

**Church, State, and Reformation: the use
and interpretation of *praemunire* from its
creation to the English break with Rome**

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Abstract

This thesis examines the use and interpretation of *praemunire* from its fourteenth-century creation to the English break with Rome. Although much has been written on *praemunire* in the Tudor period, when Henry VIII and Thomas Wolsey used the offence to intimidate their rivals in the years preceding the break with Rome, little work has been done on the offence in the century-and-a-half before this date. The central point of this thesis is to connect the creation of the offence of *praemunire* in the fourteenth century to this sixteenth-century use, to see how it changed from an offence designed to protect both the ecclesiastical and temporal spheres in England from an encroaching papacy, to one that could bring low the mightiest of England's churchmen.

As this thesis deals primarily with how the offence changed over time, the chapters follow a broadly chronological structure. Chapters one to three look at the fourteenth-century creation of the writ of *praemunire facias*, the Statutes of *Praemunire*, and the offence of *praemunire* that they created.

Chapters four and five look at the spiritual responses to the offence in the fifteenth century. Chapter four looks at the papal reactions to *praemunire* and the ostensibly similar provisors legislation. Chapter five looks at the contemporary records of convocation to measure English ecclesiastical opinion of *praemunire* in the fifteenth century.

Chapter six look at the legal interpretation of the offence, from the deposition of Richard II to the accession of Henry VII, to see how the offence was confirmed as one that could be used against the English ecclesiastical courts.

Finally, chapters seven and eight examine the use of *praemunire* in the Tudor period, and reassess the high-profile events in the sixteenth century based on this new understanding of *praemunire*.

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Abbreviations:

<i>BL</i>	British Library, London
<i>CCR</i>	<i>Calendar of Close Rolls, 1227-1509</i> , 61 vols (London: H.M.S.O., 1892-1963)
<i>Convocation</i>	<i>The Records of Convocation</i> , edited by Gerald Bray, 20 vols (Woodbridge: Boydell, 2005)
<i>CPL</i>	<i>Calendar of Entries in the Papal Registers Relating to Great Britain and Ireland: Papal Letters, 1198- 1492</i> , 14 vols (London: H.M.S.O., 1893-1960)
<i>CPR</i>	<i>Calendar of Patent Rolls, 1216-1509</i> , 53 vols (London: H.M.S.O., 1891-1916)
<i>EHR</i>	<i>English Historical Review</i>
<i>Foedera</i>	Thomas Rymer, <i>Foedera, Conventiones, Literae, et Cuiscunque Generis Acta Publica inter Reges Angliae</i> (London: Apud Joannem Neulme, 1739-1745)
<i>LP</i>	<i>Letters and Papers, foreign and domestic, of the Reign of Henry VIII</i> , edited by J. S. Brewer et al., 23 vols (London: Longman, Green, Longman, Roberts & Green, 1862-1932)
<i>ODNB</i>	<i>Oxford Dictionary of National Biography</i> , 61 vols (Oxford: Oxford University Press, 2004)
<i>POPC</i>	<i>Proceedings and Ordinances of the Privy Council</i> , 7 vols (London: G. Eyre & A. Spottiswoode, 1834-37)
<i>PROME</i>	<i>The Parliament Rolls of Medieval England, 1275-1504</i> , edited by Chris Given-Wilson et al., 16 vols (Woodbridge: Boydell, 2005)
<i>RP</i>	<i>Rotuli Parliamentorum</i> , 6 vols (S.l.: s.n., 1767-77)
<i>SR</i>	<i>The Statutes of the Realm</i> , edited by Alexander Luders et al., 11 vols (London: Dawsons of Pall Mall, 1810-28)
<i>TNA</i>	The National Archives, Kew ¹
<i>YB</i>	<i>Medieval English Legal History: An index and paraphrase of Printed Year Book Reports, 1268-1535</i> , compiled by David J. Seipp - https://www.bu.edu/law/faculty-scholarship/legal-history-the-year-books/

¹ All manuscript references are to TNA, unless cited otherwise.

Introduction

The Act in Restraint of Appeals to Rome was the first step taken in parliament towards the extinction of the papal jurisdiction and power in England.²

The Act in Restraint of Appeals of 1533, the act from which all appeals out of the realm to Rome were prohibited, cited a set of fourteenth-century statutes as precedent for such restraints.³ These Statutes of Provisors and *Praemunire* were enacted in the reigns of Edward III and Richard II to protect English interests from papal encroachments.⁴ *Praemunire* in particular would gain notoriety in the years leading up to the break with Rome for its association with not only the act prohibiting appeals out of the realm, but also the downfall of King Henry VIII's former favourite Thomas Wolsey in 1529 and the subsequent '*praemunire* manoeuvres' of 1530-31, which paved the way for the eventual Submission of the Clergy.⁵

Praemunire's connection to this narrative, and the specific associations it had with these sixteenth-century machinations against papal authority, invites conclusions that the fourteenth-century Statutes of *Praemunire*, cited in the act that blocked appeals to Rome in 1533, were intentionally designed to weaken the papacy in England.⁶ Historians of the early twentieth century confidently stated that 'the great Statute of *Praemunire* was the most anti-papal Act of Parliament passed prior to the reign of Henry VIII; the Act from which the rapid decline of Papal authority in England is commonly dated'.⁷ However, to paint *praemunire* with so broad a brush is to remove it from the context in which it was created; the offence of *praemunire* was not originally as overtly 'anticlerical'. Instead the offence was designed as a form of protection for the English courts, both of common law and ecclesiastical, from the rival jurisdiction of the court of Rome.⁸ These Statutes of *Praemunire* (which created the offence), in conjunction with those of provisors, sought to limit papal

² G. R. Elton, 'The Evolution of a Reformation Statute', *EHR*, 64 (Apr., 1949), 174-97 (p. 174).

³ 24 Hen. VIII, c. 12 (1533). *SR*, iii, pp. 427-29.

⁴ 35 Edw. I, c. 2 (1307). *SR*, i, pp. 149-52; 25 Edw. III, Stat. 4 (1351). *SR*, i, pp. 316-18; 27 Edw. III, Stat. 1, c. 1 (1353). *SR*, i, p. 329; 38 Edw. III, Stat. 2, c. 1-2 (1365). *SR*, i, pp. 385-87; 13 Ric. II, Stat. 2, c. 2 (1390). *SR*, ii, pp. 69-74; 16 Ric. II, c. 5 (1393). *SR*, ii, pp. 84-86.

⁵ J. A. Guy, 'Henry VIII and the *Praemunire* Manoeuvres of 1530-1531' in *EHR*, 97 (Jul., 1982), 481-503 (p. 481).

⁶ Waugh, W. T., 'The Great Statute of *Praemunire*', *EHR*, 37 (Apr., 1922), 173-205.

⁷ James H. Ramsay, *The Genesis of Lancaster: Or, The Three Reigns of Edward II, Edward III, and Richard II, 1307-1399*, 2 vols (Oxford: Clarendon Press, 1913), ii, p. 288.

⁸ 27 Edw. III, Stat. 1; 38 Edw. III, Stat. 2; 16 Ric. II, c. 5.

provisions to English benefices, especially where such provisions were to the detriment of royally-appointed nominees.⁹ The writ of *praemunire facias*, from which the statutes were named, was the writ used to bring those accused of the offence to court. The enacting part of the third, so-called ‘Great’, Statute of *Praemunire* (1393) made it an offence for anyone to obtain or sue ‘in the court of Rome or elsewhere any such 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.’¹⁰

Despite this change, the offence as a whole - particularly in the fifteenth century - has been little studied. This is peculiar because over the course of the fifteenth century *praemunire* came to include within its remit not just those cases drawn out of the realm to the court of Rome, but also those cases brought into the English ecclesiastical courts. It was possible to interpret the offence in this way because the enacting part of the 1393 statute was imprecisely worded, and so the phrase ‘or elsewhere’ – *ou aillours* in the statute, *vel alibi* in the writ – came to include these courts.¹¹ The main questions that this thesis answers are how and when this change occurred.

The peculiarity of *praemunire* – in that it was transformed from an offence intended to protect the interests of the English courts to a weapon used by Henry VIII to threaten the entire English clergy – has vexed generations of historians, particularly because the offence appeared to lay dormant for much of the fifteenth century, only to reappear much changed in the Tudor period. This led to two general interpretations of the Statutes of *Praemunire*. The first interpretation, largely formed before the publication of Waugh’s seminal article on the Great Statute of *Praemunire* in the 1920s, recognised that Henry VIII had used the offence as the ultimate weapon in limiting papal power in England, and surmised therefore that the Statutes of Provisors and *Praemunire* were fundamental in limiting the power of the papacy in England.¹² The second interpretation, heavily influenced by Waugh’s arguments, suggests instead that the statutes were not altogether anti-papal at the time of

⁹ *Ibid.*, 25 Edw. III, Stat. 5, c. 1-2; 13 Ric. II, Stat. 2, c. 2.

¹⁰ 16 Ric. II, c. 5 (1393). See Appendix 1. For the statute referred to as ‘Great’, see W. T. Waugh, ‘The Great Statute of *Praemunire*’, p. 173; William Stubbs, *The Constitutional History of England*, 5th edn, 3 vols (Oxford: Clarendon Press, 1891-1906), ii, p. 509; Ramsay, *Genesis of Lancaster*, ii, p. 288.

¹¹ See Appendix 1.

¹² Ramsay, *Genesis of Lancaster*; Stubbs, *Constitutional History*. For further examples see Waugh, ‘The Great Statute of *Praemunire*’.

their enactment, and it was only in the later-fifteenth and early-sixteenth centuries that the offences began to be used specifically to the detriment of first the papacy, then the English clergy, as the ambiguity in the wording of the statute (of 1393) began to be tested.¹³

Literature on the offence of *praemunire* has tended to focus on one of two points: some studies, notably the works of E. B. Graves, Chris Given-Wilson and W. T. Waugh, have focused on the body of legislation that came to define the offence in the fourteenth century.¹⁴ Other studies have focused on the more notorious uses of the offence under Henry VIII, such as S. F. C. Milsom's analysis of Richard Hunne's *praemunire*, or John Guy's examination of Henry's use of the offence in 1530 and 1531.¹⁵ There is little literature on the offence between these two points of reference, and any studies of *praemunire* in the fifteenth century have tended to focus on reactions to *praemunire* and provisors rather than the offences themselves, such as the campaign by Pope Martin V to repeal the ostensibly similar Statutes of Provisors in the 1420s and 30s, or Cardinal Beaufort's dealings with the offence in the reigns of Henry V and Henry VI.¹⁶ These works, though providing a comprehensive account of a single use of *praemunire* at a fixed point in time, do not examine how *praemunire* changed from an offence designed to protect the English courts from papal interference to one that could be used to encroach upon English ecclesiastical jurisdiction. Only a few studies have attempted to look at the use of *praemunire* over time, notably Diane Martin's examination of the offence between 1377 and 1394 (though this

¹³ Waugh, 'Great Statute of *Praemunire*'; Robert C. Palmer, *English Law in the Age of the Black Death, 1348-81* (Chapel Hill, N.C., and London: University of North Carolina Press, 1993); W. M. Ormrod, *The Reign of Edward III* (London: Yale University Press, 1990).

¹⁴ E. B. Graves, 'The Legal Significance of the Statute of *Praemunire* of 1353', in *Anniversary Essays in Medieval History by Students of Charles Homer Haskins* (Boston, Mass.: Houghton Mifflin, 1929), 57-80; Chris Given-Wilson, 'The Bishop of Chichester and the Second Statute of *Praemunire*, 1365' in *Historical Research*, 63 (1990), 128-42; W. T. Waugh, 'Great Statute of *Praemunire*'. For the Statutes of Provisors (and their precursors) see, W. E. Lunt, 'William Testa and the Parliament of Carlisle', *EHR*, 41 (Jul., 1926), 332-357; A. D. M. Barrell, 'The Ordinance of Provisors of 1343', *Historical Research*, 64 (1991), 264-77; Fredric Cheyette, 'Kings, Courts, Cures, and Sinecures: the Statute of Provisors and the Common Law', *Traditio*, 19 (1963), 295-349.

¹⁵ S. F. C. Milsom, 'Richard Hunne's *'Praemunire'*', in *EHR*, 76 (Jan., 1961), 80-82; J. A. Guy, 'Henry VIII and the *Praemunire* Manoeuvres of 1530-1531'.

¹⁶ Richard G. Davies, 'Martin V and the English Episcopate, with Particular Reference to His Campaign for the Repeal of the Statute of Provisors', in *EHR*, 92 (Apr., 1977), 309-44; K. B. McFarlane, 'Henry V, Bishop Beaufort and the Red Hat, 1417-1421' *EHR*, 60 (Sept., 1945), 316-48.

study was primarily interested in the use of provisors), and the works of Sir John Baker and Robert C. Palmer, which focussed on the use of *praemunire* in the early Tudor period.¹⁷

It is therefore the purpose of this thesis to provide a comprehensive history of the offence of *praemunire* between its late-fourteenth century origins and the break with Rome; particular attention has been paid to how the offence was used and interpreted in the fifteenth century, when this change in use was occurring. From a legal perspective, this will explain how it was that an offence originally intended as a form of protection for the English courts, both secular and ecclesiastical, became the weapon that enabled Henry VIII to disgrace Wolsey and intimidate the English clergy in the years immediately preceding the break with Rome. More importantly, it will be possible to chart when these changes in the use of the offence occurred, in a way that only a comprehensive history of the period can achieve. Once *praemunire* is placed in its fifteenth-century legal context, it is possible to see the offence's role in the changing Church-State relations in the century-and-a-half before the break with Rome.

Sources

The first points of entry for a study of this kind, which examines legal debate and interpretation, are the printed Year Books and other law reports, which record contemporary debates on common law court cases. It is in these reports that any legal changes to the application of *praemunire* were recorded. For the actual cases, the plea rolls of the courts of King's Bench and Common Pleas have been studied.¹⁸ By the late-fourteenth century both of these courts were situated in Westminster Hall, along with the court of Chancery. The courts were arranged so that Common Pleas was on the west side of the hall, near the main door in the north, and Chancery and King's Bench were on either side of the south-side steps. The Exchequer was in an adjoining building, connected to the main hall through a passage.¹⁹ It was in this environment that the majority of *praemunire* cases analysed in this study would have been heard. The sessions of the courts were held during

¹⁷ Diane Martin, 'Prosecution of the Statutes of Provisors and Premunire in the King's Bench, 1377-1394', in *Fourteenth Century England*, IV (London: Boydell Press, 2006), 109-23; Robert C. Palmer, *Selling the Church: The English Parish in Law, Commerce and Religion, 1350-1550* (Chapel Hill, N.C., and London: University of North Carolina Press, 2003); John H. Baker, *Oxford History of the Laws of England, Volume VI, 1483-1558* (Oxford: Oxford University Press, 2003).

¹⁸ Held at The National Archives, catalogue references CP40 and KB27.

¹⁹ John Baker, *Introduction to English Legal History*, 3rd ed. (Edinburgh: Butterworth and Co. Ltd., 1990), p. 44.

the four regular law terms: Michaelmas, Hilary, Easter and Trinity. The latter two were moveable terms, based on the date of Easter, and the longest of these terms was Michaelmas, which began on the 6th October – the octave of St. Michael – and ended on the 28th November – the end of the week of the quindene of St. Martin.²⁰ For the early-Tudor period, a spate of *praemunire* actions appearing in King’s Bench allowed for a more in-depth study of how a *praemunire* action commenced in practice. From the evidence of these plea rolls alone, it was possible to compile significant data about each case, such as the names and occupations of the parties involved, the place of origin for the dispute, the issues that were being prosecuted and the time taken between the ecclesiastical court case and the *praemunire* action. In some (though not all) cases the outcome of a suit was also recorded on the plea roll.²¹

The plea rolls of King’s Bench and Common Pleas for this period of study were recorded in Latin. However, some English can be found in cases where a party is quoted verbatim. These law documents were produced in Latin because it was a language known to all educated men post-conquest; so too were writs of *praemunire facias* and many of the contemporary records used in this study.²² The Year Books, however, were primarily written in Law French. This was because the Year Books were commentaries of the age, and quoted verbatim the language used by the lawyers in court - Latin was unsuitable for speaking purposes in pleading or debate. Law French developed as the regular language of court cases in the central law courts because these courts derived from the old *Coram Rege*, which favoured French post-conquest because this was the language favoured by the king. As the court settled the habit of using French to plead cases stayed, though the version of French used was unique unto itself.²³ It was this language, unique to the English central law courts, that further separated them from the continental Roman law of the age. It is also worth noting that in the local county courts English was probably still used, as these courts had developed away from the central courts. It was not until after the period of study that law French ceased to be used, primarily because lawyers ceased to be able to use it, at

²⁰ C. R. Cheney, ed., *A Handbook of Dates*, 2nd ed. (Cambridge: Cambridge University Press, 2000), pp. 98-100.

²¹ For these cases, see Appendix 4.

²² Sir Percy Henry Winfield, *The Chief Sources of English Legal History* (Cambridge, Mass.: Harvard University Press, 1925), p. 7.

²³ Winfield, *English Legal History*, p. 9.

which point English became the favoured language of the central law courts (though Latin was still used for legal documents).

A *praemunire* suit in King's Bench adhered to a standard process. Once the plaintiff had appeared (either in person or by attorney) and the defendants had been named, the terms of the statute would be outlined, namely that any offence perpetrated within the king's realm within the jurisdiction of his (secular) courts could not be heard in the papal curia or elsewhere. This was typical of *praemunire* actions across the period, and the terms of the statute would often be relayed in the writ and plea roll.²⁴ There then followed in the plea roll the allegation that the defendant (in the *praemunire* action) had broken the terms of the statute by commencing a suit in a court outside of the king's cognisance. Further pleading, unique to the case, would then lay out the specific details. As with the majority of proceedings in King's Bench, documented outcomes were rare, and many *praemunire* actions ended without a recorded judgement.

A plaintiff returning a writ to King's Bench would be assigned a particular day in the next term to do so. As a result the clerks of King's Bench could draw up reasonable dockets for each day of the respective term. This was a more efficient system than that of the court of Common Pleas, which instead had a number of common return days, and the plaintiff could appear on any of these specified days; the clerks of Common Pleas were therefore unable to draw up dockets for specific days.²⁵ *Praemunire* actions were brought into these common law courts through the purchase and sending of a writ of *praemunire facias* from Chancery. As such, another invaluable primary source has been surviving writ formularies which contain specimen writs of *praemunire facias*. More general printed primary sources for this investigation, which have proven invaluable to assessing the wider opinion of *praemunire* throughout this later-medieval period, are the printed editions of the parliament rolls, statute rolls, and convocation records for the period.²⁶

²⁴ L. C. Hector and Michael E. Hager, eds, *Year Books of Richard II: 8-10 Richard II, 1385-1387* (Cambridge, Mass.: Harvard University Press, 1987), Ames 47-48.

²⁵ Margaret Hastings, *The Court of Common Pleas in Fifteenth Century England* (Hamden, Conn.: Archon, 1971), p. 23.

²⁶ *The Parliament Rolls of Medieval England, 1275-1504*, edited by Chris Given-Wilson et al., 16 vols (Woodbridge: Boydell, 2005); *The Statutes of the Realm* (London: Dawsons of Pall Mall, 1810-28); *The Records of Convocation*, edited by Gerald Bray, 20 vols (Woodbridge: Boydell, 2005).

In theory, *praemunire* cases should have been heard on the Crown side of King's Bench. The court of King's Bench was created primarily to deal with cases that were of interest to the king in some way; the offence of *praemunire*, of bypassing the courts of the king and pursuing the case in another court, falls into this category. Despite this, *praemunire* cases found their way into the other courts for a number of reasons: firstly, a case did not always make its way into the central law courts, often originating in a local court. If the defendant settled, or the plaintiff could not afford the expensive use of the central law courts, then a case would not make its way into King's Bench. Secondly, when a case did end up at Westminster, it might have ended up in any of the central law courts depending on whom the case was between. For example, if the case was between two private parties, which did not affect the king, it could be argued that the case was a civil plea (despite the use of *praemunire facias*), and thus should be heard in the court of Common Pleas. Similarly, if a case did not directly affect the king it could end up in the Court of King's Bench but on the pleas side. Throughout this thesis, *praemunire* actions have been found appearing in the courts of Star Chamber, King's Bench, Chancery, Common Pleas, and before the King's Council; theoretically they could have been heard in any temporal law court, as dispensers of the king's justice. This lack of specificity in the destination of a *praemunire* action presented a challenge, considering the time-frame of this study. There, a systematic search of the plea rolls has been limited to a period where there is a confirmed number of *praemunire* actions in the court of King's Bench, from 1495-1525. For the rest of the period, *praemunire* cases have been compiled primarily from the cases debated in the printed Year Books, and the specimen writs of *praemunire facias* contained in contemporary Chancery formularies.

Complexities of *Praemunire*

There are two main complexities regarding the study of *praemunire* over this long fifteenth century, both relating to definition. Firstly, the term *praemunire* could apply to one of three things: the writ of *praemunire facias*, the Statute of *Praemunire*, or the offence of *praemunire*. The writ gave its name to the statutes, which in turn named the offence. By the Tudor period, these three aspects of *praemunire* were viewed as part of one; to have a *praemunire* brought against you was to be summoned with a writ of *praemunire facias* to answer for the offence, founded upon one of the Statutes of *Praemunire* (by the Tudor

period often the 1393 statute). This complexity alone is not difficult to overcome; it is often clear to which contemporaries were referring. However, although in time the statutes of 1353, 1365, and 1393 would take the name ‘Statutes of *Praemunire*’, at the time of their creation they were referred to by simpler names. The 1353 statute was the only one to have a title, ‘a statute against annullers of judgements in the king’s courts’; the other two were referred to by the regnal years in which they were enacted.²⁷

Secondly, with no common name to connect them these statutes were instead viewed as part of a larger provisors legislation, associated with the fourteenth-century Statutes of Provisors. In many ways *praemunire* and provisors were similar. The offence of provisors made it an offence to accept or purchase a papal provision to an English benefice, if the advowson of that benefice was in the king’s hand, or in dispute. *Praemunire* made it an offence to appeal to the court of Rome in a matter deemed to be within the king’s jurisdiction.²⁸ Although these were two separate offences, technically provisors could be construed as an appeal to Rome (to purchase the papal provision), and so the two were viewed as interchangeable for the majority of this thesis period. Another aim of this thesis has been to examine in more detail the relationship between provisors and *praemunire*, and how this affected the development of the offence of *praemunire* into the wider-reaching offence it became in the Tudor period.²⁹

Chapter Breakdown

This thesis follows a roughly chronological structure, as it charts how *praemunire* changed in use from its creation in the fourteenth century to the English break with Rome. A prologue addresses the general issues of papal authority in England up to the fourteenth century, to

²⁷ See Appendix 1.

²⁸ *Ibid.* For the purposes of this thesis, the phrase ‘Court of Rome’ is used to describe any one of the many courts that comprised the papal court system. Additionally, this ‘Court of Rome’ was not always in Rome; for the later part of the fourteenth century these courts were at Avignon with the papacy. This is a reflection of the rudimentary terminology of the English sources, which did not differentiate between the different papal courts. Therefore, for this study, which is focussed on the English perspective of cases being drawn from the realm, the English terminology has been kept.

²⁹ For ease of reference, the term ‘Statutes of *Praemunire*’ has been used for the three statutes enacted in 1353, 1365, and 1393 throughout this thesis, even though they were not named as such until later. The term ‘Statute of Provisors’ has been used to refer to the statutes of 1351 and 1390. In a number of contemporary sources throughout this period of study, the Statutes of *Praemunire* have been referred to as Statutes of Provisors. Where this is the case, I have used the terminology used by the contemporary source, and addressed the confusion in nomenclature if it is pertinent to the examination.

define the narrative into which the Statutes of *Praemunire* and Provisors would be enacted. The first three chapters introduce the Statutes of *Praemunire*, the offence they created, and the writ used in such actions: the writ of *praemunire facias*. They explain the complex relationship *praemunire* shared with the ostensibly similar provisors legislation, also created during the fourteenth century, and how this relationship shaped the use of *praemunire* throughout the period.

Chapter one places these statutes in the political context in which they were enacted to understand why such legislation was deemed necessary by the estates in parliament. This examination looks at general Anglo-papal relations over the course of the fourteenth century, to understand how grievances with the papacy contributed to this fourteenth-century legislation, and whether this had any bearing on the later use of *praemunire*.

Chapter two looks in detail at the writ of *praemunire facias* in the fourteenth century, the writ used to summon defendants before the king's justices in both actions of *praemunire* and provisors. This chapter examines two potential origins for the writ, either a creation of the 1353 Statute of *Praemunire* or a repurposed Chancery writ of summons from earlier in the fourteenth century, and the implications each has upon its later use.

Chapter three examines the offence of *praemunire*, created from the statutes of the same name, and how each statute shaped and adapted the offence. This chapter also analyses in more detail the relationship between *praemunire* and provisors, to understand why the two terms were considered interchangeable for much of the later medieval period, and crucially how they differed.

Chapters four, five, and six examine the use and reaction to *praemunire* in the fifteenth century, to understand how it developed from an offence largely indistinguishable from provisors, to one that could apply to actions begun in the English ecclesiastical courts. Chapter four addresses why the late-medieval papacy found the Statutes of Provisors so abhorrent (but were far less concerned about those of *praemunire*), and examines the attempts by the papacy to have these statutes repealed in the early fifteenth century, and why they failed. It explains why a threat to provisors at this point was also a threat to *praemunire*, and the implications of the papacy's failure to have the statutes repealed.

Chapter five contains a close examination of the relationship between the English clergy and *praemunire* up to the Tudor period. Their initial support of *praemunire* slowly turned to concern, as new interpretations of the wording of the 1393 Statute of *Praemunire* applied the offence to actions begun in English ecclesiastical courts. This chapter looks at their responses to this change, and the state of English ecclesiastical jurisdiction by the end of the Yorkist period because of this.

Chapter six analyses the legal interpretation of *praemunire* in the fifteenth century up to the end of Richard III's reign. This was an important period in the development of *praemunire*, when the men of the English common law confirmed that the offence could legally be used against cases begun in English ecclesiastical courts. This chapter examines how this confirmation occurred and how it related to the ecclesiastical complaints examined in chapter five. It also provides a wider analysis of the interpretation of *praemunire* in the common law during this period. Its change in application was not the only topic of debate surrounding the offence, and so this chapter also addresses these opinions of *praemunire*.

Chapters seven and eight examine the use of *praemunire* in the early-Tudor period. Having examined the changes in the way *praemunire* could be applied in chapter six, chapter seven analyses how these changes in interpretation were utilised during the early-Tudor period. A spate of *praemunire* actions appearing in King's Bench in this period have allowed for a more in-depth analysis of the practical process of a *praemunire* process. This chapter looks at the nature of the disputes being brought into the common law on such *praemunire* actions, and how they were justified as matters to be decided in the common law courts. The final chapter of this thesis examines the high-profile uses of *praemunire* in this Tudor period, up to the break with Rome, to see how the offence was being used and interpreted, and how this had changed over the whole period of examination, through a comparison of earlier high-profile uses of *praemunire*. This chapter focuses on the events following on the fall of Wolsey in October 1529, culminating with the Act in Restraint of Appeals (1533).

Taken together, the chapters in this thesis answer a number of previously unanswered questions about *praemunire* in the later-medieval period. Firstly, and most importantly, 'what was *praemunire*'? This simple question is in many ways the most difficult

to answer, because of the different meanings the word could have, and because of its close relationship to the ostensibly similar provisors. This thesis defines *praemunire*, and explains how this definition changed. The second question answered is the extent to which *praemunire* was anti-papal. Its association with Henry VIII's machinations against papal authority in the Tudor period have often painted *praemunire* in this light, and so this thesis explains in what ways the offence was and was not anti-papal. The third main conclusion to be drawn from this thesis regards how and why *praemunire* changed from an offence designed to protect both English ecclesiastical and common law courts from the rival authority of the court of Rome, to one that was used to the detriment of ecclesiastical jurisdiction in England. This thesis has identified how and when this change occurred, and why any attempts by the ecclesiastical sphere to stop this change failed.

Prologue: A Problem of Patronage

The core dispute surrounding the fourteenth-century *praemunire* and provisors legislation and its precursors was the overlapping jurisdiction between king and pope in England. In the case of *praemunire*, the dispute manifested itself as a competition between the temporal jurisdiction of the king's common law courts and the spiritual jurisdiction of the papal court of Rome. Both king and pope were duty-bound to administer justice to whomsoever desired it; however, an English case taken to the court of Rome could be perceived as a slight to royal authority. The dispute was more pronounced in the case of provisors, which concerned itself with the rights of provision to English benefices. A number of different parties could lay claim to the patronage of benefices in England in the medieval period; by the fourteenth century, the king, pope, prelates of the church and lay magnates all had a hand in the promotion of clergy to English benefices.³⁰ In both cases, tensions were created because there was no definite boundary between the temporal and ecclesiastical jurisdiction, and attempts to better define this boundary from either side were often met with opposition. This prologue looks to analyse the origins of these grievances, and the attempts by king and pope to reach some form of jurisdictional compromise, in order to place *praemunire* and provisors in this wider narrative of papal authority in England up to the break with Rome.

Rival Patrons

All English patrons, whether prelates of the church or lay magnates, were granted their rights of patronage by the king (either temporarily or in perpetuity). The kings of England could claim patronage over the entirety of their realm because their ancestors, and the ancestors of the nobility who served the king, had founded and endowed the church in England. In the late-medieval period the English Church was the king's greatest source of patronage, a source of great financial and political reward, and therefore royal concern regarding the issue of papal provisions to English benefices was more pronounced.³¹ Later English kings also agreed to be bound by the terms of Magna Carta – sealed and agreed upon by another of the king's ancestors, John – which stipulated in its first clause that the king protect the freedom of the church in the election of its bishops; papal provisions to

³⁰ R. N. Swanson, *Church and Society in Late Medieval England* (Oxford: Basil Blackwell, 1989), p. 143.

³¹ Ormrod, *The Reign of Edward III*, p. 124.

English benefices could be construed as an encroachment upon these freedoms.³² The papal claims to patronage in England were more complicated. As head of the church, the pope had the right to present to all benefices in Western Christendom.³³ This was particularly pertinent for the provision to vacant episcopal sees. Similarly, this position as primate of the Western Church allowed the pope to hear cases of an ecclesiastical nature at the court of Rome. This competition for the patronage of the most profitable benefices was exacerbated by the dual-nature of the benefice itself. A benefice was a post granted to a member of the church with a fixed amount of property or income attached. Although the benefice itself was a spiritual appointment, which should have placed such patronage with the Church, be that a high-ranking English churchman or the pope, the advowson – that is, the legal right to present to a benefice – was treated as a piece of real property, because of the land and income attached to the benefice. This brought it within the remit of the temporal sphere, and further justified the king's right to present to such benefices. Thus between the reigns of William I and Edward III the English monarch and the papacy attempted to better define the jurisdictional boundary between the two, to allay this source of tension and profit from these rights of patronage and authority within the realm; the later Statutes of *Praemunire* and Provisors can be seen as a continuation of these royal attempts.

The kings of England had not always had to contest with the papacy regarding English matters. Under the first three Norman kings – William I, William II, and Henry I – the king was undisputed master of the Church in England; no appeals were allowed to go out of the country and no English bishops were permitted to visit Rome without the king's consent. In the following centuries, however, successive medieval popes sought to chip away at this royal monopoly in order to exercise their authority over all of Western Christendom. The first major attempt at extending papal privileges in England (and Europe) was the so-called Investiture Controversy. The controversy took its name from the issue as to whether the pope or the monarch named (or invested) higher-ranking clergymen such as bishops or abbots. Common practice up to this point in England as on the continent was for the king to control these appointments. The papacy disputed this claim. As God's chosen representative, all spiritual appointments should lie with the pope. Although investiture was

³² *Magna Carta*, trans. by David Carpenter (London: Penguin, 2015), p. 38.

³³ For a recent general overview of papal provisions across medieval Europe, see Thomas W. Smith, 'The Development of Papal Provisions in Medieval Europe', in *History Compass*, 13 (2015), 110-21.

not the same as provision to a benefice, the concerns of the papacy were much the same. Investiture was when a clerical candidate was 'invested' with their symbols of ecclesiastical office and consecrated; provision was the nomination of, and 'provision' to, a specific benefice. For the papacy this was not just about power, but also about ensuring salvation. Though in Europe this dispute began in the mid-eleventh century (and would last until 1122), in England the 'controversy' took the form of a briefer struggle over investitures between Henry I and Pope Paschal II, at the beginning of the twelfth century.³⁴ The wider dispute between the pope and Holy Roman Emperor Henry IV (1056-1106) in Europe meant that initially Henry I held the upper hand in English negotiations over investiture. The king's original proposal to Paschal was that the pope should renounce his decrees on investiture and homage; if he did not, Henry was willing to banish his archbishop of Canterbury from the realm, renounce England's allegiance to the papacy, and abolish the payment of Peter's Pence.³⁵ However, Paschal would not budge. Archbishop Anselm of Canterbury's allegiance to the pope resulted in Henry temporarily confiscating the Canterbury revenues in 1103, in the hope that this would persuade the pope to allow lay investitures in England. For the most part of 1104 the archbishop was exiled in Lyons until the king and pope could come to an arrangement; that they did not do so resulted in the excommunication of all those churchmen that Henry had invested in 1105.³⁶ The dispute was settled in 1107 by the Concordat of London, but not before Anselm had been forced to threaten Henry with excommunication should he not relent on his stance.³⁷ Henry – employing a distinction already made in chancery between the secular and ecclesiastical powers of the prelates – gave up his right to invest his bishops and abbots, but reserved for himself the custom of requiring them to swear homage for their temporalities.³⁸ This act of swearing homage in receipt of their benefices – before investiture – continued for as long as England was loyal to Rome, and examples of the practice abound in the thirteenth through sixteenth centuries.³⁹ In reality Henry had lost little control over the church in England, and had simply deferred the issue. Paschal wrote in 1115 to the king and bishops of England bemoaning that no papal nuncios or letters were admitted except by the king's express permission; that no

³⁴ C. Warren Hollister, *Henry I* (London: Yale University Press, 2001), pp. 149-203.

³⁵ Hollister, *Henry I*, p. 149; Eadmer, *Eadmeri historia novorum in Anglia* (London: Longman, 1884), p. 131-33.

³⁶ Hollister, *Henry I*, p. 194.

³⁷ *Ibid.*

³⁸ Eadmer, *Eadmeri historia novorum*, pp. 186-7.

³⁹ *CCR, in passim.*

appeal, no ecclesiastical suit, was brought from England to the papal court; and that ecclesiastical synods were held and bishops translated to other sees without the Pope's consent, and in some cases without his knowledge.⁴⁰ Although Henry had relented to allow the pope to invest English churchmen, authority over the English church remained firmly in the hands of the king.

The first great victory for the papacy in gaining greater influence in English ecclesiastical affairs occurred in the reign of Stephen. The civil war between Matilda and Stephen allowed the papacy to gain a foothold in English interests, as Stephen owed the papacy a great debt for legitimising him over his rival Matilda. Pope Innocent II, who issued this papal recognition, sent Cardinal-Bishop Alberic to England in 1138 not only to help settle the contest between Stephen and Matilda but also to preside over a legatine council designed to discuss the state of the English church. In this period of political instability the papacy had been able to circumvent the royal monopoly over English ecclesiastical interests. The pope was only able to do so with the acquiescence of the men of the English church, who had turned against their king. When Stephen was crowned in 1135, the king made promises that he would act as a model ruler of the church. However, the continued travails of the civil war resulted in the king overlooking these promises. In June 1139 Stephen arrested the bishops of Salisbury, Lincoln, and Ely, and confiscated their castles.⁴¹ The newly-legated Bishop of Winchester, Henry of Blois (the king's brother) viewed this act as a breach of the promises made at the king's coronation, promises brokered by Henry. Thus, in late August 1139 the bishop summoned a legatine council at which Stephen was required to defend his behaviour. Although there were precedents for Stephen's actions, ecclesiastical confidence in the king had wavered. Innocent II's successor, Lucius II (1144-5), followed his example in sending Cardinal-Bishop Imar of Tusculum to England to preside over a legatine council without the king's involvement. Nor were English bishops seeking royal leave to appeal to Rome. Stephen was unable to prevent Archbishop Theobald of Canterbury from attending the papal council at Rheims in 1148, and was not able to punish him on his return. Additionally popes had begun to hear cases brought to them by English bishops.⁴² Thus we

⁴⁰ Hollister, p. 194.

⁴¹ *ODNB*, 'Henry of Blois' by Edmund King.

⁴² Z. N. Brooke, 'The Effect of Becket's Murder on Papal Authority in England', *The Cambridge Historical Journal*, 2 (1928), 213-28.

see during the reign of Stephen a breakdown in the royal monopoly over the English Church, brought about through the king's failure to secure the confidence of the English clergy and the distraction of the civil war, which allowed the papacy to affect English ecclesiastical matters without the permission of the king.

Henry II's attempts to restore royal authority over the English Church were hampered by the existence of this new papal authority in England. Where his predecessors had only to oppose a claim, he had to abolish a practice.⁴³ The Archbishop that he had inherited from Stephen – Theobald of Canterbury – was a devout churchman who after the events of Stephen's reign was accustomed to obey the pope over his king. Therefore it was not until Theobald's death in 1161 that Henry was able to make any sincere attempt at reclaiming lost authority. The appointment of the king's friend Thomas Becket to the vacant archbishopric was intended to provide the king with an easy restoration of these royal privileges. Despite this not being the case, the king persevered, and passed the Constitutions of Clarendon in 1164. These legislative procedures attempted to restrict ecclesiastical privileges and curb the extent of papal authority in England. Of particular note was the eighth chapter of the Constitutions, where it was declared that: 'Appeals are to proceed from the archdeacon to the bishop, from the bishop to the archbishop. And if the archbishop fails in doing justice, the matter shall finally be brought before the king that by his command the dispute may be settled in the archbishop's court, for it is not to proceed further without the king's consent'.⁴⁴ This restriction of appeals out of the realm, albeit only those cases heard in the English ecclesiastical courts, can be viewed as an early antecedent for what would later become the offence of *praemunire*.⁴⁵ Archbishop Becket's opposition to the Constitutions of Clarendon, while hindering the legislation, did not stop Henry's attempts to recover lost authority; the archbishop's murder, however, did. A repentant Henry came to an agreement with the papal legate at Avranches in 1172 to renounce the customs made during his reign to the harm of the church – i.e. the Constitutions of Clarendon – and allow appeals to Rome. Thus the attempts by Henry II to restore the royal control over the English Church ultimately failed, and the papacy could now claim legal

⁴³ Ibid.

⁴⁴ E. B. Graves, 'Studies on the Statute of *Praemunire* of 1353' (unpublished doctoral dissertation, University of Harvard, 1929), p. 9.

⁴⁵ Ibid.

precedent for intervening in English affairs. Following Avranches, particularly during the papacies of Alexander III (1159-81), and Lucius III (1181-85), appeals of ecclesiastical matters to Rome were frequent, as the application of canon law in the English ecclesiastical courts necessitated correspondence with the pope for rulings on point of law.⁴⁶ However, these concessions made by the king only extended to cases already conceded to the English ecclesiastical courts by the royal common law courts. Matters where there was some jurisdictional uncertainty, those issues that later could be drawn into the common law courts through *praemunire* actions, were still out of the papal sphere of influence.

In terms of championing royal authority within England (over the authority of the papacy), the reigns of Richard I and John did little, Richard because he was largely absent from the realm on crusade and John, like his predecessor Stephen, because he supplicated himself before the papacy in order to protect himself from his disillusioned subjects (and, towards the end of his reign, secure the succession of his son). The longevity of Henry III's reign provided the king a greater opportunity to be more assertive in his royal authority in England; however, there is little evidence that Henry ever made serious attempts to halt papal justice in England. Exceptions to this include when the king sent proctors to the court of Rome to argue his rights of jurisdiction in 1250, and when he forbade the bishop-elect in 1255 to answer in the court of Rome a plea regarding manors.⁴⁷ Henry's successor, Edward I, was more emphatic in his personal defence of royal jurisdiction. In 1279 the archdeacon of Derby was prohibited by the king from removing any cases or appeals out of the realm pertaining to the king's free chapel of All Saints Derby.⁴⁸ This was because royal free chapels were exempt from the jurisdiction of any ecclesiastic within the realm. In 1284 the king's brother Edmund was cited to the court of Rome by Almeric of Montfort. The king asked that the citation be removed, for the dispute between his brother and Alberic pertained to the cognisance of the royal courts.⁴⁹ This argument followed a line of logic consistent throughout the later medieval period. The jurisdictional overlap between temporal and ecclesiastical matters was not easily defined. The king accepted that the pope had jurisdiction in ecclesiastical matters but, crucially, that it was the royal courts that

⁴⁶ Brooke, 'The Effect of Becket's Murder'. For the number of decretals received in England at this time; Graves, 'Studies on the Statute of *Praemunire*', p. 11.

⁴⁷ *CCR*, 1247-51, pp. 525, 529; *CPR*, 1247-58, pp. 65-68, 440-41.

⁴⁸ *CPR*, 1272-58, pp. 440-41.

⁴⁹ *Foedera*, i, pt 2, p. 238.

determined whether cases that fell within this jurisdictional hinterland were spiritual or temporal matters. It was for this reason that the writ of *circumspecte agatis* was created in June 1286.⁵⁰

In defence of these royal rights Edward chastised the archbishop of York in 1287 for disturbing the treasurership of York held by the king's appointee and clerk Bogo of Clare whilst the king was overseas.⁵¹ Similarly, in 1289 the council denied the papal nuncio the right to try a debt case (for it fell within the remit of the temporal courts).⁵² Such attempts to assert royal authority did not go unnoticed by the papacy. In May 1290 Pope Nicholas IV complained to the king, through Bartholomew, bishop of Grosseto, that: secular courts continued to interfere in ecclesiastical affairs; papal letters were continually overridden by royal writs; and churchmen were continually imprisoned by the secular authorities.⁵³ A second letter from June 27 outlines these grievances more specifically: appeals to the pope had been prohibited; ordinaries were impeded from making use of ecclesiastical censure; prelates and clerks were made to answer before secular judges regarding their non-feudal lands and possessions; and prelates and clerks had been detained from taking game in the royal preserves.⁵⁴ In June 1291 the pope, having received no royal answer to these complaints, warned Edward that these grievances needed to be addressed.⁵⁵ Edward in return sent envoys to the court of Rome to declare that the king was at peace with his clergy and would do justice for his whole kingdom. Still though, the pope required a written answer to his letters.⁵⁶ The king's response to this is unknown. No written response has been found, and it is probable that Nicholas IV's death in 1292 caused a cessation of papal complaints temporarily.

Therefore, by the end of the thirteenth century, both the king and pope could lay claim to certain aspects of authority over the English church. The monopoly that the first Norman kings enjoyed had been chipped away by a combination of tenacious popes and weak monarchs. Attempts by English kings to regulate ecclesiastical and temporal

⁵⁰ *SR*, i, p. 209.

⁵¹ Graves. 'Studies on the Statute of *Praemunire*', App. 25-26.

⁵² *Ibid.*

⁵³ *CPL*, i, p. 526.

⁵⁴ *CPL*, i, p. 527; *Annales Monastici*, ed. by Henry Richards Luard, 5 vols (London: Longman, 1864-69), iii, p. 365.

⁵⁵ *CPL*, i, p. 555.

⁵⁶ *Ibid.*, i, p. 556; *CPR*, 1281-92, p. 443.

jurisdiction, the Constitutions of Clarendon, the writ and *circumspecte agatis*, had their limitations, and did not specifically provide remedy against papal provisions or removal of cases from the realm. In the fourteenth century, relations between England and the papacy became strained primarily due to the advent of the Hundred Years' War in 1337 and the Franco-sympathetic popes at Avignon throughout this period. As such, conditions were ripe for new, more stringent legislation against papal provisions and appeals to the court of Rome, the Statutes of Provisors and *Praemunire*.

Chapter I: The Statutes of *Praemunire*

The three Statutes of *Praemunire* – enacted in 1353, 1365, and 1393 – were the product of grievances levelled against those who sought to circumvent royal authority within the realm; they created an offence that prohibited appeals out of the realm in matters deemed to be within the king’s cognisance.⁵⁷ In defending the king’s authority from foreign (specifically papal) jurisdiction, these statutes can be placed among the ostensibly similar provisors legislation of the fourteenth century. The Statutes of Provisors, enacted in 1351 and 1390, created an offence that skewed the balance of patronage of English benefices in the king’s favour; they prohibited the acceptance of a papal provision in cases where the advowson was in dispute or in the king’s hand.⁵⁸ The association between the two offences went further than simply sharing similar aims. For the duration of the fourteenth century *praemunire* and provisors were treated as two sides of the same legislation.⁵⁹ This chapter focuses on the events surrounding the enactment of the collected statutes included in this broad provisors legislation in order to place these statutes in the context that they were enacted. Specifically, this chapter examines the assemblies from which the following statutes and ordinances originated: the Statute of Carlisle (1307); the Ordinance of Provisors (1343); the first Statute of Provisors (1351); the first Statute of *Praemunire* (1353); the second Statute of *Praemunire* (1365); the second Statute of Provisors (1390); and the third, so-called ‘Great’, Statute of *Praemunire* (1393).⁶⁰ At its heart, *praemunire* concerned itself with overlapping jurisdictions within the realm, between king and pope, the common law and ecclesiastical sphere. Therefore a particular focus of this chapter is the general Anglo-papal relations of the period, and how they contributed to the enactment of the statutes later called *praemunire*. This relationship is particularly pertinent considering the manner in which *praemunire* would later be used to the detriment of ecclesiastical jurisdiction not just in the court of Rome but also within England.

⁵⁷ 27 Edw. III, Stat. 1, c. 1; 38 Edw. III, Stat. 2, c. 1-2; 16 Ric. II, c. 5. See Appendix 1. For the specifics of the offence, see Chapter III.

⁵⁸ 25 Edw. III, Stat. 4; 13 Ric. II, Stat. 2, c. 2.

⁵⁹ See Chapter III.

⁶⁰ 35 Edw. I, c. 1-4, *SR*, i, pp. 149-52 (*Stat. Karlioli*); *PROME*, iv, pp. 349-52 (*Ordinance of Provisors*); 25 Edw. III, Stat. 4, *SR*, i, pp. 316-18 (*First Statute of Provisors*); 27 Edw. III, Stat. 1, *SR*, i, p. 329 (*First Statute of Praemunire*); 38 Edw. III, Stat. 2, *SR*, i, pp. 385-87 (*Second Statute of Praemunire*); 13 Ric. II, Stat. 2, c. 2, *SR*, ii, pp. 69-74 (*Second Statute of Provisors*); 16 Ric. II, c. 5, *SR*, ii, pp. 84-86 (*Third Statute of Praemunire*). See Appendix 1.

The Statute of Carlisle, 1307

By the seventeenth century, common lawyers in England could confidently state that the Statute of Carlisle, enacted in 1307, was the statute from which all subsequent Statutes of Provisors and *Praemunire* derived.⁶¹ However, despite its later historical significance, the parliament that assembled at Carlisle did not do so to primarily discuss matters relating to either the acceptance of papal provisions or of annulling the judgements of the king's courts (the grievances central to the Statutes of Provisors and *Praemunire*). Instead the main topic of discussion was the governance of Scotland following Robert Bruce's uprising, hence the parliament's location.⁶² However, during this assembly certain grievances were presented by the Commons relating to papal interference in English affairs. The petition opens, 'To our lord the king the earls, barons and the whole community of the land pray for aid and remedy for the oppressions listed below, which the pope causes to be carried out in this realm, to the destruction of God's faith, and the ruin of the estate of Holy Church in the realm, and to the disinheritance and prejudice of the king and of his crown'.⁶³ Papal provisions, they argued, were detrimental to the entire realm of England because 'Holy Church in all its estates of prelacy in this realm was founded by the king, and by his ancestors, and by the said earls, barons and their ancestors'.⁶⁴ As such these men, not the pope, should share the bulk of ecclesiastical patronage within the realm. When benefices became vacant, it should be the king and nobility that retained custody.⁶⁵ Despite this, in recent times 'the pope comes and appropriates to himself the lordship of such possessions, as if he were their patron, and gives the aforesaid dignities [etc.] to aliens who never reside there, and to some who cannot reside there, for example to cardinals, something unheard of before now, so that soon, if this thing is allowed to continue, there will be no dignity [etc.] which is not in the hands of aliens'.⁶⁶ Their two main points of grievance were that too many foreign bishops were being appointed to English benefices and – in part as a result of this – that too much money received into the English Church was leaving the realm.⁶⁷ The

⁶¹ 35 Edw. I, c. 1-4; Sir Edward Coke, *The Second Part of the Institutes of the Laws of England* (London: J. Streater et al, 1671), p. 583.

⁶² *PROME* (1307), ii, pp. 430-31.

⁶³ *PROME* (1307), ii, pp. 459-61.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ 35 Edw. I, c. 1-4.

Commons cited William Testa, who was both an alien cleric (a native Gascon) and a cause of church wealth leaving the realm in his capacity as papal collector of annates (from all churches falling vacant in England between 1306 and 1309) as particularly representative of the problem.⁶⁸ The resulting Statute of Carlisle created an offence that prohibited the sending of any clerical tax out of the kingdom. It also served as a reminder to all who resided in England that they were subject to the same laws as English-born subjects.⁶⁹

The initial influence of the Statute of Carlisle, borne out of the parliament of 1307, was short-lived (much like its enactor Edward I).⁷⁰ The parliament from which the statute was enacted concluded in April, Edward I died in July. As such a note on the parliament roll for Hilary term 1307 remarked that ‘nothing further was done about the business’.⁷¹ However, it was never repealed and therefore remained in force (albeit dormant).⁷² Its reputation as a statute that could both prevent the alienation of English revenues and prohibit unpopular papal provisions was gained throughout the fourteenth century. In 1316 Edward II referenced the Statute of Carlisle to justify an order prohibiting monks from exporting coin from the realm.⁷³ In 1331 William de Clynton, constable of Dover Castle and warden of the Cinque Ports, was commanded to allow fishermen to be paid their goods in English money, notwithstanding the act against taking money out of the realm.⁷⁴ By the parliaments of 1343 and 1351, the Statute of Carlisle was well-known as a remedy against papal provisors (and the alienation of revenues); in both sessions the 1307 legislation is cited as precedent for such actions.⁷⁵ A point was made in the Statute of Provisors (1351) that the Statute of Carlisle ‘was never defeated, repealed, nor annulled in any point’ and therefore remained in force, despite this implied a lack of publication.⁷⁶ By the sixteenth century this statute was viewed as that which begat the other Statutes of *Praemunire*. The 1533 Act in Restraint of Appeals cited the Great Statute of *Praemunire* (1393) as justification

⁶⁸ W. E. Lunt, ‘William Testa and the Parliament of Carlisle’, *EHR*, 41 (Jul., 1926), 332-57 (p. 332); *PROME* (1307).

⁶⁹ 35 Edw. I, c. 1-4.

⁷⁰ 35 Edw. I, c. 1-4.

⁷¹ *PROME* (1307).

⁷² Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge: Cambridge University Press, 1936), p. 265; *YB Pasch.* 4 Edw. IV, pl. 4, fos 3b-5a.

⁷³ Thomas Duffus Hardy, *Syllabus (in English) of the Documents Relating to England and Other Kingdoms: Contained in the Collection Known as “Rymer’s Foedera”*, 3 vols (London: Longmans, Green, 1869-85), i, p. 189.

⁷⁴ *Ibid.*, p. 262.

⁷⁵ *PROME* (1343), iv, pp. 351-52; (1351), v, pp. 8-31.

⁷⁶ 25 Edw. III, Stat. 4.

for its terms against papal authority in England, and elaborated how the 1393 statute was founded upon earlier legislation enacted during the reigns of Edward I and Edward III.⁷⁷ For Edward III's reign, this was an allusion to the first and second Statutes of *Praemunire* (1353 and 1365) and possibly also the first Statute of Provisors (1351). In Edward I's reign, the only statute that dealt with appeals out of the realm was the 1307 Statute of Carlisle. However, between 1307 and the 1340s the Statute of Carlisle had no immediate influence.

The Ordinance of Provisors, 1343

Barring a protest regarding papal provisions in 1309, parliament during Edward II's reign was conspicuously free from complaints about the exercise of papal jurisdiction in England; dissatisfaction with Edward II's policies concerning the church and nobility overshadowed grievances regarding the papacy.⁷⁸ This did not mean that there were no objections to alien provisors though. Sometime between 1319 and 1320 the Bishop-elect of Winchester, Adam de Wynton, complained to Edward II that although he was elected in due form to Winchester, Walter Reynolds, the Archbishop of Canterbury, had delayed ratification of the election until he heard from the court of Rome, as he had letters suggesting that the pope wished to present instead Rigaud de Asserio [Assier]. Adam protested this choice because Rigaud was an alien and not of the King's allegiance, whose election could lead to the disinheritance of the King and his heirs.⁷⁹ This petition was not endorsed, though the outcome of the request can be gleaned from the fact that Rigaud, not Adam, was elected Bishop of Winchester in November 1320 (after his nomination in November 1319). Early in Edward III's reign too the topic of alien provisions was a sore one. In 1327, the Commons asked that no alien provisor enter the realm or anywhere within the jurisdiction of the king in order to seek any provision, on pain of losing life and limb.⁸⁰ In 1330 Geoffrey de Cotes, clerk, complained that he had been ousted from the church of Fishlake, in the presentation of the king, by the 'machinations of the Bishop of Lincoln and Chancellor of England (Henry Burghersh) and Peter Vaurelly, alien provisor', and requested that he be given process to

⁷⁷ 24 Hen. VIII, c. 12.

⁷⁸ *PROME* (July 1309), iii, pp. 433-36. For complaints about the king and his favourites, see particularly *PROME* (1310), iii, pp. 17-20, and (May 1322), iii, pp. 433-36.

⁷⁹ SC8/146/7298.

⁸⁰ *PROME* (1327, C65/1), iv, p. 11.

argue his claim. Again the implication was that an alien has less of a right to an English benefice compared to a native.⁸¹

In parliament though, serious concerns regarding alien provisors and papal authority in England did not reappear until the 1340s. The Ordinance of Provisors made in 1343 sought to deal with both the issue of papal provisions to English benefices and appeals out of the realm, the issues inherent in the later Statutes of Provisors and *Praemunire*. In the thirty-six years since the Statute of Carlisle, matters abroad had exacerbated the tense relationship between England and the papacy. In 1309 Pope Clement V (1305-14) moved the papal court to Avignon, marking the beginning of the Avignon Papacy and ushering in a swathe of Franco-sympathetic popes (from the English point of view at least).⁸² This alone did not necessarily vindicate statutes limiting the papal exercise of authority in England. However, the advent of the Hundred Years' War in 1337 made any negotiations with parties (perceived to be) allied to the French cause difficult. The already contentious issue of papal provisions to English benefices took on a more serious edge when the pope could provide the king's enemies to such positions. The election in 1342 of Pope Clement VI (1342-52) only worsened this English concern towards the papacy. Clement was particularly criticised because firstly, he was erstwhile chancellor to the French king and secondly, he was far more zealous in the provision to English benefices than his predecessor Benedict XII (1334-42) had been.⁸³ Benedict XII, in his final eighteen months as pope, only made six provisions to English benefices, compared to Clement's ninety English provisions in his first twenty months as pope.⁸⁴ During his ten-year pontificate, Clement made on average 150 English provisions a year.⁸⁵ It was not just the secular authorities that had issue with these papal provisions. In November 1342 John Grandisson, the bishop of Exeter, wrote a letter to the

⁸¹ SC8/256/12798.

⁸² W. A. Pantin, *The English Church in the Fourteenth Century* (Cambridge: Cambridge University Press, 1955), p. 81.

⁸³ *Ibid.*

⁸⁴ A. D. M. Barrell, 'The Ordinance of Provisors of 1343', *Historical Research*, 64 (1991), 264-77 (p. 264); W. E. Lunt, *Financial Relations of the Papacy with England, 1327-1534* (Cambridge, Mass.: Medieval Academy of America, 1962), pp. 326-27.

⁸⁵ J. R. L. Highfield, 'The Relations between the Church and the English Crown from the death of Archbishop Stratford to the Opening of the Great Schism (1349-78)' (unpublished doctoral thesis, Oxford University, 1951), p. 407.

pope expressing wonder at the recent number of burdensome and immoderate apostolic provisions.⁸⁶

These factors contributed to a widespread belief amongst the Commons that any money removed from the realm through the provision of alien clerics would have ended up funding the French campaign against England in some way; echoing the concerns raised at Carlisle in 1307.⁸⁷ The estates in parliament had already suggested measures to limit money from leaving the realm in this way earlier in the reign. The October parliament of 1339 contained a request that English prelates certified every benefice in England that was in the hands of aliens, and the value of each benefice, in order to assess how much could be confiscated by the king (on account of the war).⁸⁸ As in 1307, the Commons of 1343 were able to cite the election of an alien cleric to justify the need for new legislation. Elias Talleyrand de Périgord, an enemy of the king, was elected to the rich deanery of York by the papacy shortly before the 1343 parliament; proof (to the Commons) that the papacy proved a threat to royal, and English, interests.⁸⁹ Additionally, grants of profitable benefices – worth up to a thousand marks each – to the cardinals Gerald Domar and Aymar Robert further substantiated these complaints.⁹⁰ Citing the 1307 Statute of Carlisle as historical precedent for such a piece of legislation, the Ordinance of Provisors was created. The ordinance ordered that anything prejudicial to the king (letters, bulls, etc.) should not be brought into the realm, on strict pain of forfeiture. Additionally, nothing should be done that could ‘turn in prejudice to the king or to his people, or to the detriment of the rights of his crown’.⁹¹ This ordinance was directed at both aliens and denizens. As with the parliament of 1307, the Commons cited misdeeds of the pope as the cause of such grievances in the realm. According to the Commons, the pope had acted ‘against the will of God and the good disposition of the founders of the same benefices’, no doubt a response to Clement’s

⁸⁶ Lunt, *Financial Relations*, p. 327.

