COURT OF APPEALS OF GEORGIA

RETURN NOTICE

February 12, 2015

To: Mr. Tyrone Nunn, Sr., Reg. No. 12452-002, Federal Correction Complex - Camp, Post Office Box 5000, Yazoo City, Mississippi 39194

Case Number: _____ Lower Court: County Superior Court

Court of Appeals Case Number and Style: _____

Your document(s) is (are) being returned for the following reason(s).

☐ **There is no case pending in the Court of Appeals of Georgia under your name.**

☐ **A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37.** Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.

☐ **The Notice of Appeal must include a proper Certificate of Service.** A Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.

☐ **An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained.** An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.

☑ **An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate. An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals. Therefore, your documents are being returned.**

Ms. Holly K.O. Sparrow has retired as Clerk/Court Administrator. The new Clerk/Court Administrator of the Court of Appeals of Georgia is Stephen E. Castlen.

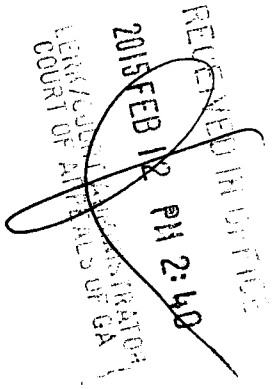
☐ **Your appeal was disposed by opinion (order) on** _____. The Court of Appeals _____. The remittitur issued on _____ divesting this Court of jurisdiction. The case decision is therefore final.

☐ **Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia.** The address of the Clerk of the is:

☐ **If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court.** As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.

☐ **A request for an out-of-time appeal should be made to the trial court from which you are appealing.** If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

TYRON NUNN, SR.
#12452-002 F.C.C. CAMP
2225 HALEY BARBOUR PARKWAY [39194]
P.O. BOX 5000
YAZOO CITY, MS 39194



COURT OF APPEALS FOR THE STATE OF GEORGIA

In re:

TYRON NUNN, SR., sui juris,

Petitioner, in proper person,

Vs. CASE NO. 08cv1041, 07cv02482

CARROLL COUNTY SUPERIOR COURT,

[DENNIS T. BLACKMON, JUDGE],

Respondent.

PRAYER FOR WRIT(PROCESS) OF MANDAMUS

"We shall know the truth and the truth shall make us free." And "You shall not be partial in judgment: hear out low and high alike fear no man, for judgment is God." DEUTERONOMY 1:16 TORAH. And "If you see the perversion of justice and righteousness in a province, do not marvel at the matter; for high offical watches over high offical, and higher officals are over them." ECCLESIASTES 5:8 KJV.

LAWFUL JURISDICTION of the ORIGINAL WRIT OF MANDAMUS which this court has ANCILLARY JURISDICTION AS AN APPEALS COURT. See Legal Treatises, 1800-1926, Handbook of common law pleading. Benjamin J. Shipman (3rd ed. 1923) Pp. 15-23 §§ 1-4 annexed hereto. And see PP. 57-60 §§ 28-30 annexed hereto. See also The History of English Law Before The Time of Edward I, Vol. 1 annexed hereto, and Vol. 2 annexed hereto.

MOML

Making of the Modern Law
Print Editions

Legal Treatises, 1800-1926

Handbook of common-law pleading.

Benjamin J. Shipman

CHAPTER I

OUTLINE OF PROCEEDINGS IN AN ACTION

SCOPE OF PROCEDURE

1. The law of procedure deals with:
   (a) Jurisdiction of courts.
   (b) The process to compel the appearance of the defendant.
   (c) The pleadings.
   (d) The trial
   (e) The judgment.
   (f) The execution.
   (g) Appellate review.

JURISDICTION OF COURTS

2. Jurisdiction depends upon authority over the subject-matter and over the parties

The law of procedure deals not with the existence of rights of action and liability, but with the method or process of pursuing actions, civil and criminal It has to do with pleading, practice, and evidence; the

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steps by which proceedings are conducted in the several courts. It deals (1) with the jurisdiction of courts, in which court action must be brought, and the authority of the court over the subject-matter, (2) with process or summons to acquire jurisdiction of the cause and compel the defendant's appearance; (3) with pleading, the formal statements of claim on the one side, and of defenses or replies thereto on the other; (4) with the examination of the issues of law after argument upon demurrer, (5) with the trial of the issues of fact joined in the pleadings; (6) with the judgment or award of the court with respect to the nature and amount of relief to be given, the great object to which all prior proceedings have led up; (7) with final process or execution, which enforces the award of relief by intervention of ministerial or executive officers. (8) Lastly comes review on appeal, writ of error, or motion for a new trial, to correct errors which may have arisen. In general, the law of procedure deals with the mode of pursuit and application of the remedy to the right. A comprehensive view of the various steps in an action at law will be given in this chapter, in order that the part played by the pleadings may be seen in perspective.

