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THOMAS DE WEYLAND: LAWYER AND KNAVE

WILLIAM F. ZACHARIAS*

THE little market town of Watton, in Norfolkshire, some twenty miles from Norwich, possesses antiquarian interest as the reputed locale of the nursery story concerning the Two Babes in the Wood.¹ Its narrow winding ways, its darkly wooded environs, might well have been the scene of that ancient tale. But, to the lawyer, Watton possesses peculiar significance for, about 1230 A.D., it served as the birthplace of Thomas de Weyland. No monuments exist to hallow his memory, nor do pilgrims journey to that shrine, for, unlike St. Ives, the lawyer's patron saint, he so misused his talents as to deserve everlasting condemnation.

England was settling down under the rule of its Norman kings when Thomas was born to William de Weyland² and Marsilia, his wife. The times were almost ready for that flowering of the common law which would come with the reign of Edward I, and Thomas was destined to play a part therein. His father, a typical soldier-courtier, had helped lay the foundation for that movement for he had seen service in Ireland with Aymer de Valence, the half-brother of Henry III, and had been rewarded with an estate there.³ Soon after, he acquired the manor called Sodbury in Gloucester. Still further recognition came when the king, pleased with his services, appointed him Escheator South of Trent.⁴ From this position he progressed to justice itinerant to hold many an assize, and eventually became a justice of the Common Pleas in 1272 A.D.

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¹ Blomefield, *History and Antiquities of the County of Norfolk*, IX, 2.

² The family name appears to have had many variant spellings. It has appeared as Wayland, Weyland, de Weyland, de Weylaund, de Weylaunde, de Weilaund, and de Welond. The spelling adopted here is that used by the author of the most complete account of de Weyland's life prior to this one found in *Dictionary of National Biography* (Oxford University Press, 1917), XX, 1302.

³ *Dict. Nat. Biog.*, XX, 1302. The annalist of Dunstaple would have one believe the family was of inferior quality for, in *Annales Monastici de Dunstaplia* (36 Rolls Series), III, 356, he remarks of Thomas de Weyland that "*de imo in altum elevatus.*"

⁴ A writ addressed to William de Weyland to inquire how much land one Hamo de Crevecuer held of the king *in capite*, issued from Westminster on April 3, 1263 (47 Hen. III), is printed in *Archaeologia Cantiana* (Kent Archaeological Society, London, 1860), III, 253.

Raised in the family of one so ambitious, it was but natural that the youthful Thomas should be placed with the Church, perhaps at that same monastery at Bury St. Edmonds in nearby Suffolk which was to figure prominently in his later days. After taking orders as a clerk, he progressed to sub-deacon and bade fair to make his mark in religious pursuits, but the study of law attracted his attention in that monastery and, leaving the cloister behind, he embarked on a career at the bar.

At that auspicious moment, Thomas de Weyland might well have been expected to write his name at large on the annals of English law for, being Norfolk born, it was but natural that he should attach himself to the staff of Roger Le Bigod, Earl of Norfolk and Marshall of England and one of the country's most powerful nobles. His patron, an influential friend of the king, saw to it that his protege should receive royal recognition and, probably through his influence, de Weyland was made a king's serjeant.⁵ Pushing his clerical status even still farther in the background, de Weyland then married a lady named Elizabeth.⁶

By 1271 he was serving as justice itinerant in Essex and Hertfordshire,⁷ and in the early years of Edward I's reign he seems to have been constantly employed in holding assizes throughout the eastern counties of England. During that period, his zeal in detecting and punishing criminals⁸ brought him into favorable light and he was rewarded, in 1273, by an appointment as justice of the Common Pleas to fill the seat vacated by his father.⁹ As a member of one of the important royal courts, he was now ready to become a constant associate of the leading men of his day and to participate in the significant councils of that time. In that capacity, for example, he served in a full council in 1276, presided over by the Archbishop of Canterbury, called to determine a dispute between the king and Gilbertus de Clare,

⁵ Dugdale, *Origines Juridiciales* (London, 1666), 25.

⁶ Calendar of Patent Rolls of Edward I (A.D. 1272-1281), published by Public Record Office (London, 1901), I, 560.

⁷ Foss, *Judges of England* (London, 1848), II, 195, lists de Weyland as such and gives the date of his appointment as 54 Hen. III (1271-2); Dugdale, *Chronica Series* (London, 1666), 25, fixes the date at 55 Hen. III.

⁸ Thomas Madox, *The History and Antiquities of the Exchequer*, 2d ed., II, 66.

⁹ Foss, *op. cit.*, III, 21.

Earl of Gloucester, over the important Borough and Castle of Bristol.¹⁰ But he was also kept busy obeying royal commands that sent him into scattered parts of England to conduct inquiries.

One such concerned the wreck of an alien ship at Holcham in Norfolk and the theft of its cargo. He was directed to locate the latter and restore it to its owners.¹¹ In 1275, he was sent on another to note the tolls charged at certain fairs and markets.¹² Later the same year, he was directed to go to Bristol to ascertain the property holdings of a recalcitrant Welsh leader.¹³ Back in London, in 1276, he was charged with examining into a scandal which had arisen concerning the liberation of seven prisoners from Newgate gaol. In that regard, the king wrote from Canterbury that he wanted such investigation made "being unwilling that the said Richard and John [the jailers] should be injured by this sinister presentation."¹⁴ When not so occupied, he presided at commissions of oyer and terminer such as the one he conducted in Norfolk in a case where, after a certain felon had been convicted and hanged for larceny, a woman falsely claiming to be the felon's wife sought to prosecute an appeal for homicide against her alleged husband's accusers.¹⁵ He could interest himself in a prisoner in Newgate gaol, suggesting a pardon for one there detained for homicide on the ground that the killing was done in self-defense,¹⁶ but at the same time he neither neglected his own¹⁷ nor his patron's affairs.¹⁸

¹⁰ See Palgrave, *Parl. Writs*, I, page 6, writ 3. While deciding in favor of the king, de Weyland does not seem to have earned the enmity of the earl since two years later they participated in an important real estate transaction: see notes 67 to 72, post.

