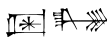


## A Concise History of the Common Law

A  
CONCISE HISTORY  
OF THE  
COMMON LAW

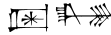
by  
Theodore F. T. Plucknett



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## PREFACE TO THE FIFTH EDITION

THE decision of the publishers to reprint this work in a larger type will have made it easier for the reader to use it, I hope; it has also made it possible to effect a good deal of revision. No new subjects have been added, however, for the object of the work has always been to treat only a limited number of topics, but with sufficient detail to make them intelligible. This has made it necessary to place the history of English law in its setting of canon, civil, and general European law in order to show the intellectual influences which have moulded our own system. Comparison with other legal systems is therefore essential to the method here pursued. The point of view adopted throughout is that of a historian who surveys the law from the outside, as it were, and contributes both comparison and criticism to the historical study contained in the following pages.

Besides a few additions (which are distributed fairly evenly through the book), there have been numerous revisions, occasionally rearrangements (especially in dealing with the jury), and sometimes a more ample explanation of difficult points.

The general plan of the work remains unchanged. The first half of the book is an historical introduction to the study of law, and stress has therefore been placed upon those conditions in political, economic, social and religious thought which have contributed to its formation. As the readers for whom this part is designed will generally be first-year undergraduates, it seemed prudent to assume that their previous knowledge of history would be by no means extensive; hence the distinctly elementary note of the first eighty pages.

The courts, the profession, and such general factors in legal development as legislation and the principle of precedent, are subjects which deserve close attention at the introductory stage, for they are the foundation of much that follows. It would, no doubt, be possible to state the essential facts in a very condensed form by using an encyclopaedic style, but such a treatment is not very helpful to beginners. Enough illustrative material has therefore been used to give, I hope, some of the spirit and atmosphere in which the common law system grew up.

The place of legal history in the law school curriculum is still a matter of debate. It may be remarked, however, that if law is a difficult study to the beginner, the history of the law, with its different outlook and unfamiliar concepts, is apt to be more difficult still. This book has therefore been planned on the principle that the first part, "A General Survey of Legal History," is as much legal history as a first-year student can be expected to master, in view of the fact that he is embarking upon a subject for which his earlier studies have given him little preparation.

At a later stage he can embark upon legal history in more detail, either as a separate subject, or as part of the study of substantive law.

The second half of the book, therefore, consists of introductions to the history of a few of the main divisions of the law. Other topics, indeed, might have been added, but only at the risk of defeating the object of the book, which is to convey a sense of historical development, and not to serve as a work of reference. The mere recital of historical data is not enough, and so a limited field, treated with careful exposition, seemed more likely to interest those who are just embarking upon their legal education, than a more comprehensive (and therefore less intimate) treatment of a larger field. The increase of size in this edition is very slight, and is attributable principally to the amplification of expository passages, and not to the introduction of new subjects for treatment.

Everyone who is interested in the history of the law is under an immense debt to the writings of Pollock, Maitland and Holdsworth in England, and of Holmes, Thayer and Ames in America. Were it not for the thirteen masterly volumes of the Vinerian Professor, neither this nor any other short history of English law could be written with any degree of confidence. The stately series of the Selden Society's publications has provided a rich harvest of original materials which adds immensely to the vividness of legal history whenever teachers and students make use of them. The even longer series of many of our county historical societies afford rich illustration of our legal history, and the grateful thanks of legal historians are due to these bodies, and especially to the enlightened bands of subscribers who make it possible to continue the work of publication, even in these inauspicious days. The footnotes to this history have been designed to place illustrative cases and statutes easily within the reach of readers. The Council of the Selden Society have kindly allowed me to reproduce a lengthy extract from one of their publications, and I hope that readers will be tempted to explore these and the other sources cited.

It should be explained that the text and pagination of this fifth edition correspond entirely, both in the English issue by Messrs. Butterworth, and in the American issue by Messrs. Little, Brown and Company.

My thanks are due once again to many friends who have discussed legal history and its teaching with me in a very helpful way, and to many English and American teachers who used the earlier editions and were kind enough to send me valuable suggestions. I am once again particularly grateful to Professor H. A. Hollond of Cambridge and Professor A. D. Hargreaves of Birmingham for their learned criticisms and interest, to Mr. K. Howard Drake for the Index, and to Messrs. Butterworth for their constant and sympathetic care in the production of this volume, and in the preparation of the Tables.

T. F. T. P.

LONDON SCHOOL OF ECONOMICS,

*July, 1956.*

# CONTENTS

	PAGE
PREFACE - - - - -	v
TABLE OF MEDIAEVAL CASES - - - - -	xi
TABLE OF MODERN CASES - - - - -	xvii
TABLE OF LAWS AND STATUTES - - - - -	xix

## BOOK ONE

### A GENERAL SURVEY OF LEGAL HISTORY

#### PART I

#### THE CROWN AND THE STATE

CHAPTER		PAGE
1. THE ANGLO-SAXON PERIOD: RACES AND RELIGION - - - - -	6	6
2. THE CONQUEST TO HENRY II: THE BEGINNINGS OF ADMINISTRATION - - - - -	11	11
3. THE GREAT CHARTERS: LAW SEPARATES FROM ADMINISTRATION - - - - -	20	20
4. EDWARD I TO RICHARD II: STATUTES AND SOCIAL REVOLUTION - - - - -	27	27
5. THE FIFTEENTH CENTURY: THE PROBLEM OF ENFORCEMENT - - - - -	35	35
6. THE TUDORS: RENAISSANCE, REFORMATION AND RECEPTION - - - - -	39	39
7. THE STUARTS: STRUGGLE FOR THE SUPREMACY OF LAW - - - - -	48	48
8. THE EIGHTEENTH CENTURY: INDUSTRIAL REVOLUTION - - - - -	65	65
9. THE NINETEENTH CENTURY: LIBERALISM AND REFORM - - - - -	73	73

#### PART II

#### THE COURTS AND THE PROFESSION

1. THE COMMUNAL COURTS - - - - -	83
2. SEIGNORIAL JURISDICTION - - - - -	95
3. THE CROWN AND LOCAL COURTS - - - - -	101
4. THE JURY - - - - -	106
5. THE ORIGINS OF THE CENTRAL COURTS - - - - -	139
6. THE ELABORATION OF THE JUDICIAL SYSTEM: 1307-1509 - - - - -	157
7. THE TUDORS AND THE COMMON LAW COURTS - - - - -	170
8. THE RISE OF THE PREROGATIVE COURTS - - - - -	176
9. PREROGATIVE, EQUITY AND LAW UNDER THE STUARTS - - - - -	191
10. PARLIAMENT AND THE PRIVY COUNCIL - - - - -	199
11. THE COURTS IN THE NINETEENTH CENTURY - - - - -	207
12. THE LEGAL PROFESSION - - - - -	215
13. THE GROWTH OF THE JUDICIARY - - - - -	231
14. PROFESSIONAL LITERATURE - - - - -	252

## PART III

## SOME FACTORS IN LEGAL HISTORY

CHAPTER	PAGE
1. THE CIVIL LAW OF ROME - - - - -	294
2. THE CANON LAW OF THE CHURCH - - - - -	301
3. CUSTOM - - - - -	307
4. LEGISLATION - - - - -	315
5. THE PRINCIPLE OF PRECEDENT - - - - -	342

## BOOK TWO

## SPECIAL PART

## PART I

## PROCEDURE

1. THE FORMS OF ACTION - - - - -	353
2. CIVIL PROCEDURE - - - - -	379
3. PLEADING - - - - -	399

## PART II

## CRIME AND TORT

1. CRIMINAL PROCEDURE - - - - -	424
2. THE FELONIES - - - - -	442
3. MISDEMEANOURS, TRESPASS AND TORT - - - - -	455
4. LIABILITY, CIVIL AND CRIMINAL - - - - -	463
5. DEFAMATION - - - - -	483

## PART III

## REAL PROPERTY

1. FEUDALISM - - - - -	506
2. FEUDALISM IN ENGLAND - - - - -	516
3. INHERITANCE AND ALIENABILITY - - - - -	521
4. TENURES AND INCIDENTS - - - - -	531
5. THE RISE OF THE ENTAIL - - - - -	546
6. THE COMMON LAW ESTATES DOWN TO 1540 - - - - -	558
7. USES AND THE STATUTE - - - - -	575
8. THE LATER LAW OF REAL PROPERTY - - - - -	588
9. THE MORTGAGE - - - - -	603
10. CONVEYANCES - - - - -	610

