The Great Statute of Praemunire

THE so-called statutes of *praemunire* are among the most famous laws in English history, and of the three acts to which the title is commonly applied, that of 1393—sometimes called 'the great statute of praemunire' by modern writers [1]—has won special renown, partly because it has been generally regarded as an anti-papal enactment of singular boldness, and also because it furnished Henry VIII with perhaps the most formidable of the weapons used by him to destroy Wolsey and to intimidate the clergy. But when the student, anxious to know precisely what the statute contained and what it was designed to effect, turns for light to the works of modern historians, he finds himself faced by a perplexing variety of opinions. Stubbs, who in one place [2] says bluntly that 'the great statute of praemunire imposed forfeiture of goods as the penalty for obtaining bulls or other instruments at Rome', elsewhere [3] restricts its effect to those who procured bulls, instruments, or other things 'which touch the king, his crown, regality, or realm', while in another passage [4] he states that though the statute allowed appeals to Rome 'in causes for which the English common law provided no remedy', it nevertheless contributed to a great diminution in the number of such appeals. In other works one may read 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'; [5] that by the statute 'papal interference was shut out [of England] as far as law could shut it out'; [6] or that with its predecessors of 1353 and 1365 it ranked as 'the great bulwark of the independence of the National Church'.[7] On the other hand, Makower, speaking of the fourteenth and fifteenth centuries, says: 'Only in so far as was necessary for the execution of the statutes against provisors was the endeavour

[1] e.g. by Stubbs (*Const. Hist.*, ii, 4th ed., 509) and Sir James Ramsay (*Genesis of Lancaster*, ii. 288).

[2] Stubbs, *loc. cit.*

[3] *Ibid.* iii, 5th ed., 342.

[4] *Ibid.* iii. 363 *seq.*

[5] Ramsay, ii. 288 *seq.*

[6] Gwatkin, *Church and State in England to the Death of Queen Anne*, p. 106.

[7] Capes, *The English Church in the Fourteenth and Fifteenth Centuries*, p. 92.

sustained to limit the power of the pope and to check appeals to him. Thus these were in general prohibited simply in cases in which the secular authorities were competent; and even then it was the right of patronage which was mainly defended. . . . Sole competence in all cases was not at this time claimed by the state.'[1] Quite recently, moreover, Professor Pollard has denied that the statutes of provisors and *praemunire*[2] were specifically anti-papal in purpose, contending that their animus was 'as much against the clerical courts in England as against the curia at Rome', that the statutes of *praemunire* 'set no limit to the pope's control over English ecclesiastical courts', and that in the middle ages the Crown 'had not the least objection' 'to appeals from English spiritual jurisdiction to the pope'.[3] And long ago Lingard argued that the measure of 1393 was not really a statute at all and thought it 'plain' that it was 'never properly passed in parliament'.[4] In face of this remarkable conflict of testimony and argument, no apology is needed for a re-examination of the purport and effect of the statute.

One misapprehension, strangely fostered by many modern writers, may be disposed of at the outset. Neither the statute of 1393 nor any other measure passed in England during the middle ages sought to prevent all exercise of the pope's authority in the country. The wording of the statute, though in some respects obscure, is clear on this point. 'If any one obtains or sues . . . 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, as is aforesaid, and those who bring them into the realm or receive them, or make notification or other execution of them within the realm or without, they', with all their aiders and abettors, 'shall be put out of the protection of our said lord the king, and their lands and tenements, goods and chattels shall be forfeited to the king our lord', and they shall be arrested and brought before the king and his council to answer there, or process shall be made against them by *praemunire facias* in the manner ordained in other

[1] *Constitutional History of the Church of England* (English translation), p. 229.

[2] Following modern practice, I shall limit the term 'statutes of provisors' to acts which explicitly sought to defeat the pope's claim to dispose of all ecclesiastical benefices. Acts which strove to maintain the jurisdiction of the king's court against the rival claims of other tribunals are commonly called 'statutes of praemunire', because process by writ of *praemunire facias* was one of the means prescribed for their enforcement. It would be pedantic to quarrel with this long-established usage, but it should be remembered that both terms are applicable to the anti-papal statute of 1365, and that the other 'statutes of praemunire' were sometimes called 'statutes of provisors' in the fourteenth and fifteenth centuries.

[3] *The Evolution of Parliament*, pp. 202, 205.

[4] *History of England*, 5th ed., iii. 348 n.

statutes of provisors and others who sue in other courts in derogation of the rights of the king.[1] The act, it is clear, applies only to certain kinds of papal documents, and the records of the time show that a wide field of papal activity was unaffected by it. Englishmen continued to appeal to the papal court, to present petitions to the pope, to accept papal graces and to execute papal mandates, evidently without any thought that they were breaking the law.[2] English prelates and magnates still had agents at the curia.[3] There are, moreover, in the Year Books of the next twenty years cases in which judges and counsel not only recognize the authority of certain papal bulls but assume that the pope has a lawful jurisdiction over Englishmen in certain matters and show much scruple in avoiding encroachment on his rights.[4] Nor, to turn to later times, should it be forgotten that Henry VIII, who was not the man to put a narrow interpretation upon statutes of *praemunire*, was constrained to plead before a papal court and could not have the divorce suit decided within the realm until parliament had passed the act in restraint of appeals.

Of what nature, then, were the 'bulls, instruments, and other things' which came within the meaning of the act? Only such, at any rate, as were against the king, his crown and regality, or his realm.[5] In wording the description was somewhat unusual,

[1] 'Si ascun purchace ou pursue ou face purchacer ou pursuer en la Court de Rome ou aillours ascuns tieux translacions, processes, et sentences de escomengementz bulles instrumentz ou autre chose quelconqe, qe touche le Roi notre seignour encountre luy sa corone et regalie ou son Roialme come devant est dit, et ceux qe les porte deinz le Roialme ou les resceive ou face ent notificacion ou autre execucion quelconqe deinz mesme le Roialme ou dehors, soient ils lour notairs procuratours meintenours abbettours fautours et conseillours mys hors de la proteccion notre dit seignour le Roy, et lours terres et tenementz biens et chatieux forfaitz au Roy notre seignour; et qils soient attachez par lour corps sils purront estre trovez et amesnez devant le Roy et son Conseil pur y respondre es cases avauntditz, ou qe processe soit fait devers eux par premunire facias en manere come est ordeigne en autres estatutz des provisours et autres qui seuent en autry Courte en derogacion de la regalie notre seignour le Roy': *Statutes*, ii. 85 *seq.*.

[2] The dealings of Englishmen with Rome are abundantly illustrated in the *Calendars of Papal Letters*. The passing of the statute of 1393 did not cause any appreciable diminution in the number of entries concerning England in the papal registers. It is true that many of the transactions recorded were contrary to the statutes of provisors, breaches of which indeed were at times sanctioned by royal licence. But the majority were evidently quite lawful in the eyes of the parties concerned, and must have been carried out without any reference to the temporal authorities in England.

[3] Of particular interest in this relation is the letter-book of William Swan, an abbreviator of papal letters at the curia, who was often employed as agent by eminent Englishmen—notably Archbishop Kemp—in the early years of the reign of Henry VI. The book is preserved in MS. Cott., Cleop. C. iv, fos. 124–229 v°.

[4] See especially the report of the suit of *quare impedit* brought by Henry IV against Robert Hallum, bishop of Salisbury, and Henry Chichele, bishop of St. Davids (*Year Book*, ed. 1679, 11 Hen. IV, pp. 37, 59, 76), and that of a suit between two priors about an advowson (*ibid.* 14 Hen. IV, p. 14).

[5] From *Cal. of Pat. Rolls*, 1391–6, p. 635, it appears as if the prior of Kyme got into trouble because he obtained certain bulls 'not knowing that the obtaining

but its connotation was familiar, for since the Conquest the kings of England had claimed and asserted the right of excluding from the country papal documents prejudicial to their authority and to the realm. From time to time writs were issued ordering that such documents should be seized, and in 1343 it was ordained in parliament that those who introduced them should be arrested and brought before the king's council.[1] The qualifying formula in the ordinance and writs lacked precision, as it did in the act of 1393, and a king like Henry VIII might wrest it to uses which medieval kings and parliaments never contemplated. But there is no doubt how it was interpreted in 1393 and the next generation. The bulls and instruments forbidden to Englishmen were such as concerned what in the view of the secular authorities were secular affairs. By the fourteenth century most of these were recognized as secular by churchmen also ; but there was still a debatable ground claimed by both the Ius Commune of the church and the Common Law of the state. It was to secure the state's hold on this that anti-papal statutes were passed and anti-papal writs issued. But no English king or parliament before the days of Henry VIII had any intention of disputing the pope's authority in that wide sphere of human concerns which every one except a few heretics agreed to call spiritual.[2] The nature and extent of papal jurisdiction within its limits were matters for the pope and the clergy. So long as the claims of the Common Law were respected it mattered nothing to the Crown whether 'spiritual' suits were decided before the English courts Christian or the papal curia.[3]

and execution of papal bulls was contrary to law'. The editor, however, ignored an important 'aforesaid', for the corresponding clause in the original runs, 'nesciente prefato priore ut asserit impetracionem bullarum predictarum nec execucionem earundem fore preiudicialem nec contra leges et statuta regni nostri existere' (Rot. Pat., 19 Ric. II, fo. 2, m. 11). The bulls in question affected the king's rights of patronage.

[1] Makower, p. 237, treats this subject with his customary lucidity and quotes a number of writs in illustration of the policy of the Crown.

[2] On the line drawn in England between temporal and spiritual affairs, see Makower, sect. 60. It is worth noting that in a petition presented by the commons in 1348 the pope is styled 'Soverein Governour de Seinte Esglise en terre' (*Rot. Parl.* ii. 173).

