Inst.*, pp. 15, 16: his remarks (p. 17) on the inadequacy and faults of the report are instructive.

<sup>8</sup> *Const. Hist. of House of Lords*, p. 242.

<sup>9</sup> *Controlment Roll* No. 1, m. 21.

had the reward of his firmness, and the judges, whose jurisdiction he denied, did not proceed to judgment. A few years later there is a record on the *Coram Rege* Roll of a trial "*coram consilio domini regis apud Westmonasterium in pleno parlamento regis tunc conuocato*," and we find that the time of Parliament is taken up with an assault on the chancellor's chamberlain in the chancellor's presence at Ely Place "*in contemptum domini Regis mille marcarum*."<sup>1</sup> We turn to a roll of Richard II and notice Gilbert Talbot, *chevalier*, and the Prior of Rochester being sent to the King's Bench "*per ausamentum magnatum et aliorum de consilio domini Regis in presenti parlamento existencium*" to find security for their good conduct.<sup>2</sup> Such entries as these help us to appreciate the character of the work performed by Parliament as a court of law and serve to put in a more correct focus the record of the proceedings on the Parliament Rolls. And we get light too on what Stubbs has called "*Parliamentary Antiquities*": as an example we may cite an action in the Exchequer where the knights of the shire for Dorset in the Good Parliament sue the sheriff for the balance of the expenses allowed to them which amount in all to the sum of 3*l.*; they allege that they have been paid 10*l.* only, and in the pleadings we are given an account of the proceedings in the county court—how the knights agreed with the sheriff that the bailiffs of the county should collect the money and how the knights appointed a receiver on their behalf, the sheriff claiming that in this way he was free from further responsibility.<sup>3</sup>

Some at least of the details here collected are, it may be excepted, rather trivial. But details, even apparently trivial details, have their value in aggregate: and where shall we find much more in the Year Books?

## ILLUSTRATIVE DOCUMENTS

### I

*Assize Roll* No. 362, m. 8, 8d.

Placita de Querelis coram Hugone le Bygod Iusticiario Anglie apud Cantuariam die dominica proxima ante festum sancti Hillarii anno xliij.

<sup>1</sup> *Coram Rege* Roll No. 315 (Hil., 13 Edw. III), Rex, m. 22d.

<sup>2</sup> *Coram Rege* Roll No. 467 (Mich., 1 Ric. II), Rex, m. 6. For a similar case, where the Council intervenes—"per consilium domini Regis missi"—see *Coram Rege* Roll No. 470 (Trin., 1 Ric. II), Rex, m. 13d.

<sup>3</sup> *Exch. Plea* Roll No. 96, m. 216.

Hundredum de Larkefeld'.

\* \* \* \* \*

Willelmus filius Alexandri de Preston Archiepiscopi queritur de Henrico Louell' quod cum idem Willelmus amerciatus esset ad j. marcam pro quodam falso appello quod idem Willelmus fecit coram Henrico de Bathonia et sociis suis et soluisset predictam marcam, predictus Henricus postea distrinxit ipsum pro xx.s. quos non debuit.

Et Henricus venit et bene cognoscit quod distrinxit ipsum pro xx<sup>ti</sup> solidis et hoc per summonitionem de Scaccario vnde dicit quod idem Willelmus alias implacitauit ipsum coram Baronibus de Scaccario de hoc quod iniuste distrinxit ipsum pro predictis xx.s. Et tunc conuictum fuit coram eisdem Baronibus quod iuste distrinxit ipsum. Et de hoc ponit se super rotulos de Scaccario. Ideo datus est dies ad parleamentum. Et tunc querantur rotuli de Scaccario [ad parleamentum *in margine*].