¹¹ *Cal. Pat. Rolls*, I, 115. ¹² *Ibid.*, I, 173. ¹³ *Ibid.*, I, 175. ¹⁴ *Ibid.*, I, 179.

¹⁵ *Ibid.*, I, 243.

¹⁶ *Ibid.*, I, 165. The king appears to have followed the recommendation.

¹⁷ He had royal permission to appoint two attorneys to act for him in connection with Irish matters, *ibid.*, I, 164, and twice secured protection against loss by his absence from Ireland by reason of being detained in England "on the king's special affairs." See *ibid.*, I, 424 (1281 A.D.) and II, 181 (1285 A.D.).

¹⁸ *Ibid.*, I, 319, discloses that Roger le Bigod, going to Ireland, appointed Thomas de Weyland and Master Geoffrey de Aspehale as his attorneys in England with the king's permission. The latter is probably the Geoffrey of Aspehale (Ashley?) who served as intermediary in the real estate transaction mentioned in notes 67 to 72, post.

Following the major overhauling of the English judicial system which was accomplished by the important Statute of Westminster I, the English Justinian met with his council at Gloucester in 1278 and there reorganized the staff of the Common Pleas. Thomas de Weyland, now firmly fixed in royal favor, was made the chief justice thereof and was assigned an annual salary of sixty marks.¹⁹ Thus began an eleven-year career as the third most prominent judicial officer in all England,²⁰ a career which might have marked him as a great lawyer but which ended in disgrace and ruin.

Repute has it that at least during the early part of that period he showed great activity in the administration of the law.²¹ It should not be thought that, because the Common Pleas had settled at Westminster pursuant to the edict of Magna Carta, de Weyland became a sedentary judge. Far from it, for in the ensuing years he travelled extensively, between periods of service in the royal court, as a royal minister charged with many quasi-judicial duties. When a dispute arose between the King's Forester and the Bishop of Ely, for example, over the exact boundary between the royal forest and the bishop's park, he was sent to fix the bounds between the two areas.²² When roads and bridges on the king's highway fell into disrepair, he was directed to find out why this had been permitted and to compel the guilty parties to put the way in condition again.²³ With others, he was assigned to view the metes and bounds of the counties of Cambridge and Huntington and to settle discords over the

¹⁹ Palgrave, *Parl. Writs*, I, page 382, writ 4. Dugdale, *Origines Juridicales* (London, 1666), 104, errs in giving the sum as sixty pounds sterling. The mark was regarded as the equivalent of thirteen shillings, six pence. The annual cash compensation paid de Weyland, beside robes, quarters, food and drink, amounted to forty pounds, ten shillings. *Cal. Pat. Rolls*, I, pp. 282 and 308, show that warrants for the first two installments of de Weyland's salary were drawn on Orlandinus de Podio and his fellows, merchants of Lucca, who appear to have been farmers of the custom of wools and hides as indicated by their annual account with the king, *ibid.*, I, 354.

²⁰ The leading figure, though not technically then a judge, was Archbishop Burton, the Chancellor. Ralph de Hengham, Chief Justice of the King's Bench was next. See Campbell, *Lives of the Chief Justices*, I, 72.

²¹ *Dict. Nat. Biog.*, XX, 1302; Campbell, *op. cit.*, I, 77.

²² *Cal. Pat. Rolls*, Edward I (1281-1291), II, 41.

²³ *Ibid.*, II, 139.

marshy land which lay between them.²⁴ When the citizens of London complained that they were annoyed by smoke and fumes from certain lime-kilns, both inside the city and across the Thames at Southwark, which had formerly used wood but were now burning sea coal "so that the air is infected and corrupted," he was sent to view the same and to provide remedies.²⁵ In like fashion, the high-handed conduct of the Prior of Ely in invading the home of Richard le Neweman of Bergham and seizing the occupants and the goods there contained called for redress, so Thomas de Weyland was dispatched to ascertain the facts with full power to act.²⁶

Unfortunately, there is no adequate record of his actions in such matters, nor, for that matter, have the rolls containing the record of the decisions he made as a judge been preserved or placed in print.²⁷ That such records were kept cannot be doubted, for in several instances a royal writ was addressed to de Weyland to send a portion of the roll for examination,²⁸ and, after his abjuration, his wife seems to have delivered into the Exchequer some of his records relating to amercements imposed during at least a part of his service.²⁹ It is only by indirection and surmise from isolated instances, therefore, that we may now gather any indication of his caliber as judge or minister.

That he was a cautious man would seem indicated by his action, in 1276, in getting a license from the Bishop of Norwich to try an assize of *darrein presentment* during a period of religious observance, for the laws of Edward the

²⁴ *Ibid.*, II, 140. The commission did not act speedily enough to suit Edward I, for on January 1, 1285, a more peremptory command issued directing that the metes and bounds "be placed and assigned for ever, and to return an account of their proceedings to the king in parliament after Easter next." *Ibid.*, II, 201. The monarch must have been satisfied with their work, for on June 13, 1285, he ordered the metes and bounds to be placed "in accordance with the inquisition taken at Stangrund by virtue of a former commission." *Ibid.*, II, 209.

²⁵ *Ibid.*, II, 296.

²⁶ *Ibid.*, II, 99.

²⁷ The introduction to 19 *Selden Society*, ix, states that the rolls series goes no farther back than 1292 A.D. See also Holdsworth, *History of English Law*, II, 536.

²⁸ See, for example, 55 *Selden Soc.* 68, case 49; *ibid.*, page 153; 57 *Selden Soc.* 9, and 58 *Selden Soc.* 165, case 91.

²⁹ *Foss*, *op. cit.*, III, 172; *Madox*, *Exch.*, II, 256. It is quite likely, however, that these records relate to the period when de Weyland was a justice itinerant since, from the time of Magna Carta, the Common Pleas sat regularly at Westminster and a judge on assize would only have the *nisi prius* roll with him.

