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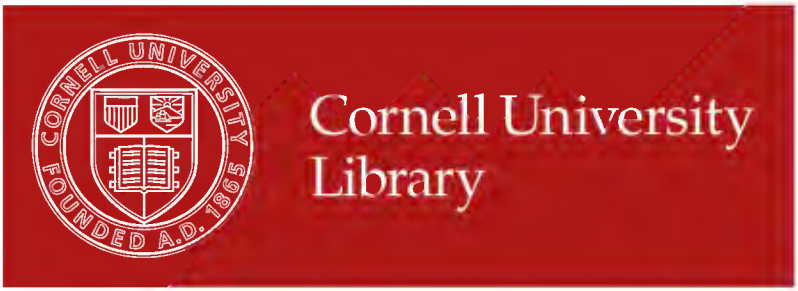

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HARVARD HISTORICAL STUDIES

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THE

COUNTY PALATINE

OF

DURHAM

A Study in Constitutional History

BY

GAILLARD THOMAS LAPSLEY, PH.D.

"Episcopus Dunelmensis duos habet status, videlicet, statum episcopi quoad spiritualia et statum comitis palacii quoad tenementa sua temporalia"

ROT. PARL., 21 EDW. I, i. 103

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TO

H. L.

AND

K. A. W. L.

PREFACE.

THE explanation of the object and scope of the present study contained in the first chapter leaves very little to be said by way of preface. Yet, it may not be amiss to point out that the book rests entirely upon first-hand sources of information which, for the most part, are still inedited. I have tried at every point to give scholars the readiest means of referring to the original authorities, and hope that the labor devoted to proof-reading and verification will not have been entirely fruitless. There remains only the pleasant duty of acknowledging obligations.

My friend and master Professor Charles Gross of Harvard has from the beginning of my work given me the benefit of his learning and wisdom with unfailing generosity and patience. My appreciation of his help I can not easily express; if he finds anything worthy in my book he will know that his efforts have not been wholly in vain.

Professor Maitland has laid under a heavy obligation all those who work at the early history of England. But I most gratefully acknowledge a very special indebtedness to him for written and spoken words that have cast light on dark places and given the clue to more than one baffling problem.

To the officials of the Public Record Office, and especially to Mr. Hubert Hall, I beg to offer my sincere thanks for valuable assistance and unvarying courtesy. I would also express my

thanks for help most kindly afforded me by the Dean of Durham; the Reverend Canon Greenwell; De Bock Porter, Esqre., Secretary of the Ecclesiastical Commission; T. Milvain, Esqre., Q. C., Chancellor of the County Palatine of Durham; R. G. Marsden, Esqre., of Lincoln's Inn; and Professor J. H. Beale of Harvard.

G. T. L.

CAMBRIDGE, MASSACHUSETTS,
December 5, 1899.

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CHAPTER I.

THE ORIGIN OF THE PALATINATE.

§ 1. Object and Nature of this Work.

DURING the middle ages, and in a restricted sense up to the present century, the county of Durham was withdrawn from the ordinary administration of the kingdom of England and governed by its Bishop with almost complete local independence. But the community of Durham had the same social and economic requirements and dangers as the rest of the kingdom; accordingly there developed in the county a group of institutions reproducing all the essential characteristics of the central government. To exhibit the growth of these institutions, their organization, and their relation to the central government is the object of the present study, which thus becomes the constitutional history of an English county. For several reasons it was desirable that this work should be done. In the first place, the three English palatinates of Durham, Chester, and Lancaster were in effect great fiefs, answering in most essentials to the county or duchy of medieval France. They constitute, therefore, a striking exception to all generalizations about English feudalism, and hence an account of their organization, setting forth the details of this exception, becomes a contribution to the feudal history of England. These palatinates, however, did not differ very greatly among themselves; and since Durham has by far the longest independent history it has been chosen to stand for the others.

Again, these privileged districts with their special jurisdictions frequently stood in the way of the administration of justice. The problems arising out of such collisions, and the solutions

which they received at the hands of fourteenth and fifteenth century lawyers, form an interesting chapter in the history of English law, and are of value also as illustrating the fashion in which the principles of the common law were interpreted to meet highly exceptional cases and to formulate new rules of law.

The palatinate of Durham was in its nature a microcosm of the kingdom, although lacking the capacity to develop a strong central government because of the substitution of an elective mitre for an hereditary crown. Its history will in some measure illustrate the danger which England escaped, for the Bishop had his feudatories, who struggled for and obtained a high degree of local independence. We have, then, in Durham a tiny feudal England surviving into the Tudor period, when it was summarily dealt with. Precisely this survival, again, throws light on the growth of the English constitution, and particularly on the development of absolute monarchy and English conservatism.

Although during the fifteenth century the immunities of the palatinate received the fullest recognition from the crown, they were disregarded whenever necessity arose; but every infringement of this sort was styled an exception, and its repetition was carefully guarded against by letters of indemnity or the like means. In legal relations similar devices were found by which the Bishop's privileges might be disregarded without injuring his dignity. Less consideration, however, was exhibited under the vigorous administration of the Tudors, when the privileges of the palatinate were largely curtailed, though the form and dignity of the institution were carefully preserved and continued into the present century. But even the generation that passed the Reform Bill and instituted the Ecclesiastical Commission was not without that spirit of conservatism which the history of the palatinate so frequently illustrates. Accordingly, although the Bishop was deprived of his dignity and all temporal jurisdiction, and the organization of the palatinate was reduced to two local courts, the county palatine was preserved, with the title vested in the crown. To-day the queen-empress is also countess palatine of Durham.

Before undertaking the detailed study of the various institutions of the palatinate, it will be necessary to dispose of several preliminary questions, the most important of which relate to the origin and use of the term "comes palatinus" in England, and to the origin of the franchise the holder of which was distinguished by this title.

§ 2. The Comes Palatii.

The origin of the title "comes palatinus" or "comes palatii" — both forms seem to be used indifferently — may probably be traced to the somewhat magniloquent nomenclature of the late Roman Empire.[1] The adjective "palatinus" indicates a very close relation to the person of the sovereign, and in this sense the word is used in the Notitia Dignitatum.[2] It was peculiarly applicable therefore to the office that developed in western Europe under the Teutonic or barbarian administration; and although the process can not be traced, there is no doubt that the title was borrowed by the invaders from the imperial court. This officer is found among all the Teutonic peoples after the migrations had left them in more or less fixed homes;[3] he does not, however, occur among the Saxons, and the term was not used in the British isles until a very much later period.

In the Merovingian period the comes palatinus was a court official who assisted or represented the king in his judicial activity. Although, like the other officers of the court, he had very varied functions, his characteristic attributes are connected with royal law and justice.[4] He was an indispensable assistant at the king's court, where he bore testimony, prepared the pleas, and

[1] See A. Tardif, Des Comtes du Palais; in Bibliothèque de l'École des Chartes, deuxième série (1848, 1849), v. 242.

[2] See, for example, Böcking's edition, i. 44, where a number of the officers under the "comes privatarum" are specified, and the rest described collectively as "alii palatini." See also Ibid., i. 43, ii. 54, 294, 370 ff.

[3] See Ducange, Glossarium, *s. v.* "Comes," where are cited numerous instances of the use of the title "comes palatinus" in Spain and Italy, and among the Franks and Burgundians.

[4] Brunner, Deutsche Rechtsgeschichte, ii. § 73.

performed a number of other important offices. He had, however, no independent duties, but was necessary as the connecting link between the chancellor, who had no official place in the court, and the court itself, which so constantly had need to refer to matters recorded or preserved by the chancellor.[1] The earliest mention of this officer in Merovingian Gaul refers to the reign of Sigibert, A. D. 561–575.[2]

Under the Karolingian rulers the office of the comes palatii undergoes considerable development, as a result of the increased and increasing predominance of royal law and justice. The comes palatii obtains a special notarial department, for the preparation of documents necessary for the royal court, and from his constant representation of the king in that tribunal comes to have a certain independent jurisdiction.[3] Finally, as the dispenser in the royal courts of these special advantages of royal justice, he came to be the proper channel through which the king's favor flowed. Thus by regulating audiences, preparing and sorting petitions, and by the like offices, he obtained an important ministerial position. The point that must not be lost sight of in connection with the growing independence of the comes palatii is that his powers and even his existence depended on the strength of the king. He did not perform those functions which the king without diminution of his regality might delegate to his officers: he was the very expression or projection of that regality. This fact had very important consequences when the Karolingian system began to break up and the comites palatii tended to localize themselves, for the principle contained possibilities of indefinite expansion. This result was already foreshadowed in the multifarious activities of the comes palatii under the Karolingian rulers. He led the army, he was sent as a *missus*, he was even commissioned to determine legal matters

[1] Brunner, ii. § 73. Cf. Schröder, Rechtsgeschichte, 136–138.

[2] Gregory of Tours, Historia Ecclesiastica, lib. v. cap. xviii, in Mon. Germ. Hist., Scriptores, i. 215.

[3] This consisted principally in the furnishing of equitable remedies for persons who, being poor or of low estate, sought the aid of the king. Thus, this jurisdiction was *ex auctoritate regia*, and had all the advantages of royal processes. The first recorded instance of such independent jurisdiction is in 801. See Brunner, Deutsche Rechtsgeschichte, ii. § 73.

not arising in his own or in the royal jurisdiction.[1] The office, too, was multiplied; probably every important division of the empire was represented at court by a comes palatii of its own race.[2]

After the disappearance of a strong central authority and the subsequent wreck of the Karolingian empire, the development of the comes palatii becomes, for the present purpose, peculiarly interesting. In Italy, during the centuries that lay between the death of Charles the Great and the accession of the emperor Henry II, the title of comes palatii was regularly but somewhat vaguely employed. In the ninth century the rulers of Italy had had separate officers of this sort, who, by reason of the frequent absences of the sovereigns, were left in a position of high local authority. This precedent seems to have given the necessary impulse; and subsequently, infected with the general tendency toward anarchy, imperial *missi*, who had established themselves here and there, but particularly in the marches or border counties, began to style themselves comites palatii and to build up little independent states. To do away with these was one of the reforms undertaken by Henry II, but it was without permanent success. In the twelfth century and later are found in Italy localized comites palatii, having all the rights and privileges usurped or otherwise acquired by the late Karolingian *missi*, together with others obtained directly from the emperor. The character of these functions shows that the essential nature of the title had not been lost sight of, for they consist of the power to nominate notaries and judges, to legitimize bastards, to confer arms and academic degrees, and (but this right comes even later) to confer nobility and knighthood, and even to create other comites palatii.[3]

In Germany the development was somewhat different; but the ultimate outcome, which leaves the comes palatii as a local independent ruler with powers of a high if somewhat indefinite nature, is even better illustrated here than in Italy.

[1] Waitz, Deutsche Verfassungsgeschichte (2d ed.), iii. 510 ff.

[2] Brunner, Deutsche Rechtsgeschichte, ii. § 73.

[3] Ficker, Forschungen zur Reichs- und Rechtsgeschichte Italiens, i. 312 ff., ii. 66 ff.; Brunner, Deutsche Rechtsgeschichte, ii. § 73.

After the death of Ludwig the German in 876 the old Frankish comes palatii disappears. In the next century, however, we meet with four comites palatii, one in each of the great duchies. These officers, it has been suggested, were acting as royal *missi* stationed by the king to restrain the local independence of the stem-dukes, and there is some evidence in support of this theory, although against it has been urged the fact that local and even ducal families are sometimes found holding the title. The comes palatii of Lorraine, however, who was accredited with a kind of supremacy over his fellows, somewhat fancifully derived from the presence in his domain of the imperial city of Aachen, becomes in the tenth century of much importance. This noble was deliberately invested by Otto I with hereditary and independent jurisdiction, under the name not of duke but of comes palatii, or Pfalzgraf. It was probably part of Otto's scheme to create a new state in close relation to himself, and the town of Aachen, where there was no local duke, formed a convenient centre; while the extensive possibilities of a title like that of comes palatii made appropriate almost any measure of local independence. The office, thus artificially lifted into a higher plane than it had reached in any other country, has a history of its own, which need not be traced here.[1]

In France proper the history of the comes palatii is different again. The officer does not here become a localized feudal noble until the twelfth century, and then not strictly on his own account. The comes palatii survived into the eleventh century as an official of the palace, and as a justice retaining the functions and duties which he had had under the Karolingians.[2] A great change came with the development of the royal household in the eleventh century when the Karolingian comes palatii disappeared, leaving the larger part of his functions to be performed by the seneschal.[3] The title, however, continued to be loosely used; thus Baldwin of Flanders, when he was regent

[1] Häusser, Geschichte der Rheinischen Pfalz, i. 38–48; Waitz, Deutsche Verfassungsgeschichte, vii. 167 ff.

[2] A. Tardif, Des Comtes du Palais.

[3] Brussel, Usage des Fiefs, i. 373 ff.; Luchaire, Manuel des Institutions Françaises, 521.

for Philip I, styled himself comes palatii, with reference perhaps to the royal functions which he was discharging.[1] But, although spasmodic and irregular cases of this sort occur from time to time, there is perceptible a growing tendency toward the exclusive use of the title by members of the house of Blois-Champagne. At the end of the twelfth century it was employed regularly by the eldest son of this family as head of the house, although the crown offered a certain theoretic opposition to its hereditary transmission.[2] There is some controversy as to how the title came to attach itself to the family, and — what is more important — as to the rights and privileges conveyed by it. One writer states that Herbert II of Vermandois, in the beginning of the tenth century, obtained the title from Lothar and eventually passed it on to the house of Blois;[3] but this view is inconsistent with the theory of Tardif, that the title did not become hereditary until the end of the twelfth century.

With regard to the significance of the title authorities differ even more seriously. The historian of Champagne contends that it implies no more than a dignity, an honorary supremacy among the great feudatories.[4] This author, however, seems to have confused the term comes palatii, or palatinus, with the adjective palatinus, or palatini, which was applied to the members of the king's narrow or secret council.[5] It is better, therefore, to follow a later authority, who holds that the counts of Champagne made use of the title to exercise in their domains a certain sovereign jurisdiction, as though by delegation of royal power.[6] There is, however, room for reasonable doubt as to whether the title was the source of this sovereign jurisdiction,

[1] Brussel, Usage, i. 377; Luchaire, Manuel, 469.

[2] A. Tardif, Des Comtes du Palais.

[3] C. Mortet, in La Grande Encyclopédie, *s. v.* "Comte."

[4] "La qualité de palatin avait déjà le caractère purement honorifique qu'ont en France, depuis des siècles, tous les titres nobiliaires:" Arbois de Jubainville, Histoire de Champagne, ii. 412.

[5] Luchaire, Institutions Monarchiques, i. 196 ff.

[6] "Les comtes de Champagne se fondaient sur ce titre, qui semblait impliquer une délégation de la justice royale, pour exercer dans leurs domaines une juridiction souveraine:" C. Mortet, in La Grande Encyclopédie, *s. v.* "Comte."

or whether it was afterward pressed into service to account for or to justify that jurisdiction. Certain it is, in any case, that this county enjoyed very considerable local independence, and that when the time came for the general supremacy of royal institutions the local court, the Grands Jours de Champagne, like the Échiquier of Normandy, survived in a modified form.[1] It is also clear — and this for the present purpose is of importance — that the counts of Champagne were commonly distinguished by the title comites palatini, and that in the thirteenth century this custom was recognized in England. Thus in 1226 Count Theobald, in a charter issued to his seneschal, describes himself as "Campanie et Brie comes Palatinus;"[2] and an English document of 1249 speaks of "Simon de Monteforti, Sorarius [sic] Regis, missus ad Theobaldum Regem Navarrae, Campanyae et Beriae Comitem Palatinum."[3] This point will be taken up again; meanwhile, before leaving France it may be noticed that several others of the great feudatories occasionally styled themselves comites palatii or palatini. The most important of these were the counts of Toulouse and Poitiers.[4]

We must now try to discover how this somewhat exotic title found its way into England, where the office of the true comes palatii had never existed. The title was first used in connection with England by Ordericus Vitalis, a writer of much authority, who was familiar with both English and Norman affairs. In two famous passages he applies the title unmistakably to Odo of Bayeux, the half-brother of the Conqueror. "Quid loquar," he writes, "de Odone Baiocasino praesule, qui consul palatinus erat et ubique cunctis Angliae habitatoribus formidabilis erat, ac veluti secundus rex passim jura dabat? Principatum super omnes comites et regni optimates habuit."[5] And again, "Odo nimirum, ut supra dictum est, palatinus Cantiae consul erat, et

[1] Luchaire, Manuel, 576.

[2] See Ibid., 262 note, where the text of the document is given.

[3] Cal. Rot. Pat., 33 Hen. III, 23 a. The counts of Champagne dropped the title palatinus in documents addressed to the king. See Brussel, Usage des Fiefs, i. 373.

[4] Mortet in La Grande Encyclopédie, *s. v.* "Comte;" Brussel, Usage des Fiefs, i. 377.

[5] Historia Ecclesiastica (ed. Le Prevost), ii. 222, A.D. 1071.

plures sub se comites virosque potentes habebat."[1] These passages have been interpreted as showing that Odo was a local palatine earl in Kent;[2] but the first one, at least, refers obviously to a jurisdiction much more extensive, to powers, in short, closely resembling those of the late Karolingian comes palatii in Italy, or those of Baldwin of Flanders, when as regent for Philip I he calls himself comes palatii. Odo had such powers, for, as we know, he was justiciar and regent during the king's absence.[3] Whether Ordericus in the second passage refers to a local palatinate makes little difference;[4] in the first one he clearly refers to an older conception of the term. In any case, the word was entirely exotic in England in the eleventh and twelfth centuries, for no other writers use it even in speaking of Odo, into whose history of course they all enter with more or less detail. The same is true of Roger Montgomery, whose claim to have had a palatine earldom in Shropshire is even more plausible than that of Odo in Kent.[5]

In the course of the thirteenth century the term comes palatinus works itself into the legal and historical vocabulary of England. The great franchise, afterward well known as county palatine, was already in existence, and there was a demand for some word to characterize it. But similar institutions existed, although as a result of another development, in France and the Empire. The French form of this institution must have been familiar in England, for in an English document the title is applied to the count of Champagne. Some tidings also of the position and privileges of the German Pfalzgraf must have reached English ears, for Matthew Paris, in his account of the

[1] Ibid., iii. 270, A. D. 1087.

[2] See Freeman, Norman Conquest, iv. 69–72, and Stubbs, i. 309 note. Dr. Stubbs, however, does not commit himself to this view.

[3] "Fratremque suum Odonem Bajocensem episcopum, et Willielmum filium Osberni . . . Angliae custodes reliquens," etc.: Roger of Hoveden, Chronica, i. 116. Cf. Freeman, Norman Conquest, iv. 73, 105.

[4] This is explicitly denied by the historian of Kent, who understands both passages to refer to a personal office in the king's court. See Hasted, History of Kent, i. 129–130, and cf. Spelman, Glossarium, 686.

[5] See Eyton, Shropshire, i. 22, 70, 242; Stubbs, i. 309 note; Round, Geoffrey de Mandeville, 322.

coronation of Henry III, says that the earl of Chester carried a certain great sword in token that he was count of the palace, and had power to coerce the king if he acted unjustly.[1] Wild as are these words, they have at least this bearing, — that a well-informed writer knew that the title comes palatinus implied a very unusual, perhaps unmeasured, degree of privilege, and that the earl of Chester enjoyed a position so exalted as to justify, at least in a literary sense, the application to him of this exotic title.

For a strict use of the term, we turn naturally to Bracton, who uses the word only once, and then in a passage in which the manuscripts are at variance (although not on this point).[2] The single use of a term in a text not yet well established is indeed meagre evidence; but there is something to be said on the other side. The highly privileged franchise that was afterward commonly described as a county palatine was probably known to Bracton, and known to him even by that name. There are two cases in his Note-Book turning on the liberties of the earl of Chester. In the earlier one those liberties are pretty thoroughly exhibited, and it is remarked that the Bishop of Durham has a similar franchise.[3] In the second case the question as to the possibility of dividing a palatinate among co-heirs is discussed; the point perplexed the justices, who declared

[1] "Comite Cestriae gladium Sancti Ædwardi, qui Curtein dicitur, ante regem bajulante, in signum quod comes est palatii et regem si oberret habeat de jure potestatem cohibendi:" Matthew Paris, Chronica Majora, iii. 337–338. Professor Maitland suggests that this somewhat wild statement was borrowed from Germany, where a doctrine was already current that a court presided over by the Pfalzgraf might even adjudge the emperor to death. See Pollock and Maitland, i. 161; Schröder, Rechtsgeschichte, 465.

[2] The passage is as follows: "Item concedendi vitam vel membra, sicut dicitur de probatore, de quo nullus prisonam habere poterit nec de eo placitum habere, nisi ipse dominus rex cum nullus alius ei posset vitam concedere vel membra. Et haec vera sunt, nisi sit aliquis in regno qui regalem habeat potestatem in omnibus, sicut sunt civitates [this word does not occur in two of the MSS.], comites Paleys, salvo dominio domino regi sicut principi:" Bracton, fol. 122 b, ii. 290. But Bracton could speak of a county where the king's writ did not run, — for a lawyer the most striking attribute of a county palatine, — without calling it a palatinate. See Ibid., fol. 272 b, iv. 266.

[3] Bracton's Note Book, plac. 1213.

that they never heard of a similar case, and declined to follow foreign precedents.[1] Bracton, without doubt, had heard of similar or apparently similar cases, but not in England, and would probably have been ready with precedents drawn from that foreign law with which he was familiar.

On the whole, then, the evidence seems to point to the conclusions that in England in the thirteenth century the great franchises, held respectively by the earl of Chester and the Bishop of Durham, had grown into such importance, such superiority over the other franchises of the kingdom, that men were at a loss how best to describe them; that since the distinguishing traits of these franchises lay in the exercise of local sovereignty, in a kind of limited royalty, scholars borrowed from the continent the convenient adjective palatinus, which was known in theory to imply something peculiarly royal, and in practice (on the Rhine and in Champagne) to denote very much the same sort of local independence that they were seeking to describe; and, finally, that the term, being foreign and somewhat pedantic, was used but sparingly. If this be true, it would naturally follow that the possessor of so great a franchise would very soon see the advantage existing for him in the vague and almost unlimited possibilities of a word like palatinus. It implied a royalty equal, within a limited area, to that of the king; and in a time when the borders of the king's royalty were being constantly and rapidly enlarged, a similar process, though on a much smaller scale, might be carried through by a feudatory who described himself as palatinus.

If, then, in this fashion the term comes palatii was by scholars imported from the continent to meet a need that in the thirteenth century had arisen in England, one difficulty is disposed of. Another and greater one arises when we ask ourselves by what process the need for such a term arose; and in endeavoring to answer this, it will be necessary to confine ourselves to the immediate subject of this study, the county palatine of Durham.

[1] Bracton's Note Book, plac. 1227, 1273. In the second case it was said, "casus iste non est similis casibus communibus nec umquam evenit iste casus in Anglia, unde comitatus dividi non debet cum sit comitatus Paleys:" Ibid., p. 282. Cf. Pollock and Maitland, i. 186.

§ 3. Origin of the County Palatine of Durham.

The origin of the county palatine of Durham is a matter of extreme obscurity, and by reason of the lack of evidence one that will probably never be settled. Three views on this question have prevailed: two of them ascribe the erection of the county palatine to the deliberate act of some king of England, either Alfred or William the Conqueror, while the third regards it as a growth, not complete until the thirteenth century, although based on a survival of local independence in the ancient kingdom of Northumbria. These theories will be stated in order and in a somewhat summary fashion, and various reasons for rejecting them will be offered. The theory advocated in the present discussion will be found to be, to a certain degree, an amplification of the last of these three views.

The oldest and the most generally accepted doctrine is that William the Conqueror, as a matter of policy, deliberately created two strong local authorities, in the persons of the earl of Chester and the Bishop of Durham, to act as buffers against the invasions of the unconquered Welsh and Scots. They were invested with an unusual measure of independence, in order that their hands might be free to perform the duty for which they had been set on the marches. They were compared to the margraves of Charles the Great, who were for the same reason very largely exempted from central control.[1] This view has all the advantage of extreme simplicity and convenience, and it found unquestioned acceptance until the middle of the present century. For a final judgment of it we should turn naturally to Dr. Stubbs, but it is impossible to tell how he stands on this point.[2] Historically,

[1] Selden, Titles of Honor, cap. v, § 8, pp. 529–533; Coke, Fourth Institute, cap. xxxviii, 216; N. Bacon, Discourse on the Government of England, cap. xxix, 73. For a variation of this theory, crediting Richard I with the erection of the palatinate, see the case of the county palatine of Wexford, in Davies, Reports (ed. 1762), 9 Jac. Trin. 159–164. Richard made Bishop Pudsey earl of Northumberland, and sold to him the district of Sadberg. See Coldingham, cap. ix, in Scriptores Tres, 14–15; and Ibid., App. Nos. xl–xlii.

[2] In one place his words point to his acceptance of the view that the palatinate was founded by the Conqueror for purposes of national defence, but this inference is rendered doubtful by a subsequent passage. See Stubbs, i. 308–309, 411–412.

indeed, the theory is worthless. There is not a vestige of evidence to show that William made any grant of palatine privileges to the Bishop of Durham; no chronicler mentions the circumstance, no document of any sort records it. Further, there is proof that in the beginning of the twelfth century a widely-different view was held. The Durham chronicler, for example, writing in the first quarter of the twelfth century, ascribes the origin of the possessions and privileges of the see (the latter known collectively as the "leges et consuetudines Sancti Cuthberti," for there is no question yet of a palatinate so called) to the grants made to S. Cuthbert on his elevation to the see of Lindisfarne in 685 by Egfrith, king of Northumbria. These grants were confirmed and largely increased by the joint action of Alfred and Guthred the Dane, and again confirmed by the Conqueror.[1] Moreover, the Bishops, when their liberties were called into question, never pleaded any grant from the Conqueror, but almost invariably answered that they held these liberties by prescription. This first theory, then, must be altogether rejected as not proven, and not even probable.[2]

The next theory to be considered is that constructed by the late Sir Thomas Duffus Hardy, the learned editor of Bishop Kellaw's Register. Hardy first states that he has been unable to discover the period at which the palatinate of Durham was first created, or to learn whether it was founded by charter or by verbal donation. He then points out the silence of all writers with respect to a charter or other deliberate foundation, together with the fact that the Bishops of Durham relied on the plea of prescription for their liberties; and he reaches the conclusion that no formal creation of the palatinate by charter or deed ever took place, but that the jurisdiction grew gradually from a small beginning under the protection of Oswald, king of Northumbria, considerably increased by later sovereigns,

[1] Symeon of Durham, i. 31, 69–71, 108.

[2] It is curious to see how it persists and crops up in otherwise scholarly and well-informed works. See, for example, Jenks, Law and Politics in the Middle Ages, 172, 173; Medley, Constitutional History (2d ed.), 331; Cobb, Story of the Palatines, 20 ff.

who as late as the Anglo-Norman period continued to make grants of land and privilege.[1]

This exposition, so far as it goes, is entirely acceptable; it does not, however, go much beyond the statement that the palatinate had its origin before the Conquest in various grants made to the see which eventually became the see of Durham. The question of the intention of the grantors is left open, and in dealing with this point Hardy is inconsistent. The authority for these grants is the chronicle of Symeon, which, although written in the early twelfth century, is based on Beda and certain Northumbrian annals which have since disappeared.[2] The fact of the grants may thus well be received as authentic, though the wording and account of the attendant circumstances will be hesitatingly accepted. But Symeon wrote at a time very shortly after the foundation of the convent to which he belonged, and the convent had been founded and endowed with immunities as well as lands by the Bishop of Durham. It was therefore to the advantage of the monks to exalt and carry back to a remote period the immunities of the see, which were the source and origin of their own immunities. Here then is reason, not for rejecting the possibility that kings before the Conquest had made grants of immunity or regality to the episcopal successors of S. Cuthbert, but for rejecting the testimony of Symeon to that effect.[3]

Let us see now how Hardy deals with the grants recorded by such an authority. King Oswald, according to the chronicler, made an ample provision for the newly-erected see of Lindisfarne, and the lands thus granted are enumerated, but there is no mention of any grant of liberties. Hardy thinks it highly probable that the king conveyed regalities with his gift, in order to enable the bishop to control the district placed in his charge.[4] That is to say, a grant of regalities is assumed,[5] and

[1] Registrum, i. Introd. lvi–lvii.

[2] Symeon, i. Introd. xix.

[3] On the relations of the Bishop and the convent in this matter, see below, § 17.

[4] Registrum, i. Introd. lix; cf. Symeon, i. 19.

[5] It is not improbable that this gift was accompanied by some grant of immunities; there is nothing in the text to deny this supposition.

then accounted for by a motive which no doubt actuated a fourteenth-century king of England in dealing with a border province,[1] but which can only by an anachronism be applied to the ruler of a petty state in the seventh century. Clearly, Hardy was preoccupied with the notion that the liberties of the see must be accounted for by some direct royal grant. This appears from his comment on the grant made to Bishop Ethelwold by King Ceolwulf toward the middle of the eighth century. Soon after this grant the king had resigned the crown to enter the church, and Hardy regards it as "within the bounds of probability, that on this occasion he conferred on the see royal privileges and rights which may have been the commencement of the *jura regalia* of the Palatinate."[2] Again, Guthred and Alfred are described as having jointly endowed the see with all the land between Tyne and Wear, together with *jura regalia* and the right to extend these privileges to all land in future to be acquired by the see.[3] If this statement might be taken literally, — though for reasons already advanced it is impossible so to take it, — it would no doubt mark the definite beginning of the palatinate. Hardy, indeed, virtually commits himself to this view.[4]

The inconsistency of all this reasoning must now be quite plain. Hardy's theory begins in effect with the proposition that the palatinate was not created but that it grew, and then proceeds to the statement that it had its origin in the grants of several early English kings, as recorded in a chronicle. In order to reconcile these statements we must suppose him to have had in mind, when writing of origins, the general necessity of a creation by means of a formal grant accompanied by a charter, and indeed as much is implied in the words by which he denies the existence of such a grant: "No formal creation by charter or deed ever took place." But this remark is soon forgotten, for he writes: "These two grants of Guthred and Alfred were undoubtedly the first germ, if not the foundation of the Palatinate of Durham (to say nothing of the liberties granted to Aidan by King Oswald, or of those which King Ceolwulf may have given),

[1] See below, ch. viii.
[2] Registrum; i. Introd. xxiii.
[3] Symeon, i. 69–71.
[4] Registrum, i. Introd. xxvi–xxvii, lx–lxi.

the extent of which was increased by succeeding sovereigns, or by encroachments on the part of the bishops themselves."[1] On the next page he is accounting for the lack of charters recording a grant of immunities, which, he has said, were never formally created by charter or deed.[2] Then follows an exposition of the ease with which a charter might be lost or destroyed, and, as an alternative, he suggests that the charter might have been "orally granted in the Witenagemote." Finally, in dealing with the grants of Guthred and Alfred, he cites certain inscriptions under statues of these sovereigns (which formerly stood in the choir of Durham cathedral), to the effect that they had made grants of land and regalities to the see. Statues and inscriptions have both disappeared, but the latter have been preserved in an unofficial manuscript. Inasmuch as the cathedral was begun in 1093, the inscriptions must necessarily have been of a later date, and hence are at best of no more than traditional value. To sum up, then: the first statement of Hardy's theory, namely that the palatinate had no definite origin but was the outcome of a slow growth begun long before the Norman Conquest, may be unhesitatingly accepted; in his explanation and elaboration of this proposition, however, he introduces a new and incongruous suggestion, to the effect that the palatinate was founded by the act of Alfred and Guthred, a view which, by reason of a lack of evidence, must be rejected.

A recent and most ingenious theory of the origin of the palatinate has been propounded in scholarly fashion by Mr. W. Page. He reviews the history of the kingdom of Northumbria from the time of its foundation by Ida in 547, until the earldom of Northumberland was granted to Prince Henry of Scotland in 1139. He then points out that the overlordship of Wessex was not acknowledged in Northumbria until 894, and that, by an arrangement between Athelstan and Sihtric, Northumbria was allowed practical independence. On the death of Sihtric, Athelstan was elected king of Northumbria by the local witan, as Mr. Page believes, with the stipulation that the union of the two kingdoms was to be only a personal one. After the death of

[1] Registrum, i. Introd. lxiii. [2] Ibid., lxiv–lxv.

Athelstan two local noblemen were successively elected by the witan, but the efforts of Edred of Wessex eventually succeeded in forcing that body, in 946, to swear fealty to him. He was, however, three times deprived of the Northumbrian crown by persons chosen by the witan, which eventually restored him in 954. Osulf, lord of Bamburgh, was then made earl of Northumbria; and the province, sometimes divided into two parts, was governed with extensive local independence by the house of Bamburgh until 1055, when the representative of that line was superseded by Tostig, son of Godwin, who acted as an independent sovereign, making laws and laying heavy taxes. In 1066 the Northumbrian thegns revolted, outlawed Tostig, and chose in his place Morkar; and this act was countenanced by the king. Under Morkar, Northumbria was divided into the earldoms of York and Northumberland. In 1071 these were forfeited to the crown. Copsi and several of his successors, on whom William had bestowed the earldom of Northumberland, were murdered by their subjects, but Waltheof, of the old local house of Bamburgh, conspired against the king, and was by his order beheaded in 1075. The earldom then passed to Walcher, the first Norman Bishop of Durham, who was murdered in 1080. Two more earls were appointed, and then the county remained in the king's hand until it was conferred on Prince Henry of Scotland in 1139.

From these facts Mr. Page reaches a number of interesting conclusions. He believes that there was an active local witenagemot in Northumbria as late as 948, and that its existence subsequent to that date may be discerned in the election of most of the earls, but particularly in the deposition of Tostig and the elevation of Morkar. The earls of Northumbria, he holds, enjoyed an unusual measure of local independence, as appears from the accounts of Tostig's legislation. From the fact that the surviving body of Anglo-Saxon diplomata comprises but one writ to the earls of Northumbria (and that of an ecclesiastical nature), he concludes that just before the Conquest the king's writ did not run in Northumbria, and probably not at an earlier period. For this conclusion Mr. Page relies largely on the authority of Freeman's opinion. In the fact that before the

Conquest many kings described themselves as rulers of the West Saxons and Northumbrians, he sees proof that no more than the accident of a common sovereign united the two kingdoms. From a passage in Domesday Book relating to York, to the effect that "in the time of King Edward the earl had nothing at all in demesne manors, neither had the king in the manors of the earl, except that which belongs to the court christian, which belongs to the archbishop," he concludes that the earl took nothing in the king's manors, but in his own took all returns, such as customary payments, escheats, and the like. This circumstance, in connection with the fact that up to the close of the twelfth century the earldom of Northumberland does not figure in the pipe rolls except when it was in the king's hand, leads to the conclusion that the earl took all the returns of the county and the king none, and that therefore the earl must have had his own staff of officers and must have possessed *jura regalia* over all his lands. These would have included, besides the present counties of Northumberland, Durham, and Lancaster, the districts of Richmond, Holderness, Hexham, Tynemouth, and Tynedale, none of which appear in Domesday Book, and all of which afterward became franchises of greater or less importance.

Having reached this point in his argument, Mr. Page undertakes to show that "Durham formed an integral part of the earldom of Northumbria before the time of Bishop Walcher; and afterwards, down to the episcopate of Bishop Anthony Bec, it was only considered a liberty within the county of Northumberland." In support of this theory he points out that there is no evidence in the chronicles that before the Conquest the Bishops exercised regalities, although they enjoyed great liberties. Further, he contends that the earls appointed the Bishops, citing two cases in the eleventh century and one in the twelfth. From the facts that it was the earl and not the Bishop who repelled the Scots when they were besieging Durham in 1006, and that, when one of the earls appointed by the Conqueror was murdered at Durham, the Bishop fled with the body of S. Cuthbert, he infers that Durham must have been included in the county of Northumberland. Finally, he points out that the

wapentake of Sadberg, which lies between Tyne and Tees, was not acquired by the see until the end of the twelfth century, and that in the *quo warranto* proceedings of 1293 the liberties of the bishopric are described as lying within the precincts of the county of Northumberland. Then comes his general conclusion: "I would suggest that the palatine rights enjoyed by the bishops of Durham were inherited from the earls of Northumbria, and did not belong separately to the Bishops previous to the time of Bishop Walcher." [1]

Mr. Page has reared an elaborate structure of theory on what may upon critical examination prove to be a slight or even insufficient basis of fact. His contention that before the Conquest the earls of Northumbria enjoyed practical independence, rests (1) on the story in the chronicle that Tostig made laws, and (2) on the absence of writs addressed to the earls of Northumbria before the Conquest. But by Mr. Page's hypothesis the independence of the earldom was secured by the witan equally with the earl, and the witan repudiated the only earl who ventured on independent legislation; and the writ is a late and probably a Norman device, and no great number of them existed before the eleventh century.[2] It is hazardous, moreover, to rely on any lacunae in a collection of records like the Anglo-Saxon diplomata, which can of necessity represent but a very small proportion of the original mass. Furthermore, the argument for the earl's immunity in the twelfth century, as based on the absence of Northumberland from the pipe rolls, does not meet the difficulty involved in the existence in that century of a royal sheriff for Northumberland.[3]

[1] W. Page, Some Remarks on the Northumbrian Palatinates and Regalities, in Archaeologia, li. 143–154. The importance of the connection between the kingdom of Northumbria and the later palatinate was recognized in the last century by Hutchinson (Durham, i. 420).

[2] On this subject see Maitland, Domesday Book and Beyond, 262–265. The weight of Freeman's authority, upon which Mr. Page relies for this point, is of course very much diminished by the recent contributions of Mr. Round and Professor Maitland.

[3] See List of Sheriffs, Record Office Lists and Indexes, No. ix; Northumberland Historical Committee, History of Northumberland, i. 25, ii. 10–12.

With regard to Mr. Page's contention that Durham was an integral part of the earldom of Northumberland, his evidence appears insufficient. He holds, as has been noticed, that the earls appointed the Bishops, and refers to two instances in the eleventh century; but one of these was a reinstatement, not an appointment. He also cites the case of the intrusion in the twelfth century of Cumin, who actually usurped the temporalities of the see and held them for three years; but Cumin was the creature of the king of Scotland; he was never elected, nor did he have any shadow of canonical right. Indeed, the whole episode was part of the scheme of David of Scotland to aid his niece, and incidentally to extend his boundary southward.[1] Again, the fact that the earl of Northumberland defended the city of Durham against the invading Scots in 1006 is not sufficient proof that Durham was part of his county. The battle of the Standard, which was fought in 1138 under the direction of the archbishop of York, took place at Northallerton, a place which though locally situated in Yorkshire was actually a parcel of the county of Durham; but no one questioned its relation to Durham after the battle. Moreover, the flight of Bishop Ethelwin after the murder of the earl at Durham does not necessarily imply, as Mr. Page would have it, that the murder of the earl in his own county would intensify the Conqueror's vengeance. Again, the fact that the wapentake of Sadberg was reckoned a parcel of the county of Northumberland until the close of the twelfth century is not conclusive evidence that the whole of the bishopric was so reckoned; for portions of the county of Northumberland, namely, the districts of Bedlyngton, Island, and Norhamshire, were parcels of the bishopric, and such detached portions of counties were not uncommon throughout England. The fact that in the *quo warranto* proceedings of 1293 the bishopric was reported as "within the precincts of the county of Northumberland," does not show that it was part of that county. It would, indeed, have been difficult to describe it in any other way; for although, as will appear in succeeding chapters, the bishopric at this time

[1] Symeon, i. 146–161; Laurentius Dunelmensis, Dialogi (Surtees Soc.). In the introduction to the latter work the editor, Canon Raine, gives an interesting account of the whole affair.

had a complete governmental machinery, the lack of organic connection with the central institutions of the kingdom prevented it from being technically a county. Mr. Page's case is not proven, because in the present state of information the point is not susceptible of proof. We must have recourse, then, to hypothesis; and against Mr. Page's use of this method it may fairly be objected that he has obtained more specific and elaborate results than his data permit. His arguments, on the other hand, are scholarly, and his theory is much more reasonable than any other that has been offered; therefore it should not be lightly rejected, or even rejected at all unless the difficulty can be overcome in a simpler fashion.

There can be no doubt that between 635 and 1066, from the founding of the see to the Norman Conquest, the bishopric had a very rich endowment of land. Apart from the testimony of the chroniclers we know that soon after the Conquest the Bishop founded and endowed a convent at Durham without particularly impairing his own resources, although he had received no grant of any consequence since the Conquest.[1] Again, in 1130, although no important recent grants had been made, the see had an annual value of between six and eight hundred pounds.[2] Without insisting, then, upon the date or details of any grant, — although the bare fact that Alfred and Guthred made gifts to the see may be easily accepted, — it is clear enough that before the Conquest the church of S. Cuthbert was a great landed proprietor.

This admission will imply certain consequences. Seignorial jurisdiction, we are told, is very closely connected at its root with ecclesiastical jurisdiction;[3] and again, "a royal grant of land in the ninth and tenth centuries generally included, and this as a matter of 'common form,' a grant of jurisdiction."[4] Finally, it

[1] It is probable that before the foundation of the Benedictine convent the congregation of S. Cuthbert, that is, the Bishop and the canons-regular, held all lands in common; hence the endowment of a new convent was in the nature of a separation or division. See Feodarium Prioratus Dunelmensis (Surtees Soc., ed. Greenwell), Introd. 10 ff.

[2] See below, § 37.

[3] Maitland, Domesday Book and Beyond, 279.

[4] Ibid., 282.

is known that foremost among the great immunists of the Anglo-Saxon period were the cathedral churches.[1] The men of a church who were removed from secular justice and placed in all things under the jurisdiction of that church were known as *homines Dei*;[2] *homines sancti* would be an equivalent phrase, particularly if used in connection with the church of Durham, where the presence of so important a relic as the incorruptible body of S. Cuthbert emphasized, in the expressions *terra* or *patrimonia sancti Cuthberti*, the personal proprietorship of the saint in the lands of the church.[3] Now, between the twelfth and fourteenth centuries the words "haliwerfolc" and "haliwersocn" occur frequently in connection with the bishopric of Durham. This word should probably be derived from the Anglo-Saxon "halig," holy, and "war" or "wer," man;[4] in this case it would pass into Latin as *homines sancti*, or *populus sancti*, phrases which actually occur.[5] The word "haliwerfolc" is in use in Latin documents in the beginning of the twelfth century, and continues to be of common occurrence until the middle of the following century. In every case it is used in a territorial sense to describe the bishopric of Durham, just as the names Norfolk and Suffolk described other English counties.[6] After the middle of the thirteenth century the word disappears, but it is revived some hundred years later by the local historian, who describes it as referring to a special tenure by the service of defending the body of S. Cuthbert. This is almost certainly a bit of popular etymology; at all events, an isolated case of this sort, in which the question at issue was purely feudal, can have little influence against a mass of evidence pointing in another direction. "Haliwerfolc" and "haliwersocn," then, are used early in the twelfth century, — that is to say, in what are practically the earliest documents referring to the bishopric, — to indicate the territorial soke or franchise of the Bishop.