## PART IV

## CONTRACT

1. ORIGINS - - - - -	628
2. THE FOURTEENTH CENTURY - - - - -	633
3. ASSUMPSIT TO SLADE'S CASE - - - - -	637
4. CONTRACT AFTER SLADE'S CASE - - - - -	647
5. LAW MERCHANT AND ADMIRALTY - - - - -	657

## CONTENTS

ix

### PART V

#### EQUITY

CHAPTER	PAGE
1. THE EARLY HISTORY OF EQUITY - - - - -	675
2. THE FORMATIVE PERIOD - - - - -	685
3. THE WORK OF THE CHANCELLORS - - - - -	695

### PART VI

#### SUCCESSION

1. INHERITANCE - - - - -	712
2. INTESTACY - - - - -	725
3. WILLS - - - - -	732

#### INDEX



# TABLE OF MEDIAEVAL CASES

	PAGE		PAGE
SELECT CIVIL PLEAS ( <i>Selden Society</i> ):		GLOUCS., WARW. & SALOP. EYRE ROLLS	
no. 1 (1200) - - - -	721	( <i>Selden Society</i> , vol. 59)— <i>contd.</i>	
no. 8 (1200) - - - -	477	no. 1013 (1221) - - - -	577
no. 17 (1200) - - - -	402	no. 1018 (1221) - - - -	573
no. 56 (1200) - - - -	529	no. 1023 (1221) - - - -	567, 713
no. 59 (1200) - - - -	362	no. 1073 (1221) - - - -	678
no. 65 (1200) - - - -	722	no. 1080 (1221) - - - -	566
no. 76 (1201) - - - -	400	no. 1090 (1221) - - - -	568
no. 148 (1203) - - - -	540	no. 1159 (1221) - - - -	567
no. 167 (1203) - - - -	527	no. 1184 (1221) - - - -	166
no. 179 (1202) - - - -	417	no. 1239 (1221) - - - -	121, 484
no. 183 ( <i>post</i> 1205) - - - -	489	no. 1241 (1221) - - - -	453
no. 194 (1201?) - - - -	718	no. 1433 (1222) - - - -	567
CURIA REGIS ROLLS:		no. 1450 (1222) - - - -	534, 541
ii. 181-182 (1203) - - - -	159, 477	no. 1458 (1222) - - - -	166
vii. 136, 179 (1214) - - - -	150, 677	no. 1459 (1222) - - - -	540
332 (1221)- - - - -	166	no. 1477 (1222) - - - -	128, 401
SELECT PLEAS OF THE CROWN		no. 1479 (1222) - - - -	551
( <i>Selden Society</i> ):		NORTHANTS ASSIZE ROLLS ( <i>ed. Stenton</i> ):	
no. 28 (1202) - - - -	677	no. 782 (1202) - - - -	156
no. 91 (1203) - - - -	144	BRACON'S NOTE BOOK ( <i>ed. Maitland</i> ):	
no. 115 (1214) - - - -	428	no. 21 (1219) - - - -	538
no. 126 ( <i>n.d.</i> ) - - - -	476	no. 27 (1219) - - - -	678
no. 157 (1221) - - - -	124	no. 36 (1219) - - - -	736
no. 169 (1221) - - - -	453	no. 44 (1219) - - - -	720
no. 170 (1221) - - - -	124	no. 54 (1219) - - - -	145
no. 192 (1220) - - - -	121, 123	no. 56 (1219) - - - -	678
LINCS. & WORCS. EYRE ROLLS		no. 67 (1219) - - - -	453
( <i>Selden Society</i> , vol. 53):		no. 77 (1219) - - - -	618
no. 908 (1219) - - - -	569	no. 86 (1220) - - - -	548, 560
GLOUCS., WARW. & SALOP. EYRE ROLLS		no. 157 (1222) - - - -	368
( <i>Selden Society</i> , vol. 59):		no. 185 (1222) - - - -	117
no. 77 (1221) - - - -	678	no. 230 (1224) - - - -	718
no. 85 (1221) - - - -	472	no. 241 (1227) - - - -	547
no. 100a (1221) - - - -	551	no. 243 (1227) - - - -	94
no. 102 (1221) - - - -	571	no. 280 (1228) - - - -	719
no. 127 (1221) - - - -	573	no. 381 (1230) - - - -	740
no. 173 (1221) - - - -	540	no. 458 (1230) - - - -	607
no. 187 (1221) - - - -	722	no. 564 (1231) - - - -	716
no. 200 (1221) - - - -	577	no. 566 (1231) - - - -	547
no. 227 (1221) - - - -	91	no. 607 (1231) - - - -	570
no. 232 (1221) - - - -	423, 465, 718, 722	no. 754 (1233) - - - -	46, 677
no. 257 (1221) - - - -	567, 577	no. 824 (1233) - - - -	121
no. 272 (1221) - - - -	573	no. 834 (1234) - - - -	721
no. 290 (1221) - - - -	737	no. 842 (1234) - - - -	318
no. 474 (1221) - - - -	360, 678	no. 892 (1224) - - - -	718
no. 559 (1221) - - - -	569	no. 900 (1224) - - - -	385
no. 560 (1221) - - - -	716	no. 951 (1224) - - - -	718
no. 715 (1221) - - - -	166	no. 980 (1224) - - - -	117
no. 728 (1221) - - - -	124	no. 982 (1224) - - - -	718
no. 751 (1221) - - - -	120	no. 988 (1224) - - - -	718
no. 767 (1221) - - - -	124	no. 999 (1224) - - - -	677
no. 822 (1221) - - - -	120	no. 1038 (1225) - - - -	117
no. 832 (1221) - - - -	453	no. 1054 (1225) - - - -	529
no. 877 (1221) - - - -	125	no. 1128 (1234-5) - - - -	721
no. 977 (1221) - - - -	476	no. 1146 (1235-6) - - - -	143
no. 978 (1221) - - - -	449	no. 1166 (1236) - - - -	388
no. 1005 (1221) - - - -	431	no. 1215 (1236) - - - -	361
		no. 1220 (1237) - - - -	150

	PAGE		PAGE
BRACTON'S NOTE BOOK (ed. Maitland)— <i>contd.</i>		YEAR BOOK 21 & 22 EDWARD I	
no. 1334 (1217) - - - - -	567, 713	( <i>Rolls Series</i> )— <i>contd.</i>	
no. 1383 (1220) - - - - -	403	446 (1294) - - - - -	724
no. 1412 (1220) - - - - -	104	452 (1294) - - - - -	388
no. 1416 (1220) - - - - -	117	456 (1294) - - - - -	647
no. 1683 (1225) - - - - -	618, 677	456-8 (1294) - - - - -	66
no. 1739 (1226) - - - - -	570	466 (1294) - - - - -	374
no. 1830 (1227) - - - - -	718	468 (1294) - - - - -	374, 411
no. 1840 (1227) - - - - -	534, 541	492 (1294) - - - - -	411
no. 1851 (1226-7) - - - - -	677	590 (1294) - - - - -	739
PROCEDURE WITHOUT WRIT: HENRY III		YEAR BOOK 30 & 31 EDWARD I	
( <i>Selden Society</i> ):		( <i>Rolls Series</i> ):	
31-32 (1253) - - - - -	453	124 (1302) - - - - -	395
SELECT CASES IN KING'S BENCH:		195 (1302) - - - - -	188, 683
EDWARD I ( <i>Selden Society</i> ):		202 (1302) - - - - -	473
i. 32 (1277) - - - - -	568	210 (1302) - - - - -	605
34 (1277) - - - - -	641	233 (1302) - - - - -	356
43 (1278) - - - - -	277	240 (1302) - - - - -	445
45 (1278) - - - - -	540	250 (1302) - - - - -	548
66 (1280) - - - - -	444	378 (1303) - - - - -	540
70 (1280) - - - - -	453	384 (1303) - - - - -	548
76 (1281) - - - - -	127	441 (1303) - - - - -	329
102 (1282) - - - - -	430	522 (1302) - - - - -	126
115 (1288) - - - - -	276	531 ( <i>n.d.</i> ) - - - - -	24, 440
148 (1285) - - - - -	163	YEAR BOOK 32 & 33 EDWARD I	
178 (1289) - - - - -	376	( <i>Rolls Series</i> ):	
ii. clvii (1239) - - - - -	718	16 (1304) - - - - -	417
3-5 (1290) - - - - -	234	32 (1304) - - - - -	345
16 (1290) - - - - -	376	264-271 (1304) - - - - -	718
19 (1290) - - - - -	473	328 (1304) - - - - -	562
26 (1290) - - - - -	429	429 (1305) - - - - -	331
52 (1291) - - - - -	736	462 (1305) - - - - -	127
53 (1291) - - - - -	453	YEAR BOOK 33 & 35 EDWARD I	
69 (1292) - - - - -	663	( <i>Rolls Series</i> ):	
90 (1288) - - - - -	129	6 (1305) - - - - -	345
98 (1292) - - - - -	389	54 (1305) - - - - -	723
131 (1292) - - - - -	429	64 (1305) - - - - -	222
134 (1292) - - - - -	423, 458	82 (1305) - - - - -	335
136 (1292) - - - - -	423	154 (1306) - - - - -	718
iii. 58 (1298) - - - - -	680	362 (1306) - - - - -	559
125 (1303) - - - - -	541	388 (1306) - - - - -	618
167 (1307) - - - - -	615	496 (1307) - - - - -	555
YEAR BOOK 20 & 21 EDWARD I		503 (1307) - - - - -	447
( <i>Rolls Series</i> ):		YEAR BOOKS OF EDWARD II	
10 (1292) - - - - -	417	( <i>Selden Society Series</i> ):	
39 (1292) - - - - -	568	i. 70 (1308) - - - - -	555
52 (1292) - - - - -	389	117 (1308) - - - - -	555
55 (1292) - - - - -	568	119 (1308) - - - - -	540
58 (1292) - - - - -	554	137 (1308) - - - - -	545
110 (1292) - - - - -	132	ii. 4 (1309) - - - - -	562
170 (1292) - - - - -	128	5 (1309) - - - - -	543
212 (1292) - - - - -	724	16 (1309) - - - - -	647
228-30 (1292) - - - - -	571	21 (1309) - - - - -	543
232-3 (1292) - - - - -	559	59 (1309) - - - - -	677
264 (1292) - - - - -	737	74 (1309) - - - - -	677, 679
266 (1292) - - - - -	724	76 (1309) - - - - -	577
302 (1292) - - - - -	618	iii. 16 (1310) - - - - -	362, 570
442 (1293) - - - - -	221	91 (1310) - - - - -	345
YEAR BOOK 21 & 22 EDWARD I		185 (1310) - - - - -	577
( <i>Rolls Series</i> ):		196 (1310) - - - - -	239
1 (1293) - - - - -	633	iv. 161 (1310) - - - - -	345
155 (1293) - - - - -	129	v. 80 (1313) - - - - -	452
222 (1293) - - - - -	221	88 (1313) - - - - -	453
228 (1293) - - - - -	361	90 (1313) - - - - -	473, 476
273 (1293) - - - - -	125	95 (1313) - - - - -	473
274 (1293) - - - - -	540	vi. 58 (1311) - - - - -	720
276 (1293) - - - - -	357, 679	vii. 86 (1313) - - - - -	356
404 (1294) - - - - -	615	viii. 44 (1313) - - - - -	556

