

RICHARD OF ANSTEY

And the Sackville Inheritance

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1. Richard of Anstey brought a big lawsuit before King Henry II and got a decision after many hearings over a period of about five years. The lawsuit related to the ownership of manors and other holdings in succession to Richard's late uncle William de Sackville. The lawsuit came early in King Henry's reign, before his great conflict with the Church, before he made the law reforms which extended his judicial power and before he made the administrative changes which were the beginnings of the common law courts, which came to be called the King's Bench and Common Pleas about 90 years later. In 1158 the court and the King were the same thing, the King's writ summoned the defendant to appear before the King himself, and when the King was in England that is what happened. Parts of the case were heard by people whom we would call judges, when the King delegated consideration to officers of his own, but it was the King himself who gave judgment.
2. At this early time King Henry had only two officers whom looking backwards we can recognise as judges. Like earlier Norman kings Henry had an officer called a justiciar or Chief Justiciar, and for some reason two persons occupied this office at once: Robert Earl of Leicester and Richard de Lucy. Both had held high office under King Stephen and had opposed Henry in those days, but like others they negotiated the

change of power, and may have facilitated it. Some stages of Richard's lawsuit came before Richard de Lucy, and he delegated part of his duty to other officers.

3. The justiciars had enforcement functions which we would not associate with administration of justice. They were the King's highest officers and in his absence they sometimes had functions close to regency. Sometimes justiciars led forces in the field, and the career attributed to a later justiciar, Ranulph de Glanville, included capturing the King of Scots during a border war and writing a detailed legal text. Others referred to as justices were churchmen or courtiers who had been deputed to hear a particular case, or to go on a journey through a few counties and hear judicial business.
4. Later in Henry's reign some officers can be recognised as judges because they were repeatedly given judicial tasks. Scholars have traced through great numbers of documents, carefully indexing names, and can see the careers of particular individuals, earlier perhaps as the clerk signing as witness after other witnesses, later witnessing first, or signing as the holder of an office. At the end of his reign some cases were heard by King Henry II himself or by judges who were with him at his court, which did not stay long at any one place, while other cases, perhaps thought less important, were heard by judges who stayed at Westminster. This was the distant beginning of the distinction between the two courts, greatly reinforced by a provision in Magna Carta which required judges to remain at Westminster and hear common

pleas, after King John had saved some money by not sending any judges to Westminster for a few years. This was far in the future for Richard and his lawsuit.

5. Richard's litigation took place at a time when the law of England about heirship and the jurisdiction of courts was still developing. A dispute about land title between subject and subject would not usually be decided by the King, so the interests of the King were probably involved in some way. No-one questioned Richard's entitlement to sue for King Henry's judgment about ownership. This suggests that King Henry was the direct feudal lord of some part of the Sackville lands, but this inference cannot be made good by identifying any of those lands as actually held in chief. Only later in King Henry's reign did the King and his court protect freehold titles held of other feudal lords; this use of the Writ of Right was one of King Henry's significant law reforms and extensions of Royal justice. It seems that in 1158 the most that the King usually did was to command a mesne lord or the county court to hear and determine a dispute about freehold land. There may have been some ground of jurisdiction which cannot now be clearly seen: Wardship, or the lordship of the justiciar over some of the lands, or the need to refer to the Archbishop. Richard's case may have been an early assertion of wide judicial power over land title.
6. We do not have Court Rolls for this period, although it is likely that they were kept and that they recorded what had been claimed and what had been adjudged before the King; records on long rolls of parchment made of lambskin are preserved almost

complete from 1194 to the Nineteenth Century, but we do not know of Richard's lawsuit from these.

7. We know about Richard and his claim because he was a careful man and made a meticulous record of money and resources spent as his case wound through the years and through courts of the Church to which King Henry referred the main issue, the validity of William de Sackville's marriage. Richard's record was preserved in the Exchequer, sewn to a Papal rescript which sets out an interlocutory decision in the courts of the Church. Why these two records found their way into the Exchequer, why they were sewn together and why only they were kept for centuries of all the documents which the lawsuit generated, are not known to us, although an ingenious suggestion has been made. These two documents remained in the Tower of London among a huge mass of mediaeval records, occasionally sifted through by lawyers and scholars but exposed to rot and rodents, until in the Nineteenth Century they began to be treated as the valuable documents they are. In the time of Charles II William Prynne, a politically radical Puritan who had twice lost his ears to the Star Chamber for seditious libels, also an antiquarian who published collections of information about ecclesiastical history, read through Richard's list and made an asterisk against one point he thought important, but he did not come back to refer to it in his published writings. After missing this chance of exposure to learning they slumbered for more centuries until they were included in material published in 1832 by a scholar named Sir Francis Palgrave. This generated attention, gathering pace through the Nineteenth Century. Events referred to or suggested by what Richard wrote down, and lines of

enquiry suggested by events in the lawsuit have inspired research by scholars, now for almost 180 years.

8. Much learning and scholarship have been given to tracing King Henry's itinerary; where he was from month to month and from day to day during his reign of 35 years. A Nineteenth Century scholar published an itinerary for King Henry's entire reign, generating a century and more of scholarly revision. Modern lawyers are meticulous about dates; they find it difficult to write that a marriage took place or that a judgment was given without stating when and where the event happened. In that age it was not customary to write the date on documents such as charters granting land and deeds recording the outcome of lawsuits, so their dates are established by inference from their contents, events to which they refer and other sources about the times when people named in the document as parties or witnesses flourished. If the bishop of a diocese is mentioned and signed his name, careful research may show the period during which that person was bishop. If three bishops signed the period available might be quite narrow. If an abbey is mentioned research may show when it was founded, dissolved or promoted from priory to abbey; this may help. If someone says he paid a fine to the Exchequer, the payment and its date may be found in Exchequer Rolls, which go back earlier than Court Rolls. A few generations of painstaking research on ancient documents can produce quite narrow ranges or even exactitude. The accumulation of this process has yielded many enquiries, certitudes, probable conclusions and intuitions about Richard, his lawsuit and later ownership of his manors.

9. Richard's list of expenses has been valuable to scholars for what it shows about social relations and the conduct of lawsuits in King Henry's time, but also because he gave the dates of hearings and stages in the lawsuit. If King Henry heard part of the lawsuit at Woodstock on a stated day we establish for certain where he was, with implications about whether he could have been at some other place within a limited time before and after. The dates are given by religious festivals, usually Saints' Days; the date of Laetare Jerusalem is transparent to historians. Richard also gave the amounts of many expenses, so we get some guide to prices and values in his time. From time to time he or his messengers lost a horse on their journeys: they left a lot of dead horses here and there, and so we know values for horses in those times. We know how much it cost to get messengers to take papers to Rome and back, and how much it cost to get advice from a Master of Laws. Richard's document has also been the starting point for lines of inquiry about chains of family relationships, ownerships of manors, holders of offices and much else.
10. A life spent in lawsuits shows what can go wrong and cause delay. At a distance of 850 years, the events which got in Richard's way and caused him delay, extra expense, frustrating adjournments, excursions from one court to another and interlocutory appeals are familiar; similar disasters happen nowadays, many times.
11. Richard followed a pattern often seen in the behaviour of litigants who conduct their own cases without lawyers to represent them. He did not always seem to follow the best course, but he was remarkably persistent, inaccessible to discouragement and

careless of expense, and won through in the end to decision on the merits of his case, although it took almost five years. Litigants in person can be like that. He does not seem to have been troubled, as litigants in person often are, by basic misconceptions about what his rights were or what the court could do. Richard did not have any lawyer to conduct his case before King Henry; as far as we can know there was no legal profession at that time, except that the Royal officers who were evolving into judges and their clerks must have known whatever law there was. Richard did have help: his chaplain Sampson and his younger brother John did a great deal for him, going on messages, and at hand when he needed them. He also had a clerk, Nicholas. He may have needed the chaplain to read and write his documents, all in Latin, but his generally high understanding suggests that he may have been literate himself.