⁸⁷ Highfield, *The Relations Between the Church*, p. 407; Diana Wood, *Clement VI: the Pontificate & Ideas of an Avignon Pope* (Cambridge: Cambridge University Press, 1989), pp. 122-41.

⁸⁸ *PROME* (1339), iv, pp. 239-45.

⁸⁹ Barrell, ‘Ordinance of Provisors’ (pp. 264-5).

⁹⁰ *Ibid*; *CPL*, iii, p. 74.

⁹¹ *PROME* (1343), iv, pp. 351-52.

enthusiastic policy of provision.⁹² As with 1307 too, the clamour for new legislation in the Commons was to protect English and royal interests from the actions of the papacy.

However, where the 1307 statute suffered from the death of Edward I, the 1343 ordinance was initially bolstered by royal support. On 20 July 1343, just two months after the parliament, Edward III sent letters to the bishops of his realm, in which they were ordered,

not to admit any alien persons or their proctors or envoys to any benefices of the realm by virtue of any provisions of the apostolic see or bulls or processes directed to him, or to provide aliens with such benefices by authority of the said see, nor promulgate any ecclesiastical censure against those resisting such provisions made by the said see of benefices to alien persons are to the impoverishment of the realm and prejudicial to the king, and the king wishes to bridle this at the instant request of the community of the realm in the parliament held at Westminster on the quinzaine of Easter last.⁹³

Edward also wrote to the pope on 30 August and 10 September, outlining the English grievances against papal provisions, and requesting remedy for them.⁹⁴ The response from Clement was emphatic. In 1344 the pope wrote a letter to the king protesting against these new ordinances against the papacy; such was his conviction, he sent copies of the letter to not only Edward, but also Queen Philippa, her mother Joan of Valois, and a selection of earls and bishops.⁹⁵ Edward co-operated, and wrote a tactful reply assuring Clement that any rumours of anti-papal legislation were unfounded.⁹⁶ However, Clement did admit to being overly generous with such provisions in the past. A papal letter after the Ordinance of Provisors was made informed Edward that William Bateman, the bishop of Norwich, had been ordered by the pope to discuss with the king the matter of papal provisions, and

⁹² Ibid.

⁹³ *CCR 1343-46*, pp. 215-16.

⁹⁴ Pantin, *The English Church in the Fourteenth Century*, p. 83.

⁹⁵ *CPL*, iii, pp. 5, 9, 12.

⁹⁶ *Foedera*, ii, pt 4, p. 173.

though he did not intend to restrict or limit papal power in this regard, Clement promised not to exercise so freely as he had at the time of his accession.⁹⁷

The Ordinance of Provisors was never made into a full statute, despite petitions for Edward to do so from the Commons in the assemblies of 1344, 1346, and 1348.⁹⁸ Instead, in February 1346 the king disowned the ordinance, arguing that neither he nor his council had confirmed or approved the ordinance (despite his earlier letters ordering its application).⁹⁹ All this is suggestive of a reluctant king that only allowed this ordinance to be created to appease the Commons, or at least was largely driven by grievances initiated by the Commons; the same was true in the 1307 assembly.¹⁰⁰ However, there is little evidence to suggest that lay patrons (other than the king) were ever gravely affected by papal provisions in the early fourteenth century. No instances of papal interference in instances where the benefice was undoubtedly in lay patronage occurred between 1305 and 1334.¹⁰¹ Even with Clement's more zealous handling of papal provisions, lay patronage was still out of the papal sphere of influence.¹⁰² Additionally, the king had more interest in the abuse of papal provisions than the parliamentary proceedings might suggest. A year before the ordinance was made the king had instructed the pope that matters concerning patronage to benefices were to be determined solely in the king's courts.¹⁰³ Contemporary chronicles also suggest that the ordinance was made with the support of king and council, if not sponsored by them, in response to the pope's provision of foreign cardinals to English benefices.¹⁰⁴ So too were the archbishops and bishops allegedly prohibited by the king from retiring from parliament to avoid being associated with this perceived 'anti-papal' ordinance.¹⁰⁵ In this light, the royal disavowal of the 1343 ordinance in 1346 can be seen instead as a means of

⁹⁷ *CPL*, iii, p. 14.

⁹⁸ *PROME* (1344), iv, pp. 359-80; (1346), iv, pp. 387-402; (Jan 1348), iv, 411-34.

⁹⁹ *CCR*, 1346-9, p. 37.

¹⁰⁰ C. Davies, 'The Statute of Provisors of 1351', *History*, 38 (1953), 119-25; W.R. Jones, 'Relations of the Two Jurisdictions: Conflict and Cooperation in England during the Thirteenth and Fourteenth Centuries', *Studies in Medieval and Renaissance History* 7 (Lincoln: University of Nebraska Press, 1970), 77-210 (p. 127); Fredric Cheyette, 'King's, Courts, Cures, and Sinécures' (pp. 316, 323, 325).

¹⁰¹ Ann Deeley, 'Papal Provision and Royal Rights of Patronage in the Early Fourteenth Century', *EHR*, 43 (Oct. 1928), 497-527 (p. 506).

¹⁰² Swanson, *Church and Society*, p. 70.

¹⁰³ *Foedera*, ii, pt 4, p. 151.

¹⁰⁴ *Chronicon Angliae ab Anno Domini 1328 usque ad Annum 1388 Auctore Monacho Quodam Sancti Albani*, ed. E. M. Thompson, Rolls Series, vol. 64 (London: Longman, 1874), p. 14.

¹⁰⁵ Adam Murimuth, *Continuatio Chronicarum*, Rolls Series, vol. 93 (London: Her Majesty's Stationary Office, 1889) p. 138.

appeasement to a papacy whose hackles were raised.¹⁰⁶ Complaints from the Commons, however, continued. In September 1346 they requested that all alien religious be expelled from the realm, and that all alien benefices be seized by the king for royal provision. Any aliens that stayed should be tried by the common law.¹⁰⁷ The king was not willing to enforce such harsh punishments upon alien clerics. The royal response confirmed that alien benefices were already in the hands of the king, but stated that it was not the place of the common law to try alien religious, for ‘the clergy are of the spiritual domain and are in their houses by institution, which thing cannot be tried in parliament’.¹⁰⁸ Nor was it the intention of the king to prevent all papal provisions from taking effect. Between 1344 and 1350 Edward continued to petition the pope to grant provisions or expectancies to those whom he recommended.¹⁰⁹ Appeals from others also continued.¹¹⁰ In 1350, just a year before the enactment of the first Statute of Provisors, Richard Pountfreyd (Pontefract) of Great Bardfield, clerk of the Chancery, petitioned against William Greyland, who had despoiled Pountfreyd of his church and presented another in his place. Pountfreyd responded with a suit in the court of Rome, and petitioned the king and council to repeal Greyland’s presentation in light of this.¹¹¹ Pountfreyd was either unaware of the Ordinance of Provisors – which he was technically in breach of by quashing an English nominee via the court of Rome – or by this point the ordinance was viewed as a dead weight. This may explain the desire for the Commons to have a new statute enacted in the parliament of 1351. Pountfreyd’s petition was not endorsed, so the opinion of the king and council in this matter is unknown.

The Ordinance of Provisors, like the Statute of Carlisle before it, was framed as a defence of royal authority within the realm. However, as at Carlisle the petition from which this legislation was made had distinctly ‘anti-papal’ undertones. Not in the sixteenth-century understanding that these complaints rejected papal canon law, but in the sense that encroachments by the papacy had caused parties in England great grievance. The

¹⁰⁶ Robert C. Palmer, *English Law in the Age of the Black Death*, p. 37.

¹⁰⁷ *PROME* (1346).

¹⁰⁸ *Ibid.*

¹⁰⁹ *CPL*, iii, pp. 127, 183, 188, 203-04, 218-19, 241, 274, 278, 282, 291, 346-47.

¹¹⁰ Ormrod, *Reign of Edward III*, p. 120.

¹¹¹ SC8/246/12264.

subsequent legislation was to the detriment of papal authority in defence of these English rights.

The First Statute of Provisors, 1351

Theoretically the onset of the Black Death in 1348 should have alleviated concerns regarding papal provisions. A decrease in population among the clergy meant that vacancies were more readily available and therefore there were likely to be fewer disputes regarding competing nominees. Also, the English victory at Crécy in 1346 eased concerns about aliens in England. The victory prompted an uneasy truce between England and France until the death of Philip VI in 1350; papal sympathies towards the French were less relevant during peacetime. The victory at Crécy also provided Edward with a number of profitable hostages, so the issue of Church money leaving the realm was less of a concern (to the king). These potentially alleviating factors were not to last though, and by 1351 the issue of papal provisions in England was again raised in parliament. The king's reasons for summoning the parliament in February 1351 were twofold: the renewal of hostilities with the French meant that the king needed to raise money, and the effects of the Black Death on the working population in England prompted a need to provide incentives for the reduced population to work for set rates of pay and specified rates of contract.¹¹² However, the Commons were determined still to have a statute against papal provisions enacted. In a petition presented before the king and council, the Commons reiterated the complaints made in 1307, by now a staple historical reference for legislation pertaining to papal provisions. According to the petition, the grievances that had resulted in the Statute of Carlisle continued 'more than ever before'.¹¹³ The pope, in his desire to gain the first fruits and tenths of the most profitable English benefices, had reserved for himself the provision to such benefices, and subsequently given them to aliens, resulting 'in greater destruction to the realm than the entire war of our lord the king, inasmuch as this money is sent to the court of Rome year after year without ever returning, and that it annually amounts to more than the king takes

¹¹² *PROME* (1351), v, pp. 1-7.

¹¹³ 'Que le grevances et meschiefs susdites s'aboundent de temps en temps, a plus grande damage et destruccion de tote le roialme plus qu unqes ne firent.' *PROME* (1351), v, p. 25.

from his realm.¹¹⁴ Again, as with the earlier Statute of Carlisle and Ordinance of Provisors, a core grievance of this petition was against alien clerics presiding in England.

The subsequent Statute of Provisors aimed to preserve the free elections of bishops and other dignitaries of the Church.¹¹⁵ It opened with a recital of the proceedings at Carlisle, which emphasised that ‘the Holy Church of England was founded...by [Edward I] and his progenitors, and the earls, barons, and other nobles of his said realm, and their ancestors’.¹¹⁶ However, recently the pope had granted those benefices to aliens that did not dwell in England, and to cardinals, which might not dwell there, as if he were patron or advowee of these dignities and benefices.¹¹⁷ If this practice be allowed to continue, ‘there should scarcely be any benefice within a short time in [England], but that it should be in the hands of aliens and denizens...against the good will and disposition of the founders of the same benefices; and so the elections of archbishop, bishops, and other religious should fail...in subversion of all the estate of [the king’s] realm’.¹¹⁸ The enacting part of the statute reads:

That the free elections of archbishoprics, 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 in case that reservation, collation, or provision be made by the court of Rome, of any archbishopric, bishopric, dignity, or other benefice, in disturbance of the free elections, collations, or presentations aforesaid...our lord the king and his heirs shall have and enjoy for the same time the collations to these archbishoprics (etc.).¹¹⁹

Of all subsequent provisors and *praemunire* legislation, it was this first Statute of Provisors that was most concerned with alien provisors in benefices. The later statutes, though they occasionally specified that aliens were to blame for some of the most prominent grievances surrounding papal provisions, were more concerned with the acceptance of a papal provision to the detriment of an English patron. Even in the reign of Henry VI, this statute

¹¹⁴ ‘a plus grande destruccion du roialme qe toute la guerre nostre seignur le roi, desicome celle monoie s’enva a la court de Rome d’an en an, saunz james retourner.’ *PROME* (1351), v, p. 14.

¹¹⁵ 25 Edw. III, Stat. 4.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ 27 Edw. III, Stat. 1, c. 1.

was recognised as one specifically enacted to prohibit alien provisors to English benefices. In the parliament of 1426 a complaint concerning alien clerics referred back to the first Statute of Provisors (1351) to justify restrictions on alien provisors. The 1351 statute, it was argued, was enacted to remove completely the issue of money leaving the realm in the hands of aliens (an offence that originated in the Statute of Carlisle).¹²⁰

The reason that Edward III chose to accept the new Statute of Provisors, where in the 1340s he had been reticent to make the Ordinance of Provisors into a full statute, could be related to an ongoing dispute between the king and Bishop Grandisson of Exeter. In 1342 Grandisson violated a royal prohibition and presented a rival to a Cornish benefice to the loss of a lay patron. Litigation lasting until January 1347 awarded the lay plaintiff 200 marks against the bishop. To collect this fine, the lay patron and his presentee, along with fifty-five others, took the bishop's goods and chattels to Exeter Castle.¹²¹ In response, Grandisson excommunicated everyone involved. This dispute continued through the period of the Black Death until the enactment of the 1351 statute.¹²² Grandisson was involved in a number of other cases relating to papal provisions throughout the 1340s. In 1346 he resisted the service of a prohibition, and held one of the royal messengers in chains for fifty-three days after the hue and cry was raised. The messengers sued him in the king's courts; he sued them in Court Christian.¹²³ When Grandisson excommunicated the messenger that brought a further prohibition, the king was forced to prosecute.¹²⁴ A further five cases concerning the bishop and papal provisions occurred between 1343 and 1346.¹²⁵ For this contempt to royal provisions, Edward seized the bishop's temporalities in 1350-1.¹²⁶ The 1351 Statute of Provisors did not justify Edward's specific actions in relation to Grandisson, but it did provide the king with more leverage over English clerics looking to undermine royal authority via the papacy. Thus the escalation of this dispute in the later 1340s could have contributed to the king's willingness to enact a statute against papal provisions.

¹²⁰ *PROME* (1426), x, p. 304.

¹²¹ Palmer, *English Law in the Age of the Black Death*, p. 46.

¹²² *Ibid*; *CPR, 1345-1348*, pp. 396-97.

¹²³ KB27/344, rot. 116; KB27/345, rot. 87.

¹²⁴ CP40/347, rot. 185; CP40/348, rot. 360.

¹²⁵ Palmer, *English Law*, p. 47.

¹²⁶ Ormrod, *Reign of Edward III*, pp. 126-27.

As with the earlier Ordinance of Provisors, there is evidence that the king put the new Statute of Provisors to the test immediately. On 27 March 1351 a letter was written to the chancellor explaining how the Statute of Provisors had rendered invalid unexecuted papal provisions issued before 9 February 1351.¹²⁷ John Gough, a clerk of the chancery, had allegedly attempted to make a process claiming such a provision against William Salman, a prebendary of Lincoln. John's provision to the prebend of Louth was dated 8 December 1350.¹²⁸ The king had refused John permission to put these provisions into effect. The king directed that John be sent to the Tower as an exemplary for this new statute, where John remained until he provided sureties.¹²⁹ On 11 February before the council, John acknowledged that he had taken possession of the benefice, but said that he had been provided before the enactment of the statute. Since the rival claimant to the prebend did not appear, John was pardoned and given permission to sue in Court Christian if he saw fit.¹³⁰ There was, however, some uncertainty regarding the legality of appealing to the court of Rome regarding papal presentations. In 1352 a petition was received before the king and council regarding the vicarage of Ermington. John de Crochille had been presented to the vicarage on the authority of the pope until he was ousted by the prior of Montacute, who had been informed by William de Hathelseye that the patronage lay with him. As Crochille's presentation was on the pope's authority, he appealed to the court of Rome and received a definite sentence against Hathelsey. In response, Hathelsey had Crochille imprisoned in the Marshalsea accused of contempt for the crown. The petition asked that Crochille be delivered from prison if the vicarage is entirely spiritual (and therefore unrelated to the king's presentment). If, however, the vicarage was deemed to pertain to the crown, then the petitioner asks that Crochille be pardoned for making his contempt not by machination but by just ignorance.¹³¹ It was decided that the case should be sued in the king's court.¹³² It is likely in this case that any suit begun by Crochille was made in the court of Rome before the enactment of the Statute of Provisors; however, the existence of this petition suggests either an awareness of legal wrongdoing on the part of Crochille, or at least enough

¹²⁷ Lunt, *Financial Relations*, p. 344.

¹²⁸ *CPL*, iii, p. 102.

¹²⁹ Lunt, *Financial Relations*, p. 345.

¹³⁰ *CCR*, 1349-54, p.469.

¹³¹ SC8/13/604.

¹³² *Ibid.*

uncertainty regarding legislation pertaining to English benefices and the court of Rome that a petition was made questioning Crochille's wrongdoing.

In the parliament of 1352 a request was made by the Commons that the Statute of Provisors (1351) be made public and put into execution against those who acted against it.¹³³ The king answered that the statute would be reviewed by the council and, if necessary, 'be better declared and amended in each point, so always that the estate of the king and realm shall always be kept and upheld'. Not all parties in parliament were satisfied with the legislation though. The English clergy complained – as diplomatically as possible – that the king was overstepping his jurisdictional rights regarding episcopal vacancies. They cited the arbitrary seizure of Bishop Grandisson's temporalities and the king's habit of looking for historical precedents of prebends being filled by the crown; the 1351 Statute of Provisors would only have allowed and encouraged these actions. They adjudged that contempt was not sufficient grounds for the confiscations of ecclesiastical temporalities.¹³⁴ The clergy had also conducted a six-month tax strike to ensure their grievances were heard.¹³⁵ The king thus granted an ordinance to the clergy, enrolled on the statute roll, confirming their liberties in relation to such provisions.¹³⁶ Within this ordinance the king relinquished his right to present to benefices reserved by the crown prior to his own accession.¹³⁷ In doing so the king was able to appease the English clergy without modifying the existing Statute of Provisors.¹³⁸ The pope too was unhappy with the new Statute of Provisors. Sometime around 1352 Clement VI threatened the entire kingdom of England with excommunication and interdict. However, in October 1352 these censures were suspended for four months, and in December 1352 he died.¹³⁹

¹³³ *PROME* (1352), v, pp. 51-57.

¹³⁴ *Ibid.*

¹³⁵ Peter Heath, *Church and Realm, 1272-1461: Conflict and Collaboration in an Age of Crises* (London: Fontana, 1988), p. 137; Ormrod, *Edward III*, p. 376.

¹³⁶ 25 Edw. III, Stat. 6, c. 1-4. *SR*, i, p. 324.

¹³⁷ *Ibid.*

¹³⁸ Palmer, *Black Death*, p. 37.

¹³⁹ *CPL*, iii, pp. 50-51, 468, 610.

The First Statute of *Praemunire*, 1353

As with the parliament of 1351, the Great Council assembled in 1353 was not primarily summoned to deal with issues surrounding papal authority within England. Instead, the more pressing reason for the summons was to implement the Ordinance of the Staple, so called because its aim was to regularise the status of England's staple ports.¹⁴⁰ This serves as an explanation for why a full parliament was not summoned; as the ordinance affected mostly urban and mercantile communities, fewer representatives from the counties needed to appear. Thus while the attendance of the lords was much as it was in a standard parliament, only one belted knight was required to attend from each county (as opposed to the usual two). Additionally, those men elected from cities and towns, who ordinarily were summoned through the sheriffs, were instead summoned directly through the authorities from thirty-eight urban centres.¹⁴¹ A more cynical perspective is that Edward did not wish any agreements relating to the staple ports to be enrolled on the statute rolls; traditionally only a full parliament, and not a great council, could enact statutes.¹⁴² The writs of summons specifically refer to the meeting as a 'council' rather than a 'parliament'.¹⁴³ If this was Edward's intent it was to backfire, for the government requested that the assembly authorise an extension of the maltolt (a tax on wool, originally created by Edward I in 1294); in asking the assembly to confirm matters of finance, by this time perceived as an exclusively parliamentary act, Edward and his government unwittingly implied that the rest of the meeting should be treated as parliamentary in all but name. Thus the representatives of the shires and towns, who had replaced their traditional parliamentary counterparts, insisted on presenting to the king a list of 'common petitions'.¹⁴⁴ This too explains how the Statute of *Praemunire* was included on the statute roll for 1353, further reinforcing this assembly's quasi-parliamentary status.¹⁴⁵

¹⁴⁰ *PROME* (1353), v, p. 83.

¹⁴¹ *PROME* (1353), v, pp. 64-89.

¹⁴² Ormrod, *Reign of Edward III*, p. 175; T. F. T. Plucknett, *Statutes and their Interpretation in the First Half of the Fourteenth Century* (Cambridge: Cambridge University Press, 1922).

¹⁴³ *PROME* (1353), v, pp. 64-89.

¹⁴⁴ Ormrod, *Reign of Edward III*, p. 175; *PROME* (1353).

¹⁴⁵ 27 Edw. III, Stat. 1.

The first 'Commons' petition (such as it was) presented in this 1353 great council sought remedy against those who appealed to courts outside of the realm.¹⁴⁶ This was despite the fact that appeals to the curia had actually dropped in number since 1351.¹⁴⁷ Although this was related in part to those grievances raised in 1351, in complaining about authorities outside of the realm undermining the king and his subjects, the earlier Statute of Provisors was not acknowledged. Instead, the Commons were concerned that certain persons had drawn cases out of the realm that had been previously adjudged in the king's courts, or fell within the jurisdiction of these courts. The closest the petition came to referencing the earlier statute is in the complaint that appellants had made disputes concerning dignities, priories and possessions that enjoyed free election or pertained to the presentment of the king or of anyone in his allegiance (as per the Great Charter).¹⁴⁸ A second clause in this petition requested that those who did not appear after summons for the aforementioned infractions ought to be put out of the king's protection, and have their goods and chattels forfeited. The king's answer addressed these grievances: firstly, all those who appealed outside of the realm (in a matter that could be heard in the king's courts) should in future be put out of the king's protection, imprisoned and ransomed at the king's will; secondly, in the event that they may not be found, the accused should be put in exigent and outlawed by due process.¹⁴⁹

However, as with the Ordinance and Statute of Provisors before, the Statute of *Praemunire* (1353) seems to have been poorly publicised. The only mention of the legislation in the 1350s is from a legal debate concerning the correct application of the statute, from 1356.¹⁵⁰ There is no apparent complaint from either the papacy or the English Church regarding the statute. This could be explained by a lack of lower clergy at this Great Council of 1353; allegedly none were summoned to this assembly.¹⁵¹ Regardless, if there were major concerns resulting from this legislation complaints would expectedly appear in later records; no such complaints are recorded. Nor did the papacy ever show any awareness of this 1353 statute. Viewed as separate from provisors, the 1353 Statute of

¹⁴⁶ *PROME* (1353).

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ *PROME* (1353); See Chapters II & III.

¹⁵⁰ *YB Mich.* 30 Edw. III, pl. [7], fo. 11b.

¹⁵¹ A. L. Brown, *The Governance of Late-Medieval England 1272-1461* (London: Edward Arnold, 1989), p. 174.

Praemunire alone did not act in detriment to the papacy, in the way that the Statute of Provisors did in relation to papal provisions. The pope had acknowledged in the thirteenth century that certain English matters should not be drawn out of the realm. This statute was focused on those undermining royal authority, something the pope did not contest.¹⁵²

The Second Statute of *Praemunire*, 1365

The second Statute of *Praemunire*, as it would later be called, was enacted in 1365, twelve years after the first.¹⁵³ It is unknown whether complaints concerning papal provisions and appeals out of the realm subsided in this interim; no parliament rolls survive for the April 1357, February 1358, May 1360, or January 1361 assemblies.¹⁵⁴ The origins of the second Statute of *Praemunire* differed in that the grievances raised in the assembly of 1365 were put to the estates in parliament by the king, not the Commons. By the mid-1360s relations between Edward III and the papacy – particularly Pope Urban V (1362-70) – had soured for three main reasons. Firstly, Urban had blocked the marriage of Edward’s son, Edmund of Langley, to Margaret, heiress of the count of Flanders, a marriage Edward had hoped would keep Flanders within the English orbit (as opposed to the French). Urban refused to grant Edmund and Margaret a dispensation and instead supported the marriage of Margaret to Philip of Burgundy, son of John II of France.¹⁵⁵ Secondly, in 1363-4 Urban had demanded that an inquiry be carried out to investigate the state of pluralism in England, following his decree that the holding of church offices in plurality should be banned. This was not a new concern for the papacy and the subject had been raised many times. The Lateran Council in 1215 had attempted to limit the number of benefices a single person could hold. Similarly, John XXII (1316-34) decreed in his *Execrabilis* that no one – except cardinals and king’s sons – should hold more than two benefices, under pain of forfeiture.¹⁵⁶ However, these decrees were laxly enforced, and pluralism was a useful way for the king to provide incomes for his clerical servants. The investigation proposed by Urban would threaten this source of income. The third reason for Edward’s displeasure with the papacy connected closely to appeals to the court of Rome, and therefore *praemunire*. A dispute between William Lynne,

¹⁵² See Chapter III.

¹⁵³ 38 Edw. III, Stat. 2.

¹⁵⁴ For brief descriptions of these parliaments see *PROME*, v, pp. 130-34.

¹⁵⁵ *PROME* (1365), v, pp. 172-75.

¹⁵⁶ W.A. Pantin, ‘The 14th Century’, in *The English Church and the Papacy*, ed. by C. H. Lawrence (London: Burns & Oates, 1965), pp. 157-94 (p. 184).

the bishop of Chichester (1362-8), and Richard Fitzalan, the earl of Arundel, had gained papal involvement in the early 1363 after Lynne was excommunicated by the whole episcopate in the Court of Arches in London.¹⁵⁷ Lynne appealed to Urban V, who annulled the decision and promptly attempted to translate Lynne from Chichester to London, in order to separate the bishop from Fitzalan. However, Lynne refused the translation, dissatisfied with merely being removed from the earl, and summoned Fitzalan and a number of his supporters to the court of Rome (then at Avignon) early in 1364 to answer for the injuries that they had caused the bishop.¹⁵⁸ The earls of Arundel often shared a tempestuous relationship with the bishops of Chichester, as they were both high-ranking magnates with overlapping lands and jurisdictions.¹⁵⁹ It was at this point that the dispute became a personal concern for the king; the citation of one of the premier men of the realm to the court of Rome was not something Edward could ignore. Sometime around July 1364 the king wrote to Charles V of France, explaining that Urban's actions against the earl of Arundel, and his proposed reform of pluralism, did not augur well for the kings of either of England or France.¹⁶⁰ Between the writing of this letter and the January parliament of 1365, from which the second Statute of *Praemunire* was enacted, relations between the king and pope became further strained due to the aforementioned refusal of a papal dispensation for Edmund to marry Margaret of Flanders. General feeling towards the papacy in England was also poor. Following the victories of Crécy and Poitiers in 1346 and 1356, it seemed illogical that the pope would be so pro-French when providence was so clearly in English favour.¹⁶¹ A fourteenth-century verse highlighted this internal conflict in the minds of Englishmen: 'Now is the Pope become French, and Jesus English'.¹⁶²

Therefore by the time that parliament was assembled early in 1365 the king had a number of reasons to reinforce the existing Statutes of Provisors and *Praemunire*. Renewing the 1351 statute ensured that the king maintained the initiative in providing to the most profitable benefices in England, despite any attempts by the papacy to curb pluralism in

¹⁵⁷ For a fuller account of this dispute, see Chris Given-Wilson, 'The Bishop of Chichester and the Second Statute of *Praemunire*, 1365', *Historical Research*, 63 (1990), 128-42.

¹⁵⁸ *Chronica Johannis de Reading et Anonymi Cantuariensis, 1346-67*, ed. J. Tait (Manchester: University of Manchester Press, 1914), pp. 158-9, pp. 313-14.

¹⁵⁹ Given-Wilson, 'The Bishop of Chichester', p. 131.

¹⁶⁰ *BL*, Add. MS. 24062, fos 187v-188.

¹⁶¹ Pantin, *English Church in the Fourteenth Century*, p. 82.

¹⁶² 'Ore est le Pape devenu Franceys; e Jesu devenu Engleys; Ore serra veou qu fra plus; ly Pape ou Jesus[?]'.

Quoted in *Chronicon Henrici Knighton*, ed. J. R. Lumby (London: Her Majesty's Stationary Office, 1889), ii, p. 94.

England. The reminder of the offence laid out in the 1353 Statute of *Praemunire* meanwhile could limit appeals such as William Lynne's to the court of Rome, and compel him to appear to answer his charges. Unlike the earlier assemblies of 1351 and 1353, the parliament of 1365 was explicitly summoned to address these 'outrages, damages and grievances recently done and attempted against [the king], the rights of his crown, and various people of his realm'.¹⁶³ The opening address by the chancellor Simon Langham, bishop of Ely (and later archbishop of Canterbury), alluded to the biblical King David to emphasise the idea that it was the king's God-given right and responsibility to be able to administer justice within his realm.¹⁶⁴ Immediately after the opening address, the king took the prelates, dukes, earls and barons into the White Chamber to outline the specific reason for summons, namely that 'from day to day personal citations were made by false and feigned accusation to the pope against all sorts of people of the realm, upon causes whose cognisance and discussion pertain to the king and his court and otherwise; and similarly how claims and provisions were made in the same court of Rome upon benefices of holy Church pertaining to the donation, presentation or disposal of the king and other lay patrons of his realm, and of churches, chapels and other benefices appropriated to cathedral churches [etc.]'.¹⁶⁵ The king then asked that they advise him as to the best method to deal with these grievances.

After this discussion, the Commons were brought into the White Chamber and the same question was put to them (after the grievances were explained to them in detail).¹⁶⁶ When parliament reassembled on the following Saturday (the initial discussions had occurred on the Monday) certain ordinances were read in the presence of the prelates, dukes, barons and Commons. Between the initial discussions and the reading of these ordinances, the statute rolls had evidently been referred to, for the statutes of 1351 and 1353 were now explicitly mentioned in conjunction with this new statute. Thus appellants of this new statute had either 'obtained, purchased or pursued...personal citations' from the court of Rome, breaching the terms of the original Statute of *Praemunire*, or they had 'obtained or will obtain from the said court [of Rome] deaneries...or any other benefices of holy Church whatsoever' whose patronage belonged to the king or other lay patrons, a

¹⁶³ *PROME* (1365), v, p. 176.

¹⁶⁴ *PROME* (1365), v, p. 176; Psalms lxxxix. 14.

¹⁶⁵ *PROME* (1365), v, pp. 176-81.

¹⁶⁶ *Ibid.*

matter addressed in the first Statute of Provisors.¹⁶⁷ These ordinances, copied almost exactly into the statute roll, would comprise the second Statute of *Praemunire*.¹⁶⁸ A transcript of this ‘Ordinance of *Praemunire*’ survives on the back of some seemingly scrap parchment, supporting the idea that some form of copying from the parliament to the statute rolls took place. On the back of this transcript are copies of a petition of John de Watton, Sheriff of Essex in 1330, and of documents relating to the will of Robert de Muskham.¹⁶⁹ Additionally, it was made clear in the 1365 statute that the king was following the example set by his progenitors and upholding his coronation oath by maintaining all ordinances and provisions made before and in his time, ‘especially in the twenty-fifth and twenty-seventh year of his reign’.¹⁷⁰ Effectively this second Statute of *Praemunire* served to renew and reinforce the existing statutes of 1351 and 1353.¹⁷¹

The English clergy seemingly had difficulty in accepting this new statute. The preamble to the statute recorded that the new legislation was made ‘by the advice and counsel of the prelates, great men and Commons’.¹⁷² Though a stock phrase for statutes of this type, the proceedings recorded on the parliament roll confirm that the king had asked for the opinions of all in parliament with how best to deal with the issues at hand.¹⁷³ However, the wording of the statute suggests that English clergy were reticent about the proposed new statute. The statute was made ‘with the assent and express will and concord of the dukes, earls, barons, nobles and Commons of his realm’.¹⁷⁴ Notably absent from this list of supporters were the prelates of the realm. Additionally, at the end of the statute transcription, it is noted that ‘the prelates continued to protest that they could agree to or do nothing that might be or turn in prejudice of their estate of dignity’.¹⁷⁵ Whether their concern was because the statute was deemed detrimental to the freedoms of the English church or to the papacy is uncertain, though it is noteworthy that no great complaint was made by the papacy in response to this legislation. This lack of papal response suggests that this statute was not particularly against the papacy, despite the ongoing disputes between

¹⁶⁷ Ibid.; See Chapter II.

¹⁶⁸ *PROME* (1365); 38 Edw. III, Stat. 2, c. 1-2.

¹⁶⁹ C49/8/6.

¹⁷⁰ 38 Edw. III, Stat. 2, c. 1-2.

¹⁷¹ See Chapter III.

¹⁷² 38 Edw. III, Stat. 2, c. 1-2.

¹⁷³ *PROME* (1365).

¹⁷⁴ *PROME* (1365).

¹⁷⁵ Ibid.

the king and pope. Instead, the new legislation was directed at clerics within the realm, such as Lynne, who looked to take advantage of their 'dual-citizenship' between king and pope to their own ends, circumventing royal justice in the process. The Statutes of Provisors were particularly problematic for the English clergy. When the king and pope were in dispute members of the English clergy were bound to go against the wishes of one or the other. The provisors and *praemunire* legislation only served to make this hinterland between ecclesiastical and temporal jurisdiction especially difficult to navigate. In the same year that the second Statute of *Praemunire* was enacted, the dean and chapter of the church of St Peter, Exeter, appealed to the king asking that their vicars could be able to serve God without disturbance from both actions in the court of Rome and in the king's courts regarding a disputed presentation to the archdeacons of Cornwall. Whichever action they took would do contempt upon one of these parties.¹⁷⁶ In this matter though the king confirmed that the archdeacons was not in his hand, and therefore if William de Cusance, the previous holder of the position, was truly dead, then all prohibitions should be repealed and the disputed holders should instead sue in Court Christian. The Statutes of *Praemunire* did not prohibit all appeals to ecclesiastical courts, nor did it aspire to.

Anglo-papal Negotiations 1373-77

In the 1370s 'anti-papal' sentiment was particularly rife in England.¹⁷⁷ In 1371 a request was made that only lay people hold the highest offices of state (chancellor, treasurer, etc.).¹⁷⁸ In the parliaments of 1372, 1373, 1376, and 1377 complaints were made regarding papal provisors and aliens in possession of English benefices.¹⁷⁹ During the Good Parliament of 1376 the Commons bemoaned absentee clerics that farmed their English benefices for profit that went to brokers staying in the sinful city of Avignon; for this reason the Commons requested that the Statutes of Provisors be renewed.¹⁸⁰ The same request to uphold the existing statutes was made in 1377.¹⁸¹ Opinion of the papal residence was low. This was also a period of negotiation between the king and the papacy to finally reach a compromise regarding papal provisions, and appeals to the court of Rome. In 1373, an embassy was sent

¹⁷⁶ SC8/84/4165.

¹⁷⁷ Pantin, *English Church*, p. 88.

¹⁷⁸ *PROME* (1371), v, pp. 235-49.

¹⁷⁹ *PROME* (1372-77), v, pp. 251-47.

¹⁸⁰ *PROME* (1376), v, pp. 295-384.

¹⁸¹ *PROME* (Jan 1377), v, pp. 394-426

to Avignon to put forward five demands regarding provisors and *praemunire* to Pope Gregory XI (1370-8).¹⁸² Firstly, the pope should stop proceedings in the Roman Curia in cases where the king's regalian rights were concerned, an issue which was at the forefront of the enactment of the first and second Statutes of *Praemunire*. Secondly, all English subjects should not be expected to appear before the court of Rome while the war with France continued; to do so would put English subjects at risk. This demand echoed an earlier papal indult granted in the thirteenth century that confirmed that in some matters, cases should not be drawn out of the realm.¹⁸³ Third, all existing reservations of benefices, which had not already been put into effect, should be quashed. Fourthly, and most audaciously, the pope should abstain in future from making any provisions or reservations. Finally, during the war with France, the charitable subsidy from English clergy should be suspended, presumably for the reasons expressed in the earlier Statutes of Carlisle and Provisors that any church money removed from the realm could fund the king's enemies in some way.

The papal response, presumably also given at Avignon, could not acquiesce to all these demands. To do so for the fourth article in particular would be to relinquish the right to present to all English benefices. However, the pope's response indicates some willingness to compromise.¹⁸⁴ Firstly, the pope agreed to be more sparing of existing reservations, though refused to revoke existing reservations. He agreed to allow for more time for elections of bishops to take place, and to confer with the king over appropriate nominees. He promised to moderate English provisions to aliens, though protested that he had not given a benefice to any alien within England except cardinals throughout his pontificate (except for a Roman who resided in England). This point is particularly suggestive that complaints surrounding aliens from the Commons were partly imagined, the product of a mistrust of foreigners galvanised by the Hundred Years' War. The pope would not give up the right to request first fruits and tenths; his costly wars of reconquest in Italy meant that the papacy could not afford such a gift.¹⁸⁵ Finally, regarding the number of expectative reservations, the pope maintained that though he would attempt to moderate such reservations in future, it was due to the large number of petitions from English universities

¹⁸² See E. Perroy, *L'Angleterre et le grand schisme de l'occident* (Paris: Monnier, 1933), p. 32.

¹⁸³ See Chapter II.

¹⁸⁴ Rymer, iii, p. 1072; Perroy, *Schisme*, p. 47.

¹⁸⁵ Pantin, *English Church*, p. 88.

requesting presentations that this number was so high. If the petition made it to the pope's ear, he was obliged to answer it.

These negotiations were concluded by a set of five papal bulls, issued 1 September 1375, and two royal ordinances, granted by Edward III on 15 February 1377.¹⁸⁶ The papal bulls confirmed the king's nominees in their English benefices, even if those benefices had been the subject of papal reservations (or of litigation at the court of Rome). He quashed a number of lawsuits proceeding at the papal curia, and some reservations of benefices previously made by the pope. He allowed some to postpone payment of first fruits and tenths. Finally, any Englishman cited to the Roman Curia was granted permission to appear at Bruges or some neighbouring town instead, so as not to fall foul of the dangers of the war. As reward for these bulls the pope was allowed to raise a charitable subsidy of 60,000 florins.¹⁸⁷ In reality the pope made little concession. He did not relinquish the right to present to English benefices, nor did he promise that in future the same disputes would not occur. Additionally, the sincerity of these papal promises is called into question by complaints made in the Good Parliament of 1376. The Commons claimed that the pope continued to give too many benefices to foreigners, breaking the terms of this treaty between king and pope.¹⁸⁸ Edward III's ordinances renounced the king's right to present to any benefices which had fallen vacant before 1376, and quashed all presentations to such benefices that had not yet taken effect.¹⁸⁹ He did not, however, give up his regalian right to present to benefices already in the king's hand, or those that would fall vacant in the future. Regardless, as with the Statute of Carlisle seventy years earlier, the death of the king halted any further proceedings. Edward died in June 1377, and any negotiations with the papacy regarding papal provisions and appeals out of the realm died with him; any further negotiations would need to begin anew with Richard II.

Edward III's reign saw the enactment of three statutes that related to the defence of royal authority over that of the pope, two Statutes of *Praemunire* and one of Provisors. Of the three, the one most hotly contested by the papacy was the 1351 Statute of Provisors. This statute directly undermined the pope's ability to present to English benefices, a slight

¹⁸⁶ Rymer, iii, pp. 1037, 1072.

¹⁸⁷ Ibid.; Pantin, *English Church*, p. 91.

¹⁸⁸ *PROME* (1376), v, pp. 295-384.

¹⁸⁹ Ibid.

against his God-given authority. It was regarding papal provisions that the papacy was more concerned in the negotiations between Edward III and Gregory XI in the 1370s. *Praemunire*, set apart from provisors, concerned itself with the undermining of royal authority in the king's courts, through the act of removing cases to the court of Rome. The root cause of the grievance was not papal justice, but the undermining of royal authority. The root cause of provisors, however, was the ability of the pope to present to English benefices, and thus any legislation made against this was also against the pope's right of presentation. Despite these fundamental ideological differences, at the time of its enactment *praemunire* was not set apart from provisors. As such, although the offence of *praemunire* was not at its heart against the papacy, its association with provisors linked it to such sentiment. The 1365 statute renewed both the Statutes of Provisors and *Praemunire* of 1351 and 1353, further blurring the distinction between the two, and the causes they represented.¹⁹⁰

The Second Statute of Provisors, 1390

Despite the negotiations of the 1370s, the final two parliaments of Edward III's reign expressed concern that Gregory XI was not keeping his promises with regards to papal provisions in England.¹⁹¹ The first parliament of Richard II's reign, assembled on 13 October 1377, renewed this complaint.¹⁹² The beginning of the Great Schism of the western papacy the following year changed the nature of Anglo-papal relations for the next half-century. To the English, there was (initially) a sense of pride in 'their' pope Urban VI (1378-89) compared to the French that supported the anti-pope.¹⁹³ The papacy on the other hand needed as many supporters as it could muster to combat rival claimants. However, there was still a desire from both sides to confirm the extent and nature of papal authority in England. Following the English confirmation of Urban VI as the true pope in 1378, negotiations were renewed to arrive at some form of concordat regarding papal authority within the realm.¹⁹⁴ When pressed by the English to confirm the treaty agreed upon by Edward III and Gregory XI in the 1370s, Urban claimed that he had never seen any record of such negotiations, and stalled his confirmation.¹⁹⁵ Meanwhile, complaints continued in

¹⁹⁰ See Chapter III.

¹⁹¹ *PROME* (1376, Jan 1377).

¹⁹² *PROME* (Oct 1377), vi, pp. 6-64.

¹⁹³ Pantin, *English Church*, p. 91.

¹⁹⁴ Lunt, *Financial Relations*, p. 385; Perroy, *Schisme*, pp. 278-91.

¹⁹⁵ *Ibid.*

parliament regarding alien provisors. In 1380, a lengthy complaint was presented by the Commons concerning papal provision to English benefices; Pope Urban continued to present aliens to English vacancies. They cited the provision of an alien cardinal to the prior of Deerhurst as one such example. Additionally, Bishop Rainulfus de Gorse of Cisteron, a native of Limousin that at the time was in rebellion against the king, was given an expectation throughout the province of Canterbury, and the archdeaconry of Bath.¹⁹⁶ The royal response reminded the Commons that legislation was already in place to deal with such offences – the Statutes of Provisors and *Praemunire* – and so nothing further was done in this assembly.¹⁹⁷ In 1383 complaints were made regarding citations to distant ecclesiastical courts.¹⁹⁸ In 1386 the Commons asked that no cardinal or other foreigner should be allowed to hold a benefice in England. Again the royal response was to remind the Commons of the legislation already in effect.¹⁹⁹ However, under the Lords Appellant in the September parliament of 1388 a statute was enacted that prohibited appeals out of the realm to purchase English benefices.²⁰⁰ No mention was made in this statute of any of the legislation created before (perhaps to avoid legitimising previous royal statutes), and punishments for such action were vague:

Item, that no liege man of the king, or [sic] whatever estate or condition that he be, great or little, shall pass over the sea, nor send out of the realm of England, by licence nor without licence, without special leave of the king himself, to provide or purchase for himself benefice of Holy Church, with or without cure, in the said realm; and if any do, and by virtue of such provision, accept any benefice of the same realm, then at that time the same provisor shall be out of the king's protection, and the same benefice void, so that it shall be lawful to the patron of the same benefice, as well spiritual as temporal, to present to the same an able clerk at his pleasure.²⁰¹

The papal response to this statute was emphatic. Urban VI reserved for himself the right to present to all vacant sees in the realm, and sent a papal collector to England with

¹⁹⁶ *PROME* (Jan 1380), vi, pp. 145-82.

¹⁹⁷ *Ibid.*

¹⁹⁸ *PROME* (1383), vi, pp. 145-82.

¹⁹⁹ *PROME* (1386), vii, pp. 35-53.

²⁰⁰ 12 Ric. II, c. 15. *SR*, ii, p. 60.

²⁰¹ *Ibid.*

instructions to raise a papal tax.²⁰² Therefore when parliament again met in January 1390, the Commons were adamant that a new, stricter, Statute of Provisors was required, to curb such papal tyranny. A petition from this parliament declared that papal provisions were more common than they used to be, and asked not only that the existing legislation be enforced, but that a new statute be made with harsher punishments for offenders.²⁰³ In future anyone who attempted to purchase a papal provision to an English benefice should be declared an enemy of the king and his laws, and should suffer both forfeiture and judgement of life and limb.²⁰⁴ Churchmen who sought such provision should be exiled in perpetuity, and laymen who abetted them should suffer the penalties for treason. Such strong punishments could not be allowed by the king. Instead he accepted the premise that more stringent legislation was required, but diluted the consequences of committing said acts. Anyone who accepted a provision from Rome after 29 January 1390 (when the statute came into effect) would suffer perpetual banishment and forfeiture of their goods.²⁰⁵ The response from the papacy to this new statute was stronger than to any other Statute of Provisors enacted throughout the fourteenth century. The new pope Boniface IX (1389-1404) received news of the 1390 Statute of Provisors in September of that year.²⁰⁶ In response, the pope issued a bull in February 1391 denouncing and annulling all the offensive acts of the 1390 English parliament, together with its predecessors of 1307 and 1351. This bull was then fastened to the door of St Peter's in Rome, the irony being that the bull could not be published in England because the 1390 statute forbade it.²⁰⁷ At the same time, all the king's subjects at the Roman Curia were ordered to return home and forbidden to procure any bulls contrary to the law of the land.²⁰⁸ Additionally, the pope had written to Richard early in 1391 expressing concerns regarding a statute made against papal provisions; a royal response had not allayed those concerns.²⁰⁹ Thus, the opening address of parliament in November 1391 cited among the reasons for summons the need to resolve this issue concerning the 1390 Statute of Provisors, to 'see how our holy father might have that which

²⁰² Heath, *Church and Realm*, pp. 213-18; *The Westminster Chronicle, 1381-94*, ed. by L. C. Hector and Barbara F. Harvey (Oxford: Clarendon Press, 1982), p. 382.

²⁰³ *PROME* (Jan 1390), vii, pp. 151-53.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ Perroy, *Schisme*, p. 318.

²⁰⁷ *CPL*, iv, p. 277.

²⁰⁸ Heath, *Church and Realm*, pp. 13-18.

²⁰⁹ *Westminster Chronicle*, pp. 461-73.

pertains to him, and the king that which pertains to him and his crown, according to the words – Render unto Caesar things that are Caesar’s, and unto God the things that are God’s’.²¹⁰ In order for the king to achieve this aim, the Commons agreed to a royal moderation of the Statute of Provisors, to remain in force until the next parliament. However, there were stipulations: no article of the said statute could be repealed (unless raised in the next parliament), and this was not to set a precedent for the future.²¹¹ That the Commons did not wish to see the statute repealed is evident from a petition presented in the same parliament, complaining that spiritual patrons ‘mischievously’ misappropriated English benefices ‘by various tricks and ruses against the Statute of Provisors’; the Commons at least still desired such prohibitions.²¹²

The Great Statute of *Praemunire*, 1393

When parliament assembled in January 1393, the issue of the 1390 statute was still high on the agenda. Again Richard was given permission to modify the statute as he saw fit, and again any ordinances he decreed to such end would be consulted upon in the following parliament.²¹³ It was from this assembly too that the ‘Great’ Statute of *Praemunire* was enacted.²¹⁴ As with the first Statute of *Praemunire* (1353), the grievances that resulted in the enactment of this statute came from the Commons. However, in this instance the petition was not enrolled on the parliament roll. As such its terms only survive through a set of ‘protestations’ presented by Archbishop Courtenay of Canterbury, who answered the petition.²¹⁵ He answered two main points. Firstly, regarding the relationship between the king’s courts and the English church, the archbishop confirmed that the king and his subjects had the right to recover presentments to churches, prebends, and other benefices of holy church in the king’s courts, when they related to lay matters. Any judgement made in these courts regarding such benefices should also be upheld by the archbishops and bishops who have the institution of any such benefice within their jurisdiction. However, despite this ‘ancient right’ to hear such matters in the king’s courts, of late the papacy had brought censures of excommunication on certain bishops for executing such mandates, to ‘the open

²¹⁰ *PROME* (1391), vii, pp. 193-219; Mark 12:17.

²¹¹ *PROME* (1391).

²¹² *Ibid.*

²¹³ *PROME* (1393), vi, p. 227.

²¹⁴ 16 Ric. II, c. 5.

²¹⁵ *PROME* (1393), vi, pp. 233-34.

disinheritance of the said crown, and destruction of the regality of our said lord the king, his law and his entire realm'.²¹⁶ This – notwithstanding the pope's right to excommunicate bishops according to the law of holy church – was in the archbishop's opinion against the king, and he therefore put forward his support for any remedy that followed suit. Secondly, concern was raised from the Commons that the pope was overzealous in his translation of English prelates from one bishopric to the other, and in some cases out of the realm. If this were allowed to happen the statutes of the realm would be voided and the wealth of England carried away, 'and thus the Crown of England, which has always been free and has had no worldly sovereign but has been directly subject to God and to no other in all things touching the regality of the same Crown, would be subject to the pope, and the laws and statutes of the kingdom could be defeated and annulled by him at his will'.²¹⁷ In this regard the archbishop also stood with the king, stating that such acts were against the king's authority, and the prohibition of such did not amount to a removal of papal rights.²¹⁸ This grievance was the product of rumours that the pope planned processes against clerks whom the king had presented to benefices and against all prelates who had instructed such provisions, allegedly going so far as to translate to foreign dioceses any bishop connected to the execution of the 1390 Statute of Provisors.²¹⁹ That Archbishop Courtenay announced clerical support for the 1393 Statute of *Praemunire* is particularly interesting considering the concerns regarding the Statutes of Provisors, and how *praemunire* would later be used against the English ecclesiastical courts. Though careful to state both that the initial grievances came from the Commons, and that he did not presume to argue against papal authority in general, the archbishop sided firmly with the king and supported any new legislation created from this petition, a statement he wished to have enrolled on the parliamentary record.²²⁰ As a result of these grievances the Great Statute of *Praemunire* was enacted. Perhaps in response to this new statute, an order was sent to 'the keepers of the passage in the major ports of the kingdom' on 6 February 1393; parliament had assembled on 20 January (and would not be dissolved until 10 February).²²¹ This order directed that no

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Perroy, *Schisme*, p. 331.

²²⁰ *PROME* (1393).

²²¹ *CCR 1392-96*, p. 43; *PROME* (1393).

'letters, bulls or instruments be allowed into or out of the realm' without them first being sent to the council for scrutiny.²²²

Despite this new statute, attempts by Richard II to reach an accord with the papacy regarding papal provisions abounded. In the early summer of 1393 and early 1394 the king sent envoys to the pope to negotiate for a compromise, to no avail. The pope still hoped to secure the complete revocation of the 1390 statute.²²³ To this end Boniface sent papal nuncios to Richard in 1394, 1396, and 1398.²²⁴ By 1398 Boniface was more amenable to a moderation, rather than a revocation, of the 1390 statute, and so an accord was reached between the king and pope regarding papal provisions on 25 November.²²⁵ The pope would only provide royally-approved nominees elected by the cathedral chapters to episcopal dignities. If the king preferred another nominee other than the one elected, the pope would provide the preferred nominee. A system was drawn up whereby the pope and the ordinary of cathedral and collegiate churches took turns to provide to benefices. Regarding absentee bishops, the pope stipulated that cardinals were not to be provided to any benefice which by law or custom required residence or personal exercise of administration. No foreigners other than cardinals were to be provided. No papal provision made after the date of the agreement was to disturb the holder of a benefice who had obtained possession before this date.²²⁶ The royal mandate that observed the provision of this compromise was known as the moderation, and was directed to the archbishops in December 1398.²²⁷ Analysed closely, this moderation actually returns many profitable benefices into the gift of the papacy. Although the king had a say in the provision to the most profitable benefices, the wording of the moderation indicates that it is the pope who holds the actual authority to present to such benefices (on the king's advisement). The main 'concession' granted by the papacy was the promise not to present any foreigners to English benefices; a common complaint throughout fourteenth-century English parliaments. However, the papacy had always maintained that it did not provide foreigners to English benefices in most cases, so the extent to which this was truly a concession of the papacy is in doubt. Regardless, the

²²² Ibid.

²²³ Perroy, *Schisme*, p. 335-7.

²²⁴ Lunt, *Financial Relations*, p. 394; *CPL*, iv, pp. 288, 299, 303

²²⁵ Perroy, *Schisme*, p. 419-20.

²²⁶ Ibid.; Lunt, *Financial Relations*, pp. 394-5.

²²⁷ *CCR 1396-99*, pp. 366-7.

existence of this moderation called into question the continued validity of the 1390 Statute of Provisors, the earlier statutes of 1351 and 1307 that had directly influenced it, and the Statutes of *Praemunire* that were threatened by association.²²⁸

Conclusion

An important point of note regarding the enactment of the Statutes of Provisors and *Praemunire* is that they were closely linked from the outset. Each of the statutes examined in this chapter referred to one or more of its precursors. Both the 1343 Ordinance of Provisors and the 1351 Statute of Provisors cite the earlier Carlisle legislation as precedent for such prohibitions.²²⁹ This 1351 statute was in turn referenced by name in the 1365 Statute of *Praemunire*, and the 1390 Statute of Provisors. The 1393 Statute of *Praemunire* prescribed punishments ‘in the manner as it [was] ordained in other statutes of provisors’.²³⁰ This is the only statute to mention the term *praemunire* by name also, in relation to the writ of *praemunire facias*. The 1353 is the odd statute out in this respect, in that it does not specifically mention any previous Statute of Provisors. Instead, the Commons petition cited Magna Carta as justification for more stringent legislation against appeals out of the realm, which undermined the freedom of the English Church (interpreted here as a freedom from papal encroachments).²³¹ A clause in the Statute of Provisors (1351) did specify that appellants should not sue against any man in the court of Rome (in this matter), echoing the eventual offence of *praemunire*.²³² The second Statute of *Praemunire* (1365) also renewed this 1353 statute, thus linking it to the early Statute of Provisors.²³³ As these statutes were so intertwined, any attempts to repeal the one directly affected the future of the other, leaving both the Statutes of Provisors and *Praemunire* in doubt at the close of the fourteenth century.

Despite this close relationship, *praemunire* and provisors were not the same. The issue at the heart of this statute, and all subsequent Statutes of Provisors, was that of the papal right to present to English benefices. The offence of provisors limited the pope’s ability to present to Western Christendom, and therefore complaints abounded in the

²²⁸ See Chapter III.

²²⁹ *PROME* (1343), iv, pp. 349-52; 27 Edw. III, Stat. 1, c. 1.

²³⁰ 16 Ric. II, c. 5.

²³¹ *PROME* (1353), v, p. 83.

²³² 25 Edw. III, Stat. 4.

²³³ 38 Edw. III, Stat. 2, c. 1-2.

fourteenth century following the enactment of each Statute of Provisors. This view was shared by the English clergy, who only protested those statutes concerned with papal patronage. Limiting papal provisions not only undermined the authority of the papacy, but also limited the avenues available to the clergy for promotion. The Statutes of *Praemunire* conversely were initially apparently accepted by the English clergy. These statutes defended royal authority within the realm, something that the clergy could not deny. Additionally, no complaints were made by the papacy regarding *praemunire* – that is, the statutes of 1353 or 1393, or the clause regarding appeals to Rome in the 1365 statute – in the whole of the fourteenth century. That it would be *praemunire* and not provisors that would eventually diminish ecclesiastical jurisdiction in England to the extent that Henry VIII could intimidate a number of prominent English churchmen, and irreparably undermine the authority of the pope in England, was outside the realms of possibility to fourteenth-century minds.

Chapter II: The Writ(s) of *Praemunire Facias*

One of the main complexities of *praemunire* is that the term could refer to any one of three things: the writ, the statute, or the offence. By the Tudor period, these three definitions of the term were viewed as different aspects of the same whole. When Henry VIII threatened the entire clergy in convocation with charges of *praemunire* in 1531 he was understood to mean the offence, based on the third Statute of *Praemunire* of 1393, and implemented by writ of *praemunire facias*; to have a *praemunire* brought against you was to include all of these things. However, in the fourteenth century this clarification had not yet been defined. The three Statutes of *Praemunire*, enacted in 1353, 1365, and 1393, created the offence of appealing to the court of Rome in a matter of royal cognisance.²³⁴ The offence took its name from the writ used in actions founded upon the statutes, the writ of *praemunire facias*; ‘the offence is called a *praemunire*, of the words of the writ, grounded upon this and other statutes for punishment thereof’.²³⁵ The origins of the writ of *praemunire facias*, however, are more uncertain. It has often been assumed that the 1353 statute created this writ.²³⁶ One of the grievances outlined in the statute was that persons accused of annulling judgements in the king’s court were not appearing after summons, thus the statute directed that a writ be made to speed up this process, and prescribe punishments to those that did not appear.²³⁷ However, the writ created by the statute of 1353 is not named in either the parliament roll or the statute itself. Examples of a writ of *praemunire facias* related to this new ‘offence’ of *praemunire* do not appear until the 1360s.²³⁸ Matters are complicated by the existence of another, earlier writ called ‘*premunire facias*’ that dates from at least 1314, nearly forty years before the Statute of *Praemunire* (1353).²³⁹ The presence of this writ brings into question the manner in which the writ of *praemunire facias* – the writ used in actions upon the statute – was created. Two possible theories are possible. Either the writ of 1353 was in fact created by the statute, and took its name from the process of forewarning outlined in the statute. The word *praemunire* is a corruption of the Latin *praemonere*, which translates in the infinitive as, ‘to forewarn’. Therefore, a writ of

²³⁴ 27 Edw. III, Stat. 1; 38 Edw. III, Stat. 2; 16 Ric. II, c.5.

²³⁵ Sir Edward Coke, *The Second Part of the Institutes of the Laws of England* (London: J. Streater et al, 1671), p. 583.

²³⁶ E. B. Graves, ‘The Legal Significance of the Statute of *Praemunire* of 1353’.

²³⁷ 27 Edw. III, Stat. 1.

²³⁸ For example, *YB Hil.* 42 Edw. III, pl. 26, fo. 7a.

²³⁹ C256/2/1-6.

praemunire facias was a writ which would – taking the subjunctive – literally ‘cause [the accused] to be forewarned’. In this example associations with the earlier writ of the same name are coincidental; both writs performed a ‘forewarning’, hence their identical names. Alternatively, the statute of 1353 either repurposed the existing writ of *praemunire facias*, or at least took its name because of similarities in the process prescribed in the statute. This chapter examines both types of writ called *praemunire facias* over the fourteenth century, and examples of similar writs, to understand how this term came to be applied to writs used in actions of *praemunire*.

