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Sir Edward Coke: His Interpretation of "In Other Courts"

J. Dennis Lamping
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SIR EDWARD COKE: HIS INTERPRETATION OF

"IN OTHER COURTS"

by

J. Dennis Lamping

A Dissertation Submitted to the Faculty of the Graduate School

of Loyola University of Chicago in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

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VITA

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CHAPTER I

INTRODUCTION

AND

BACKGROUND OF THE LIFE OF SIR EDWARD COKE

From the year 1620 until his death in 1634, Sir Edward Coke was the acknowledged champion of the Common Law. During this period in his life, he did all in his power to establish the supremacy of the Common Law in England over all other forms of law for all time. The main theme of this work will be an analysis of the medieval statutes used by Sir Edward Coke to demonstrate the inherent superiority of the Common Law and its courts over all others, especially the ecclesiastical, and a study of Coke's personal relations with the major figures in his life. It is the contention of the author that it is in the history of the reaction to these relationships that we find the seeds of Coke's almost fanatical devotion to the supremacy of the Common Law and its courts. This devotion to the law filled a void in his life which had been brought about by the eccentricities of his own personality, which, sooner or later, alienated even his great admirers.

On February 1, 1552, Edward Coke was born to Winifred and Robert Coke.¹ Coke's father, Robert, could trace his name back through several

¹Most of the following information is taken from Leslie Stephen and Sidney Lee, eds., Dictionary of National Biography, 63 vols. (London: Macmillan Co., 1885-1900), pp. 685-707. The author felt justified in its use since the purpose of this paper is to examine Sir Edward Coke's

respectable Norfolk generations, beginning with Roger Cooke of Crostwick. Robert Coke was the lord of Mileham and a barrister² who had a practice in London and Norfolk. Sir Edward Coke's mother, Winifred, the daughter of a Norwich attorney, was descended from an ancient Northamptonshire family, the Knightley's of Fawsley. Of the nine children born to Robert and Winifred Coke, eight survived. Edward, the only son, received his early education at the Norwich Free School and was admitted to Trinity College, Cambridge, in September of 1567, where he received his Master of Arts degree. Edward Coke went to Clifford's Inn in 1571 and, in the

interpretation of several medieval statutes and not to write a biography of Sir Edward Coke. The footnotes which explain what constituted the various offices which Coke held are taken from Black's Law Dictionary and The Dictionary of English Law by Earl Jowitt.

²Barrister, or barraster, is a counsellor or advocate learned in the law, admitted to plead at the bar, and there to take upon himself the protection and defence of clients. He is termed juriconsultus and licentiatus in jure. A barrister is a member of one of the four Inns of Court who has been called to the bar by his Inn. That makes him a barrister, and gives him, along with other barristers, the exclusive right of audience in the House of Lords sitting as a tribunal of appeal, the Privy Council, and the Supreme Court (except at sittings of the High Court in bankruptcy and at matters heard in chambers). A barrister can maintain no action for his fees, which are given not as a salary or hire, but as a mere honorarium or gratuity, and even an express promise by a client to pay money to counsel for his advocacy is not binding. He cannot even recover fees from the solicitor to whom the lay client has paid them. Moreover, the payment of a fee does not depend upon the event of a cause; and for the purpose of promoting the honour and integrity of the bar, it is expected that all their fees should be paid once their briefs are delivered.

A barrister is to be distinguished from an attorney, who draws the pleadings, prepares the testimony, and conducts matters out of court. Earl Jowitt, The Dictionary of English Law (London: Sweet & Maxwell Ltd., 1959), pp. 215-216.

following year, he became a student of the municipal law in the Inner Temple. In April of 1578, Edward Coke was called to the bar. By the year 1579, Coke was counsel for the defense in Crowwell v. Denny. In 1581, he was involved in Shelley's Case, one of the landmark cases in the law of real property.³ Sir Edward Coke married Bridget Paston in 1582. She brought him £30,000 and a great landed estate as her dowry. This dowry proved to be a significant step in Sir Edward Coke's life-long practice of accumulating worldly wealth. In 1584, Coke received a standing yearly retainer of five marks from the corporation of Ipswich to be its counsel.

As might have been expected from a person of Coke's intelligence, his advancement was very rapid. But even a person of Sir Edward Coke's caliber needed some outside help, and this was provided by Burghley, the Lord Treasurer. Before his fall from royal favor, Sir Edward Coke accumulated an incredible number of outstanding offices--recorder of Coventry,⁴ 1585; recorder of Norwich, 1586; bencher of the Inner

³Real property is land and generally whatever is erected or growing upon or affixed to land. It also refers to rights issuing out of, annexed to, and exercisable within or about land; a general term for lands, tenements, and hereditaments; property which, on the death of the owner intestate, passes to his heir. Henry Campbell Black, Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence 4th ed. (St. Paul, Minn.: West Publishing Co., 1951), p. 1383.

⁴A recorder is a barrister of at least five years' standing to act as a justice of the peace in a borough having a separate court of quarter sessions; he received a salary, and takes precedence after the mayor. By virtue of his office, he is the sole judge of the court of quarter sessions and of any local civil court of record (other than the county courts) there may be in the borough.

He may appoint as deputy recorder a barrister of five years' standing, in case of sickness or unavoidable absence, and as assistant recorder if it appears likely that the Quarter sessions are to last more than three days. Jowitt, The Dictionary of English Law, p. 1488.

Temple,⁵ solicitor-general,⁶ reader of the Inner Temple,⁷ and recorder of London,⁸ 1592; speaker of the House of Commons,⁹ 1592-1593; attorney-

⁵The governing body of each of the four Inns of Court consists of the benchers. Judges of the High Court are, in practice, always benchers of their respective Inns; the other benchers may be either queen's counsel or barristers below that rank; but no person can as of right claim to be a bencher; and every existing body of benchers can at their discretion invite to the bench of their Inn any member of the Inn whom they in their uncontrolled discretion may select. Benchers have complete control of the property of their Inn. Subject only to an appeal to the lord chancellor and the judges of the High Court, sitting as a domestic tribunal, and not as a court of justice, the benchers have an absolute discretion as to the admission of students, as to calls to the bar, as to disbarring, and also as to disbenching a member of their own bench.

The court will not entertain any action as to any matter in dispute between benchers and a member of their Inn; nor will they in any action investigate the propriety of the decision of the benchers as regards any such matter, the policy of the law being that, as regards any such matter, the only appeal from the decision of the benchers is to the domestic tribunal above mentioned. Ibid., p. 226.

⁶The solicitor-general is the second of the law officers. His functions are political as well as legal, for he is almost invariably a member of the House of Commons. The office is conferred by patent, and is held at the pleasure of the Crown. Ibid., p. 1654.

⁷Readers were ancients or benchers of the Inns of Court who were selected to give readings or dissertations in their Inns. Ibid., p. 1477.

⁸The recorder of London is one of the justices of oyer and terminer, and a justice of the peace of the quorum for putting the laws in execution for the preservation of the peace and government of the City of London. Being the mouth of the City, he delivers the sentences and judgments of the courts therein, and also certifies and records the city customs, etc. He is chosen by the lord mayor and the aldermen, and attends the business of the City when summoned by the lord mayor, etc.

He was formerly not disqualified by office from being a member of the House of Commons. Ibid., p. 1488.

⁹The speaker of the House of Commons is the spokesman of the Commons; in modern times he is more occupied in presiding over the deliberations of the House than in delivering speeches on their behalf. The principal duties of the speaker are to preside, as chairman of the House, at its debates when it is not in committee; to give a casting vote, when the votes are equal (he has no original vote); to read to the sovereign petitions or addresses from the Commons, and to deliver in the royal presence, whether at the palace or in the House of Lords, such speeches as are usually made on behalf of the Commons; to reprimand persons who have incurred the displeasure of the House;

general,¹⁰ 1593-1594; treasurer of the Inner Temple, 1596 chief justice of the common pleas,¹¹ 1606; chief justice of the king's

to issue warrants of committal or release for breaches of privilege; and to communicate in writing with any parties, when so instructed by the House. Ibid., pp. 1656-1657.

¹⁰The attorney-general is the principal counsel of the Crown. He is appointed by patent and holds at the pleasure of the Crown. As counsel, he is bound to conduct prosecutions and revenue and other legal proceedings on behalf of the Crown, if required to do so. He also acts as representative of the Crown in matters connected with charities and patents, and in criminal proceedings instituted by the government. He is the legal representative of the Crown in the Supreme Court and is ex officio leader of the bar, and presides at general meetings thereof. He is precluded since 1895 from practice for private clients. His fiat or consent is required before certain proceedings or prosecutions can be commenced. In many cases also, his consent is necessary before penalties can be recovered. His fiat is necessary for certain appeals to the House of Lords. When the House of Lords sits in a committee of privileges, it is the duty of the attorney-general to attend at the bar in a judicial capacity and report on the claim. His functions are, moreover, political as well as legal, for he is almost invariably a member of the House of Commons and is appointed to his office on the advice of the government for the time being: there is, therefore, a change of attorney-general on every change of government. In the House of Commons, he answers questions on legal matters of public interest and has charge of government measures relating to legal subjects. He is not normally in the cabinet. Ibid., p. 177.

¹¹The chief justice of the common pleas was the judge who presided before the Judicature Act, 1875, in the court of common pleas, and subsequently in the common pleas division. He had five (formerly four, until the Parliamentary Elections Act, 1868, s. 11) puisne judges associated with him. Lord Chief Justice Coleridge was the last holder of the office. Upon his being appointed lord chief justice of England in 1881, the common pleas division was merged in the queen's bench division. The lord chief justice now exercises the powers formerly possessed by the lord chief justice of the common pleas (Judicature Act, 1925, s. 35). Ibid., p. 362.

The court of common pleas (or common bench) was one of the courts into which the curia regis divided itself. Both Britton and Fleta mention it as a separate court. In 1272 there was a separate chief justice of the common pleas. It was detached from the king's court (aula regis) as early as the reign of Richard I, and Magna Carta, 1215, s. 14, enacted that it should not follow the king's court, but be held in some certain place. Its jurisdiction was altogether confined to civil matters, having no cognizance to criminal cases. It was originally the only superior court having jurisdiction in ordinary civil actions between private persons, although subsequently the courts of king's (or queen's) bench and exchequer acquired concurrent jurisdiction in all actions, except real actions, in which the

bench,¹² 1613; and high steward for the University of Cambridge, 1614.

Sir Edward Coke's earlier experience as an officer of the law caused

court of common pleas retained exclusive jurisdiction. Ibid., p. 427.

¹²The full title of this high judicial officer is the lord chief justice of England. He presides in the queen's bench division; and he represents not merely the chief justice of the ancient court of king's bench, but also the chief baron of the exchequer and the chief justice of the common pleas, the jurisdiction of all three of those courts being now exercised by the king's bench division. He is also an ex officio member of the court of appeal. Ibid., p. 362.

The court of queen's bench or king's bench was one of the superior courts of the Common Law, having in ordinary and civil actions concurrent jurisdiction with the courts of common pleas and exchequer; it was, however, considered superior to them in dignity and power; its principal judge being styled the lord chief justice of England, and taking precedence over the other Common Law judges, and there being formerly an appeal to it from the exchequer and the common pleas. It also had special jurisdiction over inferior courts, magistrates, and civil corporations by the prerogative writ of mandamus and (concurrently with the two other courts) by prohibition and certiorari and in proceedings by quo warranto and habeas corpus. It was also the principal court of criminal jurisdiction: information might be filed and indictments preferred in it in the first instance, and indictments from inferior courts might be removed into it by certiorari, subject to certain limitations.

The court accordingly had two "sides" or sets of offices, namely the "plea side," in which civil business was transacted; and the "Crown side," or "Crown office" in which matters within the criminal and extraordinary jurisdiction of the court were transacted.

It is said to have been called the king's bench or queen's bench, both because its records ran in the name of the king or queen (coram rege or regina), and because the sovereign in former times often personally sat there.

The court, which was the remnant of the aula regis, was not, nor could be, from the very nature and constitution of it, fixed to any certain place, but might follow the king's person wherever he went, for which reason all process issuing out of the court in the king's name was returnable ubicunque fuerimus in Anglia. For some centuries, and until the opening of the royal courts, the court usually sat at Westminster, being an ancient palace of the Crown, but might remove with the king as he thought proper to command. Ibid., pp. 1459-1460.

him to sustain doctrines which he would later judge to be illegal.¹³ In 1593, the position of attorney-general fell vacant. It was while vying for this position that Sir Edward Coke first came into conflict with Sir Francis Bacon, whose claims were strongly supported by Essex. The contest between Sir Francis Bacon and Sir Edward Coke for the office of attorney-general was but the first in a long list of conflicts. Once Coke received the appointment, Bacon attempted to secure the position of solicitor-general, but was unsuccessful because of Coke's opposition,¹⁴

¹³The struggle between Queen Elizabeth and the Parliament as to the right of the latter to meddle with ecclesiastical affairs was then at its height and, standing between them, Coke occupied a very delicate position. On the occasion of a bill relating to abuses practiced by the court of high commission, he succeeded in putting off discussion until he received the Queen's message prohibiting the House from discussing such matters-- a message which he delivered to them in language that could be termed as submissive. In the reign of James I, when Coke was chief justice of the common pleas, such behavior on his part was practically unheard of, James Spedding, The Letters and the Life of Francis Bacon, 14 vols. (London: Longman & Co., 1857-1890), vol. I, p. 229.

¹⁴Because of Bacon's failure to secure the desired position which he felt was due solely to the efforts of Sir Edward Coke, Bacon felt an enmity toward the attorney-general, which was returned in kind and which characterized their relationship. This feeling is illustrated in the following letter of Bacon to Coke.

"A Letter of Expostulation to the Attorney-General, Sir Edward Coke.

Mr. Attorney,

I thought it best once for all, to let you know in plainness what I find of you, and what you shall find of me. You take to yourself a liberty to disgrace and disable my law, my experience, my discretion. What it pleaseth you, I pray, think of me: I am one that knows both mine own wants and other men's; and it may be, perchance, that mine mind, and other's stand at a stay. And surely I may not endure in public place to be wronged, without repelling the same to my best advantage to right myself. You are great and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the Solicitor's Place (the rather I think by your means) I cannot expect that you and I shall even serve as Attorney and Solicitor together: but either to serve with another upon your remove, or to step into some other course; so as I am more free than ever I was from any occasion of unworthy conforming myself unto you, more than general good manners or your particular good usage shall provoke. And if you had not been short-sighted

even though his claims were again strongly supported by the influential Essex.

Sir Edward Coke's first wife died on June 27, 1598, and, in the following November, he again was successful over Bacon in winning the hand of Lady Elizabeth Hatton. They were married on November 6, 1598. The haste in which Coke remarried has been attributed to Bacon's rivalry, again supported by Essex, and to the size of Lady Hatton's dowry.¹⁵ However, Coke's taste of victory was soon soured because Lady Hatton refused to be wed in a public ceremony. Instead, they were married in a private home, without the benefit of a license or banns and in violation of the law. Those present at the wedding ceremony, in addition to the bride and groom, were prosecuted in the court of the Archbishop of Canterbury but were absolved upon their submission. The marriage between Edward Coke and Lady Hatton was not very successful; in fact, it turned out to be a thorn in both their sides until Coke's death. Sir Francis

in your own fortune (as I think) you might have had more use of me. But that tide is passed, I write not this to show my friends what a brave letter I have written to Mr. Attorney, I have none of these humours. But that I have written is to a good end, and this is to the more decent carriage of my mistress' service, and to our particular better understanding of one another. This letter, if it shall be answered by you in deed and not in word, I suppose it will not be worse for us both. Else it is but a few lines lost, which for a much smaller matter I would have adventured. So this being but to yourself, I for myself rest.'" Ibid. vol. III, pp. 4-5.

¹⁵

Coke received, with Lady Hatton, the greatest fortune in England, which according to the estimate of Walter Clark, was in excess of twenty million dollars. Walter Clark, "Coke, Blackstone and the Common Law," Case and Comment, 24 (1918): 864.

Bacon, although he had not married Lady Hatton, was to be consoled by the many opportunities he had of assisting her in her continual squabbles with her husband. In the meantime, however, Coke's great learning and boundless energy sent him soaring to higher and higher positions.

After the year 1600, Edward Coke, first as attorney-general and then as judge, was the dominant figure in a series of state prosecutions. As attorney-general, Coke conducted the prosecution in 1600 for the trials of the Earls of Essex and Southampton. When James VI of Scotland became James I of England in 1603, Coke not only retained his position as attorney-general, but was knighted by King James I on May 22, 1603 through the influence of Sir Robert Cecil. The same year that James ascended the throne of England, Coke prosecuted Sir Walter Raleigh for high treason, and in 1605, the Gunpowder Plotters for the same offense. Sir Edward Coke demonstrated in the aforementioned cases, and especially in the Raleigh case, a spirit of animosity which few, including his biographers, have attempted to justify.¹⁶

In 1606, on the death of Gawdy, Chief Justice of the Common pleas, Coke was selected to fill the position. With this new appointment, Coke was brought into conflict with the King whose absolutist tendencies were interfering with the administration of justice. Previously, Coke's two main interests had been to defend the Crown while at the same time to advance himself to higher and higher positions. However, as the chief

¹⁶"Thy Machiavellian and devilish policy, thou hast a Spanish heart and thyself art a spider of hell. I will now make it appear to the world, that there never lived a viler viper upon the face of the earth than thou." William Cobbett, Complete Collection of State Trials and Proceedings For High Treason and Other Crimes and Misdemeanors From the Earliest Period to the Present Time, 4 vols. (London: R. Bagshaw, 1809), vol. II, p. 1.

justice of the common pleas, he was now obligated to prohibit the King from putting himself above the law. This idea did not blend with the claims of rival courts, much less with the claims of James I of England to decide all conflicts of jurisdiction. Between 1605 and 1613, there were several such conflicts. In this new channeling of energy, Coke was immediately confronted by the Church, which was in the process of attempting to rid itself of the jurisdiction of Common Law courts.

Archbishop Bancroft, in 1605, speaking as the representative of the clergy, presented several complaints to the Star Chamber¹⁷ concerning

¹⁷The court called by this name is commonly regarded as being the aula regis, sitting in the Star Chamber, a room at Westminster. The jurisdiction of the court would, therefore, be all or some part of that residuary jurisdiction which remained after the severance of the courts of the exchequer, queen's bench, and chancery.

By the statute 1487, 3 H. 7. c. 1., the court was remodeled and its jurisdiction placed upon a lawful and permanent basis. The statute empowered the chancellor, treasurer, and keeper of the privy seal, or any two of them, with one spiritual and one temporal peer, and the chief justices of the courts of the king's bench and common pleas, or in their absence, two other justices, to call before them, and punish the following offences: combinations of the nobility and gentry, supported by liveries; partiality on the part of sheriffs in making up the panels of jurors, or in making untrue returns of members; bribery in jurors; and riots and unlawful assemblies.

By the statute 1529, 21 H. 8. c. 20., the president of the king's council was added to the list of judges; and by the statute 1539, 31 H. 8. c. 8. (which gave to the king's proclamations in ecclesiastical matters the force of law), all persons offending against such proclamations were to be tried before the star chamber, and punished with fine and imprisonment.

The star chamber was of utility during the reigns of Henry VII and subsequent monarchs in its repression of the turbulence of the nobility and gentry in the provinces, and its supplying a court of jurisdiction for matters which, as being of novel origin, were unprovided for by the existing tribunals.

The court enhanced the royal authority by supplying the executive with a speedy and effective machinery. Cardinal Wolsey improved and extended its jurisdiction. The very nature of its jurisdiction rendered its process liable to abuse; and Wolsey's connection with it was one of the principal causes of his unpopularity. The court was abolished by the statute 1641, 16 Car. 1. c. 10. Jowit, The Dictionary of English Law, pp. 1671-1672.

writs of prohibition.¹⁸ Bancroft claimed that these writs were hampering the jurisdiction of ecclesiastical courts and that, since the ecclesiastical courts and Common Law courts both received their power from the King, this power should not be infringed upon. The judges answered that the issuance of prohibitions was done according to the law, and that they could do nothing about it until Parliament changed the law. The reply of the judges did not, however, satisfy James I, who was flattered by the absolutist doctrines of the clergy. In addition, the petition of Archbishop Bancroft gave James I the opportunity to exercise what he thought to be his prerogative¹⁹ rights.

The conflict over writs of prohibition was but one phase of the ongoing struggle of the period in which the ecclesiastical courts were continually seeking their independence. The refusal to grant this independence by the advocates of the Common Law cannot simply be ascribed to jealousy; rather, there was a real peril to the existence of the Common Law if royal and ecclesiastical power were allowed to expand.

In 1607, the dispute entered upon a new phase when Archbishop

¹⁸Prohibitions are issued out of the High Court to restrain an inferior court within the limits of its jurisdiction. They are granted in all cases where an inferior court exceeds its powers, either by acting where it has no jurisdiction, or where, having a primary jurisdiction, it takes upon itself the decision of something not included in its jurisdiction. Ibid., p. 1422.

¹⁹Prerogatives are those exceptional powers, pre-eminences, and privileges which the law gives to the Crown. Ibid., p. 1390.

Bancroft restated his protest against prohibitions. James I, more determined than ever to exercise his prerogative rights, told the Star Chamber that, since they were but his delegates, he could, at will, take what cases he pleased from them and that Archbishop Bancroft's petition was just such a case. Sir Edward Coke, with the approbation of his colleagues, denied the King's position and stated his position as to the supremacy of the Common Law and the rights of the judges to be the interpreters of that law. James I replied to Coke that his position was treasonous since it would place the King under the law. To which, Coke, quoting Bracton, replied: "Quod rex non debet esse sub homine, sed sub Deo et lege."²⁰

In February, 1609, Archbishop Bancroft renewed his protests over prohibitions to the King. James I summoned Coke and some other judges to Whitehall to discuss the issue. Since Coke would not alter his position, the King lost his temper and the interview ended with the chief justice on the ground begging for mercy.

In 1611, the claim made by Abbot, the new archbishop, in Chauncy's Case, that the court of high commission had full power to imprison and fine in all ecclesiastical causes, was successfully opposed by Coke.

Because of Sir Edward Coke's continual and successful resistance to the King's interpretation of the prerogative, he was removed, on the

²⁰Sir Edward Coke, The Reports of Sir Edward Coke Kt. in English in Thirteen Parts Complete; With References to All the Ancient and Modern Books of the Law, 13 parts in 7 vols. (London: Savoy, E. and R. Nutt, and R. Gosling, 1738), pt. XII, pp. 64-65.

advice of Sir Francis Bacon, as chief justice of the common pleas in 1613 by King James and appointed as chief justice of the king's bench. In recommending this transfer, Bacon showed little insight into the character of his arch-rival. After seven years as chief justice of the common pleas, Coke's belief in the supremacy of the Common Law had almost turned to fanaticism. Sir Edward Coke's three years as chief justice of the king's bench were marked by three quarrels with the King--Peacham's Case,²¹ a jurisdictional dispute with the court of chancery,²² and the famous case of commendams.²³

Sir Edward Coke was removed from his position as chief justice of the king's bench on June 6, 1616, because of his continued refusal to submit to the demands of the King. From 1616 to 1620, Coke apparently retained the hope of regaining the King's favor. An opportunity seemed to present itself in the prospect of marriage between Frances, Coke's youngest daughter by his second wife, and Sir John Villiers, the elder brother of the Duke of Buckingham. Although Coke had agreed to the marriage proposal, his wife had not, and she took her daughter to the home of a cousin in order to withdraw the girl from her father's influence. The relationship between Sir Edward Coke and his wife had at best been tenuous, but it was brought to the breaking point when Coke forcibly seized his daughter from the house of his wife's cousin. After this episode, any

²¹ Coke made an unsuccessful attempt to check the practice of consulting the judges extra-judicially.

²² The King wanted all difficult cases referred to himself.

²³ It affected the King's right of granting commendams and James had, through Bacon, directed first Coke and then the other judges to stay the action until his Majesty's further pleasure should be known as to consulting with them.

hope of reconciliation was brought to an end.

The year 1620 began the last and, in all probability, the most outstanding period in the life of Sir Edward Coke. In the Parliament of that year, he was made a member by the King's commandment. From the beginning, Coke's learning and experience in government made him Parliament's most powerful member. But his conduct in Parliament once and for all severed any hope that he had of restoration to office. Especially harmful to Coke was an address he made concerning the marriage of the future Charles I to the Spanish Infanta. The great debate which followed ended in a speech by Coke defending the liberties of Parliament. This protestation exhausted the patience of the King, and he dissolved Parliament, arresting Coke and some of his followers.

Sir Edward Coke sat for Coventry in the Parliament of 1624, although the King had attempted to have him excluded by having him placed on a commission of inquiry of religion and trade in Ireland. Somehow Coke was able to escape his temporary exile and remained to take part in the impeachment²⁴ of the Earl of Middlesex, to speak out against the exorbitant taxation of the people, to call for a stricter adherence to

²⁴ Impeachment is a prosecution by the House of Commons before the House of Lords of any person, either peer or commoner, for treason, or other high crimes and misdemeanors, or of a peer for any crime. It was a complaint or accusation against a person for a great public offense, especially against a minister of the Crown for malversation or treason. The House of Commons first found the crime, and then as prosecutors supported their charge before the House of Lords, who tried and adjudicated upon it. The charge was contained in the articles of impeachment, to which the accused made answers, and so on: the House of Commons appointed managers to conduct the proceedings on their behalf. Impeachment has not ceased to be possible, but it is practically obsolete, the last impeachment being that of Lord Melville in 1804. Jowitt, The Dictionary of English Law, p. 938.

the ecclesiastical law of the King, to repeat his opposition to the Spanish marriage, and to promote the sentiment for war against Spain. Because he championed the war with Spain, which was also advocated by Buckingham, Coke regained favor a few months before the death of James I and was named a privy councillor.

Coke sat for Norfolk in the first Parliament of the new King, Charles I. The main topic of discussion in the Parliament of 1625 was the demand of the King for the necessary funds to continue the war. The Commons, however, were still taken up with grievances which remained unredressed, as well as with questions as to the end to which the money was to be directed. Thus, they granted tunnage and poundage²⁵ for one year instead of the customary grant for the life of the king. However, to meet the current situation, the Commons granted the King a pair of subsidies totalling L140,000. But Charles was not satisfied and said that he required another subsidy. Coke opposed such a subsidy, saying that subsidies were granted for extraordinary situations, the presence of which in this instance was not established. A second Parliament met in 1626, but Coke was excluded through a technicality.²⁶ In 1628, however, he had the

²⁵Tonnage is a duty on imported wines, imposed by Parliament in addition to poundage. The duty was at the rate of so much for every tun or cask of wine; and tunnage would appear to be the more correct form of the word. It was first levied in the fourteenth century, and was granted for life to several kings. Poundage is a duty at the rate of so much (usually twelve pence) per pound sterling upon the value of merchandise (other than wine) imported into the kingdom. The statutes which granted it also invariably granted tonnage as well, the two being known as tonnage and poundage. Ibid., pp. 1375, 1760-1761.

²⁶He could not sit in the House while holding the office of sheriff of Buckinghamshire.

unusual distinction of being returned by two counties, Buckingham and Suffolk. Electing to sit for the former, Coke spoke against forced loans and brought in a bill of liberties, which, after several debates in the House, became the Petition of Right. During the debate, Charles sent two messages to the House, the first of which recommended preparation for an early prorogation;²⁷ the second, forbidding them to entertain new matters that might bring disgrace to the nation, which simply meant that they were not to discuss the behavior of the Duke of Buckingham. As one might expect, Sir Edward Coke vocalized the thoughts of his colleagues. His denunciation of Buckingham by name was his last great speech in Parliament. He spent the last six years of his life in retirement at Stoke Pogis, where he died on September 3, 1634.

Throughout his life, Coke's single-mindedness in establishing the supremacy of the Common Law precluded the possibility, at least in his own mind, of submitting to correction in his interpretation of precedents. His main concern was to find the precedents, but, if he could not, he apparently saw nothing wrong in creating them or interpreting what he found to suit his purpose. One usually associates this type of activity

²⁷Prorogation is a prolonging or putting off to another day; the bringing of a session of Parliament to an end. This, like dissolution (which brings the Parliament to an end), can be effected only by an exercise of the royal prerogative. Adjournment to a future hour on the same day, or to a future day, can be effected by either House of its own motion. The House of Lords can at all times sit as a court of appeal without regard to the prorogation or dissolution of Parliament: and an impeachment is carried on from one session to another or from one Parliament to another: but all other business lapses upon prorogation, and, a fortiori upon dissolution, and must be reintroduced in the new session or the new Parliament. Jowitt, The Dictionary of English Law, pp. 1427-1428.

with a legal mind devoted to a dictator or an absolute monarch. Rarely does one find a devoted servant of the people using such means to establish their rights with such long-standing success. Perhaps it is this trait more than anything else that has insured a place in the history of English law for Sir Edward Coke.