12. The litigation in Church courts was conducted with the aid of lawyers; Richard had documents prepared by Masters who lived in monasteries; these Masters had to be paid fees. They were law graduates, perhaps from Bologna, they were monks and they had a practice or business of conducting litigation in courts of the Church; giving advice and preparing documents. The number of Masters referred to by Richard of Anstey, and what they did for him, show that there was a profession educated in the Law of the Church and ready and able to conduct business in its Courts. Learning on Roman Law and Canon Law was quite strong in England, the principal figure being

Vacarius who spent about 50 years in England from 1148 and seems to have taught Law at Oxford.

13. We have the dates of most events in the lawsuit: but not the dates of the underlying facts. Do not expect precision in this outline of the facts from which the controversy arose. Assertions and probabilities have often been promoted to facts. Remember Robert Graves' poem "The Devil's Advice to Story-tellers" – "Nice contradiction between fact and fact Will make the whole read human and exact."

14. Richard's uncle William de Sackville had two wives, or supposed wives. First he was either betrothed or (as the courts later decided) married to Albereda de Tregoze. There was no wedding ceremony in a church. Albereda was handed over by her father into the care of William's father and went to live in his household; we do not know for how long, but William was not there. Her dowry was paid, but they did not cohabit as man and wife. At this time Albereda was probably very young, and William may have been a child also, and the agreement may really have been made by their parents. William grew older and decided that the wife he wanted was Adelia de Vere, daughter of Amfrid the Sheriff. The fathers rearranged matters, the dowry was repaid, Albereda was sent back to her parents and William and Adelia were married in church. Albereda's father was sufficiently satisfied with the rearrangement to attend William and Adelia's wedding feast. Albereda was not happy and interrupted the wedding ceremony, to no effect.



15. William de Sackville married Adelicia de Vere in a church ceremony somewhere in England - we do not know where - late in the reign of King Henry I, who died in 1135. As in all church weddings until recent days, the priest must have come to a point where he called on anyone who could object to the marriage to do so. At this stage, as every mother-in-law knows, there is a brief silence and anxious pause before the priest resumes. However on this occasion Albereda tried to make herself heard with an objection; she "...protested her claim to be his lawful wife at the marriage ceremony, forbidding her supplanter by the authority of the Church to pass into the illicit embraces of her husband." She could not get a hearing, or could not get anyone to take any notice. She later claimed "...she failed to make herself heard by reason of the crowd and the frowardness of her husband..." It seems that she was shouted down and William had her hustled out. The ceremony proceeded and William and his bride walked out of the church and embarked on a productive marriage. Their daughter was Mabel de Francheville, the defendant in Richard's lawsuit more than two decades later. It is said that they had twins, but if they did Mabel was the survivor.

16. The peace of the marriage was disturbed. After some time, perhaps years, Albereda de Tregoze who had objected at the church brought proceedings claiming that Albereda and not Adelicia was the true wife. She won too, but only after the proceedings went through an elaborate course, by way of Colchester, London, Rome and London again. Geoffrey the Archdeacon of London does not seem to have understood judicial duties; it was claimed that he had conducted a hearing at Colchester and ordered William to put Adelicia away, without giving any notice to Adelicia, who first knew about the

proceedings when the Archdeacon and his officers appeared at her home and ejected her. She did not take this well, and disputed the claim with vigour. Her defence to the lawsuit was eventually considered by the Bishop in the London synod, actually Bishop Henry of Winchester as Vicar during a vacancy of London. The lawsuit reached Pope Innocent II; historians refer to this as an appeal, but the Pope's rescript seems to be an advisory opinion on a consultation on the principles which the Bishop should apply and not a judgment by the Pope or his Curia concluding judicially on the validity of the marriage. However that may be, the final decision of the Bishop in synod was that William had gone beyond a betrothal and had entered into a marriage with Albereda, with the consequence that there was no valid marriage to Adelia in the church ceremony. Mabel later claimed that William and the Archdeacon were in collusion; that the Archdeacon and the Bishop had been bribed.

17. William, having been told by the Church that Albereda was his wife, took her into his household and lived with her for some years, for the rest of his life. They had no children. Adelia and Mabel went or were sent by Bishop Henry to the County of Blois in France, where William also owned property: they were probably maintained out of his property there. When William died Mabel was accepted by the Count of Blois as the heir to William's lands in that County. Mabel later alleged that he did so "[a]fter calling together the leading bishops of France and investigating the case..." Perhaps there was a lawsuit there. Blois was beyond King Henry's domains and the reach of his writ. William may have been happy to see the last of Adelia and Mabel and he may have made no trouble for them in Blois for that reason. No record is

known of proceedings in Blois; and nothing has been published of records of the Papal Curia in Rome of any of the appeals which took place. If such records could be found they would probably add a great deal to our understanding; but there is wanted a scholar with a lifetime to give to research in Rome which may be unproductive.

18. The Sackville inheritance had come to William de Sackville in some way from Richard de Sackville who is mentioned in the Domesday Book. When William died the people who might have been his heirs and interested in his lands, according to later ideas about heirship and primogeniture, seem to have been these. His widow would have dower rights for her lifetime: there were two possible widows, but no claim of either is mentioned. Mabel the daughter of his invalid marriage should come under consideration as possibly his heir; there is no reference to any other surviving children of either of his marriages. The next people to be considered would be brothers of William (and it seems that he had none). Next are his two sisters. Agnes, Richard's mother, and her younger sister Hodierna, whose husband's name was Gernun, would have been his heirs as coparceners, co-owners in equal shares of all his lands, unless they agreed to partition the lands between them. We should infer that Agnes outlived their brother, but died before Richard brought his suit. Agnes' heir Richard would succeed to her half share, and his aunt or her heirs would succeed to the other. The law under which title to land passed to its owner's heirs continued until the Nineteenth Century, and it was always clear that only legitimate children counted;

and there was no law allowing legitimation. It would be easy to understand a rule which treated children born in a purported marriage which was later annulled as legitimate: but English Law did not. The law in France or in the County of Blois may have been different.