Jurisdiction of Courts

Jurisdiction is the power to hear cases and decide them by pronouncing judgment. The power to render judgment depends (1) upon jurisdiction of the subject-matter or class of cases; and (2) upon jurisdiction of the cause or parties.[1]

The judicial powers and jurisdiction of the courts of the states and of the United States are in general derived from their respective constitutions and are further fixed and defined by statutes. Such written law prescribes the nature of the causes that may be brought within the cognizance of the respective courts. In England, however, the source of the power and authority of the common-law courts to afford the relief asked was anciently the original writ, a delegation from the king in each instance. The writ was the warrant of authority for the particular court "to hold the plea" or take cognizance of the cause.[2] In course of time the jurisdiction of the law courts became fixed and established as to those matters in which writs were demandable of common right. Original writs fell out of use as a means of commencing suit, but they left behind them a defined jurisdiction and the limited system of remedies under "forms of action" which we shall have occasion to study in detail.

Some elasticity was afforded by the flexible nature of the action on the case, but a large jurisdiction was unprovided for. To meet this

[1] Courts, 7 R C L p 1030.
[2] 1 Spence Eq Jur 328; Bigelow, Hist. Proc. 76, 77, 85; 3 Bl Com 273, 393.

need the Court of Chancery arose, in which the Chancellor gave equitable relief and did complete justice wherever there was no adequate remedy at common law The jurisdiction of equity was residuary and supplemental to law, based on a delegation of all judicial authority not committed to the older law courts Such is the cause of the great division of jurisdiction into legal and equitable, allotting certain kinds of actions and relief to one set of courts and all the rest to another The line of demarcation between legal and equitable jurisdiction is thus historical and arbitrary.

The principal common-law courts, as they formerly existed in England, were the Courts of King's Bench, Common Pleas, and Exchequer These three courts for six hundred years continued to be the great superior courts of common law, with largely concurrent jurisdiction in all personal actions. These courts sat in banc at Westminster, but the trials of cases were usually held by judges traveling on circuit in the county where the case arose.

PROCESS—THE ORIGINAL WRIT

3. Original "process" is any writ or notice by which a defendant is called upon to appear and answer the plaintiff's declaration.

The commencement of the suit at common law was formerly by original writ. Judicial process was by summons, attachment, arrest and outlawry.

The Original Writ

In the common-law courts the action was commenced by original writ, which not only gave the court jurisdiction of the subject-matter, but enjoined upon the sheriff the duty of compelling the defendant to appear. "In England the sovereign was the source of all authority, and the courts were his courts, and had no right to proceed in any cause without his authority and permission It was the principal function of the original writ to give that permission With us, on the contrary, the judicial power has always been an independent, co-ordinate branch of government It never required any special license or authority from any executive, by way of original writ to exercise its functions" [8]

The original writ was a mandatory letter or executive order from the king to his officer, the sheriff, to compel the defendant to appear in

[8] Parsons v Hill, 15 App D C 532 per Morris, J , Philadelphia, B & W R Co v Gatta 4 Boyce (Del) 38, 85 Atl 721, 47 L R A (N S) 932, Ann Cas 1916E, 1227

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court to answer the demand of the plaintiff. This was the foundation of judicial process, that is, of writs issued in the name of the court, under its seal, by executive or ministerial officers of the court

Original Writ in Debt

George the Third, etc., to the Sheriff of ———, Greeting: Command C. D., late of ———, that justly and without delay he render to A. B. the sum of £——— of good and lawful money of Great Britain, which he owes to and unjustly detains from him, as it is said; and unless he shall do so, and if the said A B shall make you secure of prosecuting his claim, then summon, by good summoners, the said C D. that he be before us, on ——— wheresoever we shall be in England (or, in C. P. before our justices at Westminster, on ———), to shew wherefore he hath not done it, and have there the names of the summoners, and this writ Witness ourself, etc [L. S.]

(Tidd's Appendix, 20)

By the writ itself the sheriff was required to have it in court on a certain day On that day the writ was said to be returnable, and the day was called the "return day of the writ" In each of the terms, except Easter, there were four stated days called "general return days", in that term, five, and on one or the other of these general return days the original writ was always made returnable On the return day, it was the duty of the sheriff to remit the writ into the superior court of common law, with his return, that is, with a short account in writing of the manner in which he had executed its command to cause the defendant to appear [4]

Commencement of Action in Modern Practice

In modern practice the original writ is no longer used either as authority for instituting the suit, or for the purpose of compelling appearance by the defendant,[5] though in some of our states the term is retained to designate the process that has taken its place. No writ at all is necessary as authority for instituting suits, and the writ of summons is used as a means of notifying the defendant of the suit, and ordering him to appear in court. The practice is very generally, if not entirely, regulated by statutes, varying somewhat in the different states [6]