CHAPTER II

CIVIL AND ECCLESIASTICAL COURTS AND THEIR JURISDICTIONAL DISPUTES FROM THE TIME OF THE CONQUEST TO THE END OF THE REIGN OF ELIZABETH I

In championing the supremacy of the Common Law, one of Coke's chief concerns was to establish the hegemony of Common Law courts over ecclesiastical courts. The tradition of jurisdictional disputes between Common Law courts and ecclesiastical courts stems from two ordinances in the reign of William I (1066-1087). The policy initiated by William the Conqueror in two separate decrees (1072 and 1076), by which he separated what had formerly been one jurisdiction into two separate jurisdictions--that is civil and ecclesiastical, not only changed the relationship between the civil and ecclesiastical, but it laid the foundation for a rivalry that was to last in England for many centuries to come. The ordinances of William provided that the bishops and archdeacons were henceforth to hold their own courts and to them should be brought all cases which pertained ad regimen animorum. These cases were to be adjudicated according to canon law and were forbidden to be heard in the

shire¹ or hundred courts.² In England, every bishopric was divided into deaneries or archdeaneries ruled over by an archdeacon. Appeals could be sent from the court of the archdeacon to the court of the bishop, and from the bishop's court to the court of the arches,³ and from there to the papal court at Rome.⁴

The reign of William Rufus (1087-1100) was not marked by any great

¹A shire is a part or portion of the kingdom, also called a county. King Alfred first divided the country into shires; shires into hundreds; and hundreds into tithings. Ibid., p. 1636.

The old county or shire court was presided over by the earl of the county, or in his absence by the sheriff; the "suitors" (that is, the freemen or landholders who were bound to attend the court) were the judges. It was not a court of record. Proceedings were removable into a superior court by writ of false judgment. The county courts were the principal civil courts until the system of assizes was introduced, after which they fell into such disuse that the only business transacted in them was the election of sheriffs, knights of the shire and coroners, and the proclaiming of outlawries of absconding offenders. Jowitt, The Dictionary of English Law, p. 516.

²A hundred is a district forming part of a county, formerly governed by a high constable or bailiff. Ibid., p. 928.

A hundred court was a larger court baron being held for all the inhabitants of a particular hundred instead of a manor. Ibid., p. 928.

³The court of arches was an ecclesiastical court, so called because it was originally held in the church of St. Mary-le-Bow, so named from the steeple, which is raised upon pillars, built archwise. It exercised jurisdiction in, amongst other things, testamentary matters; but this jurisdiction was transferred by the Court of Probate Act, 1857, to the court of probate.

The court of arches is the court of appeal of the archbishop of Canterbury; the judge therefore hears all appeals from bishops or their chancellors, or commissaries, deans and chapters, and archdeacons. Ibid., p. 524.

⁴William Stubbs, ed., Select Charters and Other Illustrations of English Constitutional History From the Earliest Times to the Reign of Edward the First, 9th ed., revised by H.W.C. Davies (Oxford: At the Clarendon Press, 1942), pp. 99-100.

constitutional-legal issues between civil and ecclesiastical courts. Nevertheless, William II's most notable English opponent was the Church. William was personally immoral and continually attempted to wring as much money out of the Church as he could. To do this, he used the regale, by which the revenues from the temporal holdings of the Church reverted to lay administration during a vacancy. To keep the revenues coming in, William II refused to issue the license needed by the canons to hold an election. In addition to the regale, he also claimed the right of jus spolii, which granted the layman the right to all the personal possessions of a dead bishop. William II's most notable misuse of regale was with the archbishopric of Canterbury. The see had been vacant since the death of Lanfranc in 1089, but William did not issue a license to the monks of the cathedral chapter at Canterbury to elect a successor until 1093. William not only issued the license, but also ordered the monks to elect Anselm, the successor of Lanfranc at Bec. Anselm was an advocate of the reform program of the Church and was, therefore, opposed to William II from the beginning. The conflict between the two men ended for William at least in 1097, when Anselm went into exile rather than tolerate William II's abuse of his royal prerogatives insofar as the Church was concerned. Anselm returned to England in 1100 at the request of Henry I (1100-1135), who did everything in his power to pacify dissident elements, such as the Church, in his realm. Henry I promised to eliminate the abuses of regale and jus spolii as practiced by William II.

Henry II (1154-1189) came into conflict with the Church in his attempt to return law and order to his realm, which had been lost in the reign of his predecessor, Stephen (1135-1154). As already noted, William

I separated the court system into ecclesiastical and lay by the ordinances of 1072 and 1076. To exercise the right of being tried in an ecclesiastical court, all that was necessary was tonsure. Canon law forbade any punishment which caused the flow of blood; thus, the most serious punishment a Church court could give was long-term imprisonment. The most common punishments, however, were pilgrimages or degradations. Thus, the restrictive nature of Canon law concerning punishment caused many to enter the clergy in order to lead a life of relative impunity. During the first few years of his reign, Henry II had little opportunity to deal with reform measures in this area. Besides, he did not want to antagonize Theobald of Canterbury, the aging archbishop of Canterbury, who had been instrumental in Henry's negotiations with Stephen. However, Theobald died in 1162, giving Henry his opening. He approved Thomas Becket to be Archbishop of Canterbury and Primate of England, which proved to be the biggest miscalculation in his reign. There followed the well-known confrontation between Henry II and Becket over the jurisdictional boundaries between civil and ecclesiastical courts, which ended not only in Becket's assassination by four of Henry's barons, but ultimately ended also in Henry's loss of all he had gained by the Constitutions of Clarendon in 1164.

The reigns of Henry II's sons, Richard (1189-1199) and John (1199-1216), were not particularly noteworthy for jurisdictional disputes between civil and ecclesiastical courts. Richard spent all but six months of his reign outside of England, and John, except for a dispute with Innocent III over the nomination and election of the archbishop of Canterbury in the early part of his reign, needed the support of the papacy so badly that he

was in no position to question the expanding power of the ecclesiastical courts.

The long reign of Henry III (1216-1272) just about brings to a close the first phase of the history of the problems resulting from the ordinances of 1072 and 1076 in the reign of William the Conqueror. Up to this time, the main point of dispute between the civil and ecclesiastical courts was just who was entitled to benefit of clergy and in what circumstances it could be exercised. The first major conflict between civil and ecclesiastical jurisdiction since the time of Henry II arose in 1285 in the reign of Edward I (1272-1307). The year 1285 looms large in the history of English law. In the spring, Parliament enacted the Statute of Westminster II and discussed some of the legal problems which arose in the troubled borderland between royal and ecclesiastical jurisdictions. Within this borderland, writs of prohibition checked ecclesiastical aggressions; but it was uncertain in which cases such writs of prohibition lay. In 1285, the clergy of the southern province presented a petition of grievances to the Parliament at Westminster. The King honored the request that justices be appointed to give advice in doubtful cases as to whether or not writs of prohibition lay within his jurisdiction. Not long after this pronouncement came the order for an inquiry into the jurisdiction exercised by the clergy in the diocese of Norwich. The writ, which notified the Norwich clerks that an inquiry was to be taken, is printed among the statutes temporis incerti in the Statutes of the Realm.⁵ Its significance as a complement to Circumspecte Agatis, which dealt with certain

⁵13 E. 1. st. 4.

cases in which the prohibition of the king did not lie, and its importance in drawing the line between lay and ecclesiastical jurisdiction has not been generally recognized.⁶ It claimed for royal courts a long list of pleas and prohibited their cognizance by the clergy of Norwich, who, the King had learned, were drawing them into the ecclesiastical forum. Richard de Boyland and William de Rothing, the sheriffs of Norfolk and Suffolk, were commanded to cite all impugners of this prohibition before the justices at Westminster. It should be noted that this commission was one of inquiry and not a commission of "oyer and terminer."⁷ They had no mandate to hold pleas and punish offenders. As the inquiry progressed, the bishop of Norwich lodged a complaint with the King that Boyland and Rothing impeded him and his officials from holding pleas about titles, purely spiritual matters, mortuaries, corrections of sin, and similar suits. The King commanded the two commissioners to desist from such matters. The complaint of the bishop of

⁶The statute Circumspecte Agatis will be dealt with in the following chapter.

⁷The commission of oyer and terminer is the commission which is issued to certain judges of the High Court and other persons as their authority to inquire, hear, and determine all treasons, felonies, and misdemeanours committed within the county into which they are sent. This commission only authorizes them to proceed upon an indictment found at the same assizes, for they must first "inquire" (formerly by means of the grand jury), before they can "hear and determine" by the help of the petty jury. Their power to try other prisoners is conferred by the commission of gaol delivery. Jowitt, The Dictionary of English Law, p. 1285.

Norwich against the activities of Boyland and Rothing was supported by his fellow bishops. Archbishop Pecham and his suffragans drew up a petition which, besides denouncing in general terms the usurpations of the royal courts, sought remedies for specific grievances arising out of the inquiry in Norwich. Through the mass of detail, one fact stands out clearly. Ecclesiastical judges of the diocese of Norwich were tried by the itinerant justices in 1286 for encroachments upon royal jurisdiction. While these cases were being tried, clergy of the province of Canterbury were summoned to a convocation to be held at the New Temple, London, on October 13th, 1286. Among the grievances are the new aggressions against the Church, especially in parts of Norfolk, and the indifferent arrests of clerks and ecclesiastical people. Before the convocation met, the bishop of Norwich had made a fine with the King on behalf of his clerks, who, having been indicted before Richard de Boyland and William de Rothing, had been convicted or were now being convicted before the itinerant justices. The fine of one thousand marks was paid in 1287. With the payment of this fine, the narrative of the attempt of Edward I to distinguish between the spiritual and temporal jurisdictions in the diocese of Norwich in 1285 and 1286 comes to an end.⁸

As much as Edward I had tried to deal with the problem of conflicting jurisdiction between the ecclesiastical and lay courts, it was not until the reign of Edward II (1307-1327) that the subject was fully dealt with by the Articuli Cleri of 1315. These articles were an attempt

⁸E. G. Graves, "Circumspecte Agatis," English Historical Review 43 (1929): 1-7.

to delimit accurately the spheres of the lay and spiritual jurisdictions. The Articuli Cleri make it clear that the King intends to be the predominant partner in Church-State relations.⁹

The ever-pressing question of Church-State supremacy in England gave rise to the problem of jurisdictional disputes between civil and ecclesiastical courts. More specifically, the struggle was centered upon the growing jealousy on the part of the Crown of any infringement upon its prerogatives--this attitude was associated with the growing spirit of nationalism. National feeling in England had been fostered by the early successes of England in the Hundred Years' War. With the growth of this feeling, indignation at the claims of Rome brought about further attempts to secure the supremacy of the English law and the English state. Thus, the English did all in their power to lessen the sphere of ecclesiastical justice. Both the King and his subjects were ably supported in this endeavor by the Common Law lawyers, who had the additional motive of professional jealousy. The Statute of Carlisle (1306-1307)¹⁰ initiated the Crown's attempts to champion English Common Law and the English state against the claims of Rome. It was followed by the Statutes of Provisors (1351) and the two Statutes of Praemunire (1353 and 1393), which attempted to check, in the interests of patrons and of the State, the abuses of papal patronage. The aim of this Statute of Provisors was to protect spiritual

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10 E. 2. st. 1.

¹⁰ 35 E. 1. c. 2. ("Religious persons shall send nothing to their superiors beyond the sea.")

patrons against the pope.¹¹ It was enacted that if the pope attempted to appoint, the right of presentation should lapse to the Crown. The bishops, it should be noted, took no public part in the enactment of this statute. The first Statute of Praemunire¹² punished those who drew "any out of the realm in plea whereof the cognisance pertaineth to the King's court, or of things whereof judgments be given in the King's court or which do sue in any other court to defeat or impeach the judgment given in the King's court." It did not intend to affect cases over which the King's court never claimed jurisdiction. The second Statute of Praemunire¹³ was aimed at those who "purchased or pursued in the court of Rome or elsewhere Translations, processes and sentences of Excommunications, Bulls, Instruments, or any other things whatsoever which touch the King, against him, his crown, and his regality," whereby the King's court was hindered in its jurisdiction over pleas of presentment. The answer returned by the bishops, in reply to the question addressed to them as to the papal power in this respect, shows an apparent desire to ameliorate the Parliament without committing themselves to any statements contrary to canon law.¹⁴

¹¹25 E. 3. st. 6.

¹²27 E. 3. st. 1.

¹³16 R. 2. c. 5.

¹⁴The spiritual peers, being asked their advice as to papal claims, protested 'qu'il n'est pas leur entention de dire ne affirmer que nostre Saint Pierre le Pape ne poet excommenger Evesque ne qu'il poet faire translations des Prelatz solone la lev de Seinte Eglise;' but they said that if bishops were excommunicated for obedience to the Pope's commands; or such translations were made whereby the king was deprived of them against his will; 'que ce est encountie le Roi et sa corone sicome est contenuz en la petition avant nome,' as Mr. Davis says, 'The English clergy repeatedly protested against the statutes of Praemunire . . . they were bound to do so. Whatever anomalies they might be compelled to

Although the clergy continually protested against these statutes, the State was able to assert its rights to the jurisdiction which it claimed. Nevertheless, the State was willing to allow a large sphere of influence to the ecclesiastical courts and Canon law, and, generally, this is how matters remained until the Reformation. The claims made by the two systems of law caused much friction, but the prevailing diplomacy between Church and State made it impossible for either one to do without the other. The power of the papacy was acknowledged by the dispensations from Canon Law it granted to the State, which dispensations allowed the State to use the revenues from ecclesiastical benefices for the maintenance of a civil service.

During the early years of the sixteenth century, the wealth and corruption of the clergy, the abuses of the ecclesiastical courts, and the very doctrines of the Church were beginning to be attacked, not only more effectively, but more consistently and more often. Cases like

endure for the sake of peace, they could not accept the principle that the laity can neither make nor abrogate canon law. Laymen sometimes claimed the right to commit both these enormities and could not be restrained. But to yield before superior force is one thing; to condone it is another. The Pope himself, we are told, may be obliged to put up with laws or customs which he is powerless to sweep away." As to clerical protests against both this and the Reformation legislation, see Albert Frederick Pollard, "The Authenticity of the 'Lords' Journals in the Sixteenth Century," Royal Historical Society Transactions 8 (1914): 18; Sir William Holdsworth, A History of English Law, vols. 1, 13-16 edited by A. L. Goodhart and H. G. Hanbury, 16 vols. (1903-1956; reprint ed., London: Methuen & Co., Sweet & Maxwell Ltd., 1956), vol. I, p. 586, fn. 5.

Richard Hunne¹⁵ and Dr. Henry Standish¹⁶ not only bore witness to the

¹⁵Richard Hunne resisted the claim of Thomas Dryfield to have his dead baby's bearing sheet as a mortuary, or burial fee. He was accordingly cited in the spiritual court, and he tried to counter that by suing Dryfield in a praemunire on the ground that the spiritual court, being held by the legatine's authority, was a foreign tribunal before which Englishmen were not bound to answer. This plea to jurisdiction failed, receiving no support from King's courts, and Hunne was let in prison on a charge of heresy. On December 4, 1514, he was found dead, hanging by the neck from a beam in his cell in the Lollard's Tower at St. Paul's, and "the bishop and his chancellor, Dr. Horsey, said that he hanged himself, and all the temporality, said he was murdered." A coroner's jury found that the cause of death was murder, and charged Dr. Horsey and two of his underlings, one of whom made confession. The bishop of London showed what he thought of the terms on which the clergy and laity lived in London by begging Wolsey to induce the King to have the whole matter referred to an impartial committee of his council. To this appeal the King acceded. Perhaps Hunne had been cited for heresy before he sued his praemunire; anyway, now that he was dead and proving, dead, more dangerous than ever, the bishop of London resolved to lessen his attractiveness by registering his heresy. His sentence, based mainly on an annotated copy of a forbidden English version of the Bible found to have been in Hunne's possession, was pronounced against him; and, on December 20, 1515, his body was burned. Kenneth William Murray Pickthorn, Early Tudor Government: Henry VIII (Cambridge: At the University Press, 1951), pp. 114-117; Henry Hallam, The Constitutional History of England from the Accession of Henry VII to the Death of George II, 2 vols. (New York: Armstrong, 1893), vol. II, p. 59; Sir James F. Stephen, A History of the Criminal Law of England, 3 vols. (London: Macmillan Co., 1883), vol. II, pp. 452-453.

¹⁶Meanwhile, a much more important case about the relations between lay and clerical jurisdiction had arisen in the controversy between Dr. Henry Standish and Richard Kidderminster, the abbot of Wynchcombe. During the time of Parliament (1515), the abbot of Wynchcombe, in a sermon at St. Paul's Cross, denounced the statute of 4 H. 8. c. 2. (certain classes of murderers and felons "not free henceforth admitted to his or their clergy, such as be within holy orders only excepted") as contrary to the law of God and the liberties of the Church, and the Lords who were party to it as subject to the censures of the Church. So the King, at the request of the Lords, took counsel of diverse divines, and Standish maintained that the act was not against the liberty of the Church as it was for the real weal of the whole realm: even if there were a decree against it, there were other Roman decrees not obeyed in England, and this particular one had never been recognized there. The Lords, having heard both sides desired the bishops to cause the abbot to make an open recantation, but they refused, saying that they were bound by the law of the Church to maintain his opinion.

In Michellmas Term, Standish was cited before convocation to answer these articles: (1) whether it was lawful for a temporal judge to convict

unpopularity of ecclesiastics, but pointed to the more important trend of exercising control over them. The theory of royal supremacy gradually came to the surface in the reign of Henry VIII (1509-1547) and reached its peak in the Reformation Parliament (1529-1536).

The first acts of this Parliament were directed against certain abuses in the Church and its courts. In 1531, the clergy was forced to recognize the royal supremacy "insofar as the Law of God allows."¹⁷

clerks; (2) whether minor orders were sacred; (3) whether a constitution by pope and clergy bound a country where usage was to the contrary; and (4) whether a temporal prince could coerce bishops who refused to punish their clergy. Standish appealed to the King; by the same adjuration, the temporal Lords besought him to maintain his temporal jurisdiction and to shield Standish from the malice of the clergy. A council of lawyers, lay and ecclesiastical, was held at Blackfriars.

The judges advised that all the members of the convocation who had participated in the proceedings against Standish were subject to praemunire, and that the King could hold a Parliament by himself with the temporal Lords and Commons, without the spiritual Lords who had no place there but by reason of their temporal possessions.

Finally, the King pronounced as follows: "We are, by the sufferance of God, King of England, and the Kings of England in time past never had any superior but God; know, therefore, that we will maintain the rights of the crown in this matter like our progenitors; and as to your decrees, we are satisfied that even you of the spirituality act expressly against the words of several of them, as has been well shown you by some of our spiritual council. You interpret your decrees at your pleasure; but as for me, I will never consent to your desire, anymore than my progenitors have done." Pickthorn, Early Tudor Government: Henry VIII, pp. 114-117; Frederick William Maitland, Roman Canon Law in the Church of England (1895; reprint ed., New York: Burt Franklin, 1968), pp. 87-89.

¹⁷William Stubbs, Report of the Commissioners Appointed to Inquire into the Constitution and Workings of the Ecclesiastical Courts, 2 vols. in 1 (London: Macmillan Co., 1883), pp. 70-71; Pickthorn, Early Tudor Government: Henry VIII, p. 157.

In 1532, Parliament passed an act against the payment of annates, but respect was still accorded to the pope--he was still allowed to charge certain fees for the consecration of bishops.¹⁸ The Statutes of Restraint of Appeals in 1533¹⁹ and 1534²⁰ left little, if any, hope of reconciliation with Rome.

By the statute of 24 H. 8. c. 12., "For the restraint of appeals," the power, pre-eminence, and authority of the King of England within the realm was declared superior to any foreign jurisdiction including that of Rome. However, the most important section of this statute occurs in Part IV, which states that--

any person within the dominion of the King who attempts, moves, purchases or procures, from or to the See of Rome, or from or to any foreign Court or Courts out of this realm, any manner of foreign processes, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints of judgments, of what nature, quality or kind soever they may be, or execute any of the same processes, or do any act, or acts, to the let, impediment, hindrance or derogation of any process, sentence, judgment or determination had made, done or hereafter to be had, done or made in any Courts of this realm, or the King's dominions or marches of the same, contrary to the true meaning of the present act and the execution of the same, that every such persons so doing shall incur and run in the same pains, penalties and forfeitures, ordained and provided by the statute of Provision and Praemunire made in 16 R. 2 against such an attempt, procure or make provision to the See of Rome or elsewhere, for anything or things, to the derogation, or contrary to the prerogative or jurisdiction of the Crown and dignity of this realm.

¹⁸ 23 H. 8. c. 20.

¹⁹ 24 H. 8. c. 12.

²⁰ 25 H. c. 19., c. 20.; Stubbs, Report of the Commissioners Appointed to Inquire into the Constitution and Workings of the Ecclesiastical Courts, pp. 213-214.

By the statute of 25 H. 8. c. 19, c. 20.--"For the submission of the clergy and restraint of appeals"--the English clergy were not only frightened into submission, but appeals outside the realm to Rome for all ecclesiastical causes were now forbidden.

By the statute of 35 H. 8. c. 1., Henry established an Act of Succession, the most important section of which is the ninth, which gives the oath against the authority of the bishop of Rome.

The following reign, that of Edward VI (1547-1553), the only living legitimate male heir of Henry VIII, was one in which the doctrinal aspect of the English Reformation took place. Thus, little, if any, effort was spent in anti-Roman legislation since, by statutory law, Rome was no longer involved in the affairs of the English state.

The reign of Mary (1553-1558), the half-sister of Edward VI, saw the repeal of all acts or statutes against Rome since the twentieth year of the reign of Henry VIII. These statutes were those which--

1. Forbade pluralities and non-residence (21 H.8. c. 13.);
2. Forbade a person to be cited outside the diocese in which he lived (23 H. 8. c. 12.);
3. Forbade such cases of appeal as were formerly pursued there any longer, but were rather to be kept within the realm (24 H. 8. c. 12.);
4. Concerned the restraint of payments of annates and first fruits (21 H. 8. c. 20.);
5. Concerned the submission of the clergy (25 H. 8. c. 19);
6. Concerned the consecration of bishops and archbishops within the realm (25 H. 8. c. 20.);
7. Relieved the king's subjects from exactions and impositions formerly paid to Rome (25 H. 8. c. 21.);
8. Extinguished the authority of the bishop of Rome (25 H. 8. c. 10.);
9. Authorized the king to make bishops by letters patent (31 H. 8. c. 9.); and
10. Forced every subject of the realm to take an oath against the power, authority, and jurisdiction of Rome (35 H. 8. c. 1.).

Although it is true that there were other statutes repealed at this time, the foregoing were considered to be the most important. In short, by 1 and 2 Phil. & M., all statutes made against the supremacy of the Apostolic See and the pope since the schism were repealed. Queen Mary repealed all offenses of praemunire since the first day of the first year of the reign of Henry VIII, but some of them were revived in the reign of Elizabeth.²¹ However, in Mary's entire reign, the statutes made concerning the offenses against Provisors and Praemunire were neither repealed nor changed. Although Mary had restored papal supremacy, she was careful to preserve the prerogatives of the Crown, at least as they were before the reign of Henry VIII.

The reign of Elizabeth (1558-1603) saw the repeal of Mary's repeal of her father's anti-papal legislation. By the statute of 1 El. c. 1., the jurisdiction of the Crown over the ecclesiastical and spiritual spheres was restored, and the statute 1 and 2 Phil. & M. c. 8. was repealed. However, there was a special proviso in 1 El. that it should not extend to the repeal of any clause in the said act, 1 and 2. Phil. & M., which concerned praemunire; that which concerned praemunire was to stand in force. Here the reader is referred to Coke, who states that Elizabeth revived the statute 25 H. 8.c. 20. concerning praemunire.²² This contradicts the statute of 1 El., in which it is stated that in

²¹Sir Edward Coke, The Third Part of the Institutes of the Laws of England; Concerning High Treason, and Other Pleas of the Crown and Criminal Causes (London: E. and R. Brooke, 1797), pp. 126-127.

²²Ibid., p. 122.

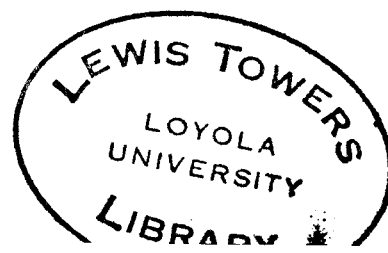
matters concerning praemunire, the statute, 1 and 2 Phil. & M., stands in force-- and this latter statute uses the statutes of Edward III and Richard II as the standard for an offense of praemunire.

According to this same statute, 1 El. c. 1., there were three penalties for the maintenance of a foreign authority: forfeiture and imprisonment for the first offense; the penalties of praemunire as stated in the statute of 16 R. 2. for the second offense;²³ and the penalties of high treason for the third offense. Also, according to this same statute of 1 El. c. 1., a proviso was made concerning those who aided anyone offending against praemunire: the proviso stated that such aid would not be considered an offense but that two witnesses would have to testify that the person giving such aid knew about the offence committed by the delinquent person at the time that he gave aid.

By the statute of 5 El. c. 1., the penalty for maintaining the authority of the bishop of Rome was re-affirmed, that is, the penalties provided by the statute of 16 R. 2. According to the same statute, the penalty for refusing to take the Oath of Supremacy the first time was to be that provided by the statute of 16 R. 2. It is here that Elizabeth, while citing the statute 16 R. 2., is in actuality referring to the statute 25 H. 8. c. 20. Also, according to this same statute 5 El. c. 1., it became lawful to slay one attainted in a praemunire.

By the statute of 13 El. c. 1., c. 2., and c. 8., either bringing in bulls from the See of Rome or executing them was prohibited. Anyone

²³For the penalties of praemunire for the second offense, see Appendix J, Statute of Praemunire (1393), p. 218.



found guilty of the offence incurred the penalties contained in the statute of 16 R. 2. According to this same act, anyone bringing into the realm any tokens termed agnus dei,²⁴ or any crosses, pictures, beads, and other superstitious things was to be subject to the penalties of the statute of 16 R. 2. By the statute of 27 El. c. 2., sending relief to any Jesuit, priest, or other persons abiding in a seminary by any person would also incur the penalty of the statute of 16 R. 2.

By the foregoing statutes, Elizabeth succeeded in restoring the supremacy of the State over the ecclesiastical sphere as it had existed in the reign of her father, Henry VIII, "Defender of the Faith."

Having given the background for the major figure of this work, Sir Edward Coke, and the history of civil-ecclesiastical jurisdictional disputes in England, let us now turn to an examination of Coke's interpretation of the four major statutes involved in these disputes.

²⁴ An agnus dei was a medallion or cake of wax with a figure of a lamb representing Christ. It was blessed by the pope.

CHAPTER III

CIRCUMSPECTE AGATIS AND ARTICULI CLERI

According to Sir Edward Coke, the foundation of all subsequent statutes of praemunire was that of E. 1.,¹ which he incorrectly designates as the Statute of Carlisle. The Statute of Carlisle states that--

the abbots, prior and governors had, at their own pleasure, set diverse impositions upon that monasteries and houses in their subjection to remedy which it is enacted that, in the future, religious persons should send nothing to their religious superiors beyond the sea; and that no impositions whatsoever should be taxed by priors alien.²

Certainly, Coke's judgment is to be regarded as expert in matters legal. However, the author does question the fact that Coke selects the Statute of Carlisle as the foundation of all subsequent statutes of praemunire. In the view of the author, the first Statute of Praemunire (1353) carried out, at least in part, the Statute of Provisors (1351) because it provided the machinery by which the infringers (provisors)

¹As far as the author can determine, Coke is referring to the statute of 35 E. 1. c. 2. (Statute of Carlisle) and not the statute of 31 E. 1., which is an Ordinance for Measures. Sir Edward Coke, The First Part of the Institutes of the Laws of England; or a Commentary Upon Littleton, revised and corrected with additions of notes, references and proper tables, by Francis Hargrave and Charles Butler, 17th ed., 2 vols. (London: Clarke, 1817), vol. II, p. 391a.

