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Thomas Wolf c. Richard de Abingdon, 1293–1295: A Case Study of Legal Argument

by SARAH B. WHITE
University of St Andrews
E-mail: sbw@st-andrews.ac.uk

This essay examines the legal arguments in Wolf c. Abingdon, a tithes dispute from 1293–5 between the rector and the vicar of Aldington, Kent. The case records contain explicit citations to written law, a surprising find in a seemingly minor case. The presence of explicit citations in particular suggests first that the litigants had access to legal assistance in the provincial court, and second that advocates and possibly judges were turning to written legal sources to resolve disputed points. This essay shows how the litigants' arguments were constructed and determines whether or not these arguments were effective in court.

Thomas Wolf c. Richard de Abingdon is a tithes dispute which took place in 1293–5 between the vicar and the rector of the church of Aldington in Kent. Thomas Wolf, the vicar, sued Richard de Abingdon, the rector, before the commissary of the consistory Court of Canterbury, Richard de Clyve, for small tithes which he claimed were due to him as vicar.[1] Richard subsequently appealed to the Official of the Court of Canterbury *sede vacante* on the grounds that Richard de Clyve refused to give him a fair hearing. The case was resolved by 3 February 1295, when Archbishop Winchelsey (1293–1313) confirmed Thomas as the vicar of Aldington, along with his rights to the tithes.

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[1] In general, rectors were owed the great and small tithes and the vicars, small tithes only. This dispute specifically concerns the small tithes of Aldington and Smeeth. It has been suggested by one reader that it was uncommon to have a permanent vicarage created when the rectory was not held by a religious house. If so, the irregularity of this may have factored into the dispute.

Although the subject, a short dispute between two men of the same parish over tithes, may seem somewhat petty, the case contains some of the most interesting and illuminating documentation of legal argument in the thirteenth-century Canterbury records. The records contain a significant amount of information about emerging legal expertise and education, as well as forms of legal activity that took place outwith the formal court setting. In particular, the dispute casts light on how parties might use written arguments in the course of a dispute alongside other strategies, including the use of witnesses, documents and even letters to the judge. Whether or not it was these arguments that brought the dispute to a close is uncertain, but they certainly played a large part in the case.

The content of arguments presented in court by litigants, or more likely by their counsel, rarely appear in the official court record. Even specific notes that these arguments were presented either orally or in writing tend to be lacking. This absence may be due in part to the record-keeping practice of the court, as well as to the ecclesiastical courts' dependence on correct procedure and proof by witnesses to determine the outcome of a case. While the legal arguments that a party might make could help to establish, for example, whether or not he had been summoned to appear in the correct form, the key point for the record was whether or not he was contumacious, and all that really mattered was whether the proofs lined up. If additional arguments were presented or sought, they do not seem to have been considered essential for the decision-making of the court. However, the *acta* (official records of the court) from *Wolf c. Abingdon* specifically note that there had been a dispute between the parties ('altercatio fuisset') and that Richard 'strove to persuade' the court ('persuadere nitebatur') of his accusations.[2] Further, there is a record of the arguments themselves, and fairly complex ones at that, presented in writing at the request of the court.[3] Why, in this case, were these sophisticated arguments used in what by any other standard would be a low-level case? How were these arguments constructed, and what does the record indicate about how they might have been received?

Both the litigants, Thomas and Richard, appear almost nowhere else in records from the period and therefore their ecclesiastical careers, let alone any legal education that they might have had, are unknown. Thomas Wolf appears in documents as Thomas Lupus or Thomas le Ulf, the vicar of Aldington and Smeeth *c.* 1293–5. Aside from the case records pertaining to *Wolf c. Abingdon*, Thomas does not appear under any name elsewhere, except in the Register of Archbishop Winchelsey, which contains the

[2] Canterbury Cathedral Archives, CCA-DCc-SVSB/3/188; SVSB/3/193. All manuscripts from the CCA are henceforward referred to by their shelf mark only.

[3] CCA-DCc-SVSB/3/188.

conclusion of the case. Richard de Abingdon, referred to in documents as Richard de Abyndone, Appendon and other variants, was the rector of the church of Aldington *c.* 1293–5. Like Thomas, Richard appears in few records outside the tithes case: he was a witness in a few instances in the Register of Archbishop Winchelsey, in addition to the document confirming Thomas's ordination. Information on Richard's possible career is somewhat muddled due in part to the presence of another Richard de Abyndon (d. 1322), an administrator who was in charge of the vacant archbishopric of Dublin *c.* 1294–6, baron of the exchequer in 1299 and again in 1308, and a canon in a number of localities with at least eight ecclesiastical livings at the time of his death, none of which are Aldington.[4] Both parties seem to be mostly self-representing in the *acta*, with only one instance of Richard appearing by a proctor, Master Alan de Holefelde, being recorded and no letters of proxy.[5] It would be tempting to assume from the lack of named legal representation that the arguments used in the case were composed by the parties themselves but, given the content of Thomas's argument especially, it seems more probable that they did indeed have legal assistance, although unnamed.

There is more information available for the primary judge in *Wolf c. Abingdon*: Richard de Clyve, commissary general of the consistory Court of Canterbury. Richard was a monk of Christ Church (professed 1286) and had likely been a master of arts, possibly at Oxford, before his profession.[6] He was a student at Paris by 1288 and, to quote Charles Donahue, began his legal career in Canterbury when he was 'young and right out of law school'.[7] Given the books that he bequeathed to the priory library in Canterbury, his interests were in canon law, not theology. Fourteen law books were assigned to his use in the fourteenth-century catalogue of Christ Church Library.[8] Richard was appointed commissary of the consistory court by John de Selveston, Official of the prior and chapter of Christ Church Canterbury, at the start of the 1292–4 vacancy (commission dates 4 January 1292/3).[9] Brian Woodcock suggests this might have been presumptuous of the Official, as the prior and chapter preferred to delegate their authority themselves, but in this case, the prior and chapter

[4] J. R. S. Philips, 'Richard de Abyndone', *ODNB*, <https://doi.org/10.1093/ref:odnb/23524>.

