

The Origins of *quare impedit*

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The writ of quare impedit was, until the mid-nineteenth century, a standard real action for the recovery of advowsons. This article argues that the writ was most likely created between 1187 and 1196, and that it was, at least in part, a response to pressure from religious houses that acquired advowsons by charter of gift and were precluded from bringing the writ of right of advowson or the assize of darrein presentment.

In Easter term 1198, during the ninth year of the reign of Richard I, the abbot of Stanley appeared before the English royal justices to offer himself in a plea of *quare impedit presentationem* against Matthew fitz Herbert, a baron and prominent member of the royal court.¹ The abbot was suing Matthew on behalf of his monastery over the right to present a parson to the church of Stokenham, in Devon, claiming that this advowson, or right of presentation,² belonged to the monastery by gift from Matthew's mother-in-law, Mabel Patric. Matthew did not appear that day, but the litigation continued, and the parties were subsequently ordered to appear in court in Trinity term barring an interim settlement.³

While the litigation between Matthew and the monastery was pending, Mabel – or, more likely, someone writing in Mabel's name – sent a passionate letter to the royal justiciar, Geoffrey fitz Peter, confirming the monastery's side of the story.⁴ The letter explained that, out of concern for her soul and that of her father, Mabel gave the advowson of the church of Stokenham in perpetuity to God and the monks of Stanley and confirmed the gift by a charter. The person writing as Mabel emphasized that the gift was made before Mabel's daughter was married or even betrothed. 'Prostrated at your feet', concluded the supposed Mabel, 'I pray and seek with heart and soul that you, as a true friend of God and his servants, for the love of God and the salvation of your soul, establish a firm foundation for my gift and maintain the abovementioned servants of God in their right.'⁵

The affection for the monks and concern for her soul attributed to Mabel in this letter did not, it seems, last long. As the lawsuit between the monastery and Matthew progressed, the case spawned a separate plea between the

monastery and Mabel, with the abbot seeking to have Mabel defend her alleged gift in court.⁶ Mabel claimed that she could not appear on account of bed-sickness, and knights were sent to determine if Mabel wanted to warrant her gift.⁷ When the knights returned, they informed the court that, according to Mabel, she made the gift to the abbey at the queen's request⁸ and after Matthew had married her daughter, at which point the tenement to which the advowson was appurtenant was no longer in her hand. For this reason, the knights explained, Mabel did not wish to appear before the court or attorn anyone in her place.⁹ No judgment is recorded,¹⁰ and thus we do not know how the justices reconciled Mabel's letter, in which she said that the gift was made before her daughter's marriage, with the contradictory report from the knights.

This case is interesting on a number of levels. First, the case is an example of the importance of advowsons to the English nobility and religious houses. Whether their interest was based on a need for additional income (in the case of religious houses) or a desire to control a valuable source of patronage (in the case of laymen), parties were willing to fight over advowsons in the royal courts in lawsuits that could last for years. Second, the conflict between the letter and the knights' testimony reminds us that a historian must be sceptical in evaluating statements attributed to the parties to a lawsuit. If Mabel gave the advowson to the abbey after her daughter's marriage, then the letter sent to the justiciar does not speak the truth; if the letter correctly states the facts, then either Mabel had a faulty memory, Mabel lied to the knights, or the knights did not accurately report what Mabel said. Third, the case prompts questions about the situation that produced this particular property dispute. If Mabel lost her rights in the advowson when her daughter was married, as the knights implied, why was this so? One suspects that a grant in *maritagium* was involved, but the record of the case does not provide the details.¹¹

While all these issues may deserve attention, the present article will focus on a different point, which is not obvious from the face of the litigation. An underlying assumption of the case is that, even though they have not presented a candidate who was instituted as parson of the church, the monks have a cause of action against Matthew: namely, the action of *quare impedit*.¹² Had this litigation commenced only ten years earlier, however, the monks may well not have had such a remedy. The case between Matthew and the monks is one of the earliest surviving examples of *quare impedit*, and this article will argue that the new action was intended to cover this sort of case: a lawsuit brought against a layman by a religious house claiming an advowson by charter of gift.

It has long been recognized that the writ of *quare impedit* is quite early in origin, and that it was designed to give the donee of an advowson who had not yet presented a parson a remedy in the royal courts.¹³ Previous

scholarship, however, has neither set a firm date for the creation of the writ nor explained why a remedy for the donee was of special significance. This article argues that the writ of *quare impedit* was created near the end of the twelfth century, probably after 1187 and no later than 1196. Regarding the purpose of the writ, this article asserts that it was probably created, at least in part, in response to pressure from religious houses, which had been excluded from the assize of *darrein presentment* and were also unable to bring the writ of right.

Religious houses were not the only sort of plaintiffs that stood to benefit from *quare impedit*, but they frequently received advowsons by gift, and they had especial reason to lobby for a writ that catered specifically to donees. *Quare impedit* was that writ. Once the writ was created, however, it was popular among laymen as well, offering a third alternative to lay plaintiffs who could not, or did not wish to, bring the writ of right or the assize. *Quare impedit* quickly became a remedy of general application in disputes involving advowsons, and it remained a part of the common law long after the religious houses that originally benefited from it were dissolved.

ADVOWSON REMEDIES UNDER HENRY II

In the first clause of the Constitutions of Clarendon, promulgated in 1164, Henry II proclaimed that controversies concerning advowsons and presentation to churches, whether between laymen, between laymen and clerks, or between clerks, were to be decided in the royal courts.¹⁴ This sweeping statement appears to have both summarized existing practice and set forth an aspiration for the future. On the one hand, Clarendon was not the first manifestation of a royal desire to meddle in advowson disputes. For example, writs survive from 1156 in which Henry ordered the bishop of Norwich to restore certain advowsons to the abbot of St. Benet's Hulme.¹⁵ On the other hand, ecclesiastical courts did not immediately lose their jurisdiction over advowsons in 1164; disputes over presentation continued to be litigated in ecclesiastical courts into the thirteenth century.¹⁶ The conflict of jurisdictions was not completely resolved even by the time of *Bracton*, let alone the reign of Henry II.¹⁷

Because no plea rolls survive from the reign of Henry II, we cannot know for certain what remedies were initially available. In the *Chronicon* of Battle Abbey we hear of a case from the 1160s in which the abbey was prevented from exercising its right of presentation by a knight named Hamo Peche; the abbey commenced suit in both the royal and the ecclesiastical court, the former based on 'the violence of the knight', the latter on 'the intrusion of the clerk'.¹⁸ The reference to 'violence' suggests that the royal action might have been delictual in nature, but the author does not seem to have been

attuned to the fine distinctions of technical legal language. The sole writ that can be said with certainty to have existed from early in Henry's reign is the *precipe* writ of right.