Confessor, confirmed by William the Conqueror and acknowledged in Magna Carta, had fixed certain sacred periods devoted to the Church during which no judicial business could be transacted.³⁰ When he had express royal authority for his action, however, he seemed not to have been so concerned, for in 1279, he heard another case of this type even though the court itself had adjourned according to such requirement.³¹

That he was a prominent official of the Crown is witnessed by the fact that he attended the important ceremony, in 1278, when Alexander, King of Scots, paid homage to Edward I.³² Again, his services were in demand in the royal councils for he was asked to pass on the sufficiency of a writ of *quo warranto*,³³ to advise concerning the troubles Edward I was experiencing with the Welsh leaders,³⁴ or to assist the Earl of Cornwall, the absent king's lieutenant.³⁵ In 1280, he attested a royal grant to John de Botiller.³⁶ Frequently he aided the judges of the King's Bench, the Exchequer, and the other courts, where he was occasionally called to confirm the evidence of his own records but was more often asked to give advice.³⁷ He did not, though, cease to try criminal cases³⁸ for the records abound with commissions of *oyer and terminer* directing de Weyland to go into distant parts and hear appeals of homicide,³⁹ rob-

³⁰ A synopsis of the license appears in *Registrum Epistolarum Peckham Archiepiscopi Cantuariensis* (77 Rolls Series), III, 1028. See also Foss, *op. cit.*, III, 15'. The Statute of Westminster I, however, provided that "at the special request of the king made unto the bishops," and with their assent, during three periods, to-wit: Advent, Septuagesima and Lent, assizes of *novel disseisin* and *darrein presentment* might be taken. The judge's conduct in asking for the bishop's permission to proceed at such a time seemed unnecessary.

³¹ Cal. Pat. Rolls, I, 324. The king's desire for an early hearing seemed to have been motivated by a fear that the plaintiff's right would be lost from the lapse of time rather than from an intentional disregard of the religious prohibition.

³² Palgrave, *Parl. Writs*, I, 7.

³³ Palgrave, *op. cit.*, I, page 383, writ 7.

³⁴ *Ibid.*, I, page 16, writ 23.

³⁵ *Ibid.*, I, page 18.

³⁶ *Ibid.*, I, 426.

³⁷ 57 Selden Soc., lxvii. Several royal writs exist directing de Weyland to join with the judges of other courts in the determination of cases pending before them. See, for example, Cal. Pat. Rolls, I, pp. 283, 292, and 348. In several instances the matters involved title to land in London, which, by the charter of that free city, were matters heard by the mayor and aldermen in the hustings court: *ibid.*, I, pp. 407, 413, and 475; II, pp. 46 and 287.

³⁸ The Common Pleas judges, when on assize, might still hear criminal cases according to 1 Selden Soc., xviii.

³⁹ Cal. Pat. Rolls, I, pp. 413 and 433; II, pp. 61, 100, 112, and 305.

bery,⁴⁰ housebreaking,⁴¹ larceny,⁴² false arrest,⁴³ breach of peace,⁴⁴ and of poaching on private estates.⁴⁵ Though the private appeal of felony was dying out, being gradually superseded by indictment at the suit of the king,⁴⁶ it was still a potent weapon for the purpose of bringing criminals to justice and de Weyland's early training as itinerant judge served him in good stead.

By far the bulk of his labors, however, must have been in dealing with the petty litigation of a litigious age, for he presided over the court of the common people and would, therefore, be called upon to decide disputes over money matters, actions involving land, and the like. Here was opportunity at hand to augment the common law by molding and fashioning it to serve the ends of justice. Perhaps, in the volume of litigation that must have come before him, he had many an occasion to pronounce far-seeing decisions but few recorded precedents of that nature can be found today. In one case, a suit had been instituted but had been put off on a plea of another suit pending, yet somehow the case had proceeded to judgment. Upon an application for review, he held that "in the taking of the aforesaid assize there was obvious error" and he revoked the judgment.⁴⁷ Again, he is reported to have refused to permit one co-parcener to proceed with a suit for rent without joining the others as plaintiffs. The fact that the defendant had not filed a plea of non-joinder until after proceeding on the merits was held not to prevent such a defence.⁴⁸ A dispute over the right to

⁴⁰ *Ibid.*, I, 347; II, pp. 69, 103, and 142.

⁴¹ *Ibid.*, II, 200. The property invaded seemed to be in the hands of the king under the jurisdiction of de Weyland's brother-judge John de Lovetot.

⁴² *Ibid.*, II, 42, which concerned the theft of a felon's goods after the same had been forfeited to the Crown, and II, 97, dealing with the theft of certain writings obligatory.

⁴³ *Ibid.*, II, 210. The case involved de Weyland's patron Roger le Bigod, Earl of Norfolk, who was accused therein of holding his prisoner until he made ransom for his release. The story is reminiscent of the imprisonment of Athelstane by Reginald Front-de-Boeuf as told in Sir Walter Scott's novel *Ivanhoe*, Ch. xxi.

⁴⁴ *Ibid.*, I, pp. 294 and 413 involved simple assaults, but p. 349 tells of an interference with a judicial officer who had been sent to impound certain farm animals.

⁴⁵ *Ibid.*, I, 350 and 410. The hunting and slaying of the deer in the royal forests was punished by the Forest Courts. See 13 *Selden Soc.* xv.

⁴⁶ One such was returned before de Weyland according to *Cal. Pat. Rolls*, I, 411, growing out of his investigation of a charge that Robert de Rede had instigated the murder of Martin de Alesham. ⁴⁷ 55 *Selden Soc.* 153, case 100.

⁴⁸ *Year Book*, 21 and 22 Edward the First (31 *Rolls Series*), II, 168. Such is still the rule as to non-joinder of joint plaintiffs, the error being regarded as fatal:

a whale cast ashore, seized by the sheriff as the property of the Crown but claimed by the Earl of Surrey, came before him though his decision is not recorded.⁴⁹ He granted enforcement of a common debt based on a statutory recognizance,⁵⁰ and took an extensive account between Walter de Riggin, keeper of the wardrobe and steward of the household, and Bogo de Clare, his master.⁵¹ He also called attention to the fact that, apparently through error, the king had presented the wrong person to the church at Weston for, upon his suggestion that the advowson had been assigned to Eleanor widow of Robert de Farrar as part of her dower, such appointment was vacated.⁵² From such fragmentary records little of real value can be gleaned but, taken alone, they would tend to indicate that he was, at least at the start, a fairly conscientious and prudent judge.