[4] As to commencement of actions at common law, see West v. Ratledge, 15 N. C. 31, Lloyd, Cas Civ Proc 281

[5] In this country since the jurisdiction of the courts is conferred by Constitutions and statutes, there is no need of any original writ to authorize the institution of an action President, etc., of Bank of New Brunswick v. Arrowsmith, 9 N. J Law, 284. Cf Pressey v. Snow, 81 Me 288, 17 Atl. 71

[6] In Illinois it is provided that the first process in all actions to be hereafter commenced in any of the courts of record in this state shall be a sum-

The general practice is for the attorney, in commencing an action, to draw up, sign, and present to the clerk of the court, an order requesting him to issue the summons. This order is called a præcipe. It is never essential to the validity of the summons, but is used merely as a convenient way of directing the clerk as to its issuance. A verbal direction would do as well.[7]

Summons and Arrest

The first process upon the original writ in contract actions and for civil injuries unaccompanied by force was a summons, or warning to appear according to the command of the writ being usually nothing more than a copy of the original writ itself, made out by the plaintiff's attorney for the sheriff, and delivered by one of his deputies to the defendant. But by early statutes a capias was allowed in all ordinary cases, and was generally issued in the first instance.[8]

mons, except actions where special bail may be required (that is, where a writ of capias ad respondendum may be issued), which summons shall be issued under the seal of the court, tested in the name of the clerk of such court, dated on the day it shall be issued, and signed with his name, and shall be directed to the sheriff (or, if he be interested in the suit, to the coroner of the county), and shall be made returnable on the first day of the next term of the court in which the action may be commenced. If 10 days shall not intervene between the time of suing out the summons, and the next term of court, it shall be made returnable to the succeeding term. The plaintiff may, in any case, have summons made returnable at any term of the court which may be held within three months after the date thereof. Hurd's Rev. St. Ill. 1921, c. 110, § 1. In Hurd's Rev. St. Ill. 1921, c. 10, § 1, it is provided that in certain cases the defendant may be arrested and brought into court on a writ of capias ad respondendum.

In Michigan it is provided as follows: "Actions brought for the recovery of any debt, or for damages only, may be commenced either (1) By original writ; or (2) by filing in the office of one of the clerks of the court a declaration, entering a rule in the minutes kept by such clerk, requiring the defendant to plead to such declaration within twenty days after service of a copy thereof and a notice of such rule, and serving a copy of such declaration, and notice of such rule personally on the defendant, which mode of commencing an action may be adopted against any person, whether privileged from arrest or not." How. Ann. St. § 7291. And see the following sections as to service of copy of declaration as a substitute for process. See Ellis v. Fletcher, 40 Mich. 321; Begole v. Stimson, 39 Mich. 298. "The original writ in personal actions shall be a summons or a capias ad respondendum, in the form heretofore in use in this state, unless the form thereof shall be altered by rule of court." Comp. Laws 1915, § 12406.

[7] Potter v. John Hutchison Mfg. Co., 87 Mich. 59, 49 N. W. 517.

[8] 3 Bl. Com. 279, 281; 3 Chit. Gen. Prac. 142, 137, 448; Martin, Civ. Proc. § 12; Tidd, Prac. 105, 122. Civil arrest by capias ad respondendum in actions of debt was settled procedure at common law from the reign of Edward III. Tidd, Prac. (8th Ed.) pp. 100, 124. Wherever the defendant could be arrested he could be held to bail and could appear only by giving special bail as con-

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Attachment

The writ of attachment is a writ commanding the seizure of property of the defendant, to be held as security for the satisfaction of the plaintiff's claim. It always issues before judgment, and thus differs from an execution, which is the process issued after judgment to obtain satisfaction of the judgment. In some states it can be issued only against absconding debtors or persons concealing themselves, or nonresidents; in others, it is issued, in the first instance, to obtain control over property of the defendant with which to satisfy the judgment. At common law the attachment was only to compel the appearance of the defendant, and, when he had appeared, the attachment was dissolved. There was no lien upon the goods to secure the debt The writ as now issued is solely to attach personal property and real estate to respond to the judgment The defendant may appear or not, after having been served with the summons; if not, he is defaulted, and the attachment constitutes a lien on the goods for the payment of the claim sued on, which may be enforced by execution The defendant may generally, however, appear at any time before judgment, and dissolve the attachment by giving a bond, in which case the property is released, and the bond stands in its place.[9] The giving of a bond is sometimes compelled by arrest on civil process, which is another provisional remedy.