[5] CCA-DCc-ESRoll/134.

[6] Thomas Sullivan, *Benedictine monks at the University of Paris, A.D. 1229–1500: a biographical register*, Leiden 1994, no. 185.

[7] Charles Donahue Jr, *Law, marriage and society in the later Middle Ages: arguments about marriage in five courts*, Cambridge 2007, 567.

[8] Ibid., 'Additional texts and commentary', no. 1183.

[9] Brian L. Woodcock, *Medieval ecclesiastical courts in the diocese of Canterbury*, Oxford 1952, 10.

had already commissioned Richard on 14 December 1292.[10] Richard was appointed commissary again in 1313, and was acting as provisional Official of the Court of Canterbury at the start of the latter vacancy.[11] Between 1292 and 1313 Richard was also regularly employed by the prior as proctor and in 1298 he was proctor to the court of Rome.[12] He was appointed subprior of Canterbury on 28 October 1317 and died in 1326.[13]

Regarding the properties, Aldington and Smeeth are located in the south-west of Kent, in the hundred of Bircholt.[14] The tithes under dispute all proceed from within the parish of Aldington in the deanery of Lympne and the diocese of Canterbury.[15] The church of Aldington (dedicated to St Martin), to which the chapel of Smeeth (dedicated to St Mary) was annexed, was exempt from the jurisdiction of the archdeacon of Kent and the patronage of the rectory and the vicarage pertained exclusively to the archbishop's manor of Aldington, until an exchange was made between the archbishop and Henry VIII, in which the manor was granted to the king (although the patronage remained to the see of Canterbury).[16] At the time of the *taxatio* in 1291–2, the benefice of Aldington with the dependent chapel of Smeeth was valued at £35 in the great *taxatio*, a significant sum, and one which was in the top 13 per cent in Kent.[17] The relatively high value of the benefice, as well as the close association with the archbishop's manor, may have been why the case received the treatment that it did.

The first known reference to a rector of Aldington comes from 1272.[18] The vicarage was newly ordained in 1295 by Archbishop Winchelsey, but Thomas claimed that the tithes and incomes due to him were augmented by Archbishop Peckham (1279–92), indicating that the vicarage was already established by 1292 at the latest.[19] In Richard's appeal to the provincial Court of Canterbury, he claimed that Thomas was 'conducting

[10] Ibid; Irene J. Churchill, *Canterbury administration: the administrative machinery of the archbishopric of Canterbury illustrated from original records*, ii, London 1933, 13.

[11] Woodcock, *Medieval ecclesiastical courts*, 113; Churchill, *Canterbury administration*, ii. 13.

[12] CCA-DCc-SVSB/1/170.

[13] Donahue, *Law, marriage and society*, 'Additional texts and commentary', no. 1185.

[14] In the Domesday entry for Aldington, it is noted that it had a particularly large number of households and tax units, indicating that it was a wealthy area even 200 years prior to the dispute over the tithes: <https://opendomesday.org/place/TR0736/aldington>.

[15] Edward Hasted, 'Parishes: Aldington', in *The history and topographical survey of the county of Kent*, viii, Canterbury 1799, 314–27; *British History Online*, <http://www.british-history.ac.uk/survey-kent/vol8/pp314-327>.

[16] Ibid.

[17] Jeff Denton and others, *Taxatio*, Sheffield 2014, <https://www.dhi.ac.uk/taxatio/benkey?benkey=CA.CA.LY.15>.

[18] Ibid. *Taxatio* notes the institution of the rectory in about 1272.

[19] *Registrum Roberti Winchelsey, Cantuariensis Archiepiscopi, A.D. 1294–1313*, ed. Rose Graham (Canterbury and York Society li, 1952), 118–20.

himself' as vicar, possibly indicating that he was either suggesting that Thomas was not canonically appointed, or that the vicarage was not real.[20] However, both the claims of augmentation and fabrication were likely rhetorical efforts and not indicative of the reality of the vicarage. Additionally, it appears that the parishioners were accustomed to pay tithes to both the rector and the vicar until the dispute began, at which point some of them, perhaps taking advantage of the confusion, had to be ordered to continue paying, pending the conclusion of the case.

The narrative of *Wolf c. Abingdon* can be pieced together fairly well from the sources available, though there are some gaps. The earliest dated document in the case is a mandate from Richard de Clyve to the vicar of Newchurch on 13 October 1293, stating that Thomas had complained that Richard de Abingdon had despoiled him of the tithes owed to him, and that while the case was still pending Richard de Abingdon had continued to receive the said tithes.[21] Richard de Clyve ordered the vicar to warn Richard de Abingdon to make satisfaction to Thomas, and if he would not, the vicar was to denounce Richard as excommunicate and summon him to appear in court. Richard de Clyve had clearly sent a similar mandate to the rector of the church of Saltwood, since the *acta* from 30 October 1293 state that following the rector of Saltwood's summons, Master Alan de Holefeld appeared on behalf of Richard de Abingdon.[22] At this point, Thomas offered a libel in court (seemingly attached to the *acta* at one point). Both parties appeared in person on the first court day assigned, but there was some dispute over a second libel, and a second court day was assigned for Richard to present his exceptions.