19. It cannot be taken for granted that rules about heirship and succession to land titles which had effect in later centuries were binding in the Twelfth Century. These rules were still gathering force and had not been altogether clearly adopted. Successions to the Crown in the Twelfth Century did not conform to them: except for the succession of King Richard I. It was not then treated as certain that an elder son would inherit land; he might be passed over or sent to a monastery if incompetent, and a father with many properties might divide them among his sons. In origin and in feudal theory acceptance by the King of rights of an heir was a concession; the King had granted the land to his own man, not to the son. This theory did not govern events: the King had to accept the heir as his new man if he was to keep the loyalty of his other tenants. So the King was brought to accept the heir as also his man by political and social pressures, and by payment of a relief, in Latin *relevatio*, lifting up again. Under King William Rufus the heir had to buy back the land from the King. King Henry I made a Coronation promise to allow the heir to hold the land and pay a just relief, without buying the land. Finer points and permutations of competition among sisters and sons and daughters of sisters of the deceased and sons and grandsons of his brothers were probably vague, while the rights of children born in marriages which were regarded as

valid at the time but were later found to be void are unlikely to have had an obvious answer.

20. Mabel de Francheville claimed that her father had expressed repentance at what he had done, and it was part of her case that her father had recognised her as his heir. But it was too early in history for land to be disposed of by will, whether word-of-mouth or in writing. In some way which is not recorded Mabel and her husband got possession of the Sackville inheritance in England, as well as of the land in Blois. This may have happened while Agnes was still alive and before Richard had any rights in the matter. Perhaps Agnes and her sister did not approve of what their brother had done and supported Mabel, or chose not to oppose her: things like that happen in families. It seems that there was a delay of some years between William's death and Richard's lawsuit, and this suggests that Richard's mother survived her brother and let matters rest until she died; until she died Richard had no claim to his uncle's land and could not sue. Richard would not have taken that sort of thing lying down if Mabel had taken possession when he had already become entitled as William's ultimate heir. Richard claimed a judgment establishing his title and putting him in possession of William's English lands.

21. Richard had inherited a modest fortune as the elder son of Hubert the Chamberlain. His lands included three manors in Hertfordshire: Anstey, Little Hornead and Braughing. These three manors north-west of Bishops Stortford extended about five

miles, one or two miles east of the Roman road which is now the A10. They are quiet little villages to this day. His feudal lord was the Count of Boulogne; the Honour of Boulogne had been granted by the Conqueror to a Count of Boulogne who had come to England with him, and had passed down several generations of his family, including Queen Maud, wife of King Stephen, who was Countess of Boulogne in her own right, then to her son Eustace and then to his brother William, who was Richard's feudal lord in 1158. Queen Maud or perhaps King Stephen as her husband had granted these manors to Richard's father Hubert, who was her Chamberlain, and he owed three knights' fees for them. Richard may have had other estates, but it is difficult to see from what resources he raised the funds to maintain his lawsuit for five years.

22. There were several women named Maud, in Latin Matilda, in public life. King Henry I's daughter, who fought long and hard to establish that she was Queen, was usefully referred to as the Empress long after her Emperor died and she remarried, while Queen Maud referred to the wife of King Stephen.
23. William de Sackville's inheritance was far more valuable than those three manors in Hertfordshire. Richard did not give us a list of the lands he sued for, but scholarship has shown what they probably were from information in lawsuits within later generations of his family about division of the property he recovered. There were at least two later lawsuits and one ran from 1244 to 1246. The Final Concord or deed of settlement enables identification of nine manors in Essex, Hertfordshire and Suffolk

and 14 other holdings, a rent in Colchester and knights' fees in Hertfordshire and East Anglia. The manors have been identified, with fair but not complete certainty, as Great Braxted, Bennington Hall, Kelvedon Hatch, Pledgdon, Little Anstey, Theydon Garnon, Little Leighs, Latchingdon and Great Wenham (or perhaps Little Wenham). When all the lawsuits were over the first five had passed to Richard's heirs and the others to Hodierna's. The knight's fees represented fourteen smaller manors, also spread over several counties, and most of them can be identified. This was a rich prize, worth far more than the Anstey inheritance.

24. A Knight's fee refers to a holding of land from the Crown with a feudal obligation to provide the service of one Knight, properly equipped, for 40 days in a year when the King was at war. One manor might owe several knights' fees; a holding which owed one was probably too small to be a manor. As time passed English kings became open to arrangements in which they accepted payment in lieu of service. Henry II began to call for payment, scutage, in 1159, and may not have truly wanted personal service for a limited number of days, which would produce a cumbersome army.
25. The common understanding about feudal lawsuits is that disputes about land title were decided by trial by battle. This seems to have been more theory than actual practice by King Henry's time and in his Court. What other feudal lords did may have been different. Of course trial by battle could have no place in decision in the courts of the Church. There is no mention of a possible trial by battle in the Anstey case. Nor is there any mention of trial by jury, or by assize, which came later. At the hearings

before the King or his justiciars what seems to have taken place was a reasoning process, hearing what the parties claimed and what their witnesses said, and arguing out the implications and legal results. If there was no dispute about the facts, or the facts were altogether clear, the court could apply the law to them and there would be nothing for a battle to establish.

26. Trials by battle sometimes did take place. Late in Richard's lawsuit when he attended the King at Windsor and Reading in 1163 business was delayed by a trial by battle in a criminal case, an appeal against Henry of Essex the Constable who was accused by Robert de Montfort of treason, dropping the King's standard and fleeing in a battle with the Welsh in 1157. Richard's case and all other business were deferred while Henry of Essex fought it out with his accuser. Saint Edmund, king and martyr, appeared fully armed in the air and reminded Henry of Essex of the trouble he had given the Saint by challenging the jurisdiction of his Abbey in a rape case. Accompanying St Edmund in the air was Gilbert de Cereville, a knight whom Henry of Essex had had done to death on suspicion of undue interest in Henry's wife. Robert de Montfort was not troubled by interventions like these because he had had held vigil to Saint Drausius the previous night. Henry of Essex was distracted from the battle in hand and was defeated. He was given up for dead and his body was taken away by the monks of Reading for burial, but he revived and entered the monastery himself. This trial by battle between prominent men received a great deal of attention, suggesting that such trials were not frequent.



27. When society reached a settled state where conflicts could be handled by consideration and reasoning it would soon seem distasteful to settle disputes by battle, and when a legal profession was emerging its professionalism would express itself in reasoning out and defining what was in dispute and deciding a case on the information available, leaving trials by battle for disputes which could not be resolved in any other way. Reasonable people would not want to fight things out. It was difficult to be sure that the protection of your Saint was better than the protection of your opponent's Saint. There was a splendid word for bringing and arguing out a lawsuit, which unfortunately has gone out of use: to *deraign*, in Latin *deratiocinare*, to reason out, and this word explains what was going on. It was very common for lawsuits to end not with a judgment by the Court but with a Final Concord or deed of settlement among the parties: the judges encouraged or prodded the parties towards their Final Concord. The prospect of battle would help to clear minds.