[1] Maitland, Domesday Book and Beyond, 87. [2] Ibid., 281.

[3] On the saints as persons and even as landholders, see Pollock and Maitland, i. 481–489.

[4] See Bosworth, Anglo-Saxon Dictionary, *s. v.* "Halig" and "Wer."

[5] Symeon, i. 107; Feodarium, 205 note; Scriptores Tres, App. No. cccxxxii.

[6] Probably the earliest use of this word in the surviving documents is in a charter purporting to have been issued by Bishop William I, about 1093,

From the analogy of the words Norfolk and Suffolk, it would seem that haliwerfolc in this sense was the district occupied

but actually forged very early in the succeeding century, before 1125. This is one of the foundation charters of the convent. In it the various lands and vills forming the endowment of the body are arranged under three heads, — "In Northumbria," "In Haliweresfolck," "In Eboracishire" (Feodarium, lv). Bishop Geoffrey Rufus (1133–1140) uses the word in the same way: "G[alfridus] Dei gratia Dunelmensis Episcopus omnibus hominibus Sancti Cuthberti et suis de Haliwerefolc et de Euerwicscire, Francis et Anglis, salutem" (Ibid., 205, and see also 140). During the pontificate of Bishop Pudsey the word was frequently used; a bull of Pope Alexander III is addressed "Omnibus sacerdotibus et personis de Haliwerefolk" (Scriptores Tres, App. No. xxxvi). In a like sense it was used in official documents by the king, and the earl of Northumberland, and by the Bishop in his charters (see Feodarium, 152, 153, 163, 172; Liber Rubeus de Scaccario, iii. 1071; Registrum, iii. 39–41; Boldon Book, App. xliv). The territorial sense of the word appears even more clearly in two private charters of this period. In one a certain Roger grants land in Silkesworth to be held "sicut aliquis tenet melius et liberius de aliquo barone in Haliweresfolc;" in the other, his wife grants land in the same vill to be held "sicut aliquis melius et liberius tenet in episcopatu Dunelm. de aliquo barone" (Feodarium, 123–124). An historical writer of the period uses haliwerfolc to signify the county or bishopric (Reginaldus Dunelmensis, Libellus, Surtees Soc., cap. xc, 194). In the early thirteenth century the word is used in a territorial sense and is correlated with the names of other counties in royal and official documents (see Rot. Chart., 5 John, 120 a, and 10 John, 182 a; Rot. Lit. Claus., 9 John, i. 90 a, 5 Hen. III, i. 446 a, and 7 Hen. III, i. 569 b; Pipe Roll, 13 John, in Boldon Book, App. xv). The witnesses who testified in the dispute between the Bishop and the prior in 1228 used haliwerfolc to signify the franchised territory between Tyne and Tees (see Attestaciones Testium, in Feodarium, 230, 235, 237, 238, 240, 297). The latest employment of the word in this sense is in an undated charter of Henry III, preserved in a fifteenth century inspeximus (Rot. Pat., 11 Hen. VI, pt. ii. m. 21), and imperfectly printed in Rot. Parl., 9 Edw. II, i. 362. After this it does not occur again until it is misused by Graystanes, the historian, in the fourteenth century. This writer reports that in the time of Bishop Bek the men of the bishopric, having been twice compelled to go under arms to Scotland and punished when they returned without leave, rose against their Bishop. This action they justified, "dicentes se esse Haliwerfolk et terras suas tenere ad defensionem corporis sancti Cuthberti nec debere se exire terminos episcopatus . . . pro rege vel episcopo" (Graystanes, cap. xxiii, in Scriptores Tres, 76). This is the *locus classicus* upon which all definitions of haliwerfolc, as a tenure or status, depend. All writers therefore who disregard the earlier use of the word and the special circumstances of its employment

by the tenants of S. Cuthbert. In a document late in form, but deriving its substance from a period earlier than the Conquest, it is recorded that every year at the feast of S. Cuthbert "omnes Barones scilicet Teines et Dreinges aliique probi homines sub Sancto praedicto terram tenentes Dunelmum conveniant."[1] Again, with regard to the flight of the monks with S. Cuthbert's body on the approach of the Danes, the chronicler writes: "Hoc populus ipsius [S. Cuthbert] postquam audivit, domibus cum tota supellectili relictis, cum uxoribus et parvulis continuo subsequitur;"[2] and the evidence of the monkish writer in recording a fact that could have no relation to the immediate interest of his convent is not open to the objection that was brought against it in connection with grants of privilege to the see.[3]

here, explain it as meaning those who held land in return for the holy work of defending S. Cuthbert's body in lieu of all other service. Etymologically the word is derived from "holy-work-folk," a form which seldom or never occurs (see Hutchinson, Durham, i. 239; Surtees, Durham, i. pp. xxxii–xxxiii; Boldon Book, Glossary, *s. v.* "Haliwerfolc;" Registrum, iii. Introd. liv–lxi; Brockett, Glossary of North Country Words, i. 270, ii. 208–209; Dinsdale, Glossary of Words used in Teesdale, *s. v.* "Warkfolk"). This easy definition, however, will not tally with the facts, for the rights upon which the Bishop's tenants based their refusal to serve outside the bishopric are feudal, and therefore of later date in England than the word haliwerfolc. The fact that the word when used by Graystanes had already been obsolete for a century puts the student on his guard against popular etymology. Again, the suggestion that some tradition of a time when haliwerfolc meant the tenants of the saint was still in existence, may be met by the facts that there is no reason to suppose that the tenants of the saint ever enjoyed any special privilege as between lord and tenant, and that all tenures in the palatinate in the thirteenth and fourteenth centuries were purely feudal. Sufficient proof of the latter statement will be found below in chapters ii and vi.

[1] Scriptores Tres, App. No. cccxxxii; see also below, p. 108.

[2] Symeon, i. 235. This is from the Auctarium de Miraculis; the Historia Ecclesiae (Ibid., i. 65) is more brief. Cf. Metrical Life of S. Cuthbert (Surtees Soc.), line 4608 ff., especially

". . . Yat pople propirly
Yat duelt in contre cuthbert by,
his awen pople was calde."

This is a fifteenth century reading of the Latin text.

[3] Above, p. 14.

It seems reasonable to infer from these facts that before the Conquest there was a body of men holding land under the church of S. Cuthbert and known in the vernacular as men of the saint; and that at some period earlier than the twelfth century the complex of these holdings was so intense and exclusive within a certain district that, as had been the case in Norfolk and Suffolk, the collective name of the inhabitants was transferred to the district. If this be true, we have before us a great ecclesiastical franchise or immunity, and that is precisely what, from antecedent probability, we should expect the church of Durham to be. This view involves no suggestion of special privileges by which Durham may have been set apart from the other cathedral churches of England, for they also were great immunists.[1] Thus far, it will be observed, we have reached no conclusion inconsistent with Mr. Page's theory ; for, if the local independence of the Northumbrian kingdom survived, then the Bishop of Durham was an immunist as against the earl of Northumberland instead of as against the king of England, but none the less an immunist.

Professor Maitland has shown that at the root of these great pre-Conquest franchises lay the question of revenue. If a lord held a court it was because the profits of jurisdiction over his men belonged to him: the royal officers would not be at the pains to collect profits which were not going to the king.[2] It would have been equally useless for the king to take an account or survey of a district from which no profits might be expected to accrue to him, and therefore the bishopric was not included in Domesday Book. It is known that in the lands of S. Cuthbert in Yorkshire neither the king nor the earl had any "custom;"[3] and it is scarcely to be supposed that the saint should not have enjoyed a like immunity in the lands of his own see. It is not suggested that Durham was omitted from the survey because it was a palatinate, but because the king had nothing to take there.[4] Nor is this consideration put forward as the only

[1] Maitland, Domesday Book and Beyond, 87, 258–292.

[2] Ibid.

[3] Domesday Book, i. 298 b.

[4] Chester, which is generally regarded as a palatinate at this time, and which at least enjoyed very high privileges, was included in the survey, but

reason for the omission; the king might, and probably would, have found it expedient to survey lands which might at any moment come into his hand by reason of vacancy of the see, if it had been perfectly easy to make such a survey. But the northern counties, although broken by the Conqueror's severity, were by no means incorporated in his kingdom in the sense, for example, in which Cambridgeshire was incorporated. Their consciousness of local independence was still strong, as Mr. Page has shown, and this feeling was no doubt intensified by the neighborhood of the Scottish lowlands, where Norman feudalism, freed from the repressive hand of the Conqueror, was already running wild.[1]

The old theory, that Durham was omitted from the survey because it was utterly devastated as a consequence of the punishment administered by the Conqueror after the murder of Bishop Walcher in 1080, must not be passed over.[2] As an explanation of the omission this suggestion will not answer, for if there were nothing worth surveying in the county in 1086, why was so much importance attached to the temporalities of the see, and notably to Durham Castle, in the course of Bishop William I's trial in 1089?[3] And how could the see, thus ravaged, have so far recovered in 1093 as to permit the Bishop to undertake the construction of what to-day remains the most splen-

the king had interests to attend to there. All the lands of the bishop were held of him, and he himself held Roger of Poitou's lands between the Ribble and the Mersey, which were included in the Chester survey. See Ibid., 262 b.

[1] See Stubbs, i. 625. Brady suggests that the northern counties might have been in the hands of the Scots at the time of the survey, "or else in such condition as no Commissioners dare adventure into them, to take the Returns of Juries and make the Survey." (Introduction to Old English History, App. 17.) Kelham (Domesday Book Illustrated, 15) accounts for the omission of Durham on the ground that it was a palatinate by the grant of Alfred; and Sir Henry Ellis accepts this explanation (Introduction to Domesday Book, xii).

[2] See W. de Gray Birch, in Domesday Studies, ii. 494, 495. For this theory the *locus classicus* in the texts is William of Malmesbury, Gesta Pontificum, 271.

[3] See the tract, "De injusta vexatione Willelmi episcopi primi," in Symeon, i. 170 ff.; and cf. Stubbs, i. 498–499.

did ecclesiastical fabric in England? The theory must be rejected, but the fact of the devastation may, by creating an intensely hostile feeling against the king and his officers, well have been one of the considerations which moved William to omit Durham from the survey.

Thus at the period of the Conquest the bishopric of Durham was, and had for some time been, a great franchise or immunity. Of such a franchise the highest authority has said: "The well endowed immunist of S^t^. Edward's day has jurisdiction as high as that which any palatine earl of after ages enjoyed. No crime except possibly some direct attack upon the king's person, property or retainers, was too high for him. It is the reconstruction of criminal justice in Henry II's time, the new learning of felonies, the introduction of the novel and royal procedure of indictment, that reduce the immunist's powers and leave him with nothing better than an unintelligible list of obsolete words."[1] The point, then, at which we must seek for the origin of the county palatine in the sense in which that word was used in England, is the reign of Henry II. We are to conceive of a number of franchises beginning at some remote period before the Conquest, growing rapidly, particularly during the reign of the Confessor, surviving the Conquest, and, after a period of royal apathy and opportunity for feudalization, reaching in the reign of Henry II a crisis so severe that most of them were swallowed up, curtailed, or otherwise brought into harmony with the vigorous central government. Those that survived the crisis continued to grow, and in the succeeding century came to be called palatinates.

The details of the process by which the bishopric of Durham contrived to weather the storm are circumstantially examined in a later chapter.[2] It is enough to say here that the result was due very largely to the high personal ambition of Bishop Hugh Pudsey, who, owing to his long pontificate and his familiarity with the mechanism of Henry II's government, had very exceptional opportunities for accomplishing his end. It was also due in some degree to the accident of a curious lawsuit in 1205–1206, which indirectly had the effect of very greatly enlarging the com-

[1] Maitland, Domesday Book and Beyond, 283. [2] Below, ch. v.

petence of the episcopal court, and of eventually developing out of it a judiciary organized on the royal model. The crisis centred in the judiciary, and when once in that department the principle had been established, — as it was in the first quarter of the thirteenth century, — that the institutions of the bishopric were sufficient for the subjects of the Bishop, the rest followed naturally. It will appear in succeeding chapters that every institution, taking shape gradually, was called into being by the necessities of the Bishop's subjects, and was modelled, naturally enough, on similar institutions in the kingdom.

The development proceeded under the pressure of two constant forces, — the necessities or the convenience of the people of the province, and the desire of the Bishops to increase their revenue, a motive which led them to insist on every profitable attribute of royalty. The first of these forces is illustrated by the development of the palatine judiciary, and the second by the history of the efforts of successive Bishops to vindicate their right to have forfeitures of war in the palatinate.[1] To the pressure of these constant forces was added the stimulus of an occasional collision with the central government, such as the *quo warranto* proceedings of 1293, which caused the Bishop to formulate his rights and privileges as broadly as possible. Also the very use of the term "palatinus," first applied to the Bishop in 1293,[2] probably had its effect; for in the beginning of the next century, and often afterward, it was contended in the royal courts that the Bishop was as king in Durham.[3] Again, the influence of the Scottish invasions of the borders, many of which the Bishops had to meet and repel as best they might, without aid or advice from the central government, produced a considerable measure of local independence in financial and military affairs.[4]

Finally, as a factor of the utmost importance in the development of the institution from 1066 until 1272, must be reckoned the geographical situation of the bishopric. This affected the political relations of Durham to the central government, as well

[1] These subjects are discussed below in chapters v and ii respectively.

[2] Rot. Parl., 21 Edw. I, i. 102–105.

[3] See below, § 4.

[4] See below, chs. vii, viii.

as the development of feudalism in the palatinate. In considering the first of these relations, the existence of a feeling of local or Northumbrian independence, so clearly brought out by Mr. Page, becomes of great importance. Until the failure of the direct line in Scotland the question of the determination of the border between the two kingdoms was probably much more open than is generally supposed. In dealing with this point it must be borne in mind that, besides the consciousness of local independence in the ancient Northumbrian kingdom, there was a strong affinity to Scotland. Race, institutions, and dialect were virtually identical in the Scottish lowlands and the northern counties of England.[1] The Conqueror was better able to ravage than to govern the northern portions of his kingdom; and in the succeeding century the Scottish kings made a deliberate effort to add Northumberland and even Durham to their domain.[2] In the rebellion of 1171–1173 Bishop Pudsey intrigued with the Scots.[3] Henry II's reorganization of the central government was probably the first close bond attaching the northern counties to the rest of the English kingdom. In the thirteenth century the border counties were for certain purposes withdrawn from the regular administration and placed under the direction of the wardens of the marches, who administered march law. The bearing of all this on the development of the palatinate is clear enough: the Bishop was so far removed from the central government that what in other and nearer counties would have been regarded as usurpation and as such punished or checked, was in Durham allowed to pass unnoticed. It is not difficult to believe that such complacence was deliberate, arising from an understanding on the part of the English kings of the situation of these counties in regard to Scotland.

In regard to feudal relations, we know that the Norman adventurers who settled between Tweed and Forth developed a feudalism far more complete than any that ever appeared in England, and that many of these barons held land on both sides

[1] This point is clearly developed in Stubbs, i. 623–625, and Pollock and Maitland, i. 200–202.

[2] Stubbs, i. 623–625; below, p. 37.

[3] See below, § 5.

of the Tweed, as, for example, the families of Bruce and Balliol both of which held large estates of the Bishop of Durham.[1] These circumstances can not have failed to exert their influence on the feudal pretensions of the Bishops of Durham, whose position as king in the feudal scheme of the palatinate formed an important part of their royalty.[2]

The theory here advanced is not inconsistent with the one constructed by Mr. Page, though it gives, it is believed, a somewhat broader view of the question. Mr. Page suggests a single cause for the origin of the palatinate, namely, the survival of the local independence of the Northumbrian kingdom. Unquestionably this circumstance had its effect, but there were other causes as well. Probably Mr. Page's most valuable contribution lies in the fact that he placed the origin of the palatinate this side of the Norman Conquest. But by origin, in this context, must be understood the differentiation of the liberty of the Bishop of Durham from the other great franchises of England, and the beginning of those attributes which made it palatine in the later and English sense of the word.

[1] Stubbs, i. 623–625; Pollock and Maitland, i. 200–202; below, § 4.

[2] See below, § 4.

CHAPTER II.

THE BISHOP AS LORD PALATINE.

§ 4. General Nature of the Bishop's Regality.

FROM the thirteenth century onward the Bishops of Durham were commonly reported to have, within their bishopric, whatever rights and privileges the king enjoyed in his kingdom. "Quicquid rex habet extra episcopus habet intra," ran the maxim.[1] In Durham, said a lawyer of the fourteenth century, the Bishop may do as he will, "for he is as king there."[2] The sovereignty was by no means stationary, but like all institutions it waxed and waned, showing its richest development between the years 1300 and 1400. To this century, therefore, much attention will be directed, for, without a notion of the complete structure, growth and degeneration would be equally obscure.

For the purposes of this study it is convenient to consider the attributes of the Bishop's regality under three categories, namely, powers *in imperio*, *in dominio*, and *in jurisdictione*.[3] This classification, the expression of a mode of thought quite foreign to the institution under examination, and therefore in application to it highly artificial, has in compensation the great advantage of clearness.

§ 5. The Bishop's Regality in Imperio.

First the Bishop is to be considered as the head of the civil government of the palatinate. In this capacity he had the appointment of all those civil officers whose duties and functions

[1] Surtees, Durham, i. p. xvi.

[2] Year Book 14 Edw. III, Mich. 142–144. See also an earlier case, "[episcopus] infra eandem libertatem loco ipsius regis" [est]: Abbrev. Plac., 257 a, 33 Edw. I.

[3] See Sir James Whitelocke, Reading on 21 Hen. VIII, cap. xiii, printed in The Practice of the Court of Chancery of Durham, 1–7.

will be dealt with elsewhere.[1] It was admitted that he of his right employed "such officers as the kings of England had regularly used, or have appointed to meet special emergencies, or carry out the provisions of an act of parliament."[2] The Bishop had also the duty of maintaining the peace in his province, where it was correct to speak of the Bishop's, not the king's, peace. This practice indeed was not uncommon in other parts of England, for many lords of great franchises professed to maintain their own peace.[3] The cases, however, are not quite parallel, for no other franchise in England was so effectually exclusive of the king's jurisdiction as was the palatinate. "The king," it was said, "can not by his writ have jurisdiction where he can not try;"[4] clearly, then, the king's peace could not extend over a district where he had no regular means of maintaining it. This is of course a view of the case that the king and the royal lawyers would not have admitted; indeed, in a royal writ addressed to Bishop Kellaw in 1314, the Bishop's attention is directed to certain trespasses committed "in pacis nostrae, quam in libertate praedicta ad manutenendum et custodiendum habetis, laesionem;" and he is warned to take care that nothing be undertaken "per quod pax nostra perturbari . . . valeat."[5] The Bishop, on the other hand, frequently uses the phrase "pax nostra"; all episcopal pardons contain a clause relieving the beneficiary from the "secta pacis nostrae quae ad nos pertinet," for murder, robbery, or whatever offence may be in question.[6] Again, the frequently recurring commissions for conservators, and later justices, of the peace show that offences were committed against the peace of the Bishop, and that the tribunals punishing them took their sanction from him.[7] The reconciliation of these divergent facts and statements is to

[1] Below, ch. iii. [2] Rot. Parl., 11–12 Hen. VI, iv. 427 ff.

[3] Blackstone, Commentaries, i. 117, iv. 431.

[4] Year Book 17 Edw. III, Trin. 36 a.

[5] Registrum, ii. 1017–1018.

[6] Rot. i. Hatfield, ann. 4, m. 1 dorse, curs. 30, and ann. 2, m. 2 dorse; Rot. ii. Hatfield, ann. 34, m. 11, curs. 31; Rot. i. Booth, ann. 5, m. 10, curs. 48 (all these are MSS. in the Record Office; see below, App. iii.); Registrum, iii. 346.

[7] On the peace commission see below, § 19.

be found in the theories of the origin of the palatinate, held respectively by the king and the Bishop. If, as the royal lawyers contended, the palatinate existed by grant from the crown,[1] then, to whomsoever its maintenance was confided, the peace itself must ultimately be the king's peace. If, on the other hand, the palatinate enjoyed its liberties by prescription, a doctrine frequently allowed by the courts,[2] then the Bishop's peace was a thing apart from the king's peace. Whichever theory was correct, the fact remains that within the palatinate the peace was styled the Bishop's peace, and offenders against it were tried in the Bishop's court and punished by his officers.[3] The whole question was ultimately settled by an act of parliament in 1536, which provided that in future the king's peace should be deemed to extend over Durham as well as other parts of the kingdom.[4]

Closely connected with the preservation of the peace is the duty of coercing and punishing malefactors. This duty of course fell upon the Bishop, and accordingly he prepared a complete apparatus for the execution of it, providing prison, tumbril, gallows, and the like. From the early years of the thirteenth century, indeed, the entire machinery of capital punishment was in the Bishop's exclusive possession.[5] From this fact, per-

[1] Registrum, ii. 843; Abbrev. Plac., 243; Year Book 21 Hen. VII, 33.

[2] Rot. Parl., 11–12 Hen. VI, iv. 427 ff.; and see Coke, Fourth Institute, cap. xxxviii, 216–220.

[3] An interesting comment on this point is to be found among the reasons put forward in support of John Hastings's claim to the crown of Scotland, as follows: "Nous dioms, que coment que la terre de Escoce seit appelle reaume, la terre en sei ne est fors une seignurie, ou une Honur, sicome Gales ou le Counte de Cestre, ou le Esvesche de Durham." Balliol's contention that the possession of peace and justice rather than the rites of anointing and coronation constitute royalty, is thus treated: "[nous dioms] que pes e justice ne pas rei, ne terre reaume; car mouz iad des Seignuries e de Honurs de mesmes les membres de Engleterre qui ount pes e justice, sicome mouz de Marchis de Gales, e le Conte de Cestre, e le Evesche de Durham, e mouz des Countes e Barones en Irelaunde e aillurs:" Rishanger, Chronica, 315–316, 327.

[4] 27 Hen. VIII, cap. xiv, Statutes, iii. 555.

[5] On this point see particularly the document known as "Le Convenit," and the depositions of witnesses examined on this point in 1228: Feodarium, 212–301. Cf. also Northumberland Assize Rolls (Surtees Soc.), 104; Rot.

haps, arose the saying, "Solum Dunelmense stola jus dicit et ense."[1]

Like the king, the Bishop might delegate certain of his governmental functions; he might even appoint persons to fill his place during his absence, with powers so extensive as almost to constitute a regency.[2] This practice, however, was unusual, for the senescal or steward, like the corresponding officer in a French fief, was himself almost a vicegerent.[3]

In like manner, certain persons in the palatinate enjoyed liberties and franchises either by prescription or by visible grant of the Bishop. The prior of Durham had his own court, and, up to a certain point, almost exclusive jurisdiction over his men;[4] and it appeared by the *quo warranto* proceedings of 1293 that there were then twelve lords enjoying more or less extensive privileges under the Bishop.[5] In 1476 Bishop Dudley undertook to regulate these liberties, and issued a commission to certain persons to make a survey of the bishopric "tam infra libertates quam extra"; they were to have regard, among other things, to all courts leet, hundreds, tourns, and other courts, in all manors, castles, and similar places, in which they were to hold a kind of general inquiry, hearing complaints, punishing de-

Parl., 21 Edw. I, i. 102–105; Rot. i. Hatfield, ann. 9, m. 9, curs. 30; Rot. A. Langley, ann. 2, m. 1, curs. 34; Rot. ii. Tunstall, ann. 5, m. 5 dorse, curs. 78; survey of Durham, A. D. 1388, Ecclesiastical Commissioners, ministers' accounts, 220198, fol. 1; receiver-general's account, A. D. 1461, Ibid., 189816; and the indexes of the various printed sources.

[1] This is ascribed to Bracton by Spearman (Inquiry, 38), who gives it thus: "Dunelmia sola judicat ense et stola." It does not, however, appear in any known text of Bracton. Camden (Britannia, ii. 935) quotes it in the form given in the text, and adds a picturesque tale to the effect that the Bishop of Durham alone among the prelates of the church passed sentence of death, sitting as president of his civil court and yet wearing his purple robes as Bishop. If this be true, it is indeed an extraordinary canonical anomaly; but it is difficult to believe.

[2] Registrum, iii. 208–210, 260; and see below, § 9. Cf. also Pollock and Maitland, i. 559.

[3] See below, § 9, and cf. Luchaire, Manuel, 250.

[4] Le Convenit, in Feodarium, 211–217. See below, § 17; also a letter of Bishop Langley, A. D. 1410, showing that this arrangement was still in force in his pontificate (Auditor 1, No. 2).

[5] Plac. de Quo War., 604.

linquent officers, and performing like offices.[1] Twenty years later Bishop Fox instituted true *quo warranto* proceedings. The document is enrolled under the rubric, "Praeceptum de proclamacione faciendi in comitatu Dunelmense de quo warranto." By it the sheriff is directed to give notice of a general examination of all liberties within the palatinate, to be held at a special session before the justices at Durham; whatever lord, temporal or spiritual, uses or claims to use such liberties must appear and make good his claim upon pain of forfeiting his liberties.[2] The same proclamation was made in the outlying district of Norhamshire.[3]

Another instance of the delegation of the Bishop's power is in the creation of corporations. Of these, the most important, of course, were the municipal corporations or boroughs. There were five boroughs in the palatinate, all of which received their privileges and charters from the Bishop, not from the king.[4] Many of these were obtained during the long pontificate of Hugh Pudsey (1153–1195), but there is an obscure notice of relations between the Bishop and his burgesses at an earlier period.[5] The burgesses of Durham, like the people of the county, had reasons of their own for entering into direct relations with the king, who was always ready to encourage any force that

[1] Rot. i. Dudley, ann. 1, m. 1, curs. 54.

[2] "My lord chargeth and straitwy commandeth alle maner of persones, asewelle abbottes, prioures, deanes of cathedralles and collegiate churches, masters of hospitalles, persones, vicars and alle other men of the churche; as mayors, bailiffs and burgesses of cites and burches and alle othir lordes, knyghtes and esquyres, freholders and inhabitauntes within the bisshoppriche of Duresme, that clamyth any maner of libertie or fraunches, as waif, stray, foire or market, court baron or lete, wreck or warren or eny othir libertie or fraunche; shalle come before his justices at Duresme upon Seynt Lucie day next for to come and there to putte in their claymes in writyng of their said libertes and fraunches, such as thei wole clayme, upon payne of forfytyng of the same and seasour ther off to my lordys handes:" Rot. ii. Fox, ann. 5, m. 11, curs. 61.

[3] Ibid.

[4] Municipal Corporations Report, i. App. pt. iii. 1511, 1523, 1529, 1727–1733; Stubbs, i. 483; cf. Surtees, Durham, iv. 14–20; Morris, Chester, 10–11.

[5] "Willelmus [Cumin] non ut custos sed sicut jam episcopus factus . . . burgenses sacramenta fidelitatis sibi facere compulit:" Symeon, i. 146.

tended to diminish the Bishop's sovereignty.[1] From time to time the Bishop granted temporary privileges to his boroughs, such as the right to levy a kind of *octroi*, known as murage;[2] but any abuse of privilege was closely followed up by the grantor.[3] A fuller delegation of power occurred when a borough was put to farm; in this case the right to all profitable jurisdiction, such as the courts of pie-powder and marshalsea, was transferred to the lessees.[4] The minor corporations of the palatinate, the industrial companies, also took their charters and confirmations from the Bishop, and their regulations were enrolled in the episcopal chancery.[5]

In strict theory the Bishop could not have any foreign relations. The power to make treaties or to enter into direct communication with any foreign power would not, in the nature of things, be an attribute of a sovereignty so purely local as was that of the Bishops of Durham. This power, indeed, the Bishops never claimed, nor was it allowed to them, though there are indications that in regard to Scotland they were pretty active in exercising it. It is not difficult to understand both why the treaty power was denied to the Bishop and why this restriction was applied with considerable leniency. Geographically

[1] Pipe Roll 31 Hen. I, in Boldon Book, App. ii–iii; Rot. Pat. 18 John, 198 a; Calendar of Patent Rolls, 1334–1338, p. 387; Rot. Parl., 8 Edw. II, i. 302 b. The borough constitution in the palatinate looked toward Scotland, but the mother town was Newcastle-on-Tyne. See Gross, Gild Merchant, i. 247.

[2] See an elaborate charter of murage granted to the city of Durham by Bishop Hatfield in 1378 (Rot. ii. Hatfield, ann. 33, m. 13, curs. 31). This is carelessly printed by Hutchinson (Durham, i. 380 note). For a similar charter of 1408 see Rot. A. Langley, ann. 2, m. 2, curs. 34. Charters of murage for Hartlepool may be found in Rot. Fordham, ann. 3, m. 4, curs. 32; Rot. Skirlaw, ann. 11, m. 21, curs. 33; Rot. B. Langley, ann. 13, m. 16 dorse, curs. 35.

[3] See a commission to investigate misappropriation of funds collected under a grant of murage, Rot. Fordham, ann. 5, m. 8, curs. 32; and cf. Rot. Claus. 16 Ric. II, m. 14.

[4] Rot. Fordham, ann. 5, m. 8 dorse, curs. 32; Rot. C. Langley, ann. 29, m. 15, curs. 36.

[5] Surtees, Durham, iv. pt. ii. 20 ff.; Rot. v. Nevill, ann. 10, m. 23 dorse, curs. 46; Rot. ii. Hatfield, ann. 28, m. 5, curs. 31.

the palatinate was of great strategic importance in all relations with the Scots. This was particularly true in the twelfth century, when the Scottish kings were striving to add Cumberland and Northumberland to their dominions. A royal highway ran through the palatinate,[1] and on the Scottish border the Bishop held the districts of Norham and Islandshire, with the important fortress of Norham Castle. These were the outworks; the county of Durham was the citadel itself. In the hands of a strong ruler this little principality, extending more than half way across England, might well fulfil the expectations of the English kings, by presenting itself as a "murus lapideus contra Scottos."[2] Its importance in this respect is strikingly illustrated by the words put in the mouth of Henry II by the author of a contemporary chronicle in Anglo-Norman verse: —

"Dunc dit le reis Willame: 'oez, mi chevalier.
Par mi Northumberland voil mun chemin aler:
N'i ad ki cuntrestoise, k'i devom dunc duter?
L'evesque de Durealme (veiz-ci sun messagier)
Me mande par ses lettres em pès se volt ester:
Par lui ne par sa force n'aurom desturbier,
Dunt jo me puisse plaindre vaillant un denier.
. . . . . .
'E cheles! que fait l'eveske de Dureaume?'
— 'Il est trestut à un e li reis Willeaume.'
— 'Saint Thomas, dist li reis, guardez-mei mun reaume.'"[3]

Situated thus, it is small wonder, then, if a strong Bishop were tempted farther to strengthen himself by coquetting at least with the Scots. Pudsey, indeed, went farther, making a secret treaty with William the Lion, by the terms of which the Scottish king was to have the Bishop's castle of Northallerton and free passage for his army across the palatinate; French and Flemish troops were also to be permitted to land at Hartlepool. This arrangement was discovered after the failure of the rebellion of 1173; but the Bishop incurred no more serious punishment than a heavy fine and the temporary confiscation of his castles of Nor-

[1] Domesday Book, i. 298 b; Graystanes, cap. v, in Scriptores Tres, 41.

[2] Foedera, ii. pt. i. 302, 312, 316; Graystanes, cap. xxxvii, in Scriptores Tres, 98.

[3] Jordan Fantosme, Chronicle (Surtees Soc.), lines 531–536, 1603–1605.

ham, Northallerton, and Durham.[1] The king, however, had this danger ever before him. Accordingly in 1238, when the monks chose as their Bishop Thomas de Melsanby, who was formerly prior of Coldingham and therefore in feudal relation to the king of Scotland, Henry III objected strenuously. He presented a long list of exceptions, many of them no more than frivolous or scandalous reports, but embodying these serious considerations: that the Bishop-elect was bound by homage and fealty to the Scottish king, whose intimate councillor he was, a circumstance that would result in great harm to the kingdom of England; that the Bishop of Durham possessed castles and strongholds on the Scottish border, which might be a source of great danger to the English, since the Scots as people of the same race were always at war with them; and that inasmuch as the Bishop of Durham controlled the sea-coast of his province, he might without the king's leave introduce French, Flemish, or other foreigners into the kingdom.[2] The monks were obstinate, and even carried the affair to Rome; but finally they were forced to give way. Thomas de Melsanby was set aside, and Nicholas de Farnham, the queen's physician, was elected instead.[3]

A weak or an incapable bishop, on the other hand, would, naturally enough, resort to the expedient of buying off the Scots instead of fighting them, although the question would be conditioned by the political relations of the two kingdoms at any given time. Thus, in the temporary lull of hostilities after Alexander III had done homage for his English fiefs, a quarrel broke out between him and Robert de Lisle, then Bishop of

[1] Coldingham, cap. vi, in Scriptores Tres, 10; Surtees, Durham, i. p. xxiv; Jerningham, Norham Castle, 100. The Scottish kings were perfectly aware of the importance of the palatinate as a weapon against England. See, for example, the story of David's attempt to force his creature, William Cumin, into the see. Cumin was never properly elected, but by brilliant and audacious manœuvring secured the temporalities, and contrived to hold out for several years. See Symeon, i. 146–161; Laurentius Dunelmensis, Dialogi (Surtees Soc.), lib. i. lines 63–75, 86–90, 135–145, 245–255, 420–430; ii. 35–105, 235–535; iii. 230–260; below, p. 63.

[2] Scriptores Tres, App. No. liv.

[3] Graystanes, cap. iv, in Scriptores Tres, 38-40.

Durham, with respect to their privileges on the border. The affair was referred to parliament, which sent four commissioners to Northumberland with full power to hear and determine the whole business, and with certain private instructions of a political nature.[1]

In war time, or when there was danger of invasion, the purchase of a truce was common enough. In 1343 Bishop Bury and his council purchased an armistice with the Scots.[2] Earlier than this similar arrangements had been made by the *communitas* of the palatinate, but, since its negotiations are recorded on the episcopal register, the Bishop must be charged with the responsibility of them. Thus, in Kellaw's register there is the memorandum of an "accorde" between Robert king of Scotland on the one part, and "les gentz de la communalte del evesche de Duresme" on the other.[3] In the fourteenth century the people of the palatinate were quite accustomed to this kind of action, and considerable light is cast on their method of procedure by a case in the year 1315, which will be considered in detail in another chapter.[4] They generally deputed two or three of their number to manage the business, but on one occasion they negotiated through the prior of Durham.[5] These discreditable performances were strictly forbidden by the king, who directed the Bishop to proclaim that all who entered into such "singular and particular truces" should forfeit all that a man could forfeit.[6] In 1434 Bishop Langley, on behalf of the earl of Salisbury then warden of the east march, bound over one of his subjects not to enter into any private arrangement with the Scots.[7]

[1] Foedera, i. pt. ii. 544, 565; and cf. Royal Letters (Henry III), i. No. clxiii, 186–188. See also Foedera, i. pt. ii. 799, A. D. 1294.

[2] Rot. Bury, ann. 10, m. 13 dorse, curs. 29.

[3] Registrum, i. 204–205, A. D. 1312. This document passed under the privy seal of the king of Scotland, and under the personal seals of the three deputies of the *communitas* of Durham, who conducted the arrangement.

[4] Below, pp. 122–123; Abbrev. Plac., 336–337; Graystanes, cap. xxxvi, in Scriptores Tres, 96; Ibid., App. No. xciv.

[5] Letters from Northern Registers, 232.

[6] Foedera, ii. pt. i. 280.

[7] Rot. DD. Langley, ann. 28, m. 8 dorse, curs. 37.

The Bishops of Durham were brought into direct relations with foreign powers in so far as they possessed and exercised the jurisdiction of admiralty in the palatinate. Thus Bishop Langley came into direct communication with the Hanseatic League, the town of Bruges, and other Flemish municipalities.[1] Another attribute, or perhaps symptom, of these rudimentary foreign relations was the right of the Bishops to take at least a share of all spoil, booty, and ransom of prisoners accruing in consequence of the perpetual warfare of the borders. In the account rendered in 1422 by Sir Robert Ogle, constable of Norham Castle and sheriff of Norhamshire, the following item occurs: "De tertia parte lutri computatoris, et tertia parte tertiae partis lutri solidariorum suorum, ut de redemptionibus clxxvi Scottorum per ipsos captorum anno praecedente et redemptorum hoc anno," etc.[2] Possibly the Bishop was theoretically entitled to the entire booty and ransom, for this arrangement of a division by thirds was made between him and Ogle when the latter was reappointed in 1437.[3]

It appears, then, that in theory the Bishops of Durham had no authority to deal with foreign powers, and therefore no external relations,[4] but that in practice such relations existed to a limited

[1] Rot. C. Langley, ann. 26, m. 6, curs. 36, and ann. 28, m. 7; Rot. ii. Nevill, ann. 9, m. 13, curs. 43. See this whole subject treated below, App. ii.

[2] Account roll of the sheriff of Norham, auditor 1, No. 3.

[3] "Et averount le dit Evesque et ses successours Evesques la tierce de tierce de quauntques le dit monsieur Robert gaynera en sa persone, et la tierce de tierce de quauntques toutz les genes que serrount en le dit chastelle gayneront par guerre sur les enemies, par le temps qe le dit monsieur Robert serra conestable de dit castelle come desuis est dit" (Rot. DD. Langley, ann. 31, m. 16, curs. 37). A Sir Robert Ogle was still sheriff of Norham in 1452 and the office of sheriff was probably feudalized and hereditary in the Ogle family (Raine, North Durham, p. 8). At Michaelmas he reported that, since no prisoners had been taken by himself, his soldiers, or any of his men during that year, there were no ransoms to be accounted for (Ecclesiastical Commissioners, ministers' accounts, 189696).

[4] The solitary case of a Bishop of Durham who received foreign ambassadors is worth noting, although from its isolation it has no significance for this study. In 1313 an embassy, accredited to the king of Scots by the pope and the king of France, went to Durham to visit Bishop Kellaw, by whom they were received at Bishop's Aukland. See Letters from Northern Registers, 216.

degree. They grew up, partly as the result of the encroachments of strong Bishops or the terrified self-defence of weak ones, and partly as the secondary reaction of the exercise of entirely legitimate authority, such as the defence of the border and the jurisdiction of admiralty.

The Bishop, in his capacity of supreme head of the civil government of the palatinate, had the right to all lands forfeited within his province by reason of treason, or from other causes. The distinction made between treason and felony before the statute of 1352 is of high importance, for on it turns the differentiation of the Bishop of Durham from the other great feudal lords of England. The rule was, that "the felon's land escheated to his lord, the traitor's land was forfeited to the king."[1] The most common occasion of forfeiture by treason—and practically the only one which need be noticed here—consisted in levying war against the king. This is a late growth,[2] and does not come into view until after the Barons' War. The difficulty arose out of the forfeiture of a man who had lands in the kingdom as well as in the palatinate. When the question was argued at a much later period (1501), the rule was illustrated by putting an hypothetical case thus: "John at Style, lord of the maner of Dale, within Middlesex, and of the maner of Roke, lying within the Bisshoprycke of Duresme, is attenynted of felony or of high traison by veredict of the commune lawe; like as the king in thys case may sease the manere of Dale lying in Middelsex, soe the Bisshope of Duresme, be reason of hys libertie royhall, may sease the maner of Roke, lying within the said Bisshoprick."[3] The right of the Bishop to land forfeited in this fashion proceeded from the royal nature of his franchise. The Bishop, it was said, has "omnia jura regalia;" and, "quia indiffinita in jure equipollet universale," he must be entitled to forfeitures of war, unless in any given case he has directly or indirectly consented

[1] Pollock and Maitland, ii. 498.

[2] Ibid., 503.

[3] This is from the brief of the Bishop's counsel in the dispute with the earl of Cumberland, in 1501, about the rights to Hartlepool. It is ticketed, "Instrucciones in anglica pro libertate regali Episcopi Dunelmensis per totam diocesim," Scriptores Tres, App. No. ccclii.

to forego them, or his right has been abridged by act of parliament. The king, clearly, may not seize land thus forfeited in the palatinate, for his writ does not run there, and his officers would have no authority to act there.[1]

So much for the theory of the matter: it remains to see how far this theory was admitted and in practice respected by the kings of England. Peter de Montfort held lands in both the palatinate and the kingdom. After the battle of Evesham he was put to forfeiture for levying war against the king, and the latter seized all his lands, including the manor of Greatham in the palatinate which he granted to Thomas de Clare. The Bishop of Durham protested and obtained from the king a charter revoking the former grant and acknowledging the Bishop's entire right to seize the manor of Greatham as a forfeiture of war.[2]

After the downfall of John Balliol, in 1296, his English estates were forfeited to the crown. Barnard Castle in the palatinate Balliol still held of the Bishop, who obtained it as a forfeiture of war. The Bishop, at this time, was the sumptuous Anthony Bek, whose pontificate (1284–1311) marked the zenith of the development of the palatine sovereignty. Even during Bek's lifetime the king took steps to check this development and to set a term to the growth of the Bishop's independence. In 1301, finding a respectable pretext, he caused the temporalities of the bishopric to be seized. They were returned the next year, but were seized again in 1305, and this time retained until the accession of Edward II in 1307. In the mean time, another baron of the palatinate had won and lost the perilous crown of Scotland. The king thus obtained the English estates of Robert Bruce by way of forfeiture, and, since the temporalities of the see were in his hand, he seized also the lands in the palatinate which Bruce had held of the Bishop. These were the manors of Hart and Hartnesse, and included the important seaport borough of Hartlepool. The king then granted Barnard Castle

[1] Scriptores Tres, App. No. cccliii.