The earliest examples of the *precipe* writ are directed at the bishop, ordering him to restore an advowson to an abbey, but they are writs for the enforcement of a prior judgment, not for the initiation of litigation. It is not clear what procedure was followed, although the writs refer to an 'oath of lawful men'.¹⁹ In another early case, the right to an advowson was decided by a special royal inquest called for the purpose.²⁰ By the end of Henry II's reign, however, the defendant could choose between battle and the grand assize, as with the writ of right of land.²¹

Whatever the procedure was for the writ of right in the late 1170s, the Third Lateran Council held in 1179 rendered it inadequate.²² Canon 17 of this council provided that, if putative patrons supported several candidates for institution to a benefice, that clerk would be instituted who had the greater merit and who was supported and chosen by the assent of the greater number. If such an election could not be made 'without scandal', the bishop would decide the matter as he thought best. Most importantly, if a dispute between the patrons dragged on for more than three months, or six months in the case of a dispute between ecclesiastical patrons, the bishop would automatically choose the parson himself.²³

After the Third Lateran Council, the royal courts needed a procedure that could quickly decide an advowson dispute before the passage of time triggered Canon 17 and gave the bishop the prerogative to choose his preferred candidate. The writ of right, which was decided either by battle or by the cumbersome procedure of electing four knights to choose twelve other knights for the grand assize, according to the election of the defendant,²⁴ and which turned on the sometimes complex question of who had the greater right in the advowson, was not such a remedy. This was probably the impetus for the creation of the assize of *darrein presentment*, which first appears in the sources beginning in 1180.²⁵

The assize of *darrein presentment* was one of several recognitions created by Henry II and his advisers, and, like *novel disseisin* and *mort d'ancestor*, was designed to offer an interim resolution to a property dispute based on recent possession.²⁶ The writ of *darrein presentment* summoned a jury 'ready to declare on oath which patron presented the last parson to the church in [a particular] vill, which is alleged to be vacant and of which [the plaintiff] claims the advowson'.²⁷ The defendant was allowed to raise certain exceptions, such as that an ancestor of the plaintiff, after the last presentation, gave the advowson to the defendant.²⁸ In such a case the assize would not proceed, and the parties would join issue on the exception.²⁹ However, a donee who had never presented could not successfully bring the

assize as a plaintiff against the person who last presented or his heir, as the jury would answer the question *quis advocatus presentavit ultimam personam* in favour of the defendant and that would end the matter.³⁰

The creation of the assize of *darrein presentment* affected the availability of the writ of right in cases where the plaintiff could not claim the last presentation. *Glanvill* tells us that a plaintiff who brings the writ of right must state whether or not he as his ancestor last presented. If the plaintiff claimed the last presentation, or asserted that some third party last presented, and the defendant claimed the last presentation for himself, the issue would be decided by the assize.³¹ However, if the plaintiff conceded that the defendant or one of the defendant's ancestors made the last presentation, 'without any recognition, the other party shall present one parson at least'.³² In other words, a plaintiff who must concede that his opponent or his opponent's ancestor made the last presentation was not only barred from recovering under the assize, he was also prevented from bringing the writ of right when the church was vacant.³³ The writ of right could be used to decide the right to present in the future, but, if *Glanvill* correctly states the law of his day,³⁴ not to resolve an immediate dispute over the presentation to a vacant church where the plaintiff conceded the last presentation.

One who received an advowson by gift faced a further impediment to bringing the writ of right. According to *Glanvill*, a plaintiff who brought a writ of right had to state in court that he or one of his ancestors was seised of the advowson in the time of Henry I, or since the time of Henry II's coronation (1154). In order to sustain such a claim, the plaintiff must further assert that he or his ancestor presented a parson at one of those times and that parson was instituted by the bishop.³⁵ A donee could not make such a claim. As *Bracton* would later explain, a donor could give his right in an advowson to a donee, 'but he cannot grant a hereditary action to anyone, where he must of necessity claim by descent'.³⁶ Thus, the abbot or prior of a religious house was required to state that he or his predecessor in office made the last presentation.³⁷ It would not suffice to state that some layman presented and subsequently gave the advowson to the monasteries.³⁸

Assuming these rules were enforced in the late twelfth century, prior to the development of *quare impedit*, a party asserting a right to an advowson by gift who could not claim the last presentation had few attractive options in the royal court. For example, suppose that Geoffrey, a layman, presented a parson named Warin to a particular church, and Warin was instituted parson by the bishop. Either before or after the institution of Warin, Geoffrey executed a charter in which he gave the advowson of that church in perpetuity to a monastery. Now suppose that Geoffrey dies, leaving an heir, Ralph; then Warin dies, and now the church is vacant. Ralph and the abbot both present candidates to the bishop.

At this point, Ralph has a choice. He could bring the assize of *darrein presentment* against the abbot, but if he does, the abbot will raise the exception that he received the advowson by gift from Geoffrey, and Ralph will offer a replication, claiming, for example, that Geoffrey presented Warin after the gift was made, thus negating the gift.³⁹ The question will be decided by a jury. Ralph could also bring the writ of right and rely on his ancestor's seisin, in which case the abbot could introduce his charter, offer a champion, or put himself on the grand assize.⁴⁰ Alternatively, Ralph could simply take no action in the king's court and wait for the bishop to choose between the candidates as mandated by the Third Lateran Council, gambling that the bishop will select Ralph's candidate.⁴¹

By contrast, the abbot can take no action in the king's court. He cannot bring a successful action of *darrein presentment* because he must concede that Ralph's ancestor presented the last parson. Moreover, if *Glanvill* correctly states the law, the abbot cannot bring the writ of right, both because he must concede the last presentation and because he cannot rely on the seisin of the donor.