It should not be thought, though, that he was infallible for the claim was made as early as 1280 A.D. that he had given judgment in an ejectment action despite the fact that the defendant had not been summoned or attached to answer. In reply to a royal writ to send up the record in that case, he appears to have answered that he had caused the rolls "for the last two years to be fully searched and it could not be found in the same that any plea had been begun" before him or his fellow judges.⁵³ There also seems to be the imputation that, in cases affecting his patron the Earl of Norfolk whom he continued to serve as "chief counsellor,"⁵⁴ he was not above giving the serjeant of his benefactor a wink when it was clear that he was following a line of argument which would lead to an untenable position and the loss of a case.⁵⁵

Graver charges were still to come, but long before they were made he seemed to have neglected no opportunity of furthering his own interests. Following his father's death

Lasher v. Cotton, 225 Ill. 234, 80 N. E. 122 (1907), and remains so even after judgment by default according to International Hotel Co. v. Flynn, 238 Ill. 636, 87 N. E. 855 (1909).

⁴⁹ See 49 Selden Soc. 109. ⁵⁰ 48 Selden Soc. 8.

⁵¹ Ibid., p. 113. ⁵² Cal. Pat. Rolls, II, 170.

⁵³ 55 Selden Soc. 68, case 49. Query: Had the search been extensive enough, or had some convenient slip resulted in the "loss" of the record?

⁵⁴ See Ancient Petition No. 13379, printed in 57 Selden Soc., cxxxviii.

⁵⁵ 55 Selden Soc., lxxvii. A specific illustration of such conduct on the part of Stanton, J., is found in 26 Selden Soc. 132.

some time about 1275, he came into possession of the family estates in Ireland as well as the family manor at Sodbury in Gloucester. To perfect his title thereto he appears to have negotiated with his mother, and her new husband John de Brandon, in 1276, for a release of all her dower interest therein. As compensation for such release, he granted her a life-estate in the manor of Middleton,⁵⁶ which he must have acquired from his earlier earnings. This transaction, however, was but the beginning of a series which reveal him as possessed of an almost consuming passion for land.

The same year he acquired the manor of Great Massingham, near his birthplace. Two years later he picked up a bargain when the king, for a mere fifty marks, assigned to him the balance of a ten-year term to the manor of Kelling in Norfolk which had come into the king's hands by reason of the execution of Abraham, son of Deulecresse, Jew of Norwich for the offense of blasphemy.⁵⁷ That estate, with other parcels, had been acquired by Abraham in satisfaction of a bond for "eighty pounds of silver" in 1277,⁵⁸ but the paths of de Weyland and Abraham must have crossed several times before the latter's execution for, in 1276, de Weyland appears to have redeemed a part of the manor of Ilketeleshale (Ilkeshall?), Norfolk, from a debt due Abraham⁵⁹ and not long thereafter de Weyland was named as a co-defendant in a suit based on the aforesaid bond.⁶⁰ Abraham was the leader of the chapter of alien Jews living at Norwich and figured prominently in the records of the Jewish Exchequer about that time,⁶¹ but no record can be found of the blasphemy that caused his death and the forfeiture of his estates. Enough does exist, though, to indicate that his career may have been the source of Sir Walter Scott's familiar character Isaac of York and de Weyland's covetousness may have played some part in his destruction.

Through purchase, de Weyland acquired the manor of North-hall from Richard Fitz-John, heir and brother of the

⁵⁶ Dict. Nat. Biog., XX, 1302.

⁵⁷ Cal. Pat. Rolls, I, 377, indicates that on June 6, 1280, the king examined and approved letters patent for such transfer to de Weyland.

⁵⁸ Calendar of the Plea Rolls of the Exchequer of the Jews (The Jewish Hist. Soc. of England, London, 1905), III, 297.

⁵⁹ Ibid., III, 227.

⁶⁰ Ibid., II, 262.

⁶¹ See 15 Selden Soc., and the three volumes of Calendar of the Plea Rolls of the Exchequer of the Jews.

Earl of Essex.⁶² In 1280, he enhanced the value of the original family property by securing a royal license for the holding of a market and fair at Sodbury,⁶³ and spreading out into adjacent counties, he accumulated other lands in Suffolk and Essex. Full prominence as a landed proprietor was attained in 1286 when he received royal permission to enclose two groves at Chighenhale, Essex, adjoining the royal forest there, so as to convert them into a park.⁶⁴ But still the land-hungry man was not satisfied for the manor of Gravesend, in Kent, was added and, in 1288, he made the largest purchase of all when he bought property at Grimestone, Crougham, and Gayton in Norfolkshire.⁶⁵ In all, twenty-six manors, farms, and churches came under his control which, though scattered through six counties, represented a truly magnificent estate.⁶⁶

It was during this period of acquisition that he engaged in a celebrated transaction which demonstrated his skill as a real-property lawyer and laid the foundation for a doctrine which still persists.⁶⁷ The story is worth repeating. Sir Thomas's wife Elizabeth had died after the birth of two sons, Thomas and John. He soon married again, this time to Margaret de Mose,⁶⁸ by whom he had two more children, a son Richard and a daughter Eleanor. Perhaps in anticipation of a violent end, and anxious to prevent the complete ruin of

⁶² Blomefield, Norfolk, IX, 262-3.

⁶³ *Calendar Rotulorum Cartarum* (Public Record Office, London, 1803), 107.

⁶⁴ Cal. Pat. Rolls, II, 237, indicates the size of the area enclosed was 20 acres.

⁶⁵ Blomefield, Norfolk, VIII, 450.

⁶⁶ At the time of his fall he was reported to have owned or been entitled, in his own sole right, to the possession of the manors of Kelling, Hiddenham, Ashhill, Minewedon, Hedenham, Ilkeshall, Crougham, Gayton and Grimestone, as well as farms at Wantedon and Claydon, in Norfolk; Clopton, Brantesdon, and Blaxhall manors, as well as Tonstall, Farnham, Orford and Monocwedne farms, with right of advowson in the latter and at Chiselford, all located in Suffolk; the manor of Gravesend in Kent; the farms and parks at Thurrok Parva and Chaldwell in Essex; and the manors of Balyconar, Killotheran and Ballywackoill in Ireland. See *Calendarium Inquisitionum Post Mortem sive Escaetarum* (Public Record Office, London, 1806), I, pp. 102, 106, 115, 130, 144, and 317.