## TABLE OF MEDIAEVAL CASES

xiii

YEAR BOOKS OF EDWARD II ( <i>Selden Society Series</i> )— <i>contd.</i>				PAGE
viii.	85 (1314)	-	-	605, 607
	132 (1314)	-	-	607
ix.	28 (1311)	-	-	550
x.	11 (1311)	-	-	640
	12 (1311)	-	-	567, 713
	36 (1311)	-	-	618
	95 (1311)	-	-	361
	98 (1311)	-	-	557
	114 (1311)	-	-	557
	171 (1311)	-	-	158
	220 (1311)	-	-	410
	240-3 (1311)	-	-	313, 523
	269 (1311)	-	-	555
	276 (1311)	-	-	263, 716
	281 (1311)	-	-	540
	285 (1311)	-	-	720
	286 (1311)	-	-	721
xi.	20 (1312)	-	-	129
	85 (1312)	-	-	540
	87 (1312)	-	-	397
	139 (1312)	-	-	397
	160 (1312)	-	-	555
	176 (1312)	-	-	332, 553
xii.	44 (1312)	-	-	684
	107 (1312)	-	-	361
	133 (1312)	-	-	618
	226 (1312)	-	-	553
xv.	74 (1313)	-	-	720
	188 (1313)	-	-	617
xvii.	118 (1315)	-	-	345
	136 (1315)	-	-	449, 477
	215 (1315)	-	-	720
xviii.	35 (1314)	-	-	605
	36, 50 (1314)	-	-	605
xix.	28 (1315)	-	-	545
xx.	99 (1316)	-	-	618
xxi.	79 (1317)	-	-	718
xxii.	15 (1317)	-	-	591
	18 (1317)	-	-	619
	31 (1317)	-	-	356
	49 (1317)	-	-	478
	96 (1317)	-	-	389
	104 (1317)	-	-	385
	115 (1317)	-	-	385
	127 (1317)	-	-	477
	146 (1317)	-	-	545
	153 (1318)	-	-	721
	169 (1318)	-	-	605
	238-241 (1318)	-	-	541
	244 (1318)	-	-	392
	264 (1318)	-	-	365
	266 (1318)	-	-	475
	268-278 (1318)	-	-	412
	280 (1318)	-	-	619
	290 (1318)	-	-	469
	315 (1318)	-	-	158
YEAR BOOKS ( <i>Vulgate edition</i> ):				
	17 Edward II, f. 536 (1324)	-	-	744
	19 Edward II, f. 628 (1325)	-	-	721
	2 Edward III, Hil. no. 17 (1328)	-	-	431
	3 Edward III, Michs. no. 19 (1329)	-	-	385
	5 Edw. III, Michs. no. 104 (1331)	-	-	365
	10 Edward III, Michs. no. 8 (1336)	-	-	562
YEAR BOOK 11 & 12 EDWARD III ( <i>Rolls Series</i> ):				
	142 (1337?)	-	-	729
	186 (1337)	-	-	742
YEAR BOOK 11 & 12 EDWARD III ( <i>Rolls Series</i> )— <i>contd.</i>				PAGE
	326 (1337)	-	-	123
	328 (1337)	-	-	684
YEAR BOOK 12 & 13 EDWARD III ( <i>Rolls Series</i> ):				
	83 (1339)	-	-	447
	98 (1339)	-	-	163
	246 (1339)	-	-	478
YEAR BOOK 13 & 14 EDWARD III ( <i>Rolls Series</i> ):				
	96 (1339)	-	-	680
	328 (1340)	-	-	742
YEAR BOOK 14 & 15 EDWARD III ( <i>Rolls Series</i> ):				
	260 (1341)	-	-	127
	288-300 (1341)	-	-	152
	364 (1341)	-	-	388
YEAR BOOK 15 EDWARD III ( <i>Rolls Series</i> ):				
	390 (1341)	-	-	222, 331
YEAR BOOK 16 EDWARD III ( <i>Rolls Series</i> ):				
	vol. i, 90 (1342)	-	-	333
	108 (1342)	-	-	164
	vol. ii, 118 (1342)	-	-	115
YEAR BOOK 17 EDWARD III ( <i>Rolls Series</i> ):				
	142 (1343)	-	-	333
	370 (1343)	-	-	333, 394
YEAR BOOK 17 & 18 EDWARD III ( <i>Rolls Series</i> ):				
	72 (1343)	-	-	401
	342 (1343)	-	-	548
	446 (1344)	-	-	333
YEAR BOOK 18 EDWARD III ( <i>Rolls Series</i> ):				
	131 (1344)	-	-	333
	308 (1344)	-	-	394
YEAR BOOK 18 & 19 EDWARD III ( <i>Rolls Series</i> ):				
	58 (1344)	-	-	680
	60 (1344)	-	-	680
	201 (1344)	-	-	554
	374-378 (1345)	-	-	561
YEAR BOOK 19 EDWARD III ( <i>Rolls Series</i> ):				
	140 (1345)	-	-	347
	170 (1345)	-	-	338
	332 (1345)	-	-	361
YEAR BOOK 20 EDWARD III ( <i>Rolls Series</i> ):				
	vol. i, 16 (1345)	-	-	161
	92-4 (1346)	-	-	394
	vol. ii, 422 (1346)	-	-	742
YEAR BOOKS ( <i>Vulgate edition</i> ):				
	21 Edward III, Pasch. no. 2 (1347)	-	-	578, 606, 649
	24 Edward III, Michs. no. 79, f. 70 (1350)	-	-	565
	25 Edward III, Pasch. no. 2 (1351)	-	-	453
	27 Edward III, Michs. no. 20, f. 8 (1353)	-	-	680
	39 Edward III, Pasch. f. 7 (1365)	-	-	328
	39 Edward III, Pasch. f. 14 (1365)	-	-	202
	40 Edward III, Hil. no. 18, f. 9 (1366)	-	-	565
	40 Edward III, Pasch. no. 1, f. 15 (1366)	-	-	376