If he is optimistic by nature, the abbot could sue anyway, and hope that Ralph will make some foolish mistake or the justices will not strictly apply the rules stated in *Glanvill*. Examples can be found from the early thirteenth century in which the justices, in fact, allowed a religious house to bring *darrein presentment* or the writ of right based on a charter of gift;⁴² the abbot might hope for leniency. But suppose the abbot is a pessimist: in that case, he will wait for Ralph to make his move. If Ralph brings *darrein presentment*, the abbot will rely on the gift and the jury will decide the matter. If Ralph brings the writ of right, the abbot has multiple options. But if Ralph chooses to wait, the outlook for the abbot in the king's court is bleak.⁴³ After the time limit set by the Third Lateran Council has elapsed, the parson will automatically be chosen by the bishop, who may or may not prefer the monastery's choice and who may be subject to influence by Ralph in the interim. In either case, prior to *quare impedit*, Ralph has the upper hand, because the rules of the king's court are stacked in his favour. If Ralph's candidate becomes parson, he will be difficult to dislodge.⁴⁴

DATING THE WRIT OF *QUARE IMPEDIT*

The writ of *quare impedit* solved the predicament of the abbot in the above example. This writ summoned the defendant to show 'why he impedes (*quare impedit*)' the plaintiff from presenting a suitable parson to a particular church, which the plaintiff says is vacant and of his donation.⁴⁵ This writ gave the donee a remedy while the church was still vacant – a condition explicitly stated in the writ – thus enabling him to pre-empt his rival's presentation by

commencing an action in the royal court. After the writ of *quare impedit* was created, the limitations on *darrein presentment* and the writ of right stated in *Glanvill* ceased to be of any real significance for donees.⁴⁶

It is relatively easy to set a *terminus ad quem* for the writ of *quare impedit*. The first three unambiguous references to *quare impedit* come from Hilary Term, 1196.⁴⁷ Because these three entries involve mesne process, they are clearly begun by writ rather than by plaint, although there is also an example from the same term of what appears to be a *quare impedit* action begun by plaint.⁴⁸ Thus, we can say with confidence that the writ of *quare impedit* was available by the beginning of 1196.

There are no clear examples of *quare impedit* in the plea rolls that survive from 1194, and it would be tempting to conclude on that basis that the action was created sometime in 1195. However, there are several examples in the plea rolls of cases that are in some entries clearly marked as *quare impedit*, but are referred to in other entries more vaguely as *placitum ecclesie* or *placitum advocacionis ecclesie*.⁴⁹ When the only entry that survives for a case records an essoin or attornment, it is often impossible to tell whether the case is *quare impedit* or a writ of right of advowson. Thus, the absence of explicit references to *quare impedit* in the plea rolls of 1194 does not prove that the writ had not yet been created.⁵⁰

One possibility, but an unlikely one, is that the writ of *quare impedit* predates both the Third Lateran Council and the assize of *darrein presentment*. The sole piece of evidence suggesting this comes from *Bracton*. Discussing the procedure to be followed when a defendant in a *quare impedit* action fails to appear or essoin on the appointed day, *Bracton* contrasts the procedure 'at one time, before the Lateran council', with the procedure of his day. *Bracton* asserts that, prior to the Council, 'when time did not run against presentors, impedians were attached by pledges and by better pledges, and the whole solemn course of attachment was observed'. Quoting from the canon law, however, *Bracton* explains that '[n]ow, however, for good reason and of necessity, since what would otherwise not be lawful necessity makes so, we must proceed more speedily because of the shortness of time', seizing the person of the defendant or distraining him by lands and chattels.⁵¹

Bracton's account could be read to mean that the writ of *quare impedit* existed before the Third Lateran Council and that the pre-Council procedure was changed following the Council to prevent the three months from running. The procedure that *Bracton* describes as having been changed after the Council, however, was actually standard in the early plea rolls. Defendants were attached first by pledges and then, if the pledges failed to appear, by better pledges.⁵² The procedure may have eventually been changed to prevent the three months from running during actions of *quare impedit*,⁵³ but whenever the change was made, it was decades after the Third Lateran Council.

It seems highly unlikely that *quare impedit* was created prior to the Third Lateran Council or, indeed, prior to the assize of *darrein presentment*. The first logical step in response to the Council was to create a swift action in the royal courts for resolving disputes based on the last presentation; not until this action was created would it have become evident that an equivalent action was needed to protect the donee who acquired an advowson by enfeoffment. Thus, *quare impedit* must have been created at some point between 1180 and 1196. The question is whether a more precise date can be set by reference to *Glanvill*.

Maitland failed to find any reference in *Glanvill* to *quare impedit*,⁵⁴ but Coke, in his *Second Institute*, stated that ‘the *quare impedit* is more ancient than the time of E. I. as appeareth by Glanvile’, citing *Glanvill* vi, 17, and xii, 20–21.⁵⁵ The second of these references is easy to dismiss; it sets forth the exception to *darrein presentment* that may be made by a tenant who has received the advowson by gift or other conveyance subsequent to the last presentation. Coke probably confused the exception granted to the donee with the later action of *quare impedit*. Coke’s first citation, however, demands more attention.⁵⁶

In book vi, chapter 17, *Glanvill* discusses a widow’s right of dower. After distinguishing between nominated dower and dower with no specific nomination, *Glanvill* first states that, if no specific dower is nominated, the heir must assign one-third of his ancestor’s entire tenement to the woman, and if there is only one church in the inheritance the heir cannot present without the widow’s consent.⁵⁷ *Glanvill* does not state what the widow’s remedy, if any, would have been if the heir presented without her consent, but it may have been the writ of right of dower, which orders the heir to do full right to the widow concerning her dower.⁵⁸ But *Glanvill* goes on to explain that, where the woman is given specific land as nominated dower and there is a church in that fee, ‘the woman shall have the free presentation to it after the death of her husband and can grant the church to any suitable clerk if it falls vacant’.⁵⁹ In this case the widow has the advowson for life, and it is reasonable to imply that she would have had a remedy if someone impeded her presentation.

