

manqué, and never passed into the condition of a formal and authoritative document.

May I further suggest two slight alterations in the text? (1) In § 4 (p. 290) Mr. Round has pointed out that the words *Si contingat quod meus baro aut homo meus* are superfluous, 'having evidently been copied out of place from the next section.' Should not the words immediately preceding—*sed non inimicis meis*—be also bracketed as superfluous, having been copied from the end of § 4? They are in place at the end of the section, as a limitation on the preceding words, *se maritabit ad libitum suum*; but they come in awkwardly above, between *debeo eam maritare* and *consilio generis sui*. It seems a little superfluous for John to say that he was not bound to marry an heiress to one of his enemies. (2) In § 10, line 3 (p. 291), *habent* seems to be required between *nemus* and *habeant*, and the comma should be placed before instead of after *habeant*. A copyist so careless as this one evidently was may very well have omitted the first of two almost identical words. G. W. PROTHERO.

P.S. In § 8 (p. 291), touching scutage, I had at first suggested the reading *extra* (instead of *contra*) *terram* for the unintelligible *gravam*; but, since writing the above, M. Bémont has been good enough to send me the true reading, viz. *gravamen*, which makes good sense. No doubt a careful examination of the manuscript itself, its *provenance*, and its other contents, may supply indications pointing to a better solution than the one I have offered. My remarks are based only on the contents of the document as printed, and are merely put forward in the hope of starting a fuller and more authoritative discussion of an interesting problem.

G. W. P.

THE FRIARS OF THE SACK.

THE history of the Friars of the Penance of Jesus Christ, or Friars of the Sack, has attracted, as it deserves, little attention. Eccleston relates that 'they had their origin in Provence at the time of the Council of Lyons (1245) through a novice who had been expelled.'¹ Matthew Paris notices, in two scornful sentences, their coming to England in 1257,² and this is also mentioned by Eccleston.³ Some details about their houses in England are given by Tanner and in Dugdale's 'Monasticon.' It is also well known that the order was suppressed by the Council of Lyons in 1274. As, however, some writers (notably Hospinian) have confounded these friars with the *Fratres de Penitentia* or Tertiaries of St. Francis, it will not be amiss to give some account of the constitutions of the order.

These are preserved in Cod. Nero A. xii. ff. 155–178, of the

¹ *Mon. Franc.* i. 72.

² *Chronica Majora*, v. 612, 621.

³ *Mon. Franc.* i. 72.

Cottonian Collection in the British Museum, and are written in a small hand of the thirteenth century. The manuscript was used by Fosbrooke,⁴ who supposed (not unnaturally) that the constitutions were those of the Friars Preachers. This mistake was due to the careful erasure both in the *incipit* and *explicit*⁵ of the words 'de penitentia Jesu Christi.' The full title is, however, given in the chapter *De forma decreti* (see below).

The Friars of the Sack followed the rule of St. Augustine; their constitutions are borrowed from, and are for the most part identical with, the constitutions of the Friars Preachers, which in turn were based on the statutes of the Praemonstratensian canons. The Dominican constitutions of 1228, as given by Deniffe,⁶ with many of the alterations and additions made by successive general chapters⁷ of the Friars Preachers till 1252,⁸ form the bulk of these constitutions; there are many verbal changes, and some omissions, additions, and alterations of a more important kind. I append here the more interesting of these.

Rector is always substituted for *Magister (ordinis)*; other titles are the same. The names of the provinces in the chapter *De capitulo provinciali* (Archiv, i. 212) are omitted in the manuscript⁹ (fol. 168, b).

In the chapter *De pulmentis* (Archiv, p. 199), the manuscript (fol. 158-9) reads: 'Pulmenta nostra sint ubique sine carnibus in nostris conventibus. Cum pinguedine tamen carniū possint nostra cibaria preparari nisi in diebus sabbatis.'

In the chapter *De capitulo provinciali* (Archiv, p. 212), the manuscript contains the definition of 'predicatores generales' from the Dominican statutes of A.D. 1252, and continues: 'Et si commode fieri potest ad illud capitulum veniat unus frater discretus cum socio de uoluntate prioris.' The last sentence, 'Item conventus qui mittunt—a quo audiverit,' is omitted (fol. 168, b).