Antecedents to the writ

The writ specified in the 1353 Statute of *Praemunire* was not the first to attempt to prohibit appeals to the court of Rome, or other cases deemed to be detrimental to the king. The first identifiable precursor of the writ originates from the early thirteenth century, and prohibited Englishmen from being drawn out of the realm.²⁴⁰ Citing a papal indult, ‘cum nobis a sede apostolica specialiter sit indultum’, the writ prohibited cases being drawn out of the realm if they were in derogation of the king’s rights, ‘in derogationem regie dignitatis nostre’. The most likely papal indult referred to by this writ is that of Pope Gregory IX in 1231, who declared that no English baron or magnate should be drawn by papal letters to judgement outside the realm of England, as they often could not do so without passing through hostile territory. Additionally the pope indicated that the execution of this privilege rested with the king and his magnates. 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.²⁴¹ The pope was not denying any authority he had to hear such cases; as Gregory stipulated, if the case made it to the court of Rome, he was obliged to hear it. Therefore this privilege did not undermine papal authority, but was rather a statement of it; it was granted because of the impracticalities in some cases of drawing English barons and magnates from the realm, not because the pope ceded spiritual authority over these men. However, the original reason for the pope’s granting of this indult, to protect Englishmen from potentially perilous journeys out of the realm, was immediately lost, and English thirteenth-century references

²⁴⁰ Graves, ‘Studies on the Statute of *Praemunire*’, p. 14; *BL Harley MS. 4351 fo. 22*.

²⁴¹ *CPL*, i, 128.

to this papal indult instead claimed that it was a general secession of papal authority with regards to English court cases. In 1233, a merchant of Douai named Peter Mulet tried to draw certain English nobles out of the realm because they were in debt to him. When these debtors did not appear, they were judged contumacious and ordered to be excommunicated. The king made an appeal for the preservation of the papal privilege that nobles could not be drawn out of the realm, despite the fact that the privilege only allowed this in matters when to leave the realm was perilous for the nobles in question.²⁴² In 1239 the king wrote to his proctors at the court in Rome that they might dispense with the privilege that no causes should be drawn outside of the realm in aiding the cause of Thomas of Savoy, the count of Flanders (and uncle of Queen Eleanor), whose case of debt (being heard at the papal curia) involved the king's estranged brother-in-law Simon de Montfort; in waiving the privilege Henry ensured that de Montfort – who sought exile in France until April 1240 – and his abettors could be cited to the papal curia, even though they were not resident in England.²⁴³ In 1244 a writ citing this papal indult no longer specified that the privilege only applied to English barons and magnates, but rather that it extended to anyone in the realm.²⁴⁴ The first 'parliament' to protest against papal provisions in England in 1246 asked that the right of Englishmen not to be drawn outside of the realm be confirmed.²⁴⁵ English (mis)use of this papal privilege continued throughout Henry III's reign.²⁴⁶ By Edward I's reign this papal indult was viewed as a general privilege prohibiting Englishmen from being drawn out of the realm in any matter relating to the king, rather than its original function as a protection for English barons and magnates against perilous trips out of the realm. Thus, at the outset of his reign, Edward I sought the confirmation of the papal privilege which, 'the good will of the apostolic see in times long past granted to the English...that no Englishman may be called out of the realm to judgement by letters of that see'.²⁴⁷ This alleged privilege continued to be cited throughout Edward's reign as justification for prohibiting appeals out of the realm.²⁴⁸ In 1290 William of Nottingham

²⁴² *CPR 1225-32*, pp. 247, 459. The outcome of this appeal is unknown.

²⁴³ *CCR, 1237-1242*, pp. 234-35; *ODNB*, 'Simon de Montfort' by J. R. Maddicott.

²⁴⁴ William Prynne, *An Exact Chronological Vindication and Historical Demonstration of the Supreme Ecclesiastical Jurisdiction, etc.* (London: s.n., 1665-8), ii, p. 628.

²⁴⁵ A. L. Smith, *Church and State in the Middle Ages* (Oxford: Clarendon Press, 1913), pp. 138-45; *Annales Monastici*, ed. Henry Richards Luard (London: Longman, 1864-69), iii, p. 170.

²⁴⁶ For further examples up to 1272, see Graves, 'Studies on the Statute of *Praemunire*', pp. 17-20.

²⁴⁷ *CCR, 1272-79*, p. 555.

²⁴⁸ Graves, 'Studies', pp. 21-23, App.25.

petitioned parliament that he might draw a case to the court of Rome – as the matter was ecclesiastical – even though there was a papal indult disallowing such an action.²⁴⁹

Nottingham claimed that he had been granted a prebend with the church of Bentham by the archdeacon of Richmond (before his death in 1281). However, by force of arms A. of Ripon obstructed Nottingham of the church, and so Nottingham pursued a plea in the papal curia. In response, Ripon obtained a royal prohibition based on the privilege, which William of Nottingham contested in parliament.²⁵⁰ The king and council on this occasion declared that the privilege should not be infringed upon, and as Nottingham could plead his case within the realm (presumably in an ecclesiastical court) he was free to do so; by this point the earlier papal indult was very much viewed as a blanket privilege against citations out of the realm. A few more details are revealed in a letter of November 1300, which appointed proctors to the Roman Curia. Archbishop Winchelsey refers in the letter to the constitution by which it is provided that no one shall be drawn outside his diocese or on a journey of more than one or two days by apostolic letters.²⁵¹ By the close of the thirteenth century, the 1231 papal indult – that allowed for English barons and magnates to contest citations out of the realm in cases where to do so would be perilous – was misinterpreted by Englishmen to prohibit all cases relating to the king from leaving the realm. However, this misreading of the papal privilege, and the writ that was founded upon it, fell into disuse in the fourteenth century as English kings chose to rely on English laws, rather than papal decrees, to confirm their rights.²⁵²

Although the writ (erroneously) founded upon Gregory IX's 1231 indult only dealt with cases being physically removed from the realm, there were writs in existence in England at this time which considered the jurisdictional boundaries of the temporal and spiritual courts, writs of prohibition. Technically, a writ founded upon the papal privilege was also a prohibition, in that it halted legal proceedings in a specific court. The difference between the two lies in the destination the recipient of such a writ answered to. In the case of writs founded upon the papal privilege, a suit could continue after receipt of the writ if it could be heard in an English court, either ecclesiastical or common law. This writ was not

²⁴⁹ *RP*, i, 50.

²⁵⁰ *Ibid*

²⁵¹ Graves, 'Studies', pp. 21-23.

²⁵² *Ibid*.

concerned with the type of court which heard the case, only the location; thus in 1290 William of Nottingham could continue his suit against A. of Ripon in an English court.²⁵³ In some of these cases the recipient specifically had to appear *coram rege* to answer for their contempt, such as in 1251 when the abbot of Shrewsbury was cited before the king for drawing the sub-prior of Coventry out of the realm.²⁵⁴ A writ of prohibition on the other hand was designed to halt a proceeding in an ecclesiastical court, both within the realm and without, because an aspect of the case was deemed to be within the remit of the common law courts. This prohibition could be issued to both papal delegates and other ecclesiastical judges if the case was cognisable in the royal courts. Such prohibitions were used throughout the thirteenth century. In 1238, the cardinal-legate Otto found himself prohibited from holding any pleas of rents, chattels and debts which were not testamentary or matrimonial.²⁵⁵ In 1236, the prior and convent of Holy Trinity, Canterbury, drew the archbishop of Canterbury before delegated judges in a plea relating to advowsons. The king issued a prohibition against the plea, as an advowson was treated as real property, thus a common law dispute.²⁵⁶ However, the case in Court Christian continued and the archbishop was still required to appear, on the grounds that the king's predecessors had not prohibited holding pleas of this type in ecclesiastical courts. The king responded with his own claims that such a statement was false, and again issued a prohibition for the ecclesiastical court case. Additionally, the king announced he was going to discuss the matter with the papal legate when he arrived.²⁵⁷ Interestingly, in this case the king and pope fell on the same side, against the invalid English ecclesiastical court case. After the archbishop and the prior and convent reached a composition, the king opposed it (because the case was invalid). In response to this, the pope also refused to assent to the composition.²⁵⁸ Although there are instances where the king and pope cooperated in the matter of prohibitions, this was not always the case. In 1222 the pope ordered Henry III and his councillors not to meddle in a case after Richard de Percy had brought into the king's court a suit against the archbishop of York regarding a benefice, even though the papal legates had prohibited the removal of this

²⁵³ *RP*, i, 50.

²⁵⁴ *CCR*, 1247-1251, p. 565.

²⁵⁵ *CCR*, 1237-1242, p. 120.

²⁵⁶ *CCR*, 1234-1237, pp. 356, 524.

²⁵⁷ *Ibid.*, p. 540.

²⁵⁸ *CPL*, i, 193.

suit to the secular courts.²⁵⁹ Similarly, in 1245 the pope ordered that case concerning tithes (a typically spiritual dispute) be brought into the court of Rome, after a secular court had reversed the decision of the papal judges in England.²⁶⁰ In 1248 the sentence of an advowson case, held before the secular judges in the royal court, was annulled by the pope.²⁶¹

A court case from 1289 better defined the scope of a writ of prohibition, and answered the question as to whether or not a prohibition could challenge papal authority as well as English ecclesiastical authority.²⁶² Albert Archill, nephew of Pope Innocent IV (1243-54) and rector of Hugate in the diocese of York, let his church to farm to the abbot and convent of St Mary's York, who complained to Pope Honorius IV when the land failed to yield the expected amount of crops. Additionally, the sheep and cattle raised on the land were of poor health, and some of the lands – which in the hands of laymen were a great source of tithes – had been acquired by monks, to the great impoverishment of the abbot and convent. Archill declared the complaint false, and appealed to the pope to decide the cause. The papal nuncio in England, Geoffrey de Vecano, was ordered to hear the case.²⁶³ The royal courts claimed that as the case was a plea of debt it should be heard in the temporal sphere, and issued a prohibition against proceedings to the papal nuncio. Vecano asked whether his status as a papal nuncio allowed him to proceed with the case, despite the prohibition. He appealed to the king, who deliberated with his council and summoned Vecano to appear before them. It was decided by Edward that since pleas of contract or debt related to the king, according to the customs of the realm, the prohibition should stand.²⁶⁴ However, the writ of prohibition had its limitations. In 1334 the Prior of Butley recounted that a false presentation to Nicholas Fraunceys of Bildeston, chaplain, to the church of Dedham in the diocese of London, was refused by the bishop of London, prompting Fraunceys to remove the case to the court of Rome. The prior lamented that as Fraunceys was out of the realm, a writ of prohibition was worthless, and further requested that the king grant his letters to the pope that those things which concern royal rights and

²⁵⁹ Graves, 'Studies', p. 27; Prynne, *Ecclesiastical Jurisdiction* iii, p. 53.

²⁶⁰ *CPL*, i, p. 214.

²⁶¹ *Ibid.*, pp. 255-56.

²⁶² Graves, 'Studies', App. pp. 51-2.

²⁶³ *CPL*, i, pp. 326, 496.

²⁶⁴ Graves, 'Studies', App. p. 52.

laws should be pleaded in England and that the pope should not allow them to be pleaded before him.²⁶⁵

The Writ of the Statutes

The writ described by the 1353 Statute of *Praemunire* was formidable. The recipient of such a writ had only two months in which to appear before the king or his courts. Failure to do so could reap strict punishments on the absentee. They were to be put out of the king's protection and outlawed; if they could be found after failing to appear they were to be imprisoned at the king's discretion.²⁶⁶ The most original thing about this 'new' writ was that it hastened the mesne process, the process of summoning those accused to the court.²⁶⁷ Before 1353, getting defendants to appear before the king's justices was a slow and unreliable process.²⁶⁸ Three main types of mesne process were available: the writ of attachment (where the defendant provided sureties for his appearance); the writ of *distringas* (where the defendant was distrained by seizure of property); and the writ of *capias* (where the defendant was arrested).²⁶⁹ Prior to the 1353 Statute of *Praemunire*, the typical process of compelling an appellant to appear the courts followed thusly: firstly, a writ of attachment was sent to the sheriff, who was instructed to find the accused and attach them through pledges. If he did not appear, the sheriff was ordered to distrain him through his lands and chattels and to have the accused in court on another day. If they failed to appear a second time, the sheriff again was ordered to distrain the accused (possibly *in infinitum*).²⁷⁰ The writ prescribed by the 1353 statute did away with this slow process; if the defendant did not appear on their allotted day within the two-month time limit they were subject to the punishments of the offence. However, the earliest mention of the writ of *praemunire facias* in relation to the 1353 statute is not until 1360. In this instance the writ was issued to settle a dispute over the right of presentation to the prebend of Northwell Overhall in the church of St. Mary's, Southwell.²⁷¹ The king had granted the prebend to William of Norwell [Northwell], a royal favourite who had served as

²⁶⁵ SC8/263/13108.

²⁶⁶ 27 Edw. III, Stat. 1.

²⁶⁷ Graves, 'Legal Significance', pp. 60-61.

²⁶⁸ For general history of mesne process, see Baker, *Introduction to English Legal History*, pp. 76-77; for fourteenth-century process, see Graves, 'Legal Significance'.

²⁶⁹ Baker, *English Legal History*, p. 76.

²⁷⁰ Graves, 'Legal Significance', p. 62.

²⁷¹ KB27/400, rot. Rex 30.

keeper of the wardrobe of the Black Prince from 1345 to 1349, and later would be appointed chief baron of the prince's exchequer.²⁷² However, the pope had also granted the prebend to one Thomas of Ikham, who had taken the matter to the court of Rome to be settled, thus breaching the terms of the 1353 statute. Consequently the sheriff of Nottingham received a *praemunire facias* instructing him to forewarn Ikham and his abettors to appear in the court of King's Bench on 24 June 1360. Of the five included in the *praemunire facias* – Ikham and four abettors – only two appeared after summons. Ikham himself failed to appear and was placed outside of the king's protection. Similarly, in 1363 the king contested a papal provision to the church of Stanhope in the diocese of Durham by issuing a *praemunire facias* against William of Norwich – who had been provided to the church by the pope two years earlier, so an issue of provisors.²⁷³ However, on their specified day in court William of Norwich and his abettors appeared but no one came to prosecute them, and as such they left *sine die*.²⁷⁴

The second Statute of *Praemunire* (1365) did not directly change the manner in which the writ of *praemunire facias* was applied; however, the *praemunire* action against Bishop Lynne, which ran concurrently to the 1365 parliament, included a challenge to the way the writ could be used. Lynne was summoned by *praemunire facias* to answer – before the king's justices – for summoning the earl of Arundel and others to the court of Rome in a plea that belonged to the crown shortly before the proceedings of the 1365 parliament. The date of the original writ must have been before the 1365 Statute of *Praemunire* was enacted as Lynne's attorney argued that the bishop was summoned before the proceedings of the January parliament. The case, however, was not heard until Easter term 1365, by which time parliament had concluded, and the new Statute of *Praemunire* had been enacted. On the first day of proceedings, the bishop's attorneys argued that there was fault in the sheriff's return of the writ of *praemunire facias*, founded upon the 1353 Statute of *Praemunire*, because the sheriff had failed to specify which statute Lynne was accused of breaching. The sheriff had in his return stated, 'I made warning [etc.] that he [being Bishop Lynne] be in the court of the Justices [etc.] to the same contained in the writ, to do what the

²⁷² ODNB, 'William Norwell [Northwell] (1345-63)', by A. J. Musson.

²⁷³ For the papal provision, see *Calendar of Papal Registers Petitions, 1342-1419* (1896), pp. 321, 375.

²⁷⁴ KB27/410, rot. Rex 19.

writ requires', omitting the statute.²⁷⁵ Regardless, the prosecution for the king quickly rebutted this argument; the sheriff's return had been comprehensive enough for the bishop's defence to appear in court on the correct day and to know of what he was accused.

The second day of proceedings contained an interesting debate about what constitutes a statute, and whether or not the 1365 Statute of *Praemunire* was valid at the time of Lynne's court defence. At the beginning of the second day of proceedings, the king's counsel argued that the bishop should be put out of the king's protection because the new 1365 Statute of *Praemunire* specified that anyone who drew a plea out of the realm must, after the process of forewarning, appear in their own person to answer before the king's courts.²⁷⁶ Lynne, still presiding at the papal court in Avignon, technically fell afoul of this stipulation. However, this charge did not stand. The bishop's attorneys successfully argued that as the original writ was made before the 1365 statute was enacted, any new stipulations attached to the earlier Statutes of Provisors and *Praemunire* should not stand.²⁷⁷ Lynne's attorneys then challenged the whole validity of the second Statute of *Praemunire*. Although they accepted that an ordinance had been made in the parliament of 1365 that prohibited appeals out of the realm and the acceptance of papal provisions, they argued that it had not yet been made into a full statute. After a pause in proceedings for the court to consider this argument, the defence elaborated on these claims. As the 'statute' had not yet been published in the counties – as all statutes before it had been – it could not yet be law, even though the court had been commanded by the king to allow this as a statute. Chief Justice Thorpe rejected this argument. The defence's argument was based on the need for a statute to be published across the counties before it could be considered a full statute; however, the statute had been read as an ordinance in parliament, for the consideration of all representatives of the counties of England, and therefore in the eyes of the law had been assented by the country as a whole as soon as parliament had concluded any matter. Additionally, in the specific case of the 1365 statute, Thorpe confirmed that when all the lords were assembled before the king they could make an ordinance, which could be held for a statute at the king's command; thus in this case the 1365 Statute of

²⁷⁵ *YB Pasch. 39 Edw. III, pl. 3, fos 7a-7b; Select Cases in the Court of King's Bench*, ed. G. O. Sayles (London: Selden Soc., lv, lvii, lviii, lxxvi, lxxxii, lxxxviii, 1936-71), vi, pp. 143-5.

²⁷⁶ *YB 39 Edw. III, Pasch, pl. 3, fos 7a-7b.*

²⁷⁷ *YB 39 Edw. III, Pasch, pl. 3, fos 7a-7b.*

Praemunire became law as soon as parliament was concluded. However, Lynne's defence that his charge predated the second Statute of *Praemunire* still stood, and therefore the original *praemunire* action against Lynne was adjourned. Prosecutions against the bishop did not end there though. In Trinity term 1365 the king issued a second *praemunire facias* against Bishop Lynne, this time founded upon the second Statute of *Praemunire*. When the bishop once again failed to appear, it was agreed that he should be put out of the king's protection, have his temporalities and possessions seized, and also forfeit all his goods and chattels to the king (the punishments prescribed by the 1353 Statute of *Praemunire*, which the 1365 statute reinforced).²⁷⁸ This stipulation that appellants had to appear in person was revoked in 1383.²⁷⁹

This was not the only time a writ of *praemunire facias* was challenged for the improper actions of the sheriff. In Hilary term 1368 a writ of *praemunire facias* was rejected because in the sheriff's return he had failed to specify on which day the accused had been forewarned. As the statute provided that the accused should be forewarned two months before their day in court, which the court could not ascertain from the writ return, the court awarded a *sicut alias* – a second writ sent out when the first was not executed (or, in this case, not executed as per the statute).²⁸⁰ This was not the only example of a case being thrown out or delayed because the writ was bad. In 1379 the justices of the Court of Common Pleas decided that a *praemunire facias* needed to be redone because in his return the sheriff had misspelled *praemunire* 'premuire'. This, according to the court, nullified the legality of the writ.²⁸¹ In the same year a different sheriff failed to mention in his return that the defendant had even been warned (despite the entire process requiring as much); the sheriff was amerced twenty shillings by the court for his mistake.²⁸² A sheriff of Northampton in 1388 failed to mention where the defendant John Stonton, chaplain, had been forewarned.²⁸³ Again the writ had to be redone. In 1379 the sheriff of London had to

²⁷⁸ Ibid.

²⁷⁹ *PROME* (1383), vi, pp. 309-18.

²⁸⁰ *YB Hil.* 42 Edw. III, pl. 26, fo. 7a.

²⁸¹ CP40/473, rot. 215.

²⁸² CP40/474, rot. 346.

²⁸³ KB27/509, rot. 63.

redo a writ because he failed to mention in his return that any of the three accused abettors to the primary defendant had been forewarned.²⁸⁴

The use of the writ of *praemunire facias* in actions of both provisors and *praemunire* also served to link the two offences. The *praemunire facias* against Bishop Lynne was attached firstly to the 1353 Statute of *Praemunire*, then the 1365 statute (which also renewed the first Statute of Provisors).²⁸⁵ In 1369 a *praemunire facias* was sent against three defendants. When they did not appear, they were put out of the king's protection, as per the 1353 Statute of *Praemunire*.²⁸⁶ In 1370 the Abbot of Waltham sent a writ of *praemunire facias* against multiple defendants in an action founded upon the 1351 Statute of Provisors.²⁸⁷ In 1380, a royal answer to a Commons petition relating to papal provisions suggested that the writ of *praemunire facias* could prescribe a defendant up to six months to appear.²⁸⁸ Although this linked the writ to actions of provisors, no such use of the writ has been found applying this extended warning period. In 1383, both the 1353 and 1365 Statutes of *Praemunire* were mentioned in connection to a writ of *praemunire facias*.²⁸⁹ The same case confirmed *praemunire facias* as a writ of trespass. This meant that instead of simply being a writ of forewarning, whereby the only function of the writ was to summon appellants to court, the writ of *praemunire facias* would imply a trespass had been inflicted upon the plaintiff (of the *praemunire* action). A number of cases found in King's Bench early in Richard II's reign also confirm that *praemunire facias* was being used in provisors actions.²⁹⁰ The most emphatic assertion that *praemunire facias* was to be used in actions of *praemunire* and provisors was in a Year Book entry from 1384, that describes one of the Statutes of *Praemunire* (unknown which) as 'lestatut de premunire facias'; the association between the writ and the statutes was confirmed.²⁹¹

By 1390, the writ was sufficiently associated with actions of provisors that the Commons could ask that the new Statute of Provisors (1390) be punishable by writ of

²⁸⁴ KB27/509, rot. 64.

²⁸⁵ See Chapter III; YB Pasch. 39 Edw. III, pl. 3, fos 7a-7b.

²⁸⁶ YB Hil. 43 Edw. III, pl. 14, fo. 6a.

²⁸⁷ YB Pasch. 44 Edw. III, pl. 6, fos 7b-8a.

²⁸⁸ *PROME* (Jan 1380), vi, pp. 145-82.

²⁸⁹ YB Pasch. 6 Ric. II, pl. 15, fos Ames 221-223. For multiple examples of *praemunire facias* used in both actions of *praemunire* and provisors, see Appendix 2.

²⁹⁰ KB27/471, rot. 41d; KB27/482, rot. 57; KB27/507, rot. 46; KB27/509, rots 63, 64.

²⁹¹ YB Mich. 8 Ric. II, pl. 6, Ames 47-48.

‘premunire’; this stipulation did not, however, make it onto the statute roll.²⁹² In the text of the Great Statute of *Praemunire* of 1393, the only time the word *praemunire* is mentioned is in relation to the writ, where it specified that if the defendant could not be found then process should ‘be made against them by *praemunire facias*, in the manner as it is ordained in other statutes of provisors.’²⁹³ In 1401 a Commons petition complained that men of the order of Citeaux, despite being resident in the realm of England and subject to the king’s laws, had purchased a papal bull exempting them from paying tithes on their English lands and possessions. This was ‘clearly contrary to the laws and customs of your realm, because various settlements and indentures are made between the said religious men and others of your lieges for the taking of such tithes’.²⁹⁴ If this bull were brought into effect the cognisance that pertains to such cases would fall into Court Christian, contrary to the laws and customs of the realm. To avert such danger the petition asked that these clerics be put out of the king’s protection if the bull were published.²⁹⁵ The response to the petition confirmed the process of the writ of *praemunire facias*, its association with the 1390 Statute of Provisors, and the fluidity in definition between the offences of provisors and *praemunire* in the early fifteenth century:

It was agreed by the king and the lords in parliament that the order of Citeaux should remain in the situation in which it had been before the time when it had purchased the bulls mentioned in this petition. And that those of the said order, as well as all other religious and secular men, of whatever estate or condition they may be, who put the said bulls into execution, or henceforth purchase other such bulls anew, or by colour of the same bulls purchased or to be purchased take advantage of them in any way, should have a process brought against them, and each one of them, with two months' warning, by writ of *praemunire facias*. And if they default or are attainted, they shall be placed outside the protection of the king and incur the penalties and forfeitures contained in the statute of provisors made in the thirteenth year of King Richard [1390]. Furthermore, to avoid any similar mischiefs in time to come, it was

²⁹² *PROME* (Jan 1390), vii, pp. 151-53.

²⁹³ 16 Ric. II, c. 5; For the issues surrounding nomenclature, see Chapter III.

²⁹⁴ *PROME* (1401), viii, pp. 118-19.

²⁹⁵ *Ibid.*

agreed that our same lord the king should request that our most holy father the pope repeal and annul the said bulls purchased, and that he abstain from making any such grant at a later date. To which reply the Commons fully agreed, and agreed that it should be made a statute.²⁹⁶

Similarly, in 1416 the Commons, again complaining about ‘deceitful’ provisors on behalf of the dean and chapter of the Henry V’s household, asked that punishments be prescribed to offenders as specified in the ‘statutes and ordinances previously made concerning provisors’ by process of *praemunire facias*.²⁹⁷ The writ of *praemunire facias* was a writ to be used in both actions of *praemunire* and provisors; just one way in which the offences were intertwined.

The Writ of ‘Premunire Facias’²⁹⁸

The more-ancient writ of *praemunire facias* was in use from at least as early as 1314, and seems to have been used frequently in the decades preceding the first Statute of *Praemunire* (1353). This writ was a Chancery writ of summons, used to bring certain people before the king and council. Between 1314 and 1353 at least sixty-one writs of this type survive, three from 1353 and fifty-eight before.²⁹⁹ The actual date for the creation of such a writ is unknown. In 1306, writs ‘quod praemunire faciant’ were sent out to the sheriffs of Kent (Canterbury), Bedfordshire and Oxfordshire that forewarned parties to appear before the king. The parties were directed to give reason why certain lands and advowsons should go out of the hands of the king.³⁰⁰ In 1315 the king and council responded to a petition from Thomas de Multon of Egremont and Anthony de Lucy, who wished to continue a process begun in Edward I’s reign concerning the manors of Cockermouth, Skipton, and Radstone, which were in their inheritance. They commanded that the treasurer and chancellor should examine the relevant charters concerning this land and make a ‘premuniri’ by writ of the

²⁹⁶ Ibid. For the statute, see 2 Hen. IV, c.4, *SR*, ii, 121.

²⁹⁷ *PROME* (1416), ix, p. 157.

²⁹⁸ The spelling of ‘premunire’ here is taken as a direct transcription of the surviving writs of its type, contained in C256/2. This is to differentiate between this writ of summons and the later writ attached to the Statutes of Provisors and *Praemunire*, although both in the fourteenth century were spelled ‘premunire facias’ (and the one may have developed from the other).

²⁹⁹ C256/2/1, nos 1-25 (Oct 1314 – May 1322); C256/2/2, nos 1-14 (Dec 1328 – July 1345); C256/2/3, nos 1-19 (Feb 1346 – May 1349); C256/2/3, nos 20-22 (Apr-Aug 1353).

³⁰⁰ *RP*, i, p. 206.

Exchequer to relevant parties concerning this query.³⁰¹ The first surviving example of a writ called *premunire facias* dates from 16 October 1314.³⁰² This writ, named as such in the sheriff's endorsement, requested that certain lower clergy appear at the parliament at Lincoln.³⁰³ In this way it was far more closely connected to the existing *premunientes* clause than a traditional Chancery writ of summons, or the later writ of *praemunire facias* associated with the offences of provisors and *praemunire*. *Premunientes* was a clause included on some parliamentary writs of summons that commanded the bishop of a particular diocese to forewarn the dean and chapter of his cathedral, and the archdeacons and clergy of his diocese, that they were to be present at parliament. A later writ from 1328 described how the bishop of Carlisle returned a writ of *premunire facias* to the archbishop of York, the body of which had summoned the clergy in the Carlisle diocese to attend Parliament.³⁰⁴

The majority of these early writs of *premunire facias* were used simply as a writ of summons. The summons was not necessarily for the recipient to appear before one of the king's courts, as *praemunire facias* would come to be used in the fifteenth century and beyond, but instead a 'forewarning' to appear before the king and council. On 18 May 1322 a number of writs of *premunire facias* were sent to various sheriffs across the country to forewarn all prominent merchants in the specified sheriff's bailiwick to appear before the council to discuss their liberties.³⁰⁵ Presumably a writ was sent out to each major English region with this instruction; twenty-one such writs survive in C256/2/1. There is little variation in the wording of these writs; each writ is addressed to the sheriff of a particular county. The sheriff is not instructed who specifically to forewarn, just that all merchants of praise should be notified to appear.³⁰⁶ More details appear in the sheriff's return, recorded on the dorse. Each of these returns open with the sheriff stating his name, and then listing each of those men he had forewarned to appear, or failed to forewarn. In some cases a *sicut alias* was sent after the *premunire facias*, this was also recorded on the return.³⁰⁷ John

³⁰¹ SC8/159/7917.

³⁰² C256/2/1, no. 25.

³⁰³ Ibid.

³⁰⁴ C256/2/2, no. 14.

³⁰⁵ C256/2/1, nos. 3-23.

³⁰⁶ Ibid. E.g. Number 18 is addressed to the sheriffs of Shropshire and Staffordshire, number 20 to the sheriff of Lincoln, number 23 to the sheriff of Norfolk and Suffolk, etc.

³⁰⁷ C256/2/1, no. 9.

Haward (or Hauward), sheriff of Norfolk and Suffolk, delivered the writ to so many recipients in 1322 that he needed to write his return on a separate parchment, attached to the original writ.³⁰⁸ These returns mark the first point that the writs were described as anything other than writs ‘quod praemunire facias’. A writ dated 19 January 1326, which was sent out for parties to appear before the king and council at Norwich to discuss disputes regarding the liberties at Great Yarmouth, was described by the sheriff of Norfolk and Suffolk in his return as ‘breve premunire facias’.³⁰⁹ Though this may merely have been a relaxation on the sheriff’s part, this suggests one possible way that the idea of a writ called *premunire facias*, as opposed to a writ that forewarned, was introduced before the statutes that would later adopt its name. Before the enactment of the 1353 Statute of *Praemunire* there was little to differentiate writs of *premunire facias* from other fourteenth-century Chancery writs. In 1340 writs of *venire facias* were sent out to a number of merchants to appear before the king and council, in much the same way that *premunire facias* was used during Edward II’s reign.³¹⁰ Similarly, in 1341 a miscellaneous Chancery writ (not otherwise represented by the wider National Archives class C256) was used to summon alien priors and clergy before the king; a year earlier *premunire facias* had been used for the same purpose.³¹¹

Even after 1353, this traditional use of *premunire facias* did not immediately subside, perhaps because of a lack of publication of the statute.³¹² In 1358 for example a writ of *premunire facias* was sent to certain parties in London to discuss the liberties of goldsmiths in the city.³¹³ A petition to the king and council from John Turk and John Foxcote, presented in the October parliament of 1362, complained that lands and properties had been unjustly held from Turk by John de Arden.³¹⁴ Turk was son and heir to Marjorie Walwayn, one of the daughters and heiresses of Maude [Wallace] Waleys, whose estate Turk had laid claim to part of. This prompted an investigation on the part of the king to find out if these claims

³⁰⁸ C256/2/1, no. 23.

³⁰⁹ C256/2/1, no. 24. For the writ referred to as *quod praemunire facias* see C256/2/1, Items 12, 14.

³¹⁰ C256/3/2, no. 19 et seq. *Venire Facias*, loosely translated as ‘may you cause to come’, was more commonly used later as a writ which instructed a sheriff to empanel a jury. Like *premunire facias*, at this early stage it is merely a writ of summons.

³¹¹ C256/7, no. 6 et seq. (misc. writ); C256/2/2, nos. 2 et seq. (*premunire facias*).

³¹² See Chapter III.

³¹³ C256/2/4, no. 23.

³¹⁴ SC8/212/10557; cf. *PROME* (1362), v, p. 154.

were true. On 8 November a writ warranted 'by petition of parliament' was sent to the mayor and recorder of London to return information into chancery pertaining to the will of Maude [Wallace] Waleys, a transcript of which the mayor and recorder sent back to chancery shortly after.³¹⁵ A further writ was sent a week later on 15 November to the sheriffs of London, requesting information from the prioress of Dartford in connection with the dispute.³¹⁶ In order to settle the dispute, a writ of *premunire facias* dated 10 December 1362 was issued, ordering the sheriffs of London to have parties appear in Chancery in relation to this matter.³¹⁷ In July of the same year a *premunire facias* was sent to parties to appear before the king and council to discuss a debt held by William Smale.³¹⁸ During the parliament of 1365 Edmund de Swinford (Swynford) requested a charter of pardon for the alienation of the manor of Harlaxton to him by Norman de Swinford without license. An investigation by Walter de Kelby, escheator in Lincolnshire, found that John de Garreine (Warene), the earl of Surrey, had alienated the manor to one John Brewes without license. On Brewes' death his son (another John Brewes) had released his right to the manor to Norman de Swinford. The manor had been in the king's hand because of this for seven years, much to the impoverishment of Edmund. Endorsed on the back of the petition is the king's response, 'let Brewes, his wife and his friends and the keeper of the manor be called before the council to inform the court for the king if they know any reason for which the king should not remove his hand'.³¹⁹ A writ of *premunire facias* was sent to the sheriff of Lincolnshire to forewarn the mentioned parties to this effect, which was endorsed with the sheriff's answer.³²⁰ Another example from 1371 had writs of *premunire facias* sent to the tenants of a number of houses in the City of London, asking them if they had any information why these houses should not be forfeited to the king.³²¹

The number of characteristics *premunire facias* shared with the later writ of *praemunire facias* makes a compelling argument for the theory that the older writ was simply repurposed to suit the specifications identified in the 1353 statute. It was already used to summon parties before the king and his council. Additionally, in all the surviving

³¹⁵ SC8/212/10555 (writ); SC8/212/10556 (transcript of will).

³¹⁶ SC8/212/10554.

³¹⁷ SC8/212/10553.

³¹⁸ C256/2/2, no. 45.

³¹⁹ SC8/226/11278.

³²⁰ SC8/226/11279.

³²¹ YB Trin. 45 Edw. III, pl. 39, fo. 26b.

writs before 1353 the recipient of the summons was also required to appear in person, ‘*propria persona*’, another stipulation of the ‘new’ writ prescribed by the statute. Another point of note is that since the early 1340s the writ of *praemunire facias* had increasingly been used in disputes pertaining to alien clerics and papal provisions, disputes that would culminate in the creation of the Ordinance of Provisors (1343) and later, the Statute of Provisors (1351). The first writs addressed to alien priors appear in 1340, amidst renewed complaints in parliament about money leaving the realm.³²² Similarly, the first writ of *praemunire facias* that related to a vacant benefice dates from 13 March 1344, less than a year after the 1343 parliament that proclaimed the Ordinance of Provisors had ended.³²³ For the remainder of the 1340s those writs that survive suggest that the writ of *praemunire facias* was primarily being used to summon aliens in English benefices before the king and council to discuss their goods and possessions.³²⁴ However, although many of the surviving writs relate to alien provisions or clergymen, they were not necessarily sent to punish those who had accepted papal provisions; a writ from 1347 apparently shows the council defending the provision of alien priors in a matter concerning a disputed benefice.³²⁵

Another feature that became synonymous with *praemunire* was the equal punishments for multiple defendants.³²⁶ This specification was constant in all Statutes of Provisors and *Praemunire* throughout the fourteenth century. In 1351 provisors suspected of encroaching upon benefices in the king’s hand were to be attached by their body, along with their procurators, executors and notaries, all of whom were brought in to answer such charges.³²⁷ In 1353 it specified that if appellants did not appear on their given day then they, ‘their procurators, attorneys, executors, notaries, and maintainers’ would be subject to the punishments prescribed therein.³²⁸ The second Statute of *Praemunire*, as a renewal of the earlier statutes, also included the accused’s ‘maintainers, concealers, abettors, and other aiders’.³²⁹ In 1390 those same ‘procurators, executors and notaries’ were targeted along

³²² C256/2/2, nos 3-9.

³²³ Parliament assembled on 28th April 1343 and was dissolved sometime around 20th May. *PROME* (1343), iv, p. 325.

³²⁴ C256/2/3, nos 1-15; this correlates with the findings of Barrell, who identified a number of royal writs specifically citing the 1343 Ordinance, in Barrell, ‘The Ordinance of Provisors of 1343’.

³²⁵ C256/2/3, no. 17.

³²⁶ For fifteenth-century opinion on this, see Chapter VI.

³²⁷ 25 Edw. III, Stat. 4.

³²⁸ 27 Edw. III, Stat. 1.

³²⁹ 38 Edw. III, Stat. 2, c. 1-2.

with the primary defendant, using the same terminology as the earlier 1351 Statute of Provisors.³³⁰ Finally, in 1393 a defendant was charged along with their 'notaries, procurators, maintainers, abettors, fautors, and counsellors'.³³¹ These secondary defendants could include anyone involved in the offending church court case. When the primary defendant appeared in court, the secondary defendants were also required to attend, and the sheriff received orders to warn or arrest all named defendants of the *praemunire* charge. It is possible then that writs of *praemunire facias* could have been used as a means of pressuring a primary defendant to cede a dispute, through the impracticalities of assembling these secondary defendants.³³²

The writ of *praemunire facias* also did not seem to have a limit to the number of people it could summon (on a single writ). In the same year that the 1353 statute was enacted, a writ of *praemunire facias* was returned in which the sheriff had forewarned sixty-five recipients to appear before the king.³³³ A returned writ from 1360 named over fifty recipients.³³⁴ However, unlike the specifications made in the statute, writs of *praemunire facias* did not prescribe a strict time limit with which an appellant had to appear. In 1318, two recipients of separate writs of *praemunire facias* were given nine months to respond to their summonses; writs dated 28 September 1318 requested that the recipients appeared before the king and council at the York parliament the following year.³³⁵ In 1322 merchants summoned to discuss their liberties had only twenty-six days to respond to their summons. The writs were originally dated 18 May; the council was summoned for 13 June the same year.³³⁶ Such associations with alien provisors, multiple defendants and the simple process of forewarning lend credence to the theory that instead of creating a new form of writ in 1353, the first Statute of *Praemunire* instead repurposed the existing writ of *praemunire facias*.

³³⁰ 13 Ric. II, Stat. 2, c. 2.

³³¹ 16 Ric. II, c. 5.

³³² Martin, 'Prosecution on the Statutes of Provisors and Praemunire', p. 117.

³³³ C256/2/3, Item 20.

³³⁴ C256/4/4, Item 53.

³³⁵ C256/2/1, nos 1-2. In reality the recipients would have had closer to a year with which to respond, as parliament was not held until October 1319.

³³⁶ C256/2/1, nos 3-23.

Conclusion

By 1400, the writ of *praemunire facias* was synonymous with those statutes that addressed papal provisions and appeals out of the realm; such a statute was referred to as 'lestatut de premunire facias' as early as 1384. As such, regardless of the writ's origins, any other version or use of the writ was likely to decline. However, this was a slow process. The more ancient writ of *premunire facias*, performing its traditional function as a writ of summons, survives up until 1404.³³⁷ The similarities in use between the two writs lend credence to the idea that the one may have influenced the other. *Praemunire facias'* use in actions founded upon both the Statutes of Provisors and *Praemunire* further cemented the relationship between the two offences. The following chapter examines these offences, to firmly identify why provisors and *praemunire* were so intertwined in the fourteenth century, and how they were viewed by 1400.

³³⁷ C256/2/6.

Chapter III: The Offence of *Praemunire*

The offence of *praemunire* did not come into being fully formed. A product of the Statutes of *Praemunire* (and in part those of provisors also), the offence drew on grievances all broadly connected to the exercise of papal authority in England.³³⁸ Although it took its name from the writ of *praemunire facias*, the method with which those accused of the offence were summoned to court, an important point of note is that in the fourteenth century, there was no ‘offence’ called *praemunire*. Nor was any statute officially called *praemunire* in the statute rolls throughout the period. The 1353 statute was originally named for the offence it created, ‘a statute against annullers of judgements of the king’s court; made in the twenty-seventh year [of Edward III’s reign]’.³³⁹ In later printed versions of the statute it was instead called a ‘statute of provisors’. The heading for the ordinances and statutes made in 1365 were simply titled, ‘of the ordinances made in the thirty-eighth year [of Edward III]’; no specific heading was given to what would become known as the second Statute of *Praemunire*.³⁴⁰ So too was the 1393 statute, later known as the Great Statute of *Praemunire*, originally only referred to as the ‘statute of the sixteenth year [of Richard II]’.³⁴¹ The reason that these statutes later became known as ‘Statutes of *Praemunire*’ was because of the common offence that they created and developed, which prohibited appeals to the court of Rome in matters of royal cognisance. This chapter examines this offence of *praemunire* in greater detail, to understand how each of these statutes contributed to the eventual offence that could be used against cases brought before English ecclesiastical courts. Such an analysis again demonstrates how the offences of provisors and *praemunire* were viewed as one in the fourteenth century. This chapter draws on the associations already identified in the previous chapters to provide a more focused examination of this relationship, exploring the implications this association of *praemunire* with provisors had upon the development of the offence(s) into the fifteenth century.

³³⁸ See Chapter I.

³³⁹ ‘*Statutum contra annullatores Judiciorum Curia Regis*’, 27 Edw. III, Stat. 1. This title is in the margin of the entry on the statute roll (*SR*, i, p. 329).

³⁴⁰ 38 Edw. III, Stat. 2.

³⁴¹ 16 Ric. II, c. 5.

Early Fourteenth-Century Appeals to Rome

To take its most literal interpretation, the offence of *praemunire* was the pursuit of appeals out of the realm. In attempting to prohibit such appeals, the first Statute of *Praemunire* (1353) was not original. As early as the Constitutions of Clarendon in 1164, English kings had sought to control the issue of appeals leaving the realm. The eighth chapter of the Constitutions declared that ecclesiastical appeals should only go as far as the archbishop; if the matter could still not be settled, it should be brought to the king before removal from the realm.³⁴² In the early fourteenth century too appeals to the court of Rome were contested. In 1317/18 James de Cosance, the prior of Prittlewell, complained that process was made against him by William le Avernaz in the court of Rome contesting his appointment as prior. These proceedings, the prior argued, were to the disinheritation of the king, and so he asked that the king order his chancellor to send writs to William forbidding his judges from meddling in this matter and from doing anything that could redound to the prejudice of the king or the destruction of his house.³⁴³ Rhetoric more likely designed to garner a more favourable outcome for the prior than a concern that certain cases were being heard unjustly, but an early use of the argument that appeals leaving the realm were to the detriment of the king nonetheless. The similarities in language between this petition and the eventual Statutes of *Praemunire* exemplify how this argument was in use at least as early as the beginning of the fourteenth century. A similar petition from the final years of Edward II's reign echoes this sentiment. Thomas de Cottingham, clerk of Chancery, complained that he was being summoned to Rome in a dispute over the priory of Pembroke to the detriment of not only Thomas but also the king as such an action weakened the judgements of the king's courts.³⁴⁴ In this case the king and council granted Thomas a writ of prohibition formed upon the contents of his petition, so that no-one should do or attempt anything to weaken the judgement, again demonstrating language and ideas later evoked in the Statutes of *Praemunire*.³⁴⁵

In 1321 a petition was presented (by unknown parties) to the king asking that a remedy be made for summons outside the realm to the court of Rome in matters

³⁴² Graves, 'Studies', p. 9.

³⁴³ SC8/196/9755.

³⁴⁴ SC8/160/7992.

³⁴⁵ Ibid.

concerning the king's right. They cited the summonses issued to Robert de Baldok concerning the church of Aylesbury, to William de Ayrnmyne concerning the church of Leighton Buzzard, and to William de Bevercote concerning the church of Rampton, as specific examples. Furthermore, the petitioners requested that writs of prohibition be issued to prevent these people from leaving the realm or sending proctors to conduct their business without, and writs be sent to the Constable and Warden of the Cinque Ports to arrest them and prevent them from crossing.³⁴⁶ Although the Statute of *Praemunire* was still some thirty years from enactment, the grievances concerning the removal of cases pertaining to the king and his courts were present.

Contested appeals to the court of Rome continued into Edward III's reign. In 1328 Robert de Lascy asked that assistance be given against Gaucelin (Gaucelinus), cardinal priest of the church of Sts Marcellinus and Peter (in Rome) and his proctor, Raymond Pelegrini, for attempting to draw Robert from the realm to answer for debts owed on his English benefices. In this matter the king and council judged that a writ of prohibition should be granted.³⁴⁷ Similar intervention was requested of Edward III in 1330 by the abbot and convent of Westminster. They asked that the king write to the pope to confirm the exemption of St Stephen's chapel from subjection to the court of Rome, granted to them by Pope Honorius IV, because the chapel was the king's special chapel.³⁴⁸ Over fifty years later in 1384, the abbot and convent of Westminster would request a pardon from the king (Richard II) for pursuing a case in the court of Rome (and elsewhere) against the dean and college of St Stephen's chapel, perhaps overlooking these ancient exemplifications.³⁴⁹ In 1348 Nicholas de Wry petitioned before the king and great council, 'coram rege et magno concilio', asking that writs be sued to the dean and chapter of Lincoln forbidding them to sue for a claimed annuity in the church of Gosberton (where Wry was patron) in Court Christian, because the law of land states that such matters should be sued in the king's court. Furthermore, Wry stated that the plea in court of the Rome in this matter was to the king's disinheritance.³⁵⁰

³⁴⁶ SC8/196/9762.

³⁴⁷ SC8/206/10281.

³⁴⁸ SC8/242/12090.

³⁴⁹ SC8/184/9164.

³⁵⁰ SC8/174/8689.

There were though deficiencies in the process of limiting appeals out of the realm prior to the statute of 1353. In 1344 John de Askham, clerk, complained that John Wrey, chaplain, had by virtue of a bull of the court of Rome entered the vicarage of Brixham and held it by force and arms. This was despite the fact that the patronage of the vicarage, once of the alien prior of Totnes, had fallen into the king's hands because of the war (the king had also recovered the right of presentation in Common Pleas).³⁵¹ For this reason John Wrey had been outlawed, though he received a charter of pardon shortly after. This charter, however, had not been released from Chancery because Wrey could not find sufficient mainprise in Chancery that he would not sue on this matter in Court Christian or disturb the possession of the incumbent vicar, Hugh de Askham. Despite this, Wrey had – citing this charter – demanded by force of arms that Hugh vacate the benefice and recompense him for damages. Thus John de Askham asked that Wrey's original charter of pardon be examined, and if he had acted contrary to it, that it be formally repealed.³⁵² The king and council agreed that a commission ought to be issued to arrest the provisor and all others that had utilised papal bulls to disturb and ruin the judgement of the king's courts, and obstruct the king's presentee by virtue of the same judgement. Additionally, the charter of pardon was to remain in the hanaper until the accused could find good and sufficient security with a heavy penalty that neither he nor any other would challenge Hugh de Askham.³⁵³ Such actions demonstrate one of the reasons why an offence that prohibited appeals out of the realm in matters of royal cognisance was needed. Had the offence of *praemunire* been active at this time, John Wrey would have faced immediate punishments for appealing to Court Christian (the court of Rome). The prohibition of appeals out of the realm was not a phenomenon new to *praemunire*.

In some instances, though, the king and pope could work together. Sometime in Edward II's reign, John Bussh petitioned the king in a matter relating to a prebend in the church of York. Bussh stated that he gave up his pursuit of a judgement he had in the court of Rome at the king's demand, on the understanding that he would have another prebend in that church, or in Lincoln, Salisbury, or London. Having not yet received anything, Bussh asked that consideration be made for himself or his nephew, another John Bussh, bachelor

³⁵¹ SC8/239/11901.

³⁵² *Ibid.*

³⁵³ *Ibid.*

of laws. The king took the request under advisement from John de Hotham, the Bishop of Ely.³⁵⁴ Early in Edward III's reign too the king could be asked to assist a papal decision. In 1328 a letter was sent to Edward III by Henry Burghersh, the bishop of Lincoln, stating that though Roger de Portes was presented to the prebend of Crowhurst (of the collegiate church of Hastings) by Edward I, he was removed and William de Cliff was presented by Edward II. Roger thus appealed to the court of Rome, and the letters were sent to the bishop ordering his reinstatement. Burghersh therefore requested that Edward do his part in the matter by writing to the dean and chapter of Hastings to restore Roger to his previous estate, working with the pope to ensure canonical justice was preserved.³⁵⁵ In this case, however, the king's response is unknown.

The Offence of Provisors

Although the Statutes of Provisors primarily focused on the issue of papal patronage in England, they too provided precursors to the eventual offence of *praemunire*. The Statute of Carlisle (1307) reminded aliens resident in the realm that they were subject to the same laws as denizens of England, and also that church money should not leave the realm without the king's acquiescence; to do so would undermine royal authority.³⁵⁶ In its concerns with things leaving the realm, and more generally with acts that undermined royal authority within the realm, this statute can be viewed as a precursor to *praemunire*. So too was the Statute of Provisors (1351), which itself also served as a renewal of the earlier Statute of Carlisle, related in part to appeals out of the realm. In the parliament of 1351 a request presented by the Commons asked that remedy be provided against 'all those who prosecuted in the court of Rome to undo the effect of judgements returned in the king's court both for the king and for others; inasmuch as they strive, as much as is in them, to undo and annul the laws of the realm'.³⁵⁷ The king's response to this petition was that there was sufficient remedy within the law to punish annullers of judgements in the king's courts.³⁵⁸ It is unclear to which remedy the king was referring in this matter. If referring to a specific piece of legislation, it seems likely that the king was alluding to a certain clause of

³⁵⁴ SC8/95/4731.

³⁵⁵ SC8/236/11774.

³⁵⁶ 35 Edw. I, *Stat. Karlioli*, c. 2.

³⁵⁷ *PROME* (1351), v, p. 15.

³⁵⁸ *Ibid.*

the 1343 Ordinance of Provisors, which read, ‘no-one should do, or allow to be done, any other thing that can turn in prejudice to the king or to his people, or to the detriment of the rights of his crown or of the aforesaid decisions, ordinances, agreements, decrees and consideration’.³⁵⁹ However, the king disowned the ordinance in 1346.³⁶⁰ Alternatively, the king could have had a specific writ in mind, such as the writ of prohibition or the writ of arrest.³⁶¹ Despite the king’s seemingly noncommittal response to this petition, a clause in the 1351 Statute of Provisors did state that those charged with the offence of provisors should provide surety that they would attempt no things in future, nor sue against any man in the court of Rome or any part elsewhere for any such imprisonments brought about by their charge of provisors.³⁶² This clause was added so as to avoid an impractical and potentially unending process of suits and counter-suits, whereby the royal and papal nominee continually ousted the other, citing royal or papal authority as justification. That the Commons saw the need to request firmer legislation against such action in 1353 suggests this aspect of the statute was not widely used.

The second Statute of Provisors, enacted in 1390, expanded upon the existing provisors legislation made in 1351. As such, it did not directly relate to appeals out of the realm. Although the court of Rome was referred to in the statute roll in the context of purchasing provisions detrimental to the patronage of the king and other English lay patrons, no previous Statute of *Praemunire* is mentioned, not even in relation to the punishment of non-attendees.³⁶³ The writ of *praemunire* is suggested as the means with which to bring such appellants to the king’s courts in the parliamentary petition that preceded this statute, but any specific mention of this writ is omitted from the statute roll.³⁶⁴

³⁵⁹ *PROME* (1343), iv, pp. 349-52.

³⁶⁰ *CCR*, 1346-9, p. 37.

³⁶¹ See Chapter II; Graves, ‘Legal Significance’.

³⁶² 25 Edw. III, Stat. 4.

³⁶³ 13 Ric. II, Stat. 2, c. 2.

³⁶⁴ *PROME* (Jan 1390), vii, p. 152.

The Offence of *Praemunire*

The Statute of *Praemunire* (1353) was enacted to satisfy two grievances raised by the Commons in the preceding Great Council. Firstly, certain persons were drawing from the realm cases which could (and should) be heard in the king's courts in England, and secondly, those accused of such were not appearing in the king's courts to answer such charges.³⁶⁵ Thus the statute specified that in future, '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 cognisance 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' should be punished according to this statute.³⁶⁶ The punishments prescribed in this statute were more severe than the previous statutes of 1307 and 1351. In 1307 the punishments were particularly vague. Any found offending the statute were to be 'grievously punished according to the quality of his offence, and according to his contempt of the king's prohibition.'³⁶⁷ In 1351 those found guilty abided in prison without bail until they made fine and ransom to the king, and made peace with the aggrieved party. They would not be released until they had made full renunciation of any provisions, and found sufficient surety that they would attempt no such things in future.³⁶⁸ Those failing to appear on their specified day according to the 1353 statute would be put out of the king's protection, and their lands, goods and chattels would be forfeited to the king. If their bodies could be found, they were taken and imprisoned, and ransomed at the king's will.³⁶⁹ The earlier Statute of Provisors only threatened appellants with a fine and loss of the benefice.

Two readings of the statute of 1353 can be made. The first is a straightforward interpretation of the statute text. The 1353 legislation created an offence that prohibited appeals to the court of Rome in matters of royal cognisance; the secondary clause relating to those failing to appear merely prescribed the mesne process for such offenders. However, these two clauses could instead encompass one broad offence of undermining royal jurisdiction. Non-appearance after summons can be viewed as a jurisdictional

³⁶⁵ *PROME* (1353), v, p. 83.

³⁶⁶ 27 Edw. III, Stat. 1.

³⁶⁷ 35 Edw. I, c. 2.

³⁶⁸ 25 Edw. III, Stat. 4.

³⁶⁹ 27 Edw. III, Stat. 1.

statement; you would not appear in a court whose authority you did not recognise. In a matter as ambiguous as ecclesiastical versus common law jurisdiction, such refusal to appear could imply far more than a simple grievance about mesne process. This broader interpretation of the statute and the offence it created demonstrates how *praemunire*, even at this early stage, could technically apply to cases begun in English ecclesiastical courts.³⁷⁰ If the ‘offence’ of *praemunire* was from the outset one that prohibited the undermining of all royal judgements, then it was no great leap to apply such an offence to English ecclesiastical courts. The original name of the statute, ‘the statute against annullers of judgements of the king’s court’, neither confirms nor denies this broader interpretation of the offence.³⁷¹

However, a close reading of the enacting part of this statute shows that in its attempts to prohibit both those appealing to the court of Rome and those failing to appear after summons the legislation was sorely lacking. The first part of this enacting clause outlined the offence of appealing outside of the realm and stated that those accused of so doing should be given two months’ warning with which to appear in the king’s courts.³⁷² The second part lists the punishments for those that *did not appear* following this forewarning. Though the implication is that these punishments should apply to both those found guilty of the offence and those that did not appear a literal reading of the statute only specifies the latter. A further stipulation on the statute roll cements this omission, stating that those who appeared before outlawry would be received by the king.³⁷³ Such wording prompted Justice Green [Grene] of the Common Pleas to conclude that the 1353 statute only applied to appellants that failed to appear upon warning. The prior of W (unspecified in the Year Books) appeared in the court of Common Pleas in answer to a writ of attachment on a prohibition, sued by the king; the prior had appealed to the court of Rome against a judgement made in one of the king’s courts. On appearance, the prior was found guilty. The king’s attorney then requested that judgement be made based on the (relatively new) Statute of *Praemunire*, for the prior had been found guilty of appealing to an outside court in a dispute originally brought before the king’s courts. However, Justice Green did not allow judgement on that statute, for judgement (in his opinion) could only be given on the 1353

³⁷⁰ For this interpretation of the offence, see Chapter VI.

³⁷¹ 27 Edw. III, Stat. 1.

³⁷² *Ibid.* For the process of forewarning, see Chapter II.

³⁷³ *Ibid.*

statute in cases where the person did not appear. The argument for the defence accepted that the statute did not explicitly give judgement against those that appeared, but disagreed that this meant that the statute should only be used against absentee parties, arguing that it was apparent from the statute that the prescribed punishments were implied to encompass all those found guilty of the offence.³⁷⁴ This opinion is corroborated by the grievances brought before the great council of 1353 that resulted in the enactment of the statute.³⁷⁵ However, Green rejected this statement.³⁷⁶ To the common lawyers of the 1350s then, the 'offence' of *praemunire* was not the act of appealing out of the realm in a matter relating to royal cognisance, but instead the act of non-appearance after summons. This could still be viewed as an offence of undermining royal authority, but at this early stage it seems that *praemunire* was an offence associated with process.

However, a possible early mention of the 1353 statute indicates that though the common lawyers may have viewed the offence as only applying to absentee defendants, to the wider population it was viewed as one that prohibited appeals out of the realm. A petition from 1362, from the people of Pointon in Lincolnshire complained about Prior William of Sempringham, who had taken a matter to the court of Rome regarding the church and chapel of Pointon, in the patronage of the lord of Sempringham, Gibert (de Sempringham). In doing so the prior had broken previous agreements regarding the arbitration of this case, and acted against the statute that no religious or other was to sue against lay people in the court of Rome or elsewhere outside the realm when he could have justice in England.³⁷⁷ In this instance the most likely statute the petitioners are referring to is the Statute of *Praemunire* (1353), for the qualification that no one should sue in the court of Rome when he could have justice in England. Although this matter pertained to an English church with disputed patronage (an issue solved by the Statute of Provisors) the specific complaint about appealing to Rome was more closely linked to the 1353 statute. The king's response to this appeal was that the people of Pointon should sue in (English) Court

³⁷⁴ *YB Mich.* 30 Edw. III, pl. [7], fo. 11b.

³⁷⁵ *PROME* (1353), v, p. 83.

³⁷⁶ *YB Mich.* 30 Edw. III, pl. [7], fo. 11b.

³⁷⁷ SC8/66/3285.