28. Family relationships among the powerful suggest that there were some inner workings in the events in which Adelia and Mabel went to Blois and were awarded William's property there. Blois, around Chartres, was not then or ever owned by English or Norman rulers. The rulers of England, Normandy and Blois were closely related. Stephen and Matilda the Empress were first cousins; his mother and her father were children of the Conqueror. Stephen had elder brothers who were given counties as their inheritances after their father, who owned several counties and much land, was killed on Crusade at the Second Battle of Ramleh in 1102. An elder brother Theobald became Count of Champagne and Blois, and Stephen became Count of Mortain in

Normandy. In his youth Stephen lived in the court of his uncle Henry I, King of England and Duke of Normandy. Henry's son and heir was drowned in the White Ship disaster in 1120; but Stephen got off the ship at the last minute before it sailed, either because he doubted the sobriety of the captain or because he had diarrhoea; perhaps both. Stephen's importance increased and he came under the patronage of King Henry I, although he was not preferred over Matilda who became the King's heir. Stephen was acclaimed King and ousted her when Henry I died, contrary to his oaths to Henry I.

29. In King Henry I's time Stephen's younger brother Henry of Blois was brought to England and rapidly promoted in the Church; Abbot of Glastonbury when 28, Bishop of Winchester when 29. He held on to Glastonbury: a pluralist. His career was very long as he remained Bishop of Winchester until he died in 1171. He was ambitious, and unsuccessfully sought further promotion, to be Archbishop of Canterbury or Archbishop of a new third archdiocese. He was Vicar of the Diocese of London during a long vacancy and for part of that time he was also Papal Legate, while Stephen his elder brother was king. Bishop Henry was one of the most powerful people in England, well-connected. At different times during the Anarchy he fought for and against Stephen: this did not harm his career, either under Stephen or under King Henry II, to whom after all he was closely related. He was also a brother of Theobald II Count of Champagne and of Blois, and an uncle of the next Count of Blois, also Theobald, who succeeded in 1151. Later in his career he took the side of King Henry II in his conflict with Thomas a Becket. He was not to be opposed

lightly, and an attack on his decision that a marriage was void, even a decision more than 20 years old, could not be made lightly. When he decided that Adelia's marriage was void and sent her to Blois where his brother the Count saw that she or her daughter obtained William's property, the outcome must have looked quite tidy. The Archdeacon must have felt relief.

30. We know about the annulment case from other sources as well as Richard's list of expenses. John of Salisbury was a cleric in the service of Theobald Archbishop of Canterbury (yet another Theobald), and he left collections of correspondence, including letters relating to appeals. One of these letters is an apostolus, a long letter from Archbishop Theobald to Pope Alexander III, which reported what had happened in the proceedings and what each party contended, when Richard appealed to Alexander III after many hearings before the Archbishop had failed to reach a conclusion. In a document somewhat like an Appeal Book Archbishop Theobald recorded the positions contended for by each side; he did not endorse either position and he did not state his own findings of fact or conclusions.

31. Another letter in John of Salisbury's collection was sent by Bishop Henry of Winchester to Archbishop Theobald of Canterbury in 1159 and reported the contents of the rescript he had received from Pope Innocent II during the annulment proceedings about twenty years earlier. Pope Innocent II said "I declare that woman to be [the lawful wife] who, as you say, was handed over to be a wife by her father and was committed by him to whom she has been handed over into the care of the

father [of the future husband] until the latter would lead her into his house on the appointed day, because on the basis of legitimate consent she became a wife as soon as she agreed to be married by a spontaneous pact. There was indeed no promise for the future, but a confirmation for the present, therefore whatever happened with the other woman afterwards, in intercourse or in the procreation of offspring, is all the more reprehensible as what had gone before is more genuine: as the first stands, the more that is committed in connection with the second, the greater the guilt will be."

32. To restate that in more modern terms, Pope Innocent II said that the facts were and the conduct of those involved showed that Albereda agreed to be William's wife at the time when she was handed into the care of William's father, and there was not, on the facts, a promise that there would be a marriage in the future. As to the law, the rescript means that if there was a present agreement to be married, acted on to the extent of the woman's being placed in the household of the man's father, there was a complete marriage; a present agreement to marry was contrasted with a promise to marry in the future. Pope Innocent II did not, in this rescript, treat consummation of marriage as significant.

33. That was the interpretation and the view of Pope Innocent II; Bishop Henry acted on it. Whether the facts were what Pope Innocent decided they were seems contestable; but the Bishop in synod acted on the same basis as the Pope. Whether those facts meant that there was a perfected marriage is also contestable; later in the Twelfth Century decisions of Pope Alexander III probably would indicate a different outcome.

34. The Twelfth Century was a period of clarification and development in the law of the Church about the validity of marriages; an account of these developments and their complexities was given by Prof FW Maitland in an article at (1897) 13 Law Quarterly Review 133, with some references to opinion at the time of the Anstey case, the changes which happened and the impact of changes on the Anstey case. It seems quite possible that a Pope later than Innocent II or that Alexander III later in his papacy might have been directed by Grace to take a different view to that applied to William and Adelia's annulment.
35. The point on which decision turned will be familiar to those interested in mediaeval English history. The validity of the marriage of Edward IV, and his legitimacy, were debated in uncertainty of what was then required to bring about a valid marriage. The point at which a betrothal becomes a binding marriage was never clearly settled until in the Sixteenth Century the Council of Trent required ceremonial marriage in church in (for practical purposes) all cases. After another two centuries the same rule was adopted in England by Lord Hardwicke's Marriage Act 1753 and about a century later in Scotland. (Hence the tales of marriages before the blacksmith in Gretna Green).
36. To modern eyes a decision of a court which had power to decide that a marriage was void, given in a lawsuit between the two parties to the supposed marriage during their lifetimes, should bind the whole world and everyone who then or later was interested in the question of validity; a decision in rem binding on everybody for all purposes. It should be pointless to show reasons why the earlier court had made a wrong decision,

and there could be little or nothing to debate. The Twelfth Century does not seem to have known doctrines of *res judicata*, estoppel by record, judgment in rem or similar doctrines; I have not seen any sign that these were considered, but the result reached accords with them.

37. King Henry II's grandfather Henry I organised the basic structure on which mediaeval government grew, and like all reformers he adapted institutions which already existed. After the Anarchy, in which King Stephen for all his historic reputation for incompetence maintained some of the basic structure of Royal government, Henry II gave his life and rule to improving extending and strengthening the structure of government, greatly extending royal power, the number of officers and the reach of his administration. His law reforms were part of this and greatly extended the royal judicial power. By the end of his life there had been a movement away from personal rule and the structure of mediaeval government was there. The absences of Richard I and the incompetence and abuses of King John allowed the structure to consolidate itself, on the principle that if you do not have clear instructions or leadership you go on doing what you were last told to do. The people of England, or the people who owned land and mattered, liked this structure and royal justice, and rebelled and obtained Magna Carta to secure them. By 1158 little of this had happened, and the Royal judicial power in civil disputes was narrow. The concerns of the king and his justiciars were much more directed to public order, securing loyalty and obedience

from magnates and defending and extending the borders. The ordinary court for civil disputes was the county, a quarterly meeting of the freeholders of each county presided over by a royal officer, the sheriff. There were many other courts, jurisdictions and powers, and each feudal lord was himself a court for disputes about land held under him.