As discussed above, *Glanvill* states that a plaintiff who brings a writ of right of advowson must rely on his own seisin or that of his ancestors. This would seem to exclude both the donee and the widow. However, it is possible that, when a widow claimed an advowson as part of her dower, she was allowed to step into the shoes of her late husband and bring the writ of right or the assize of *darrein presentment*. Indeed, a widow can be seen bringing the writ of right in this way in a case of 1203,⁶⁰ and the assize of *darrein presentment* was successfully used in a case of 1207,⁶¹ although one hesitates to infer from either case what the practice might have been in *Glanvill*’s day.⁶² In any event, while *Bracton* would later state that the widow would have the action of *quare non permittit*,⁶³ a close cousin of *quare impedit*,⁶⁴ it does not

follow that this is the action that *Glanvill* had in mind for the widow in his discussion of dower. A different writ could have been used in the 1180s before *quare impedit* provided the obvious remedy.

We must conclude that there is no clear reference to *quare impedit* in *Glanvill*. The question, then, is whether *Glanvill* would have mentioned the writ had it existed at the time the treatise was written. In his introduction, the author of *Glanvill* makes clear that his aim is not to write down all the 'laws and legal rules of the realm', which would be 'utterly impossible'. Rather, *Glanvill* set out to commit to writing 'some general rules frequently observed in court' which would be 'very useful for most people and highly necessary to aid the memory'.⁶⁵ We cannot necessarily assume, simply because the action of *quare impedit* does not appear in *Glanvill*, that it was created after the treatise was completed. Cases of *quare impedit* appear with some regularity in the early plea rolls from 1196 on, but the writ was less common than *darrein presentment*, not to mention the various actions relating to land. One could therefore argue that *Glanvill* neglected to include *quare impedit*, it being a somewhat unusual action at the time.

However, it is unlikely that the author of *Glanvill* would have neglected to mention *quare impedit* had it existed at the time the treatise was written. The action would have been relatively new and important, albeit infrequent. Given the amount of space that *Glanvill* devotes to advowsons, it would have been strange to omit any discussion of *quare impedit* had the writ been in existence. Moreover, as discussed above, the treatise says that a plaintiff who brings a writ of right will fail in his action if the church is vacant and the plaintiff concedes that the defendant presented the last parson; in such a case, 'without any recognition, the [defendant] shall present one parson at least'.⁶⁶ This statement is accurate only if there was no other action available to the plaintiff. Had the writ of *quare impedit* existed at the time *Glanvill* was written, the treatise author would have qualified his assertion by explaining that the plaintiff thus prevented from bringing a writ of right had another remedy that did not turn on who made the last presentation. Because *Glanvill* makes no such qualification, the better reading of the text is that the action of *quare impedit* did not yet exist.

Glanvill was probably completed at some point at the end of the reign of Henry II, between 1187 and 1189.⁶⁷ We can say, therefore, that the writ of *quare impedit* was created towards the end of the twelfth century, most likely after 1187 but definitely by the beginning of 1196.⁶⁸

EARLY CASES OF *QUARE IMPEDIT*

Of the six cases from the reign of Richard I that can positively be identified as *quare impedit*, four involve religious houses, and in three of the four the

religious house is the plaintiff.⁶⁹ The three earliest cases involving a religious house, from Hilary term 1196, record only a failure to appear, and thus the basis for the lawsuit cannot be divined from the evidence. However, based on the fourth case, that between the abbot of Stanley and Matthew fitz Herbert, discussed above,⁷⁰ and other similar cases from the reign of John,⁷¹ we may suspect that the religious house was claiming the advowson by gift as attested in a charter, and the dispute turned on the timing, validity, or effect of the gift.⁷² Some of these cases may have resembled the hypothetical dispute between Ralph and the abbot described above.

Given the involvement of religious houses in the early actions of *quare impedit*, it is not unreasonable to conclude that the writ was created, at least in part, in response to pressure from the monasteries. A religious house usually traced its right in an advowson back to some gift by a layman, and in many cases that layman, and not the religious house, had made the last presentation. Religious houses frequently found themselves in this position, and they probably used whatever influence they had at the royal court to create a remedy that would cater to donees.

Because the religious houses usually based their claims on charter evidence, Chancery might have been particularly receptive to their pleas in the late twelfth century. In the centuries following the Norman Conquest, written charters proliferated in England and parties began routinely to record important transactions in writing.⁷³ At first, these parties were generally religious houses, but, with the spread of literacy, charters would become increasingly common at all levels of society.⁷⁴ In this environment, it may have seemed only fair to give parties whose claim was based on a charter of gift an equal opportunity to sue for their right. However, one swallow does not a summer make, and the creation of *quare impedit* by itself does not prove that Chancery had adopted a broad policy of encouraging written evidence. In any event, not all cases brought under *quare impedit* involved charter evidence, and the subsequent history of the writ is more complex.

It is clear that laymen used the writ of *quare impedit* from an early date. In some cases, a layman had obtained an advowson by gift, in which case he found himself in a similar position to the monasteries and chose to bring a writ of *quare impedit*.⁷⁵ But other lay plaintiffs in the early cases of *quare impedit* may have held by dower or curtesy;⁷⁶ at some point, *quare impedit* would become the exclusive remedy for such plaintiffs, and it may have been at least a preferred remedy for them from quite early on.⁷⁷ A widow could also bring *quare impedit* to claim an advowson as part of her *maritagium*.⁷⁸ Sometimes the writ of *quare impedit* could be used as an alternative to the writ of right in order to circumvent the rule that rendered the writ of right useless when the church was vacant, if indeed that rule was

still enforced in the thirteenth century.⁷⁹ When a plaintiff conceded that the defendant last presented, but claimed that the presentation was during the plaintiff's wardship, *quare impedit* offered the appropriate remedy.⁸⁰ Moreover, by the second decade of the thirteenth century, plaintiffs brought *quare impedit* when they claimed the advowson on behalf of a ward.⁸¹ In short, over the course of the thirteenth century, *quare impedit* came to serve useful purposes for plaintiffs both lay and religious, and charter evidence was not always involved.

