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READINGS AND MOOTS AT THE INNS OF COURT IN THE FIFTEENTH CENTURY

VOLUME II
MOOTS AND READERS' CASES

EDITED FOR THE SELDEN SOCIETY BY
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one of us, that shall serve him against both of us, because one shall not put his life
twice in jeopardy for one same felony.

And Frowyk and Brudenell thought clearly that here the defendant must do
battle with all the plaintiffs in an appeal together, and if he vanquishes one of
them in the field that is a discharge against them all, like a release by one. And
they said that if the battle is done only [between] one plaintiff and the defendant,
who vanquishes the plaintiff, the trial is nothing but a jeofail; and his death shall
abate the writ, and the others shall both have a fresh appeal by survivorship.
(That differs from the reader’s view.) But Brudenell thought that where the
defendants in an appeal join in one plea, such as Not guilty, they must join in trial
by the country [or] in battle. (Query this.)

[104] In an indictment or an appeal the defendant shall have his peremptory
challenges, [which he does not have] in other actions, because when his life is at
risk he is so troubled in his mind through fear of death that he has neither the
boldness nor the presence of mind to show cause; and because the law presumes
that he has a secret cause in his mind, which he does not know how to show in a
suitable manner, he may therefore challenge thirty-five peremptorily without
showing cause. This is in favour of his life in these cases, more than in other
actions. And he said he had seen it adjudged that where the defendant on
indictment challenged a juror for insufficiency of freehold he was received on the
same day to challenge him peremptorily, but it was never doubted that on
another day the peremptory challenge would be bad. And he said that if a sheriff
receives money from the plaintiff to make a panel, but does not return anyone at
[the plaintiff’s] nomination, this is not a principal challenge. (Query.)

[105] A jury finds for the plaintiff, and the judgment is reversed by [writ of]
error; then one of the same jurors is made sheriff; in another action on the
same matter, on which issue [is joined], this is a principal challenge to the
array, according to Littleton, reader.

Frowyk to the contrary. Nor is it a challenge to the poll if one of that venire
facias was one of the former jurors, because it is presumed that upon better
information and evidence the same jurors may change their first verdict. And it is
not improper on such considerations, because at common law before the new
statute it was no challenge when a party was arraigned to say that one of the
jurors now returned was one of his indictors. That fully proves this case; and of
that you may see the opinion of the justices in 8 Edw. IV. That was where on an
indictment for trespass the defendant pleaded Not guilty, and on the venire facias

1 The subject of challenges is discussed in Littleton’s reading, CUL MS. Hh. 3, 6, fo. 8v.
2 25 Edw. III, st. 5, c. 3 (SR, II, 320).
3 Presumably Pas. 7 Edw. IV, fo. 4, pl. 11. Cf. Mich. 8 Hen. IV, fo. 2, pl. 4; Mich. 18 Edw. IV, fo. 13,
pl. 8.