As a general rule the action is deemed to be commenced when the writ is issued, although to stop the running of the statute of limitations some courts hold that the writ must be delivered to the officer for service. But others hold that this is not necessary.[10]

trasted with common bail or nominal bail. The defendant could not plead in bailable actions until he had appeared by giving bail The process by attachment and distringas or distress infinite was availed of wherever the defendant avoided arrest. Tidd Prac (8th Ed) 112. It was the only method of proceeding against a corporation Tidd Prac 105, 109

[9] See Sellon, Prac. p 137, 3 Bl Com 290, 291 On special bail as a condition of appearance by nonresident whose goods have been seized, see Ownbey v Morgan, 256 U S 94 41 Sup Ct 433, 65 L Ed 837, 17 A. L. R 873, Id., 7 Boyce (30 Del) 297, 323, 105 Atl 838, 849 If the property attached is a chose in action, it brings in a new party in the person of one indebted, who is called the "garnishee," and who is required to hold the property in his hands until the attachment or "garnishment," as it is called is dissolved, or he is otherwise discharged As to this process, see Drake, Attachm (5th Ed) cc. 18–37

[10] Suit is commenced by the issue of summons Schroeder v. Merchants' & Mechanics' Ins Co, 104 Ill 71 See Mason v Chenev, 47 N. H. 24; County v. Pacific Coast Borax Co, 67 N. J. Law, 48, 50 Atl. 906.

SERVICE—PERSONAL AND CONSTRUCTIVE

4 Jurisdiction to render a personal judgment is based on personal service of summons, and sometimes on substituted service Jurisdiction in rem, and quasi in rem is based on constructive service by publication and control of some res.

Personal judgments must be based upon personal service of summons upon the defendant, or in case of residents upon substituted service Constructive service of process by publication is by statute authorized where the court has jurisdiction in rem or quasi in rem In the latter case seizure of some property by attachment or otherwise is necessary [11]

Personal Service

There is a most important distinction between the jurisdiction which is based on personal service and jurisdiction which is based upon control over some res or subject-matter, which is under the power of the court Only by virtue of personal jurisdiction can the court render a personal judgment and create a personal obligation which will bind all his property everywhere

The ordinary method by which a court gets authority to adjudicate upon the rights and liabilities of the defendant is by service of summons upon him personally within the state. There are statutory provisions as to the officer or agent upon whom summons shall be served in actions against corporations The service, when personal, may be made at any time after the writ comes into the hands of the officer, but not later than the time fixed by statute, which may be the return day or a certain time before The officer is bound to use due diligence in serving it, and is liable for neglect or a false return Having made the service, it is his duty to return the writ to the court from which it issued, with his report of service, or that the defendant cannot be found within his jurisdiction indorsed thereon which is called his "return"

This act of notifying him of the commencement of the suit is generally performed by reading the writ to him or handing him a copy of it or, as is now generally provided by statute by leaving a copy at his last usual place of abode if he has one within the jurisdiction of the court [12] Substituted service where process is left at the residence of the defendant, is treated by state courts as a kind of personal service

[11] Pennoyer v Neff 95 U S 714 24 L Ed 565

[12] See Heath v White, 2 Dowl L 40, Hinton Cas Trial Prac p 41, Bimeler v Dawson, 4 Scam (Ill) 536, 39 Am Dec 430, Hopkinson v Sears

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Substituted Service

Substituted service, by leaving a copy of the summons at the defendant's residence or usual place of abode, may by statute be made equivalent to personal service as to a resident defendant, and support a personal judgment "Substituted service in actions in personam is a departure from the common-law rule requiring personal service, and the statute authorizing such service must be followed strictly But, when the statute is complied with, the general rule is that substituted service on a resident defendant is equivalent to personal service and warrants a personal judgment" [13]

Courts have no general power to summon nonresidents, and persons resident in one state are not subject to the exercise of personal jurisdiction over them by courts in another [14] If they hold property there, however, they are subject to have their property rights adjudicated by a judgment in rem Mere temporary presence in the state is sufficient to subject the nonresident individuals to its power if personal service of summons is secured therein, even if the defendant is merely passing through on a train But foreign corporations cannot be served, unless doing business in the state When once obtained, jurisdiction continues through all subsequent proceedings in the same litigation without further notice.

Constructive Service

In certain exceptional cases a court may acquire a limited jurisdiction in rem by notice sent to a nonresident outside the state or published within it, which is regarded as sufficient to give him a reasonable op-

14 Vt. 494, 38 Am Dec 236, Vaughn v Brown, 9 Ark 20, 47 Am Dec 730; Maher v Bull, 26 Ill 348; Law v Grummes, 158 Ill 492, 41 N E 1080 (service of summons by delivering a copy without rending the writ to the defendant insufficient)