²35 E. 1. c. 2.

were brought to justice. In point of fact, the praemunire statute of 1353 is listed in the Statutes of the Realm as a statute of provisors made Anno 27 Edw. III. Stat. 1., and Anno Domini 1353.³

The writ of praemunire had no context except that of the Statute of Provisors. It and the penalties foreshadowed by it, and loosely called after it, were relative to the provisors. The term "praemunire" properly applied to the writ by which the sheriff was directed to forewarn the provisors to stand at the law.⁴ Thus, the offense of the provisor was handled by a praemunire facias.⁵ Praemunire, in English law, was an offense so-called from the introductory words of the writ of summons issued to the defendant to answer the charge. "Praemunire facias AB"---"Cause AB to be forewarned." From this the word came to be used to denote the offense prosecuted by means of such a writ, and also the penalties it incurred. Thus, if anything, the Statute of Carlisle (1307) was the real basis of all subsequent statutes of provisors, especially the Statute of 1351 which states in the beginning that the grandfather of Edward III laid the foundation for his grandson's Statute of Carlisle

³27 E. 3. st. 1.

⁴Coke, First Institutes, vol. I, p. 1296.

⁵A praemunire facias is described by Blackstone as "introducing a foreign power into the land, and creating an imperium in imperio by paying that obedience to papal process which constitutionally belongs to the king alone." Sir William Blackstone, Commentaries on the Laws of England, vol. 4, Of Public Wrongs, adapted by Robert Malcolm Kerr, Beacon Series in the Classics of the Law, edited by Charles M. Haar (Boston: Beacon Press, 1962), p. 116; Coke, First Institutes, vol. II, p. 391a.

in the thirty-fifth year of his reign.⁶

Frederick W. Maitland has stated that the Petition of 1344⁷ is the basis of future praemunire legislation. The Petition of 1344 prayed that suits in which the judgment of the King's court was called in question might not be brought in the court of Rome or other Christian courts. In all probability, the petition was set forth because the English ecclesiastical judges had pronounced the censures of the Church upon laymen, or, at any rate, ecclesiastics who had availed themselves of the law of the land⁸ as a defense against papal provisors.

Although Maitland has some grounds for this opinion, he simply did not go back far enough. He should have gone back to the statute *Circumspecte Agatis* (1285-1286). Maitland selected the Petition of 1344 as the basis of future praemunire legislation because it limited the jurisdictional boundaries of the ecclesiastical courts in deference to those of the Common Law courts as did the praemunire statute of 1353. But the point at issue is not what statute formed the basis for future legislation that limited areas of ecclesiastical jurisdiction, but rather what statute formed the foundation for legislation which defined the areas of jurisdiction between ecclesiastical and Common Law courts.

⁶25 E. 3. st. 6. The marginal note states "Stat. Carlisle, 35 E. 1. c. 5. sect. 3., the causes why the Kings and noblemen of the realm did give lands to bishops and other prelates." See appendix C for the statute in its entirety.

⁷Maitland, Roman Canon Law in the Church of England, p. 70.

⁸Statute of Carlisle, 35 E. 1. c. 2.

The real basis for all subsequent praemunire legislation, in the opinion of the author, was the statute Circumspecte Agatis (1285), which dealt with "certain cases in which the prohibition of the King does not lie,"⁹ such as penances imposed by prelates for deadly sin, such as fornication and adultery, and corporal and pecuniary penances imposed by prelates for lesser offenses. This statute was re-affirmed in 1315 by the statute Articuli Cleri,¹⁰ which was more detailed than the former in its definition of the jurisdictional boundaries between royal and ecclesiastical courts.

An examination of the Statutes of the Realm indicates that the first statute that defines the areas of jurisdiction between ecclesiastical and Common Law courts is Circumspecte Agatis.

These two giants of English legal history, Sir Edward Coke and Frederick W. Maitland, are not alone in their misinterpretation of the praemunire statutes of 1353 and 1393. John Tracy Ellis, in his Anti-Papal Legislation in Medieval England (1066-1377),¹¹ agrees with Sir Edward Coke's interpretation that the basis of future praemunire legislation is in the Statute of Carlisle (1307), but perhaps this can be attributed to the fact that the first time Circumspecte Agatis is mentioned as a statute is in the Yearbook of 33-35 Edward the First,¹²

⁹13 E. 1. st. 4.

¹⁰9 E. 2. st. 2.

¹¹John Tracy Ellis, Anti-Papal Legislation in Medieval England (1066-1377) (Washington, D.C.: Catholic University Press, 1930), pp. 86-102.

¹²A.J. Horwood, trans. and ed., Yearbooks of the Reign of King Edward the First, Rolls Series, pts. 1-5 (London: Longmans, Green, Reader & Dyer, 1863-1879), pt. V, p. 479.

the same year as the Statute of Carlisle. Other historians, whether contemporaries of Sir Edward Coke or members of succeeding generations, have this fault in common--they either do not ascribe any importance to the statute *Circumspecte Agatis* as the foundation of future praemunire legislation, or they concentrate their efforts on determining whether or not the statute was a statute or a writ and in what year it was promulgated, 1285 or 1286.¹³

The writ *Circumspecte Agatis* has long been a problem to historians of the reigns of Edward I and Edward II. Its importance as a foundation stone for defining the boundary lines between ecclesiastical and Common Law jurisdiction has been generally recognized, but the fact that *Circumspecte Agatis* was the basis for future praemunire legislation has not. The question of the date, content, and whether or not it was a writ or a statute, is even less clear. Sir Edward Coke, in his *Second Institutes*, states unequivocally that *Circumspecte Agatis* is a statute and an act of Parliament.¹⁴ William Lyndwood, in his *Provinciale*, included *Circumspecte Agatis* among the provincial constitutions.¹⁵ For him, it was an important document because it stated the King's opinion as to the

¹³Graves, "*Circumspecte Agatis*," pp. 1-20. His thesis is stated in the last page of this chapter.

¹⁴"Though some have said that this was not statute, but made by the prelates themselves, yet that this is an act of parliament, it is proved not only by our books, but also by an act of parliament." Coke, *Second Institutes*, vol. I, p. 485.

¹⁵William Lyndwood, *Provinciale, seu Constitutiones Angliae* (1679; reprint ed., Farnborough, England: Gregg International Publishers, Ltd., 1968), p. 241, gl. ad v. clericus.

wherabouts of the line which divides ecclesiastical and Common Law jurisdiction. Lyndwood clearly tells us that "textus iste non este authenticus, sed tantum ad declarationem juris ecclesiastici per regem explanatus,"¹⁶ which F. W. Maitland¹⁷ and the author interpret to mean that this royal declaration does not bind spiritual courts.¹⁸ William Prynne assigns Circumspecte Agatis to the reign of Edward II, but can find little or nothing about the circumstances which led to the promulgation of the statute.¹⁹ D. Wilkins, in his Concilia, also assigned the statute to the reign of Edward II.²⁰ The views of both Prynne and Wilkins were apparently

¹⁶Ibid., p. 97, gl. ad v. conseutas.

¹⁷Maitland, Roman Canon Law in the Church of England, p. 79.

¹⁸The purpose of William Lyndwood in the Provinciale, as I understand it, was not only to bring the current law of the Church into line with the spirit of English nationalism, but to set the courts Christian right with the Crown, the Parliament, and the courts of the Common Law. It insured for them a full immunity for the coming crisis of the sixteenth century. It is extraordinary that the body of legislation under Henry VIII which made the Roman Curia ineffectual at the same time extended to the Canon law what it had never possessed--that is, a civil statutory sanction. For example, the effect of Henry VIII's Statute of Appeals was to extend to the courts Christian within the realm, in their specific character as courts of the realm, the protection of that very law of praemunire which, directed originally against the court of Rome in defense of the jurisdiction of the English Common Law, had been used by the Common Law lawyers in Lyndwood's day as a menace to those same courts Christian.

¹⁹William Prynne, Records: An Exact Chronological Vindication and Historical Demonstration of the Supreme Ecclesiastical Jurisdiction of our British, Roman, Saxon, Danish, Norman English Kings; More Particularly of King John, Henry the Third; But Principally of the Most Illustrious King Edward the First in and over All Matters, Causes, Persons, Spiritual, as well as Temporal, Within their Realms and Dominions, - vols. (London: Thomas Ratcliffe, 1666), vol. III, p. 337.

²⁰D. Wilkins, ed. Concilia Magnae Brittaniae et Hiberniae, 446-171B, 4 vols. (London: Gosling, 1737), vol. II, p. 497.

substantiated in 1926 by E. F. Jacob.²¹ But these views may now be disregarded since Circumspecte Agatis is cited as a statute in the Yearbook of 35 Edward the First.²² E. B. Graves, writing for the English Historical Review in 1928, not only placed Circumspecte Agatis in the reign of Edward I, but ascertained the date of promulgation as being in June or July of 1286.²³

William Blackstone, in the fourth volume of his Commentaries on the Laws of England, agrees with Sir Edward Coke that the Statute of Carlisle is the basis of future praemunire legislation.²⁴ Blackstone does not even mention Circumspecte Agatis, thus leaving one to conclude that he either never heard of it or, having heard of it, ascribed no importance to it whatsoever.

As we move into the nineteenth and twentieth centuries, commentaries and interpretations on Circumspecte Agatis differ perhaps in degree but not generally in kind.²⁵ William Stubbs, in his Select Charters,²⁶ questions whether or not Circumspecte Agatis was a statute. For Stubbs, it is an order issued by the King to the judges with reference to some special cases touching the bishop and clergy of Norwich. He does admit, however, that the document defined the jurisdiction of the ecclesiastical

²¹E. F. Jacob, review of Essays in Medieval History, 11 (1926): 247 fn.

²²Horwood, Yearbooks of the Reign of King Edward the First, pt. V., pp. 478-479.

²³Graves, "Circumspecte Agatis," pp. 1-20.

²⁴Blackstone, Of Public Wrongs, pp. 106-120.

²⁵Graves, "Circumspecte Agatis," pp. 1-20.

²⁶Stubbs, Select Charters, p. 469.

courts and was accepted as an authoritative pronouncement. For Stubbs, *Circumspecte Agatis* resembled the ordinances of William I in principle since it gave to the Church all cases quae mere sunt spiritualia, although it dealt more specifically with disputed cases. W. S. Holdsworth, in volume one of his History of English Law,²⁷ says that the statute or writ *Circumspecte Agatis* attempted to settle a few of the controversies of jurisdiction between ecclesiastical and Common Law courts. T. F. T. Plucknett, in his A Concise History of the Common Law, makes no comment at all on *Circumspecte Agatis*. Bryce Lyon, in his A Constitutional and Legal History of Medieval England,²⁸ says that *Circumspecte Agatis* specifically defined the function of ecclesiastical courts and the limits of lay and spiritual jurisdiction.

Obviously there must be some reason why the leading authorities on legal history from the time of Sir Edward Coke to the present have only been able to determine that *Circumspecte Agatis* was a statute and that it was promulgated in June or July of 1286. The question is, "What is the reason?" Perhaps the solution to the problem lies in the fact that *Circumspecte Agatis* could not be considered as a basis for any future legislation since it was not until the first quarter of the twentieth century that it was finally accepted by all as being a statute. Thus, it would be very difficult to view such a questionable piece of legislation as a

²⁷Holdsworth, A History of English Law, vol. I, p. 585.

²⁸Bryce Lyon, A Constitutional and Legal History of Medieval England (New York: Harper & Row, 1960), p. 455.

foundation stone for anything.

In an attempt to find a solution to the problem, let us first ask the question, "What is a statute?" The term denoting a specific type of legislation in all probability did not come into common use until the end of the thirteenth century.²⁹ Bracton did not use the word "statute." Thus, it would seem that in his time "statute" formed no part of the familiar speech of lawyers, and it is quite common for enactments that are included among the early statutes to bear some other name such as provision or establissemens.³⁰ Statutum was, however, equated with provisio and ordinacio in the Provisions of Marlborough³¹ and in a statute of the Jewry in 1271.³² In the early years of the reign of Edward I it must have become a common word in legal usage and, as a mark of acceptance, it was beginning to be applied in retrospect. It is, indeed, probable that a distinction was beginning to be made between the half-forgotten

²⁹It was presumably for some patristic source that the word passed into medieval legal terminology. It is used, for example, by Bede, Historia Ecclesiastica, edited by Charles Plummer, 2 vols. (London: Oxford University Press, 1896), vol. I, pp. 189, 415.

³⁰Examples of other names used are: First Statute of Westminster, establissemenz; Statute de Bigamis, constituciones; Statute of Gloucester, estatuz, ordeinemenz e purveaunces; Statute of Money, articles, establissemens. The Statutes of the Realm, 11 vols. (1810-1828; reprint ed., London: Dawsons of Pall Mall, 1963), vol. I, pp. 42-43, 45, 131, 134.

³¹"Provisum est et statutum et concorditer ordinatum ut. . . provisiones ordinationes et statuta subscripta . . . observentur." Ibid., p. 19.

³²Thomas Rymer and R. Sanderson, comps., Foedera, Conventiones, Litterae, etc., 4 vols. in 7 (London: Records Commission, 1816-1818), vol. I, p. 489. In the writ sending the First Statute of Westminster to the sheriffs, it is called not establissemenz, but provisiones et statuta. Statutes of the Realm, vol. I, p. 39.

compilation of laws and assizes that had been the hallmark of the twelfth century and the enactments of succeeding centuries which now represented established law.

If we were to fix a line of demarcation between the old concept of legislation and the new, it would have to be fixed at the Parliament of Oxford in 1258. There had been some law-making earlier in the thirteenth century,³³ but no one had made a systematic collection of these enactments and, when they were remembered, it was done so in an imperfect manner. While it is probable that changes in the law of obvious importance were always surrounded with a certain amount of formality,³⁴ in some cases, a new writ could apparently pass into use and become part of accepted law without any public notice. The essential thing was the form of writ or rule of law, not the formal expression of the authority behind it. For example, the law in Glanville is largely the result of deliberate law-making, much of which must have been recorded at the time in writing; but the author of that treatise speaks of the laws of England,

³³George Burton Adams, Council and Courts in Anglo-Norman England, Yale Historical Publications, Studies 5 (1926; reprint ed., New York: Russell & Russell, 1965), p. 324 ff.; Sir Frederick Pollock and Frederic William Maitland, The History of the English Law Before the Time of Edward I, 2 vols. (1895; reprint ed., Cambridge: At the University Press, 1968), vol. I, p. 180; Holdsworth, The History of English Law, vol. II, pp. 220-221.

³⁴H. G. Richardson and G. O. Sayles, "The Early Statutes," Law Quarterly Review, 50 (1934): 203.

even those enforced in the king's court, as unwritten.³⁵ If he knew of any written records of the legal reforms of Henry II, he was unmindful of them;³⁶ and this was an attitude that changed but slowly in the course of the thirteenth century. But, from the work begun at Oxford in 1258, there issued legislation of a character and quality, which, if it had any forerunner, could only be found in the Great Charter. It is plain that the Provisions of Westminster and their permanent embodiment, the Provisions of Marlborough, supplied the model for the greater enactments of Edward I. The Provisions of Westminster, for example, were being cited in pleadings in 1260,³⁷ and all the major enactments of Edward I were cited in court very speedily after their issue.³⁸

As we have seen, in the thirteenth century a legislative instrument could be described by a number of terms which were regarded as synonymous,

³⁵"Leges nam que Anglicanas, licet non scriptas, leges appellari videatur absurdum." Ranulf de Glanville, The Treatise on the Laws and Customs of the Realm of England, Commonly Called Glanvill, edited with introduction, notes and translation by G. D. G. Hall, Medieval Classics Series (London: Nelson, 1965), prologue, n. p.

³⁶As Maitland points out, he seems to have known of written ordinances which established the grand assize (Glanville, p. 19). Frederic William Maitland, Justice and Police (London: Macmillan Co., 1885), p. 100.

³⁷Reginald Lane-Poole, "The Publication of Great Charters by English Kings," English Historical Review 28 (1913): 444 ff.

³⁸H. G. Richardson, "Yearbooks and Plea Rolls as Sources of Historical Information," Royal Historical Society Transactions 5 (1922): 58.

but the two we are concerned with are ordinance and statute. As Richardson and Sayles point out, in certain legislation of 1307 amending the Statute of Money of 1299 we find the following: the ordinance which the King wills shall be fixed and established as his statute forever is required to be entered as a statute in the exchequer, the chancery, and the wardrobe; and writs are sent to all port officials containing full details of this ordinance with instructions that they are to observe and execute the ordinance in every detail.³⁹ Here there is clearly some difference of meaning between the two terms: the mark of a statute was that it should be fixed and established forever; and there might be ordinances which were not statutes.

We must not suppose, however, that we can simply divide legislation into the two classes of statutes and ordinances: a statute is still an ordinance. The technical name throughout the Middle Ages for a series of legislative enactments, which was known in common parlance as a statute, seems to be "ordinances and statutes." The change to the modern practice apparently begins in 1491.⁴⁰ Under Richard II the title "establishments" was revived as a synonym apparently for statute, and we, therefore, sometimes find the phrase ordinances at establishments⁴¹ and sometimes statum or statuta stands by itself.⁴² Nor does it appear as though the term

³⁹ Richardson and Sayles, "The Early Statutes," p. 571.

⁴⁰ Statutes of the Realm, vol. I, p. xxxv; 4 H. 7.; 7 H. 7.

⁴¹ 5 R. 2.

⁴² 13 R. 2.; 17 R. 2.; 20 R. 2.

"ordinances," when employed without qualification, is limited to temporary or transitory legislation. A statute, as we would term it, may contain tentative legislation as in 1383 when an article, placing upon mainpernors the responsibility for any loss caused to plaintiffs by the absence of defendants who have been mainprised, is expressly limited to the period before the next Parliament, during which time "this ordinance of Mainpernors shall endure in Assay till the next Parliament only"--a clear instance of the use of the word for temporary legislation.⁴³

Ordinance was, however, also regularly applied under Edward III to special classes of legislation not called statute, but apparently intended to be more than temporary provisions. Legislation affecting the clergy and clerical privileges,⁴⁴ the staple,⁴⁵ and the fisheries⁴⁶ are the main examples. We may also note that in the printed statute book we have other instruments that are called ordinances. These are the letters patent of 1344 issued at the request of the Commons pur recumforter le people, which are entered on the statute roll and these entitled ordinaciones.⁴⁷ Finally, there are the "ordinances" of the Hilary Parliament of 1365, consisting of two enactments, one containing

⁴³8 R. 2.

⁴⁴14 E. 3.; 18 E. 3.; 25 E. 3.

⁴⁵27 E. 3.

⁴⁶31 E. 3; 35 E. 3.

⁴⁷18 E. 3.

miscellaneous legislation, consequent upon the petitions of the Commons, and the other the Statute of Praemunire of that year.⁴⁸ Why these should be entitled ordinances upon the statute roll would be difficult to determine.

Leaving aside the rationale of the clerk who was responsible for recording the titles in the statute roll, there seems to be another element of confusion, but one which might be more easily explained--that is, a development in parliamentary practice beginning in the reign of Edward II. The normal type of statute is based upon a petition of the Commons: permanent legislation arising from this petition is clearly recognized as a statute, and other action taken in response to a petition, but involving only the need for ad hoc legislation as opposed to permanent legislation, will be "ordained" and will involve, therefore, only an ordinance and not a statute. The term "ordinance" is now beginning to acquire a specialized meaning and is applied, when used in the aforementioned sense, to a series of provisions which are similar in form to a statute, differing only, in the measure of its permanence and, therefore, of its importance.⁴⁹ Apparently, there was an evolutionary process in which the question arose as to whether or not an enactment was a statute: Does the legislation arise from a petition of the Commons? Is it of general application? Is it intended to be permanent? If the reply to any one of these three questions was in the negative, then the legislation should not, apparently, be described as a statute.

⁴⁸38 E. 3.

⁴⁹Richardson and Sayles, "The Early Statutes," p. 559.

Even when one accepts the above formula as accurate and valid for the drafting of statutes and ordinances, the problem of introducing order into legislative procedure would find no solution until the term "statute" became identical with parliamentary legislation. This identity was achieved very slowly, and the question of distinction between an ordinance and a statute was not raised again until the seventeenth century when an attempt was made to support political disputes with historical arguments. Statutes, it was contended, required the assent of the King, the Lords, and the Commons: ordinances were without this threefold consent, but were ordained by one or two of them.⁵⁰ According to Richardson and Sayles, William Prynne could find no historical basis for a definition along these lines.⁵¹ Actually, the issue in the seventeenth century was parliamentary authority, and this too was the issue in the fourteenth century: nomenclature was a matter of indifference.

The fourteenth century witnessed only occasional and uncertain forecasts of ideas which in the seventeenth century became subjects of passionate dispute. In the early years of the fourteenth century, Parliament itself was an evolving institution, and the Commons were no indispensable part of it. In the reign of Edward I, Parliaments were more often held without them than with them. Therefore, when collections of statutes were being made at the end of the thirteenth century,

⁵⁰Sir Edward Coke, The Fourth Part of the Institutes of the Laws of England; Concerning the Jurisdiction of the Courts (London: W. Lee and D. Pakeman, 1648), p. 25.

⁵¹Richardson and Sayles, "The Early Statutes," p. 561.

parliamentary authority meant something different than it was to mean towards the end of the fourteenth century.

The documents seem to tell us that, some time after the Parliament of Oxford in 1258, men began to make collections of statutes. Behind these collections are the charters which are called by some the fundamental laws of the kingdom.⁵² The charters had been born of a revolution, and they were at once a treaty and legislation.⁵³ In like manner, the Provisions of Oxford were born of a revolution and were both treaty and legislation: and the enactments which embodied them--the Provisions of Westminster, replaced after the Barons' War by the Statute of Marlborough--were regarded as possessing a status similar to the charters. And so, with this as a nucleus and with the legislation which was associated with the Council of Merton, we get the beginnings of a statute book. It was on such foundations that the Edwardian lawyers compiled their collections, putting together what was useful to them--statutes, royal instructions, rules of court, tracts on procedure, and registers of writs.

As yet there was no authorized collection of laws. If the authority of an enactment was challenged, there was a ready test for it--did it bear the king's seal? But this was not the sole test. The king might of his own volition and without consulting Parliament issue instructions which would interpret, vary, or even suspend a statute. There was no difficulty, therefore, about adding to a collection of statutes a writ

⁵² Holdsworth, The History of English Law, vol. II, pp. 441-442.

⁵³ Ibid., p. 210; Albert Frederick Pollard, Evolution of Parliament (London: Longmans, Green & Co., 1920), p. 219.

to the justices in eyre, such as Circumspecte Agatis, if it were more likely to afford guidance in the practice of law. There was, of course, the distinction that a statute was intended to be of general and permanent application, while a writ was limited to the specific circumstances in which it was issued: but the collections were not being made upon such a plan that the latter need be excluded.

The genesis of Circumspecte Agatis has been investigated by E. B. Graves, who has shown that it originated as a writ addressed to the justices in eyre in Norfolk in 1286 at the insistence of the bishop of Norwich: to this writ was added an extract from the gravamina of the clergy. The two parts could have been joined as a matter of convenience by some practitioner who wished to assimilate the latest rulings regarding the writ of prohibition. In this form it passed into the early collection of the statutes, and reference was made to it for the first time in 1307.⁵⁴ In 1345, the court, according to the Yearbook reporter, questioned its validity on the ground that it was not a sealed statute, Mr. Justice Willoughby remarking that the prelates had made it themselves.⁵⁵ In other words, it represented concessions made by the Crown at the request of the clergy, but these did not involve any change in the law. Justice Willoughby's comments notwithstanding, the author finds it difficult to conceive how the Statute Articuli Cleri (1315)

⁵⁴Horwood, Yearbooks of the Reign of King Edward the First, pt. V, p. 479.

⁵⁵A. J. Horwood, gen. trans. and ed., Yearbooks of the Reign of King Edward the Third, edited by Luke Owen Pike, Rolls Series, pts. 6-18 (London: Longman & Co., 1883-1911), pt. XVI, p. 293.

could be the re-affirmation of a statute that was not a statute in the first place.

It would appear, however, from a review of the historiography concerning *Circumspecte Agatis* that, with the exception of E. B. Graves, H. G. Richardson, and G. O. Sayles,⁵⁶ historians of the law and legal commentators took to heart the comments of Mr. Justice Willoughby--that is, that the prelates had made it themselves and, thus, it could not be a statute. As has already been stated, Sir Edward Coke, in his Second Institutes, did consider *Circumspecte Agatis* to be a statute,⁵⁷ but I suspect that Coke's interpretation of *Circumspecte Agatis* as a statute was done so because in that way it would have to be considered permanent and of general application rather than temporary in nature and applicable only to the particular circumstances which caused it. Thus, Sir Edward Coke, by his admission that *Circumspecte Agatis* was a statute, further strengthened his thesis for the supremacy of Parliament. It should be noted that his *Second Institutes* was written in 1628, the same year that Coke played a major role in formulating the *Petition of Right* and was the acknowledged spokesman and champion of parliamentary supremacy.

To summarize, therefore, Sir Edward Coke, William Blackstone, and John Tracy Ellis are in error in selecting the *Statute of Carlisle* as the basis of the *Statutes of Praemunire*. If anything, the *Statute of Carlisle* was the basis of all subsequent statutes of provisors.

⁵⁶Richardson and Sayles, "The Early Statutes," pp. 540-571.

⁵⁷Coke, Second Institutes, vol. I, p. 487.

In the view of the author, the first Statute of Praemunire (1353) carried out, at least in part, the Statute of Provisors (1351) because it provided the machinery by which the infringers (provisors) were brought to justice. In point of fact, the praemunire statute of 1353 is listed in the Statutes of the Realm as a statute of provisors.

F. W. Maitland was also in error in basing all subsequent praemunire legislation on the Petition of the Clergy of 1344. His error was in going from one particular restriction of ecclesiastical jurisdiction in the praemunire statute of 1353 to the first restriction of ecclesiastical jurisdiction in the 1344 Petition of the Clergy. However, the basis of defining areas of jurisdiction between ecclesiastical and Common Law courts is not to be ascribed simply on the basis of similarity of intent, that is, on the lessening of spheres of ecclesiastical jurisdiction as was done in both the 1344 Petition of the Clergy and the 1353 Statute of Praemunire. The basis of defining areas of jurisdiction is to be found rather in the first statute which does so in fact, and that statute is *Circumspecte Agatis*.

CHAPTER IV

THE 1353 AND 1393 STATUTES OF PRAEMUNIRE

In order to understand the praemunire legislation of the fourteenth century, it will be necessary to study its background and causes, the original intent and interpretation of this legislation, and the point at which Common Law lawyers began to give to the meaning of the praemunire statutes a broader construction.¹ Finally, Sir Edward Coke's interpretation of praemunire legislation will be examined.

The word "praemunire" properly applied to the writ by which the sheriff was directed to forewarn the provisors to stand at the law.² Thus, the offense of the provisors was handled by a praemunire facias.³ Praemunire, in English law, was an offence⁴ so-called from the introductory words of the writ of summons issued to the defendant to answer the charge. "Praemunire facias AB"--"Cause AB to be forewarned." From

¹A broader construction is that interpretation of a statute which not only includes the original purpose for which the statute was formulated, but also a new and sometimes different application for which it was not originally intended. A strict construction is that interpretation of a statute which concerns itself solely with the original purpose for which it was formulated. Black, Black's Law Dictionary, p. 386.

²Coke, First Institutes, vol. I, p. 129b.

³Ibid., vol. II, p. 391a. See also fn. 73.

⁴Praemunire, in English law, is an offense against the king and his government, though not subject to capital punishment. The statutes establishing this offense were framed to encounter the papal usurpations in England; the original meaning of the offense called praemunire being the introduction of a foreign power into the kingdom and creating imperium in imperio by paying that obedience to papal process which

this the word came to be used to denote the offenses prosecuted by means of such a writ, and also the penalties they incurred.

The judgment in a praemunire was that the defendant should be out of the protection of the King and that his lands and tenements, goods and chattels were forfeited to the King and that his body should remain in prison at the King's pleasure.⁵ So serious was the offense of praemunire that anyone attainted by it might be slain by any man without incurring the danger of law, because it had provided by statute that a man might do to the guilty person as he would to the King's enemy, and any man might slay the enemy of the King.⁶ However, Queen Elizabeth and her Parliament, not liking the inhumaneness of the law, provided that it was unlawful for anyone to slay a person attainted in a praemunire.⁷ The person attainted in a praemunire forfeited his land, but only during his lifetime.⁸ His descendants and relatives were not similarly attainted (no corruption of blood), and the land was returned to them.⁹ Finally, a person that was out of the King's protection could not be aided or

constitutionally belonged to the king alone. Black, Black's Law Dictionary, p. 1337.