38. An early stage in any rational disposition of a lawsuit is establishing what is in dispute and what are the issues; you cannot decide without first establishing what you are to decide. The judge must hear the parties and ask them what they are disputing about, and carry on their debate until something rational is established as the issue or issues. There is a tendency for litigants to talk about all their grievances, and this must be controlled, and so must the tendency to expand the array of issues as weaknesses appear in a party's position as earlier defined. Courts define controversies and then quell the controversies that have been defined. Without control, controversies go on for ever. If the parties have some other dispute they can start another case. People who are not lawyers find this difficult; they seem to prefer shapeless grievances and they often resent disposition limited to a defined dispute. Unless you control these things you do not have a court; you have an endless ineffectual debate in which no controversy is quelled.

39. In the time of King Henry II and long afterwards, parties came before the Court and stated orally what their positions were, what they claimed and how they defended the claim: issues emerged and were decided. Later this process took place in writing, and

as the centuries passed the process became encrusted with technical rules, sometimes of forgotten origins and purposes and no discernible utility. With the Nineteenth Century came simplifications and eventually sweeping reforms, and modernity emerged in 1875 in England, in 1972 in New South Wales.

40. In mediaeval England the power of the Church meant that sovereignty was divided; the power of the King was limited by the power of the Church, and vice versa. There were limits to the power of the King in his court, and in particular it was for the Church and its courts to decide whether a marriage existed. It was established in early hearings that it was an important issue for Anstey's case whether William's marriage to Adelia was valid. Deciding that issue was beyond the limits of the King's power, and the justiciar did not attempt to decide it but sent the parties to obtain the decision of the Church on validity. That sent Richard to Archbishop Theobald of Canterbury on a litigation journey that took several years.

41. The King and his justiciar did not tell the parties to get a decision from the Church on what were the rules of succession to land in England, or on whether Mabel was legitimate or on whether Mabel had succession rights because she was born before it was established that her parents' marriage was invalid; those are questions about the law of succession to land, at the heart of the feudal system, outside the power of the Church. However the parties did not limit themselves to the issue which it was for the Church to decide; they seem to have thought that they could talk about anything, and



Mabel took some remarkably wide courses in the arguments she put to the Archbishop and to the Pope and his delegates.

42. This is an illustration of how litigation goes wrong; parties who do not have lawyers, and also many lawyers talk about things which might sound meritorious but do not solve the defined issue. The hearing extends beyond what is necessary or useful. The judge's function requires him to resist this, stop them if he can and keep his mind on what is really involved. This discipline is especially important where there are jurisdictional boundaries.

43. Living in a Federation in Australia we encounter jurisdictional boundaries and must respect them; they exist in all systems, far worse in the United States where, unlike Australia, state courts cannot decide federal questions. The boundary between King Henry and the Church was somewhat like the boundary between the powers of a federal government and the powers of a state government and of their courts. It is an error to decide something beyond the limits of power, the powers of the other court must be respected, lawyers and judges are aware of this, and they usually discipline themselves to debate and to decide only what they are empowered to decide. The Church courts did this: although Pope Alexander III was presented with widely ranging contentions, the Pope decided only the validity of the marriage, after which the controversy was passed back to King Henry. A huge conflict about jurisdictional boundaries lay in the near future for King Henry II and the Church: Richard was present at Woodstock in 1163 when Henry and Thomas a Becket had an early public

row, but he did not get caught up in it. Henry's great conflicts with the Church were still to come, but tensions existed.

44. Some churchmen clearly knew what the Church courts were to decide. In Archbishop Theobald's apostolus this appears: "Since a question of matrimony was involved, and matrimony is annulled or confirmed in accordance with ecclesiastical law, the court of our catholic sovereign Henry II, king of the English, decreed that the case should return for judgment to an ecclesiastical court, where the question of marriage might be duly determined in accordance with canon law, which the clergy know, whereas the common people do not." Pope Alexander III's decision, stated in a letter to Richard of Anstey, is carefully limited: "... we hold the sentence of the aforesaid bishop of Winchester on that case which was pronounced in a canonical way according to the procedure indicated by our predecessor for valid and we decree that the first marriage was legitimate and the second void." That is, Pope Alexander III carefully disposed only of the question of validity of marriage, and he did so on the ground that the earlier decision of the Bishop of Winchester was regularly arrived at. The Pope did not go through the mass of other considerations which had been put before him, showing that he or whoever wrote his letters had a lawyerlike grasp of relevance.

45. Richard of Anstey commenced his suit about August 1158. He needed the King's warrant, but the King had just left England and did not return until January 1163. Richard sent a messenger after him; the King may have been difficult to find on his rapid diplomatic and military journeys through northern France, but the messenger

obtained the warrant and returned to Richard in England. Richard took it to Salisbury and obtained a writ from the Regent, Queen Eleanor. He had to take her writ to the justiciar, but first he went to Southampton and arranged for Ralph Brito, who was going to Normandy, to purchase from the King another writ referring proceedings to the Archbishop. Richard then went to Ongar and delivered Queen Eleanor's writ to the justiciar Richard de Lucy at his manor there. The justiciar gave him an appointment for 29 November 1158 at Northampton. Richard sent his clerk Nicholas to Barney in Norfolk to bring Albereda and her brother Geoffrey de Tregoze to Northampton, and Richard proceeded with his witnesses, friends and helpers to Northampton. Richard opened his pleadings at the hearing there, and the justiciar gave him another appointment for 13 December 1158 at Southampton. There Mabel stated her case in a way which showed that the validity of Adelicia's marriage was the main issue. That brought proceedings before the King's court to a stand for more than four years, until validity had been decided by the Church courts; Richard had known this would happen and had obtained the King's further writ so he could go straight to Archbishop Theobald's court.

46. Richard recorded everything he spent: 6s 8d for the messenger to Normandy, £1 6s 8d for the journey to Salisbury, £1 2s 7d for the journey to Southampton, with the loss of a horse which had cost 15s, 15s for Nicholas to go to Barney, with loss of a horse which had cost 9s, £2 14s for the journey to Northampton, £2 17s for the journey to Southampton, with the loss of a horse worth 12s. The record of expenses goes on, in detail and at every stage.

47. Richard took the King's further writ to Archbishop Theobald at Winchester (£1 5s 4d) who gave him an appointment for 22 January 1159 at Lambeth. At Lambeth there was an adjournment to 14 February 1159 at Maidstone. At Maidstone there was an adjournment to 7 March 1159 at Lambeth. During this adjournment Richard went to the Bishop of Winchester and obtained his certificate of the divorce before him in the London synod. He produced the certificate at Lambeth and there was an adjournment to 23 March 1159 at London. During the adjournment he went to see Master Ambrose who was with the Abbott of St Albans at a Priory in Norfolk, and he also sent his chaplain Sampson to Buckingham to consult Master Petrus de Melide. (On the way Sampson lost a horse worth 13s 4d.)

48. On 23 March there was an adjournment to 19 April 1159, and Richard got wind that his opponents had purchased a writ from the King exempting them from pleading until the King returned to England. This may have related to military service or other service by Mabel's husband. Richard sent his brother John to the King to get another writ removing this stay; but what Richard had heard seems to have been wrong. During the adjournment Richard went to Chichester to speak to Hilary Bishop of Chichester who (it seems) could give evidence of what happened more than 20 years before in the London synod, and got a letter from Bishop Hilary to the Archbishop testifying to the divorce. The hearing at London in April took four days; then there was an adjournment to 17 May 1159 at Canterbury. In May his opponents told the Archbishop that they could not plead on account of the summons of the King's army for Toulouse, and the Archbishop adjourned the proceedings without fixing a day.