[13] Lloyd, Cas Civ Proc p 288, note, Cassidy v Leitch (N Y) 2 Abb N C 315; Missouri, K & T Trust Co v Norris 61 Minn 256, 63 N W 634, Nelson v Chicago, B & Q R. Co., 225 Ill 197, 80 N E 109, 8 L R A (N S.) 1186 116 Am S Rep 153, 32 Cyc p 461 Service in Actions in Personam C. K Burdick, 20 Mich Law Rev 422, 425, McDonald v. Mabee, 243 U. S 90, 37 Sup Ct 343, 61 L Ed 608, L R A 1917F, 458 The Supreme Court of Iowa has held that statutes authorizing service of notice on residents of the state while outside of its territorial limits and the rendition of personal judgment on such service are unconstitutional Raher v Raher, 150 Iowa, 51, 129 N. W 494, 35 L R A (N S) 992, Ann Cas 1912D, 680 See 20 Mich Law Rev. 429, 430, McDonald v Mabee, 243 U S 90, 37 Sup Ct. 343, 61 L Ed. 608, L. R. A 1917F, 458 Substituted service of process, by posting on the front door, due process of law 7 Va Law Rev 670 (May, 1921)

[14] "Process from tribunals in one state cannot run into another state, and summon parties there domiciled to leave its territory and respond to proceedings against them," far from their homes and business Pennoyer v Neff, 95

portunity to appear and defend. But a court cannot acquire jurisdiction to pronounce a personal judgment against one who has no residence within the state, except by actual service of notice upon him within the state, or by his voluntary appearance

Jurisdiction in rem is jurisdiction in the cause acquired by virtue of control over the subject-matter. All proceedings are really directed against persons and their rights, even though, as in admiralty, a res or ship be impleaded as defendant Some notification of the proceeding is therefore essential, either by publication in newspapers, or by posting up notices, or by mailing notice to the last known address, or by service of summons outside of the state An order of court must in general be obtained to make service of the summons by publication or other substituted method, upon a showing by affidavit that personal service within the state cannot be made [15]

Jurisdiction Quasi in Rem

There has been a wide extension of the doctrine of jurisdiction in rem to cases where there is no direct claim asserted to a tangible res Thus, where a suit is brought upon an obligation against a nonresident debtor, the court may subject the property of the debtor within the state to the payment of the debt, even though no personal jurisdiction over him can be acquired No claim is made to the property, except incidentally as a means of obtaining redress for a wrong. It is held that where a claim is made to property indirectly to satisfy an obligation of a nonresident debtor, an attachment or garnishment or receivership is necessary. Since the suit is not so framed as to set up any direct claim to the res, a claim to specific property must be asserted in some manner, since jurisdiction is based upon that [16] A judgment

U. S. 714, 24 L Ed 565, Flexner v Farson, 248 U S 289, 39 Sup Ct 97, 63 L. Ed 250; A W Scott, Jurisdiction over Nonresidents, 32 Harv Law Rev 871, 875

[15] The process of the court is said to "run" only within the limits of its own jurisdiction, and only by service within those limits is jurisdiction to pronounce personal judgment against a defendant without his voluntary appearance acquired Goldey v Morning News 156 U S 518, 15 Sup Ct 559, 39 L. Ed 517; Lloyd, Cases Civil Procedure pp 291 293 note; Pennoyer v Neff, 95 U S 714, 24 L Ed 565; International Harvester Co v Commonwealth of Kentucky, 234 U S 579 34 Sup Ct 944 58 L Ed 1479 According to some authorities, no personal judgment can be rendered, even against a resident, merely on the basis of an attachment of the property and publication of summons De Arman v Massey, 151 Ala 639, 44 South 688; Scott, Cas. Civ Proc. p. 42

[16] Seizure by court necessary to base service by publication in suits quasi in rem Pennoyer v Neff, 95 U S 714, 24 L Ed 565, Baille v Columbia Gold Min Co., 86 Ore 1, 22, 42, 166 Pac 965 167 Pac 1167. See W N Hohfeld, 26 Yale Law J 714, 761; Shipley v. Shipley, 187 Iowa, 1295, 175 N. W. 51

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Forms of action, and the necessity of choosing between them, have been abolished by all the American codes, following the New York code of 1848 In many of the states which retain forms of action, the common-law forms have been combined or modified by statute In Michigan contract actions are all called assumpsit, and tort actions for damages are all called trespass on the case.[6]

ORIGINAL WRITS

28 No one could bring an action in the king's courts without the king's writ. The power of issuing writs was delegated to the Chancellor, who acted through his clerks. The function of the original writ was:

(1) To command the sheriff to compel the defendant to appear in court;

(2) To authorize the court to take jurisdiction of the cause.

Original Writs

The ancient system of original writs, by which the king gave jurisdiction to his judges, gave rise to the variety and distinction of forms of action. Original writs were royal commands, and must be sealed by the chancellor, like all other important executive acts which passed under the great seal. The chancery office was thus the officina justitiæ (the magazine of justice), out of which all original writs issued and for which it was always open to the subject, who might there demand as of right, any writ that his case might call for.

