The History of Ewyas Lacy

Document Record

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Title: Digital Images Collection: Dispute over Land at Longtown Castle – Photograph of Barrister's Brief

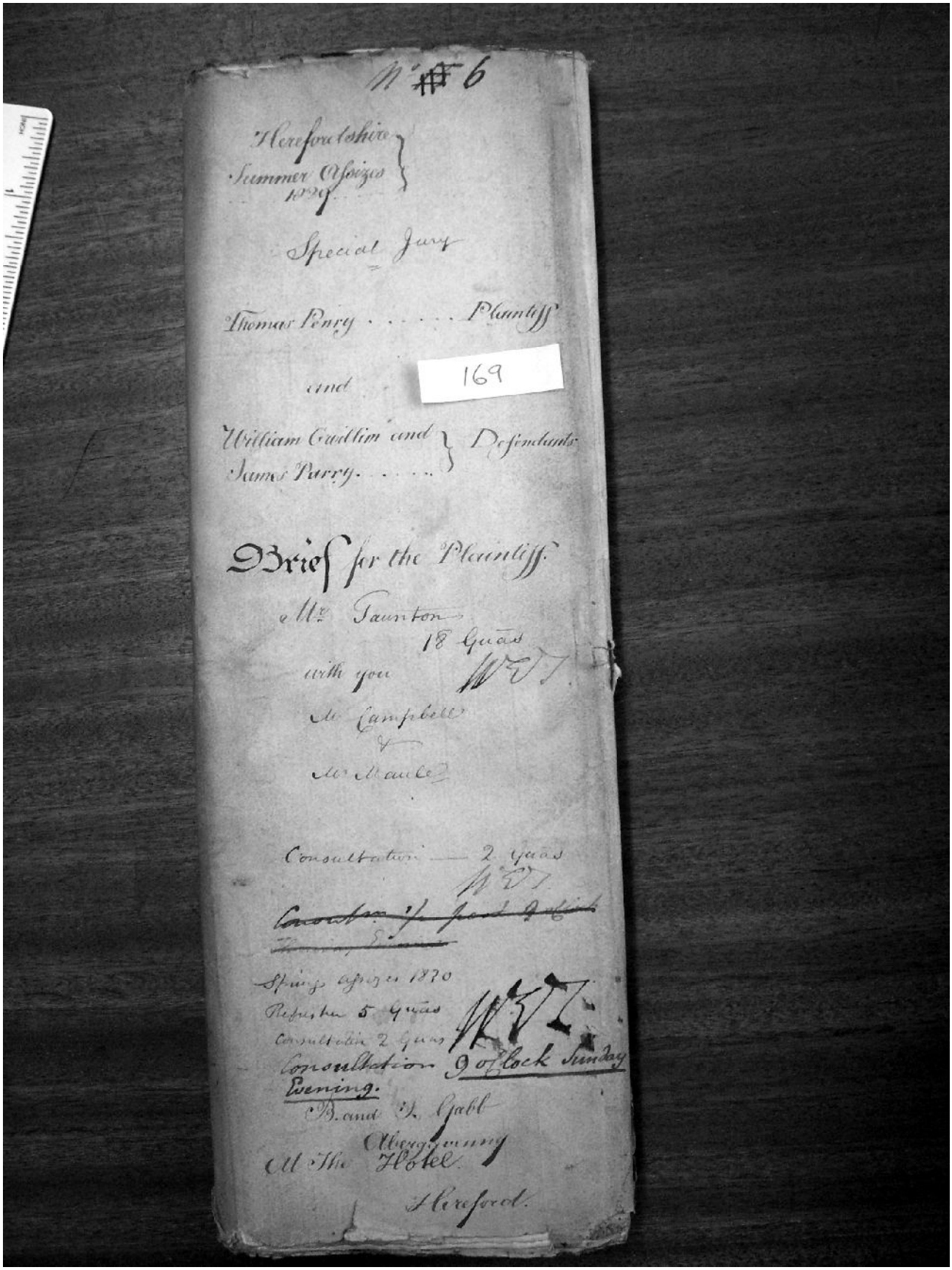
Place name: Ewyas Lacy, Longtown

Date: 1829

Description:

The case of Penry [plaintiff] versus Gwillim and Parry [defendants] at the King's Bench in the Hereford Assizes of 1829 revolved around the legal status and ownership of part of the castle green and moat at Longtown Castle.

The Brief for the Barrister representing the Plaintiff, photographed below, sets out the nature of the case to be tried by special jury, 'five of which have viewed the land in question', together with summaries of witness statements and various observations about aspects of both sides of the case. The brief is annotated, presumably by the Barrister.



No 6

Herefordshire
Summer Assizes
1829

Special Jury

Thomas Penry . . . . . Plaintiff

and

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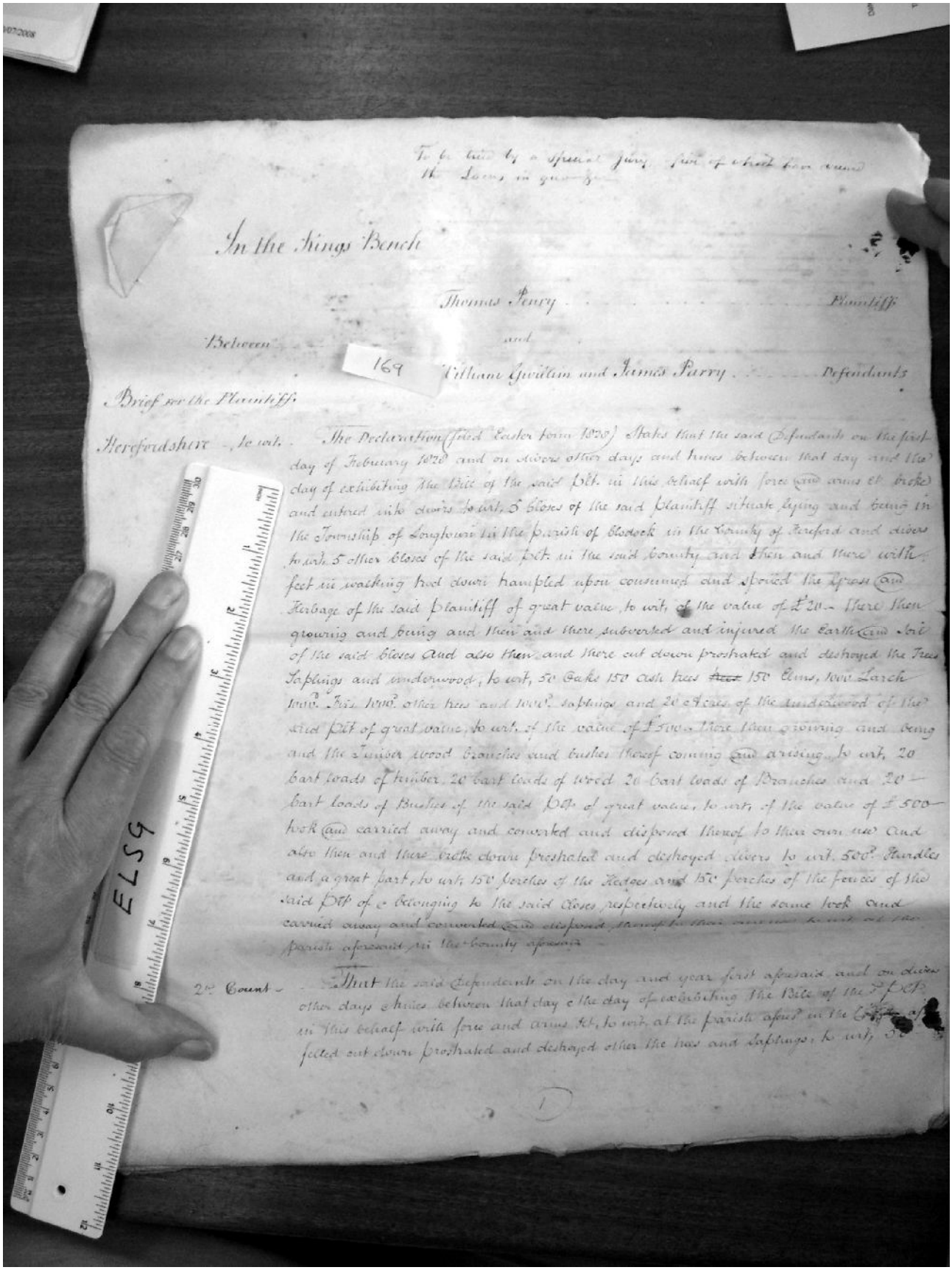
William Cwillim and
James Parry . . . . . Defendants

Brief for the Plaintiff

Mr Taunton
18 Guas
with you
Mr Campbell
&
Mr Maule

Consultation — 2 Guas

Spring Assizes 1830
Refusher 5 Guas
Consultation 2 Guas
Consultation 9 o'clock Sunday
Evening.
B. and T. Gabb
Abergavenny
At The Hotel
Hereford.


To be tried by a Special Jury
In the Kings Bench
Thomas Perry ... Plaintiff
Between
and
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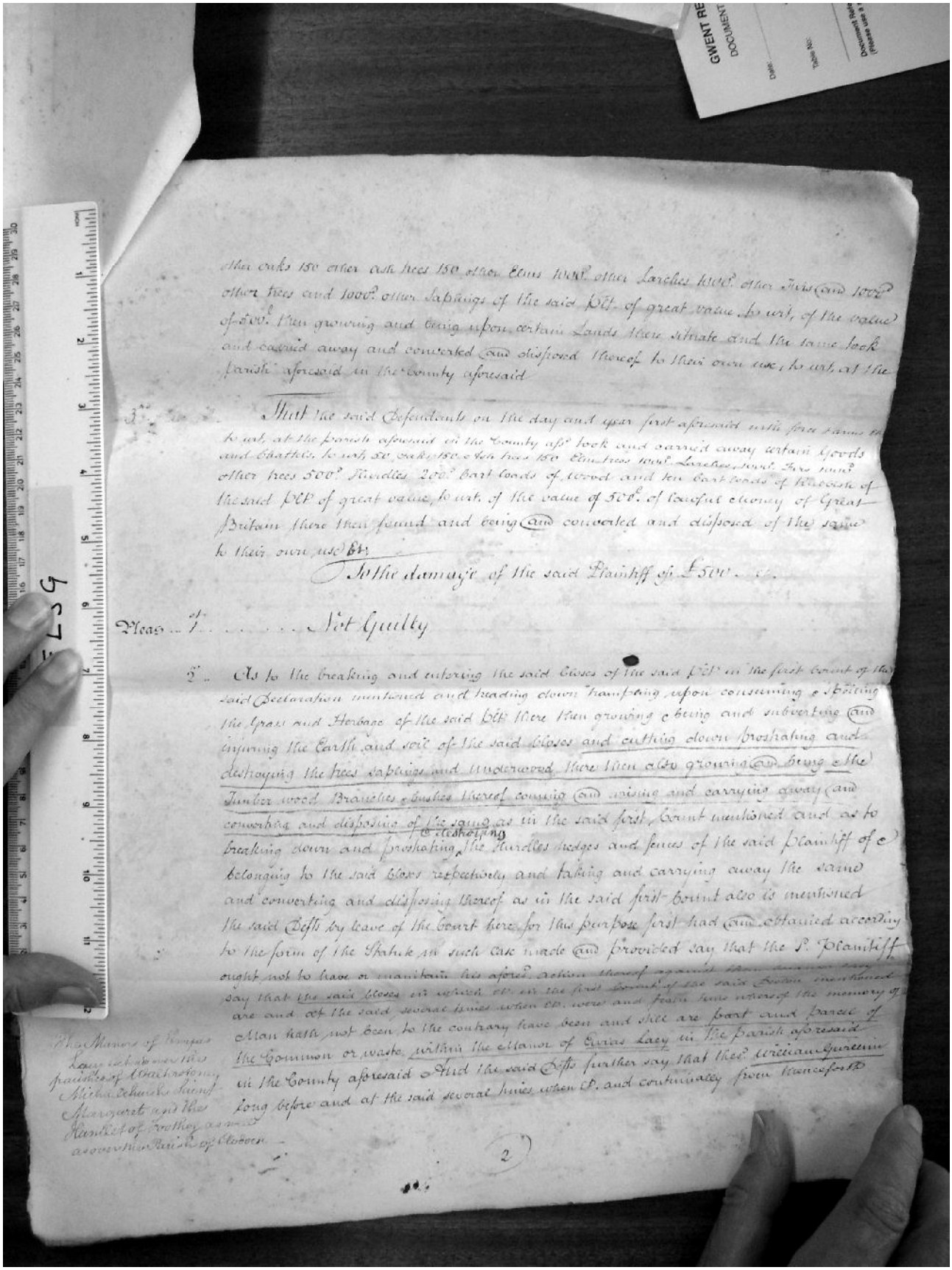
William Gwillim and James Parry ... Defendants
Brief for the Plaintiff
Herefordshire to wit.
The Declaration filed Easter term 1820 States that the said Defendants on the first
day of February 1820 and on divers other days and times between that day and the
day of exhibiting the Bill of the said Plt. in this behalf with force and arms &c broke
and entred into divers to wit, 5 Closes of the said Plaintiff situate lying and being in
the Township of Longtown in the parish of Blodock in the County of Hereford and divers
to wit, 5 other Closes of the said Plt. in the said County and then and there with
feet in walking had down trampled upon consumed and spoiled the Grass and
Herbage of the said Plaintiff of great value, to wit, of the value of £20 - there then
growing and being and then and there subverted and injured the Earth and Soil
of the said Closes And also then and there cut down prostrated and destroyed the Trees
Saplings and underwood, to wit, 50 Oaks 150 ash trees 150 Elms, 1000 Larch
1000 Firs 1000 other trees and 1000 saplings and 20 Acres of the underwood of the
said Plt of great value, to wit, of the value of £500 - there then growing and being
and the Timber Wood Branches and bushes thereof coming and arising, to wit, 20
Cart loads of timber, 20 Cart loads of Wood 20 Cart loads of Branches and 20 -
Cart loads of Bushes of the said Plt of great value, to wit, of the value of £500 -
took and carried away and converted and disposed thereof to their own use And
also then and there broke down prostrated and destroyed divers to wit, 500 Faggots
and a great part, to wit, 150 perches of the Hedges and 150 perches of the fences of the
said Plt of c belonging to the said Closes respectively and the same took and
carried away and converted and disposed
parish aforesaid in the County aforesaid
2d Count - That the said Defendants on the day and year first aforesaid and on divers
other days & times between that day & the day of exhibiting the Bill of the said Plt
in this behalf with force and arms &c, to wit, at the parish aforesaid in the County
felled cut down prostrated and destroyed other Elm trees and saplings, to wit, 50
ELSG



other oaks 150 other ash trees 150 other Elms 1000 other Larches 1000 other Firs and 1000 other trees and 1000 other Saplings of the said Pltf of great value to wit of the value of £500 then growing and being upon certain Lands there situate and the same took and carried away and converted and disposed thereof to their own use to wit at the parish aforesaid in the County aforesaid

3rd And the said Defendants on the day and year first aforesaid with force and arms to wit at the parish aforesaid in the County aft took and carried away certain Goods and Chattels to wit 50 oaks 150 ash trees 150 Elm trees 1000 Larches 1000 Fir trees and other trees 500 Hurdles 200 Cart loads of wood and ten Cart loads of Underwood of the said Pltf of great value to wit of the value of 500 of lawful money of Great Britain there then found and being and converted and disposed of the same to their own use &c

To the damage of the said Plaintiff of £500 &c

Pleas ... 1st ..... Not Guilty

5th As to the breaking and entering the said Closes of the said Pltf in the first Count of the said Declaration mentioned and treading down trampling upon consuming & spoiling the Grass and Herbage of the said Pltf there then growing & being and subverting and injuring the Earth and soil of the said Closes and cutting down prostrating and destroying the trees saplings and Underwood there then also growing & being & the Timber wood Branches & Bushes thereof cutting and using and carrying away and converting and disposing of the same as in the said first Count mentioned and as to breaking down and prostrating the Hurdles Hedges and fences of the said Plaintiff & belonging to the said Closes respectively and taking and carrying away the same and converting and disposing thereof as in the said first Count also is mentioned the said Defts by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided say that the Pl. Plaintiff ought not to have or maintain his aforesd action thereof against them and for plea say that the said Closes in which &c in the first Count of the said Declaration mentioned are and at the said several times when &c were and from time whereof the memory of Man hath not been to the contrary have been and still are part and parcel of the Common or waste within the Manor of Ewias Lacy in the parish aforesaid in the County aforesaid & And the said Defts further say that they the Freeholders and long before and at the said several times when &c and continually from time whereof

The Manors of Ewyas Lacy Abbotsbury Michaelchurch Longtown Kenderchurch Llanveyno and the Hamlet of Trothey are in the parish of Clodock

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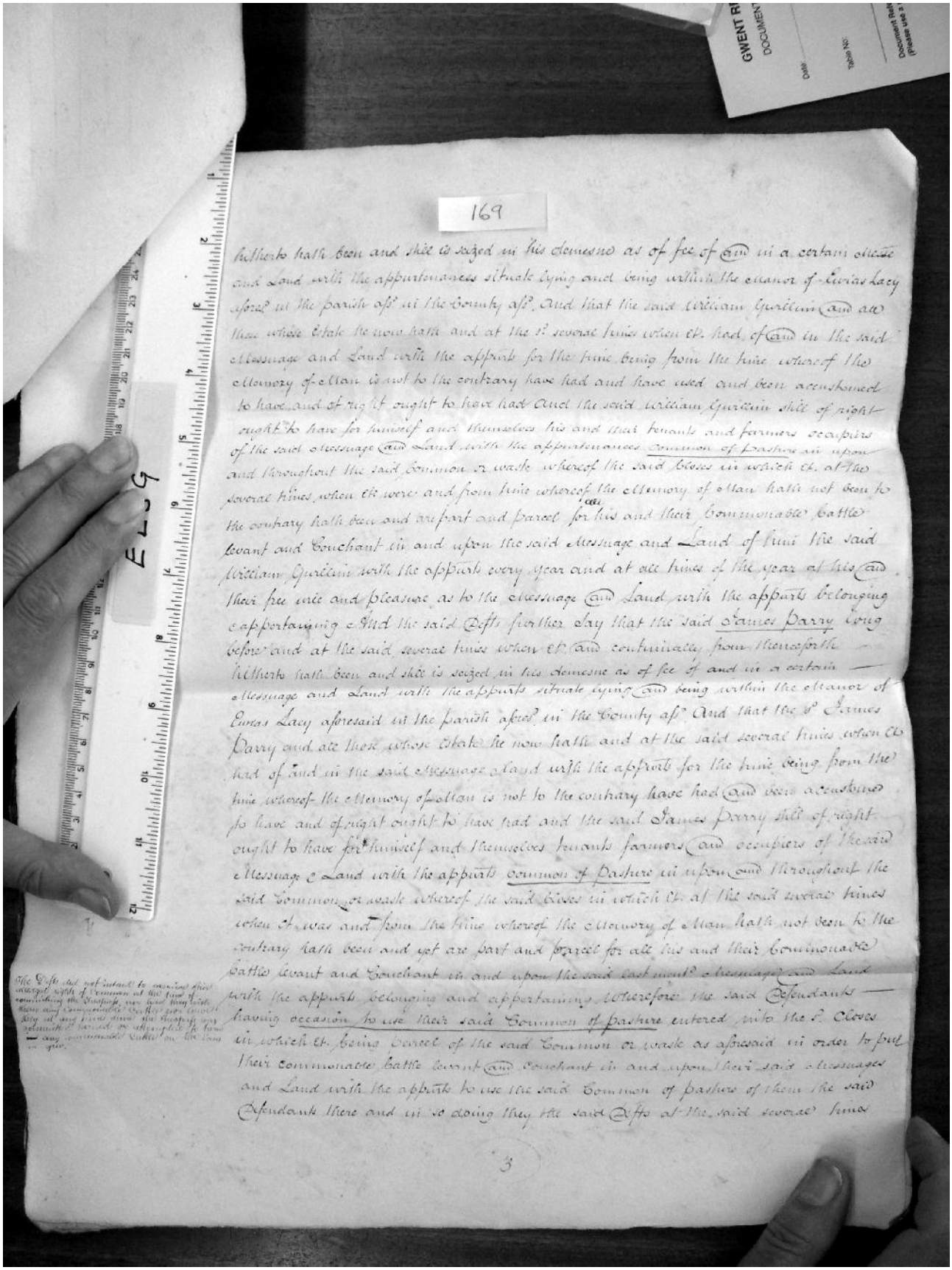

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hitherto hath been and still is seized in his demesne as of fee of and in a certain Messe and Land with the appurtenances situate lying and being within the Manor of Ewias Lacy aforesd in the parish afsd in the County afsd. And that the said William Gwillim and all those whose Estate he now hath and at the sd several times when etc. had of and in the said Messuage and Land with the appurts for the time being from the time whereof the Memory of Man is not to the contrary have had and have used and been accustomed to have and of right ought to have had And the said William Gwillim still of right ought to have for himself and themselves his and their tenants and farmers occupiers of the said Messuage and Land with the appurtenances Common of Pasture in upon and throughout the said Common or waste whereof the said Closes in which etc. at the several times when etc were and from time whereof the Memory of Man hath not been to the contrary hath been and are part and parcel for all his and their Commonable Cattle levant and Couchant in and upon the said Messuage and Land of him the said William Gwillim with the appurts every year and at all times of the year at his and their free will and pleasure as to the Messuage and Land with the appurts belonging & appertaining And the said Defts further say that the said James Parry long before and at the said several times when etc and continually from thenceforth hitherto hath been and still is seized in his demesne as of fee of and in a certain Messuage and Land with the appurts situate lying and being within the Manor of Ewias Lacy aforesaid in the parish aforesd in the County afsd And that the sd James Parry and all those whose Estate he now hath and at the said several times when etc had of and in the said Messuage & Land with the appurts for the time being from the time whereof the Memory of Man is not to the contrary have had and been accustomed to have and of right ought to have had and the said James Parry still of right ought to have for himself and themselves tenants farmers and occupiers of the said Messuage & Land with the appurts Common of Pasture in upon and throughout the said Common or waste whereof the said Closes in which etc at the said several times when etc was and from the time whereof the Memory of Man hath not been to the contrary hath been and yet are part and parcel for all his and their Commonable Cattle levant and Couchant in and upon the said last mentd Messuage and Land with the appurts belonging and appertaining Wherefore the said Defendants having occasion to use their said Common of pasture entered into the sd Closes in which etc being parcel of the said Common or waste as aforesaid in order to put their Commonable Cattle levant and Couchant in and upon their said Messuages and Land with the appurts to use the said Common of pasture of them the said Defendants there and in so doing they the said Defts at the said several times

The Defts did not intend to exercise their alleged right of Common at the time of commencing the Trespass, nor had they with them any Commonable Cattle nor were they at any time since the Trespass was committed harmed or attempted to have any commonable Cattle on the lands in qu.