Christian.³⁷⁸ Rather unsurprisingly, at this early stage *praemunire* was not considered an offence for prohibiting appeals to English ecclesiastical courts.

Before 1365 then, the interpretation of the ‘offence’ of *praemunire* was twofold. To some, such as the petitioners from Pointon, it was the offence of appealing to the court of Rome when justice could be had in England. The king’s response to this petition suggested he accepted this opinion (or at least did not contest the existence of such an offence). To the more legally-minded, who would have had opportunity to analyse in detail the wording of the statute, it was an offence relegated to mesne process, used to punish those that did not appear after summons. A broader reading of the statute, not identified by contemporaries of the legislation, was that it created the offence of undermining royal authority, either through the annulment of judgements in the king’s courts through appeals to Rome, or through the implied refusal of jurisdictional authority manifested in non-appearance.

The next statute to develop the offence of *praemunire* (as it would later be called) was the 1365 Statute of *Praemunire*. This act served to renew the two existing statutes of 1351 and 1353. In the parliament that preceded this new statute, the king asked for solution to two grievances: personal citations were being drawn into the court of Rome in matters of royal cognisance; and claims of provision to English benefices in the hand of the king and other lay patrons were being purchased from the same court of Rome.³⁷⁹ Appeals to the court of Rome were prohibited by the 1353 Statute of *Praemunire* (though the offence itself was not punishable); accepting papal provisions in this way was covered by the 1351 Statute of Provisors.³⁸⁰ The subsequent statute conflated these individual offences of *praemunire* and provisors into one broader offence that prohibited proceedings in the court of Rome (which included the purchase of papal provisions) in matters of royal cognisance. Thus the 1365 statute directed that all those that ‘obtained, purchased or pursued personal citations to the court of Rome in times past, or planned to purchase such citations in future’, would be punished according to the 1351 Statute of Provisors.³⁸¹ So too would those who had purchased ‘deaneries, archdeaconries, provostships or any other benefices of holy Church

³⁷⁸ Ibid.

³⁷⁹ *PROME* (1365). See Chapter I.

³⁸⁰ 25 Edw. III, Stat. 4; 27 Edw. III, Stat. 1.

³⁸¹ 38 Edw. III, Stat. 2, c. 1.

from the court of Rome by which prejudice might be done to the king or his subjects, whether in their persons, inheritances or rights (etc.)', be punished according to the same statute. The statute of 1353 is not mentioned in conjunction with punishing these appeals to the court of Rome. Instead, the punishments prescribed in the first Statute of *Praemunire* are reserved for those that failed to appear before the king or his justices after forewarning. The second Statute of *Praemunire*, created from the proceedings of the 1365 parliament, thus directed that:

if any of the people defamed or suspected of the said claims, prosecutions, grievances or enterprises are outside or inside the said realm, and cannot be attached or arrested in their own persons, and do not appear before the king or his council within two months next after they were warned [garniz] in their own places of residence (if they have any), or in any of the king's courts [etc.] or otherwise sufficiently to answer to the king and to the party...they shall be punished in the form and manner contained in the statute made in the twenty-seventh year of our lord the king.³⁸²

Following the enactment of the second Statute of *Praemunire* (but before the enactment of the third) most cases in King's Bench relating to the offences of provisors and *praemunire* cited both the 1351 Statute of Provisors, for the offence and punishment, and the 1353 Statute of *Praemunire*, for the punishments for non-appearance.³⁸³ Therefore, at the close of Edward III's reign in 1377 there was not really a distinguishable offence of *praemunire*. The offence created by the 1353 statute, later called the first Statute of *Praemunire*, suffered from a lack of specification in the enacting text of the statute, and there were differing opinions as to the actual offence laid out in the statute. In cases of appealing outside of the realm in a matter deemed to be within the king's cognisance, the 1353 statute technically did not prescribe punishments, unless the accused did not appear.

³⁸² *Et si ascunes persones diffamees ou suspectes des dites impetracions, prosecucions, grevances ou entreprises soient hors du dit realme ou dedans, et ne purront estre attachez ne arestuz en lour propres persones, et ne se presentent devant le roi ou a son consail dedans deux mois preschein apres ce q'ils serront sur ce garniz en leur lieux si ascuns en aient, ou ascuns des courtz le roi, ou en les countees, ou devant les justices le roi en lour sessions, ou autrement sufficeaument pur respondre au roi et a la partie...soient puniz par fourme et manere comprise en l'estatut fait l'an xxvij^{me} nostre seignur le roi. PROME (1365), v, pp. 176-81. The statute roll replicates this text in French. SR, i, pp. 316-18.*

³⁸³ E.g. KB27/510, rots 41, 46; KB27/511, rot. 50; KB27/514, rot. 68; KB27/522, rots 48, 51; KB27/523, rot. 66; KB27/526, rot. 40; KB27/527, rot. 31; KB27/528, rot. 20.

A broader view of the offence shows one concerned more generally with royal authority, and different ways this could be undermined. This included both appealing to the court of Rome, annulling the judgements of the king's courts, and refusing to acknowledge royal jurisdiction by failing to appear when summoned. The enactment of the 1365 statute confused matters further. Now, the acts of appealing to the court of Rome and accepting a papal provision to a disputed benefice were treated as part of one larger offence of provisors, with punishments prescribed as per the 1351 Statute of Provisors. The 1353 Statute of *Praemunire* was instead treated as a rider to this earlier legislation, only prescribing punishments to those that did not appear to answer their charge of (the offence of) provisors.³⁸⁴

The Great Statute of *Praemunire*

After 1365, the distinction between the separate offences of provisors and *praemunire* was muddled, and examples abound for the remainder of the fourteenth century where the one was referred to by the other. The proceedings of the January 1380 parliament include a complaint from the Commons relating to papal provisions in England, particularly the provision of aliens to English benefices (a matter now traditionally associated with the offence of provisors).³⁸⁵ The king answered that remedy to such issues could be found in the 'Statute of Provisors' made in 1353, which prohibited appeals to the court of Rome; those encroaching upon these benefices had done so to contest English patronage. This was despite the fact that the 1353 statute does not mention provisors in the enacting part of the statute.³⁸⁶ In the parliamentary records of the early fifteenth century too a lack of differentiation between *praemunire* and provisors can be seen. In 1402 complaint was made by the poor parishioners of the churches of Liskeard, Linkinhorne, and Talland in the county of Cornwall that the prior and convent of Launceston, parsons of the said churches, had petitioned the pope to appropriate the churches in order to bear the charges of their priory.³⁸⁷ After the pope appropriated the said vicarages it was discovered by the archbishop of Canterbury and his fellow bishops in convocation that the prior and convent were able to spend a thousand pounds a year in their priory, sufficient to maintain fifteen

³⁸⁴ Pantin, *English Church in the Fourteenth Century*, p. 85.

³⁸⁵ *PROME* (1380), vi, pp. 169-71.

³⁸⁶ 27 Edw. III, Stat. 1.

³⁸⁷ *PROME* (1402), viii, pp. 203-04.

canons.³⁸⁸ The pope upon hearing this annulled the appropriation. However, the prior continued to send ‘a great amount of gold and silver to Rome’ in order to procure a new appropriation, without the king’s leave, and contrary to the statutes made concerning this matter.³⁸⁹ The petition thus requested that in such matter the prior and convent should incur the penalties specified in the Statutes of Provisors (1390).³⁹⁰ The prior’s charge in this case was threefold: illegally purchasing a papal appropriation; sending money out of the realm; and appealing to the court of Rome to overturn a matter settled in England. In the first instance, the prior had committed the offence of provisors; in the second, he had acted against the Statute of Carlisle (that the 1351 statute in part reinforced); in the third, he was in breach of the Statutes of *Praemunire*. In this case, ‘the statutes of provisors’ can be taken to mean all prior legislation associated with the offences of provisors and *praemunire*.³⁹¹

The Commons in 1407 complained that papal provisors residing at the Roman Curia had taken advantage of their proximity to the pope to purchase provisions and collations that ruined English incumbents, in some cases without the incumbent’s knowledge (until the publication of such sentences). They asked that no presentee be accepted by any ordinary to any benefice as a result of deprivation or incapacity when the process was based outside of the realm. If any ordinary should act to the contrary they, their proctors, supporters and advisers should incur the penalties of the Statute of Provisors (1390). However, the process by which such offenders should be brought to justice should be drawn from the Statute of *Praemunire* (1353), thus also reinforcing *praemunire*’s association with provisors.³⁹² An editor of a fifteenth-century Chancery formulary also mistook provisors for *praemunire* sometime in the 1430s.³⁹³ The writ of *praemunire facias*, directed to the sheriff of Kent, explained how Agnes of D., recently widowed, had sued her late husband’s executors in the court of Rome (the writ also specifies how it was custom in England that widows received a reasonable part of their husband’s goods and chattels).³⁹⁴ Agnes’ offence, of appealing outside of the realm in a matter that could be heard in England, was prohibited by the Statutes of *Praemunire*. However, a heading in the writ formulary, added later in a second

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ See Appendix 1.

³⁹² *PROME* (1407), viii, pp. 433-34.

³⁹³ *BL Add. MS 35205*, m. 8. For the dating of this formulary, see Chapter V.

³⁹⁴ Ibid. See Appendix 2, no. 10.

hand, states that the statute the writ of *praemunire facias* was founded upon was the statute made in the twenty-fifth year of Edward III's reign, the 1351 Statute of Provisors.³⁹⁵ This statute did not prescribe punishments for appealing to the court of Rome in this manner.³⁹⁶

The enactment of the 'Great' Statute of *Praemunire* in 1393 is important for a number of reasons. Firstly, it was the first statute since 1365 to develop the offence of appealing to the court of Rome in a matter deemed to be within the king's cognisance. The 1390 Statute of Provisors had only drawn on the existing statutes that developed the offence of provisors, those of 1307 and 1351, and thus had not addressed the 'offence' of *praemunire*. It did, however, prescribe harsher punishments for those subverting royal patronage within the realm. As well as the punishments listed in the 1351 Statute of Provisors (which are recited in the 1390 statute), anyone accepting a benefice contrary to the new statute would be banished from the realm, and his goods, lands, and tenements shall be forfeited to the king. The appellant would have six weeks to leave the realm.³⁹⁷ If any then appealed to the court of Rome to dispute such a judgement, they would either pay the value of their temporalities to the king for one year (if they were a prelate of the Church) or pay the king the value of their lands and possessions for a year (if they were a temporal lord abetting such actions). Other persons of more mean estate should pay the value of their benefice and be imprisoned for one year. If anyone continued to dispute actions founded upon the 1390 Statute of Provisors, by way of excommunication or otherwise, they would be imprisoned, suffer forfeiture of their temporalities forever, and incur the pain of life and of member.³⁹⁸

The second reason the Great Statute of *Praemunire* is significant is because the offence in 1365 had been conflated into one larger offence of provisors in 1365, so it was important for the eventual development of *praemunire* into an identifiable offence separate from provisors that a further statute was enacted. The 1393 statute prescribed punishment for all those that obtained or sued 'in the court of Rome or elsewhere any such translations, processes, and sentences of excommunication, bulls, instruments or anything else

³⁹⁵ Ibid.; 25 Edw. III, Stat. 4.

³⁹⁶ Ibid.; See Appendix 1.

³⁹⁷ 13 Ric. II, Stat. 2, c. 2.

³⁹⁸ Ibid.

whatsoever which touches the king our lord against him, his crown and regality, or his realm, as is aforesaid'.³⁹⁹ Here, unlike the previous Statutes of *Praemunire*, punishment is prescribed to both those who did not appear after forewarning and those that appeared and were found guilty, thus the 1393 statute was the first to have a definable and more importantly punishable offence of *praemunire*. Also, and more importantly, it is addressed as an offence separate from that of provisors, unlike the 1365 statute that conflated the offences and the 1390 statute that omitted the 'offence' of *praemunire* to focus on the issue of papal provisions. It was still related to these statutes, but could stand on its own as a definable offence; the first 'Statute of *Praemunire*' to be able to do so. The punishments listed in the 1393 Statute of *Praemunire* were not as harsh as this earlier Statute of Provisors. Those who appealed to the court of Rome in a matter deemed to be within the royal cognisance were put out of the protection of the king, forfeited their lands, tenements, goods and chattels, and arrested to answer said charges.⁴⁰⁰ Thus in 1428 John Forster of Gnoweshale, a clerk, defaulted on a *praemunire* charge and was put out of the king's protection, and had his goods and chattels seized.⁴⁰¹ This statute did not prohibit anything new compared to the earlier Statutes of *Praemunire*. It was, however, potentially wider-reaching in its application because of lax wording in the enacting part of the statute, particularly the phrase, 'la Courte de Rome ou aillours', but the general offence remained the same.⁴⁰² A possible reason for this lax wording is that it was a direct reaction to actions made by the pope in response to the 1390 Statute of Provisors.⁴⁰³ Therefore it is possible that it was hastily drafted to respond swiftly.⁴⁰⁴ This is not the only peculiarity surrounding this 1393 statute. Firstly, the Commons' petition from 1393, which formed the basis for the statute, was not enrolled on the parliament roll; the only evidence of its content (other than the statute) is from Archbishop Courtenay's 'protestations' in favour of the offence, which outline the Commons' requests.⁴⁰⁵ Additionally, most chronicles contemporary to the 'Great' Statute of *Praemunire* largely overlook it. Only one chronicle, the *Eulogium Historiarum*, mentions it in any great detail, and it is possible that the portion pertaining to

³⁹⁹ 16 Ric. II, c. 5.

⁴⁰⁰ 16 Ric. II, c. 5.

⁴⁰¹ E357/30, rot. 52d.

⁴⁰² See Chapters 5 and 6.

⁴⁰³ See Chapter I.

⁴⁰⁴ Waugh, 'Great Statute of *Praemunire*', p. 178.

⁴⁰⁵ *PROME* (1393), vii, pp. 233-34.

the Winchester parliament and the third Statute of *Praemunire* was added in the 1430s, by which point *praemunire* was better known; particularly its use against English ecclesiastical courts.⁴⁰⁶ This is particularly peculiar considering how many chronicles publicised the 1390 Statute of Provisors and its harsh punishments.⁴⁰⁷ Furthermore, when the Statutes of Provisors (including those statutes of 1365 and 1353) were published in Ireland in 1411, the Great Statute of *Praemunire* (1393) was omitted from this Irish statute.⁴⁰⁸ Comments in a fifteenth-century writ formulary, dating from around the 1430s, also seem to suggest something invalid about the 1393 statute; a comment on one of the writs read ‘vacat quia nullum tale statutum’, voided because the statute was bad.⁴⁰⁹

Awareness of the Statutes

An important point of note is that despite the existence of an ‘offence’ of *praemunire* in some form or another after 1353, appeals to the court of Rome continued to occur, often with royal permission. Additionally, there is no indication in the fourteenth century that *praemunire* could apply to actions begun in an English ecclesiastical court. A petition to the king and council late in Edward III’s reign, presented by Robert de Wykford, clerk and canon of Exeter cathedral, complained that he had sued before the bishop of Exeter for nine months in a dispute between himself and another canon concerning a farm belonging to the cathedral, to no avail. Thus Robert asked permission of the king to appeal to a higher court (outside of the realm), but was wary of doing so without the king’s permission, as the king had recently written to the dean and chapter asserting that the cathedral was entirely of the foundation of the king’s progenitors and of his patronage. Robert wished therefore for permission from the king and council to sue his right in the court of Rome, unless the dean and chapter of the cathedral (or the bishop) could give him swift justice in the matter.⁴¹⁰ Though not specifically mentioned, the king clearly had the Statutes of Provisors and *Praemunire* in mind when writing to the dean and chapter, the idea of the king and his

⁴⁰⁶ *Eulogium (Historiarum sive temporis)*, ed. by Frank Scott Haydon (London: Longman, 1858-63), iii, p. 368; *PROME* (1393), vii, p. 223.

⁴⁰⁷ See Chapter I.

⁴⁰⁸ R. D. Edwards, ‘The Kings of England and Papal Provisions in Fifteenth-Century Ireland’, in *Medieval Studies Presented to A. Gwynn*, ed. by John A. Watt, John B. Morrall, and Francis X. Martin (Dublin: C. O. Lochlainn, 1961), pp. 265-80 (p. 269).

⁴⁰⁹ *BL Add. MS 35205*, m. 8. See Appendix 2, no. 39. For more on the dating and alternate readings of this writ, see Chapter V.

⁴¹⁰ *SC8/77/3837*.

ancestors being ‘patron paramount’ in England a common theme of the statutes.⁴¹¹ Another important point gleaned from this letter is that at this early stage the king and council agreed that in the first instance (in cases of this kind) justice must be pursued in the English ecclesiastical courts. Therefore they deferred this matter to the bishop of Exeter to proceed with haste towards a judgement in this appeal, according to the law of the Holy Church. The king and council only agreed that the matter could be heard elsewhere (either within the realm or without) if the bishop refused to do this.⁴¹² At no point is it suggested that the English ecclesiastical jurisdiction would not suffice; *praemunire* at this point was not concerned with appeals within the realm.

In practice also the Statutes of *Praemunire* and Provisors only served to regulate, rather than completely remove, appeals to the papacy. Following the creation of the legislation parties made a point to ask the advice or permission of the king before appealing outside of the realm. In 1366, a year after the second Statute of *Praemunire* was enacted, a petition was put to the king by the convent and prior of St Oswald, Nostell, requesting permission either to appeal to the court of Rome regarding an annuity from the church of Lythe, or assurances that if they took the matter to the king’s courts, the parson of Lythe, John de Bolton, would not impeach them in the court of Rome in this matter.⁴¹³ It was ordered that Bolton be made to take an oath before the justices of the Bench promising not to appeal to the court of Rome, under pain of forfeiture. Furthermore, if Bolton refused to appear before the justices on the specified date, then he would also be subject to forfeiture, akin to the punishments for non-attendance in a *praemunire* action.⁴¹⁴ In 1374 the bishop of Coventry and Lichfield, Robert Stretton, asked permission for his official Richard de Bermyncham to go overseas to the court of Rome on business concerning the diocese. Though not explicitly legal business, the fact that permission was sought suggests a desire to avoid the punishments for leaving the realm without the king’s acquiescence.⁴¹⁵ Also in Edward III’s reign, the dean and chapter of Lichfield asked permission that their canon, Richard Tysho, be allowed to cross the sea to go to (the court of) Rome to settle a church dispute regarding unpaid silver. They had sought justice first before the chancellor’s officer,

⁴¹¹ See Appendix 1.

⁴¹² SC8/77/3837.

⁴¹³ SC8/227/11329.

⁴¹⁴ Ibid.

⁴¹⁵ SC8/236/11765.

who 'by lack of council and negligence had not allowed the proper evidences and muniments to be shown', and as such asked that they be allowed to pursue their claim outside of the realm. The king's response was that this petition should be answered in another place (presumably the English ecclesiastical courts, but this is not specified).⁴¹⁶

There is also a question of how widely publicised the Statutes of *Praemunire* and Provisors were in the fourteenth century. A number of petitions in the later-fourteenth century suggest a lack of awareness among certain groups in England. In 1376 John Wallyngford, the Prior of St Frideswide, Oxford, complained to the king and council that though he had been duly elected according to the custom of the convent with the full permission of Edward III and the confirmation of the bishop, a certain John Doddesford had come with bulls from Rome and expelled him. He therefore asked that the king and council summon Doddesford in order to examine these bulls and administer justice.⁴¹⁷ Essentially Wallyngford was requesting justice upon the Statutes of Provisors and *Praemunire* (provisors for the purchase of papal bulls, *praemunire* for the appeal to Rome); that they were not mentioned in some capacity suggests a lack of awareness from the prior. A year later in 1377 the abbot of Croxton and others petitioned the king after Stephen de Cundale began an action in the court of Rome relating to the church of Ilkeston. A previous case in King's Bench (brought to court on a writ of *quare impedit*) had deemed the church to be in the king's right; regardless Cundale sued in Rome.⁴¹⁸ The petitioners therefore requested that the king send letters to the pope to repeal and annul all the processes and sentences made in this case. Again though, no mention is made of any statute that could provide remedy, despite the fact that the provisors and *praemunire* legislation provided just that.

There is evidence too of the king and pope working together to ensure just provisions to English benefices. In 1388 representatives of the chapter of Beverley argued that a dispute originating in 1380-1 between them and Alexander Neville, the archbishop of York, had culminated in the king taking the canons, chapter and vicars of Beverley into his protection, until an agreement could be reached.⁴¹⁹ However, en route to proclaim this, the king's men Robert Rous and Richard Hembridge were blocked by a large crowd (allegedly

⁴¹⁶ SC8/58/2852.

⁴¹⁷ SC8/146/7261.

⁴¹⁸ SC8/166/8300.

⁴¹⁹ SC8/20/992.

procured by the archbishop and wearing caps of his livery. Additionally, the archbishop had replaced the canons, vicars, etc. of Beverley with his own clerics. Therefore the petitioners besought the king and council that they might be restored to their benefices, and enjoy royal protection, until the matter be determined in the court of Rome.⁴²⁰ The king and council agreed and assented to this request in parliament, and ordered that a commission be given to restore the supplicants to their benefices. In this case the king did not dispute the right for the petitioners to appeal to the court of Rome to settle the matter; the petitioners had not appealed outside of the realm without royal foreknowledge, and the king's right of patronage (which in this case was only temporary while the matter was decided) was not threatened by such actions. Also in 1388, John Ixworth asked the king and council for aid in settling a dispute regarding the patronage of his church of Sevenoaks. He had previously recovered his right to the church in the court of Rome, but now found himself challenged by Thomas Talbot, who claimed to have royal papers granting him the church. Therefore, Ixworth requested that Talbot appear before the council with the relevant title to this church; if he had none, Ixworth asked that Talbot's presentation be annulled.⁴²¹ The king and council apparently had no issue with Ixworth's previous court case in Rome, despite the fact that it pertained to an English benefice. Nor were papal provisions completely prohibited. On September 9 1390 a papal bull of provision was given to Richard Maundalene to the canonry and prebend of Derby; no punishment relating to the Statutes of Provisors followed.⁴²²

In 1390 John Treffaur, the bishop-elect of St Asaph, asked permission to go to the court of Rome to sue for the pope's confirmation of his election. If the pope had already made provision for the diocese before Treffaur's arrival, he asked that the king allow whichever provision the pope saw fit to make for him.⁴²³ In this matter the king allowed Treffaur to appeal to the court of Rome, again demonstrating how the king was willing to permit appeals to the court of Rome if the petitioner first asked the king's permission (and if the matter was not detrimental to the king's own rights of patronage). Another petition concerned the ousted Griffith Yonge, possessor of the prebend of Garthbreny in the

⁴²⁰ Ibid.

⁴²¹ SC8/198/9854. A John Ixworth is mentioned as the defendant in a *praemunire* action in Henry V's reign. The petitioner here may be the same Ixworth. *BL Add. MS 35205*, m. 9. See Appendix, nos. 23, 24.

⁴²² Hardy, *Syllabus of "Rymer's Foedera"*, ii, p. 520.

⁴²³ SC8/143/7120.

collegiate church of Abergwili. Yonge stated that he was in peaceful possession of the prebend long before the Statutes of Provisors was enacted in 1390 by virtue of a papal provision ratified by the king. However, John Gilbert, the bishop of St David's, made collation of the prebend to Edmund Warham, who – realising that he had no right (allegedly) to the prebend – purchased letters from the king presenting Andrew Hore to the prebend.⁴²⁴ As a result of these royal letters, Yonge was ousted from his benefice, without being party to the process or answering for his possession. Furthermore, Hore also sued a writ of *praemunire facias* – founded upon the 1390 Statute of Provisors – against Yonge and his proctors, for accepting the papal provision to the prebend (even though the acceptance occurred before 1390). Therefore Yonge asked that Hore be ordered to appear in Chancery to show the king's title of presentation, and to accept whatsoever the court awards if those royal letters were proven to be false. He also asked that writs of *supersedeas* be sent to halt the proceedings against him in the meantime.⁴²⁵ All this is suggestive of an offence that was not widely used in the fourteenth century. However, this theory has been disproven by a study of the fourteenth-century plea rolls of King's Bench, which identified ninety-one separate defendants in *praemunire* and provisors actions between 1377 and 1394.⁴²⁶ Therefore, what is far more likely is that to the king, these statutes were designed to ensure that any matters of disputed patronage or appeals out of the realm first went through him.

Conclusion

By 1400, three Statutes of *Praemunire* had been enacted. These three statutes created and defined an offence that prohibited appeals out of the realm in matters of royal cognisance. However, these statutes were not yet called *praemunire*, and the offence that they created was not yet distinct from the ostensibly similar offence of provisors. The 1353 Statute of *Praemunire* specified the offence of appealing out of the realm but failed to define punishments for those that appeared after forewarning. This omission meant that for most of the fourteenth century (and parts of the fifteenth) this statute was considered one that dealt primarily with mesne process rather than appeals to the court of Rome. This statute's

⁴²⁴ SC8/296/14761; SC8/255/12712.

⁴²⁵ Ibid.

⁴²⁶ Diane Martin, 'Prosecution on the Statutes of Provisors and Praemunire in the King's Bench, 1377-1394'. Martin's conclusions directly addressed the theories put forward in, C. Davies, 'The Statute of Provisors of 1351', *History* 38 (1953), 116-33, and R. G. Davies, 'Richard II and the Church', in *Richard II: The Art of Kingship*, ed. by A. Goodman and J. Gillespie (Oxford: Clarendon Press, 1999), pp. 83-106.

association with the earlier Statute of Provisors meant that the ‘offence of *praemunire*’ created by the 1353 statute was instead viewed as a rider to the earlier offence of provisors. This relationship was cemented in the enactment of the 1365 Statute of *Praemunire*. According to this statute, the act of appealing to the court of Rome – either to overturn an English court case or to purchase a papal provision – was punishable per the terms of the 1351 Statute of Provisors. The 1353 statute was relegated to prescribing punishments for non-attendance. The offence of appealing to the court of Rome, created by the 1353 statute, was viewed as part of the wider offence of provisors. Therefore, the 1393 ‘Great’ Statute of *Praemunire*, although it stood apart from the Statutes of Provisors in a way the previous Statutes of *Praemunire* had not, was still viewed as an extension of this provisors legislation. However, within this 1393 statute was the potential for the offence of *praemunire* to be utilised independently of provisors, and this meant that it could, in theory, apply to actions begun in courts other than the court of Rome. The fact that it did not immediately do so is because of its continued association with the more papal-focused provisors, and an apparent lack of awareness of the 1393 statute. The association with provisors never truly diminished. A royal writ from 1507 referred to ‘the statute of provisors, otherwise called the statute of premunires’.⁴²⁷ Over the fifteenth century, however, this relationship with provisors changed. As the issue of prohibiting papal provisions became less relevant, it was the offence of *praemunire* – which did not necessarily only apply to actions taken to the court of Rome – that became the dominant of the two offences.⁴²⁸ The following chapters will examine how this change occurred, and how *praemunire* came to be applied to actions begun in English ecclesiastical courts.

⁴²⁷ KB27/984, rot. Rex 18.

⁴²⁸ For why the issue of papal provisions diminished, see the following chapter.

Chapter IV: Popes and Provisors

At the beginning of the fifteenth century, there was little to differentiate between provisors and *praemunire*. They were treated as two sides of one offence. But, *praemunire* and provisors were not the same, a distinction best exemplified by papal reactions to the two in the fourteenth century. Of the various statutes called provisors and *praemunire*, only those that created and refined the offence of provisors (1307, 1351, and 1390) were contested by the papacy. The offence of provisors was viewed by fourteenth-century popes as a direct challenge to their God-given right to present to all benefices within Western Christendom; *praemunire* on the other hand – which concerned itself with the jurisdiction of the king – was less of a concern for the papacy. However, *praemunire* was limited in its association with provisors. While the issue of papal provisions remained a concern within the realm *praemunire* was entangled in these concerns, and therefore unlikely to be viewed as anything other than an extension of provisors. This chapter examines firstly the confirmation of the Statutes of Provisors (and by extension those of *praemunire*) at the beginning of the fifteenth century, to see how this legislation survived the so-called ‘moderation’ of Richard II. Secondly, this chapter analyses the papal responses to provisors, and how their attempts to have the statutes repealed in the 1420s and 1430s contributed to the offence of provisors becoming less relevant.

Lancastrian Legitimation

At the start of the fifteenth century the continued use of provisors, and by association *praemunire*, was in doubt. In 1398 Richard II and Boniface IX had agreed upon the so-called ‘moderation’ of the Statute of Provisors (1390), which skewed largely in the pope’s favour.⁴²⁹ However, Richard II was deposed on 30 September 1399, less than a year after the moderation had been decided. The royal mandate ordering the observation of this compromise was not sent to the archbishops in England until 16 December 1398.⁴³⁰ It took a further two months for the bishop of London to send copies to his suffragans; they were sent on 24 February 1399.⁴³¹ Considering the country descended into civil war some three months before Richard’s deposition on 30 September 1399, it is unlikely that English

⁴²⁹ See Chapter I.

⁴³⁰ *CCR 1396-99*, p. 336-7.

⁴³¹ *Concilia Magnae Britanniae et Hiberniae*, ed. by David Wilkins, iii, pp. 236-7.

prelates were able (or willing) to widely publish the moderation. If the pope therefore still wished to have the statutes repealed or moderated, he would have to attempt negotiations anew with Henry IV. In the first parliament of Henry IV's reign, the 'deposition' parliament of 1399, the right to change the Statute of Provisors, granted to Richard II in 1391, 1393, and 1397, was extended to the new king.⁴³²

For the protection of his royal estate, [the Commons] have willingly agreed...in full parliament, that our said lord the king...should be able to make any sort of relaxation, ordinance or modification of the said statute [of provisors] as may seem to him to be most reasonable and advantageous.⁴³³

This grant of relaxation was not the same as the 'moderation' of Richard II and Boniface; such a compromise was never acknowledged in parliament. Richard's 'moderation' was negotiated outside of parliament and the modifications granted to the king in the assemblies of the 1390s made it clear that any changes made to the statutes had to be ratified in (the next possible) parliament to take effect.⁴³⁴ The estates in parliament were willing to allow the king to moderate the Statutes of Provisors, they were not willing, however, to have the statutes repealed; (perceived) issues concerning the provision of aliens to English benefices abounded, the statutes limited this.⁴³⁵ It is perhaps in response to these royal powers of modification that the council included on its agenda in 1400 instructions for the bishop of Hereford and other envoys to discuss at the papal court Richard II's earlier negotiations regarding the moderation or repeal of provisors; however, no agreement resulted from these negotiations.⁴³⁶ It is unknown to what extent Henry at this time was aware of the fourteenth-century provisors legislation. He was not present at either the 1390 or 1393 parliaments that had enacted the second Statute of Provisors and third Statute of *Praemunire*.⁴³⁷ However, in the first years of his reign the issues surrounding provisors, and the statutes designed to curb such practices, were brought up in parliament on multiple occasions. In the parliament of 1401 it was made clear that Richard's 'moderation' was set aside in favour of the 1390 Statute of Provisors, and any modifications

⁴³² *PROME* (1391), vii, p. 195; (1393), vii, p. 227; (Jan 1397), vii, p. 317; (1399), viii, pp. 38-39.

⁴³³ *PROME* (1399), viii, pp. 38-39.

⁴³⁴ *PROME* (1391, 1393, 1397, 1399).

⁴³⁵ *PROME* (1401), viii, p. 108.

⁴³⁶ *POPC*, i, p. 111.

⁴³⁷ *PROME* (1390, 1393).

the king wished to add to it. No mention is made of the previous attempts by Richard II and Boniface to have the statutes moderated, and all other mentions of provisors in this parliament concern expanding the application of the offence. One such request in this parliament asked that those who had been pardoned for accepting papal provisions contrary to the Statute of Provisors (1390) in the past, only to continue to attempt to gain such possessions through the same papal provision, should have their pardon declared void and incur the full penalties of the 1390 statute. In the same parliament of 1401 the Commons requested that any who accepted a benefice which was not compatible with his original benefice (in cases of plurality) should also incur all the penalties ordained against provisors. The same request was made of those clerics that were non-resident in their benefice, on the assumption that any such dispensation was granted by the pope.⁴³⁸

Another request from 1401 asked that the king abstain from granting licences and pardons for the execution of provisions of benefices which became vacant in England, and again requested that the Statute of Provisors be enforced in such actions concerning these benefices. The king responded that he would do so, not because of the Commons petition, but because he was granted the right to moderate the Statute of Provisors as he most saw fit, and in this case it seemed to him most profitable and reasonable to limit such licences.⁴³⁹ During the 1390s, Richard II had been particularly generous in granting exemptions from the statutes, no doubt prompting this petition. On 1 December 1390 James Dardani, Clerk of the Chamber of Pope Boniface IX, asked that he be allowed to take possession of the archdeaconry of Norwich by virtue of his (papal) bulls. He was previously unable to take possession first because of illness and second because by the time he was able to take possession the 1390 Statute of Provisors had been enacted, which prohibited the purchase and execution of papal bulls in relation to English benefices. A certain John Middleton had taken advantage of the new statute to intrude upon the archdeaconry, and thus Dardani asked that he be allowed to sue in Court Christian against Middleton, notwithstanding the recent statute. In this matter the king, with the assent of the prelates and lords in parliament, granted a licence to Dardani allowing him to pursue his right in Court Christian, and to execute his papal bulls to this end.⁴⁴⁰ In another instance, John Mere [Meer]

⁴³⁸ *PROME* (1401), viii, pp. 125-26.

⁴³⁹ *PROME* (1401), viii, p. 131.

⁴⁴⁰ SC8/42/2057; *CCR* 1388-92, p. 335.

petitioned the king and council asking permission to appeal in the court of Rome his right to the prebend of Grytton in the cathedral church of Lincoln. Mere was granted the prebend by virtue of a papal provision before the Statute of Provisors (1390) was enacted, but now did not dare to take physical possession of the prebend for fear of denying the king's royal majesty and of being subject to the penalties ordained by the statute. Again the king granted the petitioner's request, and allowed the claim to be decided in Court Christian (though not necessarily in the court of Rome).⁴⁴¹

In 1394 Robert FitzThomas of Harton in Kelsey asked permission for Robert Braybrooke, the bishop of London, to publish a papal bull collating Robert to the church of Thornton le Moor in the diocese of Lincoln. Robert had exchanged the church of Wootton in the diocese of Canterbury for Thornton le Moor without permission three years prior, and so had sued in the court of Rome for a confirmation of this exchange. The pope issued a bull collating Robert to the benefice, but both Robert and the Bishop of London did not wish to publish such a bull without first asking the king's permission, on account of the Statute of Provisors (1390). In this case Richard II allowed for this bull to be published (with the assent of parliament), but stipulated that he did not wish for it to be treated as an exemplar; in all other cases the statutes should remain in force.⁴⁴² Also in 1394, the king and council received a petition from Ralph Canon, who asked that a judgement in the court of Rome be upheld, for it was made before the enactment of the Statute of Provisors.⁴⁴³ Canon claimed that Robert Norton had by false provision of the court of Rome faithlessly despoiled the church of High Ham in the diocese of Bath, ousting the rightful parson of the church, Thomas Weston. Weston appealed to the court of Rome to recover against Norton, but was unable to do so before a 'certain statute' was passed, thus prompting the petition by Canon to the king. Again the king assented, on the understanding that this example did not nullify the effect of the statute in future cases.⁴⁴⁴ A third instance of this royal response, also from 1394, gave Thomas Elteslee, the parson of Dinton in the diocese of Salisbury, permission to send evidences to the court of Rome concerning his papal provision to the church, again

⁴⁴¹ SC8/62/3069; *CPR 1388-92*, p. 338.

⁴⁴² SC8/22/1058; SC8/22/1059; *CPR 1391-96*, p. 391.

⁴⁴³ SC8/101/5034.

⁴⁴⁴ *Ibid.*

notwithstanding the Statute of Provisors.⁴⁴⁵ In 1395, Richard Hals was granted permission to accept papal provision to the church of St Ives in Cornwall. He had been afraid to accept it because of the Statute of Provisors (1390). Again, it was stressed that this was not to act as a precedent.⁴⁴⁶ In 1397, Roger Beaumont requested permission to pursue his suit against John Pauston for a prebend in the church of St Teath (Cornwall) in the Roman Curia or other Court Christian, notwithstanding the Statute of Provisors.⁴⁴⁷ Concern for breaching the terms of the 1390 Statute of Provisors also prompted the college of vicars of the cathedral church of St Peter, York (thirty-six vicars in total) to ask for royal exemption from the punishments of the statute concerning the provision of a vicar in the church, due to the insubstantial value of the church and because of the number of vicars.⁴⁴⁸ It is, however, important to note that the number of provisions issued during the decade that Boniface IX was pope (1390-99) was smaller than it had been during any decade from 1342-70.⁴⁴⁹

Even in the parliament of 1401, the very same in which the Commons requested that pardons for those guilty of accepting papal provisions be reduced, did a petition appear asking for exemption from the Statute of Provisors (1390). The petition was presented on behalf of Richard Clifford, the keeper of the privy seal. Clifford had been at the heart of Richard II's household, so closely associated with the former king that the lords appellant had seen fit to detain him in the Tower of London in 1387 as an ardent supporter of the king.⁴⁵⁰ However, despite royal favour, a bishopric eluded Clifford during Richard's reign. In December 1395 he was elected to the see of Salisbury, only to find his royal provision overruled by the papal nomination, Richard Medford.⁴⁵¹ He was one of the few men to survive Richard's fall, and Henry IV reappointed Clifford as keeper of the privy seal on the day of Richard's deposition.⁴⁵² When the see of Bath and Wells became vacant early in Henry IV's reign, Clifford thus secured this Commons petition to request to the king on his behalf consideration for this vacancy. In this instance, Clifford had secured a papal provision to the benefice, possibly because of his losing out to the papal nominee in 1395 (or perhaps

⁴⁴⁵ SC8/109/5404.

⁴⁴⁶ *CPR 1391-6*, p. 571.

⁴⁴⁷ *CPR 1396-9*, p. 56-57.

⁴⁴⁸ SC8/153/7605; PRO 31/7/153.

⁴⁴⁹ Lunt, *Financial Relations*, p. 396.

⁴⁵⁰ *ODNB*, 'Richard Clifford' by R. G. Davies.

⁴⁵¹ *Ibid.*; *PROME* (1401), viii, pp. 111-12.

⁴⁵² *Ibid.*

because of the dynastic uncertainty surrounding the kings of England at this time). Thus the petition asked the king to allow Clifford to accept this provision, notwithstanding the Statute of Provisors. After all, the petition continues, 'the majority of the prelates of the realm had thus occupied and occupy their benefices and dignities by papal provisions, notwithstanding the aforesaid statute'. The king responded that although Richard Clifford had indeed done him good service, the vacancy at Bath and Wells had already been filled by Henry Bowet, who had similarly done the king good service. The king though promised to make provision for Richard Clifford in future.⁴⁵³ The king made good on this promise. When Bishop Winchcombe of Worcester died three months after this petition was presented in parliament, Clifford was presented to the vacant see.⁴⁵⁴ It seems that Henry IV was also willing to apply the modification given to him by the estates in parliament concerning the Statute of Provisors. Between 1404 and 1406 such licenses and pardons increased from four in 1404, to fifty-four in 1406.⁴⁵⁵

Requests that the Statute of Provisors be upheld continued throughout Henry IV's reign. In 1402, a petition complained that some clerics chose to farm their benefices and live in London and other places, taking annual payments and salaries contrary to the law of Holy Church. Again, the Commons reiterated a desire for persons to remain in their benefices, on pain of incurring the penalties prescribed in the Statute of Provisors.⁴⁵⁶ The statute for that year confirmed this extension of provisors.⁴⁵⁷ The king did not always resort to renewing provisors in such complaints. In the same parliament, the Commons complained that there were some who farmed out their benefices and were never resident there, 'contrary to the law of holy church'.⁴⁵⁸ Anyone so doing should be punished according to the Statute of Provisors. Instead of acquiescing to this request, the king instead commanded the prelates of the realm to provide a remedy for this before the next parliament, and that henceforth no request should be made to the contrary by any secular persons against this remedy when it is made. Also in 1402, the Commons tried to have the penalties of the Statute of Provisors extended to apply to all friars who accepted men less than twenty-one years of age into

⁴⁵³ *PROME* (1401).

⁴⁵⁴ *ODNB*, 'Clifford'.

⁴⁵⁵ Lunt, *Financial Relations*, p. 403.

⁴⁵⁶ *PROME* (1402), viii, p. 194.

⁴⁵⁷ 2 Hen. IV, c. 3.

⁴⁵⁸ *PROME* (1402), viii, p. 194.

their orders.⁴⁵⁹ The king's response, though he accepted the need for sureties that men under a certain age should not be accepted into orders, was to summon the heads of the Friars Minor, Augustinian, Preachers and Carmelites, to gain these sureties. He did not apply the punishments of the Statutes of Provisors to such offenders.⁴⁶⁰

In 1406, the Commons requested again that the Statutes of Provisors continue to be enforced against papal provisors.⁴⁶¹ Finally, in 1407 similar requests concerning appeals to the Roman Curia and papal provisions prompted a reiteration of the Statutes of Provisors.⁴⁶² The statute directed that, 'all Statutes and Ordinances made against provisors...in the times of King Edward the Third and King Richard the Second...shall be from henceforth firmly holden and kept in all points; the moderation of the said statutes made before this time to our said sovereign lord the king notwithstanding'.⁴⁶³ The statute also confirmed that elections to spiritual promotions shall be free. In the 1407 parliament that preceded this reaffirmation of the statutes, specific complaints against the pope's collector argued that he was using papal authority to draw 'great and intolerable sums of English money by way of first fruits' from English clerics, to their ruination.⁴⁶⁴ In this case, the penalties of provisors should apply, for he was undermining English jurisdiction and wielding foreign authority. The king willed it.⁴⁶⁵ Sometime after the reiteration of this statute the king was petitioned by John Chaundeler, dean of Salisbury, asking for clarification that the king would not appoint any (papal) provisor to any cathedral church in England.⁴⁶⁶ Chaundeler stated that to do so would be harmful to the king. Although the rest of the petition is damaged, part of the response survives, stating that, 'There is to be a proclamation in each of the...of England'; likely an allusion to the proclamation of statutes in the counties of England, here referring to the reiterated statutes against provisors.⁴⁶⁷

Considering how many times the Statutes of Provisors were confirmed and extended in the first decade of Henry IV's reign, it is interesting that the validity of the first Statute of

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ *PROME* (1406), viii, pp. 387-89.

⁴⁶² 9 Hen. IV, c. 8-10.

⁴⁶³ Ibid.

⁴⁶⁴ *PROME* (1407), viii, pp. 436-37.

⁴⁶⁵ Ibid.

⁴⁶⁶ SC8/237/11826.

⁴⁶⁷ Ibid.

Provisors (1351) was questioned in Michaelmas Term 1409.⁴⁶⁸ Disputing a plurality held by Henry Chichele, then Bishop of St David's, the judges of Common Pleas debated whether Chichele could retain his prebend in the cathedral church of Salisbury, which he claimed by papal bulls.⁴⁶⁹ Serjeant Horton argued that the justices should take no regard of the 1351 Statute of Provisors for it was not put in use. However, Chief Justice Thirning of Common Pleas said that it did not matter whether or not a statute was put in use; once a statute is made, it remains in force.⁴⁷⁰ This is a judgement echoed in the text of the 1351 statute itself. Describing the Statute of Carlisle (1307), the point was made that it 'was never defeated, repealed, nor annulled in any point' and therefore remained valid.⁴⁷¹ It is possible here that there was some confusion in the reading of the statute by Serjeant Horton.

From the parliament rolls, it seems that the state of the Statutes of Provisors by 1409 was much improved from the beginning of the century. The 'moderation' of Richard II had been discarded, and Henry IV had shown himself willing to confirm and expand upon the existing legislation to firm up the offence of provisors. So many petitions relating to the offence meant that even if Henry had been unaware of the legislation at the beginning of his reign, he quickly became acclimatised to it. During this period of reconfirmation the papacy had remained silent. It was not until Henry himself wrote to the antipope Alexander V (1409-10) acknowledging him as pope that papal concerns regarding provisors resurfaced. Part of Henry's letter of congratulations and royal legitimisation included a request from the king that nothing be attempted against the statutes and ordinances made in England that prohibited anything within the realm that could stand in derogation of the crown or his realm. He asked that should there be any papal concerns that the matter wait until the next general council.⁴⁷² However, this letter only served to remind Alexander of the offending statutes, who sent envoys to England asking for the repeal of the statutes.⁴⁷³ Henry's response, which typified royal diplomacy with the papacy with regards to provisors both in the fourteenth century and the rest of the fifteenth, was that he would take counsel with the estates of the realm, since ordinances and statutes, once enacted, could not be revoked

⁴⁶⁸ YB Mich. 11 Hen. IV, pl. 67, fo. 37a-39a.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid. See also Mich. 11 Hen. 4, pl. 20, fo. 7b-10a.

⁴⁷¹ 25 Edw. III, Stat. 4.

⁴⁷² BL Add. MS. 24062, fo. 155v.

⁴⁷³ Lunt, *Financial Relations*, p. 405.

without the assent of parliament.⁴⁷⁴ There is no evidence, however, that Henry ever put these papal concerns to the estates in parliament; no mention is of papal provisions and the statutes against them in the remaining parliaments of Henry's reign.

The last statute confirming all previous provisors (and *praemunire*) legislation was enacted in the first parliament of Henry V's reign. A petition presented in parliament asked that the king kept in force all statutes against provisors enacted by the king's predecessors (being Edward III, Richard II and Henry IV). The king's response: 'let the statutes made on this be upheld and preserved'.⁴⁷⁵ By chance, this parliament also contained a complaint that alien Frenchmen continued to hold benefices within the realm, despite statutes forbidding it; just as the Statute of Carlisle had created the provisors legislation against aliens, so too was the last confirmation of the statute also partly concerned.⁴⁷⁶ Further requests were made by the Commons, on behalf of the dean and chaplains of the king's household, in 1416.⁴⁷⁷ Despite the ordinances and statutes relating to provisors in Henry IV's reign, there were still 'several persons' that purchased provisions from the pope for various benefices in England and deceitfully ousted incumbents of these benefices, many of whom had been resident for a long time by the collation of the true patrons. The Commons prayed that any found disturbing such benefices in this way should be punished according to the statutes and ordinance made concerning provisors, by process of *praemunire facias*.⁴⁷⁸

The early years of the Lancastrian kings were therefore relatively free from papal complaints regarding provisors. Only one complaint was made between 1400 and 1417 by the papacy relating to these statutes. These years also mark the final period of legislation, with Henry V finally confirming that all previous statutes against provisors be upheld. In these parliament rolls, references to 'statutes of provisors' can be seen where the offence in question was clearly the process of appealing to Rome in a temporal matter; when *praemunire* was referred to, it was as part of this wider provisors legislation or the writ used

⁴⁷⁴ E. F. Jacob, 'Some English Documents of the Conciliar Movement', *Bulletin of John Rylands Library*, xv (1931), 358-94 (p. 379).

⁴⁷⁵ 'Soient les estatutz en faitz tenuz et gardez'. *PROME*, (1413), ix, p. 16.

⁴⁷⁶ 35 Edw. I, c. 2.

⁴⁷⁷ *PROME* (Mar 1416), ix, p. 157.

⁴⁷⁸ *PROME* (1416), ix, p. 157.

in such offences. That the early 1400s were also a low point for the papacy in terms of English provisions and expectancies is surely no coincidence.⁴⁷⁹

However, the Statutes of Provisors were not universally popular among all the estates of the realm. Since the enactment of the statutes in the fourteenth century the English clergy had had an uneasy relationship with provisors. Unlike *praemunire*, which could also protect the interests of the clergy from papal encroachments, provisors instead limited the avenues available to English clerics for promotion. A diatribe against Henry IV from early on in his reign, popularly ascribed to Richard le Scrope, archbishop of York and later popular martyr, lists a number of points for the removal and excommunication of the king. One of the reasons for such actions was the king's confirmation of the statutes 'contra curiam Romanam'.⁴⁸⁰ The diatribe cited the statute 'promulgated and renewed in the parliament at Winchester [during Richard II's reign]', with a space left for the year to be inserted (but left blank).⁴⁸¹ As the only statute enacted at Winchester during Richard II's reign, the statute referred to must have been the Great Statute of *Praemunire*. However, the complaints in this diatribe were not against the prohibited appeals to the court of Rome but the prevention of certain parties in England (particularly the universities) from petitioning the pope for provisions to benefices, an action prohibited by the 1390 Statute of Provisors. Therefore, this diatribe both indicates some clerical unease surrounding the Statutes of Provisors (though the extent to which this opinion was universal is unknown) and confirms that provisors and *praemunire* were viewed as interchangeable at this point.

The chronicler Adam of Usk also found himself on the receiving end of the punishments of the Statutes of Provisors. In 1404 he was provided by the pope to a vacancy in the church at Hereford. However, this appointment was opposed 'out of envy' by the English, who wrote letters to the king protesting the appointment (and 'poisoned his mind' against Usk). Thus, instead of being promoted, Usk was stripped of all his benefices and goods and 'forced like Joseph to live amongst strangers whose language I did not know'. Usk

⁴⁷⁹ Lunt, *Financial Relations*, p. 404.

⁴⁸⁰ C.C.C. Cambridge, No. 197, ff. 85-98, printed transcription in James Raine, ed., *Historians of the Church of York and its Archbishops*, 3 vols (London: Longman, 1879-94), ii, pp. 301-02. Raine included it in *Miscellanea relating to Archbishop Scrope*, an association acknowledged, albeit sceptically, in W. E. Lunt, *Financial Relations of the Papacy with England, 1327-1534*, pp. 405-6. The authorship of this diatribe has not knowingly been questioned since.

⁴⁸¹ *Ibid.*

remarked that he did at least get paid for his counsel.⁴⁸² Usk followed up this entry with a copy of a letter which he gave to the Bishop of Salisbury for the king, asking that he be allowed to accept his papal provision. However, this letter was sent to no avail.⁴⁸³ A final comment was made regarding the recent confirmations of the Statutes of Provisors.⁴⁸⁴

A set of petitions presented to the king between 1393 and 1416, on behalf of the universities of Oxford and Cambridge, also demonstrated some concern about provisors. In 1393 the Commons asked that any moderation made to the 1390 Statute of Provisors consider the welfare of the students of Oxford and Cambridge in its modifications. Before the statutes were enacted, it was typical for these universities to send a list of students ready for promotion to the pope for consideration; their students relied on the patronage of both king and pope, which the Statutes of Provisors limited.⁴⁸⁵ In the parliament of January 1401, the universities again requested that in any royal moderation of the statutes the universities of Oxford and Cambridge be remembered, for they were ‘the fountains of the clergy in this kingdom, and especially the graduates, for the relief and sustenance of the clergy and of the catholic faith’.⁴⁸⁶ In 1416 the universities were more emphatic with their requests:

Whereas in the past the clergy of the realm were increasing, flourishing and prospering in your universities of Oxford and Cambridge – some as doctors of divinity or in the canon and civil laws, and others in lesser degrees – to the great comfort, consolation and outstanding profit of all holy church and your Christian people all over England; now, on the contrary, since the statute concerning provisions and against provisors was enacted by parliament, lamentably the clergy in the said universities have left, and are despised in many regions, to the great damage of holy church.⁴⁸⁷

⁴⁸² *The Chronicle of Adam Usk, 1377-1421*, translated by Chris Given-Wilson (Oxford: Clarendon Press, 1997), i, pp. 175-79.

⁴⁸³ *Ibid.*

⁴⁸⁴ *Ibid.*

⁴⁸⁵ *PROME* (1393).

⁴⁸⁶ *PROME* (1401).

⁴⁸⁷ *PROME* (Mar 1416).

The king's response to this petition was to delegate the matter to the lords spiritual, who would provide remedy.⁴⁸⁸ Here the universities of Oxford and Cambridge blamed the Statutes of Provisors, particularly the 1390 statute, for this lull in ecclesiastical promotions. This contradicts the opinion of Dietrich of Niem, a notary at the papal court in the early fifteenth century, who instead blamed Boniface IX for being too greedy in exacting money from archbishops, bishops, abbots and holders of inferior benefices in a letter drawn up for consideration at the Council of Constance. The maintenance of the Statute of Provisors was in response to this greed. Thus England, then Hungary, sought their ecclesiastical titles away from the Papal Curia. Dietrich complained that this had made clerics in these kingdoms disobedient to the pope, because they did not need to appease the papacy in order to secure promotion.⁴⁸⁹ Regardless of hyperbole, it seems clear that the Statute of Provisors had begun to have a detrimental effect on papal provisions in England; something that the papacy could not ignore any further.

Martin V's Crusade Against Provisors

When the papacy was once again unified at the Council of Constance (1414-18) it had been in schism for forty years. As such, when Pope Martin V was elected in 1417 he found Anglo-papal affairs much changed from that which his predecessors had experienced. At the forefront of these changes was the hold that the English Crown had acquired over provisions within the realm. Pope Martin's attempts to repeal the Statutes of Provisors would be the last serious attempt by the papacy to do so. In the summer of 1419 Martin commissioned Henry Grenefelde to ask Henry V to 'interpret, modify or withdraw an English statute which was prejudicial to the Roman church and the papacy'.⁴⁹⁰ The response from Henry V and his council, with whom the papal nuncio met at Mantua, was the same as that of the king's predecessors. As the statute(s) had been made before Henry became king, he was bound by his coronation oath not to change it without first consulting the three estates in parliament.⁴⁹¹ Though this was not the answer that the pope had desired, this promise by Henry that the issue would be raised in parliament appeased Martin V until 1421. However, a continued lack of involvement from the king prompted the pope to ask Simon of Teramo,

⁴⁸⁸ *PROME* (Mar 1416).

⁴⁸⁹ Lunt, *Financial Relations*, p. 399.

⁴⁹⁰ *Ibid.*, p. 418.

⁴⁹¹ Rymer, *Foedera*, iv, pt 3, pp. 136-37.

his papal collector in England, to start negotiations anew. Teramo met with the Canterbury convocation to recommend to the English clergy that the pope should have the right of provision in the kingdom.⁴⁹² However, the matter was not mentioned further in this regard. The papal collector also met with Henry V, again asking him to repeal the statutes; all Henry could promise (conveniently) was that he would raise the issue at the next parliament.⁴⁹³ However, whether Henry would have honoured that promise is unknown. When the next parliament met in December 1421 Henry was overseas campaigning in France, and he died in August the following year.

The death of Henry V did not deter Martin V, and in fact he may have overplayed the late king's intentions to repeal the statutes when he wrote a letter to the councillors of the new king, Henry VI, stating that Henry V had given him the greatest hope that, upon his return to England, he would assemble a parliament to reinstate the liberties of the Roman church.⁴⁹⁴ However, once again the council, speaking for the infant king, did nothing but send empty promises to the pope. During these attempts to repeal the Statutes of Provisors, Pope Martin continued to provide his own nominations to vacant English bishoprics, putting him more at odds with the king's council. The death of Archbishop Henry Bowet of York in 1423 brought about one such example. Following the archbishop's death, Pope Martin provided Richard Fleming – then bishop of Lincoln – to the vacant see. However, the council had already elected Philip Morgan, the bishop of Worcester, to the position. Martin's election had been made without the consent of the English council, and so they did not permit the translation of Fleming – even though his Lincoln administration had already been vacated [*sede vacante*] – and invoked the Statute of Provisors by sending out writs of *praemunire facias* against Fleming.⁴⁹⁵ On 21 October 1424 a compromise was reached, which meant that Fleming would not have to suffer the punishments of the statute: as both York and Lincoln remained vacant, Fleming would withdraw all claims to the former, supporting Philip Morgan's nomination, and return to Lincoln. In exchange all threats of the

⁴⁹² *Convocation*, v, p. 96.

⁴⁹³ Lunt, *Financial Relations*, p. 419.

⁴⁹⁴ Lunt, *Financial Relations with the papacy*, p. 420.

⁴⁹⁵ *POPC*, iii, pp. 210-12.

statutes would be withdrawn, including writs sent, and a formal pardon would be issued at the next parliament.⁴⁹⁶

Martin V's final attempts to repeal the Statutes of Provisors began in 1426. The convocation for that year had as a speaker the papal nuncio Julian Casarini, who warned those in attendance of possible papal censures, should the statutes against the authority of the pope be maintained.⁴⁹⁷ The clergy in convocation promised that they would raise the issue in the next parliament.⁴⁹⁸ Later in the year, Martin V wrote letters to the archbishops of York and Canterbury, ordering them to ensure that no members of the English clergy were providing to any benefices reserved to the apostolic see. The archbishops were ordered to publish the letter, and to do so without regard for the statutes of Edward III and Richard II, which were 'damned and reprobated'.⁴⁹⁹ He reserved a personal letter for Henry Chichele, the archbishop of Canterbury, scolding him for allowing the statute to remain in force and expressing the evils of such legislation.⁵⁰⁰ Martin also wrote a letter to the king's council, again expressing the many evils of the statute.⁵⁰¹ Events came to a head when the pope, in another letter to Chichele, accused the archbishop of preventing papal provisions in an attempt to reap the rewards himself. For this alleged infraction, Martin V suspended the archbishop from his office as *legatus natus*.⁵⁰² The royal council, on learning of the subsequent bill confirming this suspension, issued a royal writ ordering the archbishop to bring any bulls that came to him to the council before publication or execution.⁵⁰³ The papal collector was imprisoned for the delivery of these bulls, which prompted Martin V to write to the duke of Bedford and the bishop of Winchester, so appalled was he that the laity had laid their hands on an envoy of the pope.⁵⁰⁴ Still Chichele had not been reinstated as legate. On 30 January 1428, Chichele appeared in parliament, accompanied by the archbishop of

⁴⁹⁶ Ibid.; *ODNB*, 'Richard Fleming', by R. N. Swanson.

⁴⁹⁷ Ibid.

⁴⁹⁸ Wilkins, ed., *Concilia Magnae Britanniae et Hiberniae*, iii, p. 480.

⁴⁹⁹ 'damnata et reprobata'. Ibid., pp. 471-72.