CONCLUSION

Although the monasteries played a key role in the development of *quare impedit*, the remedy outlasted the monasteries by centuries and became the principal writ for recovery of advowsons. After the early fourteenth century, the use of the other advowson writs became rare, and *quare impedit* became the dominant form of action.⁸² By the time of Blackstone, *quare impedit* was the sole action used by a plaintiff whose patronage of an advowson had been disturbed.⁸³ An early nineteenth century treatise on advowsons devotes 27 pages to the action of *quare impedit*.⁸⁴ *Quare impedit* was one of the few real actions to survive the Real Property Limitation Act of 1833, which abolished both the writ of right of advowson and the assize of *darrein presentment*.⁸⁵ Not until 1860 was *quare impedit* finally abolished, when the real actions were replaced by the writ of summons.⁸⁶ Like other actions in the common law, the writ of *quare impedit* proved more useful and long-lasting than its creators were likely to have imagined.⁸⁷

NOTES

The following abbreviations and abbreviated citations are used in this article:

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| BNB | <i>Bracton's Note Book</i> , ed. F.W. Maitland, 2 vols., London, 1887 |
| <i>Bracton</i> | <i>Bracton on the Laws and Customs of England</i> , ed. George E. Woodbine and trans. Samuel E. Thorne, 4 vols., Cambridge, MA, 1968–77, repr. Buffalo, NY, 1997 |
| CRR | <i>Curia Regis Rolls</i> , 18 vols., London, 1922 |
| <i>Glanvill</i> | <i>The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill</i> , ed. and trans. G.D.G. Hall, Oxford, 1965, repr. with further commentary by M.T. Clanchy, 1993 |
| Lincs. | <i>The Earliest Lincolnshire Assize Rolls, A.D. 1202–1209</i> , ed. Doris M. Stenton, Lincoln Record Society, 1926 |
| PKJ | <i>Pleas before the King or his Justices, 1198–1212</i> ; ed. D.M. Stenton, 4 vols., Selden Society, vols. 67, 68, 83, 84, London, 1948–67 |
| 14 PRS | <i>The Rolls of the King's Court in the Reign of King Richard the First, A.D. 1194–1195</i> , ed. Frederick William Maitland, Pipe Roll Society, vol. 14, London, 1891 |

- 31 PRS *Memoranda Roll for the Tenth Year of King John [etc.]*, ed. R. Allen Brown, Pipe Roll Society, vol. 31, New Series, London, 1955
- RCR *Rotuli Curiae Regis*, ed. F. Palgrave, 2 vols., London, 1835
- SS Selden Society
1. 1 CRR, 44 (Pas. 1198). For the details of this case, see D.M. Stenton's description at 1 PKJ, 8 and 352–53. Stenton states that Matthew fitz Herbert 'was a powerful royal servant as well as an important baron'. 1 PKJ, 8. It is possible that Matthew's wife Joan was the daughter of William of Mandeville, baron of Erlestoke in Wiltshire. See I.J. Sanders, *English Baronies: A Study of Their Origin and Descent, 1086–1327*, Oxford, 1960, 42.
 2. An advowson is 'the right to present a clerk to the bishop for institution as parson of some vacant church; the bishop is bound to institute this presented clerk or else must show one of some few good causes for a refusal'. F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I*, 2 vols., 2nd edn., Cambridge, 1898, repr. 1968, vol.2, 136. Advowsons were valuable sources of patronage in medieval England and frequent objects of litigation.
 3. 1 RCR, 313 (Pas. 1199).
 4. 1 PKJ, no.3475 (circa 1199).
 5. '*Ideoque precor uos et requiro . . . corde et animo ad pedes uestros prostrata . . . quatinus hanc elemosinam meam pro Dei amore et salute anime uestre stabilem faciatis habere firmitatem et seruos Dei supramemoratos in iure suo sicut uerus Dei amicus et seruorum eius manuteneatis*'. Ibid.
 6. 1 CRR, 142 (Hil. 1200). The entry refers to a '*placito waranti carte*'.
 7. 2 RCR, 226 (Pas. 1200). This procedure is different from the usual practice of the thirteenth century, in which the knights are sent simply to determine whether the person is actually sick; here they are sent to determine '*si vellet warrantizare donum suum*', the substantive issue in the lawsuit.
 8. The record does not indicate which queen is meant.
 9. '*[D]icitur quod ipsa dixit quod ipsa, postquam Matheus filius Hereberti duxerat in uxorem filiam suam et de ipsa liberos habuerit, prece domine regine fecit cartam monachis predictis et eo tempore quo terra ad quam abbatia [recte advocatio] illa pertinet non fuit in manu sua, et quod ipsa non vult coram iusticiariis venire nec aliquem loco suo attornare*'. 1 CRR, 201 (Trin. 1200).
 10. The last entry involving Matthew and the abbot records a postponement by the king's command in what appears to be a separate case involving the advowson of Chillington. 1 CRR, 301 (Mich. 1200).
 11. On grants in *maritagium* in general, see Joseph Biancalana, *The Fee Tail and the Common Recovery in Medieval England, 1176–1502*, Cambridge, 2001, 37–69.
 12. The treatise known as *Bracton* distinguishes between two differently worded writs, the writ of *quare impedit* and the writ of *quare non permittit*, with the former being available when the plaintiff has '*quasi-seisin* and right of some kind and to some degree', and the latter available when the plaintiff has '*no seisin at all, or quasi-seisin through the causa of gift*' or other special circumstances. *Bracton*, iii, 230 (f. 247). *Bracton* says that the two writs 'amount to practically the same thing'. Ibid. at 231. The early plea rolls do not clearly distinguish between the two writs, and there is no real difference between them except in the wording. Accordingly, this article will use the term *quare impedit* to refer generally to all actions that might be classified as either *quare impedit* or *quare non permittit*.
 13. Edward Coke, *The Second Part of the Institutes of the Laws of England*, ca. 1630, publ. 1642, repr. London, 1817, facsimile edn., Union, NJ, 2002, 356; Pollock and Maitland, II, 139.
 14. William Stubbs, *Select Charters and Other Illustrations of English Constitutional History*, 9th edn., ed. H.W.C. Davis, Oxford, 1921, 164.
 15. *English Lawsuits from William I to Richard I*, ed. R.C. Van Caenegem, London, 1990–91, 106–07 SS, nos.354 and 355 (1156).
 16. J.W. Gray, 'The *Ius Praesentandi* in England from the Constitutions of Clarendon to Bracton', 67 *English Historical Review* (1952), 481–509, at 481.