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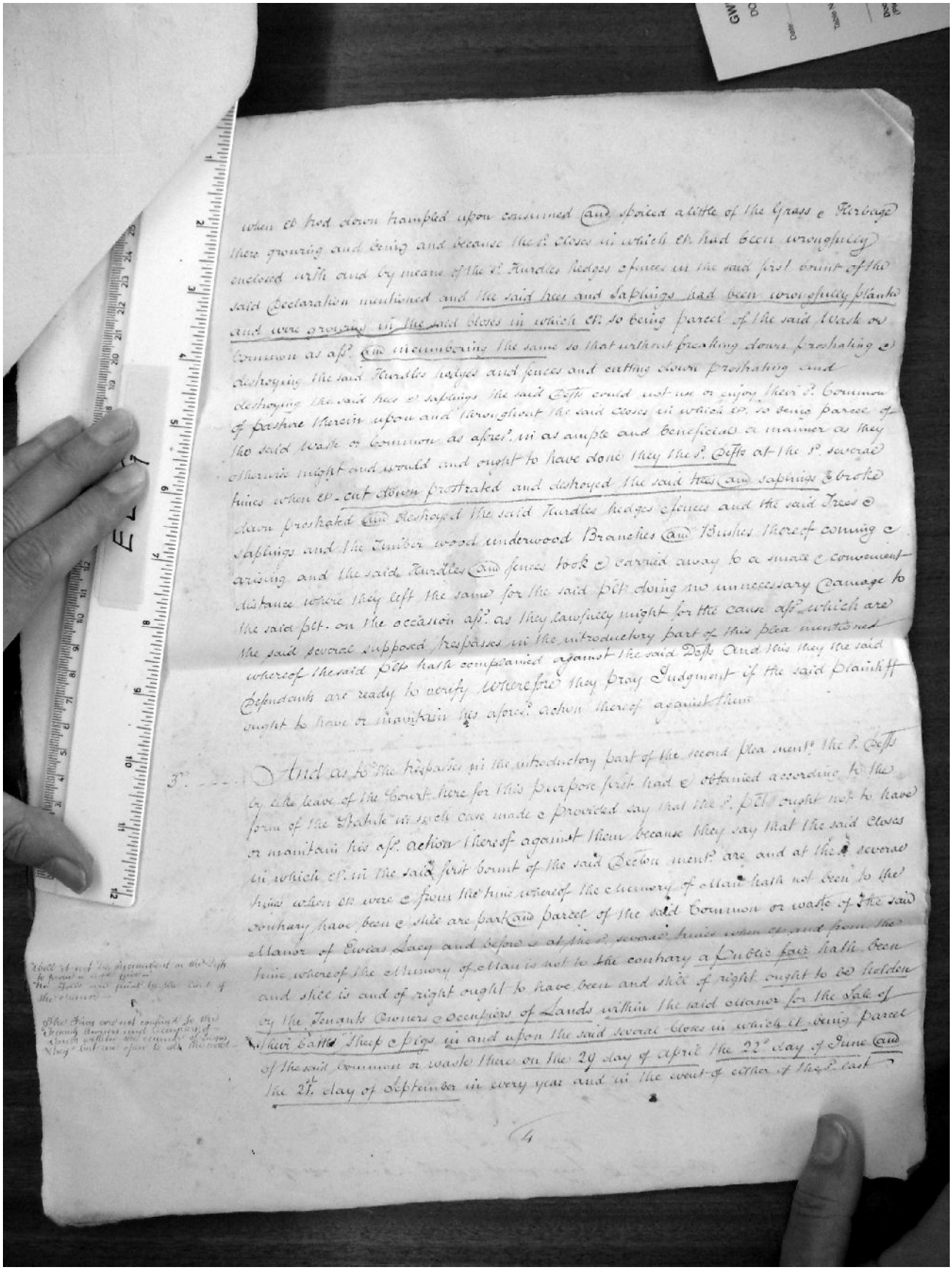
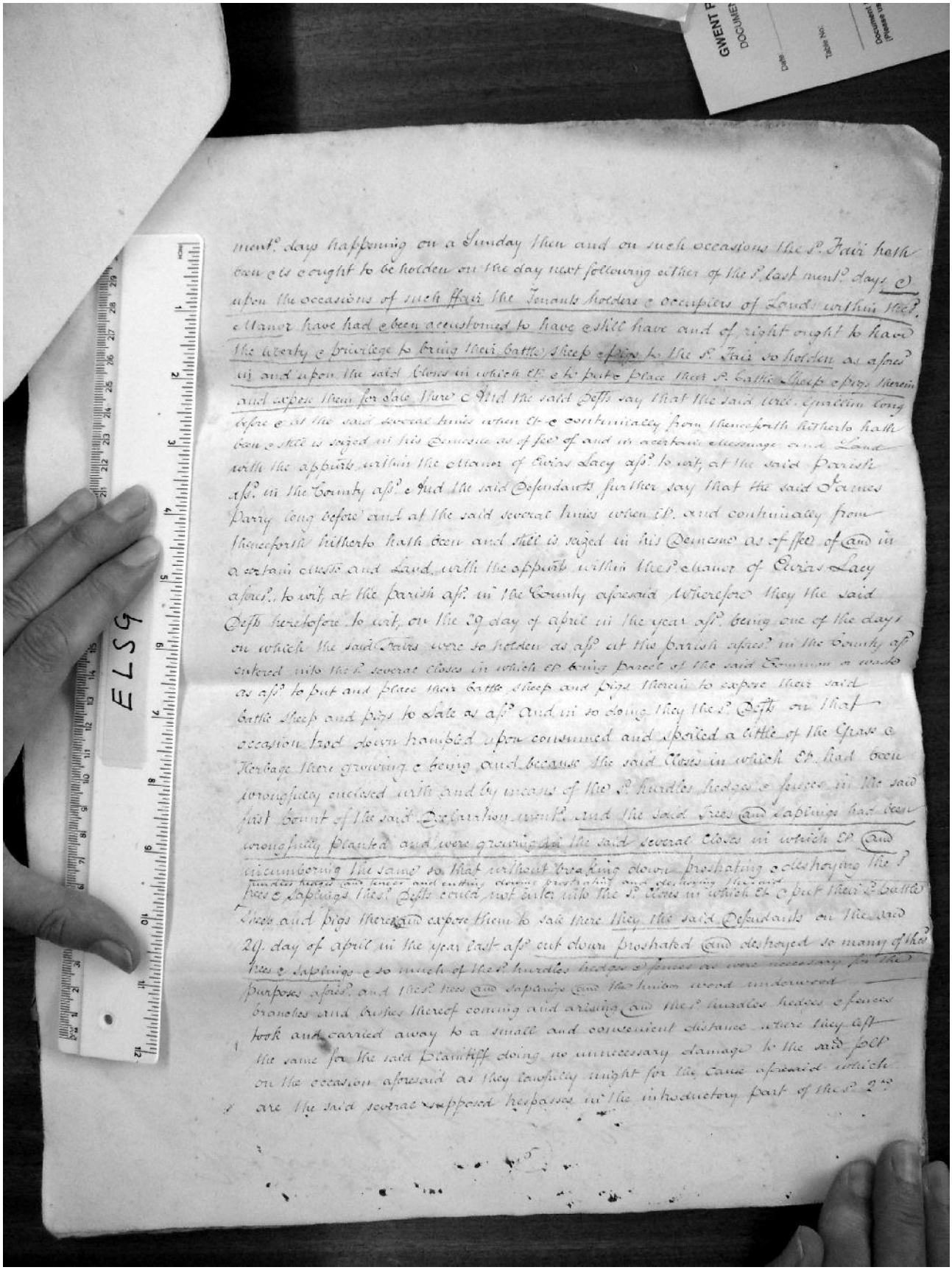
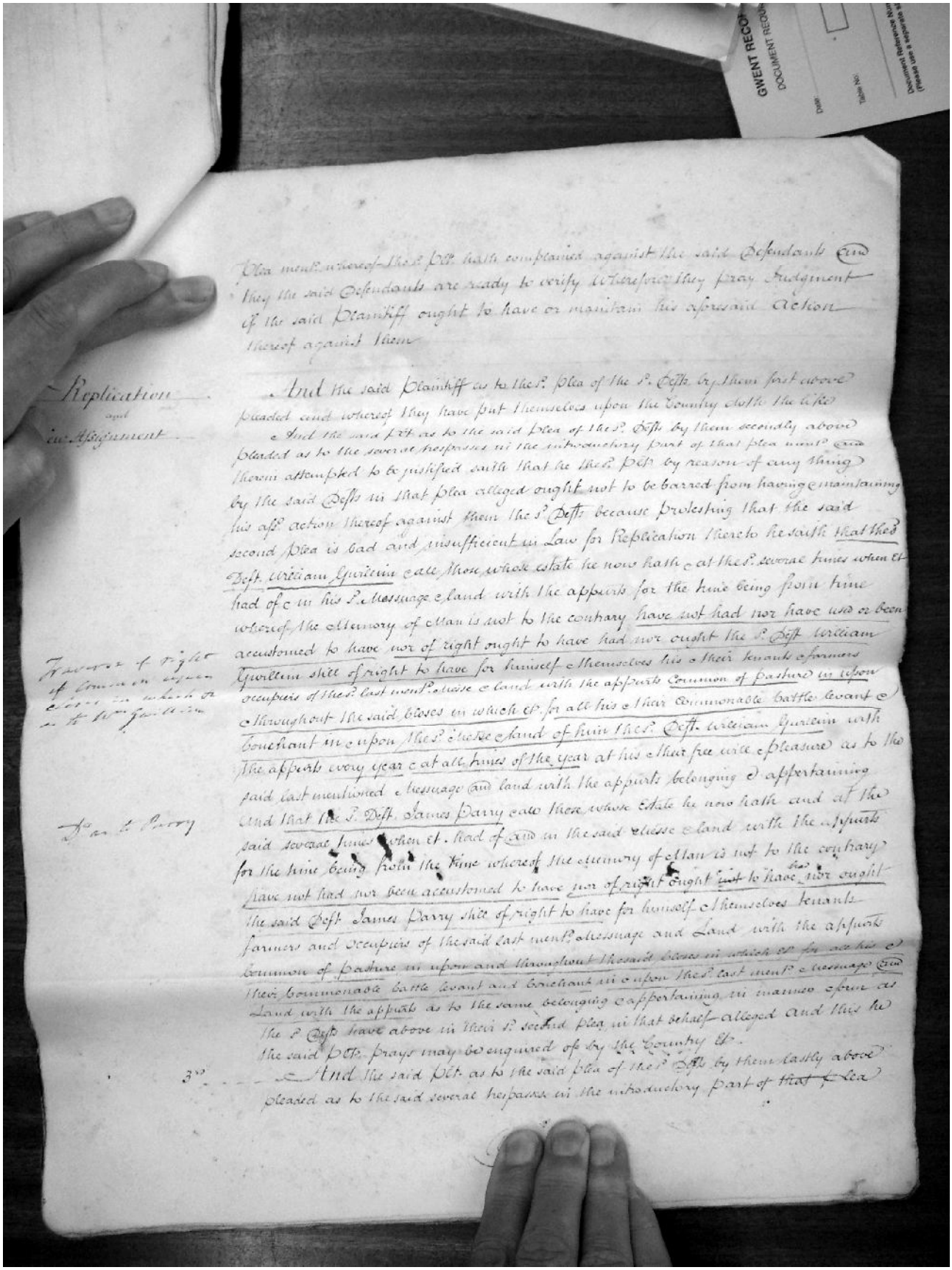


when ch had down trampled upon consumed and spoiled a little of the Grass & Herbage there growing and being and because the sd Closes in which ch had been wrongfully enclosed with and by means of the sd Hurdles Hedges Fences in the said first Count of the said Declaration mentioned and the said Trees and Saplings had been wrongfully plants and were growing in the said Closes in which ch. so being parcel of the said Waste or Common as afsd. did incumbering the same so that without breaking down Prostrating & destroying the said Hurdles Hedges and Fences and cutting down Prostrating and destroying the said Trees & Saplings the said Defts could not use or enjoy their sd Common of Pasture therein upon and throughout the said Closes in which ch. so being parcel of the said Waste or Common as afsd. in as ample and beneficial a manner as they otherwise might and would and ought to have done they the sd Defts at the sd several times when ch. cut down prostrated and destroyed the said Trees and Saplings & broke down prostrated and destroyed the said Hurdles Hedges Fences and the said Trees & Saplings and the Timber wood underwood Branches and Bushes thereof coming & arising and the said Hurdles and Fences took & carried away to a small & convenient distance where they left the same for the said Plt doing no unnecessary damage to the said Plt. on the occasion afsd. as they lawfully might for the cause afsd which are the said several supposed trespasses in the introductory part of this plea mentioned whereof the said Plt hath complained against the said Defts And this they the said Defendants are ready to verify Wherefore they pray Judgment if the said Plaintiff ought to have or maintain his aforesd action thereof against them

3rd And as to the trespasses in the introductory part of the second plea mentd the sd Defts by like leave of the Court here for this purpose first had & obtained according to the form of the Statute in such case made & provided say that the sd Plt ought not to have or maintain his afsd action thereof against them because they say that the said Closes in which ch in the said first Count of the said Declaration mentd are and at the several times when &c were & from time whereof the memory of man hath not been to the contrary have been & still are part and parcel of the said Common or waste of the said Manor of Ewias Lacy and before & at the sd several times when &c and from time whereof the memory of man is not to the contrary a Custom hath been and still is and of right ought to have been and still of right ought to be holden by the Tenants Owners & Occupiers of Lands within the said Manor for the sake of their Cattle Sheep & Pigs in and upon the said several Closes in which ch being parcel of the said Common or waste there on the 29 day of April the 22nd day of June and the 21st day of September in every year and in the event of either of the sd last



ment.d days happening on a Sunday then and on such occasions the s.d Fair hath been & is & ought to be holden on the day next following either of the s.d last ment.d days & upon the occasions of such ffair the Tenants holders & occupiers of Lands within the s.d Manor have had & been accustomed to have & still have and of right ought to have the liberty & privilege to bring their battle sheep & pigs to the s.d Fair so holden as afores.d in and upon the said Closes in which Et. & to put & place their s.d battle sheep & pigs therein and expose them for sale there & And the said Defts say that the said Will. Gwillim long before & at the said several times when Et. & continually from thenceforth hitherto hath been & still is seized in his Demesne as of fee of and in a certain Messuage and Land with the appurts within the Manor of Ewias Lacy afs.d to wit, at the said Parish afs.d in the County afs.d & And the said Defendants further say that the said James Parry long before and at the said several times when Et. and continually from thenceforth hitherto hath been and still is seized in his Demesne as of ffee of and in a certain Messe and Land with the appurts within the s.d Manor of Ewias Lacy afores.d to wit, at the parish afs.d in the County aforesaid Wherefore they the said Defts heretofore to wit, on the 29 day of april in the year afs.d being one of the days on which the said Fairs were so holden as afs.d at the parish afores.d in the County afs.d entered into the s.d several Closes in which Et. being parcel of the said Common or waste as afs.d to put and place their battle sheep and pigs therein to expose their said battle sheep and pigs to sale as afs.d And in so doing they the s.d Defts on that occasion trod down trampled upon consumed and spoiled a little of the Grass & Herbage there growing & being and because the said Closes in which Et. had been wrongfully enclosed with and by means of the s.d hurdles hedges & fences in the said first Count of the said Declaration ment.d and the said Trees and Saplings had been wrongfully planted and were growing in the said several Closes in which Et. and incumbering the same so that without breaking down prostrating & destroying the s.d hurdles hedges and fences and cutting down prostrating and destroying the said trees & saplings the s.d Defts could not enter into the s.d Closes in which Et. & put their s.d battle sheep and pigs therein and expose them to sale there they the said Defendants on the said 29. day of april in the year last afs.d cut down prostrated and destroyed so many of the s.d trees & saplings & so much of the s.d hurdles hedges & fences as were necessary for the purposes afores.d and the s.d trees and saplings and the timber wood underwood branches and bushes thereof coming and arising and the s.d hurdles hedges & fences took and carried away to a small and convenient distance where they left the same for the said Plaintiff doing no unnecessary damage to the said plt on the occasion aforesaid as they lawfully might for the cause aforesaid which are the said several supposed trespasses in the introductory part of the s.d 2.nd



Plea mentd. whereof the said Deft. hath complained against the said Defendants and they the said Defendants are ready to verify Wherefore they pray Judgment if the said Plaintiff ought to have or maintain his aforesaid Action thereof against them