YEAR BOOKS ( <i>Vulgate edition</i> )— <i>contd.</i>		PAGE	YEAR BOOKS ( <i>Vulgate edition</i> )— <i>contd.</i>		PAGE
40 Edward III, Pasch. no. 28, f. 25	(1366)	389	3 Henry VI, Hil. no. 33 (1424)	-	640
40 Edward III, Trin. no. 18, f. 34	(1366)	330	7 Henry VI, Michs. no. 3 (1428)	-	641
40 Edward III, Michs. no. 12 (1366)	-	744, 745	9 Henry VI, Trin. no. 19, f. 23	(1431)	563, 564
41 Edward III, Pasch. no. 5 (1367)	-	635, 645	10 Henry VI, Michs. no. 69, f. 21,	(1431)	-
41 Edward III, Pasch. no. 9 (1367)	-	365	11 Henry VI, Hil. no. 10 (1433)	-	478
41 Edward III, Michs. no. 2, ff. 17-19	-	577	11 Henry VI, Pasch. no. 1 (1433)	-	641
42 Edward III, Pasch. no. 13, f. 11	(1368)	373, 481	11 Henry VI, Trin. no. 26 (1433)	-	639
43 Edward III, Michs. no. 38 (1369)	-	637	14 Henry VI, no. 58 (1436)	-	639, 640
46 Edward III, Trin. no. 19, f. 19	(1372)	469, 471, 481	19 Henry VI, Michs. no. 42 (1440)	-	413
47 Edward III, Michs. no. 16 (1373)	-	562	19 Henry VI, Hil. no. 5 (1441)	-	638
48 Edward III, Michs. no. 17 (1374)	-	127	19 Henry VI, Pasch. no. 1 (1445)	-	318
49 Edward III, Hil. no. 5, f. 2 (1375)	-	389	19 Henry VI, Pasch. no. 5 (1445)	-	368
LIBER ASSISARUM (1-50 EDWARD III):			20 Henry VI, Hil. no. 2 (1442)	-	677
8 Ass. no. 28 (1334)	-	577	20 Henry VI, Trin. no. 4 (1442)	-	641, 643
22 Ass. no. 41, f. 94 (1348)	-	469, 470	28 Henry VI, Pasch. no. 1 (1450)	-	130, 435
27 Ass. no. 60 (1353)	-	565	33 Henry VI, Michs. no. 17, f. 41	(1454)	-
no. 69 (1353)	-	453	33 Henry VI, Michs. no. 19 (1454)	-	346
29 Ass. no. 4 (1355)	-	129	33 Henry VI, Hil. no. 3 (1455)	-	478
no. 28, f. 162 (1355)	-	478	33 Henry VI, Trin. no. 12 (1455)	-	375
30 Ass. no. 19, f. 177 (1356)	-	491	37 Henry VI, Hil. no. 3 (1459)	-	202
39 Ass. no. 20 (1365)	-	563	2 Edward IV, Pasch. no. 10, f. 5	(1462)	-
41 Ass. no. 11, f. 253 (1367)	-	129	4 Edward IV, Pasch. no. 4 (1464)	-	334, 338
42 Ass. no. 17 (1368)	-	481	4 Edward IV, Pasch. no. 9 (1464)	-	189
YEAR BOOKS OF RICHARD II			5 Edward IV, Long Quinto, f. 33	(1465)	-
( <i>Ames Foundation</i> ):			6 Edward IV, Michs. no. 18, f. 7	(1466)	-
v. 71 (1387)	-	556	7 Edward IV, Pasch. no. 2, f. 2	(1467)	-
119 (1388)	-	576	7 Edward IV, Pasch. no. 16, f. 6	(1467)	-
147-149 (1388)	-	394	9 Edward IV, Trin. no. 9 (1469)	-	194
148 (1388)	-	394	12 Edward IV, Pasch. no. 7, f. 2	(1472)	-
158 (1388)	-	567	12 Edward IV, Michs. no. 25, f. 19	(1472)	-
187 (1388)	-	742	13 Edward IV, Pasch. no. 5 (1473)	-	621
223, 227 (1388)	-	471, 639	15 Edward IV, Pasch. no. 4, f. 24	(1475)	-
240-242 (1388)	-	581	15 Edward IV, Trin. no. 15, f. 32	(1475)	-
268-278 (1388)	-	412	16 Edward IV, Pasch. no. 7 (1476)	-	491
283-288 (1388)	-	563	17 Edward IV, Trin. no. 2, f. 3 (1477)	-	642
vi. 1 (1388)	-	742	18 Edward IV, Pasch. no. 18 (1478)	-	492
4 (1388)	-	474	18 Edward IV, Trin. no. 8 (1478)	-	162
71 (1388)	-	545	18 Edward IV, Michs. no. 17 (1478)	-	376
vii. 9 (1389)	-	744	21 Edward IV, Michs. no. 2, f. 11	(1481)	-
52 (1389)	-	567	22 Edward IV, Pasch. no. 18, f. 4	(1482)	-
56 (1389)	-	374	22 Edward IV, Trin. no. 47, f. 20	(1482)	-
80 (1389)	-	314	22 Edward IV, Michs. no. 9, f. 29	(1482)	-
89 (1389)	-	572	22 Edward IV, Michs. no. 21, f. 37	(1482)	-
104 (1390)	-	373, 469	1 Richard III, Michs. no. 2 (1483)	-	57, 189
123 (1390)	-	33	2 Richard III, Michs. no. 22 (1484)	-	347
161 (1390)	-	339	1 Henry VII, Hil. no. 3, f. 6 (1486)	-	429
YEAR BOOKS ( <i>Vulgate edition</i> ):			1 Henry VII, Pasch. no. 19 (1486)	-	492
1 Henry IV, Michs. no. 1, f. 1 (1399)	-	203, 339	1 Henry VII, Michs. no. 3 -	-	386
2 Henry IV, Michs. no. 9 (1400)	-	639	1 Henry VII, Michs. no. 3 -	-	203
2 Henry IV, Michs. no. 48 (1400)	-	414	2 Henry VII, Hil. no. 9 (1487)	-	640
11 Henry IV, Michs. no. 20, f. 7	(1409)	338	2 Henry VII, Hil. no. 15 (1487)	-	642
11 Henry IV, Michs. no. 67, f. 39	(1409)	339			
11 Henry IV, Michs. no. 80 (1409)	-	640			
11 Henry IV, Trin. no. 14, f. 74 (1410)	-	563			
12 Henry IV, Michs. no. 15, f. 9 (1410)	-	554			
1 Henry VI (Selden Society), 49	(1422-3)	87			
1 Henry VI (Selden Society), 114	(1422-3)	87			

## TABLE OF MEDIAEVAL CASES

XV

YEAR BOOKS ( <i>Vulgate edition</i> )— <i>contd.</i>	PAGE	COURT BARON ( <i>Selden Society</i> ):	PAGE
3 Henry VII, Michs. no. 20 (1487)	642	13 - - - - -	473
4 Henry VII, Hil. no. 8 (1489)	686	34 - - - - -	473
9 Henry VII, Michs. no. 4, f. 7 (1493)	492	47 - - - - -	489
12 Henry VII, Trin. no. 2, f. 24 (1497)	493	64 - - - - -	453
13 Henry VII, Michs. no. 3, f. 4 (1497)	580	79 - - - - -	472
13 Henry VII, Michs. no. 10, f. 10 (1497)	492	115-136 - - - - -	98, 115
20 Henry VII, Michs. no. 5 (1504)	741	130 (1320) - - - - -	489
20 Henry VII, Michs. no. 18, f. 8 (1504)	642	SELECT PLEAS IN MANORIAL COURTS	
21 Henry VII, Hil. no. 30 (1506)	581, 586	( <i>Selden Society</i> ):	
21 Henry VII, Trin. no. 5, f. 27 (1506)	467	116 (1294) - - - - -	489
12 Henry VIII, Michs. no. 3 (1520)	643	SELECT BILLS IN EYRE ( <i>Selden Society</i> ):	
27 Henry VIII, Trin. no. 4, f. 14 (1535)	493	no. 92 (1292) - - - - -	640, 642
27 Henry VIII, Pasch. no. 22, f. 10 (1536)	579	SELECT CASES IN CHANCERY	
FITZHERBERT, GRAND ABRIDGEMENT:		( <i>Selden Society</i> ):	
Corone, 317-319 (1329)	474	no. 140 (1456) - - - - -	742
334 (1329)	474	SELECT CASES IN LAW MERCHANT	
Detinue, 46 (1388)	563	( <i>Selden Society</i> ):	
59 (1315)	477	i. 91 (1312) - - - - -	665
Ejectione Firme, 2 (1383)	574	ii. xcv-xcvi (1349) - - - - -	474
FITZHERBERT, NEW NATURA BREVIVM:		iii. 93 (c. 1283) - - - - -	679
220 H (1498-9)	574	SELECT CASES IN EXCHEQUER CHAMBER	
BROOKE, GRAND ABRIDGEMENT:		( <i>Selden Society</i> ):	
Action sur le Cas, 5 (1536)	644	i. 97 (1442) - - - - -	641, 642
105 (1541)	644	SELECT CASES IN EXCHEQUER OF PLEAS	
Chattels, 23 (1542)	594	( <i>Selden Society</i> ):	
Feoffment al Uses, 40, 54 (1532)	581, 599	114-5 (1286) - - - - -	678
		SELECT CASES IN COUNCIL ( <i>Selden Society</i> ):	
		33 (1350) - - - - -	579
		38 (1364) - - - - -	683
		SELECT CASES IN STAR CHAMBER	
		( <i>Selden Society</i> ):	
		i. 38 (1493) - - - - -	489

# TABLE OF MODERN CASES

**N.B.** The report references, which appeared in this table in earlier editions, will be found incorporated in the footnotes in the text.