Instead of the chapter *De electione diffinitoris capituli generalis* (Archiv, p. 218), the manuscript (fol. 164) reads: '*De tempore capituli generalis et electione diffinitorum.* Nos rector et priores provinciales ac diffinitores capituli generalis, cupientes parcere fratrum laboribus ac distracionibus (*sic*) personarum, statuimus ut solum de tribus in tribus annis fiat nostrum capitulum generale. Si autem videatur rectori necessitas ardua uel alia (*sic*) periculum imminere, conuocatis qui ad capitulum generale pertinent, possit ante presignatum terminum, etiam si omnes non affuerint, ipsum capitulum cum presentibus celebrare: ordinantes nihilominus ut inter unum generale capitulum et aliud in singulis provinciis duo capitula provincialia celebrentur. Et tunc in ipso secundo provinciali capitulo quod

⁴ *British Monachism.*

⁵ 'Incipiunt constituciones fratrum. . . . 'Expliciunt constituciones fratrum. . . .'

⁶ *Archiv f. Litteratur- und Kirchengeschichte d. Mittelalters*, vol. i.: henceforth referred to here as *Archiv*.

⁷ In Martène and Durand, *Thesaurus novus anecdotorum*, vol. iv.

⁸ See below, *De capitulo provinciali*.

⁹ 'The manuscript' = Cotton Nero A. xii.

proximus (!) erit futuro capitulo generali, aliquis de magis ydoneis a capitulo eligatur, qui sit capituli generalis diffinitor. Cui socius competens . . . habeatur.¹⁰ Priori et provinciali eunti ad capitulum generale a diffinitoribus socius detur.¹¹

In the chapter *De forma electionis*, the last paragraph in the Archiv (p. 218) is omitted: the manuscript (fol. 165, b) substitutes: 'Confirmacio uero rectoris ad sacrosancte ecclesie Romane summum pontificem pertinerebit.'

The manuscript (fol. 165 b, -166) continues: '*De forma decreti*. Decretum uero electionis poterit fieri in hunc modum. Sanctissimo patri ac domino N. sacrosancte Romane ecclesie summo pontifici, priores ac diffinitores apud talem locum generali capitulo presidentes, necnon et totum idem capitulum ordinis fratrum de penitentia Ihu Xpi, obedienciam et reuerenciam subiectiuam cum pedum osculo beatorum. Quoniam diuino auctorabili et inuolabili dictamine sacrosancta Romana ecclesia facta est omnium Christi fidelium mater domina et magistra, prelacionis eminentiam, que ab eadem auctoritate non suscipitur, carere nouimus roboris firmitate. Idcirco sanctitatem vestram, quam preesse regimini sedis apostolice congaudemus, de uestra clemencia quam plurimum confidentes, imminente necessitatis articulo, affectuosis conatibus duximus adeundam, significantes eisdem suppliciter et deuote, quod sine dolore et lacrimis referre non possumus, paterno nos esse destitutos auxilio. Nam frater N. bone memorie, nobis olim a sede apostolice (!) in pastorem et patrem ac¹² nostri ordinis rectorem concessus, vniuerse carnis uiam nouiter est ingressus. Nos autem tanti patris presidio destituti, rursus nobis de aliquo prouidere curantes, die ad tractandum de electione prouide assignata, conuocatis omnibus presentibus, qui debuere uoluerunt et potuerunt commode interesse, ad electionem processimus in hunc modum. Inclusis enim in uno conclauis omnibus, qui ad hoc uoces totius nostri ordinis habere, inuocati spiritus sancti gracia, tres ab eisdem fide digni, ut uota cunctorum secreto et sigillatim in conspectu omnium diligenter exquirerent, et in scriptis redigerent, sunt assumpti. Dicti uero tot numero tot fratres nominauerunt. Nam frater N. prior prouincialis Prouincie, et frater N. prior prouincialis Francie, frater N. prior prouincialis Hyspanie, et frater N. de tali loco, nominauerunt fratrem de tali loco. Frater N. prior prouincialis Anglie nominauit fratrem N. de tali loco, et sic de ceteris. Hiis igitur nominatis et inde scriptis redactis confestim etiam coram omnibus publicatis, facta collacione canonica, numeri ad numerum, zeli ad zelum, meriti ad meritum, aperto quod maior pars et sanior fratrem talem elegeret, in ipsum continuo vniuersi vnanimiter et concorditer consensere, et in rectorem nostri ordinis eundem solempniter assumentes, una cum toto capitulo "Te deum laudamus" domino decantauerunt. Ea propter sanctitati uestrae deuotissime supplicamus, quatinus eundem electum nostrum, uidelicet fratrem talem sepedictum, virum utique prouidum et discretum, et tam in temporalibus quam in spiritualibus circumspicere nobis in rectorem dignemini confirmare. Actum in domo fratrum nostrorum in tali loco, Anno domini M^o CC^o etc., tali die. Deinde singuli de

¹⁰ As in *Archiv*, p. 218.