All applicants for justice in the royal courts must first come to the chancery office for their writs. Thus the king at first controlled the jurisdiction of all the judges of the three great superior courts, by his control over the issue of the original writs. The actual drawing

443, 50 L R A (N S) 1; Bowers, Conversion, §§ 488, 489, McFaul v Ramsey, 20 How. (U S) 523 15 L Ed 1010 H U Sims, 21 Yale Law J 215 Necessity of Theory of the Case in Pleading, 50 L R. A (N S) 3, note, E F Albertsworth, 94 Cent Law J 388, 106, 10 Cal Law Rev 202, Theory of the Pleadings in Code States, Election of Remedies, B S and A S Durfee, 6 Minn Law Rev. 480, 504, 505, Reinkey v Findley Electric Co, 147 Minn 161, 180 N W 236, Ash v Childs Dining Hall Co, 231 Mass 86, 120 N E 306, 33 Harv Law Rev 240

[6] The Michigan Judicature Act of 1915, by chapter XI (Pub Acts 1915, No 314), abolishes some of the forms or theories of action for damages, and expands the others to cover the vacant territory As Professor E R Sunderland suggests, why not openly and frankly abolish them all? Why stop halfway in the process of simplification? 14 Mich. Law Rev 383 Code pleading, while subject to many criticisms, is beyond criticism in abolishing all forms of action

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England preparing of these important warrants of authority were confided to a staff of special clerks under the Chancellor, who were men learned in the law

The following is a form of the—

Original Writ in Trespass to the Person

Original Writ—Fitzherbert, Natura Brevium, 196-198.

The King to the Sheriff, etc If A shall make you secure, etc, then put by gages and safe pledges B that he be before us on the Morrow of All Souls, wheresoever we shall then be in England And if it be returnable in the Common Pleas, then thus Before our Justices at Westminster on the Morrow of All Souls, to shew wherefore with force and arms he made an assault upon him the said A at N, and beat wounded and ill treated him, so that his life was despaired of, and other enormous things to him did, to the great damage of him the said A and against our peace And have there the names of the pledges and this writ Witness, etc

The original writ was thus a mandatory letter, issuing at first from the Chancellor, the king's secretary, and later out of the Court of Chancery, under the great seal, and in the king's name, directed to the sheriff, the king's officer, containing a summary statement of the cause of complaint, and requiring him in most cases to command the defendant to satisfy the claim, and, on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his noncompliance It was a kind of executive order to show cause why he had not redressed the wrong complained of. In some cases it omitted the former alternative, and required the sheriff simply to enforce the appearance.

One object of the original writ, therefore, was to direct the sheriff to summon the defendant to appear in court. But it was also necessary as authority for institution of the suit: for it was a principle that no action could be maintained in any superior court without the sanction of the king's original writ, the effect of which was to give cognizance of the cause to the court in which it directed the defendant to appear The king is thus "the fountain of justice," and his writ is the foundation of the jurisdiction of the court.[1]

Since, as we have seen, an original writ was essential to the institution of an action, the various forms of original writs had the effect of limiting and defining the rights of action No cases were

[1] Philadelphia, B & W R Co v Gatta, 4 Boyce (Del.) 38, 85 Atl 721, 47 L R A (N S) 932, Ann Cas 1916E, 1227, Parsons v Hill, 15 App D C 532

writs then known in practice. A restoration, in part, of the ancient authority to devise new writs to meet new cases was granted by Parliament in the year 1285. In that year the famous statute of Westm. II, 13 Edw. I, c. 24, was enacted. By this statute it was provided: "That as often as it shall happen in the chancery that in one case a writ is found, and in a like case (in consimili casu), falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the chancery shall agree in making a writ, or adjourn the complaint till the next Parliament, and write the cases in which they cannot agree, and refer them to the next Parliament, and by consent of men learned in the law, a writ shall be made, lest it might happen after that the court should long time fail to administer justice unto complainants." New writs were copiously produced under the authority of this statute, while others were added from time to time by express authority of the Legislature. All forms of writs once issued were entered, from time to time, and preserved, in the court of chancery, in a book called the Register of Writs (Registrum Brevium), which, in the reign of Henry VIII, was committed to print and published.[10]

HISTORY OF FORMS OF ACTION IS HISTORY OF SUBSTANTIVE LAW

30. The development and extension of the scope of the different forms of action is the history of the recognition of rights and liability in the law of torts, contracts, and property, and the essentials of rights of action.