	A	PAGE		PAGE
Ackroyd v. Smithson (1780)	-	706	Colthirst v. Bejushin (1550)	- 590
Anon. (n.d.)	-	600	Commendams, Case of (1616)	- 52
(1504)	-	642	Cook v. Fountain (1672)	- 702, 703
(1514)	-	135	Corbet's Case (1600)	- 339
(1527)	-	619	Cornfoot v. Fowke (1840)	- 350
(1536) 1 Dyer 7a	-	594	Cromwell's (Lord) Case (1601)	- 581
(1536) 1 Dyer 14	-	348	Cromwell's (Lord) Case (1578-1581)	- 487
(1542)	-	594	Curl's Case (1727)	- 705
(1557)	-	348		
(1561)	-	592	D	
(1562)	-	135	Darnel's Case (1627)	- 52, 58
(1572)	-	644	Davis v. Gardiner (1593)	- 494, 495
(1613)	-	495	Davy v. Pepys (1573)	- 377, 390, 552, 720
(1621)	-	348	Daw v. Newborough (1715)	- 602
(1640)	-	333	Day v. Savadge (1614)	- 337
Archer's Case (1597)	-	591	Delamere v. Burnard (1568)	- 593
Argent v. Darrell (1700)	-	135	De Libellis Famosis (1605)	- 487, 489
Ash v. Abdy (1678)	-	330	Dormer v. Parkhurst (1740)	- 592
Ashby v. White (1703)	-	246, 339	Duncomb v. Duncomb (1697)	- 592
Ashford v. Thornton (1819)	-	118, 428	Dunlop Pneumatic Tyre Co., Ltd. v. Selfridge & Co., Ltd. (1915)	- 655
Attorney-General v. Hunston (1488)	-	428		
Auditor Curle's Case	-	175	E	
			Eastwood v. Kenyon (1840)	- 654
B			Edgecomb v. Dee (1670)	- 349, 363, 377, 647
Baker v. Pierce (1703)	-	497	Edwards v. Burre (1573)	- 645
Ball v. Hesketh (1697)	-	653	Entick v. Carrington (1765)	- 335
Bankers' Case (1690-1700)	-	59, 175, 246, 702, 704		
Bate's Case (1606)	-	52, 487	F	
Beauchamp (Lord) v. Croft (1569)	-	497	Finch's Case, Sir Moyle (1600)	- 601, 602
Blankard v. Galdy (1693)	-	246	Fitzjames v. Fitzjames (1673)	- 608
Bole v. Horton (1670)	-	349	Five Knights' Case (1627)	- 52, 58
Bonham's Case (1610)	-	51, 243, 325, 337, 338, 339	Floyd v. Barker (1607)	- 127
Boson v. Sandford (1691)	-	475	Forward v. Pittard (1785)	- 482
Brent's Case (1575)	-	593, 599	Fry v. Porter (1670)	- 692
Bridgman v. Holt (1693)	-	29	Fuller v. Wilson (1842)	- 350
Bright v. Eynon (1757)	-	135	Fulmerston v. Steward (1554)	- 334
Brook v. Montague (1606)	-	497		
Brown v. Farndell (1689)	-	731	G	
Buller v. Crips (1704)	-	669	Gerrard v. Dickenson (1590)	- 496
Bushell's Case (1670)	-	56, 134, 136, 137	Girland v. Sharp (1595)	- 600
Butler v. Bray (1561)	-	591	Godden v. Hales (1686)	- 348
Butler and Baker's Case (1591)	-	616	Gould v. Gapper (1804)	- 333
C			H	
C, Re, an Infant (1937)	-	335	Hadley v. Baxendale (1864)	- 289
Calvin's Case (1608)	-	348, 698	Hales v. Petit (1562)	- 242
Casborne v. Scarfe (1737)	-	705	Hamilton's (Duchess) Case (1712)	- 337
Challoner and Bowyer's Case (1587)	-	594	Hampden's Case (1637)	- 52
Chamberlain v. Harvey (1667)	-	246	Hanmer v. Lochar (1612)	- 690
Chapman v. Pickersgill (1762)	-	339	Harbert's Case (1584)	- 690
Charnel's Case (1592)	-	495	Harrington v. Horton (1618)	- 676
Cheyney's (Lord) Case (1591)	-	562	Harrison v. Thornborough (1714)	- 497
Chichester (Bp. of) v. Webb (1554)	-	242, 328	Hilder v. Dexter (1902)	- 330
Child v. Baylie (1623)	-	596, 597	Hilliard v. Jennings (1700)	- 740
Chudleigh's Case (1595)	-	593, 594, 596	Hixt v. Goats (1615)	- 135
Claridge v. South Staffs. Tramway Co. (1892)	-	480	Holt v. Astrigg (1607)	- 495
Clere v. Brook (1573)	-	716	Hudson v. Benson (1671)	- 621
Clerke v. Martin (1702)	-	247	Humber Ferry Case (1348)	- 467, 468, 633
Coggs v. Bernard (1703)	-	247, 264, 479, 482	Hyleing v. Hastings (1699)	- 653
Colt and Glover v. Bp. of Coventry (1616)	-	52	I	
			Impositions, Case of (1606)	- 52, 487