[2] Rot. Parl., 9 Edw. II, i. 363. The charter may be better read in an inspeximus of Henry VI, Rot. Pat. 11 Hen. VI, pt. ii. m. 21–22. Cf. Surtees, Durham, iii. 134.

to Guy de Beauchamp, earl of Warwick, and the manors of Hart and Hartnesse to Robert de Clifford, to be held of himself and not of the Bishop. When Edward II returned the temporalities to Bishop Bek they were therefore diminished by the loss of these important estates.[1]

The Balliol and Bruce forfeitures have a history of their own, with much bearing on the subject in hand. Before following this history in detail a significant point must be noticed. Among the adherents of both Balliol and Bruce were persons who held land in the palatinate. These men were involved in a common ruin with their leaders and, like them, forfeited their estates, which passed without question to the Bishop and by him were granted out again. Among the followers of Balliol were John Percy, who held the manor of Whitlaw in the bishopric, Amerik Howden, who held the manors of Berrington and Ryley in Norhamshire, and Walter Fitz-James, who held Buckton and Goswyk in Islandshire. These estates were forfeited to the Bishop without question or objection, and were by him immediately granted out again.[2] In the next century they were still held of the Bishop and not the king.[3] Among those who made forfeiture along with Robert Bruce was John Selby, who held the manor of Fellyng in the bishopric; this came to the Bishop, and in the next century it was held of the prior and convent by the family of Surtees.[4]

Thus in the beginning of the fourteenth century the Bishop's right to have forfeitures of war by reason of his regality was theoretically admitted. With this fact in mind we may turn to

[1] Graystanes, caps. xxx, xlviii, in Scriptores Tres, 88, 118–119; Calendar of Patent Rolls, 1304–1313, pp. 333, 349; Registrum, ii. 795–802; and cf. Surtees, Durham, iii. 90–95, iv. 50–65. The words of the inquest, taken for the king at Barnard Castle, deserve especial attention as admitting the full right of the Bishop to have this forfeiture. See Registrum, ii. 798.

[2] Rot. Privileg. Eccles. Dunelm., in the Treasury at Durham, cited by Raine, North Durham, 200, 207; Instrucciones, in Scriptores Tres, App. No. ccclii.

[3] Registrum, iv. 288, 310; Surtees, Durham, ii. 331.

[4] Instrucciones, in Scriptores Tres, App. No. ccclii. See inquisitions and charters relating to this manor, printed in Feodarium, 8, 9, 111; cf. Surtees, Durham, i. 86.

the history of the Balliol and Bruce estates. When the mutilated temporalities were restored to Bishop Bek, he was an old and disgraced man, and seems to have been content to live the few years remaining to him without further struggle. But Richard Kellaw, his successor, made a vigorous effort to recover the lost estates. He brought the matter into parliament, and, citing the case of Henry III's restitution of the manor of Greatham, based his demand squarely on his royal power, asserting that he possessed "omnimodas regales libertates." This claim was admitted, but seisin was nevertheless withheld, and for his pains the Bishop got no more than a favorable judgment.[1]

Louis de Beaumont, Kellaw's successor, pushed the affair, and in 1332 obtained from the king an exemplification of the writs which had issued in consequence of the judgment taken by Kellaw. These are directed to the constable of Barnard Castle and the bailiff of Hart and Hartnesse, forbidding them to intermeddle in the see of Durham or in any wise to exercise the royal authority therein. The keeper of escheat lands in Northumberland is also informed that, since it has been agreed that the Bishop of Durham ought to have forfeiture of war within his liberty, he (the keeper) must remove the king's hand from the estates in question and not further intermeddle therein. Similar writs were issued to other persons concerned in the matter.[2] The splendor of these rich acknowledgments was the only satisfaction that Bishop Beaumont ever got, for the lands remained in the king's hand, as appears from a suit in parliament relative to a manor in the seignory of Barnard Castle.[3] They were all again confirmed by Henry V to Thomas Langley, Cardinal Bishop of Durham, but in 1433 Langley had not yet obtained seisin of the estates, nor did he ever obtain it.[4]

In the mean time, legal learning on the subject of treasons

[1] Rot. Parl. 9 Edw. II, i. 362–364.

[2] Calendar of Patent Rolls, 1330–1334, p. 360; cf. Graystanes, cap. xlviii, in Scriptores Tres, 118.

[3] Rot. Parl., Edw. III, ii. 379 a.

[4] Ibid., 11–12 Hen. VI, iv. 427 ff.

and their consequences had been enriched by the great statute of Edward III, which, having defined the offences that shall be reckoned treasonable, provides that "of such treason the forfeiture of the escheats pertaineth to our sovereign lord, as well of the lands and tenements holden of other, as of himself."[1] There was no saving clause for the Bishop of Durham's liberties. The king had therefore, the royal lawyers might say, deliberately if tacitly withdrawn from the Bishop the privilege for which the latter had been contending; for, they might argue, although the Bishop's claim was good at common law — and the king had admitted as much — still parliament was supreme, and the words of parliament, in this case at least, were unmistakable. But how was this contention borne out by subsequent events?

In 1416 Bishop Langley caused an inquest to be taken with regard to the land of Henry, lord Scrope, of Masham, who had been attainted of treason and had forfeited his estates to Henry V. The act of attainder contained a saving clause for royal liberties, and under this the inquest returned that lord Scrope had been seised of the manor of Winston in the liberty of Durham. This, by reason of the forfeiture and by right of the church of Durham, was taken into the Bishop's hand, where it remained until 1453, when Bishop Nevill seems to have granted it again to the Scrope family.[2] Sir Thomas Gray, who held the manors of Urpath and Ebstowe and various other lands and tenements in the palatinate, fell under the same attainder as lord Scrope, and his palatinate lands were accordingly seized by the Bishop. In 1430 Ralph Gray, the son of this Sir Thomas, petitioned the Bishop for restitution of these lands on the ground that his father by the form of the original gift had no estate in them but only a fee tail.[3] The restitution seems to have been delayed until 1456.[4] Two other cases of forfeiture for treason occurred in the early part of Edward IV's reign, in

[1] 25 Edw. III, stat. 5, cap. ii, Statutes, i. 320.

[2] Rot. iii. Nevill, ann. 15, m. 14, curs. 44.

[3] Rot. DD. Langley, ann. 24, m. 2, curs. 37.

[4] Rot. iv. Nevill, ann. 18, m. 2–3, curs. 45. Surtees (Durham, ii. 192) mentions the circumstance, but his date is wrong.

1464 and 1466 respectively. In these it was provided by letters patent that all the possessions of the offenders in England, Ireland, Wales, Calais, and the marches of Scotland that were not within the liberty of the bishopric of Durham, should go to the king.[1] Laurence Booth, the Bishop at that time, had been a passionate supporter of the house of Lancaster; but he made his peace with Edward IV after having suffered deprivation for two years (1462–1464),[2] and was received into such favor that he ventured in 1470 to reopen the old question of the Bruce and Balliol forfeitures, and obtained from the king a very full acknowledgment of his rights to have forfeitures in general, as well as that of Barnard Castle in particular.[3]

[1] Calendar of Patent Rolls, 1461–1467, pp. 363, 549.

[2] Foedera, xi. 518–519.

[3] "Edwarde by the grace of God kynge of Englande and of Fraunce and lord of Irlande, to ye reverende fader in God Laurence Bysshope of Dueresme [sic] greting. For asmoche as, by a peticion showed unto us one your behalve, we have understande howe, be vertu of reasone of the libertes and fraunchises by our noble progenitors graunted unto ye churche of Duresme, amonge other things alle maner forfaitures fallyng unto ye Bysshopryche of Duresme shulde owe and apperteigne to ye sayd churche and Bysshope of ye same for ye tyme being, and by vertu of ye same liberties and fraunchises ye and your predecessours have be[en] in possessione of suche forfaitures, out of tyme of mynde; and among other ye manoir and Castelle called Bernard Castelle, which fylle, be forfaiture of John Ballyole sumtyme lord thereof, into ye handes of Antoyne sumtyme Bysshope of ye sayd Churche of Duresme, whyche ye same Bysshope of long tyme in right of his said churche hadde and possessed; and how it be, yat in tyme of our noble progenitour Edwarde the first ye sayd manoir was seased in to his handes and so a grete tyme remaignet, notwithstanding that delygent poursute was madd, aswele unto hym in his parlyament, as unto our progenitour Edwarde ye secunde, which couthe not be obteigned but was delayed: yet afterwards in a parliament holden ye xiiii day of February ye furst yere of ye reigne of our noble progenitour Edwarde ye thridde, after ye sayd peticion an thansweres thereto in ye sayd iather parlyament made, examyned and viply understande, wyth other memorialles and remembraunces remaignyng in his Tresorie and also Chauncellarie concernyng ye sayd matyr, yt was accorded and agreed yat ye sayd Bysshope shuld and ought to have the sayd forfaitures, as in ye peticion and recordes of ye parlyament of our progenitour Edward ye thridde is conteigned alle at large, and we, desyryng, accordyng to ye graunt of our sayd noble progenitours in yat behalve, we be content and woll that ye occupie, have and enjoye ye sayd

The question was again regulated by parliament in 1534, by an act which provided substantially that all lands and tenements in which persons attainted of treason had any estate of inheritance (fee tail, for example, as in the case of Sir Thomas Gray), should pass to the king as forfeiture.[1] The Bishop, Cuthbert Tunstall, was near the person of the king and must have obtained special favor in the matter of forfeitures, for he seems to have taken them without meeting objection. Thus in 1539 he made a grant of the manor of Thorpe-Bulmer, which had been forfeited by the attainder of Sir John Bulmer. The document according the grant sets forth that the right to such forfeitures belonged to the Bishops of Durham, by prescription, by royal concession, and by grant of the reigning king, and Tunstall professes to act "auctorite suprema regia sufficienter suffultus."[2] The Bishop made a precisely similar grant in 1544.[3] No other case comes to view until 1570, when, by the attainder of Charles, earl of Westmoreland, for his concern in the Rising in the North, the great estates held by the Nevills in the palatinate were cast, like the apple of discord, between the Bishop and the queen.

It is remarkable that, in the two centuries that lie between Edward III's statute and the forfeiture of the earl of Westmoreland, the question as to how far the Bishop's right to forfeitures for treason was affected by the legislation on that subject had never been fairly met and answered. The reason is sufficiently obvious: during the period in question no lands of any considerable value had been forfeited in the palatinate. Successive kings and Bishops, accordingly, actuated on the one side by that impulse of conservatism, which has always moved Englishmen to cling to existing institutions, and on the other by a wise policy of preferring substance to shadow, were content to arrive at a sort of *modus vivendi*. Thus the question of theoretical right

manoir and castelle wyth alle thappurtenaunces accordyng to your right and title. Geven under oure prive seel at Lewes ye secunde day Juyne ye x yere ouer Reigne" (Rot. ii. Booth, 10 Edw. IV, m. 4, curs. 49).

[1] 26 Hen. VIII, cap. xiii, Statutes, iii. 508–509.

[2] Rot. i. Tunstall, ann. 30 Hen. VIII, curs. 77.

[3] Ibid., ann. 14, m. 32, curs. 77.

was never tested, for in every case the king or parliament made special provision for the Bishop of Durham in respect of lands forfeited in the palatinate.[1]

When estates of great value were concerned, however, this *laissez-faire* policy became impossible. Elizabeth, moreover, was a prudent sovereign, in need of money; and though she did not scruple to infringe the Bishop's rights, she had at least more justification than Edward I, who had retained the Bruce and Balliol forfeitures on "the good old rule the simple plan."[2] But Bishop Pilkington would not resign his claims to Elizabeth without a struggle, and hence brought the matter into court, contending that the bishops of Durham, having had *jura regalia* and therefore the escheats and forfeitures of lands of traitors held of them within their franchise before the statute of 1352, should not by that statute be deprived of their rights. The court held that the statute did not in effect deprive the Bishops of their right to forfeitures, because it was not a creation of new treasonable offences but a definition, made by the king at the request of parliament, of such offences as were already treasonable at the common law. The forfeitures referred to, therefore, were not given to the king by the act, but were merely declared to be his right at the common law. But Henry VIII's

[1] There was indeed one occasion on which parliament went contrary to this principle. In 1383 Bishop Fordham petitioned the king in parliament for redress, on account of the seizure by the king of certain lands in the palatinate forfeited by reason of the attainder of Roger Fulthorpe and Michael de la Pole. Parliament had provided that the forfeited possessions of these persons, as well within franchises as without, should go to the king (Rot. Parl., 7 Ric. II, iii. 177 a). This document must be misplaced. Fulthorpe and Suffolk were impeached by the Merciless Parliament in 1388; and Fordham, the king's treasurer and intimate adviser, involved in the ruin of his master, was two years later, in 1390, translated in disgrace to Ely (see Chambre, cap. iv, in Scriptores Tres, 144). Clearly, then, the petition was exhibited between 1388 and 1390. Richard granted Sir Roger Fulthorpe's lands to the latter's son to be held during the lifetime of his father, and hence the succession was unchanged (Rot. Pat. 13 Ric. II, No. 23); but Suffolk's lands were restored to Bishop Skirlaw, in order, as is probable, that they might be returned to Michael de la Pole, the second earl of Suffolk (Rot. Skirlaw, ann. 12 Ric. II, m. 1, curs. 33).

[2] Graystanes, commenting on this matter a generation later, tempers his regret with philosophy (see cap. xxx, in Scriptores Tres, 88–89).

statute[1] was not open to this construction, although five of the nine justices contended that, since it contained a saving clause for strangers, it did not destroy the Bishop's right. The remaining four insisted that "by this statute escheats and forfeitures for treasons are taken from him who has *jura regalia* as well for lands in fee simple as in tail;" they argued that the forfeiture clause was general, and included all manner of treasons, while the reversion of the forfeited lands, no matter how or of whom held, was limited to the king, his heirs, and successors. It was agreed at length that lands entailed or held in the right of the church might forfeit to the king.[2]

But the queen was determined that, however the judgment went, the lands should come to her. Hence, while Pilkington's case was still pending, the act of attainder was passed, providing that all the lands and goods of the traitors should forthwith come to the queen. It was further stated that, since a great part of these lands and other possessions lay in the palatinate "where the . . . Bishop of Durham doth now claim Jura Regalia, and by reason thereof doth challenge to have all the said forfeitures, as in right of his church, the tryall of which challenge and claime is now depending," and since the queen had been at great expense in repressing the rebellion and thereby had, among other things, preserved the Bishop's life, therefore "the Queene . . . shall for this time have, hold and enjoy against the said Bishop and his successors, all the said honors, mannors, lands, tenements," etc., of the offenders within the palatinate. It was hinted, however, that should the judgment then pending go against the queen, she might of her bounty restore to the Bishop some part of the forfeited lands; and it was also provided that in the same event whatever of these lands should happen to be granted out again by the queen should be held by the grantees not of her but of the Bishop.[3]

In this fashion the troublesome question was at length settled. Elizabeth's immediate or personal motives do not concern this study, but it may be noted that her act in respect to the palat-

[1] 26 Henry VIII, cap. xiii, Statutes, iii. 508–509.
[2] 12 Eliz., Pasch., Dyer's Reports, 283–289.
[3] 13 Eliz., cap. xvi, Statutes, iv. pt. i. 551.

inate marks another step in the path opened by her father in 1536. Feudal institutions had no place in the economy of the Tudor régime. A spirit of cautious conservatism had indeed unduly preserved one and another of the privileges of the palatinate; but these were justly, if somewhat ruthlessly, cleared away whenever they threatened to impede the march of the new ideas which now had possession of the civilized world.

As supreme head of the civil government in the palatinate the Bishop stood toward the church in a relation peculiarly complex. In this connection we shall consider first the regular clergy. There was but one monastic body in the province, namely, the Benedictine convent of Durham with its dependent cells. Bishop Pudsey is said to have attempted to establish a house of Augustinian friars, but the effort was frustrated by the monks of Durham.[1] The friars, indeed, never obtained a foothold in the palatinate, nor were they allowed even to preach in Durham, since this privilege was reserved by ancient custom for the Benedictine monks of that place.[2] The prior was elected by the monks, under authority of a *congé d'élire* issued by the Bishop *quâ dominus*;[3] and during vacancies the temporalities of the priorate vested in the Bishop.[4] This arrangement gave rise to endless disputes and to a good deal of chicanery on both sides. It is worth while to devote some attention to these otherwise trivial quarrels, for they cast much light upon the practical effect of the Bishop's anomalous status on his relation to the church.

In 1272 the Bishop allowed the prior to resign, and imme-

[1] Tanner, Notitia Monastica, *s. v.* "Durham."

[2] Scriptores Tres, App. No. cxv.

[3] Graystanes, cap. vi, in Scriptores Tres, 44; see also Ibid., 54, and App. Nos. cxlvi, cxlix, clxxx, ccxxx.

[4] Graystanes, cap. xii, Ibid., 53 ff., A. D. 1270: "In crastino . . . ingressi sunt aulam in Abbathia, ex parte Episcopi, quinque vel sex . . . quorum unus erat coronator episcopi . . . qui dixerunt Priorem mortuum et se ibi venisse ad capiendum prioratum in custodiam Episcopi; audierat enim Episcopus de morte Prioris et mandaverat suis ut prioratum in suam saysirent custodiam" (Graystanes, cap. xxix, Ibid., 86, A. D. 1307); "Litera Episcopi ad recipiendum commissarium suum pro custodia Prioratus" (Ibid., App. No. cxlvii, A. D. 1391). On the dispositions of advowsons, *vacante prioratu*, cf. Rot. ii. Hatfield, ann. 31, m. 8, curs. 31; and on the general attitude of the prior toward the Bishop, Registrum, i. 359–361.

diately afterward he sent to the convent the steward of the palatinate, the constable of Durham Castle, and several minor officers, who, in the Bishop's name, took possession of the house and instituted the constable as custodian. The next day the constable summoned the subprior and other officers and said to them: "This house is in the custody of my lord; therefore I wish to see those who have the care of it, to take from them an oath of fidelity, or to remove them and substitute others as I see fit." The subprior protested that this was impossible, saying that in times of vacancy the Bishops had never done more than send some clerk to take charge. The convent complained to the Bishop, who replied that the house was in his custody and proceeded to seize a number of manors belonging to the convent and to place custodians in them. These officers, however, were subsequently removed, and the affair was thus compromised.[1] In the mean time a much more important matter had arisen. The convent wrote to the Bishop, asking leave to elect a new prior; the Bishop refused permission because the letters were not addressed to him "tanquam patrono et domino," adding that unless the monks acknowledged his right in this respect they need not hope for the desired license. This claim was based on one set up by his predecessor, Nicholas de Farnham, who desired to be addressed as "pater et patronus in temporalibus et spiritualibus," but did not succeed in forcing the convent to do this. The monks, objecting only to the spiritual superiority of the Bishop, were glad to readdress their letters "patrono in spiritualibus et temporalibus," and thus the matter was adjusted.[2]

Bishop Bek at one time undertook to depose a prior who showed too great independence and to substitute one more flexible to his will. The attempt failed: the Bishop lost his head and went to unjustifiable extremes, while the prior, keeping strictly within the letter of the law, wisely enlisted the sympathies of the Bishop's disaffected subjects, and thus fortified appealed to the king in parliament.[3] At all times, however, the prior

[1] Graystanes, cap. xii, in Scriptores Tres, 53–54.

[2] Ibid. The prepossession of the monks with the point of spiritual supremacy appears clearly in this text.

[3] Ibid.

and convent had to steer a perilous course between the Scylla and Charybdis of the Bishop's double status. Their difficulty is well illustrated by a dissension that arose in 1328. The Bishop in the discharge of his spiritual functions undertook to visit the convent. After this had been accomplished in spite of various objections, he sent word to the prior that he wished to have certain officers of the convent dismissed. The prior took council with the monks, some of whom were minded to regard this step as an infringement of their privilege. Others urged that "it was a heavy thing to strive with the Bishop, inasmuch as he was lord both in temporal and spiritual affairs," and advised that, since the point at issue was no more than the exercise of the prior's undoubted right, he should dismiss the officers, "non . . . propter injunctionem Episcopi, sed motu proprio." This course was followed, but Graystanes (who wrote of personal experience) adds ruefully: "In omni actione Prioris contra Episcopum confundit Priorem potestas Episcopi in spiritualibus et temporalibus; et, si Episcopus excesserit, rehabendi remedium est difficultas."[1] Nevertheless, in the event of outrageous or oppressive conduct on the part of the Bishop, an appeal was always possible to the king in parliament. Such an appeal was actually made in 1301 by the prior, Richard Hoton, and it resulted in the deprivation of the Bishop.[2] Interference of this kind was uncommon, however; until the close of the middle ages the Bishop and the monks were usually left alone to settle their disputes and adjust their mutual relations as best they might. At length the great religious-political upheaval of Henry VIII's reign put an end to any question of the Bishop's temporal supremacy in regard to the convent, by the removal of one of the parties to the contest.

The temporal relation of the Bishop to the secular clergy was in the nature of things very limited. In the kingdom this relation centred chiefly on the choice of bishops and their subsequent adjustment of loyalty as between the king and the pope. In this aspect the Bishop of Durham was like any other prelate of the realm; hence his complex status does not at all come into

[1] Cap. xli, in Scriptores Tres, 104–105.

[2] The whole story is related below, p. 24 f.

play. In his relation to his immediate spiritual superior, the archbishop of York, however, the intricacy of this status is somewhat deliberately brought forward, and the metropolitan, like the prior, is confounded by the Bishop's spiritual and temporal power. What the Bishop did was to resist the process of visitation by the archbishop, and then, standing squarely on his character of a lay baron who might not without the king's leave be excommunicated, to defy the spiritual consequences of his act.

This somewhat disingenuous manœuvre was carried through by Bishop Bek in 1292, when the palatine regality had attained its richest development. The archbishop had sent two properly commissioned persons to visit the diocese of Durham. Bek was absent with the king on their arrival, but his temporal officers promptly imprisoned the commissaries in Durham castle; whereupon the archbishop, through the prior of Bolton, excommunicated Bek, who at once brought the matter before parliament. The archbishop contended that he was quite within his canonical right in excommunicating his insubordinate suffragan. To this the Bishop's counsel made the well-known answer: "Episcopus Dunelmensis habet duos status, videlicet, statum episcopi quoad spiritualia et statum comitis palacii quoad tenementa sua temporalia." The archbishop admitted the double status, but submitted that the Bishop in his spiritual aspect still owed him canonical obedience. This was allowed, but it was held that, since the imprisonment was effected by the lay officers of the Bishop during his absence, and since the castle in which the commissaries were confined was of the barony and not of the see (for the king held it *sede vacante*), the Bishop was justified; and judgment was therefore given in his favor.[1]

The relation of the Bishop as head of the civil government to the church in its judicial aspect, that is, to the authority of the church as expressed in an hierarchy of ecclesiastical courts, is more conveniently discussed in another context. Here it will suffice to say, by way of anticipation, that the Bishop *quâ dominus* issued prohibitions, writs for certification of divorce, bastardy, and the like, and in general regulated the relations of the two jurisdictions.[2]

[1] Rot. Parl., 21 Edw. I, i. 102–105.

[2] See below, § 23.

The Bishop's temporal relation with the church ended with the Act of Supremacy. Cuthbert Tunstall, the contemporary Bishop, accepted the new order, in so far as it related to his episcopal franchise, with equanimity and even enthusiasm. He aimed at something higher than the extension or even the preservation of the palatinate. He was, moreover, somewhat in disfavor at court, and hence was glad of an opportunity to prove his loyalty. In March, 1534, he renounced the papal jurisdiction and acknowledged the king's supremacy in the church.[1] In July, 1535, he wrote to Cromwell, laying stress on his acceptance of the king's attitude, and indicating by his somewhat over-zealous protestations the suspicion with which he was still regarded.[2] This disfavor was partly due to the temper of his subjects, which became sufficiently evident in 1536, the year of the Pilgrimage of Grace. Tunstall weathered the storm and became the first president of the north.[3]

The convent fared well in this crisis; it was transformed into a body of cathedral clergy with scarcely any diminution of its possessions, and the last prior became the first dean.[4] The monks indeed had bribed heavily, the *comperta* of the house were mild, and the commissioners made a favorable report;[5] but beyond this it is perhaps not fantastic to discern in the tenderness with which the convent was treated some vague respect for the Bishop's earlier rights.

§ 6. The Bishop's Regality in Dominio.

The Bishop's regality must now be considered under the second category, that is, with regard to his powers *in dominio*. The point of departure here is the fact that within the palatinate the Bishop was universal landlord; that is to say, in the bishopric no land was held of the king and all land was held, mediately or

[1] Calendar of Letters and Papers, Henry VIII, viii. No. 311.

[2] Strype, Ecclesiastical Memorials, i. App. 138–139, and cf. Ibid. 206 ff.

[3] See his letter to Cromwell, 19 January, 1538, in Calendar of Letters and Papers, Henry VIII, xiii. pt. i. No. 107.

[4] Surtees, Durham, i. p. lxix.

[5] Calendar of Letters and Papers, Henry VIII, x. Nos. 364, 721, and cf. No. 182.

immediately, of the Bishop. This conclusion is reached by a double process, namely, by the exclusion of the king and the inclusion of the Bishop. The royal records contain only incidental notices of Durham; it does not appear in the Domesday survey;[1] it does not account at the exchequer or figure in the pipe rolls except during vacancies of the see; the documents which illustrate the king's feudal supremacy in other counties — inquisitions *post mortem* and the like — are lacking for Durham; the king had no escheator or other officer there to look after his interests; and finally the king makes no grant of feudal privilege relative to land in Durham.[2] As to the inclusion of the Bishop, it will presently be seen that he possessed all the rights which the king lacked. There is no record of the Bishop's holding of any one else in the palatinate; like the king in England he was always lord and never tenant, and enjoyed very exceptional rights within the feudal sphere.[3] It is with these rights that we are chiefly concerned; we shall best arrive, therefore, at an understanding of the Bishop's royal position in the feudal structure of the palatinate, if attention be concentrated on those attributes by which he was differentiated from an ordinary feudal lord.

In the matter of reliefs, so long a subject of bitter controversy before it was legally adjusted, the king was outside the common law, for he was entitled to primer seisin; that is, he had the right, on the death of a tenant-in-chief, to seize the land and hold it until by an inquest *post mortem* the identity of the next heir had been established.[4] Precisely this course was followed by the Bishop on the death of one of his tenants-in-chief.[5] In

[1] On this point see above, pp. 25–27.

[2] In a well-known charter of the twelfth century — the grant of Prior Algar of Durham to Dolfin son of Ughtred (1131) — occur these words, "praedictus vero Dolfinus pro hac concessione quam monachi ei concesserunt devenit homo ligius Sancti Cuthberti et Prioris et monachorum, salva fidelitate Regis Angliae et Regis Scociae et Dunelm. Episcopi Domini nostri" (Feodarium, 56). This coördination of the Bishop with the kings of England and Scotland is full of significance for the point under consideration.

[3] Pollock and Maitland, i. 312.

[4] Ibid., 292.

[5] "Inquisitio de tenementis quae Rogerus de Esshe tenuit," A. D. 1312 (Registrum, i. 256). There is a regular series of these inquisitions begin-

like manner, in the question of wardships no one might compete with the king, who, if a man held of him in chief, was entitled to the wardship of the heir's body and to his marriage, no matter how many other lords there might be.[1] Here also the Bishop was prerogative. In 1302 the people of the palatinate, petitioning the king for remedy against the oppressions of their Bishop, represented that, although it was provided by Magna Carta that no chief lord should have the wardship of any one who did not hold of him by knight service, the officers of the Bishop nevertheless took into wardship lands which were not so held of him. To this the Bishop replied that his prerogative entitled him to such wardships between Tyne and Tees, just as the king had them elsewhere in England: "and the king to the honour of God and S. Cuthbert, did grant that the Bishop had the same, just as he himself has it elsewhere in England."[2] In 1369 an attempt was made to defraud the Bishop of this right by abducting Thomas Gray, a minor then in the Bishop's custody in Norham Castle. A commission of oyer and terminer to inquire about this abduction was at once issued, and a new inquest *post mortem* was directed to be taken.[3]

There is another peculiarly royal attribute of this right of wardship. The custody of the lands of idiots, of whatsoever lord they were held, belonged in England to the king and in the palatinate to the Bishop. Such lands were held in wardship on the analogy between an idiot and an infant, although a distinction was taken between the idiot, or born fool, and the lunatic, who might expect recovery or at least lucid intervals. The strict application of feudal law would by this analogy throw the custody of the idiot's lands into the hands of his lord, and this was the practice in England and Scotland up to the close of Henry III's reign. At that time the rule was changed in Eng-

ning with the accession of Bishop Hatfield in 1345. Most of them have been calendared, and may be consulted in the appendices of the Deputy-Keepers' Reports, beginning with Report No. xliii.

[1] Pollock and Maitland, i. 302.

[2] Registrum, iii. 41, 62.

[3] See the originals of these documents in a Durham chancery file, Cursitor 154, Nos. 40, 41. For some information about the ward, see Raine, North Durham, 327.

land, and the king became the sole guardian of the lands of persons born insane.[1] This change extended to the palatinate. In 1314 there is recorded the complaint of Richard, son of Walter of Hereford, who represented to the king that, although from his birth he had been sane and of good memory, the lands and tenements which he was holding in Durham had been seized by the Bishop on the ground that he was an idiot.[2] Again, in 1393, Margaret de Alaynssheles was examined in the palatine chancery and pronounced an idiot; whereupon it was judged that all the lands and tenements which she held in the palatinate should be taken into the Bishop's hand, and that William de Merly, who had occupied these lands since the death of Margaret's husband, should account to the Bishop for the issues of them during the time of his occupation.[3]

When persons holding of a mesne lord were convicted of felony so that their lands escheated, the king had the right to hold and waste these lands for a year and a day.[4] This royal right belonged also to the Bishop in the palatinate.[5] The Bishop's royal right to forfeitures has already been considered in another place.[6] The incidents of feudal tenure accruing to the Bishop in regular course need not be noticed here; they do not differ from those of any other great English feudatory, and hence for details the reader is referred to the ordinary sources.[7]

[1] Pollock and Maitland, i. 464.

[2] Registrum, ii. 1024, 1025.

[3] Rot. Skirlaw, ann. 5, m. 9, curs. 33.

[4] Pollock and Maitland, i. 332, 460.

[5] See Le Convenit, in Feodarium, 214. This arrangement was confirmed by Bishop Hatfield in 1354 (Rot. i. Hatfield, ann. 9, m. 9, curs. 30), and was still in force in 1410 (see a letter of Bishop Langley relating to it, Auditor 1, No. 2). Cf. also the sheriff's account for 1477–1478 (Auditor 1, No. 6), which shows that it was equally effective then.

[6] Above, § 5.

[7] For relief, see Registrum, ii. 1151, 1209, 1214, 1215, 1244. For aids, see Feodarium, 23, 30–31, 38, 41, 57, 64; note especially p. 30, "Et quociens commune auxilium ponetur per totam terram Sancti Cuthberti idem Gilbertus et heredes sui dabunt quantum pertinet ad tantum terrae;" and compare with Rot. C. Langley, ann. 25, m. 2, curs. 36, "per servicium . . . reddendi ad commune auxilium quando ponitur per episcopatum quinque solidos." For wardship and marriage, see Registrum, ii. 1171, 1172, 1179, 1215, 1259,

All mines of gold or silver in England belonged to the king, in order, according to the *ex post facto* explanation of the lawyers, to afford him material for the coinage with which he provided the kingdom.[1] In respect to the proprietorship of mines, the privilege of the Bishops of Durham somewhat exceeded that of their royal model, for they seem to have possessed all the mines in the palatinate, including base as well as precious metals and coals. In the case of gold and silver they had the pretext of their mint at Durham, but for other minerals they seem to have relied on the general principle of their supreme rights *in dominio*. This control of the mines was a fruitful source of revenue, for although there was probably no appreciable production of the precious metals, yet coal, iron, and lead were plentiful. This subject, though full of interest, needs no more than a passing notice here; it will be considered more fully in another chapter.[2]

The right of the king to royal fish, whales, and sturgeons cast ashore or taken near the coast of the kingdom is, along with the right to wreck, closely connected with the later development of admiralty jurisdiction. Both of these rights the Bishop possessed from a period at least as early as the beginning of the twelfth century.[3]

In like manner the Bishop was entitled to treasure-trove, or all hidden treasure discovered in the palatinate; to waif, or stolen goods abandoned by the thief; to estray, or beasts and cattle for which no owner could be found; and to deodand, or any object that had been the proximate cause of the death of a human being.[4]

1260; iii. 276, 277, 282, 347, 353, 361, 418. For escheat, see Ibid., ii. 1291. A few only of the most accessible sources have been indicated; much information will also be found in the calendars of inquisitions *post mortem* (Deputy-Keepers' Reports, No. xliii ff.) and the account rolls of the sheriffs and receivers-general (Auditor 1; Ecclesiastical Commissioners, ministers' accounts, 189696; Auditor 5, No. 149).

[1] Coke, Second Institute, cap. xx, 577; Blackstone, Commentaries, book i. cap. viii.

[2] Below, § 37.

[3] See below, App. ii.

[4] Fleta, lib. i. cap. xliii; Coke, Third Institute, 132; Dalton, Office of Sheriffs, cap. xvi; Blackstone, Commentaries, book i. cap. viii; Pollock and Maitland, ii. 471–472. In connection with treasure-trove and deodand

The Bishop's royalty in respect to the forests — always a sore subject in the middle ages — is of somewhat late development, for the time of its maturity lies well within the limits of legal memory. Early in the twelfth century, to be sure, the Bishop's rights in the forests of the palatinate seem to have excluded all but those of the king. There is an undated charter of Henry I which recites that Bishop Ranulf Flambard (who died in 1128), having disproved the claims of the men of Northumberland with regard to the forests of S. Cuthbert between Tyne and Tees, shall hold and enjoy these forests for himself and his successors freely and quietly. The Northumbrians had laid claim to a right of hunting in S. Cuthbert's forests and of taking firewood and timber from them on payment of a certain sum.[1] In Bishop

there are two curious stories, the first of which comes from the second half of the twelfth century. Christian, a moneyer, who leased certain mines of the Bishop, got hold of a man (*quemdam miserum*) who, according to rumor, had found a treasure. Christian, finding it impossible to get anything from him, confided in the sheriff and the subvicar of the Bishop. The reason given for this step is remarkable: "Nam celari talis mancipatio torturae diutiusque latere non poterat; et detecta ejus audacia magis jacturae dispendium quam alicujus lucri emolumentum ei adjicere praevalebat. Nam et regiae dignitas potestatis in urbe illa erat potentiaria Episcopalis possessio dicionis. Unde nec abditum tenere potuit tantae lucrum adquisitionis, quae tam regiae quam Episcopalis esse debuerant dignitatis." The sheriff, hoping for great gain, confined the man in the Bishop's prison, from which he was duly delivered by S. Cuthbert. (Reginaldus Dunelmensis, Libellus, Surtees Soc., cap. xcv, 210 ff.) The second incident occurred in one of Edward I's expeditions against Scotland. It happened that, as the king was passing through the palatinate, John de Corbyn, one of his retainers, was pressed to death by a horse (either the king's or his own), which was promptly seized as deodand by the Bishop's officers. Graystanes records the event in these words: "Erat tanta libertas ecclesiae Dunelmensis . . . quod Episcopus habuit palefridum Regis tendentis versus Scotiam pro eschaeto, eo quod minister de eo incaute cecidit et ex casu obiit" (cap. xxx, in Scriptores Tres, 89). See also the letter of the king asking for the return of this horse as a personal favor (*pur lamur de nous*); in this letter the horse is said to have been "seisi . . . come forfait ou deodande" (Registrum, iv. App. 513, 514). These matters appear from time to time on the palatine account rolls (see Auditor 1, Nos. 1, 2; Ecclesiastical Commissioners, ministers' accounts, 189696).

[1] Scriptores Tres, App. No. xxv. This document is also printed in Surtees, Durham, i. pp. cxxv, cxxvi.

Pudsey's survey of the palatinate in 1183 a good deal is said of the *magna caza*, the great autumn battue in the Weardale, which, from its close connection with tenures in that district, must have been of considerable antiquity.[1] But the king's rights seem still to have persisted in some degree over these northern forests. Accordingly in 1234 the lords and freemen between Ouse and Derwent paid him a great sum of money to renounce his claims and disafforest the land between these two rivers. In the charter which issued on this subject, however, there is a saving clause for the previous rights of the Bishop of Durham, which are recognized as superior to those of his co-petitioners.[2] From this time onward the Bishop seems to have enjoyed an unquestioned supremacy over the forests of the palatinate, and, in imitation of his royal model, even to have pushed it rather beyond the endurance of his subjects; for in 1302 they complain of the extortions and illegal practices of the forest officers and the limitations on their freedom of taking game and the like, but without obtaining many concessions from the Bishop.[3] The Bishops continued to appoint officers and administer the forests according to their good pleasure, on the assumption of their entire supremacy in this respect.[4]

[1] Boldon Book, 26, 29.

[2] "Carta de foresta inter Usam et Derewent" (Registrum, ii. 1183). In the statement of the usages of the forest which follows this, it is said that "le pais fu desaforeste par graunt raunson que le pais dona al roi." Those who paid this sum were the Bishop of Durham, the archbishop of York, the abbot of S. Mary of York, and the earls, barons, knights, freemen, and all others, lay and cleric, having lands between Ouse and Derwent in Yorkshire. The Ouse and Derwent include the greater part of the palatinate; but for this the Bishop paid alone, receiving in return the following safeguard of liberties: "Salvis tamen praedicto R. episcopo et ecclesiae Dunolmensibus et successoribus suis libertatibus et liberis consuetudinibus eis ante hanc concessionem nostram concessis per praedecessores nostros, reges Angliae; ita videlicet quod per hanc libertatem nostram praedictis . . . concessam, nullum fiat vel fieri possit praejudicium dicto episcopo et ecclesiae Dunolmensibus, de libertatibus suis eis prius concessis inter Usam et Derewent a praedecessoribus nostris regibus Angliae" (Ibid., 1185).

[3] Ibid., iii. 41–46, 61–67.

[4] In 1312 William de Brakenbury receives the "custodiam forestarum, chaceorum, boscorum, et parcorum nostrorum, infra libertatem nostram Dunelmensem, una cum dilecto nobis Johanne Baudre juniore faciendo id

Here again, then, is an example of the deliberate growth of the Bishop's regality, which, bit by bit, had completed itself toward the close of the thirteenth century, very much as that of the English crown had done long before. Bracton, writing of the lesser regalities of waif, stray, deodand, and the like, says: "[Haec] quae olim fuerunt inventoris de jure naturali, jam efficiuntur principis de jure gentium;"[1] the implication is that these things are ascribed to the prince for his regality. As applied to the crown of England this may be a lawyer's explanation of an inconvenient historical problem, or a mere borrowing from the civilians; that question does not concern us here. With regard to the Bishop's regality, on the other hand, we have seen enough to convince us that these privileges preceded the theoretical rights from which they were assumed to be derived. They are contributories, not resultants, the signs of forces working together toward completion rather than the embellishment of a regality mature from its birth.

Many of these privileges which have been occupying our attention might be alienated by the Bishop on behalf of his subjects. Thus, in 1311, Bishop Kellaw granted to Hugh de Louthre and his heirs forever the right to have free warren in all the demesne lands of the manor of Thorpe Theules in the palatinate, in so far as such lands were not within the metes and bounds of the Bishop's forest. A fine of ten marks was imposed on any one who should enter the district so privileged for the purpose of hunting or taking game.[2]

quod ad forestarium pertinet" (Ibid., i. 114; cf. Graystanes, cap. xxiii, in Scriptores Tres, 76, and also the appointment of Sir Thomas Lumley to be chief forester in Weardale, as recorded in a privy seal addressed to the chancellor for the issue of a commission, Cursitor 145). On some of the duties of the forest officers, see Rot. i. Hatfield, ann. 12, m. 11 dorse, curs. 30, and ann. 19, m. 14; Rot. DD. Langley, 9 Hen. VI, m. 3 dorse, curs. 37. An interesting case, decided in the Bishop's courts in 1365, established the right of an under-forester to levy certain contributions in kind from every husband-land in the vill of Urpath. The whole record of the affair is preserved in one of the few chancery files remaining among the Durham records (Cursitor 162, Nos. 34–39).

[1] Bracton, fol. 8 b, i. 60–62.

[2] Registrum, ii. 1136–1137. For a similar grant to William de Daldene, see Rot. i. Hatfield, ann. 9, m. 9 dorse, curs. 30.

The Bishop might also erect fairs and markets, a privilege which, outside the palatinate, could be claimed only by prescription or royal grant.[1] Thus, in 1312, Bishop Kellaw, for the perpetual convenience of himself and his successors, and for the advantage of the royal liberty at large and in particular of the people of his vill of Seggefield, erected there a weekly market and an annual fair of five days' duration, retaining to himself and his successors the profits of the fair.[2] Again, in 1379 Bishop Hatfield granted that John de Nevill, lord of Raby, and his heirs should hold a weekly market and an annual fair in July at his vill of Staindrop within the royal liberty of Durham, under condition that this privilege should not react to the prejudice of the surrounding vills having fairs or markets, or to that of the church of Durham.[3] The saving clause is worth noting: it would have been illegal to establish a market at a distance less than six miles and two thirds from one already existing,[4] and furthermore the really important September fair, at which winter stores might be laid in, the Bishop retained in his own hand until it was made over to the corporation of Durham by Bishop Pilkington in 1565.[5]

In like manner the Bishop alienated his right of wreck. Thus, in 1432, Bishop Nevill granted to Sir Thomas Lumley and Mar-

[1] See Ashley, Economic History, i. 98; and cf. the following clause from a charter granted by Bertram, prior of Durham, A. D. 1189–1209, to his burgesses of Elvet: "Si vero nos, per graciam et licenciam Domini nostri Episcopi, forum vel nundinas in eodem burgo poterimus adipisci," etc. (Feodarium, 199). In 1228 one of the witnesses who testified in the quarrel between the Bishop and the prior said: "Quod nullus habet theoloneum nisi Episcopus, quia nullus habet mercatum sive nundinas in Haliwarifolc nisi ille (Ibid., 235); indeed, this sentiment occurs repeatedly (see Ibid., 230, 237, 240, *et passim*). On the great fair of S. Cuthbert in September, see Boldon Book, 4, 26.

[2] Registrum, ii. 1180.

[3] Rot. ii. Hatfield, ann. 34, m. 11, curs. 31.

[4] Bracton, cited by Ashley, Economic History, i. 99.