[3] Dr. Pollard, however, is not justified in saying (cf. *supra*, p. 174) that the animus of the statutes of provisors and *praemunire* was as much against the English church courts as against the court of Rome. Though the statutes of provisors of course contained safeguards against possible attempts of the English courts Christian to frustrate them, their sole object was to prevent papal interference with rights of patronage. As for the 'statutes of praemunire', the act of 1353 applied to suits in English church courts as well as in the court of Rome ; but its enactment was due entirely to the activities of the latter, and long before it was passed the Crown had ample means of protecting its rights from aggression on the part of the English courts. The act of 1365, so far as it was new, was concerned merely with the court of Rome. When Dr. Pollard says that the statutes of *praemunire* 'set no limits to the pope's control over English ecclesiastical courts', and that the Crown had no objection

That this was the attitude of the English Crown towards papal jurisdiction can readily be inferred from English and papal records of the time. There is no need, however, to multiply citations, for we luckily have two statements of the recognized principle. In 1412 the prior of B. (the name is not given in full) brought a writ of *praemunire facias* against the prior of N. because the latter had resorted to the court of Rome in a dispute between the two about an advowson. The particulars of the case, which was a complicated one, need not concern us. But in the course of the hearing, counsel for the defence asserted that if a clerk were despoiled of his benefice by another clerk, he could sue a spoliation in court Christian or in the court of Rome, at his choice; for if a spoliation were sued, the right to the advowson of the benefice would not be at issue, and so the matter would not be temporal but spiritual. The bench held that the argument was not relevant to the case before it, but no one questioned its soundness.[1]

The principle here assumed was affirmed still more clearly in October 1415 by the royal council. Roger Lansell, clerk, had obtained from Rome citations summoning Nicholas Ryecroft, goldsmith, to answer in the curia on certain matters which (according to Ryecroft) were prejudicial to the Crown and contrary to the laws and customs of the realm, in particular an ordinance of Edward III. Ryecroft then obtained a writ of *praemunire facias* against Lansell and five others, said to be accessories, and they were summoned before the king's bench.[2] Lansell,

'to appeals from English spiritual jurisdiction to the pope', his statements, though defensible in the letter, are apt to give a false impression. For the English ecclesiastical courts were forbidden by the Crown to do many things which, in the view of the pope, they might and ought to have done. Nor must it be overlooked that the papal court was not merely a court of appeal, but also a court of first instance, and very frequently used as such by Englishmen. And to this jurisdiction of the pope as 'universal ordinary' the statutes of 1353 and 1365 did set limits, the same limits of course as were already imposed on the jurisdiction of the English courts Christian. How far Dr. Pollard's assertions are applicable to the statute of 1393 will, I hope, become clear later on.

[1] *Year Book*, 4 Hen. IV, p. 14. Counsel contended that if he presented a clerk to a church, and after institution and induction 'il est spoile de son benefice par un estrange Clerke, que de cest spoliation il puit suer en Court Christien, pur estre remise a sa Eglise, et a sa possession, ou en Court de *Rome*, a sa volunt, sans estre empeche de ceo, car par cest suit il n'est my mis a recoverer le droit de l'advowson, eins pur estre remise a son benefice areremaine, et uncore pur cest recoverie jeo ne suy restitute a ma advowson, en quel case cest suit nest my temporal eins spiritual'.

[2] 'Comme a ce qe nous avons entenduz a la suite de Nicholas Ryecroft orfeour par vertue de notre brief de Premuniri facias proces soit fait . . . en notre banc envers Roger Lansell clerc . . . de ce qe mesme cellui Roger deust avoir purchacez nadgairs en la courte de Rome plusieurs citacions appellacions et notificacions dicelles envers le susdit Nicholas Ryecroft pur lui avoir fait respondre en mesme la courte sur certaines choses en le susdit notre brief especifiez et plusieurs autres choses a nous et a notre corone prejudicieles encontre la duetee de sa ligeance en contempt et prejudice de nous peril ouvert de la disheritance de notre corone et encontre les loys et custumes

however, exhibited the obnoxious bulls to the council, who pronounced that the cause was purely spiritual, and that the bulls contained nothing prejudicial to the Crown or contrary to the laws and customs of the realm.[1] The story appears in the draft of a letter sent by the council to the justices of the king's bench, who were asked to consider whether in the circumstances they would proceed with the case or not. It is a pity that we are not told why Ryecroft was cited before the court of Rome; but the principle which governed the decision of the council could hardly have been put more clearly, and the tenor of the letter to the judges indicates that it was one familiar to the courts of law.

Now one might recognize that the statute of 1393 had nothing to do with affairs unanimously regarded as spiritual, and yet admit it to have been the most comprehensive and drastic of the anti-papal measures passed in medieval England. But it will be noticed that it does not expressly apply to all documents prejudicial to the king and the realm, but only to such of them as are against the king and the realm as is aforesaid.[2] What significance then is to be attached to the words 'such' (*tieux*) and 'as is aforesaid' (*come devant est dit*)?

The statute consists mainly of a long preamble, which reports certain proceedings in the parliament of 1393. The commons had complained that although suits about the right of patronage belonged to the king's court, and bishops and others of the clergy with authority to institute to benefices were bound, when ordered by the king, to execute the sentences of his court in such suits, as also to obey certain other royal mandates,[3] nevertheless the pope had instituted proceedings and issued sentences of excommunication against certain English bishops for executing

de notre roiaume Dengleterre et contre la forme del ordenance et accord par le Roy E. notre besaiel et les pieres grandz et communialtee de son roialme Dengleterre faitz en un son consail nadgairs a Westmonster tenuz': *Ordinances of the Privy Council*, ii. 181. The significance of the allusion to the 'ordinance' of Edward III will be considered below.

[1] 'Il semble a mesme notre consail qe la cause est meure espirituele et qen les dites lettres . . . nest pas contenuz aucune chose prejudiciele a nous ne a notre corone nencountre les loys estatutz ordenances ne custumes de notre roiaume desusditz': *ibid.* pp. 181 *seq.*

[2] See above, p. 175, n. 1.

[3] *Statutes*, ii. 84: 'notre seignour le Roy et toutz ses liges deivent de droit et soloient de tout temps purseuer en la Courte mesme notre seignour le Roi pur recovrer lour presentementz as Esglises prebendes et autres benefices de seinte Esglise as queux ils ount droit a presenter, la conisance de plee de quelle pursute appartient soulement a Courte . . . le Roy . . . et qant juggement soit rendu en mesme sa Courte sur tiel plee et pursute, les Ercevesques Evesques et autres persones spirituels qount institucion de tiele benefice deinz lour jurisdiccion sont tenuz et ont fait execucion des tieux juggementz par mandement des Rois . . . qare autre lay persone ne poet tiele execucion faire, et auxint sont tenuz de droit de faire execucion de plusours autres mandementz notre seignour le Roy.'

such mandates, to the destruction of the king's rights, of his laity, and of his whole realm. Moreover, it was currently reported that the pope intended to translate—even to places outside the realm—certain prelates whose counsel was needed by the king, and that without his knowledge or the consent of the prelates concerned. If this were suffered the statutes of the realm would be annulled, his wise counsellors withdrawn, and the wealth of the realm carried away, 'and thus the Crown of England, which has always been so free that it has had no earthly sovereign but has been immediately subject to God in all things touching the regality of the same Crown, would be subject to the Pope, and the laws and statutes of the realm would be defeated and annulled by him at his will'. The commons added that since the things thus attempted by the pope were manifestly prejudicial to the Crown and the king's immemorial rights, they and all the commons of the realm wished to uphold the king to the death in face of these and all other encroachments on his prerogative.[1] They asked the king to question each of the lords in parliament 'and all the estates of parliament' as to their opinion of the aforesaid matters and the support they would give the king in maintaining his rights. The temporal lords all expressed the same views and intentions as the commons. The lords spiritual who were present and the proctors of those absent, first protesting that they had no intention of asserting that the pope could not excommunicate bishops or translate prelates according to canon law,[2] replied severally that if execution were made of such processes as the commons had specified, if any of the king's lieges were excommunicated for the reason mentioned, or if execution were made of translations exactly like those described, it would be against the king and his Crown.[3] They further declared that they wished and ought to support the king loyally in the cases sub-

[1] Et disoient outre les Communes avantdites qe les dites choses ensi attemptez sount overtement encountre la corone notre seignour le Roi et sa regalie use et approve du temps du touz ses progenitours; par quoy ils et toux les lieges communes du mesme le Roialme veullent estere ovec notre dit seignour le Roy et sa dite corone et sa regalie en les cases avauntdites et en touz autres cases attemptez encountre luy sa corone et sa regalie en toutz pointz a vivre et mourer': *ibid.* pp. 84 *seq.*

[2] 'Fesantz protestacions qil nest pas lour entencion de dire ne affermer qe . . . le Pape ne poet excomenger Evesques ne quil poet faire translacions des prelatz solonc la ley de Seinte Eglise': *ibid.* p. 85.

[3] 'Si aucunes execucions des processes faitz en la Courte de Rome come devant soient faitz par ascuny, et censures de escomengementz soient faitz encountre ascun Evesque Dengleterre ou ascun autre liege du Roi purce qils ount fait execucion des tieux maundementz, et qe si aucuns execucions des tieux translacions soient faitz dascuns prelatz de mesme le Roialme queux seignours sount moult profitables et necessairs a . . . le Roi et a son Roiaume suisdit, ou qe ses sages lieges de son counseil saunz son assent et encountre sa volunte soient sustretz et esloignez hors du Roialme, sique lavoir et tresor du Roialme purroit estre destruit, qe ce est encountre le Roy et sa Corone sicome est continuz en la peticion avant nome': *ibid.*

mitted to them and all others in which his crown and prerogative were concerned.[1] Whereupon the king, 'with the assent aforesaid and at the prayer of his said commons', ordained and established penalties for certain offences in the terms already quoted.

Now the enacting part of the statute was evidently carelessly drafted; at several points its meaning is open to dispute; and single words or phrases must not be taken too strictly. It may be that when the framers of the act spoke of 'such' bulls or anything else prejudicial to the king 'as is aforesaid', they merely meant 'documents prejudicial to the king in the same kind of way as those indicated in the preamble', and so intended the act to apply to all documents that encroached on the rights of the Crown. But it is more natural to apply a stricter interpretation to the words *tieux* and *come devant est dit*. They need not have been inserted at all if the act was meant to cover every document prejudicial to the king. Moreover, they direct attention to the preamble. Now the preamble is clearly worded with some care. It deals with two specific questions, papal action against churchmen for executing certain royal mandates and the translation of prelates without their assent or that of the king. No other topic is mentioned. The lords spiritual, when asked for their opinion, drew some nice distinctions, and in their replies kept meticulously to the cases put forward by the commons.[2] It is most improbable that the king would claim their assent to the act, as he did, if it really went far beyond the matters submitted to them; and in view of the preamble it is natural to regard the words *tieux* and *come devant est dit* as referring precisely to documents indicated therein, those, that is to say, used by the pope in execution of his measures against the ecclesiastics specified and in carrying out arbitrary translations.

Apart from the actual wording of the statute there is much evidence in favour of the view that it was intended by those who passed it to serve a strictly limited purpose, and that it was long before it was regarded as a measure of much importance. In the first place it had the assent of the lords spiritual. Even if we did not possess their guarded statements in reply to the questions put to them at the instance of the commons, it would be wellnigh incredible that they should have agreed to a measure which warned the pope off the whole of the ground disputed between church and state. Neither in the statutes of provisors of 1351 and 1390, nor in the statute of *praemunire* of 1353, is the

[1] 'Les ditz seignours espirituelx veullent et deivent estre ovesque le Roy . . . en ceux cases loialment en sustenance de sa Corone et en touz autres cases touchantz sa Corone et regalie come ils sount tenuz par lour ligeance': *Statutes*, ii. 85.