Praemunire is the offense of directly or indirectly asserting the supremacy of the pope over the Crown of England, as by procuring excommunications or bulls from Rome. Jowitt, The Dictionary of English Law, pp. 1381-1382.

⁵Coke, First Institutes, vol. II, p. 391a.

⁶Ibid., vol. I, p. 130a; 25 E. 3. c. 22.

⁷5 El. c. 1.

⁸Ibid.

⁹Coke, First Institutes, vol. II, p. 391a.

prosecuted by the law of the monarch or his writ, thus, he was unable to bring any legal action because he was "civilly dead."¹⁰ The writ of praemunire had no context except that of the Statute of Provisors. It and the penalties foreshadowed by it, and loosely called after it, were relative to the provisors.

By 25 E. 3. st. 6. (Statute of Provisors), 27 E. 3. st. 1. c. 4. (Statute of Praemunire), and 38 E. 3. st. 2. c. 1., c. 2., c. 3., and c. 4. (Parliament of 1363), it was enacted that--

the court of Rome should present or collate to no bishopric or living in England; and that if anyone disturbed any patron in the presentation to a living, by virtue of a papal provision, such provisor should pay fine and ransom to the King at his will and be imprisoned until he renounced such provision.

The same punishment was inflicted on "such as should cite the King, or any of his subjects, to answer in the Court of Rome."

By the Statutes of 3 R. 2. c. 3. and 7 R. 2. c. 12., it was enacted that "no alien should be capable of being presented to any ecclesiastical preferment, under the penalty of the Statute of Provisors."

By the Statute of 12 R. 2. c. 15., "all liegemen of the King, accepting a living, by any foreign provision, were put out of the King's protection, and the benefice made void." To which, the Statute of 13 R. 2. st. 2, c. 2. added banishment and forfeiture of land and goods; and by c. 3. of the same Statute, it was enacted that "any person bringing over citations or excommunication from beyond the sea, on account of the execution of the Statute of Provisors, should be imprisoned, forfeit his goods and lands, and moreover, suffer pain of life and member."

¹⁰Ibid., vol. I, p. 130a.

The Statute of 16 R. 2. c. 5., which is the statute generally referred to by all subsequent statutes, is called the "Great Statute of Praemunire." It states that--

whoever procures at Rome or elsewhere, any translations, processes or excommunications, bulls, instruments or other things which touch the King, against him, his crown, and realm and all persons aiding and assisting therein shall be put out of the King's protection; their land and goods forfeited to the King's use; and they shall be attached by their bodies to answer the King and his council or process of praemunire facias shall be made out against them as in other cases of provisors.

By the Statute of 2. H. 4. c. 3., all persons who accepted any provision from the pope to be exempt from canonical obedience to their proper ordinary were subject to provisors. By c. 4. of this same statute the religious men of the Order of Citeaux were threatened with praemunire if they continued tenements,¹¹ and so forth. Sir Edward Coke considered this statute to be the last legislative act concerning the offense of praemunire until the separation of the Church of England from the Church of Rome in the reign of Henry VIII,¹² but the author does not.

By the statute of 6 H. 4. c. 1., a penalty was imposed on anyone who paid to the court of Rome more for the first fruits of any bishopric than the usual sum. By the statute of 7 H. 4. c. 6., the penalty imposed

¹¹Tenements, in its vulgar acceptation, is only applied to houses and other buildings, but in its original, proper, and legal sense, it signifies everything that may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial ideal kind. Thus, liberum tenementum, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc. Black, Black's Law Dictionary, pp. 1637-1638.

¹²Coke, First Institutes, vol. II, p. 391a.

on those of the Order of Citeaux for purchasing bulls to be discharged of tithes was re-affirmed. By the statute 9 H. 4. c. 8. and c. 9., the carrying of money out of the realm to the court of Rome was prohibited and all the statutes against provisors were confirmed.

Finally, by the statute of 10 H. 5. c. 4., all provisors, licenses, and pardons of a benefice already filled were made void.

The praemunire statute of 1353 made no deep impression on contemporary chroniclers; none of those whose works are now in print makes mention of its promulgation. However, time has given new perspective to the Statute of Praemunire, which makes it seem strikingly significant.

Many modern writers have placed the statute in a political setting as an attack on the claims of papal jurisdiction,¹³ and the impression that the attack began with the praemunire statute of 1353 is rather widespread.¹⁴ In such a setting, the statute was obviously considered a

¹³Felix Makower, The Constitutional History and the Constitution of the Church of England (1895; reprint ed., New York: Burt Franklin, n.d.) p. 42; T. F. Tout, The History of England from the Accession of Henry III to the Death of Edward III (1216-1377) (London: Longmans, Green & Co., 1905), pp. 377-378; J. H. Ramsay, The Genesis of Lancaster, 2 vols. (Oxford: At the Clarendon Press, 1913), vol. I, p. 380; Guillaume Mollat, Les Papes d'Avignon, 1305-1378 (Paris: J. Gabalda & Son, 1930), pp. 284-285; H. K. Vickers, England in the Later Middle Ages (London: Methuen & Co., 1913) pp. 228-230; Holdsworth, The History of English Law, vol. I, pp. 585-586.

¹⁴W. T. Waugh, "The Great Statute of Praemunire," English Historical Review 37 (1922): 176, fn. 3; T. F. Tout, The Place of the Reign of Edward II in English History, 2nd ed., revised throughout by Hilda Johnston, The Ford Lectures for 1913 delivered in the University of Oxford Manchester: At the University Press, 1936), p. 234.

turning point in the relationship between England and the papacy. Others have viewed the praemunire statute of 1353 as an expression of emerging English nationalism against a foreign pope dominated by a French monarch.¹⁵ In opposition to these views is A. F. Pollard,¹⁶ who asserts that the Statutes of Praemunire were directed as much against the ecclesiastical court in England as against the court of Rome. It is generally recognized that the actions which the statute comprised were restricted to those in which the King claimed cognizance. After it, as before it, many matters could be legally impleaded at the court of Rome as in other ecclesiastical courts. For the actions which it comprised, it has been said to have declared the penalties of forfeiture and outlawry.¹⁷ Such are in general the views of modern writers.

The opposition in England to appeals to the court of Rome goes back at least as far as the Constitutions of Clarendon in 1164 and goes up to the Act in Restraint of Appeals of 1534. Midway between these two pronouncements lies the Statutes of 1353 and 1393. In the fourteenth

¹⁵Vickers, England in the Later Middle Ages, pp. 228-230; Holdsworth, The History of English Law, vol. I, p. 585.

¹⁶Pollard, Evolution of Parliament, pp. 202, 205.

¹⁷William Stubbs, The Constitutional History of England: In Its Origin and Development, 3 vols. (1897; reprint ed., New York: Barnes & Noble, 1967), vol. II, p. 428; Tout, History of England, p. 378; Ramsay, The Genesis of Lancaster, vol. I, p. 380; Makower, The Constitutional History and the Constitution of the Church of England, p. 42; Vickers, England in the Later Middle Ages, p. 230.

century, the opposition was engendered largely by papal provisions.¹⁸ By 1350, the rivalry between the royal and papal courts was a part of the larger rivalry between royal and ecclesiastical jurisdictions. However, in the decade following 1353, the author has found no cases in which the process of the Statute of Praemunire of 1353 was applied to appellants to ecclesiastical courts within the realm of England, whereas, in the fifteenth century, such cases apparently may be found.¹⁹

As was previously stated, the antecedents of the Statute of Praemunire reach back at least to the Constitutions of Clarendon of 1164. In the eighth chapter of the Constitutions,²⁰ it was declared that appeals could be carried from archdeacon to bishop, from bishop to archbishop, and from the archbishop to the king. They could not be carried further without royal permission. It should be noticed that this chapter referred only to those cases which were triable in ecclesiastical courts;²¹ it did

¹⁸W. W. Capes, The English Church in the Fourteenth and Fifteenth Centuries (London: Macmillan Co., 1900), p. 85 ff.; Stubbs, Constitutional History of England, vol. II, p. 410, vol. III, p. 329; Guillaume Mollat, La Collation des Benefices Ecclesiastiques a l'Epoque des Papes d'Avignon, 1305-1378 (Paris: E. deBoccard, 1921), p. 252 ff.

¹⁹Waugh, "The Great Statute of Praemunire," pp. 197-200; Maitland, Roman Canon Law in the Church of England, p. 70.

²⁰Stubbs, Select Charters, p. 139; Makower, The Constitutional History and the Constitution of the Church of England, p. 228.

²¹In the twelfth century, the ecclesiastical courts claimed to exercise a wide jurisdiction. (1) They claimed criminal jurisdiction in all cases in which a clerk was the accused, a jurisdiction over offenses against religion, and a wide corrective jurisdiction over clergy and laity alike, pro salute animae. A branch of the latter jurisdiction was the claim to enforce all promises made with oath or pledge of faith. (2) They claimed jurisdiction over matrimonial and testamentary cases. Under the former head came all questions of marriage, divorce, and legitimacy; under the latter came grants of probate and administration.

not concern those cases which were triable by the royal courts. On the appeal of matters which were clearly recognized by Church and State as pertaining to the royal jurisdictions, the Constitutions are silent. Since, however, a disputed borderland lay between the royal and ecclesiastical jurisdictions, the Church courts claimed competence in some cases of which the royal courts also claimed cognizance. These causes, as well as the causes which the royal courts conceded to the ecclesiastical forum, could not be appealed to the pope without royal permission under chapter eight of the Constitution of Clarendon.

Henry II based the restriction of appeal to the pope on ancient custom. The ancient custom had developed in the reigns of the first three Norman kings; William I, William II, and Henry I had permitted no appeal to the pope without royal consent.²² In the reign of Stephen, however, there was a definite change.²³ Appeals were carried to the papal court and judges were delegated to hear the evidence and report to

(3) They claimed exclusive cognizance of all matters which were in their nature ecclesiastical, such as ordination, consecration, celebration of service, the status of ecclesiastical persons, ecclesiastical property, such as advowsons, land held in frankalmoign, and spiritual dues.

These claims were at no time admitted by the State in their entirety and, in the course of time, most of these branches of jurisdiction have been appropriated by the State. All that is left at the present day is a certain criminal and corrective jurisdiction over the clergy and a certain jurisdiction in respect of some of the matters contained in the third head. Holdsworth, The History of English Law, vol. I, pp. 614-615.

²²Zachary Nugent Brooke, "The Effect of Becket's Murder on Papal Authority in England," Cambridge Historical Journal 2 (1928): 213-214; Henry William Charles Davis, England Under the Normans and Angevins, 1066-1272 (London: Methuen & Co., Ltd., 1905), pp. 145-146.

²³Brooke, "The Effect of Becket's Murder on Papal Authority in England," p. 214.

the pope, who rendered the decision. Henry II sought to return to the custom of his grandfather. His task was difficult, for "he had to abolish a practice, while his predecessors had only to oppose a claim."²⁴ Henry II was attempting to abolish the practice when the quarrel with Becket came to a head. That quarrel, which led to the promulgation of the Constitutions of Clarendon, need not delay us; its aftermath, however, must be considered. After the murder of Becket, the repentant king came to an agreement with a papal legate at Avranches in 1172. Henry II renounced chapter eight of the Constitutions of Clarendon. He agreed not to impede, nor to permit to be impeded, the appeal of ecclesiastical matters to the pope. His concession referred only to the ecclesiastical causes;²⁵ he did not concede that matters which were adjudicable in royal courts could be appealed to the pope. Further, in doubtful cases, the appellants could be required to give security that they intended to do no harm to the king or to the realm.

In its broadest outline, the agreement of Avranches was maintained by the king throughout the Middle Ages. Appeals to the papal court in matters which the royal courts conceded to the ecclesiastical forum were permitted. But, with the passage of time, the sphere of jurisdiction which the royal courts conceded to the ecclesiastical forum grew narrower and narrower. Furthermore, a distinction was drawn between appeal to the court of Rome and the trial at the court of Rome. In general, appeal to the court of Rome was permitted if litigants were not

²⁴Ibid., p. 215.

²⁵Makower, The Constitutional History and the Constitution of the Church of England, p. 228.

forced to appear outside the realm. If one of the litigants demanded it, the king sought to have the trial take place before ecclesiastical judges in England.

The fact that litigants were not usually cited outside the realm followed from a privilege that the pope conceded to Englishmen. By the middle of the thirteenth century, the privilege granted that no Englishman should be cited in litigation outside the realm by apostolic letters. The foundation stone of the privilege seems to have been an indult granted by Gregory IX in 1231. At the King's petition, the Pope, on July 20, 1231, decreed that no baron or magnate should be drawn by papal letters to judgment outside the realm of England. At the same time, the Pope declared that the effective execution of the privilege rested with the King and his magnates, and not with him. He exhorted the King to warn his barons and magnates not to bind themselves to anyone in such a manner that they might be cited outside the realm, for if justice were demanded the Pope could not refuse to give it.²⁶ Obviously, this would nullify the privilege!

Edward I sought the confirmation of this privilege from Nicholas III. He requested the Pope to preserve the privilege which "the goodwill of the apostolic see in times long past granted to the English. . . that no Englishman may be called out of the realm to judgment by letters of that see, for by God's grace the realm is in such peace and

²⁶W. H. Bliss, ed., Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland, 9 vols. (London: Printed for His Majesty's Stationary Office by Eyre and Spottiswoode, 1908-1912), vol. I, p. 128; Rymer and Sanderson, Foedera, vol. I, p. 201.

tranquility that any stranger may freely sue for his rights against any native."²⁷

In the thirteenth century, many appeals were made from England to the court of Rome. The trial of most of them was delegated to ecclesiastical judges in England. If the matters were purely ecclesiastical, these judges received no interference from the royal court. In matters in which the king claimed cognizance, prohibitions were issued. The trial of pleas at the court of Rome was impeded in two ways. Throughout the century, the privilege that no Englishman should be cited outside the realm was invoked. Toward the end of the century, Edward I attempted to prohibit the drawing of matters of royal cognizance to a trial outside the realm.

In the thirteenth century, the normal prohibition was grounded in the infringement of the privilege that no Englishman should be cited outside the realm; whereas, in the fourteenth century, the normal prohibition was based on the claim that cognizance of the matter in dispute belonged to the royal courts. It was the royal rights of cognizance that the royal courts sought to maintain. During the first half of the fourteenth century, appeals on matters of royal cognizance were regularly prohibited.

One method of showing that the appeal of matters of royal cognizance to the papal court was prohibited regularly in the half century before the making of the first Statute of Praemunire is the method of

²⁷Calendar of Close Rolls, 1272-1279, 5 vols. (London: His Majesty's Stationary Office, 1900-1908), vol. I, p. 555.

amassing actual cases of such prohibited appeals. To do so would probably be impossible. However, a good start may be made with the aid of the Patent, Close, and King's Bench Rolls. It was largely from these sources that E. B. Graves²⁸ gathered 113 cases of prohibited appeals to the court of Rome between 1307 and 1353. Of the 113 cases used by Professor Graves, ninety-one concern disputes about patronage. In such disputes, frequently the claims of the canon law conflicted with the claims of the Common Law; and the pope refused to admit that the royal courts alone had competence in such disputes. Although disputes about patronage were by far the most frequent, disputes as to cognizance in other matters also arose. Among the latter were pleas of chattels and debts, neither testamentary nor matrimonial, of pensions and rents, of spoliations of free tenements, of trespasses against the king's peace, and of exemption from episcopal jurisdiction.

Thus, since the beginning of the fourteenth century the claim that matters of royal cognizance could not be appealed outside the realm had been continuously affirmed. Against the court of Rome the Statute of 1353 claimed no new rights. So far as the prohibition of appeals to the papal court was concerned, this statute was the affirmation of a well-established custom.

The privilege which the papal court had granted in the thirteenth century had hardened into custom by the fourteenth century in England. And it was on this custom that prohibition of appeals was based. However, if the appeal to the court of Rome of a case which was

²⁸E. B. Graves, "Studies on the Statute of Praemunire" (Ph.D. diss., Harvard University, 1929), p. 37.

acknowledged to belong to the ecclesiastical forum was occasionally prohibited, the appeal of similar cases was often specifically allowed. Permission to appeal or to answer in the court of Rome was sometimes given when it was shown that the matter was spoliation²⁹ and not the right of presentation. Also, special permission to appeal from a decision of an ecclesiastical court in England to the court of Rome was frequently given. In such cases, there was no question as to where cognizance lay; the royal courts acknowledged the cognizance of the ecclesiastical courts.³⁰

The frequency of appeals from England and elsewhere was very probably in part the cause, and in part the result, of the development of the legal institutions of the papal court. By the middle of the fourteenth century, three tribunals existed at the court of Rome. Causae minores were tried in the consistory by the pope and cardinals.³¹ Causae minores were tried in the Rota by the auditor.³² Financial cases were brought before the camera.³³ The development of these tribunals in the papal court in all probability stimulated, and was stimulated by, the appeal of cases from England. Such appeals were found to have been

²⁹Spoliation is a suit in a spiritual court by which an incumbent of a benefice suggests that his adversary has wasted the fruits of a benefice or received them to his prejudice. Jowitt, The Dictionary of English Law, p. 1665.

³⁰Graves, "Studies on the Statute of Praemunire," p. 53.

³¹Mollat, La Collation des Benefices, pp. 155-156.

³²F. H. Schneider, Die Romische Rota (Paderborn: W. Regenberg, 1914), p. 70.

³³W. E. Lunt, "The Financial System of the Medieval Papacy in the Light of Recent Literature," Quarterly Journal of Economics 23 (1909): 265-266.

frequent by Professor Graves.³⁴ In many of them the royal courts apparently offered no intervention. For many ecclesiastical cases specific permission to appeal was given. In some ecclesiastical cases the royal courts sought to impede prosecution without the realm although they allowed prosecution in ecclesiastical courts within the realm. When, however, the royal rights of jurisdiction were infringed, the royal courts sought to prohibit all appeals. Nonetheless, the auditors of the Rota often entertained cases on which the royal courts had issued prohibitions.

The background for so called antipapal legislation having been established, let us examine the praemunire statute of 1353. Before the making of 27 E. 3 (1353 Statute of Praemunire), according to Sir Edward Coke, there were three great abuses: first, the king's subjects were drawn from the realm to answer things whose cognizance pertained to the king's court; secondly, things where judgments had already been given in the king's courts were then appealed to an ecclesiastical court; thirdly, after judgments had been given in the king's courts of the Common Law, suits were begun in other courts within the realm to defeat or impeach those judgments. And these three abuses had insufferable effects--they acted to the prejudice of the king and his Crown and to the undoing of the Common Law of the realm.³⁵

The Statute of Praemunire of 1353 is listed in the Statutes of the Realm as a statute of provisors, made Anno 27 Edward III, statute I, and Anno Domini 1353. The subheading of chapter one of this statute is

³⁴ Graves, "Studies on the Statute of Praemunire," p. 56.

³⁵ Coke, First Institutes, vol. I, p. 1296.

entitled "Praemunire for suing in a foreign realm, or impeaching of judgment given." The causes given for the statute in chapter one are the following:

"...how that divers of the people be, and have been drawn out of the realm to answer of things, whereof the cognisance pertaineth to the King's court; and also that judgments given in the same court be impeached in other court, in prejudice and disherison of our lord the King, and of his crown, and of all the people of his said realm, and to the undoing and destruction of the common law of the same realm at all times used."³⁶

The marginal note after the abovementioned reasons for the 1353 Statute of Praemunire is as follows: the penalty for suing in a foreign realm for anything whereof the King's court is to take cognisance, or to impeach a judgment given in the King's court."³⁷

Sir Edward Coke, in referring to the phrases "in another court" in the 1353 Statute of Praemunire, has this to say:

"they are called (other courts) either because they proceed by the rules of other laws, as by the canon or civill law & c., or by other trials, then the common law doth warrant. For the triall warranted by the law of England for matters of fact, is by verdict of twelve men before the judges of the common law of matters pertaining to the common law; and not upon examination of witnesses in any court of equity: so as alia curia is either that which is governed per aliam legem or which draweth the party ad aliud examen."³⁸

I disagree with Sir Edward Coke's interpretation of the phrase "in another court" on two main points. The first point has to do with his disregard for the syntax of chapter one of the Statute of 1353; the

³⁶27 E. 3. st. 1. c. 1.

³⁷Ibid.

³⁸Coke, Third Institutes, p. 120.

second has to do with his utter disregard for the history of Anglo-papal relations in the fourteenth century.

The subheading for chapter one is entitled "Praemunire for suing in a foreign realm, or impeaching of a judgment given."³⁹ It should be noted that the title of chapter one is separated by a comma, which by definition is a "punctuation mark, indicating the least possible separation between words in, or parts of, a sentence, and corresponding to a very slight pause in uttered speech."⁴⁰ If one accepts the definition of a comma, does it not then follow that one would interpret the phrase after the commas as meaning impeaching in a foreign realm of a judgment given in the king's court since the phrase that precedes it is "Praemunire for suing in a foreign realm"?

The rationale for the making of the 1353 Statute of Praemunire is stated very plainly in the body of chapter one: ". . . how the divers of the people be, and have been drawn out of the realm to answer of things whereof the cognisance pertaineth to the king's court; and also that the judgements given in the same court be impeached in another court . . ."⁴¹ The two reasons given for the making of the Statute of Praemunire are separated by a semicolon which, according to a work entitled Legal Writing Style, "is itself a kind of connective. Using it

³⁹27 E. 3. st. 1. c. 1.

⁴⁰Henry Cecil Wyld and Eric H. Partridge, eds., The Little & Ives Webster Dictionary and Home Reference Library, international ed. (New York: J. J. Little & Ives Co., 1963), p. 255.

⁴¹27 E. 3. st. 1. c. 1.

instead of a full stop tells the reader that there is a connection between the two statements." As Sir Ernest Gowers has said, "the full stop says to the reader, 'Have you got that? Very well; now I'll tell you something else.' A semicolon says, 'Got that? Now I'll add something else that has something to do with what I just said.'"⁴² Does it not then logically follow that, when the statute refers to "Judgements given in the same court (King's court) be impeached in another court," the phrase "in another court" refers to a court outside" of the realm since the phrase before the semicolon is speaking of "divers people being drawn out of the realm, to answer of things, whereof the cognisance pertaineth to the King's court."

Sir Edward Coke insists that the phrase "in another court" refers to any jurisdiction inside or outside the realm which does not come under the tenets of the Common Law.⁴³ As usual, he cites precedents for his interpretation in such things as "the ancient writs of common law, the Statute of Carlisle in 1307 and the Statute of Provisors in 1351," none of which lists the type of precedent that he cites.⁴⁴ It is true that the interpretation of the 1353 statute took on a broader meaning in the first quarter of the fifteenth century,⁴⁵ so as to include some temporal

⁴²Henry Weihofen, Legal Writing Style (St. Paul, Minn.: West Publishing Co., 1961), p. 264.

⁴³Coke, Third Institutes, p. 120.

⁴⁴See appendices C & F for the statutes.

⁴⁵Cf. pp.

and all spiritual courts within the realm, but this was not the interpretation intended by the framers of the 1353 Statute of Praemunire.

What then can we say of Sir Edward Coke's interpretation of the phrase "in another court"? The only thing that can be said is that his peculiar interpretation suited his needs as the "Champion of the Common Law." As its champion, Coke could not interpret the statute in any other manner if he were to achieve his purpose--the supremacy of the Common Law over all others.

My second point of disagreement with Sir Edward Coke's interpretation of "in another court" has to do with his disregard of the history of Anglo-papal relations in the fourteenth century. The period covering the last years of the reign of Edward I (1272-1307), the reign of Edward II (1307-1327), and the early years of the reign of Edward III (1327-1377) were, generally speaking, a time of relative calm in the history of Anglo-papal relations.

In the last years of the reign of Edward I, the great struggle between England and the papacy came to an end with the death of Boniface VIII (1294-1303). The English King was able to get what he wanted from the successor of Boniface VIII, Clement V (1305-1316), namely, a share in papal taxation. The right of taxation was obviously beneficial to the papacy and beneficial to the King because of the "kickbacks" he received therefrom, but did not prove beneficial to the King's subjects. The antagonism of the English laity against provisions and papal taxation was given expression at the Parliament of Carlisle in 1307 when they petitioned the King not to export any more money to Rome. Although the petition was formulated into statute, it was nullified to a great extent

by the activity (or lack of it) of Edward II.

The establishment of the papacy at Avignon coincides with the reign of Edward II and the early years of the reign of Edward III. The Avignon Papacy was a period in the fourteenth century beginning in 1307 and ending in 1377. It was during this time that irreparable harm was done to the prestige of the papacy. The pope had always been considered an international figure while in Rome, but was now considered a French puppet because the residence of the papacy had been moved to Avignon in southern France. Although it was true that Avignon was in France, it had been purchased from Joanna I, queen of Naples, in 1348 by the papacy.⁴⁶ Nevertheless, it was well within the French sphere of influence. Perhaps the clearest illustration of this is the fact that the preponderant number of cardinals in the College of Cardinals before the move to Avignon were French; and, of the 134 to receive the cardinal's hat in the period at Avignon, 113 were French. Finally, all seven popes at Avignon were French.⁴⁷

The first Avignon pope, Clement V, a subject of the Duke of Aquitaine, who also happened to be the King of England, was succeeded by two masterful popes, John XXII (1316-1334) and Benedict XII (1334-1342).

Edward II, because of his nature,⁴⁸ and Edward III, because of his

⁴⁶Guillaume Mollat, The Popes at Avignon, 1305-1378, translated by Janet Love from the 9th French ed. (New York: Harper & Row, 1965), p. XX.

⁴⁷ibid.

⁴⁸Though not unlike his father to look at, the second Edward was a very different sort of man. He might have filled well the role of a jolly country baron of his times, for he was fond of hunting, drinking and thatching roofs, was good natured, kindly and affable, though also

youth, were, by necessity, weak and conciliatory, always acceding to the wishes of the Avignon popes. Underneath the veneer of compatibility between England and Rome, however, there were undercurrents of difficulties, namely the conflict between the papacy and the English Crown to recognize the claims that the royal courts made over advowsons.

Clement VI ascended the papal throne in 1342. With his pontificate, the relationship between the papacy and the English Crown begins to deteriorate. Clement VI was a monk, a competent scholar, and a former chancellor of the French king; he was totally French in his sympathies. Clement ascended the papal throne in the most active period of the reign of Edward III. The Hundred Years' War was now to add further complications to an already tenuous Anglo-papal relationship. Although the Avignon Papacy may have deterred the possibility of further rapprochement between England and the papacy, the outbreak of the Hundred Years' War between England and France just about precluded the possibility of the furtherance of Anglo-papal relations. It was rather obvious that the papacy had a natural sympathy towards France. As if this were not enough, both the papacy and England were in great need of money, the latter because of the war, the former because it was living in exile, cut off from its Italian patrimony. Finally, it seemed intolerable to the English laity that they should accede to papal demands and papal policy,

weak and worldly; but he was not of the stuff of which kings are necessarily made. His neglect of duty, and his weakness for favorites, made of his reign, one long tale of friction and faction. Sir George Bellew, Britain's Kings and Queens (London: Pitkins Pictorials Ltd., 1959), p. 14.

particularly after the English victories at Crecy and Poitiers. It was to them quite obvious--God was on their side!

Anti-papal protests from the English Parliament continued through the pontificate of Clement VI (1342-1352). However, while in fact those protests were going on, the King and the Pope continued to cooperate. The King still received parliamentary petitions and made formal protests to the papacy, but he did not seem ready to do much more. In fact, in February of 1345, he sent a letter to the Pope assuring him that the rumours of anti-papal legislation were not true.⁴⁹ But the parliamentary protests continued. They reached their climax in the Statute of Provisors in 1351 and the Statute of Praemunire in 1353.

The remaining years of the reign of Edward III and the entire reign of his successor, Richard II (1377-1399), consisted of attempts by the Crown to reach some sort of workable agreement with the papacy interspersed with conflicts and protests. For the papacy, it marked the return to Rome from Avignon, wars of reconquest in Italy, and the beginning of the Great Western Schism.

The pressing financial needs of the papacy caused it to make demands on the English that would have been considered imprudent at any other time. In 1365, Urban V (1362-1370) raised the issue of the annual tribute of one thousand marks due to the papacy by reason of the submission of King John (1199-1216), but this was dropped because of the intense

⁴⁹Rymer and Sanderson, Foedera, vol. III, p. 31.

opposition it aroused.⁵⁰ In 1372, Pope Gregory XI (1370-1378) demanded a charitable subsidy.⁵¹ The attitude of the English was quite obvious. In 1365, the Statutes of Provisors and Praemunire had been renewed by royal initiative. In the 1370's, anti-papalism and anti-clericalism were rampant in England. It was the period of the alliance of John of Gaunt and John Wyclif on one hand, and on the other hand, the vociferous complaints of the Good Parliament⁵² against the Roman Curia. Although the charitable subsidy was forbidden by the King, a series of negotiations between the papacy and the English Crown were initiated, which continued sporadically until the end of the century. It was a deadlock between two unlimited prerogatives.