Richard set off to Aquitaine to find the King, probably to Bordeaux and then far up the Garonne and the Tarn, and found him at Auvillar, deep in southern France on the far eastern boundary of Aquitaine, where the King was conducting a campaign to conquer Toulouse, without success. Richard waited 13 weeks for the King's attention, purchased the King's writ and returned to England, where he found Archbishop Theobald at Mortlake. (This venture cost him £4 10s.)

49. When the Archbishop saw the King's writ he gave an appointment for 25 October 1159 at Canterbury (famously, the feast of Saints Crispin and Crispinian.) The proceedings were adjourned to 18 November 1159 at Canterbury, thence to 13 December 1159 at Canterbury, and Richard sent Sampson his chaplain to Lincoln to bring Master Peter to the hearing. But Richard was ill on 13 December 1159 and had to send essoiners, witnesses of his illness, to Canterbury for him; they obtained an adjournment to 20 January 1160 at London. Then there were hearings and adjournments to Canterbury on 10 February 1160, to London on 6 March 1160, thence to London on 10 April 1160. During this adjournment Richard sent two supporters to bring in Godfrey de Marcy (and they lost another horse) and Richard went to the Bishop of Winchester to obtain a more precise certificate; he found Bishop Henry at Fareham near Portsmouth and he brought back from there Master Jordan Fantosme and Nicholas de Chandos as witnesses *viva voce* to what the Bishop had stated in his certificate. (It seems that these two, and also the Bishop of Chichester, had been present at the London synod earlier in their careers). At London in April the proceedings were adjourned to 22 May 1160 at Canterbury. During the

adjournment Richard went to Stafford to see the Bishop of Lincoln and obtain the assistance of Master Peter, and sent Sampson the chaplain to find Master Stephen de Binham, whom he found at Norwich. He appeared at Canterbury with his clerks, his witnesses and his friends, and the hearing there took two days. There was an adjournment to 6 July 1160 at Wingham, then to Lambeth on 6 August 1160, then to Canterbury on 29 August 1160. Then there was an adjournment to 18 October 1160 at London.

50. The lawsuit was now two years old. Archbishop Theobald allowed facts and arguments which seem to have little relation to the limited issue before him. Mabel and her advocate did not lack ingenuity. Among many contentions made by Mabel, the more virulent passages dealt with the annulment case. She said that after the death of King Henry I "... justice was banished from the realm, and as the madness of those who rejoiced in overturning the old order grew ever stronger, every man was provoked to all manner of ill; and her mother Adelia -so she alleges- was separated from her husband for no just cause, but was cast out with violence from his house; and this was done by the machination of Geoffrey, archdeacon of London, who for a bribe spared no pains to condemn her undefended and unheard, without even having received a summons. In this he relied on the support of the Bishop of Winchester who, she asserts, had himself been corrupted by filthy lucre; ..." Mabel went on to say that when Adelia brought her case before the Bishop presiding over the Synod of London Adelia "... demanded justice for the wrong done to her by the Archdeacon and her husband. But the weight of iniquity and filthy lucre had sunk the

soul of her judge so low that he could not rise to afford her justice ...” She went on with complaints about the proceedings against her mother being heard in her mother’s absence, while not dealing clearly with the effect of the further hearing before the Bishop in which her mother took part, or of the Bishop’s decision in synod. When dealing with Richard’s contentions the apostolus said “Although he alleged many things in support of his case, he laid special stress on the judgment and the sentence which he said was passed against the mother of Mabel in the London synod, where the divorce was celebrated, by the Lord Bishop of Winchester, then legate of the apostolic see and vicar of the church of London.”

51. Mabel’s main points may be summarized. (1) The agreement was in fact an agreement to be betrothed, not an agreement to be married, had been made by the fathers of the parties and had been set aside by their agreement, with refund of the dowry, release of obligations and full approval by Albereda’s father of the marriage to Adelicia. (2) A betrothal is not a marriage, and a marriage is not complete until it has been consummated. (3) A marriage celebrated in Church takes precedence over a betrothal. (4) The annulment did not in fact ever happen. (5) Alternatively if it did happen it was not rightly celebrated because Archdeacon Geoffrey was bribed and gave his decision without giving Adelicia notice, and Bishop Henry had been bribed. (6) Bishop Henry was not the Legate when the case began, Adelicia sought justice from the previous

Legate Bishop Alberic of Ostia who commanded Bishop Henry to do justice, which he did not do because he was bribed. (7) William and Albereda had a Church wedding after the annulment and this proved that they were not married earlier. (8) The decision of Archdeacon Geoffrey was void for lack of notice and procedural irregularity. (9) Mabel's parents were not to blame for not knowing that the previous arrangements were effective. (10) On his deathbed William had expressed repentance for acquiescing in the Archdeacon acting fraudulently in ejecting Adelia. (11) Mabel (and her children) were not parties to the annulment proceedings, were not mentioned in the decision and were not bound by it. (12) Theobald Count of Blois had investigated the case and decided that William's children were his heirs in Blois.

52. Richard replied to this, and his main point was reliance on the annulment decision. He took other points in answer to Mabel's defences, and the argument got well away from the real issue. Mabel put many more points in reply, and these are some of them. (13) If Richard were right the children of King Louis VII of France would be disinherited. (14) Mabel was innocent of any sins of her parents. (15) Adelia only asked Bishop Henry to discipline the Archdeacon and did not know he would decide that the marriage was void. (16) Bishop Henry had deliberately mis-stated the facts and had misled Pope Innocent II, and the Pope's rescript did not deal with the actual facts. (17) The Emperor Marcus Aurelius made a concession and legitimized the children of a void marriage in a similar case.



53. Archbishop Theobald did not distinguish himself as a judge in this case. What was he to do with the allegation that Henry Bishop of Winchester had been bribed to grant the annulment? He was well out of his depth. He did not reach a conclusion in 19 months and 19 appointments. On most of these occasions there had been no hearing on the merits of the case, only an adjournment. Mabel obtained most of the adjournments on various grounds, maternity, illness, the absence of her husband on the King's service. Richard asserted that she was shifty. Richard lost his patience and left the Archbishop and his court, as he was entitled to do, by appealing, in modern terms removing the case to a higher court. Archbishop Theobald had been severely rebuked by Pope Adrian IV in 1157 over his conduct of judicial business. He had spent his career in crises, and although he had helped steer the course from his patron King Stephen to the accession of King Henry II he was not always in King Henry's good favour. He was over 70 years old and had been Archbishop since 1139. A papal election in September 1159 produced two rival popes, and it was not clear which one the English Church should adhere to until some time after June 1160. Until then it would have been unwise to try to take the case out of Archbishop Theobald's hands by appealing to the Pope, which would need King Henry's permission at a time when the King was considering which Pope he wished to recognise. So Richard had been locked in to Archbishop Theobald and Theobald had been concerned with much greater things.