[2] It is true that they added a general promise to uphold the king's rights in all cases as they were bound by their allegiance; but this is merely common form and in any case of little value from men whose allegiance was double.

consent of the clergy explicitly claimed.[1] In the parliament of 1390 the archbishops made a solemn protest on behalf of the clergy against the new statute of provisors and that of 1351, declaring that they dissented from them in so far as they restricted the power of the pope or impaired ecclesiastical liberty, as the clergy had always dissented from such measures in times past.[2] Moreover, in 1397, when the commons gave the king permission to modify the statute of provisors, the archbishops, speaking in the name of all the lords spiritual, declared that they would oppose any arrangement which limited the pope's power or the liberty of the church.[3] Now the statute of 1390, though a substantial joint, was a less formidable meal than the 'great statute of praemunire'. Yet we are asked to believe that the clergy swallowed the camel whole, though four years later they solemnly declared that they would refuse the smallest gnat. If, however, the statute merely forbade certain specific things, which the lords spiritual had just acknowledged to be prejudicial to the Crown, their assent to the act would follow as a matter of course.

When, furthermore, one examines the attitude of the Crown and of parliament towards the pope at the time when the statute was passed, it seems unlikely that even the laymen concerned would just then have enacted an anti-papal measure more comprehensive than any of its predecessors. The statute of 1390 against provisors had excited much alarm at Rome, where on 4 February 1391 Boniface solemnly annulled it, together with the 'statute' of Carlisle and the statute of 1351.[4] Papal envoys had already been sent to press for the repeal of the new measure,[5] and in June 1391 there arrived in England the abbot of Nonantola, who on behalf of the pope asked for the withdrawal of the statutes of provisors and other anti-papal measures, including the statutes,

[1] According to itself, the statute of 1365 was enacted 'de lassentement et expresse volunte et concorde des Ducs, Contes, Barons, Nobles, et communes . . . et de touz altres qe la chose touche' (*Statutes*, i. 386). This hyperbolical assertion was, however, robbed of all significance by the prelates, who formally declared that they assented to nothing that might turn to the prejudice of their estate or dignity (*Rot. Parl.* ii. 285).

[2] 'Nolumus nec intendimus alicui Statuto in presenti Parliamento nunc noviter edito, nec antiquo pretenso innovato, quatenus Statuta huiusmodi, seu eorum aliquod, in restrictionem Potestatis Apostolice, aut in subversionem, enervationem, seu derogationem, Ecclesiastice Libertatis tendere dinoscuntur, quomodolibet consentire, set eisdem dissentire, reclamare, et contradicere . . . prout semper dissensimus, reclamavimus, et contradiximus temporibus retroactis': *ibid.* iii. 264.

[3] 'Coment ils ount fait profession, et sont jurez a notre tres seint Piere le Pape, et a la Courte de Rome, et pur ceo, en cas qe ascune ordenance ou autre chose serra fait ou assentuz par le Roy, ou Seigneurs Temporels sur cest poair et auctorite de Parlement touchantes les Provisions del Court de Rome, qe soit en restriction del poair de l'Appostoil, ou derogation de la Liberte de Seint Eglise, ils ne veullent, ne poont, ne deyvent, a ce assentir n'accorder en nulle voie, einz les contredient et disassentont de leur part, en quanc qe a eux appartient': *ibid.* p. 341.

[4] *Calendar of Papal Letters*, iv. 277.

[5] *Cont. Polychron.* ix. 250.

as he called them, of *Quare impedit* and *Praemunire facias*. He was listened to politely; but the king brusquely refused to do away with the two writs, and said that as statutes were established in parliament, they could not be revoked without its consent. The next parliament, however, would be asked to consider the matter.[1] Accordingly one of the reasons officially given for the summons of parliament in the following November was the desirability of finding some compromise about provisors whereby the pope and the king might each have what pertained to him.[2] According to Walsingham, the king and John of Gaunt seemed disposed to give way to the pope; but the knights refused to agree to the repeal of the statute,[3] and the commons would do no more than allow the king, with the advice and assent of the lords, to relax the enforcement of the statute until the next parliament, when, as they expressly stated, they would be free if they wished to restore it to full vigour.[4]

Consequently, when parliament again met, in January 1393, it was officially announced that remedy touching the statute of provisors was to be considered, with a view to avoiding the disputes that might easily arise between the Crown and the papacy.[5] This time the commons were more tractable. They agreed that the king, with the consent of the lords and the council, might take the whole matter into his own hands, giving him power to modify the statute and to make ordinance respecting it. At the next parliament everything done was to be reported to the commons, that they might, if it pleased God, agree thereto.[6]

[1] *Cont. Polychron.* ix. 247 *seqq.*; Walsingham, *op. cit.* ii. 200 *seqq.*; cf. *Cal. of Papal Letters*, iv. 278, 279. It must be remembered that the statutes of 1353 and 1365 were not yet termed 'statutes of praemunire', and when the abbot spoke of the 'statute of praemunire facias' he meant the writ from which they afterwards derived their title.

[2] *Rot. Parl.* iii. 284.

[3] Walsingham, ii. 203.

[4] 'Fait a remembrier touchant l'Estatut de Provisours, qe les Communes . . . s'assenterent en plein Parlement, qe notre dit Seigneur le Roi, par advys et assent des Seigneurs, purra faire tielle soefferance tochant le dit Estatut come lui semblera resonable et profitable tan q'al proschein Parlement, par issint qe le dit Estatut ne soit repellez en null article d'icelle. . . . Et en outre, qe les ditz Communes se purront desagreer a dit proschein Parlement a tielle soefferance pluis outre, et pleinement resorter al dit Estatut si lour semblera a faire, ove protestation qe cest assent, q'est une novellerie et n'ad mye este fait devant ces heures, ne soit trait en ensample n'en consequence en temps a venir': *Rot. Parl.* iii. 285.

[5] *Ibid.* p. 300.

[6] 'Fait a remembrier touchant l'Estatut des Provisours, Qe les Communes . . s'accorderent et assenterent en plein Parlement, Qe . . . le Roi, par bone deliberation et assent des Seigneurs et de son sage Conseill, preigne toute la matire a luy, et q'il eit plein poair et auctorite de modifier le dit Estatut, et ent ordeiner, par deliberation et assent sus ditz, en manere come luy semblera meutz a l'honour de Dieu et de Seinte Eglise, et salvation de les droitz de sa Corone et de l'estat et profit de sa Terre: et de mettre en execution qan qe serra ensy ordeine. Et qe au proschein Parlement toutes les choses sus dites soient plainement monstrez as ditz Communes, aufyn q'ils purront alors par bon avisement agreer, si Dieu plest, a ycelles': *ibid.* p. 301.

It seems impossible to ascertain what use the king made of the discretionary power bestowed on him at these two parliaments.[1] But it appears that he might practically have suspended the statute from November 1391 to January 1393, while after that date he was free to abrogate it altogether and to bargain with the pope for a concordat which parliament could not have criticized until it had been concluded. It is hard to believe that the commons, after making such a concession, should have sought to rob it of all effect by pressing for the enactment of a new measure which covered the whole of the ground affected by the statute of provisors and more besides. Equally unlikely is it that the king should have thrown away the valuable powers just granted him by assenting to such an act. If, however, the new statute was interpreted in the sense I have suggested, it was perfectly compatible with the resolution of the commons about provisions.[2]

[1] An examination of the *Cal. of Papal Letters* and the *Cal. of Pat. Rolls* shows that the king exercised with great moderation the authority entrusted to him, but does not reveal what principle he followed. It seems to have been commonly believed that after the parliament of 1391 the pope was allowed to dispose of benefices vacant in the curia; but I have found no confirmation of this in official records (*Mon. Evesham*, p. 123; cf. *Cal. of Pat. Rolls*, 1391–6, p. 33, and *Cont. Polychron.* ix. 243, which ascribes this concession to the autumn parliament of 1390).

[2] The difficulty raised by the proceedings of the parliament of 1393 was noticed by Lingard, who, after summarizing the contents of the statute, writes: 'There is reason to believe that when this bill was discussed in the house of lords, it met with considerable opposition. It was at least withdrawn by the commons, who agreed that the king should refer the whole matter to his council, and have full power to make such alterations and ordinances as he might think fit, and to carry them, when made, into execution. Though they expressed a hope that, when it was thus amended, they should assent to it at the next parliament, it does not appear to have ever been laid before them again; but to have been occasionally acted upon and occasionally modified, as suited the royal convenience.' In a foot-note Lingard quotes the terms of the commons' concession about provisors, and adds that four years later 'another memorandum to the same import is inserted in the rolls: and it is added, that immediately afterwards the prelates protested', as I have narrated above. 'Hence', proceeds Lingard, 'I think it plain that this statute was never properly passed in parliament, and on that account does not appear in the rolls' (*History of England*, 5th ed., iii. 347 *seq.*).

The passages quoted bristle with anachronisms, and Lingard's assumption that the concession of the commons regarding the statute of provisors referred to a 'bill' which ultimately became the statute of *praemunire*, is wholly without warrant. Nor is there any reason to suppose that the statute met with opposition. As for its not being 'properly passed', it is difficult to say what constituted the 'proper passage' of a legislative measure in the fourteenth century: at all events, this statute stands written in a contemporary hand in its proper place in the statute roll. Lingard's statement that the statute 'does not appear' in the rolls of parliament requires qualification, for the roll of the Winchester parliament contains a formal record of the answers of the prelates to the questions submitted to them, and this embodies a great part of the preamble (*Rot. Parl.* iii. 304). It is, however, true that there is no trace of the operative clauses. But the absence of a petition for their enactment is of no great moment, and it may still be true that the whole statute was based on 'the prayer' of the commons. The contents of the preamble suggest that the matters under consideration were brought to the notice of the commons by the Crown, and in that case there would doubtless be 'conversations' both in parliament and in the commons'

That this interpretation is correct becomes still more likely when we examine the effect of the statute, whether on contemporary opinion or on the relations between England and the papacy. No chronicler living at the time gives an accurate account of its contents. Neither the St. Albans chroniclers,[1] nor the Continuator of Knighton, nor the 'Monk of Evesham' say anything of anti-papal legislation under the year 1393. The Westminster Continuator of the Polychronicon states that the Winchester parliament confirmed the statute of provisors,[2] an assertion which, on any view of its proceedings, is incorrect. In fact, of the annalists with any claim to be regarded as contemporary authorities, only the Continuator of the *Eulogium Historiarum* and the author of the work called by Mr. Kingsford *A Southern Chronicle* suggest that new and important legislation affecting the papacy was passed at this parliament. Probably, too, these should be regarded as but a single witness, seeing that for the reign of Richard II they used a common source; and since both confuse the statute of 1393 with the statute of provisors of 1390, in which year they evidently suppose the Winchester parliament to have been held,[3] their testimony is not of much value. There is, it is true, what seems at first sight to be an allusion to the statute of 1393 in a manifesto containing a number of charges against Henry IV and probably composed in 1407.[4] Henry is denounced for having ratified and kept in force an anti-papal statute 'promulgated and renewed' at a parliament at Winchester. But an examination of the evils said to have been wrought by this measure shows that the author was thinking of

own chamber, at which proposals and requests might be made to the king's representatives by word of mouth. In any event, there is no reason whatever to suppose that the commons did not approve of what was done.