	PAGE		PAGE
<b>J</b>		<b>R. v. Peters (1758)</b>	
Jentleman's Case (1583)	92	R. v. Rosser (1836)	136
<b>K</b>		R. v. Russell (1901)	204
King v. Lake (1670)	497	R. v. Seven Bishops (1688)	500
Kingston v. Booth (1685)	475	R. v. Shipley (1783)	500, 501
Kinross (Lord), <i>Re</i> (1905)	233	R. v. Toler (1700)	428
<b>L</b>		R. v. Tutchin (1704)	500
Lampet's Case (1612)	595	Rann v. Hughes (1778)	350, 654, 655
Lane v. Cotton (1701)	247	Read v. Brookman (1789)	211
Lee v. Bude & c. Ry. (1871)	337	Reeve v. Long (1695)	591
Leigh v. Kent (1789)	339	Reniger v. Fogossa (1550)	130
Le Neve v. Le Neve (1747)	706	Russel v. Russel (1783)	608
Libellis Famosis (1605)	487, 489	<b>S</b>	
Lickbarrow v. Mason (1787)	418	St. Asaph's (Dean) Case (1783)	500, 501
London, City of, v. Wood (1701)	115, 337	Salkeld v. Johnson (1848)	335
Lutwich v. Mitton (1621)	616	Sambach v. Dalston (1634)	601, 602
<b>M</b>		Sanchar's Case (1612)	430
Magdalen College Case (1615)	325	Seven Bishops' Case (1688)	500
Manning's Case (1609)	595	Shelley's Case (1581)	250, 544, 562, 564, 565, 591, 596
Manwood v. Burston (1587)	649	Shirley's Case (1604)	52
Market Over, Case of (1596)	452, 665	Shrewsbury's (Earl) Case (1610)	469
Marshal's Case, The (1455)	478, 479	Slade v. Morley (1602)	348, 349
Martin d. Tregonwell v. Strachan (1744)	621	Slade's Case (1596)	645, 647, 648, 649, 650, 653
Martin v. Boure (1602)	668	Smith v. Brown (1705)	246
Millar v. Taylor (1769)	335	Smith v. Tracy (1677)	731
Mines, Case of (1567)	348	Somers v. House (1693)	497
Morse v. Slue (1671)	482	Sommersett's Case (1772)	58, 246, 249
Mutford v. Walcot (1700)	246	Southcote's Case (1601)	479, 480, 482
<b>N</b>		Stapilton v. Stapilton (1739)	705
Newis v. Lark (1571)	414	State v. Hall (1894)	128
Norfolk's (Duke) Case (1681)	595, 597, 691, 702, 703	Stewart v. Lawton (1823)	339
Northampton's (Earl) Case (1612)	496	Stockdale v. Hansard (1839)	502
Norwood v. Reed (1558)	644, 647	Strangborough v. Warner (1589)	644
<b>O</b>		<b>T</b>	
Oaste v. Taylor (1612)	668	Taltarum's Case (1472)	621
<b>P</b>		Tanistry, Case of (1608)	312
Partridge v. Strange and Croker (1553)	328	Tey's Case (1592)	614
Paty's Case (1705)	213	Thornborough v. Baker (1675)	703
Pawlett v. Attorney-General (1668)	175	Throckmorton's Case (1554)	132
Pelham's Case (1590)	620	Treyer v. Eastwick (1767)	498
Pells v. Brown (1620)	595, 596	Trueman v. Fenton (1777)	653
Penn v. Baltimore (1750)	706	Turberville v. Stampe (1697)	247
Pillans v. Van Mierop (1765)	350, 653, 654, 655	Tyrrrel's Case (1557)	600, 601, 602
Pinchon's Case (1612)	647	<b>W</b>	
Prince's Case, The (1606)	327	Walker's Case (1587)	348
Proclamations, Case of (1610)	244	Warbrook v. Griffin (1610)	648
Prohibitions del Roy (? 1608)	49	Wason v. Walter (1868)	502
Purefoy v. Rogers (1669)	591, 594, 596	Webb's Case (1608)	276
Purslowe v. Parker (1600)	595	Weleden v. Elkington (1578)	594
<b>R</b>		Wennall v. Adney (1802)	655
R. v. Banbury, Earl of (1695)	337	Willion v. Berkley (1562)	556, 557
R. v. Bewdley, Bailiffs of (1712)	339	Winkfield, The (1902)	480
R. v. de Clifford (1935)	204	Witherley v. Sarsfield (1690)	66
R. v. Cumberland, Inhabitants of (1793)	339	Wolfe Tone's Case (1798)	58
R. v. Curl (1727)	704	Wood v. Gunston (1655)	135
R. v. Jones (1776)	451	Woodward v. Lord Darcy (1557)	741
R. v. Keite (1697)	247	Woolmington v. Director of Public Prosecutions (1935)	446
		<b>Y</b>	
		Young v. Ashburnham (1587)	648

# TABLE OF LAWS AND STATUTES

	PAGE
c. 600. Æthelbert, 78, 80 (Succession) - - - - -	726
c. 690. Ine, 9 (Procedure) - - - - -	363
31 (Marriage) - - - - -	628
42 (Damages) - - - - -	371
57 (Wife's part) - - - - -	726
74 (Noxal surrender) - - - - -	472
c. 890. Alfred, 20 (Liability) - - - - -	472
41 (Bookland) - - - - -	525
42 (Blood-feud) - - - - -	426 ( <i>text</i> )
925-946. VI Æthelstan (London gild) - - - - -	87, 726
941-946. II Edmund, 1, 7 (Blood-feud) - - - - -	425
946-961. I Edgar (Ordinance of the Hundred) - - - - -	87
ante 962. III Edgar, 4 (Defamation) - - - - -	483
c. 962. IV Edgar, 6-11 (Sale) - - - - -	629
c. 991. II Æthelred, 8-9 (Sale) - - - - -	629
c. 997. III Æthelred (Law of Wantage) - - - - -	
c. 3 (Presentments) - - - - -	108, 109, 112
c. 7 (Rehabilitation) - - - - -	425
c. 14 (Extinction of actions) - - - - -	376
c. 1000. VI Æthelred, 52 (Liability) - - - - -	464
1020. I Canute, 5 a (Blood-feud) - - - - -	425
1027-1034. II Canute	
c. 9 (Distress) - - - - -	603
cc. 12-15 (Royal Pleas) - - - - -	426
c. 16 (Defamation) - - - - -	483
c. 17 (Appeal to the King) - - - - -	87
c. 19 (Hundred) - - - - -	87, 363, 603
c. 20 (Hundred) - - - - -	87, 97
c. 68 (Liability) - - - - -	464
c. 70 (Intestacy) - - - - -	726 ( <i>text</i> )
c. 73 (Morning-gift) - - - - -	566
1066. 1 William I (London charter) - - - - -	13, 713, 726
c. 1072. [6] William I (Episcopal law) - - - - -	12, 88
? William I (Hic Intimatur) - - - - -	
c. 3 (Lord's liability) - - - - -	88
c. 10 (Death penalty) - - - - -	318
Leis Willelme	
c. 22 (Murder) - - - - -	88, 445
c. 27 (Marital property) - - - - -	313
c. 34 (Succession) - - - - -	727
Willelmes asetnyss (Trial by battle) - - - - -	427
1100. 1 Henry I (Coronation Charter) - - - - -	14, 17, 22, 318, 524
c. 2 (Relief) - - - - -	524
c. 3 (Marriage portion) - - - - -	535
c. 4 (Dower: wardship) - - - - -	535, 545, 566
c. 7 (Wills: intestacy) - - - - -	727, 728, 736
c. 8 (Criminal penalties) - - - - -	455
(County and hundred)	
1109-1111. 1135. 1 Stephen (Second charter) - - - - -	82
1164. 10 Henry II (Constitutions of Clarendon) - - - - -	727
c. 1 (Advowsons) - - - - -	17, 18, 111, 319, 439
c. 2 (Alienation of churches) - - - - -	17
c. 3 (Criminous clerks) - - - - -	541
c. 6 (Episcopal procedure) - - - - -	17, 439
c. 7 (Excommunication) - - - - -	18
c. 8 (Ecclesiastical appeals) - - - - -	17
c. 9 (Assize Utrum) - - - - -	17
c. 10 (Excommunication) - - - - -	17, 111
c. 13 (Liability) - - - - -	17
c. 15 (Debt) - - - - -	17, 475
	17, 631



							PAGE
1166.	12 Henry II (Assize of Clarendon)	-	-	-	-	19, 88, 112, 118, 319, 428	
	c. 1 (Presentments)	-	-	-	-	-	112 ( <i>text</i> ), 428
	c. 2 (Ordeal)	-	-	-	-	108, 112 ( <i>text</i> ), 118, 428	
	c. 4 (Arrest)	-	-	-	-	-	112 ( <i>text</i> )
	c. 12 (Stolen goods)	-	-	-	-	112 ( <i>text</i> ), 116, 453	
	c. 14 (Abjuration)	-	-	-	-	112 ( <i>text</i> ), 116, 453	
1176.	22 Henry II (Assize of Northampton)	-	-	-	-	-	19, 112
	c. 4 (Mort d'Ancestor)	-	-	-	-	-	18, 112
	c. 7 (Eyre jurisdiction)	-	-	-	-	-	149
1179.	25 Henry II (Assize of Windsor)	-	-	-	-	-	109
1181.	27 Henry II (Assize of Arms)	-	-	-	-	-	19
1215.	17 John (Magna Carta)	-	-	-	-	22, 24, 309, 319, 320, 337, 339, 729	
	c. 2 (Relief)	-	-	-	-	-	524
	c. 9 (Crown debts)	-	-	-	-	-	390
	c. 14 (Writs)	-	-	-	-	-	683
	c. 17 (Common pleas)	-	-	-	-	-	149, 166
	c. 18 (Assizes)	-	-	-	-	-	104, 165
	c. 24 (Pleas of the crown)	-	-	-	-	-	93, 102
	c. 27 (Intestacy)	-	-	-	-	-	728
	c. 34 (Writs of praecipe)	-	-	-	-	-	356
	c. 38 (Suit)	-	-	-	-	-	401
	c. 39 (Due process)	-	-	-	-	-	187
1216.	1 Henry III (Magna Carta)	-	-	-	-	-	22, 356
1217.	1 Henry III (Magna Carta)	-	-	-	-	23, 104, 356	
1219.	3 Henry III (Modes of Trial)	-	-	-	-	-	119 ( <i>text</i> )
1225.	9 Henry III (Magna Carta)	-	-	-	-	23, 26, 27, 41, 337	
	c. 1 (The Church)	-	-	-	-	-	23 ( <i>text</i> )
	c. 2 (Relief)	-	-	-	-	-	24
	c. 3 (Wardship)	-	-	-	-	-	24
	c. 4 (Waste)	-	-	-	-	-	24, 570
	c. 5 (Wardship)	-	-	-	-	-	24
	c. 6 (Marriage)	-	-	-	-	-	24
	c. 7 (Dower)	-	-	-	-	-	24
	c. 8 (Crown debts)	-	-	-	-	-	24, 390
	c. 9 (Towns)	-	-	-	-	-	24
	c. 10 (Services)	-	-	-	-	-	24
	c. 11 (Common pleas)	-	-	-	-	24 ( <i>text</i> ), 149, 166, 661	
	c. 12 (Novel Disseisin; Mort d'Ancestor)	-	-	-	-	24, 103, 159	
	c. 13 (Darrein Presentment)	-	-	-	-	-	29
	c. 14 (Amercements)	-	-	-	-	-	24
	c. 17 (Pleas of the Crown)	-	-	-	-	24, 93, 102	
	c. 18 (Succession)	-	-	-	-	-	744
	c. 19 (Purveyance)	-	-	-	-	-	24
	c. 21 (Purveyance)	-	-	-	-	-	24
	c. 22 (Felons' lands)	-	-	-	-	-	24
	c. 24 (Writ of Praecipe)	-	-	-	-	24 ( <i>text</i> ), 356	
	c. 25 (Weights and Measures)	-	-	-	-	-	24
	c. 28 (Wager of law)	-	-	-	-	24, 400	
	c. 29 (Due process)	-	-	-	-	24 ( <i>text</i> ), 187	
	c. 30 (Foreign Merchants)	-	-	-	-	-	24
1225.	11 Henry III c. 31 (Tenancy in chief)	-	-	-	-	-	541
	c. 35 (County Court)	-	-	-	-	-	24, 329
	c. 36 (Mortmain)	-	-	-	-	-	24
1234.	18 Henry III (Hundred Court)	-	-	-	-	-	89
1234.	18 Henry III (Interpretation of Magna Carta)	-	-	-	-	-	328
1236.	20 Henry III (Statute of Merton)	-	-	-	-	91, 235, 319, 320, 339	
	c. 6 (Marriage)	-	-	-	-	-	339
1237.	c. 8 (Limitation)	-	-	-	-	-	719
	c. 10 (Suit of court)	-	-	-	-	-	91, 233
1252.	36 Henry III (Watch and Ward)	-	-	-	-	-	86
1253.	37 Henry III (Police measures)	-	-	-	-	-	86, 87
1256.	40 Henry III (Tenants in chief)	-	-	-	-	-	541
1259.	43 Henry III (Provisions of Westminster)	-	-	-	-	320, 322	
	c. 14 (Mortmain)	-	-	-	-	-	541
	c. 16 (False judgment)	-	-	-	-	-	156
	c. 18 (Royal writs)	-	-	-	-	-	156
	c. 22 (Murdrum)	-	-	-	-	-	445