There are two surviving libels from Thomas and a description of a third. In the first libel Thomas claimed that Richard despoiled him of the tithes from a number of named lands (Peynesland, Karceresland, John Walter's land, Cleyhame, which belonged to Richard Aleyn, and that of Henry Peres) as well as the pasturage of the churchyard of Smeeth and the hunting tithe from the park of Aldington, which had been added to his income by the late John Peckham, archbishop of Canterbury (1279–92).[23] The description of the libel contains slightly more specific information about the tithes, saying that they were taken from land dug by a 'foot-plough', from mowing and from pasturage in Smeeth, as well as tithes of specific goods from the lands mentioned.[24] The third libel, directed to John Symnel, a parishioner of Aldington, is not directly related to this case but worth noting, as it indicates that Thomas had initiated proceedings

[20] Ibid. 118; CCA-DCc-SVSB/3/194.
[21] CCA-DCc-SVSB/3/191.
[22] CCA-DCc-ESRoll/134.
[23] CCA-DCc-SVSB/3/190. All the lands named are presumably farmland held within the hundred of Bircholt (in which Aldington is located), but any modern names have yet to be found.
[24] CCA-DCc-SVSB/3/186.

against parishioners who refused to pay tithes to him.[25] It does not appear from the libel that John was paying tithes to Richard instead of Thomas, but was simply withholding them. However, some parishioners were indeed paying tithes to Richard and not Thomas, as Richard de Clyve issued a mandate on 27 March 1294 to the chaplain of Hythe ordering him to ensure that parishioners paid the tithes due to Thomas under threat of excommunication and despite the pending lawsuit, so that the tithes would not be paid to Richard de Abingdon to Thomas's detriment.[26]

The next dated document, from 12 November 1293, is a second mandate from Richard de Clyve to the vicar of Newchurch.[27] He stated that Richard de Abingdon had not ceased to take tithes due to Thomas and ordered the vicar to summon him to court. The case then goes quiet for a few months before the next dated document, a set of *acta* before Richard de Clyve on 30 January 1294, noting that both parties appeared in court and that for some time there had been a dispute as to whether an earlier libel from Thomas was unchanged.[28] A new court date was assigned and this seems to be the point at which Thomas presented his *raciones* (reasons or arguments, but the Latin term is used here to differentiate between the document itself and its contents). There is a second set of *acta*, which appear to be from the same day, stating that Thomas did indeed present his *raciones* in person and was asked to present them in writing within five days of the next court session.[29] Richard de Abingdon's letter to Richard de Clyve, complaining that Thomas had threatened him, may fit into the case at this point.[30]

There is a draft inhibition mandate from the Official of the Court of Canterbury to Richard de Clyve from 7 March 1294, saying that Richard de Abingdon had appealed to the Court of Canterbury, claiming that Thomas, who was 'sufficiently beneficed elsewhere', had been conducting himself as the self-appointed vicar of Aldington.[31] The Official ordered Richard de Clyve to summon Thomas to appear at the metropolitan court and inhibit Richard from acting in the case. The next document is another set of *acta* before Richard de Clyve on 23 March 1294.[32] There is some confusion here as to whether the case had devolved to Richard de Clyve following Richard de Abingdon's appeal, or whether Richard de Clyve was pursuing issues related to the case *ex officio* in spite of the inhibition. In either case, Thomas and Richard appeared and were set a new court day. Thomas seemingly refused to publish his libel and for this

[25] CCA-DCc-SVSB/3/187.
[26] CCA-DCc-SVSB/1/108/1.
[27] CCA-DCc-SVSB/2/58/2.
[28] CCA-DCc-SVSB/3/188.
[29] CCA-DCc-SVSB/3/193.
[30] CCA-DCc-EC/III/55.
[31] CCA-DCc-SVSB/3/189. Thomas has not as yet appeared in any other records, so whether or not he had benefices elsewhere is unknown.
[32] CCA-DCc-SVSB/3/192.

reason Richard was absolved from paying expenses. Four days later, Richard de Clyve sent the mandate to the chaplain of Hythe, ordering him to ensure that the parishioners of Aldington paid their tithes to Thomas.

It appears issue was joined shortly thereafter, but following this, further issues were brought to light. Although there are no surviving depositions from the case, there is one set of interrogatories made on Thomas's behalf. There are questions on the payment of the tithes, namely whether there was indeed a vicar of Aldington to whom tithes were due, and also whether Richard had threatened the parishioners that if they paid tithes to Thomas, he would demand them back in full in the lawsuit. An entirely different set of complaints also emerges, namely that Richard's men had beaten Thomas's priest and 'thrown him down in the manner of robbers', entered Thomas's locked room and thrown his things out the window, and that Robert had insulted and violently argued with Thomas in public.[33]

On 7 April 1294 the Official of the Court of Canterbury once again sent an inhibition mandate (a mandate ordering a lower judge to cease prosecuting a case pending appeal) to Richard de Clyve, stating that Richard had refused to hear Richard de Abingdon's complaints concerning Thomas's libels. For this reason Richard de Abingdon had appealed to the Official of Canterbury, who once again inhibited the commissary from proceeding with the case. Although the document is undated, a warning from Richard de Clyve to Richard de Abingdon seems to fit here, in which he states his intent to prosecute Richard de Abingdon *ex officio*, enjoining him to cease taking tithes, to return the key to the church of Aldington, which Richard was currently withholding, to Thomas as well as to cease entering Thomas's room at night and throwing his things out of the room. Then there is a gap of ten months for which there are no extant records. Although there is no record of a sentence as such, the Register of Archbishop Winchelsey contains a document confirming Thomas's original appointment as vicar 'if the aforesaid Thomas is uncertain as far as his institution is concerned'.[34] The register also confirms the tithes that Thomas was to receive, granting him the small tithes owed to Aldington and Smeeth from all the land which could be tilled without a plough (by a foot spade or other tools) along with the additions which Archbishops Kilwardby and Peckham had made. From this document it appears Thomas was successful in his suit, even resolving Richard's accusation that he was not in fact the vicar of Aldington. Richard's rights to the great tithes are also confirmed and Thomas and his priests were required to swear to obey Richard as rector.[35] This final

[33] CCA-DCc-SVSB3/196.

[34] *Registrum Roberti Winchelsey*, 119.

[35] Ibid. 120. The register of Archbishop Winchelsey mentions that the vicar of Aldington was to maintain a priest and a clerk, and later that the vicar, priests and clerks aforesaid were to swear the oath to the rector.

record was made in the presence of both Thomas and Richard at the archbishop's manor in Aldington.