⁵⁰⁰ Ibid., p. 482.

⁵⁰¹ Ibid., pp. 480-2.

⁵⁰² Ibid., pp. 484-5.

⁵⁰³ Ibid., p. 486.

⁵⁰⁴ *POPC*, iii, p. 268; Wilkins, *Concilia*, iii, pp. 474-78.

York, five bishops and two abbots, to appeal on behalf of the pope for the repeal of the Statute of Provisors.⁵⁰⁵

Chichele took as his theme 'Render unto Caesar what is Caesar's, and to God what is God's, the same theme that Richard II had used in his attempts to moderate the Statutes of Provisors in the 1390s.⁵⁰⁶ The archbishop then declared what belonged to ecclesiastical jurisdiction and what belonged to the king's, citing laws of Holy Scripture to justify the papal right to present to English benefices.⁵⁰⁷ From the record of this speech it is unclear how sincere Chichele was in seeing the statutes repealed. He never explicitly recommends such course of action. His reason for appearing before parliament was to discuss the 'matter of provision and that the statute against provisors be abolished', not that he believed that such action should be taken. He did not explicitly endorse the repeal of the statutes, only asked that the community consider the bulls and apostolic letters made (at great cost to the papacy) on this matter, and deliberate in parliament for a solution. This lack of explicit support is again implied in the most impassioned portion of Chichele's speech:

Perhaps it seems to certain of you that I do not proffer these things which most strongly concern the prelates of the realm from the heart. May you know for certain and in the faith by which I am bound to God and to the church, [that] I affirm before you that it would be more acceptable to me never to confer or even to have any ecclesiastical benefice than that any such danger or proceedings should in my time result in the scandal of the English church.⁵⁰⁸

Chichele demonstrated a willingness to give up some English ecclesiastical rights of patronage if they should rightly have been in the hand of the pope. But, although he recommended some form of compromise between England and the pope, he did not ask that the statutes be repealed, despite the fact that he was facing serious papal censures to achieve this aim. The parliamentary proceedings in 1428 focused on redeeming Chichele's standing with the pope; it did not discuss any form of moderation or repeal of the Statutes of Provisors.⁵⁰⁹ The assembled estates in parliament judged that the archbishop was

⁵⁰⁵ Wilkins, *Concilia*, iii, pp. 483-84.

⁵⁰⁶ *Ibid.*; *PROME* (1391), from Mark 12:17.

⁵⁰⁷ Wilkins, pp. 483-84.

⁵⁰⁸ *Ibid.*

⁵⁰⁹ *PROME* (1427), x, pp. 365-66.

‘wrongly and without good reason accused’ by the pope of acting against the freedom of the court of Rome in England. Therefore the Commons requested that an embassy be sent to Rome to restore Chichele’s legatine powers.⁵¹⁰ It seems that at this point Martin realised his cause was lost. Accepting that Chichele had done all within his power to see the repeal of the statutes, the pope restored the archbishop’s legatine powers.⁵¹¹ This would be Martin V’s last serious attempt at removing the offending legislation before his death in 1431. A final effort was made by Martin’s successor, Eugenius IV (1431-47), to have the Statutes of Provisors repealed. A letter written by the pope in 1435 remarked to the king (and council) that Henry V had been well-disposed to consider the repeal of the Statute of Provisors, and would have done so had he made it back to England. Therefore Henry VI should – in Eugenius’ opinion – honour his late father’s wishes and remove the statute.⁵¹² However, there is no surviving response to this request, and no further action was taken by Eugenius to secure the repeal of the statute. By this point, the Council of Basel on the continent left the papacy once again distracted from English affairs. This council resulted in another schism of the papacy in 1439. The papacy only questioned the Statutes of Provisors and *Praemunire* once more in the period of this thesis. In 1506, Robert Sherbourne went to Rome to defend himself against accusations that he had forged bulls of provision to the see of St David’s. Once there he was asked questions by the papal prosecutor about a statute called *praemunire* and laws forbidding causes to be taken to Rome. This questioning, however, did not lead to any renewed attempt to have the statutes removed.⁵¹³

Conclusion

By 1435, the papacy were forced to accept that the Statutes of Provisors, which for so long had proved detrimental to their ability to present to English benefices, would not be repealed. This had two effects on the development of *praemunire*. Firstly, it publicised the offence. Martin V’s persecution of Chichele and attempts to interfere in English episcopal

⁵¹⁰ Ibid.

⁵¹¹ CPL, viii, p. 64.

⁵¹² *Calendar of Papal Registers*, viii, 216.

⁵¹³ F. R. H. Du Boulay, ‘The Fifteenth Century’, in *The English Church and the Papacy in the Middle Ages*, ed. by C. H. Lawrence (London: Fordham University Press, 1965), pp. 195-242 (p. 220); J. A. F. Thomson, *The Transformation of Medieval England* (New York: Longman, 1983), p. 318.

appointments highlighted the worth of the Statutes of Provisors.⁵¹⁴ This must also have raised awareness of *praemunire*, considering the close association between the two offences.

Secondly though, the papal failure to have the statutes repealed, and their subsidence from English affairs due to events abroad, meant that papal provisions to English benefices became less relevant in the 1430s; the papacy had (publicly) tried, and failed, to secure the removal of these statutes. Therefore it stands to reason that from this point English clerics were less likely to appeal to the papacy for such provisions, for fear of the punishments prescribed by the Statutes of Provisors. The offence of *praemunire* then, so long associated with provisors and the court of Rome, could be viewed apart from its more papal-focused cousin. It is no coincidence that the failure of the papacy to have the Statutes of Provisors repealed in the 1430s coincides with the first complaints made by the English clergy regarding the wider interpretation of *praemunire*, applying the offence to cases begun in the English ecclesiastical courts. The following chapter examines these complaints from an English clergy increasingly fending for themselves against the alleged encroaching jurisdiction of the temporal courts, as the papacy became embroiled in events on the continent.

⁵¹⁴ Richard G. Davies, 'Martin V and the English Episcopate, with Particular Reference to His Campaign for the Repeal of the Statute of Provisors' (p. 344).

Chapter V: Complaints in Convocation

As the previous chapter demonstrated, the first half of the fifteenth century was marked by a concerted effort from the papacy to have the Statutes of Provisors repealed. Closer to home, however, it was the offence of *praemunire* that began to be a concern for the English clergy. Initially these clerics were in favour of the legislation, for its ability to allow English ecclesiastics to execute the king's will (as derived from actions in the king's courts) free from any papal censures. It was the offence of provisors that limited their avenues for promotion, not *praemunire*. However, broader interpretations of the 1393 'Great' Statute of *Praemunire* in the 1430s meant that this statute and the writ of *praemunire facias* were being applied to those bringing cases into the English ecclesiastical courts. This chapter charts the causes of ecclesiastical grievances across the Lancastrian and Yorkist periods, to see when *praemunire* became a cause for concern, and how it related to clerical grievances earlier in the century. This chapter also examines why, like the papacy before them, these English ecclesiastics failed to achieve any real solution to these abuses.

Clerical Concerns by 1400

Although *praemunire* was a new grievance for the clergy in the fifteenth century, there had always been a degree of underlying concern regarding secular encroachments upon ecclesiastical freedoms and jurisdiction. Misuse of the writ of prohibition for one was a regular cause for concern in the thirteenth and fourteenth centuries.⁵¹⁵ In the Canterbury convocation of 1342 twenty-nine canons were approved by the Church including one that directed that any found hindering ecclesiastical jurisdiction were to be condemned and made subject to the greater excommunication.⁵¹⁶ These encroachments were typified at this time by John de Sodbury, a royal clerk who had outlawed some of the Exeter clergy, including Bishop Grandison's commissary.⁵¹⁷ The bishop had excommunicated Sodbury but been ignored by the royal clerk. The king then commanded Sodbury to appear before the royal justices at Westminster on 13 October 1342.⁵¹⁸ Before a mixed panel of secular and ecclesiastical authorities, Sodbury's actions were declared illegal and he was ordered to

⁵¹⁵ See Chapter II.

⁵¹⁶ *Convocation*, iii, pp. 214-16.

⁵¹⁷ *Convocation*, xix, p. 38; Brenda Bolton, 'The Council of London of 1342', in G. J. Cuming and Derek Baker eds., *Councils and assemblies* (London: Cambridge University Press, 1971), 147-60.

⁵¹⁸ *Convocation*, iii, p. 200.

repent. Two years later in the Canterbury convocation of 1344 a list of seven articles was written up for presentation to the king relating to ecclesiastical jurisdiction. The fifth article specified that any prohibitions from the royal courts regarding causes properly belonging to the ecclesiastical jurisdiction be removed. This was granted.⁵¹⁹ If a matter truly belonged to the ecclesiastical sphere, the king was happy to allow the case to proceed.⁵²⁰

The English clergy's concerns regarding the provision of benefices, ecclesiastical jurisdiction, and papal authority within England were laid out in a set of grievances formed from the convocation of 1399. This convocation was called after the rebellion that would depose Richard II and make Henry IV king, and restore Arundel as archbishop (but before Arundel's restitution).⁵²¹ It was also the assembly where the chronicler Adam Usk remarked that 'more cruelty has been inflicted on prelates in England than in all Christendom'.⁵²² The set of sixty-three grievances was drawn up in the October convocation (which met concurrently with the first parliament of Henry IV's reign) and submitted to the pope for appraisal.⁵²³ That these grievances were sent to the pope for adjudication is indicative of the clergy's need to answer to two masters, the king and pope. As the position of the king was at this time in flux, the clergy thought it prudent to first request adjudication from the pope. The grievances relating to the provision of benefices highlight that it was not only the issues surrounding the Statutes of Provisors that caused concern for the English Church in this matter. There are some complaints relating to money, such as article four that complained patrons of benefices were charging too much for their institutions. Other concerns included the fraudulent exchange of benefices. Bishops were not to admit unknown persons to benefices by proxy, and exchanges of benefices must be confirmed by official letters. A point was made that graduates of Oxford and Cambridge should be preferred for ecclesiastical office, correlating with the parliamentary petitions presented by the same universities. The most important point relating to the provision of benefices also pertained to the jurisdiction of the English ecclesiastical courts. Article thirty directed that when the king presented someone to an occupied benefice, the case should not be handed over to a

⁵¹⁹ *Convocation*, xix, p. 41.

⁵²⁰ See Chapter III.

⁵²¹ R. L. Storey, 'Clergy and Common Law in the Reign of Henry IV', in *Medieval Legal Records Edited in Memory of C. A. F. Meekings*, ed. by R. F. Hunnisett and J. B. Post (London: HMSO, 1978), 342-408, p. 342.

⁵²² *Chronicon Adae de Usk, A.D. 1377-1421*, ed. E. M. Thompson, 2nd edn (London: Frowde, 1904), pp. 44, 204-05.

⁵²³ For the articles that follow, see *Convocation*, iv, pp. 197-207.

commissary but be dealt with by the bishop in his consistory court or in the archbishop's court of arches. Matters relating to disputed benefices should be decided in ecclesiastical courts.

Further articles were presented relating to encroachments upon ecclesiastical jurisdiction by the secular arm in England. Considering this was exactly the manner in which *praemunire* would be applied during the fifteenth century, these articles highlight what was being used in lieu of *praemunire* to damage this ecclesiastical jurisdiction (and also that *praemunire* was not yet such a concern). Thus bishops were reminded that abbots, priors and the like should bring cases relating to the recovery of rents into the church courts rather than the secular. An interesting article relating to the Statutes of Provisors was that when beneficed clergy were on trial and prevented from making use of their possessions, ministers of the crown must assume responsibility for all tithes, offerings and other expenses relating to them. The king's minister must also not do anything to infringe upon the church's liberties. The Statute of Provisors (1351) stipulated that while a benefice was vacant due to the imprisonment of those guilty of the offence, the profits of the benefice were to go to the king.⁵²⁴ This article suggests perhaps that the king's ministers were not caring for these vacant benefices as well as they should have. Another grievance related to the greater provisors legislation was that benefices once owned by enemy aliens had been appropriated by lay persons and alienated from the church. They should instead, the article argued, be granted to English clerics, with a portion going to the king according to ancient custom. A further article stated emphatically that perjury and defamation belonged to the ecclesiastical jurisdiction, and therefore a royal prohibition did not apply in such actions. This point is particularly pertinent considering that cases of defamation would be one of the most common disputes that *praemunire* drew into the English common law courts in the early Tudor period.⁵²⁵

The writ of prohibition was targeted for particular complaint. One such grievance was that in some cases persons who thought that they might be brought before an ecclesiastical court were purchasing royal prohibitions before they were summoned, so as to strike the fear of contempt into the ecclesiastical judges and discourage them from

⁵²⁴ 25 Edw, III, Stat. 4.

⁵²⁵ See Chapter VII.

continuing with the case. The clergy thus asked that even in a matter such as this, the ecclesiastical judges should still have the right to summon the accused. Only after an ecclesiastical judgement is reached should a prohibition be granted. Another restriction to prohibition included in these articles was that matters concerning pensions owed between churches were a strictly ecclesiastical matter, and therefore if a prohibition should be issued, the matter should be judged by an ecclesiastical judge. Two articles complain about a misuse of the royal writ *attachias* in conjunction with a royal prohibition. The writ of *attachias*, or attachment, was a writ that ensured defendants made sureties for their appearance in the king's courts. In some instances, the clergy in convocation complained, certain persons had asked for the royal writ of *attachias* as a preliminary to obtaining a royal prohibition, thus slowing the ecclesiastical court proceedings to a halt. This was not to be allowed under any circumstances in future. More pertinently, it seems that the writ of *attachias* was being used to contest ecclesiastical judgements of excommunication; article sixty-three of the grievances asks that judges be free to proclaim excommunication without fear of the writ being used against them. An interesting parallel to how *praemunire* would be used later can be seen in article thirty-four of these complaints. It seems that certain persons had claimed that they were wrongly abused in a church court, and therefore appealed directly to the court of arches for an inhibition, thus hindering the operation of ecclesiastical justice. One of the changes that occurred during the fifteenth century was that *praemunire facias* replaced the writ of prohibition as the cause of complaint regarding this encroachment upon ecclesiastical liberties; the writ of *praemunire facias*, though not technically a prohibition, was treated as one from at least 1441 because the Statutes of *Praemunire* implied prohibition.⁵²⁶

Finally, these articles contain a number of more general requests regarding ecclesiastical jurisdiction within the realm. These included a request that constitutions made in the past against those who impede the exercise of ecclesiastical jurisdiction should be read out and explained in the vernacular. The more general request that the king confirm the ancient liberties and freedoms of the English Church, as laid out in Magna Carta and in the statutes *Circumspecte Agatis* (1285), was also included in this list of articles, as well as a request that the *Articuli Cleri* of November 1316 be confirmed. A similar request for the

⁵²⁶ YB Hil 19 Hen. VI, pl. 17, fos 54a-54b. See Chapter VI.

confirmation of *Circumspecte Agatis* was made in the parliament of 1352, when the clergy were concerned about the recent Statute of Provisors (1351) and the extension of royal authority over the church in general.⁵²⁷ Magna Carta too was often confirmed in parliament at the request of the Commons.⁵²⁸ The church were keen also to have the right of 'benefit of clergy' confirmed, the privilege that English clerics could only be tried before the ecclesiastical courts (or justices). Article fifty-five complained that many clerics were being deprived of this privilege. Article fifty-eight complained that clergy were being arrested in the course of their duties and imprisoned by the lay authorities.

Therefore, at the beginning of the fifteenth century the clergy in convocation had a number of concerns regarding the application of ecclesiastical jurisdiction in England. Some of these concerns related in part to the offence of provisors, mostly from the practical perspective of how a vacant benefice should be handled by lay ministers during the vacancy. None, however, raised concerns about either the Great Statute of *Praemunire* of 1393 or the misuse of the writ of *praemunire facias*. Nor was there any mention of *praemunire* in the convocation of 1411, when a list of thirteen complaints was put forward by the clergy. Of these thirteen, only three related partly to the freedom of the church from secular authority. Article five requested that ecclesiastical persons accused of adultery should not be brought before secular judges on a charge of rape, and article six asked that rectors and other clerics should not be indictable by county sheriffs. Article eight alludes more strongly to the process that would later define *praemunire*. In this article the clergy asked that those charged with the correction of morals in the ecclesiastical courts of England should not be indicted by a secular judge for exercising this charge in the ecclesiastical court. This was because the matter was spiritual.⁵²⁹

Initially though, *praemunire* was not one of these jurisdictional concerns. When used to protect the king's realm from outside (read: papal) influences the offence was not a cause of complaint or mistrust for the English clergy. In fact it was the men of the church in England that benefitted most from the proper use of *praemunire*, protecting as it did the right to settle disputes within the realm, without complicating matters by appealing to rival

⁵²⁷ *PROME* (1352), v, p. 58. See Chapter I.

⁵²⁸ Faith Thompson, *Magna Carta – Its Role in the Making of the English Constitution 1300-1629* (Minnesota: University of Minnesota Press, 1948).

⁵²⁹ *Convocation* (1411), iv, p. 375.

sources of jurisdiction. This was the opinion of Archbishop Courtenay in 1393, who in his ‘protestations’ in parliament that year, announced himself and the English church he represented in favour of new *praemunire* legislation.⁵³⁰ Sometime around 1402, the prior and convent of Pontefract asked Henry IV to intervene when John Thornton, the vicar of the church, sued in the court of Rome to annul the appropriation of the church and get himself provided to the said living by the pope. This was, claimed the prior, ‘against the good laws and statutes of your realm, to the very great impoverishment of your poor house and open destruction of the chantry of the chaplain’.⁵³¹ The prior and convent of Pontefract did not specify which laws and statutes of Henry’s realm had been encroached upon. John Thornton’s actions in the case seem to suggest though that he was breaching the terms of both the Statutes of *Praemunire* – in appealing to a court outside of the realm for a matter within the king’s cognisance – and those of provisors, for the subsequent attempt to get himself provided by the pope to the living. But in the early fifteenth century *praemunire* and provisors were still viewed as part of one legislation, thus the most likely interpretation of this episode is that the prior and convent of Pontefract were appealing for justice to be made upon the ‘statutes of provisors’, incorporating in this more general term those of *praemunire* also. Regardless of which statute these clerics were referring to, this exchange demonstrates willingness by some of the English clergy to utilise these statutes. This is true whether they were using the rhetoric of ‘English liberty’ to secure a more favourable arena for their complaint, or whether they were more sincere in the concern regarding alien jurisdictions in England.

***Praemunire* in Convocation**

By the mid-1430s, the papal attempts to repeal the Statutes of Provisors had failed. The last mention of the statutes in relation to their repeal was in 1435, when Eugenius IV asked that Henry VI consider such action.⁵³² By this point the pope was too concerned with events abroad, such as the ongoing Council of Basel, to rally against these accursed statutes against provisors. Following this point the issue of papal provisions to English benefices became less

⁵³⁰ *PROME* (1393).

⁵³¹ ‘...encontre les bonnes loys et estatutz de vostre roialme, a tresgrande enpoverissement de vostre dite povre maison et en overte enervacion de la Chanterie du dit Chapellain’ in M. D. Legge, ed., *Anglo-Norman Letters and Petitions*, from All Souls College MS. 182 (Oxford: B. Blackwell, 1941), no. viii.

⁵³² See Chapter IV.

relevant. The ‘statutes of provisors’ are only mentioned three more times in the parliaments of Henry VI. Of these, one from 1445 is a reference to the 1353 Statute of *Praemunire* (though referred to as a ‘statute of provisors’), and one from 1455 is a general pardon, pardoning those accused of provisors.⁵³³ This subsidence in papal attempts to repeal provisors, and the offence’s subsequent lack of relevance, coincide with complaints made in convocation relating to the misuse of the writ of *praemunire facias* and certain clauses contained within the 1393 Great Statute of *Praemunire*. Such a correlation suggests that the removal of one interpretation of *praemunire*, that of an offence executory to provisors, opened up the possibilities for its broader use. A general council of the clergy, summoned by the archbishop late in 1434, was assembled to discuss a number of clerical grievances.⁵³⁴ One of the grievances raised during this assembly was the imaginative use of royal writs, especially the writs called ‘*praemunire facias*’, to impede and disturb ecclesiastical jurisdiction. In the last few years these writs had come to be applied in all matters within the realm.⁵³⁵ This complaint suggests that any new use of the writ was relatively recent. Despite the specific mention of the writ in the convocation record, it was not entered by name on the official complaints drawn up on 23 October 1434 (the original complaint about *praemunire facias* was made on 8 October).⁵³⁶ These twelve articles were designed to be read quarterly in English in churches, which mirrors the request in the 1399 convocation that constitutions made against those who impeded ecclesiastical jurisdiction should be read out in the vernacular.⁵³⁷ Of the twelve articles, three allude to misuses of the writ. The first article was a typical grievance among the clergy, that there were those that sought to infringe upon the agreed-upon – between the English Church and the king (and his progenitors) – rights and liberties afforded to them.⁵³⁸ The second is more specific, mentioning that one of the ways in which the rights of the clergy had been encroached upon was by letters purchased from the temporal court which could halt a spiritual court case; an allusion to the earlier complaint against *praemunire facias*. The fourth point focuses instead on the rights of the king and his realm, rather than the freedom of the English Church. Unlike the other two points, which echoed complaints made in the past, this fourth

⁵³³ *PROME* (1445), xi, p. 416; (1453), xii, p. 295; (1455), xii, p. 386.

⁵³⁴ *Convocation*, v, p. 345.

⁵³⁵ *Convocation*, v, p. 345.

⁵³⁶ *Ibid.*, xix, p. 105.

⁵³⁷ *Ibid.*, iv, pp. 197-207.

⁵³⁸ *Ibid.*, v, p. 347.

article appears to be newer.⁵³⁹ It is possible, considering the recent attempts by the papacy to have the Statutes of Provisors repealed, that the inclusion of this point was to assert the rights and privileges of the king within his realm over outside influences. They may also have been deliberately echoing the phrasing of the Statutes of *Praemunire*, to emphasise that the king's realm included the English church, and therefore should not be disturbed by royal writs such as *praemunire facias*.

The convocation that assembled in 1439 built upon the earlier complaints about *praemunire*. Henry Chichele, in his summons for the convocation, cited that the clergy were being summoned to discuss 'certain difficult and urgent affairs concerning the state of the kingdom and the honour and expedience of the English church'.⁵⁴⁰ To the king, these 'urgent affairs concerning the state of the kingdom' referred to a royal need for a clerical subsidy. Chichele, however, was concerned that the writ of *praemunire facias* was being misused to damage 'the honour and expedience of the English church'. During the course of this 1439 convocation the English clergy outlined how, to their minds, the writ was being used to frustrate the exercise of ecclesiastical jurisdiction. The Canterbury convocation concluded that the only sure way to remove such abuses upon the writ was the complete withdrawal of *praemunire facias*. These complaints were raised with the royal delegation that arrived on 26 November, who agreed to send these grievances to the king on 1 December (perhaps in part to ensure the acquiescence of a subsidy). To guarantee that the king understood the importance of these grievances, a delegation was sent to the archbishop of York (who presided over a separate convocation in the northern province) to ask him to send another letter supporting the request that the misused writ be withdrawn. Following this request, it was announced in convocation on 22 December that the writ of *praemunire facias* would be suspended indefinitely. The bull 'abolishing' the writ, in French, lists details as to why such action was deemed necessary.⁵⁴¹ It begins by outlining that the original purpose of the statute made in the 16th year of Richard II's reign (the Great Statute of *Praemunire*) was to prosecute those seeking to undermine royal jurisdiction in the court of Rome. This bull also erroneously says that the 1393 statute was made at Westminster (in 1393 parliament

⁵³⁹ Ibid., xix, p. 105.

⁵⁴⁰ 'quibusdam arduis et urgentibus negotiis nos, statum regni nostri ac honorem et utilitatem Ecclesiae Anglicanae intime concernentibus...'. *Convocation*, v, p. 396.

⁵⁴¹ Ibid, v, pp. 404-05.

assembled at Winchester). However, in recent times the writ of *praemuniri facias* had been used against the spiritual courts in England, to the destruction of the Church in England, against the freedoms confirmed by Magna Carta. As such the writ should be withdrawn (for its implications when applied to the English church courts were too great).⁵⁴² Writs of prohibition had sufficed in the past at halting ecclesiastical court cases, and did not prescribe harsh punishments such as forfeiture. However, despite the declaration that the writ was to be withdrawn at the end of 1439 in convocation, this annulment was never enrolled in parliament (though it may have formed the basis for a parliamentary petition in 1447). A possible reference to this ‘abolishment’ of the writ of *praemunire facias* (at least with regard to the 1393 Statute of *Praemunire*) is in a writ formulary contemporary to these clerical complaints. This collection, dating from around 1430, contains a number of specimen writs of *praemunire facias*.⁵⁴³ One such writ questions the validity of the 1393 statute.⁵⁴⁴ The contents of the *praemunire facias* are fairly formulaic, citing John, abbot of Kirkstall to court for breaching the terms of the 1393 statute by excommunicating two bailiffs in a matter which should have been settled in the common law courts. However, the title of the writ, ‘premunire facias de anno xvj^o Regis Ricardi’, and the description of the terms of the statute have been crossed out by a second hand, alongside which they have written ‘vacat qz nullum tale statutum’ (voided because the statute was bad). The date of this second hand is unknown but, considering that by the later-fifteenth century the 1393 statute was being used confidently to prosecute against actions begun in English ecclesiastical courts, it is likely that this comment was made earlier in the fifteenth century. Assuming this collection dates from around 1430 (based on some dated writs in the collection) it is likely that this second hand dates to sometime around 1439. If this was the case, then it is possible that this second hand updated the writ register in response to this bull in convocation. Later in the century, the 1393 statute was less likely to be discounted as ‘bad’ or invalid, particularly after the common lawyers confirmed its application against cases brought before English ecclesiastical courts (definitely by 1465; probably as early as 1441).⁵⁴⁵ By 1485 the Great Statute of *Praemunire* was included in the *Nova Statuta*

⁵⁴² Ibid.

⁵⁴³ *BL Add. MS 35205*. See Appendix 2.

⁵⁴⁴ *BL Add. MS 35205*, m. 10. See Appendix 2, no. 39.

⁵⁴⁵ See following chapter.

amongst other statutes pertaining to provision, an inclusion not likely to have been made if it was perceived that the statute was invalid.⁵⁴⁶

No further mention is made of this bull of 'abolishment', either in convocation or elsewhere. Additionally, the English clergy somewhat undermined their own grievances by continuing to use the writ (admittedly in the correct fashion). In 1440 the canon and chapter of Wells petitioned the king, through his representatives on the Council, to halt a papal provision (using *praemunire facias*) which was being utilised by John Delamere, the king's almoner.⁵⁴⁷ The canons of Wells were complaining because Delamere had sued for provision to the Deanery of Wells, although it was in the king's patronage. Similarly, in 1441 the prior of Christ Church, Canterbury sued a writ of *praemunire facias* against William Pouns (one of the monks from the monastery) who, without the permission of the prior, had gone to London and published papal bulls exempting him from monastic obedience. Pouns had also failed to get permission from the king's council to publish these bulls. In this case the threat of the writ was enough to impel William Pouns to return to Canterbury.⁵⁴⁸ The proceedings against the monk did not seem to have too detrimental an effect on his future career. Once he returned to Canterbury letters from the archbishop of Canterbury and the dean of St. Martin-le-Grand were sent to the prior of Christ Church requesting that Pouns be received back into the Convent.⁵⁴⁹ Evidently the English clergy, despite their grand protests in convocation, had no issue in using the writ of *praemunire facias* for its original purpose. In this light it seems more likely that the 'abolishment' of the writ of *praemunire facias* in 1439 was more of a statement against its misuse than a serious removal of the writ.

However, these complaints came to no avail and in 1444 Canterbury convocation once again had cause to protest *praemunire*. A list of four grievances to be reformed in parliament on behalf of the church included as its first suggestion the reform of the 1393 Statutes of *Praemunire*, with specific mention of the term 'alibi'.⁵⁵⁰ It is likely that from this list of grievances came the petition drawn up for the 1447 parliament. The petition to the

⁵⁴⁶ *Nova Statuta* (London: William de Machlinia, 1485).

⁵⁴⁷ William Henry Bendow Bird et al, eds., *Calendar of the Manuscripts of the Dean and Chapter of Wells* (London: HMSO, 1907), ii, p. 675.

⁵⁴⁸ *Litterae Cantuarienses*, ed. by Joseph Brigstocke Sheppard (London: HMSO, 1889), iii, p. 172.

⁵⁴⁹ *Ibid.*, pp. 173-75.

⁵⁵⁰ '*Imprimis reformatur statuta de praemunire, et praesertim propter terminum "alibi"*'. *Convocation*, vi, p. 10.

king and council, written (in English) on behalf of ‘all the clergy of your realm of England’ began by outlining specifically what was contained within the 1393 statute, namely,

that no man should purchase nor pursue any suit, process, sentences, or cursing instruments, bulls, or any other things whatsoever they be, touching the king, his regality or his realm of England [...] and that whosoever bring any of the said processes, sentences (etc.) [...] into the realm of England [...] shall be put out of the king’s protection.⁵⁵¹

The composers of the petition were evidently aware of the precise wording of the Winchester statute, outlining to the king that, ‘the said statute has of itself no place but in suits, processes, sentences of cursing, and censures, *outside the land*, for in prevention and restraint of any such process or things that might be done within the land there was sufficient remedy made before’. The ‘remedy made before’ was likely another allusion to the writ of prohibition, which provided such a process. The main grievance of the clergy was that in recent times,

some men have contrived and taken pains to make strange and bitter interpretations of the said statute, such as [...] should turn into intolerable hurt and prejudice of the said prelates and of spiritual judges within the land, in whose favour the said statute was first made and ordained.⁵⁵²

The petition also contains a complaint that the same sorts of men were wilfully (mis)interpreting the statute (of provisors) made in the second year of Henry IV’s reign (1401).⁵⁵³ The clergy’s inclusion of this second statute may have been intentional, to emphasise that the original and proper purpose of the writ of *praemunire facias* was as a form of enforcing against appeals out of the realm (relating to provisors), and not in the ‘bitter and twisted’ use connected to the 1393 statute that the clergy were specifically protesting. Having outlined their grievance regarding the misuse of the Winchester statute, the clergy appealed to the king to,

⁵⁵¹ Wilkins, *Concilia*, iii, p. 555.

⁵⁵² Ibid.

⁵⁵³ 2 Hen. IV, c. 3-4.

declare and cause to be declared...that the said statute...and the pains and penalties contained in the same, have relation only to suits, processes [...] made or pursued, or to be made or pursued in the court of Rome, or in any other places outside the realm of England.⁵⁵⁴

However, as with their complaints from 1434 and 1439, this petition did not result in any change to the 1393 statute. An interesting point regarding these clerical complaints from 1439 to 1447 is the awareness amongst the clergy of the specific cause of their grievances. They realised that the writ of *praemunire facias*, though misused, was a second-order problem, and the real cause of their complaint was in the misinterpretation of the 1393 Statute of *Praemunire*. They were also able to identify the specific portions of the statute's text that were being misinterpreted to the detriment of ecclesiastical jurisdiction. Through a tendentious reading of the 1393 legislation a new 'offence' of *praemunire* was being created without the approval of parliament. Seeing the future implications that such an offence could (and did) have for the jurisdiction and freedoms of the clergy, they were keen to see this new use curtailed before it had the chance to be confirmed in parliament (or through legal precedent). It is also pertinent that in the 1444 convocation the 1393 statute is specifically called the 'Statute of *Praemunire*'; by this point it seems *praemunire* had begun to be viewed as an offence separate from provisors (possibly because of this new reading of the statute).

Such was the clerical relationship to *praemunire* up to the end of Henry VI's reign. What is clear from the earlier complaints in the 1399 convocation up to and including the meeting in 1447 was that the interference of the secular authorities in ecclesiastical business was a constant issue. In 1399 a number of articles were presented which complained of various secular intrusions, particularly misuses of the writs of prohibition and of *attachias*. In the convocations of the 1430s and 1440s, these concerns were the same. The clergy still had reason to protest that secular parties were encroaching upon ecclesiastical freedoms. However, now they had a particular grievance related to these general encroachments, the Statute of *Praemunire* (1393) and the writ of *praemunire facias*. The complaints concerning these two aspects of *praemunire* show a sophisticated understanding from the clergy of what precisely the wording of the 1393 statute said, and

⁵⁵⁴ Ibid.

how this was being used to the detriment of the English Church. Their complaints indicate a rough date from when this 'new' use of *praemunire* began to apply; the grievances in the 1434 convocation say that the misuse of the writ is a recent occurrence, suggesting somewhere around 1430. However, despite their protests, no formal solution was ever presented by the king.

Charta de Libertatibus Clericorum

Henry VI's reign was marked as one of lost liberties for the English clergy, caused in part by the novel interpretations of the writ of *praemunire facias*. The beginning of Edward IV's reign, however, suggested that maybe the Church in England could regain some of their lost liberties. In response to a list of clerical grievances, Edward IV granted to them the 'Charta de Libertatibus Clericorum'.⁵⁵⁵ This charter, granted at Westminster Palace on 2 November 1462, confirmed a number of ecclesiastical privileges which the clergy believed had been largely overlooked for many years. Included as witnesses on the charter were: the king's brothers, George duke of Clarence and Richard duke of Gloucester; the dukes of Norfolk and Suffolk ('our very dear cousins'); the great chamberlain of England Richard, earl of Warwick; the treasurer John Tiptoft, earl of Worcester; Henry Bouchier, earl of Essex; William Neville, earl of Kent; John Neville, marquess of Montagu; William Hastings; and John Fogge.⁵⁵⁶ Though these men may not have physically been in attendance, their association with the charter lends credence to its prestige. The grievances presented to the new king probably originated from the proceedings of the 1460 convocation, in which three items were presented for urgent reform. Two of these items pertained directly to loss of ecclesiastical liberties, due to secular encroachments and the writ of *praemunire facias*. Item two directed that those sheriffs and other local officials who were indicting priests and other ecclesiastical persons for frivolous and unjust causes should be subject to the proper canonical punishments. Item three reiterated the issue of the writ called *praemunire facias* to channel ecclesiastical causes into the secular courts; all those using this or other unjust royal writs to draw pleas out of the ecclesiastical courts were to be pronounced excommunicate.⁵⁵⁷

⁵⁵⁵ Wilkins, *Concilia*, iii, pp. 583-5.

⁵⁵⁶ Wilkins, *Concilia*, iii, pp. 585.

⁵⁵⁷ *Convocation*, vi, p. 108.

The title given to the charter in the *Concilia Magnae Britanniae et Hiberniae* outlines three specific grievances that required attention: the reinstatement of the so-called ‘benefit of clergy’, the confirmation that all trees over twenty years of age could be tithed by the Church, and a further attempt to curb the misuse of *praemunire facias*.⁵⁵⁸ The privilege of ‘benefit of clergy’ allowed all clerics to escape conviction for felony before the common-law courts. Though a form of this privilege existed in Anglo-Saxon times, it was not officially recognised until the reign of Henry II, who confirmed it as part of the fallout of Thomas Beckett’s murder, to assure the clergy that they were safe from common law (read: royal) jurisdiction.⁵⁵⁹ The 1352 statute *Pro Clero*, enacted between the first Statutes of Provisors and *Praemunire*, outlined the basis for this system:

[that] all manner of clerks, secular as well as regulars, who shall henceforth be convicted before secular justices for whatsoever felonies or treasons, concerning persons other than the king himself or his royal majesty, shall henceforth have and freely enjoy the privilege of holy church, and shall without any further hindrance or delay be handed over to the ordinaries who shall demand them.⁵⁶⁰

The process was a source of tension between the canonists and the common lawyers throughout the period, their main point of contention being how ‘benefit of clergy’ was received. To ecclesiastical lawyers, it was a right; a man of the clergy could not (according to canon law) be subject to secular justice. To the common lawyers, however, it was a privilege, which could be taken away if abused.⁵⁶¹ One such manner in which men of the temporal sphere saw the privilege being exploited was in the way in which a person was tested for clerical status. Originally, the accused would have to prove possession of at least the first tonsure (the first physical sign of ordination into both major and minor holy orders). However, by the end of the fourteenth century the prerequisite for proving clerical status

⁵⁵⁸ ‘*Charta regis Edwardi quarti de libertatibus clericorum; et ne ipsi clerici per laicos arrestentur, aut in aliquot per breve de “Praemunire facias” vexentur; et quod decimam de grossis arboribus libere exigere valeant*’. Wilkins, *Concilia*, iii, p. 583.

⁵⁵⁹ R. H. Helmholz, *The Oxford History of the Laws of England, Volume I, The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), p. 508; C. B. Firth, ‘Benefit of Clergy in the Time of Edward IV’, *EHR*, 32 (Apr., 1917), 175-191.

⁵⁶⁰ 25 Edw. III, Stat. 6, c. 3 (*SR*, i, p. 325).

⁵⁶¹ Leona Christine Gabel, *Benefit of Clergy in England in the Later Middle Ages* (Northampton, Mass.: Dept. of History of Smith College, 1929), pp. 1, 25-28.

was in a test of literacy; the reading generally being from a Latin psalter.⁵⁶² By the fifteenth century this test had changed from a basic reading test for clergy to a reading test regardless of orders, and thus the privilege was able to be abused by those seeking to circumvent the common law.⁵⁶³ Thus, while the clergy were defending their *right* of ‘benefit of clergy’ there were those abusing the *privilege*, causing tension between the ecclesiastical and temporal courts.⁵⁶⁴ What the clergy viewed as encroachments upon their liberties may instead have been secular attempts to stop this privilege being abused. In the Charter of Ecclesiastical Liberties the clergy were granted their request; any secular official found to be disobeying the terms of the charter, or refusing to respond to an ecclesiastical official within fifteen days of a claim that a man was a member of the clergy, was required to appear in Chancery under a penalty of £200 (of which two thirds was to go to the Crown) to show cause as to why the cleric’s claim was disregarded.⁵⁶⁵

One of the ways in which men of the common law had been encroaching on the jurisdiction of the ecclesiastical law courts was by transferring disputes on the issue of tithes, specifically the tithing of great trees, ‘decimam de grossis arboribus’ – being trees older than twenty years – into the common law courts. The matter of tithes, as with the ‘breach of faith’ cases which bolstered the business of the ecclesiastical courts throughout the Yorkist period, had a degree of jurisdictional overlap.⁵⁶⁶ Theoretically, the payment of tithes was a spiritual matter, a tithe being the payment intended for the cure of souls. Those defaulting on such payments could technically be at risk of excommunication, and thus the issue fell within the jurisdiction of the Church. However, if a litigant could argue that in losing the tithe their right of patronage was affected, or that the tithe in dispute had come to be classed as a lay chattel by sale or composition, then the said litigant could pursue the matter in the common law courts.⁵⁶⁷ The collection of tithes on ‘great trees’ was not a new dispute; a statute of 1371 prohibited the collection of tithes on any trees more than 20

⁵⁶² Swanson, *Church and Society*, p. 151.

⁵⁶³ *Ibid.*

⁵⁶⁴ For tensions between the Church and the common lawyers, see particularly Chapters VI, VII and – for the disputes contributing to the Submission of the Clergy – Chapter VIII.

⁵⁶⁵ Wilkins, *Concilia*, iii, p. 584.

⁵⁶⁶ See Chapter VI.

⁵⁶⁷ Norma Adams, ‘The Judicial Conflict over Tithes’, *EHR*, 52 (Jan., 1937), 1-22; J. A. F. Thomson, ‘Tithe Disputes in Later Medieval London’, *EHR*, 78 (Jan., 1963), 1-17.

years old, a statute that the men of the English church had refused to accept.⁵⁶⁸ Although this statute directed that a writ of prohibition should be issued against such offenders, a *praemunire* action in 1503 was brought into the King's Bench on the basis of this 1371 statute, against the vicar of Hornchurch in Essex.⁵⁶⁹

The charter also went into some detail to describe how the men of the common law had justified prosecuting those in holy orders and transferring tithe disputes in the secular law courts. Immediately following the clause confirming the ecclesiastical right to hear tithe disputes, the charter specified that all cases of this type should be determined without any threat of the use of the writ of *praemunire facias*, or the penalties of the Statute of *Praemunire* of 1393.⁵⁷⁰ This is consistent with the complaints made by the English clergy in the convocations of the 1430s and 1440s; the measures suggested in those assemblies were evidently non-effective. The specific mention of *praemunire* in the *Charta de Libertatibus Clericorum* could have been a major blow to the offence, had the charter been enforced diligently. The terms of the charter limited the jurisdictional claims of the common law over those of the ecclesiastical courts. However, evidence for the rest of the period suggests that enforcement of this 1462 charter was lax at best. Less than a year after the charter was granted, complaints were made by the lower house of convocation that certain clerks were still being held by the secular authorities, despite the charter specifically disallowing such actions.⁵⁷¹ Although this was not a complaint about the use of *praemunire*, the continued abuses upon 'benefit of clergy' – the main point of grievance outlined in the charter – suggests that the rest of the charter was similarly overlooked. It is far more likely that the charter was instead a means for Edward IV to shore up support among the English clergy at a time when he was in need of as many allies as possible. The official line in the charter is that Edward granted the charter in gratitude for the recovery of his hereditary right to the throne.⁵⁷² The parliament begun in November 1461 had as its first item of business asserted the king's title over that of his predecessor Henry VI; this charter could be seen as a continuation of these attempts to legitimise this title.⁵⁷³ He thus granted this charter to

⁵⁶⁸ 45 Edw. III, c. 3; Helmholz, *The Oxford History of the Laws of England, Volume I*, p. 176.

⁵⁶⁹ KB27/969, rot. 93 (*Clerk vs Rede*). See Chapter VII.

⁵⁷⁰ Wilkins, *Concilia*, iii, pp. 583-4; 16 Ric. II, c. 5.

⁵⁷¹ Wilkins, *Concilia*, iii, p. 585; *Convocation*, vi, pp. 157-58.

⁵⁷² Wilkins, iii, p. 584.

⁵⁷³ *PROME* (1461), xiii, p. 11.

rectify past wrongs (specifically those made by the Lancastrians); he was not making a serious effort to ensure the continuation of these liberties.

By the 1470s any optimism resulting from the 1462 *Charta de Libertatibus Clericorum* had thoroughly diminished, and again complaints appeared in convocation surrounding the loss of ecclesiastical liberties. In the Canterbury convocation of 1472 the lower clergy presented a list of grievances, including a request that sheriffs and other local law officers release all ecclesiastical persons and hand them over to the relevant ordinaries for punishment.⁵⁷⁴ The 1462 Charter had done little to confirm ecclesiastical liberties in the long term, further suggesting that it had been little more than a show of good faith by the king. As in 1462, this new request for all ecclesiastical persons to be released was similarly unsuccessful; the request is followed by the addendum that the king had not yet consented to this request, ‘ad istam petitionem dominus rex nondum consentit’, nor was there any evidence that he did so at a later date. A parliamentary petition dated to around this time suggests that some pockets of the clergy, realising that the 1462 charter had been a dead weight, were willing to try a different tack when reacting to the use of *praemunire*. The exact date of the petition is uncertain, though it has often been associated with the parliament of 1472 to 1475.⁵⁷⁵ The petition’s preamble evokes comparisons between martial success and piety – ‘with victorious triumphs the princes of the land have, under God’s mighty sufferance, excelled all the countries adjacent’ – which makes the likely date for the petition sometime before Edward IV’s 1475 military campaign in France, placing it sometime during the 1472 to 1475 parliament.⁵⁷⁶ The authorship of the petition is similarly uncertain; all that is clear is that they were part of the English clergy. The opinions made in the petition are in line with the attitudes expressed by the wider clergy in convocation during the period, and as such the petition provides a unique viewpoint into the struggle for ecclesiastical liberties at this time, albeit from a small pocket of the English Church rather than the clergy as a whole. The fact that the petition ended up in the Westminster Abbey Muniments suggests that the author(s) of the petition was possibly a member of the Abbey, though it is equally possible that the petition was found here because the Abbey was

⁵⁷⁴ Wilkins, iii, p. 609; *Convocation*, vi, p. 210.

⁵⁷⁵ The petition was first associated with the 1472-75 parliament in D. Morgan, ‘The Apotheosis of a Warmonger; the political afterlife of Edward III’, *EHR*, 112 (Sept., 1997), 856-81.

⁵⁷⁶ *Westminster Abbey Muniments 12235; PROME (1472-75)*, xiv, pp. 341-42.

frequently used as a meeting place for the Commons when parliament met at Westminster during the fifteenth century.⁵⁷⁷

The focus of the petition is again the attempt to have the liberties of the English Church protected from the secular authorities. It was made because something had to be done about the abuse and misuse of ‘venomous writs of cursed simony and perjury’ out of which ‘grows all manner of exuberant mischiefs’.⁵⁷⁸ The petition also reinforced the fact that God is lord of all lords and subject to no-one, and therefore because of this there should be nothing within the king’s laws ‘which might be know [to be] contrary unto God’s law’; *praemunire*, when used against the English ecclesiastical courts to the detriment of the church, could be perceived as such.⁵⁷⁹ The following points of the petition further illustrated that the 1462 Charter was not being enforced to the satisfaction of the English clergy. The first of these once again requested confirmation of the privileges and liberties of the English Church which, the author added had previously been confirmed in parliament. This request was to be found in almost all meetings of convocation since the charter had been enacted. The second point referred specifically to the clause in the 1462 charter which pertained to the misuse of the writ of *praemunire facias*. The author of the petition requested that all secular judges be put out of the king’s protection if they encroached upon the liberties of the English Church through the use of the writ of *praemunire facias*; ironic considering those guilty of *praemunire* were also put out of the king’s protection.

The petition also accused the English common lawyers of unjustly interpreting certain statutes, a probable allusion to the (mis)reading of the 1393 Statute of *Praemunire*. Shortly before the petition was written, in 1465, the secular justices in England had confirmed that *praemunire* actions founded upon the 1393 statute could be brought against England’s church courts.⁵⁸⁰ The author asked that in future statutes should be made and interpreted solely on the authority of parliament (and the king), not on the authority of any secular justices.⁵⁸¹ The petition suggested a number of ways to combat these unjust judges, such as the creation of new impartial roles to oversee the judgements of both the

⁵⁷⁷ Alasdair Hawkyard, ‘From Painted Chamber to St. Stephen’s Chapel: The Meeting Places of the House of Commons at Westminster until 1603’, *Parliamentary History*, 21 (2002), 62-84.

⁵⁷⁸ *Westminster Abbey Muniments 12235; PROME (1472-75)*.

⁵⁷⁹ *Ibid.*

⁵⁸⁰ *YB Mich. 5 Edw. IV, pl. 7, fo. 6b*. See Chapter VI.

⁵⁸¹ *Westminster Abbey Muniments 12235; PROME (1472-75)*.

ecclesiastical and common law courts. Taking this idea further, the compiler of the petition advised the king and parliament that they should create an offence to deal specifically with any secular party that encroached upon ecclesiastical liberties. In essence the petition suggested an offence be created that could counteract the one of *praemunire*, which protected the interests of the ecclesiastical courts where *praemunire* protected those of the common law. This point in particular hints at a change of tack from certain areas of the clergy when dealing with what they perceived to be vexatious offences such as *praemunire*. The charter of 1462 showed that the clergy's main interest was in limiting the scope of the offence. By the time this petition was compiled some ten years later it is clear that at least one member of the clergy – not content with the way that the liberties and privileges of the Church had been overlooked – was actively seeking to find ways to contest *praemunire* with the creation of an offence designed to counteract it. However, like the 1462 charter, and the various complaints from convocation in the years following it, this petition did not lead to any major upheaval of ecclesiastical and common law jurisdictions and no 'anti-*praemunire*' statute was enacted; there is no evidence that one was ever discussed. It is possible, if the petition was written by a member of Westminster Abbey, that the petition never made it to parliament, drafted but never submitted. What the petition does indicate though is that during the 1470s the offence of *praemunire* was still perceived as a threat to ecclesiastical liberties by the clergy, and that some were attempting to combat the offence rather than merely complain about it in convocation. Later in the 1470s, with no firm repeal of *praemunire* or confirmation of ecclesiastical liberties forthcoming, the English clergy petitioned the papacy for aid. Pope Sixtus IV (1471-84) responded with a (rather noncommittal) bull in 1476 stating that all those who indicted before secular justices or who imprisoned (and in any way injured) men of the church would be excommunicated.⁵⁸² However, there is no indication that this bull had any effect on the use of *praemunire* or other similar attacks to ecclesiastical liberties.

The 1480s did not fare much better for the clergy in their attempts to regain these lost liberties. On 3 April 1481 the lower clergy once again asked the Archbishop of Canterbury to plead to the king on their behalf, in an attempt to make sure the freedoms of

⁵⁸² Wilkins, *Concilia*, iii, pp. 609-10.

the English Church were respected by the secular sphere.⁵⁸³ Once again no action was taken. Edward's disinterested stance to ecclesiastical liberties had remained fairly constant throughout his reign. However, with the accession of Richard III the clergy had another opportunity to assert their ecclesiastical liberties. One of the first acts of the clergy upon Richard's accession was to petition the king for a confirmation of the English Church's liberties, as they had done early in Edward's reign.⁵⁸⁴ Richard had been witness to the original 1462 charter and, like his brother before him, needed support from the English Church. Therefore on 23 February 1484 Richard confirmed the existing *Charta de Libertatibus Clericorum*.⁵⁸⁵ Unlike the 1462 charter, this confirmation did not specifically mention the misuse of *praemunire*, instead emphasising that the secular arm should not encroach on ecclesiastical jurisdictions (and referred offenders back to the 1462 charter for punishment). However, Richard's reign differs from that of Edward's in that the clergy were more willing to press forward with protecting their liberties on their own, rather than waiting for the support of a seemingly uninterested monarch (at the very least a monarch with more pressing responsibilities). In the final convocation of Richard's brief reign, which was assembled until March 1485 (Richard was killed at the Battle of Bosworth in August), a (canon) law was passed in convocation which imposed a penalty of excommunication on any secular person who might arrest, or had already arrested, any ecclesiastical person.⁵⁸⁶ But, as with so many attempts by the clergy during this fifteenth-century period, there is no evidence that this law was ever put into any practical effect.

Conclusion

This chapter has analysed how the clergy viewed *praemunire* in relation to ecclesiastical jurisdiction in the Lancastrian and Yorkist periods. In 1399, the English clergy raised concerns that their freedoms were being encroached upon by various temporal writs. Whether this was a genuine concern for church freedoms, as opposed to ecclesiastical jurisdiction, is uncertain. They may have used the more emphatic rhetoric of 'ecclesiastical liberties' to better get their complaints heard. At this time it was the writs of prohibition and *attachias*, not *praemunire facias*, which were causes for concern. Although the nature of the

⁵⁸³ *Convocation*, vi, p. 264.

⁵⁸⁴ *Concilia*, iii, p. 614.

⁵⁸⁵ *Concilia*, iii, p. 616.

⁵⁸⁶ *Convocation*, vi, p. 303.

complaint remained the same – ecclesiastical liberties were being disregarded by the common law – during the fifteenth century abuses of the writ of *praemunire facias* became the focus of such grievances. If the records of convocation are any indication, the English clergy were aware that this writ was being used to the detriment of ecclesiastical jurisdiction by the Canterbury assembly of 1434. By 1439, such was their concern about the misuse of the writ that they proposed its abolition. That this was the period when papal attempts to have the Statutes of Provisors repealed, after which the offence of provisors became less relevant, suggests that these changes in the interpretation of *praemunire* are somehow connected to this subsidence of provisors. The initial complaints surrounding *praemunire* in the 1430s and 1440s culminated in the *Charta de Libertatibus Clericorum* in 1462, which attempted to curb this wider interpretation of *praemunire facias*. However, there is no evidence the charter was ever rigidly enforced, and as such complaints of the clergy regarding *praemunire* continued into the 1470s, by which point certain pockets of the clergy looked to fight fire with fire and proposed a new offence to counteract *praemunire*. This again came to naught. It was not until the reign of Richard III that the clergy gained any ground in their ongoing battle for ecclesiastical liberties. The confirmation of Edward IV's Charter of Ecclesiastical Liberties in 1484 suggested a possible victory for the clergy, and a year later in convocation they tried to act on this by passing a statute enforcing the terms of the 1462 charter. However, Richard's reign was too brief to know if any of these measures would have been enforced. Under Henry VII the English clergy would once again find themselves the target of the common law courts, and the offence of *praemunire* increasingly became the tool by which to do this. The following chapters will examine how the offence came to be used in such a way.

Chapter VI: *Vel Alibi*

By the 1430s, the ecclesiastical arm in England recognised that *praemunire*, traditionally an offence closely associated with provisors and appeals to the court of Rome, now threatened Church jurisdiction through a broad reading of the 1393 Statute of *Praemunire*. According to the clergy, the blame for this unique interpretation of the statute laid with the secular authorities in England, the English common lawyers. The previous chapter showed how the church attempted to combat this misuse of the statute, and how those attempts amounted to little by the end of Richard III's reign. This chapter examines the legal opinion surrounding these statutes across the fifteenth century, and how these debates correlated to the complaints made by the clergy. Twenty-six cases are recorded in the printed Year Books concerning *praemunire* for the period 1400-1500, and have provided the first point of entry for such an examination into the legal interpretations of *praemunire* for the fifteenth century.⁵⁸⁷

Legal Opinion of Ecclesiastical Jurisdiction

By the Tudor period, *praemunire* was a wide-reaching offence that could apply to all manner of appeals out of the king's courts; appeals to the English ecclesiastical courts were just as punishable by the 1393 Statute of *Praemunire* as appeals to the court of Rome were. It could even apply in cases drawn from the English ecclesiastical courts to the Papal Curia.⁵⁸⁸ However, just because *praemunire* could be applied in this way, it did not mean that it immediately was. The general opinion of the English common lawyers up to the Tudor period was that certain disputes could rightly be heard in the ecclesiastical sphere, and as such a number of debates and discussions on the matter of spiritual versus temporal authority appear in the legal reports of the fifteenth century. The earliest such case to

⁵⁸⁷ YB Mich. 8 Hen. IV, pl. [9], fos 6b-7a (1406); Mich. 10 Hen. IV, pl. 2, fos 1b-2b (1408); Mich. 11 Hen. IV, pl. 67, fos 37a-39a (1409); Trin. 11 Hen. IV, pl. [17], fos 76a-78b (1410); Hil. 14 Hen. IV, pl. 4, fos 14a-14b (1413); Trin. 3 Hen. VI, Fitzherbert Estoppel 18, fo. 294v (1425); Trin. 7 Hen. VI, pl. 5, fo. 39b (1429); Trin. 7 Hen. VI, pl. 14, fo. 41b (1429); Mich. 8 Hen. VI, pl. 8, fos 3a-3b (1429); Hil. 9 Hen. VI, Fitzherbert Praemunire 2, fo. 105r (1431); Trin. 11 Hen. VI, pl. 10, fo. 50b (1433); Mich. 17 Hen. VI, Fitzherbert Praemunire 11, fo. 105v (1438); Pasch. 18 Hen. VI, pl. 6, fos 6a-7b (1440); Hil. 19 Hen. VI, pl. 17, fos 54a-54b (1441); Mich. 27 Hen. VI, pl. 35, fos 5b-6a (1448); Mich. 30 Hen. VI, Statham Provision 5, fo. 143r (1451); Mich. 31 Hen. VI, pl. 1, fos 8b-10a (1452); (anno.) 36 Hen. VI, pl. 32, fos 29b-31a (1458); Mich. 5 Edw. IV, pl. 7, fo. 6b (1465); Pasch. 7 Edw. IV, pl. 3, fos 1a-2b (1467); Pasch. 9 Edw. IV, pl. 8, fos 2b-3a (1469); Pasch. 9 Edw. IV, pl. 12, fo. 3b (1469); Mich. 13 Edw. IV, pl. 3, fos 1b-2b (1473); Mich. 2 Ric. III, pl. 45, fos 17b-18b (1484); Trin. 15 Hen. VII, pl. 8, fo. 9a (1500); Trin. 15 Hen. VII, pl. 12, fo. 9b (1500).

⁵⁸⁸ YB Pasch. 9 Edw. IV, pl. 12, fo. 3b.

address this debate in the 1400s concerned Henry Chichele's provision to the see of St David's on 4 October 1407. As part of his promotion, Chichele was granted papal permission to retain his other benefices *in commendam*, on account of the bishopric's reduced revenues caused by the Welsh wars of Henry IV.⁵⁸⁹ According to canon law, particularly John XXII's 1317 bull *Execrabilis*, once Chichele was provided to a bishopric he should have vacated all other benefices.⁵⁹⁰ Chichele was previously chancellor of Salisbury. Three days after Chichele's papal provision to the see of St David's, Nicholas Bubwith, then-bishop of Salisbury, was translated to Bath and Wells, creating a vacancy in Salisbury.⁵⁹¹ By this vacancy, all empty benefices in this diocese were in the king's hand (as the Statutes of Provisors reiterated), including Chichele's former chancellorship. It was for this reason that Chichele was summoned to appear in Common Pleas in Michaelmas Term 1409.⁵⁹² The king's serjeants Skrene and Norton argued that Chichele's provision to St David's left the Salisbury vacancy void for the king to present. Serjeant Horton, however, reminded the justices of the court that Chichele had papal bulls granting him all his other benefices until otherwise ordained by the pope. Justice Hankford accepted this statement, and deferred to the pope's power in this (spiritual) matter.⁵⁹³ However, Chief Justice Thornton stressed that the king's rights were paramount against the pope's in the realm of England. This argument raised the topic of the Statutes of Provisors, which were enacted to offer a solution to just this issue. However, Serjeant Horton told the justices to disregard the Statute of Provisors (1351), for it was never put in use. Thirning countered, arguing that regardless of whether the statute was put in force it was never repealed, and therefore remained valid no matter its past use. Additionally, Thirning had no interest in questioning the power of the pope; rather he wished to see how a papal bull could change the law of England.⁵⁹⁴ This debate continued into the Easter Term of 1410.⁵⁹⁵ Chief Justice Thirning laid out the matter for debate. The bishop of England had always enjoyed pluralities through papal dispensations; this was not the issue at hand. The question raised was whether or not a papal bull could be

⁵⁸⁹ *CPL*, vi, pp. 46-60.