Lingard, however, deserves credit for his reluctance to believe that in one and the same parliament the commons virtually sanctioned the abrogation of the statute of provisors and initiated the most drastic of the anti-papal laws passed in medieval England, and for his recognition of the incompatibility between the assent of the prelates to such a measure and their protest against limitations of papal authority four years later. But all the real difficulties that perplexed him can be satisfactorily met if the statute be interpreted in the way I have suggested.

[1] Walsingham, it should be remembered, showed great interest in the statute of provisors and in the attempts of the pope to secure its repeal.

[2] *Cont. Polychron.* ix. 279.

[3] *Eulog. Hist.* (Rolls Ser.), iii. 368; Brit. Mus. Add. MS. 11714, fo. 11^{r}. On the relation between these two authorities, see Kingsford, *English Historical Literature in the Fifteenth Century*, pp. 28 *seqq.*

[4] It has generally been held that the document was drawn up by Archbishop Scrope in justification of his rebellion; but Dr. J. H. Wylie argued that it was composed after the archbishop's death and circulated in 1407 in preparation for the earl of Northumberland's rising in the following year, and that it was not 'the composition of a practical politician at all, but an elaborate outburst of academical indignation compiled by some disappointed student' (*History of England under Henry IV*, ii. 214 *seq.*).

the statute of provisors and that the parliament he had in mind was really that of 1390.[1] It may be concluded that while it was remembered that the parliament of 1393 had dealt with the relations of England and the papacy, the general public, clergy and laity alike, did not ascribe to it any legislation as severe and comprehensive as the statute of *praemunire* was afterwards supposed to be.

Even greater is the indifference of official records to the 'great statute of praemunire'. It duly appears on the statute roll of 16 Richard II. It forms the subject of a petition of the archbishops and bishops in 1439.[2] Between these dates I have not found in official documents any mention of the statute or, except perhaps in a record of 1434, any evidence of its existence.

It is notoriously dangerous to base any conclusion on an argument from silence. Nevertheless, the absence from official documents, English or papal, of all apparent allusion to the statute for more than forty years after it was passed does seem to

[1] 'Idem dominus Henricus . . . quoddam statutum nefandissimum promulgatum et renovatum in Parliamento apud Wintoniam anno Domini Regis [*lacuna in text*] scienter approbat, ratificat et sustinet, nec aliud remedium quam illud ordinat vel opponit: quod quidem statutum est directe contra Curiam Romanam, eius potestatem ac principatum a Domino nostro Iesu Christo, Beato Petro, eiusque successoribus Romanis Pontificibus traditam et collatam; quibus omnium beneficiorum Ecclesiasticorum tam superiorum quam inferiorum plena et libera dispositio, ordinatio et collatio . . . deberet ut noscitur pertinere. Quod statutum nefandum est causa efficiens multorum scelerum et peccaminum. . . . Quia plures Episcopi, Abbates, Priores, et Prelati . . . vacantia beneficia conferunt iuvenibus et illiteratis et indignis personis. . . . Et vix reperitur aliquis Praelatus taliter Beneficium conferens, quin ex conventione ac pacto vult habere singulis annis tertiam vel dimidiam partem Beneficii sic collati. Et sic his diebus non promovent aliquos, nisi suos filios spurios et cognatos, secum in peccatis enormibus laborantes, et commensales. Ita quod per istud statutum destruitur Clerus Universitatum. Quia Milites et Armigeri, Mercatores et tota regni communitas potius eligunt filios suos et cognatos apprenticios facere vel constituere in aliqua arte temporali vel saeculari, quam ad aliquam Universitatem pro Clericis fiendis mittere': Wharton, *Anglia Sacra*, ii. 366 *seq.*

The writer evidently did not know the date of the parliament to which he alludes; he left a blank space for it, but never filled it in. There is no record of any anti-papal statute having been 'promulgatum et renovatum' in the parliament of 1393; on the other hand, if we take *promulgatum* in the sense of 'recited' the phrase gives a fairly accurate impression of what happened to the statute of provisors in 1390. The original statute, that of 1351, was recited and declared to be in force, its scope being somewhat extended and new penalties being prescribed for its infringement. The effect of the statute of provisors on the universities was a frequent cause of complaint during the reigns of Henry IV and Henry V (cf. Wilkins, *Concilia*, iii. 241 *seqq.*; *Chron. Adae de Usk*, p. 60; *Rot. Parl.* iv. 81). In 1403 the king suspended the statute in favour of graduates of the universities (Wilkins, iii. 275 *seqq.*), but apparently this concession was withdrawn in 1407, when it was enacted that the statutes against provisors should be strictly observed, notwithstanding any relaxation of them which the king had been authorized to make (*Statutes*, ii. 161). It was perhaps of this that the writer of the tract was thinking when he spoke of the king as having 'ratified' the obnoxious statute. There is no record of Henry's having ratified or having in any way noticed the statute of 1393.

[2] Wilkins, iii. 534.

me fatal to the notion that it was intended and understood to be a measure of the first importance, protecting against ecclesiastical intrusion the whole field of jurisdiction claimed by the Crown. It is not as if the anti-papal legislation of the period had been a dead letter. The statute of provisors meets one at every turn in the Rolls of Parliament and in the Patent Rolls; the papal registers, in spite of the pope's attempts to ignore it, betray its effectiveness; and from time to time it was enforced with much vigour.[1] The statutes of *praemunire* of 1353 and 1365 were employed as need arose. There is no greater mistake than to suppose, as some modern historians have done, that the weapons of the Crown against the papacy were allowed to rust unused. This being so, if the statute of 1393 applied to all encroachments of the papacy on the temporal sphere, one would expect it to appear very frequently in the records of the time. A pardon for a breach of the statute of 1390 would be of no avail unless the breach of the statute of 1393 were pardoned too. A licence to accept a papal provision 'notwithstanding the statute of 13 Richard II' would not protect the provisor against the statute of 16 Richard II. Nevertheless, in the numerous pardons for accepting and licences to accept provisions which are entered in the patent rolls of the twenty years following its enactment it is not once mentioned, while the act of 1390 is repeatedly named as if it were the only one that mattered.[2] Moreover, when Englishmen procured from Rome bulls prejudicial to the Crown, why should laws of Edward III be made the ground of the proceedings taken against them if a more stringent statute of Richard II was equally suited to the case? But when in 1399 John Bastard, clerk, was pardoned for failing to obey a writ of *praemunire facias*, his offence of suing divers processes in the Roman court was described as a breach of a statute of Edward III.[3] When in 1415, as we have seen, a writ of *praemunire* issued against Roger Lansell, it was on the ground that a citation he had procured in the court of Rome was contrary to an ordinance of the same king.[4] In 1427 what was evidently a similar offence was stigmatized in similar terms.[5] And in other cases of unlawful

[1] The effect of the statutes of provisors has never been properly investigated. But even a somewhat hasty examination of the calendars of papal registers shows that at various times, especially after the council of Constance, the control of the pope over English preferment became very slight.

[2] The statute of 1390 included that of 1351. After 1390 there is little trace of the statute of 1365. Though not formally repealed, it was, as regards papal provisions, superseded by the later act.

[3] *Cal. of Pat. Rolls*, 1396–9, p. 544.

[4] *Supra*, p. 177. The terms of the reference suggest that the act of 1353 was meant. It was confirmed in 1365, the statute of 1365 being supplementary to it.

[5] Rot. Pat., 5 Hen. VI, fo. 1, m. 3. The abridgement in *Cal. of Pat. Rolls*, 1422–9, p. 400, mentions the 'statute of praemunire'. The original merely refers to an offence

recourse to the Roman court, it is often evident, even when there is no allusion to any statute, that the proceedings against the offenders are based on the earlier statutes of *praemunire* and not on the act of 1393.[1]

Assuming that the statute of 1393 was an all-sufficient safeguard against papal encroachments, modern writers have often given the impression that it marked the end of the anti-papal activities of medieval parliaments. This, however, was far from being the case. Some of the parliaments of Henry IV show as much jealousy of the authority of the pope as any of their predecessors. Nor were they merely concerned with the enforcement of existing laws. Much of their attention was given to grievances against which, as they evidently supposed, no adequate provision had as yet been made. Thus in 1401 it was complained that the Cistercians had obtained bulls granting them certain exemptions from the payment of tithes, to the prejudice of the rights of the king and other patrons of ecclesiastical benefices. Now here, if the statute of 1393 covered all papal bulls prejudicial to the Crown, was surely a case which fell within its scope. The petition indeed asked that any attempt to execute the bull should be punished by loss of the king's protection and forfeiture, the very punishments imposed on offenders against the statute of 1393; but it made no allusion to that measure.[2] What is more remarkable, the statute which was the outcome of this petition, though it directed that all who attempted to execute such bulls or procured any in future should be proceeded against by writ of *praemunire facias*, went on to ordain that they should incur the penalties prescribed, not in the statute of 1393, but in the statute of provisors of 1390.[3] This was a singular arrangement. For that statute had been very carefully drawn up to deal with the particular question of papal provisions; a number of different penalties, appropriate to different classes of offenders, are enumerated in it; and which of these were to be inflicted on the guilty Cistercians and others in like case is nowhere specified. The statute of 1393, if not applicable to the case, might more reasonably have been extended to meet it. But apparently no one thought of its existence.

'contra formam ordinationis et concordie in parliamento domini Edwardi nuper regis Anglie progenitoris nostri apud Westmonasterium nuper tento editarum'. Doubtless one of the 'statutes of praemunire' is meant, but not that of 1393, to which the entry in the calendar would naturally be taken to allude.

[1] See, for example, *Cal. of Pat. Rolls*, 1405–8, pp. 479 *seq.*; 1408–13, pp. 27, 263. A good example appears in Rot. Pat., 20 Ric. II, fo. 3, m. 34, another letter which has had its meaning distorted in the calendar (*Cal. of Pat. Rolls*, 1396–9, p. 106: pardon of the abbot of Dore, whose sentence was not for procuring unlawful citations at Rome, but for failing to respond to a writ of *praemunire facias*).

[2] *Rot. Parl.* iii. 464 *seq.* The source of the petition is not stated.

[3] *Statutes*, ii. 121 *seq.*

It is probable that the terms of the statute in restraint of the Cistercians had been suggested by the commons. At any rate, the statute of 1390 was evidently regarded by them as an instrument that could be adapted to the reform of many kinds of ecclesiastical abuses. In the same parliament they asked for the imposition of the pains ordained 'against provisors in the court of Rome' on those who accepted incompatible benefices, obtained papal dispensation for non-residence, or accepted new appropriations of churches.[1] Next year they wanted to extend the same penalties to those who put their benefices to farm and dwelt elsewhere as stipendiary chaplains, and to the principal officers of any order of friars which should accept as a recruit any one under twenty-one years of age.[2] None of the abuses of which the commons complained in these petitions had as yet been the object of legislation by Crown or parliament, and it is strange that the commons, with a free hand, should have wished to bring them under the act of 1390, if there was at their service a measure which was not only newer and less complicated but also of much wider range.

