

LES ENLUMINURES, LTD
2970 North Lake Shore Drive 11B
Chicago, Illinois 60657

tel. 1-773-929-5986
fax. 1-773-528-3976
chicago@lesenluminures.com

LES ENLUMINURES
Le Louvre des Antiquaires
2 place du Palais-Royal
75001 Paris

tél : 33 1 42 60 15 58
fax : 33 1 40 15 00 25
info@lesenluminures.com

***Registrum Brevium Originalium* [Register of Original Writs] with some Statutes of England
In Latin and Anglo-Norman, decorated manuscript on parchment
England, Yorkshire? or Lincolnshire?, c. 1325-1350**

[VI] paper and parchment leaves + 87 parchment leaves + [IV] paper leaves, interleaved with modern blank paper pages likely signaling lacunae (ff. 16a, 16b; 39a, 39b; 45a, 45b), parchment leaves preceded and followed by 5 modern paper flyleaves, lacking an undetermined number of folios (collation i-v⁸, vi⁶, vii⁷ [8-1, missing first leaf of quire], viii-x⁸, xi⁶, xii⁴), some discrete catchwords, written in an English legal bookhand, in brown ink with 25 long lines per page, ruled in brown (justification 90 x 50 mm.), paragraph marks throughout in red or blue, running-titles and marginal headings preceded by similar paragraph marks, a few 3-line high initials marking important textual breaks, in red or blue with violet or red pen flourishing, six 4-5-line high initials, parti-colored in red and blue with red and blue pen flourishing extending in the margin, some blank spaces set aside for additional writs (ff. 82, 83), two original palimpsest pastedowns still extant, the first detached with faint inscriptions and a shelf-mark "486" with inscription perhaps legible by means of ultra-violet light, the second which appears to be a leaf from the original manuscript, and part of the "Statute of Westminster Secunde." English binding of the late fifteenth or early sixteenth century, boards paneled with a simple rectangular frame with fleurons at angles and rolled in blind, two bands attached with white leather strips cross-laced on covers, endleaves and pastedowns renewed (Spine wanting, binding a bit worn but boards still intact; register imperfect with headings and some marginal annotations cropped; some browning to parchment, but text still fully legible). Dimensions 118 x 80 mm.

This is an early example of a practitioner's legal pocket handbook likely compiled for use in defending the interests of ecclesiastical parties, granted the number of sample writs and forms of actions that concern ecclesiastical interests (instead of connected with the Inns of Court). Its small format would have allowed for easy transportation and reference. The present manuscript is of further interest for its early binding and its local (Yorkshire and Lincolnshire) references.

PROVENANCE

1. Script and content suggest a 14th century date for this manuscript, copied undoubtedly in England, perhaps Yorkshire or Lincolnshire granted the references to these counties are heavily represented. The compiler of this Register is not known. A second quarter of the 14th century date for this manuscript seems probable. The first writ in the Register concerning land in Lincolnshire is tested by Edward II (1307-1327) in the first year of his reign (1307), and the latest fixed date is 27 March 1327 (f. 50). The manuscript must have been copied in the years following 1327. Isabella, Queen Consort of England is cited: "Rex balliuis Isabelle regine anglie consortis sue carissime M. salutem..." (f. 3). A certain W. archbishop of York ("archiepisopo Eboracensi") is cited a number

of times, ff. 4v, 49v, 51v, 56v. There is a sample writ to the Abbey of Saint-John of Beverley, located in Yorkshire (f. 50), and the first writ also concerns Beverley: "The king to his bailiffs of the honor of Beverley concerning the county of Lincoln..." (f. 1). There is a writ addressed to the official of the archbishop of Lincoln (f. 53), again a writ concerning the archbishop and the church of Lincoln (f. 56) *et passim*. The important number of references to forms of actions and writs relating to the Ecclesiastical group of writs suggests that the Register might have been copied for a religious house in Yorkshire or Lincolnshire.