⁵⁹⁰ Aemilius Friedberg, ed., *Corpus Juris Canonici*, 2 vols (Leipzig: ex officina Bernhardi Tauchnitz, 1879-81), ii, p. 1207 (Extrav. Jo. XXII 3.1); E. F. Jacob, *Henry Chichele*, (London: Nelson, 1967), p. 8.

⁵⁹¹ *ODNB*, 'Nicholas Bubwith', by R. G. Davies.

⁵⁹² *YB Mich.* 11 Hen. IV, pl. 67, fos 37a-39a.

⁵⁹³ *Ibid.*

⁵⁹⁴ '*Jeo ne ferra disputation del poiar l'appostel, mes jeo ne scay veier coment il per ses bulles changera le ley d'Engleterre.*' *Ibid.*

⁵⁹⁵ *YB Pasch.* 11 Hen. IV, pl. 10, fos 59b-60b.

upheld within the realm. The mention of the Statute of Provisors in the last session seemed to bring this legislation into focus, for the first opinion raised was by Justice Colepeper, who asserted that the law of the land could not be changed by a papal bull. Considering the Statute of Provisors, he concluded that as the statute was made 'in salvation of the right of the king and other patrons, and to restrain the pope's encroachments', Chichele was at fault.⁵⁹⁶ Serjeant Skrene, however, said that Chichele was not to blame. The bishop was a man of the Church and therefore must obey all papal instruction. Still though the matter went undecided, and was again raised in Trinity term.⁵⁹⁷ In this instance, the debate continued while Chichele was overseas. The common lawyers were just as divided as they had been in the previous two sessions. Justice Hankford continued to maintain the pope's power in this matter; Justice Hill argued that instead it was God's power, not the pope's, and from God both the king and the pope were granted their authority, therefore the pope should not have authority in this matter.⁵⁹⁸ Thirning throughout commented on the need for the common law to prevail over the apostolic in England.⁵⁹⁹

Similarly, in 1413 the prior of B. (the full name not given in the report) brought a writ of *praemunire facias* against the prior of N. because the latter had appealed to the court of Rome in a dispute over an advowson.⁶⁰⁰ The defendant (of the *praemunire*) was awarded 100 marks as a result of this. However, the plaintiff did not pay the prior, and so was sued execution, and excommunicated.⁶⁰¹ The defendant prior argued that as the plaintiff was excommunicate, he should not have suit in the king's courts. Unlike the benefice, which was a spiritual appointment – and therefore within the jurisdiction of the English Church or the papacy to promote a suitable candidate – the advowson of that benefice was treated as property, and thus fell within the remit of the common law courts. Over the course of the hearing, the defence argued that in cases where a clerk was despoiled of his benefice by another clerk, he could sue in Court Christian or in the court of Rome, without disturbing the advowson of the benefice. The justices of the bench agreed upon the premise of this argument, thus acknowledging that in certain cases the Courts Christian had jurisdiction, but

⁵⁹⁶ Ibid.

⁵⁹⁷ YB Trin. 11 Hen. IV, pl. [17], fos 76a-78b.

⁵⁹⁸ Ibid.

⁵⁹⁹ Jacob, *Chichele*, p. 9.

⁶⁰⁰ YB Hil. 14 Hen. IV, pl. 4, fos 14a-14b.

⁶⁰¹ Ibid.

did not agree to the defendant's premise that this argument was relevant to his case. Additionally, Justice Hankford of the Common Pleas argued that in the common law courts one should not be disabled by excommunication, unless they are excommunicated by an English bishop, for the pope's laws do not extend to the common law courts.⁶⁰²

Another judgement regarding the pope's authority in the realm was made in Michaelmas term 1429.⁶⁰³ The *praemunire* case, appearing in Common Pleas, involved two abbots of the county of Chester. The defendant abbot (of the *praemunire* action) argued that because the original ecclesiastical court case had occurred in the county of Chester, the court of Common Pleas had no cognisance there, as Chester was a palatinate and thus subject to its own jurisdictions. Additionally, the defendant abbot argued that the plaintiff abbot had been excommunicated, and showed to the court a writ certified by the Archdeacon of Chester to confirm this fact. Thus, two jurisdictional matters were in debate. The focus of the lawyers' discussion was the jurisdiction of the pope in common law matters. Sergeant Rolf, acting on behalf of the defendant abbot, showed the writ from the Archdeacon of Chester certifying that the plaintiff abbot had been excommunicated for certain 'crimes and contempts' to the Holy Church. In response, Sergeant Chaunterell, speaking on behalf of the plaintiff, argued that the Court would not, and could not, accept this writ because the Pope was not the king's minister, and therefore any evidence derived from this source could not be used in any of the king's common law courts. Chief Justice Babington argued that in this case the plaintiff abbot would always remain excommunicated, no matter the outcome. The excommunication had occurred within the remit of the ecclesiastical sphere, and for the temporal sphere to request that the said excommunication be renounced would be overstepping their jurisdiction.⁶⁰⁴ Two years later in October 1415 the king's council discussed whether a *praemunire facias* could apply in a certain case because of uncertainties whether the matter was spiritual in nature.⁶⁰⁵ Roger Lansell was summoned to the court of King's Bench by Nicholas Ryecroft, for obtaining citations from Rome to summon Ryecroft to the papal curia. Ryecroft thus sued a writ of *praemunire facias* against Lansell and five others, for being drawn from the realm. However,

⁶⁰² Ibid.

⁶⁰³ YB Mich. 8 Hen. VI, pl. 8, fos 3a-3b.

⁶⁰⁴ Ibid.

⁶⁰⁵ *POPC*, ii, p. 181.

Lansell went directly to the royal council to show them the obnoxious bulls that were in dispute, who pronounced that the case should rightly be heard in the ecclesiastical sphere, and that the bulls were not prejudicial to the Crown.⁶⁰⁶ These examples demonstrate that there was no clear separation between temporal and ecclesiastical jurisdiction, and the boundary between the two was open to legal debate, sometimes on a case by case basis. When cases could legally be heard in Courts Christian, however, the king and his justices were willing to cede temporal justice.

La Courte de Rome ou Aillours

Considering the clamour from the church concerning the misuse of *praemunire* against English ecclesiastical courts, it is striking how little the matter is discussed in the legal records. The English clergy had identified by 1434 that a new interpretation of the writ called *praemunire facias*, used in actions upon the 1393 Statute of *Praemunire*, was being used to the detriment of the English church courts.⁶⁰⁷ The complaint made in the convocation of 1434 suggested that this was a relatively new interpretation.⁶⁰⁸ It is surprising to note therefore that the English common lawyers did not explicitly confirm that actions made upon the Great Statute of *Praemunire* could be used in this way until 1465; twenty years after the clergy had made such complaints. This confirmation appeared in a legal debate from Michaelmas Term in 1465.⁶⁰⁹ The *praemunire* case itself was fairly typical, and did not mention precisely the issue of appeals in the English ecclesiastical courts. In a *praemunire facias* against many, some defendants appeared, and some did not appear. Those that appeared argued that there were faults in the plaintiff's writ, and thus the case could not proceed. Furthermore, those defendants that did not appear – who per the terms of the Statutes of *Praemunire* should have been outlawed on non-appearance – should not be prosecuted either, for the faulty writ halted all proceedings.⁶¹⁰ No more information is given concerning the process and pleading of the case, and as such these protests can be construed in one of two ways, depending on the extent of the 'fault' in the writ of *praemunire facias*. The defendants could simply have been challenging a technical aspect of

⁶⁰⁶ Ibid.

⁶⁰⁷ See Chapter V.

⁶⁰⁸ *Convocation*, v, p. 345.

⁶⁰⁹ YB Mich. 5 Edw. IV, pl. 7, fo. 6b

⁶¹⁰ Ibid.

the writ, such as a misspelling in the summons or a fault with the sheriff's return (as seen in fourteenth-century proceedings).⁶¹¹ If this was the case, argument could be made that those defendants that did not appear failed to do so because the writ was vague. Alternatively, the defendants could have been arguing for a more substantive fault in the writ of *praemunire facias*, that the writ was at fault because it did not apply in ecclesiastical cases heard within the realm. A note follows this brief narrative, confirming the application of *praemunire* in cases begun in English courts:

Note, that the Statute of *Praemunire* stated 'in Curia Romana vel alibi', in which 'alibi' is understood to mean in the courts of the bishops, so that if one is excommunicated in a bishop's court for a thing belonging to the Royal Majesty, to wit a thing at common law, he will have *praemunire facias*, and so [it was] adjudged.⁶¹²

It is possible that the defendants, in attempting to claim their case was invalid, drew on the conclusions made in the convocation of 1439 regarding the writ of *praemunire facias* and 1393 Statute of *Praemunire*. In this assembly, the writ of *praemunire facias* was 'abolished' for its use against English courts.⁶¹³ A writ formulary from the same period also implied that actions brought upon the 1393 Statute of *Praemunire* were voided because using *praemunire facias* against the English church courts was invalid.⁶¹⁴ Additionally, by this point the 1393 statute could be referred to as the Statute of *Praemunire* (as it had been in the convocation of 1444) with needing further clarification.⁶¹⁵ The only other debate that specifically confirmed the use of *praemunire* in English church court cases dates from 1500. Chief Justice Fyneux of King's Bench, debating the joint temporal-spiritual jurisdiction held by the Bishop of Durham in his palatinate, remarked that the bishop could punish his clerks for allowing someone to sue in the bishop's spiritual court for a temporal cause by *praemunire*.⁶¹⁶ Whether or not such a process against English ecclesiastical court cases in

⁶¹¹ See Chapter II.

⁶¹² YB Mich. 5 Edw. IV, pl. 7, fo. 6b.

⁶¹³ *Convocation*, v, p. 345.

⁶¹⁴ BL Add. MS 35205, m. 10. See Chapter V.

⁶¹⁵ For the convocation record, see previous chapter.

⁶¹⁶ YB Trin. 15 Hen. VII, pl. 8, fo. 9a. For Fyneux's potential contribution to the spate of *praemunire* actions in the early Tudor period, see Chapter VII.

general was valid was not even considered; by this point it was an accepted use of the offence.

Two further cases, from 1384 and 1440, possibly imply that *praemunire* applied to cases begun in English ecclesiastical courts. In both these cases, the implication derives from the use of the ambiguous term ‘Court Christian’. The term itself could be applied most generally to all ecclesiastical courts, both English and papal. However, in many fifteenth-century reports the phrase ‘Court de Rome’ is specifically used, or variations thereof (‘Papal Curia’, etc.).⁶¹⁷ Therefore for the 1440 entry at least the use of the phrase ‘Court Christian’ could be pertinent. The 1384 entry describes a case where a defendant named as an accessory in a *praemunire* action was allowed not to answer on finding sureties that he would not proceed in Court Christian before the attainder of the principle.⁶¹⁸ The action was founded upon the 1365 Statute of *Praemunire*, which confirmed the stipulation made in the 1351 Statute of Provisors that defendants would not appeal to Rome to quash any judgements made in the king’s courts (itself reinforced by the 1353 Statute of *Praemunire*).⁶¹⁹ If ‘Court Christian’ did apply to the English courts in this instance, it is unlikely that the common lawyers considered that *praemunire* could be used against actions initiated in these courts. In 1440 though, the use of the term Court Christian to apply to courts other than the court of Rome is more plausible. By this point the English clergy were vehemently protesting that the writ of *praemunire facias* was being used against the English ecclesiastical courts unjustly, through novel readings of the 1393 Statute of *Praemunire*. Any reference to such courts in relation to *praemunire*, however slight, could be acknowledgment that the offence applied to courts other than the Papal Curia, especially considering the terminology used in other debates contemporary to this court case that specified the court of Rome.⁶²⁰ The 1440 case that the debate was attached was not one of *praemunire*; it was instead related to forgery.⁶²¹ During the debate, Serjeant Portington (of Common Pleas) remarked that when an action is begun in *Court Christian* by one who is in holy orders against several, for a battery made by them to him, that one of the defendants

⁶¹⁷ For example *YB Mich.* 10 Hen. IV, pl. 4, fos 1b-2b; *Hil.* 14 Hen. IV, pl. 4, fos 14a-14b; *Trin.* 3 Hen. VI, pl. Fitzherbert *Estoppel* 18, fo. 294v.

⁶¹⁸ L. C. Hector and Michael E. Hager, *Year Books of Richard II*, Ames 47-48.

⁶¹⁹ See Appendix 1.

⁶²⁰ *YB Mich.* 10 Hen. IV, pl. 4, fos 1b-2b; *Hil.* 14 Hen. IV, pl. 4, fos 14a-14b; *Trin.* 3 Hen. VI, pl. Fitzherbert *Estoppel* 18, fo. 294v.

⁶²¹ *YB Pasch.* 18 Hen VI pl. 6, fos 6a-7b.

could sue a *praemunire facias* against the plaintiff for suing in Court Christian for battery, because the suit properly belonged to the king's court.⁶²² The argument that Portington was making was actually that any one of the defendants could bring the *praemunire* action against the plaintiffs even though they had all been accused (the responding action did not require the involvement of all accused parties). However, his argument framed *praemunire* as an offence to be used against Church courts when an action belonged in the temporal sphere. The example he used, of battery, would not be heard in the English ecclesiastical courts, for it was rightly a temporal dispute. Therefore, the implication is that *praemunire* could apply to actions falsely brought into the English ecclesiastical courts.

The previous examples identified how and why *praemunire* could apply to cases begun in the ecclesiastical courts of England. However, this was not the first time that the king's courts had entertained a *praemunire* action brought against cases originated in these Church courts; perhaps unwittingly, the first debate that discussed such a case originated as early as 1408.⁶²³ The dispute was between the defendant Goodfather, vicar of Sidlesham (Sussex), and the plaintiff Lee, one of his parishioners. Lee had issued a writ of *praemunire facias* – founded upon the 1353 Statute of *Praemunire* – to the vicar because Goodfather had cited Lee to the court of Rome to answer for a case of trespass. Trespass was a matter to be decided within the common law courts; additionally the writ of *praemunire facias* had been confirmed as a writ of trespass in 1368.⁶²⁴ Goodfather retorted that his suit was not a trespass but a mortuary, the customary payment paid to the church upon death, due to him on the death of his parishioner John Segrome Jr in 1404.⁶²⁵ He did not deny taking the dispute to Rome and agreed that he had cited Lee and John Segrome Sr, who withheld the mortuary payment (the best beast of Segrome Jr) from Goodfather on the advice of Lee, thereafter beginning his suit in the consistory court of Chichester. Both Lee and Segrome Sr had been excommunicated by the end of 1406.⁶²⁶ Even though the case against Goodfather was based on his bringing his case of trespass to Rome, the suit was begun in an English

⁶²² 'C'est 'ad este adjuge or tarde', que ou action fuit atteinte en Court Chrestien per un que fuit 'infra sacros' envers plusieurs, d' un batery fait per eux a luy, que un des defendants en son nom seul suit un Praemunire facias envers le plaintiff de ceo que il avoit sue en Court Chrestien de baterie dont le suite pertiene a le Court le Roy...' Ibid.

⁶²³ KB27/590, rot. 6 (*Lee vs. Goodfather*); YB Mich. 10 Hen. IV, pl. 2, fos 1b-2b.

⁶²⁴ YB Hil. 42 Edw. 3, pl. 26, fo. 7a.

⁶²⁵ KB27/590, rot. 6.

⁶²⁶ CPL, vi, p. 298.

ecclesiastical court, the consistory court of Chichester. The matter at issue was therefore whether or not the case was one of mortuary (an ecclesiastical dispute) or trespass (a common law matter). It was the opinion of the common lawyers that this case was rightly a case pertaining to mortuaries, and therefore should only be heard in an ecclesiastical court (English or otherwise).⁶²⁷ To conclude the matter, Chief Justice of King's Bench William Gascoigne observed that any suits about bequests by testament and removal of tithes were also cases that should only be heard in the ecclesiastical courts.⁶²⁸ Had this case concerned a matter deemed to be within the scope of the king's secular courts, the implications of the *praemunire facias* used against an action begun in the English ecclesiastical courts may have prompted greater debate; one question unanswered was whether or not the *praemunire facias* applied to both the consistory court case in Chichester and the case that drew the matter out of the realm. However, this early in the fifteenth century, it does not appear that *praemunire* was viewed as an offence typically used in such a way.

Another *praemunire* case to seemingly challenge the jurisdiction of the English ecclesiastical courts was heard in 1413.⁶²⁹ As with the earlier case against Goodfather, the suit ended up in the court of Rome, but again was begun in an English ecclesiastical court, in this instance the Canterbury court of audience. The plaintiff, Strange, appeared before the ecclesiastical court accused (and subsequently charged) of threatening violence, a matter that should traditionally be heard in the king's common law courts. However, as with many disputes in later-medieval England, there was some jurisdictional overlap in these cases. A threat of violence could be heard in an ecclesiastical court if the threat was made to a clergyman; the defendant of the *praemunire*, Richard, was a member of the church (clericus). What is particularly of note in this case is that both the Canterbury court case and the Rome court case were considered equally unlawful; the damages awarded to Strange for his citation to Rome and to Canterbury were the same.⁶³⁰ Thus the King's Bench *praemunire* action treated both the Canterbury and Rome court cases as equally applicable to the same *praemunire* action. Despite the implications this use could have had on the

⁶²⁷ YB Mich. 10 Hen. IV, pl. 2, fos 1b-2b.

⁶²⁸ Ibid.

⁶²⁹ KB27/607, rot. 37 (*Strange vs Richard*).

⁶³⁰ KB27/607, rot. 37.

future use of *praemunire* actions against cases drawn into the English ecclesiastical courts, there does not seem to have been any contemporary debate surrounding the case.

There are various other examples of *praemunire* being used in actions where cases are drawn into the court of Rome *and* the English Courts Christian. A writ of *praemunire facias*, contained within a Chancery formulary from around 1430 (and therefore the time when the clergy were complaining of the misuse of *praemunire facias*), directed how Thomas Halsale, late brother of the order of friars minor of Preston in Amounderness, secured a provision to the priory of Penwortham, of the abbey of Evesham, which was founded by progenitors, and sued John, the abbot of Gloucester, within the realm and without.⁶³¹ A *praemunire facias* from the same formulary also demonstrates the writ being used against actions brought in both Courts Christian within the realm and the court of Rome.⁶³² Another action was brought against Roger Longley, clerk, by John Brugge, clerk. Brugge had been presented to the church of Appleton in the Salisbury Diocese but falsely ousted by Thomas Brons, clerk, appointed by the crown who was wrongly informed that the church was vacant.⁶³³ Brugge claimed he had sued in King's Bench through *scire facias* – a writ requiring a person to show why a judgement should or should not be annulled – and had the false presentation invalidated. On Brons' resignation, however, Longley was presented to the benefice, and thus sued Brugge in Court Christian (unspecified).⁶³⁴ As long as some appeal out of the realm was involved, *praemunire* could apply to cases that technically originated in England. The use of *praemunire* against appeals both within and without the realm provides an explanation as to why there was so little debate surrounding the 'new' use of *praemunire facias* in the 1430s (identified from the complaints of the clergy). If *praemunire* was already being used against cases originating in English Courts Christian – albeit with the caveat that an appeal to Rome occurred later in proceedings – it is no great leap of interpretation to conclude that the offence could also be used when no appeal to Rome followed. In 1440, the point when clerical complaints regarding this new use of *praemunire facias* reached a peak, Serjeant Portington could generally remark that *praemunire* could apply when a case of battery was brought into Court Christian, framing it

⁶³¹ *BL Add. MS 35205*, m. 8. See Appendix 2, no. 5.

⁶³² *BL Add. MS 35205*, m. 9. See Appendix 2, no. 12.

⁶³³ *Ibid.* Appendix 2, no. 22.

⁶³⁴ *Ibid.*

as a general comparison of spiritual versus ecclesiastical jurisdiction; he did not imply that it was unusual for a *praemunire* action to be used against such courts.⁶³⁵ In 1465, when the common lawyers finally confirmed *praemunire's* applicability against actions originating in these ecclesiastical courts, again there was not great debate surrounding the confirmation; the implication was that this had been the accepted interpretation for some time.⁶³⁶

This raises the question of why *praemunire* was not used in this manner sooner, and more litigiously. One possible reason is a lack of publication of the 1393 statute. The statute was only mentioned in one contemporary chronicle in the fourteenth century (and even that entry may have been added later); also, it was not published along with the other 'statutes of provisors' in 1411 in Ireland.⁶³⁷ Additionally, only one Year Book entry specifically mentions this 'Great' Statute of *Praemunire*; the 1465 report that confirmed its use against the English church courts.⁶³⁸ Furthermore, the legal debates surrounding the extent of ecclesiastical jurisdiction in the fifteenth century suggest that the common lawyers of the early 1400s were willing to cede certain disputes to the spiritual sphere, if they could not rightly be heard in the king's courts. Therefore, although *praemunire* could apply to actions begun in these ecclesiastical courts, there was no great desire from the secular justices to exploit this interpretation at this time. Frustratingly, the contemporary records give no indication of any legal debate concerning the application of *praemunire* during this period, and therefore the reasons remain open to speculation. From the 1430s, however, the offence was being used enough against English ecclesiastical courts to prompt complaint in convocation, and by 1440 it appears that the legal profession see nothing remarkable about *praemunire* being used this way.

Breach of Faith

One of the suggestions put forth by an agitated pocket of the clergy in the 1470s was that there should be an offence to counteract actions of *praemunire*, one that protected cases against being removed to the common law courts.⁶³⁹ Although nothing came of this

⁶³⁵ YB Pasch. 18 Hen VI pl. 6, fos 6a-7b.

⁶³⁶ YB Mich. 5 Edw. IV, pl. 7, fo. 6b.

⁶³⁷ *Eulogium (Historiarum sive temporis)*, ed. by Frank Scott Haydon, iii, p. 368; R. D. Edwards, 'The kings of England and papal provisions in fifteenth-century Ireland', p. 269.

⁶³⁸ YB Mich. 5 Edw. IV, pl. 7, fo. 6b.

⁶³⁹ *Westminster Abbey Muniments*, 12235; *PROME* (1472-5), xiv, 341-42. See Chapter V.

petition, the English ecclesiastical courts were experiencing an increase in business during the Yorkist period. From 1461, when the records of the Consistory court of Canterbury are fairly consistent, there was a marked rise in the number of cases appearing before this court, and would not decline until the early years of Henry VII's reign.⁶⁴⁰ This increase has been attributed to one type of case in particular, the so-called 'breach of faith' case.⁶⁴¹ Like many of the cases later brought into the common law on actions of *praemunire*, this case shared some overlap between spiritual and temporal jurisdiction. A case which related to simple contracts, being a written or oral agreement, was a temporal dispute. However, if it could be proven that the said contract had been made on a promise then the matter was within the remit of the ecclesiastical law courts, as the perpetrator, on breaking said promise, had committed a sin; literally a breach of faith. At the same time as these ecclesiastical courts were experiencing a boom in business, the common law courts were in a comparative slump.⁶⁴² Though not specifically related to the business of the church courts, this slump would not improve until innovations in procedure were introduced in the Tudor period.⁶⁴³ This adverse correlation in the business of the courts could indicate a period from 1465-85 whereby the English ecclesiastical courts were poaching business from the common law, through broad interpretations of ambiguous disputes. This period links to when the English clergy were petitioning the king and parliament for confirmation of their liberties; Edward IV's *Charta de Libertatibus Clericorum* was granted at a similar time to this upsurge in business.⁶⁴⁴ Therefore, considering all these factors, it is expected that *praemunire* actions, which could after all be applied to cases brought into English ecclesiastical courts, should increase in response to these jurisdictionally ambiguous 'breach of faith' cases. However, there is no indication that such a change did occur until the Tudor period.

The common lawyers did not ignore this increase in 'breach of faith' actions. Throughout the Yorkist period these men continually affirmed that such cases were a matter for the common law, not the spiritual courts. In the Exchequer Chamber in 1460 John Fortescue, Chief Justice of King's Bench, stated that in cases where a party sued in

⁶⁴⁰ B. L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (London: Oxford University Press, 1952), p. 84.

⁶⁴¹ *Ibid.* pp. 89-92.

⁶⁴² Marjorie Blatcher, *The Court of King's Bench, 1450-1550* (London: Athlone Press, 1978), p. 21.

⁶⁴³ See Chapter VII.

⁶⁴⁴ See Chapter V.

Court Christian ‘pro laesione fidei’ (for breach of faith) in a matter relating to debts, then a prohibition could be sent against him, because the matter was not spiritual.⁶⁴⁵ So too would a prohibition be valid against anyone suing in Court Christian anyone who pledged their faith to make feoffment at such a day (and failed to make the feoffment), because this suit would make the spiritual courts touch something that belongs to the king’s court.⁶⁴⁶ All assembled judges were in agreement with this statement. The distinction, however, was not always as clear. During Easter Term 1468 in Chancery the lawyers of the court debated how and when ‘breach of faith’ could apply.⁶⁴⁷ The plaintiff sued the defendant in Chancery because the defendant had promised his benefice to the plaintiff, after the defendant resigned. However, upon resignation the plaintiff was contested in the occupation of this benefice because the defendant had resigned the benefice without the plaintiff’s knowledge. Serjeant Jenney, seemingly arguing for the defendant, claimed that in the case a breach of faith applied, and therefore the case should rightfully be heard in Court Christian, just as one would if they became engaged to marry a woman, only to refuse the marriage later.⁶⁴⁸ Robert Stillington, the Chancellor, argued that while a breach of faith should rightly be heard in Court Christian, in this case the plaintiff’s plea was good, because the plaintiff is damaged by a non-performance of the promise. That Stillington would argue for the jurisdiction of the common law is interesting considering he was both Chancellor and Bishop of Bath and Wells. But, Jenney retorted, the plaintiff’s plea was only good in the temporal courts if he had a deed for the benefice.⁶⁴⁹

Still the legal profession tried to better define how ‘breach of faith’ applied to both jurisdictions. In Michaelmas Term 1480 in Common Pleas Serjeant Bridges tried to separate the spiritual offence from the temporal. Thus in a case of battery against a chaplain, the spiritual offence (of beating a chaplain) was punishable by Court Christian, whereas the act of battery could be punished in the common law.⁶⁵⁰ So in the breach of faith, the spiritual court could punish the broken promise, but the temporal thing that the faith was made on should be punished in the common law courts. Chief Justice Bryan of Common Pleas agreed

⁶⁴⁵ *YB Pasch.* 38 Hen. VI, pl. 11, fo. 29a.

⁶⁴⁶ *Ibid.*

⁶⁴⁷ *YB Pasch.* 8 Edw. IV, pl. 11, fo. 4b.

⁶⁴⁸ *Ibid.*

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *YB Mich.* 20 Edw. IV, pl. 9, fo. 10b.

with this argument, stating that as Court Christian could not punish a temporal action, a breach of faith on a temporal act must be heard in the king's courts.⁶⁵¹ But for all these attempted distinctions, the legal profession still did not connect *praemunire* to this encroachment upon temporal jurisdiction. Instead, each case argued that the defendant (in the Church court case) would have a prohibition.⁶⁵² Two possible reasons for this are apparent. Either, the common lawyers of the Yorkist period were using prohibition as a blanket term to include such writs as *praemunire facias* (which had been connected to prohibition since 1441) or alternatively, *praemunire* was not yet viewed primarily as an action to be used against English ecclesiastical courts, but still appeals out of the realm.⁶⁵³

The legal opinion regarding spiritual jurisdiction does not fit with the picture painted by clerical complaint of overreaching justices utilising *praemunire* to the diminishment of the Church. In most of the legal reports for the period, the men of the common law instead are mostly concerned with ensuring that pleas are heard in the correct place; if it is rightly a spiritual matter, then it should not be received in the common law. Even though there was some overlap to a number of these disputes, there is no evidence in the law reports that these intersections were being exploited. If there was a concerted attempt to diminish ecclesiastical jurisdiction within the realm, it was either occurring outside of the common law courts, which is unlikely, or there was no debate regarding this novel application of *praemunire*, which also seems improbable. The most likely explanation then is that the application of *praemunire* against English ecclesiastical courts in the 1430s was not a novel interpretation – hence the lack of debate in the common law – but neither was such action encouraged if it concerned matters of an ecclesiastical nature. As late as 1483, the legal profession were arguing for the comity principle, the legal recognition of another's jurisdiction. Chief Justice Huse of King's Bench outlined a number of instances where either the temporal or spiritual courts could hear a case in Michaelmas Term 1483.⁶⁵⁴ Huse argued that if an action was commenced in Court Christian and afterwards something comes in issue that is triable by common law, it can still be tried by canon law. For example if one sues for a horse devised to him in Court Christian (a testamentary cause), and the defendant

⁶⁵¹ Ibid.

⁶⁵² See also, *YB Pasch. (or Trin.) 22 Edw. IV, pl. 47, fos 20a-20b.*

⁶⁵³ *YB Hil. 19 Hen. VI, pl. 17, fos 54a-54b.*

⁶⁵⁴ *YB Mich. 1 Ric. III, pl. 7, fo. 4a.*

pleads that he was given the horse before the testator died (a plea of goods, so temporal), the matter can still continue in Court Christian.⁶⁵⁵ Huse's main argument related to whether or not an alien born of English parents could inherit by the common law, and thus used these examples as evidence of the fluidity of court jurisdictions both within and without the realm.⁶⁵⁶

Principals and Accessories

Only a select few of the Year Book cases from the fifteenth century mention the use of *praemunire* against English ecclesiastical courts. However, the common lawyers discussed various other aspects of *praemunire* in these debates. Though they confirmed that actions of *praemunire* founded upon the 1393 statute could be used more broadly, a number of these other cases associated the earlier Statutes of *Praemunire* with appeals to the court of Rome. A Year Book entry from 1413 discussed a case where the defendant (of the *praemunire*) drew the plaintiff into a plea in the court of Rome for the right to an advowson in the reign of Richard II. In the court of Rome, the plaintiff (of the *praemunire*) was forced to pay 100 marks to the defendant prior.⁶⁵⁷ In a case unrelated to *praemunire* in 1425, Chief Justice Babington of Common Pleas remarked in his comments that 'if one recovers against me in the court of Rome...I will have *praemunire*...', confirming the association of the offence with Rome.⁶⁵⁸ In 1469, four years after *praemunire* had been confirmed as an offence that could be applied against cases brought into the English Church courts, the common lawyers confirmed that the original use of the offence was also still valid.⁶⁵⁹ Justice Yelverton of King's Bench remarked that it has always been the opinion of the common lawyers that if a clerk sued another in the court of Rome for a spiritual thing, where he could have remedy in an ordinary's court within the realm, then a *praemunire* could be issued against the clerk, for the statute states 'drawn into a plea outside the realm'.⁶⁶⁰ *Praemunire* could be applied in a multitude of ways, including it seems in instances where an action could rightly be heard in the English ecclesiastical courts. But, in such instances the *praemunire* action would still come before the king's common law courts, for the offence

⁶⁵⁵ Ibid.

⁶⁵⁶ Ibid.

⁶⁵⁷ YB Hil. 14 Hen. IV, pl. 4, fos 14a-14b.

⁶⁵⁸ YB Trin. 3 Hen VI pl. Fitzherbert Estoppel 18, fo. 294v.

⁶⁵⁹ YB Pasch. 9 Edw. IV, pl. 12, fo. 3b.

⁶⁶⁰ Ibid.

was a common law action.⁶⁶¹ A number of other cases link *praemunire* to the court of Rome in passing.⁶⁶²

Another common topic of debate in the fifteenth-century Year Book reports concerning *praemunire* is the punishments prescribed to secondary defendants in *praemunire* actions. These secondary defendants had, since the enactment of the Statutes of *Praemunire*, been included in any actions against the primary defendant. *Praemunire* actions would often recite the inclusion of these defendants, the ‘notarii, procuratores, fautores et consilarii’ of the primary.⁶⁶³ The matter of secondary defendants was raised three times in the fourteenth-century law reports.⁶⁶⁴ The most important of these, which concerns how secondary defendants should be treated, dates from 1370.⁶⁶⁵ A *praemunire facias* was sent against three principal defendants who, despite reasonable forewarning (by the writ) did not appear on their specified day. Thus, as per the terms of the 1353 Statute of *Praemunire*, they were put out of the king’s protection, and forfeited their lands and chattels. However, though the principals did not appear, their accessories did, and thus a lengthy debate was required to decide how such defendants should be treated in these instances. The plaintiff, the abbot of Waltham, prayed that the accessories answer the *praemunire* charge. These defendants, however, argued that they should be not compelled to answer until the principals had been attainted; if these accessories were to be attainted, only for the principals to appear later and be acquitted, then the initial attainder against the accessories would be invalid. Therefore, nothing could be done until the principals appeared. The matter at issue here was whether a *praemunire* should be treated as a felony – whereby accessories were not required to answer until the principal appeared – or as a trespass, where all defendants, accessories or otherwise, answered on appearance regardless of whether the principal appeared. Upon close inspection of the writ of *praemunire facias*, which outlined the terms of the Statutes of *Praemunire*, it was adjudged that *praemunire* was a trespass in nature, and therefore the defendants should answer.⁶⁶⁶

⁶⁶¹ No such instances of this application have been found in the cases examined in this thesis.

⁶⁶² YB Hil. 19 Hen. VI, pl. 17, fos 54a-54b; Mich. 30 Hen. VI, Statham Provision 5, fo. 143r.

⁶⁶³ The specific wording taken from KB27/1002, rot. 33 (1512, *Huckell v. Cokkys*). Other cases use words to this effect: *abbettatores, excitatores*, etc.

⁶⁶⁴ YB Hil. 42 Edw. III, pl. 26, fo. 7a; Hil. 43 Edw. III, pl. 14, fo. 6a; Pasch. 44 Edw. III, pl. 6, fos 7b-8a.

⁶⁶⁵ YB 44 Edw. III, pl. 6, fos 7b-8a.

⁶⁶⁶ *Ibid.*

In 1406, the plaintiff argued that in a *praemunire* against two, one as the principal and the other as accessory, the damages should not be shared between the defendants, but should be recovered in common against both.⁶⁶⁷ The same argument was made by a defendant in a *praemunire* action in 1451. Two defendants were sued for procuring and suing bulls in the court of Rome, the one for suing these bulls, the other for abetting this process. The abettor appeared, and argued that he ought not answer, because the principal had not answered the summons and the action did not lie solely against the secondary defendant.⁶⁶⁸ The justices argued that as the 1353 Statute of *Praemunire* directed that abettors would have the same penalty as those suing to Rome, then their defence would be treated as separate.⁶⁶⁹ In 1452 John Fortescue, Chief Justice of the King's Bench, used *praemunire* as an example in a case where multiple defendants were being accused, to show that it was not unusual for certain writs to include more than one defendant, '...in a writ of *decies tantum* [a writ which lay against a juror, or jurors, who had taken money for giving a verdict], I will have a writ against...the embracers together; I will have a *praemunire facias* against the procurators, notaries, counsellors, and the principals together...'.⁶⁷⁰ In 1458 it was cited to explain why multiple defendants received equal charges, arguing that a *praemunire facias* would be brought against three, 'one because he sued the bulls, another for the proclamation of them, and the third for execution of them'.⁶⁷¹ Justice Laken of King's Bench argued the same in 1473,

in a *praemunire facias* sued against the provisors, fautors, procurators, executors, etc. the one (defendant) will not plead a release made to the other (defendant), because the causes of action are separate, and none of the defendants is party to the other defendant's wrong.⁶⁷²

Thomas Billing, Chief Justice of King's Bench, agreed with this argument, adding that 'it is the plaintiff's folly to join [the defendants] in one action'.⁶⁷³ An interesting reverse of this argument was made by Serjeant Portington in 1440 (in the same case where he confirmed

⁶⁶⁷ YB Mich. 8 Hen. IV, pl. [9], fos 6b-7a.

⁶⁶⁸ YB Mich. 30 Hen. VI, Statham Provision 5, fos 143r.

⁶⁶⁹ Ibid.

⁶⁷⁰ YB Mich. 31 Hen. VI, pl. 1, fos 8b-10a.

⁶⁷¹ YB (anno) 36 Hen. VI, pl. 32, fos 29b-31a.

⁶⁷² YB Mich. 13 Edw. IV, pl. 3, fos 1b-2b.

⁶⁷³ Ibid.

praemunire could be used against ‘Court Christian’).⁶⁷⁴ Could a sole plaintiff have *praemunire* against someone in holy orders if the action brought in Court Christian was against the *praemunire* plaintiff and others? Or did the *praemunire* have to be brought by all those defendants of the Court Christian case? Portington adjudged that the sole plaintiff’s writ was good, because the wrong against him in Court Christian was not the same as the wrongs against the other defendants in the Church court.⁶⁷⁵ In cases of *praemunire*, the fault of the defendants is equal, regardless of whether they were the principal or the accessory; so too was the wrong against the plaintiff in the church court personal to them.

Other Applications

Other cases confirmed the specifications of the statutes. The earliest Year Book entry to confirm that defendants were put out of the king’s protection on non-appearance was in 1369.⁶⁷⁶ In 1370, it was confirmed that not only were guilty appellants put out of the king’s protection, but also had their goods and chattels forfeit. In a 1433 case, where the plaintiff had sued a writ of trespass (not *praemunire facias*) against the defendant for taking his goods and chattels, the King’s Serjeants Newton and Goderede commented that, ‘if in *praemunire facias* the defendant does not appear, he will be put out of the king’s protection and lose his chattels’.⁶⁷⁷ Writs of *praemunire facias* often recited part of the statutes, so the stipulations of the legislation were presumably well-known to those using the writs.⁶⁷⁸ Some law reports even claimed that the whole of the statute was recited in the writ; considering the length of the statute and the size of the average writ, this was slightly hyperbolic.⁶⁷⁹ In 1431 a writ of *praemunire facias* founded upon the Statute of Provisors was queried in the court of Common Pleas.⁶⁸⁰ On appearance, the defendant demanded hearing of the writ, and demanded judgement of the writ, for he did not believe he had received his provision falsely. Chief Justice Babington told the defendant that he had no plea until he renounced his provision. The defendant refused until he had seen the statute, and wanted to have

⁶⁷⁴ YB Pasch. 18 Hen VI pl. 6, fos 6a-7b.

⁶⁷⁵ Ibid.

⁶⁷⁶ YB Hil. 43 Edw. III, pl. 14, fo. 6a.

⁶⁷⁷ YB Trin. 11 Hen VI, pl. 10, fo. 50b.

⁶⁷⁸ L. C. Hector and Michael E. Hager, *Year Books of Richard II*, Ames 47.

⁶⁷⁹ Ibid.

⁶⁸⁰ YB Hil. 9 Hen. VI, Fitzherbert *Premunire* 2, fo. 105r.

mainprise. Babington said he would only have it on a penalty of 100 pounds.⁶⁸¹ One case from 1500 concerns whether or not someone could appear by attorney in a *praemunire* action. The defendant abbot of St. Albans prayed that he could make attorney, because he was a lord in parliament. Serjeant Botiller confirmed this, citing the example of a previous abbot lord of parliament in 1469. However, the judges of the court argued that because the 1353 Statute of *Praemunire* was vague on the issue of attorneys, the defendant abbot should appear in person.⁶⁸² It was agreed in parliament in October 1383 that those accused of *praemunire* that were overseas could appoint an attorney by royal patent; however, this stipulation did not confirm whether this applied to those remaining in the realm.⁶⁸³

The Uses of *Praemunire Facias*

Even in the mid-fifteenth century, the distinction between *praemunire* and provisors was blurred, partly because of the common writ of *praemunire facias* used in both actions. The earliest association of the two in a Year Book report was in 1365, in response to Bishop Lynne's *praemunire*. The 1353 Statute of *Praemunire*, which Lynne's original *praemunire facias* was founded on, was referred to as the Statute of Provisors in the record.⁶⁸⁴ In 1441 again the two offences are indistinct from each other.⁶⁸⁵ Justice Ayscough of Common Pleas argued that even though the writ of *praemunire facias* did not make mention of any prohibition, it was treated as such because the statute is a prohibition in itself. The statute Ayscough was referring to was the Statute of Provisors.⁶⁸⁶ A fifteenth-century writ formulary lists a large number of writs of *praemunire facias*, used in actions of both *praemunire* and provisors.⁶⁸⁷ A writ addressed to the sheriff of Cornwall regarding the church in the crown's gift directed that the sheriff sue the offending chaplain a *praemunire facias* along with his abettors for procuring provision from the apostolic see, by virtue of which he prosecuted the rightful holder of the church, who had been canonically instituted; an action of provisors.⁶⁸⁸ Similarly, a provision to a priory in the advowson of Matilda, countess of Oxford

⁶⁸¹ Ibid.

⁶⁸² YB Trin. 15 Hen. VII, pl. 12, fo. 9b.

⁶⁸³ *PROME* (1383), vi, pp. 309-18.

⁶⁸⁴ YB Pasch. 39 Edw. III, pl. [3], fos 7a-7b.

⁶⁸⁵ YB Hil. 19 Hen. VI, pl. 17, fos 54a-54b.

⁶⁸⁶ Ibid.

⁶⁸⁷ BL Add. MS 35205. See Appendix 2.

⁶⁸⁸ BL Add. MS 35205, m. 8. See Appendix 2, no. 1.

(Maud Ufford, widow of Thomas de Vere), was contested by one Henry, who secured a provision, leading to prosecution in courts beyond the realm.⁶⁸⁹

Other examples in this writ formulary show *praemunire facias* used in more traditional *praemunire* pleas, i.e. appeals out of the realm in matters pertaining to the king. John, prior of Bath cathedral, was sued by J., master of the hospital of St John Bath, for tenths of larders and pastures at Rome.⁶⁹⁰ William Penrych of London, clerk, prosecuted Nicholas Birchels in a court out of the realm for 20 marks, and obtained a bull to that effect, which he pleaded in London.⁶⁹¹

An interesting argument concerning the application of *praemunire* in actions brought by bill was made in 1484.⁶⁹² The plaintiff, a prothonotary of King's Bench, brought the defendant Sands (or Sonds) into King's Bench because they had sued a citation in the court of Audience against the plaintiff, regarding the goods of a deceased person. The defendant then appealed from the court of Audience to the court of Rome, to the disinheritation of the king and great damage of the plaintiff.⁶⁹³ The legal discussion arose because the plaintiff had brought the defendant into King's Bench by bill. In relation to the court of King's Bench, this was a petition addressed directly to a court in order to commence an action.⁶⁹⁴ The bill had an older history connected to the eyre, the circuit court whereby a king's judge would travel around the counties administering royal justice. When the King's Bench was itinerant in the fourteenth century, this bill procedure made more sense than the traditional process of purchasing a writ from Chancery, only to have it sent out to the counties. However, when the court of King's Bench settled at Westminster bill procedure could apply to the county of Middlesex; other counties still needed to purchase a writ.⁶⁹⁵ The issue in this 1484 case arose because the Statutes of *Praemunire* specified that actions should be sued by original writ. Thus Serjeant Townshend argued that because the defendant had not been given two months to answer his charge (as outlined in the writ of *praemunire facias* and Statutes of *Praemunire*) the bill was invalid. The plaintiff argued that the main point of the statute was

⁶⁸⁹ Ibid. See Appendix 2, no. 4.

⁶⁹⁰ Ibid. See Appendix 2, no. 11.

⁶⁹¹ Ibid. Appendix, no. 25.

⁶⁹² *YB Mich.* 2 Ric. III, pl. 45, fos 17b-18b.

⁶⁹³ Ibid.

⁶⁹⁴ Baker, *Introduction to English Legal History*, p. 49.

⁶⁹⁵ Ibid.

that the defendant be given a day in court. Also, King's Bench had jurisdiction over the case; therefore the bill sufficed. The justices of King's Bench agreed that because the defendant was in the Marshalsea (and thus technically Middlesex), the case was good.⁶⁹⁶ A 'bill' of *praemunire facias* had first been discussed in 1448, on a provisors action.⁶⁹⁷ As with the later action, the defendant complained that the bill was not valid because that were not taken by force of the statute. However, Chief Justice Fortescue of King's Bench argued that a bill could be brought for an action on a statute if the defendant was in the custody of the Marshal.⁶⁹⁸ Even – as the 1484 case decided – if the writ of *praemunire facias* specified a two-month warning.⁶⁹⁹

Conclusion

To the common lawyers of the fifteenth century *praemunire* could be applied in a multitude of ways. A *praemunire facias* attached to one of the Statutes of Provisors could still apply to those accepting papal provisions. The surviving writs of this period suggest that these cases were framed in such a way so as to imply an appeal out of the realm; one could not receive a papal provision without appealing for or purchasing it from the court of Rome. In this way *praemunire* continued to be closely linked to provisors. Writs of *praemunire facias* also continued to be applied to cases founded upon the Statutes of *Praemunire*. These cases prosecuted those drawing from the realm matters that should rightfully be heard in the king's law courts. However, the broader reading of the 1393 Statute of *Praemunire* meant that during this period the writ of *praemunire facias* was applied to actions begun in English court cases. Any case heard before a Church court that could rightfully be heard in the king's common law courts could now fall within the remit of a *praemunire*. However, this change did not occur through any great debate; the 'new' application of the writ was confirmed rather dispassionately in 1465. The clergy had been complaining about the misuse of the writ for over twenty years by this point. Allusions to the applicability of *praemunire* against Church court actions were made during the 1430s and 40s, suggesting that to the legal minds of the fifteenth century, this application of *praemunire facias* was no real innovation. If this was the case, then the reason that it was not used earlier in such a way was because

⁶⁹⁶ YB Mich. 2 Ric. III, pl. 45, fos 17b-18b.

⁶⁹⁷ YB Mich. 27 Hen. VI, pl. 35, fos 5b-6a.

⁶⁹⁸ Ibid.

⁶⁹⁹ YB Mich. 2 Ric. III, pl. 45, fos 17b-18b.

the 1393 Statute of *Praemunire* was not widely publicised. Many of the Year Book entries for this period do not question or challenge the way in which *praemunire* is used. Instead, *praemunire* is cited as an exemplar for certain actions. The punishments of forfeiture and outlawry, the penalty for non-appearance, and the issue of secondary defendants feature prominently in these reports. Regardless of the debate surrounding the broader interpretation of *praemunire*, by the time Henry VII became king the offence could lawfully be applied to actions begun in English Courts Christian. The following chapter will examine how, using this broader reading of the 1393 statute, *praemunire* began to encroach upon English ecclesiastical jurisdiction.

Chapter VII: Tudor Innovation

After 1465, the use of *praemunire* in actions begun in the English ecclesiastical courts was confirmed in the common law. However, this did not immediately prompt a surge of *praemunire* actions against such court cases. The legal reports of the period waste little time on the topic: the note that confirmed this potentially wide-reaching use is only fifty-one words long.⁷⁰⁰ It was not until the early-Tudor period that this broader reading of the statute was fully realised. Whereas in the earlier fifteenth century *praemunire* was used primarily against appeals drawn out of the realm to the court of Rome, from the reign of Henry VII these actions increasingly targeted appeals made to the English ecclesiastical courts. Additionally, many of these actions concerned cases traditionally viewed as ecclesiastical matters, such as breach of faith (on a debt), debt & detainee against executors, defamation, mortuaries, tithes. Other disputes brought into the common law in this way concerned lay aspects of church land, including religious houses, grammar schools, chantry land, glebe land and hospitals, heard originally in English Court Christian. By the sixteenth century, these disputes far outnumbered the use of *praemunire* against appeals to the court of Rome. Such was this increase in cases that Richard Nykke, the bishop of Norwich, complained in 1504 that laymen were ‘much bolder against the Church then ever they were’, a response to a spate of *praemunire* actions in his Norwich diocese.⁷⁰¹ This early Tudor period was also one of high-profile disputes relating to the extent of ecclesiastical and common law jurisdiction. The *cause célèbre* of Richard Hunne’s alleged murder by church authorities in December 1514 exacerbated anti-clerical feeling among the Commons and the men of the City of London. Hunne was found dead while in church custody awaiting trial for heresy; he had first drawn the ire of the ecclesiastical authorities by suing an action of *praemunire* against a number of ecclesiastics in King’s Bench.⁷⁰² This chapter examines how the broader interpretation of *praemunire* was applied in the court of King’s Bench in the early-Tudor period, examining the types of cases that appeared, and the sort of people instigating such actions. Existing studies of *praemunire* during this period have identified that a spate of such actions were brought into the court of King’s Bench from 1495

⁷⁰⁰ YB, Mich. 5 Edw. IV, pl. 7, fo. 6b.

⁷⁰¹ SC1/44/83.

⁷⁰² S. F. C. Milsom, ‘Richard Hunne’s *Praemunire*’, *EHR*, 76 (Jan., 1961), 80-82.

onwards.⁷⁰³ These studies have been consulted and expanded upon for this analysis, in a way not possible for earlier periods, due to the number of possible courts a *praemunire* action could appear in. A secondary objective of this analysis is to consider why this increase in *praemunire* actions in King's Bench was occurring at the end of the fifteenth century; after all, *praemunire* had been confirmed as applying to English ecclesiastical court actions twenty years before, in 1465, so why did this increase not occur earlier?

Sir John Fyneux

If there was one general group that benefitted from a wider interpretation of *praemunire* to include actions begun in the English ecclesiastical courts it was the common lawyers, who could utilise such actions to increase business in the common law courts. It was they who decided how *praemunire* could be interpreted, and whether or not certain disputes could be brought into the common law with a *praemunire* action.⁷⁰⁴ However, as the previous chapter demonstrated, there is no indication that this group were particularly zealous in encouraging this wider interpretation of the 1393 statute.⁷⁰⁵ A number of factors suggest why this increase in King's Bench *praemunire* actions occurred in the early-Tudor period and not earlier. Firstly, the common law courts of the fifteenth century were experiencing a lull in business. By 1485, the business of King's Bench (and Common Pleas) was the lowest it had been in the fifteenth century. Though it is difficult to pinpoint exactly why litigation was lower in this period, a number of factors can contribute to this slump. Throughout the fourteenth and fifteenth centuries, England experienced a prolonged period of economic stagnation, epidemic disease, dynastic upheaval, and a static (or declining) population; any or all of these factors could contribute to reduced business in the common law courts.⁷⁰⁶ For the common law courts specifically, this decline can be attributed to the rise of other types of courts hearing traditionally common law matters. Primarily, this was attributed to a rise in the number of conciliar cases heard in the equity courts of Chancery, though it is also possible that the boost in business to the ecclesiastical courts through an increase in 'breach

⁷⁰³ *The Reports of Sir John Spelman*, edited by John Baker, 2 vols (London: Selden Society, 1977-78), ii, pp. 66-68; Palmer, *Selling the Church*, pp. 63-65. For a full list of *praemunire* actions analysed in this period, see Appendix 4.

⁷⁰⁴ YB Mich. 5 Edw. IV, pl. 7, fo. 6b; YB Mich. 10 Hen. IV, pl. 2, fos. 1b-2b.

⁷⁰⁵ See Chapter VI.

⁷⁰⁶ See particularly Blatcher, *King's Bench*, pp. 21-24; E. W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge: Cambridge University Press, 1983), pp. 207-210.

of faith' cases also contributed to this decline.⁷⁰⁷ Thus, by Henry VII's reign the English common lawyers were amenable to implementing innovations to boost the business of King's Bench and Common Pleas.⁷⁰⁸ They were helped in this cause by the new king's apparent faith in the common law. Edward IV's Charter of Ecclesiastical Liberties, which on paper protected the jurisdiction of the ecclesiastical courts to a small extent, was not renewed at the beginning of Henry VII's reign, as it had been at the beginning of Richard III's.⁷⁰⁹ Additionally, two acts of parliament early on in the reign instead outlined a stricter approach to ecclesiastical liberties.⁷¹⁰ As a result the common lawyers could take the initiative and increase business through the use of offences such as *praemunire*, and the number of such cases appearing in the court of King's Bench increased from 1495 onwards.⁷¹¹ It is possible also that they were following the example set in the parliament of 1495, which encouraged the enforcement of 'olde necessarie statutes...made and ordeigned for the comene well of this his [Henry's] realme'.⁷¹²

The common law benefitted from innovative individuals also, willing to encourage the wider application of offences such as *praemunire*. Sir John Fyneux, Chief Justice of the King's Bench from 1495 until his death in 1525, is often cited as being influential in these innovations, such as the increased use of *praemunire*, within the common law.⁷¹³ During his tenure as Chief Justice, Fyneux effectively replaced the chancellor in the prohibition process.⁷¹⁴ Whereas traditionally a writ of *praemunire facias* first had to be purchased from the chancellor in Chancery, Fyneux begun entertaining processes on prohibitions in King's Bench.⁷¹⁵ *Praemunire facias* had been treated similarly to the writ of prohibition since at least 1441.⁷¹⁶ This sped up the process of King's Bench cases and circumvented the chancellor, who throughout this period was often an ecclesiastic, providing an amenable environment for a wider application of *praemunire*. Associated with this process was the

⁷⁰⁷ Woodcock, *Medieval Ecclesiastical Courts*, p. 85.

⁷⁰⁸ E. W. Ives, *Common Lawyers*, p. 274.

⁷⁰⁹ Wilkins, *Concilia*, iii, p. 616.

⁷¹⁰ 4 Hen. VII, c. 13; 12 Hen. VII, c. 7.

⁷¹¹ John Baker, *Oxford History of the Laws of England, Volume VI*, pp. 239-45; Robert Palmer, *Selling the Church*, pp. 63-65.

⁷¹² Paul Cavill, 'The Enforcement of the Penal Statutes in the 1490s: some new evidence' in *Historical Research*, 82 (Aug., 2009), 482-492.

⁷¹³ Baker, *Oxford History, Volume VI*, p. 13; Palmer, *Selling the Church*, pp. 25-27.

⁷¹⁴ Palmer, *Selling the Church*, p. 25.

⁷¹⁵ YB Trin. 12 Hen. VII, pl. 2, fos 22a-24b.

⁷¹⁶ YB Hil. 19 Hen. VI, pl. 17, fos 54a-54b.

application of bill procedure to hear pleas in King's Bench; something that the common law had confirmed could be applied to *praemunire* actions in 1484.⁷¹⁷ Fyneux also promoted the authority of the common law during Henry VIII's reign. In late 1515, Fyneux argued that the system of conventing clerks (transferring a member of the clergy into the common law) was a process by which the common law could aid the ecclesiastical courts, to punish offenders for crimes such as felony, which the ecclesiastical law had no means of enforcing.⁷¹⁸ Later, Fyneux would argue that the use of permanent sanctuary was in derogation of the common good of the realm and thus not sufferable by law.⁷¹⁹ This argument, articulated in 1519, claimed that the pope could not himself set up a sanctuary; he needed the king's permission. Even those sanctuaries that had subsequent royal confirmations were invalid if they had been founded without the king's acquiescence. Those churchmen offering sanctuary under these false claims could be adjudged guilty of *praemunire*.⁷²⁰ Additionally, Fyneux argued,

that a statute must be construed and taken according to the letter so far as it may be; and if not by the letter, then (during the parliament) according to the construction of those who made the statute; and if the parliament has been dissolved, then according to usage – that is, how it has been taken before. The fourth is according to common reason, and that shall be [determined] by the judges.⁷²¹

Fyneux seems to have been a particular promoter of using the writ of *praemunire facias* over that of prohibition. Throughout his tenure as Chief Justice, there were a number of *praemunire* actions relating to disputes over tithes.⁷²² In 1528, however, after Fyneux's death, the same dispute was brought into King's Bench on a prohibition.⁷²³ These views,

⁷¹⁷ YB Mich. 2 Ric. III, pl. 45, fos 17b-18b.

⁷¹⁸ *Reports of Cases by John Caryll*, edited by John Baker, 2 vols (London: Selden Society, 1998-99), ii, p. 691.

⁷¹⁹ S. J. Gunn, 'Edmund Dudley and the Church', *Journal of Ecclesiastical History* 51 (2000), 509-526 (p. 524); E. W. Ives, 'Crime, Sanctuary and Royal Authority under Henry VIII: The Exemplary Sufferings of the Savage Family', in *On the Laws and Customs of England*, ed. M. S. Arnold et al. (Chapel Hill: North Carolina Press, 1981) 296-320, p. 298-99.

⁷²⁰ E. W. Ives, 'Sanctuary', p. 300.

⁷²¹ *Reports of Cases from the Time of Henry VIII*, edited by John Baker, 2 vols (London: Selden Society, 2003-04), i, p. 114; ii, p. 278.

⁷²² KB27/1007, rot. 32 (*Sympson v. Fells*); KB147/2/5/1; KB27/969, rot. 93; KB27/1031, rot. 23 (*Trewynard v. Trevilian*); KB27/991, rot. Rex 9 (*Girlyng v. Smith*); KB27/1006, rot. 35 (*Wryght v. Brokeden*).

⁷²³ KB27/1068, rot. 29 (*Locton v. Thurkylde*).

combined with the fact that his son-in-law, John Roper (chief clerk of the King's Bench from 1498), had a vested financial interest in increasing the business of the court, make it likely that Fyneux was influential in encouraging the wider reading of the offence between 1495 and 1525.⁷²⁴ There is no comparable common lawyer for the Yorkist period in terms of promoting business in King's Bench.

***Praemunire* in King's Bench**

Between 1484 and 1526 seventy-four individual actions of *praemunire* have been analysed from the plea rolls of King's Bench. This figure allows for the fact that the same case could appear more than once in the plea rolls, if the matter was adjourned until the next legal term. These cases can be identified from the name of the defendant, and corroborated by the date the plaintiff was in the church court. The dispute between John Reynolds and John Horwode, which spans four separate pleadings, exemplifies this.⁷²⁵ John Reynolds appeared as plaintiff twice, firstly in Hilary term 1504 and again in the subsequent law term a year later. However, the church court case referred to in both occurred on the same date, 19 January 1504, and thus the two pleadings are part of the same *praemunire* suit. Similarly, the two pleadings where John Horwode was plaintiff refer back to one church court case, on 28 May 1504. As such these four cases in the plea rolls have only been counted twice. The date of each case is taken from the first time the case appeared in the plea rolls. Of the cases examined only three cite any statute other than the 1393 Statute of *Praemunire*. Each of these cases has as the plaintiff a man of the church, and the disputes were related to the more traditional view of *praemunire* as a prohibition of appeals to Rome (often over a disputed benefice); therefore all three cases are brought under the 1365 Statute of *Praemunire*, which reinforced both offences of provisors and *praemunire*.⁷²⁶ No cases for the period were brought under the first Statute of *Praemunire* (1353). As the only statute to apply a broader reading to the offence, it is unsurprising therefore that the majority of cases in King's Bench during the period cite the 1393 Statute.⁷²⁷

⁷²⁴ ODNB 'John Roper', by J. H. Baker.