Replication and Assignment

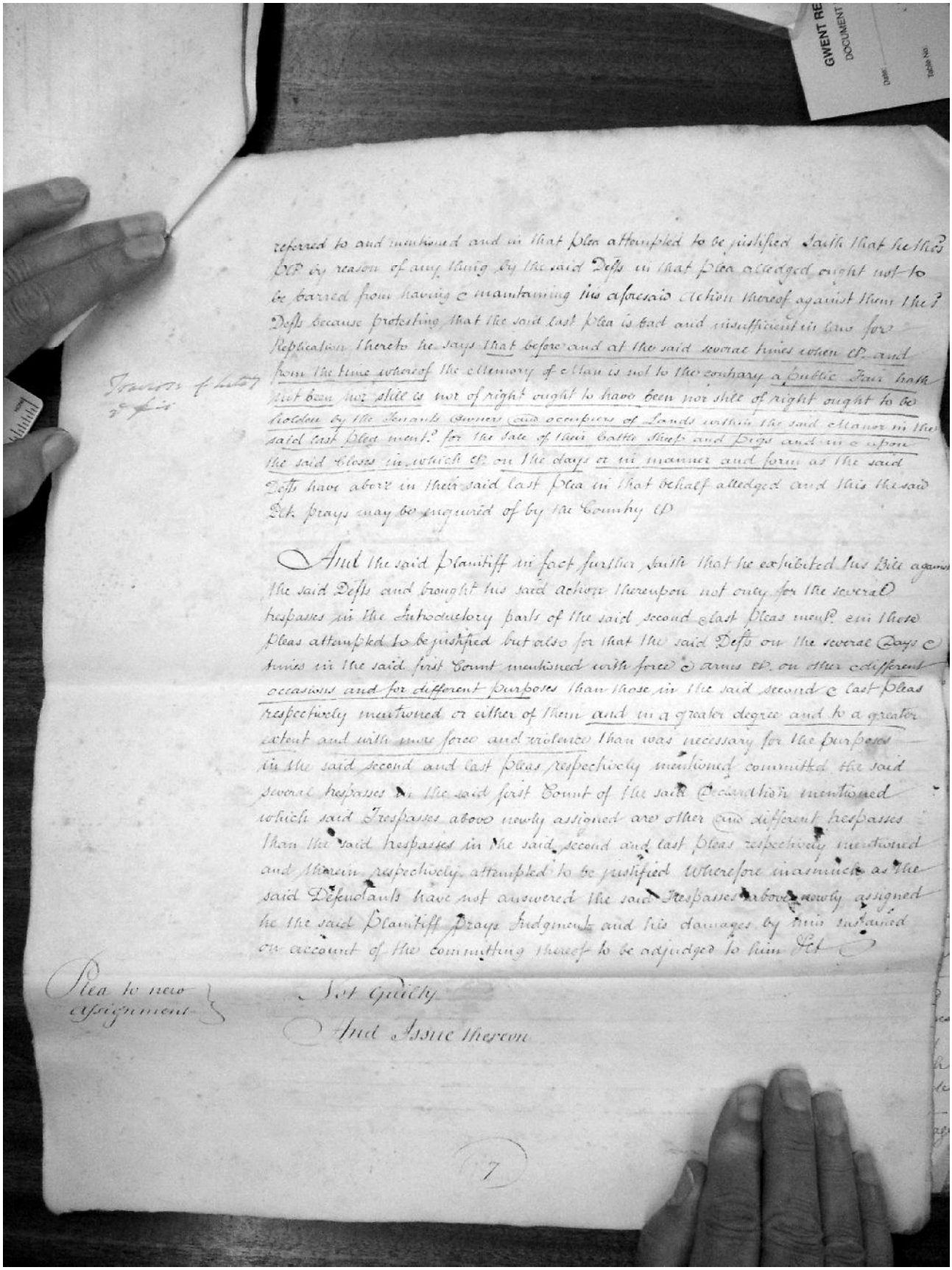
And the said Plaintiff as to the said plea of the said Defts by them first above pleaded and whereof they have put themselves upon the Country doth the like

And the said Plt as to the said plea of the said Defts by them secondly above pleaded as to the several trespasses in the introductory part of that plea mentd and therein attempted to be justified saith that he the said Plt by reason of any thing by the said Defts in that plea alleged ought not to be barred from having & maintaining his aforesaid action thereof against them the said Defts because protesting that the said second plea is bad and insufficient in Law for Replication thereto he saith that the said Deft. William Lyricum & all those whose estate he now hath & at the several times when &c had &c in his Messuage & land with the appurts for the time being from time whereof the memory of man is not to the contrary have not had nor have used or been accustomed to have nor of right ought to have had nor ought the said Deft William Lyricum still of right to have for himself & themselves his & their tenants & farmers occupiers of the said last mentd Messe & land with the appurts Common of pasture in upon & throughout the said closes in which &c for all his & their Commonable cattle levant & Couchant in & upon the said Messe & land of him the said Deft. William Lyricum with the appurts every year & at all times of the year at his & their free will & pleasure as to the said last mentioned Messuage and land with the appurts belonging & appertaining and that the said Deft. James Parry & all those whose estate he now hath and at the said several times when &c. had &c and in the said Messe & land with the appurts for the time being from the time whereof the memory of man is not to the contrary have not had nor been accustomed to have nor of right ought has ought the said Deft James Parry still of right to have for himself & themselves tenants farmers and occupiers of the said last mentd Messuage and Land with the appurts Common of pasture in upon and throughout the said closes in which &c for all his & their Commonable cattle levant and couchant in & upon the said last mentd Messuage and Land with the appurts as to the same belonging & appertaining in manner & form as the said Defts have above in their said second plea in that behalf alleged and this he the said Plt prays may be enquired of by the Country &c.

And the said Plt as to the said plea of the said Defts by them lastly above pleaded as to the said several trespasses in the introductory part of that plea

Power of right of Common in respect of which &c in the [illegible]

As to Parry



referred to and mentioned and in that plea attempted to be justified saith that he the s.d
Plt by reason of any thing by the said Defts in that plea alledged ought not to
be barred from having & maintaining his aforesaid action thereof against them the s.d
Defts because protesting that the said last plea is bad and insufficient in law for
Replication thereto he says that before and at the said several times when &c. and
from the time whereof the Memory of Man is not to the contrary a public Fair hath
not been nor still is nor of right ought to have been nor still of right ought to be
holden by the Tenants Owners and occupiers of Lands within the said Manor in the
said last plea ment.d for the sale of their Cattle Sheep and Pigs and in & upon
the said Closes in which &c. on the days or in manner and form as the said
Defts have above in their said last plea in that behalf alledged and this the said
Plt. prays may be enquired of by the Country &c.

And the said Plaintiff in fact further saith that he exhibited his Bill against
the said Defts and brought his said action thereupon not only for the several
trespasses in the Introductory parts of the said second & last pleas ment.d & in those
pleas attempted to be justified but also for that the said Defts on the several Days &
times in the said first Count mentioned with force & arms &c. on other & different
occasions and for different purposes than those in the said second & last pleas
respectively mentioned or either of them and in a greater degree and to a greater
extent and with more force and violence than was necessary for the purposes
in the said second and last pleas respectively mentioned committed the said
several trespasses in the said first Count of the said Declaration mentioned
which said Trespasses above newly assigned are other and different trespasses
than the said trespasses in the said second and last pleas respectively mentioned
and therein respectively attempted to be justified Wherefore inasmuch as the
said Defendants have not answered the said Trespasses above newly assigned
he the said Plaintiff prays Judgment and his damages by him sustained
on account of the committing thereof to be adjudged to him &c.

Plea to new assignment

Not Guilty

And Issue thereon

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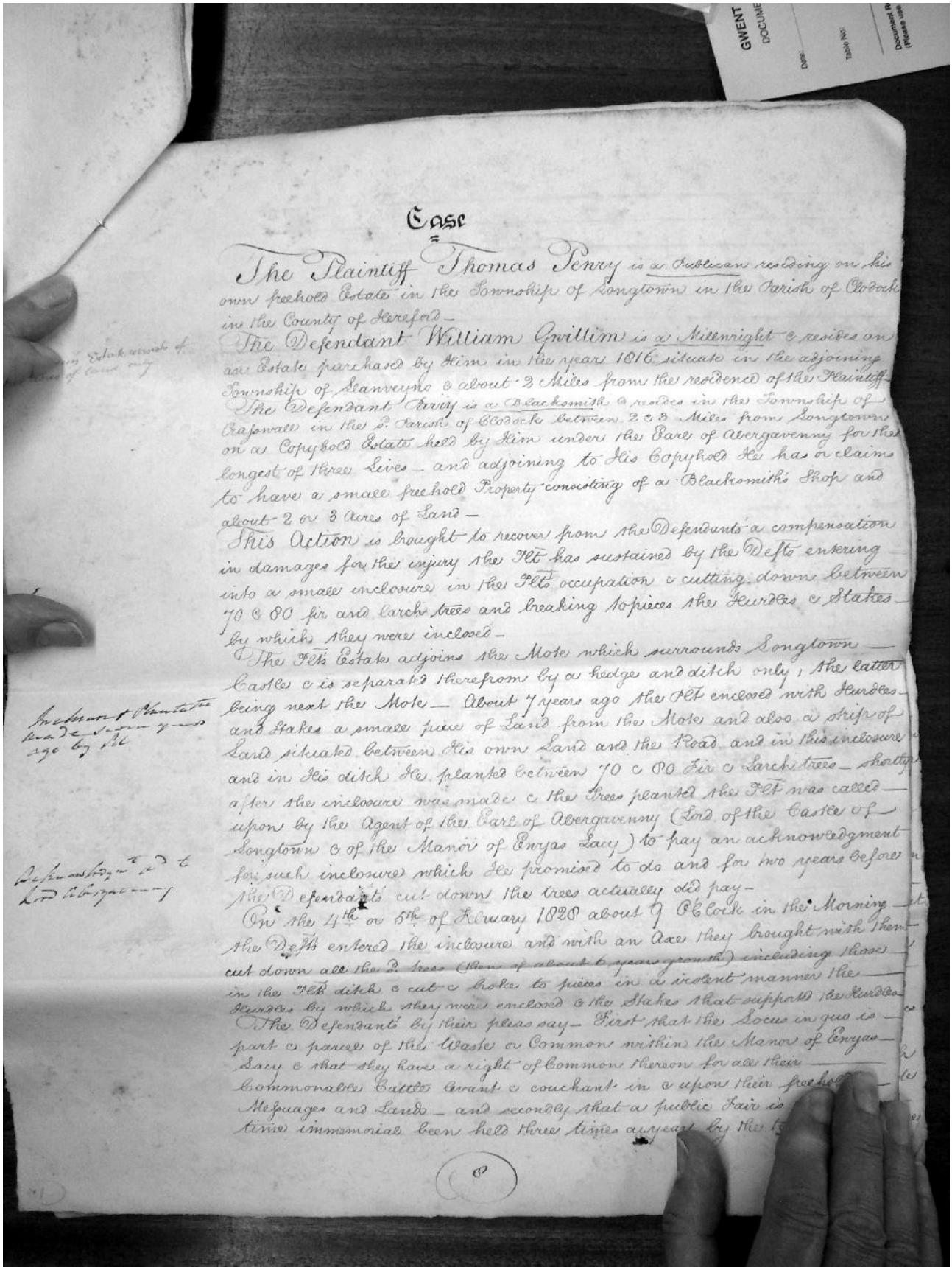


Case

The Plaintiff Thomas Perry is a Publican residing on his own freehold Estate in the Township of Longtown in the Parish of Clodock in the County of Hereford –

The Defendant William Gwillim is a Millwright & resides on an Estate purchased by Him in the year 1816 situate in the adjoining Township of Scanvenno & about 2 Miles from the residence of the Plaintiff

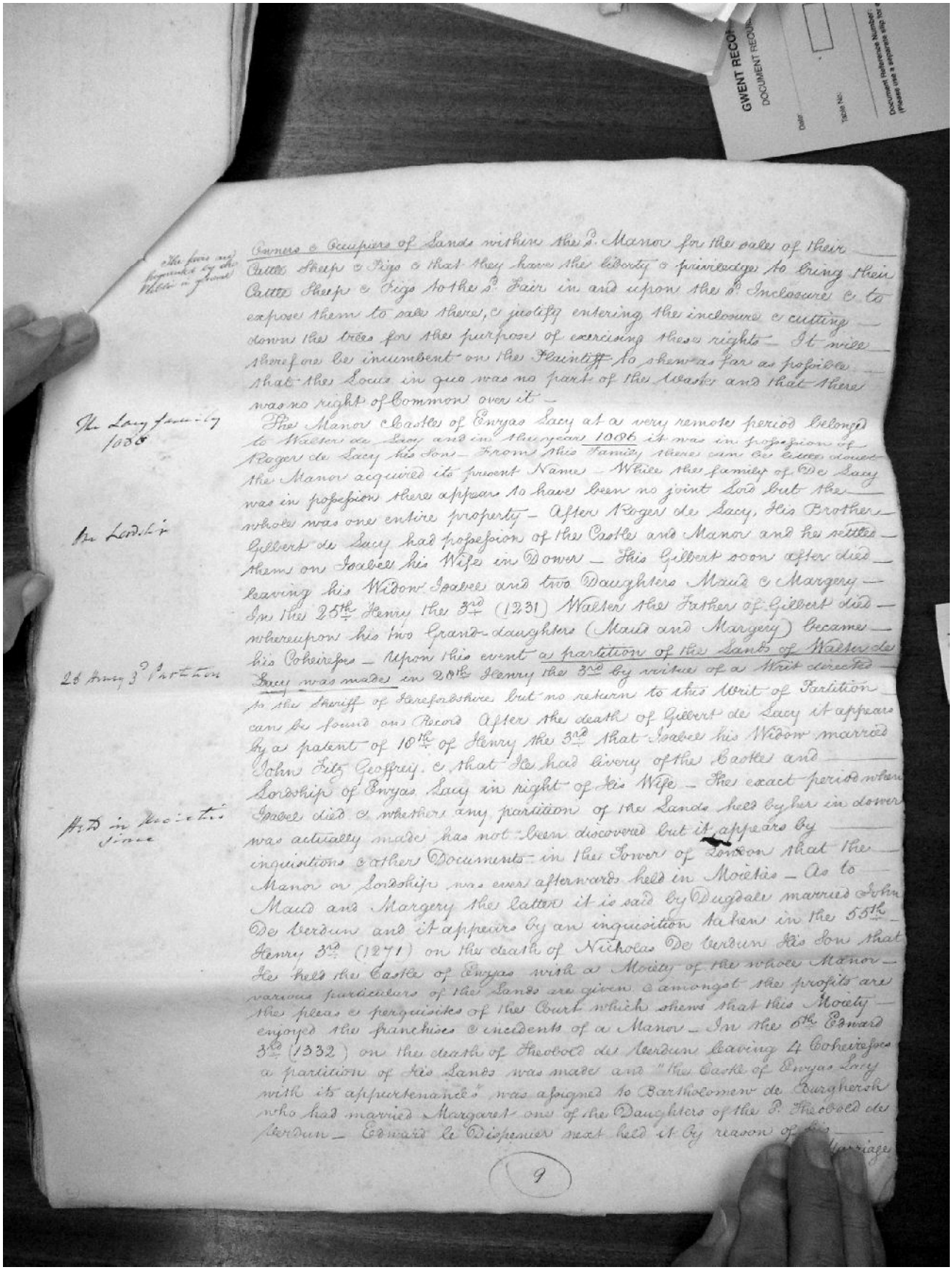
The Defendant Perry is a Blacksmith & resides in the Township of Cafnwall in the s.d Parish of Clodock between 2 & 3 Miles from Longtown on a Copyhold Estate held by Him under the Earl of Abergavenny for the longest of three Lives – and adjoining to His Copyhold He has or claims to have a small freehold Property consisting of a Blacksmiths Shop and about 2 or 3 Acres of Land –

This Action is brought to recover from the Defendants a compensation in damages for the injury the Plt has sustained by the Defts entering into a small inclosure in the Plts occupation & cutting down between 70 & 80 fir and larch trees and breaking to pieces the Hurdles & Stakes by which they were inclosed –

The Plts Estate adjoins the Mote which surrounds Longtown Castle & is separated therefrom by a hedge and ditch only, the latter being next the Mote — About 7 years ago the Plt enclosed with Hurdles and Stakes a small piece of Land from the Mote and also a strip of Land situated between His own Land and the Road and in this inclosure and in His ditch He planted between 70 & 80 Fir & Larch trees — shortly after the inclosure was made & the Trees planted the Plt was called upon by the Agent of the Earl of Abergavenny (Lord of the Castle of Longtown & of the Manor of Ewyas Lacy) to pay an acknowledgment for such inclosure which He promised to do and for two years before the Defendants cut down the trees actually did pay –

On the 4th or 5th of February 1828 about 7 O'Clock in the Morning the Defts entered the inclosure and with an Axe they brought with them cut down all the P. trees (then of about 6 years growth) including those in the Plts ditch & cut & broke to pieces in a violent manner the Hurdles by which they were enclosed & the Stakes that supported the Hurdles

The Defendants by their pleas say – First that the Locus in quo is part & parcel of the Waste or Common within the Manor of Ewyas Lacy & that they have a right of Common thereon for all their Commonable Cattle Avant & couchant in & upon their freehold Messuages and Lands – and secondly that a public Fair is time immemorial been held three times a year by the



Owners & Occupiers of Lands within the Sd. Manor for the sake of their Cattle Sheep & Pigs & that they have the liberty & priviledge to bring their Cattle Sheep & Pigs to the Sd. Fair in and upon the Sd. Inclosure & to expose them to sale there, & justify entering the inclosure & cutting down the trees for the purpose of exercising these rights – It will therefore be incumbent on the Plaintiff to shew as far as possible that the Locus in quo was no part of the Waste and that there was no right of Common over it –

The Manor & Castle of Ewyas Lacy at a very remote period belonged to Walter de Lacy and in the years 1086 it was in possession of Roger de Lacy his Son – From this Family there can be little doubt the Manor acquired its present Name – While the family of De Lacy was in possession there appears to have been no joint Lord but the whole was one entire property – After Roger de Lacy, his Brother Gilbert de Lacy had possession of the Castle and Manor and he settled them on Isabel his Wife in Dower – This Gilbert soon after died leaving his Widow Isabel and two Daughters Maud & Margery – In the 25th Henry the 3rd (1231) Walter the Father of Gilbert died – whereupon his two Grand-daughters (Maud and Margery) became his Coheiresses – Upon this event a partition of the Lands of Walter de Lacy was made in 20th Henry the 3rd by virtue of a Writ directed to the Sheriff of Herefordshire but no return to this Writ of Partition can be found on Record After the death of Gilbert de Lacy it appears by a patent of 10th of Henry the 3rd that Isabel his Widow married John Fitz Geoffrey & that He had livery of the Castle and Lordship of Ewyas Lacy in right of his Wife – The exact period when Isabel died & whether any partition of the Lands held by her in dower was actually made has not been discovered but it appears by inquisitions & other Documents in the Tower of London that the Manor or Lordship was ever afterwards held in Moieties – As to Maud and Margery the latter it is said by Dugdale married John De Verdun and it appears by an inquisition taken in the 55th Henry 3rd (1271) on the death of Nicholas De Verdun his Son that He held the Castle of Ewyas with a Moiety of the whole Manor – various particulars of the Lands are given & amongst the profits are the pleas & perquisites of the Court which shews that this Moiety enjoyed the franchises & incidents of a Manor – In the 6th Edward 3rd (1332) on the death of Theobold de Verdun leaving 4 Coheiresses a partition of his Lands was made and "the Castle of Ewyas Lacy with its appurtenances" was assigned to Bartholomew de Burghersh who had married Margaret one of the Daughters of the D. Theobold de Verdun – Edward le Despenser next held it by reason of his marriage