In 1406 the commons presented a long petition about provisors who, having been prevented by the statute against them from securing possession of the benefices they claimed, took proceedings in the curia against their successful rivals. This was an offence against more than one statute, and the petition was needlessly diffuse; but it is of interest as showing that the commons regarded the act of 1390 as the most recent and important measure bearing on the question.[3] Again, in 1407 there was a petition against provisors resident at Rome who secured at the papal court sentences against English incumbents before these even knew that proceedings were being taken against them. The commons asked that no ordinary should admit any clerk to a benefice the previous incumbent of which had been deprived by ecclesiastical authority without being cited within the realm. Any ordinary acting to the contrary, and any presentee pursuing his claim to such a benefice, should, they suggested, incur the penalties ordained in the statute of 1390, the procedure to be followed being that prescribed in the statute of 1353.[4] The petition is of exceptional interest, and raises many points of common, statute, and canon law. The commons asserted that the abuse could only be remedied by fresh legislation; but, even if the statutes of provisors were not sufficient, it seems to me that the statute of 1393, as afterwards interpreted, would have been an ample safeguard. The commons, however, were plainly trying to frustrate a subtle and dangerous attempt to circumvent

[1] *Rot. Parl.* iii. 468.
[2] *Ibid.* p. 501.
[3] *Ibid.* p. 595.
[4] *Ibid.* p. 614.

the legislation against provisors ; and in their eyes, perhaps, even 'the great statute of praemunire' would have left one or two points unguarded. But in that case one would still have expected them to make use of such a measure, which would have furnished at once a suitable procedure and adequate punishments. Instead, they had recourse to two earlier measures, and would apparently have left it to the courts to decide which of the numerous penalties provided in the statute of 1390 was to be used against the offenders they had in view.[1] Once again the act of 1393 is ignored—unaccountably ignored if it was really the climax of the anti-papal legislation of the middle ages.

It appears then that for many years the English parliament and the English courts of law took no notice of the statute. And, what is no less remarkable, there seems to be no evidence that it called forth any protest from Rome. The statute, it must be remembered, was passed at a time when Boniface IX was much exercised about the anti-papal legislation in England. In 1391 he had solemnly denounced and declared void the so-called statute of Carlisle, the statute of 1351, and the new one of 1390, and he had been trying hard to secure their repeal. But I have found nothing to show that he displayed any concern about the statute of 1393. In 1394, it is true, Bartholomew of Novara, a canonist of some repute, was sent by the pope to England to press for the annulment of certain statutes lately made there against the pope, the Roman church, and ecclesiastical liberty.[2] The use of the plural *statuta* might be thought to indicate that the pope had in mind the acts of 1390 and 1393. But in papal communications on this topic *statutum* is often used in its non-technical sense of something ordered or decreed. In 1391 the abbot of Nonantola spoke of the 'statutes' of *Quare impedit* and *Praemunire facias*, and moreover used the plural when referring to the act of 1390.[3] Further, when Bartholomew stated his errand before the king's council, that body reported to Richard that he had explained how 'the statute lately made in

[1] The petition is not always as explicit as one could wish. I have, however, tried to take into account all possible interpretations of obscure passages. To discuss the relation of all the anti-papal statutes to the abuse of which the petition complains would necessitate a long digression. I have, therefore, contented myself with stating the rather inconclusive results to which, in my opinion, such a discussion would lead. The king refused the petition, and promised that the council would do justice to aggrieved incumbents.

[2] *Cal. of Papal Letters*, iv. 47.

[3] *Cont. Polychr.* ix. 250 *seq.* ; Walsingham. ii. 200. The Continuator of the Polychronicon gives a verbatim report of the abbot's speech. That it is genuine is proved not only by internal evidence, but also by the abridged version given by Walsingham, who frequently attributes to the abbot whole sentences reported by the Continuator. It looks as if the abbot had distributed copies of his speech among the journalists of the day.

your parliament' was very detrimental to the estate of the apostolic see and the liberty of the church, and had advocated its repeal.[1] Evidently the council thought that only one statute was in question. If that was so, it is probable that Bartholomew of Novara was merely renewing the attempt of the abbot of Nonantola to obtain the repeal of the statute of provisors and the abolition of the obnoxious writs. This hypothesis is strengthened by the terms of the commission to Peter bishop of Dax, who in 1398 was sent to England with power to grant absolution to the English people from the penalties incurred under the pope's annulment of all the statutes and ordinances made by Richard II in parliament at Westminster against ecclesiastical liberty and the Roman church, after such annulment should have taken place in England.[2] The parliament of 1393 was of course held not at Westminster but at Winchester; and while it would be rash to make much of this point, it is strange, if the pope had ever formally denounced the statute of 1393, that care was not taken to have it precisely described in the bishop's commission.[3] At all events, the St. Albans chronicles say that the bishop came to urge the withdrawal of the statute against provisors, the writ of *Quare impedit*, and many such things whereby the curia was vexed.[4] And the outcome of the bishop's visit, as far as the objectionable statutes were concerned, was merely a temporary concordat regarding the statute of provisors, whereby the pope was to be allowed to fill a limited number of English benefices.[5] It may at least be said that the transactions just noticed might all have taken place if the statute of 1393 had never been passed.

It was not until after the council of Constance that the anti-papal laws were again the subject of serious remonstrance from Rome. Then, however, Martin V addressed himself to the problem with vigour. It has commonly been assumed that his angry protests were directed against the statutes of provisors and *praemunire* alike; but I have found no evidence that either Martin V or Eugenius IV, who continued his efforts, was concerned about any of the so-called statutes of *praemunire*. As a rule, the popes' letters on the subject are not very specific. The target of their wrath is usually alluded to as that 'abominable' or 'detestable' or 'execrable statute against ecclesiastical

[1] *Ord. Priv. Council*, i. 53 *seq.* The word 'lately' (*nadgaires* in the council's report) proves nothing. In 1415 a council of Edward III was spoken of as *nadgaires tenuz* (*supra*, p. 177, n. 2).

[2] *Cal. of Papal Letters*, v. 111.

[3] In the formal act recording the pope's denunciation of the statutes of provisors in 1391, they are cited with meticulous accuracy (*ibid.* iv. 277).

[4] Walsingham, ii. 228; *Ann. Ric. II*, p. 228.

[5] Wilkins, iii. 236 *seq.*

liberty '.[1] The use of the singular *statutum*, whether the word be given its technical or its general meaning, suggests that only one measure was in debate. English documents relating to the matter refer only to one statute,[2] which one or two of them call the statute of provisors,[3] and it was merely for the repeal of that measure that Chichele pleaded when at the bidding of Martin V he put the pope's case before the commons during the parliament of 1428.[4] Now if only one statute was in question, there can be no doubt as to which it was. On the rare occasions when the pope condescends to paraphrase passages in the offensive legislation, he seems always to be using the text of the statute of 1390 (in which that of 1351 is recited),[5] and the one verbatim quotation that I have found in a papal letter is drawn from that source.[6] The archbishop of York,[7] in a letter written soon after the close of the parliament of 1428, speaks of Chichele's efforts as directed towards gaining for the pope freedom to dispose of benefices in clerical patronage, and in 1435 Eugenius IV identified the measure to which his predecessor had objected with a statute which hindered the pope from collating to English benefices.[8] All interested parties, in fact, seem to assume that the papal claim to appoint to English benefices was the only question at issue throughout the prolonged negotiations. It is hard, in the face of this, to believe that the statute of 1393 came into the

[1] e.g. 'illud abominabile statutum' (Wilkins, iii. 479), 'pro abolitione illius detestabilis statuti contra libertatem ecclesiasticam editi' (*ibid.*), 'execrabile illud statutum contra libertatem ecclesiasticam editum' (*ibid.* p. 473).

[2] So, for example, in an official reply, dated October 1419, to one of the pope's demands for redress (*Foedera* ix. 806), and in a letter from Archbishop Chichele to William Swan at the curia, dated 27 February 1428 (MS. Cott., Cleop. C. iv, fo. 174 b).

[3] e.g. a letter, dated 16 January 1428, from the bishop of Bath and Wells (John Stafford) to Swan: 'In instanti parliamento . . . archiepiscopi . . . ac singuli alii episcopi et prelati pro abolitione illius statuti editi contra provisores diligentissime laborarunt' (*ibid.* fo. 173 b).

[4] Wilkins, iii. 484.

[5] Most of Martin's allusions to details occur in his letter to Henry VI dated 1 December 1426 (Wilkins, iii. 480 *seqq.*), and in that to Chichele dated 9 December 1426 (*ibid.* 482 *seq.*; *Cal. of Papal Letters*, vii. 24 *seq.*).

[6] This occurs in the letter to Henry VI just cited: 'Ferentes aut destinantes a sede apostolica excommunicationis processum contra aliquem de regno contra ipsius statuti dispositionem . . . ut ipsius statuti utamur verbis, poenam vitae ac membrorum incurrunt' (Wilkins, iii. 481). Cf. *Statutes*, ii. 74: 'Si ascun port ou envoie deinz le roialme . . . ascun somonces, sentences, ou escomengementz envers ascun persone . . . a cause de la mocion . . . fesance assent ou execucion du dit estatut des provisours . . . encourge la peyne de vie et de membre.'

[7] Dated 28 March 1428, and addressed to the bishop of Dax, who was apparently at Rome: 'Desideria sanctissimi domini nostri quo ad optatam disponendi libertatem de beneficiis videlicet ecclesiasticis hoc in Regno vacaturis saltim [*sic*] de patronatu personarum ecclesiasticarum existentibus omni cum diligencia pertractata fuere' (MS. Cott., Cleop. C. iv, fo. 169).

[8] Raynaldus, *Annales* (ed. Mansi, 1747–56), xxviii. 199; *Cal. of Papal Letters*, viii. 216 *seqq.*

dispute at all: on the interpretation that I have suggested it only touched the fringe of the question, while if given a wider significance it would have raised a much broader issue, some allusion to which must have appeared in the correspondence that was exchanged. Furthermore, if the statute of 1393 covered all encroachments on temporal affairs, the repeal of the statute of 1390 would have availed the pope nothing; while, on the other hand, the repeal of the statute of 1393 would have left that of 1390 in force. To secure liberty of conferring English benefices the pope would have been obliged to get rid of both measures. Yet, as we have seen, it was for the repeal of but one statute that Chichele pleaded before the commons, and his conduct on that occasion was considered by observers to be proof of zeal in the pope's cause, and satisfied even Martin V himself.[1]

There seems then good reason to believe that the popes of the forty years after the passing of the statute of 1393 were little if at all perturbed by it, and there is apparently no evidence that they took any formal notice of it. Thus the wording of the act itself, the circumstances in which it was passed, and the general disregard of it for so many years point alike to the conclusion that it was originally a measure of but limited purpose, intended by those who framed it to protect ecclesiastics from punishment for executing the sentences of secular courts and to prevent arbitrary translations of bishops. But why, it may be asked, was such an act required? Did not existing statutes provide adequate safeguards against such exercise of papal authority?