⁷²⁵ KB27/970, rot. 61, KB27/974, rot. 27d (*Reynolds v. Horwode*); KB27/972, rot. 28, KB27/975, rot. 32 (*Horwode v. Reynolds*).

⁷²⁶ KB27/930, rot. 64 (*Bishop of St David's and Denby v. Walter*); KB27/950, rot. 59 (*Abbot of Whalley v. Persons*); KB27/974, rot. 69 (*Prior of Bath v. Prior of Exeter*).

⁷²⁷ 16 Ric. II, c. 5.

The decade preceding Henry VII's death saw a drastic rise in the number of *praemunire* cases appearing in King's Bench. Between 1500 and the king's death early in 1509 thirty-one *praemunire* cases commenced in King's Bench, compared to the years 1490 to 1499 when only nine cases were begun.⁷²⁸ In particular there was a marked rise in cases after 1495. The highest number of *praemunire* cases in any given year was in 1504, when eight cases were recorded in the plea rolls (nine including the second appearance of Clerk and Rede).⁷²⁹ 1504 also seemed to be a high-point for *praemunire* actions outside of the central law courts, based on the example set at Norwich. Richard Nykke, the bishop of Norwich, wrote to Archbishop Warham regarding a high number of *praemunire* actions in his diocese in the same year.⁷³⁰ Interestingly, none of the cases that appeared in King's Bench in 1504 originate from Norwich, suggesting that where possible a *praemunire* action might be heard more locally, such as in the court of assizes, rather than the central law courts.⁷³¹ The year 1504 has often been cited as a turning point in Henry VII's reign. The king's attempts to bolster the royal coffers became more obvious, and the reports of contemporaries lead to the traditional view that Henry had become avaricious after this date.⁷³² His ministers Cardinal Morton (d. 1500) and Sir Reynold Bray (d. 1503) had been

⁷²⁸ KB27/925, rot. 29 (1492, *Hamond v. Somnour*); KB27/930, rot. 64 (1494, *Bishop of St Davids and Denby v. Walter*); KB27/942, rot. 59 (1497, *Abbot of Reading v. Shirwode*); KB27/948, rot. 34 (1498, *Wynall v. Lawrans*); KB27/949, rot. 84 (1498, *Pierce v. Richardson*); KB27/950, rot. 59 (1499, *Abbot of Whalley v. Persons*); KB27/950, rot. 63 (1499, *Somer v. Perot*); KB27/953, rot. 76 (1499, *Buscher v. Hegyns*); KB27/953, rot. 67d. (1499, *Prior v. Callawey*); KB27/954, rot. Rex 3 (1500, *Rex v. Emondess*); KB27/959, rot. 40 (1501, *Ferrers v. Abbot of St Albans*); KB27/960, rot. 71d (1501, *Prior of Shulbred v. Prior of Lewes*); KB27/960, rot. 77 (1501, *Pere v. Sade*); KB27/961, rot. 103 (1501, *Turbefeld v. Lever*); KB27/961, rot. 75 (1501, *Calle v. Stubbys*); KB27/961, rot. 80d (1501, *Penfold v. Facete*); KB27/963, rot. 34 (1502, *Hunte v. Prowde*); KB27/966, rot. Rex 5 (1503, *Rex v. Sygrave*); KB27/968, rot. 72 (1503, *Gilbart v. Spersalt*); KB27/969, rot. 63d (1503, *Poyntz v. Blunt*); KB27/969, rot. 93 (1503, *Clerk v. Rede*); KB27/970, rot. 24 (1504, *Mylne v. Barfote*); KB27/970, rot. 32 (1504, *Carmynowe v. Boscawyn*); KB27/970, rot. 61 (1504, *Reynolds v. Horwode*); KB27/971, rot. 37 (1504, *Gilbard v. Bean*); KB27/971, rot. 67 (1504, *Amyas v. Woderove*); KB27/972, rot. 28 (1504, *Horwode v. Reynolds*); KB27/973, rot. 35d (1504, *Dalton v. Hutton*); KB27/973, rot. 37 (1504, *Dudley v. Hatton*); KB27/974, rot. 69 (1505, *Prior of Bath v. Prior of Exeter*); KB27/976, rot. 26 (1505, *Prior v. Callaway*); KB27/977, rot. 23 (1505, *Cagell v. Staveley*); KB27/978, rot. 26 (1506, *Savyll v. Boughton*); KB27/980, rot. 32 (1506, *Samford v. Walronde*); KB27/983, rot. 27d (1507, *Warman v. Pyte*); KB27/984, rot. 84 (1507, *Graunte v. Wodward*); KB27/984, rot. Rex 18 (1507, *Rex v. Wood*); KB27/986, rot. 37 (1508, *Eton v. Roys*); KB27/986, rot. 60 (1508, *Arnold v. Bishop of Llandaff*); KB27/987, rot. Rex 20 (1508, *Rex v. Church*).

⁷²⁹ Clerk's *praemunire* action against Rede began in Michaelmas Term 1503. They appeared a second time in Hilary Term 1504. KB27/969, rot. 93; KB27/970, rot. 64.

⁷³⁰ SC1/44/83. For an analysis of the likely date of the letter see Cavill, 'The Enemy of God and his Church: James Hobart, *Praemunire*, and the clergy of Norwich Diocese' in *The Journal of Legal History*, 32 (Aug., 2011), 127-50.

⁷³¹ The lack of surviving records for these courts make it difficult to analyse the use of *praemunire* away from the central law courts.

⁷³² Though not universally accepted. For differing (and hotly contested) views, see G. R. Elton, 'Henry VII: Rapacity and Remorse', *The Historical Journal*, 1 (1958), 21-39; J. P. Cooper, 'Henry VII's Last Years

replaced by Sir Richard Empson and Edmund Dudley, notorious for acquiring money on behalf of the king.⁷³³ The petition of Edmund Dudley, written while he was awaiting execution in the Tower of London in 1509, lists ‘such persons as I thincke were hardlie intreated & much more sorer than the causes Required.’⁷³⁴ Included in the petition is an apology to the abbots of Gloucester and Cirencester, who ‘were hardlie dealt wthall for premunires.’⁷³⁵ As this petition implicates *praemunire* in these unpopular actions, the assumption has always been that *praemunire* suffered a backlash in the early years of Henry VIII’s reign.⁷³⁶ However, although the number of *praemunire* cases in King’s Bench did not increase in the years following Henry VII’s death as they had between 1500 and 1509, they did not decrease in a way that would be representative of the perceived backlash against the late king’s reign either. Twenty-six cases were begun between 1510 and 1520, a slight dip from the thirty-one cases the decade before.⁷³⁷ The period 1505 to 1514 shows that the number of *praemunire* cases actually increased in Henry VIII’s reign, with eleven cases 1505-09, and thirteen for 1510-14.⁷³⁸ This makes an important point about *praemunire*. Although it was later defined as a weapon of the king, when Henry VIII used it to bring low his mightiest churchmen, before Henry VIII’s reign it was not associated as such. Instead, *praemunire* was beneficial to many mid- to lower-ranking laymen, as the offence allowed them to pursue injustice in the common law courts. Thus *praemunire* was not necessarily associated with the alleged rapacity which defined the late king’s reign. Although Henry VII was dead, business in the common law courts – and in the non-noble ranks of society, from which the plaintiffs of *praemunire* actions derived – continued as usual. In 1515, a year of particular jurisdictional uncertainty between the secular and ecclesiastical law courts, no *praemunire* cases were begun in King’s Bench. This was a year during which a set of debates at Blackfriars and Baynard’s Castle contested the use of ‘benefit of clergy’ specifically and secular encroachments upon ecclesiastical liberties more generally. As *praemunire* was associated with such encroachments by this point, it is possible that the men of the

Reconsidered’, *The Historical Journal*, 2 (1959), 103-129; G. R. Elton, ‘Henry VII: A Restatement’, *The Historical Journal*, 4 (1961), 1-29.

⁷³³ *The Great Chronicle of London*, edited by A. H. Thomas and I. D. Thornley (Gloucester: Alan Sutton, 1983), pp. 294-95, 325-26.

⁷³⁴ C. J. Harrison, ‘The Petition of Edmund Dudley’ in *EHR*, 87 (Jan., 1972), 82-99 (p. 86).

⁷³⁵ *Ibid.*, p. 89.

⁷³⁶ Speculated in Cavill, ‘The Enemy of God and his Church’.

⁷³⁷ See Appendix 4.

⁷³⁸ *Ibid.*

common law were unwilling to encourage plaintiffs to bring such cases until the matter at Baynard's Castle was decided.⁷³⁹ Alternatively, perhaps potential plaintiffs were aware of the controversy and settled their disputes through other channels. Whichever was the case, by 1516 once the king had intervened and asserted his supremacy over the ecclesiastical courts, *praemunire* suits recommenced in King's Bench. Five cases were begun in 1516, the highest number of *praemunire* cases in a single year since 1504.⁷⁴⁰

The length of time between the church court case and the *praemunire* suit in King's Bench indicates how *praemunire* was being used by the plaintiffs, and during this period twenty-five *praemunire* cases were commenced in King's Bench less than six months after the corresponding church court case (a further ten cases within a year).⁷⁴¹ This suggests that in many cases *praemunire* was a device to be used swiftly after an injustice in the ecclesiastical courts. In some instances the plaintiff sued less than a month after the specified ecclesiastical court case. John Reynolds, in 1504, requested a writ of *praemunire facias* only twenty-four days after his corresponding Church court case.⁷⁴² In 1503 John Clerk took only half that time, and began a suit in King's Bench on 20 November following an ecclesiastical court case on 8 November.⁷⁴³ However, not all cases commenced as quickly. If a *praemunire* suit had not begun in King's Bench within two years of the church court case, it was more likely to take longer. Eight of the fourteen cases that started in King's Bench more than two years after the ecclesiastical court case took longer than five years to

⁷³⁹ For an analysis of these conferences, see Chapter VIII.

⁷⁴⁰ See Appendix 4.

⁷⁴¹ Less than a month: KB27/969, rot. 93 (*Clerk v. Rede*), twelve days; KB27/970, rot. 61 (*Reynolds v. Horwode*) twenty-four days; KB27/986, rot. 37 (*Eton v. Roys*), thirty-three days; KB27/1024, rot. 81 (*Shudde v. Baylle*), forty-nine days. Two months: KB27/961, rot. 75 (*Calle v. Stubbys*); KB27/971, rot. 37 (*Gilbard v. Bean*); KB27/972, rot. 28 (*Horwode v. Reynolds*); KB27/1020, rot. 23 (*Alee v. Markwik*); KB27/1020, rot. 35 (*Dobbys v. Wrenn*). Three months: KB27/961, rot. 80d (*Penfold v. Facete*); KB27/1002, rot. 33 (*Huckell v. Cokkys*); KB27/1004, rot. 88 (*Hunne v. Dryffeld*). Four months: KB27/970, rot. 24 (*Mylne v. Barfote*); KB27/983, rot. 27d (*Warman v. Pyte*); KB27/1002, rot. 31 (*Fynes v. Benet*); KB27/1031, rot. 23 (*Trewynard v. Trevilian*). Five months: KB27/968, rot. 72 (*Gilbart v. Spersalt*); KB27/970, rot. 32 (*Carmynowe v. Boscawyn*); KB27/977, rot. 23 (*Cagell v. Staveley*); KB27/986, rot. 60 (*Arnold v. Bishop of Llandaff*); KB27/1024, rot. 57 (*Lawes v. Blither*). Six months: KB27/959, rot. 40 (*Ferrers v. Thomas*); KB27/1005, rot. 109 (*Hychynson v. Machell*); KB27/1028, rot. 70 (*Hewys v. Parker*); KB27/954, rot. Rex 3 (*Rex v. Emondnes*). Within the year: KB27/963, rot. 34 (*Hunte v. Prowde*); KB27/1000, rot. 27d (*Hampden v. Massy*); KB27/1011, rot. 76d (*Newton v. Harward*); KB27/1019, rot. 61d (*Tatersale v. Incent*); KB27/1000, rot. 26d (*Bak v. Wellys*); KB27/1000, rot. 27 (*Bunse v. Elwyn*); KB27/973, rot. 37 (*Dudley v. Hatton*); KB27/974, rot. 69 (*Prior of Bath v. Prior of Exeter*); KB27/1006, rot. 25 (*Dean of Warwick v. Smyth*); KB27/1009, rot. 28 (*Middelmores v. Abbot of Bordesley*).

⁷⁴² KB27/970, rot. 61 (1504, *Reynolds v. Horwode*). Reynolds appeared in the church court on 19 January and King's Bench on 12 February.

⁷⁴³ KB27/969, rot. 93 (1503, *Clerk v. Rede*).

appear. The longest interval saw William Dalton commencing a suit in King's Bench on 18 November 1504, over a decade after the church court case against him in 1492.⁷⁴⁴ In the instances where the interval between the two court cases was longer, a plaintiff may have waited to begin an action when conditions were more encouraging (perhaps after alternate methods of arbitration had been attempted). Alternatively the plaintiff may begin a *praemunire* suit, based on an earlier ecclesiastical court case, against somebody who had moved to apply excommunication against them.

The number of *praemunire* cases found in the plea rolls in this period give a good indication of the sorts of people commencing such actions (and defending against them). There is a fairly even split between lay and ecclesiastical defendants during this early Tudor period. Between 1500 and 1520, thirty-three out of fifty-eight primary defendants were members of the clergy.⁷⁴⁵ This is a stark change to similar actions in the fourteenth century, where over ninety per cent of primary defendants were clerics.⁷⁴⁶ A late fourteenth century study of actions of provisors and *praemunire* identified that all ecclesiastical defendants were mid to low level clerics; no cardinals, archbishops, bishops, archdeacons or abbots were named as defendants.⁷⁴⁷ This was not the case by 1520. The abbot of St Albans in 1501 was summoned to answer a charge related to a dispute for the control of the hospital of St. Julian.⁷⁴⁸ The abbot of Bordesley similarly was accused of *praemunire* in 1513, over a dispute of having committed trespass to goods.⁷⁴⁹ The highest order of cleric named as a primary defendant was the bishop of Llandaff, who in 1508 was called to King's Bench to answer charges of *praemunire* pertaining to having heard a case of trespass relating to

⁷⁴⁴ KB27/973, rot. 35d (1504, *Dalton v. Hutton*). William Dalton appeared in the church court on 24 March and 31 October 1492.

⁷⁴⁵ KB27/954, rot. Rex 3; KB27/959, rot. 40; KB27/960, rot. 71d; KB27/960, rot. 77; KB27/961, rot. 80d; KB27/961, rot. 103; KB27/963, rot. 34; KB27/966, rot. Rex 5; KB27/968, rot. 72; KB27/969, rot. 93; KB27/970, rot. 24; KB27/973, rot. 35d; KB27/973, rot. 37; KB27/974, rot. 69; KB27/976, rot. 26; KB27/977, rot. 23; KB27/984, rot. 84; KB27/985, rot. Rex 15; KB27/985, rot. Rex 20; KB27/986, rot. 60; KB27/1002, rot. 31; KB27/1002, rot. 33; KB27/1004, rot. 88; KB27/1005, rot. 109; KB27/1007, rot. 32; KB27/1009, rot. 28; KB27/1019, rot. 61d; KB27/1020, rot. 24d; KB27/1020, rot. 98; KB27/1024, rot. 81; KB27/1024, rot. 83; KB27/1028, rot. 70; KB27/1030, rot. 20; KB27/1031, rot. 23.

⁷⁴⁶ Diane Martin, 'Prosecution on the Statutes of Provisors and Premunire in the King's Bench, 1377-1394', in *Fourteenth Century England*, iv, pp. 113, 115.

⁷⁴⁷ *Ibid.*, p. 112.

⁷⁴⁸ KB27/959, rot. 40 (*Ferrers v. Abbot of St. Albans*).

⁷⁴⁹ KB27/1009 rot. 28 (*Middelmore v. Abbot of Bordesley*).

detention of a gown.⁷⁵⁰ As with the ecclesiastical defendants, there were few examples where lay defendants were of a higher rank; most of the twenty-five lay defendants were listed as gentleman, yeoman or husbandmen. The highest ranking was Robert Woderove, a knight, accused of *praemunire* in 1504 for a dispute over the leases of rectories.⁷⁵¹ The later use of *praemunire* by Henry VIII and his councillors demonstrates that *praemunire* was used against those of a higher-rank, but did not appear in the records of the common law courts.⁷⁵² In those cases the accusation of *praemunire* was sufficient to reach a concord, without resorting to litigation. In some cases the defendant's occupation is listed: in 1507 John Wood is listed as a smith, in 1510 John Portas, a shoemaker, was summoned to King's Bench, and in 1517 Thomas Blither, a tanner, is recorded in the plea rolls.⁷⁵³ The primary defendant could also be a woman, as was the case in 1506, when Katherine Walronde was summoned to King's Bench.⁷⁵⁴

As with earlier cases of *praemunire*, the action applied to all secondary defendants as well as the principal. In 1512 Richard Hunne accused Thomas Dryffeld and nine abettors – Cuthbert Tunstall, Walter Stone, Thomas Gotson, Henry Marshall, Charles Joseph, Thomas Lambe, Thomas Esgore, Robert Kylton and William Awdley – of *praemunire*.⁷⁵⁵ In 1520 John England was accused with six abettors, including his wife Johanna.⁷⁵⁶ Although the secondary defendants were subject to the same punishment as the primary defendants, it is clear from the plea rolls that there was some differentiation between them. In some cases this was simply a differentiation of rank, where the highest ranking would be listed as the primary defendant. The bishop of Llandaff's case, where he and two of his chaplains, Thomas Fyshwyck and James Herbert, were called to answer a *praemunire* charge, exemplifies this.⁷⁵⁷ In other cases the primary defendant was the main instigator of the dispute, such as the case of Katherine Walronde, whose dispute with John Samford began

⁷⁵⁰ KB27/986, rot. 60 (*Arnold v. Bishop of Llandaff*). For other bishops plagued by *praemunire* accusations, see following chapter.

⁷⁵¹ KB27.971, rot. 67 (*Amyas v. Woderove*).

⁷⁵² See Chapter VIII.

⁷⁵³ KB27/984, rot. Rex 18 (*Rex v. Wood*); KB27/995, rot. 26 (*Noreys v. Portas*); KB27/1024 rot. 57 (*Lawes v. Blither*).

⁷⁵⁴ KB27/980, rot. 32 (*Samford v. Walronde*).

⁷⁵⁵ KB27/1004, rot. 88 (*Hunne v. Dryffeld*).

⁷⁵⁶ KB27/1036, rot. 86 (*Stykberd v. England*).

⁷⁵⁷ KB27/986, rot. 60 (*Arnold v. Bishop of Llandaff*).

on 10 June 1500. Her abettor, Nicholas Walronde, did not become involved in the dispute (at least according to the plea rolls) until 29 December the same year.⁷⁵⁸

Traditionally Ecclesiastical Disputes

One of the most notable things about the *praemunire* actions in King's Bench throughout this period is the number of cases brought into the common law relating to traditionally ecclesiastical matters. By the early sixteenth century, the most common of these was actions of defamation.⁷⁵⁹ Traditionally though, defamation was considered an ecclesiastical matter. The original justification for defining defamation as a spiritual matter was that the purpose of the case was to ascertain whether slanderous words spoken by the defendant against the plaintiff were true. However, in the late fifteenth-century a second, 'temporal' defamation was defined.⁷⁶⁰ A Year Book case from 1482 explains how defamation disputes came to fall within the remit of the temporal courts.⁷⁶¹ The issue discussed by the common lawyers was whether the plaintiffs (B.J. and his wife) had sufficient cause to sue a writ of prohibition against the proceedings of the defendant (the abbot of St Albans). The original dispute had begun when the defendant abbot had held the plaintiff's wife against her will with the intent of seducing her. Upon learning this, the plaintiff said that he intended to sue the abbot for false imprisonment (a temporal dispute). For saying these things, the defendant abbot sued the husband in a church court for slander, thus blocking any common law action, for which the plaintiff husband and wife sued a writ of prohibition. Chief Justice Bryan of Common Pleas argued that if an action had an overlapping jurisdiction between the common law and ecclesiastical courts, such as the dispute of false imprisonment apparent in this case, the suit should be heard in the former. A defamation dispute would fall into this category if the said slanderous words (upon which a defamation suit is founded) implied that the plaintiff had committed a temporal crime.⁷⁶² These concerns had been raised at the

⁷⁵⁸ KB27/980, rot. 32 (1506, *Samford v. Walronde*).

⁷⁵⁹ E.g. KB27/972, rot. 28 (1504, *Horwode v. Reynolds*); KB27/973, rot. 37 (1504, *Dudley v. Hatton*); KB27/980, rot. 32 (1506, *Samford v. Walronde*); KB27/983, rot. 27d (1507, *Warman v. Pyte*); KB27/1011, rot. 76d (1514, *Newton v. Harward*); KB27/1020, rot. 23 (1516, *Alee v. Markwik*); KB27/1020, rot. 35 (1516, *Dobbys v. Wrenn*); KB27/1024, rot. 57 (1517, *Lawes v. Blither*); KB27/1024, rot. 83 (1517, *Newton v. Senacle*); KB27/1032, rot. 21 (1519, *Ferrys v. Ryche*).

⁷⁶⁰ S. F. C. Milsom, 'Richard Hunne's *'Praemunire'*', pp. 80-82.

⁷⁶¹ *YB Pasche*. (or *Trin.*) 22 Edw. IV, pl. 47, fos 20a-20b.

⁷⁶² R. H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), p. 24.

beginning of the century in a case relating to the authority of the pope's collector to hold pleas in England (by virtue of a papal bull).⁷⁶³

In Michaelmas Term 1400, William Hankford, Justice of Common Pleas, argued that in an action for perjury in the ordinary's court, a defendant will be ordered to perform his oath (a spiritual matter) to pay debts or perform contracts (a temporal matter), in which case all lay contracts could in theory be determined in Court Christian, which goes against the king's regality.⁷⁶⁴ Justice William Rikhill (Rykhill) supported this statement, 'if a person could not say that another had committed trespass (on account of the defamation suit in the ecclesiastical court), then the law of the land would be lost'.⁷⁶⁵ The ecclesiastical sphere too had their opinions on the topic at the close of the fourteenth century. One of sixty-three articles drawn up in the October convocation of 1399, which was submitted to the pope for appraisal, made a statement for defamation cases to always be heard in Courts Christian. Article forty-eight stated that 'in cases of perjury and defamation, which belong to the ecclesiastical jurisdiction, if a royal prohibition is issued, there is no recourse to be had, even if the judge has already pronounced sentence. This results in perjury going unpunished and is a grave danger to morals'.⁷⁶⁶ However, despite this ecclesiastical assertion that cases of defamation were strictly an ecclesiastical matter, a century later it was understood to fall within the remit of both Courts Christian and common law. An excerpt from the *Old Natura Brevium* defines these two types of defamation, as they were recognised in the sixteenth century:

Note that the spiritual court should have jurisdiction in causes of defamation, subject to a qualification: for there are two kinds of defamation, one of which is an offence under the spiritual law and the other under a temporal law. For instance, if a man slanders another by saying that he committed fornication or adultery, he may be sued for that in a spiritual court...But it is otherwise with such defamations as concern purely temporal matters which are punishable by temporal law. For instance, if someone defames another in respect of treason, murder, felony or such like, even though these also sound to the displeasure of

⁷⁶³ YB Mich. 2 Hen. IV, pl. 45, fos 9b-10b.

⁷⁶⁴ Ibid.

⁷⁶⁵ Ibid.

⁷⁶⁶ *Convocation*, iv, pp. 197-207.

God, yet in no way and in no part are they punishable by spiritual law for, if they were, the party so defamed would have to make his purgation, and thus he would purge something which ought to be purged by the law of the realm.⁷⁶⁷

During the 1490s, attempts were made by plaintiffs to bring defamation disputes into the common law courts using *praemunire*, but it was not until the early 1500s that the judges accepted the common law jurisdiction over them. In 1499, a defamation dispute between John Buscher and Robert Hegyns appeared in King's Bench.⁷⁶⁸ Robert Hegyns had alleged in the church court case that John Buscher had said, 'I sawe Rob[er]t Vincent huntyng in the kyngys game att kyngysthornys & his houndys with hym'; poaching in the royal forest was a secular offence, thus the dispute should be heard in a secular court.⁷⁶⁹

However, Hegyns challenged the basis of the suit in King's Bench; the court agreed with this challenge and the case was ended. A similar quashing of a *praemunire* suit upon a defamation action appeared in Easter term 1500.⁷⁷⁰ The dispute had originated in 1498, at a session of the sheriff's tourn in Norfolk, when Robert Emondnes had presented allegations that one Nicholas Myles kept a house of prostitution at Swanton Abbot, and that Nicholas' wife often committed adultery with Geoffrey Cheteryng, a cleric. Cheteryng then accused Emondnes of defamation in the ecclesiastical court. When the *praemunire* suit arrived in King's Bench, the judges disallowed the suit, judging that the case was rightly heard in the ecclesiastical court, for the crime alleged was of adultery and fornication. The first defamation cases successfully brought into King's Bench under a *praemunire* action came into the common law courts in 1501.⁷⁷¹ The first of these cases includes an allegation of murder, a crime strictly belonging in the temporal courts; allowing this case to proceed in the church courts would set a precedent whereby the ecclesiastical courts could hear all other cases of this type.⁷⁷² Following the successful transition of a defamation dispute into the common law courts using *praemunire* a number of similar suits appeared soon after.

⁷⁶⁷ From *Old Natura Brevium* (1528 edn.), fo. clxxxv, trans. in J. H. Baker and S. F. C. Milsom, *Sources of English Legal History* (London: Butterworth, 1986), pp. 625-26.

⁷⁶⁸ KB27/953, rot. 76 (*Buscher v. Hegyns*).

⁷⁶⁹ *Ibid.*

⁷⁷⁰ KB27/954, rot. 3 Rex (*Rex v. Emondnes*).

⁷⁷¹ KB27/961, rot. 75 (*Calle v. Stubbys*); KB27/961, rot. 80d (*Penfold v. Facete*).

⁷⁷² Palmer, *Selling the Church*, pp. 63-65.

Another traditionally ecclesiastical dispute to end up in King's Bench on a *praemunire* action was the matter of tithes, the payment intended for the cure of souls. This dispute had always had a degree of jurisdictional overlap. The first recorded *praemunire* action regarding disputed tithes dates from 1390, between the abbot of Cirencester and the vicar of Shrivenham. The vicar had taken a suit to the court of Rome against a parishioner for tithes of wood and lambs. The abbot argued that this was not a payment of tithe, but an annual rent, and therefore should rightly have been heard in the common law. In this instance the abbot's suit was successful; however, he only received a verdict for £26.67 from the vicar.⁷⁷³ In 1513 a *praemunire* action was brought against William Fell, cleric, who went to the court of Rome to claim lands, rents, oblations, tithes, and other things related to the royal chapel in Durham. Even though some of these things when related to other churches could be drawn into ecclesiastical courts, in this instance a *praemunire* was issued both for the claim that it was a suit relating to rents, and that it was a royal chapel (and thus free from spiritual jurisdiction).⁷⁷⁴ By the sixteenth century the most common type of tithe dispute related to *praemunire* actions was those dealing with the tithing of great trees. It was for this very use that the clergy had specifically been granted the 1462 *Charta de Libertatibus Clericorum*, demonstrating how these fifteenth-century attempts to curb the (mis)use of *praemunire* had truly failed by the Tudor period.⁷⁷⁵ In 1503-04 John Clerk of Brentwood brought a *praemunire* against George Rede, the vicar of Hornchurch, and Thomas Bodley of South Weald concerning an attempt to tithe trees over a century old.⁷⁷⁶ The same accusation was made against George Trevilian by James Trewynard in 1519.⁷⁷⁷ Finally, in 1509 Richard Girlyng accused John Smith of Fressingfield of tithing great trees on the pretence that the case related to the deprivation of rights of churches.⁷⁷⁸

⁷⁷³ CP40/519, rot. 351. For further *praemunire* cases relating to annual rents, see *BL Add. MS 35205* mm. 8, 10. See Appendix 2, nos 11, 41.

⁷⁷⁴ KB27/1007, rot. 32 (*Sympson v. Fells*); KB147/2/5/1.

⁷⁷⁵ Wilkins, *Concilia*, iii, pp. 583-4. See Chapter V.

⁷⁷⁶ KB27/969, rot. 93; KB27/970, rot. 64 (*Clerk v. Rede*).

⁷⁷⁷ KB27/1031, rot. 23 (*Trewynard v. Trevilian*).

⁷⁷⁸ KB27/991, rot. Rex 9 (*Girlyng v. Smith*). For another *praemunire* relating to tithes, see KB27/1006, rot. 35 (*Wryght v. Brokeden*).

The Murder of Richard Hunne

The most notorious attempt to draw a traditionally ecclesiastical dispute into the common law was Richard Hunne's *praemunire*, brought into King's Bench on 10 July 1512.⁷⁷⁹

Although for the purposes of this thesis what is interesting is the validity of his *praemunire* action, the case of Richard Hunne is better known because on 4 December 1514 he was found dead in Lollards' Tower at St Paul's Cathedral, in the cell where he awaited heresy investigations against him.⁷⁸⁰ Hunne's dispute with the church concerned mortuaries. The mortuary payment, the customary fee paid to the Church upon one's death, had existed since Anglo-Saxon times, when it was known as 'soul-scot'.⁷⁸¹ Traditionally, the custom required that the deceased's 'second best beast' was to be given as payment, though by the Tudor period it was more common to make a monetary payment. As with all cases regarding money or goods owed, there was a degree of overlapping jurisdiction between the common law courts and the Church, which could in theory provide enough cause for a *praemunire* action. However, of the traditionally ecclesiastical disputes brought into the common law in this early Tudor period, this dispute was difficult to argue in favour of a common law suit. Early in the fifteenth century a plaintiff had tried and failed to have his mortuary dispute transferred to the common law.⁷⁸² The case, which appeared in Michaelmas term 1408, was brought by the plaintiff J.S. the younger against the vicar of his parish. The vicar had sued the plaintiff over the possession of a mare, which had belonged to J.S. the elder, since deceased. The vicar claimed the right of mortuary to take the best beast that J.S. had on the day he died, which had come into the hands of J.S. the younger by covin (i.e. – a secret agreement between persons to cheat and defraud). However, the plaintiff replied that no mortuary would be taken for a servant, and J.S. was son and servant to J.S. the elder. The court rejected the plaintiff's reply, and decided that on the plaintiff's pleading the defendant properly had suit in Court Christian. To conclude, Chief Justice Gascoigne made the judgement that if goods are devised by testament and are not delivered, even though

⁷⁷⁹ KB27/1004, rot. 88 (*Hunne v. Dryffeld*).

⁷⁸⁰ The saga of Hunne's death, and whether or not he was murdered, has been covered extensively in many works. A more recent examination appears in G. W. Bernard, *The Late Medieval English Church: Vitality and Vulnerability before the Break with Rome* (Cornwall: Yale University Press, 2007), pp. 1-16. See also Peter Gwyn, *The King's Cardinal* (London: Barrie & Jenkins, 1990), pp. 34-41.

⁷⁸¹ Helmholz, *The Ius Commune in England: Four Studies* (Oxford: Oxford University Press, 2001), pp. 135-36.

⁷⁸² YB Mich. 10 Hen. 4, pl. 2, fos 1b-2b; KB27/590, rot. 6.

they are demanded from the executors, the suit will be brought against the executors in the ecclesiastical courts.⁷⁸³

However, a mortuary case could be argued as a common law dispute if the plaintiff (of the common law action) could prove that any goods received were done so before a person's death (therefore not a mortuary). In 1495 John Pepar sued the vicar of the church of Hutcroft, Lincolnshire, for what he claimed was the unlawful taking of six cows. The vicar claimed that these cows, left to Pepar by Isabella Blake, a parishioner in the parish of Markby, were bequeathed to Pepar after Isabella's death, and therefore by right the prior of Markby, to whom the vicar was agent, was due Isabella's best beast, in this case one of the cows, by right of mortuary. Pepar, however, claimed that though the cow may once have been Isabella's, he had been in possession since long before her death.⁷⁸⁴ A dispute that applied similar logic to apply to both ecclesiastical and temporal courts was that of debts owed by executors. Traditionally this was an ecclesiastical dispute, as the offence in question dealt with monies related to the cure of the (deceased) soul, in much the same way that tithe disputes were an ecclesiastical dispute. However, as with tithes (and mortuaries), the fact that disputes regarding executors could end up in a common law court was because it dealt with money and debt, a temporal dispute. It was this logic that validated a King's Bench *praemunire* action in 1484.⁷⁸⁵

Richard Hunne's justification for his *praemunire* action was more dubious. His grievance with Thomas Dryffeld, rector of his parish, began on 29 March 1511 when Hunne's infant child died in the parish of St Mary Matfelon (Whitechapel). Dryffeld asked for the child's bearing-sheet to be paid as a mortuary, but Hunne refused on the grounds that the bearing-sheet was not his son's to give, as he was only an infant. Dryffeld argued in the prerogative court of Canterbury in April 1512 that rectors of the parish of St Mary Matfelon had always received mortuaries, and any disputes arising from these payments were heard in the ecclesiastical sphere; Cuthbert Tunstall, then commissary-general of the court, found in favour of Dryffeld, and Hunne was ordered to pay the mortuary fee.⁷⁸⁶ Hunne's response

⁷⁸³ Ibid.

⁷⁸⁴ CP40/934, rot. 337.

⁷⁸⁵ KB27/892, rot. 54 (*Sonde v. Pekham*).

⁷⁸⁶ KB27/1004 rot. 88 (1512); KB27/1006, rot. 37 (1513).

was to begin a *praemunire* action against Dryffeld and his abettors on 10 July 1512.⁷⁸⁷ Hunne appeared regularly to prosecute but the case continued to be adjourned throughout 1512.⁷⁸⁸ On 27 December 1512, when Hunne went to vespers at Whitechapel, the parish priest Henry Marshall cast him out saying, “Hunne, thou are accursed and thou standest accursed, and therefore go thou out of the church, for as long as thou are in this church I will say no evensong nor service”.⁷⁸⁹ This suggests that by this point Hunne was excommunicate, likely for his continued non-payment of the mortuary. A defamation suit against Marshall followed, and continued along with the *praemunire* action in King’s Bench.⁷⁹⁰ One point of interest in the second *praemunire* is that Cuthbert Tunstall, who had given the original judgement in the ecclesiastical court case, was no longer listed as a secondary defendant; the first *praemunire* had him mentioned with Dryffeld’s other abettors.⁷⁹¹ Unfortunately, the outcome of Hunne’s *praemunire* is not known. Hunne was imprisoned by the church authorities in October 1514 on suspicion of heresy; he would be found dead by strangulation two months later. Regarding the *praemunire*, no legal discussion of the case exists in either the published Year Books or similar contemporary legal reports. Hunne’s argument, that his infant son could not own the bearing-sheet on account of his age seems a weak one. An infant could sue in the king’s courts (though admittedly not one so young), so it stood to reason that they could also be culpable of ownership.⁷⁹² His defamation suit against Marshall too, which ran concurrently to the *praemunire*, is suggestive of someone looking to exploit the common law to antagonise his accusers. Thomas More, in his 1528 *Dialogue Concerning Heresies*, suggested that Hunne’s death was – as the Church had argued – suicide, brought on by Hunne’s realisation that his *praemunire* was about to fail.⁷⁹³ This work was a response to early English Protestants who saw in Hunne a martyr for the cause. John Foxe included Hunne as a pre-Reformation martyr in his *Acts and Monuments*, and a 1536 pamphlet, which reprinted the inquiry into

⁷⁸⁷ Ibid.

⁷⁸⁸ Palmer, *Selling the Church*, p. 45.

⁷⁸⁹ From the subsequent defamation case against Marshall, KB27/1006, rot. 36 (1513)

⁷⁹⁰ KB27/1006, rot. 36; KB27/1006, rot. 37.

⁷⁹¹ KB27/1004 rot. 88; KB27/1006, rot. 37.

⁷⁹² For an example of an infant plaintiff, see YB Pasch. 35 Edw. I, pl. [2], fos RS [467]-471.

⁷⁹³ Thomas More, *A Dialogue concerning Heresies*, in *The Complete Works of St Thomas More*, vi pt. i., ed. T. M. C. Lawler, G. Marc’hadour and R. C. Marius (New Haven, Conn.: Yale University Press, 1997), pp. 326-27.

Hunne's death that concluded he had been murdered, was included in the text.⁷⁹⁴ However, the evidence from the plea rolls neither confirms nor denies these opinions, and without contemporary evidence the outcome of Hunne's *praemunire* remains – like the details of his death – a topic of speculation.

A supporting King's Bench case from 1517, though not a *praemunire* action, contains a long preamble justifying the ecclesiastical jurisdiction over mortuaries.⁷⁹⁵ The preamble largely echoes the comments of Chief Justice Gascoigne a century earlier, but also sheds some light on the strength of Hunne's *praemunire*. In the event of a wife's death before her husband, the second best beast of the husband, not the wife, made up the customary mortuary payment. In the context of Hunne's case, this meant that it did not matter to whom the bearing sheet – which the Church had demanded as a mortuary – belonged. As his son's next-of-kin, Hunne was liable to pay the mortuary and, as the ecclesiastical case did not pertain to any temporal crime, the subsequent ecclesiastical proceedings were right and proper. Following Hunne's death a number of attempts were made to legislate mortuaries, suggesting that Hunne's *praemunire* action caused enough controversy for the mortuary payment to be more strictly defined.⁷⁹⁶

Conclusion

The cases analysed in this chapter have highlighted an offence that was incredibly wide-reaching. Certain disputes, once consigned to the ecclesiastical sphere, could now be received in King's Bench because of the way that *praemunire* was used. It is clear that by the early-Tudor period, *praemunire* was now much changed from the way in which it was used in the common law courts of the fourteenth and fifteenth centuries. Although it still prohibited appeals to the court of Rome in matters of royal cognisance, far more common were cases which challenged proceedings in the English ecclesiastical courts. Although the initial change to the interpretation of *praemunire* had occurred in the 1430s, it was not until the Tudor period – through a combination of resourceful lawyers such as Sir John Fyneux, amenable kings such as Henry VII, and the need to be innovative brought on by the rise of

⁷⁹⁴ *The Enquirie and Verdite of the Quest panneld of the death of Richard Hune wich was founde hanged in Lolars tower*, printed in *The Acts and Monuments of John Foxe*, ed. by Stephen Reed Cattley (London: Seeley and Burnside, 1838), iv, pp. 183-204.

⁷⁹⁵ KB27/1024, rot. 86 (*Perys v. Grene*).

⁷⁹⁶ *LP*, i, 3602; ii, 1315.

the conciliar courts – that the offence would truly expand to prosecute not just clerics but also laymen, looking to have justice in the ecclesiastical sphere. In this respect the use of *praemunire* in this period was a Tudor novelty. The murder of Richard Hunne too demonstrated one way in which these *praemunire* cases in the common law courts could become embroiled in the wider church-state conflicts occurring early in Henry VIII's reign. The next, and final chapter, analyses these high-profile disputes to see how *praemunire* was being used to intimidate, rather than prosecute, the English clergy on the eve of the English break with Rome.

Chapter VIII: The Submission of the Clergy

In October 1529 Thomas Wolsey, King Henry's former favourite, was charged with *praemunire* in King's Bench, for purchasing bulls from Rome to make himself legate.⁷⁹⁷ This single *praemunire* action set off a chain of events that incorporated some of the most important precursors to the English break with Rome five years later. Many of these events – the Pardon of the Clergy, the Act in Restraint of Appeals – would directly reference *praemunire*. However, in many ways Henry VIII and his councillors were not using *praemunire* any differently to how it had been used before. The offence was still being used against those undermining royal authority. Technically, *praemunire* as described in the Act in Restraint of Appeals (1533) was a more traditional interpretation of the offence than its use in the court of King's Bench in the early-Tudor period. The act prohibited appeals to the court of Rome in matters of royal cognisance, just as the Statutes of *Praemunire* had originally done. However, what had changed was the definition of what constituted royal cognisance. Where in the fourteenth and fifteenth centuries there were broadly defined limits to royal jurisdiction over the church, the need for Henry to divorce Catherine of Aragon – something the pope had outright refused to do – meant that he needed the complete cooperation of the English clergy. In *praemunire* he found an offence that could both bring the English clergy in line and send a message of strength to the pope. This chapter analyses how *praemunire* was used during these years, particularly how novel its use was on the eve of the break with Rome. How different was *praemunire* between 1529 and 1533 compared to the century-and-a-half before?

The Standish Controversy

One of the most relevant precursors to the use of *praemunire* in the five years before the break with Rome occurred in the first few years of Henry VIII's reign. In 1510 the English clergy, perhaps seeking to emulate the Charter of Ecclesiastical Liberties that Edward IV had granted them in 1462 (and Richard III had confirmed in 1483), introduced a bill in parliament asking that the king confirm the Church's liberties.⁷⁹⁸ The English clergy had met at a provincial council on 26 January 1510 to discuss the attack on ecclesiastical liberties caused

⁷⁹⁷ *The Reports of Sir John Spelman*, ed. J. H. Baker (London: Selden Society, 1977-78), i, p. 190.

⁷⁹⁸ Peter Gwyn, *The King's Cardinal*, p. 45.

by ‘unjust men of malice and wickedness’, which no doubt prompted this bill.⁷⁹⁹ However, their attempts were unsuccessful, and the bill was quashed in parliament. Matters were worsened for the English clergy in 1512, when an act was passed curtailing ‘benefit of clergy’.⁸⁰⁰ This act was only a temporary provision to be reviewed at the next parliament in 1515, allegedly designed to ‘try the temper of the people, as to such innovations upon the ancient superstition of the realm’, but this was of little consolation.⁸⁰¹ Hunne’s death in December 1514 did little to improve matters between the church and laity. Relations were therefore particularly strained at the opening of parliament in 1515, only to come to a head when Richard Kidderminster, the abbot of Winchcombe, delivered a sermon at St Paul’s cross in London where the Canterbury convocation was convening. This sermon complained that the act of 1512 that limited ‘benefit of clergy’ was made utterly against the law of God, and that all clerks who had received orders should be exempt from temporal punishment. In response, the king appointed several doctors of canon law to argue the point before his judges and ‘temporal counsel’ at Blackfriars.⁸⁰² Dr Henry Standish, guardian of the Franciscan convent in London, spoke on behalf of the king, and argued that the act of conventing clerks was for the public good (weal), which ought to be favoured in all laws; the doctor speaking on behalf of the spirituality argued to the contrary. The offence of *praemunire*, which relied on the secular courts’ ability to convent clerks in this manner – and had been cited as detrimental to ‘benefit of clergy’ as far back as 1462 – was therefore intrinsically linked to the outcome of these debates.⁸⁰³ The first conference yielded no discernible outcome, and a second conference was arranged for Michaelmas term of the same year. In the interim, Standish was brought before a convocation of bishops to answer questions relating to his argument made at Blackfriars. According to the common lawyer John Caryll, this was because the developments in the Hunne affair had given the church cause for concern in any matter that could diminish their freedoms.⁸⁰⁴ These questions would form the basis of heresy proceedings against Standish, who received a bill of conclusions shortly after this convocation. The second conference addressed these

⁷⁹⁹ From Archbishop Warham’s summons, printed in Wilkins, *Concilia*, iii, p. 651. The clergy had gathered without a royal writ, so it was not technically a convocation.

⁸⁰⁰ 4 Hen. VIII, c. 2.

⁸⁰¹ John Reeves, *History of the English Law*, ed. by W. F. Finlason, 4 vols (London: Reeves & Turner, 1869), iv, p. 307.

⁸⁰² *Reports of John Caryll*, ii, pp. 683-92.

⁸⁰³ Wilkins, *Concilia*, iii, pp. 583-4. See Chapter V.

⁸⁰⁴ *Reports of John Caryll*, ii, pp. 685- 6.

accusations against Standish, and culminated in the judges present declaring that all those who had participated in the process against Dr Standish were guilty of *praemunire*, as Standish had been acting on behalf of the king. The bishops had drawn Standish into a court (convocation) in a matter of royal cognisance, therefore technically a *praemunire* could apply.

A final debate was assembled at Baynard's Castle late in 1515, this time with the king in attendance, so he could give final judgement on the matter:

By the ordinance and sufferance of God we are king of England, and the kings of England in times past have never had any superior but God alone. Therefore take good heed that we wish to maintain the right of our Crown and of our temporal, both in this point and in all other points, in as ample a manner as any of our forebears have done before our time. And as to your decretals, we have been certainly informed that you of the spirituality act expressly against the words of many of them, as has been well shown to you by some of our spiritual counsel. Nevertheless, you make interpretation of your decretals at your pleasure. Therefore we will not agree to your desire now any more than our forebears have in times past.⁸⁰⁵

Following this judgement Archbishop Warham made one final plea for the matter to be heard at Rome, to no avail. Henry's judgement, perhaps unwittingly, echoed assertions made in both the second and third Statutes of *Praemunire* in 1365 and 1393.⁸⁰⁶ The preamble to the 1393 statute, which complained of papal interference within the realm echoes Henry's judgement:

...[If papal interference be allowed to continue] the crown of England, which has always been free, and has no worldly sovereign, but has been directly subject to God and to no other in all things touching the regality of the same crown, would be subject to the pope, and the laws and statutes of the kingdom undone and

⁸⁰⁵ *Reports of John Caryll*, ii, p. 691.

⁸⁰⁶ 38 Edw. III, Stat.2; 16 Ric. II, c.5.

annulled by him at his will, to the perpetual destruction of the sovereignty of our lord the king, his crown, his regality and his entire realm, which God forbid.⁸⁰⁷

Henry's judgement gives an early indication of his opinion of the Church, and where it stood in the hierarchy of English society. In light of this, the route Henry would take a little under fifteen years later, in the *praemunire* accusations against fifteen prominent clerics in 1530, is unsurprising. It would also serve as an example of how Henry could utilise anticlerical feeling amongst the laity to exercise his authority over the English church.⁸⁰⁸

Heresy

The *praemunire* accusation against the clerics at the second Blackfriars conference in Michaelmas Term 1515 was based on the heresy investigations brought against Standish earlier that year. The English clergy had renewed attempts to identify and try heretics following a provincial council in 1510, certain that the attacks on ecclesiastical liberties made against them in the early-Tudor period were down to 'unjust men of malice and wickedness'.⁸⁰⁹ However, this increase in heresy investigations made them unpopular with sections of the laity. A set of complaints, the 'Commons' Supplication against the Ordinaries', was presented to King Henry in parliament during 1532.⁸¹⁰ This set of complaints centred on the jurisdiction of the ordinaries, particularly in their *ex officio* proceedings for heresy.⁸¹¹ Though heresy was solely determined and prosecuted by the Church, those who refused to abjure or relapsed were handed over to the secular authorities for punishment (i.e. – burning).⁸¹² Heresy in many ways provided a similar function for the ecclesiastical courts that *praemunire* did for the secular ones. A heresy proceeding, which could only be heard in the ecclesiastical sphere, affirmed the interests of canon law, just as a *praemunire* action protected the interests of the king's (common) law.

⁸⁰⁷ '...la corone d'Engleterre q'ad este si frank de tout temps, qe le n'ad eeu nule terrene sovereyne, mes immediat susgit a Dieu en toutes choses touchantz regalie de mes me la corone et a nule autre, serroit submys a pape, et les leys et estatutz du roialme par luy defaitz et anientiz a sa volunte, en perpetual destructioun de la soverainte nostre seignour le roi, sa corone, et sa regalie, et tout soun roialme, qe Dieu defend.' *PROME* (1393), vii, pp. 233-34.

⁸⁰⁸ G. R. Elton, *England under the Tudors*, 3rd edn (Oxford: Routledge, 1991), pp. 122-23.

⁸⁰⁹ Craig D'Alton, 'Heresy Hunting and Clerical Reform: William Warham, John Colet, and the Lollards of Kent, 1511-1512' in *Heresy in Transition*, ed. by Ian Hunter, John Christian Laursen, and Cary J. Nederman (London: Ashgate Publishing Ltd, 2013), pp. 103-112.

⁸¹⁰ Printed in G. R. Elton, *The Tudor Constitution* (Cambridge: Cambridge University Press, 1960), pp. 325-26.

⁸¹¹ Sir Henry Ellis, ed., *Hall's Chronicle* (London: J. Johnson et al, 1809), p. 784.

⁸¹² The process was defined in 2 Hen. IV, c.15 (*De Haeretico Comburendo*).

Such were these similarities, *praemunire* and heresy both featured in a number of the higher-profile disputes between church and state up to 1532. In 1504, Bishop Nykke – who himself would find himself one of the fifteen named on a *praemunire* action in 1530 – lamented to Archbishop Warham about the spate of *praemunire* actions in the diocese of Norwich after the 1504 parliament. He offered a possible solution: to ‘curse all such promoters and maintainers of the *praemunire* in such cases as heretics and not believers in Christ’s Church.’⁸¹³ Though somewhat hyperbolic, Nykke’s complaint identified a possible link between heresy and *praemunire*; as the offence could challenge spiritual law, could it be construed as a heresy? This is possibly suggested too by the *praemunire* of Richard Hunne. Following his King’s Bench action in 1512, Hunne was arrested by the ecclesiastical authorities on suspicion of heresy.⁸¹⁴ Though these two acts were not necessarily linked, the implication remained that heresy could be used against those antagonising the church through the use of *praemunire* actions.

The heresy proceedings against Dr Standish in 1515 offer an alternative relationship. Conversely to the Nykke and Hunne examples, the heresy proceedings came before the accusation of *praemunire*. Standish’s heresy proceedings began after the first conference at Blackfriars; the *praemunire* against the bishops followed the second. Although no actual *praemunire* action resulted in this accusation, the mooted charge was serious enough to warrant a detailed defence from the bishops accused. This defence provides a greater insight into the justification of the *praemunire*, which is not discussed in any great detail in Caryll’s report.⁸¹⁵ There were seven points to their defence, opening with a denial of the *praemunire* charge. The charge was based on the fact that Dr Standish was acting as the king’s advocate during the first Blackfriars conference, and therefore any accusations against Dr Standish at this time should have been heard in the king’s courts; the first point of the bishops’ defence addressed this, and they claimed that any accusations made against Standish were made ‘long sithens the time of his said counsel given to the king’s grace’.⁸¹⁶ The second to fourth points argue that once in convocation, the bishops did nothing that could be considered prejudicial to the crown. No articles were delivered to Standish in

⁸¹³ SC1/44/83.

⁸¹⁴ KB27/1004, rot. 88 (*Hunne v. Dryffeld*).

⁸¹⁵ SP1/12/fos. 18-21.

⁸¹⁶ *Ibid.*

writing (though they were conceived in writing), and though Standish received them later, it was after the convocation had ended. The defence then remarked that when members of Parliament ‘speaketh divers and many things not only against men of the Church and against the laws of the Church, but also sometime against the king’s laws...neither the king nor the prelates of the Church have punished them.’ The fifth and sixth points made the argument that the Church was bound to investigate suspicions of heresy, as per divine (and English) law, and also argued that asking the question, ‘Is the exemption of the clergy a matter of Divine Law, or not?’ was not contrary to the king’s laws. The defence concluded with a traditional plea to the king to allow the spirituality to continue to hold convocation, as had been allowed them by past kings; the bishops were keen to confirm the king’s supremacy over them, which Henry himself had asserted only weeks before at Baynard’s Castle. The judges’ conclusion that the bishops were guilty of *praemunire* is very interesting in this example. Heresy was an undeniably ecclesiastical dispute. Even after the Act of Supremacy the common law judges could agree to that.⁸¹⁷ Therefore, their charge must rest on the fact that Standish was acting on behalf of the king, and therefore anything he asserted in the first conference was the opinion of the king. Following this logic, just the action of drawing Standish into convocation to question any aspect of what he said at the conference could amount to *praemunire*. This case takes the broadest definition of the offence, that of undermining royal authority, and applies it to the most ecclesiastical of legal proceedings. In looking for antecedents to Henry’s later use of the offence, the so-called Standish Controversy is the most obvious precursor.

In the fifteenth century, *praemunire* and heresy proceedings had been used in conjunction to secure the downfall of Reginald (Reynold) Pecock in 1458. During the years 1456 and 1457, Pecock, then bishop of Chichester, was tried for his unorthodox writings on suspicion of heresy (the irony being that these writings were intended to curb the spread of Lollardy).⁸¹⁸ The heresy proceedings ended with Pecock’s abjuration in November 1457, and he was suspended from office.⁸¹⁹ However, following his abjuration Pecock appealed to Pope Callixtus III for papal absolution in 1458, and it was for this appeal that his accusers were justified in issuing a *praemunire* charge against him. Pecock’s teachings were

⁸¹⁷ YB 27 Hen. 8, pl. 4, fos 14a-14b.

⁸¹⁸ E. F. Jacob, ‘Reynold Pecock, Bishop of Chichester’, *Proceedings of the British Academy*, 37 (1951), 121-53.

⁸¹⁹ Peter Heath, *Church and Realm*, p. 311.

particularly worrying to certain members of the English clergy despite their anti-Lollard sentiments, because he chose to write in the English vernacular (a common trait of Lollard writings), and therefore certain clergy close to court pressed for his prosecution.⁸²⁰ The heresy proceedings against Pecock were thusly begun in an attempt to remove the threat of such writings. The commencement of the '*praemunire*' investigations was preceded by a royal letter outlining his crimes:

We grete you wel and howe be it that Reynold Pecok Ministre of the See of Chichestre was in late dayes detected and conuicted of certain errours and heresies and abiured and toke his penaunce for the same, as it is notoriously knowen; yet nevertheles the saide Reynolde hath surrepticiously purchaced and obeigned from our holy fadre the Pope certain bulles for his declaracion and restitucion contraire to our Lawes and statutes prouisours, and to the grete contempt and derogacion of oure prerogatiue and estat roial.⁸²¹

The main reason for the *praemunire* proceedings against him was to ensure that Pecock did not regain his position on the council, and was simply a natural continuation of the heresy proceedings once Pecock had drawn his case out of the realm. The outcome of these '*praemunire*' investigations found him guilty of violating not only orthodoxy but also the 'law of the realm'. Whether this was a reference to the *praemunire* charge or to the former heresy proceedings is left unclear, though it is likely that it was intentionally ambiguous in order to maximise the impact against the bishop. As a result of these proceedings Pecock was induced to resign his see in the autumn of 1458.

The plea rolls of King's Bench indicate a more discursive relationship between *praemunire* and heresy. Only one *praemunire* action has been identified in which the plaintiff was later involved in a heresy proceeding (other than Hunne). The plaintiff, Simon Pierce [Pyers] appeared in King's Bench in Michaelmas Term 1498 against John Richardson, notary.⁸²² The original dispute which resulted in this *praemunire* action was over simple contracts. Thirteen years later, on 12 May 1511, Pierce appeared before the commissary

⁸²⁰ Jeremy Catto, 'The King's Government and the Fall of Pecock, 1457-58', in *Rulers and Ruled in Late Medieval England, essays presented to Gerald Harriss*, ed. by Rowena E. Archer and Simon Walker (Hambledon Press: London, 1995), pp. 201-222.

⁸²¹ Letters from Bodleian Library, MS Ashmole 789. Printed in Catto, 'Fall of Pecock', p. 215.

⁸²² KB27/949, rot. 84 (*Pierce v. Richardson*).

court in Canterbury to answer allegations of heresy.⁸²³ The long period of time between the *praemunire* action and the heresy proceedings suggest that the two were not directly related, in the way that Hunne's *praemunire* (allegedly) led to the accusations of heresy against him. Simon Pierce, though not as aggressive as Hunne, was, however, challenging the Church with his *praemunire* action in 1498. It is unfortunate that Pierce's actions in the interim are unclear, as they would help assert the extent to which he challenged the Church; he does appear in another King's Bench case (though not a *praemunire* suit) in 1509, but little else is known.⁸²⁴ The allegation of heresy against Pierce in 1511 was because of his belief that Christ was 'God and man incarnate at the begynnyng of the worlde and before he was conceyved and borne of his said blisshed moder and virgin Mary'.⁸²⁵ This belief does not directly relate to his *praemunire* action in 1498, nor does it directly challenge ecclesiastical jurisdiction as Hunne's *praemunire* action did; to do so would be foolhardy. However, the example of Simon Pierce shows that there were free-thinking laymen in this period unwilling to take the Church's teachings as gospel, and his earlier *praemunire* action suggests a link between some – but by no means all – *praemunire* actions and dissatisfaction with the English Church in this early Tudor period.

It was a far more common occurrence for churchmen involved in heresy proceedings to appear as defendants in *praemunire* suits, though this is no surprise. These men involved with such proceedings were often officers of the church courts, and therefore were likely to have been involved with a number of church court cases; as a *praemunire* action could target any member of a contentious church court case, it was more likely to see these men appearing as defendants in the *praemunire* suits. Robert Woodward [Wodward], the commissary general of Archbishop Warham, appeared as a defendant in a *praemunire* suit in 1507.⁸²⁶ In his capacity as commissary general, Woodward conducted two of the thirty-two heresy proceedings in Kent between April 1511 and June 1512.⁸²⁷ Similarly, Thomas

⁸²³ Norman P. Tanner, ed., *Kent Heresy Proceedings 1511-1512* (Maidstone: Kent Archaeological Society, 1997), pp. 59-60.

⁸²⁴ KB27/989, rot. 52d.