## II

*Assize Roll No. 911, m. 6.*

[Placita de Querelis et Assisis coram Hugone le Despenser apud Cycestriam.<sup>1</sup>]

Rogerus le Bygod Marescallus Anglie venit per Walterum de sancto Edmundo seruientem suum et petit custodiam omnium prisonum qui adiudicantur prisone coram capitali Iusticiario vna cum exitibus imprisonmenti illius siue in itineribus ipsius capitalis Iusticiarii per totam Angliam siue coram domino Rege. Et vnde idem Walterus dicit quod predictus Marescallus dominus suus fuit in pacifica seisina toto tempore Hugonis le Bygod quondam capitalis Iusticiarii in diuersis itineribus suis per Angliam. Et quia Hugo le Despenser capitalis Iusticiarius vult quod nichil preiudicetur domino Regi in hac parte nec scit vtrum custodia predicta et exitus predicti pertineant ad dominum Regem seu ad predictum Marescallum, ideo dictum est predicto Waltero quod omnes exitus prouenientes ex huiusmodi imprisonmentis in itinere ipsius Iusticiarii ante proximum parleamentum quod erit in octabis purificationis beate Marie promptos habeat ad idem parleamentum ad reddendum domino Regi uel predicto Marescallo domino suo secundum quod magnates de consilio Regis considerauerint et ibidem similiter discutiatur de custodia predicta.

<sup>1</sup> From m. 6d.

## III

*Curia Regis Roll No. 167 (Easter, 44 Hen. III), m. 10.*

Adhuc de quinta septimana Pasche et de Crastino Ascensionis domini.

\* \* \* \* \*

Kancia. Abbas de Feuresham per attornatum suum optulit se iiij<sup>to</sup> die uersus Ricardum le Iouene [*and twenty-one others*] homines ipsius Abbatis de Fauresham de placito quod teneant ei finem factum in curia regis coram rege apud Westmonasterium inter eundem abbatem querentem et predictos homines suos impediētes de eo quod iidem homines sui facerent ei consuetudines et seruicia que ei facere debent de liberis tementis suis que de eo tenent in Fauresham, et de eo quod iidem homines sui libertates nouas et plures super ipsum Abbatem vsurpauerunt contra libertates eiusdem Abbatis vnde cyrographum etc. Et ipsi non veniunt etc. Et plures fecerunt defaltas. Ita quod preceptum fuit vicecomite quod distringeret eos per omnes terras etc. Et quod de exitibus etc. Et quod haberet corpora eorum ad hunc diem. Et vicecomes mandat quod nichil inde fecit eo quod dominus Rex ei mandauerat per breue suum quod districtionem illam poneret in respectum vsque ad presens parlamentum scilicet usque nunc eo quod voluit tam ipsi abbati quam hominibus suis predictis plenam coram eo in hac parte exhibere iusticiam etc. Et ideo sicut prius preceptum est vicecomite quod distringat eos per omnes terras etc. Ita etc. donec etc. Et quod de exitibus etc. Et quod habeat corpora eorum a die sancti Iohannis Baptiste in tres septimanas. Et super hoc veniunt balliui libertatis quinque portuum et petunt inde curiam suam etc.

The case is continued on *m. 24*, and there is a further adjournment. Et vicecomes nichil inde fecit set mandat quod predicti Ricardus, Willelmus et omnes alii sunt de libertate quinque portuum quam nullus vicecomes ingreditur. Et ideo preceptum est Hugoni le Bigod custodi predictę libertatis quod faciat eos venire a die sancti Michaelis in vnum mensem vbicunque etc.

There seems however to be no reference to the case on the roll for the Michaelmas term (*Curia Regis Roll No. 168*).

## APPENDIX B

### BIBLIOGRAPHICAL NOTE

*Year Books.* A Year Book Bibliography was printed by C. C. Soule in the *Harvard Law Review*, vol. XIV, and has been reprinted as a separate pamphlet. This deals principally with the old editions of the Year Books. A list of modern editions is given by C. Gross, *Sources and Literature of English History*, No. 2053 : since the second edition was published a few more volumes of the Year Books of Edward II have appeared in the Selden Society's series. The *Graunde Abridgement* of Anthony Fitzherbert (1514 and many later editions) is an invaluable digest of, and guide to, the Year Books, and despite its many deficiencies is never likely to be superseded : the revised versions of Robert Brooke and Henry Rolle, designed to bring Fitzherbert up to date, are not so useful to the modern student of the Year Books as the original, but are well worth consulting for the additional matter which they contain, most of it from later reports but some from extraneous sources. David Jenkins' *Eight Centuries of Reports* (fourth edition, 1885) is a collection of appeal cases (and some others), nearly half from the Year Books, arranged in order of date, with a useful subject index.

