

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

## XXXV.

## THE FIRST STATUTE OF PRÆMUNIRE,

A.D. 1353.

## 27 EDWARD III, STAT. 1.

THE enactment of a Statute of Provisors in 1351 (*vide ante*, p. 102, *note*) logically necessitated a Statute of Præmunire; this latter aimed at preventing encroachment upon, or usurpation of, jurisdiction, just as the former aimed at defending patronage. Præmunire makes it treason to appeal to the pope against the king. A second Act of Præmunire was passed in 1393 (*vide post*, No. XL]. 1853.

[Tr. Statutes of the Realm, i. 329.]

Our lord the king, by the assent and prayer of the great men, and the commons of his realm of England, at his great council holden at Westminster, on Monday next after the feast of St. Matthew the apostle, the twenty-seventh year of his reign of England, and of France the fourteenth, in amendment of his said realm, and maintenance of the laws and usages, has ordained and established these things under written :

First, because it is shown to our lord the king, by the grievous and clamorous complaints of the great men and commons aforesaid, how that divers of the people be, and have been drawn out of the realm to answer for things, whereof the cognizance pertains to the king's court; and also that the judgments given in the same court be impeached in another court, in prejudice and disherison of our lord the king, and of his crown, and of all the people of his said realm, and to the undoing and destruction of the common law of the same realm at all times used.

Complaint that many have been called out of the realm to answer complaints cognizable in the king's courts, and that judgments there given are elsewhere impeached.

Whereupon, good deliberation being had with the great men and others of his said council, it is assented and

1353. Those so calling out of the realm, or impeaching, to answer before the king in council.

accorded by our lord the king, and the great men and commons aforesaid, that all the people of the king's allegiance, of whatsoever condition they be, which shall draw any out of the realm in plea, whereof the cognizance pertains to the king's court, or of things whereof judgments be given in the king's court, or which do sue in any other court, to defeat or impeach the judgments given in the king's court, shall have a day, within the space of two months, by warning to be made to them in the place where the possessions be, which are in debate, or otherwise where they have lands or other possessions, by the sheriffs or other the king's ministers, to appear before the king and his council, or in his chancery, or before the king's justices in his places of the one bench or the other, or before other the king's justices which to the same shall be deputed, to answer in their proper persons to the king, of the contempt done in this behalf.

Penalty for default.

And if they come not at the said day in their proper persons to be at the law, they, their procurators, attorneys, executors, notaries, and maintainers, shall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeited to the king, and their bodies, wheresoever they may be found, shall be taken and imprisoned, and ransomed at the king's will: And upon the same a writ shall be made to take them, by their bodies, and to seize their lands, goods, and possessions, into the king's hands; and if it be returned that they be not found, they shall be put in exigent, and outlawed.

Appearance within two months will save outlawry. Appearance of the offender after two months will save his outlawry, but not his lands or goods.

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

## XL.

## THE SECOND STATUTE OF PRÆMUNIRE,

A. D. 1393.

16 RICHARD II, CAP. 5.

1898. AFTER the first Act of Præmunire of 1353 (*ante*, No. XXXV), an Act was passed, in 1365, confirming the Statute of Provisors (*ante*, p. 102, *note*), bringing suitors in the papal courts within the Act of Præmunire. The following Act, passed in 1393, amplified the previous Act of Præmunire.

[Tr. Statutes of the Realm, ii. 84.]

The Commons petition that recovery of presentations lies in king's court.

On judgment there given, spiritual persons must make institution conformably thereto.

Spiritual persons must execute

Item, whereas the Commons of the realm in this present Parliament have showed to our redoubtable lord the king, grievously complaining, that whereas the said our lord the king, and all his liege people, ought of right, and of old time were wont, to sue in the king's court, to recover their presentments to churches, prebends, and other benefices of Holy Church, to the which they had right to present, the cognizance of plea, of which presentment belongs only to the king's court of the old right of his crown, used and approved in the time of all his progenitors kings of England; and when judgment shall be given in the same court upon such a plea and presentment, the archbishops, bishops, and other spiritual persons which have institution to such benefice within their jurisdiction, are bound, and have made execution of such judgments by the king's commandment by all the time aforesaid without interruption (for another lay person cannot make such execution), and also are bound of right to make execution of many other of the king's commandments, of which right the crown of England has been peaceably seized, as well in the time of our said

lord the king that now is, as in the time of all his progenitors till this day :

1998.

the king's commands. The pope has lately excommunicated for executing such sentences.

But now of late divers processes are made by the holy father the pope, and censures of excommunication upon certain bishops of England, because they have made execution of such commandments, to the open disherison of the said crown and destruction of our said lord the king, his law, and all his realm, if remedy be not provided.