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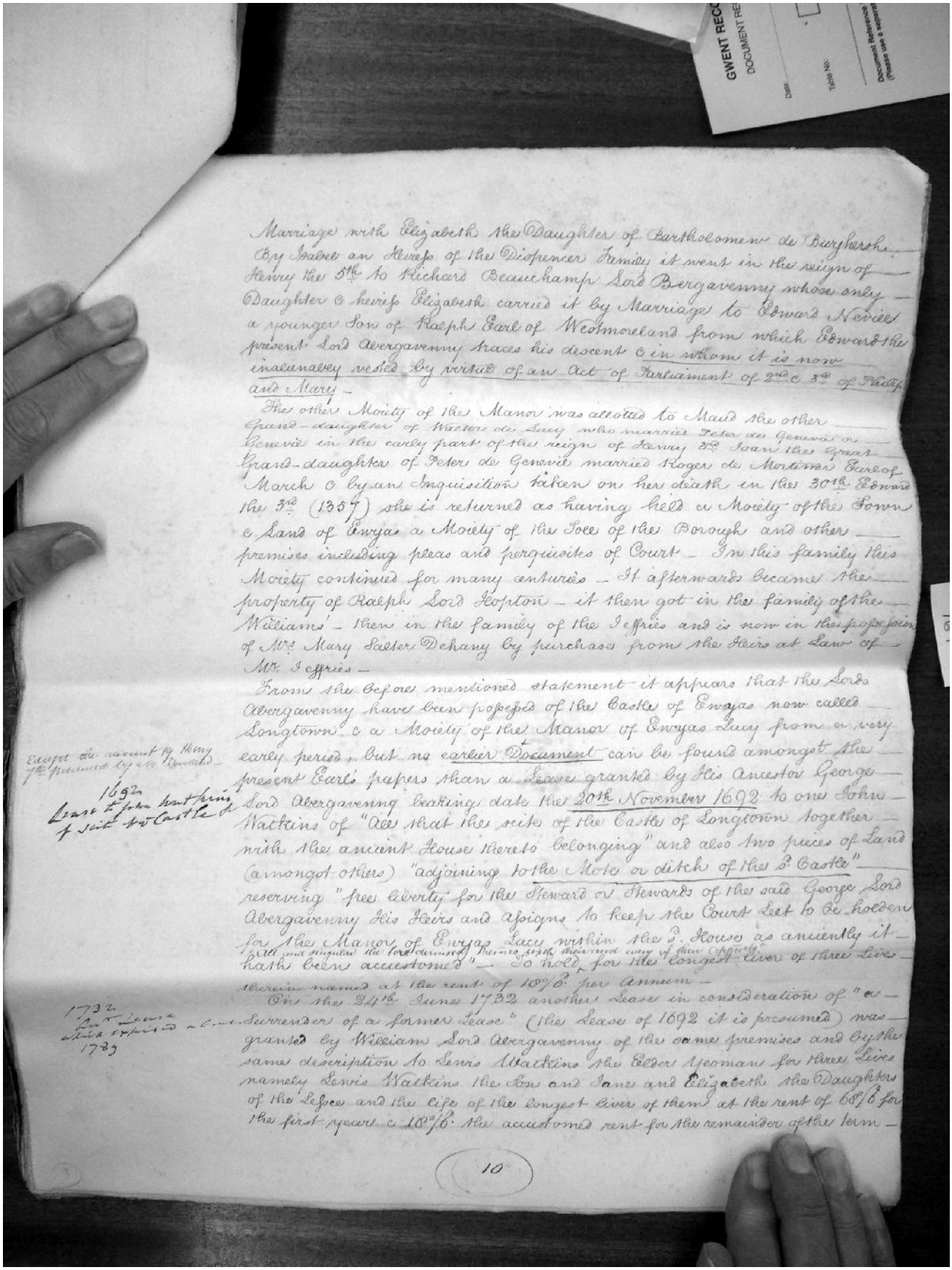

Marriage with Elizabeth the Daughter of Bartholomew de Burghersh. By Isabel an Heiress of the Dispencer Family it went in the reign of Henry the 5th to Richard Beauchamp Lord Bergavenny whose only Daughter & heiress Elizabeth carried it by Marriage to Edward Neville a younger Son of Ralph Earl of Westmoreland from which Edward the present Lord Abergavenny traces his descent & in whom it is now inalienably vested by virtue of an Act of Parliament of 2nd & 3rd of Philip and Mary –

The other Moiety of the Manor was allotted to Maud the other Grand-daughter of Walter de Lacy who married Peter de Geneva or Genevie in the early part of the reign of Henry 3rd Joan the Great Grand-daughter of Peter de Genevie married Roger de Mortimer Earl of March & by an Inquisition taken on her death in the 30th Edward the 3rd (1357) she is returned as having held a Moiety of the Town & Land of Ewyas a Moiety of the Toll of the Borough and other premises including pleas and perquisites of Court – In this family this Moiety continued for many centuries – It afterwards became the property of Ralph Lord Hopton – it then got in the family of the Williams' – then in the family of the Jeffries and is now in the possession of Mrs Mary Salter Dehany by purchase from the Heirs at Law of Mr Jeffries –

From the before mentioned statement it appears that the Lords Abergavenny have been possessed of the Castle of Ewyas now called Longtown & a Moiety of the Manor of Ewyas Lacy from a very early period, but no earlier Document can be found amongst the present Earl's papers than a Lease granted by His Ancestor George Lord Abergavenny bearing date the 20th November 1692 to one John Watkins of "All that the scite of the Castle of Longtown together with the ancient House thereto belonging" and also two pieces of Land (amongst others) "adjoining to the Mote or ditch of the s. Castle" reserving "free liberty for the Steward or Stewards of the said George Lord Abergavenny His Heirs and Assigns to keep the Court Leet to be holden for the Manor of Ewyas Lacy within the s. House as anciently it hath been accustomed" – To hold for the longest liver of three Lives therein named at the rent of 18s/6 per Annum –

Except the account by Henry 7th presumed by also Dowland –

1692 Lease to John Watkins of scite of Castle &c

1732 Ant Lease which expired a.c. 1789

On the 24th June 1732 another Lease in consideration of "a Surrender of a former Lease" (the Lease of 1692 it is presumed) was granted by William Lord Abergavenny of the same premises and by the same description to Lewis Watkins the Elder Yeoman for three Lives namely Lewis Watkins the Son and Jane and Elizabeth the Daughters of the Lessee and the life of the longest liver of them at the rent of 68s/6 for the first year & 18s/6 the accustomed rent for the remainder of the term –

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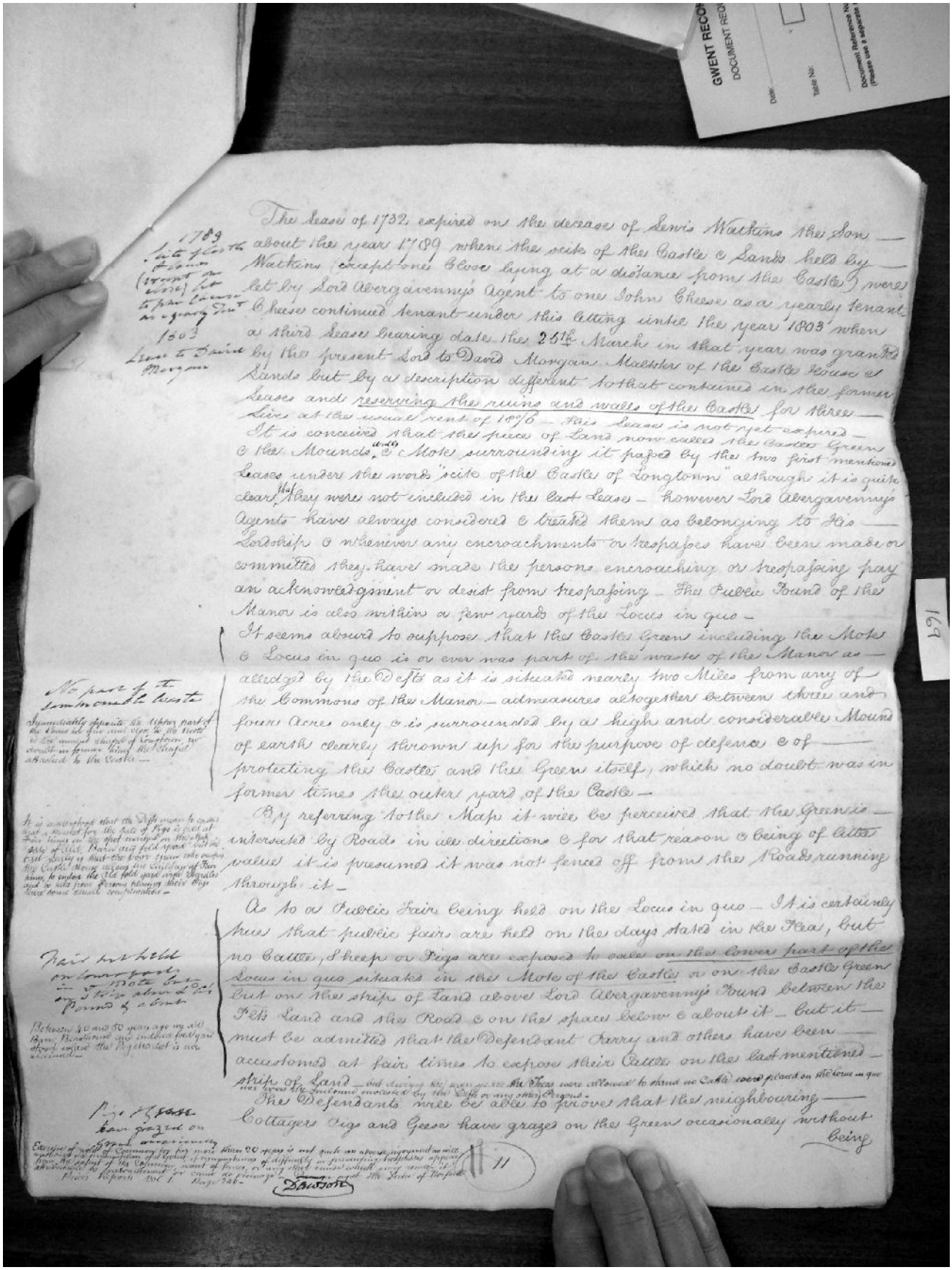

The Lease of 1732 expired on the decease of Lewis Watkins the Son — about the year 1789 when the scite of the Castle & Lands held by — Watkins (except one Close lying at a distance from the Castle) were let by Lord Abergavenny's Agent to one John Cheese as a yearly tenant. Cheese continued tenant under this letting until the year 1803 when a third Lease bearing date the 25th March in that year was granted by the present Lord to David Morgan Maltster of the Castle House & Lands but by a description different to that contained in the former Leases and reserving the ruins and walls of the Castle for three — Lives at the usual rent of 18/6 — This Lease is not yet expired —

1789 Scite of Castle & Lands (except one Close) let to Jan Cheese as a yearly Tent

1803 Lease to David Morgan

It is conceived that the piece of Land now called the Castle Green & the Mounds, walls & Mote surrounding it passed by the two first mentioned Leases under the words "scite of the Castle of Longtown" although it is quite clear that they were not included in the last Lease — however Lord Abergavenny's Agents have always considered & treated them as belonging to His — Lordship & whenever any encroachments or trespasses have been made or committed they have made the persons encroaching or trespassing pay an acknowledgment or desist from trespassing — The Public Pound of the Manor is also within a few yards of the Locus in quo —

It seems absurd to suppose that the Castle Green including the Mote & Locus in quo is or ever was part of the waste of the Manor as — alledged by the Defts as it is situated nearly two Miles from any of the Commons of the Manor — admeasures altogether between three and four Acres only & is surrounded by a high and considerable Mound of earth clearly thrown up for the purpose of defence & of — protecting the Castle and the Green itself, which no doubt was in former times the outer yard of the Castle —

No part of the commonable waste

Immediately opposite the Upper part of the Locus in quo and close to the Mote is the ancient Chapel of Longtown, no doubt in former times the Chapel attached to the Castle —

By referring to the Map it will be perceived that the Green is — intersected by Roads in all directions & for that reason & being of little value it is presumed it was not fenced off from the Roads running through it —

It is understood that the Defts mean to endeavour that a Market for the sale of Pigs is held at Fair times on the spot marked on the Map Sale of Old Barn and fold yard but the Fair Yard is that the poor Grass who occupied the Castle House allows the Building of Fair times, to enter the Old fold yard with Hurdles and to take from Persons placing their Pigs there some small compensation —

As to a Public Fair being held on the Locus in quo — It is certainly true that public fairs are held on the days stated in the Plea, but no Cattle, Sheep or Pigs are exposed to sale on the lower part of the Locus in quo situated in the Mote of the Castle or on the Castle Green but on the strip of Land above Lord Abergavenny's Pound between the Plts Land and the Road & on the space below & about it — but it — must be admitted that the Defendant Parry and others have been — accustomed at fair times to expose their Cattle on the last mentioned — strip of Land — but during the seven years the Fairs were allowed to stand no Cattle were placed on the locus in quo nor were the Inclosure molested by the Defts or any other Person —

Fair not held on lower part in the Mote but on strip above Lord Pound & about

Between 40 and 50 years ago my old Barn Bearthound and indeed fold yard stood where the Pig market is now assumed —

The Defendants will be able to prove that the neighbouring — Cottagers Pigs and Geese have grazed on the Green occasionally without being

Pigs & Geese have grazed on Green occasionally

Exercise of right of Common for pig more than 20 years is not quite as above as ingrossed as will authorize the presumption of a Grant, if circumstances of difficulty in preserving trespasses appear from the extent of the Common want of fences, or any other cause which may cause it attributable to encroachment or cause as pleasure — Dawson

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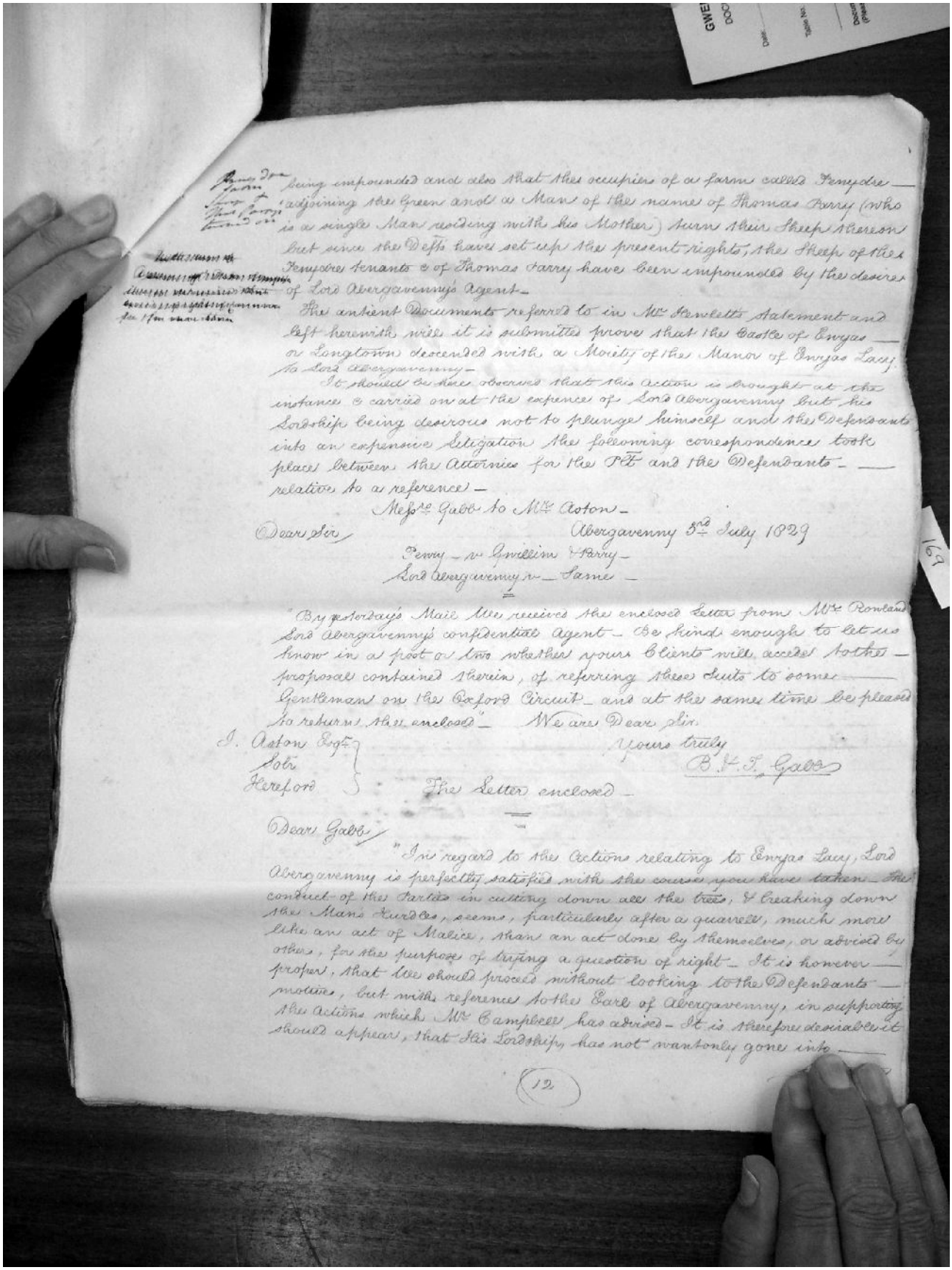


being impounded and also that the occupiers of a farm called Fenydre — adjoining the Green and a Man of the name of Thomas Parry (who is a single Man residing with his Mother) turn their Sheep thereon but since the Defts have set up the present rights, the Sheep of the Fenydre tenants & of Thomas Parry have been impounded by the desire of Lord Abergavenny's Agent —

The antient Documents referred to in Mr Hewlett's statement and left herewith will it is submitted prove that the Castle of Ewyas — or Longtown descended with a Moiety of the Manor of Ewyas Lacy to Lord Abergavenny —

It should be here observed that this action is brought at the instance & carried on at the expence of Lord Abergavenny but his Lordship being desirous not to plunge himself and the Defendants into an expensive Litigation the following correspondence took place between the Attornies for the Plt and the Defendants — relative to a reference —

Messrs Gabb to Mr Aston —

Dear Sir, Abergavenny 3rd July 1829

Perry — v Gwillim & Parry —
Lord Abergavenny v — Same —

"By yesterday's Mail We received the enclosed Letter from Mr Rowland Lord Abergavenny's confidential Agent — Be kind enough to let us know in a post or two whether yours Clients will accede to the — proposal contained therein, of referring these Suits to some — Gentleman on the Oxford Circuit — and at the same time be pleased to return the enclosed" — We are Dear Sir

Yours truly
B. & T. Gabb

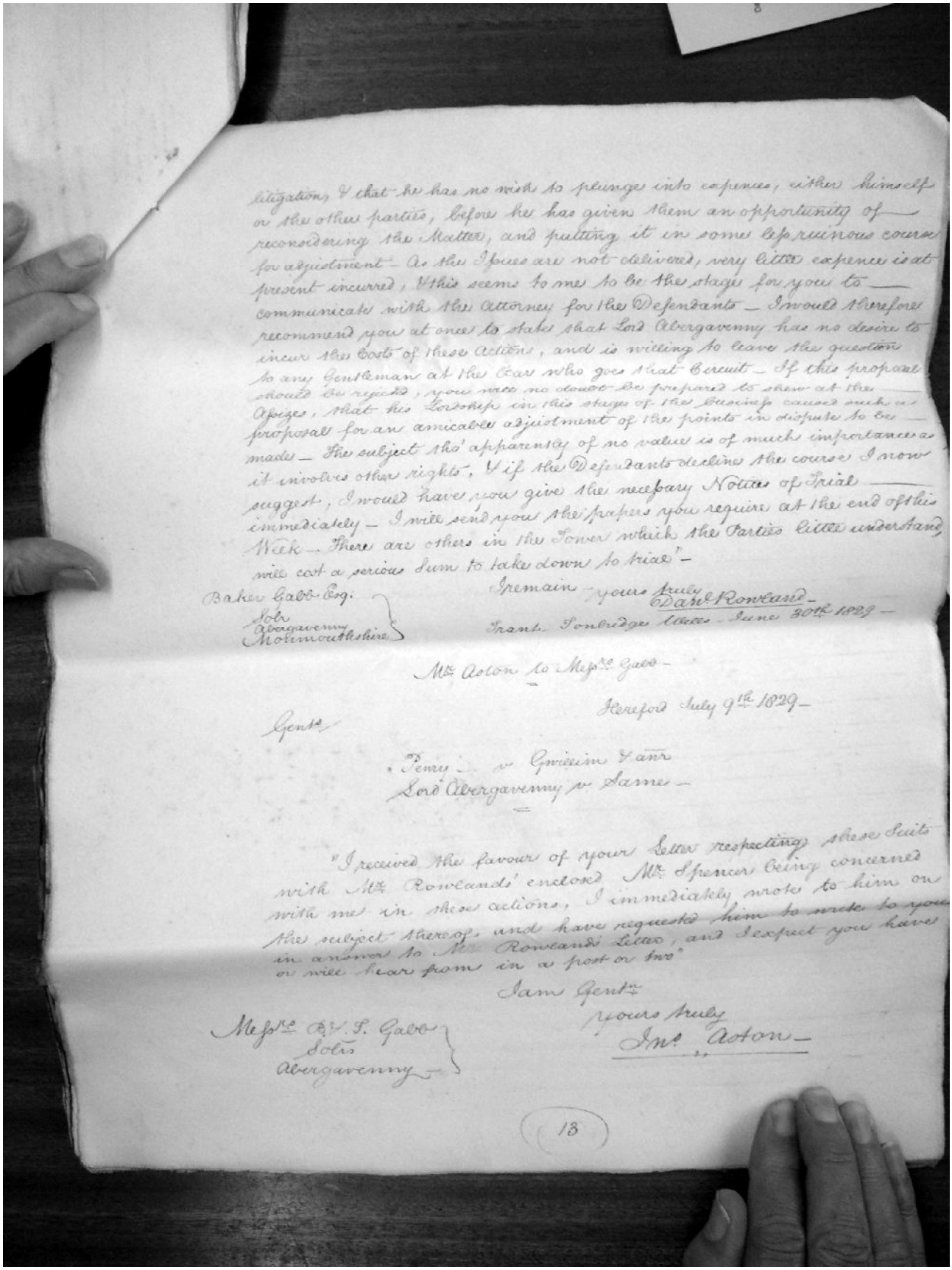
I. Aston Esqr
Sobr
Hereford

The Letter enclosed —

Dear Gabb,

"In regard to the Actions relating to Ewyas Lacy, Lord Abergavenny is perfectly satisfied with the course you have taken — The conduct of the Parties in cutting down all the trees, & breaking down the Man's Hurdles, seems, particularly after a quarrell, much more like an act of Malice, than an act done by themselves, or advised by others, for the purpose of trying a question of right — It is however — proper, that We should proceed without looking to the Defendants — motives, but with reference to the Earl of Abergavenny, in supporting the Actions which Mr Campbell has advised — It is therefore desirable it should appear, that His Lordship, has not wantonly gone into —

