

DOCUMENTS
ILLUSTRATIVE OF ENGLISH
CHURCH HISTORY

COMPILED FROM ORIGINAL SOURCES

BY

HENRY GEE, B.D., F.S.A.

AND

WILLIAM JOHN HARDY, F.S.A.

London

MACMILLAN AND CO., LTD.

NEW YORK: MACMILLAN & CO.

1896

L.

THE RESTRAINT OF APPEALS, A. D. 1533.

~~24~~ HENRY VIII, CAP. 12.

THIS Act—which embodies the legal principle of the reformation under Henry VIII, as the Dispensation Act (*post*, No. LIII) sets forth the ecclesiastical principle—was passed in February, 1533; it was repealed by Mary's general Act of repeal (*post*, No. LXXVI), which repeal was in turn repealed by 1 Elizabeth, cap. 1 (*post*, No. LXXIX). 1533.

[Transcr. Statutes of the Realm, iii. 427.]

Where by divers sundry old authentic histories and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown of the same, unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporality, be bounden and ought to bear, next to God, a natural and humble obedience: he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative and jurisdiction, to render and yield justice, and final determination to all manner of folk, residents, or subjects within this his realm, in all causes, matters, debates, and contentions, happening to occur, insurge, or begin within the limits thereof, without restraint, or provocation to any foreign princes or potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and showed by that part of the said body politic, called the spirituality, now being usually called the English Church,

Recital of ancient power and pre-eminence of the king of England,
and of the power and learning of the body spiritual, or English Church.'

1533. which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it hath been always thought, and is also at this hour, sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual doth appertain; for the due administration whereof, and to keep them from corruption and sinister affection, the king's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said Church, both with honour and possessions; and the laws temporal, for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without ravin or spoil, was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporality; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other. . . .

Form of government of the estate temporal.

Statutes made in time past to prevent encroachments of Rome or other foreign power.

And whereas the king, his most noble progenitors, and the nobility and Commons of this said realm, at divers and sundry Parliaments, as well in the time of King Edward I, Edward III, Richard II, Henry IV, and other noble kings of this realm, made sundry ordinances, laws, statutes, and provisions for the entire and sure conservation of the prerogatives, liberties, and pre-eminences of the said imperial crown of this realm, and of the jurisdiction spiritual and temporal of the same, to keep it from the annoyance as well of the see of Rome, as from the authority of other foreign potentates, attempting the diminution or violation thereof, as often, and from time to time, as any such annoyance or attempt might be known or espied.

Notwithstanding which,

And notwithstanding the said good statutes and ordinances made in the time of the king's most noble progeni-

tors, in preservation of the authority and prerogative of the said imperial crown, as is aforesaid; yet nevertheless since the making of the said good statutes and ordinances, divers and sundry inconveniences and dangers, not provided for plainly by the said former acts, statutes, and ordinances, have arisen and sprung by reason of appeals sued out of this realm to the see of Rome, in causes testamentary, causes of matrimony and divorces, right of tithes, oblations and obventions, not only to the great inquietation, vexation, trouble, cost and charges of the king's highness, and many of his subjects and residents in this his realm, but also to the great delay and let to the true and speedy determination of the said causes, for so much as the parties appealing to the said Court of Rome most commonly do the same for the delay of justice.

1533.

dangers unprovided for therein have arisen by appeals to Rome.

These appeals delay justice.

And forasmuch as the great distance of way is so far out of this realm, so that the necessary proofs, nor the true knowledge of the cause, can neither there be so well known, nor the witnesses there so well examined, as within this realm, so that the parties grieved by means of the said appeals be most times without remedy:

Inconvenience of these appeals by reason of distance.

In consideration whereof the king's highness, his nobles and Commons, considering the great enormities, dangers, long delays and hurts, that as well to his highness, as to his said nobles, subjects, commons, and residents of this his realm, in the said causes testamentary, causes of matrimony and divorces, tithes, oblations and obventions, do daily ensue, does therefore by his royal assent, and by the assent of the lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by authority of the same, enact, establish, and ordain, that all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations and obventions (the knowledge whereof by the goodness of princes of this realm, and by the laws and customs of the same, appertaineth to the spiritual juris-

All causes determinable by spiritual jurisdiction, to be determined in the king's courts, temporal or spiritual.

