

Dispossess, Deforce and Disseise – JH, AS

JH: In thinking about medieval landholding and landownership, we are often interested in how people had land taken away from them. The keywords in English seem to be dispossession, disseisin, deforcement. How would you see these ideas playing out in the context of Roman law and Italian feudal law?

AS: In Roman law, the best translation for ‘deforce’ is probably ‘evictio’. That could only be exerted by the full owner, called ‘dominus’, who wanted to claim back his land from an unlawful possessor. By law, the *dominus* could not be evicted. Even in the case of excommunication or a capital crime, the owner’s kinsmen could even lay claim on the evicted. The case of tenants is different, since tenants could be evicted at any time they failed to fulfil one of the obligations entailed in the contract, such as pay rent or provide service. A third case is that of fief-holders. According to the *Libri feodorum*, there were two broad categories of causes by which a holder could be evicted from a fief: alienation and betrayal. In the case of unlawful alienation of a fief – which is to say when the holder sold or leased more than half the fief – the fief was distributed among the holder’s close relatives. In the case of betrayal – and by betrayal I mean if the holder assaulted the lord or abandoned him on the battlefield or cuckolded him – the fief was seized and returned to the lord.

JH: In English law, the central concept is disseisin, which can be justified (legitimate) or unjustified. Disseisin is most easily translated now as ‘dispossession’ and by the thirteenth century in English law was translated into Latin as taking away of possession. Seisin probably originally had some connotations of lordship: a lord putting a person in possession of land. To disseise is the reverse of that. Lords could justifiably disseise their tenants, for reasons not too dissimilar to those you talked about: failure to perform service could lead to temporary or permanent dispossession; disloyalty or treachery could lead to forfeiture, which is permanent disseisin. It was possible in certain cases for disseisin to be carried out justifiably by other people. Notably, if someone lost a law case, a royal official could be ordered to disseise that person and give seisin to the successful party. Disseisin could also be used for unjustified dispossession, sometimes by a lord, sometimes by another person. This is clear for example in the writ of novel disseisin, recent disseisin, where the disseisin is specified to be unjust and without judgment. That notion of unjustified taking away leads to the other word that we raised, which was deforcement. Deforcement means having taken away possession of land. In an action of ownership, it may be specified who is the person who has deforced the claimant of their right to the land. In that case, deforcing is taking away not necessarily established right but what someone is claiming to be established right. All of these would of course relate to the word that you were talking about, eviction, which is the thing we would talk about in modern English law. It’s often about justified dispossession, but one could use it more casually of unjustified dispossession.