

SPIGURNEL J. Supposing they have got rid of their property simply for the purpose of having naught by which they can be made answerable, is it right that we should delay awarding the jury by reason of their absence?

STAUNTON J. We rule that you must say something more than this, or we shall award the jury.

Passeley asked that the writ for the assize might be read; and when it was read it appeared that a name was transposed. Therefore, said he, we crave judgment on the ground of variance between the original writ and the writ summoning the four and twenty.

STAUNTON J. Such variance as that is not sufficient to abate a writ.

Then the counsel went out to imparl, and returned.

Stonore. You have heard that this jury is asked for for the purpose of attainting the verdict of a jury of twelve. Now those twelve are not fully here; and we submit that this jury of four and twenty cannot be awarded in the absence of any of the twelve; for it may well be that if any of those who are absent were here they might allege some release or some other matter as cause why this jury should not be awarded.

STAUNTON J. You told us that before, and we told you to say something else, and we tell you so again; and if you don't we shall award the jury.

Stonore. It is enacted by statute that the Justices in Eyre shall have formal proclamation made that all who desire to purchase writs shall purchase them within a certain limited time, and that all process taken under any writ not purchased within the time so limited shall be null and void. Now, Sir, we say that this writ was purchased subsequently to the day limited in the proclamation, and we submit that you cannot give any effect to such a writ.

STAUNTON J. We have received a later authority to do so from the King, and this is equally binding with the statute.

Stonore. And we answer to that that the law is laid down in the statute, and that no man may go contrary to statute.

SPIGURNEL J. That answer would have been good if it had been the Sheriff who had received the writ after proclamation; but we have received it by the command of the King, under a new authority which is as binding as the statute.

Passeley. Sir, the statute is made by the General Council of the Realm, which may not be over-ridden by a simple order from the King; and we submit that such an order cannot make of no effect the plain words of the statute.

ORMESBY J. What the King commands we must suppose to be commanded by the General Council; and moreover no man may plead in objection to an act of the King.

Costone, who was attorney for William Grandison: The statute enacts, Sir, that such writs as are delivered after the day limited in the proclamation shall be null, and all proceedings taken under them be void. Moreover in the new ordinances it is laid down¹ that no law shall be changed by the King to the delaying of justice; wherefore we pray a bill of exception, or that you will make an entry of our objection in the Roll.

STAUNTON J. We will make no bill, but you have the testimony of the whole court; so lodge your objection as soon as you like.

Stonore. Sir, in every case in the world wherein a man may have attaint the full performance of judgment is a condition precedent. Now we tell you that when judgment was delivered on the verdict of the assize, damages in the sum of fifteen pounds were awarded. These damages have never yet been fully paid, and so we submit that this jury cannot be granted.

Malberthorpe. You have already been paid five marks, and afterwards we made tender to you etc. if you were willing to give us a discharge, and now once more we make tender, and ask for judgment etc.; and he tendered eleven pounds and a mark.

Stonore. Even now judgment is not fully performed, for we lack two marks.

Malberthorpe. When judgment was delivered he gave them to the marshals and clerks for their fees.

Stonore. Besides this, since he had them not ready in court and could not say that he had paid them, we ask for judgment, and we pray inspection of the record of the assize; and there it was found that they were given to the marshals etc.

Stonore. What proof have you of the payment of the five marks?

SPIGURNEL J. If the Sheriff levied the money and paid it into court, can you ask him what proof of the payment he has?—*meaning that he could not be so asked.*

Stonore. We submit that William Grandison is entitled to sustain his objection to the writ. Its clear purpose is to reverse the

¹ The reference seems to be to cap. xxxii. 'Purceo qe la lei de la terre et comun droit unt este sovent delaiez par lettres issues desoutz le prive seal le Roi, au graunt grevance du poeple; Nous ordenoms qe desormes la ley de la terre ne comun droit ne soient delaiez ne des-

turbiez par lettres du dit seal, et si rien soit fait en nule des places de la Court nostre seignour le Roi ou aillours par tiels lettres issues desutz le prive Seal, encontre dreiture ou lei de terre, rien ne vaille ne pur nient soit tenuz.'