2. Nineteenth-century owner's inscription: "McPhell (?) 1876" (front flyleaf, f. I).

TEXT

ff. I-VI, Renewed flyleaves, mostly blank, but with a few later 19th century notes, including a memorandum of the dates of the Statutes (f. V);

ff. 1-16v, Writs of right, beginning with a Writ of Right Patent, announced by marginal note, *Breve de recto. Patens*, incipit, "Edwardus dei gratia rex anglie dominus hiberniae et dux aquitanie balliuis suis de .M. salutem. Precipimus vobis quod sine dilacione plenum rectum teneatis Willermo de B. de uno mesuagio cum pertinenciis in .C. quod clamat tenere de nobis in liberum servicium unius denarii per annum pro omni servicio quod Robertus de C. ei deforciat. Et nisi feceritis vicecomes [...] faciat ne amplius inde clamorem audiamus pro defectu recti. Teste me ipso apud W[estmonasterium] [...] die anno regni nostri primo [1307] / Rex balliuis suis honore Beverelli in comitatu Lincolnensis [Beverley, Yorkshire]...";

ff. 16a-16b, blank;

ff. 17-31v, Statute of Westminster Secunde [Second Statute of Westminster] (1285), incipit, "[...] de banco nisi statuatur certus dies et locus..." [SR, I, 71-95] (begins incomplete);

ff. 31v-32v, Statuta *Quia Emptores* (1290), heading, *Incipit statutus quia emptores*; incipit, "Quia emptores terrarum..." [SR, I, 106];

Quia emptores allowed the purchase and sale of land, tacitly admitting that any personal relationship between lord and land holder was no longer basic to land tenure.

ff. 32v-35, Statuta *de Mercatoribus* [Statute of Merchants] (1285), heading, *Incipit statutus de mercatoribus*; incipit, "Pur ceo que marchauntz avant ces hures..." [SR, I, 98-100];

The Statute of Merchants, which provided for the protection of creditors, was an important statute and appears in a little over half of all Common Law statute books produced through the mid-fourteenth century, most frequently in books written in the second quarter of the fourteenth century. The Statute was passed in consequence of the complaints of merchants who could not recover their claims, because the lands of the debtors could not be sold for their debts.

ff. 35-36, *Districiones scaccarii* [Distresses of the Exchequer] heading, *Incipiunt districiones scaccarii*; incipit, "Pur ceo que la convalte du realme..."

ff. 36-42, Statute of the Exchequer, heading, *Incipit statuta scaccario*; incipit, "*Le roi veot que touz. . .*";

ff. 39a-39b, blank;

ff. 42-42v, Statute *de Quo Warranto* (1290), heading, *Incipiunt statuta de quo waranto* [SR, I, 107];

ff. 42v-45v, Statute of Winchester (1285), heading, *Incipiunt statuta wyntonensis* [ends incomplete] [SR, I, 96-98];

ff. 45a-45b, blank;

ff. 45-86, Additional Writs, with some headings as follows: *De presentatione ad ecclesiam* [Ecclesiastical Group]; *De prohibitione* (Prohibicio de catallis et debitis) [Ecclesiastical Group]; *De vasto* [On waste, Ecclesiastical Group]; *De replegiando* [Replevin and Liberty Group]; *Recordari* [facias]; *De rescussu averiorum* [Rescue of beasts]; *De homine replegiando*; *Cessavit*; *De forma donacionis* etc.

This is an early example of a practitioner's legal pocket handbook likely compiled for use in defending the interests of ecclesiastical parties, granted the number of sample writs and forms of actions that concern ecclesiastical interests. Its small format would have allowed for easy transportation and reference. The manuscript contains a Register of original writs and a selection of statutes (acts of Parliament). The first writ in the Register is tested by Edward II (1307-1327) at Westminster and the latest writ presents the fixed date of 27 March 1327 (f. 50), thus likely placing the date of copy for this manuscript in the second quarter of the fourteenth century. With a few exceptions, this register is written throughout in one hand.

Its contents can be divided into two parts. The Register proper covers ff. 1-16 and again ff. 46-86v. At ff. 17-45v are a selection of principal statutes from the reign of Edward I. One should note that the counties of Lincolnshire and Yorkshire are well represented, with frequent references to the archbishops of both cities and also two references to the town of Beverley in Yorkshire (See Provenance above). Such registers provide untapped sources for reconstructing judicial conflicts acted out in local and regional histories.