⁶⁷ The New York Court of Appeals was recently faced with the duty of deciding whether or not a convicted felon, sentenced to a lifetime of imprisonment, might participate in his deceased former wife's estate. The decision, *In re Lindewall's Will*, 287 N. Y. 347, 39 N. E. (2d) 907, 139 A. L. R. 1301 (1942), can be traced back to this incident.

⁶⁸ Like most names of the period, doubt exists as to the correct spelling. Foss, *op. cit.*, III, 172, gives it as Morse; *Dict. Nat. Biog.*, XX, 1303, gives as variations Mose, Maze, and Moyes. Coke on Littleton, Book 2, Ch. 11, §200, spells it Margerie de Mose.

his family if he fell from power,⁶⁹ he negotiated with Gilbertus de Clare, Earl of Gloucester, who was his feudal overlord, to permit him to recognize by fine that the family manor of Sodbury should belong to one Geoffrey of Ashley. In return, Geoffrey was to grant the property back to Thomas de Weyland and his wife Margaret for the period of their joint lives, with remainder over to his son Richard and the heirs of his body. With the earl's permission, this was accordingly done.⁷⁰

Nothing might have come from this apparently simple transaction had de Weyland died a normal death, but on his abjuration in 1290, Gilbertus de Clare seized possession of Sodbury arguing that, by acknowledged felony, the property had become forfeit.⁷¹ The wife and son petitioned the king for relief, but the earl vigorously contested on the ground that the arrangement was a mere fraud designed to deprive the overlord of his right of escheat; that there was no precedent for the wife of a felon suing, or holding lands, during his lifetime; and that it would be a great prejudice to all capital lords to permit such a transfer to stand. The case was so unprecedented that it was argued before all the judges, the barons of the Exchequer, the Council, and even the Parliament who finally concluded in favor of the judge's wife. Despite the animosity engendered by the defalcation of so important a royal servant, the king upheld the decision though the wife was ordered not to give any support, openly or secretly, to her banished husband.⁷² It might be

⁶⁹ The date of the transaction, however, was 1278 when, so far as then appeared, he enjoyed royal favor.

⁷⁰ Other lands were taken jointly by de Weyland and his elder son John, or with his daughter Eleanor, according to Dict. Nat. Biog., XX, 1303. In Year Book 20 and 21 Edward the First (31 Rolls Series), I, 36, is the record of a law suit by John de Weyland, the justice's son, brought in 1292 against Philip Harneys over rent for a piece of property so held, which the defendant claimed had been forfeited by reason of the father's conduct in committing felony and "embezzling the King's goods."

⁷¹ Holdsworth, Hist. Eng. Law, III, 304-5, states: "The effects of abjuration were exactly the same as those of a condemnation to death except that the criminal's life was spared. His goods were forfeited, his lands escheated, and his wife was treated as a widow."

⁷² *Rotuli Parliamentarium*, Edward I (1278-1325), vol. 1, 66-7; Coke on Littleton, Book 2, Ch. 11, §200; Holdsworth, Hist. Eng. Law, III, 103-4. The decision therein became precedent for later cases such as Countess of Portland v. Prodggers, 2 Vern. 104, 23 Eng. Rep. 677 (1689), and Newsome v. Boyer, 3 P. Wms. 37, 24 Eng. Rep. 959 (1729), which were relied on by the New York court as the basis for its decision in *In re Lindewall's Will*, 287 N. Y. 347, 39 N. E. (2d) 907, 139 A. L. R. 1301 (1942).

also remarked that in further effort to be fair to the family, Edward I refused to set aside a *maritagium* or right of marriage which de Weyland had secured from the king for the union of his daughter Eleanor with the heir of John de Neville.⁷³ The contention of the latter's kin that it would be a serious disparagement to marry him to a felon's daughter was rejected.⁷⁴

Careful husbandry might explain how, with one inherited manor, a royal stipend of sixty marks a year, and such largess as might come from a beneficent patron, one might in a lifetime acquire a competence of sorts.⁷⁵ The clue to such extensive acquisitions as were made by de Weyland must, however, be sought for elsewhere. The answer might be suggested by an ominous decision which he was called upon to pronounce in 1286 A.D. when an investigation was made into the conduct of the judicial staff of the Jewish Exchequer. The attitude of Henry III, and his son Edward I, toward such of the alien Jews as were permitted to remain in England was one of marked toleration at times, followed by periods of savage exaction at still others. To keep control of their dealings and to be able to collect levies the more readily, both of these kings required that all transactions by these aliens be registered and enforced before the judges of that special institution. Such judges, however, seemed to be prone to follow in the footsteps of their royal masters and more than one scandal had occurred. In 1272, Sir Hamo Hauteyn and Sir Robert de Ludham were chosen to serve, doubtless with a view to their competence and character,⁷⁶ but, like their predecessors, they failed to withstand the seductive influences to which they were exposed. In 1286 they were dismissed and Sir Hamo Hauteyn was accused of falsifying his records. Upon a finding of guilty, de Weyland fined him one thousand pounds sterling.⁷⁷ One way to acquire

⁷³ The king, at Shrewsbury on December 16, 1283, had signed a grant of the right of marriage of Hugh, son of John de Nevil[le], then a minor, to Thomas de Weyland: see Cal. Pat. Rolls, II, 104.

⁷⁴ *Rotuli Parliamentarium*, Edward I (1278-1325), vol. 1, page 52, petition 79 (1290).

⁷⁵ The only disbursement from the royal treasury, other than the annual salary as Chief Justice, appears to have been made in 1283 A.D. when he had a grant of forty pounds sterling in discharge of his expenses in going through divers counties taking assizes and inquisitions: Madox, Exch., II, 66. Of course, as judge, he would be entitled to certain costs in every case which came before him.

⁷⁶ 15 Selden Soc. xxxiv.

⁷⁷ 55 Selden Soc. clv. See also 15 Selden Soc. xxxiv.