(12)



litigation, & that he has no wish to plunge into expences, either himself or the other parties, before he has given them an opportunity of reconsidering the Matter, and putting it in some less ruinous course for adjustment – As the Issues are not delivered, very little expence is at present incurred, & this seems to me to be the stage for you to communicate with the Attorney for the Defendants – I would therefore recommend you at once to state that Lord Abergavenny has no desire to incur the Costs of these Actions, and is willing to leave the question to any Gentleman at the Bar who goes that Circuit – If this proposal should be rejected, you will no doubt be prepared to shew at the Assizes, that his Lordship in this stage of the Business caused such a proposal for an amicable adjustment of the points in dispute to be made – The subject tho' apparently of no value is of much importance as it involves other rights, & if the Defendants decline the course I now suggest, I would have you give the necessary Notices of Trial immediately – I will send you the papers you require at the end of this Week – There are others in the Tower which the Parties little understand, will cost a serious Sum to take down to trial" –

I remain – yours truly
Danl Rowland –

Baker Gabb Esq.
Solr
Abergavenny
Monmouthshire

Trant Tonbridge Wells – June 30th 1829 –

Mr Aston to Messrs Gabb –

Hereford July 9th 1829 –

Gentn

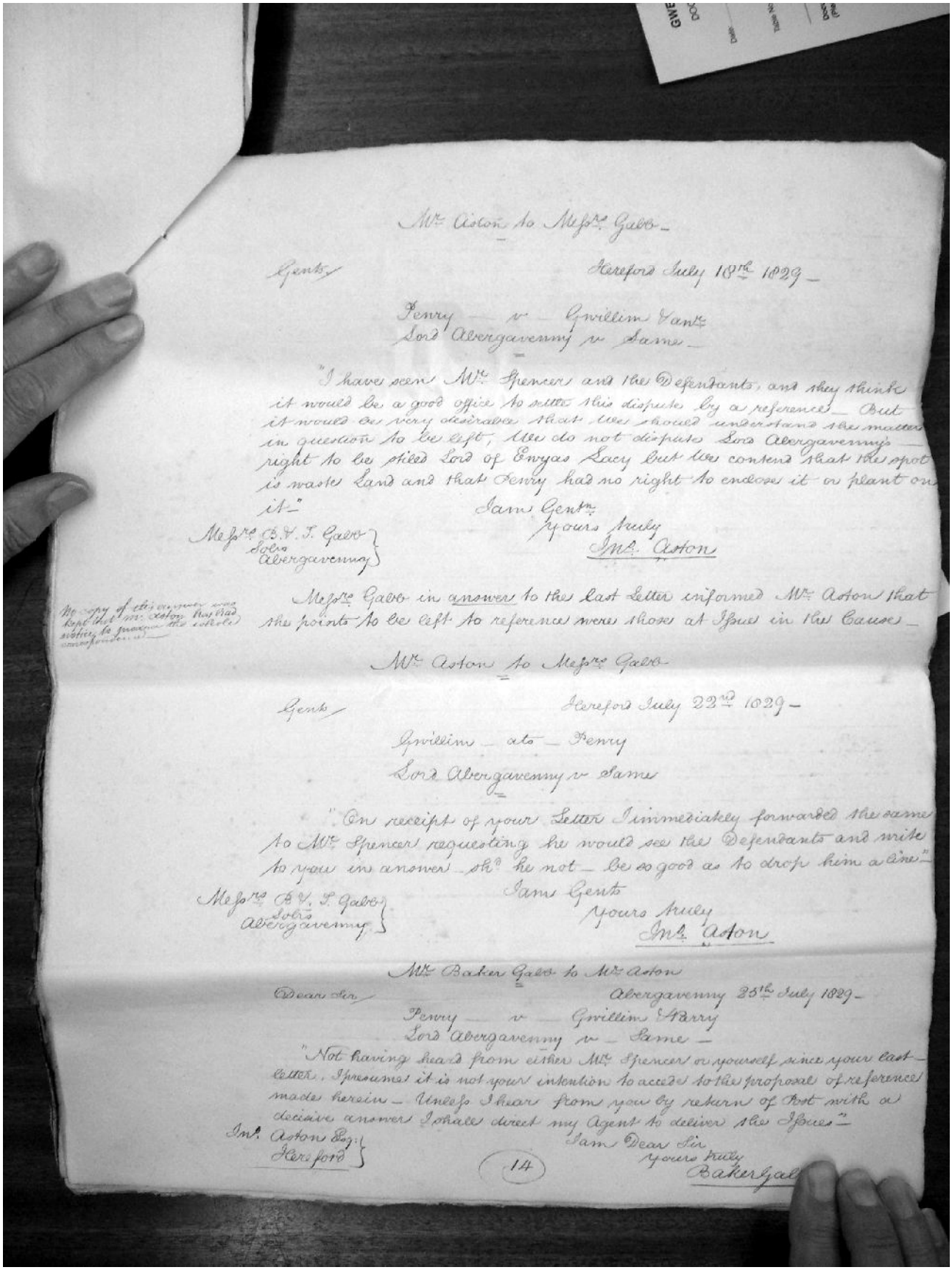
Penry – v Gwillim & anr
Lord Abergavenny v Same –

"I received the favour of your Letter respecting these Suits with Mr Rowlands' enclosed Mr Spencer being concerned with me in these actions, I immediately wrote to him on the subject thereof, and have requested him to write to you in answer to Mr Rowlands' Letter, and I expect you have or will hear from in a post or two"

I am Gentn
yours truly
Jno Aston –

Messrs B. & T. Gabb
Solrs
Abergavenny –

13



Mr Aston to Messrs Gabb –

Gents / Hereford July 18th 1829 –

Penry – v – Gwillim & anr
Lord Abergavenny v Same –

"I have seen Mr Spencer and the Defendants, and they think it would be a good office to settle this dispute by a reference – But it would be very desirable that we should understand the matter in question to be left, We do not dispute Lord Abergavenny's – right to be stiled Lord of Ewyas Lacy but we contend that the spot is waste Land and that Penry had no right to enclose it or plant on it –"

Iam Gentn
Yours truly
Jno Aston

Messrs B. & T. Gabb
Solrs
Abergavenny

No copy of this answer was kept but Mr Aston has had notice to preserve the whole correspondence –

Messrs Gabb in answer to the last Letter informed Mr Aston that the points to be left to reference were those at Issue in the Cause –

Mr Aston to Messrs Gabb

Gents / Hereford July 22nd 1829 –

Gwillim – ats – Penry
Lord Abergavenny v Same

"On receipt of your Letter I immediately forwarded the same to Mr Spencer requesting he would see the Defendants and write to you in answer – shd he not – be so good as to drop him a line" –

Iam Gents
Yours truly
Jno Aston

Messrs B. & T. Gabb
Solrs
Abergavenny

Mr Baker Gabb to Mr Aston

Dear Sir / Abergavenny 25th July 1829 –

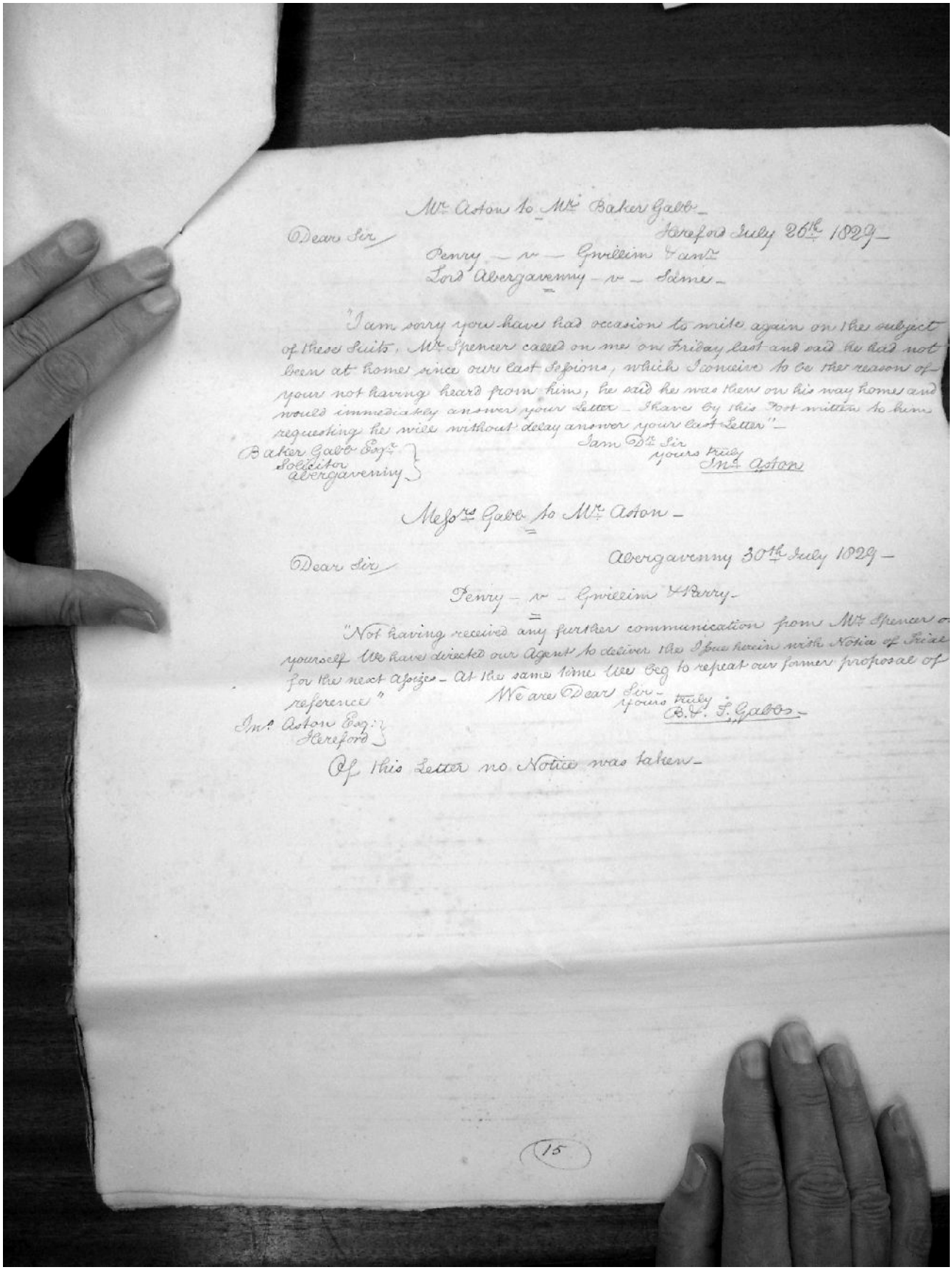
Penry – v – Gwillim & Parry
Lord Abergavenny v – Same –

"Not having heard from either Mr Spencer or yourself since your last – letter, I presume it is not your intention to accede to the proposal of reference made herein – Unless I hear from you by return of Post with a decisive answer I shall direct my Agent to deliver the Issues" –

Iam Dear Sir
Yours truly
Baker Gab

Jno Aston Esq:
Hereford

(14)



Mr Aston to Mr Baker Gabb –

Hereford July 26th 1829 –

Dear Sir

Penry – v – Gwilliam & anr
Lord Abergavenny – v – Same –

"I am sorry you have had occasion to write again on the subject of these Suits. Mr Spencer called on me on Friday last and said he had not been at home since our last Sessions, which I conceive to be the reason of your not having heard from him, he said he was then on his way home and would immediately answer your Letter – I have by this Post written to him requesting he will without delay answer your last Letter" –

I am Dr Sir
yours truly
Jno Aston

Baker Gabb Esqr
Solicitor
Abergavenny

Messrs Gabb to Mr Aston –

Dear Sir

Abergavenny 30th July 1829 –

Penry – v – Gwilliam & Barry –

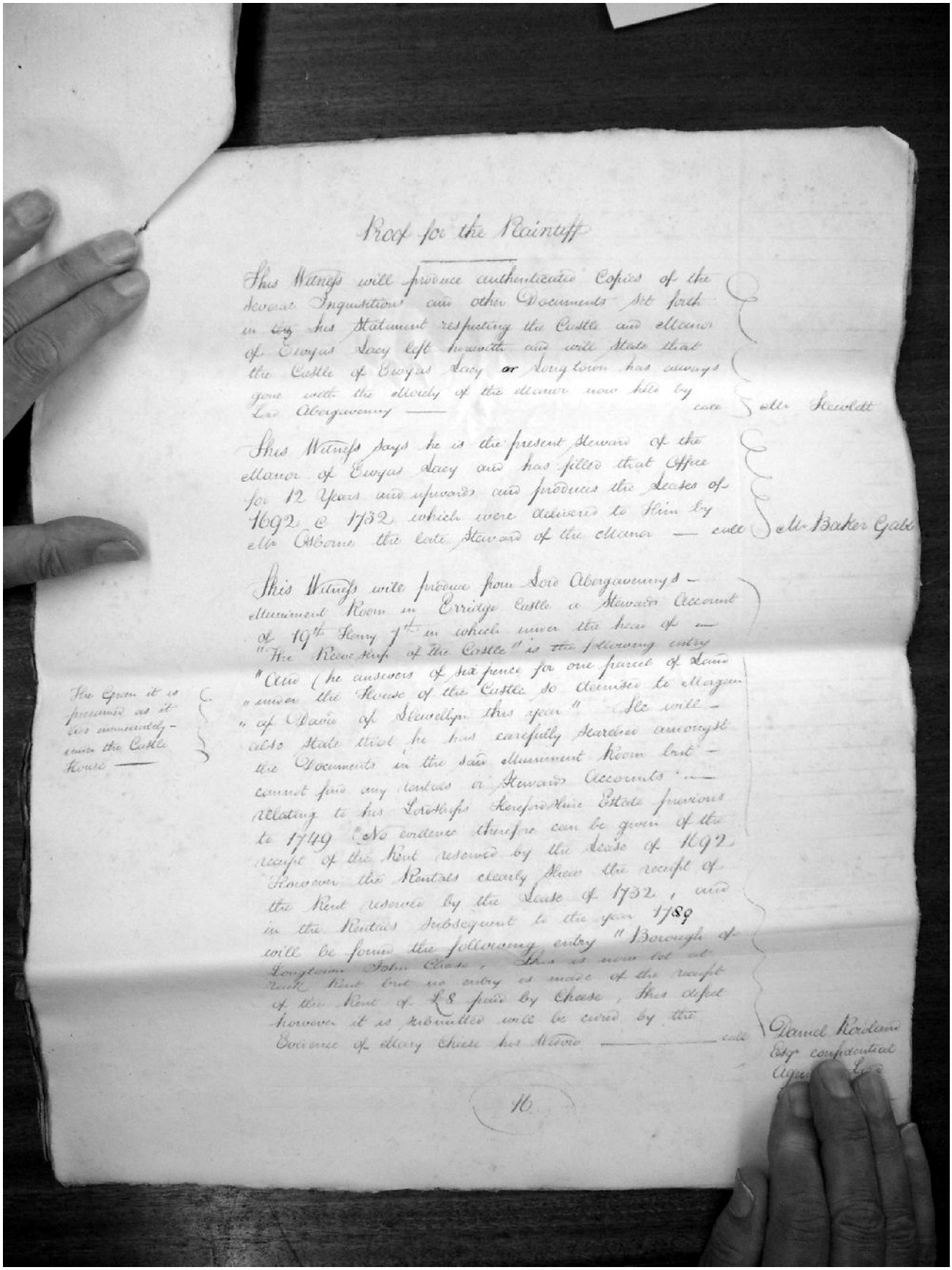
"Not having received any further communication from Mr Spencer or yourself We have directed our Agent to deliver the Brief herein with Notice of Trial for the next Assizes – At the same time We beg to repeat our former proposal of reference"

We are Dear Sir
yours truly
B.B. & J. Gabbs –

Jno Aston Esqr
Hereford

Of this Letter no Notice was taken –

15



Proof for the Plaintiff

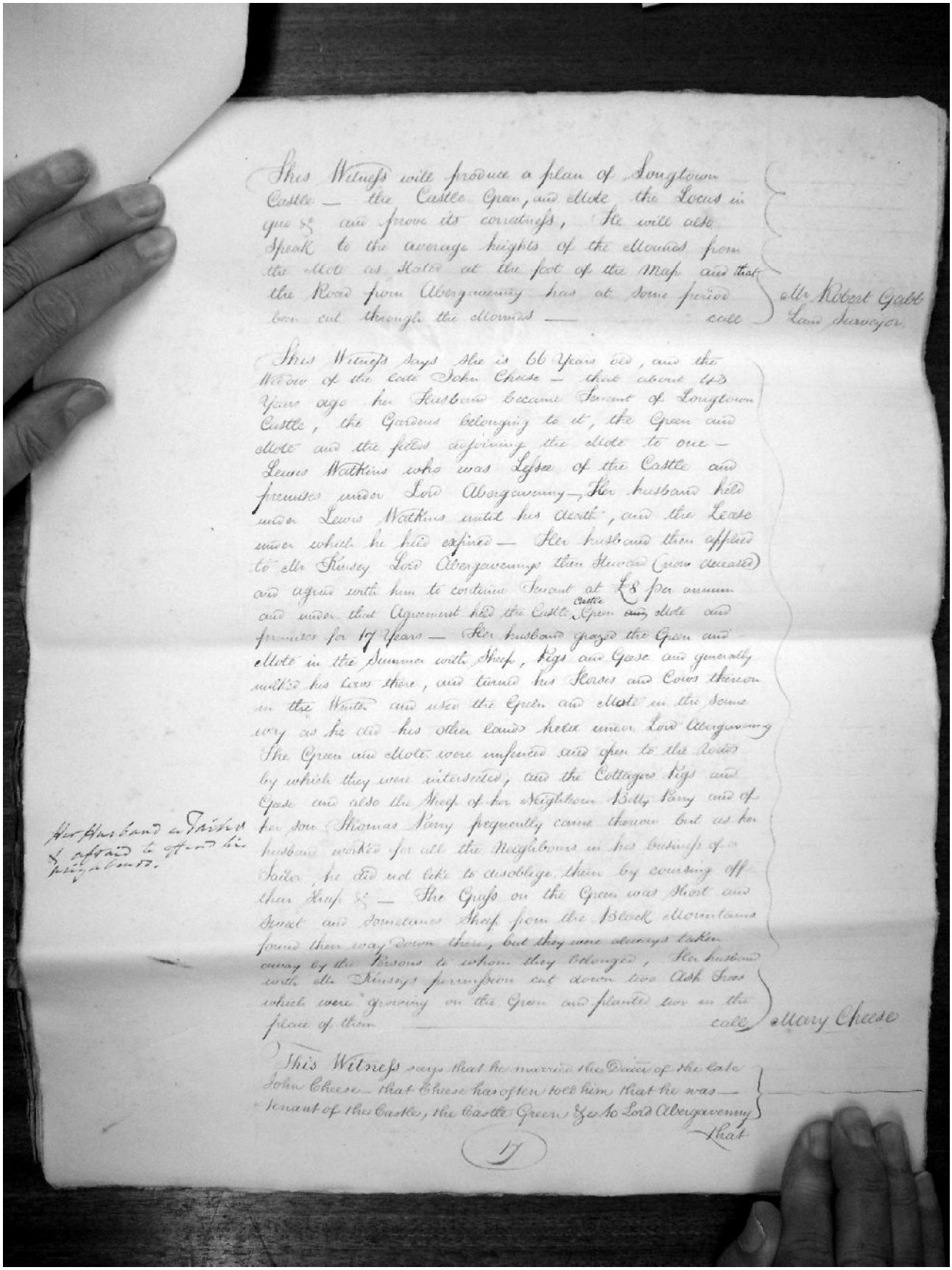
This Witness will produce authenticated Copies of the several Inquisitions and other Documents set forth in his Statement respecting the Castle and Manor of Ewyas Lacy left herewith and will state that the Castle of Ewyas Lacy or Longtown has always gone with the Moiety of the Manor now held by Lord Abergavenny — call — Mr Hewlett