⁸²⁵ Tanner, *Kent Heresy Proceedings*, p. 59. The analysis in this thesis was based solely on the county of Kent, and a broader study of heresy proceedings in other counties may provide further links between plaintiffs in *praemunire* suits and defendants of heresy proceedings.

⁸²⁶ KB27/984, rot. 84 (*Graunte v. Wodward*).

⁸²⁷ Tanner, *Kent Heresy Proceedings*, p. xi.

Welles [Wellys], chaplain to Archbishop Warham, appeared in a number of the same heresy proceedings, and was also a defendant of a *praemunire* charge in 1511.⁸²⁸

The high-profile disputes in the early-Tudor period – of Nykke, Hunne and Standish – highlight possible links between heresy and *praemunire*. Nykke’s letter and Hunne’s *praemunire* show that if those initiating *praemunire* suits pursued their case too aggressively, it could be construed as akin to heresy. Nykke’s letter did not go so far as to call these men heretics, but complained that they were undermining the Church in much the same way as heretics. Hunne’s case, and to a lesser extent the case of Simon Pierce, showed how men who wished to begin *praemunire* actions may have harboured anticlerical – even heretical – ideas. The *praemunire* accusation during the second Blackfriars conference argues differently, that a heresy proceeding could be in violation of *praemunire* if it encroached on the King’s jurisdiction. However, this mooted charge was unique, and the evidence from the plea rolls shows that in cases where a *praemunire* defendant was also involved in heresy proceedings, the two charges were not linked; it was their position within the church court system that made them susceptible to *praemunire* actions, and also suitable to be involved in heresy proceedings. Any link between the two was suggestive rather than substantial. By the 1530s it was this very rise in heresy investigations that prompted such ‘anticlerical’ acts as the Commons’ Supplication against the Ordinaries. A point of note regarding the relationship between *praemunire* and heresy is that during one of the drafts of what would become the Act in Restraint of Appeals (1533) a long clause was added anticipating that ‘evyll Interpretours [...] of the laws insuyng’ accused their makers of heresy.⁸²⁹

The Fall of Wolsey

Wolsey’s *praemunire*, begun in King’s Bench in October 1529, was for preventing presentations to benefices in Surrey and Leicester, using his powers as papal legate to do so, contrary to the Great Statute of *Praemunire*.⁸³⁰ Despite the fact that the king had almost certainly asked Wolsey to use his legatine powers in this way (and therefore Wolsey did not

⁸²⁸ *Kent Heresy Proceedings*; A. B. Emden, *A Biographical Register of the University of Oxford to A.D. 1500*, 3 vols (Oxford: Clarendon Press, 1957), iii, pp. 2008-09 (Thomas Welles); KB27/1000, rot. 26d. (*Bak v. Wellys*).

⁸²⁹ G. R. Elton, ‘The Evolution of a Reformation Statute’, *EHR*, 64 (Apr., 1949), 174-97.

⁸³⁰ *Ibid.*

circumvent the royal will), the fallen cardinal accepted his charge.⁸³¹ Instead of the usual punishments for *praemunire* Wolsey was granted permission to 'retire' to York. Henry's choice of *praemunire* as the means with which to bring about his former favourite's downfall has been viewed by most as a statement of royal supremacy over that of the pope; there were many options open to Henry to secure the removal of Wolsey if he desired, this was just the most public statement against the pope's authority.⁸³² However, the actual charge of *praemunire* was valid. If Wolsey's wielding of legatine authority was done in such a way as to be detrimental to the king (regardless of whether the king had originally asked for such) then a *praemunire* could stand. There was also precedent for such an action in the case of Henry Beaufort, the fifteenth-century cardinal who had also found himself on the receiving end of *praemunire* accusations for following legatine authority over that of the king's.

The circumstances that concluded with writs of *praemunire facias* against Henry Beaufort, half-brother of Henry IV and bishop of Winchester, actually began during Henry V's reign. In December 1417 Beaufort accepted the cardinal's hat from the newly-elected Pope Martin V, without first asking the king's permission.⁸³³ This could – with a little interpretation of the statutes – fall within the remit of either *praemunire* or provisors, in that Beaufort had accepted the red hat without the express consent of the king. Additionally, Beaufort was breaking with the customs of the English church, because in agreeing to become legate *a latere* the bishop was bypassing the jurisdiction of the Archbishop of Canterbury. At this point, however, no writs of *praemunire facias* were issued against Beaufort, the king instead gave his half-uncle a choice: either he decline the red hat or he relinquish his temporalities and forfeit his goods. It is interesting, if almost certainly coincidental, that the punishments Henry suggested if Beaufort chose to continue as cardinal were the same as those inflicted upon those found guilty of *praemunire*. In this case Beaufort chose to give up the red hat rather than suffer the seizure of his temporalities.⁸³⁴ After Henry V's death, Beaufort and another of his nephews – Humphrey, Duke of Gloucester – formed part of the regency government during Henry VI's minority. Both

⁸³¹ Gwyn, *King's Cardinal*, p. 594.

⁸³² *Ibid.*; Bernard, *The King's Reformation*, p. 36.

⁸³³ K .B. McFarlane, 'Henry V, Bishop Beaufort and the Red Hat', in *EHR*, 60 (Sept., 1945), 316-48 (p. 316).

⁸³⁴ *Ibid.*, p. 317.

Gloucester and Beaufort sought to have the most influence over the young king, and the rivalry between the two would result in *praemunire* actions against the bishop in 1431. Gloucester first saw an opportunity to undermine his rival after 1427, when Beaufort finally received the red hat from Martin V, this time going through the proper English channels. Gloucester raised the point that upon becoming cardinal, Beaufort should have given up his see at Winchester, citing the precedent of Simon Langham in 1368 who had relinquished his title of Archbishop of Canterbury upon becoming cardinal.⁸³⁵ What Gloucester failed to mention was that Langham had only resigned the archbishopric after Edward III had confiscated the Canterbury temporalities, viewing the archbishop's acceptance of the cardinalate without royal consent as an action of divided loyalty (unsurprising considering that Edward had enacted the second Statute of *Praemunire* only three years earlier, for the express purpose of consolidating his jurisdiction within the realm).⁸³⁶ However, at this time no further action was taken against the bishop. Beaufort, now cardinal-priest of St Eusebius, had been tasked by Martin V with leading the crusade against the Hussites of Bohemia, and was absent from the realm at this time.⁸³⁷

However, in 1431, when Henry VI and Cardinal Beaufort were in France for the king's coronation (as king of France), Gloucester renewed efforts to prosecute Beaufort. The minutes of the Privy Council proceedings for 6 November 1431 record the renewed attempt to remove Cardinal Beaufort from the see of Winchester on the grounds that it was incompatible for a Cardinal and legate *a latere* to also hold an English bishopric.⁸³⁸ This Council was made up of fourteen spiritual peers, among them the archbishops of Canterbury and York, and eight temporal lords.⁸³⁹ Reiterating the precedents of Simon Langham and others who upon becoming Cardinal had relinquished their sees, the council concluded that Beaufort should lose the see of Winchester, and refund all the revenues which he had received from it.⁸⁴⁰ Gloucester's complaint went further, suggesting that as part of becoming legate *a latere* Beaufort had purchased an exemption from the court of Rome from the jurisdiction of the Archbishop of Canterbury. If proven, this accusation

⁸³⁵ *POPC*, iv, p. lxii.

⁸³⁶ *ODNB*, 'Simon Langham' by W.J. Dohar.

⁸³⁷ *Ibid*, 'Henry Beaufort', by G. L. Harriss.

⁸³⁸ *POPC*, iv, pp. 100-01.

⁸³⁹ *Ibid.*, p. xxxii.

⁸⁴⁰ *Ibid.*, pp. 100-01.

would have meant that Beaufort was guilty of bypassing the jurisdictions of those in the realm in favour of the papacy, and thus be subject to the punishments contained within the Statutes of *Praemunire*. After being questioned by Gloucester (during the Council meeting) Thomas Poulton, the bishop of Worcester, admitted that the Bishop of Lichfield had purchased the said exemption on behalf of Beaufort. Proceedings against the bishop went no further at this time because a number of the Council felt it prudent to wait until his return. In the meantime, according to the council minutes, the exemption was to be investigated by the king's judges.⁸⁴¹ Just three weeks later – before Beaufort had returned to England – the Privy Council ordered that writs of *praemunire* be prepared and sealed against the cardinal. The execution of these writs was deferred until the king returned to England, because of Beaufort's close relationship with Henry VI.⁸⁴² The composition of this council that ordered the preparation of these writs of *praemunire facias* included a number of prominent churchmen, who actually outnumbered those temporal lords present: the archbishops of Canterbury and York and the bishops of Durham, Lincoln, Rochester, Bath and Ely were all present; the duke of Norfolk, the earls of Huntingdon and Suffolk, and Lord Scrope were present from the temporal sphere. That those from the spiritual sphere were willing to acquiesce to the use of *praemunire facias* against Beaufort demonstrates that the English clergy at this time were not against the writ – as they (particularly Chichele) would become by the end of the 1430s – when it was used in the appropriate, traditional, manner.⁸⁴³ Beaufort was undermining the jurisdiction of both the archbishop of Canterbury and the king in his role as legate *a latere*. However, Henry Chichele, the archbishop of Canterbury at this time, should have been especially wary of the use of *praemunire* against Beaufort. By the logic that warranted writs of *praemunire facias* to be made up against Beaufort in 1431, Chichele himself was technically guilty for claiming to have been given permission to hold both the see of St David's and his previous prebend at Salisbury in 1409. Fortunately in Chichele's case, at the time of the King's Bench case against him he did not have a rival willing to apply the minutiae of the law to ensure his downfall.⁸⁴⁴ As it was, Beaufort's *praemunire* ended when he appeared in parliament in 1432, asking to face his

⁸⁴¹ Ibid.

⁸⁴² Ibid., pp. 104-05.

⁸⁴³ See Chapter V.

⁸⁴⁴ YB Mich. 11 Hen. IV, pl. 67, fos 37a-39a; Pasch. 11 Hen. IV, pl. 10, fos 59b-60b; Trin. 11 Hen. IV, pl. [17], fos 76a-78b.

accusers. The cardinal was under the impression that he was accused not only of *praemunire* but also treason. When no one answered his challenge, he was pardoned (for a fee).⁸⁴⁵ Beaufort's *praemunire* also mirrored Wolsey's in that they were both initiated for political, rather than legal concerns. Gloucester wanted any viable reason to secure Beaufort's downfall, just as Henry VIII needed rid of the cardinal that had failed him, and to make an example for the pope. Additionally, Beaufort's *praemunire* action was known around the time of Wolsey's fall. In 1535, Justice Fitzherbert of Common Pleas explained how Beaufort had had to appear in parliament to answer for his appeal to the court of Rome.⁸⁴⁶

Before his fall, Wolsey too was no stranger to *praemunire*; in 1518 he brought two cases of *praemunire* to the court of Star Chamber, over which he presided as chancellor. This court, named after the gilded stars on the ceiling of where the court met in Westminster Palace, was traditionally simply a meeting place for the council.⁸⁴⁷ However, Wolsey increasingly developed Star Chamber as a court of the realm in its own right, hearing cases between private parties as the common law courts would.⁸⁴⁸ It also became notorious as a court for Wolsey to intimidate his rivals; his *praemunire* actions were two such cases.⁸⁴⁹ The first *praemunire* action was brought against Sir Christopher Plommer and Dr John Allen. Though their precise offences were not known, the *praemunire* against them resulted in a fine of 500 marks.⁸⁵⁰ The second *praemunire* was against Henry Standish, whose defence of the king in the Blackfriars' Conferences in 1515 had resulted in Wolsey – on behalf of the English clergy – submitting himself to the king. Additionally, Standish had been provided to the see of St Asaph in 1518 over Wolsey's preferred candidate.⁸⁵¹ Therefore, this *praemunire* can be viewed as a political move to humiliate a cleric that had dealt Wolsey past slights.⁸⁵² The use of *praemunire* in Wolsey's downfall is thus somewhat ironic considering the cardinal's use of the offence in 'his' court of Star Chamber in 1518. That Wolsey managed to secure money for the king in the form of pardons through his

⁸⁴⁵ *PROME* (1432), xi, pp. 13-17.

⁸⁴⁶ *YB Trin.* 27 Hen. VIII, pl. 3, fo. 14a.

⁸⁴⁷ Baker, *Introduction to English Legal History*, p. 136.

⁸⁴⁸ John Guy, *The Cardinal's Court* (Sussex: The Harvester Press Ltd, 1977), p. 51.

⁸⁴⁹ *Ibid.*

⁸⁵⁰ *STAC* 2/1/96.

⁸⁵¹ Guy, *The Cardinal's Court*, p. 76.

⁸⁵² *STAC* 2/2/75.

praemunire cases in King's Bench also serves as a precursor to the way Henry would later intimidate the clergy – on a much larger scale – in 1531.⁸⁵³

Wolsey's treatment after his *praemunire* action, his being allowed to retire to York, was also not atypical. Although *praemunire* could carry with it harsh punishments, part of the first Statute of *Praemunire* (1353) allowed those that appeared to answer their charges to be received.⁸⁵⁴ Nor was a *praemunire* action necessarily a death knell to a cleric's career. The *praemunire* of Walter Skirlawe, future bishop of Durham, is testament to this in the fourteenth century. While archdeacon of East Riding in 1364, Skirlawe came into dispute with the king over a disputed vacancy, and prevented a royal presentation of the queen's secretary to the benefice.⁸⁵⁵ A *quare impedit* followed, and instead of answering the summons Skirlawe retreated out of the realm disguised as a servant in striped clothing, and sued in the Papal Curia at Avignon to prevent the king's presentee from taking possession of the disputed benefice. This inhibition was posted on the doors of York Minster.⁸⁵⁶ A *praemunire* ensued, against Skirlawe and his abettors, such as Peter Stapleton, who had smuggled him abroad. Upon approaching the king, Stapleton was committed to the Marshalsea, for Skirlawe did not return to answer his *praemunire* charge.⁸⁵⁷ The archdeacon was outlawed in 1366.⁸⁵⁸ However, despite this episode, Skirlawe was later pardoned of his outlawry in 1370, and went on to enjoy a prosperous career as bishop, first of Coventry and Lichfield on 28 June 1385, then finally Durham by way of Bath and Wells by 1388.⁸⁵⁹ Though not on the same scale as Skirlawe's rise following his *praemunire*, a similar example of clerics overcoming *praemunire* charges to have successful ecclesiastical careers can be seen from the *praemunire* against William Pouns, monk of Christ Church, Canterbury, who was charged with publishing papal bulls without the permission of his prior; writs of *praemunire facias* followed.⁸⁶⁰ However, Pouns was received back into the church at the request of Chichele, the archbishop of Canterbury, who had interviewed him and found him penitent. Pouns was sent to the Cistercian House of Boxley and no further mention was made

⁸⁵³ It is possible that Wolsey's use of *praemunire* influenced the later use of the offence by Henry VIII and his councillors, though no conclusive evidence for such a relationship was found researching this thesis.

⁸⁵⁴ 27 Edw. III, Stat. 1.

⁸⁵⁵ *ODNB*, 'Walter Skirlawe [Skirlaw]', by M. G. Snape.

⁸⁵⁶ *Ibid.*

⁸⁵⁷ SC8/72/3577.

⁸⁵⁸ *ODNB*, 'Walter Skirlawe'.

⁸⁵⁹ *Ibid.*

⁸⁶⁰ *Litterae Cantuarienses*, iii, p. 172. See Chapter V.

regarding his *praemunire*.⁸⁶¹ In Pouns' case his move to a stricter order could have been a form of punishment, although the records do not indicate whether this was the case.

From a legal perspective then, there was nothing invalid about Wolsey's *praemunire*. He had utilised his legatine authority within the realm to the perceived detriment of the king. The fact that the king had allowed Wolsey to act in this way makes the *praemunire* against the cardinal morally dubious, but legally the king's action was sound. However, that Wolsey was charged with *praemunire* rather than any other form of misdemeanour committed by the cardinal (and the list was allegedly very long indeed) was not a point against Wolsey's undermining of royal authority, but a reassertion of Henry's challenge to papal authority, fortuitously (for the king) outlined in the 1393 Statute of *Praemunire*.⁸⁶²

The Pardon of the Clergy

Henry's use of *praemunire* did not stop with Wolsey. The king still needed to secure his divorce, and to do this he either needed to persuade the pope to grant it (which Wolsey had failed to do, thus provoking the ire of the king), or he needed to get the English clergy to agree not to reject any royal statements regarding the divorce in future based on papal instruction. Thus on 11 July 1530 Christopher Hales, the attorney-general, appeared in King's Bench to place *praemunire* informations on file against fifteen clerics.⁸⁶³ Eight bishops were implicated: Geoffrey Blythe of Coventry and Lichfield; Richard Nykke of Norwich; Henry Standish of St Asaph; Thomas Skeffington of Bangor; Nicholas West of Ely; John Fisher of Rochester; John Clerk of Bath and Wells; and Robert Sherborne of Chichester.⁸⁶⁴ Three were abbots – John Islip of Westminster; John Melford of Bury St Edmunds; and Robert Fuller of Waltham Cross. The remaining accused were: Edward Finch, archdeacon of Wiltshire; Edmund Frocetor, dean of Hereford; and Giles Hakluyt, subdean of Salisbury.⁸⁶⁵ Those accused were charged with acknowledging Wolsey's legatine authority by paying a portion of their annual income from their miscellaneous revenues.⁸⁶⁶ Initially, this charge

⁸⁶¹ Ibid. pp. 173-75.

⁸⁶² Bernard, *King's Reformation*, p. 36.

⁸⁶³ KB9/513/1-14.

⁸⁶⁴ Guy, 'Henry VIII and the *praemunire* manoeuvres of 1530-31', *EHR*, 97 (Jul., 1982), 481-503 (pp. 482-83).

⁸⁶⁵ Ibid.

⁸⁶⁶ J. J. Scarisbrick, 'The conservative episcopate in England 1529-1535' (unpublished doctoral thesis, Cambridge University, 1955), p. 115; Guy, '*Praemunire* manoeuvres' (pp. 482-83); Bernard, *King's Reformation*, p. 45.

was limited to these fifteen; however, if accepted an extension of these accusations could theoretically be brought to apply to all churchmen within England; Wolsey's authority, as cardinal and papal legate, technically had held sway over all of England's churchmen. The legality of this *praemunire* action is actually on firmer ground than Wolsey's. As Wolsey had admitted guilt, all these clerics could be prosecuted as the fallen cardinal's abettors, fautors, etc. (as per the terms of the statutes).⁸⁶⁷ The common lawyers of the fourteenth and fifteenth centuries had confirmed that *praemunire* actions punished all defendants equally, whether principal or secondary.

These *praemunire* informations were followed in 1531 by a royal demand to the English clergy in convocation that they recognise Henry as their supreme head, and pay an expensive pardon for the 'illegal' exercise of spiritual jurisdiction within the realm. This pardon included any charges of *praemunire* or provisors. Though studies disagree on whether or not the original *praemunire* charge against the fifteenth clerics had been extended to apply to the whole clergy, the outcome was the same. In exchange for £100,000 (plus £18,000) the clergy would be pardoned any 'illegal' spiritual jurisdiction they had exercised.⁸⁶⁸ The clergy also acquiesced to recognising Henry as their supreme head, but only after adding the addendum 'as far as the law of Christ allows'.⁸⁶⁹ This was not unlike Archbishop Courtenay's protestations to the 1393 Statute of *Praemunire*, where he affirmed the need for such legislation against annullers of judgements in the king's courts, but made a point to affirm that this did not mean that he denied the pope authority.⁸⁷⁰

The year before the Act in Restraint of Appeals, one final *praemunire* demonstrated the opinion of the English Church to this broad interpretation of the offence. In a letter to the king in February 1532, Archbishop Warham – accused of *praemunire* for pre-emptively consecrating Henry Standish in 1518 (fourteen years earlier) before the king had consulted with Standish over his temporalities – laid out his view on the recent attacks on ecclesiastical jurisdiction. He may even have been aware of the terms of the Commons'

⁸⁶⁷ See Appendix 1.

⁸⁶⁸ Bernard, *King's Reformation*, p. 47; Guy, 'Praemunire Manoeuvres' (p. 483).

⁸⁶⁹ Ibid.

⁸⁷⁰ See Chapter I.

Supplication before its formal presentation to the king.⁸⁷¹ A *praemunire* action based on an historic church court action was not unheard of. William Dalton summoned Thomas Hutton to King's Bench in 1504 for a slight that occurred over twelve years earlier.⁸⁷² Similarly, Gloucester in 1439 accused Beaufort of subverting royal authority by his first acceptance of the cardinal's hat in 1417; however, this was based upon earlier accusations of *praemunire* (for which Beaufort had already been pardoned in 1432).⁸⁷³ However, where these previous two examples were founded on some basis of precedent, Warham's charge – so he claimed – was unprecedented.⁸⁷⁴ He asked the king to consider the fates of previous kings who had rallied against the freedoms of the English church. The three English kings that had enacted and expanded upon *praemunire* and provisors, Edward III, Richard II, and Henry IV, had all in the end suffered at the hands of God:

Edwarde the thirde also following his predecessoures steppes in this behalve, in his last dayes, his subgicts rebelling ayenst him, and notwithstanding his grete conquestes and his grete triumphs, finally dyed in povertie, and hate of his nobles and subjects; Also Richard the seconde maker and confirmer of suche actes as be afor reheryd at thende of his reigne renounced the right of the Crown confessing him selve not to be able and sufficient to occupie the same and after was in prison in the Castel of Pomfrete ther murdred or meserably famissed; And Henry the IIIIth being of the number of princes aforesaid was stryken with so grete and so fowle a leprosy and so evil favoured by reason of hys disease, that suche as he loved best and had doon most for, abhorred him so sor that they wold not com nygh to hym, and so he mor miserably died than is to be rehersyd.⁸⁷⁵

Warham was never tried for this outburst; he died the same year. However, this letter showed how incredulous pockets of the English clergy were with the way that *praemunire* was being used by the king. More so than Wolsey's *praemunire*, Warham's charge was

⁸⁷¹ For what follows, see G. W. Bernard, *The King's Reformation*, pp. 176; G. R. Elton, *Reform and Reformation*, pp. 152-53; and especially James Moyes, 'Warham, an English Primate on the Eve of the Reformation', *The Dublin Review* 114 (1894), 390-419.

⁸⁷² KB27/973, rot. 53d (*Dalton v. Hutton*). The court cases were 152 months apart.

⁸⁷³ *PROME* (1439), xi, pp. 311-13.

⁸⁷⁴ Moyes, 'Warham' (p. 401).

⁸⁷⁵ *Ibid.* (p. 410).

spurious at best, essentially accused of not checking whether Standish had spoken with the king before consecrating him bishop; as Warham argued, it was not his responsibility to check who the king had and had not parleyed with.⁸⁷⁶

Conclusion: The Act in Restraint of Appeals

Considering the high-profile uses of *praemunire* in the years immediately preceding it, the Act in Restraint of Appeals is rather anti-climactic. This act drew on the historical precedents of the Statutes of *Praemunire* to justify itself. It did not, however, make any grand interpretations of the offence. The parliaments of Edward I, Edward III, Richard II, and Henry IV, had created an offence that protected the crown in his realm from the ‘annoyance’ of the see of Rome.⁸⁷⁷ This, as the first chapter of this thesis highlighted, was not an exaggeration. However, these statutes, by this point over a century old, were no longer suited to the purpose in which they were created. According to the act, the now-ancient statutes were unable to prohibit certain appeals sued out of the realm in causes ‘testamentary, causes of matrimony and divorces, right of tithes, oblations and obventions’. Here the act was applying some legal fictions; over the course of its one-hundred-and-fifty year history, *praemunire* had expanded in scope to apply to matters of tithes and other ecclesiastical disputes (though it had not yet applied to divorces).

Perhaps the most remarkable thing about the Act in Restraint of Appeals is how similar it was in wording to the Great Statute of *Praemunire*.⁸⁷⁸ Where the 1393 statute prohibited appeals to ‘the court of Rome or elsewhere’, the 1533 act prohibited appeals ‘to the see of Rome or from or to any other foreign court’.⁸⁷⁹ Secondary defendants, the key feature (according to the fifteenth-century law reports at least) of *praemunire* actions, were also specified almost identically. The ‘notaries, procurators, maintainers, abettors, fautors, and counsellors’ in 1393 became ‘fautors, comforters, abettors, procurers, executors and counsellors’ in the Tudor legislation.⁸⁸⁰ Clearly whoever drafted the act of 1533 had a copy of the statute to hand (or at least a writ of *praemunire facias*, which often outlined these specifications). Even the punishments for breaching the statutes were the same; the 1533

⁸⁷⁶ Ibid. (p. 406).

⁸⁷⁷ 24 Hen VIII, c. 12.

⁸⁷⁸ Ibid. 16 Ric. II, c. 5

⁸⁷⁹ Ibid.

⁸⁸⁰ Ibid.

act prescribed punishments as per the 1393 Statute of *Praemunire*. That two pieces of legislation over a century apart could be so similar in wording but so different in application is testament to how the relationship between the king and the papacy changed between the fourteenth and sixteenth centuries; that *praemunire* was such an important part of both, and featured so often in the high-profile disputes leading up to this 1533 legislation, is testament to how the offence had broadened in scope over the same period.

Conclusion: “There Can Be No *Praemunire*”

There can be no *Praemunire*. A *Praemunire* (so called from the word *Praemunire facias*) was when a Man laid an Action in an Ecclesiastical Court, for which he could have no remedy in any of the King’s Courts, that is, in the Courts of Common Law, by reason the Ecclesiastical Courts before *Henry* the Eighth were subordinate to the Pope, and so it was *contra coronam et dignitatem Regis*; but now the Ecclesiastical Courts are equally subordinate to the King. Therefore it cannot be *contra coronam et dignitatem Regis*, and so no *Praemunire*.⁸⁸¹

Following the break with Rome, *praemunire* should have become irrelevant. An offence of undermining royal authority could not apply when all the courts in the realm, ecclesiastical and temporal, answered to the king. Yet *praemunire* persevered. One of the reasons for this was the adaptability of the offence, demonstrated throughout this thesis. The lax wording of the 1393 Statute of *Praemunire* allowed for broad interpretations of the offence. In the seventeenth century Edward Coke would argue that the equity court of Chancery could fall under the punishments of *praemunire*, for hearing business that should rightfully have been received in King’s Bench.⁸⁸² The statutes themselves would not be repealed until the twentieth century. These later changes to the offence were only possible because of the first century-and-a-half of its existence.

This thesis has examined *praemunire* from its creation up to the English break with Rome. It has necessarily covered a lot of ground in order to connect these two important milestones in the history of the offence. Chapters one to three addressed the creation of *praemunire* and the complex question of definition. *Praemunire* could refer to one of three things: the writ, the statute, or the offence. The Statutes of *Praemunire* were enacted in 1353, 1365, and 1393, as part of a body of legislation that protected English interests from papal encroachments. The Statutes of Provisors, enacted in 1351 and 1390, prohibited the acceptance of papal provisions to English benefices where the advowson was in the king’s hand or in dispute. *Praemunire* created an offence of undermining royal authority, which in the fourteenth century manifested itself as the offence of drawing pleas out of the realm in

⁸⁸¹ John Selden, *Table Talk: being the discourses of John Selden, Esq.* (London: printed for E. Smith, 1689), p. 179.

⁸⁸² Sir Edward Coke, *The Second Part of the Institutes of the Laws of England*, p. 583.

matters of royal cognisance. However, the creation of a definable offence of *praemunire* was not a smooth process. Lax wording in the first Statute of *Praemunire* (1353) meant that although it was called a 'statute against annullers of judgements in the king's courts', it was only able to apply to those that did not appear after summons. Thus, for most of the fourteenth century *praemunire* was viewed as an offence relating to process. Appeals to the court of Rome were included instead under the blanket definition of 'provisors'. The second Statute of *Praemunire*, enacted in 1365, did little to change this. It served to renew the first Statute of *Praemunire* and the first Statute of Provisors, treating the 1353 statute again as one of process. Therefore it was not until the enactment of the third Statute of *Praemunire* in 1393 that the term could truly apply to the offence of undermining royal authority. This statute prescribed punishments to both those appealing to the court of Rome (or elsewhere) and to those that did not appear after summons. However, the close relationship between *praemunire* and provisors was long-lasting. The Statutes of *Praemunire* took their name from the writ of *praemunire facias*, the royal writ applied to actions on the statutes. This writ was itself named after – or a repurposed version of – an older writ of '*premunire facias*'. These writs were named after the function they provided, one of forewarning. These writs did not help differentiate provisors from *praemunire*; it could apply to actions founded on both sets of statutes.

The offence of *praemunire*, of undermining royal authority, was not anti-papal. It could be, as Henry VIII and his councillors would prove in the sixteenth century, but this was a secondary cause to the protection of royal jurisdiction. *Praemunire* was only against those who circumvented the king's authority. The pope was not the king's vassal, so therefore the offence was not against the pope. Although the pope would never deny his authority to hear cases brought before the court of Rome, he did not rely on those cases in the way that he relied on the money and patronage from English provisions. There is, however, a caveat to this. Although *praemunire* was not anti-papal, provisors was. As such, for all the time that the two were viewed as part of the same offence, *praemunire* was anti-papal by association.

The fifteenth-century history of *praemunire* was one of broadening application. In 1400, *praemunire* was indistinguishable from provisors; by the Tudor period, it was a definable offence that could target appeals made to English ecclesiastical courts as well as the court of Rome. From the complaints of the clergy, it is clear that they had a

sophisticated understanding of how *praemunire* was being used to the detriment of ecclesiastical jurisdiction by 1434. By the reigns of Edward IV and Richard III, these complaints had developed into appeals for charters confirming ecclesiastical liberties.

The legal reports for the same period do not correlate with the complaints of the clergy. Although the English Church was complaining about the misuse of the writ from 1434, the first allusion to this wider interpretation of *praemunire* in the legal records dates from 1440. The first outright confirmation of the application of the offence dates from 1465. Additionally, even though these new interpretations of *praemunire* had been confirmed by the common law, this did not mean that they were used straight away. In fact, it would not be until the Tudor period that the true expansion of *praemunire* would occur.

In the reigns of Henry VII and Henry VIII, *praemunire* came to be used to draw traditionally ecclesiastical cases into the common law courts. More so than in the fifteenth century, *praemunire* could be viewed as a piece of vexatious litigation, increasingly used by individuals such as Wolsey to intimidate their rivals. Thus, when Henry VIII was casting around for options to solve his Great Matter, he was able to use *praemunire* to suit his aims. He was probably less aware that he was only able to do this because of the way in which the offence had developed from its fourteenth-century origins.

Appendices

Appendix 1: The Statutes of Provisors & *Praemunire*

The Statute of Carlisle, 1307 (35 Edw. I, c. 2; SR, i, 149-52)

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 him dominion, under the name of a rent, tallage, or any kind of imposition, or otherwise by way of exchange, mutual sale, or other contract howsoever it may be termed; neither shall depart into any other country 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. And if any will presume to offence this present statute, he shall be grievously punished according to the quality of his offence, and according to the contempt of the king's prohibition.

The Ordinance of Provisors, 1343 (PROME, iv, pp. 351-52)

...it should be publicly announced and strictly forbidden on behalf of our said lord the king that anyone, of whatever estate or condition he may be, be he alien or denizen, henceforth carry or cause to be carried within the realm of England, upon strict forfeiture to the king, letters, bulls, processes, reservations, instruments or any other thing prejudicial to the king or to his people, in order to deliver them to archbishops, bishops, abbots, priors, earls, barons or any others within the said realm; and no-one by virtue of such provisions or reservations should receive benefices of holy Church; and no-one, upon the aforesaid forfeiture, should receive or take such letters, bulls, processes or instruments touching such provisions or reservations, or by virtue of the same make institution or induction or execute the same in any other manner; and no-one should do, or allow to be done, any other thing that can turn in prejudice to the king or to his people, or to the detriment of the rights of his crown or of the aforesaid decisions, ordinances, agreements, decrees and consideration. And it was also agreed that in addition a diligent search be made in places where necessary

in the said realm, inside as well as outside franchises, of each and every person coming into the same realm of England, and that all those who are found by such search, or by inquest to be taken thereon, or by other information, to be carrying letters, bulls, processes, reservations or instruments or any other thing prejudicial to the king or to his people, and all those who by virtue of the same receive any benefice, or put themselves in the same, or should be received to the same benefices, and also those who by the authority of such letters, bulls, processes, reservations or instruments would be or make appeals, citations or process against the patrons of the said benefices, or their presentees, or any others whatsoever, or sue them or cause them to be sued in any court whatsoever, or have made or procured to be made anything in prejudice to the king or to the earls, barons, nobles and aforesaid commonalty, or to the detriment of the said decisions, ordinances, agreements, decrees and consideration and against the aforesaid proclamation and prohibition, should be taken and arrested by their bodies; and the letters, bulls, processes and instruments on such provisions and reservations should be taken from them or from others, wherever they are found, and sent before the king's council, together with the bodies of those who have carried them into the said realm of England, Wales, Ireland or within the county of Chester, or pursued any execution of the same; and also the bodies of all others who are taken and arrested for the aforesaid reason, for taking and receiving that which the court awards.

The First Statute of Provisors, 1351 (The Statute of Provisors of Benefices. 25 Edw. III, Stat. 4; SR, i, 316-318)

Our lord the king, seeing the mischiefs and damage before mentioned, and having regard to the said statute made in the time of his said grandfather (1307 Statute of Carlisle), and to the causes contained in the same; which statute holds always his force, and was never defeated, repealed nor annulled in any point...hath ordered and established, that the free elections of archbishops, bishop, 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, and that the 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 enfeoffed by their donors. And in case that

reservation, collation, or provision be made by the court of Rome, of any archbishopric, bishopric, dignity, or other benefice, in disturbance of the free elections, 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 archbishoprics and other dignities elective, which be of his advowry, such as his progenitors had, before that free election was granted, since the election was first granted by the king's progenitors upon a certain form and condition, as to demand licence of the king to choose, and after the election to have his royal assent, and not in other manner...

...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 impeached 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; and if they be convicted, they shall abide in prison without being let to mainprise, or bail, or otherwise delivered, till they have made fine and ransom to the king at his will, and agree to the party that shall feel himself aggrieved. And nevertheless before 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, nor by other, against any man in the court of Rome, nor in any part elsewhere, for any such imprisonments or renunciations, nor any other things depending of them.

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, and that in the meantime the king shall have the profits of such benefices so occupied by such provisors, except abbeys, priories, and other houses, which have colleges or convents; and in such houses the colleges and convents shall have the profits.

The First Statute of Praemunire, 1353 (A Statute Against Annnullers of Judgements of the King's Court; made in the twenty-seventh year. 27 Edw. III, Stat. 1, c. 1; SR, i, 329)

It is assented and accorded by our lord the king...that all the people of the king's allegiance, whatever condition they be, which shall draw any out of the realm in plea, whereof the cognisance pertains to the king's court, or of things where judgements have been 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 are in debate, or otherwise where they have lands or other possessions, by the sheriffs or other royal 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 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; 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: 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; and if it be returned that they be not found, they shall be put in exigent, and outlawed.

Provided always, that at what time they come before they are outlawed, and will yield themselves 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 thereto 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.

The Second Statute of Praemunire, 1365 (38 Edw. III, Stat. 2, c. 1-2; SR, i, 385-7)

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 [the king] or any of his subjects, and also all they that have obtained or shall obtain in the said court [of Rome], deaneries, archdeaconries, provosties, and other dignities, offices, chapels, or benefices of Holy Church, pertaining to the collation, gift, presentation, or disposition of our

sovereign lord the king, or of other lay person of his said realm...also all their maintainers, concealers, abettors, and other aiders and fautors wittingly, as well at the suit of the king as of the party, or other whatsoever he be out 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 of 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 convicted 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..

Item, if any person defamed or suspect of the said impetrations, prosecutions, 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 themselves before the king or his council, 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 otherwise sufficiently, to answer to the king and to the part, 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 twenty-seventh year of this king's reign...

The Second Statute of Provisors, 1390 (13 Ric. II. Stat. 2 c. 2; SR, ii, 69-74)

[King Richard] hath ordained 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. And that all prelates and other people of holy Church, which have advowsons of any benefices in the king's hand, 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 enfeoffed by their donors. And in case that reservation, collation, or provision be made by the court of Rome, of any archbishopric, bishopric, dignity, or other benefice, in disturbance of the elections, collations, or presentations aforementioned, that at

the time of voidance, when such reservations, collations, and provisions shall take effect, our lord the king and his heirs shall have and enjoy for the same time the collations to the archbishoprics, bishoprics, and other dignities elective, which be of his advowry, such as his progenitors had, before that free election was granted, seeing that the elections were first granted by the king's progenitors upon a certain form and condition, as to demand licence of the king to choose, and after the election to have his royal assent, and not in any other manner; which conditions not kept, the thing ought by reason to resort to his first nature...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 impeached 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; and if they be convicted, 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 aggrieved; 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, nor by other, against any man in the court of Rome, nor in any part elsewhere, for any such imprisonments or renunciations, nor any other thing depending of them. 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, and that in the meantime the king shall have the profits of such benefices so occupied by such provisors...

...for all archbishoprics, bishoprics, and other dignities and benefices elective, and all other benefices of Holy Church, which shall begin to be void in deed [from 29 January 1390] 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 held for ever, and put in due execution from time to time in all manner of points; 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 forever, his lands and tenements, goods and chattels shall be forfeit to the king; and if he be within the realm, he shall also be 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; 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; and that their procurators, notaries, executors, and summoners have the pain and forfeiture aforesaid...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 anything is done contrary to this statute, touching any archbishopric, bishopric, dignity, or other benefice of Holy Church within the said realm, if he maketh such motion or suit to be a prelate of Holy Church, he shall pay to the king the value of his temporalities of one year; 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; 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...

Item, it is ordained and established, that if any man bring or send within the realm, or the king's power, any summons, sentences, or excommunications 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 chattels forever, and incur the pain of life and of member. And if any prelate make execution of such summons, sentences, or excommunications, that his temporalities be taken and abide in the king's hands, till due redress and correction be thereof made. 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.

The 'Great' Statute of Praemunire, 1393 (16 Ric. II, c. 5; SR, ii, 84-86)

Whereupon our 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 translation,

processes, and sentences of excommunications, bulls, instruments, or any other things whatsoever, which touch the king against him, his Crown, and his regality, 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, fautors, and counsellors, shall be put out of the king's protection, and their lands and tenements, goods and chattels, forfeit to our lord the king; 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, or that process be made against them by *praemunire facias*, in manner as it is ordained in other Statutes of Provisors, and other which do sue in any other court in derogation of the regality of our lord the king.

Henry IV's Confirmation and Extension of Provisors, 1400-01 (2 Hen. IV, c. 3-4; SR, ii, 121-22)

Item, it is ordained and established, that if any provision be made by the bishop of Rome to any person of religion, or to any other person, to be exempt of obedience regular, or of obedience ordinary, or to have any office perpetual within houses of religion, or as much as one regular person of religion, or two or more, have in the same; that if such provisors from henceforth do accept or enjoy any such provision, they shall incur the pains comprised in the Statute of Provisors, made in the 13th year of King Richard the Second.

Item, for as much as our lord the king, upon grievous complaint to him made in this parliament, hath perceived, that the religious men of the Order of Cisteaux in the realm of England, have purchased certain bulls to be quit and discharged to pay the tithes of their lands, tenements, and possessions let to farm, or manured, or occupied by other persons than by themselves, in great prejudice and derogation of the liberty of Holy Church, and of many liege people of the realm: Our lord the king [...] hath ordained and established, that the religious persons of the Order of Cisteaux shall stand in the estate that they were before the time of such bulls purchased; and that as well they of the said order, as all other religious and seculars, of what estate or condition they be, which do put the said bulls in execution, or from henceforth do purchase other such bulls of new, or by colour of the same bulls purchased, or to be purchased do take advantage in any manner, that process shall be made against them and every bit of them by garnishment [forewarning] of two months by

writ of *premunire facias*; and if they make default; or be attainted, then they shall incur the pains and forfeitures contained in the Statute of Provisors, made the 13th year of the said King Richard.

The Act in Restraint of Appeals, 1533 (24 Hen. VIII, c. 12; SR, iii, 427-29)

[...]

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 King Edward I, Edward III, Richard II, Henry IV, and other noble kings of the 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 jurisdictions 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 known or espied. And notwithstanding the said good estatutes and ordinances made in the time of the King's most noble progenitors in preservation of the authority and prerogative of the said imperial crown as is aforesaid, yet nevertheless since the making of the good statutes and ordinances divers and sundry inconveniences and dangers not provided for plainly by the said former acts, statutes and ordinances have risen 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, costs and charges of the King's highness and many of his subjects and resiants in 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: 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 nor the witnesses there so well examined as within this realm, so that the parties grieved by means of the said appeals be most times without remedy.

[...]

And it is further enacted [...] that if any person or persons [...] 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, interdictions, excommunications, restraints or judgements, of what nature, king or quality soever they be [...] that then every person or persons so doing, and their fautors, comforters, 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 [...] King Richard II [...]

Appendix 2: Writs of *Praemunire Facias*

BL Add. MS 35205 (numbers have been added to the writs of *praemunire facias* in the sequence that they appear on the manuscript for ease of reference)

BL Add. MS 35205

Writ No.	Nature of Offence
m. 8	
1	Procuring provision from apostolic see
2	Unlawful provision
3	Vacancy in Hospital, leading to citation beyond realm
4	Vacancy in Priory, leading to citation beyond realm
5	Unlawful provision to Priory, leading to citations within realm and without
6	Unlawful provision
7	Unlawful provision, attempting to publish bulls of provision
8	Unlawful provision.
9	Vacancy of Hospital, leading to citation beyond realm
10	Relating to debts upon executors. Citation to Rome
11	Relating to annual rents. Citation to Rome
m. 9	
12	Relating to advowson of church. Citations within realm and without
13	Relating to trespass, conspiracy, lay contracts. Citation to Rome.
14	Relating to advowson of church. Citation to Rome.
15	Relating to advowson of church. Citation to Rome.
16	Relating to cognisance of writings. Citation to Rome
17	Vacancy of Prebend, leading to citation beyond realm
18	Vacancy of alien Priory, leading to citation beyond realm
19	Relating to advowson of church. Citation to Rome.
20	<i>Quare Impedit</i> , relating to vacant archdeaconry (implied punishment of <i>praemunire</i>)
21	Relating to advowson of church. Citation to Rome.
22	Unlawful Provision. Citation to Court Christian (unspecified)
23	Vacancy of Prebend, leading to citation beyond realm.
24	<i>Quare Impedit</i> , relating to vacant prebend (same parties as 23)
25	Relating to chattels and debts. Citation to Rome.
26	Unlawful provision. Citation to Rome.
27	Vacancy of Church, leading to unlawful provision from Rome.
28	Vacancy of Church, leading to citations within realm and without.

29	Vacancy of Vicarage, leading to citation to Rome.
30	Unlawful provision. Citation to Court Christian (unspecified).
31	Unlawful provision.
m. 10	
32	Writ of <i>supersedeas</i> under Statute of Provisors (1390).
33	Unlawful provision, leading to citation to Rome.
34	Unlawful provision, leading to citation in Court Christian (unspecified).
35	Unlawful provision, leading to citation within realm and without.
36	Unlawful execution of papal bulls.
37	Unlawful execution of papal bulls.
38	Unlawful provision.
39	Unlawful ecclesiastical censures, under Statute of <i>Praemunire</i> (1393)
40	Unlawful sentences of excommunication.
41	Relating to rents. Citation to English Court Christian.

Appendix 3: Year Book Entries for *Praemunire*, 1356-1535

Year	Year Book Reference	Writ	Court (if known)	Description
1356	Mich. 30 Edw. III, pl. [7], fo. 11b	Attachment sur prohibition		First mention of 1353 Statute
1365	Pasch. 39 Edw. III, pl. [3], fo. 7a-7b	Writ founded on the Statute of Provisors.		Lynne's <i>Praemunire</i>
1368	Hil. 42 Edw. III, pl. 26, fo. 7a	<i>Praemunire Facias</i>		Confirms <i>Praemunire Facias</i> as a Writ of Trespass.
1369	Hil. 43 Edw. III, pl. 14, fo. 6a	<i>Praemunire Facias</i>		Confirms Punishments for Non-appearance
1370	Pasch. 44 Edw. III, pl. 6, fo. 7b-8a	<i>Praemunire Facias</i> (Provisors)	Common Pleas	Concerns Secondary Defendants
1370	Mich. 44 Edw. III, pl. 29, fo. 36b-37a	<i>Praemunire Facias</i> (Provisors)	King's Bench	Explains how a Provision Falls Out of Spiritual Sphere
1371	Trin. 45 Edw. III, pl. 39, fo. 26b	Office, <i>Praemunire Facias</i>		Demonstrates a use of <i>Praemunire Facias</i> separate from the statutes.
1383	Pasch. 6 Ric. II, pl. 15, fo. Ames 221-3	<i>Praemunire Facias</i>	Common Pleas	Confirms <i>Praemunire Facias</i> as a Writ of Trespass.
1384	Mich. 8 Ric. II, pl. 6, fo. Ames 47-8	<i>Praemunire Facias</i>	Common Pleas	Ambiguous Allusion to Court Christian with regard to <i>Praemunire</i> .
1406	Mich. 8 Hen. IV, pl. [9], fo. 6b-7a	Writ founded on the Statute of Provisors.	King's Bench	All defendants suffer equal punishments.
1408	Mich. 10 Hen. IV, pl. 2, fo. 1b-2b	<i>Praemunire Facias</i>	King's Bench	Some matters should be heard in Court Christian.
1409	Mich. 11 Hen. IV, pl. 67, fo. 37a-39a	Quare Impedit	Common Pleas	Chichele Case. Relating to Papal Authority in England.
1410	Pasch. 11 Hen. IV, pl. 10, fo. 59b-60b	Quare Impedit	Common Pleas	Chichele Case
1410	Trin. 11 Hen. IV, pl. [17], fo. 76a-78b	Quare Impedit	Common Pleas	Chichele Case
1413	Hil. 14 Hen. IV, pl. 4, fo. 14a-14b	<i>Praemunire Facias</i>	Common Pleas	Excommunicated plaintiffs can still appeal to common law
1425	Trin. 3 Hen. VI, pl. Fitzherbert Estoppel 18, fo. 294v	Case, Writ (tresspass) on the	Common Pleas	<i>Praemunire</i> applies to appeals in court of Rome
1429	Mich. 8 Hen. VI, pl. 8, fo. 3a-3b	<i>Praemunire Facias</i>	Common Pleas	Confirms Punishments for Non-appearance.
1431	Hil. 9 Hen. VI, pl. Fitzherbert	<i>Praemunire Facias</i>	Common Pleas	<i>Praemunire Facias</i> used in

	Premunire 2, fo. 105r	(Provisors)		Provisors case.
1433	Trin. 11 Hen. VI, pl. 10, fo. 50b	Trespass	Common Pleas	Confirms Punishments for Non-appearance.
1438	Mich. 17 Hen. VI, pl. Fitzherbert Premunire 11, fo. 105v	Praemunire Facias	Common Pleas	Use of <i>Praemunire Facias</i>
1440	Pasch. 18 Hen VI, pl. 6, fo. 6a-7b	Forgery of false deeds	Common Pleas	<i>Praemunire</i> an example of multiple defendants
1441	Hil. 19 Hen. VI, pl. 17, fo. 54a-54b	Prohibition	Common Pleas	Defines <i>Praemunire Facias</i> as a prohibition
1448	Mich. 27 Hen. VI, pl. 35, fo. 5b-6a	Bill on the Statute of Provisors	King's Bench	<i>Praemunire</i> defendants should appear before king and council.
1451	Mich. 30 Hen. VI, pl. Statham Provision 5, fo. 143r	Praemunire Facias		All defendants suffer the same punishment
1452	Mich. 31 Hen. VI, pl. 1, fo. 8b-10a	Maintenance, Error	King's Bench	All defendants suffer the same punishment
1458	(anno.) 36 Hen. VI, pl. 32, fo. 29b-31a	Maintenance	Common Pleas	All defendants suffer the same punishment
1465	Mich. 5 Edw. IV, pl. 7, fo. 6b	Praemunire Facias		' <i>Vel Alibi</i> ' Clause confirmed as applicable to English church courts
1467	Pasch. 7 Edw. IV, pl. 3, fo. 1a-2b	Replevin	Exchequer Chamber	<i>Praemunire</i> is not the suing for damages, but the actual practice of removing from the realm.
1469	Pasch. 9 Edw. IV, pl. 8, fo. 2b-3a	Praemunire Facias	King's Bench	Both Plaintiff and Defendant are clerics
1469	Pasch. 9 Edw. IV, pl. 12, fo. 3b	Praemunire Facias	King's Bench	<i>Praemunire</i> applies to appeals in court of Rome
1473	Mich. 13 Edw. IV, pl. 3, fo. 1b-2b	Attaint	King's Bench	All defendants suffer the same punishment
1484	Mich. 2 Ric. III, pl. 45, fo. 17b-18b	Praemunire Facias, bill in the nature of	King's Bench	Confirms wording of 1353 statute; <i>Praemunire</i> actions can be brought by bill.
1500	Trin. 15 Hen. VII, pl. 8, fo. 9a	(felony)	King's Bench	Confirms use of <i>praemunire</i> against English Church Courts
1500	Trin. 15 Hen. VII, pl. 12, fo. 9b	Praemunire		Questions whether one can appear by attorney.
1535	Trin. 27 Hen. VIII, pl. 3, fo. 14a	Debt		Relates to Beaufort's <i>Praemunire</i> .

Appendix 4: King's Bench *Praemunire* Actions, 1484-1526

Cases compiled from: Baker, John H., *The Oxford History of the Laws of England, Volume VI, 1483-1558* (Oxford: Oxford University Press, 2003); *The Reports of Sir John Spelman*, edited by John H. Baker, 2 vols (London: Selden Society, 1977-78), ii, pp. 66-68; Palmer, Robert C., *Selling the Church: The English Parish in Law, Commerce and Religion, 1350-1550* (Chapel Hill, N.C., and London: University of North Carolina Press, 2003), pp. 63-65, and expanded upon.

TNA Ref.	Year	Plaintiff	Defendant	Statute
KB27/892, rot.54	1484	Sonde	Pekham	16 Ric. II, c.5 (1393)
KB27/925, rot.29	1492	Hamond	Somnour	16 Ric. II, c.5 (1393)
KB27/930, rot.64	1494	Bishop of St David's and Denby	Walter	38 Edw.III, st.2 (1365)
KB27/942, rot.59.	1497	Abbot of Reading	Shirwode	16 Ric. II, c.5 (1393)
KB27/948, rot.34	1498	Wynall	Lawrans	16 Ric. II, c.5 (1393)
KB27/949, rot.84.	1498	Pierce	Richardson	16 Ric. II, c.5 (1393)
KB27/950, rot.59	1499	Abbot of Whalley	Persons	38 Edw.III, st.2 (1365)
KB27/950, rot.63	1499	Somer	Perot	16 Ric. II, c.5 (1393)
KB27/953, rot.67d	1499	Prior	Callawey	16 Ric. II, c.5 (1393)
KB27/953, rot.76	1499	Buscher	Hegyns	16 Ric. II, c.5 (1393)
KB27/954, rot. Rex 3	1500	Rex	Emondas	16 Ric. II, c.5 (1393)
KB27/959, rot.40	1501	Ferrers	Abbot of St Albans	16 Ric. II, c.5 (1393)
KB27/960, rot.71d	1501	Prior of Shulbred	Prior of Lewes	16 Ric. II, c.5 (1393)
KB27/960, rot.77	1501	Pere	Sade	16 Ric. II, c.5 (1393)
KB27/961, rot.103	1501	Turbelfeld	Lever	16 Ric. II, c.5 (1393)

KB27/961, rot.75	1501	Calle	Stubbys	16 Ric. II, c.5 (1393)
KB27/961, rot.80d	1501	Penfold	Facete	16 Ric. II, c.5 (1393)
KB27/963, rot.34	1502	Hunte	Prowde	16 Ric. II, c.5 (1393)
KB27/966, rot. Rex 5	1503	Rex	Sygrave	16 Ric. II, c.5 (1393)
KB27/968, rot.72	1503	Gilbart	Spersalt	16 Ric. II, c.5 (1393)
KB27/969, rot.63d	1503	Poyntz	Blunt	16 Ric. II, c.5 (1393)
KB27/969, rot.93 KB27/970, rot.64	1503-04	Clerk	Rede	16 Ric. II, c.5 (1393)
KB27/970, rot.24	1504	Mylne	Barfote	16 Ric. II, c.5 (1393)
KB27/970, rot.32	1504	Carmynowe	Boscawyn	16 Ric. II, c.5 (1393)
KB27/970, rot.61 KB27/974, rot.27d KB27/975, rot.26	1504-05	Reynolds	Horwode	16 Ric. II, c.5 (1393)
KB27/971, rot.37	1504	Gilbard	Bean	16 Ric. II, c.5 (1393)
KB27/971, rot.67	1504	Amyas	Woderove	16 Ric. II, c.5 (1393)
KB27/972, rot.28 KB27/975, rot.32	1504-05	Horwode	Reynolds	16 Ric. II, c.5 (1393)
KB27/973, rot.35d	1504	Dalton	Hutton	16 Ric. II, c.5 (1393)
KB27/973, rot.37 KB27/974, rot.61d	1504-05	Dudley	Hatton	16 Ric. II, c.5 (1393)
KB27/974, rot.69	1505	Prior of Bath	Prior of Exeter	38 Edw.III, st.2 (1365)
KB27/976, rot.26	1505	Prior	Callaway	16 Ric. II, c.5 (1393)
KB27/977, rot.23	1505	Cagell	Staveley	16 Ric. II, c.5 (1393)
KB27/978, rot.26	1506	Savyll	Boughton	16 Ric. II, c.5 (1393)
KB27/980, rot.32	1506	Samford	Walronde	16 Ric. II, c.5 (1393)

KB27/983, rot.27d	1507	Warman	Pyte	16 Ric. II, c.5 (1393)
KB27/984, rot. Rex 18	1507	Rex	Wood	16 Ric. II, c.5 (1393)
KB27/984, rot.84 KB27/986, rot.60	1507-08	Graunt	Wodward	16 Ric. II, c.5 (1393)
KB27/986, rot. 37	1508	Eton	Roys	16 Ric. II, c.5 (1393)
KB27/986, rot.60	1508	Arnold	Bishop of Llandaff	16 Ric. II, c.5 (1393)
KB27/987, rot. Rex 20	1508	Rex	Churche	16 Ric. II, c. 5 (1393)
KB27/995, rot.26	1510	Noreys	Portas	16 Ric. II, c.5 (1393)
KB27/1000, rot.26d	1511	Bak	Wellys	16 Ric. II, c.5 (1393)
KB27/1000, rot.27	1511	Bunse	Elwyn	16 Ric. II, c.5 (1393)
KB27/1000, rot.27d	1511	Hampden	Massy	16 Ric. II, c.5 (1393)
KB27/1002, rot.31	1512	Fynes	Benet	16 Ric. II, c.5 (1393)
KB27/1002, rot.33	1512	Huckell	Cokkys	16 Ric. II, c.5 (1393)
KB27/1004, rot.88 KB27/1006, rot.37	1512-13	Hunne	Dryffeld	16 Ric. II, c.5 (1393)
KB27/1005, rot.109	1512	Hychynson	Machell	16 Ric. II, c.5 (1393)
KB27/1006, rot.25	1513	Dean of Warwick	Smyth	16 Ric. II, c.5 (1393)
KB27/1006, rot. 35	1513	Wryght	Brokeden	16 Ric. II, c.5 (1393)
KB27/1007, rot.32	1513	Sympson	Fells	16 Ric. II, c.5 (1393)
KB27/1009, rot.28	1513	Middelmore	Abbot of Bordesley	16 Ric. II, c.5 (1393)
KB27/1011, rot.76d	1514	Newton	Harward	16 Ric. II, c.5 (1393)
KB27/1019, rot.61d	1516	Tatersale	Incent	16 Ric. II, c.5 (1393)

KB27/1020, rot.23 KB27/1023, rot.78	1516-17	Alee	Markwik	16 Ric. II, c.5 (1393)
KB27/1020, rot.24d	1516	Prowde	Pele	16 Ric. II, c.5 (1393)
KB27/1020, rot.35	1516	Dobbys	Wrenn	16 Ric. II, c.5 (1393)
KB27/1020, rot.98	1516	Prior of St Barts, Smithfield	Aleyn	16 Ric. II, c.5 (1393)
KB27/1024, rot.57	1517	Lawes	Blither	16 Ric. II, c.5 (1393)
KB27/1024, rot.81	1517	Shudde	Baylle	16 Ric. II, c.5 (1393)
KB27/1024, rot.83	1517	Newton	Senacle	16 Ric. II, c.5 (1393)
KB27/1028, rot.70	1518	Hewys	Parker	16 Ric. II, c.5 (1393)
KB27/1029, rot.30	1518	Myxbery	Parker	16 Ric. II, c.5 (1393)
KB27/1030, rot.20	1519	Fynamore	Chambre	16 Ric. II, c.5 (1393)
KB27/1031, rot.23	1519	Trewynard	Trevilian	16 Ric. II, c.5 (1393)
KB27/1032, rot.21	1519	Ferrys	Ryche	16 Ric. II, c.5 (1393)
KB27/1036, rot.80	1520	Marlyn	Manory	16 Ric. II, c.5 (1393)
KB27/1036, rot.86	1520	Stykberd	England	16 Ric. II, c.5 (1393)
KB27/1040, rot.20	1521	Sewell	Lambe	16 Ric. II, c.5 (1393)
KB27/1043, rot.79	1522	Archer	White	16 Ric. II, c.5 (1393)
KB27/1043, rot.81	1522	Abbess of Polesworth	Rydermyster	16 Ric. II, c.5 (1393)
KB27/1044, rot.75	1522	Cruge	Powell	16 Ric. II, c.5 (1393)
KB27/1044, rot.77	1522	Hanley	Robinson	16 Ric. II, c.5 (1393)
KB27/1059, rot.20	1526	Clerk	Stevyn	16 Ric. II, c.5 (1393)

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