The statute of 1390 ordained that if any person brought or sent into the realm summonses, sentences, or excommunications directed against any one for proposing, assenting to, or executing

[1] *Cal. of Papal Letters*, viii. 64. It has sometimes been argued that, as the anti-papal legislation had not been enforced, Martin V was not seriously concerned about it, and merely used it as a stick for beating Chichele, who (according to this view) had been encouraging the English church in a display of independence somewhat alarming to the papacy. But, whatever motives led the pope to make his attack on Chichele—which, it should be noted, began in 1423 on another issue (Raynaldus, *Annales*, xxvii. 573; *Cal. of Papal Letters*, vii. 12)—it is clear from the papal registers that throughout his pontificate the statute of provisors was operating effectively, and, with the exception of bishoprics, very few English benefices were filled by the pope. Martin's attempt to secure some redress began in 1419; it was resumed at intervals during the next nine years, and renewed by Eugenius IV in 1435 (*Foedera*, ix. 806; Raynaldus, *Annales*, xxvii. 538, 556; xxviii. 20; Wilkins, iii. 471 *seqq.*; *Cal. of Papal Letters*, viii. 216 *seqq.*, 263). That he was in earnest is shown by the mere fact that he addressed himself mainly to the king; it was not till late in 1426 that he sought to stimulate Chichele's activity in the cause. Moreover, Eugenius IV seems to have had no suspicion that when Chichele was reconciled to the Holy See, the incident was really closed. One gathers, not merely from official documents but from informal correspondence preserved in William Swan's letter-book, that Martin's efforts were taken quite seriously both at Rome and in England. It is, therefore, important to notice the precise terms in which the papal demands were urged.

the statute, he should be arrested and imprisoned, undergo forfeiture of lands and goods, and incur the pain of life and member. If, then, a secular court had given judgement in an action brought under the statute of provisors, any one bringing into the country a bull excommunicating a churchman for carrying out the sentence would presumably have been liable to the penalties recited. In this instance the statute of 1393 would have been superfluous. But the clause just cited could not be applied unless the statute of 1390 had been involved, and most of the sentences which the clergy were called upon to execute would have nothing to do with the statute. For one thing, neither this act, nor that of 1351, which it confirmed, referred to any benefices but those in clerical patronage.[1] The impetration at the court of Rome of any benefice whatever was indeed an offence under the statute of 1365, but that measure was easy to evade and made but perfunctory provision against the use of papal authority to defeat it.[2] Lay patrons, of course, did not need statutes of provisors, for they had at their service such writs as *quare impedit*, *quare non permittit*, *quare non admisit*, not to mention the newfangled one of *praemunire facias*, which could be obtained on suggestion filed before the king's council.[3] These resources they were expected to use in suits against papal provisors, as well as in the much more numerous suits which did not concern the pope at all. Now for many years the spiritual courts in England had tacitly waived their claim to determine suits regarding patronage, and the papacy had seemingly acquiesced. The secular courts decided who was the rightful patron of any benefice in dispute, and the ecclesiastic with authority to institute admitted his presentee as a matter of course, unless it could be proved that he was personally unfit. But suppose the pope determined to exercise that jurisdiction over patronage which the church had never formally surrendered, and threatened with excommunication any prelate who acted in pursuance of the sentence of a lay court in a suit concerning patronage. A writ of *quare non admisit* would enforce the claims of the common law; but the wretched churchman might prefer ruin or even imminent death to the risk of eventual damnation, and it might prove impossible to secure the canonical institution of the presentee. If the church might not say who was patron, she would not allow any one to be parson.

One gathers from the preamble to the statute of 1393 that

[1] It is true that the statute of 1390 enacts that the statute of 1351 shall hold good of all ecclesiastical benefices whatsoever, and that this reads as though it were to be extended to benefices in lay patronage (*Statutes*, ii. 73). But an examination of the text of the earlier statute and of other passages in the later one shows that this cannot have been intended.

[2] *Ibid.* i. 386.

[3] Palgrave, *The Original Authority of the King's Council*, p. 40.

this was the attitude of Boniface IX. Alarmed by the statute of 1390, he had resolved to reopen the whole question of jurisdiction in cases concerning patronage. Besides demanding the repeal of the statutes of provisors, the abbot of Nonantola had asked for the abolition of what he called the statutes of *quare impedit* and *praemunire facias*, and had made vague threats as to what the pope might do if his requests were denied.[1] The abolition of the two writs had been curtly refused,[2] and the pope had got little satisfaction in regard to the statutes. It was probably in retaliation that he did the things complained of by the commons in 1393. Their petition certainly suggests that he had acted on his own initiative. The conventional pretence, usually kept up in anti-papal statutes, that English suitors at Rome were mainly to blame for all abuses and grievances, is altogether dropped. It is also to be remarked that the statute of provisors is nowhere mentioned in the petition; and the allusion to the immemorial authority of the king's court in relation to patronage and to the right of the king's lieges to sue there gives the impression that the commons had in mind, not the anti-papal statutes—all fairly recent—but the venerable actions at common law which were the natural weapons of lay patrons and which even churchmen often employed in cases where the authority of the pope was not directly at issue.[3]

Now if the processes and sentences complained of by the commons had been the outcome of litigation initiated at Rome by an Englishman, he might have been proceeded against under the statute of 1353;[4] but if they were the result of a petition for papal favour and support, still more if they sprang from the pope's own initiative, there was, so far as I am aware, no statute under which any one could be punished. It was even considered doubtful whether bulls communicating such proceedings were in all cases 'prejudicial to the Crown'. Hence the careful consultation of the estates in parliament. Of course the pope could not be prevented from taking such measures against English ecclesiastics; all that could be done was to forbid any one to ask him to do so, and to try to keep the victims in ignorance of their

[1] *Cont. Polychr.* ix. 251; Walsingham, ii. 251. [2] *Cont. Polychr.* ix. 256 *seq.*

[3] Compare the passage quoted above, p. 178, n. 3, and a passage in the king's reply to the abbot of Nonantola: 'Ex eo namque quod per dictum nuncium petebatur statuta "Quare impedit" et "Praemunire facias", ut praemittitur, aboleri, admirationis causa consurgit maxime cum ab aliis summis pontificibus nunquam fuerunt haec petita, quoniam constat illa statuta etiam inter laicos patronos regni nostri subditos super iure patronatus eorum et aliter legem tribuere ab antiquissimis temporibus observatam' (*Cont. Polychr.* ix. 256 *seq.*).

[4] He would come within the scope of this act as one of those 'qui suent en autri Court a deffaire ou empescher les juggementz renduz en la Court le Roi'. But I do not think that the English courts would at this period have construed this clause so as to bring within its meaning petitions for papal grace and favour.

fate. So very severe penalties were prescribed for any one who procured, pursued, brought into the realm, or published, documents of any kind instituting or announcing proceedings against ecclesiastics for executing judgements of English secular courts.

The question of arbitrary translation was perhaps still more perplexing. None of the statutes of provisors mentions translations. It was generally recognized that only the pope could translate bishops,[1] and no one wanted to stop translations altogether. The statute of 1351, however, laid it down that episcopal elections were to be free, and if it had been enforced in this particular, the pope would have been permitted to translate a bishop to another English see only at the request of its chapter. But what if the pope translated an English bishop to a see *in partibus infidelium* or *schismaticorum*?[2] The king might forbid him to leave the realm, but more he could not do. The bishop could not retain his English see, and if he did not try to obey the pope's command, he might incur the gravest spiritual penalties. Even in the case of translations from one English see to another, the king's powers, as the law then stood, were of little avail against such a policy as Boniface was said to be contemplating. He could keep a translated bishop out of his new see; he could proceed against him for a breach of the statute of provisors: but he could not keep him in his old see or save him from the spiritual dangers of offending the pope. The petition of the commons dwells entirely on the negative aspect of translation. It was a means whereby the pope might deprive the king of his counsellors and also (though this is not expressly mentioned) deprive his counsellors of salaries which were no burden on the treasury. The commons limit their complaint to translations made without the consent of either the king or the prelates affected, and if Boniface really had the intentions ascribed to him, it is clear that his motives were political and highly improbable that he was prompted by any Englishman. There seems to have been no means of preventing the pope from doing what he pleased in the matter. The only hope of defeating him lay in keeping translated prelates in ignorance of what had befallen them. This the statute tried to do, but there was obviously little chance of its succeeding.

Five years afterwards, indeed, Richard II was consulting the judges as to what he could do in defence of royal rights threatened by a series of translations then being made, and asking the clergy whether the pope might lawfully make translations at his will and if there were any justifiable method of preventing his doing

[1] On this see Stubbs, *Const. Hist.* iii. 316.

[2] This had, of course, recently been done at the instance of the lords appellant, who prevailed on Urban VI to translate Archbishop Neville from York to St. Andrews.

so.[1] Most of the recent translations in England seem, it is true, to have had the consent of either the king or the bishop concerned, if not of both ; but one—that of John Buckingham from Lincoln to Coventry and Lichfield—was apparently made contrary to the wishes of both Richard and Buckingham himself, and therefore fell clearly within the scope of the statute of 1393. Yet there is no indication that any appeal was made to the statute ; the Crown recognized the translation of Buckingham as valid,[2] though the bishop himself is said to have refused his new see ;[3] and Richard was apparently at a loss how to prevent the pope from creating vacancies in English sees as he liked.[4] In fact, if men could be found who were ready to risk the penalties ordained in the statute and introduce into the country bulls notifying arbitrary translations, the king had no effective remedy for the consequent inconvenience to the English church and himself, unless he were daring enough to deny the pope's right to exercise a prerogative hitherto recognized on all hands as spiritual, and strong enough to coerce the clergy into compliance with his policy. Neither condition was fulfilled until the days of Henry VIII.

The truth probably is that the enacting part of the statute was not regarded very seriously. It was badly drafted. It contains a glaring anacoluthon ; the passage prescribing penalties and procedure reads like the rough notes of a clerk ; and it abounds with words and phrases of doubtful import. In sharp contrast is the long preamble, obviously drawn up with care. The form of it is singular, and creates the impression that it was intended primarily to impress the pope with the unanimity of the English nation in opposition to the designs imputed to him. Probably, in fact, it should be looked upon as a political manifesto rather than as part of a measure of legislation.[5] Nor did it fail of

[1] *Ord. Priv. Council*, i. 80 ; *Ann. Ric. II*, 226 *seq.* ; Walsingham, ii. 228.

[2] *Cal. of Pat. Rolls*, 1396–9, p. 383.

[3] *Ann. Ric. II*, p. 226 ; Walsingham, *loc. cit.* The St. Albans writers say that the bishop, after refusing Coventry and Lichfield, retired to Canterbury, where he ended his days as a monk. It is likely enough that Buckingham, an old man, did not wish to move from Lincoln to a poorer see and a less orderly diocese ; but the news of his translation cannot have reached him more than a few days before his death (Eubel, *Hierarchia Medii Aevi*, i. 216, 242, 319), and five weeks after that event the pope had not heard of his refusal of Coventry and Lichfield (*Cal. of Papal Letters*, v. 167). The story in the chronicles cited must therefore be regarded with some scepticism.