This Witness says he is the present Steward of the Manor of Ewyas Lacy and has filled that Office for 12 Years and upwards and produces the Leases of 1692 & 1732 which were delivered to him by Mr Osborne the late Steward of the Manor — call — Mr Baker Gabb

This Witness will produce from Lord Abergavennys — Muniment Room in Erridge Castle a Stewards Account of 19th Henry 7th in which under the head of — "The Reeve Ship of the Castle" is the following entry "And (he answers of six pence for one parcel of Land "under the House of the Castle so demised to Morgan "of David of Llewellyn this year" He will — also state that he has carefully searched amongst the Documents in the said Muniment Room but — cannot find any Rentals or Stewards Accounts — relating to his Lordships Herefordshire Estate previous to 1749 No evidence therefore can be given of the receipt of the Rent reserved by the Lease of 1692 However the Rentals clearly shew the receipt of the Rent reserved by the Lease of 1732, and in the Rentals subsequent to the year 1789 will be found the following entry "Borough of Longtown John Cheese, This is now let at rack Rent but no entry is made of the receipt of the Rent of £8 paid by Cheese, This defect however it is submitted will be cured by the Evidence of Mary Cheese his Widow — call — Daniel Rowland Esqr confidential Agent [illegible]

The Green it is presumed as it lies immediately — under the Castle House —

16



This Witness will produce a plan of Longtown Castle — the Castle Green, and Mote the Locus in quo &c and prove its correctness, He will also speak to the average heights of the Mounds from the Mote as stated at the foot of the Map and that the Road from Abergavenny has at some period been cut through the Mounds — call

Mr Robert Gabb
Land Surveyor

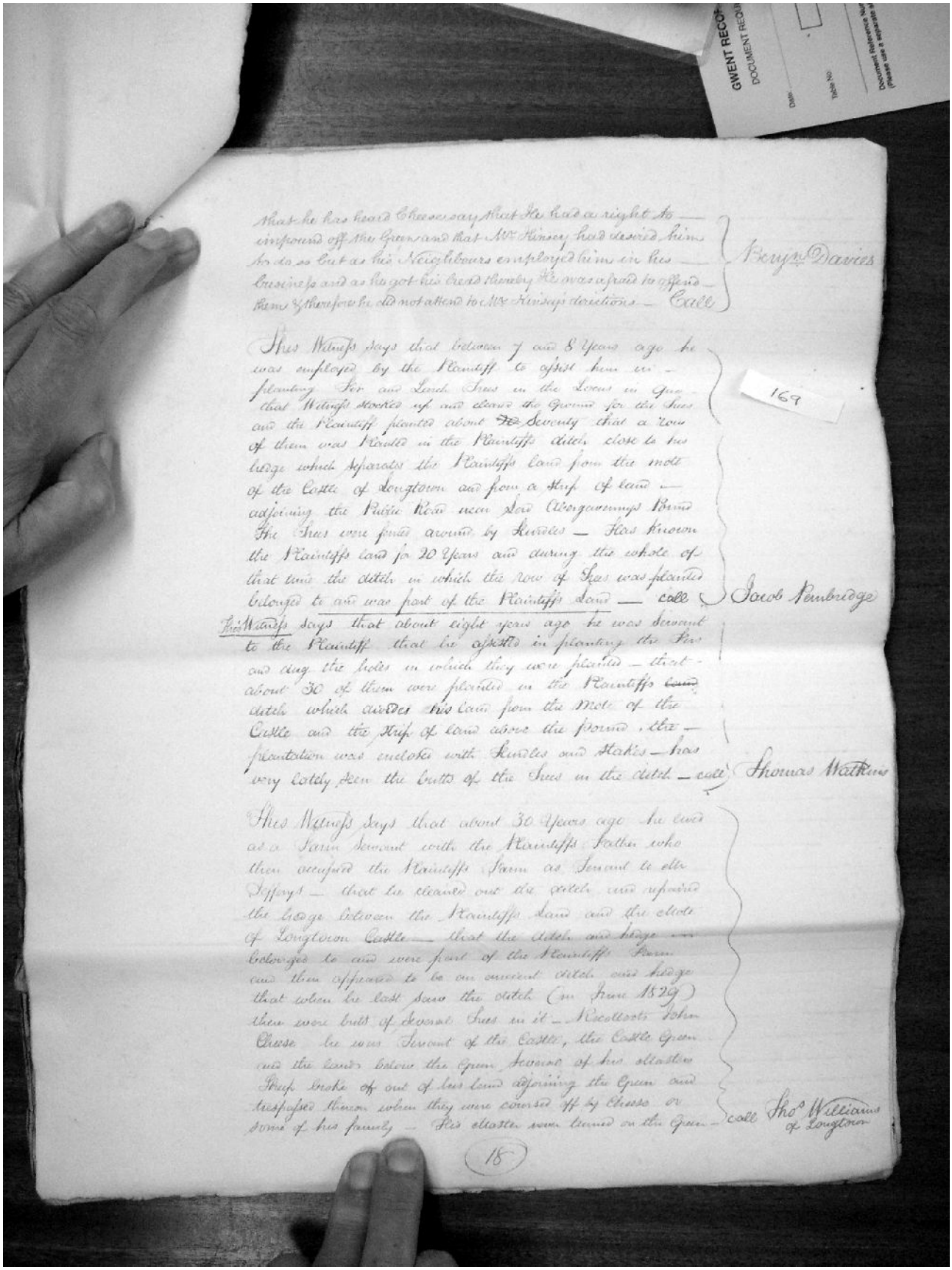
This Witness says she is 66 Years old, and the Widow of the late John Cheese — that about 43 Years ago her Husband became Tenant of Longtown Castle, the Gardens belonging to it, the Green and Mote and the fields adjoining the Mote to one — Lewis Watkins who was Lessee of the Castle and premises under Lord Abergavenny — Her husband held under Lewis Watkins until his death, and the Lease under which he held expired — Her husband then applied to Mr Kinsey Lord Abergavennys then Steward (now deceased) and agreed with him to continue Tenant at £8 per annum and under that Agreement held the Castle Castle Green ~~and~~ Mote and premises for 17 Years — Her husband grazed the Green and Mote in the Summer with Sheep, Pigs and Geese and generally milked his Cows there, and turned his Horses and Cows thereon in the Winter and used the Green and Mote in the same way as he did his other lands held under Lord Abergavenny The Green and Mote were unfenced and open to the Roads by which they were intersected, and the Cottagers Pigs and Geese and also the Sheep of her Neighbour Betty Parry and of her son Thomas Parry frequently came thereon but as her husband worked for all the Neighbours in his business of a Tailor, he did not like to disoblige them by coursing off their Sheep &c — The Grass on the Green was Short and Sweet and sometimes Sheep from the Black Mountains found their way down there, but they were always taken away by the Persons to whom they belonged, Her husband with Mr Kinseys permission cut down two Ash Trees which were growing on the Green and planted two in the place of them — call

Her Husband a Tailor & afraid to offend his neighbours.

Mary Cheese

This Witness says that he married the Daur of the late John Cheese — that Cheese has often told him that he was — Tenant of the Castle, the Castle Green &c to Lord Abergavenny — that

17



That he has heard Cheese say that he had a right to impound off the Green and that Mr Kinsey had desired him to do so but as his Neighbours employed him in his Business and as he got his Bread thereby he was afraid to offend them & therefore he did not attend to Mr Kinseys directions — Cross

Serjt Davies

This Witness says that between 7 and 8 Years ago he was employed by the Plaintiff to assist him in planting Ten and Leach Trees in the Locus in Quo that Witness stocked up and cleared the Ground for the Trees and the Plaintiff planted about ~~Ten~~ Seventy that a Row of them was planted in the Plaintiffs ditch close to his Hedge which separates the Plaintiffs Land from the Moat of the Castle of Longtown and from a Strip of Land adjoining the Public Road near Dan Morgans Barn The Trees were fenced around by Hurdles — Has known the Plaintiffs Land for 20 Years and during the whole of that time the ditch in which the Row of Trees was planted belonged to and was part of the Plaintiffs Land — cross

169

Jacob Pembridge

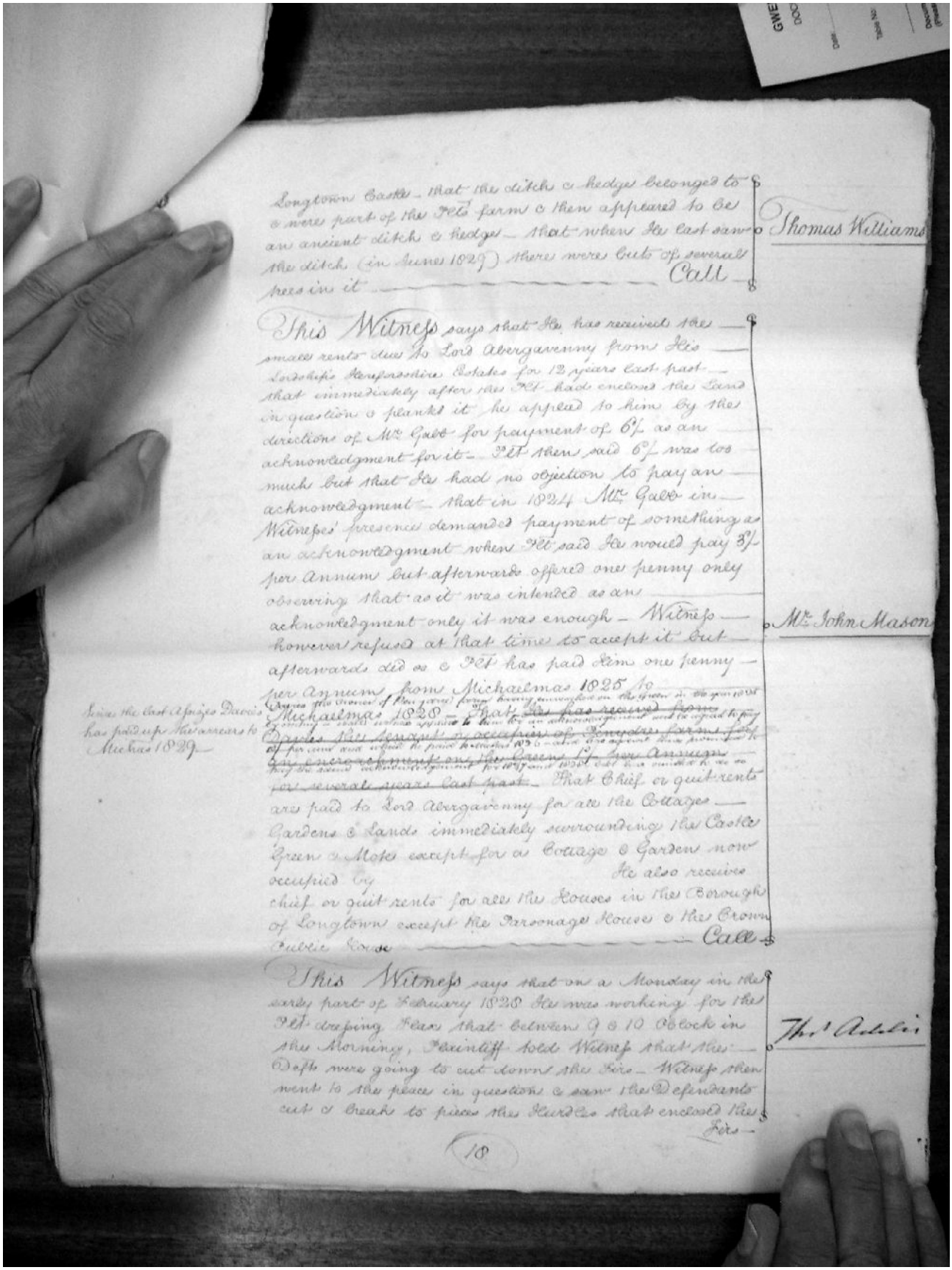
This Witness says that about eight years ago he was Servant to the Plaintiff that he assisted in planting the Trees and dug the holes in which they were planted — that about 30 of them were planted in the Plaintiffs ~~Land~~ ditch which divides his Land from the Mote of the Castle and the Strip of Land above the ground the Plantation was enclosed with Hurdles and Stakes — has very lately seen the Butts of the Trees in the ditch — cross

Thomas Watkins

This Witness says that about 30 Years ago he lived as a Farm Servant with the Plaintiffs Father who then occupied the Plaintiffs Farm as Servant to Mr Jeffreys — that he cleaned out the ditch and repaired the Hedge between the Plaintiffs Land and the Mote of Longtown Castle — that the ditch and Hedge so belonged to and were part of the Plaintiffs Farm and then appeared to be an ancient ditch and Hedge that when he last saw the ditch (in June 1829) there were Butts of several Trees in it — Recollects John Cheese he was Servant of the Castle, the Castle Green and the Lands below the Green Several of his Masters Sheep broke out of his Land adjoining the Green and trespassed thereon when they were coursed off by Cheese or some of his family — His Masters were turned on the Green — cross

Thos Williams of Longtown

18



Longtown Castle – that the ditch & hedge belonged to & were part of the Plts farm & then appeared to be an ancient ditch & hedge – that when He last saw the ditch (in June 1829) there were buts of several trees in it ——— Call

Thomas Williams

This Witness says that He has received the small rents due to Lord Abergavenny from His Lordship's Herefordshire Estates for 12 years last past – that immediately after the Plt had enclosed the Land in question & planted it he applied to him by the direction of Mr Gabb for payment of 6/- as an acknowledgment for it – Plt then said 6/- was too much but that He had no objection to pay an acknowledgment – that in 1824 Mr Gabb in Witnesses' presence demanded payment of something as an acknowledgment when Plt said He would pay 3/- per Annum but afterwards offered one penny only observing that as it was intended as an acknowledgment only it was enough – Witness however refused at that time to accept it but afterwards did so & Plt has paid him one penny per Annum from Michaelmas 1825 to Michaelmas 1828 – That ~~He has received from Davies the tenant & occupier of Penydre farm for an encroachment on the Green 1/- per Annum for several years last past~~ – That Chief or quit rents are paid to Lord Abergavenny for all the Cottages Gardens & Lands immediately surrounding the Castle Green & Mote except for a Cottage & Garden now occupied by He also receives chief or quit rents for all the Houses in the Borough of Longtown except the Parsonage House & the Crown Public House ——— Call

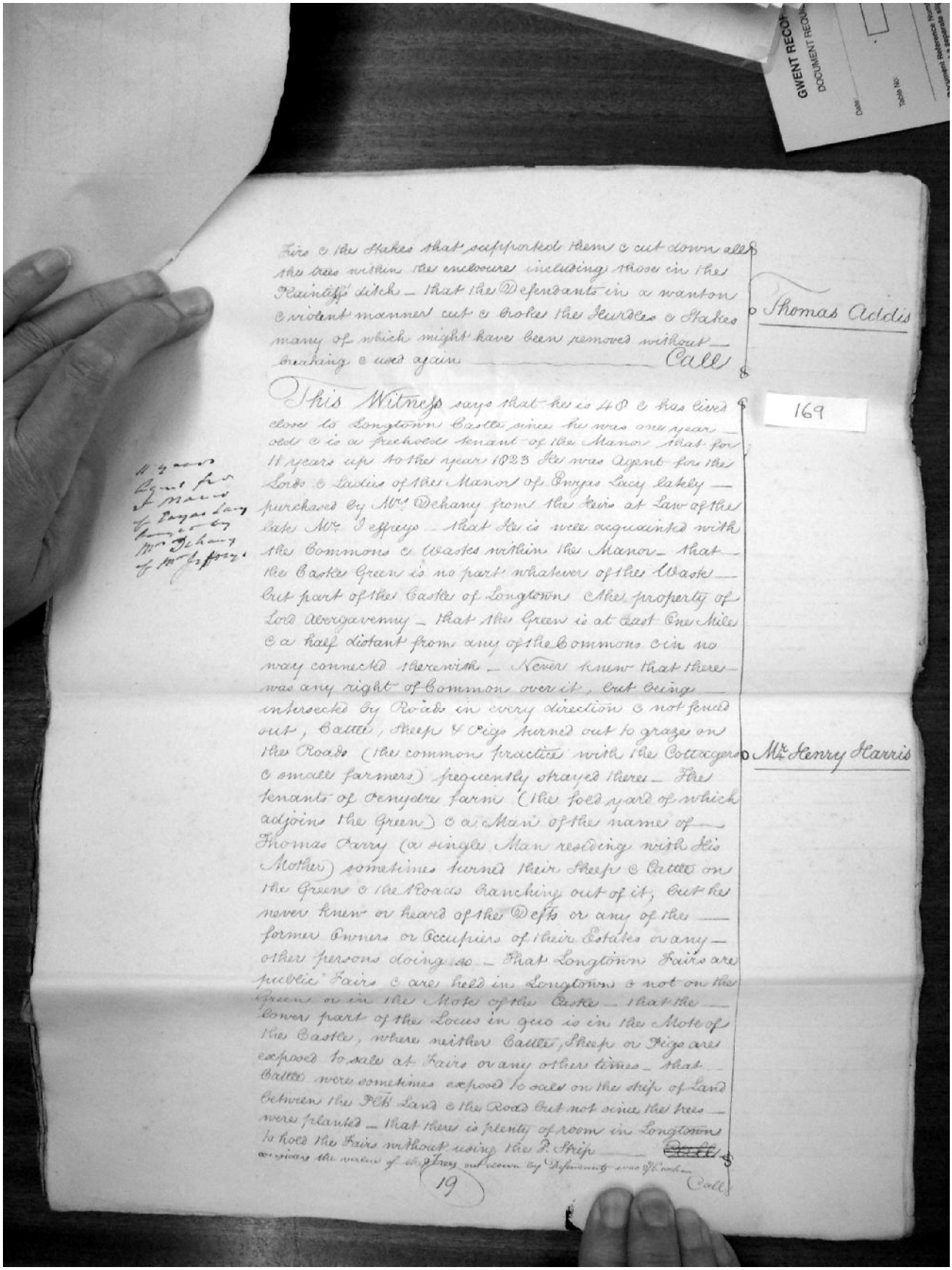
Since the last Assizes Davies has paid up the arrears to Michas 1829

Mr John Mason

This Witness says that on a Monday in the early part of February 1828 He was working for the Plt dressing Flax that between 9 & 10 Oclock in the Morning, Plaintiff told Witness that the Defts were going to cut down the Firs – Witness then went to the place in question & saw the Defendants cut & break to pieces the Hurdles that enclosed the Firs –