1533. diction of this realm) already commenced, moved, depending, being, happening, or hereafter coming in contention, debate, or question within this realm, or within any the king's dominions, or marches of the same, or elsewhere, whether they concern the king our sovereign lord, his heirs and successors, or any other subjects or residents within the same, of what degree soever they be, shall be from henceforth heard, examined, discussed, clearly, finally, and definitively adjudged and determined within the king's jurisdiction and authority, and not elsewhere, in such courts spiritual and temporal of the same, as the natures, conditions, and qualities of the causes and matters aforesaid in contention, or hereafter happening in contention, shall require, without having any respect to any custom, use, or sufferance, in hindrance, let, or prejudice of the same, or to any other thing used or suffered to the contrary thereof by any other manner of person or persons in any manner of wise; any foreign inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, judgments, or any other process or impediments, of what natures, names, qualities, or conditions soever they be, from the see of Rome, or any other foreign courts or potentates of the world, or from and out of this realm, or any other the king's dominions, or marches of the same, to the see of Rome, or to any other foreign courts or potentates, to the let or impediment thereof in any wise notwithstanding.

Any foreign inhibition, &c., notwithstanding.

Only sentences pronounced in the king's courts to take effect.

And that it shall be lawful to the king our sovereign lord, and to his heirs and successors, and to all other subjects or residents within this realm, or within any the king's dominions, or marches of the same—notwithstanding that hereafter it should happen any excommengement, excommunications, interdictions, citations, or any other censures, or foreign process out of any outward parts, to be fulminate, provelged, declared, or put in execution within this said realm, or in any other place or places, for any of the causes

before rehearsed, in prejudice, derogation, or contempt of this said Act, and the very true meaning and execution thereof—may and shall nevertheless as well pursue, execute, have, and enjoy the effects, profits, benefits, and commodities of all such processes, sentences, judgments, and determinations done, or hereafter to be done, in any of the said courts spiritual or temporal, as the cases shall require, within the limits, power, and authority of this the king's said realm, and dominions and marches of the same, and those only, and none other to take place, and to be firmly observed and obeyed within the same. 1538.

As also, that all the spiritual prelates, pastors, ministers, and curates within this realm, and the dominions of the same, shall and may use, minister, execute and do, or cause to be used, ministered, executed and done, all sacraments, sacramentals, divine services, and all other things within the said realm and dominions, unto all the subjects of the same, as catholic and Christian men ought to do; any former citations, processes, inhibitions, suspensions, interdictions, excommunications, or appeals, for or touching the causes aforesaid, from or to the see of Rome, or any other foreign prince or foreign courts, to the let or contrary thereof in any wise notwithstanding. Clergy to celebrate service and administer sacraments to the subjects of the realm, notwithstanding any interdict or suspension from Rome.

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

And it is further enacted by the authority aforesaid, that

1588. if any person or persons inhabiting or resident within this realm, or within any of the king's said dominions, or marches of the same, or any other person or persons, of what estate, condition, or degree soever he or they be, at any time hereafter, for or in any the causes aforesaid, do attempt, move, purchase, or procure, from or to the see of Rome, or from or to any other foreign court or courts out of this realm, any manner foreign process, inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, or judgments, of what nature, kind, or quality soever they be, or execute any of the same process, or do any act or acts to the let, impediment, hindrance, or derogation of any process, sentence, judgment, or determination had, made, done, or hereafter to be had, done, or made, in any courts of this realm, or the king's said dominions, or marches of the same, for any of the causes aforesaid, contrary to the true meaning of this present Act, and the execution of the same, that then every such person or persons so doing, and their fautors, comforters, abettors, procurers, executors, and counsellors, and every of them, being convict of the same, for every such default shall incur and run in the same pains, penalties, and forfeitures, ordained and provided by the Statute of Provision and Præmunire, made in the sixteenth year of the reign of the right noble prince King Richard II, against such as attempt, procure, or make provision to the see of Rome, or elsewhere, for any thing or things, to the derogation, or contrary to the prerogative or jurisdiction of the crown and dignity of this realm.