17. *Ibid.*, 508.
18. *English Lawsuits*, no.445.
19. *Ibid.*, nos.354 and 355.
20. *Ibid.*, no.365 (1156 X 1157).
21. This is the procedure described in the treatise known as *Glanvill*. *Glanvill*, 45–7 (bk.iv, chs.2–6).
22. R.C. Van Caenegem, *Royal Writs in England from the Conquest to Glanvill*, London, 1959, 77 SS at 332.
23. *Conciliorum Oecumenicorum Decreta*, ed. Joseph Alberigo, Freiburg, 1962, 196 (c.17, regarding lay patrons); 191 (c.8, regarding ecclesiastical patrons). These canons are included in the *Liber extra* as X 3.38.3 and 3.38.22 respectively. The *Editio Romana* has the time limit for lay patrons as four months rather than three, but three months appears to have been the time limit originally set by the Council. The sources do not make clear what the time limit would be for disputes between a lay patron and a religious house, but the bishop would certainly step in after six months at least.
24. *Glanvill*, 30–31 (ii, 11); 47 (iv, 6).
25. Van Caenegem, *Royal Writs*, at 332–3. The earliest reference to the assize of *darrein presentment* dates to 1180. *English Lawsuits*, no.518. An 1182 entry in the pipe rolls may also refer to the assize of *darrein presentment*, though it could also refer to the grand assize. *Pipe Roll 28 Henry II*, 83 (1182) (*'Radulfus Ferrariis reddit compositum de 10 marcis pro respectu de recognitione cujusdam ecclesie'*).
26. Of course, the story of *novel disseisin* and *mort d'ancestor* is complicated; there has been much debate as to the extent to which these reforms were meant to upset the existing feudal framework. See S.F.C. Milsom, *The Legal Framework of English Feudalism*, Cambridge, 1976; for reactions to Milsom, see, among others, Robert C. Palmer, 'The Origins of Property in England', 3 *Law & History Review* (1985), 1–50; Joseph Biancalana, 'For Want of Justice: Legal Reforms of Henry II', 88 *Columbia Law Review* (1988), 433–536 at 435–41; Paul Brand, 'The Origins of English Land Law: Milsom and After', in *The Making of the Common Law*, London, 1992. See also John Hudson, *Land, Law, and Lordship in Anglo-Norman England*, Oxford, 1994, 253–81. *Darrein presentment* does not involve the same concerns, as the lord/vassal relationship was not generally implicated in advowson disputes (although, if the advowson was appurtenant to a tenement, the tenement certainly was held of some lord).
27. *Glanvill*, 161 (xiii, 19). *Glanvill* seems to have omitted the requirement that the presentation was *tempore pacis*; or perhaps this requirement was added later. For an early writ including the phrase *tempore pacis*, see 1 PKJ, no.3497 (July 1199).
28. *Glanvill*, 162 (xiii, 20).
29. *Ibid.*
30. *Glanvill* states that, when the assize proceeds in the presence of one or both parties, '*is cui sui uel alicuius antecessorum suorum gratia adiudicabitur ultima presentatio eo ipso saisinam ipsius aduocationis intelligitur dirationasse'*. *Glanvill*, 161 (xiii, 20). Thus, a gift ought to be irrelevant once the assize proceeds, and *Bracton*, iii, 205 (f.238) forcefully states that only someone who has presented in his own name, or his heir, could bring the assize. But the plea rolls from the early thirteenth century seem to show more flexibility; juries sometimes explained in their verdict that the plaintiff had received the advowson by gift, and a gift might be discussed after the verdict even if the jury had not mentioned it. See 1 CRR, 431 (Pas. 1201); 4 CRR, 97–8 (Pas. 1206); 7 CRR, 67 (Hil. 1214); 13 CRR, 354 no.1675 (Pas. 1229).
31. *Glanvill*, 43 (iv, 1).
32. *Ibid.*, 44 (iv, 1).
33. Gray, 'Ius Praesentandi', 488.
34. This rule was not strictly followed in the decades after *Glanvill*. In 2 RCR, 201–2 (Pas. 1200), which appears to be an action of right, a monastery sued the donor's heir, offering a charter of donation; the heir responded that the church was vacant and his ancestors had made the last presentation, and sought to have a jury decide the issue of the last presentation.

The case was adjourned to Trinity term, and the abbot eventually prevailed. See 1 CRR, 238 (Trin. 1200). Though it is not clear from the fragmentary record if his success had anything to do with whether the church was vacant, the fact that the lawsuit did not immediately stand over when the heir raised the exception of voidance suggests that the rule was not applied.