[4] At St. Albans Richard's anxiety was thought to be assumed, and he was suspected of having connived with the pope in the recent translations ; but his reference of the question to the judges indicates that, whatever his motives, his concern was not altogether feigned. The whole episode, however, raises many perplexing problems. Its clue is probably to be sought in Richard's political aims at this time ; but these lie far beyond the range of my present inquiry.

[5] That there was a serious but temporary crisis in the relations between the Crown and the papacy is suggested by a writ, issued while the Winchester parliament was

its effect. Nothing more is heard of attempts by Boniface IX to defeat the sentences of English courts in the way described in the statute. Arbitrary translations, if not entirely stopped, were not used as a means of coercing the English government. The fact was that whatever card the pope of Rome played, the English Crown could always trump it as long as there was also a pope at Avignon. Boniface IX, in his first zeal, had plunged into controversy with England as though he had been Boniface VIII. But the preamble of the statute of 1393 told him plainly that if he persisted in his intentions he would be regarded as an enemy of the Crown and nation. He took the hint: the French were threatening his position in Italy, and they and the English were drawing together. It was no time for desperate measures, and while he continued his attempts to rid himself of the statute of provisors and perhaps even repeated his request for the abolition of the writ of *quare impedit*,[1] he contented himself in future with the methods of polite diplomacy.

Having served its purpose the statute would naturally fall into obscurity. It reappears in the record of the proceedings of the convocation of Canterbury which met in November 1439.[2] The archbishop, in his speech on the causes of its summons, declared that ecclesiastical jurisdiction was being unwontedly disturbed and injured by royal writs, especially the writ 'de praemunire facias'. After discussion of the matter a petition to the king was drafted. It stated that in a parliament [3] in the sixteenth year of Richard II divers punishments and processes by writs of *praemunire facias* were ordained against those who sued in the court of Rome or elsewhere, against any of the king's lieges, regarding anything which was against the king and his crown, as was more fully set forth in the same statute. The statute, however, was obscurely worded, and understood by some in a sense different from that intended by those who made it. For some maintained that it applied to those who sued in courts Christian or feudal courts within the realm, just as much as to those who sued in the court of Rome. This interpretation, the petition urged, was too stringent and would utterly destroy spiritual and feudal jurisdiction and gravely injure the status

still sitting, in which the keepers of the passage at the chief ports were ordered to seize all bulls and other documents coming from abroad and to bring them before the council (Rot. Claus. 16 Ric. II, mm. 14 *d*, 18). By 15 June following this strictness had been relaxed, and the officials concerned were to arrest only such bulls as they deemed prejudicial to the Crown and the realm (Rot. Pat. 16 Ric. II, fo. 3, m. 7 *d*).

[1] The St. Albans chronicles say that the bishop of Dax asked for this in 1398 (*Ann. Ric. II*, p. 228; Walsingham, *op. cit.*, ii. 228).

[2] Wilkins, iii. 533 *seqq.*

[3] Held, according to the petition, at Westminster: a slip which is a warning not to make too much of the wording of the commission of the bishop of Dax in 1398 (*supra*, p. 190).

and liberties of the church.[1] The king was therefore begged to ordain and declare, by authority of the parliament then sitting, that the statute did not apply to anything done or procured in any courts within the realm, against whose encroachments on Crown rights the king had sufficient safeguard, before ever the statute was made, in writs of prohibition and attachment. The archbishop of York, who was asked to co-operate, drew up a petition in English, which was also presented to the king. Henry said that owing to the near approach of Christmas he could not at present discuss the matter fully with his council, but promised that until the next parliament no writ of *praemunire* should issue unless the king and his great council had considered the purpose for which it was required.

The clergy, however, failed to secure a pronouncement in the sense desired. The matter was brought before parliament without effect in 1444,[2] and three years later a long petition in English was presented to Henry VI on behalf of all the clergy of England.[3] It goes into greater detail than the petition of 1439, emphasizing in particular the words 'such' (*tieux*) and 'in the wise aforesaid' (*come devant est dit*), which I have discussed above, and arguing from them that when the statute speaks of the court of Rome and elsewhere, it must mean 'elsewhere without the realm'.[4] Historically, the clergy were doubtless right; but they apparently did not dispute that the statute covered all

[1] 'Suppliaunt humblement Henry archevesque de Canterbirs, et touts ses freres evesques d'Engleterre, que come par le statut fait al parlement tenuz a Westmonster le xvi an du roy Richard le secunde, nadgairs roy d'Engleter, entre aultres divers punishmentz et processes par breves le roy appelles "Praemuniri facias" soient ordines, et purveues vers ceux, que suont en le court de Rome, ou aylours vers ascun liege nostre seigneur le roy, dascun chose, que soit encontre le roy et sa corone, come en le dit estatut pluis a plein est contenux. Le quel estatut en les parols contenuz en ycell est obscure, et autrement entenduz as plusieurs que l'entent des faiseurs d'icell y fuist al temps del confection de mesme le statut, ascuns intendantes que les paroles de mesme le statut et les punishementz contenuz en ycell, auxi ben averoit relation a eux, que pursuont en ascun court christiane, ou en courtes temporall des seigneurs, et autres, que ount contrepalesez [*sic*] et courtes franchesez . . . dedeinz mesme le royalme, come a ceux, que suont en le court de Rome, come devant est dit, que seroit trop dure, et final destruction de tout le jurisdiction espirituel, et toutes autres courtes et fraunchesez . . . e[t] contre foy et conscience, et en graunt emblemishement del estat et libertes de seint eglise, par le graunt chartre d'Engleterre et par nostre seigneur le roy et plusieurs ses progenitours devant en divers parlementz grauntes, et confirmes, sil serroit issint suffrees entenduz ou adjuges': Wilkins, iii. 534.

[2] *Ibid.* pp. 540 *seq.*

[3] *Ibid.* pp. 555 *seqq.*

[4] 'It was ordeyned . . . that noo man sholde purchase, nor pursue, ner make to be purchased or pursued in the said court of Rome, or other places, ony sute [*sic*, ? such], processe, sentences, or cursyng instruments, bull, or any other things whatsomeever they be, touching the king his regalie, or his reme of Englande in the wise aforsaid; the which words, that is to say, ony such processe, sentences of cursing, and also the wordes in the wise aforesaid, owen to be nooted, forasmuch as afore in the suggestion was it not spoken, but of processe, sentences of cursyng, and censures maad, and yeven be the pope, and of England, and may not therfor resonably be extended ferther': *ibid.* p. 555.

documents prejudicial to the Crown which were of foreign origin, and once the statute ceased to be interpreted strictly in the light of the preamble there was no good reason for limiting the meaning of *aillours* in the manner suggested. At all events it is evident that in the royal courts no attention was being paid to the preamble, and that the crucial words *tieux* and *come devant est dit* were being practically ignored. It is significant that, according to the clergy, this was not the only statute which their enemies were trying to wrest to the disadvantage of the church, for the petition goes on to complain that a statute of 1401 against those who procured from the pope exemptions from ordinary obedience was being unwarrantably extended to cover papal licences for non-residence and certain other dispensations.[1]

The further history of the dispute throws no fresh light on the subject of my inquiries. It is enough to say that, except for a small concession made by Edward IV,[2] the efforts of the clergy were unsuccessful.

The petitions just noticed indicate that the statute was being used with vigour against the English ecclesiastical courts, and it is remarkable that I have found no clear instance of its employment as against the pope up to the middle of the century. But that its anti-papal potentialities were not overlooked is shown by the report of a case of 1448, in which it is described as ' le statut des provisors fait l'An xvi le Roy Richard '.[3] Probably the defendant, Thomas Kemp, archdeacon of Richmond, was being prosecuted for accepting papal provision to the see of London,[4] but we are not told what the case was about, the report being concerned entirely with a discussion of procedure, which suggests that the court of king's bench had had little to do with the statute before. The description of the statute is interesting as showing that it was regarded primarily as an anti-papal measure and as illustrating the fact that such acts, however wide their scope, were seldom used to the disadvantage of the pope except in suits concerning papal provisions or reservations, the one question on which the Crown and the papacy were seriously at variance.

It must of course have been some years before 1439 that the statute was rediscovered and first employed to the detriment of the English spiritual courts. The precise date can only be conjectured. Probably it was prior to 1434; for in that year Archbishop Chichele, addressing the convocation of Canterbury,

[1] The act in question was Stat. 2 Hen. IV, c. 3 (*Statutes*, ii. 121).

[2] That the church courts might entertain suits about tithes on great trees without being interfered with by writs of *praemunire* (Wilkins, iii. 584).

[3] *Year Books*, 27 Hen. VI, p. 5.

[4] Cf. Le Neve, *Fasti*, ii. 207; *Official Correspondence of Thomas Bekynton* (Rolls Ser.), i. 155, 157.

bewailed the abuse of the writ of *praemunire* in terms almost identical with those which he afterwards used in 1439,[1] and though the record of this convocation contains no mention of the statute, it is almost certain that it furnished the ground of the proceedings to which the primate referred. Chichele, we are told, asserted on this occasion that the use of the writ 'in any matter within the realm' had been unknown until the last few years. This is of course false, and even if he meant 'any matter originating within the realm', it would still be inaccurate.[2] Probably the archbishop has been misreported and really said that it was only of late that the writ had been used in restraint of English spiritual courts. In any case, the passage points to the fact that the writ had recently been put to novel uses, and this makes it likely that the statute had attracted particular notice not long before.

Now a few years earlier Humphrey duke of Gloucester had been trying hard to compass the ruin of Cardinal Beaufort by charges arising out of the latter's acceptance of the red hat in 1426. His nearest approach to success was in November 1431, when, Henry VI and the cardinal being absent in France, the king's serjeant and attorney, citing the precedents of Archbishops Kilwardby and Langham, urged in the council that Beaufort should be deprived of his see of Winchester, which he had papal dispensation to retain. Gloucester then elicited from the bishop of Worcester that the late bishop of Lichfield[3] had said that he had sued at Rome for the exemption of the cardinal from the jurisdiction of Canterbury and had paid for it. When asked what they thought of these things, the councillors expressed the opinion that nothing should be done until those concerned had been duly summoned, that the ancient records should be searched, and that the justices should state their views on the question.[4] Three weeks later, however, the council agreed that writs of *praemunire* and attachment against the cardinal should be sealed 'on the statute', though they were not to be executed until the king returned to England.[5]

[1] 'Iurisdictio ecclesiastica per brevia regia et alias vias exquisitas et imaginata brevia plus solito perturbata extitit et impedita, et praecipue per brevia illa de "Praemuniri facias", quae nonnisi infra paucos annos in aliqua materia infra regnum aliquem habebant cursum': Wilkins, iii. 523.

[2] For the early history of the writ, see Palgrave, pp. 40, 131, and Leadam and Baldwin, *Select Cases before the King's Council* (Selden Society), pp. 43 seq., 50.

[3] John Caterick, who held the see from 1415 to 1419. Martin V had offered to make Beaufort a cardinal in 1418, but Henry V had forbidden him to accept (*Letters and Papers illustrative of the Wars of the English in France* (Rolls Ser.), ii. 441; cf. Duck, *Vita Henrici Chichele* (1617), pp. 76 *seq.*, 78).