The list of original writs determined the jurisdiction of the courts, and the existence of remedial rights and liability. Even when the function of writs as an authorization from the king was gone, yet the judges regarded it as their duty to govern the exercise of their jurisdiction according to the recognized occasions of remedy. Although the original writs became a mere formality, and were superseded as a method of commencing the action, yet the principle of jurisdiction remained, and the forms of action based on the old precedents of writs were still observed as representing the sole occasions of remedial intervention.[11]

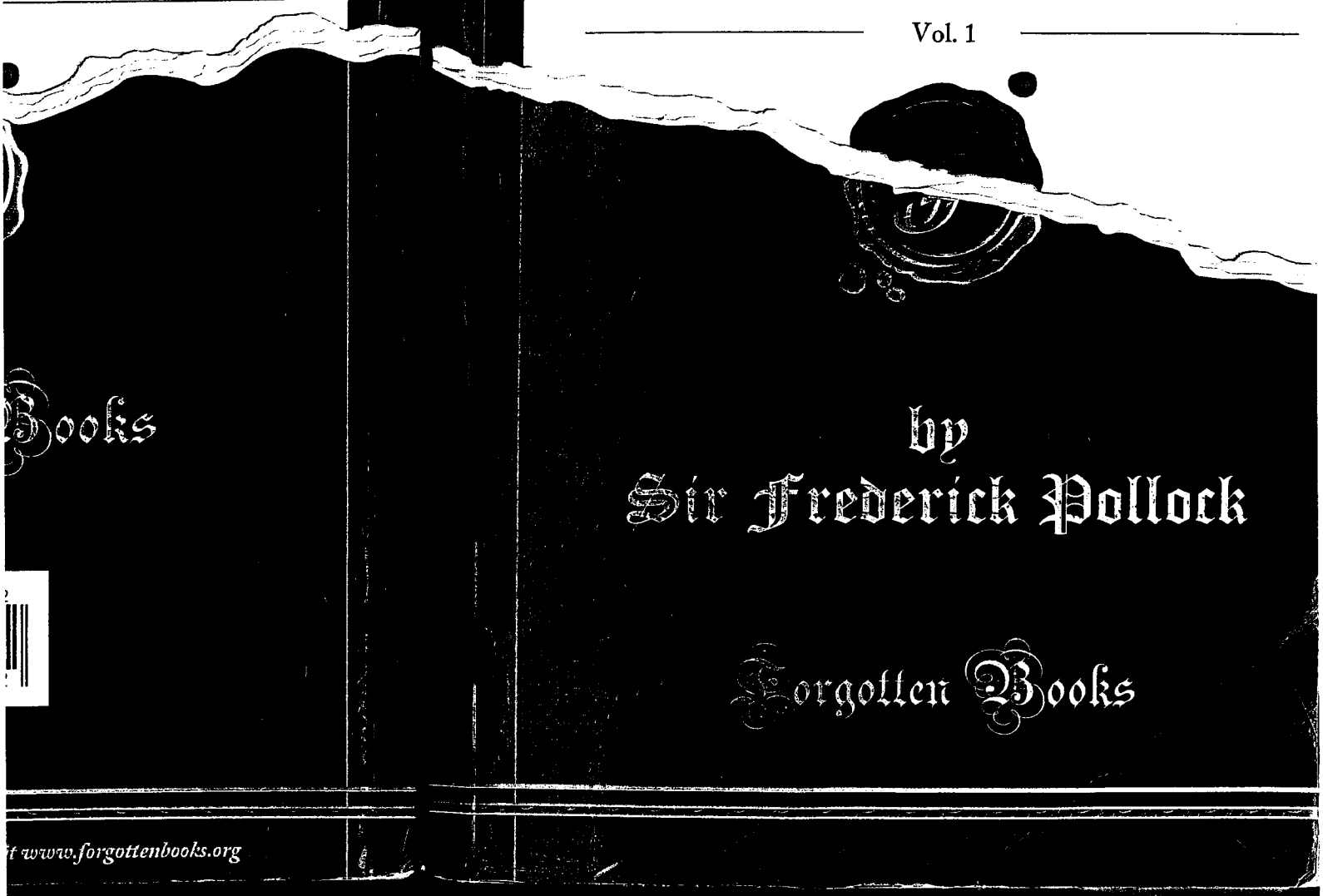
[10] See Maitland's History of the Register of Original Writs, 3 Harv. Law Rev. 97, 169; reprinted in Select Essays in Anglo-American Legal Hist. vol. 2, p. 549; Stephen, Pl. c. 1; Gould Pl. (Will's Ed.) c. 1; Chitty, Pl. c. 2; 2 Maitland, Select Papers, 172; 3 Street, Foundations Legal Liab. pp. 28–32.

[11] "The writs were like doors to the king's courts. there was one for big dogs and a smaller one for little dogs, there were doors for yellow dogs and black dogs, and the door of case for mongrel curs of no particular breed, but just plain dogs.