A Register of Writs is a formulary of real and fictitious examples of documents issued by the Royal Chancery and compiled by private lawyers and religious houses. According to Sir Edward Coke, the Register of Writs is "the name of a most ancient Book and of great Authority in Law." It consists of an enumeration of original writs current in the English Chancery, that is, writs originating actions. From these royal writs the common law descends (see E. De Haas and G.D.G. Hall, *Early Registers of Writs*, 1970, Selden Society, LXXXVII, p.xi). The text can be traced back to the twelfth century and was used by lawyers and religious houses as well as by members of the Chancery. It was continually modified and updated and the occasional blank spaces in the present manuscript are no doubt in anticipation of additions. The earliest extant manuscript of *Registrum brevium* dates from 1227 (see Winfield, 1925, p. 289), and the number of "copies of it in existence have so far baffled computation" (Winfield, 1925, p. 298). There is no uniform copy, and Registers of Writs varied according to the needs of the practitioner or official: "Each official might have his

own copy and transmit it to a successor who had his own idiosyncrasies, and no two copies are alike" (Winfield, 1925, p. 298).

The procedure in Common Law is executed by writ, and in order to have access to a court the complaint issued by parties had to fit into one of the existing forms of action, i.e. the original writs. The original writs were issued from the Chancery: they specified the nature of the complaint, the names of the parties, the object of the plea etc. Another great class of Common Law writs, the judicial writs, issued from the courts, concerned the steps and measures connected with litigation. These forms of action were collected in Registers of Writs: they were limited although over time they were increased by the Chancellor to meet the needs of legal development. The oldest surviving specimens of Registers of Writs are from the 1220s. New writs were devised as the law developed, and between the oldest copies and the first printed Register in 1531, the number of writs greatly expanded. Although an official "master Register" was most probably kept at the Chancery, numerous "unofficial" registers circulated in private hands, often copied as it is the case here with other material such as excerpts from the Statutes, useful in waging judicial battles.

The *Registrum Brevium* (or Register of Writs) is considered to be "the basis of the medieval common law, a guide to its leading principles, and a commentary upon their application" (W. S. Holdsworth, *A History of English Law*, London, 1923, II, p. 520). Bracton had asserted circa 1260 that "there ought to be a remedy for every wrong; if some new wrong be perpetrated, then a new writ may be invented to meet it" (see De Haas and Hall (1970), p. xii). Hence the Register expanded to such an extent that ultimately when it was printed in 1531, the writs covered over 700 pages (the first edition was printed by William Rastell in the reign of Henry VIII).

LITERATURE

De Haas, Elsa and G. D. G. Hall ed. *Early Registers of Writs*, London, Bernard Quaritch, 1970 (Selden Society, vol. 87).

Maitland, F. W. "The History of the Register of Original Writs," in *Collected Papers of F. W. Maitland*, Cambridge, 1911 (reprint Buffalo, 1981), volume 2, pp. 110-173.

Maitland, F.W. "The History of the Register of Original Writs III," *Harvard Law Review*, 3, no. 5 (1889), pp. 212-225.

McDermid, Richard T. W. *Beverley minster fasti [Texte imprimé] : being biographical notes on the provosts, prebendaries, officers and vicars in the church of Beverley prior to the dissolution*, Leeds, Yorkshire Archaeological Society, 1993.

Plucknett, T.F.T. *Statutes and Their Interpretation in the First Half of the Fourteenth Century*, Cambridge, 1922.

Skemer, D. "Reading the Law: Statute Books and the Private Transmission of Legal Knowledge in Late Medieval England," in *Learning the Law. Teaching and the Transmission of Law in England, 1150-1900*, ed. J. A. Bush and A. Wijffels, London, The Hambledon Press, 1999, pp. 113-131.

The Statutes of the Realm (from Henry I to Queen Anne) printed by command of the King, n.p., n.d., vol. I (1880) to IX (1822) [abbreviated as SR].

Thesaurus brevium, or a collection of approved forms of writs and pleadings. . . ., London, T. Basset, 1687.

Winfield, P. H. *The Chief Sources of English Legal History* (Historical reprints in jurisprudence and classical legal literature), Buffalo, 1983.

ONLINE RESOURCES

English Legal History Materials

<http://vi.uh.edu/pages/bob/elhone/elhmat.html>

Sixteenth-century Lawyer's Library

<http://www.law.harvard.edu/library/collections/special/>

Beverley Minster (Monastery)

http://en.wikipedia.org/wiki/Beverley_Minster

<http://www.beverleyminster.org/>