All appeals to be tried within the realm. And furthermore, in eschewing the said great enormities, inquietations, delays, charges, and expenses hereafter to be sustained in pursuing of such appeals, and foreign process, for and concerning the causes aforesaid, or any of them, do therefore by authority aforesaid, ordain and enact, that in such cases where heretofore any of the king's subjects or

residents have used to pursue, provoke, or procure any appeal to the see of Rome, and in all other cases of appeals, in or for any of the causes aforesaid, they may and shall from henceforth take, have, and use their appeals within this realm, and not elsewhere, in manner and form as hereafter ensueth, and not otherwise; that is to say, first from the archdeacon, or his official, if the matter or cause be there begun, to the bishop diocesan of the said see, if in case any of the parties be grieved. And in like wise if it be commenced before the bishop diocesan, or his commissary, from the bishop diocesan, or his commissary, within fifteen days next ensuing the judgment or sentence thereof there given, to the Archbishop of the province of Canterbury, if it be within his province; and if it be within the province of York, then to the Archbishop of York; and so likewise to all other archbishops in other the king's dominions, as the case by order of justice shall require; and there to be definitively and finally ordered, decreed, and adjudged, according to justice, without any other appellation or provocation to any other person or persons, court or courts.

1588.

Before whom and in what courts.

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

Appeals ought to be made within fifteen days.

And it is further enacted by the authority aforesaid, that all and every matter, cause, and contention now depending, or that hereafter shall be commenced by any of the king's

Suits commenced before an archbishop

1588. subjects or residents for any of the causes aforesaid, before any of the said archbishops, that then the same matter or matters, contention or contentions, shall be before the same archbishop where the said matter, cause, or process shall be so commenced, definitively determined, decreed, or adjudged, without any other appeal, provocation, or any other foreign process out of this realm, to be sued to the let or derogation of the said judgment, sentence, or decree, otherwise than is by this Act limited and appointed; saving always the prerogative of the Archbishop and Church of Canterbury, in all the foresaid cases of appeals, to him and to his successors, to be sued within this realm, in such and like wise as they have been accustomed and used to have heretofore.

The prerogative of the Archbishop of Canterbury saved.

Appeal, in causes touching the king, lies to the Upper House of Convocation for final determination. And in case any cause, matter, or contention, now depending for the causes before rehearsed, or any of them, or that hereafter shall come in contention for any of the same causes, in any of the foresaid courts, which has, does, shall, or may touch the king, his heirs or successors, kings of this realm; that in all and every such case or cases the party grieved, as before is said, shall or may appeal from any of the said courts of this said realm, where the said matter, now being in contention, or hereafter shall come in contention, touching the king, his heirs, or successors (as is aforesaid) shall happen to be ventilated, commenced or begun, to the spiritual prelates and other abbots and priors of the Upper House, assembled and convocate by the king's writ in the Convocation being, or next ensuing, within the province or provinces where the same matter of contention is or shall be begun; so that every such appeal be taken by the party grieved within fifteen days next after the judgment or sentence thereupon given or to be given; and that whatsoever be done, or shall be done and affirmed, determined, decreed, and adjudged by the foresaid prelates, abbots, and priors of the Upper House of the said Convoca-

tion, as is aforesaid, appertaining, concerning, or belonging to the king, his heirs, and successors, in any of these fore-said causes of appeals, shall stand and be taken for a final decree, sentence, judgment, definition, and determination, and the same matter, so determined, never after to come in question and debate, to be examined in any other court or courts. 1538.

And if it shall happen any person or persons hereafter to pursue or provoke any appeal contrary to the effect of this Act, or refuse to obey, execute, and observe all things com-
 Penalty for not observ-
 ing this
 Act.
 prised within the same, concerning the said appeals, provo-
 cations, and other foreign processes to be sued out of this
 realm, for any the causes aforesaid, that then every such
 person or persons so doing, refusing, or offending contrary
 to the true meaning of this Act, their procurers, fautors,
 advocates, counsellors, and abettors, and every of them,
 shall incur into the pains, forfeitures, and penalties ordained
 and provided in the said statute made in the said sixteenth
 year of King Richard II, and with like process to be made
 against the said offenders, as in the same statute made in
 the said sixteenth year more plainly appears.