"easy" money was thus brought forcibly to de Weyland's attention, if he was not already conversant with such methods.

If more was needed to induce de Weyland to apply like methods to foster his greed for land, the extended trip that Edward I made to his possessions on the continent between 1286 and 1289 furnished the opportunity. With both the king and the chancellor absent from the realm, any check on the conduct of de Weyland and his colleagues was removed. What ensued in those three years may never be revealed for though there exists a complete account of the proceedings of the parliamentary commission appointed by Edward I upon his return to hear complaints against the judges,⁷⁸ yet, by reason of his abjuration, no investigation was entertained as to de Weyland's own conduct.⁷⁹ One outstanding fact, however, is known. The value of his goods and chattels seized by the king upon his removal from the bench, exclusive of his lands, was computed at 100,000 marks!⁸⁰ Well might Blackstone later remark ". . . an incredible sum in those days before paper credit was in use."⁸¹ What chicanery, what bribery, what corruption helped amass that huge sum in so short a period of time must be left to the imagination.

Favoritism undoubtedly counted for a part of the wealth acquired for it was charged that de Weyland, in a case involving a wrecked ship brought between Roger le Bigod, Earl of Norfolk, on the one hand and the Prior of Buttelee and Robert of Ufford on the other, "took the inquest . . . in favor of the Earl all alone without companion, and then had the judgment entered . . . all privately at his desire and without the parties. . . ."⁸² In like fashion he was accused of

⁷⁸ See the publication of the Royal Historical Society, Camden Series, entitled "State Trials of the Reign of Edward the First," London, 1906.

⁷⁹ He is only mentioned twice in such proceedings. State Trials of the Reign of Edward the First, xxix, 49-51, and 91-2.

⁸⁰ Campbell, Lives of the Chief Justices, I, 77, citing from *Abb. Rot. Originales*, I, pp. 61, 63, and 64. A description of the estates he held at the time of his fall may be found in note 66, ante.

⁸¹ Bl. Com., III, 410.

⁸² See 57 Selden Soc. cxxxviii, setting forth Ancient Petition No. 13379, which was probably presented to the Royal Commission appointed in 1290. It does not appear in State Trials of the Reign of Edward the First, nor is there any reference to a decision thereon.

injecting himself into a proceeding pending before another judge, in which the plaintiff sought to secure a hearing on a writ of *mort d'ancestor* but could not get an attorney to speak for him "for any money by reason of the favor which his adversaries enjoyed from Sir Thomas de Weyland."⁸³ It was also charged that de Weyland's influence was such that the cause was put off and delayed so that finally the litigant had to abandon the matter "because of poverty and because he otherwise dared not remain in the country."⁸⁴

Usurpation of power undoubtedly helped, for in the case of Peter de Champvent against Robert, son of Richard of Tilbury, the petition indicates that after a proceeding had been begun before the Common Pleas for breach of warranty of title and while the same was pending, the feudal overlord had proceeded before the king himself to regain his estate as having been seized from him during the War of the Barons. In that action before the king all the parties were present and all issues between them had been decided or waived, yet the Common Pleas persisted in the determination of the suit for breach of warranty despite the fact of the former adjudication.⁸⁵ Downright oppression is intimated in Robert de Wandesley's petition for pardon in 1290, for he claimed to have been wrongfully outlawed by de Weyland at the suit of Peter de Huntingfield because of his alleged failure to render an account.⁸⁶ The king seemed to agree, for he granted the prayer and restored the petitioner to his rights.

Bribery must have been involved, for the complaint of the defendant in the case of Turtle against Alexander⁸⁷ was that the judge tried the case behind the defendant's back and while he was not in court. For that matter, no one can now tell what the price must have been for countenancing a

⁸³ As told in 55 Selden Soc. cxliv, where is printed Ancient Petition No. 2070 presented by Thomas of Denham. The trial judge appears to have been Sir Solomon of Rochester who served as a justice in eyre during this period.

⁸⁴ Ibid. Much the same story is told in State Trials of the Reign of Edward the First (London, 1906), 49-51, in a petition by William of Bardwell who had sued the Abbott of St. Edmund in trespass, but who found it difficult to advance his cause before the trial judge because "Thomas de Weyland then Justice of our Lord the King advanced always aid and assistance in favor of the said abbott near one and the others of the justices. . . ." It might appear that he was also responsible therein for jurors who ". . . were suspect and elected by the adverse party."

⁸⁵ See 57 Selden Soc. 9. The king ordered the production of the records, in 1290, to determine if such was the fact. ⁸⁶ Cal. Pat. Rolls, II, 344. ⁸⁷ 57 Selden Soc. 43.

downright violation of the Statute of Mortmain,⁸⁸ or how it was possible, other than on the score of bribery, to award a judgment for a lesser sum even though the defendant admitted a greater sum was due and acknowledged there was no acquittance or anything else which might operate as a discharge.⁸⁹

To these isolated instances, it must be added that the records disclose that he decided cases in which he was a party,⁹⁰ and rumor has it that he rendered an obviously false judgment by condemning an accessory to death before the conviction of the principal criminal.⁹¹ The story may, however, have foundation in fact for Bereford, Chief Justice in 1310, tells how Sir Ralph Hengham, a compeer of de Weyland's, criticised an unnamed judge for that very thing.⁹² Far more serious was the accusation that he had instigated his servants to commit murder and then had screened them from punishment. The charge appears to have the support of eminent authority,⁹³ but it lacks the authenticity that would be present if names, dates, and places were given.⁹⁴

⁸⁸ 57 Selden Soc. 154, case 66. The method pursued seemed to be for the Church to bring an action of trespass *quare clausam fregit* over the land in question, claiming ownership prior to the date of the statute. The donor would then either fail to defend, or present some frivolous defence, leading to a judgment in favor of the plaintiff, upon which judgment roll the Church would later be able to base its claim to title.

⁸⁹ See petition in State Trials, pp. 91-2.

⁹⁰ 55 Selden Soc. cxi, note 5, refers to an Ancient Petition No. 15734 containing an accusation of that sort, and the order directing that the Treasurer and the barons of the Exchequer were to be associated with de Weyland at the further hearing thereon.