35. *Glanvill*, 46 (iv, 6). As discussed below, it is not clear whether, in *Glanvill's* day, a widow would have been allowed to make this claim with respect to her dower on the basis of the seisin of her husband or his ancestor.
36. *Bracton*, iv, 178 (f.376). See 3 BNB, 457 no.1578 (Hil. 1223); 2 BNB, 383 no.488 (Hil. 1231).
37. *Bracton*, iv, 175–6 (ff.374–5).
38. See Lincs., 78 no.449 (1202), in which an abbot brought a writ of right on the basis of a charter of gift, and the suit was dismissed '*quod nichil dictum est per quod aliqua diracionacio fiat*'. This rule probably also accounts for 2 CRR, 173 (Hil. 1203), where a prior lost his suit '*quia . . . petit alterius jus per cartam sibi datam et non suum jus proprium*'. However, numerous examples can be found in the early plea rolls where the justices seem not to have applied the rule. See, for example, 14 PRS, 122–3 (Trin. 1194) (lay plaintiff claims an advowson by gift from his father); 1 CRR, 151 (Hil. 1200) (prioress recovers against a donor); 2 RCR, 201–2 (Pas. 1200); 1 CRR, 238 (Trin. 1200) (abbot claims by gift of the defendant's father, and prevails); 1 CRR, 471 (Pas. 1201) (abbot claims by gift in a writ of right); 4 CRR, 126 (Pas. 1206) (prior brings a writ of right based on a charter of gift, and the case is allowed to go forward). All these cases may have been brought by writ of right, though the standard reference to '*jus*' is not always recorded.
39. 1 CRR, 240 (Trin. 1200); 1 CRR, 431 (Pas. 1201); 3 CRR, 152 (Trin. 1204).
40. For an early case where a religious house defended against a writ of right by offering a charter of gift and various confirmations, see 1 RCR, 391–2 (Trin. 1199). But in most cases brought by writ of right the defendant simply offered a champion or put himself on the grand assize; thus it is rare to see a case where the defendant is explicitly claiming by gift.
41. Ralph's candidate might also have a remedy in the ecclesiastical court, despite the bold statement made at Clarendon. Gray, '*Ius Praesentandi*', 481, 496. The existence (or otherwise) of remedies in ecclesiastical court for the recovery of advowsons is beyond the scope of this article.
42. See notes 30, 34 and 38 above. One must be careful, however, about drawing any conclusions from the cases of the early thirteenth century, after *quare impedit* was created, about the application of the rules in the twelfth century.
43. Again, the abbot or his candidate might have an action in the ecclesiastical court.
44. According to *Glanvill*, 50 (iv, 10), by a rule established by the king a clerk wrongly instituted cannot be removed during his lifetime. This may not be an accurate statement of canon law, although the relevant canon law text can be interpreted in different ways. See Gray, '*Ius Praesentandi*', 488 n.4; for a different view, see Mary Cheney, '*The Compromise of Avranches of 1172 and the Spread of Canon Law in England*', 61 *English Historical Review* (1941), 177–97 at 193. In any event, the rule certainly prevented any action from being taken against the incumbent in the royal courts.
45. For an early case setting forth all these elements of the writ, see 2 CRR, 36 (Mich. 1201). The earliest example of the writ itself may come from *Bracton*, who, as discussed above, distinguishes between *quare impedit* and *quare non permittit*. The latter includes the *que vacat* clause and concords with the writ as seen in the earliest plea rolls. *Bracton*, iii, 230 (f.247). The writ also appears in a pre-Mertonian register of writs dating from early in the reign of Henry III, again with the *que vacat* clause. See *Early Registers of Writs*, ed. Elsa de Haas and G.D.G. Hall, London, 1970, 87 SS at xl, 31 (CA, no.52).
46. The earliest plea rolls reflect some uncertainty about how a *quare impedit* suit was to be resolved. In 1 CRR, 111 (Hil. 1199), the defendant put himself on the jury or, alternatively, on the grand assize. This suggests some early confusion as to whether *quare impedit* was more akin to the writ of right or to *darrein presentment*. In another case, the defendant thought it wise to offer one mark to the justices to have a jury. 1 CRR, 386 (Hil. 1201).

47. 1 CRR, 18 (Hil. 1196) ('*placito impediacionis presentacionis ad ecclesiam*'); 31 PRS 79 (Hil. 1196) ('*placito impediacionis persone ad ecclesiam*'); 31 PRS 90 (Hil. 1196) ('*placito impedimenti presentare idoneas personas ad ecclesias*').
48. 1 CRR, 19 (Hil. 1196) appears to be a *quare impedit* action, though it does not use the word *impedio*; its use of the word *conqueritur* rather than *petit* led Richardson and Sayles to think that the action was available by plaint before it was formalized as a chancery writ. H.G. Richardson and G.O. Sayles, *Select Cases of Procedure Without Writ under Henry II*, London, 1941, 60 SS at cv. Richardson and Sayles, however, evidently failed to notice 1 CRR, 18, which records a failure to appear and an attachment by better pledges, and did not have access to 31 PRS 79 and 90, which also involve mesne process. Cases begun by plaint do not, as a rule, refer to mesne process. Richardson and Sayles, xlvi. Moreover, it is by no means clear that the use of *queritur* or *conqueritur* during this period always signifies an action begun by plaint. The word *queritur* is used in 1 CRR, 193 (Trin. 1200), but various other entries relating to the case record mesne process, which means that the action was begun by writ. See 2 RCR, 7 (Mich. 1199) (failure to appear and attachment); 1 PKJ, 219 (Mich. 1199) (essoins); and 1 CRR, 115 (Hil. 1200) (replevin of advowson taken into king's hand), all involving the same case as 1 CRR, 193. Thus, while the action of *quare impedit* may have been available by plaint by the beginning of 1196, it was also available by writ during the same term, and it is impossible to say whether *quare impedit* suits were brought by plaint before they were brought by writ.
49. For example, compare 2 RCR, 7 (Mich. 1199) ('*placito quare impedit presentacionem*') with 1 CRR, 126 ('*placito ecclesie*'). Both entries refer to the same case.
50. 14 PRS, 32 (Trin. 1194), could conceivably be a *quare impedit* suit; the record gives no indication of what writ was used.
51. *Bracton*, iii, 231 (f. 247) (quoting X.5.41.4).
52. 1 CRR, 18 (Hil. 1196) (attachment by better pledges after the first pledges failed to appear); 1 CRR, 209 (Trin. 1200) (attachment by pledges); 2 CRR, 176 (Hil. 1203) (attachment by pledges).
53. However, as late as 1235–36, the court of King's Bench held that it was error for the justices of the common pleas to award the plaintiff seisin by default in a *quare impedit* suit after the defendant's initial failure to appear, explaining that the justices should have followed the process of attachment by pledges and then by better pledges and finally *per corpus*. 3 BNB 179 no.1166 (Cor. Reg. 1235–36). This is not the abbreviated procedure described in *Bracton*; perhaps the issue was being debated at the time and the treatise author was expressing one point of view, shared by some but not all of the justices.
54. Pollock and Maitland, II, 139.
55. Coke, *Second Institute*, 356.
56. The author is grateful to Dr. Paul Brand for explaining the relevance of Coke's first citation.
57. *Glanvill*, 67 (vi, 17).
58. *Glanvill*, 60–61 (vi, 4–5).
59. '[S]i fuerit terra aliqua data alicui mulieri in dotem nominatim ita quod ecclesia aliqua in feodo illo sit fundata, post mortem mariti habebit mulier liberam inde presentationem ita quod clerico cuilibet idoneo poterit ecclesiam ipsam concedere si uauerit'. *Glanvill*, 67 (vi, 17). *Glanvill* goes on to state that the widow cannot give the advowson to a religious house.
60. 2 CRR, 228 (Pas. 1203). The widow claims the advowson as pertaining to her dower, and offers to prove this by a free man; although the widow claims that the last presentation was made by her father-in-law, at no point does the defendant argue that the action should not proceed for this reason.
61. 5 CRR, 84 (Mich. 1207). In this case, the widow had remarried, and she and her husband brought the assize to recover an advowson as appurtenant to a tenement that her former husband gave her in dower, claiming that the last presentation was made by the first husband's father. Judgment was for the plaintiffs.
62. *Glanvill*'s rules may not always have been followed in the thirteenth century, and thus it is possible that these cases are mere deviations from the rule.