One particularly interesting document related to the case is a letter from Richard de Abingdon to Richard de Clyve. The letter is undated but was likely written near the start of the case. The style of writing is very similar to pleas from the start of the century, which played on the judge's conscience and depicted the party as poor and in need of aid. However, this letter is not an official case document. Richard had written a private letter to the judge instead, indicating a shift in what was considered to be the appropriate forum for this kind of rhetoric. Pleas from the start of the century are often narrative documents which make heavy use of scriptural references and are more rhetorically ornate but, by the end of the thirteenth century, this has been replaced by a very formalised document outlining the basics of the claim.[36] However, this standardisation of pleas did not mean that litigants lost the opportunity to express their concerns outside this structure, as Richard's letter demonstrates. The letter is an excellent example of how extra-judicial strategies were combined with judicial procedure and highlights the alleged mutual violence and escalating disturbances. Richard writes as follows:

To the man of truth and very careful consideration, the lord commissary of Canterbury, Richard [de Abingdon], the rector (of some unworthy sort) of the church of Aldington, may you always be prosperous according to his wish.

Yesterday as I was going to Saltwood, the Wolf of Master John Hanekyn [Thomas' superior], like Saul in the past, was carried away by fury and breathed out dreadful venom with his whole body against me, the unhappy accuser (as I warned you). Alas that coming on the road, a light from heaven did not shine around him, nor was he struck down to the earth and blinded and, so justified, change his name and life. Perhaps this did not happen to him because he was not the chosen vessel, like Saul [Acts ix.1–9]. May God defend me as I fight. My dearest lord, because his words travelled swiftly, do not believe him. You should have seen how he behaved toward me in front of the parishioners that Sunday and how unpleasant he made himself, as unpleasant as you will consider his plea, because it will rebound onto the head of the Wolf, who is neither a prophet nor the son of a prophet [Amos vii.14]. And if the bearer of the present letter comes to you, as a messenger sent by me, it would be good of him to ask what I deserve with regard to the said plea, and what the Wolf deserves.

Be well always in Christ. And Master John be well, if he has disassociated himself from the Wolf.[37]

[36] Sarah White, 'Procedure and legal argument in the court of Canterbury, *c.* 1193–1300', unpubl. PhD diss. St Andrews 2018.

[37] 'Viro veritatis et ualide circumspectationis Domino commissario Cant' R. Qualiscumque rector ecclesie de Aldington' prosperos semper ad vota successere quibat hesterna die usque Saltwod' Lupus magistri Johannis Hanekyn' ut Saulus dudum furia inuectus dirumque toto corpore virus efflabat ut vos moneret erga me

Richard's letter complains of his dire situation and the threats levelled at him by Thomas, and it seems from the phrase 'as I warned you' that this was not the first time that he had written to Richard de Clyve in this way. While this letter is not an argument *per se*, it is evidence of what might have gone on outwith the official case record and what tactics the parties may have used to sway the judges in their favour. In this case, one might be moved by Richard's plight, if not charmed by his slight play on Thomas's surname and his biblical analogies, likening Thomas 'efflebat inuectus dirumque' to Saul 'inspirans minarum et caedis', and noting Thomas's lack of deserved recompense for his misdeeds.[38] However, since we know about the final warning from Richard de Clyve to Richard de Abingdon urging him to cease sneaking into Thomas's rooms at night, as well as Richard's persistence in taking tithes in contempt of the court, Richard seems a bit less pitiable, if not downright annoying. The warning implies that Richard, not Thomas, was at fault in the case, or at the very least had committed more serious offences. In particular, the beating of Thomas's priest and the public argument with Thomas (presumably the same one mentioned in the interrogatories) indicate that Richard may have been troublesome in other ways as well. Richard de Clyve wrote an undated letter to the prior and chapter of Christ Church Canterbury (probably shortly before Richard de Abingdon's appeal) asking for assistance, as he was unable to ascertain the truth of Richard's claim that Thomas had sent yet another libel.

Although Richard's letter is the most entertaining, the focus of the rest of this article is on Thomas's arguments, specifically on the document containing his *raciones*.[39] *Raciones* start appearing at the end of the century and, with a few exceptions, they are the only document type in which there are explicit citations to legal sources, as well as extended abstract arguments, and these seem to be entirely the work of legal professionals.

accusator infelix. Heu quod in via quam ueniebat non circumfulsit eum lux de celo ut cecidisset in terra nichilque vidisset ut sic iustificatus et nomine sibi mutaretur et vita non hoc forsitan ei accidit quia non est vas electionis ut saulus expugnet impugnantem me deus Carissime domine quia uelociter currit sermo eius minus ei credatis Cum enim scieritis qualiter se habuit erga me coram parochianis hac die dominica et quantum se reddidit importunum Sic pondabitis eius querelam quod redundabit in caput Lupi qui nec propheta nec filius est prophete Et nisi veniret lator presentium ad vos ut nuncius a me missis bonum esset inquirere ab illo quid ego quoad dictam querelam merui et quid Lupus valete semper in Christo. Et valeat Magister Johannes cum fuerit segregatus a Lupo': CCA-DCc-EC/III/54.

[38] The line from Amos appears to be a misunderstanding on Richard's part. In context, Amos is denying any personal motivation to prophesy, stating that he is only doing so at God's command. The passage is usually used as a disclaimer, when an author wishes to make clear that he is not writing anything original, whereas Richard's intention here appears to be to denounce Thomas.

[39] CCA-DCc-ESRoll/213.

There is a steady shift over the course of the thirteenth century from self-representing at court to the use of proctors and advocates for representation and counsel. It seems reasonable that the increased use of legal counsel and the professionalisation of canon lawyers would lead to the use of more intricate and well-researched arguments in litigation.[40] The record-keeping requirements of the courts were also changing, which resulted in the keeping of more extensive records and may have also pushed parties to present more of their cases in writing. It is possible that Thomas composed his *raciones* himself, but it is far more likely that he had assistance. The document itself switches back and forth between first and third person, and never states who is composing the arguments. However, for the sake of ease, this essay will refer to Thomas instead of his unknown counsel when discussing the arguments. As noted earlier, the *raciones* are undated, but seem to fit at some point when the appeal was pending in the Court of Arches.