Thus, my first point of disagreement with Sir Edward Coke concerning the syntax of the Statute of 1353 is clearly substantiated by the history of Anglo-papal relations in the fourteenth century. Considering these relations, one can only conclude that the author's interpretation of the syntax of the 1353 statute is correct.

⁵⁰Edouard Parroy, L'Angleterre et le Grand Schisme de l'Occident (Paris: J. Monnier, 1933), pp. 32-33, 35-40.

⁵¹Ibid., pp. 28-29.

⁵²In the Good Parliament of 1376, the Commons bitterly attacked John of Gaunt and his cronies. The leader was Peter de la Mare, steward of Edmund Latimer, and the first speaker of the Commons. He accused various courtiers and councillors of corruption, in particular the chamberlain, Lord Latimer, and the London banker and merchant, Richard Lyons. The Lords of Parliament condemned them to imprisonment and to forfeiture of goods. They were the first royal servants to be impeached by Parliament. Lyon, A Constitutional and Legal History of Medieval England, p. 490.

The period immediately following the Avignon papacy was that of the Great Western Schism (1378-1414). In 1377, Pope Gregory XI returned to Rome thinking it was safe to do so. But it was not! Unfortunately, as he was making plans to leave, he died. The cardinals met in conclave to elect a new pope. (The accounts of exactly what happened from this point are confused.) The Roman mob demanded that the cardinals elect a Roman or Italian pope. The cardinals did elect an Italian--Pope Urban VI. The French cardinals left Rome after the election and went to Anagni where they declared the election of Urban VI as invalid because of the threats they faced from the Roman mob. The French cardinals elected Robert of Geneva as Pope Clement VII, thus causing the split of the western church for thirty-six years into two camps. France, Scotland, Navarre, Castile, Aragon, and certain sections of Germany supported Clement VII. England, Flanders, Portugal, Hungary, and most of Germany supported Urban VI.

My point is simply this--does it seem logical to interpret the phrase "in another court" as found in the 1353 Statutes of Praemunire, or the phrase "or elsewhere" as found in the 1393 Statute of Praemunire in the manner of Sir Edward Coke, as meaning any non-Common Law court within or without the realm? I think not! Statutes, as a part of history, must be examined in the context of their own times and the period of both Statutes of Praemunire was one in which England was having great problems with the papacy whether the pope was in Rome "or elsewhere." Thus, one might suspect that Sir Edward Coke's interpretation of the 1353 and 1393 Statutes of Praemunire was not as an historian of the law, but rather as someone who sought out and found some loosely constructed phrases in statutes which could be molded to suit

the purpose of this particular period of his life as the "Champion of the Common Law." However, Sir Edward Coke's statutory precedent for his interpretation of the phrases "in another court" and "or elsewhere" really are based on the 1393 Statute of Praemunire and the 1534 Statute of Appeals of Henry VIII. It is to these two statutes that we now turn our attention.

One misinterpretation, frequently fostered by modern writers, should be disposed of at the outset. Neither the praemunire statute of 1393 nor any other measure passed in England during the Middle Ages sought to prevent all exercise of the pope's authority in the country. The wording of the statute, though at times vague, is clear at least on this point.

"If any one obtains or sues . . . in the court of Rome or elsewhere any such⁵³ translations, processes, and sentences of excommunication, bulls, instruments or anything else whatsoever which touches the King our lord against him, his crown and regality, or his realm, as is aforesaid,⁵⁴ and those who bring them into the realm or receive them, or make notification or other execution of them within the realm or without, they shall be put out of the protection of our said lord the King and their lands and tenements, goods and chattels shall be forfeited to the King our lord and they shall be arrested and brought before the King and his council to answer

⁵³The adjective "such" sometimes serves a useful purpose, as where it saves having to repeat a concept that cannot be referred to in a word or two. In statutes and regulations, it may be necessary to make clear that the second reference is exactly the same concept mentioned previously. The word "such" is the simplest way to do so. Weihofen, Legal Writing Style, p. 32.

⁵⁴The word "aforesaid" means aforementioned; it, therefore, confines the meaning of the word with which it is used to something that has been mentioned before. Ibid., p. 30.

there, or process shall be made against them by praemunire facias in the manner ordained in other statutes of provisors and others who sue in other courts in derogation of the rights of the King."⁵⁵

Thus, it is clear that the 1393 Statute of Praemunire applies only to certain kinds of papal documents, and the records of the time show that a wide field of papal activity was unaffected by it. Englishmen continued to appeal to the papal court, to present petitions to the pope, to accept papal graces, and to execute papal mandates, apparently without any thought that they were breaking the law.⁵⁶ Moreover, there are in the Yearbooks in the twenty years following the promulgation of the 1393 Statute of Praemunire cases in which judges not only recognize the authority of certain papal bulls, but assume that the pope had a lawful jurisdiction over Englishmen in certain matters and demonstrate great hesitancy in avoiding encroachment of his rights.⁵⁷

⁵⁵ 16 R. 2. c. 5. It is to be noted that the two phrases, "any such" and "as is aforesaid," have been omitted in the 1533 Statute of Appeals. By this omission, the statute of 16 R. 2., which was originally formulated to limit papal authority on two counts, was altered to remove any limit to the exercise of royal authority on which the King and judges or the King in Parliament might agree.

⁵⁶ The dealings of Englishmen with Rome are abundantly illustrated in the Calendar of Entries in the Papal Registers. It is true that many of the transactions recorded were contrary to the Statute of Provisors, breaches of which, indeed, were at times sanctioned by royal license. But the majority were evidently quite lawful in the eyes of the parties concerned, and must have been carried without any reference to the temporal authorities in England.

⁵⁷ See especially the report of the suit quare impedit brought by Henry IV against Robert Hallum, bishop of Salisbury, and Henry Chichele, bishop of St. David's (Yearbook of 11 Henry the Fourth, ed. 1679, pp. 37, 59, 76), and that of a suit between two priors about an advowson (Yearbook of 14 Henry the Fourth, p. 14). Waugh, "The Great Statute of Praemunire," p. 175.

In later times, it should be noted, Henry VIII was forced to plead before a papal court and could not have the divorce suit decided within the realm until Parliament had passed the Act in Restraint of Appeals.

What was the nature of the bulls, instruments, and other things which came within the meaning of the act of 1393? The wording of the statute itself states that the act refers to those bulls, instruments, and other things which were against the king, his crown, and regality. The meaning of the previous sentence goes back to the time of the conquest when the kings of England excluded any papal documents which would have been prejudicial to the realm. As time progressed, writs were issued which ordered the seizure of such documents. However, in an ordinance of Parliament in 1343, it was ordained that those who introduced such documents should be arrested and brought before the king's council.⁵⁸

Admittedly, the composition or phrasing of the words in the writs and in the 1393 Statute of Praemunire lacks the customary legal preciseness, and it is this lack of clarity in the 1393 Statute of Praemunire which is put to such effective use by Henry VIII. Surely no medieval Parliament would have contemplated the broad interpretation used by the "Defender of the Faith."⁵⁹ If there is considerable doubt as to the preciseness of the "sixteenth century" interpretation of the 1393 Statute of Praemunire, it is not so in the fourteenth century. Unquestionably, the bulls and instruments forbidden to Englishmen were those viewed by the secular authorities as having to do with secular offices. But, in the fourteenth

⁵⁸Makower, The Constitutional History and the Constitution of the Church of England, p. 237.

⁵⁹Cf. Chapter 2, fn. 13.

century, most of these were recognized as being secular by the churchmen also. This is not to say that there was no debatable ground between the Common Law of England and the canon law of the Church. In fact, it was to insure their dominances in this "no man's land" of legal theory that the State passed anti-papal statutes in the Middle Ages. Be that as it may, no English king before Henry VIII ever thought of disputing the papal sphere of jurisdiction in spiritual matters; only a few English heretics did. As long as the claims of the Common law were respected, it mattered little to the Crown whether so-called spiritual suits were heard before courts Christian within the realm or in Rome.⁶⁰ The fact that the above was indeed the feeling of the Crown of England towards the jurisdiction of courts Christian can be deduced from English and papal records of the time.⁶¹

⁶⁰On the line drawn in England between temporal and spiritual affairs, see Makower, The Constitutional History and the Constitution of the Church of England, sect. 60.

⁶¹According to Waugh, two statements of the recognized principle are to be found in the Yearbook of 4 Henry the Fourth, p. 14.

"In 1412, the prior of B (the name is not given in full) brought a writ of praemunire facias against the prior of N because the latter had resorted to the court of Rome in a dispute between the two about an advowson. In the course of the hearing, counsel for the defense asserted that if a clerk were despoiled of his benefice by another clerk, he could sue a spoliation in court Christian or in the Court of Rome, at his choice; for if a spoliation were sued, the right to the advowson of the benefice would not be at issue, and so the matter would not be temporal or spiritual. The bench held that the argument was not relevant to the case before it, but no one questioned its soundness.

The principle here assumed was affirmed still more clearly in October, 1415 by the royal council. Roger Lansell, clerk, had obtained from Rome citations summoning Nicholas Rycroft, goldsmith to answer in the curia on certain matters which (according to Rycroft) were prejudicial to the Crown and contrary to the laws and customs of the realm, in particular an ordinance of Edward III. Rycroft then obtained a writ of praemunire facias against Lansell

It should be noted that the praemunire statute of 1393 does not apply to all documents prejudicial to the king and the realm, but rather to such of them as are against the king and the realm as is aforesaid,⁶² namely, papal action against churchmen for executing royal mandates and the translation of prelates without their assent or that of the king. No other topic is mentioned. Apart from the actual wording of the statute, there is much evidence in favor of the view that it was intended by those who passed it to serve a strictly limited purpose. In the first place, the praemunire statute of 1393 had the assent of the lords spiritual. Neither in the provisors statutes of 1351 and 1390 nor in the praemunire statute of 1353 is the assent of the clergy overtly claimed.⁶³ The archbishops in the Parliament of 1390, citing a tradition of dissent in such matters protested vehemently against the 1351 and 1390 Statutes of Provisors because they insisted that these two statutes restricted the power of the pope and impeded ecclesiastical liberty.⁶⁴ The English

and five others, said to be accessories, and they were summoned before the king's bench. Lansell however, exhibited the obnoxious bulls to the council, who pronounced that the cause was purely spiritual and that the bulls contained nothing prejudicial to the Crown or contrary to the laws and customs of the realm." Waugh, "The Great Statute of Praemunire," p. 177.

⁶²16. R. 2. st. 1. c. 5.

⁶³Rotuli parliamentorum; ut et petitiones et placita in Parlamento tempore Edwardi r. I ad finem Henrici VII, prepared and edited by order of a committee of the House of Lords, in part by the Rev. John Strachey and the Rev. John Priden, and completed by Edward Upham, F.S.A., 6 vols. (London: Records Commission, 1767-1777), vol. II, p. 285.

⁶⁴Ibid., vol. III, p. 264.

hierarchy did the same thing in 1397. The Statute of 1390, certainly forboding in its intent to ecclesiastical liberty, was just as certainly less substantial than the Statute of 1393. However, if the Statute of 1393 forbade certain things which were prejudicial to the Crown, but at the same time did not restrict the power of the pope nor delimit ecclesiastical liberty, it would seem but a matter of course for the clergy to give its assent.

The Statute of 1390 had so displeased the Roman pontiff that he annulled it along with the Statute of Carlisle and the Statute of 1351. When papal envoys arrived in England in June of 1391, they asked for the repeal of the Statutes of Provisors along with other so-called anti-papal measures such as quare impedit and praemunire facias. King Richard II refused to do away with these two writs, stating that since they were established in Parliament, they could not be rescinded without its consent. Thus, one of the reasons given for the calling of Parliament in the following November was the desirability of reaching some rapprochement between the King and the Pope. Apparently the King was disposed to give in to the papal pressure but his Commons were not. In fact, all they did allow the King was to relax the enforcement of such measures until the next Parliament at which time they (the Commons) could restore the measures to their full power. By the time of the meeting of the next Parliament in January of 1393, the Commons were apparently more prone to compromise--they gave the King the power to modify the statute. At the next Parliament, all action decided upon and taken by the King was to be

reported to the Commons so that they might agree.⁶⁵

It appears that the King, for all practical purposes, suspended the statute of 1390 between November, 1391, and January, 1393,⁶⁶ while, after that date, he (the King) could have abrogated it altogether in an attempt to reach a concordat with the Pope. Thus, it seems unlikely that the Commons would do a complete "about-face" by pressing for an enactment of a new measure even more harsh than the Statute of 1390. It also seems to be equally unlikely that the King would have assented to such an act, especially when it would have meant the abrogation of powers so recently acquired by him. However, if the Statute of 1393 was as limited as I have stated, then it seems to logically follow from the resolution passed by the Commons about provisors and the power given to the King concerning it.⁶⁷

This interpretation seems all the more correct when the effect of the Statute of 1393 on contemporary opinion and the relations between England and the papacy in the decades following the promulgation of the statute are examined. No chronicle of the time gives an accurate account

⁶⁵Bliss, Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland, vol. IV, pp. 278-279.

⁶⁶An examination of the Calendar of Papal Registers and the Calendar of Patent Rolls shows that the King exercised with great moderation the authority entrusted to him, but does not reveal what principle he followed.

⁶⁷John Lingard, A History of England from the First Invasion by the Romans to the Accession of William and Mary in 1688, 8 vols. (London: J. Mawman, 1819-1830), vol. III, p. 347 ff.

of its contents. It should be noted, however, that there is an apparent allusion to the Statute of 1393 in 1407,⁶⁸ when charges are made against Henry IV for enforcing anti-papal statutes made at Winchester in 1393, but an examination of the charges clearly demonstrates that the author of them is referring to the Statute of Provisors enacted at the Parliament of 1390.

Thus, it can be concluded that while the Statute of 1393 dealt with the relations between England and the papacy, the Commons, the clergy, the King, and the general public never ascribed to that statute any legislation as severe and comprehensive as the Statute of Praemunire was afterwards supposed to be.

In the forty years after the Statute of Praemunire of 1393, there was apparently little or no attention paid to the statute by the papacy. The Statute of 1393 appears on the statute rolls of Richard II and it forms the subject for a petition of the bishops and archbishops in 1439⁶⁹ (except for a brief mention in 1434), but between these dates I have not found any evidence of its existence, nor any mention of the statute in official documentation. Although it is rather precarious to base one's conclusion on an argument from silence, nevertheless, the absence of any apparent allusion to the Statute of 1393 in either papal or English official documents for more than forty years after the statute was passed does seem to dispel the notion that it was intended and

⁶⁸James Hamilton Wylie, History of England under Henry IV, 4 vols. (Cambridge: At the University Press, 1884-1898), vol. II, p. 214 ff.

⁶⁹Wilkins, Concilia Magnae Britanniae et Hiberniae, 446-1718, vol. III, p. 534.

understood to be a measure of protection against ecclesiastical infringement on the jurisdictional rights of the Crown. Therefore, the phrasing of the statute, in addition to the circumstances under which it was passed and the general disregard of it for so many years, seem to point to the conclusion that the praemunire statute of 1393 was originally intended for a limited purpose, that is, for the protection of English ecclesiastics from punishment as a result of executing the sentences of secular courts and to prevent the arbitrary translation of members of the English hierarchy.

This being the case, one might ask, why was it necessary to have the Statute of 1393, especially since the Statutes of 1341, 1353, 1365, and 1390 seemed to be sufficient safeguards against the intrusion of papal authority? The answer, in all probability is that the praemunire statute of 1393 should be looked upon as a political manifesto, rather than as a piece of anti-papal legislation.⁷⁰

If the rationale behind the Statute of 1393 was to prohibit the papal incursion, however temporary, on English sovereignty, exactly how

⁷⁰That there was a serious but temporary crisis in the relations between the Crown and the papacy is suggested by a writ, issued while the Winchester Parliament was still sitting, in which the keepers of the passage at the chief ports were ordered to seize all bulls and other documents coming from abroad and to bring them before the council. However, by June 15, this strictness had been relaxed, and the officials concerned were to arrest only such bulls as they deemed prejudicial to the Crown and the realm. Rotuli parliamentorum, vol. III, pp. 300-308.

successful was it? In point of fact, nothing more is heard of attempts by Boniface IX to defeat the sentences of English courts in the manner described in the statute, and the translation of bishops, if not entirely stopped, at least was no longer used as a form of coercion against the English government. Thus, having served its purpose, the statute would naturally fall into disuse.

If, in point of fact, the praemunire statute of 1393 did fall into obscurity, at just what discernible point in time did the lawyers of the Common Law begin to view the phrase "in another court" as meaning within the realm as well as without the realm? The ramifications of both meanings are perhaps by now rather obvious, but for the sake of clarity must be stated. If "in another court" is interpreted in the then traditional narrow construction of meaning without the realm, it would mean a court not adhering to the tenets of the Common Law, such as trial by twelve peers, which was situated outside the geographical boundaries of England; on the other hand, according to the broad interpretation, "in another court" is interpreted as meaning both within and without the realm. According to this latter interpretation, admiralty courts, equity courts, and Christian courts in England would be included. The crux of the problem is obviously one of interpretation. The question to be asked is how, given the background for the two main praemunire statutes (1353 and 1393), can one interpret this construction to be broad unless one is trying to prove the unprovable in order to achieve or stabilize something whose very existence is in jeopardy? The answer, in the opinion of the author, is that the praemunire statutes of 1353 and 1393 were interpreted according to the broad construction first by Henry VIII in order to cow the clergy

into submission and later by Sir Edward Coke in order to secure the supremacy of the Common Law over all others in England. For now, let us examine the faint first beginnings of the "new" interpretation of the praemunire statutes of 1353 and 1393.

For this we must first turn to the records of Convocation from which we find that the chief cause for the calling of Convocation in 1434 is the abuse of the writ praemunire facias which is in restraint of the Church courts within the realm.

The presiding officer, Archbishop Chichele, declared that ecclesiastical jurisdiction through the writs of the king was being disturbed in an inordinate manner. The cause for disturbance are "those writs of praemunire facias, which, until a few years back were current on any matter within the kingdom."⁷¹ Nothing, however, came of the complaints emanating from Convocation in 1434 because a plague had broken out while the Convocation was sitting, thus causing it to adjourn. In spite of the vocalized displeasure of Convocation, nothing else was done. The matter was brought up again in 1439 by Archbishop Chichele in Convocation. This time, the archbishop, as presiding officer, explained that not only has ecclesiastical jurisdiction been restricted and hindered, but has also been enormously damaged. This time, there was no plague and a petition was sent to the Crown. The King received the petition with all consideration but told the Convocation that he would have to take it under advisement with his council at a later date since Christmas was approaching. However, the King promised the archbishop that he would instruct his

⁷¹Wilkins, Concilia Magnae Britanniae et Hiberniae, 446-1718, vol. III, p. 523.

judges not to issue any further writs of praemunire facias without his own and the council's consent until the next Parliament.⁷² When Parliament did meet, the complaints of the clergy in Convocation were not satisfied. In 1447, eight years later, the clergy once again registered their complaint in the form of a petition.⁷³ From that year, the problem apparently diminishes, but the writs of praemunire remained in the background and were very rarely brought into play. In fact, only one case is mentioned by Coke from that time until the reign of Henry VII. If the foregoing seems to lack clarity, one thing is clear and that is, that once the Common Law lawyers took up their position of broad interpretation concerning the praemunire legislation, they would never relinquish it. Sir Edward Coke affirmed this interpretation as a matter of course.

My concern at this point is not with the interpretation of Sir Edward Coke in the seventeenth century. Rather, it is with the words of Archbishop Chichele in 1434 that the aggression complained of was a recent one and had been unknown until a few years back. We can go back to 1429 when Convocation is arranging for some denunciations of recent infringement on ecclesiastical tribunals.⁷⁴ We can go further back to 1426 to see an almost inherent disposition on the part of the Common Law lawyers to the broad interpretation of the praemunire statutes because of the attempts by Martin V to have them abrogated.⁷⁵ Finally, we see a

⁷²Ibid., pp. 533-535.

⁷³Ibid., pp. 555-556.

⁷⁴Ibid., p. 516.

⁷⁵Ibid., pp. 471-486.

suit brought up before the royal courts in 1409.⁷⁶ According to this suit a certain prelate preferred to the see of St. David's sought by virtue of a papal dispensation to retain a prebend in the church of Salisbury. The prelate's right to do this was disputed by the Crown, whose advocates invoked the laws of provisors and praemunire.⁷⁷ The counsel for the prelate did not challenge the possibilities of applying the law, but contested it rather on the basis that it was being applied to the prejudice of his client.⁷⁸ The contention of the defense was in all probability true.⁷⁹ Since the passing of the 1393 Statute of Praemunire, both Church and State had their hands filled with Lollardy.⁸⁰ But in 1409, it seems rather clear that the lawyers of the Common Law have found a most destructive weapon which they will never put down.

Although it is true that there is no recorded instance of the Statute of 1393 being interpreted in the manner which I have suggested

⁷⁶Maitland, Roman Canon Law in the Church of England, p. 69.

⁷⁷While admitting the possibility of such an interpretation, the advocates claimed it was unfair since the statute had never been interpreted in such a manner and, to do so without precedent, was prejudicial to the client. Ibid.

⁷⁸Ibid.

⁷⁹Arthur Ogle, The Canon Law in Medieval England: An Examination of William Lyndwood's "Provinciale," In Reply to the Late Professor F. W. Maitland (1912; reprint ed., New York: Burt Franklin, 1971), p. 175.

⁸⁰Lollardy was a term brought from Belgium and given to the early Protestants (the followers of Wyclif) in the reign of Edward III. The Lollards closely resembled the Puritans of the reign of Elizabeth I. Jowitt, The Dictionary of English Law, p. 1111.

to be correct, it is not too surprising since it is unlikely that much use would be made of the statute until it was interpreted under a broader construction. Also, the original purpose of the statute might well have been forgotten by the time it was rediscovered a generation later. The courts of the Common Law had seldom, if ever, had occasion to use the statute and few of those who were responsible for the enactment of and promulgation of the statute were still alive. Thus, unless the circumstances which surrounded the enactment of the Statute of 1393 were clearly remembered, it might seem highly improbable that a statute, prescribing such drastic penalties, should be exclusively concerned with punishments for ecclesiastics who executed sentences of papal courts to the derogation of the king and the translation of bishops without the King's consent.

Taken as a whole, the total context of the statutes of Edward III and Richard II refer not to jurisdiction in general, but to the particular branch of jurisdiction in dispute between the Common Law courts and the courts of Rome--the laws relating to patronage. The Statute of Provisors of Edward III was, in substance, quite simple: . . . "the bishoprics and benefices had been endowed by the sovereigns and other lay founders, who exercised as such, rights of patronage and presentation."⁸¹

These were valuable temporal rights and as such were within the cognizance of the temporal courts. The Statute of Praemunire of Edward III made provisions concerning what was to be done with the offending "provisor."

The "Great Statute of Praemunire" of Richard II was directed

⁸¹25 E. 3. st. 6.

against two things: 1. Papal excommunications of English prelates who executed the judgments of royal courts in matters of patronage. 2. Papal translations of bishops without their own or the king's consent.

The title under which this ruling may be found is not "The Statute of Praemunire," but rather "Praemunire for Purchasing Bulls from Rome. The Crown of England subject to none." It should also be noted that the wording of the process that was to be taken against anyone who violated this statute was as follows: . . . "on that process be made against them by praemunire facias, in manner as it is ordained in other statutes of provisors."⁸²

Thus, in actuality, there was no distinctive offense of praemunire--the offense was that of a provisor.

Henry VIII based his Statute of Appeals in the twenty-fourth year of his reign on 16 R. 2. c. 5., which was directed to papal action against churchmen for executing royal mandates and the translation of prelates without their assent or that of the king. The author does not question the logic of the great English monarch in doing so. What he does question is the fact that Henry VIII dropped two key phrases in the 1393 statute in order to justify his actions in the twenty-fourth year of his reign.

The penalties of the statute of 16 R. 2.--outlawry, forfeiture, and imprisonment--are enjoined against

⁸²16 R. 2. c. 5.

any who pursue or purchase or cause to be pursued or purchased in the court of Rome or elsewhere, by any such translations, processes and sentences of excommunication, bulls, instruments or any other things whatsoever which touch the King, against him, his crown and his regality, or his realm as is aforesaid.

However, in the Statute of Appeals in the 24 H.8., the wording is paraphrased, if not radically altered, to read--

the same pains, penalties and forfeitures ordained and provided by the Statute of provisor and Praemunire made in the reign of King Richard II, against such an attempt to procure or make provision to the See of Rome or elsewhere, for any thing or things, to the derogation, or contrary to the prerogative or jurisdiction of the Crown and dignity of this realm.

It is to be noted that the two phrases--"any such" and "as is aforesaid"--have been omitted in the 1533 Statute of Appeals.⁸³ By this omission, the statute of 16 R. 2., which was originally formulated to limit papal authority on two counts, was altered to remove any limit to the exercise of royal authority upon which the king and judges, or the king and Parliament, might agree.

It is to be further noted that the statute of 16 R. 2. is referred to as the "Statute of provisor and Praemunire," with the emphasis on praemunire, since it was capitalized. However, this particular statute of Richard II was in actuality that of provisors with the ensuing penalty of praemunire which was not an offense in itself. Thus, praemunire, as a developed political weapon, was a Tudor innovation; more specifically, it was a brainchild of Henry VIII and his counselors.

Now we know when and why the wording of the "Great Statute of Praemunire" was altered; it only remains to examine Sir Edward Coke's view of

⁸³Ogle, The Canon Law in Medieval England, pp. 228-229.

praemunire legislation. Sir Edward Coke is guilty of the same omission as Henry VIII. Neither man quoted the statute of 16 R. 2. accurately. Henry VIII was purposely inaccurate in order to insure the total submission of the clergy. But what possible reason could Sir Edward Coke have in misquoting the statute of 16 R. 2. in his Third Institutes? The answer is that Coke did not refer directly to the statute of 16 R.2., but rather to the Statute in Restraint of Appeals in 24 H.8. The error of Coke in this regard is apparently one of inaccuracy in his research. For, as every law student is aware, when quoting from a statute you must use it directly and not depend on a later commentary or a later statute which is reputed to be based on it. But why would the leading legal mind of the seventeenth century fall prey to such a pedestrian error?

The answer to this question can perhaps best be answered if we first examine Sir Edward Coke's interpretation in his Third Institutes of the 1353 Statute of Praemunire, which according to Coke is the basis of the 1393 Statute of Praemunire.⁸⁴ According to Coke, there were three reasons for the 1353 Statute of Praemunire:

"First, that the king's subjects have been drawn out of the realm, to answer of things, whereof the cognisance pertaineth to the king's court; secondly, of things whereof judgements have been given in the king's courts; and thirdly, that after judgements given in the king's courts of the common law, of matters determinable by the common law, suits were commenced in other courts, within the realm, to defeat or impeach those judgements."

"They are called (other courts) either because they proceed by the rules of other lawes, as by the canon or civill law, & c. or by other trials, then the common law doth warrant. For the trial warranted by the law of England for matters of fact, is

⁸⁴Coke, Third Institutes, p. 119.

by verdict of twelve men before the judges of the common law of matters pertaining to the common law; and not upon examination of witnesses in any court of equity."

According to Sir Edward Coke's interpretation of the 1393 Statute of Praemunire, "the effect of the statute of 16 R.2. is, if any pursue or cause to be pursued in the court of Rome or elsewhere, any thing which toucheth the king, against him, his crowne and regality, or his realme, their notaries, procurators, & c. & fautors, & c. shall be out of the king's protection."⁸⁵

What we are concerned with here are the phrases "in other courts" and "or elsewhere". Sir Edward Coke is probably the first legal commentator, and most certainly the first legal commentator of such note, to interpret these phrases as not only meaning ecclesiastical tribunals within or without the realm but also any legal body which does not adhere to the procedures of the Common Law.⁸⁶ It has been demonstrated earlier as to what was the background leading to and the original intent of the Statutes of Praemunire in 1353 and 1393. Clearly the interpretation of the author and Sir Edward Coke seem at variance. This is especially peculiar since they are both examining the Statutes of the Realm and their precedents. One major problem that historians continually face is that, no matter how much they research the causation of past events and the consequences of these events, they can never place themselves at the time of the events. This is as true for Sir Edward Coke as it is for the

⁸⁵Ibid., pp. 119-120.