[5] See Reginaldus Dunelmensis, Vita S. Godrici (Surtees Soc.), 101, 408; Scriptores Tres, App. No. cccxxxii; Surtees, Durham, iv. pt. ii. 14. Some material on this subject will be found in the Durham ministers' accounts, *e. g.* "In expensis factis circa custodiam nundinarum apud Derlington" (sheriff's account, A. D. 1336, Auditor 1, No. 1).

garet his wife everything cast ashore by the tide in their demesnes in Stranton and Seaton Carrowe, in the royal liberty of Durham. For this they paid an annual rent of three shillings, and agreed to surrender to the Bishop one half of any royal fish or great ships that might be cast ashore.[1]

It has been said that one of the attributes of the Bishop's royalty, under the category of *dominium*, was the existence of baronies which originated in tenure of him.[2] Something of this sort was unquestionably true, but before generalizing it will be well to examine the evidence on which these statements rest. The earliest information comes from the troubled period of Stephen's reign. After the death of Bishop Geoffrey Rufus in 1140, David, king of Scotland, in the interest of his niece, the empress, and with a view to the extension of his own border, made a bold and ingenious effort to control the bishopric by forcing the election of William Cumin, his own tool and a favorite of the late Bishop. Cumin had already obtained practical possession of the temporalities, and in all probability the plot would have succeeded but for the determined resistance of a certain Roger de Conyers, who is described as one of the barons of the bishopric.[3] Cumin, it is said, conducted himself as though already Bishop, granting out lands and receiving the homage of all the barons except of Roger de Conyers alone.[4] Later, when the canonically elected Bishop presented himself, he was invited by Conyers to enter the bishopric, and on his arrival a few of the barons of the bishopric and others came to do him homage.[5] A plot to advance the interests of Cumin was arranged with the aid of Aschetinus de Wirece, one of the Bishop's barons;[6] but this treachery was

[1] Rot. iv. Nevill, ann. 19, m. 8, curs. 45; see below, App. ii.

[2] Spearman, Inquiry, 15; Registrum, iii. Introd. xlv–xlvi; Stubbs, i. 412, note. Whitelocke (in his reading on 21 Hen. VIII, cap. xiii) commits himself to the hazardous statement that the Bishop might create baronies by tenure. See The Practice of the Court of Chancery of Durham, 1–7; but see also Stubbs, ii. 194 ff., and below, p. 66.

[3] For this whole story, see Symeon, i. 146–161, and the Poems of Lawrence of Durham (Surtees Soc.).

[4] Symeon, i. 146, 150.

[5] Ibid., i. 150–151.

[6] Ibid., 156, 158.

frustrated by the vigorous loyalty of Roger Conyers, Geoffrey Escolland, and Bertram de Bulmer, also episcopal barons,[1] and the terms of a truce made with the intruder were arranged under the approval and guarantee of all the barons of the bishopric.[2] During the rest of the twelfth century we continue to hear of barons, *proceres*, and *magnates* of the Bishop.[3] From this evidence it appears that the great tenants-in-chief of the Bishop and the king were not, in the twelfth century, clearly differentiated. The Bishop had his barons, who owed him homage and fealty as temporal head of the province, and could even feel toward him in that capacity a certain loyalty.

In 1197, the see being then vacant, the keeper of the temporalities accounted at the exchequer for the issues of the baronies of the bishopric to the number of ten.[4] This is a larger number than is usually given; the ordinary enumeration is four, namely, the prior of Durham, Hilton of Hilton Castle, Bulmer of Brancepeth, and Conyers of Sockburne.[5] These are certainly the most prominent barons, and deserve particular attention. The prior was no doubt the greatest tenant of the Bishop; his holdings and his extensive feudal jurisdiction may be judged from the great feodary of Durham.[6] In 1295 he was summoned to parliament for the first time,[7] and afterward frequently received summonses under the *praemunientes* clause in the writ addressed to the Bishop.[8] The family of Hilton had their chief seat at Hilton Castle in the palatinate, and were reckoned titular barons by tenure-in-chief of the Bishop.[9] In 1180 Alexander de Hilton witnesses a conveyance in presence "of the barons of the

[1] Symeon, i. 158. [2] Ibid., 155.

[3] Reginaldus Dunelmensis, Libellus, cap. xciii, 206; see also his Vita S. Godrici (Surtees Soc.), 178, 217, and a charter of Bishop Pudsey, in Surtees, Durham, iii. 339.

[4] Pipe Roll, 8 Ric. I, in Boldon Book, App. xi–xii.

[5] Spearman, Inquiry, 15.

[6] Feodarium Prioratus Dunelmensis (Surtees Soc.).

[7] Parliamentary Writs, i. 28.

[8] Registrum, index, *s. v.* "Parliament;" Parliamentary Writs, indexes, *s. v.* "Durham;" and cf. Stubbs, Select Charters, 485.

[9] Sir T. C. Banks, Baronia Anglica Concentrata (ed. 1844), i. 251–253; Surtees, Durham, ii. 36; Stubbs, i. 393 note.

bishopric,"[1] and again in 1185.[2] In 1294, 1295, and 1296 a Robert de Hilton was summoned to parliament,[3] and this is no doubt the same Robert who in 1313 appears as "dominus villae de Hilton;"[4] but he is not again summoned to parliament. From 1332 until 1336 an Alexander de Hilton is summoned, but not again.[5] After this no Hilton is called, although one of that name seems to have sat in 1399.[6] The barons of Hilton continue to be heard of in Durham as late as 1539.[7]

Bertram de Bulmer was a "baro episcopi" in 1144,[8] but in 1162 the Bulmers are described as barons by tenure of the king.[9] In Edward I's reign they certainly owed to the crown the services of tenants-in-chief,[10] but we resummoned to parliament first in 1327 and last in 1349.[11] Banks describes them as "reputed barons of the county of Northumberland."[12] The existence, in the twelfth century at least, of the barony of Conyers of Sockburne is evident enough from the words of Symeon already quoted.[13] The manor of Sockburne was held of the Bishops by the peculiar and probably very ancient service of meeting the new Bishop on his first entrance into his diocese on a bridge over the river Tees, and there presenting him with a "faulchion." A ritual phrase accompanying this ceremony describes the faulchion as the weapon with which the first Conyers slew a "worm, dragon, or fiery flying serpent," for which exploit he

[1] The document is printed in a condensed form in Feodarium, 20; see also Surtees, Durham, ii. 36. See another charter witnessed by this Hilton, in which land is granted to be held "sicut aliquis . . . tenet in Episcopatu Dunelm. de aliquo barone:" Feodarium, 124.

[2] Feodarium, 142.

[3] Dugdale, Perfect Copy of all Summons of the Nobility . . . to Parliaments, 9, 14, 19.

[4] Registrum, ii. 1229.

[5] Dugdale, Summons, 175, 176, 179, 182.

[6] Rot. Parl., 1 Hen. IV, iii. 427.

[7] Rentale Bursarii [of the Convent], in Feodarium, 307.

[8] Symeon, i. 158.

[9] Nicolas, Historic Peerage, 82.

[10] Parliamentary Writs, i. 505.

[11] Dugdale, Summons, index, *s. v.* "Bulmer."

[12] Baronia Anglica, i. 140.

[13] Above, pp. 63-64.

was rewarded with the manor of Sockburne. This picturesque ceremony, which survived until 1771,[1] perhaps veiled some particularity in the tenure of Sockburne, which, if more were known, might be connected with the twelfth century baronage, and with a queer story of "an old pedigree" relating to the "erles of Socburn in the Bishopric" known to Surtees.[2] However that may be, the Conyers of Sockburne were never summoned to parliament, and their barony is unknown in the peerages.

From this collection of facts several conclusions are at once apparent. In the first place, it is clear why these four barons were prominent in the palatinate. The prior of Durham was in his spiritual relations like any other prior of the kingdom; by virtue of his office he was summoned to parliament, and he held estates which, economically at least, answered to the requirements of a barony. Bulmer and Hilton had both been summoned to parliament, but the title of Conyers rested on the prominence given by the monkish historians to the name and achievements of the founder of his family.

It remains to speak of the barons mentioned in the pipe roll of 1197 and in other sources. Take, for example, the barony of Evenwood, which was held by the Hansards. Gilbert Hansard held a barony in 1197;[3] he constantly appears in the test clauses of Bishop Pudsey's charters.[4] In 1294 we hear of Sir John Hansard, lord of Evenwood, who sold the barony to Bishop Bek,[5] although the estate continued to be known as the barony of Evenwood.[6] There is something therefore to give rise to the title of baron beyond a summons to parliament, when in process of time that extends to the palatinate. The question then arises, was tenure-in-chief of the Bishop enough to secure this distinction? Probably although indispensable it was not alone sufficient. The determining factor in barony by tenure appears to have been not tenure-in-chief of the king, but the relative size and importance of the estates thus held, and the fact that the

[1] Surtees, Durham, iii. 243 ff.
[2] Ibid., ii. 209 note.
[3] Pipe Roll 8 Ric. I, in Boldon Book, App. xii.
[4] Feodarium, index, *s. v.* "Hansard."
[5] Graystanes, cap. xxxi, in Scriptores Tres, 90; Registrum, iii. 69.
[6] Registrum, ii. 1204, 1205, 1213.

holder dealt directly with the exchequer and not through the medium of the sheriff.[1] The dignity, therefore, would seem to proceed rather from the nature of the estate than from the king's royalty.

Now, a certain number of persons, holding in chief of the Bishop in the palatinate, would no doubt correspond feudally, or socially and economically, to the *majores barones* holding of the king in Yorkshire or Northumberland. Their tenure, as we know, had all the distinguishing characteristics of tenure-in-chief. The tenants, moreover, dealt directly with the local exchequer; this indeed must be assumed from the fact that they did not deal through the sheriff when the see was vacant, for the palatine exchequer records have for the most part perished. Again, the very term *baro* was of extremely elastic significance, and it would be strange indeed if it had not been applied to men like Roger Conyers. Finally, when the practice of summons to parliament begins to define and restrict the title, there is a kind of recognition of the social or aristocratic claim to its use made by the representatives of such families as Hilton and Bulmer, in the inconsistent and arbitrary summonses occasionally addressed to them. Bulmer, for example, who possessed lands in Northumberland, was summoned for feudal service in 1295, but was not called to parliament until 1327, and ceased to receive summons to that body in 1349. It is not fantastic to suppose that the military duty was exacted by reason of estates in the kingdom insufficient in themselves to place him in the rank of the *majores barones*, but that his claim to that dignity was justified by his possessions in the palatinate.

It is not admissible, then, that this baronage proceeded out of the Bishop's regality. Rather, as the liberties and franchises of the Bishop grew and increased, the status of his tenants-in-chief advanced *pari passu*, so that they finally became indistinguishable from the greater tenants of the king; and this social and economic condition received a semi-official recognition by the occasional summons to parliament of one or other of the episcopal barons, who thus contributed to the regal position of the Bishop.

[1] Pike, House of Lords, 89–95.

§ 7. The Bishop's Regality in Jurisdictione.

In view of the fact that the Bishop was supreme *in jurisdictione* in the palatinate, the question arises, what, within his province, were his relations to the law? Now, the king in England was under the law, although its machinery might not be set in motion against him. In a certain sense, again, he stood outside the law, since he might by his grace prevent its consequences, and by his prerogative altogether suspend certain of its conditions.[1] These principles, *mutatis mutandis*, apply to the Bishop in his palatinate. Thus no action lay against the Bishop in his own courts; if a person sought remedy against him he was obliged to proceed by way of petition to the Bishop and his council. Even an outsider, who wished to recover land in the palatinate of which the Bishop was the adverse holder, would find it more prudent and probably more effectual to follow this course.[2]

In respect to the privilege of preventing the consequences of the law by means of a pardon, the analogy between the Bishop and the king is practically complete. The power to pardon an approver — that is to say, a convicted criminal, who for the sake of obtaining his pardon would agree to rid the world of some half-dozen of his associates by his appeals[3] — was a privilege confined to the king and lords palatine,[4] and was therefore exercised by the Bishop.[5] The most important pardons, however, are those for killing. These may be divided into two classes, the first including pardons granted to persons who have committed manslaughter in self-defence or by misadventure, and the second those granted to ordinary homicides, for some special reason indicated in the pardon. With regard to the first class, it should be noticed that the law of England in the middle ages was unable of itself to prevent the punishment of an innocent or excusable manslayer. Such an offender needed the special grace

[1] Pollock and Maitland, i. 500–502.

[2] This whole question is worked out in some detail below, § 33.

[3] Pollock and Maitland, ii. 631.

[4] Bracton, fol. 122 b, ii. 290.

[5] Le Convenit, in Feodarium, 215; see also Registrum, iii. 79.

of the king;[1] within the borders of the palatinate, however, this grace flowed not from the king but from the Bishop. In these cases the manner of the crime was generally stated as reported by the justices, and the words of felony, or suggestion of malice aforethought, were specifically guarded against. Thus, in 1339, Adam de Faustane was pardoned in these words: "cum per recordum dilectorum et fidelium nostrorum domini Rogeri de Aisshe et Johannis de Menevill, justiciariorum nostrorum ad gaolam nostram Dunelmi deliberandam, accepimus quod Ada de Faustane captus, et in gaola nostra Dunelmi, pro morte Gilberti Gilet interfecti, detentus, interfecerit praedictum Gilbertum se defendendo, ita quod mortem suam aliter evadere non potuit, et non per feloniam, aut malitiam excogitatam," etc.; then follow the words of pardon.[2]

Pardons for guilty manslaughter were expressed in a different form, and generally contained some pretext, as the pious motive of the Bishop, the request of some powerful person, or the recommendation of the justices.[3] A guilty person who had obtained a pardon from the king would naturally wish to have it made effectual in the palatinate, particularly if he held land there. This end was accomplished in two ways: either the king gave notice to the Bishop that he had pardoned the crimes and desired the Bishop to proclaim this fact, or else the guilty person obtained a fresh pardon from the Bishop, in which the king's action was assigned as the motive. Thus, in 1314, the king directed his writ to the Bishop, announcing that inasmuch as Robert Spryng had by royal letters patent been pardoned for killing John Spryng and for other transgressions, as well as for any outlawry that may have been proclaimed against him, the conditions of this pardon were to be publicly proclaimed in the palatinate and strictly observed there.[4] On the other hand, in 1340 the Bishop announced that, since the lord king moved by

[1] Pollock and Maitland, ii. 480 ff.

[2] Registrum, iii. 238–239. For similar cases see Ibid., ii. 1171, 1258, iii. 239–240, 341–342, 346, 350, 370–371. The last of these cases is very curious and interesting.

[3] Ibid., iii. 281, 373; Rot. i. Hatfield, ann. 2, m. 2 dorse, curs. 30; ann. 4, m. 1 dorse; ann. 9, m. 9 dorse.

[4] Registrum, ii. 1027.

certain causes had pardoned William de Whestwyk, who had committed homicide, he moved by the same causes also pardoned William.[1] The form of such a document deserves attention. It recites that A. B., accused of a certain manslaughter at such a time and place, is pardoned, and that the Bishop remits to him the suit of his peace which belongs to him for that crime, *i. e.* the right of prosecution, and frees him from any outlawry that may have been declared against him by reason of the crime, on condition that he shall stand to right in the Bishop's court, if any one wishes to speak against him, and shall further find security for his future good behavior toward the Bishop and his people. This document, known from its form as a *carta pacis*, is followed by a formal notice of the pardon, and a precept to the sheriff to make public proclamation of the matter at the great meeting of the county court.[2] The *carta pacis* issued out of chancery under the great seal, on the Bishop's warrant to the chancellor under the privy seal.[3]

In like manner the Bishop issued pardons to outlaws who surrendered themselves,[4] to persons guilty of felonies and robberies,[5] or of insurrections,[6] and to his own officers for escapes from prison[7] or for all offences committed during their term of office.[8] These do not differ materially from the types that have been noticed, and hence need not be considered farther. The right to grant pardons in the palatinate was withdrawn from the Bishop and vested in the crown by act of parliament in 1536.[9]

[1] Registrum, iii. 250. For a similar case see Ibid., ii. 1261.

[2] Ibid., iii. 346.

[3] See a number of these warrants, *temp.* Langley, in a bundle of miscellaneous papers, Cursitor 211, Nos. 2, 4, 7, etc.

[4] Registrum, iv. 281; Rot. ii. Hatfield, ann. 34, m. 11, curs. 31, and ann. 36, m. 14; Rot. Fordham, ann. 2, m. 3, curs. 32.

[5] Registrum, iii. 417, 418; Rot. i. Hatfield, ann. 2, m. 2 dorse, curs. 30, and ann. 9, m. 9 dorse; Rot. Fordham, ann. 3, m. 6, curs. 32.

[6] Rot. i. Booth, ann. 5, m. 10, curs. 48. Eighteen pardons will be found on this membrane.

[7] Rot. Fordham, ann. 4, m. 7, curs. 32 (pardons to the gaoler for escapes).

[8] Ibid., ann. 3, m. 5 dorse (to John de Elvet, for all offences committed when he was sub-sheriff and sub-escheator of Durham and Sadberg).

[9] 27 Hen. VIII, cap. xiv, Statutes, iii. 555. For an instance of a royal

The Bishop, like the king, might interfere with the operation of the law at an earlier stage of procedure, by forbidding the justices to give judgment by default when the absent party was engaged on his service. This privilege of staying procedure is a very ancient attribute of royalty and was known to the Salic law.[1] In 1340 Bishop Bury directed his warrant to his justices assigned in the county of Durham, notifying them that William de la Pole, against whom an action was pending before them, being in the Bishop's service on the day appointed for hearing the case, should not for this absence be put to default.[2] This, of course, is to be compared with the king's warrant to his justices, with which it is practically identical, and must not be confused with the essoin, in the royal courts, for service of the feudal lord.[3] By the exercise of a similar privilege the Bishop granted to various persons relief from the duty of serving on juries or assizes, or of attending the sessions of the county court. This favor was accorded by reason of the great age of the beneficiary,[4] or for good service rendered to the Bishop,[5] or for pressing occupation with the Bishop's affairs.[6]

The Bishop's prerogative in respect to the law was not confined to checking its operation: he could also, under certain conditions, suspend its application. It was within the terms of the king's prerogative to allow a statute to become inefficient for want of administrative activity; he could also by active measures interfere with the observance of laws which he disliked, and he could even suspend the operations of a statute.[7] To what extent the Bishop may have exercised the negative side of this preroga-

pardon in the palatinate, in the year after the statute, see Rot. ii. Tunstall, ann. 28 Hen. VIII, m. 9 dorse, curs. 78.

[1] Brunner, Deutsche Rechtsgeschichte, ii. 336.

[2] Rot. Bury, ann. 10, m. 14, printed in Registrum, iv. 282; Rot. i. Hatfield, ann. 4, m. 1 dorse, curs. 30.

[3] Glanvill, lib. i. cap. viii; Bracton, fol. 336 b, v. 148.

[4] Registrum, i. 276.

[5] "Confirmacio Johanni de Elvet quod non ponetur in assisis nec juratis:" Scriptores Tres, App. No. cxvii.

[6] Rot. ii. Hatfield, ann. 36, m. 14 dorse, curs. 31; and see similar cases in Rot. Fordham, ann. 3, m. 5 dorse, curs. 32, and ann. 6, m. 9.

[7] Stubbs, ii. 632–634.

tive is not certain, for the matter is referred to only in the protests of his subjects. Thus, in 1205–1206, a man complained that the Bishop had refused to carry out the provisions of the grand assize, by forcing him to the duel when he had put himself on the country;[1] and in 1302 the *communitas* of Durham, petitioning the king against the oppressions of its Bishop, instanced, among other things, his contraventions of Magna Carta.[2]

On the positive side — the actual suspension of statutes — there is considerable evidence in one direction. The Bishop had the right to issue licences for the amortization of land, and this right he exercised frequently and without question. Mortmain licences were of course readily obtainable from any feudal lord,[3] but the lords could only bind themselves not to take advantage of the provisions of the statute, and could not affect the rights of the lord next above them in the feudal hierarchy. Besides, there was always the crown as ultimate sequestrator.[4] When the king, however, issued such licences he resorted to the device of the *non obstante*, a clause in a charter or letter patent allowing something to be done, any statute to the contrary notwithstanding. Such a document is defined as a licence from the king to do a thing which at common law might lawfully be done, but which, being restrained by act of parliament, cannot be done without such licence.[5] This device, it appears, was borrowed from the practice of the Roman *curia* and was first used in England in the thirteenth century, where it was applied to statutes that tended to restrain some prerogative incident to the person of the king.[6] In the palatinate the Bishop was in the position of ultimate sequestrator, and accordingly he issued licences on the royal model, suspending the action of the statute in this or that case. The difference between such

[1] Geoffrey Fitz Geoffrey's case, Curia Regis, 8 John, roll 36, m. 13 (Northumb.); and below, App. i.

[2] Registrum, iii. 41.

[3] Pollock and Maitland, i. 315.

[4] Stubbs, ii. 122.

[5] Jacob, Law Dictionary, *s. v.* "Non obstante."

[6] Ibid., *s. v.* "Dispensations"; Bouvier, Law Dictionary, *s. v.* "Non obstante" and "Dispensations."

a document and the personal engagement of a feudal lord to forego his right is very marked, and illustrates well the distinction that must be taken between the status of the Bishop as palatine earl and that of the other feudal lords of the kingdom.

The actual words "non obstante" seem not to have been essential; indeed, in the document from which a quotation is made below they are replaced by a circumlocution, although this method is unusual. In 1344 Bishop Bury licensed William de Twysyle to amortize certain lands in the palatinate for the erection of a chantry in the parish church of Norham. None of these lands, it should be noticed, were held immediately of the Bishop. The significant words are as follows: "Noverit universitas vestra, quod, licet de communi consilio regni Angliae, statutum sit quod non liceat viris religiosis ingredi feodum alicujus, ita quod ad manum mortuam deveniat, sine licentia domini regis, et capitalis domini de quo res illa immediate tenetur; de gratia tamen nostra speciali, ex regali potestate nostra, concessimus et licentiam dedimus, pro nobis et successoribus nostris quantum in nobis est, dilecto nobis Willelmo de Twysyl, quod . . . [here follows the specification of the lands to be amortized, the lords of whom they are severally held, and the purposes and conditions of the chantry], nolentes quod praedictus Willelmus vel haeredes sui, aut praedictus capellanus aut successores sui, per nos vel successores nostros, ratione alicujus statuti de terris et tenementis ad manum mortuam non ponendis editi, inde occasionentur in aliquo seu graventur. Salvis tamen capitalibus dominis feodorum illorum servitiis inde debitis et consuetis."[1] This is strong language for a prelate to use — the terms approximate those of a royal licence[2] — scarcely half a century after the passage of the statute of mortmain. There is abundant evidence, however, that these licences were constantly issued.[3] Such a licence would of course be a source of profit to the Bishop; indeed, the document itself sometimes

[1] Registrum, iii. 368–369.

[2] Calendar of Patent Rolls, 1377–1381, p. 436.

[3] Registrum, ii. 1230, 1238–1240, 1297–1298, iii. 284–286; Rot. ii. Hatfield, ann. 34, m. 11, m. 13 (*ter*), curs. 31; Rot. Skirlaw, ann. 4, m. 8, and ann. 5, m. 9, curs. 33.

mentions the fine paid. Thus a licence issued by Bishop Skirlaw in 1392, opening with the formula already quoted, proceeds thus: "tamen pro quadraginta solidos, quos dilectus nobis in Christo Abbas de Gervaux nobis solvit, concessimus," etc.[1] The amount of the fine was determined by the value and tenure of the land to be amortized, and before the licence was issued these were ascertained by an inquisition *ad quod dampnum* taken by the Bishop's escheator.[2] Licences obtained from one Bishop probably needed confirmation by his successor, who for this purpose would make an inquest to assure himself that no improper advantage had been taken.[3] This privilege of the Bishop, by which he, a prelate, is clothed with authority to suspend a statute levelled at his own order, constitutes one of the many grotesque anomalies that were the inevitable result of a status so complex.

Having considered the relation of the Bishop to the law, we should now direct our attention to his position in the legal system of the palatinate. The Bishop was said to have "omnimodam justiciam in placitis coronae et placitis civilibus."[4] This was obviously the case, since all judicial officers in the palatinate took their sanction from the Bishop's appointment, and no officers of the king could come into the palatinate in the execution of their office. It follows, that everything done in the palatinate before judges other than those of the Bishop was null, as being *coram non judice*.[5] Further, except in two specific cases,

[1] Rot. Skirlaw, ann. 5, m. 9, curs. 33.

[2] See a number of originals — writs, findings of inquest, etc. — in a Durham chancery file, Cursitor 154, Nos. 16–17, 18–19, 42–43, 53–55, 57–60.

[3] Ibid., Nos. 26–27, 28–29. The writ is directed to the escheator, and the characteristic clause runs as follows: "Nos volentes certis de causis certiorari super vero valore terrarum et tenementorum praedictorum, vobis mandamus quod," etc.

[4] Sir James Whitelocke, Reading on 21 Hen. VIII, cap. xiii, in The Practice of the Court of Chancery of Durham, 1–7. Cf. also Plac. de Quo War., 604, and Rot. Parl., 9 Edw. II, i. 362–363.

[5] Cf. Norfolk to Cromwell, Calendar of Letters and Papers, Henry VIII, xii. pt. i. No. 616: "There have been this day indicted [at Durham], though to no purpose, quia coram non judice, thirteen persons." The duke of Norfolk's commission did not include the palatinate.

all appeals and writs of error lay to the Bishop only,[1] a circumstance again indicating his judicial supremacy, out of which also he supplemented and corrected the common law by an equitable jurisdiction in chancery and by an admiralty jurisdiction in properly constituted courts.[2] Finally, he determined and regulated the relations between the common law courts and the ecclesiastical forum.[3] On the other hand, two facts must be borne in mind: first, that the fulness of this development was not attained until the close of the thirteenth century, and, second, that over the splendor of the Bishop's judicial independence lay always the shadow of the crown of England. The king checked and limited the Bishop's supremacy both in the regular course of law — that is, in case of a default of justice on the Bishop's part or in matters touching the king's person — and in the exercise of the royal prerogative. This whole matter is worked out in another connection; here this hasty recapitulation must suffice.[4]

§ 8. General Estimate of the Bishop's Regality.

In possession now of the principal facts, we may return to examine the generalization which was our point of departure, the statement, namely, that the Bishop is as king in Durham. The dictum certainly cannot be rejected, but its acceptance must be conditional on a frank recognition of the gulf that separates theory and practice. Within the palatinate, no doubt, the Bishop theoretically enjoyed the rights and privileges of royalty. In practice, however, the king, whether from motives of policy or of greed, infringed upon these rights at many points, hampering the Bishop's independent activity and from time to time compelling him to submit to encroachments and restrictions incompatible with his position as a local independent sovereign. It must not be forgotten that we are studying a process of growth and degeneration. Up to the close of the thirteenth century there has been a development in almost every attribute of the Bishop's royalty, which, as the supremacy of the crown was defined and asserted, applied to itself the new principles

[1] See below, § 29.
[2] See below, §§ 21, 24, and App. ii.
[3] See below, § 23.
[4] See below, § 29.

of sovereignty. Thus, by a process of reasoning from the general to the particular, the Bishops of Durham lifted themselves above the level of even the greatest feudatories of England, and were ready, when the king refused any longer to be ousted by general words,[1] to confront him with a definite and detailed list of privileges, all flowing from the richness of the assumption which his ancestors had been willing to admit.

There is therefore something to be said on the other side, in regard to the matter of royal encroachments on the palatinate before 1300. That date marks the culmination, the maturity of the Bishop's regality. Then follows, during the fourteenth century, a period of perplexed toleration, not unnatural on the part of the crown in view of the complexity of the situation. Edward I and his successors knew how to deal with feudalism, as they knew how to deal with the church; but the problem of the palatinate bristled with the difficulties of both of these institutions. A turn of the screw was added by the distinct value of the bishopric as a buffer against Scotland. On the other hand, if the Bishop of Durham was a sovereign, he was an elective one, in whose choice the will of the king, exercised either independently or through pressure on the pope, was the determinant. Moreover, the interregna, during which this sovereign state was in the hands of the king, were frequent and sometimes long; and, further, as prelate and baron the Bishop was subordinate to the king. What wonder, then, that in the relations of the two there should have been constant discrepancies between theory and practice!

In time this perplexity disappeared, but the logical consequences of clearer vision were delayed by the disorders of the fifteenth century; and when, under the vigorous policy of the Tudors, the blow fell, the Bishops no longer had any care to avert it. Rash generalization must of course be avoided, but it may be said that at almost any time between 1066 and 1485 the Bishops of Durham desired to be as kings in their palatinate, and that during most of this period they in varying degrees approximated their ideal.

[1] Plac. de Quo War., 305.

CHAPTER III.

THE OFFICERS OF THE PALATINATE.

§ 9. Officers of State.

THE Bishops of Durham, of right and by custom, employed such officers as the kings of England regularly used, or ordinarily appointed, either to meet special emergencies or to carry out the provisions of an act of parliament.[1] This principle, expressed in the course of an important suit in parliament in 1434, was made authoritative by the judgment in favor of the Bishop which terminated the action. It furnishes a convenient point of departure in the shape of a general doctrine, leaving us to discover how early and to what extent the Bishops of Durham availed themselves of this privilege, what officers they made use of in the government of the province committed to their charge, and what functions were allotted to those officers. At the outset a distinction will be made between the officers of government and those of the household. The evidence that will come before us tends to show that in respect to the relations of these two classes the system of the palatinate was unique. It does not appear that the offices either of state or of the household were ever feudalized, or that those of the household had any governmental functions; at no time therefore were the two classes identical even in name, and there is none of that displacement of the feudal nobility by persons of humble birth dependent on the will of their lord which marks the history of feudal courts. Attention will first be given to the officers of state.

Up to the middle of the fifteenth century the steward (*senescallus*) was the most important administrative officer of the

[1] Rot. Parl., 11–12 Hen. VI, iv. 427 ff.

palatinate. The earliest notice of a palatine steward comes from the pontificate of Bishop Geoffrey (1133–1140), though there had doubtless been stewards of Durham long before that time. This officer had a double set of functions, comprising both economic and political duties derived from the essential nature of his office, which was that of representative or agent of the Bishop.

In his economic capacity the steward represented the Bishop as landlord at large of the palatinate, and may be compared on a magnified scale to the ordinary manorial steward. In the fourteenth and fifteenth centuries he managed all business connected with the amortization of land by the Bishop's licence;[1] he attended to the details of the farming of boroughs,[2] the renting of land,[3] and the leasing of mines.[4] Finally, by virtue of his office he held all manorial courts.[5]

In his political capacity he represented the Bishop as head of the civil government of the palatinate. His duties in this department are made clear in the commission of Sir Richard Marmaduke, who was steward of Durham and Sadberg in 1314. Marmaduke received custody of the royal liberty, "with full power of assembling the people of the aforesaid liberty for the security of the country, and compelling them to assemble, as often," runs the document, "as you shall see fit; of imposing and raising taxes; of coercing any persons who do not observe what has been ordained for the public welfare; of removing from the liberty those who are notoriously reputed dangerous to the peace; of commanding the inferior officers in whatever pertains to the aforesaid custody, and of exercising all other powers which the custodians of the liberty have been accustomed to exercise."[6] This authority amounted to a general superintendence of the palatine government, and the steward's duties are

[1] Scriptores Tres, App. No. lxxv.

[2] Roll of original indentures, Cursitor 147, Nos. 3, 6.

[3] Ibid., No. 4; Rot. Skirlaw, ann. 1, m. 1, and ann. 4, m. 7, curs. 33; Rot. i. Nevill, ann. 4, m. 14, curs. 42.

[4] Roll of original indentures, Cursitor 147, Nos. 1, 2.

[5] Rot. i. Nevill, ann. 1, m. 5, and ann. 4, m. 14, curs. 42; Rot. i. Booth, ann. 1, m. 2, curs. 48.

[6] Registrum, ii. 686; see also Ibid., iv. 384–385.

so stated in an appointment in 1388.[1] This officer was also a member of the council *ex officio*.[2]

The steward had, moreover, several judicial functions. He "craved court" for the Bishops from the king's justices as long as that practice continued,[3] and he occasionally levied distress.[4] During the thirteenth century he was sometimes associated with the palatine justices for the purpose of hearing cases.[5]

This office was never feudalized; we know that it was not hereditary, and that from the fourteenth century onward it was salaried. During the thirteenth century it seems to have been held chiefly by members of the lesser feudal nobility;[6] but in

[1] This officer received "gubernationem et regiminem de omnibus hominibus et tenentibus . . . infra episcopatum . . . tam tempore pacis quam guerrae:" Rot. Skirlaw, ann. 1, m. 1, curs. 33.

[2] Feodarium, 46, 76, 186; Registrum, iv. 349; Rot. ii. Wolsey, ann. 20 Hen. VIII, m. 2 dorse, curs. 73; Gneist, English Constitution, i. 149; below, p. 143 ff.

[3] Coram Rege 2 John, roll 23, m. 12 (Ebor.); Plac. de Quo War., 604; Pollock and Maitland, i. 570–571, 627; Maitland, Domesday Book and Beyond, 282.

[4] See Bishop Pudsey's foundation charter of the borough of Sunderland, in Surtees, Durham, i. 297.

[5] See below, § 18.

[6] Hutchinson gives a list of names, of which the earliest is Henricus (1129) and the next another Henricus (1180); of these nothing definite is known (Hutchinson, Durham, i. 157, 183, and cf. Feodarium, 141). Adam de Jeland held the office from 1217 until 1225 (Feodarium, 46, 188.; Finchale Chartulary, 56; Hutchinson, i. 199). He seems to have belonged to a good family, for in 1228 there is a Sir Nicholas de Jeland (Feodarium, 272, 295). John de Rumsey was steward in 1226 and for some time afterward (Ibid., 123, 149, 217; Hutchinson, i. 204). He is also described as "dominus J. de Rumsey." (Feodarium, 187, 197). Geoffrey de Leuknore, who held the office in 1242, was a lawyer, and incidentally one of the palatine justices (Ibid., 186; Rot. Matthew, m. 16 dorse, No. 33, curs. 92; Foss, Judges, iii. 118; below, § 18). From 1258 until 1260 John Gyleth of Eggescliffe was steward of Durham. He figures sometimes as John Gyleth and sometimes as John Eggescliffe, a circumstance which led Hutchinson to suppose that there were two persons holding the office successively; but the full name appears in 1260 (Feodarium, 180, 184; Hutchinson, i. 214). Guiscard de Charron, who was the steward of both Richard de Lisle and Anthony Bek, belonged to the greater nobility, and was also a palatine justice (Feodarium, 116, 185; Hutchinson, i. 227; Coldingham Chartulary, 2; Finchale Chartulary, 59; Plac. de Quo War., 604; Registrum, iii. 69, iv. 355).

the fourteenth century the tendency was to confer it either on one of the great tenants-in-chief or on a cleric. In the fifteenth century a distinct change is visible, in a reference for the first time to a chief or high steward (*capitalis senescallus*).[1] It is just possible that the title then became an honorary one, but more probably it did not. The office was ceasing to be particularly desirable, and was assimilating more and more to the character of agent or bailiff on a large scale. Separate stewards were appointed for the outlying districts of Hoveden, Norham, and Islandshire.[2]

The palatine steward can not be compared to the lord high steward of England, for the latter was a feudal dignitary whose title passed by inheritance and who "makes in his official capacity no great figure in English history." As general administrator and vicegerent of the Bishop he has points of resemblance to the English justiciar who took over the most important functions of the high steward.[3] There is however a closer analogy between the palatine steward and the *sénéchal* of a great French fief such as Normandy or Anjou, although the functions of the latter officer were somewhat more comprehensive than those of his English namesake. The *sénéchal* directed the department of justice, commanded the army, and exercised the high police functions of the fief, besides presiding over the lord's household. His office was at first hereditary, and there was very early a tendency to make it purely honorary; but in the south and west, under the influence of the Plantagenets, the feudal *sénéchal* was replaced in the governmental mechanism of the fief by an appointive and purely ministerial officer having the same title.[4]

The earliest notice of a sheriff of Durham refers to the pontificate of Bishop Ranulf Flambard, whose nephew, or son, Osbert held the office during most of the first half of the twelfth cen-

[1] Rot. i. Nevill, ann. 1, m. 5, curs. 42, A. D. 1438.

[2] Registrum, i. 19, ii. 771, 772, iii. 332; Rot. i. Hatfield, ann. 1, m. 1 dorse, curs. 30; Rot. Fordham, ann. 4, m. 7, curs. 32; Rot. Skirlaw, ann. 8, m. 15, curs. 33; Rot. DD. Langley, ann. 31, m. 16, curs. 37.

[3] Stubbs, i. 401–402; Gneist, English Constitution, i. 234.

[4] Luchaire, Manuel, 262, 266, 267.

tury;[1] but it is practically certain that at least from the Norman Conquest the Bishops of Durham had their own sheriffs. From a much earlier period they held a court which excluded the king's sheriff; and it is recorded in Domesday Book that neither the king nor the earl of Northumberland had any "custom" in the lands of S. Cuthbert in Yorkshire.[2] The county of Durham was not included in the survey, but it is impossible to suppose that the immediate patrimony of S. Cuthbert should have been less privileged than the lands held by him in another county. The Bishops must therefore have had some officer who discharged the duties of a sheriff, whether or no he bore the title. This practice, again, is not without parallel: Roger Montgomery, earl of Shropshire under William the Conqueror, had his own sheriff, and there is good reason to believe that Roger was earl palatine.[3] Except during voidance of the see no royal sheriff was appointed for Durham;[4] on the other hand, from the twelfth century onward there are regular notices of the Bishop's sheriff,[5] and in the fourteenth century the Bishop's commissions appointing this officer occur. Before studying the sheriff's functions in detail, it will be profitable to examine one of the earliest of these documents which have survived.

In 1344 Bishop Bury, by the advice of his council, appointed William de Blaykestone sheriff and escheator in the counties of

[1] Feodarium, lxiv, 112, 145, 152; Surtees, Durham, ii. 210; Reginaldus Dunelmensis, Libellus, 101–102, 205. Hutchinson, Durham, i. 152, says that Philip Fitz Hamo was sheriff of Durham under Flambard; but this is a mistake, for Philip held the office under Bishop Pudsey (see his charters tested by that Bishop, in Feodarium, 125, 126).

[2] Domesday Book, i. 298 b; and cf. Maitland, Domesday Book and Beyond, 97, 278–292.

[3] Ordericus Vitalis, Historia Ecclesiastica, ii. 414, and cf. 220; Stubbs, i. 294, 295; Eyton, Shropshire, i. 22, 70, 241–246. See also Third Report on the Dignity of a Peer, in Parl. Papers, 1826, vol. ix. 87.

[4] See List of Sheriffs, Record Office Lists and Indexes, No. ix.

[5] The names are given by Hutchinson in the first volume of his History of Durham, at the end of his account of each pontificate. They are fairly accurate, but they may be checked and the list somewhat lengthened by reference to the index of names in the Feodarium, and in the chartularies of Brinkburn, Guisbrough, Coldingham, and Finchale, published by the Surtees Society. See also List of Sheriffs, as above.

Durham and Sadberg, authorizing him to exercise this office, as in all past time had been customary, agreeably to the law and custom of the kingdom of England and the royal liberty of Durham. The appointee had to account to the Bishop for the issues of his office. Following this appointment a mandate known as a *de intendendis* was addressed to the counties of Durham and Sadberg at large, enjoining upon them obedience to the new sheriff. On taking office Blaykestone swore, according to the established formula, loyally to serve the Bishop and honestly to treat the people of his bailiwick; to deliver the gaols and execute the writs and precepts of the Bishop; to show favor to none, but to do right to all, rich and poor alike; to maintain the powers and privileges of the Bishop, and to consent to nothing by which they might be injured or diminished, but either to repress such attacks or report them to the Bishop or to some responsible member of his council.[1] This entire formula survived, with very little change, into the sixteenth century.

The duties of the sheriff, apart from his functions as escheator, group themselves under the heads of military, judicial, police, and financial affairs. For any period before the close of the thirteenth century it is impossible to say very much. The difficulty lies in the fact that our knowledge of the way in which a privileged district was fitted into the military economy of the kingdom is to a great degree conjectural.[2] If the bishopric contributed its share to the fyrd or to the later

[1] Registrum, iv. 345 ff.; the other documents follow immediately. The appointment of Adam de Bowes to be sheriff and escheator in 1312 is an earlier instance, but the document is curt and furnishes little or no information (Ibid., i. 222). For similar appointments see Rot. ii. Hatfield, ann. 35, m. 12, curs. 31; Rot. Fordham, ann. 5, m. 8 dorse, curs. 32; Rot. Skirlaw, ann. 4, m. 7, and ann. 13, m. 24, curs. 33; Rot. A. Langley, ann. 1, m. 1, curs. 34; Rot. B. Langley, ann. 11, m. 8, curs. 35; Rot. C. Langley, ann. 30, m. 11, curs. 36; Rot. DD. Langley, ann. 30, m. 15, curs. 37; Rot. i. Nevill, ann. 4, m. 16, curs. 42. In strong contrast with these is the appointment, by Bishop Pilkington in 1560, of Sir Robert Tempest to be sheriff and escheator of Durham; half of this verbose document consists in the acknowledgment of the complete and supreme rights of the queen over the bishopric and the Bishop. See Rot. ii. Pilkington, ann. 1, m. 1, curs. 82.

[2] See below, ch. viii.

national militia, the muster was no doubt managed by the sheriff. After the reorganization of the national force by Edward I, however, the part of the sheriff becomes clearer. It was his duty to effectuate the authority of the persons to whom commissions of array were addressed; a writ would be sent to the sheriff informing him that the Bishop had issued commissions to array the fencible men of every ward, and directing him to see that the people appear, armed and equipped in the manner required by the statute of Winchester. The commissioners were authorized to arrest refractory persons, and these the sheriff must imprison and guard pending the Bishop's pleasure.[1] During times of war the sheriff appears to have held the court of marshalsea, or at least to have managed the sessions whether he presided over the court or not. But this is a somewhat ambiguous function and is as much judicial as military.[2]

The sheriff managed the machinery of the palatine judiciary. He presided over the ordinary and great meetings of the county court, and summoned the men of the shire to meet the justices when a general eyre was held.[3] It had always been the practice for the sheriffs to deliver the gaols of the county, despatching this business in the county court. But in the fourteenth century it seems to have been felt that the sheriff was not authorized to perform this function, and the notion of the necessity of a special commission of gaol-delivery was widely diffused. Accordingly in 1344 Bishop Bury issued to his new sheriff a commission of association, reciting the ancient custom and giving it his sanction by creating the sheriff a justice of gaol-delivery, with the authority of both sheriff and justice.[4] This is the earliest instance that we have of the change from the old custom and probably

[1] Grose, Military Antiquities, i. 67; Stubbs, ii. 229, 301; Historical Documents relating to Scotland, ii. 181; Registrum, iv. 269–274. For further references see below, ch. viii.