Thos Adkins

18



Firs & the Stakes that supported them & cut down all the trees within the enclosure including those in the Plaintiff's ditch — that the Defendants in a wanton & violent manner cut & broke the Hurdles & Stakes many of which might have been removed without breaking & used again ——— Call

Thomas Addis

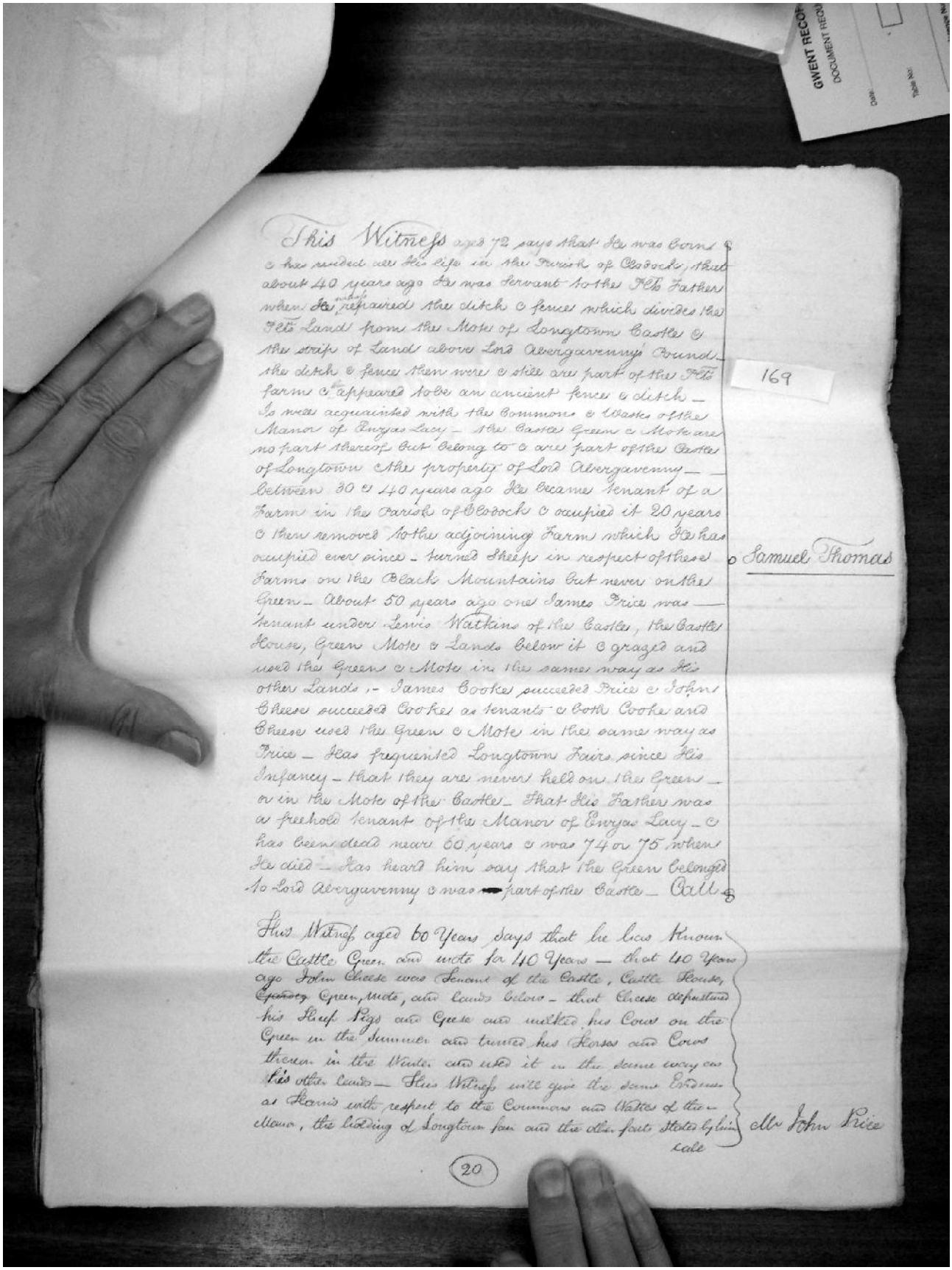
169

This Witness says that he is 48 & has lived close to Longtown Castle since he was one year old & is a freehold tenant of the Manor that for 11 years up to the year 1823 He was Agent for the Lords & Ladies of the Manor of Ewyas Lacy lately purchased by Mrs Dehany from the Heirs at Law of the late Mr Jeffreys — that He is well acquainted with the Commons & Wastes within the Manor — that the Castle Green is no part whatever of the Waste but part of the Castle of Longtown & the property of Lord Abergavenny — that the Green is at least One Mile & a half distant from any of the Commons & in no way connected therewith — Never knew that there was any right of Common over it, but being intersected by Roads in every direction & not fenced out, Cattle, Sheep & Pigs turned out to graze on the Roads (the common practice with the Cottagers & small farmers) frequently strayed there — The tenants of Penydre farm (the fold yard of which adjoins the Green) & a Man of the name of Thomas Parry (a single Man residing with His Mother) sometimes turned their Sheep & Cattle on the Green & the Roads branching out of it, but he never knew or heard of the Defts or any of the former Owners or Occupiers of their Estates or any other persons doing so — That Longtown Fairs are public Fairs & are held in Longtown & not on the Green or in the Mote of the Castle — that the lower part of the Locus in quo is in the Mote of the Castle, where neither Cattle, Sheep or Pigs are exposed to sale at Fairs or any other times — that Cattle were sometimes exposed to sale on the strip of Land between the Plts Land & the Road but not since the trees were planted — that there is plenty of room in Longtown to hold the Fairs without using the P. Strip ——— ~~Call~~ considers the value of the Trees cut down by Defendants was 7/6 each — Call

Mr Henry Harris

11 years Agent for the Manor of Ewyas Lacy lately by Mrs Dehany of Mr Jeffreys.

19



This Witness aged 72 says that He was born & has resided all His life in the Parish of Clodock, that about 40 years ago He was Servant to the Plts Father when He witness repaired the ditch & fence which divides the Plts Land from the Mote of Longtown Castle & the strip of Land above Lord Abergavenny's Pound — the ditch & fence then were & still are part of the Plts farm & appeared to be an ancient fence & ditch — Is well acquainted with the Commons & Wastes of the Manor of Ewyas Lacy — the Castle Green & Mote are no part thereof but belong to & are part of the Castle of Longtown & the property of Lord Abergavenny — between 30 & 40 years ago He became tenant of a Farm in the Parish of Clodock & occupied it 20 years & then removed to the adjoining Farm which He has occupied ever since — turned Sheep in respect of these Farms on the Black Mountains but never on the Green — About 50 years ago one James Price was tenant under Lewis Watkins of the Castle, the Castle House, Green Mote & Lands below it & grazed and used the Green & Mote in the same way as His other Lands, — James Cooke succeeded Price & John Cheese succeeded Cooke as tenants & both Cooke and Cheese used the Green & Mote in the same way as Price — Has frequented Longtown Fairs since His Infancy — that they are never held on the Green — or in the Mote of the Castle — That His Father was a freehold tenant of the Manor of Ewyas Lacy — & has been dead near 60 years & was 74 or 75 when He died — Has heard him say that the Green belonged to Lord Abergavenny & was part of the Castle — Call

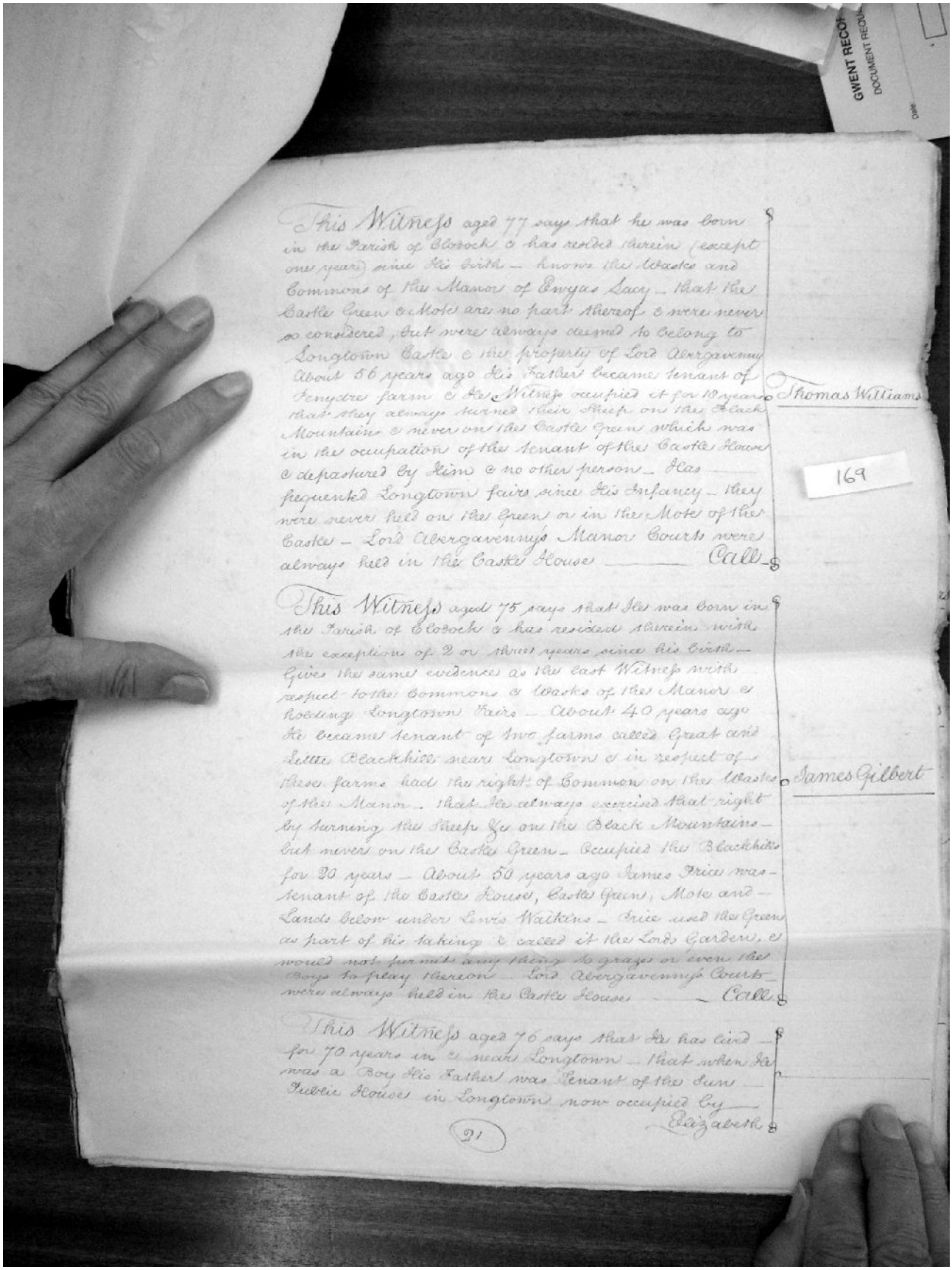
169

Samuel Thomas

This Witness aged 60 Years says that he has known the Castle Green and mote for 40 Years — that 40 Years ago John Cheese was Tenant of the Castle, Castle House, ~~Garden~~ Green, Mote, and Lands below — that Cheese depastured his Sheep Pigs and Geese and milked his Cows on the Green in the Summer and turned his Horses and Cows thereon in the Winter and used it in the same way as his other Lands — This Witness will give the same Evidence as Harris with respect to the Commons and Wastes of the Manor, the holding of Longtown fair and the other facts stated by him call

Mr John Price

20



This Witness aged 77 says that he was born in the Parish of Clodock & has resided therein (except one year) since His birth — knows the Wastes and Commons of the Manor of Ewyas Lacy — that the Castle Green & Mote are no part thereof & were never so considered, but were always deemed to belong to Longtown Castle & the property of Lord Abergavenny About 56 years ago His Father became tenant of Penydre farm & He Witness occupied it for 18 years that they always turned their Sheep on the Black Mountains & never on the Castle Green which was in the occupation of the tenant of the Castle House & depastured by Him & no other person — Has frequented Longtown fairs since His Infancy — they were never held on the Green or in the Mote of the Castle — Lord Abergavenny's Manor Courts were always held in the Castle House — Call

Thomas Williams

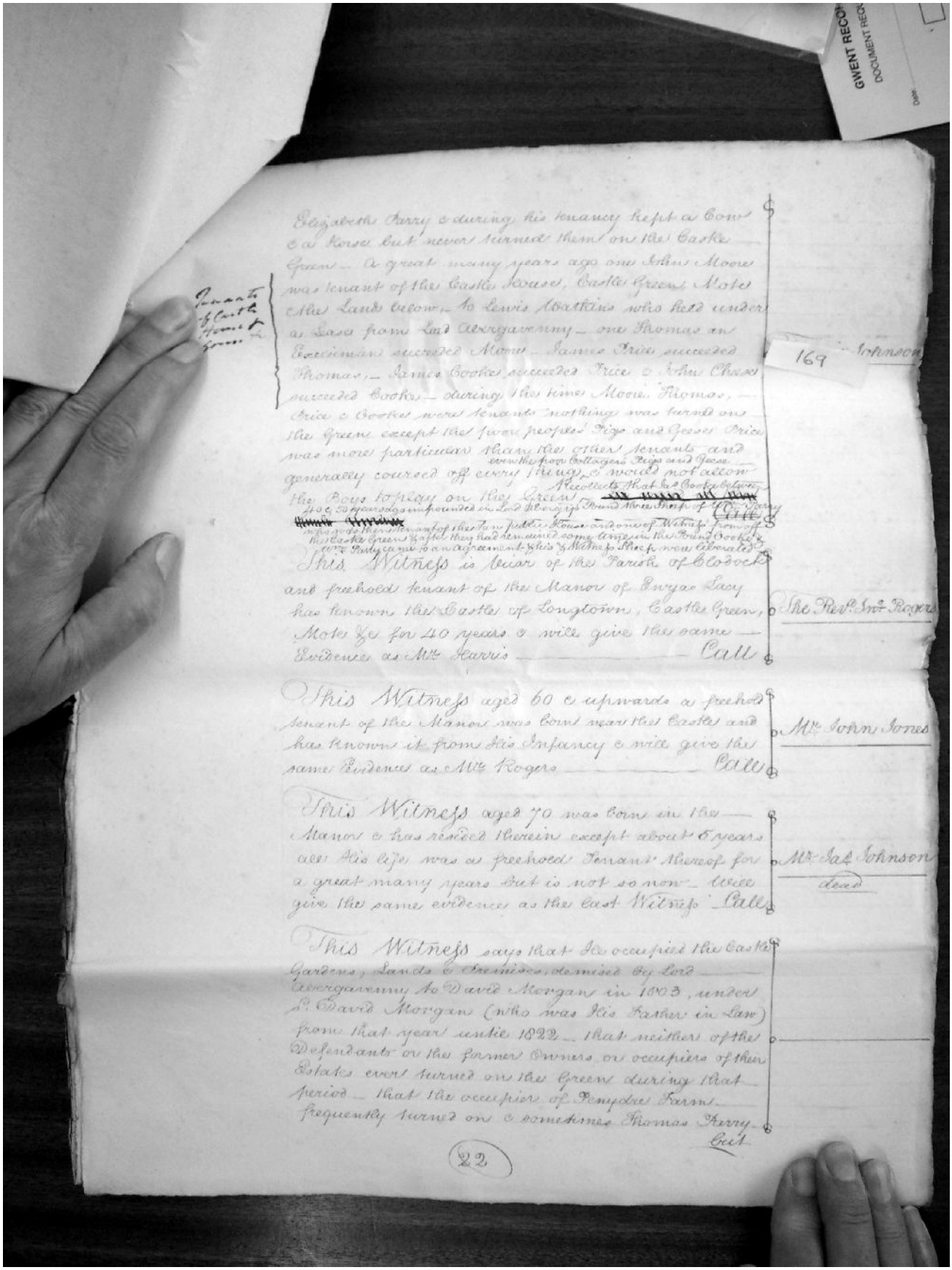
169

This Witness aged 75 says that He was born in the Parish of Clodock & has resided therein with the exception of 2 or three years since his birth — Gives the same evidence as the last Witness with respect to the Commons & Wastes of the Manor & holding Longtown Fairs — About 40 years ago He became tenant of two farms called Great and Little Blackhill near Longtown & in respect of these farms had the right of Common on the Wastes of the Manor — that He always exercised that right by turning the Sheep &c on the Black Mountains — but never on the Castle Green — Occupied the Blackhills for 20 years — About 50 years ago James Price was tenant of the Castle House, Castle Green, Mote and Lands below under Lewis Watkins — Price used the Green as part of his taking & called it the Lords Garden, & would not permit any thing to graze or even the Boys to play thereon — Lord Abergavenny's Courts were always held in the Castle House — Call

James Gilbert

This Witness aged 76 says that He has lived for 70 years in & near Longtown — that when He was a Boy His Father was Tenant of the Sun Public House in Longtown now occupied by Elizabeth

21



Elizabeth Parry & during his tenancy kept a Cow & a Horse but never turned them on the Castle Green — A great many years ago one John Moore was tenant of the Castle House, Castle Green, Mote & the Lands below — to Lewis Watkins who held under a Lease from Lord Abergavenny — one Thomas an Exciseman succeeded Moore — James Price succeeded Thomas, — James Cooke succeeded Price & John Chase succeeded Cooke — during the time Moore, Thomas, Price & Cooke were tenants nothing was turned on the Green except the poor peoples' Pigs and Geese Price was more particular than the other tenants and generally coursed off every thing, even the poor Cottagers' Pigs and Geese — & would not allow the Boys to play on the Green — Recollects that Jas Cooke between 40 & 50 years ago impounded in Lord Abergavenny's Pound three Sheep of Wm Parry who was then tenant of the Tan public House and one of Witness' from off the Castle Green & after they had remained some time in the Pound Cooke & Wm Parry came to an agreement & his & Witness' Sheep were liberated — Call

Tenants of Castle House & Green &c

169 Johnson

This Witness is Vicar of the Parish of Clodock and freehold tenant of the Manor of Ewyas Lacy has known the Castle of Longtown, Castle Green, Mote &c for 40 years & will give the same Evidence as Mr Harris — Call

The Revd Jno Rogers

This Witness aged 60 & upwards a freehold tenant of the Manor was born near the Castle and has known it from His Infancy & will give the same Evidence as Mr Rogers — Call