## TABLE OF LAWS AND STATUTES

xxi

						PAGE
1267.	52 Henry III	(Statute of Marlborough) -	-	-	-	26, 30, 31, 81, 322, 361, 541
	c. 1	(Distress)	-	-	-	31
	c. 2	(Suit of Court)	-	-	-	31
	c. 4	(Distress)	-	-	-	31
	c. 6	(Fraudulent feoffments)	-	-	-	565, 724
	c. 7	(Wardship)	-	-	-	30
	c. 9	(Suit and services)	-	-	-	31
	c. 15	(Distress)	-	-	-	31
	c. 17	(Guardians in socage)	-	-	-	537
	c. 20	(False judgment)	-	-	-	81, 93, 156
	c. 22	(Writs)	-	-	-	156
	c. 23 I	(Account)	-	-	-	31, 449
	II	(Waste)	-	-	-	570
	c. 25	(Homicide)	-	-	-	445
	c. 28	(Trespass)	-	-	-	377
	c. 29	(Entry in the post)	-	-	-	361
1275.	3 Edward I	(Westminster the First)	-	-	-	27, 30, 221, 320, 321, 696
	c. 12	(Peine forte et dure)	-	-	-	126 ( <i>text</i> )
	c. 13	(Rape)	-	-	-	451
	c. 16	(Distress)	-	-	-	31
	c. 17	(Distress)	-	-	-	475, 679
	c. 20	(Poaching)	-	-	-	451, 457
	c. 21	(Waste)	-	-	-	327, 570
	c. 34	(Scandalum magnatum)	-	-	-	485, 486, 488, 489
	c. 35	(Distress)	-	-	-	31
	c. 39	(Limitation)	-	-	-	312, 719
	c. 40	(Voucher)	-	-	-	412
	c. 41	(Battle)	-	-	-	117 ( <i>text</i> )
	c. 45	(Fourcher)	-	-	-	385
	c. 48	(Infants)	-	-	-	545
1275.	3 Edward I	(Statute of Jewry)	-	-	-	390
1276.	4 Edward I	(Bigamists)	-	-	-	296, 322, 411
	c. 5	(Bigamy)	-	-	-	322
	c. 6	(Warranty)	-	-	-	412
1278.	6 Edward I	(Statute of Gloucester)	-	-	-	27, 321, 326, 338, 362
	c. 3	(Cui in vita)	-	-	-	569, 617, 618
	c. 4	(Cessavit)	-	-	-	31
	c. 5	(Waste)	-	-	-	570
	c. 7	(Entry)	-	-	-	362, 570
	c. 8	(Trespass in county courts)	-	-	-	81, 93
	c. 9	(Homicide)	-	-	-	445
	c. 10	(Fourcher)	-	-	-	385
	c. 11	(Termor)	-	-	-	411, 571, 572
1278.	6 Edward I	(Exposition of Statute of Gloucester)	-	-	-	329, 567
1279.	7 Edward I	(Mortmain)	-	-	-	27, 31, 321, 541, 578
1281.	9 Edward I	(Articulus statuti Gloucestrie)	-	-	-	329
1283.	11 Edward I	(Acton Burnell)	-	-	-	30, 321, 391, 392
1284.	12 Edward I	(Statute of Wales)	-	-	-	27, 265, 277, 365
1285.	13 Edward I	(Westminster II)	-	-	-	27, 31, 321, 326
	c. 1	(De Donis)	-	-	-	28, 239, 326, 331, 551 ( <i>text</i> ), 552, 553, 554, 559, 560, 561, 568, 618, 619, 622
	c. 2	(Distress)	-	-	-	31, 475
	c. 3	(Cui in vita)	-	-	-	411, 555, 560, 567, 569, 570, 620
	c. 4	(Collusive recoveries)	-	-	-	28, 535
	c. 5	(Benefices)	-	-	-	678
	c. 9	(Mesne)	-	-	-	31
	c. 11	(Account)	-	-	-	28, 31, 160, 385, 389, 449, 475, 635
	c. 12	(Defamation)	-	-	-	484
	c. 14	(Waste)	-	-	-	570
	c. 15	(Infants)	-	-	-	545
	c. 16	(Wardship)	-	-	-	31, 545
	c. 18	(Elegit)	-	-	-	28, 329, 390, 391 ( <i>text</i> )
	c. 19	(Intestacy)	-	-	-	729
	c. 21	(Cessavit)	-	-	-	31
	c. 23	(Executors)	-	-	-	377
	c. 24	(Consimili casu)	-	-	-	28 ( <i>text</i> ), 361, 373, 395
	c. 30	(Nisi Prius)	-	-	-	29, 166, 417
	c. 31	(Bill of exceptions)	-	-	-	29, 403