63. *Bracton*, iii, 230 (f.247).
64. See *supra* note 12.
65. *Glanvill*, prologue at 3.
66. *Glanvill*, 44 (iv, 1).
67. G.D.G. Hall, *Introduction to Glanvill*, xxxi. Of course, it is possible that the portions of the treatise relating to advowsons were written earlier, but if *quare impedit* had been created in the interim, one would expect the author to have mentioned it in the finished product.
68. A search of the late twelfth century Pipe Rolls prior to 1196 revealed no references to *quare impedit*. Nor does the action appear in the collection of lawsuits culled from cartularies by R.C. Van Caenegem for the Selden Society. See *English Lawsuits*.
69. 1 CRR, 18 (Hil. 1196); 31 PRS, 79 (Hil. 1196); 31 PRS, 90 (Hil. 1196); and 1 CRR, 44 (Pas. 1198) all involve a religious house; in all but 31 PRS, 79, the religious house is the plaintiff. 1 CRR, 101 (Hil. 1199) and 1 CRR, 111 (Hil. 1199) do not involve a religious house. This count excludes 1 CRR, 19 (Hil. 1196), which cannot definitely be identified as *quare impedit*, although it looks like it; a religious house is also plaintiff in that case.
70. 1 CRR, 44. See above.
71. See, for example, 2 RCR, 171 (Pas. 1200), a dispute between the prior of Lenton and William of St. Patrick in which the prior claimed by gift from William's grandfather and William responded that the gift was made when his grandfather was ill; and 5 CRR, 145 (Hil. 1208), where the prior of Alvingham claimed by gift from the defendant's uncle and the defendant responded that the charter was sealed after his uncle's death. The pattern is extremely common in early cases of *darrein presentment*, although the parties are usually reversed and the religious house is the defendant. Sometimes both the layman and the religious house claimed by charter, as in 2 RCR, 200 (Pas. 1200).
72. Generally, such a dispute would be between the religious house and the donor's heir; the abbot of Stanley's case is unusual in that the donor was still alive and was not a party to the original lawsuit.
73. M.T. Clanchy, *From Memory to Written Record: England 1066–1307*, Oxford, 1993, 44–80. See also S.E. Thorne, 'Livery of Seisin', 52 *Law Quarterly Review* (1936), 345–64, at 349 ('With the growth of written record . . . it becomes possible to substitute written for oral memory, to provide testimony more permanent than that of mortal witnesses, by having a charter drawn at the conclusion of the ceremony on the land which can effectively be put in the place of the witnesses who attest it').
74. Clanchy, *From Memory to Written Record*, 76.
75. 2 RCR, 200 (Pas. 1200); 4 CRR, 75 (Hil. 1206); 6 CRR, 225 (Hil. 1212).
76. For an example of a *quare impedit* action brought by a widow to recover an advowson held in dower, see 6 CRR, 10 (Hil. 1210), 297 (Trin. 1212); this case is interesting because the parties agreed that the plea '*non potuit teneri*' in light of the fact that the plaintiff's '*warantus*', probably her son, was underage.
77. *Bracton* tells us that *quare impedit* (or rather, *quare non permittit*) was the appropriate remedy for widows who held advowsons as part of their dower and widowers who held by curtesy. *Bracton*, iii, 230 (f.247). However, as discussed above, the writ of right and/or *darrein presentment* may have been available for these plaintiffs in the early thirteenth century, see 2 CRR, 228 (Pas. 1203); 5 CRR, 84 (Mich. 1207), and widows and widowers were sometimes allowed to bring *darrein presentment* even in the late 1220s. In 1227, a widow was allowed to bring an assize of *darrein presentment* to claim an advowson as part of her dower, though she lost the case on the merits, see 13 CRR, 59 No. 266 (Trin. 1227) (2 BNB, 215 No. 261), and a widower who held an advowson by curtesy was allowed to recover by *darrein presentment* in 1229, see 13 CRR, 320 No. 1495 (Hil. 1229) (2 BNB, 268 no.319). Perhaps the author of *Bracton* was stating the rule as he thought it should be, rather than the rule actually applied in the courts.
78. See Lincs., 39 no.239 (1202). In this case the widow offered her father's charter to show that the advowson was part of her *maritagium*.
79. 1 CRR, 436 (Pas. 1201). See *Glanvill*, 44 (iv, 1), for the rule.

80. 6 CRR, 160 (Mich. 1211) (plaintiffs, a husband and wife, claim that the defendant presented the last parson while the wife was in his wardship).
81. 6 CRR, 170 (Mich. 1211); 6 CRR, 352 (Trin. 1212).
82. Robert C. Palmer, *Selling the Church: The English Parish in Law, Commerce, and Religion, 1350–1550*, Chapel Hill, 2002, 20-22.
83. William Blackstone, *Commentaries on the Laws of England*, 4 vols., Oxford, 1768, repr. Chicago, 1979, vol.3, 246. The later action of *quare impedit* differed from the writ of the early plea rolls in that not only the 'pseudo-patron' but also his clerk and the bishop were joined as defendants. *Ibid.* at 248. The essence of the action, however, was the same.
84. John Mirehouse, *A Practical Treatise on the Law of Advowsons*, London, 1824, 265–92.
85. 3 & 4 Will. 4, c.27, § 36.
86. Common Law Procedure Act, 23 & 24 Vict., c.126, § 26.
87. The author would like to thank April Anderson, John Baker, Harold Berman, Joseph Biancalana, Paul Brand, Marcia Colish, Charles Donahue, Jr., Paul Freedman, Lisa Harday, Richard Helmholz, John Langbein, Andrew Lewis, Janet Loengard, Robert Palmer, James Whitman, Anders Winroth, and participants in the legal history forum at the Yale Law School for their comments, suggestions, and encouragement. The author alone is responsible for any error.