[2] See below, § 24.

[3] Le Convenit, in Feodarium, 212; Rot. Hundred, i. 104 b, 129 b; Plac. de Quo War., 604; Registrum, i. 256–258, 560; Rot. Claus. 4 Edw. II, m. 11 dorse, in Registrum, iv. 78–80; sheriff's account, A.D. 1336, Auditor 1, No. 1; below, ch. v.

[4] Registrum, iv. 346–347.

marks its inception, for as late as 1316 the sheriff of Durham was delivering the gaols as of course.[1] The sheriff also had entire control of the system of inquisitions; where special commissions were issued for any purpose he was required to meet the justices at the appointed day and place and produce a panel;[2] and all releases from jury and assize duty were addressed to him.[3]

The sheriff also discharged certain police duties in the palatinate. He arrested and imprisoned criminals, and the whole machinery of extradition as between the neighboring counties and the franchise was in his hands.[4] He managed the business of the abjuration of the realm by those who had taken sanctuary in the cathedral.[5] When it became necessary to employ the temporal arm against excommunicated persons who proved contumacious, the chancellor issued a writ to the sheriff;[6] and this method is described as "the approved custom of the royal liberty."[7] In his own tourn the sheriff attended to the police business connected with frank-pledge and infractions of the assizes of bread, beer, measures, and the like.[8] All public announcements, such as grants of pardon, royal statutes and proclamations, and the like were made by the sheriff in the full county court.[9]

[1] Scriptores Tres, App. No. xcvi.

[2] See a number of interesting cases of this sort, the originals of which are preserved in a fourteenth century chancery file, Cursitor 154, Nos. 11–15, 20–25, 34–39, 40–41, 46–47, 73–77; cf. also Registrum, iii. 268–272.

[3] Registrum, i. 276; Scriptores Tres, App. No. cxvii; Rot. ii. Hatfield, ann. 36, m. 14 dorse, curs. 31; Rot. Fordham, ann. 3, m. 5 dorse, and ann. 6, m. 9, curs. 32.

[4] See below, and particularly Le Convenit, in Feodarium, 214–216, and Plac. de Quo War., 604. In the former document the word "vicecomes" does not occur; we read only of "ballivus." But at this time the terms were convertible, — "inquisitio . . . de prisis . . . omnium ballivorum domini regis, tam justitiarum quam vicecomitum," etc.: "Forma procedendi in Placitis Coronae Regis," cap. xxv (A. D. 1194), in Stubbs, Select Charters, 263.

[5] See below, § 33.

[6] Registrum, i. 454.

[7] Ibid., 312–313, and see 99, 166, 406, 589–590.

[8] See the Durham sheriffs' accounts noticed below, App. iii.

[9] For the proclamation of pardons see above, p. 70. Other proclamations will be found in Foedera, iii. pt. i. 2; Registrum, ii. 1137, iii. 346,

A large part of the Bishop's revenue passed through the hands of the sheriff, who by virtue of his office received all the profits of jurisdiction. In this way he seized the lands and goods of all felons and fugitives;[1] received the fines imposed by the judges or accruing for neglect of attendance at the county court; and took charge of waifs, estrays, deodands, and other miscellaneous sources of profit. For all these he accounted at the Bishop's exchequer.[2] His aid was also placed at the disposal of the collectors of taxes, and was probably indispensable to them, for without it they would have been unable to coerce those who refused to pay.[3]

The sheriff was also the Bishop's escheator, and in this capacity transacted all business arising out of the Bishop's feudal relations. He executed writs of *diem clausit extremum* and *ad quod dampnum*,[4] attended to all complaints arising from grants of wardship and marriage, and was the general representative of the Bishop as feudal lord.[5]

After the thirteenth century sub-sheriffs and sub-escheators appear.[6] The high sheriff, as he was called in other counties,

350, 371, 374, 416, 417, 421, iv. 308–309; Rot. i. Hatfield, ann. i, m. 1 dorse, curs. 30; Rot. Fordham, ann. 1, m. 1 dorse, curs. 32; Rot. C. Langley, ann. 30, m. 10, curs. 36; Rot. iii. Nevill, ann. 28 Hen. VI, m. 12, curs. 44; Rot. ii. Fox, ann. 5, m. 12, curs. 58; Rot. i. Wolsey, ann. 16, Hen. VIII, m. 18, curs. 72.

[1] Le Convenit, in Feodarium, 214; Registrum, ii. 1147–1148, iii. 357; exemplification of Sadberg assize roll, A. D. 1279, Rot. Matthew, m. 16 dorse, No. 33, curs. 92; Auditor 1, No. 2 (an episcopal warrant relieving the sheriff from certain charges in this respect).

[2] Sheriffs' accounts, A. D. 1336–1535, Auditor 1, Nos. 1, 2, 3, 40; Ecclesiastical Commissioners, ministers' accounts, 189696; and see below, § 24. In the course of the fifteenth century fines and amercements imposed in court were paid directly into the exchequer, without passing through the sheriff's hands.

[3] Registrum, iv. 231, 276–277; Rot. C. Langley, ann. 30, m. 10, curs. 36.

[4] Registrum, i. 256, iii. 416. See further examples in an original chancery file, Cursitor, 154, described below, App. iii.

[5] Sheriffs' accounts, A. D. 1336, 1410, Auditor 1, Nos. 1, 2. In the latter document the escheator's account is made out separately.

[6] It appears that in 1344, according to ancient custom, the sheriffs of Durham and Sadberg delivered the gaols of those counties at each county court held by them (Registrum, iv. 346); and although there is no reason

was a member of the Bishop's council and acted as general executive for that body, particularly in the matter of secret payments in the nature of bribes.[1] For the outlying district of Norham there was a separate sheriff; the holder of this office combined in his proper person all administrative and judicial functions. In the fifteenth century this post seems to have become hereditary.[2]

The earliest notice of the coroners of Durham occurs in 1279, but the existence of this case, and of another in 1293, points to the presence of palatine coroners at a much earlier date. In an inspeximus of part of the assize roll of Sadberg for the year 1279 this note appears, "isti fuerunt coronatores post ultimum iter scilicet,"[3] etc.; unfortunately the scribe did not think it worth while to preserve the names. The jury that was summoned in the *quo warranto* proceedings in 1293 reported as a long-established custom the fact that the Bishop had a coroner in every ward of Durham and one at Norham, Bedlington, and Sadberg respectively.[4]

In the kingdom the coroner was elected, but in the few manors which possessed such an officer he was appointed by the lord.[5] From the fourteenth century onward the palatine

to suppose that there were separate sheriffs for the two districts, the words seem to imply that the office was executed by different persons. In 1381 John de Elvet was pardoned for all offences committed by him when he was sub-sheriff and sub-escheator of Durham and Sadberg (Rot. ii. Hatfield, ann. 36, m. 14 dorse, curs. 31); and in 1385 there is a memorandum to the effect that William de Elmedene, chancellor of Durham, had delivered a certain writ to John de Hexham, under-sheriff of Durham and Sadberg (Rot. Fordham, ann. 3, m. 6, curs. 32). At the end of the fifteenth century we hear of a bailiff in each of the four wards of Durham, who may possibly have been the sheriff's deputy (see Liber Magnus Receptae, 1485–1494, fol. 168–172, 464–466, Ecclesiastical Commissioners, ministers' accounts, 220198).

[1] Sheriff's account, A. D. 1336, Auditor I, No. I.

[2] Registrum, iv. 287; Rot. Fordham, ann. 4, m. 7, curs. 32, and ann. 7, m. 10; Rot. Skirlaw, ann. 8, m. 15, curs. 33; Rot. DD. Langley, ann. 31, m. 16, curs. 37; and see Raine, North Durham, 45–49.

[3] Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

[4] Plac. de Quo War., 604.

[5] Gross, Select Coroners' Rolls (Selden Soc.), Introd. xx, xxii, xxix.

coroners were appointed by the Bishop;[1] and it is hardly likely that, if this practice had been suddenly taken up by the Bishop in the abridgment of his subject's right of election, such an act would not have been mentioned in the charter of liberties obtained by the people in 1301, particularly as this very document, which has nothing to say of the election or appointment of coroners, complains of their oppressions.[2] On assuming office the coroner took an oath before the chancellor in the exchequer to serve the Bishop loyally and to account for the issues of his office.[3] He was allowed to appoint deputies, whose oppressions became a source of complaint in 1301.[4] His fee was levied on the vills of the palatinate in the shape of sheaves of corn.[5]

The coroner performed a great variety of miscellaneous duties. Thus in 1279 a woman who had taken sanctuary at S. Hilda's in Hartlepool acknowledged herself a thief and abjured the realm before the coroner, and the sheriff was re-

[1] "Thomas Episcopus Dunelmensis commisit dilecto sibi Willelmo de Kirkeby officium coronatoris wardae Cestriæ; habendum cum omnibus ad officium illud spectantibus, ita quod de exitibus inde provenientibus eidem episcopo respondeat ad scaccarium suum Dunelm. percipiendo in officio illo feodum consuetum. In cujus rei, etc. quamdiu eidem episcopo placuerit duraturum; datum Dunelm. quarto die Decembris anno secundo." Rot. i. Hatfield, ann. 2, m. 2 dorse, curs. 30. Cf. the appointment of John Boner to be coroner of the Easington ward (Ibid.); and see Rot. Fordham, ann. 1, m. 1, curs. 32, and ann. 7, m. 10.

[2] Registrum, iii. 43–44, 64.

[3] Rot. E. Langley, ann. 17, m. 8 dorse, curs. 38; and cf. Rot. B. Langley, ann. 10, m. 7, curs. 35.

[4] See the appointment of John de Billy to be coroner of the Darlington ward for life, with leave to fill the office by deputy because in his own person he can not work (Rot. Fordham, ann. 1, m. 1, curs. 32). Cf. Registrum, iii. 43–44: "Et que nul suthbaillive de coronere soit a chivalle, fors les quater chiefs corouners, si cum font en temps ses predecessours."

[5] "It is ordered and decreed by Robert Hyndin, clerke, chauncelor of the countie palantyne of Durhaum, that the tenants and inhabitaunts of Whitharne . . . yearly from hensforthe, pay the croner, or his deputie there for the tymé beying, his corne in shayfe, accordingly as it haithe ben accustomed in tymes past; unless that they cane otherwise agre withe the said coroner": Rot. i. Tunstall, ann. 2 Edw. IV, m. 39, curs. 77. See Gross, Select Coroners' Rolls, Introd. xxi, note 4.

sponsible for her chattels.[1] The details of this procedure appear from an interesting case in the year 1497.[2] Again, in 1301, after the death of the prior Richard Hoton, Bishop Bek sent five or six clerical persons to seize the temporalities of the priorate, and among these was J. Breton, his coroner.[3] The coroners had taken an active part in the various acts of oppression which Bishop Bek committed on the prior and convent, and one of them, in answer to charges brought against him, set up the defence that the alleged act was done by virtue of his office of coroner of the Bishop, in token of which he carried a rod in his hand at the time of the act.[4] The earliest coroner's account which has survived (1466) shows principally a list of rents and issues of lands, which for one reason or another — for escheat, nonage, or the like — were in the hands of the Bishop; but this list is made up only of incidentals; the details of the more regular issues of his office had been noted separately.[5] A case which occurred in the year 1344 is an excellent example of the more regular functions of the coroner. Reginald de Bradbery, in the course of a quarrel with his daughter Emma, struck her in the head with a stick shod with iron. Some months later, as a result of the wound thus inflicted, Emma died. Bradbery and the three adjoining vills guarded the body until the coroner appeared and undertook the management of the affair. An inquest was then taken and the four vills reported that the killing was accidental, whereupon the Bishop issued his pardon to Reginald.[6]

It is extremely difficult to speak definitely about the constable of Durham, on account of the confused way in which the term "constable" was used. In the first place, it is not clear that

[1] Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

[2] Sanctuarium Dunelmense (Surtees Soc.), lxx, 30–31; cf. below, § 33.

[3] Graystanes, cap. xxix, in Scriptores Tres, 86.

[4] Registrum, iv. 21, and cf. 33, 35, 48, 53, 54, 63, 64.

[5] Ecclesiastical Commissioners, ministers' accounts, 189697. The coroner noted the issues of his office "in quodam quaterno papiri de recepta sua in cancellaria Dunelm." This practice appears more fully in the account for 1530, where the sums alone are named (Auditor 5, No. 149).

[6] Registrum, iii. 370; cf. Ibid., ii. 1257–1258.

there was any distinction between this constable and the constable of Durham castle. In the second place, when the office comes into greater prominence, it is, with very few exceptions, held in combination with the chancellorship or receiver-generalship, and sometimes with both. In regard to the first point it is probable that the larger application of the term grew out of the smaller. In the French fief, as in the English kingdom, this office was hereditary and of little significance in the scheme of government;[1] and this was probably the case in the palatinate for some time after the Conquest. During the pontificate of Bishop William I the castle of Durham becomes an object of great importance; indeed, the surrender of this fortress was the condition made by the king for the reinstatement of the Bishop after his association with the conspiracy of 1088.[2] But to all appearances the office of constable of the castle was at this time hereditary in the baronial family of Conyers. Hutchinson and Surtees, relying on the manuscript collections of certain Durham antiquaries of the last century, state that this office was conferred on Roger Conyers and his heirs by a charter of Bishop William I.[3] This document no longer exists, but there seems to be little or no reason for rejecting the story. The family of Conyers figured prominently in the affairs of the palatinate, and several successive generations of these powerful barons bore the name of Roger. The second Roger, moreover, who, according to our authorities, inherited from his father the office of constable of the castle, was a member of Bishop Ranulf Flambard's council.[4] It was a Roger Conyers also to whom, after the disturbances of Cumin's intrusion, the castle of Durham was eventually surrendered.[5] After the rebellion of 1174, Bishop Pudsey, who had been concerned in the rising, forfeited to the king several castles, and among them that of Durham. Henry II then appointed Roger Conyers constable of the castle on behalf of the crown rather than on behalf of the

[1] Stubbs, i. 401; Luchaire, Manuel, 260–263.

[2] See the tract, "De injusta vexatione," etc., in Symeon, i. 171; cf. Stubbs, i. 476–477.

[3] Hutchinson, Durham, i. 132; Surtees, Durham, iii. 244.

[4] Finchale Chartulary, 20; Scriptores Tres, App. No. xx; Feodarium, 145.

[5] Symeon, i. 143–161; above, p. 63.

Bishop.[1] This points to the conclusion that the office was still feudalized, and may be construed as a recognition by the king that the Conyers family had a claim to the fief of the constableship, from whomsoever it was held. By the middle of the thirteenth century the character of the office had changed. From this time the constable is an administrative officer appointed by the Bishop.[2]

The constable of England had military and financial functions. The former, in time of war, involved a certain special jurisdiction which he shared with the marshal; the latter were executed by a deputy, who in course of time became an independent officer under the title of constable of the exchequer.[3] No such complicated character as this can be assigned to the palatine constable. He had, it is true, certain military functions, as shown by the fact that in 1400 he with several other persons was commissioned to manage the clerical array of the diocese;[4] but he seems altogether to have lacked the special jurisdiction of the royal officer.[5] The palatine constable had many duties in the exchequer; but, as the office was usually held simultaneously with that of receiver-general or chancellor, it is very difficult to decide in what capacity he was acting in these fiscal matters. In the fifteenth century, however, there is a little light on this point. In 1415 John Brytley, sometime coroner in the Chester ward, made recognizance with the Bishop that within a given time he should discharge all arrears outstanding for the time he held office, or else furnish sufficient security for such payment to the constable of the Bishop in the castle of Durham.[6] Again, in 1420 the Bishop commissioned William Thorneburgh to collect and receive throughout the bishopric such moneys, rents,

[1] Benedictus Abbas, i. 161; Leland, Collectanea (ed. Hearne), i. 134; Jerningham, Norham Castle, 100.

[2] Graystanes, cap. vi, in Scriptores Tres, 43, and cap. xii, Ibid., 53; Rot. Parl., 21 Edw. I, i. 102–105; Registrum, i. 116.

[3] Madox, Exchequer, i. 39, ii. 281; Coke, Fourth Institute, cap. xvii, 123; Grose, Military Antiquities, i. 182 ff.; Stubbs, i. 402.

[4] In the absence of the Bishop this commission was addressed by his vicar-general to the prior, the official, the constable of Durham, and others. See Scriptores Tres, App. No. clxi (the commission), No. clxii (the array).

[5] Cf. below § 24.

[6] Rot. B. Langley, ann. 10, m. 7, curs. 35.

ferms, commodities, and pensions of the Bishop as, during the first twelve years of his pontificate, his constable of Durham was accustomed to answer for in his account at the exchequer.[1] Meagre as this information is, it still shows that the constable had an independent existence as a fiscal officer.

As constable of the castle he was assisted by deputies, or castellans, and with them he seems to have had certain local police-functions connected with the government of the castle. The castellans aided the constable in the arrest of the archbishop's commissioners, and in 1312 they were poaching on a private fishery in the Wear by virtue of their office.[2] The latter circumstance may perhaps be connected with the constable's duty of keeping the castle provisioned. This idea is also suggested by a recognizance made in 1443 between the constable of the castle and a butcher, under condition that the latter should render annually seven quarters of mutton so long as he plied his trade at Durham.[3]

The only other important castle of the palatinate was Norham, built by Ranulf Flambard in the beginning of the twelfth century.[4] The constable of Norham usually executed the functions of all the other officers of state, and the office showed a distinct tendency to remain in one family for long periods. For the rest, this whole matter has a history of its own, which is military rather than constitutional, and need not therefore be noticed here.[5]

The earliest mention of a receiver-general of Durham is on Bishop Bek's receipt roll for the year 1307, the earliest document of the kind that survives.[6] Peter de Thoresby, who held

[1] Rot. B. Langley, ann. 14, m. 18, curs. 35.

[2] Registrum, ii. 1188–1189.

[3] Rot. v. Nevill, ann. 5, m. 8 dorse, curs. 46. For some minor details with respect to the fee of the constable (43*l.* 6*s.* 8*d.*) and to his great hall and lodging in the castle, see a survey of the Easington ward, A. D. 1388, Ecclesiastical Commissioners, ministers' accounts, 220195; receiver-generals' account, A. D. 1461; Ibid., 189816.

[4] Raby and Barnard castles did not belong to the Bishop.

[5] See Jerningham, Norham Castle; Raine, North Durham, 45–49; and cf. Rot. Hatfield, ann. 1, m. 1 dorse, curs. 30; Rot. Fordham, ann. 4, m. 7, curs. 32; Rot. DD. Langley, ann. 31, m. 16 dorse, curs. 37.

[6] The roll is printed in Boldon Book, App. xxv–xxxix; the original is in the Public Record Office.

the office at that time, also served the Bishop as councillor and justice itinerant.[1]

Since the palatine exchequer was already organized in the second half of the twelfth century,[2] the office of receiver-general must have existed under some name or other since that time. The receiver-generals' accounts which have survived comprise practically all the receipts and all the expenditures of the palatinate, and thus correspond to the pells of receipt and issue of the kingdom, for which the treasurer was responsible. The receiver-general, then, answered to the treasurer, but the palatine machinery never underwent the changes which in the kingdom left the treasurer one of the most important officers of the crown and absolute head of the financial business of the exchequer.[3] This circumstance will in large measure account for the fact that the offices of receiver-general and chancellor were very frequently held by the same person. The palatine exchequer was never disengaged from the chancery; and though in theory it was made up of officers corresponding in names and duties to those of the royal exchequer, we must conceive of a far smaller number of persons surrounding the board in Durham Castle than sat at that in Westminster.

It has been said that the receiver-general took all the revenues of the palatinate and managed the greater part of the expenditures. This fact will appear more clearly when the construction of the receivers' accounts is examined in more or less detail in a later chapter.[4] Payments were for the most part made against the Bishop's warrant,[5] but a good deal seems to have been trusted to the receiver's discretion. Thus the expenses of carrying on a lawsuit in parliament were paid in 1307 by the receiver at the direction of the chief justice of the palatinate; and similar payments were made for a good deal of sending to and fro on the Bishop's business.[6] In the same year

[1] Feodarium, 183, 185, 200; Registrum, iv. 100–101; Graystanes, cap. xix, in Scriptores Tres, 65.

[2] See below, § 36.

[3] See Stubbs, i. 400, 428, ii. 299 ff.

[4] Below, ch. vii.

[5] See, for example, Registrum, i. 468, 480, 520, 589.

[6] Receipt roll of 1307, Boldon Book, App. xxxv–xxxvi.

the receiver paid to various Italian merchants interest on the Bishop's loans to the amount of upwards of four thousand pounds.[1] In the fourteenth and fifteenth centuries the office was frequently held by a cleric, who was also chancellor or constable and sometimes both.[2]

In the kingdom the chamberlains had certain minor functions at the exchequer, where two of them regularly sat as auditors or accountants.[3] There were several chamberlains, among whom the primacy fell to the *camerarius regis*, or *magister camerarius*, a dignity which in the twelfth century was hereditary.[4] Their duties were of a double nature; they "performed some Acts of their Office in the King's Court and Houshold and other Acts at his Exchequer."[5] There is not much material in illustration of the office in the palatinate, but there is enough to permit the conclusion that in essentials the royal and the episcopal officers corresponded to each other. Thus we are able to distinguish one superior chamberlain,[6] called *magnus camerarius* in the fifteenth century,[7] and to see the chamberlain concerned in the business of the exchequer.[8]

The chancellor, both in England and in Normandy, stands

[1] Ibid., xxxiv; cf. Registrum, iv. 405–407.

[2] Registrum, i. 116, 468, iii. 358–359; Rot. Skirlaw, ann. 15, m. 9 dorse, curs. 33; Scriptores Tres, App. No. clxi; Ecclesiastical Commissioners, ministers' accounts, 189816, 221160; Auditor 1, No. 3; Scriptores Tres, App. No. clxxxii. These references are arranged chronologically, covering the period between 1312 and 1461.

[3] Stubbs, i. 382, 409.

[4] Madox, Exchequer, i. 55–59.

[5] Ibid., 59.

[6] Simon Camerarius seems to have been Bishop Pudsey's chief chamberlain. See Feodarium, 101, 103, 113, 124, 125, 132, 133, 134, 140, 141, 142, 159, 173, 182; Attestaciones Testium, in Feodarium, 249–250, 271; Boldon Book, App. xliv; Scriptores Tres, App. No. xlv. The earliest mention of the office is in a charter of Bishop Flambard, Feodarium, 145.

[7] Rot. iii. Nevill, ann. 11, m. 1, curs. 44, and cf. ann. 13, m. 13.

[8] Registrum, ii. 699. An original indenture recording a payment made to the chamberlain is in Ecclesiastical Commissioners, ministers' accounts, 221160. Peter del Hay, the chamberlain in question, took an active part in the government of the province (see Scriptores Tres, App. Nos. clxx, clxxix). For a similar case, see Norham sheriff's account, A.D. 1423, Auditor 1, No. 3, and cf. Scriptores Tres, App. No. ccxi.

alone among the other great officers, being distinguished by two striking characteristics: he was practically always in holy orders, and his office was never feudalized.[1] With the chancellor we closely associate the custody of his master's official seal. From the moment, therefore, that the possession of such a seal may be ascribed to the Bishops of Durham, we may date the existence of some officer answering to a chancellor.[2] That moment is the pontificate of Bishop Ranulf Flambard.[3] The title of chancellor, however, does not appear until much later, but no satisfactory explanation of this fact can be offered. It is strange, indeed, that Bishop Pudsey, who apparently made a conscious effort to develop the palatine system on the plan of that of the kingdom,[4] who had a seal and issued writs and charters, and who appointed sheriffs and other administrative officers, should not have had a chancellor. It is likely, however, that if a palatine chancellor so called had existed in Pudsey's time, his name would be found among the witnesses of the Bishop's charters, but we search there in vain; a good deal is said of *capellani*,[5] but nothing of a *cancellarius*. Hutchinson has a story to account for this circumstance; he says that Bishop William I ordained that from his time forth the prior of Durham should *ex officio* be archdeacon and temporal chancellor of the diocese, and that, with the exception of Ranulf Flambard, succeeding Bishops adhered to this rule.[6] No authority is given for this statement, and it is difficult to understand how it could have originated. Turgot, the first prior, was, it is true, invested

[1] Stubbs, i. 398 ff.; Luchaire, Manuel, 260–261.

[2] We are dealing, of course, with the temporal chancellor. The office of chancellor of a cathedral was unknown in England until some time after the Conquest. See Stubbs, i. 398, note.

[3] Surtees, Durham, i. p. xv, gives engravings of a number of early palatine seals. Such of those of Bishop William I as have survived are not genuine, and there are none earlier. See Canon Greenwell's remarks on this subject in the preface of the Feodarium; see also Finchale Chartulary, 20.

[4] This point is treated below, p. 163 ff.

[5] Feodarium, lxxxvi, 10, 100, 106, 108, 134, 140–142, 177, 182, 198, 206; Boldon Book, App. xlii–xlv.

[6] Hutchinson, Durham, i. 143.

with archidiaconal jurisdiction in the diocese,[1] but even this privilege gave rise in later times to constant and bitter disputes.[2] The story must be rejected and the question left in obscurity.

At the beginning of the thirteenth century there are indications that some one clerk of the chancery was assuming pre-eminence among his fellows ;[3] but it is not until 1242, when the well-known Walter de Merton was chancellor of Durham, that the office comes prominently into view.[4] Scattered notices of various chancellors, mostly as witnesses of charters, occur down to the fourteenth century without throwing much light on the nature of the office.[5]

The earliest surviving commission of appointment for a palatine chancellor bears date 1341, but it contains nothing beyond the curt announcement that the Bishop has appointed Robert de Calne to the offices of chancellor, receiver-general, and constable of the castle.[6] A like document from the year 1476 is a little fuller : John Keyling is appointed chancellor, with custody of the great seal during the Bishop's pleasure, and full authority to seal and issue writs and other instruments.[7] During vacan-

[1] Symeon, i. 129.

[2] See Graystanes, *passim*, but especially cap. xl, in Scriptores Tres, 103.

[3] See a charter in Hutchinson, Durham, i. 199, and Hutchinson's note in regard to Valentinus and Simon de Ferlington; cf. also Feodarium, 217, 299–300.

[4] Rot. Matthew, m. 16 dorse, No. 33, curs. 92; Feodarium, 186; below, § 18.

[5] Ricardus le Chanceler was chancellor and steward of Bishop Stichill (Feodarium, 45, 171, 183). Robert de Cave and Robert Avenel were later chancellors for the same Bishop: see charters in Hutchinson, Durham, i. 219, 222; Feodarium, 185; Graystanes, cap. xviii, in Scriptores Tres, 63; and cf. Ibid., App. Nos. lxxi, cvii. On the death of a Bishop it was customary for the chancellor to break his seals and offer them at S. Cuthbert's shrine. Hutchinson gives, as Bishop Bek's chancellors, William de Greenfield, Peter de Thoresby, Roger de Waltham, and Henry de Gildeford (Durham, i. 256). But Greenfield was chancellor of the kingdom, not of the palatinate (Rot. Parl., 33 Edw. I, i. 167a; Foss, Judges, iii. 96). On the other names see Feodarium, 183, 185; Registrum, iii. 69, iv. 100–102; Boldon Book, App. xxxviii; below, § 18.

[6] Registrum, iii. 358–359.

[7] Rot. i. Dudley, ann. i, m. 1, curs. 54; cf. Scriptores Tres, App. No. ccxii.

cies of the see, the king appointed a chancellor for the palatinate, who made use of a special seal preserved at other times at the royal exchequer.[1]

Turning now to the functions of the chancellor, we shall recall at once the fine phrase of Dr. Stubbs, to the effect that the chancellor was secretary of state for all departments.[2] In that capacity the office in the palatinate must now be considered, for, although with the rapid development of central institutions in the kingdom these words soon cease to be true of the royal chancellor, they apply to the palatine officer throughout the independent history of the county.

As secretary, the chancellor was the mainspring of all governmental acts. In the department of justice he set in motion all processes by issuing writs.[3] In the policing of the county, he authorized the arrest and punishment of persons dangerous to the peace, and was the medium through which the force of the temporal arm was placed at the disposal of the church. To this end the chancellor, at the instance of the Bishop in his spiritual capacity, caused the arrest and imprisonment of persons who proved contumacious under excommunication.[4] Similar steps were taken to support the authority of the spiritual courts in cases relating to matrimony and testament,[5] and even, at the complaint of a parish priest, to cause the arrest of certain persons "propter manifestas offensas."[6] Again, if the Bishop had granted a pardon, he sent a precept under his privy seal directing the chancellor to issue a *carta pacis* under the great seal.[7] The chancellor was also occasionally associated with the other justices, under special commission to take cognizance of some particular breach of the peace or like misdemeanor,[8] and he also

[1] Registrum, iv. 96–97, 176.

[2] Stubbs, i. 399.

[3] On this point see the discussion with regard to the Bishop's writ, *temp.* Henry II and John, in Geoffrey Fitz Geoffrey's case, below, App. i.; cf. also a tariff of writs *de cursu*, Rot. B. Langley, ann. 1, m. 1, curs. 35, and a fourteenth-century chancery file, Cursitor 154.

[4] Registrum, i. 99, 165, 262, 359, 486.

[5] Ibid., 312, 407, 551.

[6] Ibid., ii. 680.

[7] See several of these privy seals in a bundle of miscellaneous papers numbered Cursitor 211, especially Nos. 2 and 3, *temp.* Langley.

[8] Registrum, iv. 300, 310.

received the recognizances of those who were bound over to keep the peace.[1]

On the administrative side, beyond his duties as a member of the council, the chancellor issued all patents for appointment to office;[2] and, when in 1513 the Scots had been excluded from the palatinate, the chancellor managed the disposition of their property.[3] In like manner, in the sixteenth century, he is found adjusting the relations of the coroner and the tenants of one of the Bishop's vills.[4] A vast deal of administrative business, private as well as public, devolved on him by the persistence in the bishopric of the use of recognizances in chancery, a system which gave way but slowly before the more convenient forms of contract by statute merchant or statute staple.[5]

The chancellor so frequently held at the same time some fiscal office, such as constable or receiver-general, that it is difficult to distinguish the financial duties that devolved upon him as chancellor proper. In 1349 Bishop Hatfield included his chancellor in the commission for raising and collecting the four hundred pounds which the "community" of the palatinate had agreed to pay the king for immunity from a threatened eyre.[6] In the late fifteenth and early sixteenth centuries, when the Bishops were much away from their diocese, the chancellor appears to have taken over to a great degree the management of the palatine revenue. In 1502 Bishop Senhouse writes to his chancellor

[1] See below, § 21.

[2] See the original privy seal of Bishop Hatfield, directing letters patent appointing a chief forester of Weardale to be issued under the great seal, which was then in the hands of the constable (Cursitor 145).

[3] Rot. i. Ruthall, ann. 5, m. 12, curs. 70.

[4] Rot. i. Tunstall, ann. 2, Edw. VI, m. 39, curs. 77.

[5] See Pollock and Maitland, ii. 202. Newcastle was brought under the statute of merchants in 1311, but apparently the first instance in the palatinate of proceedings on a contract under the statute is in 1385, a case elsewhere considered (below, p. 250. See also Statutes, i. 165; Ashley, Economic History, i. 205; Rot. Fordham, ann. 3, m. 4, curs. 32). Most of the entries on the palatine chancery rolls consist of recognizances of one sort or another, public and private, the nature of which is sufficiently indicated in the excellent calendars published in the appendices to the Deputy-Keepers' Reports, Nos. xxxi–xli.

[6] Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30.

acknowledging the receipt of more than four hundred pounds, and adding: "We thynk this receyt is verrey lytyll for the Wytsonday fermes. . . . My mynde is nut to trobyll yow, bot I myselff shall trobyll theym that dewth nut their dewtes by me." Finally the Bishop asks for seven bucks from his various parks, one of which is to be presented to the prior, "and than yourselff and John Rakett to have on in lyk wyse to make you mery."[1] This general administration of the chancellor is forcibly illustrated in several letters of William Frankleyne, chancellor of the palatinate during the pontificates of Ruthall and Wolsey, the former of whom very rarely visited his diocese, and the latter never.[2]

During the vacancies of the chancellorship it seems to have been customary to commit the great seal to the constable. This at least is the most cautious reading of three perplexing documents. In 1375 the Bishop's mandate under his privy seal, addressed to William Chancellor, constable of Durham, directed the latter to issue letters patent under the great seal for the appointment of Sir Thomas Lumley to the office of chief forester of the Weardale.[3] In 1416 Bishop Langley wrote to the subprior and convent of Durham, giving them leave to elect a new prior and announcing that he had directed the constable to issue the necessary licence under the great seal.[4] In 1431 the same Bishop wrote to William Chancellor, the constable, requiring him to issue a licence for the fortification of a manor house "under our seal, in your custody, but without taking the fee of the great seal."[5] The name William Chancellor in the first and last cases is suggestive, although of course it is not to be supposed that a man who held the chancellorship in 1375 should continue to do so in 1431. Still, the name fairly suggests the office; and, further, it is known that in 1422 a

[1] Scriptores Tres, App. No. cccxii.

[2] Calendar of Letters and Papers, Henry VIII, iii. pt. ii. Nos. 2531, 2946, 3518; Chambre, cap. xiv, in Scriptores Tres, 151; Surtees, Durham, i. lxv–lxvi.

[3] Cursitor 145.

[4] Scriptores Tres, App. No. clxxx. This letter is dated at Calais.

[5] "Sub sigillo nostro in custodia vestra existente absque fine et feodo magni sigilli nostri ad opus nostrum inde capiendo:" Cursitor 211, No. 8.

William Chancellor (or Chanceller) was chancellor of Durham.[1] But even if this hypothesis of a reduplication of offices in one individual be admitted, how can the fact be accounted for that a man who was both constable and chancellor was required to perform, as constable, functions which pertained to the office of chancellor? As to the case from 1431, it might possibly be answered that the object was to avoid the expenses of the great seal; but that might have been done by the Bishop's warrant, and the other two cases would still remain unaccounted for.[2] The only plausible explanation, then, is that during the temporary vacancy of the chancellorship the great seal was in the custody of the constable.

§ 10. Officers of the Household.

We pass now from the officers of state to those more immediate attendants who formed the Bishop's *familia* or court. The great officers whose duties have been considered were in their capacity as councillors no doubt in constant attendance upon the Bishop. Those who will now claim attention had no state functions, but performed duties of a purely ceremonial and domestic nature. Durham was always, and still is, one of the richest sees in England, and from an early time the Bishops kept great state, conceiving perhaps that their temporal dignity justified or required a more lavish display than that made by other English prelates. Anthony Bek carried this practice to an extravagant point, and, accompanied with his retinue of an

[1] See the mandate to William Chanceller, chancellor of Durham, to issue letters patent under the great seal in confirmation of the Bishop's lease of certain of his lands, Ibid. No. 7.

[2] Still the difficulty in this case is increased by the fact that William Chanceller may possibly have been the Bishop's spiritual chancellor in 1434. In that year a monk of Durham cleared himself of a charge of incontinence by compurgation. The record of this transaction notes the presence of "Willelmus Chanceller domini Dunelmensis Episcopi cancellarius;" but the next name on the list is that of the official of the Bishop. Nearly all the witnesses were clerics, and, inasmuch as the cause was purely ecclesiastical, it is possible that William may have been spiritual chancellor. See Scriptores Tres, App. No. ccx.

hundred and forty knights, impressed the medieval mind as a temporal prince rather than as a cleric or bishop.[1]

Bek's successor, Richard Kellaw, appears to have continued this practice on a more moderate scale,[2] though this prelate's will affords none of that information which is furnished by the testaments of his successors.[3] Bishop Hatfield, for example, left one hundred and twenty marks for the expenses of the members of his household, who were to be entertained for one month after the funeral, at the late Bishop's cost.[4] This seems to have been a recognized custom, for similar provision for the entertainment of their household was made by Bishops Skirlaw and Langley.[5] In the fifteenth century all the bishops of England, "so far as influence and expenditure were concerned, maintained the state of earls" and kept their court with an array of servants, councillors, and chaplains.[6] In Durham, however, an organization of this sort seems to have been developed at least as early as the middle of the fourteenth century. Bishop Hatfield had a treasurer and chancellor of his household,[7] and Bishop Skirlaw's court consisted of a somewhat formidable collection of "officiarii, familiares, servitores et ministri."[8] The latter prelate also left a proportional legacy to every *scutifer familiarius, valletus familiarius vocatus grome*, and *pagettus*

[1] "Erat autem iste Antonius magnanimus; post Regem nulli in regno in apparatu, gestu et potentia militari secundus; magis negotia regni quam circa episcopalia occupatus; in guerra Regi potenter assistens, et in consiliis providus. Aliquando in guerra Scotiae habuit de familia xxvi vexillarios, et communiter de sua secta centum quadraginta milites; ita ut magis crederetur princeps laicus quam sacerdos vel Episcopus. Et, quamvis gauderet sic militum constipari agmine, erga tamen eos sic se habuit, quasi de eis non curasset; comites et barones regni majores sibi genuflectere, et eo sedente milites quasi servientes diutissime coram eo astare parvipendens:" Graystanes, cap. xviii, in Scriptores Tres, 64. Cf. Ibid., 78, 80.

[2] Ibid., 94.

[3] Bishop Kellaw's very brief will is printed in Testamenta Eboracensia (Surtees Soc.), i. 1.

[4] Ibid., 121.

[5] Ibid., 316; Scriptores Tres, App. No. ccxi.

[6] Stubbs, iii. 581–582, 584, 586.

[7] Testamenta Eboracensia, i. 122.

[8] Ibid., 316.

of his household, and also to every chaplain of his private chapel;[1] and his example was followed by Bishop Langley.[2] The household of an earl in the fifteenth century averaged one hundred and thirty persons,[3] and that of the Bishop of Durham was probably even larger.

It is pretty clear, then, that even in the fourteenth century the Bishop's household was of considerable size and had already received some definite organization. There is unfortunately no document, like the "Constitutio domus regis," in which the details of that organization are revealed, and we are driven accordingly to depend on such meagre notices of the various officers of the household as are vouchsafed to us in the available documents. From what we have already learned of the office of chamberlain, we may conclude that he was in close personal attendance on the Bishop and managed a large part of his private expenditure.[4] In the twelfth century we hear something of a marshal; "Gerardus marescallus noster" figures in one of Bishop Pudsey's charters,[5] and in the same fashion we hear of Henry, Alexander, and Peter, all of whom held this office.[6] About 1261 a certain William seems to have been marshal,[7] and Henry le Mareschal, who occurs in 1311, was probably so designated from his office and not as by an ordinary surname.[8] Adam Tirwhit was the "marescallus hospicii" of Bishop Skirlaw.[9] In

[1] Testamenta Eboracensia, i. 309–310.

[2] Scriptores Tres, App. No. ccxii. The valleti were not of course domestic servants. In 1351 Bishop Hatfield issued a charter to Henry de Shenefeld, "dilectus vallettus noster;" but in the same year we hear of John Vesty, "vallettus de coquina." See Rot. i. Hatfield, ann. 6, m. 1 dorse, curs. 30; cf. Stubbs, iii. 574–575.

[3] Stubbs, iii. 581.

[4] See above, p. 93. Robert de Camera witnessed two of the codicils of Bishop Skirlaw's will. See Testamenta Eboracensia, i. 313, 316.

[5] Feodarium, 198.

[6] Ibid., 22, 31; Boldon Book, App. xlii.

[7] Feodarium, 197. For a dated charter having many of the same witnesses as this one, see Ibid., 49.

[8] Registrum, i. 41. When "marshal" was used as a surname, the article was generally omitted. There was a medieval family using the name in this way at Wolston in Durham See Ibid., iii. 130, 165; Feodarium, 80.

[9] Testamenta Eboracensia, i. 314.

1449 Bishop Nevill appointed R. Bullok to be "magister equorum episcopi" for the term of his life, at an annual salary of five marks;[1] it is not improbable that this was a revival of the older office of marshal under a more impressive title. The marshal, as his name implies, had command of the stable;[2] and in the palatinate this duty, which probably included the superintendence of the Bishop's cavalry escort, seems to have been his only function, for the court of marshalsea was held by the sheriff.[3]

An officer more strictly of the household than the marshal was the dapifer or sewer. In the king's household this office, pushed into the background by the development of the justiciar, became an hereditary grand-serjeanty.[4] In the palatinate the history of the dapifer is obscure, but it seems clear that, although the title undergoes several changes, it is always distinguished from that of the purely ministerial steward. The earliest mention of the dapifer is connected with the effort of William Cumin to usurp the see of Durham; the intruder was able to corrupt Hugh Pynton, dapifer of the Bishop, and induce him to take part in a plot against his master.[5] Edmund the dapifer and Walter the dapifer witness charters of Bishop Pudsey,[6] but after this the term does not occur. It is recorded, however, that Bishop Kellaw made one of the monks of Durham his steward with oversight of all his expenses,[7] and it is probable that this officer should be conceived of rather as the *senescallus hospicii* — a term which also occurs — than as the *senescallus regiae libertatis*.[8] This Bishop's household had on great occasions, such as the time of his consecration and the

[1] Rot. iii. Nevill, ann. 11, m. 1, curs. 44.

[2] Stubbs, i. 401. [3] See below, § 24. [4] Stubbs, i. 401.

[5] Symeon, i. 156. Possibly Hugo, "filius Pyncun," who witnesses charters of Bishop William II, may be identified with this man, for in many documents "c" and "t" are practically indistinguishable. See Feodarium, xiv, lxv.

[6] Feodarium, 106, 127, 133, 142, 157, 173.

[7] Graystanes, cap. xxxv, in Scriptores Tres, 94.