From Thomas's *raciones* and from a letter written by Richard to the prior and chapter of Canterbury, it appears that Richard had brought exceptions against Thomas's libel, saying that the first libel was too general in its claims and that the second, re-submitted libel differed too much from the first.[41] This was a common complaint; plaintiffs were to compose their claims in a way which would guarantee that they received the specific thing they wanted, but most would try to make the claim as broad as possible to get the most out of it. Why claim tithes specific to a single church when one could claim tithes in general in an entire parish, and perhaps get other tithes that had been missed? Of course, if this tactic was too obvious, the defendant would often point this out and ask for a new, more specific libel, and this was exactly what Richard had done. There was one primary difficulty with the general claim tactic: once the claim had been submitted in a libel, the substance of the claim could not be changed without starting a new action; therefore, if the second libel differed too much from the first, the case could be thrown out and the plaintiff would have to pay expenses. This outcome is probably what Richard hoped would happen in this case. In his letter, he said that he had presented his own *raciones* to the effect that Thomas's second libel was not an explanation of the first because it introduced new items. Further details of his objections can be elucidated from Thomas's *raciones*. It seems that Richard claimed that in the second libel Thomas had changed the names of the properties under dispute, added a request for an estimation of tithes owing (which included a request for payment of the same), and changed his claim from one of possessory right to one of petitory right. A possessory action is one in which the plaintiff's claim is

[40] White, 'Procedure and legal argument'.

[41] CCA-DCc-EC/III/55.

founded upon his or her physical possession of a thing or property, and not upon his or her right or title, whereas a petitory action is raised by a petition in which a judge is requested to enforce the petitioner's entitlement to certain property rights or credit from the defender.[42]

Thomas uses the citations in his *raciones* to prove, with three main arguments, that there is no substantive difference between the two libels which he submitted and that they do not lack clarity, as Richard claimed. First, adding the names of the properties included in the parish of Aldington does not alter the claim, since it helps to specify the plea and does not change the substance of it. He could also by law ask for an estimation of the tithes owing to him, because these would be due on the basis of Richard's violence, and so the addition of this request does not alter the claim in the libel either. Third, the wording of the libel implies that he is suing for both possessory and petitory right, not only possessory, so Richard's exception that this was the case is invalid. Finally, although the second libel serves only to clarify the first, and should therefore be accepted, even the first, more general, libel could be admitted because of Richard's violence towards Thomas.

To begin with, Thomas argues that the changes that he made did not alter the plea. He starts by presenting an example: if he had first brought an *actio vi bonorum raptorum* and afterwards *furti*, or the reverse, he would not have to pay expenses for changing his claim.[43] Here he cites the *Code* and the *Institutes*.[44] Thomas says that in the case discussed in the *Institutes*, even though the action and manner of suing are changed, there is no place for the payment of expenses because the facts and persons are the same. In his case, he is changing neither the action nor the manner of suing, nor is he requesting something other than what he requested before; he has only stated the way in which the tithes he seeks pertain to the vicars of Aldington. This argument is almost a word for word quotation of the Accursian gloss on the *Institutes*, including the citation from the *Code*. The latter establishes that either party has the right to petition for a delay, if there is good reason for it. The overarching argument is fairly clear: Thomas has not changed his request, and therefore there is no place for further delivery or payment of expenses as requested by Richard.

[42] 'Detentio', 'In possessione esse' and 'Possessio': Adolf Berger, *Encyclopedic dictionary of Roman law* (Transactions of the American Philosophical Society xliii, 1953), 433, 496, 636–7.

[43] An *actio vi bonorum raptorum* was a penal action following the theft of moveable goods. If it were brought within a year of the theft, a convicted defendant had to pay four times the value of the goods: 'Rapina', ibid. 667. An *Actio furti* was an action for a private penalty, the amount of which depended on the kind of theft: 'Furtum', ibid. 480.

[44] C. 3.116; Inst. 4.6 in the gloss which begins 'In eodem iudicem'.

Thomas then states that although the first libel claimed the tithes from Aldington and the second claimed tithes from Smeeth Chapel, the claim has not been changed. He argues:

My adversary's objection that the libel appears to be changed presents no impediment. This is because in the first libel, I pled that I was deprived of the tithes proceeding from the said places situated in the parish of Aldington, and the payment of the same tithes was requested. In the second libel, I pled that [I was deprived of] all of the tithes proceeding from the lands in the parish of Aldington and also those proceeding from those in the parish of Smeeth Chapel. Smeeth Chapel pertains to the vicarage of Aldington, so the second libel is merely more detailed than the first. In the first, there is no mention made of the parish of Smeeth Chapel, except for a mention of the garden of the churchyard of Smeeth. Although it appears that a new plea was introduced in that second libel, and that the first libel was changed, I can easily reply to this in several ways, first because the parish of Smeeth Chapel is said to be contained under the title of the vicarage of Aldington and its parish, and second because it is well known that the cure of souls of Smeeth Chapel pertains to the vicar of Aldington and that the chapel depends upon the said mother church of Aldington. Those things which pertain to religious matters are religious, and those which pertain to spiritual matters are also spiritual. In addition, if a house is bequeathed, the garden dependent on it is also considered to be bequeathed by reason of [its] dependency on the title of the house, and this is summed up in [D.32.52pr] and similar authorities.[45]

Thomas argues that Smeeth Chapel, rather than being an addition to his claim, is instead included within the parish of Aldington. By naming Smeeth Chapel, he is merely clarifying where the tithes were to come from; the underlying request for the tithes is unchanged. The implicit citation concerning religious and spiritual matters can be found in the *Digest,* which states that anything attached to a religious object is itself religious.