The accessible manuscripts of Year Books are in various collections—the British Museum, the Bodleian, Cambridge University Library, the Inns of Court, and a few elsewhere. Nothing in the nature of a census or general catalogue of manuscript Year Books has been published ; but certain of the introductions to modern editions contain valuable information relating to other manuscripts than those of the texts with which the editor is immediately concerned, e.g., Mr. G. J. Turner's Introduction to Vol. VI of the Selden Society's Year Book Series and Mr. G. F. Deiser's Introduction to the *Year Books of 12 Richard II.* The most extensive collection is that at the British Museum, and the detailed catalogue (in manuscript), now in progress, promises to be of great value. The Year Books not

being of official origin, no manuscripts are in the Public Record Office.

*Plea Rolls. Guides and Indexes.* As a general guide to the Plea Rolls we have certain sections (pp. 150, 253 ff.) of the official *Guide to the Public Records* and the *List of Plea Rolls*.<sup>1</sup> The former is inadequate and in places inaccurate<sup>2</sup>: but it is now under revision and the errors may be expected to disappear. The *List of Plea Rolls* would be improved by the insertion of additional notes of printed texts, the present references being confined to the *Rotuli Curiae Regis* published by the Record Commission. The worst feature of the List<sup>3</sup> is the heterogeneous mass of documents placed together "under the general title of 'Eyre Rolls, Assize Rolls, etc.'"<sup>4</sup> Miss H. M. Cam's recent *Studies in the Hundred Rolls*, however, contain a provisional list of Eyre Rolls from 1194 onwards,<sup>5</sup> and Miss B. H. Putnam has identified many of the proceedings of Justices of the Peace and Justices of Labourers:<sup>6</sup> but much more needs to be done in the way of classification and arrangement before this jumble of 1,500 odd rolls and files can become reasonably easy to consult. It may be noted also that there is no clear division between the documents included under this "general title," those in the class entitled "Ancient Indictments,"<sup>7</sup> and those among the *Gaol Delivery Rolls*: this last class includes subsidiary documents of the same type as those to be found among *Ancient Indictments*,<sup>8</sup> which, moreover, contain *inter alia* rolls of Justices of the Peace and of Oyer and Terminer. It is to be hoped that when the List is again reprinted, it will be thoroughly revised and the classification reconsidered.

It may not be impertinent to remark that once in the posses-

<sup>1</sup> And, in brief compass, the section on Judicial Records in the *Reper-tory of British Archives*, pp. 65 ff.

<sup>2</sup> See as to Controlment Rolls, L. W. V. Harcourt, *The Baga de Secretis*, *Engl. Hist. Rev.*, xxiii, esp. p. 511; n. 17: as to Eyre Rolls, H.M. Cam, *Studies in the Hundred Rolls*, p. 79: as to Docket Rolls, *below* p. 65.

<sup>3</sup> See Mr. L. O. Pike's criticism on other points: *Report of R. Commn. on Public Records*, I, iii, 164.

<sup>4</sup> The whole class is, however, officially known as *Assize Rolls*, and this compendious (but inaccurate) title is used in this paper.

<sup>5</sup> Appendix III, pp. 103 ff.: and see pp. 74 ff. for an account of the records of Justices of Trailbaston.

<sup>6</sup> *Engl. Hist. Rev.*, xxviii, 321 ff., xxix, 480-1.

<sup>7</sup> *Ibid.*, xxix, 479 ff.

*E.g. Gaol Delivery Rolls* Nos. 216, 217: 216/1 contains proceedings before Justices of the Peace.

sion of a complete and well classified list of rolls and subsidiary documents, the student needs little further guidance to cases bearing upon historical events of magnitude, such as the Rebellions of 1381 and 1450 : indeed the rolls are not of such vast bulk as to preclude search in them for material bearing upon any considerable event the date of which is known. Difficulty arises where the subject of enquiry is local history or a social or political movement or institution of long duration or slow development. This is true not only of the King's Bench but of all other courts as well, although historical events will be reflected in a different way in the records of the different courts.