									PAGE
1285.	13 Edward I (Westminster II)— <i>contd.</i>								
	c. 34 (Rape)	-	-	-	-	-	-	-	451
	c. 35 (Ravishment of ward)	-	-	-	-	-	-	-	31, 377, 457
	c. 41 (Cessavit)	-	-	-	-	-	-	-	31
	c. 43 (Hospitallers and Templars)	-	-	-	-	-	-	-	475
	c. 45 (Scire facias)	-	-	-	-	-	-	-	392, 614
	c. 46 (Common lands)	-	-	-	-	-	-	-	31
	c. 48 (View)	-	-	-	-	-	-	-	411, 570
1285.	13 Edward I (Statute of Winchester)	-	-	-	-	29, 86, 88, 167,	321, 430		
1285.	13 Edward I (Statute of Merchants)	-	-	-	-	-	30, 321, 392, 393		
1285.	13 Edward I (Circumspecte Agatis)	-	-	-	-	-	-	485, 631	
1290.	18 Edward I (Quia Emptores)	-	-	-	-	30, 31, 326, 540, 542, 543, 544,	558, 581, 611, 696, 716		
1290.	18 Edward I (Quo warranto)	-	-	-	-	-	-	-	312
1292.	20 Edward I (De vocatis ad warrantiam)	-	-	-	-	-	-	-	412
1292.	20 Edward I (Attorneys)	-	-	-	-	-	-	-	218
1292.	20 Edward I (Statute of Waste)	-	-	-	-	-	-	-	327
1292.	20 Edward I (De defensione juris)	-	-	-	-	-	-	-	570, 620
1297.	25 Edward I (Magna Carta: Confirmatio Cartarum)	-	-	-	-	-	-	23, 30, 325	
1299.	27 Edward I (De finibus levatis)	-	-	-	-	-	-	-	167, 615
1300.	28 Edward I (Articuli super cartas)								
	c. 3 (Steward and Marshall)	-	-	-	-	-	-	-	661
	c. 4 (Common pleas)	-	-	-	-	-	-	-	160
1303.	31 Edward I (Carta mercatoria)	-	-	-	-	-	-	-	636
1305.	33 Edward I (Ordinance of conspirators)	-	-	-	-	-	-	-	411
1305.	33 Edward I (Statute of Carlisle)	-	-	-	-	-	-	-	321, 443
1306.	34 Edward I (De conjunctim feoffatis)	-	-	-	-	-	-	-	411
1307.	35 Edward I (Statute of Carlisle)	-	-	-	-	-	-	-	321
1311.	5 Edward II (The Ordinances)	-	-	-	-	-	-	31, 155, 161, 322	
1322.	15 Edward II (Statute of York)	-	-	-	-	-	-	-	32, 326
Undated and doubtful statutes									
	Chapters of the eyre	-	-	-	-	-	-	-	103, 259
	Praerogativa Regis	-	-	-	-	-	-	-	542
1327.	1 Edward III, st. 1, c. 3 (Executors)	-	-	-	-	-	-	-	378
	c. 4 (Trial by battle)	-	-	-	-	-	-	-	123
	st. 2, c. 11 (Jurors)	-	-	-	-	-	-	-	127
	c. 17 (Indictments)	-	-	-	-	-	-	-	429
1328.	2 Edward III (Statute of Northampton)	-	-	-	-	-	-	-	
	c. 2 (Pardons)	-	-	-	-	-	-	-	167, 445
	c. 8 (Independence of courts)	-	-	-	-	-	-	-	158
1330.	4 Edward III, c. 2 (Justices of peace)	-	-	-	-	-	-	-	167
	c. 7 (Executors)	-	-	-	-	-	-	-	378
1331.	5 Edward III, c. 7 (Attaints)	-	-	-	-	-	-	-	386
	c. 9 (Liberties)	-	-	-	-	-	-	-	187
	c. 10 (Bribery)	-	-	-	-	-	-	-	474
1335.	9 Edward III, st. 1, c. 3 (Fourcher)	-	-	-	-	-	-	-	385, 741
1340.	14 Edward III, st. 1, c. 4 (Englishry)	-	-	-	-	-	-	-	87, 445
	c. 5 (Delays of justice)	-	-	-	-	-	-	-	158
	c. 6 (Jeofail)	-	-	-	-	-	-	-	397
	c. 18 (Voucher)	-	-	-	-	-	-	-	412
1344.	18 Edward III, st. 2, c. 2 (Keepers of the Peace)	-	-	-	-	-	-	-	168
	c. 5 (No exigents in trespass)	-	-	-	-	-	-	-	471
1346.	20 Edward III, c. 6 (Sheriffs)	-	-	-	-	-	-	-	183
1349.	23 Edward III (Labourers)	-	-	-	-	-	-	-	32, 323
1351.	25 Edward III (Confirmation of the charters)	-	-	-	-	-	-	-	32
1351.	25 Edward III, st. 2 (Statute of Labourers)	-	-	-	-	-	-	-	32, 168
1351.	25 Edward III, st. 4 (Provisors)	-	-	-	-	-	-	-	338
1352.	25 Edward III, st. 5								
	c. 2 (Treason)	-	-	-	-	-	-	-	443
	c. 3 (Jurors)	-	-	-	-	-	-	-	127
	c. 4 (Due process)	-	-	-	-	-	-	-	187
	c. 5 (Executors of executors)	-	-	-	-	-	-	-	742
	c. 17 (Outlawry)	-	-	-	-	-	-	-	385, 389
1352.	25 Edward III, st. 6 (Statutum pro clero)								
	c. 4 (Clerks convict)	-	-	-	-	-	-	-	439, 441
	c. 9 (Fees of church courts)	-	-	-	-	-	-	-	742
1353.	27 Edward III, st. 1, c. 1 (Provisors)	-	-	-	-	-	-	-	183
	st. 2 (Statute of Staples)	-	-	-	-	-	-	-	393, 474, 660
1354.	28 Edward III, c. 8 (Attaint)	-	-	-	-	-	-	-	386

		PAGE
1357.	31 Edward III, st. 1, c. 11 (Administrators) -	729
	c. 12 (Exchequer Chamber) -	162
1361.	34 Edward III, c. 1 (Justices of the peace) -	168
	c. 7 (Attaint) -	132
	c. 16 (Fines) -	619
1362.	36 Edward III, st. 1, c. 9 (Law enforcement) -	183 ( <i>text</i> )
	c. 15 (Pleading in English) -	400
1363.	37 Edward III, c. 18 (Due process) -	183, 187
1364.	38 Edward III, st. 1, c. 5 (Wager of Law) -	116
	st. 2 (Premunire) -	328
	c. 2 (Provisors) -	183
1368.	42 Edward III, c. 3 (Due process) -	187
	c. 6 (Justices of the peace) -	168
1376.	50 Edward III (Wager of Law) -	116, 160
1377.	51 Edward III, c. 6 (Uses) -	578
1377.	1 Richard II, c. 9 (Uses) -	579
1378.	2 Richard II, st. 1, c. 5 (Defamation) -	486
1384.	8 Richard II, c. 2 (Civil procedure) -	259
1388.	12 Richard II, c. 11 (Scandalum magnatum) -	486
1389.	13 Richard II, st. 1, c. 5 (Admiralty) -	662
1390.	13 Richard II, st. 2, c. 1 (Pardons) -	446
1391.	15 Richard II, c. 3 (Admiralty) -	662
	c. 5 (Uses) -	578, 581
	c. 12 (Law enforcement) -	183, 186
1393.	16 Richard II, c. 2 (Councils of lords) -	186
1394.	17 Richard II, c. 6 (Damages in chancery) -	188
1398.	21 Richard II, c. 3 (Uses) -	578
1399.	1 Henry IV, c. 19 (Appeals in parliament) -	205
1402.	4 Henry IV, c. 7 (Uses) -	579
	c. 18 (Attorneys) -	218
1404.	5 Henry IV, c. 8 (Wager of law) -	633
	c. 14 (Final concords) -	614
1413.	1 Henry V, c. 1 (Elections) -	337
	c. 5 (Additions) -	338, 397, 429
1414.	2 Henry V, st. 1, c. 4 (Labourers) -	438
	c. 9 (Chancery) -	188
1429.	8 Henry VI, c. 4 (Liveries) -	438
	c. 12 (Indictments) -	429
	c. 14 (Chancery) -	188
1437.	15 Henry VI, c. 3 (Safe conduct) -	339
	c. 4 (Chancery) -	188
1450.	29 Henry VI, c. 2 (Admiralty) -	662
1453.	31 Henry VI, c. 2 (Chancery) -	188
	c. 4 (Admiralty) -	662
1455.	33 Henry VI, c. 1 (Chancery) -	188
1461.	1 Edward IV, c. 2 (Sheriff's tourn) -	90
1484.	1 Richard III, c. 1 (Uses) -	579
	c. 5 (Uses) -	580
	c. 7 (Fines) -	619
1485.	1 Henry VII, c. 1 (Uses) -	579
1487.	3 Henry VII, c. 1 (Pro Camera Stellata) -	46, 182, 183, 188, 428
	c. 4 (Uses) -	580
1490.	4 Henry VII, c. 13 (Benefit of clergy) -	440
	c. 17 (Uses) -	580
	c. 24 (Fines) -	619
1495.	11 Henry VII, c. 1 (Treason) -	444
	c. 3 (Statutory misdemeanours) -	169, 183, 438
	c. 20 (Entry by reversioner) -	362, 617
1497.	12 Henry VII, c. 7 (Petty treason) -	446
1504.	19 Henry VII, c. 9 (Outlawry) -	385, 389, 471
	c. 15 (Uses) -	580
	c. 28 (Pardons) -	325
1510.	1 Henry VIII, c. 6 (Summary trials) -	438
1529.	21 Henry VIII, c. 1 (Wilful murder) -	446
	c. 2 (Sanctuary) -	431
	c. 5 (Administration) -	729
	c. 7 (Larceny) -	450
	c. 11 (Writ of restitution) -	474