⁸⁶Ibid., p. 120.

author, but with one important difference. Sir Edward Coke was writing at this point in the seventeenth century as the "Champion of the Common Law." It has already been demonstrated that he (Coke) was not above misquoting or paraphrasing to the advantage of the cause he was espousing. What could be more natural than to interpret the phrases "in other courts" and "or elsewhere" to mean courts within or without the realm just as long as they were not courts of the Common Law if one were the "Champion of the Common Law"? Natural, perhaps; but logical, most assuredly not. The time of the Statutes of 1353 and 1393 was one in which England was involved in the Hundred Years' War with France. It was also the time of the Avignon Papacy and the Great Western Schism. Taking into account the anti-French feeling and the growing spurt of nationalism in England, in addition to the events preceding the Statutes of 1353 and 1393 and the litigation which followed them, it would be more logical to conclude that, if these statutes were directed against any courts, it would be the spiritual courts. There is absolutely no documentation to substantiate Coke's claims that his interpretation is based on usage from time "in memoriam".

What is true, is that some time after the promulgation of these statutes, Common Law lawyers saw it to their advantage to interpret "in other courts" and "or elsewhere" as also meaning all spiritual and some temporal courts within the realm. This interpretation, it should be pointed out, is not solely that of the author. It originated in William Blackstone's Commentaries on the Laws of England, Vol. IV,

Of Public Wrongs.⁸⁷

The answer to the question as to why Sir Edward Coke chose such an interpretation for the praemunire statutes of 1353 and 1393 has already been answered. The reasons why he chose to do so will be the subject of the next chapter.

⁸⁷"A learned writer, . . . [Sir John Davis], is therefore greatly mistaken, when he says, that in Henry the Sixth's time the Archbishop of Canterbury and other bishops offered to the king a large supply, if he would consent that all laws against provisors, and especially the statute 16 Rich. II, might be repealed; but that this motion was rejected. This account is incorrect in all its branches. For, first, the application, which he probably means, was made not by the bishops only, but by the unanimous consent of a provincial synod, assembled in 1439, 18 Hen. VI., that very synod which at the same time refused to confirm and allow a papal bull, which then was laid before them. Next, the purport of it was not to procure a repeal of the statutes against provisors, or that of Richard II. in particular; but to request that the penalties thereof, which by a forced construction [emphasis added] were applied to all that sued in the spiritual, and even in many temporal, courts of this realm, might be turned against the proper objects only; those who appealed to Rome, or to any foreign jurisdictions: the tenor of the petition being, 'that those penalties should be taken to extend only to those that commenced any suits or procured any writs or public instruments at Rome or elsewhere out of England; and that no one should be prosecuted upon that statute for any suit in the spiritual courts or lay jurisdictions of this kingdom.' Lastly, the motion was so far from being rejected, that the king promised to recommend it to the next parliament, and in the mean time that no one should be molested upon this account. And the clergy were so satisfied with their success, that they granted to the king a whole tenth upon this occasion." Blackstone, Of Public Wrongs, p. 115.

CHAPTER V

THE RATIONALE OF SIR EDWARD COKE'S BEHAVIOR

In an attempt to gain greater depth in understanding Sir Edward Coke, I have consulted Dr. Sheldon Kirshner,¹ a psychologist familiar by training with the history of Coke and his times, for an attempted construction of a description of the psychological functioning of Coke and how this functioning may have related to the playing out of some of his life events, in particular, his interpretation of the law.

Sir Edward Coke's personality is best described as authoritarian,² highly ego-centric,³ impulsive,⁴ and characterized by great energy. He

¹Sheldon Kirshner studied at John Marshall Law School from 1963 to 1966 and was an editor of the Law Review in 1965-1966. He received his Bachelor of Arts in Psychology from Southern Illinois University in 1967. He received his Master of Science in Psychology in 1969 from the University of Wisconsin--Milwaukee and his Ph.D. in Psychology from the same school in 1970.

Although the research procedures and conclusions found in this chapter are solely attributable to the author, a great debt of gratitude is owed to Dr. Sheldon G. Kirshner for his advice on the proper use of psychological terminology.

²Authoritarian: "an individual who demands unquestioning obedience and submission. The authoritarian character detests sign of weakness, is rigid and intolerant of ambiguity. The complex of personality traits characteristic of those who have great difficulty considering the views of others and who often desire complete obedience and subservience from others." J. R. Chaplin, Dictionary of Psychology (New York: Dell Publishing Company, 1968) p. 45.

³Egocentric: "concerned or preoccupied with the self. The world revolves around the individual and his personality." Ibid., p. 154.

⁴Impulsive: "characterizing activity which is engaged in without due reflection or which cannot be suppressed; given to immediate activity without judging the quality or appropriateness of the activity." Ibid., p. 233.

appears to have been a neurotic,⁵ shallow, rigid man, highly acquisitive, with considerable will, a good sense of self-preservation, and probably superior intelligence. He was not a man possessing what we would call personal courage, but rather one who preferred to hide from those unpleasant realities from which one may hide occasionally.⁶ From the standpoint of trying to understand the psychological process which affected the outcome of some of Sir Edward Coke's important life events, one needs to obtain an understanding of how his various personality characteristics interacted, sometimes in complement, sometimes not.

Several characteristic qualities will now be detailed, followed by an analysis of certain prominent events in the life of Sir Edward Coke, in order to help provide a clearer picture of the workings of his personality and how this personality affected his judgment in the interpretation of the law.

Acquisition was a primary motive in the life of Sir Edward Coke. Acquisition of positions from a professional standpoint⁷ and acquisition of wealth from a material standpoint⁸ was a lifetime motive which was

⁵Neurotic: "relatively high level of reality functioning with great amount of psychic energy being required to deal with life's problems; combination of traits which are organized as a defense against feelings of inferiority." Ibid., p. 32.

⁶Interview with Dr. Sheldon Kirshner in December of 1972.

⁷Cf. Chapter 1.

⁸At the age of thirty, Edward Coke married a fortune that at the present valuation would amount to more than half a million dollars. When his first wife died, Coke, though then turning fifty, immediately sought the hand of the widow of Christopher Hatton, the nephew of the Lord Chancellor (Burghley), then less than twenty years of age. He married her in less than six months after his wife's death, receiving with her the greatest fortune in England, which, on the basis of present value

never laid to rest or satisfied. This was reflected in Coke's ongoing attempt to move up the ladder of professional success, and in his acquisition of a second wife who possessed a great fortune, in spite of the fact that he was already a wealthy man by his first wife.⁹

Another salient characteristic of Coke's personality was his authoritarian nature. Authoritarian people tend to need to have their own way; they are self-righteous and tend to blame others rather than themselves as the source of arising problems. According to Dr. Kirshner, rigidity and authoritarianism often go together, especially after one has taken a stand or a position.¹⁰ There are several events which now follow, which demonstrate the interplay of these two forces in his personality.

The Earl of Birkenhead states that, "Time and time again, he (Coke) gives a proposition, luminous and exact accompanied by a wealth of authority, not always relevant but always in pari materia and his argument

would be more than twenty million dollars. Walter Clark, LL.D., "Coke, Blackstone and the Common Law," Case and Comment, 24 (1918): 864.

⁹What means Coke used to attain the marriage are not clearly known, but that Lady Hatton was against the marriage seems apparent by her refusal of a public ceremony and by her refusal even to assume Coke's name. The marriage, of course, turned out unhappily. It is said that the great injustice of the English law against married women is due to the rulings made by the judges and certainly not to any law of England. Sir Edward Coke, sulking over the wounds he received from the tongue of Lady Hatton, wrote down, as the Common Law, provisions which married women had to observe in subjection to their husbands. The English law stands almost alone in its harsh discrimination against women: for until the changes as to ownership by married women of their own property, they were, in reality, slaves. Even the Moslems, bad as their social customs are in regard to women, always recognized their right to hold property. Clark, "Coke, Blackstone and the Common Law," p. 868.

¹⁰Interview with Dr. Sheldon G. Kirshner in February of 1973.

leading up to his conclusion has halts and pauses and may even fail to support it. Sometimes he even yielded to the temptation of misquoting authorities when they clashed with his views.¹¹ The point is that Sir Edward Coke would use any means possible to prove that he was right and that those who opposed him were wrong.

Sir Edward Coke himself provides us with further examples of his authoritarian nature. In this we may well take note of the tale related by Coke that one of the counts of Cardinal Wolsey's indictment was a charge that he had plotted to subvert the Common Law and substitute for it the civil and canon law.¹² In regard to Coke, it not only gives us an excellent illustration of his lack of historical method, but also of his authoritarian nature.

The facts are as follows: the words which Coke cites do not occur in either of the indictments of Wolsey in the 21 Henry 8, Michaelmas term. These indictments refer only to offenses against the Statute of Provisors. They do occur, as he says in his Third Institutes, on the coram rege roll, Trinity term, 23 Henry 8.¹³ But this is an indictment, not of Wolsey, but of Dr. Peter Lygham, clerk, the archbishop's official in the court of arches, for sending a case concerning tithes to be tried before Wolsey's legatine court. It appears that Dr. Lygham was indicted by the King's orders, the real cause of his offense being his opposition

¹¹Frederick Edwin Smith, Earl of Birkenhead, Fourteen English Judges (London: Cassell and Co., Ltd., 1926), p. 44.

¹²Coke, Second Institutes, vol. II, pp. 626-662; Third Institutes, p. 208.

¹³Coke, Third Institutes, p. 208.

to the King's designs in Convocation. The indictment is a very long one, and, after reciting the provisions of the Statute of Praemunire, it goes on to assert that the late Cardinal Archbishop Thomas Wolsey, now deceased, had assumed a jurisdiction in breach of the Statute of Praemunire.

Sir Edward Coke never ceased to be an advocate and was all through his career an enthusiastic and somewhat unscrupulous proponent of the excellence of the Common Law, and of his claims that it was the supreme law of the State. Obviously, because he was its champion, his authoritarian nature would not allow him to brook any opposition to it. He had, no doubt, read the indictment of Dr. Peter Lygham of 23 Henry 8, in which this accusation was made against Cardinal Wolsey, and the words stuck in his mind. He had probably also read the indictment of Wolsey in the 21 Henry 8. When he was writing his Institutes, Coke evidently "confused" these indictments of 21 Henry 8, which were really indictments of Wolsey, with the indictment of the 23 Henry 8, which was not and could not be an indictment of Wolsey, since he was dead. He then proceeded to give to the words of the indictment of the 23 Henry 8 a significance which their context shows they were never meant to have, using them to illustrate that Cardinal Wolsey hated both Parliament and the Common Law.¹⁴ For a man like Coke, what better proof of the supremacy of the Parliament and the Common Law could one have than the hatred of both by the "archvillain" of Henry VIII.

Sir Edward Coke was always the lawyer, always the unrelenting advocate who always fought on the side of right, (even when he was a

Ibid.

judge), and in the closing years of his life a keen politician. As a lawyer, a judge, and a politician, Coke was constantly attempting not only to prove a point, but more importantly his point. In some cases, he would, therefore, find it expedient to enter the domain of historians for his own special purposes. Sir Edward Coke had little or no conception of history for its own sake and lacked the will or power of criticizing the historical sources which he used, especially if they proved his point.

A very cursory acquaintance with the writings of Sir Edward Coke should illustrate that he approached both law and history with a singleness of purpose, not to prove that someone or something was right and just, but that he was right and therefore just. This was his raison d'etre. All through his life, Sir Edward Coke never ceased to be an advocate of legal doctrines or political causes with which he was intimately involved. Whether he was reporting a case, arguing for the supremacy of the Common Law, or championing the rights of Parliament, he did it with all the energy at his disposal, which, demonstrated by some of the projects he became involved in, necessitated an almost super-human effort. The result was that he had a decided if not unbending position on the subject. It is highly improbable that one could find in all of Coke's writings a phrase in which he leaves any uncertainty. This, as part and parcel of his authoritarian nature, led him into two major shortcomings in his writings.

In the first instance, the many causes which were advocated by Sir Edward Coke in his long and distinguished career apparently were not

always consistent with one another.¹⁵ The causes may not have been consistent, but Coke, was, since he gave no thought to one cause being inconsistent with another. His thought was entirely devoted to the cause which he was espousing at the time. It was of no importance to Coke that what he was espousing then was in contradiction to what he had previously espoused. The main point was that what he was presently championing must be right because he was the champion. And as its champion, Coke, because of his authoritarian and rigid nature, did all in his power to put down the opposition.

For example, when he moved from attorney-general to chief justice of the common pleas to chief justice of the king's bench, the authority which he represented was always the authority to be championed at the time he was its representative, at least as far as he was concerned. The exception to be noted here is when Sir Edward Coke, as chief justice of the King's bench, opposed King James, in all probability due to the fact that the King was under the influence of Coke's archrival,

¹⁵The dicta in Bonham's Case, on the power of the Common Law to override Acts of Parliament, are not very consistent with the view which he expresses elsewhere about the supremacy of Parliament. The power of Parliament is "so transcendent and absolute that it cannot be confused either for causes or persons within any bounds." Coke, Fourth Institutes, p. 36. "Acts against the power of subsequent Parliaments bind not." Ibid., p. 37.

However, "in the case of Non Obstante 12 Co. Rep. 18, he said, 'No act can bind the king from any prerogative which is sole and inseparable to his person, but that he may dispense with it by a non obstante; as a sovereign power to command any of his subjects to serve him for the public weal; and this solely and inseparably is annexed to his person; and this Royal power cannot be restrained by any Act of Parliament, neither in thesi nor in hypothesi, but that the king by his royal prerogative may dispense with it'." Holdsworth, A History of the English Law, vol. IV, p. 205.

Sir Francis Bacon, who had been not only his main adversary for most of the major offices which he had held, but who also had contested Coke for the hand of Lady Hatton. Even after Coke's marriage to Lady Hatton, had served as legal advisor for Lady Hatton in her continual squabbles with her husband.¹⁶

In the second place, Coke's penchant for authoritarianism tended to make him very uncritical in the use of authorities and even led him to misrepresent their intent.¹⁷ Despite his intense concern with history, this most unhistorically-minded of men was no scholar.¹⁸ He accepted the legends about the pre-conquest golden age with naive credulity, being satisfied for example that the Modus Tenendi Parliamentum dated from the Conquest and reliably described the method of holding Parliament in Saxon times. Coke also believed that the highly imaginative Mirror of Justices was an accurate account of Anglo-Saxon law and institutions.¹⁹ The definite statements made in the Mirror of Justices strongly appealed to a man like Coke. They confirmed all his pre-conceived notions of the antiquity of the Common Law. They told him that behind the meager statements of the Anglo-Saxon codes and early Norman customs, there existed both the Parliament and the Common Law with which he was familiar.²⁰ They proved to his mind the theory which he wished to

¹⁶Birkenhead, Fourteen English Judges, p. 29.

¹⁷Spedding, The Letters and Life of Francis Bacon, vol. V, pp.229.

¹⁸Samuel E. Thorne, Sir Edward Coke, 1552-1634, Selden Society Lecture, 17 March, 1952 (London: Bernard Quaritch, 1957), p. 13.

¹⁹Coke, Reports, pt. IX, preface, pp. i-ix.

²⁰"This book in effect appeareth the whole frame of the ancient

believe: that the Common Law owed little or nothing to the Conqueror and his successors.²¹

This readiness to accept anything in support of the view he was defending made it easy for him to misrepresent his authorities by reading into them the sense which supported the conclusion which he wished to draw. We have seen that he twice repeated a statement that one of the counts of an indictment of Wolsey contained an accusation that he had attempted to subvert the Common Law, the facts being that the indictment was not of Wolsey at all. The errors into which his endeavors to withdraw business from the admiralty to the courts of the Common Law are known, since they were exposed by William Prynne in the seventeenth century.²²

In interpreting the phrase "in another court" in the 1353 Statute

common laws of the realm . . . This grave and learned author will show as in this Mirror the great antiquity of the said courts of the common law, and particularly of the High Court of Parliament ever since the time of King Arthur, who reigned about the year of our Lord, 516." Coke, Reports, pt. IX, preface, pp. ib, vb, vi.

²¹"To speak what we think, we would derive from the Conqueror as little as we could." Coke, Third Institutes, preface.

²²William Prynne, Brief Animadversion on, Amendments of, and Additional Explanatory Records to, the Fourth Part of the Institutes of the Lawes of England; Concerning the Jurisdiction of Courts, Compiled by the Late Famous Lawyer Sir Edward Coke Knight, (Chief Justice of both Benches) in His Lifetime, But Published and Reprinted (with Some Disadvantages) Since His Death (London Thomas Ratcliffe, and Thomas Daniel, 1669), pp. 553-554, 558.

of Praemunire and the phrase "or elsewhere" in the 1353 Statute of Praemunire, Coke not only chose to disregard the syntax of chapter one of the praemunire statute of 1353, but also the history of Anglo-papal relations in the fourteenth century. Was this simply an honest mistake? Perhaps not, Sir Edward Coke's disregard in this instance perfectly suited the cause he was championing at the time, that is, the supremacy of the Common Law. His interpretation was not that of a legal researcher much less that of a legal historian. His interpretation was that of a ruthless advocate who sought out and found some loosely constructed phrases in a statute which could be molded to suit the purpose of this particular period of his life as the "Champion of the Common Law."

In his interpretation of the 1393 Statute of Praemunire, Sir Edward Coke was at fault for not quoting the Statute of 16 R2. accurately in his Third Institutes. Instead of referring to the Statute itself, he chose to refer to the Statute in Restraint of Appeals of 24 Henry 8 in which Henry VIII deliberately misquoted the Statute of 16 R.2. in order to cow the clergy into submission. This certainly does not correspond to the usual method of Coke in going back in time as far as possible to prove his point. Normally, he drew his precedents and based his conclusions on very old sources; the older the source, he thought, the purer the law. He naturally presented the law of his own day as the logical outcome of the law laid down in the older sources. According to Coke, the newer decisions had not changed the law, they had merely developed or explained the truth to be found concealed in the oldest authorities. Sir Edward Coke was obviously familiar with the wording of the 1393 Statute of Praemunire since he was acknowledged by all as the master of medieval

law and precedent. However, Coke, always the advocate, surely realized at this time that going back to the Statute itself would not be appropriate to his personality or his needs. Instead, he deliberately chose the wording of the Statute of 16 R.2. as expounded by Henry VIII in his Statute in Restraint of Appeals in the 24 Henry 8.

Because of his rigid, authoritarian, and impulsive nature, Sir Edward Coke had a confrontation with King James I (1603-1625) over the authority of James in the area of the right of prohibitions.²³ He helplessly pursued the line until it became apparent that another moment would have put him beyond redemption; his instinct for selfpreservation then rushed to the fore and pressed him into a position of extreme and obsequious self-humiliation. In this disagreement with James, Coke not only took a position contrary to that of the King, but offensively and categorically denied to the King the legitimacy of his position. He pursued this until James finally became enraged and Coke, then realizing impending doom, began "grovelling and begging for mercy."²⁴

²³In 1607, when Archbishop Bancroft renewed his protest against prohibitions, the king called the judges together, and told them that, as he was informed, he might take what causes he pleased from the judges, who were but his delegates, and determine them himself. Coke, with the clear consent of all of his colleagues, told them that it was not law. "Nothing," it has been said, "can be more pedantic, nothing more artificial, nothing more unhistorical than reasoning" which Coke employed. But no achievement of sound argument, no stroke of enlightened statesmanship, ever established a rule more essential to the very existence of the constitution than the principle enforced by the obstinancy and the fallacies of the great chief justice." Dicey, Introduction to the Study of the Law of the Constitution, p. 18.

²⁴In February, 1609, another angry session took place at Whitehall between the king and Coke, who with some other judges had been summoned to discuss the question of prohibitions, when the king lost his temper and Coke is said to have fallen grovelling on the ground begging for mercy. Gardiner, History of England from the Accession of James I to

Another series of events which illustrate Coke's impulsive nature was when his daughter by Lady Hatton attempted to flee, with her mother's connivance, from a marriage to a man three times her age. Sir Edward Coke, with an armed retinue, sword in hand, and pistol at his side, rode to the house where his daughter had fled, seized her, and brought her home. Finally, there is Coke's well publicized conduct in the Essex,²⁵ Raleigh,²⁶ and Gunpowder Plot trials.²⁷ In the trials of Essex and Raleigh, owing to the defendants' friendship with his archrival, Sir Francis Bacon, Coke, with a spirit of rancor, methodically destroyed them. In the Gunpowder Plot trial, Coke, in a spirit of religious intolerance, used every means at his disposal, whether legal or extra-legal, to destroy the Roman Catholic defendants.

Sir Edward Coke was a narrow, shallow person. His interests were few,²⁸ his shallowness reflected itself in his inability to relate well to people.²⁹ This inability to relate well to people flowed harmoniously with his lack of personal courage in looking closely at personally painful areas. The result was his failure to comprehend the problems of

the Outbreak of the Civil War, 1603-1642, vol. II, p. 41.

²⁵Cobbett, Complete Collection of State Trials, vol. I, pp. 1334-1358.

²⁶Ibid., vol. II, pp. 2-35.

²⁷Ibid., vol. II, pp. 166-194.

²⁸Birkenhead, Fourteen English Judges, p. 50.

²⁹He lived rather with his books than with men."

marrying a woman who disliked him from the beginning, and attempting to marry off his daughter against her wishes.³⁰ Had he thought about his daughter's feelings, he might have considered the possibility of her eloping with another man (which she did), or that his wife, who was already quite public in her dislike for Coke, would use all her influence to humiliate him in his venture, (which she did). What saved Coke in most of these situations was his motivation and will; tapping his source of great energy, he argued his way through difficult situations. His inability to relate further reflected itself in his extreme harshness toward prisoners,³¹ with whom he could neither identify nor relate.

It was his great energy, possibly an outlet for his neurotic interaction with the world, which provided the basis for a second major theme in his life. He was a man of action. He was more for process or the act than content. And few, if any, have ever described him as a thoughtful or logical man or in any way pensive. As a judge, he often engaged, to

³⁰When his only daughter by Lady Hatton was fourteen years of age, Coke married her against her will to a suitor three times her age.

³¹As a crown lawyer (attorney-general) his treatment of the accused was marked by more than the harshness and violence common in his time. Among other cases, his brutality towards Sir Walter Raleigh will be more lastingly remembered against him owing to the fame of the reactions. While Raleigh defended himself with the calmest dignity and self-possession, Coke used the bitterest invective and brutally addressed the defendant, as if he had been a servant, in the phrase long remembered for its insolence and utter injustice: "Thou hast an English face, but a Spanish heart." Coke was not only brutal as attorney general, but when a judge on the bench, he was a fully brutal towards the defendants. When a certain Everhard Digby asked Edward Coke for moderations, he replied that he must not expect the king to honor him in the manner of his death, but that he was rather to admire the great moderation and mercy of the king, in that, for so exorbitant a crime, no new torture answerable thereto was devised to be inflicted upon him, and that as to his wife and children it was said in the Psalms, "Let his wife be a widow and his children be vagabonds." Clark, "Coke, Blackstone and the Common Law," pp. 864-868.

the level of impropriety, in the role of an advocate.³² As to his thoughtful nature, the content and the logic of his Institutes is described as a terrible tumble of faults.³³ This interest in process, rather than content, coupled with his rigid authoritarian nature, may well have led him with ease to misquoting or disregarding the authorities in order not to have his position denied.

It is the combination of all of the foregoing personality characteristics working in flow and at times against each other, with an overlay of considerable intellectual power, which may well have provided Sir Edward Coke with the opportunity to interact at times in the ways that he did.

A final point worth mentioning is his typically neurotic quality which necessitated the organization of his traits as a defense against feelings of inferiority. Examples of this already cited are his continual acquisition of power and wealth, his incessant conflicts with Sir Francis Bacon, whether it be for the hand of Lady Hatton or another office, and his conflicts with James I.

From the foregoing expositions it appears that Coke, at times, as concerns his legal interpretations, was not so much "incorrect" on the basis of honest ignorance, but rather "incorrect" due to the characteristics of his personality which dictated that his position and analysis, rather than the historical and legal context of the case, be the

³²Birkenhead, Fourteen English Judges, p. 44; Holdsworth, vol. V, A History of English Law, p. 471.

³³Birkenhead, Fourteen English Judges, p. 44.

determining factors.

It is contended by the author that this tendency was responsible for Coke's interpretations of law wherever and whenever the cause that he was currently espousing faced the possibility of being called into question or was questioned. And this tendency was part and parcel of his authoritarian and rigid nature, which not only demanded complete obedience and subservience from others, but which caused great difficulty in even considering the views of others. Sir Edward Coke was the eternal advocate and therefore often allowed himself to be carried away by the argument he was urging at the moment.

From the foregoing evidence, it strongly appears that Sir Edward Coke may be guilty of the charge of inconsistency if not outright chicanery in his interpretation of the law. As attorney-general in the latter part of the reign of Elizabeth I he fought for the prerogative of the Crown. As a judge, he fought for the independence of the Common Law courts, as against the King as the interpreter of statutes as against Parliament, so that they might be brought into conformity with the Common Law. And finally, at the twilight of his long and distinguished career, he advocated the supremacy of Parliament.

The reasons for Sir Edward Coke's inconsistencies have been illustrated in the above sections. For Coke's sake, perhaps, history views the end result of a man's accomplishments in relation to their benefit to others, and rarely examines the means by which those accomplishments were attained.

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APPENDIX A

CONSTITUTIONS OF CLARENDON (1164)

Chapter I

If a controversy comes up between laymen or between laymen and clerics, or between clerics, concerning advowson or presentation of churches, it shall be treated or closed in the court of the lord king.

Chapter II

Churches in the fee of the lord king cannot be given in perpetuity without his assent or permission.

Chapter III

Clerics charged and accused of anything, being summoned by a justice to the king, shall come to his court, to answer there for what it seems to the king's court he should respond to there; and in the ecclesiastical court for what it appear he should respond to there; in such a way that the king's justice shall send to the court of the holy church to see in what manner the matter will be treated there. And if the cleric shall be convicted or shall confess, the church ought not to examine him as for the remainder.

Chapter IV

It is not lawful for archbishops, bishops, and persons of the kingdom to leave the kingdom without the permission of the lord king. And if they go out, if it pleases the lord king, they shall give assurance that neither in going, nor in staying, nor in returning will they seek the

hurt or harm of king or kingdom.

Chapter V

The excommunicated should not give a pledge to continue, nor take an oath, but only a pledge and surety of remaining in the judgment of the church so that they may be absolved.

Chapter VI

Laymen shall not be accused unless by true and lawful accusers and witnesses in the presence of the bishop, in such a way that the arch-deacon does not lose his right, nor anything which he ought to have from it. And if those who are complained of are such that no one wishes or dares to accuse them, the sheriff, being requested by the bishop, shall cause twelve lawful men of the neighborhood or the town to swear in the presence of the bishop that they will discover the truth in the matter, according to their knowledge.

Chapter VII

No man who is tenant-in-chief of the king nor any of the ministers on his demesne shall be excommunicated, nor shall the lands of any of them be placed under interdict, unless first the lord king, if he is in the country, or his justicar if he is outside the kingdom, agrees that justice shall be done to that man: and in such a way that what pertains to the king's court shall be terminated there; and with regard to that which belongs to the ecclesiastical court, it shall be sent thither in order that it may be handled there.

Chapter VIII

Concerning appeals, if they should arise, they should go from the archdeacon to the bishop, from the bishop to the archbishop. And if the archbishop fails to deliver justice, they must come finally to the lord king, in order that by his command the argument may be ended in the court of the archbishop, thus it must not proceed further without the assent of the lord king.

Chapter IX

If a quarrel arises between a cleric and a layman or between a layman and a cleric concerning any tenement which the cleric wants to take as free alms, but the layman as a lay fee: let it be decided by an investigation of twelve men through the judgment of the chief justicar of the king, in the presence of the justicar himself, whether the tenement belongs to free alms or to lay fee. And if it is recognized as belonging to free alms the pleading will be in the ecclesiastical court, but if to the lay fee, unless both call to the same bishop or baron, the pleading will be in the king's court. But if, for that fee, both call to the same bishop or baron, the pleading shall be in his court; in such a way that, because of the recognition that was made, he who first was seised shall not lose his seising, until the case has been proven for the plea.