¹¹ Cf. *Acta Cap. Gen. Ord. Praed.* A.D. 1250, § 4 (Martène and Durand):

¹² MS. Ca (?).

electoribus subscriptionem faciant in hac forma: Ego frater talis prior prouincialis Prouincie huic electioni interfui et consensi, et decretum illud propria manu subscripsi, et signi huius signaculo insigniui ✕: et sic de omnibus aliis forma huic similis obseruetur.'

The Dominican statute *De morte magistri* (Archiv, p. 217) is omitted in the manuscript.

In the statute *De electione priorum prouincialium* (Archiv, 218), the manuscript (f. 167) reads: 'Quod si fratres non elegerint qui debent eligere infra tres menses, potestas eligendi ad rectorem ordinis transferatur. Electores autem possint eligere vbicumque in ordine inuenerint ydoneum, dummodo non fuerit in consimili dignitate.'

In the chapter *De potestate prioris prouincialis* (Archiv, 218), the manuscript (fol. 167) reads: 'Prior prouincialis eandem potestatem habeat in sua prouincia quam et rector ordinis. Item recipiendis minoribus xvij annis, et illis qui nesciunt competenter legere et cantare, dispenset etiam sine licentia speciali rectoris. Et eadem reuerencia,' &c.

In the chapter *De capitulo generali* (Archiv, 219), for 'Et si littere dande sunt,' &c., the manuscript (fol 167 b-168) reads: 'Tradant litteras quicumque habent eas ostendandas, et recipiantur, et cum consilio suo tempore respondeatur. Nullus autem aliquam petitionem offerat que per conuentuale capitulum non fuerit approbata et signata. Vnde volumus et mandamus, quatinus quelibet domus sigillum conuentuale habeat, quod in capsula cum clauis infra archam depositoriam caucius obseruetur. Quo sigillo si quod scriptum uel littera rectori uel priori prouinciali seu capitulis destinetur, ea que maior pars capituli conuentualis numero non¹³ testatur, nomina protestantium in illa littera conscribantur. Et sic omnes qui non sunt,' &c.

In the chapter *De questionibus* (Archiv, 220-1), the manuscript (fol. 169) inserts a long form of confession and absolution to be used at the end of the General Chapter.

Instead of the chapter *De possessionibus non recipiendis* (Archiv, 222), the manuscript (fol. 170) reads: 'De paupertate. Verum quia pauper dominus noster Ihs Xps imitatores beatificat et exultat, statui-mus ut noster ordo nullas habeat possessiones agrorum uel uinearum, nutrimenta animalium, census, redditus, nec aliqua immobilia nisi ortum et officinas. Vnde si que possessiones nobis date uel relicte fuerint, licebit nobis eas recipere, dum tamen eas, quam cito bono modo poterimus, distribuamus in pietatis et caritatis operibus conuertentes. Interim tamen ab amicis et familiaribus nostris sine periculo teneantur. Domorum autem ac officinarum nostrarum opera sint humilia et mediocria, in quibus non sint sumptus superflui, nec uoluptuose et inutiles ymagines picturarum. Preterea si aliquis frater noster siue prior siue conuentualis ad executionem alicuius testamenti ab aliquo fuerit constitutus,¹⁴ conuentus assignet ei socium, consilio cuius omnia disponat et distribuat; et isti duo teneantur priori prouinciali et aliquibus de discretioribus fratribus de dicta executione reddere rationem.

¹³ Now inserted above in the same hand.

¹⁴ To act as executor was usually forbidden to the friars: see e.g. *Acta Gen. Cap. Ord. Praed.* A.D. 1240, § 12.

'Item precipimus firmiter et districte, ut in singulis domibus duo fratres a conuentualibus eligantur, qui recipiant omnes elemosinas, et in cartulario conscribant fideliter receptas pariter et expensas : quas elemosinas expendant de consilio prioris et uoluntate, et teneantur ad minus infra quindenam semel priori et quibusdem discrecioribus de omnibus reddere rationem. Frater autem operarius, sacrista et vestiarius, illi tres, in eodem cartulario teneantur receptas et expensas in eodem cartulario (*sic*) conscribere, et rationem reddere de eisdem.