CLASSIC REPRINT SERIES

THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I

Vol. 1



by
Sir Frederick Pollock

Forgotten Books

world over[1]. Very little was done by the king that was not done by a document bearing the great seal; it was 'the key of the kingdom[2].' The exchequer and the two benches had indeed [p. seals and could issue writs running in the king's name, writs, for example, summoning juries, coercing contumacious litigants or carrying judgments into effect; but the province of such writs was not very wide, and it was a very general rule that no action could be begun in the king's courts and that no action touching freehold could be begun anywhere without an 'original' or (as we might say) 'originating' writ, which proceeded from the chancery and served as the justices' warrant for entertaining that action[3]. During the course of Edward's reign writs under the privy seal became common; but the king was constrained to promise that no writ which concerned the common law should issue under that seal[4], and very many of the writs thus authenticated were addressed to the chancellor and did but bid him set the great seal to some instrument which would be the final expression of the king's will[5]. Confidential clerks or 'secretaries,' (for this word was coming into use) were beginning to intervene between the king and his chancellor, sending to him written, or carrying to him oral messages[6]. The chancellor was now a man of exalted rank, and, though theoretically the chancery 'followed the king,' still as a matter of fact it often happened that the king was at one place while the chancellor was at another[7]. In

[1] The term *magistri* when applied to the masters in chancery seems at first merely to mark them as men with university degrees. But they were also *praeceptores*, for in certain cases they had power to order that a writ should issue; Fleta, p. 77. Apparently the class of writs known as *magistralia* consists of those which must be settled by one of the *magistri*; Bracton, f. 413 b. Edward I. had two apostolic notaries in his chancery, John Arthur of Caen and John Busshe. The series of masters of the rolls goes back to the early years of Edward's reign. The master of the rolls is the chancellor's principal subordinate.

[2] Mat. Par. Chron. Maj. v. 130.

[3] Writs issued by the court in the course of litigation are *brevia iudicialia*; they are sometimes said to 'issue out of the rolls of the court;' this means that the order for the issue of the writ is on the court's roll.

[4] Articuli super cartas, 1300, c. 6 (Statutes, i. 139).

[5] The large collection of privy seal writs in the Record Office begins in Edward I.'s reign.

[6] Maitland, Memoranda de Parliamento, 33 Edward I., p. xxxvii.

[7] The stages by which the chancery ceased as a matter of fact to be a peripatetic office, following the king in his progresses, have never yet been accurately ascertained; but it seems probable that Chancellor Burnel made some noteworthy change in 1280: Annales Monastici, ii. 303, iv. 477.

its final form almost every message, order or mandate that came, or was supposed to come, from the king, whether it concerned the greatest matter or the smallest, whether addressed to an emperor or to an escheator, whether addressed to all the lieges or to one man, was a document settled in the chancery and sealed with the great seal. Miles of parchment, close rolls and patent rolls, fine rolls and charter rolls, Roman rolls, Gascon rolls and so forth, are covered with copies of these documents[1], [74] and yet reveal but a part of the chancery's work, for no roll sets forth all those 'original' writs that were issued 'as of course[2].'

The original writs.

The number of writs which were issued as of course for the purpose of enabling those who thought themselves wronged to bring their cases before the law courts, increased rapidly during the reign of Henry III. A 'register of original writs' which comes from the end of that period will be much longer than one that comes from the beginning[3]. Apparently there were some writs which could be had for nothing; for others a mark or a half-mark would be charged, while, at least during Henry's early years, there were others which were only to be had at high prices. We may find creditors promising the king a quarter or a third of the debts that they hope to recover[4]. Some distinction seems to have been taken between necessaries and luxuries. A royal writ was a necessary for one who was claiming freehold: it was a luxury for the creditor exacting a debt, for the local courts were open to him and he could proceed there without writ. Elaborate glosses overlaid the king's promise that he would sell justice to none, for a line between the price of justice and those mere court fees, which are demanded even in our own day, is not easily drawn[5]. That the poor should have their writs for nothing, was an accepted maxim[6]. The almost mechanical work of penning these ordinary writs was confided to clerks who stood low in the official hierarchy, to cursitors (*cursarii*); it consisted chiefly of

[1] The best introduction to them will be found in Bémont, Rôles Gascons (Documents inédits), Paris 1896.

[2] If an intending litigant has to pay for his original writ, then an entry will be made on the fine roll, but the nature of the writ will be but briefly described, *e.g.* as 'a writ of trespass,' 'an attaint' or the like. See Fleta, p. 77. The Record Office contains large stores of these writs.

[3] Harv. L. R., iii. 175.

[4] Excerpta e Rotulis Finium, i. 29, 49, 62, 68; Harv. L. R., iii. 12.

[5] Fleta, p. 77. [6] Fleta, p. 77; Excerpta e Rotulis Finium, ii. 101.