Chapter X

Anyone in a city or castle or bourough or demesne manor of the lord king, if he be summoned by the archdeacon or the bishop for some crime for which he ought to answer to them, and he is unwilling to give satisfaction to their summons, may quite permissibly be put under interdict; but he ought

not to be excommunicated until the chief minister of the lord king of that town is summoned in order to compel him by law to come to give satisfaction. And if the minister of the king fails in this matter, he himself shall be at the mercy of the lord king, and the bishop can thereafter restrain the accused by ecclesiastical justice.

Chapter XI

Archbishops, bishops, and all persons of the kingdom who hold from the king in chief have their property of the lord king as a barony, and answer for them to the justices and ministers of the king, and comply with and perform all the royal customs and duties; and like the other barons they ought to be present with the barons at the judgments of the court of the lord king, until it comes to a judgment leading to the loss of limb or life.

Chapter XII

When an archbishopric, bishopric, abbey or priory in the gift of the king is vacant, it ought to be in his hands; and he will thence receive all that come from it, just as the demesne ones. And when it has come to providing for the church, the lord king should summon the more powerful persons of the church and the election ought to take place in the lord king's own chapel with the assent of the lord king and the counsel of the persons of the kingdom whom he has summoned for this purpose. And there, before he is consecrated, the person elected shall do homage and fealty to the lord king as his liege lord, for his life and limbs and his earthly honor, saving his order.

Chapter XIII

If any of the magnates of the kingdom have prevented an archbishop or bishop or archdeacon from doing justice to himself or his men, the lord king should do justice to them. And if by chance anyone has prevented the lord king his justice, the archbishop, bishops and archdeacons ought to bring him to justice in order that he might make amends to the lord king.

Chapter XIV

Chattels of those in forfeiture of the king may not be detained in a church or churchyard, contrary to the king's justice, because they belong to the king, whether they are found in the churches or outside them.

Chapter XV

Pleas concerning debts which are owed either with or without security being placed are in the king's justice.

Chapter XVI

The sons of peasants may not be ordained without the consent of the lord on whose land they are known to have been born.

APPENDIX B

CIRCUMSPECTE AGATIS (1285)

The king to such and such judges, greeting. See that ye act circum-
spectly in the matter touching the Bishop of Norwich and his clergy, in
not punishing them if they shall hold pleas in the Court Christian concern-
ing those things which are merely spiritual, to wit:--concerning correc-
tions which prelates inflict for deadly sin, to wit, for fornication,
adultery, and such like, for which, sometimes corporal punishment is
inflicted, and sometimes pecuniary, especially if a freeman be convicted
of such things.

The foregoing is the writ, and, apparently, a distinct document from what
follows, which is a series of questions submitted to the king, with his
answers thereto.

Also if a prelate impose a penalty for not enclosing a churchyard, leaving
the Church uncovered or without proper ornament, in which cases no other
than a pecuniary fine can be inflicted.

Also if a rector demand the greater or lesser tithes, provided the fourth
part of any Church be not demanded.

Also if a rector demand a mortuary in places where a mortuary has been
usually given.

Also if a prelate of any Church demand a pension from the rector as due
to him:--all such demands are to be made in the ecclesiastical court.

Concerning laying violent hands on a clerk, and in case of defamation, it

has been granted formerly that pleas thereof may be held in the Court Christian, provided money be not demanded; but proceedings may be taken for correction of sin; and likewise for breach of faith. In all these cases, the ecclesiastical judge has to be taken into cognizance, the king's prohibition notwithstanding, although it be put forward.

Wherefore laymen generally obtain a prohibition for tithes, oblations, mortuaries, redemptions of penances, laying violent hands on a clerk or a lay-brother, and in the case of defamation, in which cases proceedings are taken to exact canonical punishment.

The lord the king made answer to these articles, that in tithes, obventions, oblation, and mortuaries, when proceedings are taken as is aforesaid, there is no place for prohibition. And if a clerk or religious person shall sell for money to anyone his tithes stored in the barn or being elsewhere, and be impleaded in the Court Christian, the royal prohibition has place, for by reason of sales, spiritual things are temporal, and then tithes pass into chattels.

Also if dispute arise concerning the right of tithes, having its origin in the right of patronage, and the quantity of these tithes exceeds the fourth part of the Church, the king's prohibition has place.

Also if a prelate impose pecuniary penalty on any one for sin, and demand the money, the king's prohibition has place, if the money is exacted before prelates.

Also if anyone shall lay violent hands upon a clerk, amends must be made for a breach of the peace of the lord the king, before the king, and for

excommunication before the bishop; and if corporal penalty be imposed which, if the defendant will, he may redeem by giving money to the prelate or the person injured, neither, in such cases is there place for prohibition.

APPENDIX C

STATUTE OF CARLISLE (1307)

CAP. II

RELIGIOUS PERSONS SHALL SEND NOTHING TO THEIR
SUPERIORS BEYOND THE SEA

That no Abbot, Prior, Master, Warden, or other Religious Person, of whatsoever Condition, State, or Religion he be, being under the King's Power or Jurisdiction, shall by himself, or by Merchants or others, secretly or openly, by any Device or Means, carry or send, or by any Means cause to be sent, any Tax imposed by the Abbots, Priors, Masters or Wardens of Religious Houses their Superiors, or assessed amongst themselves, out of his Kingdom and his Dominion under the Name of a Rent, Tallage, or any kind of Imposition, or otherwise by the way of Exchange, mutual sale, or other Contract howsoever it may be termed; (2) neither shall depart into any other County for Visitation, or upon any other Colour, by that Means to carry the Goods of their Monasteries and Houses out of the Kingdom and Dominion aforesaid. (3) And if any will presume to offend this present Statute, he shall be grievously punished according to the Quality of his Offence, and according to his Countempt of the King's Prohibition. 4 Ed.3.c.6.

CAP. III

NO IMPOSITIONS SHALL BE TAXED BY PRIORS ALIENS

Moreover, our foresaid Lord the King doth inhibit all and singular Abbots, Priors, Master and Governors of Religious Houses and places, being Aliens,

to whose Authority, Subjection, and Obedience the Houses of the same Orders in his Kingdom and Dominion be subject, that they do not any Time hereafter impose, or by any Means assess any Tallages, Payments, Charges, or other Burdens whatsoever, upon the Monasteries, Priories, or other Religious Houses in Subjection unto them (as is aforesaid) and that upon Pain of all that they have or may forfeit.

APPENDIX D

ARTICULI CLERI (1316)

Cap. I

First, whereas laymen do purchase prohibitions generally upon tythes, obventions, oblations, mortuaries, redemption of penance, violent laying hands of clerks or converts, and in cases of defamation, in which cases spiritual penance ought to be enjoined; the king doth answer to this article, that in tythes, oblations, obvention, mortuaries (when they are propounded under these names) the king's prohibition shall hold no place, although for the long withholding of the same the money may be esteemed at a sum certain. But if a clerk or a religious man do sell his tythes being gathered in his barn, or otherwise, to any man for money, if the money be demanded before a spiritual judge, the kings prohibition shall lie; for by the sale the spiritual goods are made temporal and the tythes turned into chattels.

Cap. II

Also if debate do ariss upon the right of tythes, having his original from the right of patronage, and the quantity of the same tythes do come unto the fourth part of the goods of the church, the king's prohibition shall hold place, if the cause come before a judge spiritual. Also, if a prelate enjoin a penance pecuniary to a man for his offence and it be demanded, the king's prohibition shall hold place. But if prelates enjoine a penance corporal, and they which be so punished will redeem upon their own accord such penances by money, if money be demanded before a judge spiritual, the king's prohibition shall hold no place.

Cap. III

Moreover, if any lay violent hands on a clerk, the amends for the peace broken shall be before the king, and for the excommunication before a prelate, that penance corporal may be enjoined; which if the offender will redeem of his own good will, by giving money to the prelate, or to the party grieved, it shall be required before the prelate, and the king's prohibition shall not lie.

Cap. IV

In defamations also prelates shall correct in manner abovesaid, the king's prohibition notwithstanding; first injoyning a penance corporal, which if the offender will redeem, the prelate may freely receive the money, though the king's prohibition be shewed.

Cap. V

Also, if any do erect in his ground a mill of new, and after the parson of the same place demandeth tithe for the same, the king's prohibition doth issue in this form: The answer. In such case the king's prohibition was never granted by the king's assent, nor never shall, which hath decreed that it shall not hereafter lie in such cases.

Cap. VI

Also if any cause or matter, the knowledge whereof belongeth to a court spiritual, and shall be definitively determined before a spiritual judge, and doth pass into a judgement, and shall not be suspended by an appeal; and after, if upon the same thing a question is moved before a temporal judge between the same parties, and it be proved by witnes or instruments, such an exception is not to be admitted in a temporal court.

The answer. When any one case is debated before judges spiritual or temporal (as above appeareth upon the case of laying violent hands on a clerk) it is thought that notwithstanding the spiritual judgement, the king's court shall discuss the same matter as the party shall think expedient for himself.

Cap. VII

Also, the king's letter directed unto ordinaries, that have wrapped those that be in subjection unto them in the sentences of excommunication, that they should assoil them by a certain day, or else that they do appear, and shew wherefore they have excommunicated them.

The answer: The king decreeth, that hereafter no such letters shall be suffered to go forth, but in case where it is found that the king's liberty is prejudiced by the excommunication.

Cap. VIII

Also barons of the king's exchequer claiming by their privilege, that they ought to make answer to no complaint out of the same place, extend the same privilege unto clerks abiding there, called to orders or unto residence, and inhibit ordinaries that by no means, or for any cause, so long as they be in the exchequer, or in the king's service, they shall not call them to judgement.

The Answer. It pleaseth our lord the king, that such clerks as attend in his service, if they offend, shall be correct by their ordinaries, like as other; but so long as they are occupied about the exchequer, they shall not be bound to keep residence in their churches. This is

added of new by the king's council. The king and his ancestors since time out of mind have used, that clerks, which are employed in his service, during such time as they are in service, shall not be compelled to keep residence at their benefices. And such things as be thought necessary for the king and the commonwealth, ought not to be said to be prejudiced to the liberty of the Church.

Cap. IX

Also the king's officers, as sheriffs and other, do enter into the sees of the church to take distresses and sometimes they take the parson's beasts in the king's highway, where they have nothing but the land belonging to the church.

The answer. The king's pleasure is, that from henceforth such distresses shall neither be taken in the king's highway, nor in the sees wherewith churches in times past have been indowed; nevertheless he willeth distresses to be taken in possessions of the church newly purchased by ecclesiastical persons.

Cap. X

Also, where some flying into the Church, abjure the realm, and lay-men or their enemies do pursue them, and pluck them from the king's highway, and they are hanged or headed; and whilst they be in the church, are kept in the church-yard with armed men, and sometime in the church, so straitly, that they cannot depart from the hallowed ground to empty their belly, and cannot be suffered to have necessaries brought unto them for their living.

The answer. They that abjure the realm, so long as they lie in the common way, shall be in the king's peace, nor ought to be disturbed of any man; and when they be in the church, their keepers ought not to abide in the church-yard, except necessity or peril of escape do require so. And so long as they be in the church, they shall not be compelled to flee away, but they shall have necessaries for their living, and may go forth to empty their belly. And the king's pleasure is, that thieves and appellors may confess their offences unto priests; but let the confessors beware that they do not erroneously inform such appellors.

Cap. XI

Also it is desired that our lord the king, and the great men of the realm do not charge religious houses or spiritual persons, for corodies, pensions or sojourning in religious houses, and other places of the church, or with taking up horse or carts, whereby such houses are impoverished, and God's service diminished, and, by reason of such charges priests and other ministers of the church deputed unto divine service, are oftentimes compelled to depart from the places aforementioned.

The Answer. The king's pleasure is that upon the contents in their petition, from henceforth they shall not be unduly charged. And if the contrary be done by great men or other, they shall have remedy after the form of the statutes made in the time of the king Edward, father to the king that now is. And like remedy shall be done for corodies and pension exacted by compulsion, whereof no mention is made in the statutes.

Cap. XII

Also if any of the king's tenure be called before their ordinaries out of the parish where they continue, if they be excommunicate for their manifest contumacy, and after forty days a writ goeth out to take them, they pretend their privilege, that they ought not to be cited out of the town and parish where their dwelling is; and so the king's writ that went out for to take them is denied.

The answer. It was never yet denied, nor shall be hereafter.

Cap. XIII

Also, it is desired that spiritual persons, whom our lord the king doth present unto benefices of the church (if the bishop will not admit them either for lack of learning, or for other cause reasonable) may not be under the examination of lay persons in the cases aforesaid, as it is now attempted, contrary to the decrees canonical, but that they may sue unto a spiritual judge for remedy, as right shall require.

The answer. Of the ability of a parson presented unto a benefice of the church the examination belongeth to a spiritual judge; and so it hath been used heretofore; and shall be hereafter.

Cap. XIV

Also if any dignity be vacant where election is to be made, it is moved that the electors may freely make their election, without fear of any power temporall, and that all prayers and oppressions shall in this behalfe cease.

The answer. They shall be made free according to the form of statutes and ordinances.

Cap. XV

Moreover, though a clerk ought not to be judged before a temporall judge, nor anything may be done against him that concerneth life or member; nevertheless temporall judges cause that clerks fleeing unto the church, and peradventive confessing their offences, do abjure the realm, and for the same cause admit their abjurations, although hereupon they cannot be their judges, and so power is wrongfully given to lay persons to put to death such clerks, if such persons chance to be found within the realm after their abjuration; the prelates and clergy desire such remedy to be provided herein; that the immunity or privilege of the church and spiritual persons may be saved and unbroken.

The answer. A clerk fleeing to the church for felony, to obtain the privilege of the church, if he affirm himself to be a clerk, he shall not be compelled to abjure the realm; but yielding himself to the law of the realm, shall enjoy the privilege of the church, according to the laudable custom of the realm heretofore used.

Cap. XVI

Also notwithstanding that a confession made before him that is not lawful judge thereof, is not sufficient whereon process may be awarded or sentence given; yet some temporall judges do not deliver to their ordinaries, according to the premisses, such clerks as confess before them their heinous offences, as theft, robbery, and murder, but admit their accusation, which commonly they call an appeal, albeit to this respect they be not of their court, nor can be judged or condemned before them upon their own confession, without breaking of the churches privilege.

The answer. The privilege of the church, being demanded in due form by the ordinary, shall not be denied unto the appealour, as to a clerk. We desiring to provide for the state of holy church of England, and for the tranquility and quiet of the prelates and clergy aforesaid, as far forth as we may lawfully do, to the honour of God, and emendation of the church, prelates, and clergy of the same; ratifying, confirming, approving all and every of the articles aforesaid made and contained in the same, do grant and command them to be kept firmly and observed for ever; willing and granting for us and our heirs, that the foresaid prelates and clergy and their successors, shall use, execute, and practice for ever the jurisdiction of the church in the premises, after the tenour of the answers aforesaid, without quarrel, inquieting, or vexation of us or of our heirs, or any of our officers whatsoever they be.

APPENDIX E

STATUTE OF THE CLERGY (1344)

Cap. I

A TRIENNIAL DISME GRANTED TO THE KING BY THE
CLERGY TOWARD THE MAINTENANCE OF HIS WAR IN FRANCE

First, whereas many things have been attempted, by the party our adversary of France, against the truce late taken in Britain, betwixt us and him, and how that he enforceth himself, as much as he may, to destroy us, and our allies, subjects, land, and places, and the tongue of England: And thereupon we prayed the prelates, great men and the commons, that they would give us such counsel and aid as should need in so great necessity. And the said prelates, great men, and commons, having thereof good deliberation and advice, and seeing openly the subversion of the land of England, and of our great business, which God defend, if speedy remedy be not provided: have counselled jointly and severally, and with great instance prayed us, that in assurance of the aid of God, and our good quarrel, we should make us as strong as we might, to pass the sea and by all the good means that we might, at this time to finish our wars. And that for letters, words, nor fair promises, we should not let our passage, till we did see the effect of our business. And for this cause, the great men aforesaid granted to pass, and to adventure themselves with us. And the said prelates and procurators of the clergy, have granted to us for the same cause, a triennial Disme, to be paid at certain days, that is to say, of the province of Canterbury, at the feasts of the purification of our Lady, and of Saint Barnaby the Apostle: And of the province of York, at the feasts of Saint Luke, and the Nativity of Saint John

Baptist. And we for this cause, in maintenance of the estate of holy church, and in case of the said prelates, and all the clergy of England, by assent of the great men, and of the commons, do grant of our good grace the things underwritten, that is to say, that no archbishop shall be impeached before our justices because of crime, unless we especially do command them, till another remedy be thereof ordained.

Cap. II

BIGAMY SHALL BE TRIED BY THE ORDINARY,

AND NOT BY INQUEST

Item, If any clerk be arraigned before our justices at our suit, or at the suit of the party, and the clerk holdeth him to his clergy, alledging that he ought not before them thereupon to answer; (2) and if any man for us, or for the same party, will suggest, that he hath married two wives, or one widow, that upon the same the justices shall not have the cognisance or power to try the bigamy by inquest, or in other manner; but it shall be sent to the spiritual court, as hath been done in times past in case of bastardy. (3) and till the certificate be made by the ordinary, the party in whom the bigamy is alledged, by the words aforesaid, or in other manner, shall abide in prison, if he be not mainpernable.

Cap. III

PRELATES IMPEACHED FOR PURCHASING LANDS IN MORTMAIN

Item, If prelates, clerks beneficed, or religious people, which have purchased lands, and the same have put to mortmain, be impeached upon the same before our justices, and they shew our charter of licence, and process thereupon made by an inquest of Ad quod damnum, or of our grace, or by fine, they shall be freely let in peace, without being further impeached for the

same purchase. (2) And in case they cannot sufficiently shew, that they have entered by due process after license to them granted in general or in special, that they shall be well received to make a convenient fine for the same; and that the enquiry of this article shall wholly cease according to the accord comprised in this parliament.

Cap. IV

IN COMMISSIONS TO BE MADE FOR PURVEYANCE,
THE FEES OF THE CHURCH SHALL BE EXCEPTED

Item, that the statutes touching the purveyances of Us and of our son, made in times past by Us and our progenitors, for people of holy church be holden in all points. And that in the commissions to be made upon such purveyances, the fees of holy church shall be expected in every place where they be found.

Cap. V

NO PROHIBITION SHALL BE AWARDED BUT WHERE
THE KING HATH COGNISANCE

Item, that no prohibition shall be awarded out of the chancery, but in case where we have the cognisance, and of right ought to have.

Cap. VI

TEMPORAL JUSTICES SHALL NOT ENQUIRE OF PROCESS
AWARDED BY SPIRITUAL JUDGES

Item, Whereas commissions be newly made to divers justices, that they shall make inquiries upon judges of holy church whether they made just process or excessive in causes testamentary, and other, which notoriously

pertaineth to the cognisance of holy church, the said justices have enquired and caused to be indicted, judges of holy church, in blemishing of the franchise of holy church; (2) that such commissions be repealed, and from henceforth defended, saving the article in eyre, such as ought to be.

Cap. VII

NO SCIRE FACIAS SHALL BE AWARDED AGAINST

A CLERK FOR TITHES

Item, Whereas writs of Scire facias have been granted to warn prelates, religious and other clerks, to answer dismes in our chancery, and to shew if they have any thing, or can anything say, wherefore such dismes ought not to be restored to the said demandants, and of answer as well to us, as to the party of such dismes; (2) That such writs from henceforth be not granted, and that the process hanging upon such writs be annulled and repealed, and that the parties be dismissed from the secular judges of such manner of pleas: (3) saving to us our right, such as we and our ancestors have had, and were wont to have of reason. In witness whereof, at the request of the said prelates, to these present letters we have set our seal. Dated at London, the eighth day of July, the year of our reign of England the eighteenth and of France the fifth.

APPENDIX F

STATUTE OF PROVVISORS (1351)

Cap. III

Our lord the King, seeing the mischiefs and damages before mentioned, and having regard to the said statute made in the time of his said frandfather, and to the causes contained in the same; which statute holdeth always his force, and was never defeated, repealed, nor annulled in any point, and by so much as he is bounded by his oath the cause the same to be kept as the law of his realm, though that by sufferance and negligence it hath been sithence attempted to the contrary; (2) also having regard to the grievous complaints made to him by his people in divers his parliaments holden heretofore, willing to ordain remedy for the great damages and mischiefs which have happened, and daily do happen to the Church of England by the said cause; (3) by the assent of all the great men and commonalty of the said realm, to the honour of God, and profit of the said church of England, and of all his realm, hath ordered and established, That the free elections of archbishops, bishops, and all other dignities and benefices elective in England, shall hold from henceforth in the manner as they were granted by the king's progenitors, and the ancestors of other lords founders of the said dignities and other benefices. (4) And that all prelates and other people of holy church, which have advowsons of any benefices of the King's gift, or of any of his progenitors, or of other lords and donors, to do divine services, and other charges thereof ordained, shall have their collations and presentments freely to the same,

in the manner as they were enfeofed by their donors. (5) And in case that reservation, collation, or provision be made by the court of Rome, of any archbishoprick, bishoprick, dignity, or other benefice, in disturbance of the free elections, collations, or presentations afore-named, that at the same time of the voidance, that such reservations, collations, and provisions ought to take effect, our lord the King and his heirs shall have and enjoy for the same time the collations to the archbishopricks and other dignities elective, which be of his advowry, such as his progenitors had before that free election was granted by the King's progenitors upon a certain form and condition, as to demand license of the King to chuse, and after the election to his royal assent, and not in other manner; which conditions had not kept, the thing ought by reason to resort to his first nature.

Cap. IV

And if any such reservation, provision, or collation be made of any house of religion of the King's advowry, in disturbance of free election, our sovereign lord the King, and his heirs, shall have for that time the collation to give this dignity to a convenient person. (2) And in case that collation, reservation, or provision be made by the court of Rome of any church, prebend, or other benefices, which be of the advowry of people of holy church, whereof the King is advowee paramount immediate, that at the same time of the voidance, at which time the collation, reservation, or provision ought to take effect as afore is said, the King and his heirs thereof shall have the presentation or collation for that time. (3) And so from time to time, whensoever such people of holy church

shall be disturbed of their presentments of collations by such reservations, collations, or provisions, as afore is said; saying to them the right of their advowsons and their presentments, when no collation or provision of the court of Rome is thereof made, where that the said people of holy church shall or will to the same benefices present or make collation; and that their presentees may enjoy the effect of their collations or presentments. (4) And in the same manner every other lord, of what condition that he be, shall have the collations or presentments to the houses of religion which be of his advowry, and other benefices of holy church which be pertaining to the same houses. (5) And if such advowees do not present to such benefices within the half year after such avoidances, nor the bishop of the place do not give the same by lapse of time within a month after half a year, that then the King shall have thereof the presentments and collations, as he hath of other of his own advowry. (6) And in case that the presentees of the King, or the presentees of other patrons of holy church, or of their advowees, or they to whom the king, or such patrons or advowees aforesaid, have given benefices pertaining to their presentments or collations, be disturbed by such provisors, so that they may not have possession of such benefices by virtue of the presentments or collations to them made, or that they which be in possession of such benefices be impeaced upon their said possessions by such provisors; then the said provisors, their procurators, executors, and notaries, shall be attached by their body, and brought in to answer; (7) and if they be convict, they shall abide in prison without being let to mainprise or bail, or otherwise delivered, till that they have made fine and ransom to the King at his will, and

agree to the party that shall feel himself grieved. (8) And nevertheless before that they be delivered, they shall make full renunciation, and find sufficient surety that they shall not attempt such things in time to come, nor sue any process by them, not by other, against any man in the court of Rome, nor in any part elsewhere, for any such imprisonment or renunciation, nor any other thing depending of them.

Cap. V

And in case that such provisors, procurators, executors, or notaries be not found, that the exigent shall run against them by due process, and that writs shall go forth to take their bodies in what parts they be found, as well at the King's suit, as at the suit of the party, (2) and that in the mean time the King shall have the profits of such benefices so occupied by such provisors, except abbeys, priories, and other houses, which have colleges or covents, and in such houses and colleges or covents shall have the profits; saving always to our lord the King, and to all other lords, their old right. (3) And this statute shall have place as well of reservations, collations, and provisions made and granted in times past against all them which have not yet obtained corporal possession of the benefices granted to them by the same reservations, collations, and provisions, as against all other in time to come. And this statute oweth to hold place and to begin at the said utas.

APPENDIX G

STATUTE OF PRAMUNIRE (1353)

Cap. I

First, because it is showed to our lord the King, by the grievous and clamorous complaints of the great men and commons aforesaid, how that divers of the people be, and have been drawn out of the realm to answer of things, whereof the cognizance pertaineth to the King's court; (2) and also that the judgements given in the same court be impeached in another court, in prejudice and disherison of our lord the King, and of his crown, and of all the people of his said realm, and to the undoing and destruction of the common law of the said realm at all times used. (3) Whereupon good deliberation had with the great men and other of his said council, it is assented and accorded by our lord the King and the great men and commons aforesaid that all the people of the King's ligeance, of what condition that they be, which shall draw any out of the realm in plea, whereof the cognizance pertaineth to the King's court, or of things whereof judgements be given in the King's court, or which do sue in any other court, to defeat or impeach the judgements given in the king's court, shall have a day, containing the space of two months, by warning to be made to them in the place where the possessions be, which be in debate, or otherwys where they have lands or other possessions, by the sheriff or other the King's ministers, to appear before the King and his council, or in his chancery, or before the King's justices in his places of the one bench or the other, or before other the King's justices which to the same

shall be deputed to answer in their proper persons to the King, of the contempt done in this behalf. (4) And if they come not at the said day in their proper person to be at the law, they, their procurators, attorneys, executors, notaries, and maintainers, shall from that day forth be put out of the King's protection, and their lands, goods, and chattels forfeit to the King, and their bodies, wheresoever they may be found, shall be taken and imprisoned, and ransomed at the King's will. (5) And upon the same a writ shall be made to take them by their bodies, and to seize their lands, goods and possessions, into the King's hands; (6) and if it be returned, that they be not found, they shall be put in exigent and outlawed.

Cap. II

Provided always, that at what time they come before they be outlawed, and well yield them to the King's prison to be justified by the law, and to receive that which the court shall award in this behalf, that they shall be thereunto received; the forfeiture of the lands, goods and chattels abiding in their force, if they do not yield them within the said two months as afore is said.

APPENDIX H

STATUTE AGAINST PROVISORS (1363)

To nourish love and peace, and concord between holy church and the realm, and to appease and cause to cease the great hurt, perils, and importable losses and grievances that hath been done and happened in times past, and that shall happen hereafter, if the thing from henceforth be suffered to pass, because of personal citations, and other that be past before this time, and commonly doth pass from day to day out of the court of Rome by feigned and false suggestions and propositions against all manner of persons of the realm, upon causes, whose cognisance and final discussing pertaineth to our lord the King and his royal court; (2) and also of impetrations and provisions made in the said court of Rome, of benefices and offices of the church, pertaining to the gift, presentation, donation, and disposition of our said lord the King and other lay patrons of his realm, and of churches, chapels, and other benefices appropriated to cathedral churches, abbeys, priories, chantries, hospitals, and other poor houses, and of other dignities, offices, and benefices occupied in times past and present by divers and notable persons of the said realm: (3) for the which causes, and the dependant thereof, the good ancient laws, customs, and franchises of the said realm have been and be greatly impeached blemished, and confounded, the crown of our lord the King abated, and his person very hardly and falsly defamed, the treasure and riches of his realm carried away, the inhabitants and subjects of the realm impoverished and troubled, the benefices of the church wasted and destroyed, divine service, hospitalities, alms-deeds, and other works of

charity withdrawn and set apart, the great men, commons, and subjects of the realm in body and goods damaged:

Cap. I

PERSONS RECEIVING CITATIONS FROM ROME IN CAUSES PERTAINING TO THE KING &c.
TO INCUR THE PENALTIES OF 25 EDW. 3 STAT. 6

Our sovereign lord the King, at his parliament holden at Westminster in the vias of St. Hillary, the thirty-eighth year of his reign; having a regard to the quietness of his people, which he chiefly desireth to sustain in tranquility and peace, to govern according to the laws, usages, and franchises of his land, as he is bound by his oath, made at his coronation, following the ways of his progenitors, which for their time made certain good ordinances and provisions against the said grievances and perils; which ordinances and provisions, and all the other made in his time, and especially in the twenty-fifth and twenty-seventh year of his reign, our sovereign lord the King by the assent and express will and concord of the dukes, earls, barons, and the commons of his realm, and of all other whom these things toucheth, by good and meet deliveration and advisement, hath approved, accepted, and confirmed, saving the estate of the prelates and other lords of the realm, touching the liberty of their bodies, so that by force of this statute their bodies be not taken.