'Precipimus etiam firmiter et districte ut duo fratres ueritatis filii a conuentualibus statuatur, qui sub uno depositorio duarum clauium diuersarum, omnia deposita conseruabunt.¹⁵ Vnde cum aliquis suis filiis aliqua uicissitudine uel aliqua occasione aut noticia ad se pertinentibus aliquid pro libris uel aliis contulerit,¹⁶ statim priori et predictis fratribus depositariis expressa persona et occasione plenius ostendatur : et si pecunia huiusmodi summa fuerit desuper scripta, in depositorio reponatur. Quod depositum nec prior nec fratres depositarii aliqua necessitate pro aliquibus distrahere acceptabunt, nisi de uoluntate et assensu fratris, ad usum cuius fuerit concessum. Nec ipsi fratres sine licencia prioris depositum recuperabunt, uel de ipso aliquid ordinabunt : aliter autem uel in alio loco nec prior conuentualis nec subprior uel frater aliquis audebunt aliquid sibi datum uel concessum seu recommendatum ultra unam noctem uel duas, postquam in suo conuentu fuerint, conseruare. Quod si actum fuerit, quod absit, censemus de precepto beati Augustini patris nostri furti iudicio condempnari.

'Item precipimus firmiter et districte ne aliquis siue prior siue conuentualis de rebus communibus libros uel quaternos scribere faciat speciales. Nec etiam pro secularibus fideiubere audeat, uel amicos ordinis fideiubere faciant. Nec etiam libro[s] speciales uel communes uel ornamenta uel aliquid aliud de rebus ordinis presumant pro huiusmodi secularibus obligare. Si quis autem contrafecerit, pene grauioris culpe per unum mensem continuum subiaceat.'

'*De studio et magistro studencium* : 'Archiv, 222 : MS. (fol. 171) reads : 'Quoniam circa studium diligens est adhibenda cautela, apud Montem Pessulanum, Parisius, Oxoniam, Colonias, Boloniam, generalia studia ordinauimus, ad que prior prouincialis quilibet possit mittere duo fratres, qui habeant studencium libertatem. Prior autem prouincialis Prouincie, quia ipsa est mater et principium aliarum, poterit quatuor destinare. Vniuersis autem studentibus magister diligens preponatur, sine cuius licencia non scribant quaternos nec audiant lectiones, et que circa eos in studio corrigenda uiderit, corrigat. Et si vires excedant, proponat prelato.

'Statuimus autem ut quilibet prouincia fratribus suis missis ad studendum ad minus in tribus libris theologicis, uidelicet biblia, sentenciis, et historiis, prouidere teneatur. Et fratres missi ad studium in historiis et sentenciis et textu et glosis precipue studeant et intendant. Omnibus autem fratribus generaliter precipimus ne in diebus dominicis uel festiuis libros uel quaternos audeant scribere proprias uel communes.'¹⁷

At the end of the statute *De dispensacione studencium* (Archiv, 223),

¹⁵ Cf. *Acta Gen. Cap. Ord. Præd.* A.D. 1248, § 1; and 1250, § 7.

¹⁶ I can make nothing of this sentence.

¹⁷ Cf. *Archiv*, i. 225.

the manuscript (fol. 171, b) reads: 'In cellis legere, scribere, orare, dormire, et de nocte vigilare ad lumen possunt propter studium. Studentes autem, in quacumque facultate fuerint ad studium assignati, et predicatorum non teneantur, nisi in quarta et vi feria uel nisi uocentur specialiter, cotidianis capitulis interesse. Libri etiam fratrum omnium post mortem eorum redeant ad conuentus domus unde et quocumque modo fuerint adquisito.'

The statute *De doctore* (Archiv, p. 228) is omitted in the manuscript; also that *De edificiis* (Archiv, p. 225), but cf. the chapter *De paupertate* above.

In the statute *De predicatoribus* (Archiv, 228-4), the manuscript (fol. 172) inserts: 'In predicacionibus autem suis honeste inducant¹⁸ populum ad decimas et oblaciones et alia iura ecclesiastica persoluenda.' The prohibition against preachers and students being occupied in secular affairs is omitted here in the manuscript.

This addition is made in the manuscript (fol. 171), to the chapter 'Ubi non audeant predicare fratres.' 'Quando uero ad aliquam ecclesiam causa predicacionis declinauerint, humiliter a parochiali capellano predicandi licenciam postulent et requirant. Quam si negauerit, non predicent, nisi domini pape uel diocesani episcopi licenciam habeant specialem. Qui etiam predicatorum uel etiam fratres quicumque alii non sint causarum secularium uel questionum diffinitores, iudices, uel arbitrarii, seu quasi aduocati ullo modo: pacis uero et amicitie compositores et consultores esse poterunt. Nec efficiantur de familia prelatorum aut principum cum eis in domibus conversando, nisi de rectoris licencia uel capituli generalis. Nec instare audeant nec rogare pro beneficiis notis suis¹⁹ uel consanguineis optinendis.'²⁰