[45] 'Nec obstat quod per partem aduersam obiciatur quod libellus videatur immutatus quia in primo libello narramus nos spoliatos quibusdam decimis prouenientibus de dictis locis in parochia de Aldenton' existentibus et earundem decimarum petitur fieri restitutio [erasure] in secundo libello narratur quod omnes decime prouenientes de terris pede foffis uel etiam fofforis in parochia de Aldentone et etiam in parochia de Smethe Capelle dependentis ab eadem spectent ad vicariam de Aldentone et vicariam suam predictam et sic cum plus narretur in secundo libello quam in primo quia in primo non facta erat mentio de parochia Capelle de Smethe nisi tamen de erbagio Cimiterii de Smethe videtur quod in hoc secundo libello sit nouum factum introductum et primus libellus inmutatus Ad hoc multis modis potet bene responderi Primo quia sub appellatione vicarie de Aldentone et eius parochie parochia Capelle de Smethe contineri dicitur cum manifestum et notorium existat quod Cura Capelle de Smethe spectet ad vicarium de Aldentone et quod est Capella dependens a dicta matrice ecclesia de Aldenton' quia que religiosis adherent religiosa sunt et que spiritualibus adherent et spiritualia tententur. Preterea si legetur domus racione dependencie sub appellatione domus et ortus dependens ex ea legari videntur et hoc colliguntur ff. del. iii l. Librorum appellatione cum similibus': CCA-DCc-ESRoll/213.

For example, stones which have been removed from a religious structure can be recovered, even if they have been moved and placed in a new structure.[46] Anything that at one time pertained to something religious or spiritual was itself religious or spiritual by association. Whether this idea could extend to the inclusion of parishes under the title of a certain vicarage is uncertain, but this is the argument that Thomas makes. The citation from the *Digest* states that if a testator bequeaths books in general, then all the volumes he has are included in that bequest.[47] By the same reasoning, Thomas asserts, if a certain house is included in the libel, then the garden dependent on it is included as well, i.e. the general includes the specific.

Thomas follows on from this argument by saying that the general rule of law is modified and restricted by the specific, citing the *Code*.[48] The *Code* presents a case in which a sum of money has to be paid in full regardless of what the job had cost the person assigned to do it. The intent here seems to be to demonstrate that anything owing was to be paid in full, although the placement of the citation in the *raciones* is odd, as the sentence refers to the general being limited by the specific, and the citation best fits the preceding sentence. The citation could also pertain to the following comment, that the sentence should follow the form of the petition, since the judgement on the money owing was based on the original claim. As Thomas says, the sentence ought to be modelled according to the form of the petition, citing both the *Digest* and the *Liber extra*.[49] The citation from the *Digest* states that a judge's authority only extends to what is brought to court, which seems to support the preceding statement that the sentence has to follow the form of the petition (and consequently the judge cannot bring a sentence regarding anything not included in the libel). The citation from the *Liber extra* is used again later in Thomas's argument concerning general and specific libels and is more fitting at that point in the argument, so will be discussed there. Thomas uses these two citations to suggest that by specifying the claims in the libel, he has not changed the substance of the claim, but rather made it easier for the sentence to proceed. His next argument, however, is that even if his libel was too general in the first place, it could still be admitted.

In order to prove that a general libel could be admitted in this case, Thomas brings forward two points. Thomas's argument is a bit tangled, but proceeds as follows: first, a general libel can be admitted in a case where violence is evident, and second, for the same reason, Thomas could add a request for an estimation of tithes owing, since Richard owed Thomas the tithes paid while Thomas was not in control of the church.

[46] D. 6.1.43. [47] D. 32.52 pr. [48] C. 2.4.3. [49] D. 10.3.18; X 2.10.2.

To the first point, that a general libel could be admitted in his case, Thomas argues that:

> Even if a petition for the estimation of the deprived tithes was never raised, but I had said in general that he had deprived me of such tithes proceeding from such places which pertained to my aforesaid vicarage (which by you, lord judge, I sought to have restored to myself) … the libel would proceed in legal form, because the violence was proved in the malice of the treacherous attacks, even if the amount of the damage dealt was not proved [C. 8.4.7]. A general libel can be admitted, as in [X 2.10.2]. The abbot of Ferentino complained of certain nobles that, coming by force of arms and with an army to the monastery, they presumed to cause damage to the said monastery by despoiling it of animals and other things, and the abbot sought for justice for himself. This was the petition of the abbot, and it appears that it should not have proceeded as it was too general in many things and obscure at first when he said, 'the animals', without specifying which animals, and thereafter when he follows with, 'with other things', without specifying with which other things. And the doctors respond that the general libel is admitted against the spoliators for this reason because the violence proved concerning other things was evident in the oath of the spoliator.[50]

In the case in the decretals, the abbot of Ferentino sued certain nobles for spoliation by force of arms. Although his libel was considered too general and non-specific, it was admitted because violence was proved in the oaths of the spoliators.[51] Likewise, Thomas's first libel could be admitted, even though it appeared too general, because of Richard's violence, presumably referring to the beating of the priest and throwing Thomas's things out of the window. Further, Thomas added that the spoliator can be charged concerning not only the fruits received but also those which could be received, citing the *Liber extra*.[52] The first citation establishes that a general libel can be accepted if violence is proved in the case; whether this claim could be proven in the case at hand is unclear. The second citation contains a case in which a clerk who was despoiled of his church received both the church and the rents proceeding from it when the case was decided in his favour. This citation clearly supports the argument that Thomas is trying to make regarding the similar return of his tithes. If it was already

[50] 'Hinc est quod queritur per modernos doctores quare admissus fuit ille libellus ita generalis in illo c. extra. de. ord. cong. cum dilectus Quia ibi Abas de Ferentillo conquestus fuit de quibusdam nobilibus quod Manu armata et cum excercitu ad castra monasterrii venientes in predis animalium et aliis dictum Monasterium dampnificare presumpserunt de quibus sibi iustitiam fieri postulauit iste fuit petitio Abbatis et videtur quod non procedere deberet tanquam in multis nimis generaliter et obscurus primo vbi dicit in predictis animalia non specificando animalia preterea cum subsequatur et aliis non specificando in quibus aliis et respondent Doctores quod ideo admittitur contra spoliatorem ita generalis libellus quia probata violencia super aliis statur iuramento spoliati articulo pre aliis legis si quo cum similibus': CCA-DCc-ESRoll/213.