[4] *Ord. Priv. Council*, iv. 100 *seq.*

[5] *Ibid.* pp. 104 *seq.*: 'Concordatum fuit quod brevia de premunire facias et attachiamento super statuto contra Cardinalem sigillentur sed quod execucio eorundem differatur usque adventum Regis in Angliam.'

One is tempted to identify the statute on which the council were to rely with the act of 1393. The two writs correspond to the alternative modes of procedure sanctioned under that measure.[1] No one statute, so far as I know, could be made to cover both the offences with which Beaufort was charged, unless it were that of 1393, interpreted as involving everything prejudicial to the Crown. Beaufort's acceptance of the cardinalate, we must remember, was not in itself an offence and was never treated as such. It was his retention of the bishopric of Winchester and his alleged purchase of exemption from archiepiscopal jurisdiction that gave his enemies their chance. The king's attorney when impugning the first indiscretion seems to have relied on custom and precedent; the second was an offence under the statute of 1401 which appeared in the petition of the clergy in 1447. It is possible, however, that Gloucester and his friends, after considering the results of research in the records and hearing the views of the judges, resolved to construe Beaufort's two dispensations as prejudicial to the Crown and therefore contrary to the statute of 1393.

On the other hand, when in 1440 Gloucester drew up a long and solemn arraignment of Beaufort's career, he argued that the see of Winchester became void when Beaufort was made cardinal, that it was only some time afterwards that he received permission to retain it, and that therefore he was technically appointed to it afresh by papal provision and so guilty of an offence against the statute of provisors. It is evident from this argument and from his allusions to the contents of the statute that he had in mind the act of 1390. As for Beaufort's exemption from the jurisdiction of Canterbury, that, in Gloucester's opinion, followed as a matter of course from his creation as cardinal. He says nothing of Beaufort's having purchased it, and it is probable that this charge, which seems to have rested on very weak evidence, had been dropped.[2]

[1] It was ordained that offenders 'soient attachez par lour corps sils purront estre trovez et amesnez devant le Roy et son Conseil pur y respondre . . . ou qe processe soit fait devers eux par premunire facias en manere come est ordeigne en autres estatutz des provisours et autres qui seuent en autry Courte en derogacion de la regalie notre seignour le Roy' (*Statutes*, ii. 86).

[2] 'Item, the saide cardinal, thanne being bisshop, was assoylled of his bisshopriche of Winchestre. Wherupon he sewed to . . . the pope to have a bulle declaratorie that notwithstanding that he was assumpt to the state of cardinal, that the see was not voied, where in dede it stode voied by a certayne tyme or that bulle was graunted, and so he was exempt from his ordinarie by the taking on hym the state of cardinal; and the bisshopriche of the chirche of Winchester thanne standing voied, he toke it ageyn of the pope; ye [*sc.* king] not leerned ne knowyng wherinne he was fallen in the cas of provision, wherby alle his goode was clerly and laufully forfaited to you . . . with more, as the statute declareth, for youre avauntage': *Letters and Papers illustrative of the Wars of the English in France during the Reign of Henry VI* (Rolls Ser.), ii. 442. The statement that the king might have got more than Beaufort's goods

It is unfortunate that no light is thrown on the question by what occurred after the cardinal's return to England in 1432. For he immediately confronted his enemies in parliament, said that according to information received while he was abroad he was accused of treason, and challenged his accuser to bring his charge then and there. Gloucester and the other lords meekly answered that no one had accused him of any treason or, to the best of their knowledge, wished to do so, but that the king held him to be a true and loyal subject.[1] Afterwards, at the petition of the commons, it was ordained that Beaufort should be exempt from all proceedings on account of any offence against any statute of provisors, any exemption, any receipt or execution of papal bulls, or anything else whereby he might be liable to the penalties contained in the statutes of provisors.[2] The wording is of course far too comprehensive to be of any service in our present inquiry.

On the whole, it seems likely that the statute 'on' which the two writs against Beaufort were sealed was that of 1390, and that the charge of purchasing exemption from obedience to Canterbury was dropped. The preparation of two writs might have been suggested by the statute of 1365 no less than by that of 1393, and was, after all, natural in the circumstances: Beaufort was abroad; if he returned, the writ of attachment would be executed; while if he thought it wise to remain on the Continent, proceedings could still be taken against him by writ of *praemunire*. Nevertheless, it may well have been as a result of the researches ordered by the council that the statute of 1393 was drawn from the obscurity in which it had lain and that attention was attracted to its potentialities as a weapon against the pope or the clergy. It is perhaps not without significance that the statute of 1401 which figures with it in the petition of 1447 was one with a direct bearing on Beaufort's case. That an attempt to ruin a cardinal started on its destructive career the measure which, nearly a century later, ruined another and yet greater one may be a mere conjecture, but it is a conjecture that sorts well with all the known facts.

It is of course true that when the statute began to cause public debate, it was generally understood to refer to all documents prejudicial to the Crown if they came from abroad, while the secular courts held that it applied to all such documents irrespective of their source. But there is nothing in this which is incompatible with my view of the original intention of the measure. That there is no recorded instance of its having been

proves that Gloucester was thinking of the statute of 1390, under which he would have had the right of appointing whom he pleased to the see.

[1] *Rot. Parl.* iv. 390 *seq.* [2] *Ibid.* p. 392.

expressly interpreted in the sense I have advocated is of small significance; for if my reading of the act is correct, little use was likely to be made of it until a wider construction had been put upon it. Again, assuming that I have understood it aright, one would even expect its original purpose to be forgotten when, after being lost to sight for more than a generation, it was rediscovered. The courts of law had seldom if ever had occasion to interpret it; few of those who had taken part in its enactment were alive; and unless the circumstances in which it was passed were clearly remembered, it would seem most improbable that a long statute, prescribing very drastic penalties for its infringement, should be exclusively concerned with the punishment of churchmen for executing sentences of the king's courts and the translation of bishops without the consent of themselves or the king, two things with no apparent connexion and moreover unknown in the days of Henry VI. The interval between the enactment and the reappearance of the statute had been a stormy and chequered one for both church and state, and a revolutionary change of dynasty, the conciliar movement, the vicissitudes of the French war, to mention nothing else, might well have blotted out the memory of Boniface IX and his ambitions. Cardinal Beaufort was perhaps as likely as any man to remember the events which had occasioned the passing of the act; but, already under suspicion of preferring the interests of the pope to those of the Crown, he would hardly give a new handle to his enemies by attempting to explain away an anti-papal statute which was probably never actually used to his hurt. The English clergy, while they protested when the statute was turned against their liberties, would only have prejudiced their case if they had put forward the pope as a fellow victim of the abuse of the measure. There was, in short, hardly any one in England whose interest it was to scrutinize the act on behalf of the pope, and as it seems to have been some time before it was employed against him, the wider interpretation of the statute probably became established before the court of Rome realized its dangerous character. Further, while the statute may have been honestly misunderstood, it is evident that anti-papal statutes were in demand during Gloucester's long quarrel with Beaufort, and it appears from the complaints of the clergy that an anti-clerical spirit had invaded the judicial bench, which a generation earlier had been well disposed towards the courts Christian. In a word, conditions were extraordinarily favourable for the misinterpretation of the statute. It was not the only anti-papal measure that owed its importance to a mistake, for the 'statute of Carlisle', cited at length in the first statute of provisors and solemnly denounced by Boniface IX, was no statute at all, but only a fruitless petition

presented at the parliament of Carlisle in 1307.[1] But for examples of how the meaning of an act can be distorted and its range extended, there is no need to look further than the notorious achievements in later times of the very statute we have been considering.

The statute of 1393, as interpreted after its reappearance, was the most serviceable of the laws at the disposal of the Crown in its occasional differences with the pope or the English clergy. It summed up in itself all previous anti-papal legislation, provided simple and effective modes of procedure, and ordained very severe punishments for all encroachments on the rights of the Crown. But as long as any respect was shown for the wording of the statute, it gave the temporal authorities few powers that they would not have possessed without it. Writs of prohibition, of *quare impedit*, *quare non admisit*, and such-like; the long-established royal right, reaffirmed by the ordinance of 1343, of forbidding the introduction into the realm of bulls prejudicial to the Crown; and, in addition, the numerous anti-papal acts, great and small, passed before and after 1393, furnished the Crown with ample resources for resisting invasions of the temporal sphere, whether by foreign or by English churchmen. The statute of 1393 did not seriously threaten the established relations between church and state until the king's courts took to ignoring, not merely the preamble, but certain words in the enacting part, words of restrictive force which yet might be omitted without destroying grammar or sense. Once the preamble was disregarded, the words *tieux* and *come devant est dit* ceased to have much apparent weight, and at some date unknown disappeared from writs citing the statute:[2] even when their full significance was overlooked, they might have served as reminders that the range of the measure was not so wide as the courts assumed. But it was more serious still when the statute was cited as covering everything which touched the king, his crown, regality, or realm, the words 'against him', awkwardly inserted in the original text after the word 'king', being left out.[3] Thus, the writ of *praemunire* in vogue in 1529 makes the penalties of the statute apply to those who pursue in the court of Rome or elsewhere, or bring into the realm, or receive, notify, or in any way execute within the same realm any processes, sentences of excommunication, bulls, instruments, or other things

[1] *Rot. Parl.* i. 219.

[2] From the wording of the petition of the bishops in 1439, it almost looks as if this had already happened, but it is impossible to be certain (cf. *supra*, p. 198, n. 4).

[3] It is strange that the clergy, in their petition of 1447, omit these words (cf. *supra*, p. 198, n. 3). They are, however, attempting to quote the text of the statute itself, so the omission was probably due to mere inadvertence. But it shows how easily the words might be overlooked.

whatsoever which touch the king, his crown, regality, or realm.[1] The pistol was ready primed, and first Wolsey and then the whole body of the clergy put up their hands when it was levelled at them. No other act would have served the king's ends so readily. It is doubtless true that on any conceivable interpretation of the statute the clergy might have contested Henry's allegation that they had broken it by recognizing Wolsey's legatine authority. But the grasp of the statute was wide—who but the king's justices could say how wide?—terrible punishments (partly unknown) awaited those who fell into its clutches, and the clergy feared their fate too much to make a stand for their deserts.

W. T. WAUGH.

[1] 'Cum in statuto in parliamento domini [Ricardi] regis Anglie secundi apud Wintoniam anno regni sui xvi tento edito inter cetera ordinatum sit et stabilitum quod si aliquis impetrauerit aut prosecutus fuerit seu impetrari vel prosequi fecerit in Curia Romana vel alibi aliquos processus sententias excommunicationum bullas instrumenta vel alia quecumque quae tangunt nos coronam regaliam seu regnum nostrum, et illi qui ea in dictum regnum nostrum detulerint aut ea receperint vel inde notificationem seu aliam executionem quamcunque infra idem regnum nostrum seu extra fecerint', &c.: *Natura Brevium*, ed. 1529, clxxxiii.