For detailed indexes and abstracts we are still chiefly dependent upon the work of Agarde and past generations of record keepers. Lists of them are to be found in the official *Guide* (pp. 273 ff., 290 ff.). The most helpful are the indexes to the *Curia Regis* and *Coram Rege Rolls*. To the end of Edward II's reign these are printed in the *Abbreviatio Placitorum* : volumes 35, 36 and 37 of Agarde's Indexes carry the work up to the end of the fourteenth century. No one who has not collated plea roll entries with abstracts in the *Abbreviatio* or in the manuscript indexes can appreciate how inadequate these may be : they are valuable because there is nothing to take their place, but their omissions—particularly those of the *Abbreviatio*—are many and strange beyond any conjecture of a plan lying behind. Yet how serviceable Agarde's Indexes may be will be clear from Mr. C. T. Flower's Introduction to the first volume of his *Public Works in Mediæval Law*. To the *Coram Rege Rolls* of the fifteenth century there is no index of any sort : the so-called *Docket Rolls*, to which reference is made in the *Guide*,<sup>1</sup> are the memoranda of one of the clerks of the King's Bench and relate only to the membranes which bear his name on the plea rolls.<sup>2</sup> They appear to have descended to each successive occupant of the office and are of some interest from the light they throw on the organization of the court, but they have no value for any other purpose.

Those volumes of Agarde's and Le Neve's Indexes which deal with the rolls of the Court of Common Pleas are of little use except for genealogical and topographical purposes : in any case they deal with isolated years or reigns. An Index to the *Placita*

<sup>1</sup> P. 259.

<sup>2</sup> Indexes Nos. 1322-7 : they bear such headings as, "Memorandum Iohannis Hulton" : "Memorandum Iohannis Hulton et Hugonis Halgot." Cf. *Guide*, p. 266.

*de Banco* of the first two years of Edward III was printed in 1909: it has been very adversely criticised by Mr. L. O. Pike,<sup>1</sup> and although it may be used as a guide to matters other than genealogical or topographical, it is not a model to be followed. What is required above all is a *subject* index to the rolls.

To the Exchequer Plea Rolls<sup>2</sup> rather more guidance is afforded by a modern "Catalogue of Enrolments" (in manuscript) containing abstracts of a selection of entries from Edward I onwards, and a contemporary repertory from 14 Henry IV to 14 Henry VII which gives the names of the parties and the nature of the action. The Plea Rolls of the Exchequer of the Jews have been calendared by Mr. J. M. Rigg, who has also printed extracts in a volume published by the Selden Society.

*Texts.*<sup>3</sup> The Record Commission commenced the publication of the rolls of the Curia Regis: rolls for various terms between 1194 and 1200 were printed and then the work stopped. "The nation put its hand to the work and turned back, fainthearted."<sup>4</sup> The Pipe Roll Society many years later took up the task and printed three rolls of 1194-5 under Maitland's editorship: apart from the use of record type, this is the most satisfactory of editions. A further roll, of Hilary term, 1196, was also printed by the Society as an expiring effort in 1900: the Society revived but the printing of plea rolls was dropped. The work has now been taken up afresh by the Public Record Office: the object is to fill the gaps left by the Record Commission and Pipe Roll Society and to continue with subsequent years at least to the end of the reign of John. It is to be regretted that the opportunity has not been taken to publish the rolls from the beginning in chronological order: but it is a great deal to have the work continued.

In the meantime the Selden Society have published two volumes of selections from the rolls of the Curia Regis and the early Assize Rolls—*Select Pleas of the Crown* and *Select Civil Pleas*—as well as selections from other plea rolls, the most noteworthy being *Public Works in Mediæval Law*, which consists chiefly of extracts from the Coram Rege Rolls, and Mr. Rigg's volume mentioned above.

<sup>1</sup> *Ubi supra*, p. 165.

<sup>2</sup> The Memoranda Rolls which record many actions, of great historical interest, heard in the Exchequer are not classified as Plea Rolls.

<sup>3</sup> A list of printed texts will be found in Gross, *op. cit.*, pp. 451 ff. Very little has been added since.

<sup>4</sup> Maitland. *Bracton's Note Book*. i. 11.