[51] See X 2.10.2 and the gloss.

[52] X 2.13.7.

possible for him to receive the tithes owed to him, then the addition of a request for estimation did not alter the content of the libel, it only clarified it.

Thomas then presents a combined argument regarding both the generality of the libel and the estimation. He says even if he had not raised a petition for the estimation of tithes but had only said in general that Richard had deprived him of such tithes, the libel would still be valid, because the violence was proved in the malice of the treacherous attacks. He cites the *Code*, which states that if someone is forcibly dispossessed, he could bring a suit which referred to private violence and compel the guilty party to return possession, along with any incomes obtained from the land while it was out of the plaintiff's possession.[53] Thomas uses this citation to support his claim that he can seek an estimation and payment of any tithes which he lost since losing possession of the right to them. The point concerning proven violence ties back to the previous citation referencing the case in which the abbot's general libel was admitted for this reason. Thomas's overall argument in this section, therefore, is that the first libel was acceptable even though it was non-specific, due to Richard's violence, and that the second libel only clarified the claims made in the first and did not alter their substance. Either way, both libels were acceptable, and Richard's exceptions to them should be quashed.

Thomas's final argument addresses Richard's complaint that Thomas sued only for possessory right and not for petitory right. The key difference between the two, for Thomas's purposes, is whether or not the judge was asked to protect the plaintiff's rights in perpetuity.

Thomas argues that:

> The third objection, that mere possessory right is sued for in the libel, presents no impediment. In the second libel, a certain clause is inserted at the end, which has the sense of petitory right, there when it says that Sir Richard is to be restrained by you, lord judge, so as not to be permitted to receive the said tithes, oblations, and garden freely in perpetuity (which is what my adversary endeavours to prove). In this way, if I bring a suit against you with an *actio negatoria*, in order that it not be permitted to place timbers in my wall and that you give surety to me that you will not insert [beams] in the future [D.8.5], or if I bring an [*actio*] *confessoria* against you in order that you rebuild the damaged wall in which I have the service of placing timber for the maintenance of my house and for which you give surety concerning the repair of the wall in the future … there is the sense of petitory right in both cases by this plea, 'lest you insert [beams] in the future or repair the damaged wall in the future'.[54]

[53] C. 8.4.7.

[54] 'Non obstat quod tertio opponitur quod in libello agebeatur mere possessorio in isto secundo libello inseritur in fine quedam clausula que mere sapit naturam petitorii ibi cum dicat ipsum que dominum Ricardum quo minus dicto vicario dictas decimas

Richard had said that Thomas had only sued for possessory right, but Thomas uses two citations from the *Digest* to support his argument to the contrary, presenting two hypothetical cases. First, he says he could bring an *actio negatoria*, an action brought by the owner of a property against someone who had claimed a servitude over the same property to prove that the plaintiff had full ownership, and cites a case in the *Digest* wherein it was decided that the defendant had no right to place timbers in the plaintiff's wall, and the judge compelled the defendant to give surety that he would not do so in the future.[55] Second, Thomas says he could bring an *actio confessoria*, the opposite of the first action, which was brought against the owner of the land on which the plaintiff claimed a servitude, and citing another case in the *Digest*, wherein the defendant had been ordered to place timber in the wall to maintain the house, and had given surety that he would do so.[56] Thomas's argument is that surety has the sense of petitory right, because a petitory action is one in which the plaintiff asks to be protected in his right by the judge from the defendant, here citing the *Institutes*.[57] Further, citing the *Digest*, he says placing anyone in possession of something is done in vain unless they are protected in their possession.[58] Therefore, there is a sense of petitory right in both cases, because of the request for surety. Likewise, he says even if he only sued for possessory right, by asking that the judge impede Richard in perpetuity he was also making a petitory claim.[59] The argument is somewhat laboured but, as with his arguments concerning the generality of his claim, Thomas is once again arguing that the substance of his libel has not changed.

Thomas's argument is somewhat fragmented: citations sometimes precede rather than follow the statement that they support, and he jumps from point to point, indicative that this document may not have been the final copy that he would have presented to the judge. That being said, the overall argument is quite coherent and Thomas, perhaps on his own but likely with counsel, was clearly familiar with not only the main legal sources but also the glosses on these sources. He often quotes large sections including internal citations, which could be an attempt to

oblationes et erbagium libere inperpetuum percipere liceat per vos domine Iudex cohiberi quod pars aduersa nitebatur probare hoc modo video quod si ago contra te actione iurem negatoria ne liceat transmittere tigna inparietem meum et quod caueas mihi ne infuturum mittas ut dicitur in lex illa egi ff. si seruitus vendi Item si ago contra te confessoria ut reficias parietem visiosum in quo habeo seruientem in mittendi tigna ad sustentationem domus mee et quo caueas infuturum de reficiendo parietem ut est videre in casu illius L. harum. e. ti. in vtroque casu ista cancione ne infuturum in mittat uel in parietem visiosum in futurum reficiat sapit naturam petitorii': CCA-DCc-ESRoll/213.

[55] 'Actio negatoria': Berger, *Encyclopedic dictionary*, 343; D. 8.5.12.

[56] 'Actio confessoria' and 'Vindicatio servitutis': Berger, *Encyclopedic dictionary*, 342, 766; D. 8.5.7.

[57] See Inst. 2.1 and the gloss.

[58] D. 43.4.1pr.

[59] CCA-DCc-ESRoll/213.

state his argument as clearly as possible, but if so, it seems laborious. It is occasionally unclear how the citations are applicable to the case at hand, although whether this ambiguity is due to a lack of specific sources to support the points made or a lack of knowledge on Thomas's part is uncertain. Regardless, it appears that Thomas's arguments were successful, as he was granted the rights to the tithes he sought and re-confirmed as vicar of Aldington and Smeeth.