In the chapter *De itinerantibus fratribus*, instead of the clauses, 'Statuimus ne fratres—honeste procurentur' (Archiv, 225), the manuscript (fol. 172 b-173) reads: 'Honestatem, parocitatem, et modestiam, ubique exhibeant inter gentes. In domibus etiam priuatorum uultu hyllari et uoce iocunda contentos apositis se ostendant, nec signo, uerbo, uel facto aliqua requirant. Fratres minores et predicatorum sicut et nostri caritative et hylariter recipiantur, et secundum facultates domus pie et honeste procurentur; et similiter omnes alii religiosi de religionibus aprobatis, cum ad nos declinauerint, nisi sinistra de ipsis suspicio habeatur.' (Then follows a decree against going to the Roman Curia similar to that given in Archiv, i, p. 226, l. 1.)

In the chapter *De anniversariis*, which comes next in the manuscript, some differences may be noted. For 'laici D Pater noster' (Archiv, 221) the manuscript (f. 178) reads: 'CL Pater noster et totidem Aue Maria.' The manuscript also has: 'Altarum uero maiora nostri ordinis sint ad honorem domini nostri Ihu Xpi et beate Marie uirginis in locis in quibus poterit obseruari. Oblaciones ad manum sacerdotis celebrantis non recipiantur, nisi de licencia prelatorum.'

The next chapter in the manuscript (f. 178) runs: '*Qualiter fieri debent constitutiones et qualiter roborari.* Vt autem in constituendo salubrius procedatur, approbante generali capitulo, prohibemus ne abso-

¹⁸ MS. *indicant*.

¹⁹ MS. *eius*.

²⁰ Cf. *Acta Gen. Cap. Ord. Praed.* A.D. 1245, § 1.

lute aliquid statuatur, set in secundo generali capitulo per rectorem et diffinitores capituli, quod statutum fuerat, examinari, confirmari, mutari valeat, uel deleri.²¹ Interpretaciones regule uel constitutionum facte in generali capitulo non habeant uim constitutionis, nisi per generale capitulum approbentur, set tamen²² quod statutum est interim firmiter obseruetur, ut statuti difficultas uel utilitas ualeat experiri.' (A decree follows similar to that contained in § 28 of the 'Dominican Statutes of A.D. 1286.')

The constitutions end with a number of memoranda; e.g. 'Mem. de lampadibus qui ubique in nostris conuentibus in dormitorio habeantur.'²³

A. G. LITTLE.

TWO LETTERS OF JAMES HOWELL.

THE two following letters of James Howell have already been mentioned in the *ENGLISH HISTORICAL REVIEW* (Jan. 1898, p. 158) in a notice of Mr. Joseph Jacobs's new edition of the 'Epistolae Ho-Elianae;' but until now, I believe, they have never been published. Although they are not printed from the originals, there can be no doubt of their genuineness, and they have so far the advantage over those printed by Howell himself that they are free from any suspicion of having been recast, if not actually concocted, at the time of publication, years after their professed date. The volume in which copies of them have been preserved is now Add. MS. 34217 in the British Museum. It contains a collection of historical and other pieces formed by Sir Francis Fane, created earl of Westmoreland in 1624, and it remained in the possession of his descendants until a year ago. Possibly the letters were addressed to Fane himself, but on this point there is no evidence, and it is not even certain that both were addressed to the same person. As to their contents, they speak for themselves. The whole history of the visit of Prince Charles to Madrid, to which they relate, has been minutely worked out by Mr. Gardiner, and I need only add that at the time they were written Howell was there in a quasi-diplomatic capacity as agent to prosecute a claim against the Spanish government for the Levant Company, and his relations with the English ambassadors and those about the prince gave him exceptional opportunities for collecting news. One of the letters, as will be seen, is only an extract; the other appears to be complete. In date they fit in between letters xvi. and xvii. in book i. of the 'Epistolae Ho-Elianae.'

G. F. WARNER.

²¹ Cf. the Dominican custom, *Archiv*, vi. 22-3.

²² MS. tm̄.

²³ A few other small points may be noted. In the statute *De excessu magistri (rectoris) corrigendo* (*Archiv*, p. 215), this manuscript (f. 165) reads 'non deponatur nisi pro heresi,' thus following the original statute of the Dominicans, not the amendment of A.D. 1286. *Archiv*, p. 217; § 14, l. 8, *diffinitiones*: manuscript (f. 166, b) reads *dissensiones*. *Archiv*, p. 224, § 33; 'xv. annos': manuscript, f. 172, 'xx. annos.' *Archiv*, p. 224, § 34, l. 4: *secundum mores*: manuscript, f. 172, b, *Seniores*.