[8] It is known that this office was held by a layman, Sir Richard Marmaduke, and that the functions ascribed to the monk were performed later by the house-steward. See above, p. 78.

celebration of Christmas, the adornment of an honorary high steward, who set the dishes before the Bishop. But this office was a grand-serjeanty by which certain lands were held of the Bishop in Lincolnshire, and has therefore no organic connection with the matter in hand.[1]

In 1456 we meet with the case of Robert Kelsey, late *senescallus hospicii* of the Bishop; this will come before us again in another connection.[2] Kelsey at the expiration of his term of office was found to owe a considerable sum to certain victuallers and money-lenders for provisions furnished for the Bishop's use and money borrowed for his necessities. He was accordingly authorized by the council to raise the necessary money on the Bishop's possessions throughout the palatinate.[3] In 1472 the receiver-general accounts for sums of money paid to Thomas, *hospicius* of the Bishop, for the purchase of corn, beer, and other victuals,[4] and a similar entry occurs in the account of 1492.[5] From the twelfth century onward, then, the Bishops kept a kind of *maître-d'hotel*, who under the titles of dapifer, *senescallus hospicii*, or *hospiciarius*, managed their households, though without enjoying the more dignified position attaching to these titles at the courts of the English king or the French feudatories.

The term pincerna occurs a few times in the documents, at first as the title of an officer of the household not differing materially from the dapifer, except that his special department was the cellar rather than the larder.[6] Later there is mention of a "capitalis pincerna," who was an appointive officer in the seaport of Hartlepool, having charge of the customs on wine brought into that town, and accounting at the exchequer for the issues of his office.[7] But there is no evidence of any development connecting the earlier with the later use of the term.

From a very early time the Bishops of Durham maintained a

[1] Registrum, ii. 1142–1143.
[2] See below, p. 152.
[3] Rot. iv. Nevill, ann. 18, m. 2, curs. 45.
[4] Auditor 5, No. 149.
[5] Ecclesiastical Commissioners, ministers' accounts, 189698.
[6] Feodarium, lxxxvi, 173; Graystanes, cap. xiv, in Scriptores Tres, 56.
[7] Registrum, iv. 295.

more or less complete staff of forest officers, corresponding to those appointed by the king. The names and duties of these occur frequently in the documents, and from time to time their oppressions or extortions were a source of complaint by the people of the liberty. For the rest, this whole matter, in Durham as in the kingdom, has a history of its own which forms no part of this study. An indication of some of the more important material, however, is given in the notes.[1]

The judicial officers are fully treated of in another chapter;[2] it will be enough to say here that, after the Bishop's court had been reorganized in the beginning of the thirteenth century, a staff of justices was soon appointed, and that thenceforth the palatine judiciary developed slowly on the royal model, producing in course of time nearly all the judicial officers that were to be found in the kingdom.

To sum up, then: the Bishop's staff of officers present several characteristics in which they differ from the pattern set in the kingdom or in a great continental fief. In the first place, they were at no time feudalized; although such officers as the sheriff and steward often belonged to great families and performed most of their duties by deputy, still the offices were purely appointive and showed no tendency to remain in or return to any one family. Again, the duties of two or more offices were usually discharged by one person. This practice, which is easily enough understood in view of the extremely small area of the palatinate and the fact that it was probably very sparsely populated, produced results extremely perplexing to the historian. The functions of the various officers became so confused that in

[1] Feodarium, 106, 141; Scriptores Tres, App. No. xxv; Boldon Book, 26, 29; Graystanes, cap. xxiii, in Scriptores Tres, 76; Registrum, iii. 44, 45, 64, 65; Calendar of Patent Rolls, 1330–1334, p. 189; Registrum, iv. 272–273; Rot. ii. Hatfield, ann. 19, m. 14, curs. 31 (appointment of a chief forester of Weardale); the original privy seal for a similar appointment in 1375 is in Cursitor 145; an interesting case respecting the exactions of the forest officers will be found in Cursitor 162, Nos. 34–39, A. D. 1365. For some material bearing on the superintendence of charcoal-burners and iron-smelters by the forest officers, see Rot. i. Hatfield, ann. 12, m. 11 dorse, curs. 30, and Rot. DD. Langley, ann. 9 Hen. VI, m. 3 dorse, curs. 37.

[2] Below, § 18.

many cases it is almost impossible clearly to distinguish between the duties of two offices commonly held by the same person, as, for example, between the chancellorship and the receiver-generalship. From another point of view this confusion is no more than a case of retarded development, a rudimentary condition occasioned by the lack of that pressure which economic forces were bringing to bear on the institutions of the kingdom. We shall find good examples of this influence in the judiciary and exchequer of the palatinate. On the other hand, the forces at work in the kingdom had a weak secondary reaction on the mechanism of the palatine government, for the latter shows the effect of a certain amount of self-conscious imitation of the larger system. These points will be noticed again in succeeding chapters.

CHAPTER IV.

THE ASSEMBLY AND THE BISHOP'S COUNCIL.

§ 11. Development of the Assembly.

"THE Bishops of Durham anciently had a council (in the nature of a parliament) consisting of diverse barons (called barones episcopi) . . . before whom appeals from the Bishop's chancery, and writs of error from his court of pleas, were brought and determined; and money or aids given for the defence of the kingdom and the Bishop's royal liberties." [1] These words were written at the end of the seventeenth century, when the body in question had — if it ever existed — already become a tradition. The writer had no better authority than a somewhat random statement in Camden,[2] certain passages in Symeon of Durham bearing on the palatine baronage which have already been noticed,[3] and a certain amount of material of the fourteenth and fifteenth centuries implying the existence of some kind of a palatine assembly with a limited power of self-taxation. Later historians of the palatinate have followed pretty closely the words of Camden and Spearman, without venturing to examine the matter more carefully.[4] It becomes necessary therefore to consider the question in detail. Before undertaking this it should be said that we shall have to do with two bodies, which, at first almost indistinguishable, soon come to have a distinct existence and an independent history. This fact indeed is evident enough in the words of Spearman, who is clearly confusing the functions of an assembly and a council. Since these two bodies had a

[1] Spearman, Inquiry, 15.

[2] Britannia, ii. 935.

[3] Above, pp. 63–67.

[4] Hutchinson, Durham, i. 127–128; Surtees, Durham, i. p. xvi; Longstaffe, Darlington, 56.

common origin, the greater including the less, we shall examine first the assembly of the palatinate.

With regard to the period before the Conquest we have no direct evidence and must therefore depend entirely upon conjecture. Very soon after 1066 we begin to hear of something like an assembly in the bishopric. The events leading up to the murder of Walcher, the first Norman Bishop, in 1080, and the circumstances of that crime have significance in this connection. The story is detailed in another chapter, and will have to be recurred to in the course of the present investigation, but the points of importance may here be recapitulated. Two of the Bishop's advisers, jealous of each other's influence over their lord, fell to quarrelling in the course of an argument before the Bishop in the moot-stead (*placiti locus*). One of them left in anger and was shortly afterward assassinated. The blame of this crime was laid at the Bishop's door, and he was obliged to meet the angry relatives of the murdered man at a gemot at Gateshead in the bishopric. Here, carried away by passion, the people brutally murdered their Bishop.[1]

In the foundation charter of the convent of Durham, supposed to have been issued by Bishop William I in 1092 but actually forged by the monks in the first quarter of the twelfth century, the following words occur: "Igitur senes et prudentiores totius Episcopii homines, qualiter in initio apud Sanctum ageretur Cuthbertum a me [episcopo] exquisiti," etc.[2] The spuriousness of this document does not in the least affect its historical value for the present purpose. The writer, with every wish to make his work regular, must naturally enough have described the procedure of his own day, the Bishop consulting the assembly of notables with regard to the custom and tradition of the country.

The next bit of evidence is curious and bears on its face the marks of extreme antiquity. It consists of the regulations of

[1] Florence of Worcester, ii. 14–15; Symeon, i. 116–117, ii. 208–210; Anglo-Saxon Chronicle, i. 351; below, p. 136 ff.

[2] Feodarium, xxxviii. The same words occur in Symeon, i. 120 ff. The spuriousness of the charter is sufficiently demonstrated in Canon Greenwell's preface to the Feodarium.

the special peace attaching to the feast of S. Cuthbert in September, and reads as follows: "Haec est consuetudo et lex sancti Patris Cuthberti, a religiosis et potentibus viris antiquitus instituta: scilicet ut ante ipsius Festum, quod mense Septembris solenniter celebratur, omnes Barones, scilicet Teines et Dreinges, aliique probi homines, sub Sancto praedicto terram tenentes, Dunelmum conveniant . . . ibidem renovent et confirment legem et consuetudinem Pacis S. Cuthberti, viz., qualiter pax Festi ipsius ab omnibus sit observanda et tenenda."[1] These words were written in a Durham gospel-book that perished in 1734. They had, however, been previously copied into the register of the dean and chapter, and in 1715 this transcript was collated with the original by Mickleton, the Durham antiquary.[2] From the form and subject-matter of the whole document it may be assigned to the period before the Norman Conquest. For the present purpose the point to be remarked is, that from a remote period there was in the palatinate an annual gathering of the barons and freemen. That this was still customary in the fourteenth century is clear from the appearance, in the letter-book of Bishop Richard Bury (1333–1345), of a form of invitation to attend the feast of S. Cuthbert.[3]

In 1147 a long-standing quarrel between the prior and archdeacon of Durham was settled by the Bishop William II and "senioribus quibusque saepius de Episcopatu nostro ad utriusque allegationis controversiam audiendam convocatis."[4] In 1180 there is the record of the conveyance of certain lands to the prior and convent "in presencia Domini Hugonis Dunelmensis Episcopi et baronum Episcopatus in pleno placito apud Dunelm.";[5] and a similar transaction in 1185 is recorded in the same words.[6] In like manner and in the same pontificate an undated document records a grant of land made in the presence of the Bishop, his chamberlain, his sheriff, and a large number of other persons, among whom may be recognized the names of several palatine barons.[7] Finally, a quit-claim made during the

[1] Scriptores Tres, App. No. cccxxxii. [2] Ibid.
[3] Registrum, iv. 435.
[4] Charter of Bishop William II, in Feodarium, lx.
[5] Feodarium, 20. [6] Ibid., 141. [7] Ibid., 134.

vacancy of the see (1195–1197) is recorded as accomplished "coram curia Dunelm." and the custodians of the vacant see, who would in this case represent the Bishop; the witnesses, who were in the court, included the sheriff of the palatinate and a number of barons.[1]

Such, then, is the evidence obtainable up to the close of the twelfth century. It will probably at once be objected that the words of these quotations do not so much as raise a presumption that they all refer to the same institution. Though this be admitted for a moment, there is still nothing to prevent them from referring to different aspects of a single institution. Consider first the political conditions of the bishopric and the surrounding counties at the time of Bishop Walcher's murder. There is strong reason to believe that something of the local independence of the old Northumbrian kingdom still survived here; this much we may take from the hypothesis of Mr. Page without following him to the length of accepting the continued existence of the Northumbrian witan.[2] The story of Walcher's murder has shown us a gemot, presided over by the bishop and engaged in legal business, and a gemot, assembled at least for the purpose of adjusting a quarrel, not litigious, between the Bishop and one of his tenants. This gemot, then, bears the double aspect of a court of law and an assembly, both of which were proper to the shire-moot under the Anglo-Saxon dispensation;[3] and Anglo-Saxon custom and practice would scarcely yet have been displaced in a district so loosely attached to the Norman kingdom that it was omitted from the Domesday survey.

Again, we know that it was customary for those who held land under S. Cuthbert, namely, the tenants of his church, to assemble annually for the performance of some ceremony which emphasized their mutual relation and the bond which attached them to the saint and his church, their common lord. This meeting then will be a kind of folc-gemot of the men of the saint, who form a community within and apart from the old Northumbrian kingdom. This meeting of Haliwerfolc, drawn together by a bond of common tenure which contains an element

[1] Feodarium, 161. [2] See above, p. 17. [3] Stubbs, i. 136–137.

of feudalism, is still in its essential nature a shire-moot. Now, before the Conquest the court of a shire or hundred was, when the jurisdiction belonged to the church, the court of the lord of the land, that is, of the abbot or the bishop.[1] In Durham there was no abbot, and the Bishop accordingly takes jurisdiction over the tenants of his church, who do suit at the court which is in his hands; but since this is a shire-moot it has functions and aspects other than judicial.

If this hypothesis be correct, the shire-moot of Durham will have a development unique in the history of English local institutions. It finds itself in a district with no actual head, in a kingdom whose royal dignity has passed to a line of far-away Wessex princes unable to do more than retain, by frequent reconquests, the title they have so laboriously acquired. Under these circumstances the shire-moot will not lose its character of folc-gemot. Since all local business must be transacted here, there will be a pressure of legal and economic necessities that will tend to give the body a judicial and administrative aspect. The feudal element will be found in the attendance of "the thanes, drengs, and other lawful men" holding land under the saint, who will give to the gathering a dignity suggesting, on a small scale, a meeting of the national council. If this explanation be acceptable, then in the great meetings of the Bishop's court up to the beginning of the twelfth century will be seen a kind of local assembly, the folc-gemot of Haliwerfolc.

The bishopric was now taking its place among the greatest of English fiefs and effectually excluding the king's jurisdiction.[2] The shire-moot has therefore the opportunity of free development, and in the activities of the notables (*seniores et prudentiores homines*) may be seen something more extensive than the functions of mere suitors or judgment-finders at an ordinary county court. The addition of the element of barons gives another twist to the matter, and presents the body somewhat in the light of the *cour plénière* of a French fief. This latter gather-

[1] Maitland, Domesday Book and Beyond, 277, and cf. 281.

[2] This is worked out below, ch. v. In the first half of the century there was doubtless no effort to restrain local independence; and in Henry II's time it was admitted that the king's officers might not act in the bishopric.

ing concerned itself with precisely such business as we have seen transacted in the presence of the Bishop and all the barons of the bishopric in *pleno placito*.[1] Moreover, the feudal system, at least as far as tenure was concerned, had now established itself in England, and in feudal theory all of the king's tenants-in-chief were members of his court and council.[2] Since the Bishop stood in place of the king, this doctrine would account for the presence of the barons at a great meeting of the assembly and for the importance assigned to them in the record.[3] The danger of attaching too much importance to the feudal element must be guarded against. It was doubtless present in the assembly in some rudimentary form before the Conquest, and the predominance, in the twelfth century, of a feudal mode of thought gave it greater emphasis in the palatine assembly than its actual growth warranted.

It must be remembered that, throughout the kingdom, the shire-moot by no means altogether lost its character of an assembly of the people after the Conquest.[4] With the development of legal science and machinery the ordinary meetings of this court in the English counties became of less importance, but the *plenus comitatus* retained a measure of administrative and financial functions as the mouthpiece of the "community" of the county.[5] This same development operated in Durham to set apart the judicial functions of the body which we are considering, and to construct out of them a more or less articulate judiciary.[6]

We have now drawn for ourselves the picture of a local assembly, originating at some point considerably earlier than the Nor-

[1] Luchaire, Manuel, 250 ff.; against this suggestion, see Gneist, English Constitution, i. 149.

[2] Stubbs, ii. 194.

[3] We come here in sight of the controversy between Dr. Stubbs and Professor Gneist, with respect to the relations in point of continuity between the witan and the later great council (Stubbs, i. 385). Whatever may have been the ratio of comparison between the palatine assembly and the national body which later expanded into parliament, the existence of the Durham gathering before the Conquest, and its development into the partially feudalized body of the twelfth century, are almost certain.

[4] See Pollock and Maitland, i. 542.

[5] Ibid.

[6] See below, ch. v.

man Conquest in the regular meetings of a shire-court, which happened to be in the hands of a great immunist, and in the peculiar annual gathering of the tenants of the lord of that court. We have seen that these elements had, from various political causes, the opportunity of free development. Under these circumstances the machinery of the shire-court appears to have been sufficient to meet the administrative and legal responsibilities that the isolation of the district involved. The great meetings therefore assumed more and more the character of a governmental body.

This development is not without a parallel. In the Isle of Man an isolation, in some ways more complete than that to which the bishopric was subjected, operated to produce a governmental body known as the Tynwald. This was a primary assembly which included all the freeholders of the island and embraced also the lord's council. It met annually and had administrative and even rudimentary legislative functions.[1]

We come now to the thirteenth century. In order to support the view which has been advanced, it will be necessary to show that the *communitas* of the bishopric undertook independent corporate action, and that this action was taken in a meeting which in certain respects corresponded to the *plenus comitatus* of any other county in the kingdom. In 1208 the barons, knights, and free tenants of Haliwerfolc obtained from the king a grant of certain important privileges, paying handsomely for their charter. Among other things, they got leave to use in the Bishop's court the forms of procedure recently introduced by Henry II.[2]

[1] See Wilson, History of the Isle of Man, in The Older Historians of the Isle of Man (Manx Soc., vol. xviii), 96, 99, 115–116; Records of the Tynwald (Manx Soc., vol. xix).

[2] Rot. Chart., 10 John, 182 a; Pipe Roll, 13 John, in Boldon Book, App. xiii ff. This roll contains the account of the bishopric from the tenth to the thirteenth of John; on page xv is the following entry: "And of 700 marcs, and of 35 marcs for seven palfreys of the knights of Haliwarfolk. And of 70 marcs of the same for the use of the Queen, for holding the Assizes of the kingdom of England, saving the liberties of the Bishoprick of Durham." Apparently the Bishop had opposed this grant and outbribed his subjects, for in 1207 he obtained leave to have in his court all the liberties which he enjoyed before his knights of Haliwerfolc made complaint to the king. See Rot. Lit. Claus., 9 John, i. 90.

Two years before, 1205–1206, an important case in the bishopric had turned on the refusal of the Bishop's court to allow the tenant to avail himself of the grand assize. The tenant, wishing to put himself on the country, brought a writ directing the Bishop to give over the plea. These are the words of the report: "Et cum ipse breve illud obtulisset, Jordanus filius Scolland, unus de curia, dixit quod non omitteret propter breve regis quin procederet in illa loquela." This man was one of the barons of the bishopric,[1] but he speaks here probably as one the *judicatores* of the court. At any rate, proceedings were interrupted, and the Bishop advised his men (*consuluit suos*) that, since the king's writ was in question and the grand assize could not be had in his court, they should depute some of their number to compromise with the tenant. This was in 1205–1206; in 1208 the Bishop died, and the people of the bishopric, as we have seen, obtained the king's charter allowing the new assizes to be used in the Bishop's court. This case does not of course prove beyond question that the people of the bishopric, assembled or represented in the county court, dealt with the king to obtain a charter of liberties; but it is very difficult to see how otherwise the transaction was effected. A strong presumption is thus raised that the county court was the organ for this kind of action.[2]

The somewhat meagre evidence, then, points in the direction of the hypothesis we have set up, namely, that the palatine

[1] "Tres vero barones episcopi, Rogerus, scilicet, de Coinneriis, Gaufridus Escolland, et Bertram de Bulemer:" Symeon, i. 158. Geoffrey was Jordan's ancestor. The name occurs frequently in the charters (see Feodarium, index, *s. v.* "Escolland"). Toward the close of the twelfth century, Jordan, son of Elias Escolland, witnessed an important charter (Ibid., 124), and during the vacancy of the bishopric, 10–13 John, Jordan de Dalden paid five marcs at the exchequer (Boldon Book, App. xiv). Dalden was the estate of the Escolland family (Surtees, Durham, i. 4–5).

[2] As late as 1278 the county court of Chester shows traces of being a representative as well as a judicial body. This fact appears in two interesting cases, too long unfortunately to be given here, and not very fully treated in the Abbreviatio. See Coram Rege, 6 Edw. I, roll 38, m. 1 dorse, m. 13 dorse; Abbrev. Plac., 229 b, 268 b; Pollock and Maitland, i. 536, 538–539; cf. also Stubbs, ii. 227.

assembly was the representative branch of the *plenus comitatus* down to the thirteenth century. Later a great deal is said of the various activities of the *communitas* of the bishopric, a word which was applied to the representative meetings of the county courts in other shires of the kingdom. An examination of this later evidence will probably not lead to a change of view although it will show us a good deal of development.

§ 12. Composition and Functions of the Assembly.

We shall consider first the composition of this body, which may be called the assembly. In the course of the thirteenth century the attendance at the ordinary meetings of the county court diminished very considerably, but the solemn semi-annual meeting was full and representative. Such a meeting, however, required a special summons.[1] In the letters patent of Bishop Kellaw appointing a steward of the palatinate in 1314, that officer receives authority "populum dictae libertatis, pro salvatione patriae, quotiens opportunum videritis, convocandi et convenire compellendi."[2] Some notion of what was implied in the word "populum" in this connection may be formed from the fact that in 1338 the king, desiring a grant of wool from the palatinate, directed the Bishop in the following words to summon the assembly: "Vos rogamus mandantes quod prelatos, abbates, priores, comites, barones, milites ac alios quos noveritis convocandi, necnon communitatem libertatis vestrae Dunolmensis coram vobis apud Dunolmum . . . ad certum diem . . . venire faceritis."[3] This call should be compared with the writ to the sheriff directing him to summon the *plenus comitatus*, of some

[1] Stubbs, ii. 225; Pollock and Maitland, i. 522, 526, 534.

[2] Registrum, ii. 686; and cf. Ibid., iv. 384, where this document reappears as a pattern in a letter-book of Bishop Bury. In the printed Register it reads "salvatione propria;" but a reference to the original (now in the Record Office, i. fol. 40 b) shows that the word "p̄rā" has been incorrectly extended. Probably Sir Thomas Hardy did not notice the mark of contraction over the "a," and, seeing that the regular extension would give the ungrammatical "patria," assumed that the scribe had made a slip. In the copy in Bishop Bury's letter-book, however, the word has been correctly extended.

[3] Registrum, iv. 227.

shire; which in substance differs only in the addition of archbishops and bishops, and the substitution for "communitas" of "liberi tenentes," and the usual representatives of vill and borough.[1] The word *communitas* appears again and again and is used interchangeably with the phrases *populus libertatis*, *bones gentz de la fraunchise*, and *illi de episcopatu*;[2] what, then, can it mean but the freeholders of the bishopric who had the right or duty of attending the assembly?[3]

The peculiar conditions of the bishopric increased the inducement to attend these meetings, for every man's interest in respect to his liberty and his purse was at stake; not mediately, as in other counties which returned members to parliament, but directly, for every one present would probably have at least a voice in the proceedings. If this had been a body that existed only for the purpose of assenting to the will of the Bishop, the theory that it was attended scantily and only by those who were obliged to come, would be admissible. But from the moment when it is found taking independent action, checking and controlling the Bishop or dealing with him on its own initiative, this view becomes impossible. Evidence of such action will presently be laid before the reader.

Of the organization of the assembly very little can be said. The Bishop had his *concilium intimum*, composed of his household, the officers of the palatinate, and certain other persons, and this body was present at the meetings of the assembly,[4] but there is no reason to believe that there was any bi-cameral arrangement. There is scarcely any evidence pointing to the size of the body, but it could not have been large. The area of the bishopric was limited, and the population was probably very

[1] Bracton, fol. 109 b, ii. 188.

[2] These cases will come before us in the course of the present discussion.

[3] This trenches on the disputed point of the composition of the full county court. Stubbs contended that it was composed of the freeholders of the county, as against the view that it was restricted to the minor tenants-in-chief. Professor Maitland, by demonstrating the relation of suit and tenure, has demolished the second theory, without altogether accepting the first (see Stubbs, ii. 246–247; Pollock and Maitland, i. 522–529). The case in Durham was different.

[4] For the Bishop's council, see below, §§ 13–15.

sparse.[1] With regard to procedure, methods of deliberation, voting, and the like, we are unfortunately quite ignorant; it is probable, however, that when the assembly was acting independently, particularly in opposition to the Bishop, very little form would be observed. On the other hand, an ordinary meeting, transacting business proposed by the Bishop or his council, would probably be directed by some members of the latter body and may well have followed the forms observed in the national parliament, with which of course the Bishop, and probably some of his councillors as well, would be familiar.

We pass now to a consideration of the functions of the assembly in the government of the palatinate. Its greatest activity was in fiscal matters. The palatinate was altogether freed from ordinary royal taxation; the king could levy nothing there except through the Bishop and by his leave.[2] This exclusion, however, did not extend to the clergy, who were taxed separately. When the king applied to the Bishop for financial aid the latter obtained leave from the *communitas* to levy what was required; but in the course of the fifteenth century this practice was dropped. In 1225 the people of Haliwerfolc granted the king a tax on movables, but there are no particulars about the manner of granting or raising this tax.[3] In 1338 Edward III wrote to the Bishop informing him that parliament had granted him one half the wool of the kingdom to meet the pressing necessities with which he was then confronted. The Bishop was accordingly directed to summon the great men and commons of his liberty, and, having explained to them the great dangers of the present war and the necessity for the defence of the kingdom, to invite them to grant to the king the half of their wool in like manner as the rest of the kingdom had done. This request was complied with.[4] In 1374 the king raised a

[1] The present county contains 1011 square miles; except for the loss of outlying districts in Northumberland and Yorkshire, its boundaries have not altered since the thirteenth century (Boyle, Durham, i.). The assessment of the poll-tax in 1377 gives a population of 51,083 for the counties of Durham and Chester together, but Professor Rogers calls this "a very large, perhaps excessive, estimate" (Six Centuries of Work and Wages, 120).

[2] See below, § 37.

[3] Rot. Lit. Claus., 9 Hen. III, ii. 75 b.

[4] Registrum, iv. 225–231.

subsidy by a proportionate levy on every parish in England. The parishes of the bishopric paid along with the rest; the tax was proportioned and collected by knights of the palatinate under the Bishop's commission, and the assent of the assembly was sought and obtained. This seems to have been regarded as an exceptional case, for an act of indemnity was passed stating that the men of the liberty had made this grant to the king and allowed the money to be collected of their own free will and in consideration of the king's great necessities.[1]

In 1435 parliament granted the king a subsidy, to be assessed according to a somewhat elaborate arrangement on all freeholds in the kingdom. In January, 1436, the substance of this act was transmitted to Bishop Langley by royal letters patent, with directions to issue commissions to his officers to assess the tax in the prescribed fashion within the palatinate. In March of the same year the Bishop issued the required commissions.[2] In February, 1437, he obtained from the king a letter of indemnity for this tax, in which the king explained that it had been suggested by certain members of his council that the subsidy would be paid in Durham, that therefore he had directed his letters with regard to collecting it to certain persons there. These letters, however, were not yet formally delivered, because the king was informed that the men of the liberty, having regard to the generosity of the rest of the kingdom, would of their own free will grant to the king a sum of money not only equal to but exceeding the amount of the subsidy. The king therefore, unwilling that such a gift should be drawn into a precedent to the injury of the liberties of the bishopric, had provided that such a gift or concession should never be used as a precedent for further demands.[3] The details of this transaction are a little obscure, but in all probability the *communitas* of the bishopric declined to pay unless its consent were obtained and the conse-

[1] Rot. Parl., 48 Edw. III, ii. App. 461, No. 135; Rot. ii. Hatfield, ann. 28, m. 5, curs. 31; Scriptores Tres, App. No. cxxv.

[2] Rot. C. Langley, ann. 30, m. 10, curs. 36 (a very long entry under the rubric "Commissio ad inquirendum de quodam subsidio pro domino rege," etc.).

[3] Rot. iii. Nevill, ann. 15 Hen. VI, m. 12, curs. 44.

quences of its liberality guarded against. The king agreed, but confronted the people with the dilemma of saving their dignity at the expense of their purse.

The tendency here is quite apparent: in respect to royal taxation the consent of the palatine assembly is becoming a formality after the fact. In 1449 parliament dispensed with the formality and granted the king a subsidy to be raised throughout the kingdom, without regard to previous exemptions or immunities. The act was transmitted to the Bishop with directions that the money should be raised by his sheriff and constable. This document was entered on the palatine chancery roll immediately after a transcript of the letter of indemnity which the king had granted to Bishop Langley, and the ineffectual protest of this conjunction is eloquent of the change which had occurred in the government of the palatinate.[1]

Attention must now be directed to the fiscal relations of the assembly and the Bishop. The government of the palatinate was economical and the Bishop's personal endowment ample. The great expense of an army was largely avoided by the use of commissions of array. Under these circumstances the occasion for direct taxation in the palatinate would only arise in extraordinary cases when the Bishop found himself unable to meet some pressing necessity. It is clear that as early as 1302 the consent of the *communitas* of the palatinate was necessary for raising direct contributions either in money or in kind. Thus in the petition which the commonalty of the bishopric presented to the king in 1302, it requested that, in accordance with the usage of the kingdom, no carriage — *i. e.* forced contributions of horses, carts, and labor — should be required of free men without certain grant, except in the case of those who held their lands at such service. In the charter which as a result of this petition was issued by the Bishop, he granted that, except in time of war, no carriage should be taken without certain grant.[2] This action shows clearly enough the sense of the community that it should be consulted when direct contributions were to be taken. That the Bishop conceived that he had a right to raise

[1] Rot. iii. Nevill, ann. 28 Hen. VI, m. 12, curs. 44.

[2] Registrum, iii. 43, 64.

or demand such contributions appears from a passage in a document of the year 1314; this was the Bishop's commission for the steward of the palatinate, which has already been noticed. The passage reads as follows: "dantes vobis potestatem plenariam populum dictae libertatis, pro salvatione patriae, quotiens opportunum videritis, convocandi, et convenire compellendi, collectas imponendi et levandi,"[1] etc. This is an admission that imposts, although they might be proposed by the Bishop or his steward, might not be collected without the assent of the *populus*. This fact appears more fully in two later cases.

In 1344 Bishop Bury issued a commission to seven persons to collect, in the Darlington ward, a proportionate amount of the general tax about to be raised in the palatinate. It had been determined by the common counsel and unanimous consent of the *communitas* to purchase a truce with the Scots for the sum of one hundred and sixty pounds. This money, along with a sum sufficient to meet the expenses of collecting and transmitting it to Scotland, was to be assessed and raised according to an apportionment established by former practice in similar cases and now ratified by the consent of the *communitas*. The Bishop therefore, in pursuance of his duty to execute this concession and assessment, issued his commissions for the four wards of Durham and the two of Sadberg.[2] Grants like this must have been fairly frequent in the earlier history of the palatinate, for the assessment of each district was evidently a matter of common knowledge. The earlier records of the palatinate, the loss of which is so frequently felt in the course of this study, would no doubt have furnished many similar cases of earlier date.

In 1348 the Bishop obtained a grant of four hundred marks from the notables and community of the liberty, in recompense for his pains and expense in preserving the franchise of the palatinate against the encroachments of the king; to this grant was joined a petition indicating the persons whom the assembly wished to have the Bishop appoint for the assessment and col-

[1] Registrum, ii. 686. The change of "propria" to "patriae" (noticed above, p. 114, note 2) has been made here.

[2] Ibid., iv. 273–277.

lection of the money.[1] This is the last instance in the surviving records of a money grant to the Bishop; probably there were few others, if any. Except in cases of extraordinary necessity, which usually took the form of an invasion, the Bishop was well able "to live of his own." The development of the royal army, which in the fifteenth century led to a practice by which the palatine array was managed and paid by the king's officers,[2] relieved the Bishop of the pressure of this special necessity. It is clear, however, that the palatine assembly had the power of self-taxation, and even a certain control over the execution of the grants that it made. This point receives fuller illustration from a series of cases in which the assembly taxed itself, not at the request of the Bishop but on its own initiative and for its own ends. An early instance of this action is to be found in the purchase of certain liberties from King John during the vacancy of the see, a transaction which has been already sufficiently considered.[3]

In 1302 nearly all the knights and freeholders of the bishopric, under the leadership of Ralph Nevill and John Marmaduke, conceiving themselves injured by the Bishop, agreed to appeal at their common expense to the king in parliament.[4] The details of this affair, which amounted to a constitutional rebellion on a small scale, will be noticed later.[5] In the mean time it is sufficient to point out that the charter which was obtained from the king was addressed to the leaders of the movement by name

[1] "Thomas Episcopus Dunelmensis dilectis sibi Roberto de Brakenbury, Johanni de Brunnynghille, et Johanni Randolf, salutem. Cum magnates, proceres, et tota communitas regiae libertatis nostrae Dunelm., pro magnis laboribus et variis expensis [quos] erga dominum regem Angliae illustrem pro dicta libertate illaesa observanda pluries opposuimus, nobis quadringentas marcas . . . concesserunt, et per petitionem suam nobis supplicaverunt ut dilectos et fideles nostros ad summam praedictam taxandam . . . faceremus assignare:" Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30.

[2] See below, § 40.

[3] Above, pp. 112–113.

[4] "Adhaerebant tamen eis [Nevill and Marmaduke] fere omnes de episcopatu milites et liberi tenentes; et sumptibus eorum communibus prosecuti sunt negotia sua in parliamento et curia Regis:" Graystanes, cap. xxiii, in Scriptores Tres, 76.

[5] Below, p. 128 ff.

"and the others of the commonalty of the franchise of the Bishop of Durham."[1] There can be little doubt, then, that this action was taken by the assembly. In 1311, just after the election of Bishop Kellaw, the king prepared to send his justices into the bishopric to hold a general eyre. The men of the liberty, wishing to avoid the inconvenience and possible damage of the eyre, induced the Bishop-elect to compound with the king, promising that they would repay to him whatever he might spend for this purpose. Kellaw paid the king a thousand marks, and the visitation was given up, but the men of the bishopric declined to reimburse the Bishop.[2]

The pontificate of Bishop Kellaw was disturbed by frequent and severe invasions of the Scots, and, since the Bishop was often absent for reasons connected with the king's dislike of him, the responsibility of buying off these intruders and the problem of raising money for that purpose often fell on the assembly. In 1312 the Scots fearfully ravaged the palatinate while the Bishop was in London, whereupon the people of the bishopric purchased a truce with their enemies for the sum of a thousand marks, to be paid in several instalments. Four gentlemen of the palatinate were appointed to carry out with the king of Scots the arrangements which had been initiated by the prior of Durham. The people of the liberty of Barnard Castle — which, it will be remembered, was held adversely to the Bishop by the earl of Warwick — refused to pay their share; but on the Bishop's return to his province he wrote to the earl requesting him to require his tenants to bear their part of the burden, since Barnard Castle had been saved by the action of the commonalty.[3] In 1314 a similar arrangement was made between the earl of Moray, acting in behalf of the king of Scots, and the prior, acting for the commonalty of the bishopric. In this case a truce was obtained from March, 1314, until January, 1315, for the sum

[1] Edward . . . Roy d'Engleterre . . . à ses cheres et feaux Mons. Randuf de Nevell, Mons. Johan le fuiz Marmeduc . . . et as autres de la communaute de la fraunchise del Evesche de Duresme Saluz," etc.: Surtees, Durham, i. p. cxxviii.

[2] Graystanes, cap. xxxiv, in Scriptores Tres, 93.

[3] Graystanes, cap. xxv, Ibid., 94; Registrum, i. 191, 204.

of eight hundred marks. The prior bound himself for the payment of this money under the seal of the chapter, and the commonalty gave hostages.[1]

The record of a case of this sort in the year 1315 is particularly rich in details which illustrate the point in hand. In that year the Scots made an unusually daring and successful raid, sweeping across the greater part of the palatinate and up to the very gates of Durham itself, and almost capturing the prior, who was at Beaurepaire, the country seat of the convent.[2] The Bishop at this time seems to have been absent, but such members of the commonalty of the bishopric as were then at Durham — and it is extremely probable that a large number would have been driven to take refuge in the city — assembled, and determined to take measures for the protection of the palatinate. They first, however, agreed that every man should take an oath to abide by whatever action might be determined upon for their common welfare. It was decided to purchase a truce with the Scots, but it appeared that the sum agreed upon for the payment would not be immediately forthcoming. It was arranged therefore that the money should be collected by a house-to-house visitation in Durham and in as much of the neighborhood as was available for the purpose. Accordingly, two persons were appointed, with power practically to get the money as best they might, but on the understanding that their action was provisional, and that those who had been laid under contribution should be reimbursed so soon as the sum could be properly levied on the commonalty.

William de Kellaw and David de Rotherbiry, having been duly appointed and sworn, came in the course of their visitation to the house of William de Heberne, one of those who had taken the original oath to abide by the action of the commonalty. Here they discovered a quantity of money, which they seized in spite of William's protest. Afterward William sued the two collectors in the palatine courts, and obtained judgment. The court, among other reasons for its decision, said that there was no one against whom William could recover except the collectors. The case came before the king's justices on a writ of error, and the judg-

[1] Scriptores Tres, App. No. xciv.

[2] Graystanes, cap. xxxvi, in Scriptores Tres, 96.

ment was reversed on the assignment of a number of errors. This court held that William's oath to abide by the action of the community, together with the authority granted by the community to the collectors, justified the latter in taking William's money; and, further, that it had been wrongly suggested that William was without remedy unless he could recover against the collectors, for, by reason of the determination and concession of that part of the commonalty which was assembled at Durham, an action would lie against the entire commonalty.[1]

Although this case is exceptional, the principle involved, namely, that the commonalty gathered or represented in the assembly or shire-moot had the right of self-taxation, is quite regular. The disposition of the palatine court to disregard the commonalty has less significance than would at first appear, for the original action was brought before the king's justices appointed for the palatinate in a time of vacancy, and they would naturally be unfamiliar with local institutions.

In 1334 the commonalty of the bishopric compounded with the king for the settlement of their debts at his exchequer.[2] Whatever may have been due from them was no doubt incurred during the vacancy of the see in the preceding year. Before the accession of Bishop Hatfield the king again threatened to hold a general eyre in the palatinate, and the commonalty again procured relief from the visitation at a cost of four hundred pounds. This money was

[1] The record was examined at Michaelmas, 1321. The jury returned that all the members of the community of the bishopric at Durham "ordinarunt quod unusquisque illorum praestaret sacramentum corporale stare ordinationi quae . . . contigeret ordinari." They agreed to make a fine, and, having no money, "praesto ordinarunt quod quidam de communitate praedicta irent de domo in domum . . . et perscrutarent ubi denarii essent inde positi; et ubicunque denarii hujusmodi invenirentur caperentur . . . quousque levari possent de communitate praedicta et satisfieri illis quorum denarii sic capiendi fuerunt." The words of the king's justices with regard to the responsibility of the whole community are also worth noting: "Cum illud [*i. e.* recovery] habere posset directe versus communitatem, virtute ordinationis et concessionis praedictarum." (Abbrev. Plac., 336 b).

[2] Calendar of Patent Rolls, 1330–1334, p. 528.

assessed and collected, however, by persons commissioned by the new Bishop.[1]

The assembly, then, taxed itself at the request of the king and of the Bishop. But in a less formal way it raised money for purposes of its own, notably that of bringing pressure to bear on the Bishop either by purchasing the king's aid or by organized action on the part of the community. This sort of action may be matched in the county courts of many of the other shires, which dealt with a good deal of fiscal business and at that point "most closely approached, before they actually touched, the national council."[2] A good instance is the refusal, in 1220, of the Yorkshire shire-moot to assent to a grant made to the king in the national council, and its readiness to pay if the king should summon it and make a personal request.[3] Dr. Stubbs considers this a "clear proof that not merely the assessment but the concession of a grant was regarded as falling within the lawful power of a local assembly."[4]

Now, it is known that the acknowledgment of this power was a step toward the organization of parliamentary government, which, partly by reason of the obvious inconvenience of dealing separately with many local assemblies, followed close on that acknowledgment. The community of Durham, however, did not obtain parliamentary representation until the Stuart restoration;[5] and yet, as we have seen, both the king and the Bishop, when they wished to raise a tax, were obliged to obtain the consent of that community. This consent was given in a local assembly, which under the same name engaged in various other activities. We can thus scarcely avoid the conclusion that the palatine assembly and the Durham shire-moot were identical.

The functions of the assembly in the department of legislation were extremely rudimentary. In the first place, the principle is

[1] The Bishop commissioned his chancellor and several other persons "ad taxandum, levandum, colligendum et recipiendum quatuor centum libras sterlingas domino nostro regi Angliae, nuper per communitatem nostrae regiae libertatis Dunelmensis concessas, pro relaxatione itineris justiciariorum suorum, post mortem bonae memoriae Ricardi Episcopi Dunelmensis ultimi praedecessoris nostri:" Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30.

[2] Stubbs, ii. 232. [3] Ibid., 233–234. [4] Ibid., 233.

[5] Bean, Parliamentary Representation of the Northern Counties, 97.

clear that, unless there were special provision to the contrary, all general legislation applied to the palatinate as well as to the rest of the kingdom. Thus, the people once complained to the king that their Bishop had violated the provisions of Magna Carta.[1] Edward I's redaction, in 1301, of the great charter and the charter of the forests appears on Bishop Kellaw's register in 1316.[2] The fact that the Bishops issued licences to amortize land is sufficient proof that the statute of mortmain was in force in the palatinate. The same is true of the statute of Winchester, for in accordance with its provisions Bishop Bury issued commissions for a levy of troops.[3] Edward III's statute of laborers is entered on Bishop Hatfield's chancery roll,[4] and there is a record of a pardon granted to a person who had made default in an action brought against him under this statute.[5] New actions authorized by statute extended to Durham,[6] and the administration of justice there followed the development that took place in the kingdom; — as, for example, in the case of the custody of the lands of idiots, which has already been noticed.[7]

Only a very few instances have been chosen from the large number that are available in the sources, but the point is clear enough. It is well brought out in the words of a document by which, in 1455, Bishop Nevill proclaimed the action of parliament in appointing the duke of York protector of the realm: "Nos omnia et singula que in parliamento domini Regis rite acta sunt, debite executionem demandari volentes," etc.; then follows the proclamation.[8] Probably general legislation was not thus applied before the thirteenth century, for, as we shall see, the legal changes of Henry II's reign did not go into force

[1] Registrum, iii. 41. [2] Ibid., ii. 1116–1117.

[3] Ibid., iv. 269 ff. See also Rot. Fordham, ann. 4, m. 4 dorse, curs. 32; Rot. A. Langley, ann. 3, m. 3 dorse, and ann. 9, m. 11 dorse, curs. 34.

[4] Rot. i. Hatfield, ann. 6, m. 6 dorse, curs. 30.

[5] Rot. ii. Hatfield, ann. 34, m. 11, curs. 31. See also a special commission to the palatine justices to execute this statute in 1408, Rot. A. Langley, ann. 2, m. 4, curs. 34.

[6] See below, § 34. [7] Above, § 6.