*The Abbreviatio Placitorum*, another work of the Record Commission, includes full texts among its abstracts. No indication is, however, given of the extent to which the text is reproduced: many terms for which rolls exist are unrepresented and some rolls are misdated: it is necessary therefore to use the volume with caution. The Index Society published as a jubilee volume the roll of the King's Bench for Trinity term 1297: a rather forlorn monument of national pride. Texts and translations of Assize Rolls have been published by local societies and private persons: and extracts from plea rolls are to be found in a number of books from the seventeenth century onwards, to some of which reference has been made in the preceding pages.

The most notable of texts published by private effort is *Bracton's Note Book*, which reproduces a nearly contemporary transcript of many of the entries on the Curia Regis and Assize Rolls from 1217 to 1240. The value of this work is universally recognized: it contains careful extracts from several rolls that have since disappeared: it represents the devoted labour of the greatest of the historians of English law: but it may nevertheless serve to illustrate the disadvantages of the unsystematic publication of texts which has, with the few exceptions already mentioned, been hitherto the only way in which the contents of the plea rolls have been made available to the general student. Maitland indeed seems to have regarded the book, from one point of view, as a stop gap, as a selection of texts which would serve until complete texts were published: its value for Bracton criticism is a separate question.

One of the best-known and most interesting of plea rolls is that now known as *Curia Regis Roll No. 115B*, covering the terms from Trinity 1234 to Easter 1235. From it Mr. J. M. Rigg printed the famous case before the King's Council concerning the circumcision of a Christian child by Jews of Norwich,<sup>1</sup> and Maitland the inquisition into the murder of Henry Clement.<sup>2</sup> From it *Bracton's Note Book* takes other twenty-six cases,<sup>3</sup> one of them recording the proceedings at the king's council on 12 October, 1234, when the ordinance concerning bastardy was enacted. This case had already been printed *twice* by Sir Travers

<sup>1</sup> m. 22. Select Pleas of the Exchequer of the Jews (Selden Soc.), p. xlv: see also Prynne, *Demurrer*, i, 19 ff.

<sup>2</sup> m. 34d. *Engl. Hist. Rev.*, x, 294 ff.; *Collected Papers*, III, 11 ff.

<sup>3</sup> III, 123 ff.; one case. No. 1128. in the *Note Book* seems not to be on the roll.

Twiss in his edition of Bracton :<sup>1</sup> he did not, however, print any of the other proceedings which took place at the same meeting of the Council, nor the proceedings at a Council meeting of 6 October which are intimately connected with those of the twelfth. *Bracton's Note Book* includes a good deal but not all of the business transacted at the two Councils : the text is garbled and there is an interpolation upon which Maitland expended much learning. Maitland, of course, was under no misapprehension as to the relations of the record and the Note Book<sup>2</sup> ; but even so acute a scholar as Prof. Baldwin has accepted the interpolation as part of the record :<sup>3</sup> and the significance of the formulas employed in recording the proceedings at the two Councils appears to have been obscured by the manner in which the text is presented.<sup>4</sup>

It seems clear that the specially afforded Council which considered the question of bastardy, ratified also ordinances relating to the assizes of *darrein presentment* and *utrum*, already settled at the meeting held six days before. The formulas employed appear to tell us as much : they are, we may be sure, used advisedly and are not whims of the clerk. At the earlier Council the formula is "prouisum est coram Domino Rege," etc. : at the later Council the ordinance concerning bastardy is prefaced "prouisum fuit et concessum," but the other ordinances need only the word "concessum"—they have already passed through one stage.

Immediately following these entries on the roll is another entry<sup>5</sup> (absent from the Note Book) which must, it would seem, have some connexion with the ratification of the ordinance concerning the assize *utrum*. The bishop-elect of Hereford, who is present at the Council, comes forward and concedes the king's right to appoint to a prebend which had become vacant while the see was in the king's hands, but which the bishop had appar-

<sup>1</sup> *De Legibus* (Rolls Series), II, 606 ff. ; VI, 510 ff.

<sup>2</sup> *Bracton's Note Book*, i, 110 ff.

<sup>3</sup> *King's Council*, p. 60 : " Among these [ordinances] is found the well-known answer of the barons concerning the proposed change in the law of bastardy, *quod nolunt leges Anglie mutare que usitate sunt et approbate*."