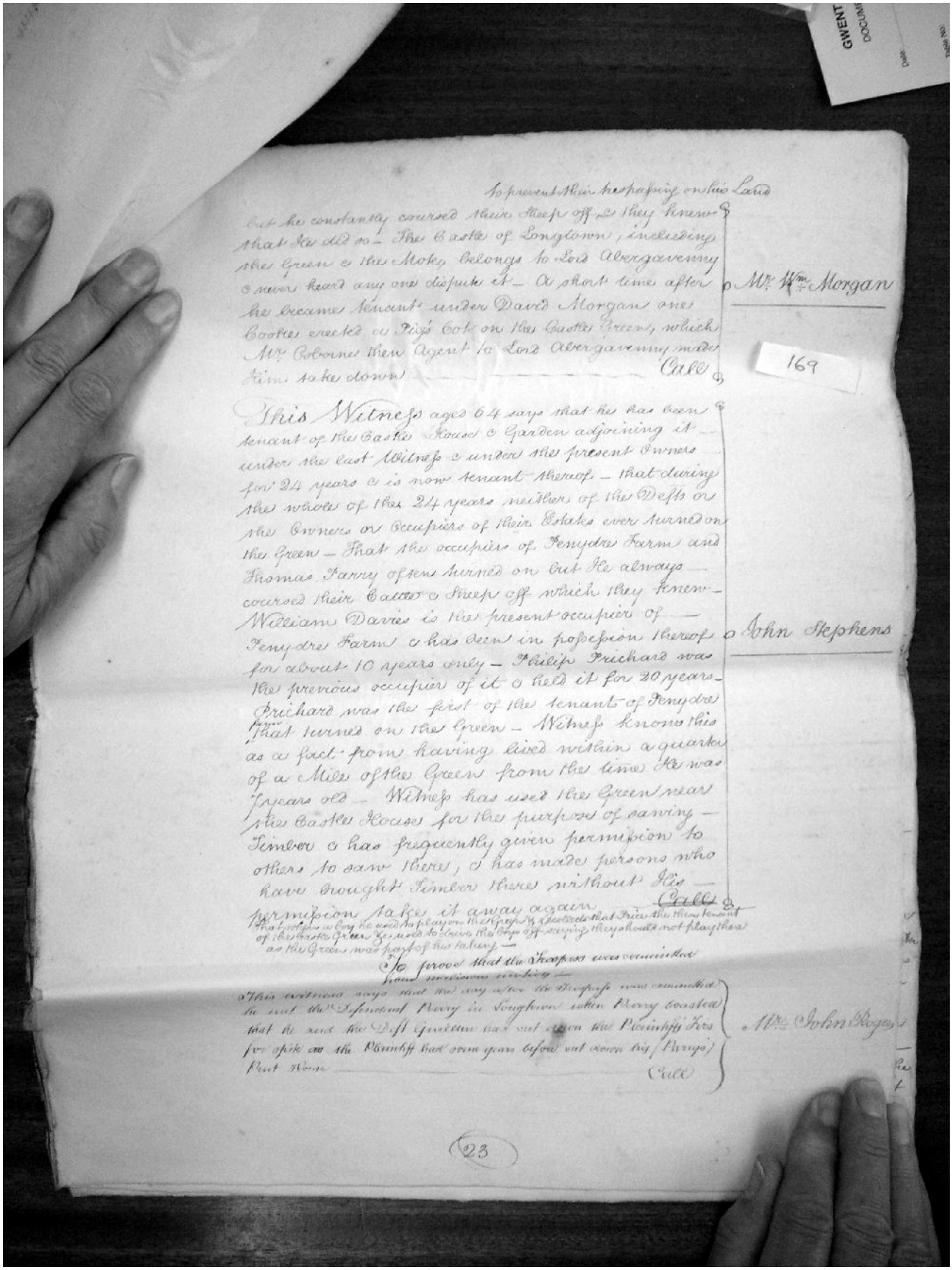
Mr John Jones

This Witness aged 70 was born in the Manor & has resided therein except about 5 years all His life was a freehold Tenant thereof for a great many years but is not so now — Will give the same evidence as the last Witness — Call

Mr Jas Johnson dead

This Witness says that He occupied the Castle Gardens, Lands & Premises, demised by Lord Abergavenny to David Morgan in 1803, under Sr David Morgan (who was His Father in Law) from that year until 1822 — that neither of the Defendants or the former Owners or occupiers of their Estates ever turned on the Green during that period — that the occupier of Penydre Farm frequently turned on & sometimes Thomas Parry — Cut

22



to prevent their trespassing on his Land

but he constantly coursed their Sheep off, & they knew that He did so — The Castle of Longtown, including the Green & the Mote, belongs to Lord Abergavenny & never heard any one dispute it — A short time after he became tenant under David Morgan one Cooke erected a Pig's Cot on the Castle Green, which Mr. Osborne then Agent to Lord Abergavenny made Him take down — Call

Mr. Wm. Morgan

169

This Witness aged 64 says that he has been tenant of the Castle House & Garden adjoining it — under the last Witness & under the present Owners for 24 years & is now tenant thereof — that during the whole of the 24 years neither of the Defts or the Owners or Occupiers of their Estates ever turned on the Green — That the occupier of Penydre Farm and Thomas Parry often turned on but He always — coursed their Cattle & Sheep off which they knew — William Davies is the present occupier of — Penydre Farm & has been in possession thereof for about 10 years only — Philip Prichard was the previous occupier of it & held it for 20 years — Prichard was the first of the tenants of Penydre farm that turned on the Green — Witness knows this as a fact from having lived within a quarter of a Mile of the Green from the time He was 7 years old — Witness has used the Green near the Castle House for the purpose of sawing — Timber & has frequently given permission to others to saw there, & has made persons who have brought Timber there without His — permission take it away again — Call

John Stephens

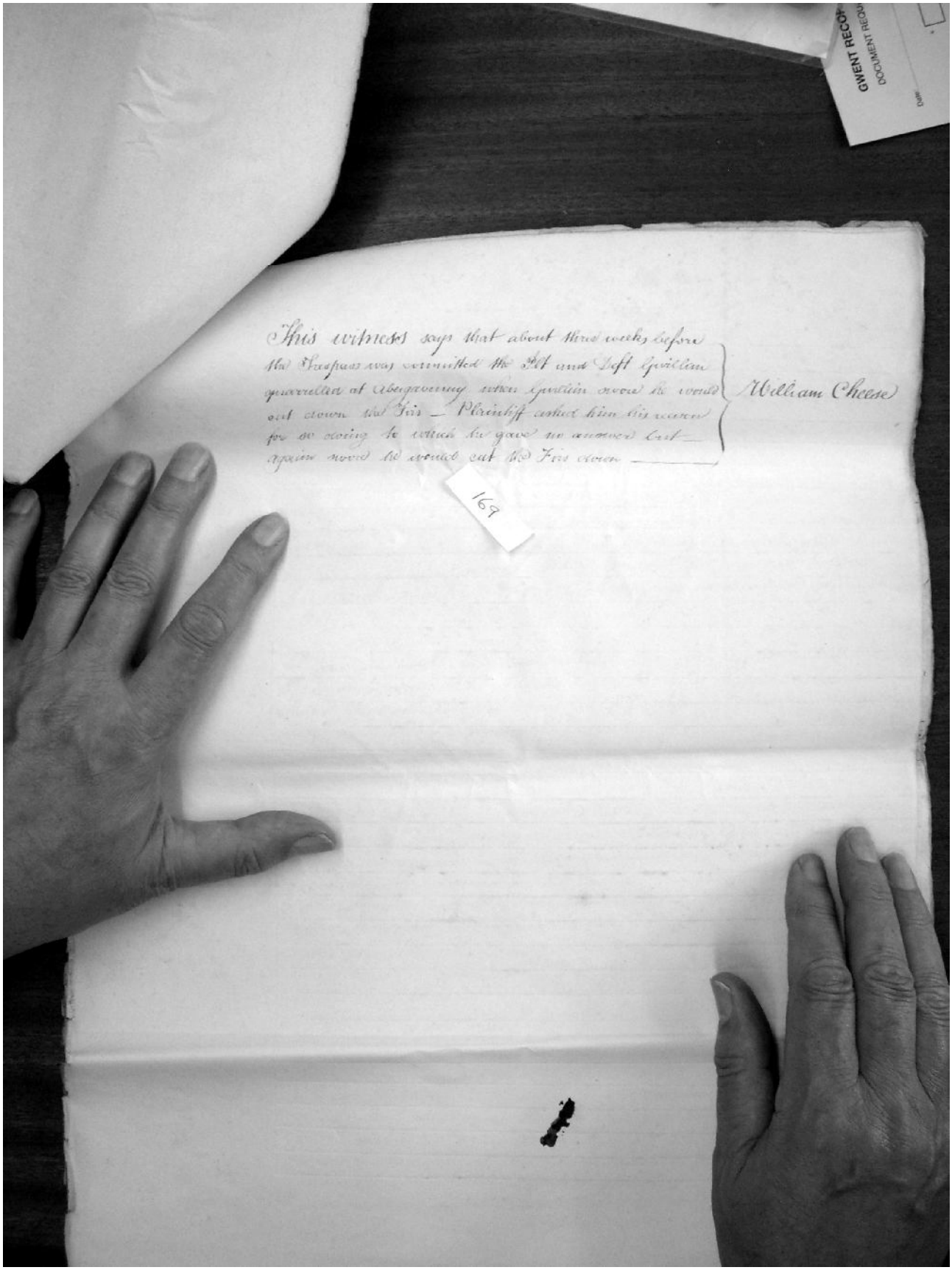
That when a boy he used to play on the Green & recollects that Price the then tenant of the Castle Green &c used to drive the boys off saying they should not play there as the Green was part of his taking —

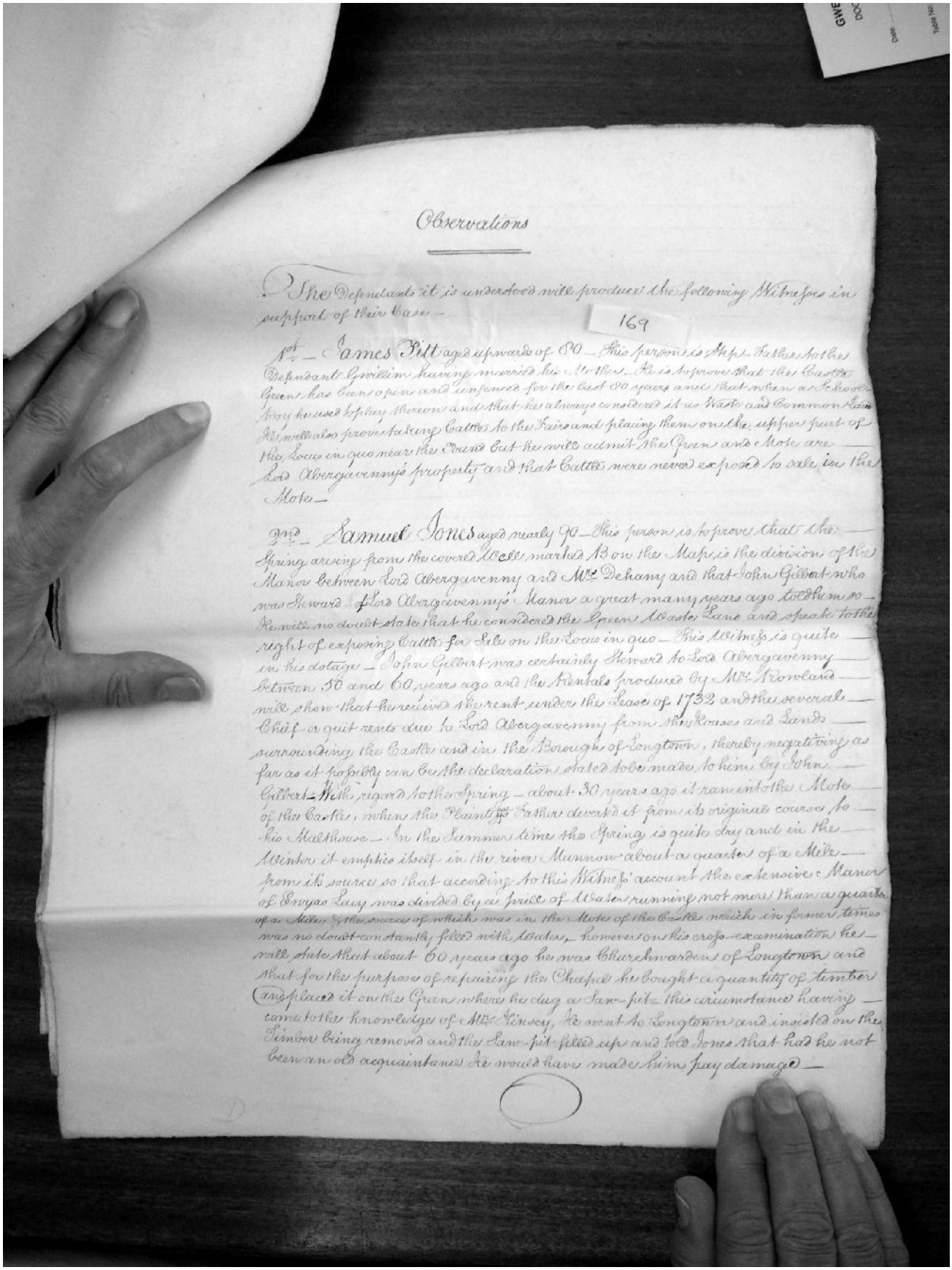
To prove that the Trespass was committed home mediowns notice —

This witness says that the day after the Trespass was committed he met the Defendant Perry in Longtown when Perry boasted that he and the Deft Guillem had cut down the Plaintiffs Firs for spite as the Plaintiff had some years before cut down his (Perry's) Pent House — Call

Mr. John Rogers

23


This witness says that about three weeks before
the Trespass was committed the Plt and Deft Gwillim
quarrelled at Abergavenny when Gwillim swore he would
cut down the Firs — Plaintiff called him his warren
for so doing he struck he gave no answer but —
again swore he would cut the Firs down ——
William Cheese
169



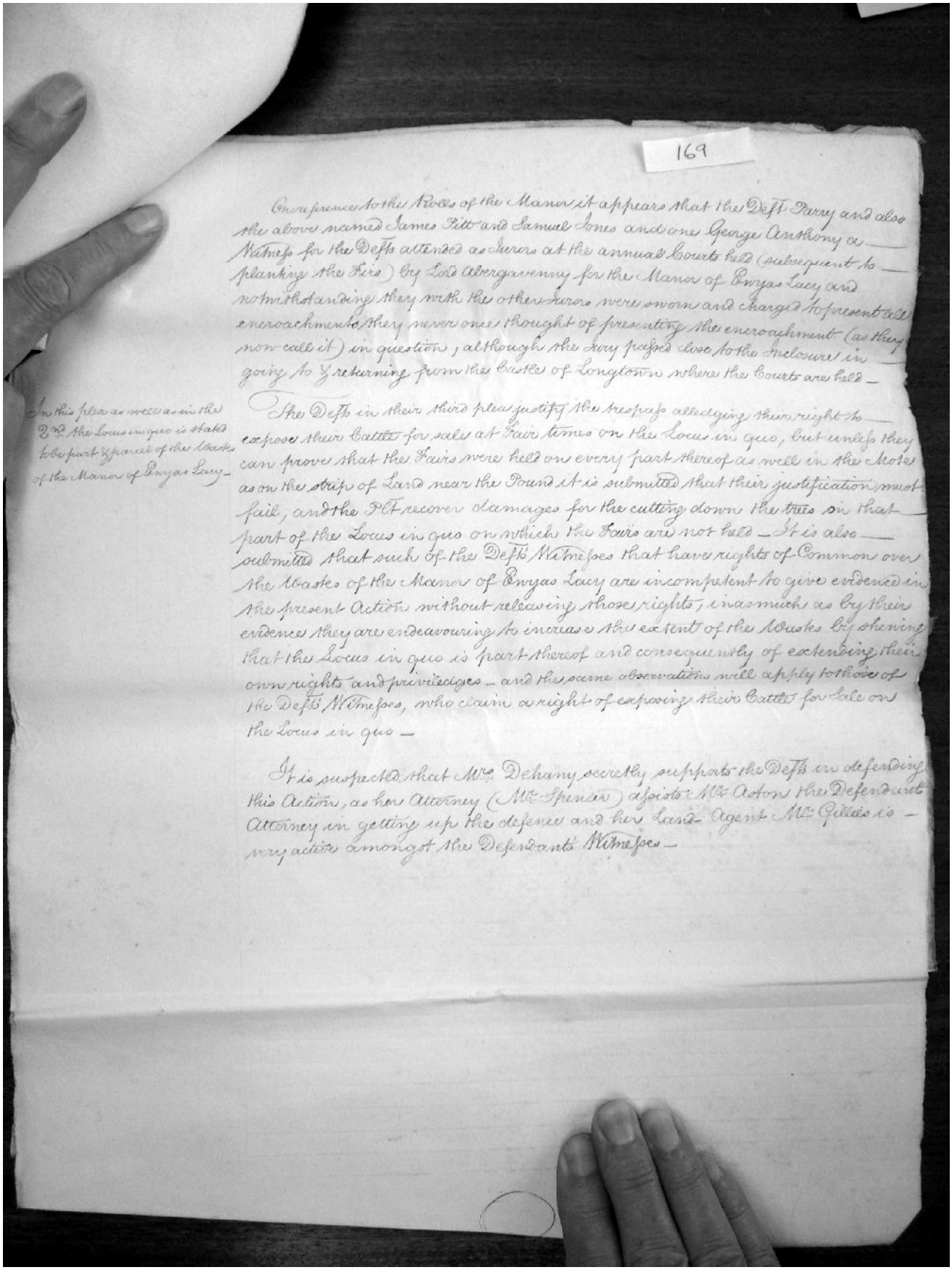
Observations

The Defendants it is understood will produce the following Witnesses in support of their Case —

169

1st — James Pitt aged upwards of 80 — This person is Step Father to the Defendant Gwillim having married his Mother — He is to prove that the Castle Green has been open and unfenced for the last 80 years and that when a School Boy he used to play thereon and that he always considered it as Waste and Common Land He will also prove to seeing Cattle to the Fairs and placing them on the upper part of the Locus in quo near the Pound But he will admit the Green and Mote are — Lord Abergavenny's property and that Cattle were never exposed to sale on the Mote —

2nd — Samuel Jones aged nearly 90 — This person is to prove that the Spring arising from the covered Well marked B on the Map, is the division of the Manor between Lord Abergavenny and Mrs Dehany and that John Gilbert who was Steward of Lord Abergavenny's Manor a great many years ago told him so — He will no doubt state that he considered the Green Waste Land and speaks to the right of exposing Cattle for Sale on the Locus in quo — This Witness is quite in his dotage — John Gilbert was certainly Steward to Lord Abergavenny between 50 and 60 years ago and the Rentals produced by Mr Rowland will show that he received the rent under the Lease of 1732 and the several Chief or quit rents due to Lord Abergavenny from the Houses and Lands surrounding the Castle and in the Borough of Longtown, thereby negativing as far as it possibly can be the declaration stated to be made to him by John Gilbert — With regard to the Spring — about 30 years ago it ran into the Mote of the Castle, when the Plaintiff's Father diverted it from its original course to his Malthouse — In the Summer time the Spring is quite dry and in the Winter it empties itself in the river Munnow about a quarter of a Mile from its source so that according to this Witness's account the extensive Manor of Ewyas Lacy was divided by a price of Water running not more than a quarter of a Mile, the source of which was in the Mote of the Castle which in former times was no doubt constantly filled with Water, — However on this cross-examination he will state that about 60 years ago he was Churchwarden of Longtown and that for the purpose of repairing the Chapel he bought a quantity of timber and placed it on the Green where he dug a Saw-pit — This circumstance having come to the knowledge of Mrs Kinsey, he went to Longtown and insisted on the Timber being removed and the Saw-pit filled up and told Jones that had he not been an old acquaintance he would have made him pay damages —



169

On reference to the Rolls of the Manor it appears that the Defts Parry and also the above named James Pitt and Samuel Jones and one George Anthony as Witnesses for the Defts attended as Jurors at the annual Courts held (subsequent to planting the Firs) by Lord Abergavenny for the Manor of Ewyas Lacy and notwithstanding they with the other Jurors were sworn and charged to present all encroachments they never once thought of presenting the encroachment (as they now call it) in question, although the Jury passed close to the Enclosure in going to & returning from the Castle of Longtown where the Courts are held —

In this plea as well as in the 2nd the Locus in quo is stated to be part & parcel of the Waste of the Manor of Ewyas Lacy —

The Defts in their third plea justify the trespass alledging their right to expose their Cattle for sale at Fair times on the Locus in quo, but unless they can prove that the Fairs were held on every part thereof as well in the Moats as on the strip of Land near the Pound it is submitted that their justification must fail, and the Plt recover damages for the cutting down the trees in that part of the Locus in quo on which the Fairs are not held — It is also submitted that such of the Defts Witnesses that have rights of Common over the Wastes of the Manor of Ewyas Lacy are incompetent to give evidence in the present Action without releasing those rights, inasmuch as by their evidence they are endeavouring to increase the extent of the Wastes by shewing that the Locus in quo is part thereof and consequently of extending their own rights and privileges — and the same observations will apply to those of the Defts Witnesses, who claim a right of exposing their Cattle for Sale on the Locus in quo —

It is suspected that Mrs Deheny secretly supports the Defts in defending this Action, as her Attorney (Mr Spencer) assists Mr Aston the Defendants Attorney in getting up the defence and her Land-Agent Mr Pitts is very active amongst the Defendants Witnesses —

Observations:

Click here for links to other legal documents pertaining to this case.