The pope contemplates translation of prelates without their, or the king's, consent.

And also it is said, and a common clamour is made, that the said holy father the pope has ordained and purposed to translate some prelates of the same realm, some out of the realm, and some from one bishopric to another within the same realm, without the king's assent and knowledge, and without the assent of the prelates, which so shall be translated, which prelates be much profitable and necessary to our said lord the king, and to all his realm ; by which translations, if they should be suffered, the statutes of the realm would be defeated and made void ; and his said liege sages of his council, without his assent, and against his will, carried away and gotten out of his realm, and the substance and treasure of the realm shall be carried away, and so the realm be destitute as well of council as of substance, to the final destruction of the same realm ; and so the crown of England, which has been so free at all times, that it has been in no earthly subjection, but immediately subject to God in all things touching the royalty of the same crown, and to none other, should be submitted to the pope, and the laws and statutes of the realm by him defeated and avoided at his will, to the perpetual destruction of the sovereignty of our lord the king, his crown, and his royalty, and of all his realm, which God defend.

Such translation illegal and may leave the realm destitute of council and substance, and make the crown of England—subject only to God—subject to the pope.

And moreover, the Commons aforesaid say, that the said things so attempted are clearly against the king's crown and his royalty, used and approved from the time of all his progenitors ; wherefore they and all the liege commons of the

The Commons promise to assist the king in de-

1898. same realm will stand with our said lord the king, and his fence of his liberties, said crown and his royalty, in the cases aforesaid, and in all other cases attempted against him, his crown, and his royalty in all points, to live and to die.

and pray him to consult Parliament how to resist such usurpation. And moreover they pray the king, and require him by way of justice, that he would examine all the lords in the Parliament, as well spiritual as temporal, severally, and all the estates of the Parliament, how they think of the cases aforesaid, which be so openly against the king's crown, and in derogation of his royalty, and how they will stand in the same cases with our lord the king, in upholding the rights of the said crown and royalty.

Answer of the Lords temporal: they will support the king. Whereupon the Lords temporal so demanded, have answered every one by himself, that the cases aforesaid are clearly in derogation of the king's crown, and of his royalty, as it is well known, and has been for a long time known, and that they will be with the same crown and royalty in these cases specially, and in all other cases which shall be attempted against the same crown and royalty in all points with all their power.

The Lords spiritual: they will neither affirm nor deny the pope's power to excommunicate or translate. And moreover it was demanded of the Lords spiritual there being, and the procurators of others being absent, their advice and will in all these cases; which lords, that is to say, the archbishops, bishops, and other prelates—being in the said Parliament severally examined, making protestations that it is not their mind to deny nor affirm that our holy father the pope may not excommunicate bishops, nor that he may make translation of prelates after the law of Holy Church—answered and said, that if any executions of processes made in the king's court, as before were made, by any, and censures of excommunications be made against any bishops of England, or any other of the king's liege people, for that they have made execution of such commandments; and that if any executions of such translations be made of any prelates of the same realm, which prelates be very

But they say that the same is against the king's crown and dignity.

profitable and necessary to our said lord the king, and to his said realm, or that the sage people of his council, without his assent, and against his will, be removed and carried out of the realm, so that the substance and treasure of the realm may be consumed,—that the same is against the king and his crown, as it is contained in the petition before named. 1893.

And likewise the same procurators, every one by himself examined upon the said matters, have answered and said in the name of and for their lords, as the said bishops have said and answered, and that the said Lords spiritual will and ought to be with the king in these cases in lawfully maintaining his crown, and in all other cases touching his crown and his royalty, as they are bound by their allegiance ;

The proctors of absent prelates answer for their principals in similar strain.

Whereupon our said lord the king, by the assent aforesaid, and at the request of his said Commons, has ordained and established, that if any purchase or pursue, or cause to be purchased or pursued, in the court of Rome, or elsewhere, any such translations, processes, and sentences of excommunication, bulls, instruments, or any other things whatsoever, which touch our lord the king, against him, his crown, and his royalty, or his realm, as is aforesaid, and they which bring [the same] within the realm, or receive them, or make thereof notification, or any other execution whatsoever within the same realm or without, that they, their notaries, procurators, maintainers, abettors, favourers, and counsellors, shall be put out of the king's protection, and their lands and tenements, goods and chattels, forfeited to our lord the king ; and that they be attached by their bodies, if they may be found, and brought before the king and his council, there to answer to the cases aforesaid, or that process be made against them by *Præmunire facias*, in manner as it is ordained in other statutes concerning provisors, and others who sue, in any other court, in derogation of the royalty of our lord the king

Therefore enacted that all persons, acting as in the complaint aforesaid, be proceeded against by Præmunire.