Three main questions stem from this discussion of Thomas's arguments: what prompted him and his counsel to compose arguments in this manner; how was access to the cited texts facilitated; and why were these arguments preserved in the case record when this was not the norm?

First, Thomas may have thought that it was worth the effort to argue for the validity of his libels rather than risk having to start an entirely new action. Arguments concerning the initial claim (like Richard's), objecting to the wording or the type of claim being brought, were to establish the specifics of the litigation. If the plaintiff could not compose a satisfactory claim, the case could be thrown out, although it was far more likely that the plaintiff would simply submit a revised libel following the exceptions, as Thomas may have done with his second libel. Further, Richard de Clyve specifically requested that the parties submit their arguments in writing. Therefore, it may be that what we have is a rare copy of the sort of oral presentation made in court. Whether or not citations were common in this forum is unknown, of course, but there are several reasons one might include them, for example to validate arguments, to demonstrate legal prowess, or because a grounding in written law was required. The reference to specific Roman law actions is noteworthy in this instance, as Thomas argues for the validity of his two libels primarily on the basis of the acceptability of similar Roman law actions.

Second, whoever composed the arguments for Thomas was clearly well-acquainted with Roman and canon law sources, including the glosses. Access to written law in cases like *Wolf c. Abingdon* was likely facilitated through *brocarda*, *summae*, *quaestiones* and other shorter texts, and citations of procedural arguments may well have been drawn from those found within *ordines*. Canon law texts, especially decretals, were likely accessed from collections, as the English decretal tradition was extensive and, as Charles Duggan remarks, enthusiastic.[60] It seems probable (if speculative) that legal practitioners would have become familiar with both Roman and canon law sources during their studies, and that following this introduction, used shorter reference texts when researching for their cases. Texts like the *brocarda* only go so far, however, as some cases, like *Wolf c. Abingdon*, do cite large passages of source material, indicating that

[60] Charles Duggan, *Twelfth-century decretal collections and their importance in English history*, London 1963, 118–21.

practitioners had access to the *Corpus Iuris Civilis* and *Canonicis* when needed. Manuscript copies of legal texts from the thirteenth century would probably have the best evidence of use, and examining these is a project of considerable size. Should it prove that certain *brocarda*, *ordines*, or any other texts are the most prolific and annotated, this would be a clear indication of which texts were most used in practice.[61]

Lastly, there are a number of possible explanations for the presence and preservation of Thomas's arguments in this case. Their presence may be in part because the case was brought in the first instance to the consistory Court of Canterbury, where Thomas would have had more immediate access to legal experts who could help him with his case, instead of the court of the archdeacon where this would be less likely. From the statutes of Archbishop Winchelsey (9 November 1295) providing guidelines for advocates and proctors (as well as a limit on the number of practitioners on retainer at the Court of Arches), it is clear that there was considerable assistance available to litigants pursuing cases in the higher courts.[62] This access to counsel could account for both the complexity of Thomas's arguments as well as the presence of such arguments in a relatively minor case. The preservation of the *raciones*, however, is less easily accounted for, as documents like this rarely survive even in long, drawn-out cases in the Court of Arches. It may be due entirely to chance. That being said, it is also possible that the commissary, Richard de Clyve, might be a reason behind the preservation. Richard himself was a legal expert and was involved in matters of law for most of his life.[63] Charles Donahue has suggested a connection between Richard, as 'the most prominent monk of Canterbury involved in legal matters in this period', and the increase in legal texts and activity at Canterbury from the 1292–4 vacancy onwards. First, a formulary and various legal treatises on procedure in the Court of Arches were produced during his time, and there is evidence that the monks were working on a formulary for the court of audience as well.[64] Second, there was significantly more preservation of legal records during this vacancy than previously. While Richard was commissary, his authority on behalf of the prior and convent was constantly challenged by the archdeacon of Canterbury.[65] Richard's response to this was to exercise his jurisdiction to the fullest and record his activities thoroughly. He may have

[61] For further discussion of this see White, 'Procedure and legal argument'.

[62] F. Donald Logan, *The medieval Court of Arches* (Canterbury and York Society xcv, 2005), 5–20, esp. p. 7.

[63] Richard was particularly intent on what Donahue has referred to as his 'campaign against incest', although the success of his efforts is debatable: Donahue, *Law, marriage and society*, 567–9.

[64] Ibid., 'Additional texts and commentary', no. 1185.

[65] Idem, *The records of the medieval ecclesiastical courts*, II: *England*, Berlin 1994, 37; *Select cases from the ecclesiastical courts of the Province of Canterbury, c. 1200–1301*, ed. Norma Adams and Charles Donahue Jr (Selden Society xcv, 1981), 35.

also been the driving force behind the preservation of previous provincial vacancy collections from the Court, as an attempt to show precedent for the prior and chapter's right to *sede vacante* jurisdiction.[66] As the *acta* note that Richard specifically sought out *raciones* from the parties in *Wolf c. Abingdon*, it may be that the case was preserved along with other records that Richard thought to be important, as part of his engagement with legal development in the court.

In sum, *Wolf c. Abingdon* provides insight into possible features of legal argument in the late thirteenth-century material and the various tactics that parties might employ in order to succeed at law. Most cases in the Canterbury material are not as extensive as *Wolf c. Abingdon*, but the issues, particularly of the wording of the libel and the nature of Thomas's possession of the church, recur in many of the other cases. However citations, like the ones used by Thomas, are rare even at the end of the thirteenth century. That being said, the presence of explicit citations, although infrequent, suggests that advocates and possibly judges were turning to written legal sources to resolve disputed points. From this case it is clear that some litigants had, if not their own basic knowledge of civil and canon law, then access to others who were learned in the law and could assist them. We can also see that written law was not the only source of argument; it was possible to plead with the judge on a more personal level outside of the official forum. Whether or not any of these arguments were successful is another matter, as most cases do not have a tidy conclusion like *Wolf c. Abingdon*, but the amount of effort put into constructing them indicates that some parties or their counsel thought that crafting a well worded and well thought out argument was worth the time.

[66] *Select cases*, 35–6.