54. Richard crossed to France, found King Henry II and obtained his licence to appeal to Rome. (He lost a horse worth 16s on the way.) When he appeared on 18 October

1160 he told the Archbishop and his opponents that he appealed to Rome and named 26 March 1161 as the date for the appeal. He asked the Archbishop for his writ of appeal, meaning the apostolus reporting on the proceedings; the Archbishop refused to issue it immediately and gave him an appointment to collect it at Canterbury. Richard went to Canterbury and received an unsealed draft which he was to show to his advocates for their opinion. Richard took it to Bishop Hilary of Chichester for his advice. Then he sent Sampson to Lincoln to see Master Peter de Melide, and then sent a messenger to show it to Master Ambrose whom he found at Binham. Richard took it back to Canterbury where the Archbishops' clerks refused to seal it but gave him another draft. This too was taken and shown to Master Peter and to Master Ambrose for their advice and corrections. Then Richard found the Archbishop at Wingham and he sealed it. Then Richard sent his brother John to Winchester to get Bishop Henry to certify to the Pope what he had already certified to the Archbishop, and went to Salisbury himself to get Bishop Hilary of Chichester to do likewise. John had to go to Winchester three times to get Bishop Henry's attention. Then Richard sent his representatives off to Rome: Sampson the chaplain, Master Peter de Littlebury and an attendant. He spent £3 6s 8d to outfit them with horses and clothing and gave them £16 13s 4d for the journey: but when they came back they had spent another £2 and he had to pay this back to one of the Bishop of Lincoln's clerks who had lent it to them.

55. The Pope, who was at Anagni south-east of Rome, sent back a brief dated 8 April 1161 appointing delegates to hear the appeal and decide it: and the Pope limited

appeal rights, so that there could be no appeal until all evidence and argument had been received. If there was an appeal at that stage the delegates were to put everything in writing and send the writings under seal to the Pope. The delegates were Laurence Abbot of Westminster and, surprisingly, Hilary Bishop of Chichester, who was a witness of the annulment proceedings and had given certificates about what had happened in them. Appointing Bishop Hilary as a delegate seems to have been Pope Alexander's way of establishing whether the annulment proceedings in the London synod had really taken place. Archbishop Theobald died in April 1161: if the prescient Richard had not appealed all the hearings before Theobald would have come to nothing.

56. The Pope directed the delegates to decide within three months, and they were expeditious. Richard took the brief to the delegates who gave him an appointment for 6 October 1161 at Westminster. Richard attended with his advocates, his friends and his witnesses, but the case did not start for three days while the delegates attended to business of the King. After a day's hearing there was an adjournment to 18 November 1161. Richard tried to arrange for Godfrey de Marcy to attend as a witness, and sent John for him, but he was ill and his son came in his place. (John lost another horse on this journey, value 15s.) At this hearing Richard hoped to obtain the delegates' judgment, showing that the evidence was at last complete, and he was kept at court for five days. But completion of the evidence and argument meant that his opponents could appeal to the Pope, and they did appeal and nominated 18 October 1162 for the appeal. The exercise of obtaining an apostolus was again undertaken, with a journey

to Oxford to receive the draft on 30 November 1161, a journey to Lincoln to consult Master Peter, a journey to Winchester to have it sealed on 13 January 1162, but the Bishop would not seal it in the absence of the Abbot, and eventually it was sealed at Westminster on 18 March 1162.

57. Richard needed or thought it wise to obtain letters from the Primate and other bishops to the Pope supporting his position in the appeal. Whatever was his reason, these letters must have been important, because Richard went to great trouble to get them. Archbishop Theobald's successor Thomas a Becket was not consecrated until June 1162. Robert found the Archbishop of York at York with the Bishop of Durham, and obtained from each a writ deprecatory addressed to the Pope. He then went to Lincoln and obtained a like letter from the Bishop there, then sought the Bishop of Winchester and found him at Glastonbury, for a like letter. Then he sent off his clerks with the documents to the court of Rome. At this time there were two rival popes, but the Kings of England and France recognised Alexander III; that Pope and his Curia were at Tours. Richard's clerks attended for 62 days before they got a decision, but the decision was the one which Richard wanted. The sentence was issued late in December 1162. They brought back three briefs stating the Pope's sentence; one directed to Archbishop Roger of York, one directed to Richard de Lucy the justiciar and the third to Richard of Anstey. The litigation was far from over: it moved back to the King and his court.

58. Richard took the sentence to Richard de Lucy, who did not act on it, probably because the King was about to return to England after an absence of four years and five months. The King landed at Southampton on 25 January 1163, and was met by a large assembly of notables. Richard followed the court for three weeks before he could make fine with the King; this refers to the need to agree with the King or his officers about a payment relating to the lawsuit, not to the conclusion of the lawsuit. When the King saw the Pope's brief and the sentence he was vexed because the Pope had not directed any brief to the King himself. Richard sent a messenger on the following day to Pope Alexander to obtain a brief directed to the King, and the messenger brought it to him at Windsor on 31 March 1163. Richard then made fine with the King and the King gave Richard de Lucy a precept to continue with the case. The justiciar gave an appointment for pleading at London on 3 March 1163 (the dates are anomalous) but when Richard attended with his following the justiciar could not attend to this plea for four days because he had to attend a council and deal with the King's business; Richard was given an appointment for 31 March 1163 at Windsor. Richard sent his brother John to arrange for Ranulph de Glanville to attend; Glanville was later justiciar himself, and he was probably to attend as a lawyer or adviser for Richard. (On this journey John lost a horse, value 20s.) But no business was done at Windsor, as the court had to attend to Robert de Montfort's appeal against Henry of Essex, business was postponed from day to day, the justiciar moved to Reading where the trial by battle took place, and then the justiciar moved with the King to Wallingford.

59. The King then required Richard de Lucy to go with him to Wales, so Richard de Lucy removed the case to the other justiciar Robert Earl of Leicester at London. Richard could make no progress with the Earl, and did not get a new appointment, so he wrote to Richard de Lucy in Wales, and de Lucy ordered Oger the Steward and Ralph Brito to do justice. These were men in royal service, not necessarily clerics, who appear from time to time over many years as witnesses to documents. Ralph Brito had taken papers to the King for Richard early in the case. Many years later he was an Itinerant Justice. Deputing them suggests that the case was not thought complicated any more. The case came before them and presumably they reported to the justiciar who appointed them, because the justiciar and also the King sent writs to the defendants to hear judgment at Woodstock. The parties attended at Woodstock, where the King was in July 1163, and after keeping them waiting for eight days the King adjudged William's land to Richard.

60. At every stage Richard recorded what he spent. The document becomes very tiresome, but the cumulative amounts spent are astonishing. He spent well over £300, and although we do not have national accounts, the King's annual revenue may have been in the order of £30,000, and Richard spent one percent of that on his lawsuit. He had income from his first inheritance, and he borrowed money from the Jewish moneylenders who alone could lend at interest, but it is likely that he had other supporters, possibly Albereda's Tregoze relatives. Many people who had assisted him had claims on his generosity which it would take years to meet. He had to pay a large sum to the King which may have been a relief on the Sackville inheritance, and it took

him years to pay that off. An insightful scholar has suggested that Richard may have sued on behalf of his aunt or her heirs as well as himself, and that as the elder stock of those interested in coparcenary he was entitled to sue on behalf of all with similar rights to himself: a right called *esnescy*. In this interpretation he carefully tabulated all his expenses because he wanted to get half of them back from the people interested in the other half of the inheritance. This seems reasonably possible, but is not clearly established, and Richard himself did not mention his relatives or their entitlement. It could explain how the record of expenses was among Exchequer records: he may have sought satisfaction by throwing more of the burden of feudal services onto those with whom he shared the inheritance.