⁹¹ This may be an apocryphal tale invented by the author of the *Mirroure of Justices*. That person wrote that King Arthur, in one year, had forty-four judges hanged for false judgments, among them "Watling, for that he had judged Sidulf to death for receiving Edulf, his son, who was afterwards acquitted of the principal crime." See translation in 7 Selden Soc. 166. The editor of the translation, adopting the view that the book was written as a political work to condemn the judges of England sitting at about the time of its composition, i.e. 1285-90 A.D., notes that the author ". . . is not going to speak out in simple and straightforward words. He will imply and he will allude. He will not talk of Stratton and Weyland; he will talk of Billing and Watling. . . ." See 7 Selden Soc. xlvi.

⁹² 20 Selden Soc. xxix, and 196. See also 55 Selden Soc. lxx.

⁹³ Holdsworth, *Hist. Eng. Law*, II, 297, cites from *Annales Monastici*, particularly that of the Annalist of Dunstaple, (36 Rolls Series), III, 355. See also Foss, *op. cit.*, III, 39 and 171.

⁹⁴ Campbell, *op. cit.*, I, 78, note *, not only questions the story but questions the accuracy of Lingard, whom he cites, in making de Weyland Chief Justice of the King's Bench. Campbell, however, did not seem to have been familiar with the

Enough has been proven of the conduct of the other judges, however, to lend credence to Holdsworth's statement that: "Few of the . . . ministers of the Crown had Stratton's opportunities; but on a smaller scale some did their best to imitate him."⁹⁵ More eloquent, perhaps, are the words of an anonymous contemporary of de Weyland's who wrote a *Song on the Venality of Judges* from which the following excerpts are taken:

What, therefore, O good Jesus, will be done with the judges, who for prayers or gifts recede from what is just? In fact such judges have numerous messengers;—listen for what purpose. If you wish to claim land, a messenger will come to you, and speaks in confidence, saying, "Dear friend, do you wish to plead? I am one who can help you in various ways with the judge; if you wish to obtain anything by his aid, give me half and I will help you."

At his feet sit clerks, who are like people half-famished, gaping for gifts; and proclaiming it as law, that those who give nothing, although they come early, will have to wait. . . .

There are some at this court, who express judgment; whom they call relaters, worse than the others. They take with both hands, and so deceive those whose defenders they are. And what shall we say to the ushers? who say to the poor that follow the court, "Poor man, why do you trouble yourself? why do you wait here? unless you give money to everybody in this court, you labor in vain. . . ."

The same people have this vice, when they enter the house of some countryman . . . unless by and by jewels follow after the meal, and are distributed to all . . . unless robes of various colors are transmitted . . . then they proceed as follows; whatever cattle they find, are driven off violently to their own manors, and the owners themselves are put in confinement until they make satisfaction . . . then at length they are liberated.

That unknown writer's final words might be said to epitomize the career of de Weyland itself, for, of the judges of his day, he said:

I see them at first indigent enough . . . they next show themselves proud . . . they begin very hastily to buy lands and houses, and agreeable rents;

Annales Monastici, not printed until later, where the accusation is worded: "*Quoddam homicidium per scrutarios suos fieri fecit, et ipsos homicidas postea receptavit.*" Again, the annalist may be in error for he states de Weyland was found guilty thereof by a jury. It is more likely the case that he sought sanctuary to prevent trial on such a charge.

⁹⁵ Hist. Eng. Law, II, 297.

and amassing money themselves, they despise the poor, and make new laws, oppressing their neighbors. . . .⁹⁶

Thomas de Weyland would have needed unusual powers of rectitude indeed not to have indulged himself as was the prevailing fashion of the times.⁹⁷ England would have rung with his fame had he proven himself to be an honest man, but there can be little doubt that he did so indulge for in no other way can his tremendous accumulation of wealth be explained. The hand of retributive justice, however, was about to fall.

In August of 1289, Edward I returned to England and was promptly beseiged by petitions from plundered litigants and subjects. His wrath at finding such grave breach of trust among his ministers found vent in a clean sweep of the bench of every royal court. Hardier spirits remained expecting to ride out that vengeful storm, but de Weyland, recognizing that the "jig was up" fled⁹⁸ and went into hiding.⁹⁹ His hasty flight can be regarded as nothing short of an acknowledgement of guilt, but guilty of exactly what must ever remain a secret.¹⁰⁰ A writ for his arrest was issued in the early part of September,¹⁰¹ seizure of his lands and goods was ordered on the 19th of that month,¹⁰² and by the 24th

⁹⁶ Thomas Wright, *The Political Songs of England* (Camden Society, London, 1839), pp. 224 et seq. The original is in metrical Latin.

⁹⁷ Even de Weyland's clerk and marshal would appear to have been doing their bit, for accusation was made that they had stolen records and packed a jury in a case in which their father was a party. See Ancient Petition No. 2070, printed in 55 *Selden Soc.* cxliv.

⁹⁸ Foss, *op. cit.*, III, 171, indicates that fines were levied before de Weyland as late as fifteen days before the Feast of St. Martin in 17 Edward I, which date would have been October 25, 1289. This date hardly coincides with the date of the appointment of his successor.

⁹⁹ Campbell, *op. cit.*, I, 77, inclines to the view that he was arrested but contrived to escape. Foss, *op. cit.*, III, 170-2, also so states. No such idea is advanced by the other historians.

¹⁰⁰ T. F. Tout, in *State Trials of the Reign of Edward the First*, p. xxix, advances the argument that his offences must have involved him more deeply than his colleagues, not only as demonstrated by his hasty flight, but also from the permanent character of his punishment. Such of the other judges as were banished, subsequently received royal pardon, remission of unpaid balances of fines, and permission to return to England.

¹⁰¹ Foss, *op. cit.*, III, 171.

¹⁰² *Cal. Pat. Rolls*, II, 323. The king was then at Bury St. Edmunds but was apparently then unaware of de Weyland's concealment in the nearby convent.

Ralph of Sandwich was appointed as his successor.¹⁰³ The royal favorite, reversing his meteoric rise, swiftly plunged to the depths.