Joining to the same hath provided and ordained, That all they which have obtained, purchased, or pursued, such personal citations or other in any times past, or hereafter shall obtain, purchase, or pursue such like, against him or any of his subjects, and also all they that have obtained or shall obtained in the said court, deanries, archdeaonries, provosties, and other dignities, offices, chapels, or benefices of holy church,

pertaining to the collation, gift, presentation, or disposition of our said sovereign lord the King, or of other lay patron of his said realm and also all like persons, obtainers of churches, chapels, offices or benefices of holy church, pensions or rents amortised and appropriated to churches, cathedral or collegial, abbeys, priories, chanteries, hospitals or other poor houses, before that such appropriations, amortisements be void and adulled by due process; also all they which have obtained in the same court, dignities, offices, hospital, and any benefices of churches which be occupied at this present season by reasonable title by any persons of the said realm, if such impetrations be not fully executed, or shall obtain hereafter like benefices, whereby prejudice, damage, or impeachment hath been or may be done hereafter to him or to his said subjects, in persons, heritages, possessions, rights, or any goods, or to the laws, usages, customs, franchises, and liberties of his said realm and of his crown; also all their maintainers, counsellors, abettors, and other aiders and fauters wittingly, as well at the suit of the King as of the party, or other whatsoever he be of the realm, finding pledges and surety to pursue against them; in this case all the said persons defamed and violently suspect of such impetrations, pursuits, or grievances by suspicion, shall be arrested and taken by the sheriffs of the places and justices in their sessions, deputies, bailiffs, and other the King's ministers, by good and sufficient mainprise, replevin, bail or other surety (the shortest that may be) and shall be presented to the King and his council, there to remain and stand to right, to receive what the law will give them; and if they be attainted or convict of any of the said things, they shall have the pain comprised in the statute made in the

twenty-fifth year of the reign of our sovereign lord the King, which
beginneth, Whereas late in the parliament, &c.

Cap. II

SUSPECTED PERSONS NOT APPEARING BEFORE THE KING'S JUSTICES, AFTER WARNING
TO INCURE THE PENALTY OF 27 EDW. III. STAT. I. CAP. I

Item, if any person defamed or suspect of the said impetrations, pro-
secutions, or grievances, or enterprises, be out of the realm or within,
and may not be attached or arrested in their proper persons, and do not
present them before the King or his counsel, within two months next after
that they be thereupon warned in their places (if they have any) in any
of the King's courts, or in the counties, or before the King's justices
in their sessions, or other wise sufficiently, to answer the King and to
the party, to stand and be at the law in this case before the King and
his council, shall be punished by the form and manner comprised in the
statute made in the said seven and twentieth year of this King's reign,
which beginneth, Our sovereign lord the King of the assent, &c. and
otherwise, as to the King and his council shall seem to be done, without
any grace, pardon, or remission to be made by the King, without the will
and assent of the party, which shall prove him to be grieved, and with-
out making to him due satisfaction in this case.

Cap. III

SUCH OFFENDERS TO BE OUT OF THE KING'S PROTECTION, AND PUNISHED ACCORDING
TO THE STATUTE OF 27 EDW. III. STAT. I. CAP. I

Item, it is accorded, That none other subject of the said realm, keeping and sustaining these ordinances, shall incur any forfeiture of life and member, of lands of heritage, nor of goods, against the King, nor none other person, nor lose estate nor favour because of the said things ordained, nor his heirs may not nor ought not to be reproved, defamed, nor impeached by any of the said causes at any time hereafter. And if any person, of whatsoever estate or condition that he be, by any manner, attempt or do any thing against the said ordinances, or any thing comprised in them, the same person shall be brought to answer in the manner as aforesaid; and if he be thereupon attainted or convict, he shall be put out of the King's protection, and punished after the form of the said statute made the said XXVII year.

Cap. IV

THE PUNISHMENT OF THOSE WHO SUE FALSELY AND MALICIOUSLY UPON THIS STATUTE.
THE CONSENT OF THE KING AND PARLIAMENT TO IMPEACHE OFFENDERS AGAINST THE
SAME.

Item, if any person maliciously or falsely make any pursuit against any person of the said realm, for cause comprised in these present ordinances, and thereof be duly attainted; such plaintiff shall be duly punished at the ordinance of the King and his council; and nevertheless he shall make gree and amends to the party grieved by his pursuit. And to the intent that the said ordinances, and every of the same, for the ease, quietness, and wealth of the commons, be the better sustained, executed, and kept;

and that all those that have offended, or shall offend against these ordinances, by prosecutions, accusations, denunciations, citations, or other process made or to be made out of the said realm or within, or otherwise against any manner of person of the said realm, be the more covenantably and speedily brought in answer, to receive right according to their desert: the King, the prelates, dukes, earls, barons, nobles, and other commons, clerks, and lay-people, be bound by this present ordinance to aid, comfort, and to counsel the one and the other; and as often as shall need, and be all the best means that may be made of word and of deed, to impeach such offenders, and resist their deeds and enterprises, and without suffering them to inhabit, abide, or pass by their seignories, possessions, lands, jurisdictions, or places, and be bound to keep and defend the one and the other from all damage, villainy, and reproof as they should do their own persons, and for their deed and business, and by such manner, and as far forth, as such prosecutions or process were made or attempted against them in especial, general or in common.

APPENDIX I

STATUTE OF PROVVISORS (1390)

Cap. II

A CONFIRMATION OF THE STATUTE OF PROVVISORS, MADE ANNO 25 EDW. 3. STAT.

6. AND THE FORFEITURE OF HIM THAT ACCEPTETH A BENEFICE CONTRARY TO THAT

STATUTE

Item, whereas the noble King Edward, grandfather to our lord the King that now is, at his parliament holden at Westminster at the Utas of the Purification of our Lady, the five and twentieth year of his reign, caused to be rehearsed the statute made at Carleil in the time of King Edward, son of King Henry, touching the estate of the holy church of England; the said grandfather of the King that now is, by the assent of the great men of his realm, being in the same parliament, holden the said five and twentieth year, to the honour of God and of holy church, and of all his realm, did ordain and establish, that the free elections of archbishopricks, bishopricks, and all other dignities and benefices elective in England, should hold fromthenceforth in the manner as they were granted by his progenitors, and by the ancestors of other lords founders: (2) and that all prelates and other people of holy church, which had advowsons of any benefices of the gift of the King, or of his progenitors, of other lords and donors, should freely have their collations and presentments; and thereupon a certain punishment was ordained in the same statute for them which accept any benefice or dignity contrary to the said statute made at Westminster the said twentieth year, as afore is said; which statute our lord the King hat caused to be recited in this present

parliament at the request of his commons in the same parliament, the tenor whereof is such as hereafter followeth: 'whereas late in the parliament of good memory of Edward, King of England &c.' (rehearsing the whole statute made the said twenty-fifth year.)--And then thus: (3) our lord the king that now is, of the assent of the great men of his realm, being in this present parliament, hat ordained and established, That for all archbishopricks, bishopricks, and other dignities and benefices of holy church, which shall begin to be void in deed the twenty-ninth day of January, the thirteenth year of the reign of our lord King Richard that now is, or after, or which shall be void in time to come within the realm of England, the said statute made the said twenty-fifth year shall be firmly holden for ever, and put in due execution from time to time in all manner of points. (4) And if any do accept of a benefice of holy church contrary to this statute, and that duly proved, and be beyond the sea, he shall abide exiled and banished out of the realm for ever, his lands and tenements, goods and chattels shall be forfeit to the King; (5) and if he be within the realm, he shall be also exiled and banished, as afore is said, and shall incur the same forfeiture, and take his way, so that he be out of the realm within six weeks next after such acceptation. (6) And if any receive any such person banished coming from beyond the sea, or being within the realm after the said six weeks, knowing thereof, he shall be also exiled and banished, and incur such forfeiture as afore is said. (7) And that their procurators, notaries, Executors, and summoners have the pain and forfeiture aforesaid.

Cap. II

Provided nevertheless, that all they to whom the pope of Rome, or his predecessors, have provided any archbishoprick, bishoprick, or other dignity, or other benefices of holy church, of the patronage of people of holy church, in respect of any voidance before the said XXIX. day of January, and thereof were in actual possession before the same XXIX. day, shall have and enjoy the said archbishopricks, bishopricks, dignities, and other benefices peaceably for their lives, notwithstanding the statutes and ordinances aforesaid. (2) And if the King send by letter, or in other manner to the court of Rome, at the intreaty of any person, or if any other send or sue to the same court, whereby any thing is done contrary to this statute, touching any archbishoprick, bishoprick, dignity, or other benefice of holy church within the said realm, if he that maketh such motion or suit be a prelate of holy church, he shall pay to the King the value of his temporalities of one year; (3) and if he be a temporal lord, he shall pay to the King the value of his lands and possessions not moveable of one year; (4) and if he be another person of a more mean estate, he shall pay to the King the value of the benefice for which suit is made, and shall be imprisoned one year. (5) And it is the intent of this statute, that of all dignities and benefices of holy church, which were void indeed the said XXIX. day of January, which be given, or to whom it is provided by the pope of Rome before the same XXIX. day, that they to whom such gifts or provisions sue execution without offense of this statute. (6) Provided always, That of no dignity or benefice which was full the said XXIX. day of January, no man because of any collation, gift, reservation, and provision, or other

grace papal, not executed before the said XXIX. day, shall not sue there-
of execution, upon the pains and forfeitures contained in this present
statute.

Cap. III

THE PENALTY OF HIM WHICH BRINGETH A SUMMONS OR EXCOMMUNICATION AGAINST
ANY PERSON UPON THE STATUTE OF PROVISORS, AND OF A PRELATE EXECUTING IT.
Item, it is ordained and established, That if any man bring or send
within the reals, or the King's power, any summons, sentences, or ex-
communications against any person, of what condition that he be, for the
cause of making motion, assent, or execution of the said statute of
provisors, he shall be taken, arrested, and put in prison, and forfeit
all his lands and tenements, goods and chattles for ever, and incur the
pain of life and of member. (2) And if any prelate make execution of
such summons, sentences, or excommunications, that his temporalities be
taken and abid in the King's hands, till due redress and correction be
thereof made. (3) And if any person of less estate than a prelate, of
what condition that he be, make such execution, he shall be taken,
arrested, and put in prison, and have imprisonment, and make fine and
ransom by the discretion of the King's council.

APPENDIX J

STATUTE OF PRAEMUNIRE (1393)

Cap. V

PRAEMUNIRE FOR PURCHASING BULLS FROM ROME.

THE CROWN OF ENGLAND SUBJECT TO NONE

Item, Whereas the commons of the realm in this present parliament have shewed to our redoubted lord the King, grievously complaining, That whereas the said our lord the King, and all his liege people, ought of right and of old time were wont to sue in the King's court, to recover their presentments to churches, prebends, and other benefices of holy church, to the which they had right to present, the cognisance of plea, of which presentment belongeth only to the King's court of the old right of his crown, used and approved in the time of all his progenitors Kings of England; (2) and when judgment shall be given in the same court upon such a plea and presentment, the archbishops, bishops, and other spiritual persons which have institution of such benefices within their jurisdiction, be bound, and have made execution of such judgments by the King's commandments of all the time aforesaid without interruption (for another lay-person cannot make such execution) and also be bound of right to make execution of many other of the King's commandments, of which right the crown of England hat been peaceably seised, as well in the time of our said lord the King that now is, as in the time of all his progenitors till this day: (3) But now of late divers processes be made by the bishop of Rome, and censures of excommunication upon certain bishops of England, because they have made execution of such commandments,

to the open disherison of the said crown and destruction of our said lord the King, his law, and all his realm, if remedy be not provided. (4) And also it is said, and a common clamour is made, that the said bishop of Rome hath ordained and purposed to translate some prelates of the same realm, some out of the realm, and some from one bishoprick into another within the same realm, without the King's assent and knowledge, and without the assent of the prelates, which so shall be translated, which prelates be much profitable and necessary to our said lord the King, and to all his realm; (5) by which translations (if they should be suffered) the statutes of the realm should be defeated and made void; and his said liege sages of his council, without his assent, and against his will, carried away and gotten out of his realm, and the substance and treasure of the realm shall be carried away, and so the realm destitute as well of council as of substance, to the final destruction of the same realm; (6) and so the crown of England, which hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regalty of the same crown, and to none other, should be submitted to the pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the King our lord, his crown, his regalty, and of all his realm, which God defend.

Cap. II

And moreover, the commons aforesaid say, That the said things so attempted be clearly against the King's crown and his regalty, used and approved of the time of all his progenitors; wherefore they and all the liege commons of the same realm will stand with our said lord the King,

and his said crown and his regalty, in the cases aforesaid, and in all other cases attempted against him, his crown, and his regalty, in all points, to live and to die. (2) And moreover they pray the King, and his require by way of justice, that he would examine all the lords in the parliament as well as spiritual as temporal severally, and all the states of the parliament, how they think of the cases aforesaid, which be so openly against the King's crown, and in derogation of his regalty and how they will stand in the same cases with our lord the King, in upholding the rights of the said crown and regalty. (3) Whereupon the lords temporal so demanded, have answered every one by himself, that the cases aforesaid be clearly in derogation of the King's crown, and of his regalty, as it is well known, and hath been of a long time known, and that they will be with the same crown and regalty in these cases specially. And in all other cases which shall be attempted against the same crown and regalty in all points with all their power. (4) And moreover it was demanded of the lords spiritual there being, and the procurators of others being absent, their advice and will in all these cases; which lords, that is to say, the archbishops, bishops, and other prelates, being in the said parliament severally examined, making protestations, that it is not their mind to deny, nor affirm, that the bishop of Rome may not excommunicate bishops, nor that he may make translation of prelates after the law of holy church, answered and said, That if any executions of process made in the King's court as before be made by any, and censures of excommunications to be made against any

bishops of England, or any other of the King's liege people, for that they have made execution of such commandments; and that if any executions of such translations be made of any prelates of the same realm, which prelates be very profitable and necessary to our said lord the King, and to his said realm, or that the sage people of his council, without his assent, and against his will, be removed and carried out of the realm, so that the substance and treasure of the realm may be consumed, that the same is against the King and his crown, as it is contained in the petition before named. (5) And likewise the same procurators, every one by himself examined upon the said matters, have answered and said in the name, and for their lords, as the said bishops have said and answered and said in the name, and for their lords, as the said bishops have said and answered, and that the said lords spiritual will and ought to be with the King in these cases in lawfully maintaining of his crown, and in all other cases touching his crown and his regalty, as they be bound by their liegeance; (6) whereupon our said lord the King, by the assent aforesaid, and at the request of his said commons, hath ordained and established, That if any purchase or pursue, or cause to be purchased or pursued in the court of Rome, or elsewhere, by any such translations, processes, and sentences of excommunications, bulls, instruments, or any other things whatsoever which touch the King against him, his crown, and his regalty, or his realm, as is aforesaid, and they which bring within the realm, or them receive or make thereof notification, or any other execution whatsoever within the same realm or without, that they, their notaries, procurators, maintainers, abettors, factors, and counsellors, shall be put out of the King's protection, (7) and their lands and

tenements, goods and chattels, forfeit to our lord the King; (8) and that they be attached by their bodies, if they may be found, and brought before the King and his council, there to answer to the cases aforesaid, (9) or that process be made against them by Praemunire facias, in manner as it is ordained in other statutes of provisors, (10) and other which do sue in any other court in derogation of the regalty of our lord the King.

APPENDIX K

STATUTE IN RESTRAINT OF APPEALS (1532)

Cap. II

And whereas the King his most noble progenitors, and the nobility and commons of this said realm, at divers and sundry parliaments, as well in the time of the King Edward the first, Edward the third, Richard the second, Henry the fourth, and other noble Kings of this realm, made sundry ordinances, laws, statutes, and provisions for the entire and sure conservation of the prerogatives, liberties and preeminences of the said imperial crown of this realm, and of the jurisdiction spiritual and temporal of the same, to keep it from the annoyance as well of the see of Rome, as from the authority of other foreign potentates, attempting the diminution or violation thereof, as often, and from time to time, as any such annoyance or attempt might be know or espied: (2) notwithstanding the said good statutes and ordinances made in the time of the King' most noble progenitors, in progenitors, in preservation of the authority and prerogative of the said imperial crown, as is aforesaid; yet nevertheless sithen the making of the said good statutes and ordinances divers and sundry inconveniences and dangers, not provided for plainly by the said former acts, statutes and ordinances, have arisen and sprung by reason of appeals sued out of this realm to the see of Rome, in causes testamentary, causes of matrimony and divorces, right of tithes, oblations and obventions, not only to the great inquietation, vexation, trouble, cost and charges of the King's highness, and many of his subjects and residents of this his realm, but also to the great delay and let to the

true and speedy determination of the said causes, for so much as the parties appealing to the said court of Rome most commonly do the same for the delay of justice. (3) And forasmuch as the great distance of way is so far out of this realm, so that the necessary proofs, nor the true knowledge of the cause, can neither there be so well known, ne the witnesses thereso well examined, as within this realm, so that the parties grieved by means of the said appeals be most times without remedy: (4) in consideration whereof, the King's highness, his nobles and commons, considering the great enormities, dangers, long delays and hurts, that as well to his highness, as to his said nobles, subjects, commons, and resiants of this his realm, in the said causes testamentary, causes of matrimony and divorces, tithes, oblations and obventions, do daily ensue, doth therefore by his royal assent, and by the assent of the lord spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, enact, establish and ordain, That all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations and obventions (the knowledge whereof by the goodness of princes of this realm, and by the laws and customs of the same, appertaineth to the spiritual jurisdiction of this realm) already commenced, moved, depending, being, happening, or hereafter coming in contention, debate of question within this realm, or within any of the King's dominions, or marches of the same, or elsewhere, whether they concern the King our sovereign lord, his heirs and successors, or any other subjects or resiants within the same, of what degree soever they be, shall be from henceforth heard, examined, discussed, clearly, finally, and definitively adjudged and determined within the King's jurisdiction and

authority, and not elsewhere, in such courts spiritual and temporal of the same, as the natures, conditions, and qualities of the cases and matters aforesaid in contention, or hereafter happening in contention, shall require, without having any respect to any custom, use, or sufferance, in hindrance, let, or prejudice of the same, or to any other thing used or suffered to the contrary thereof by any other manner of person or persons in any manner of wise; any foreign inhibitions, appeals, sentences, summons, citation, suspensions, interdictions, excommunications, restraints, judgments, or any other process or impediments, of what natures, names, qualities, or conditions soever they be, from the see of Rome, or any other foreign courts or potentates of the world, or from and out of this realm, or any other the King's dominion, or marches of the same, to the see of Rome, or to any other foreign courts or potentates, to the let or impediment thereof in any wise notwithstanding. (5) And that it shall be lawful to the King our sovereign lord, and to his heirs and successors, and to all other subjects or residents within this realm, or with any of the King's dominions or marches of the same, notwithstanding that hereafter it should happen any excommunication, excommunications, interdictions, citations, or any other censures, or foreign process out of any outward parts, to be fulminate, promulged, declared, or put in execution with in this said realm, or in any other place or places, for any of the causes before rehearsed, in prejudice, derogation, or contempt of this said act, and the very true meaning and execution thereof, may and shall nevertheless as well pursue, execute, have and enjoy the effects, profits, benefits and commodities of all such processes, sentences, judgments and determinations done, or here-

after to be done, in any of the said courts spiritual or temporal, as the cases shall require, within the limits, power and authority of this the King's said realm, and dominions and marches of the same, and those only, and none other to take place, and to be firmly observed and obeyed within the same. (6) As also, that all the spiritual prelates, pastors, ministers and curates within this realm, and the dominions of the same, shall and may use, minister, execute and do, or cause to be used, executed ministered and done, all sacraments, sacramentals, divine services, and all other things within the said realm and dominions, unto all the subjects of the same, as catholick and christian men owen to do; any former citations, processes, inhibitions, suspensions, interdictions, excommunications, or appeals, for or touching the causes aforesaid, from or to the see of Rome, or any other foreign prince or foreign courts, to the let or contrary thereof in any wise notwithstanding.

Cap. III

And if any of the said spiritual persons, by the occasion of the said fulminations of any of the same interdictions, censures, inhibitions, excommunications, appeals, suspensions, summons, or other foreign citations for the causes before said, or for any of them, do at any time hereafter refuse to minister, or cause to be ministered, the said sacraments and sacramentals, and other divine services, in form as is aforesaid, shall for every such time or times that they or any of them do refuse so to do, or cause to be done, have one year's imprisonment, and to make fine and ransom at the King's pleasure.

Cap. IV

And it is further enacted by the authority aforesaid, That if any person or persons inhabiting or resiant within this realm, or within any of the King's said dominions, or marches of the same, or any other person or persons, of what estate, condition or degree soever he or they be, at any time hereafter, for or in any the causes aforesaid, do attempt, move, purchase, or procure, from or to the see of Rome, or from or to any other foreign court or courts out of this realm, any manner foreign process, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, or judgment or determination had, made, done, or hereafter to be had, done or made, in any courts of this realm, or the King's said dominions, or marches of the same, for any of the causes aforesaid, contrary to the true meaning of this present act, and the execution of the same, that then every such person or persons so doing, and their fautors, conforters, abettors, procurers, executors, and counsellors, and every of them, being convict of the same, for every such default shall incur and run in the same pains, penalties and forfeitures, ordained and provided by the statute of provision and Praemunire, made in the sixteenth year of the reign of the right noble prince King Richard the Second, against such as attempt, procure, or make provision to the see of Rome, or elsewhere, for any thing or things, to the derogation, or contrary to the prerogative or jurisdiction of the crown and dignity of this realm.

Cap. V

And furthermore, in eschewing the said great enormities, inquietations, delays, charges and expences hereafter to be sustained in pursuing of such appeals, and foreign process, for and concerning the causes aforesaid, or any of them, do therefore by authority aforesaid, ordain and enact, That in such cases where heretofore any of the King's subjects or resiants have used to pursue, provoke, or procure any appeal to the see of Rome, and in all other cases of appeals, in or for any of the causes aforesaid, they may and shall from henceforth take, have and use their appeals within this realm, and not elsewhere, in manner and form as hereafter ensueth, and not otherwise; that is to say, first from the archdeacon, or his official, if the matter or cause be there begun, to the bishop diocesan of the said see, if in case any of the parties be grieved.

Cap. VI

And in like wise if it be commenced before the bishop diocesan, or his commissary, from the bishop diocesan, or his commissary, within fifteen days next ensuing the judgment or sentence thereof there given, to the archbishop of the province of Canterbury, if it be within his province; and if it be within the province of York, then to the archbishop of York; and so likewise to all other archbishops in other the King's dominions, as the case by order of justice shall require; and there to be definitively and finally ordered, decreed, and adjudged, according to justice, without any other appellation or provocation to any other person or persons, court or courts.

Cap. VII

And if the matter or contention for any of the causes aforesaid be or shall be commenced, by any of the King's subjects or resiants, before the archdeacon of any archbishop, or his commissary, then the party grieved shall or may take his appeal within fifteen days next after judgment or sentence there given, to the court of the arches, or audience, of the same archbishop or archbishops; (2) and from the said court of the arches or audience, within fifteen days then next ensuing after judgment or sentence there given, to the archbishop of the same province, there to be definitively and finally determined, without any other or further process or appeal thereupon to be had or sued.

Cap. VIII

And it is further enacted by the authority aforesaid, that all and every matter, cause and contention now depending, or that thereafter shall be commenced by any of the King's subjects or resiants for any of the causes aforesaid, before any of the said archbishops, that then the same matter or matters, contention or contentions, shall be before the same archbishop where the said matter, cause or process shall be so commenced, definitively determined, decreed, or adjudged, without any other appeal, provocation, or any other foreign process out of this realm, to be sued to the let or derogation of the said judgment, sentence or decree, otherwise than is by this act limited and appointed; (2) saving always the prerogative of the archbishop and church of Canterbury, in all the foresaid causes of appeals, to him and to his successors to be sued within this realm, in such and likewise as they have been accustomed and used to have heretofore.

Cap. IX

And in case any cause, matter or contention, now depending for the causes before rehearsed, or any of them, or that hereafter shall come in contention for any of the same causes, in any of the foresaid courts, which hath, doth, shall or may touch the King, his heirs or successors, Kings of this realm; that in all and every such case or cases the party grieved, as before is said, shall or may appeal from any of the said courts of this realm, where the said matter, now being in contention, or hereafter shall come in contention, touching the King, his heirs, or successors (as is aforesaid) shall happen to be ventilate, commenced or begun, to the spiritual prelates and other abbots and priors of the upper house, assembled and convocate by the King's writ in the convocation being, or next ensuing within the province or provinces where the same matter of contention is or shall be begun; (2) so that every such appeal be taken by the party grieved within fifteen days next after the judgment or sentence thereupon given or to be given; (3) and that whatsoever be done, or shall be done and affirmed, determined, decreed and adjudged by the foresaid prelates, abbots and priors of the upper house of the said convocation, as is aforesaid, appertaining, concerning, or belonging to the King, his heirs, and successors, in any of these forsaid causes of appeals, shall stand and be taken for a final decree, sentence, judgment, definition and determination, and the same matter, so determined, never after to come in question and debate, to be examined in any other or courts.

Cap. X

And if it shall happen any person or persons hereafter to pursue or provoke any appeal contrary to the effect of this act, or refuse to obey, execute and observe all things comprised within the same, concerning the said appeals, provocations and other foreign processes to be sued out of this realm, for any the causes aforesaid, that then every such person or persons so doing, refusing, or offending contrary to the true meaning of this act, their procurers, fautors, advocates, counsellors, and abettors, and every of them, shall incur into the pains forfeitures and penalties ordained and provided in the said statute made in the said sixteenth year of King Richard the Second, and with like process to be made against the said offenders, as in the same statute made in the said sixteenth year more plainly appeareth.

APPENDIX L

PRAEMUNIRE-PROVISOR PUNISHMENTS

1. 2 R.2.c.12
2. 3.R.2.c.3.
3. 7.R.2.c.12
4. 24.H.8.c.12
5. 25 H.8.c.12
6. 1 El.c.1
7. 26 H.8.c.15
8. 28 H.8.c.16
9. 1 and 2. Philip
and Mary. c.1
10. 3 El.c.1
11. 5 El.c.1
12. 13 El.c.2
13. 39 El.c.18
14. 27 El.c.2

APPENDIX M

PRAEMUNIRE-PROVISOR STATUTES

- 13 E.1. Circumspecte Agatis, 1285--Cases where the King's prohibition does not lie.
- 35 E.1. Statute of Carlisle, 1307--Religious persons shall send nothing beyond the sea.
- 9 E.11. Articuli Cleri, 1315--Area allowed to the ecclesiastical Courts.
- 18 E.111. Statute of the Clergy, 1344--prelates impeached for throwing land in mortmain.
- 25 E.111. Death penalty for Provisors.
- 25 E.111. Statute of Provisors, 1350
- 27 E.111. Statute of Praemunire, 1351--Suing in a foreign realm.
- 38 E.111. Parliament of 1363--Provisors and Praemunire--mentions Rome specifically.
- 3 R.11. Statute of 1379--No benefices to aliens; no money sent from the realm.
- 7 R.11 Statute of 1383--No alien should purchase or occupy to be provided.
- 13 R.11. Statute of 1389--No subject shall go out of the realm to be provided.
- 13 R.11. Statute of 1389--Death penalty for provisors, re-affirmed.
- 16 R.11. Statute of Praemunire, 1393--Purchasing bulls and translations.
- 2 H.IV. Statute of 1400--Provisors (obedience)--Praemunire (bulls)--discharged of tithes.
- 6 H.IV. Statute of 1404--First fruits over the customary sum.
- 7 H.IV. Statute of 1407--Carrying money out of the realm to the Court of Rome confirmed.
- 10 H.V. Statute of 1415--Benefices provided to, already filled are void.

- 24.H.VIII. Statute of 1532--Restraint of Appeals (Change in wording from Statute 1393).
- 25 H.VIII. Statute of 1533--Restraint of Appeals (For all ecclesiastical causes.)
- 35 H.VIII Statute of 1543--Establishment of Succession (Oath against the authority of Rome.)
- 1 and 2
Philip and
Mary Statute of 1554--Repeal of post 1520, Statute of Henry VIII against Rome.
- 1 El. Statute of 1558--Abolish all foreign power repugnant to ancient jurisdiction.
- 5 El. Statute of 1562--Not lawful to slay one attained in a Praemunire.
- 13 El. Statute of 1570--Prohibition of bringing in bulls or executing them from the See of Rome.
- 27 El. Statute of 1585--Anti-Jesuit.

APPROVAL SHEET

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The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

Date

May 20, 1974

Director's Signature

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