61. Richard recorded all his borrowings from moneylenders, and the rates of interest seem very high, but may have been reasonable when weighed with his apparent prospects of a favourable outcome. In that age there was nothing like an effective mortgage security over land, or over anything that was not portable. The moneylenders were Vives of Cambridge who charged 4d per week per pound or 87 per cent, Comitissa of Cambridge, Bon-enfaunt, Dieu-la-Cresse, Jacob of Newport, Hakelot who charged 3d per week, Benedict of London, Bruno who only charged 1½d, and Mirabella of Newport who lent him money after he had won his case and charged him the highest rate again. In 1165 he was again borrowing from Hakelot to pay instalments on his relief, and the rate was only 2d.

62. Richard paid fees in the Archbishop's court to clerks and pleaders £7 6s, in the Bishop of Winchester's court £9 6s 8d, to Master Peter de Melide £6 13s 4d and a gold ring, to Master Robert de Chimae 13s 4d. In the King's court he made gifts of gold, silver and horses worth £11. He gave Master Peter de Littlebury £2 and gave gifts of money and horses to other pleaders and neighbours totalling £8 6s 8d. He paid Ralph the physician £24 6s 8d, but does not say what for. He paid the King £66 13s 4d, and the Queen (who issued his first writ) one gold mark.

63. Richard is unlikely to have been treated with much dignity by King Henry and his officers, or by his courtiers. In that age the way to get a fortune in land was to fight for it, to serve the King in war and receive conquered or forfeited land as a reward. The King himself spent most of his life in wars and conflicts, and leading figures at his court did the same. The pathway to dignity and respect was military; Richard did not follow it, but repeatedly claimed the King's attention for processes of reasoning and debate which were not the usual path to advancement. Mabel's husband was sometimes absent in the service of the king, and this led to adjournment. Richard did not go the wars; no reason is given and none appears. He may have had some disability. He had a duty to give or provide Knight's Service; but there is no reference to war service calling him away from his lawsuit. Richard may have paid someone else to perform his Knights' Service; he may have negotiated a payment with the King's officers.



64. On four occasions Richard claimed the King's attention in the midst of more pressing events: the siege of Toulouse, the King's return after four years' absence, at Windsor and Reading when Henry of Essex did battle and at Woodstock when Thomas a Becket confronted the King in their first public shouting match, before an assembly of notables. For Richard to appear at court claiming attention, waiting around until the King would give it to him, sometimes for days, sometimes for months, was not a dignified situation. He must have been well known in his own times, trailing along muddy roads in all weathers in England and France towards wherever the King the justiciar or the Archbishop might be, with bundles of documents and his little following of witnesses and supporters, sending messengers to Rome and hither and yon, borrowing heavily, spending money and getting nothing for it for years on end. This probably brought him wide undignified fame, even mockery. A very large item in his expenditure, about a twelfth of the total, is the money he paid to Ralph, Radulphus medicus regis, sometimes translated as Ralph the King's physician but sometimes less kindly as Ralph the Leech; it seems that to get King Henry's attention and time it was necessary or it was wise to pay bribes to the physician. Soldier knights who won their fortunes by fighting for the King are unlikely to have respected a litigant waiting about and slipping money to the physician to get some attention.

65. We do not know much about Richard personally. There are no portraits or descriptions. In later decades he had sons. Richard does not complain about his journeys, and he did not make his record to set out his hardships or his complaints; he had a different purpose. As a Norman and a freeholder Richard was a privileged

person: an ordinary Englishmen would have had difficulty moving away from his own village unless he was carting goods or otherwise serving his master, and would be unlikely to have had resources or motivation for travels. Journeys along mediaeval roads and across the sea had burdens, discomforts and perils which challenge the modern imagination: a world without sealed roads, police, printing, signposts, timetables, clocks, post offices, diaries, notebooks, pencils; there were no regular shipping runs and there was the challenge every day of finding an inn, abbey or barn to accommodate and feed men and horses, enquiries for the whereabouts of notables who were themselves on the move, chaffering with sea captains for passage and horse dealers for transport. Information was never reliable, everything took a long time, forty miles was a long journey for a day, ships navigated by dead reckoning and there was not much protection from the weather.

66. To dispose of litigation the judicial mind must be brought to engage with the relevant issues. To bring this about the litigant must pass through mazes of practicalities, which beset Richard of Anstey with unusual force. Difficulties like these are constants of litigation, and they confronted Richard in intensity. Richard needed determination to the point of the fanatic. There can have been few in his time who brought civil litigation before the King, and even fewer who achieved decision. Half a century later the path of litigants was smoother, and relative efficiency and utility had been produced by King Henry's reforms, the Writ of Right, the assizes, the jury, a functioning routine produced by a flow of business, a staff of judges who continued in office, a known location for the court: generally, institutionalisation. Access to royal

justice had become a valued right worthy of claims to protection in Magna Carta. Richard's persistence and success in the face of years of delay, expense and circuitous process mark him as a rare personality, immune to discouragement. If litigants in person ever meet to exchange recollections or praise famous men, they should toast Richard of Anstey.

67. A note on sources.

Richard of Anstey's Account of Expenses and documents from John of Salisbury's Letters appear in Latin and English in "English Lawsuits from William I to Richard I" Volume II, (1991) Volume 107 Selden Society edited by Professor Van Caenegem – documents under 408 at pages 387 to 404. There are references to Henry of Essex and his trial by battle at documents under 407, pages 381 to 387.

The Pipe Roll Society has been publishing the Great Rolls of the Pipe, records of dealings in the Exchequer, and other medieval records, since 1884. "The Anstey Case" an article by Dr Patricia M Barnes appears at page 1 of the Society's Volume 74 for 1960 and states in detail what was then known, with references to earlier publications.

Dr Paul Brand's Article "New Light on the Anstey Case" was published in (1983) Vol 15 Journal of Essex Archaeology and History at page 68 and contains striking insights based on study of records of litigation among later generations of Richard's family,

and other records. Dr Brand wrote the article on Richard of Anstey in the on-line Oxford Dictionary of National Biography. Dr Paul Brand FBA, now Senior Research Fellow at All Souls College Oxford and a Vice President of the Selden Society, kindly pointed out some misunderstandings in my draft, although as the reader will see, I have made my own interpretations of material which leaves many uncertainties.

I have drawn on Pollock and Maitland, "History of English Law Before the Time of Edward I" 2 ed 1898.

There is a large literature on Henry II and his times, and new publications appear frequently. I have been influenced by general reading but I should mention:

"Henry II New Interpretations" edited by Professors Harper-Bill and Vincent, The Boydell Press, Woodbridge 2007

"Becket & Henry; The Becket Lectures" James J Spigelman, The St Thomas More Society Sydney 2004.