[8] Rot. A A. Nevill, ann. 17, m. 20 dorse, curs. 47. Cf. Ibid., ann. 15, m. 19 (a precept to the sheriff regarding the enforcement of the statute of Merton, cap. x).

in the palatinate without question,[1] and the Assize of Clarendon, although it was intended to apply to all franchises "and even to the honor of Wallingford," was executed in Durham only under a charter of indemnity from the king.[2] The validity in the palatinate of general legislation may, then, be considered to emanate from the parliamentary sanction of such legislation, for the authority of parliament was never questioned and was often invoked both by the Bishop and the people of Durham. The general assumption that all acts of parliament would bind the people of Durham as well as those of the rest of England, is further proved by the fact that when this application was not intended a special clause to that effect was inserted in the act.[3]

Many statutes and acts of parliament were transmitted to the Bishop with directions that he should cause them to be proclaimed by the sheriff in full meeting of the county court.[4] This was the ordinary method of publication in other counties of the kingdom, but under the special circumstances it is possible that in Durham the process had a more extended significance, involving the notion of assent on the part of the community. At any rate, there remained to the palatine assembly only the possibility of issuing ordinances or bye-laws. Something of this sort had been

[1] Below, § 16.

[2] Assize of Clarendon, § 11, in Stubbs, Select Charters, 144; Scriptores Tres, App. No. xxxi.

[3] See, for example, 8 Edw. IV, cap. ii, Statutes, ii. 428; 31 Eliz. cap. iv, Ibid., iv. pt. ii. 808.

[4] On account of the fragmentary condition of the Durham records, particularly at an early period, it is not certain whether this was regularly done before the fifteenth century; probably, however, it was not. The earlier proclamations are mostly of royal ordinances, *e. g.* Edward II's prohibition of tournaments and Edward III's ordinance with regard to provisors (Letters from Northern Registers, 214; Registrum, iv. 308–309). The statutes 9 and 27 Edw. III were directed to be proclaimed in Durham (Statutes, i. 274, 344), and in 1455 one of Henry VI's statutes was sent directly to the sheriff of Durham for that purpose (Rot. BB. Nevill, ann. 17, m. 20, 21 dorse, curs. 46; Rot. Parl., v. 394–396). In 1536 a number of printed statutes were sent to Bishop Tunstall, with a precept for their publication in churches, abbeys, etc. (Rot. ii. Tunstall, ann. 28 Hen. VIII, m. 9 dorse, curs. 78).

done in the county court of Northumberland,[1] and a similar function might seem to be implied in the words of a document which has already been noted. This is Bishop Kellaw's commission to his steward in 1314, and the passage in question is as follows: "dantes vobis potestatem plenariam populum dictae libertatis pro salvatione patriae . . . convocandi, et . . . rebelles, si qui fuerint, contra ordinata pro communi utilitate seu contradictores, coercendi,"[2] etc. The collocation, shown in this document, of an assembly of the people for the good of the country and of matters ordained for the common welfare is, on the face of things, very significant. On the other hand, in the only case of such local regulations in the palatinate the action was unquestionably taken by the Bishop's council,[3] and not by the assembly. Possibly there was some sort of ratification or assent on the part of the assembly, but this is not probable; the nearest approach to such action would have been the proclamation of the new ordinance in a meeting of the assembly. Thus for all practical purposes the palatine assembly had no legislative functions.

We are dealing, then, with a body devoid of legislative power and having but a limited control of the spigot of taxation, since the Bishop could under ordinary circumstances "live of his own." To what extent did or could such a body influence the policy of the Bishop or bear a part, however small, in the government of the province? The regular channels through which the national parliament, when it came into being, exerted its influence on the crown were not open to the palatine assembly in its relation to the Bishop. On the other hand, Durham was by no means so cut off from the rest of England as to be unaffected by the forces which were acting on the English constitution in the thirteenth and fourteenth centuries. The difference lies in this, that the extra-constitutional collisions of the crown and the estates of the kingdom in the thirteenth century produced a mechanism by means of which the relations of the contending parties might be, and were, thenceforth determined regularly, and their share in the government of the country allotted in like

[1] Northumberland Assize Rolls (Surtees Soc.), 208–209; Pollock and Maitland, i. 542.

[2] Registrum, ii. 686.

[3] Ibid., iv. 348 ff.; below, § 14.

manner. In the palatinate, on the other hand, the same friction occurred on a much smaller scale, but the mechanism was never produced. The friction would no doubt have greatly increased during the fourteenth century if the Bishop's subjects had not learned how to exercise a certain irregular control over him; moreover, the increasing power of the crown, and its relation to the community of the palatinate, made it necessary for the Bishop to take into account the rights or interests of his subjects. Such evidence of this development as we have must now be examined.

In 1208 the people of the palatinate forced the Bishop to extend the procedure in his court so as to bring it into line with that of the kingdom. The circumstances under which this was accomplished are fully set forth in another part of this work.[1] In 1225 they were in negotiation with the king for a grant of certain liberties, which they probably never obtained.[2] In 1300, when Bishop Anthony Bek was in the thick of a fierce struggle with the prior and convent,[3] he was confronted with an organized movement on the part of his subjects, under the leadership of two great northern families, much resembling the movement which led to the grant of the great charter. The purpose of this rising was a general reform of the government of the palatinate, as will appear in the consideration of the charter which was eventually obtained from the Bishop. The immediate pretext was the question, then vexing the kingdom, as to feudal service in foreign parts. The Bishop had twice led his feudal tenants into Scotland to aid the king in his wars; from the second expedition they returned without leave and were imprisoned by the Bishop at Durham. The people declared that they held their land for the defence of the body of S. Cuthbert and were under no obligation to go beyond the boundaries of the palatinate, the rivers Tyne and Tees.[4]

[1] Above, § 11. [2] Rot. Lit. Claus., 9 Hen. III, ii. 75 b.

[3] The circumstances of this trouble are detailed below, p. 24 f.

[4] "Nam Episcopus homines de episcopatu secum coegerat ire in guerram Scotiae cum equis et armis, jam bina vice; et cum secunda vice redissent domum, ab eo non licentiati, fecit eos apud Dunelmum incarcerari. Quod ipsi graviter ferentes fecerunt se partem contra Episcopum, dicentes se esse Haliwerfolk et terras suas tenere ad defensionem corporis sancti Cuthberti,

The question of military service alone would probably have been insufficient to raise such a tempest; but, as in 1297, when the two earls refused to go abroad, so now there was a larger interest at stake, namely, the future of feudal independence.[1] Here again, as was so often the case in English history, the interested effort of a single class to defend its own privileges made for general liberty, because one side or the other, the crown or the baronage, was obliged to ally itself with the people. In this case the baronage had on its side, against the Bishop, the church and the people. Marmaduke, the leader of the movement, was a good example of a feudal baron, being a fierce fighter and a cruel man.[2] The church, personified in the convent of Durham, had assuredly suffered grievous things at the hands of the Bishop, and the people complained that he had made innovations which outrageously curtailed their liberties. It is significant for this last point that while Graystanes speaks of the rebels as "fere omnes de episcopatu milites et liberi tenentes,"[3] Hemingburgh, the only other writer who treats of these events, says "insurrexerunt in eum quasi omnes incolae pro libertatibus suis defendendis."[4]

The Bishop was little alarmed; for, although the party of op-

nec debere se exire terminos episcopatus, scilicet ultra Tynam et Teysam, pro Rege vel Episcopo. Et hujus dissentionis capitales erant Ranulphus de Nova Villa et Johannes Marmeduci. Adhaerebant tamen eis fere omnes de episcopatu milites et liberi tenentes:" Graystanes, cap. xxiii, in Scriptores Tres, 76. Cf. above, p. 22.

[1] See Stubbs, ii. 143–144. "The spirit that had inspired him [Gloucester] lived in the two earls, who by his death were left almost the sole relics of the great nobility of feudalism, and the last inheritors of the political animosities of the late reign:" Ibid., 159.

[2] Marmaduke was with Bek at the siege of Dirlton Castle, in 1298. Bek, despairing of success, sent him to the king, who seems to have relied on his violent and unscrupulous character to carry through the affair successfully. Hemingburgh (Chronicon, ii. 175) calls him "ille strenuissimus miles," and makes Edward address him as "homo crudelis."

[3] Graystanes, cap. xxiii, in Scriptores Tres, 76.

[4] "Coepitque nova facere in episcopatu, et inaudita quaerere, ita quod insurrexerunt in eum quasi omnes incolae pro libertatibus suis defendendis:" Walter of Hemingburgh, ii. 217. Cf. the complaint of "les bones gentes de la fraunchise de Duresme," Registrum, iv. 41, 61.

position had appealed to the king, he knew himself to be high in the royal favor and anticipated no more than a series of royal precepts enjoining him to leave off his oppressions and govern justly, under pain of a deprivation which would never be accomplished.[1] Bek's calculations, however, were thrown out by an unexpected event. In February, 1301, in parliament at Lincoln, formal complaints were made against the Bishop, on the part of the church by the prior, who had but recently escaped from his imprisonment at Durham, and on the part of the people of the bishopric by their representatives. In the course of the proceedings the king asked the Bishop whether he supported the crown as against the two earls and their party. Bek made the memorable answer, that the earls were laboring for the profit and honor of the kingdom and the king and that he held with them therefore, and not with the king against them.[2] Edward never forgave this frankness and made the Bishop pay heavily for his words.

In the mean time the *communitas* had formulated their demands in a series of articles, which were submitted to the Bishop. The king sent several members of his council to Durham, accredited to the free tenants and whole commonalty of the liberty, to direct the negotiation on his behalf. The Bishop was stubborn, declining to concede as much as his subjects thought necessary, whereupon the matter was adjourned into parliament.[3] No agreement could be reached there, and on the renewal of complaint by the prior and people the king in July, 1302, seized the temporalities of the see.[4] Edward had more

[1] "Deposueruntque frequenter ad dominum regem multimodas querelas, quaerentes fieri per eum justitiae complementum, nec curavit episcopus, propter quod dominus rex primo rogans, secundo exhortans, tertio comminando praecipiens sub poena perdendae libertatis, scripsit ut ab injuriis cessaret et populum suum juste regeret modo consueto:" Walter of Hemingburgh, ii. 217.

[2] Graystanes, cap. xxv, in Scriptores Tres, 78. Bek although a violent man and somewhat inclined to vulgarity and bravado, was probably quite sincere in administering this rebuke to the king. He had assumed a personal responsibility for the Confirmation of the Charters, and doubtless felt that he had been ill treated. See Walter of Hemingburgh, ii. 215; Rishanger, Chronica, 186; Stubbs, ii. 160 ff.

[3] Registrum, iii. 41; Scriptores Tres, App. No. lxxx.

[4] Graystanes, cap. xxvi, in Scriptores Tres, 81.

justification for this act than lay in his quarrel with Bek the year before. In the hands of that prelate the liberties of the palatinate had dangerously expanded; he had enormous wealth and a high ambition, which was destined sooner or later to bring him into collision with Edward's anti-feudal policy.[1] The important diminution of the palatinate, when it was finally returned to Bishop Bek, has already been noticed.[2] In November, 1302, a royal letter addressed to Marmaduke, Nevill, and "the rest of the commonalty of the Bishopric," informed them that the Bishop was disposed to come to terms and directed them to appear before the king at a certain date for the final adjustment of the matter.[3] At Eastertide, 1303, Edward was in Durham, and before him and his council the contending parties reached an agreement. The result was an almost complete triumph for the party of Nevill and Marmaduke, for the Bishop incorporated in his charter, with insignificant alterations, nearly all the articles proposed in their petition.

The Bishop's charter is of so much constitutional importance that it demands careful analysis. This document consists of twenty-two sections; nine of these look toward the correction of abuses in the administration of justice, four toward the suppression of unauthorized exactions from the freemen of the palatinate, three toward the restraint of the abuse of feudal privilege on the part of the Bishop, four toward the confirmation of sundry special privileges enjoyed by the people, and two relate to the observation of the articles contained in the charter and to the mutual relations of the Bishop and his subjects.[4]

[1] He was patriarch of Jerusalem and king or lord of the Isle of Man; fond of pomp and display, and not always scrupulous in getting money, if the story of his selling Alnwick Castle, which he held in trust for the natural son of William de Vescy, may be believed. See Graystanes, caps. xviii, xxxi, in Scriptores Tres, 64, 90; Annales Monastici (Dunstaple), iii. 298; Chronicles of Edward I and Edward II, i. 176; Calendar of Close Rolls, 1318–1323, p. 16; Foedera, i. pt. ii. 1017; The Older Historians of the Isle of Man (Manx Soc.), 9, 129; Hutchinson, Durham, i. 228–258; Surtees, Durham, i. pp. xxxi–xxxv.

[2] Above, § 5.

[3] This document is printed in Surtees, Durham, i. p. cxxviii.

[4] Registrum, iii. 61–67. The document is also printed in Prynne, Historical Vindication, v. 989–991.

The items will be considered in the order named. Under the first head it is provided that: § 1. No freeman shall be imprisoned except by inquest or sakeber,[1] or if he be taken in the mainour.[2] § 2. No freeman shall be impleaded in the court christian except for matters relating to testament and matrimony; and if any other action be attempted, he shall have prohibition and attachment against the official. § 6. No freeman shall be impleaded in a halmote or other villein court, and even if a villein be party to the suit, the freeman shall have a writ enabling him to plead in a free court. § 7. For purposes of arrest and imprisonment, the wapentake of Sadberg is to be regarded as a venue distinct from the rest of the palatinate, except in cases of trespass against the Bishop. § 9. The Bishop shall not seize any lands or goods in the palatinate without a writ, except in the case of the death of a tenant-in-chief. § 10. Without due recovery in court no officer of the Bishop shall levy debt on any freeman, except the ascertained debts of the Bishop. § 15. In the forest courts procedure by inquest is to be allowed, and fines are to be amerced by the suitors of the court and not arbitrarily by the bailiffs. § 16. Arbitrary imprisonment and refusal of procedure by inquest for forest offences are not to be tolerated. § 21. Except for distress, no issues shall be levied on any freeman until the party has come into court.

Under the second head it is provided that: § 8. No tolls shall be taken on sales and purchases except in vills merchant, and all transactions in the open country (uppelaunde) shall be free. § 11. Except in time of war, no carriage shall be levied of freemen without reimbursement, unless such carriage is involved in their tenure. § 18. Forest officers shall make no unaccustomed exactions of freemen in the way of corn-sheaves and the like. § 20. Dues from such of the Bishop's wastes as have been put to farm and subsequently abandoned by reason of poverty shall not be levied from the neighbors.

[1] *i. e.*, the prosecutor in the case of thieves taken in the act. For a discussion of this obscure word, see Pollock and Maitland, ii. 15.

[2] A thief having the stolen goods in his possession was said to be taken with the mainour (*cum manuopere*). See Ibid., 494, 577.

Under the third head it is provided that: § 3. The Bishop shall have the wardship of only such tenements in drengage[1] as are held of himself and the prior. § 4. Like the king, the Bishop may have the wardship of all the tenements of his tenants-in-chief, whether such tenements be held of himself or of a mesne lord. § 5. The freemen of the palatinate may make mills on any of their lands that do not owe suit at the Bishop's mill, and they may open and work mines of coal and iron on their own land.

Under the fourth head it is provided that: § 13. All the men of the bishopric may have free entry to the shrine of S. Cuthbert except in time of war. § 14. Hunting is to be free under certain restrictions, and in districts not especially privileged, such as parks and the like. § 17. Persons living in the free chace may, in respect to the use of timber, freedom from pannage, and the like, have all privileges that by reason of their tenure belong to them. § 19. All enclosures made in the free chace by Bishop Bek which in any way infringe on commonable rights shall be removed within the year.

Under the last head it is provided that: § 12. Only the four chief coroners may be mounted, and none of the deputies may go on horseback. § 22. The Bishop finally undertakes to observe and support all of these articles, and for the honor of the king, who is concerned in the negotiation, to renounce any rancor or ill-will which he may have felt toward his people. They, in turn, give up any claim for damages or the like that they may have had against the person of the Bishop by reason of the abuses mentioned and corrected in this agreement.

The points enumerated above require very little comment; they tell plainly enough the story of the Bishop's high-handed methods of government. The manner of obtaining the charter is for us the most instructive part of the story. It is clear from the articles that the smaller freemen of the palatinate were largely concerned in the struggle, but there is no trace of any

[1] Drengage is a peculiar form of tenure, bearing a resemblance to tenure by knight-service, but liable to merchet and heriot. See Maitland, Northumbrian Tenures, in English Historical Review, v. 625–632.

burghal element; in fact, the demand for free traffic outside of privileged towns would seem to exclude the possibility that the boroughs were in any way concerned in the movement. The part played by the church and baronage is sufficiently obvious; but it should be noticed that even the combination of these three powerful forces was not strong enough to coerce the Bishop, who stood out successfully against his people until he was subjected to pressure by the king.

It should be remembered, on the other hand, that Bek was an unusual man, commanding enormous wealth, and — at least until the struggle was well under way — a large measure of royal favor. Even when forced to yield, he made a last effort to avoid his new responsibilities by withholding the charter. The temporalities were restored on July 8, 1303, and the charter was sealed at York some months later and delivered to William de Greenfeld, archbishop of York and chancellor of the kingdom.[1] Whether he retained it out of carelessness or at Bek's request we do not know. At any rate, the next year the commonalty of the bishopric petitioned the king in parliament that he should obtain for them livery of a certain charter granted to them by their Bishop and by him delivered to the chancellor.[2] To this petition a favorable answer was made, and, since the document is entered in the episcopal register, the inference is that the commonalty received it. In 1353 the men of the bishopric obtained from Edward III an inspeximus and confirmation of their charter.[3] This interesting story illustrates well the desire, on the one hand, of the assembly, commonalty, or folkmoot to control the Bishop, and on the other hand their inability to do so in the teeth of his opposition without the help of the king.

Before this subject is left, three more pieces of evidence, sufficiently interesting to receive at least a passing notice, must be considered. The first is an obscure story which comes from the year 1331. John de Creping, a monk of Durham who had

[1] Prynne, Historical Vindication, v. 995–996; Foss, Judges, iii. 96.

[2] Rot. Parl., 33 Edw. I, i. 167a; Memoranda de Parliamento (ed. Maitland), 126.

[3] Rot. Pat. 27 Edw. III, pt. ii. m. 25.

studied at Oxford and subsequently created great scandals in the convent, obtained leave to go to Rome. This permission was immediately withdrawn, and Creping went on his own motion. He was then declared apostate and was excommunicated. Thereupon he wrote to the commonalty of the bishopric requesting that it would not think evilly of him, since he was laboring for the good of the church. The king and the archbishop of York were interested in the affair, and when the monk eventually returned the Bishop concerned himself to make his reinstatement in the convent as easy as possible. The story is dark, and since it comes through a monkish writer considerable allowances must be made in favor of the hero. It is possible that it has some political significance; certainly the fact that so many important people were concerned in it points in that direction. At any rate, for the present purpose it is important to notice that in the palatinate at this time there was a body or assembly to which a letter might be addressed and whose influence it was desirable to enlist. The fact that, after the letter had been received, the Bishop interested himself in the affair may possibly indicate that his action had been guided by the voice of the assembly.[1]

The next case comes from the year 1349. Bishop Hatfield had issued a kind of general commission to his justices to inquire and dispose of certain transgressions, oppressions, and the like, according to a list of articles transmitted to them. On this the commonalty approached the Bishop — but by what means we do not learn — representing to him that it was contrary to the custom of the franchise for the justices to hold a session under general articles except at the time of an eyre, and praying that the Bishop would not persist in his intention. This he agreed to do, not only for the occasion in question but for the whole of his pontificate as well.[2] The commonalty no doubt

[1] Graystanes, cap. xlvi, in Scriptores Tres, 113–117.

[2] Littera pro communitate Episcopatus Dunelmensis. Thomas par la grace de Dieu Evesque de Duresme a touz noz foialx et loialx as queux cestes noz lettres vendront Saluz en Dieu. Come nous eussons assigne noz Justices a Duresme denquere, oier et terminer sur divers articles de diverses trespas et oppressions, come en lour commission feust pleinement contenuz; sur quei la commune des gentz de notre roiale Fraunchise de Duresme

paid well for this favor, though that part of the transaction is not recorded.

Finally, in 1378 the people of the liberty made a *clamosa querela* to the Bishop, representing to him that the butchers, fishmongers, inn-keepers, and vintners were asking prices higher than those allowed by the recent statute (23 Edw. III). On this the Bishop issued a special commission to his justices to inquire into such offences and to put an end to them.[1]

§ 13. Origin and Development of the Council.

It was said of the passage quoted at the beginning of this chapter that the writer confused two bodies, namely, the palatine assembly and the Bishop's council. The second of these now requires our attention. From the reign of Edward II onward the documents permit us to speak definitely of the composition and functions of the Bishop's council, but in dealing with the centuries that lie between the Norman Conquest and the death of Edward I much caution is necessary.

We begin with a reëxamination of some of the circumstances of an event which has already been noticed, the story of Bishop Walcher's murder in 1080. It seems that the Bishop so highly esteemed his friend Liulf that without his advice he was un-

approcherent a nous monstrantz que [one or two words illegible] ne noz predecessours unques en nul temps navions session des Justices sur generals articles, forsque en temps de Eyre, empriant a nous qen notre temps tieles choses ne feussent pas comencez, en grevance et travail du pais, encontre la custume de notre dite Fraunchise roiale. Nous, desirantz la bone voillance, amur, et eese de nos dites gentz, avons grauntes et comande que noz ditz Justices sur la dite commission nulle administracion ne execucion ferront mes de tout surcesseront. Et grantons por tout notre temps que tieles enquerres, ne autres que soient encontre la custume de notre roiale Fraunchise susdite, ne ferrons ne soeffrons estre fait en tant come en nous est, et autrement que nous et noz predecessours, du temps dont y nyad memorie, navons use affaire, saufe tote foitz temps de Eyre et autres enquerres acustumes. En tesmoignance de quon chose a cestes lettres avons mys notre seal. Done a notre Chastel Daukland le tierez iour de Marcz, lan de notre Sacre quatre. Per litteram de privato sigillo. (Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30.)

[1] Rot. ii. Hatfield, ann. 28, m. 5, curs. 31.

willing to transact any secular business.[1] Of the occasion of the quarrel between Liulf and Leobwine it is said that, "when Liulf had been summoned by the Bishop to the council and had made a just and lawful judgment," Leobwine began to taunt Liulf.[2] After Liulf's murder the Bishop undertook at the gemot at Gateshead to clear himself by the ordeal; alarmed no doubt at the temper of the assembly, he declined to plead in the open air and withdrew to a neighboring church, accompanied by his clerics, the more honorable of his knights, and all those who were apt to give counsel, and there a council was held.[3] The picture evoked by these words is not only that of a desperate man hastily collecting his friends and asking their advice; there is a suggestion of something more formal and of greater authority, of a select body of knights and clerics whose membership was well known and whose advice the Bishop was accustomed to seek. The existence of such a body may also be traced in the relation of the Bishop with the two monks of Evesham, Aldwin and Turgot. We read that the Bishop, delighting in their wisdom, frequently summoned them to his *colloquium* at Durham, and acted on the advice they gave there.[4] It is evident therefore that some sort of council existed.

From this point until the middle of the thirteenth century the chroniclers give us no aid, and we must depend on the names of witnesses in such episcopal charters as are available. The series begins with Ranulf Flambard, 1099–1128, for there are

[1] "Absque illius consilio majores secularium negotiorum causas nullatenus agere vellet aut disponeret:" Florence of Worcester, ii. 14. Walcher obtained the earldom of Northumberland after Waltheof had been deprived for his part in the conspiracy of 1075 (Symeon, i. 113–116; William of Malmesbury, Gesta Pontificum, 271–273; Stubbs, i. 409). It might therefore be objected that these words have reference to the temporal government of the earldom rather than to that of the bishopric. This view is inadmissible, however, because we are expressly told by Symeon that the Bishop intrusted the government of the earldom to his nephew Gilbert (Symeon, ii. 208–211).

[2] "Cum idem vir Liulfus ab episcopo vocatus ad consilium legalia quaeque et recta decerneret," etc.: Florence of Worcester, ii. 14.

[3] Ibid., 14–15. But Symeon (i. 116) says that the Bishop was alarmed by the crowd and so took refuge in the church.

[4] Symeon, i. 112.

none of Walcher's charters, and those ascribed to Bishop William I are spurious.[1] Five of Bishop Flambard's charters have survived; they are undated and two of them have no witnesses.[2] Among the witnesses in the other three are the names of Osbert, nephew of the Bishop, who was afterward sheriff of Durham and possibly held the office at this time,[3] Robert the archdeacon, Roger de Conyers, one of the episcopal barons,[4] Peter de Humfraville and John de Amundaville, two names which at a later date were borne by great baronial families in the north,[5] and two persons described as chamberlains (*camerarii*), with several others who cannot be identified.

Bishop Geoffrey (1133–1140) made a grant of certain lands in the bishopric, the boundaries of which were perambulated by Osbert, the sheriff, Geoffrey de Escolland, William de Freibos, Odo de Brenba, Roger de Putot, Aechardus, and Dolfinus his brother. Nearly all these names reappear among the witnesses, along with those of Robert de Amundaville, Roger de Conyers, and several others who are known to have been palatine or episcopal barons. There are also here and in other charters of this Bishop such names as Dolfinus, Engelarius, Gamel son of Aelferus, Geoffrey Train, and the like, which are clearly not noble. William, a chamberlain, and Osbert, sheriff and nephew of the Bishop, supply the official element, and one or more archdeacons the clerical.[6] In Bishop William II's charters the clergy predominate; Osbert the sheriff is the only officer named, but the baronial families of Bulmer, Conyers, Freibos, and Amundaville are represented.[7]

Bishop Pudsey's charters show a large and somewhat shifting baronial element in the council, though certain familiar names constantly reappear, such as Hansard, Hilton, Conyers, Punch-

[1] See Canon Greenwell's preface to the Feodarium.

[2] Scriptores Tres, App. No. xviii–xxi; Surtees, Durham, i. p. cxxv; Feodarium, 98, 145.

[3] A charter of Bishop Geoffrey is witnessed by "Osbert vicecomes," and another of Henry earl of Northumberland (*temp.* Henry I) is addressed "Willelmo cancellario, Osberto vicecomiti, et omnibus hominibus de Haliweresfolc:" Feodarium, 112, 152.

[4] See above, p. 65.

[5] Plac. de Quo War., 604.

[6] Feodarium, 112, 140, 205.

[7] Ibid., lxi–lxv, 131–132.

ardon, and de Leia. Some member of each of these families seems to have been in constant attendance on the Bishop. The clergy were always present, sometimes the prior or archdeacon, sometimes one or more persons described as *clerici* or *capellani*.[1] The household and administrative officers also appear more freely, — several *camerarii*,[2] a *pincerna*,[3] a *dapifer*,[4] a *marescallus*,[5] an *hostiarius*,[6] several *vicecomites*,[7] a *senescallus*,[8] a *venator*,[9] and a *silvanus*.[10] There is also a body of persons who, to judge from their names, are not noble and who should probably be reckoned as councillors pure and simple, especially adapted by their learning or skill to aid the Bishop in the various departments of government; among these are such names as Simon, Ernaldus, Robert Scot, Helias, Wido Tisun, John Inigna, Robert Bacun, and Stephen the physician.[11] Among the permanent councillors should be reckoned Henry Pudsey, the Bishop's son, and a certain Simon the chamberlain; these two names appear with great regularity, and Simon in a grant of land which he obtained for his two nephews is described as "dilectus filius et familiaris" of the Bishop.[12]

Philip of Poitou, the next Bishop, has left a much smaller number of charters than his predecessor, Pudsey. These show no change in the composition of the council, except in the fact that the more humble element is less prominent.[13] The charters of the successive Bishops up to 1259, when Walter de Kirkham held the see, show nothing of importance.[14] Bishop Kirkham's charter of 1259 is witnessed by John de Balliol, Robert de Nevill,

[1] Feodarium, lxxxvi, 10, 100, 106, 108, 113, 134, 140–142, 177, 182, 198, 206; Boldon Book, App. xlii–xlvi; Scriptores Tres, App. No. xlv.

[2] Feodarium, lxxxvi, 108, 113, 134, 177, 182, 198; Boldon Book, App. xlii–xlvi; Scriptores Tres, App. No. xlv.

[3] Feodarium, lxxxvi.

[4] Ibid., 106.

[5] Boldon Book, App. xlii.

[6] Feodarium, 177.

[7] Ibid., 113, 134, 136, 140, 182, 198; Boldon Book, App. xliii–xliv.

[8] Feodarium, 141.

[9] Ibid., 106.

[10] Ibid., 141.

[11] Ibid., lxxxvi, 100, 106, 134, 141.

[12] Boldon Book, App. xliv.

[13] Feodarium, 109, 150, 177–178; Hutchinson, Durham, i. 190 note.

[14] Hutchinson, Durham, i. 197 note; Feodarium, 149, 186, 187, 197, 217; Scriptores Tres, App. No. lviii; and cf. also Matthew Paris, Chronica Majora, vi. 340.

Marmeduke Fitz Geoffrey, and William de Fengeram, knights, "and many others."[1] The next year Kirkham issued another charter, of which the test clause is particularly interesting.[2] It opens with a list of four *magistri*, one of whom, Roger de Seyton, was probably a palatine justice; at any rate he certainly held the Bishop's commission later.[3] Then follow nine *domini milites*, including the familiar names of Nevill, Hansard, and de Leia; then come the steward, a chaplain and a clerk, and a miscellaneous group of eight persons whose rank is not specified. This list clearly marks a step in organization; and the presence of a justice, or at least of a man learned in the law, is also significant. The example thus set by Bishop Kirkham is followed by his successors, Robert Stichill and Robert de Lisle.[4]

The striking feature in Bishop Bek's council is the increase of the legal element, combined very often with the clerical.[5] Two important members were Guiscard de Charron and Peter de Thoresby. The former was a person of great importance in the palatinate, and probably a favorite of the Bishop; at any rate he held many offices, but none more often than that of justice.[6] He and Thoresby were both justices in 1295.[7] William de S. Botulph and Stephen de Mauley, each in turn combining the offices of steward and archdeacon of Durham, also witness Bishop Bek's charters.[8] The importance of the legal element in the council, as well as the general composition of the body, appears in the story of the beginning of the quarrel between the Bishop and the prior, as told by Walter of Hemingburgh. The Bishop undertook to make a visitation of the convent in 1300. He appeared accordingly, attended by numerous knights and clergy. The prior objected that it would be inconvenient to expose the secrets of the convent to so many persons, but the Bishop

[1] Feodarium, 182. [2] Ibid., 184.

[3] See below, § 18; cf. Hutchinson, Durham, i. 219.

[4] Feodarium, 183, 187; Finchale Chartulary, 110.

[5] Registrum, ii. 1188, 1209, iii. 236, iv. 100–101; Feodarium, 183.

[6] See below, § 18.

[7] Registrum, iii. 69. Just before Bek's accession, in 1283, these two had saved the life of the archbishop of York, who rashly undertook to visit the church of Durham. See Graystanes, cap. xix, in Scriptores Tres, 65.

[8] See above, note 5.

answered him sharply, "Sit down, prior, and understand clearly that we intend that all these who are of our council shall accompany us." Among the persons thus referred to were John de Lasci and Reginald de Brandun, famous lawyers, whom the Bishop had brought with him in order to vindicate his canonical right of visitation. The monks, alarmed by these preparations, gave notice of an appeal to the archbishop's court at York with a supplementary appeal to Rome, and, having thereby suspended proceedings, trooped out of the chapter-house, leaving the Bishop and his council alone.[1] In the account roll of the palatinate for the year 1307 there is an entry of the expenses of lord Stephen (probably Stephen de Mauley, steward and archdeacon) and other members of the council and pleaders at several of the law terms.[2] Bek had an unusually turbulent pontificate, and his constant quarrels with the prior and the king involved him in a great deal of litigation, a fact which partly explains, no doubt, the considerable increase of the legal element in his council.

After the accession of Bishop Kellaw the documents attainable become more plentiful and far fuller, so that it is possible to distinguish an important change in the organization of the council. Before entering on a consideration of this subject, however, it will be well to form some clearer notion of the body we have been studying. Whereunto shall the Bishop's council be likened? The first impulse is to compare it to the *concilium regis* of the kings of England: other palatine institutions followed more or less closely the pattern set for them in the kingdom; why not this one? If for this analogy we accept the view of Stubbs and Freeman, we shall have to recognize in the king's council a kind of standing-committee of the great or national

[1] "'Sede, prior, et pro certo intellige quod omnes istos qui de consilio nostro sunt, nobiscum habere volumus in praesenti.' Adduxerat enim secum magistrum Johannem de Lasci, et magistrum Reginaldum de Brandun famosos advocatos et quosdam alios nominatos, volens et disponens mirabilia facere; propter quod monachi . . . statim appellarunt ad curiam Eborum . . . et in supplementum justitiae curiam Romanam; et sic appellatione muniti recesserunt omnes; remansitque solus episcopus cum consilio suo:" Walter of Hemingburgh, ii. 214–215.

[2] Boldon Book, App. xxxv.

council (*commune concilium*), itself the successor, under the Norman dispensation, of the Anglo-Saxon witenagemot. According to this view, the great officers of the household, who at first formed the body of royal advisers, become hereditary and give way to a new series of dignitaries whose functions are purely ministerial. Thus in the twelfth century the court and council of the king are the same, and the *curia regis* is ready to begin that amazing development which will produce an articulate financial and judicial system for the kingdom, leaving about the crown the narrow council, which in the succeeding century will take up an important growth of its own.[1]

Now in the palatinate conditions do not tally with those of the kingdom in this point. In the first place, there is no evidence that the household of the Bishop became hereditary and was replaced by a new series of officers. On the contrary we have seen that this was not the case.[2] In the second place, the council of the king, by the theory which has been stated, would have a distinctly permanent character; that is to say, almost any ordinary session would comprise the immediate advisers of the crown, while persons who theoretically had a right to be present by reason of tenure or dignity would not be there unless for some special reason. But we find that the character of the Bishop's council is shifting; it will include now this, now that, officer or member of the clergy, now these barons, now those; although in general the composition is the same, the individuals continually differ. Finally, there is no trace in the Bishop's council of the development which took place in the *curia regis* in the twelfth and thirteenth centuries, a circumstance largely due to the reduplication of offices in individuals, which has been noticed elsewhere.[3] The functions of the council multiplied, but the increased business involved by new offices was not too great to be despatched by the same body in various aspects, and hence the pressure which might have precipitated these aspects of one body into separate entities was lacking. Upon this theory of the *concilium regis* therefore the proposed analogy will not stand.

[1] Stubbs, i. 389–406, ii. 278–288; Freeman, Norman Conquest, iii. 289, v. 422 ff.

[2] Above, § 9.

[3] Above, pp. 97–99.

There is, however, another view, that of Gneist, according to which in the Norman period the *commune concilium* of the kingdom is to be connected with the baronial court of the Norman duchy and quite dissociated from the Anglo-Saxon witenagemot.[1] This theory applies only to the Norman period and will not affect what has been said of the twelfth-century development. So far as it goes, an analogy may probably be established here; but if this is possible, the analogy will extend to the thirteenth century. It will be wiser, then, to reject altogether the attempt to compare the Bishop's council to anything in the kingdom, and to seek rather its points of resemblance to the *curia* or council of a great feudal lord in France. Let us see what were the chief characteristics and functions of this body.

First, it was essentially the entourage of the lord, and on this account presented no fixed or permanent aspect, so that from day to day the number and degree of the persons composing it might vary considerably. But the members may be grouped into two classes. The first class was composed of members of the higher clergy and seignorial baronage, who were compelled by their feudal obligations to form part of their lord's court. In theory perhaps all of these must or might be present, but in practice only those appeared who were attracted by their own interest, their regard for their lord, or by some accident that made attendance easy. The frequency of their appearance was in direct relation to their dependence on their lord or their good disposition toward him. The second class embraced the officers of the fief. These persons were generally of modest station, knights or clerics, and, after the twelfth century, even burghers. They had special duties, could be removed at pleasure, and were eventually paid for their services. They were very frequently persons trained in the law. This element was permanent, dependent on the lord and flexible to his will, and hence in the twelfth century it increased in importance with the growth of the ducal or comital power. Finally, certain members of the council belonged to both classes at once, such, for example, as the great officers of the fief, who would often be barons as

[1] Gneist, Verwaltungsrecht, i. 20 ff.

well, so that it is often impossible to tell in which capacity they appeared.[1]

Clearly the analogy between this body and the Bishop's council is complete at almost every point. The change by which the humbler and more permanent element secured predominance in the council comes indeed a century later in England than in France; but, as has been frequently noticed, the palatinate did not obtain a full measure of feudal independence until the close of the thirteenth century, and it was about the middle of that century when the less distinguished members of the council, and particularly those trained in the law, began to play a prominent part in that body. We conclude, then, that the Bishop's council was essentially a feudal body in its origin and theoretic composition. In practice, however, and under pressure of certain executive and administrative necessities, occasioned in the palatinate as in France by the absence of any direct relation between the people of the district and the crown, it became defeudalized and assumed many of the functions and characteristics of a rudimentary ministry of state. When we have completed the survey of the composition of the Bishop's council and have to consider its functions, we shall find that our analogy still holds good.[2]

It is probable that the practice of paying a salary to members of the council began at least as early as the pontificate of Bishop Bek, but the first proof of such an arrangement appears in a document executed in October, 1311. This is an indenture between Bishop Kellaw and Sir Richard Marmaduke, by the terms of which the latter agrees to become a member of the Bishop's

[1] Luchaire, Manuel, 257–259.

[2] Hutchinson supposed that the Bishop's council was composed of barons who by reason of their tenure were obliged to act as the Bishop's advisers, and whom he was equally obliged to accept in that capacity. He regards this body as at once a privy council and a miniature house of lords, and compares it to the assembly of the island of Jersey. Reason for rejecting the theory has been shown in the text above, and the comparison will not hold. An example of the sort of body which Hutchinson had in mind may be seen in the *cour majour* of Béarn. See Hutchinson, Durham, i. 316; Falle, Caesarea, 222–223, 233–237; Plees, Account of Jersey, 221 ff.; Luchaire, Manuel, 257.

council, and to aid him in governing the palatinate for one year next following, at a salary of twenty marks, payable at the Bishop's exchequer in two instalments.[1] This engagement is renewed in the following year, and a similar one is made between the Bishop and Lord Robert Nevill.[2] At the same time the Bishop added to his list of retainers a Sir Ralph Fitz William, who took the Bishop's livery and agreed to form part of his "sute de chivallers" and to hold himself at his disposal for one year, receiving a salary of one hundred marks in three instalments.[3] In the course of the year we find Fitz William witnessing the Bishop's charters.[4] This looks as though the baronial element in the council were being reduced to a very small number, and made more manageable by being brought into an unfeudal relation with the Bishop.

An examination of a number of charters issued by Bishop Kellaw in the second year of his pontificate shows the average number of witnesses to have been between six and seven, with a maximum of eleven and a minimum of three. In the group of witnesses to each charter the average number of barons not holding office is between three and four, but many of these were no doubt either the salaried councillors or the retainers of the Bishop, like Marmaduke, Nevill, and Fitz William, all of whose names frequently recur.[5] This supposition is rendered more probable by the fact that Kellaw's policy was to increase his retinue by conferring his livery on large numbers of the feudal tenants of the bishopric.[6] The figures given have only an approximate value, for there were always persons present who did not sign the charter.

An important meeting of Bishop Bury's council in 1345 consisted of thirteen persons, comprising the steward, the chancel-

[1] Registrum, i. 9.
[2] Ibid., ii. 1169, 1170.
[3] Ibid., 1181.
[4] Ibid., 1189, 1196.
[5] Ibid., 1167, 1169, 1171–1172, 1173, 1177–1178, 1179–1180, 1189, 1190, 1194–1195, 1197, 1202.
[6] Graystanes, cap. xxxv, in Scriptores Tres, 94. Bishop Hatfield continued this policy, as is learned from a licence issued in 1377 to Sir John Nevill to fortify Raby Castle. In this document it is said of Nevill, "qui de long temps adeste de nostre consaile et nous servant:" Rot. ii. Hatfield, ann. 33, m. 10 dorse, curs. 31.

lor, five justices, the sheriff of Durham, one of the coroners, one cleric, and two tenants-in-chief of the Bishop. This session was occupied with the regulation of judicial affairs, and may probably be taken as typical of the composition of the council when assembled for administrative purposes.[1] In 1386 Bishop Fordham's receiver-general paid the fees of seven persons "retenti de concilio episcopi," all of whom appear to have belonged to noble or at least to knightly families.[2]

In the course of the fourteenth century the influence of the clergy and jurists in the Bishop's council continued to increase. In 1312 Bishop Kellaw writes that he cannot carry out an engagement until he has consulted with the *peritiores* of his council;[3] and any doubt as to the branch of learning in which these persons were skilled is removed when it is found that among the Bishop's advisers in that year were two professors of civil law.[4] One of these, a certain Richard de Eriom, seems to have acquired entire predominance in the council of Kellaw's successor, Louis de Beaumont. He was in priest's orders and had been Bishop Kellaw's official, besides standing in very intimate relations to the convent.[5] His name will recur again. In the course of the fourteenth century, then, the Bishop's council becomes smaller and more manageable, the accidental feudal element is excluded by a system of salaries, and greater prominence is accorded to clerics and persons skilled in the law, while

[1] Registrum, iv. 349. The composition of any given session of the council no doubt varied in direct proportion to the purpose for which it was gathered. Thus a charter issued by Bishop Kellaw in 1312, conveying a grant of wardship, is tested by three persons, all of whom are tenants-in-chief. See Ibid., ii. 1171–1172.

[2] This statement comes from an extract from the receiver-general's account for the fourth year of Bishop Fordham, printed by Hutchinson, Durham, i. 316. Hutchinson copied this from Randall's MSS., but the original document seems to have disappeared, although it may possibly be found in a collection of Durham ministers' accounts (A. D. 1341–1484) belonging to the Ecclesiastical Commissioners, and by them deposited in the Record Office. These documents, however, are in such bad condition as to be useless and therefore can not be examined; they are numbered Ecclesiastical Commissioners, ministers' accounts, 190252.

[3] Registrum, i. 193.

[4] Ibid., ii. 784, 808, 1167, 1169.