An account of de Weyland's life might well close at that point, but such life provides still further illustrations of the operation of the ancient laws. Sanctuary was a striking feature of the criminal law of that period, though it was probably a legacy from antiquity. Only consecrated ground could afford such sanctuary, and then for not longer than forty days. By the end of that period, the felon was supposed to surrender and stand trial.¹⁰⁴ That such privilege was well known to de Weyland cannot be doubted for he seems to have fled to the convent of the Franciscans established at Babwell, just outside the north gate of Bury St. Edmunds, where he was allowed to assume a friar's habit as a novice of the order. Perhaps he hoped, by silence and disguise, to keep his whereabouts concealed, but he was discovered and Sir Roger Malet was ordered to place guard over the convent so as to prevent his escape or accept his surrender.

Still clinging to existence, de Weyland remained the full period of sanctuary without making any other sign than to transfer two of his manors to the abbot as a consideration for the asylum he had been furnished.¹⁰⁵ When he failed to leave at the end of that period the king, recognizing that it would have been sacrilegious to have taken him from his asylum by force, resolved to starve out the inmates. The ex-judge then bethought himself of still one more device to escape from the fate which threatened him. Members of clerical orders, in those days, could avoid criminal punishment by claiming benefit of clergy which, if granted, ended

¹⁰³ Cal. Pat. Rolls, II, 323-4. The author of the note in Dict. Nat. Biog. XVII, 770, indicates that the latter did not serve as such, though a fine was levied before him. This appears to have been the customary manner of qualifying for office, just as the Chancellor, upon appointment, would immediately seal one writ.

¹⁰⁴ Holdsworth, Hist. Eng. Law, III, 304-5. Many instances abound in the early records. See Select Pleas of the Crown, 1200-1215 A.D., 1 Selden Soc., particularly page 23, case 48; page 47, case 89; page 93, case 143. For an instance of an attempt to disguise the supplicant as a cleric, see 1 Selden Soc. 86, case 135. The problem of what should be done with the recalcitrant who would not surrender at the end of the period was a vexing one. Bracton, folio 136a, held to the idea that he could not be forcibly removed, but asserted he could be starved into surrender. His view seems to have been followed in an account of another actual case in 57 Selden Soc. liii. ¹⁰⁵ Foss, op. cit., III, 172.

all temporal power over the offender and required his surrender to the spiritual power of the Church. As a clerk and a sub-deacon in his younger days, de Weyland now demanded that he be accorded the benefit of clergy and he even interested the Archbishop of Canterbury to advance the claim for him.¹⁰⁶ Edward I proved adamant though he did permit the friars to leave their convent to avoid starvation. Through cold and privation, de Weyland still clung to hope, but finally doffing the cowl and serge jerkin of the religious order he surrendered to Sir Roger Malet and was conveyed to the Tower of London.

The balance of his story must be inferred for little record remains.¹⁰⁷ Perhaps, some day, a novelist will reconstruct that closing scene, perchance in words like this:

The door of the Tower cell swung gratingly on its hinges. Slowly the prisoner raised his head. A look of earnest terror crossed his face as he recognized his visitor. "What news, Sir Roger, do you bring me?" he finally managed to say, forcing the words through unwilling lips as though he feared the reply.

"My royal master commands me," began Sir Roger Malet, "to offer you a three-fold choice. You may, he says, stand trial by your peers for the grievous wrongs you have committed. You may, from the love he once bore you, chose to remain immured within these walls for the rest of your days, or —"

"What choices are these!" The words burst, as though with a groan, from the prisoner. "You know the result of either! A felon, convicted or not—call you these choices!" "Stay," replied the other, "Hear me to the end. Your third choice — confess your wrongs, go forth a free man, but abjure the realm forever!"

The wretched man raised himself from the wooden bench. "My manors, my estates, if I so do?" he queried. "What of them—my life went into their acquisition—are they saved?"

"Nay, you know the law," chided Sir Roger, "all are forfeit, for those who abjure the realm may leave but may take nothing with them. Many a man has heard the same sentence from you. Have you forgotten so soon?"

The prisoner sank back as though crushed. For a while, his jailer stood

¹⁰⁶ His own apostasy in marrying, not once but twice, was conveniently overlooked by the Archbishop who claimed such marriages were invalid. See his letter to Roger Malet in *Registrum Epistolarum Peckham Archiepiscopi Cantuariensis* (77 Rolls Series), III, 995. No one else, however, appears to have questioned their validity. The prelate's concern, however, seems to have been more for the beleaguered friars for he wrote: ". . . they were never so illtreated in Christendom as they are under your hands. . . ."

¹⁰⁷ A commission to Sir Roger Malet "to deliver the Tower of London of Thomas de Wey[land], with power to grant him life and limb if he will confess his felony and abjure the realm," may be found in *Cal. Pat. Rolls*, II, 344.

looking down on the head bowed so low. Thoughts of their years together passed through his mind. Finally he broke silence. "Friend Thomas," he said, "permit me to advise you. Serious are the complaints our king has received, and daily the storm gathers greater. Already he has acted against your brothers of the bench. Fines and banishment are like to be their portion. Could you escape? They have no choice. Think well on these words." He turned to leave, but a racking sob arrested his attention.

"Can you not comfort me more," pleaded the prisoner, "—no other word of hope? My lands, my manors—must I lose all, every last one?"

"Ill-gotten gains comfort one poorly in times like these, friend Thomas. Rather should you think of your soul!" The lips of Sir Roger Malet curled in a sneer, such miserliness in one who had stood so high brought disdain for his prisoner. "Come, man, your choice! Your master will brook no more delay!"

"Abjuration then, if you must have an answer—and let it be soon. God knows, I've suffered enough," gasped the old man, "I can stand little more!"

"Hear, then, the command of your king! You shall leave these walls at once, barefoot, and with ungirt head. With crucifix in hand, eyes firmly fixed thereon, you shall walk to Dover with all dispatch, never leaving the limits of the highway if you would save your life. There you shall board a ship assigned to you and depart to Gascony. Never again shall you set foot on these shores without royal permission or your life is forfeit! May God go with you!"

Fictional though such account may be, history does record that Thomas de Weyland, stripped of his possessions, stepped from a beach at Dover into oblivion leaving the shining promise of his youth shattered beneath the footsteps of a knave.