<sup>4</sup> Prof. B. G. Adams, with the *Note Book* before him, inclines to the view here expressed, but says : " exactly what took place in October, 1234, is not clear enough to enable us to affirm anything with certainty " (*Origin of the English Constitution*, p. 199). To me, on the contrary, the actual record on the Plea Roll seems to be clarity itself.

<sup>5</sup> *Curia Regis Roll* No. 115B, m, 16d.

ently disposed of elsewhere. And then after another entry, with which seemingly the Council have nothing to do, follows a case (also absent from the Note Book) "coram Domino Rege et Domino Cantuariensi Archiepiscopo, Episcopis, Comitibus, Baronibus tunc presentibus et aliis magnatibus Anglie," which concerns a dispute between Florentine merchants and their agent: some difficulty was clearly felt as to the status of the plaintiffs who express themselves content "quod secundum consuetudinem Regni Anglie deducantur et iusticiam habeant." Doubtless in due course this case will be printed, like other cases from this same roll, to illustrate some special point touching, let us say, the Law Merchant or the Italian merchants in England: but what such piecemeal publication will not illustrate is the constitution and day by day work of the King's Council, nowhere better displayed than on the one membrane which records, among much else, the acts of the two meetings of 6 and 12 October, 1234.

We are slowly learning that our conception of the history of any period is likely to be out of focus unless we have unravelled the system of public administration: isolated extracts from plea rolls will not greatly help us to understand administrative history, and we may misunderstand the extracts because we have not the context before us. In the plea rolls of the thirteenth century lies much of the history of Parliament and the Council, of courts and institutions of all kinds and degrees, history for which we shall look in vain elsewhere. Yet to look for it in the unprinted plea rolls is laborious and possible only to the few. "Foreigners print their records; we, it must be supposed, have too many records to be worth printing; so there they lie these invaluable materials for the history of the English people, unread, unknown. . . ." <sup>1</sup> We should, however, deplore the expenditure of time and labour represented by scattered extracts, some indeed already printed twice or thrice, which will be printed yet again when the full texts are published; for we cannot but believe that before many years are over all the plea rolls will be printed to the end of the reign of Henry III. The task is by no means a gigantic one, for time has wrought sad ravages, and many of the surviving rolls consist of but a few membranes.

In later reigns the rolls increase in number and bulk and seem to strike terror in many breasts: and seeing that so little has

<sup>1</sup> *Bracton's Note Book*, i, 11.

been attempted since the seventeenth century to render them accessible, perhaps some gratuitous and irresponsible advice may be excused. It is not to be expected that the rolls will be printed in full: but those of the King's Bench and the Exchequer of the Pleas should certainly be calendared to the end of the reign of Henry VII.<sup>1</sup> Most of the entries could be dealt with as briefly as the bills and answers in the *List of Early Chancery Proceedings*: many, which give no material information, might be treated even more summarily. The average number of membranes to each Coram Rege Roll appears to be under a hundred, and the average number of entries to the membrane is probably not more than a dozen; or, for an average year, between four and five thousand entries, which could be dealt with adequately in something like two hundred pages of an ordinary Public Record Office calendar. The *Exchequer Plea Rolls* would demand but a fraction of the space required by the *Coram Rege Rolls*. The rolls of the Common Bench are of far less importance for constitutional, administrative and general history and their bulk is far greater than the rolls of the King's Bench: that eight rolls of the Common Bench were first selected for indexing—and by a topographical scheme—was doubtless due to that reverence for the needs of the genealogist and antiquary which has so strangely persisted for so many years: but the Common Bench might well wait until the rolls of other courts (not excluding the rolls of justices in eyre) had first been dealt with. Neglecting the Common Bench, the whole undertaking would be no greater than the calendaring of the Chancery Rolls, now within sight of completion. There are doubtless other claimants for attention, and mediæval history is slightly out of fashion: but the claims of others must indeed be great if the Plea Rolls are to give place to them.

<sup>1</sup> I suggest this reign as the *terminus ad quem* for reasons indicated in the *Repertory of British Archives*, p. 65.