[5] Graystanes, cap. xl, in Scriptores Tres, 103–104; Registrum, ii. 1207.

the officers of the palatinate continue *ex officio* to be members of the council.[1]

In the fifteenth century there is very little change to be noted in the composition of this body. The practice of retaining salaried members appears to have continued and even increased. Thus in 1447 Bishop Nevill granted to William Norton, "consiliarius noster," an annual pension of ten marks as a reward for his faithful services in counselling the Bishop.[2] In 1461 the receiver-general paid forty shillings as the fee of Richard Pygot, "unius periti domini de consilio suo."[3] The practice of increasing the Bishop's retinue by conferring his livery grew rapidly in this century, especially in the pontificate of Bishop Nevill. It is possible that persons so retained received a sort of honorary membership in the Bishop's council, which would oblige them to share with him the responsibility of his acts, although their attendance at meetings of the council would be of secondary importance, depending on their accidental presence or the Bishop's pleasure. Something like this arrangement is suggested in the agreement made by Bishop Langley with Sir Robert Ogle, to whom was granted for a term of years practically all the offices of the little district of Norhamshire on the Scottish border. Ogle engaged to be of the Bishop's council and to serve him whenever need might arise;[4] but he probably

[1] Besides the case described above, p. 145, we know that Nicholas Gategang was at once chancellor of Durham and a member of the Bishop's council. See the Durham sheriff's account, A. D. 1336, Auditor 1, No. 1, and Cursitor 211, No. 9. The former record notes a payment made by the authority of N. Gategang and other members of the council; the latter is a precept bearing the same date, given by the hand of N. Gategang, chancellor.

[2] Rot. ii. Nevill, ann. 9, m. 13, curs. 43.

[3] Receiver-general's account, A. D. 1461, Ecclesiastical Commissioners, ministers' accounts, 189816.

[4] "Et le dit Monsieur Robert . . . voet et graunte . . . destre de counsaille de dit Evesque et de [ses] successours Evesques, et eux loiallment counsailler, et lour counsaille celer et lours honours et profits garder et faire garder en tout son loial pouvoir, et de faire service au dit Evesque et ses successours Evesques a toutz les foitz qils averount besoigne de luy:" Rot. DD. Langley, ann. 31, m. 16, curs. 37. See also an indenture between Bishop Nevill and Sir William Eure, by which the latter, in 1438, bound himself to

passed most of his time at Norham Castle, and could not have attended the Bishop's council unless the meetings were held there. The fifteenth-century notion, that the Bishop's council consisted of men chosen rather for their qualifications than for their station or degree, appears in a contemporary version of the story of the wanderings of S. Cuthbert's body. The words in the chronicle are these: "Tunc quidem habito inter se consilio, episcopus cum congregatione cunctique in terra meliores venerabile patris corpus secum asportaverunt."[1] They are rendered as follows:—

> "Ye bischop and his colage wyse
> Ye best of his diocyse
> Ye counsaild all' to gydyr."[2]

In the sixteenth century the actual working body seems to have become very small. At a meeting in 1524 there were present the chancellor, the sheriff, a clerical person described as "supervisor," John Bentley "councillor," and Sir William Eure, knight.[3] At a meeting in 1528 six persons attended, namely, the chancellor, the sheriff, the steward, the surveyor, Robert Bowes, esquire, and John Bentley councillor.[4] Persons admitted to the council took an oath faithfully to perform their engagements toward the Bishop and other members of the council.[5] It is even possible that the council had some voice in the choice of a new member, for on one occasion the Bishop appointed a sheriff — who *ex officio* would be of the council — "de avisamento consilii nostri."[6] In the fifteenth century this body was called the "concilium intimum."[7]

the Bishop as his retainer "a ly fayre servicez ou counceller:" Rot. v. Nevill, ann. 17 Hen. VI, m. 21, curs. 46; also printed in Surtees, Durham, i. p. cxxxiii.

[1] Symeon, i. 246.

[2] Metrical Life of S. Cuthbert (Surtees Soc.), lines 5157–5159.

[3] Rot. ii. Wolsey, ann. 4, m. 3 dorse, curs. 73. The original order is tacked to the roll; it is written on paper and is signed by three members only. For a similar case see Ibid., ann. 5, m. 5 dorse; but four members were present on this occasion.

[4] Rot. ii. Wolsey, ann. 20 Hen. VIII, m. 2 dorse, curs. 73.

[5] Registrum, i. 10. [6] Ibid., iv. 345.

[7] Rot. iv. Nevill, ann. 18, m. 2, curs. 45.

§ 14. Functions of the Council.

We pass now to a consideration of the functions of the council. These may be grouped into three classes, comprising the general administration of the palatinate, fiscal arrangements, and the advice and control of the Bishop. The council was also from an early time very active in judicial matters, and along this line it had a considerable development, producing later a chancery with equitable and common-law jurisdiction, a court of last resort (the Bishop in council), and eventually a court of admiralty. This side of the matter, however, has been fully treated in another chapter and need not be noticed here.[1]

The theory of the council's part in administration is well set forth in the oath taken by Sir Richard Marmaduke on becoming a councillor in 1311. He engaged "well and loyally to counsel and aid the said Bishop in all things touching himself and his church of Durham, well and loyally to aid, maintain, guard, and govern the peace within the said franchise of Durham between the waters of Tyne and Tees, and to aid in restraining and bringing to justice, according to the law of the land, evil-doers within the said franchise, as often as he should be required or commanded to do so."[2]

A few specific instances of the administrative acts of the council may now be considered. In 1183 the survey of the palatinate known as Boldon Book was undertaken by order of the Bishop and his council.[3] In the middle of the next century the whole intricate business of the law-suit between the Bishop of Durham and the abbot of S. Albans, with respect to the advowson of the church of Overconscliffe, was managed by the council; this case

[1] Below, §§ 20, 24, and App. ii.

[2] Registrum, i. 9. The words "lui et sa eglise de Duresme" must not be supposed to imply any ecclesiastical functions of the council; the Bishop of Durham was said to hold his liberties "non jure proprio, sed jure ecclesiae suae Sancti Cuthberti Dunelm." See The Practice of the Court of Chancery of Durham, 1–7.

[3] "Anno Incarnationis Dominicae [sic] millesimo centesimo octogesimo tertio, ad festum Sancti Cuthberti in Quadragesima, fecit Dominus Hugo Dunolmensis Episcopus in presentia sua et suorum describi omnes redditus totius Episcopatus sui sicut tunc erant:" Boldon Book, p. 1.

involved a great deal of difficulty and diplomacy, for much depended on securing the king's favor and special writs from him.[1] We have already seen what part the council bore in Bishop Bek's attempt to subdue the prior and convent.[2] In 1313 it was again helping the Bishop to order the affairs of the convent with the aid of a delegation of monks.[3] In 1335 the council directed the sheriff to pay a sum of money to Peter de Greet, the king's marshal, in order that he might not do anything to infringe on the liberty of the bishopric.[4] In 1345, in pursuance of an agreement previously reached between the king and the Bishop, the councillors made an ordinance facilitating the arrest in the liberty of persons who had committed crimes in other counties.[5] In 1364 they asserted the Bishop's right of wreck throughout his province, by forcing John de Carrowe to surrender a whale which a storm had driven ashore in his manor of Seaton Carrowe. John set up the defence that he did not know that a whale was a royal fish; and, as the creature was cut up and distributed among his friends, he was glad to escape with a fine of one hundred marks and a formal acknowledgment of the Bishop's right in all such cases.[6]

Between 1370 and 1379 the council was occupied with the management of the college which Bishop Hatfield had founded for the monks at Oxford.[7] In 1410 the question arose of making certain payments to the prior and convent under the

[1] Matthew Paris, Chronica Majora, vi. 326–332, 340, 346, 347, 376–382.

[2] Above, p. 140.

[3] The prior and convent appointed certain monks to represent them "in omnibus negotiis et ordinationibus monasterium Dunolmense et ipsius prioratum tangentibus, de quibus hac instanti die Mercurii, proxima post festum Sanctae Trinitatis ultimo elapsum, coram vestra reverenda praesentia . . . tractabitur, ordinabitur, seu etiam statuetur, et ad simul tractandum, ordinandum et statuendum, una vobiscum et vestro consilio," etc.: Registrum, i. 360.

[4] Sheriff's account, A. D. 1336, Auditor 1, No. 1.

[5] Registrum, iv. 348–350; below, § 30.

[6] Rot. i. Hatfield, ann. 19, m. 14, curs. 30. This interesting document is printed in Surtees, Durham, iii. 100 ff., and in Collectanea ad statum civile . . . comitatus Dunelmensis spectantia (Darlington, 1775).

[7] Scriptores Tres, App. No. cxxviii; see also Chambre, cap. iii, Ibid., 138. Hatfield's foundation, after many changes and chances, now survives as Trinity College.

terms of the thirteenth-century agreement known as Le Convenit; the Bishop and his council caused the records to be searched and concluded that, since the Convenit was still in force, the payment should be made.[1] In 1432 the council was busy with practical forestry. The Bishop had leased a certain tract of woodland to an iron-master, who was to set up forges, make charcoal, and smelt the iron ore which occurs so abundantly in the county of Durham. In order to preserve the forest it was stipulated that no trees of a certain description were to be felled without the advice and consent of the council; and that body was further to assign the proper sites for the smithies, water-wheels, and the like.[2] In 1437 we have a larger view of the governmental functions of the council, in the terms of the agreement between the Bishop and Sir Robert Ogle, constable of Norham, a document which has already been examined. In this it was provided that any danger threatening the Bishop or his franchise, of such a nature that Ogle alone could not meet it, should at once be reported to the Bishop and his council.[3] In 1524 the council determined the commonable rights of the inhabitants of the borough of Darlington in certain lands in dispute between them and the tenants of two adjoining manors.[4]

On the more strictly financial side of the government of the palatinate the council also exercised considerable influence. In 1387 it managed the farming of the borough of Durham; in a document drawn up by the council it is provided that "due allowance is to be made for delays [in payment] in case of pes-

[1] See the Bishop's warrant to the auditors, "Nous navons enserchiers tant au plein nos muniments ne assietz communez, ovec ceulx de notre conseils, pour savoir qe faire deens," etc.: Sheriff's account, A. D. 1410, Auditor 1, No. 2.

[2] Rot. DD. Langley, ann. 9 Hen. VI, m. 3 dorse, curs. 37.

[3] "Et si tiel chose soit ou aveigne desore en avaunt qe purroit estre prejudicielle au dit Evesque, ou a ses successours Evesques, ou a dite franchise, qe le dit monsieur Robert ne purra luy mesme aider ni remedier sans aide de dit Evesque, ou de ses successours Evesques et du lour counsail, le dit monsieur Robert alors certifiera ou monstrera au dit Evesque, ou a ses successours Evesques, le pluistost qil purra:" Rot. DD. Langley, ann. 31, m. 16, curs. 37.

[4] Rot. ii. Wolsey, ann. 4, m. 3 dorse, curs. 73; cf. Ibid., ann. 16 Hen. VIII, m. 5 dorse, and ann. 20 Hen. VIII, m. 2 dorse.

tilence or the like, according to the discretion of the Bishop's council."[1] In 1456 the steward of the Bishop's household, finding himself indebted to certain victuallers and money-lenders to the amount of £127 21*d.*, was authorized by the council to raise this sum on the Bishop's possessions throughout the palatinate. The details of this affair are obscure, but the writ to the steward probably called either for a tallage on the Bishop's manors, or, as is more likely, for a general settlement of arrears. It certainly was not a tax of any sort.[2] At the general audit of accounts in 1472 the question of an allowance to one of the auditors for travelling and living expenses arose, and was referred to the council. The councillors caused the records to be searched for precedents, and, having satisfied themselves that the claim was just, directed the allowance to be made.[3]

§ 15. Relations of the Council and the Bishop.

We have now to deal with an aspect of the subject that involves somewhat larger interests, namely with the mutual relation of the Bishop and his council. Instances of the Bishop's leaning on his council for advice and support have been seen in the story of Walcher's murder,[4] in Farnham's protracted suit with the abbot of

[1] Rot. Fordham, ann. 5, m. 8 dorse, curs. 32.

[2] The money had been borrowed for the Bishop's necessities, and the steward was authorized to raise, collect, and receive it "infra episcopatum nostrum Dunelmensem ac in Norhamshire, Bedlyngtonshire, Alvertonshire et Hovedenshire juxta formam et effectum cujusdam rotuli pergamenti, signo nostro manuali signati et signeto nostro sigillati, cujus vera copia praesenti est annexa." This was done "de avisamento et consideratione consilii nostri intimi." (Rot. iv. Nevill, ann. 18, m. 2, curs. 45.) The *vera copia* unfortunately has disappeared, but we learn from the rest of the document that the palatine officers are not to interfere in any way "de aliquibus parcellis in dicto rotulo contentis," but are to be protected against the audit by warrants for the said "parcellae." It is just possible that the Bishop was demanding his revenues in advance.

[3] "Consideratum est per consilium Domini, per inspectionem compotorum praecedentium tam temporibus Roberti Nevill nuper Dunelmensis episcopi quam Thomae Langley praedecessoris sui, quod tales expensae dicto Willelmo . . . allocantur:" Receiver-general's account, A. D. 1472, Auditor 5, No. 149.

[4] Above, pp. 107, 136–137.

S. Albans,[1] and in Bek's effort to coerce the convent.[2] In 1306 Bishop Bek and another were sued before the king's justices for the recovery of certain lands; whereupon the Bishop, at the advice of his council, brought a counter-suit, which his opponent said was malicious. It is not known what success attended this manœuvre.[3] In an instance, in the year 1312, of what has charitably been called Bishop Kellaw's extreme caution, the Bishop may be seen sheltering himself behind his council against the fulfilment of a distasteful engagement. Kellaw writes to Sir John Sandale in regard to a promise made to the latter at Tottenham, saying that, when he had laid the matter before his councillors, they, by reason of the nature of the affair and the grave consequences of a refusal, wished for more time to deliberate. The Bishop therefore delays his final answer until his council, reinforced by other members who have not yet arrived, shall have given the business more mature consideration.[4] The matter in question was the discharge of the Bishop's feudal service on the border, and the Bishop, having neglected this duty, incurred a penalty of £120. Sir John Sandale was at this time the *locum tenens* of the treasurer, and in 1314 a writ witnessed by him in that capacity was directed to the Bishop enjoining him at once to send the money to the exchequer. But the Bishop and his council determined to make no return to this writ, and the matter drops there.[5] It is impossible to avoid the conclusion that Kellaw had come to an understanding with Sandale, as a result of which his neglect was allowed to pass without consequences. In the conduct of this whole affair the Bishop was guided and supported by his council.

In 1315 a royal writ touching a suit then pending in the palatine court came to the Bishop. This was transmitted to the justices with instructions to pay close attention to the form and words of the writ, but to take care that the royal liberty of the

[1] Above, p. 149. [2] Above, pp. 140–141.

[3] Rot. Parl., 35 Edw. I, i. 198.

[4] Registrum, i. 193; and see Ibid., iii. Introd. cvii–cviii, where Sir Thomas Hardy cites this as an example of Kellaw's virtuous caution.

[5] "Breve regis pro solutione finis facti pro servitio debito . . . Deliberatum fuit per consilium apud Creyk' quod istud breve non retornaretur:" Ibid., ii. 1010–1011.

Bishop should suffer no harm.[1] It is not stated that this was done by the council, but the clear intention of the instructions is quite of a piece with the case just considered, and there can be little doubt that the council was as responsible for the latter as for the former. In 1321 occurred a case in which the Bishop's policy was shaped and controlled by his council, although the affair seems to have been managed by a single member of that body. The archdeacon of Durham had quarrelled with the prior about his jurisdiction in the churches appropriated to the convent. The archdeacon, seeing that he could accomplish nothing by regular methods, succeeded in corrupting Richard de Eriom, a councillor of great influence with the Bishop. At Eriom's suggestion the Bishop took up the archdeacon's cause and threatened to depose the prior. The quarrel raged for four years, but in the end Eriom exchanged the benefice which he held of the prior and convent, and the Bishop accepted a present of money from the monks and decided in their favor.[2]

Eriom must have obtained an almost unlimited influence over Bishop Beaumont, for his pontificate furnishes an unique instance of a successful traverse of the Bishop's will by the council. The Bishop had obtained a papal bull permitting him, in the event of a vacancy of the priorate, to designate any member of the convent to be the new prior, and another authorizing him to take a fourth part of the revenues of the convent while the war with Scotland lasted. Because these bulls were obtained by unfair means, however, his council refused to allow him to use them.[3] This was probably a case of flagrant injustice on the part of the Bishop, who was an erratic man and of no great

[1] Registrum, ii. 1044.

[2] "Videns ergo Archidiaconus, quod sic non proficeret, conduxit magistrum Ricardum de Eriom, tunc ducem et consiliarium Episcopi. Ad cujus instigationem Episcopus se fecit partem contra Priorem, comminatusque est Priorem deponere:" Graystanes, cap. xl, in Scriptores Tres, 103–104. Graystanes relates the whole story in this chapter.

[3] "Bullam unam habuit ad praeficiendum in Priorem Dunelmensem quemcunque de domo vellet; aliam ad habendum quartam partem bonorum Prioratus dum guerra Scotiae duraret. Sed quia istae Bullae impetratae erant tacita veritate et suggesta falsitate, noluit ejus concilium eis uti:" Graystanes, cap. xlviii, Ibid., 118.

sanctity, according to the monkish historian's account of him.

The conclusions in regard to the council may be summed up somewhat in this fashion. From the Norman Conquest onward the Bishop was surrounded by a more or less limited body of advisers, composed of the great officers of his household and of the palatinate, a number of feudal tenants-in-chief, and possibly a few other councillors of humbler rank. The number of this body did not vary much, but the individuals composing it changed constantly. In the course of the thirteenth century a lower and more permanent class of councillors, largely clerics and jurists, began to become prominent, and the feudal or noble element was gradually subordinated or eliminated by the practice of choosing certain individuals to be of the council for a fixed time and at a salary. In the succeeding centuries the body became smaller and more manageable, and the legal and clerical element continued to predominate. This body had various advisory, financial, and ministerial functions, and, in view of the restricted quality of the problem of government in the palatinate, may be termed a rudimentary ministry of state.

CHAPTER V.

THE JUDICIARY OF THE PALATINATE.

§ 16. Development of the Judiciary from 635 to 1195.

THE student of English legal institutions will find much to interest him in the legal history of the county palatine of Durham. He may read there the story of a conflict in which the common law displayed many of its most striking characteristics, and the history of the development of a judicial system under circumstances which might, but for certain combinations of political, economic, and personal interests, have obtained throughout the kingdom. The story, then, since it may help us to see how the legal system of England grew up and what it escaped, is worth telling.

Our first task will be to discover so far as possible the origin of the palatine jurisdiction in so far as it related to the administration of justice, and to trace its growth, the mutual relations of the courts which were produced in the course of that growth, and the eventual disintegration of the entire system. In fine, we must study the organization from within before we are prepared for our second task, before we may pass out of the palatinate and fix our attention on the more interesting spectacle of the relations of the legal institutions of the palatinate with those of the kingdom.

In the first division of our subject it will be necessary to show, as best we may, how there grew up in the patrimony of S. Cuthbert, the possessions that eventually crystallized into the bishopric between Tyne and Tees, a great feudal jurisdiction. This process occupies the centuries that lie between the foundation of the see of Lindisfarne in 635 and the death of Bishop Pudsey in 1195. The next step will show the transition in one century (1206–1310) from feudal to palatine jurisdiction, together with the establishment of a judicial machinery in

the palatinate which effectually excluded that of the kingdom. Passing then to the two centuries that lie between the death of Edward I and the accession of Henry VII, we shall examine the various phases of the development of the palatine judiciary, the courts and their mutual relations, the judicial officers, and the like. We may then return to the larger question, and observe how the whole system was undermined and its immunities were stultified under the combined pressure of various forces, of which the most important were the rapid growth of legal science, the increasing power of the crown and the consequent centralization of government, the anomalous position of the Bishops, and the superannuation of the palatinate. It will be necessary to notice, however, that certain circumstances in the course of the fifteenth century, such as the geographical position of the bishopric and the general disorder of the period, tended to preserve somewhat beyond their time the liberties of the palatinate. The last step, covering but a small part of the Tudor period, brings us to the practical extinction of the palatine judiciary by act of parliament in 1536. The discussion of the courts of chancery and admiralty will lead us far beyond this date; and we shall undertake a hasty survey of the legal history of the palatinate down to the present day.

We have already encountered the obscurities that overhang the origin and early history of the palatinate; we have to do now with a smaller and more manageable difficulty, namely with the growth of a seignorial jurisdiction. It will be well to begin by examining whatever sources are available. At the outset it must be acknowledged that until the first quarter of the twelfth century we know only what the chroniclers can tell us. We learn from them that, on S. Cuthbert's reluctant elevation to the see of Lindisfarne in 685, Egfrith, king of Northumbria, endowed the saint (and by consequence the see) with lands in those parts of his kingdom which were later to become Northumberand[1] and Yorkshire.[2] Pious kings and nobles continued to

[1] It will be remembered that up to the present century Norhamshire, Islandshire, and Bedlington, in the county of Northumberland, were reckoned parcels of the county of Durham.

[2] This transaction is also recorded in a charter ascribed to Egfrith

increase this little patrimony, until in 883 Alfred, grateful for the miraculous encouragement he had received in a vision from S. Cuthbert, organized, in concert with Guthred the Dane, a general confirmation of the liberties and possessions of the saint. Not content with confirmation, the two kings so increased the patrimony of S. Cuthbert that it included all the territory between the Tyne and the Wear, — about one-half of the present county, — with the right of sanctuary and the usual immunities. These privileges were to extend to any lands which the see might in future acquire whether by gift or by purchase.[1] The story, as we have it from Symeon of Durham, is the text of a charter imported bodily into the narrative; even the familiar condemnatory clause has not been omitted. This is the central point of the story; but we continue to hear of donations to God and S. Cuthbert,[2] and these carry us down to a point just before the Conquest, when we have to do with charters forged just after that event. But these, as will be seen, are not charters of foundation; they do not profess to create the immunities of S. Cuthbert's successors, but rather to confirm and amplify those immunities.[3]

We are free to doubt as many of Symeon's details as we please, but we may not altogether reject the substance of his story. He wrote, it is true, as late as 1104, but on the other hand he relied largely on Beda and had access to the lost Northumbrian annals, which would be likely to mention any gift to the church. We must remember, too, the fervid and persistent veneration in which the body of S. Cuthbert was held by Englishmen of the middle ages. It is not fantastic to say that the incorruptible body of the saint was the nucleus of the temporal power of the Bishops, his successors. In the indisputable existence of this relic, during four centuries before the Norman Conquest, in various parts of what was later to

(Kemble, Codex Diplomaticus, i. 29), a most unblushing forgery, which was subsequently confirmed by Henry VI (Rot. Pat. 11 Hen. VI, roll ii. m. 22). It contains a grant of regalities.

[1] Symeon, i. 62, 69–71, 204–207.

[2] Monasticon, i. 234–235.

[3] Symeon, i. 97, 208, 212–213.

become the county palatine, may be found a certain corroboration of Symeon's story.

Let us see now how matters stood at the time of the Conquest. If we find the Bishop of Durham in possession of jurisdiction, we shall be inclined to assume, in the absence of any record of donations from the Conqueror and in view of the evidence already considered, that this jurisdiction was inherited from more ancient times. There is no record of donations from the Conqueror, and yet the way is not clear, for the existence of seignorial jurisdiction before the Conquest has been called into question and even denied.[1] But if we are willing to admit that before the Conquest the church of S. Cuthbert was a great landed proprietor — and it is impossible to avoid the admission — we shall find Professor Maitland forcing us to the conclusion that the church enjoyed jurisdiction also.[2] From Domesday Book, moreover, we get important though indirect testimony. Durham, as we know, was not included in the survey, but it is recorded that neither king nor earl had any "custom," or profitable rights, over the lands of S. Cuthbert in Yorkshire.[3] In the face of what we have heard from Symeon and of what we know of the endowment of other great English churches, Winchester, Worcester, and York,[4] it is impossible to suppose that the church of S.Cuthbert enjoyed immunities in Yorkshire not accorded to it in Durham.

Before the close of the eleventh century there is unmistakable evidence of the existence of a court of justice in the Bishop's hands. The story of the events leading up to the murder of Bishop Walcher in 1080 brings out this fact. We read of the rivalry of two of the Bishop's advisers, Liulf and Leobwine. There had been ill feeling between them, and Leobwine would often make light of Liulf's judgments and opinions, "judicia atque consilia." Frequently too, when arguing with him before the Bishop, Leobwine would exasperate his enemy with harsh

[1] Adams, The Anglo-Saxon Courts of Law, in Essays in Anglo-Saxon Law, 1–54; cf. Stubbs, i. 124–126.

[2] Maitland, Domesday Book and Beyond, 258–292; for ecclesiastical franchises, cf. Ibid., 87.

[3] Domesday Book, i. 298b.

[4] Maitland, Domesday Book and Beyond, 87.

words. On one occasion, when Liulf had made a judgment, "legalia quaeque et recta decernet," Leobwine was more than usually insulting; Liulf answered him sharply and at once left the moot-stead, "placiti locus." We need not linger over the end of the story: Liulf was assassinated, and in revenge his relatives shockingly murdered the Bishop.[1] The words of the original are significant; the Bishop, as lord, is presiding over the county court, for as Bishop he no longer has any place there, and his advisers, Liulf and Leobwine, are standing among the doomsmen who make the judgment.

Finally there is good reason to believe that before the close of the eleventh century the Bishops of Durham had their own sheriffs, and by consequence the court over which the sheriff presided. But this point has already been noticed.[2]

All this brings us to the first half of the twelfth century, with the conclusion that the Bishops of Durham already possessed considerable seignorial jurisdiction inherited from some period earlier than the Norman Conquest. Here we are confronted with a mass of new material in the shape of the self-styled foundation charters of the convent of Durham. The convent was founded by Bishop William de S. Carileph in 1083, and these documents were forged at some time during the first quarter of the twelfth century.[3] In them the Bishop is represented as conferring extensive possessions and jurisdiction on the newly-founded community, and there can be no doubt that the convent did acquire considerable jurisdiction, and probably at this period. At any rate, in Henry II's reign the Bishop and prior were already quarrelling over their respective judicial privileges, and the dispute was then referred to an earlier time.[4] There is no reason

[1] Anglo-Saxon Chronicle, i. 351; Florence of Worcester, ii. 13–16; Symeon, i. 116–118, ii. 208–211.

[2] The whole question is discussed above, § 9. See also Hutchinson, Durham, i. 165; Reginaldus Dunelmensis, Libellus (Surtees Soc.), 101–102, 205; Scriptores Tres, App. Nos. xx, xxi.

[3] Feodarium, Introd. xi, xxxi–lxxx. The charters are here printed, together with Dr. Greenwell's demonstration of their spuriousness. These documents have found a more ingenuous reception in Monasticon, i. 234, and Scriptores Tres, App. Nos. i–xv.

[4] "Igitur cum temporibus Hugonis [et] Philippi Episcoporum . . . mul-

to suppose that the charters in question do not, like other medieval forgeries of a certain class, truthfully represent the condition of things at the time they were made. The Bishop accordingly founded the convent and endowed it with jurisdiction, but for this purpose he must himself have possessed considerable jurisdiction. Finally, in a charter of Henry II it is provided that the Bishop of Durham and his successors are to have their courts in like manner as his predecessors had them in the time of Henry I.[1]

Let us see now what we have learned. We have marshalled a column of small facts and indications, meagre, it is true, and not always illuminative, but at least coherent. If we have learned nothing or next to nothing about the organization and internal arrangement of the Bishop's court, we have seen the continuous existence of such a court from a period long before the Norman Conquest. Reasoning from analogy we shall not find it very difficult to construct some adequate idea of the tribunal in question. Finally — and this is of most consequence — we have a clue by which we may pass back from the comparative light of Henry II's reign, through the obscurities of the anarchy in the time of Stephen and the silence of the Norman period, into the darkness of the Anglo-Saxon constitution.

If we have called the reign of Henry II a period of comparative light, we must remember the other term of the comparison and not expect too much. Hugh Pudsey, who sat at Durham from 1153 until 1195, was a cousin of Henry II.[2] This fact perhaps contributed to the success with which he preserved the liberties of his province in face of the searching reforms of the first Angevin king. At all events, four charters which he obtained from Henry survive and have considerable bearing on the subject in hand. The king grants that Bishop Hugh shall have "all lands, customs, laws, and benefits of which his church was possessed on the day on which Bishop William I was living

tas controversias et graves querelas inter eosdem Episcopos et Priorem . . . frequenter exortas cognovissemus:" Le Convenit, in Feodarium, 212.

[1] Scriptores Tres, App. No. xxxii.

[2] Both Stephen and Henry in their charters describe Pudsey as "cognatus meus." See Scriptores Tres, App. Nos. xxvii, xxxii.

and dead" (1096);[1] that the Bishop shall have all liberties, free customs, and exemptions (*quietancias*) which his predecessors had enjoyed in the time of king Henry [I] or any other of the king's ancestors;"[2] that "the men of S. Cuthbert and of the monks of Durham shall be free from all shires, hundreds, trithings, and wapentakes, as well as from aids of sheriffs and reeves, and are to have their court as fully and freely as they had it in the time of king Henry the king's grandfather;"[3] and, finally, that Bishop Hugh "shall have his court in respect to all things about which his predecessors had their courts in the time of king Henry my grandfather, and the men of the bishopric shall not plead elsewhere but in the Bishop's court until he make default of justice."[4]

Here, then, is the picture of the court of a lord having high justice, whose men, relieved from all other legal and judicial responsibilities, are answerable only to the tribunal of their lord. These conditions, moreover, are clearly stated to have existed in the time of Henry I, for the terms of the charters forbid us to understand them as grants rather than as confirmations. We do not learn the exact nature of the court, but it could not have differed materially from the ordinary county and hundred courts, if indeed the Bishop's jurisdiction extended over the entire county. But before this is shown to have been the case, attention must be called to the fact that the term "county of Durham" is essentially modern; throughout the middle ages and long afterward we hear only of "the bishopric." With this fact in mind, it will be possible to understand how the Bishop's jurisdiction might be complete and exclusive although a portion of the modern county, the wapentake of Sadberg, was still in the king's hands.[5] With this reservation the proof of the Bishop's exclusive jurisdiction may be considered.

[1] Scriptores Tres, App. No. xxxiv. On the phrase "leges et consuetudines," cf. Maitland, Domesday Book and Beyond, 76–79.

[2] Scriptores Tres, App. No. xxxv.

[3] Ibid., No. xxxiii.

[4] Ibid., No. xxxii.

[5] Sadberg is the southeastern corner of the modern county; it was purchased from the crown by Bishop Pudsey, who was outrageously swindled in the transaction. See Coldingham, cap. ix, in Scriptores Tres, 14–15. The charters are printed in Ibid., App. Nos. xl–xlii.

In a final charter the king states that, by the advice of his barons and with the consent of the Bishop, he is about to send his justices into the lands of S. Cuthbert to put into execution his assize with regard to thieves, murderers, and robbers. This step is not to be regarded as a precedent in the king's time or in that of his successors; it is necessary to execute justice, but the king wishes that the lands of S. Cuthbert shall have their liberties and ancient customs as freely as ever they had them.[1] We have to do here with a charter of indemnity; the assize referred to is that of Clarendon, which, it will be remembered, provides that all qualified persons shall attend the county court to meet the justices, and that no franchise shall exclude the sheriff, who is preparing for these visitations.[2] We infer, then, that the earlier judicial and financial eyres had not included the bishopric, and that such business as was reserved in other counties for the king's justices was in Durham transacted in the Bishop's court. From all this it may be concluded that in 1166–1167 the Bishop of Durham enjoyed complete and exclusive jurisdiction in the bishopric, and that he and his predecessors had held this privilege for a period long enough to be regarded, in the brief memory of the middle ages, as immemorial.

During the reign of Henry II the judicial system of the kingdom was developing with amazing rapidity. Under these circumstances we shall expect to find some corresponding growth in the palatinate, or else the abolition of at least the legal side of the institution. It is not consistent with human nature that men should see their neighbors and brothers enjoying advantages which are denied to them, without at least making a protest. Thus, when the convenience of the new assizes was once understood, men in Durham would no longer be content to go to the duel for their free tenements, or holdings, while but a few miles away, at York or Newcastle, their friends were putting themselves on the country. It is likely that Bishop Pudsey understood the situation perfectly. That he was an ambitious man, seeking to strengthen his own feudal position, is

[1] Scriptores Tres, App. No. xxxi.

[2] Assize of Clarendon, §§ 8, 11, in Stubbs, Select Charters, 144.

well known.[1] He was familiar with the legal reforms introduced by Henry II, for he had acted as a royal justice in eyre,[2] and in the beginning of Richard's reign he had been justiciar for the northern half of the kingdom.[3] If, then, it is found that very shortly after Pudsey's death the judiciary of the palatinate shows considerable development, it will be natural to ascribe the change to the efforts of that Bishop. This conclusion is corroborated by the chronicler, who writes with some bitterness that Bishop Pudsey completely altered the old laws and institutions of the bishopric.[4]

Only by working backward from a knowledge of the palatine legal system in the first quarter of the thirteenth century, and by supplementing this survey with analogies drawn from the general system, is it possible to arrive at the changes introduced by Bishop Pudsey. Still, one scrap of definite information is vouchsafed us. Eleven years after Pudsey's death we hear that he had been accustomed to hold pleas in his court by his own writs and not by those of the king, though from the litigation in which this fact is developed we also learn that one might not have the grand assize in the court at Durham, nor yet by the king's writ take one's plea out of that court.[5] Reading this in connection with what we know of Pudsey's life, ambitions, and opportunities, we may form a pretty clear notion of what he accomplished in the way of legal changes. We may note his achievement in the fact that, in the face of the expansion of legal science and its expression in a more articulate judicial machinery, he formulated and applied the doctrine of the sufficient and exclusive competence of the Bishop's court in the

[1] He purchased from the king the earldom of Northumberland as well as the wapentake of Sadberg. See above, p. 162, note 5.

[2] Foss, Judges, i. 509–512.

[3] Benedictus Abbas, ii. 101; Coldingham, cap. ix, in Scriptores Tres, 14.

[4] "Ut quorundam haereditates et jura videretur in extraneos contulisse, et novis institutionibus antiquas episcopatus leges et consuetudines penitus immutasse:" Coldingham, cap. iv, in Scriptores Tres, 8. It is worth remembering in this connection that Pudsey sat at Durham for forty-two years, a pontificate overlapping at both ends the reign of Henry II.

[5] Curia Regis, 8 John, roll 36, m. 13 (Northumb.). See also below, App. i.

bishopric.[1] Pudsey probably carried the idea no farther than this, but it contained in itself sufficient impetus to bear it to its logical conclusion, namely, to the organization of the feudal court of the palatinate into a diminutive model of the royal judiciary.

§ 17. The Transition from a Feudal to a Royal Court.

Several surviving records that form landmarks in this process of development must now be examined. First to be noticed is the evidence that has come by circuitous courses from the second year of John. In 1243 William, abbot of S. Mary's, York, brought before the Bishop's justices an action of *quare impedit* in respect to the church of Gainford in Durham against John de Balliol. The abbot rested his claim to the advowson on a fine made between the father and uncle of John and his own predecessor. To this John replied that he was not bound to plead, because the document in question was made at Westminster in the year 1200, when Philip, Bishop of Durham, was alive; that from this it followed that the fine ought not to have been levied outside the liberty of Durham, and could not rightly have been so levied; that if the fine were authentic, then it had been made in contravention of the royal liberty of Durham and by deception of the court at Westminster. The abbot, in reply, admitted that the transaction ought to have taken place in the palatine court, but pointed out that, since the Balliols had declined either to do homage to the Bishop or to plead in his court, the contemporary abbot was forced to resort to the royal court at Westminster. Balliol replied that, whatever may have been the practice of his ancestors, in theory they had always been under the obligation of rendering homage and suit of court to the Bishop; and that the document therefore was as though made in one county in respect to land in another.[2] The outcome of the case is not

[1] Pudsey by no means invented this doctrine, for it is expressed by Symeon (i. 70–71) in the opening years of the century; but, although in existence, it had up to this point encountered nothing but a *laissez-faire* treatment; Pudsey maintained it in the face of great and increasing pressure.

[2] This is from an exemplification of Bishop Farnham's plea rolls, made in the late sixteenth century. See Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

known. The point to notice is, that as early as 1200 the theory of the law allowed to the palatine courts exclusive jurisdiction over land in the palatinate.

We pass now to a case that came up before the king's justices in Northumberland between 1205 and 1208. Geoffrey Fitz Geoffrey related that, being impleaded for his free tenements[1] by the Bishop's writ and in the Bishop's court, he had put himself on the country. On this he was told that he might not have the grand assize in the Bishop's court; whereupon he brought the king's writ (*de pace*) forbidding the Bishop to continue the plea. The court, however, disregarded the king's precept and substantially forced Geoffrey to the wager of battle. Geoffrey then came before the king's justices and contended that he should not have been compelled to plead in the Bishop's court, since no free man ought to be impleaded in respect to his free tenements except by the king's writ or that of his chief justice. The Bishop thereupon produced a charter of the king confirming to him all privileges enjoyed by his predecessor, Bishop Pudsey, and maintained that Pudsey had held pleas by his own writ. This issue was referred first to a jury of twenty-four knights from York and Northumberland, having no interest in the liberty of Durham, and finally to twelve knights produced by the Bishop himself from his liberty. We are left in ignorance as to the solution of the difficulty, but the novelty of the question and the perplexity of the justices appear clearly enough in the closing words of the record, whether spoken in court or added by the reporter we do not know: "Quo teneam nodo mutantem Prothea vultus."[2]

What now does this imply? The men of the bishopric, as we know, were obliged to plead in the Bishop's court until he made default of justice. But these men must have seen the convenience of the inquest, at least when the king's eyre was held in the bishopric to execute the Assize of Clarendon, and probably frequently afterward when they sought or defended lands in Yorkshire, Northumberland, or other adjacent counties. They

[1] *i. e.* for two holdings within the bishopric.

[2] Curia Regis, 8 John, roll 36, m. 13 (Northumb.). The charter is 5 John, m. 11, Rot. Chart. (ed. Hardy), 120 b. The verse is misquoted from Horace, Epist., lib. i. epist. i. l. 90. This case will be found in full in App. i. below.

had heard, too, that no free man might be impleaded for his free tenement except by the writ of the king or of his chief justice. Finally, they were ready upon occasion to put their experience into play, to demand what they conceived or asserted to be their rights. Thus pressure from within was put upon the Bishop's judiciary, to cause it either to increase its resources or to abandon its pretensions and step aside. The second alternative was probably the one intended by the men of the bishopric.[1] The end of the story may be read on the charter roll. In 1208 the king granted a charter to the knights and freeholders of Haliwerfolc, forbidding that they should be impleaded for their free tenements except according to the customs and legal assizes of the kingdom, and granting them leave to use these assizes in the court of the Bishop.[2] The Bishop died in this year, and the see remained vacant until 1217; before king John's death, however, the men of Haliwerfolc had paid into the royal treasury a considerable sum "for having the assizes of the kingdom of England saving the liberties of the Bishop of Durham."[3]

Here then is another step. The procedure in the Bishop's court is changed, against his will but with great resulting advantage to his liberties. The Bishop had taken the somewhat unreasonable position of excluding the king's writ and the convenient procedure secured by it,[4] without offering to his subjects any corresponding advantage. If a man's land lay in the palatinate he was forced to defend or recover it by way of the duel; no royal writ would remove the plea to the king's court and give him the advantage of the grand assize. This is the psychological moment in the development which we are fol-

[1] See Rot. Lit. Claus., 9 John, i. 90, a grant to the Bishop of all the liberties of his court which he had before his knights complained to the king. The Bishop no doubt had paid higher than his subjects; hence they were forced to wait until a time of vacancy to obtain what they wanted.

[2] Rot. Chart., 10 John, 182 a.

[3] Pipe Roll, 13 John, in Boldon Book, App. xv.

[4] On this point compare the words of Dr. Stubbs (i. 453): "There is however no doubt that the same principles of legal procedure were used in these [courts of liberties and manors] as in the popular courts . . . the whole accumulation of ancient custom as well as Norman novltye." In regard to Durham however, an exception to this rule must be made.

lowing. Will the Bishop, like the other great feudatories of England, bow to the all-pervasive royal power and allow his jurisdiction to be restricted to that of an ordinary seignorial court, or will he reorganize his judiciary and continue, thus fortified, to stand out for his liberties? In point of fact, as we have seen, his subjects, seeking their own convenience and with some notion perhaps of reducing his power (for the introduction of the new procedure seems to have been regarded in the light of an infringement on the Bishop's privilege), forced on him the second alternative. The step here taken places the Bishop's court on a level higher than that of any other feudal court in England. It is now a royal court, in the sense that it offers to those who resort to it the benefits of the new procedure to be found in the king's courts, to which, however, it denies them access.

Turning now for a moment, and by anticipation, to the side of criminal jurisdiction, we find that by 1230 the palatine judiciary was in exclusive possession of all pleas of the crown and other criminal matters arising in the palatinate, subject only to a formal petition or notification to the king's justices when they came toward the borders of the county.[1] It will also appear that the prior's court had tried and failed to get hold of at least part of this jurisdiction, and that the struggles and conflicts occasioned by this effort are referred to a period at least as early as the accession of Henry II.[2] But it follows that, if the Bishop and the prior were striving as against each other for the possession of this jurisdiction, one or both of them, and not the king, must have held it. Again, if the king had criminal jurisdiction in the bishopric, there would have been no need for his charter of indemnity when he sent his justices there to execute the Assize of Clarendon.

With these facts in mind let us read the words of a high authority: "It is the reconstruction of criminal justice in Henry II's time, the new learning of felonies, the introduction of the novel and royal procedure of indictment, that reduce the immunist's powers and leave him with nothing better than an unintelligible

[1] See below, p. 173. [2] See below, p. 172, and above, p. 160.

list of obsolete words."[1] Possibly Bishop Pudsey understood the significance of the changes that were going on about him; possibly he acted only on the impulse of an ambitious instinct. At any rate, what he accomplished toward preserving the criminal jurisdiction of the Durham court, the lucky blunder of the men of the bishopric later did for the civil jurisdiction; and out of these two circumstances proceeds the subsequent history of the palatine judiciary. To the legal historian, then, Bishop Pudsey and king John, rather than Egfrith, Alfred, or William the Conqueror, will deserve the credit or the reproach of being the true founders of the palatinate of Durham.

The change just noticed was followed by a very rapid development in the palatine judiciary. There are no means of tracing the stages of this growth, but the result appears in a document drawn up about 1229 to confirm and define the relations of the Bishop's and the prior's courts. We have already heard something of the difficulties that grew out of an earlier Bishop's grant of jurisdiction to the prior. These increased rather than abated during the succeeding pontificates, until by 1229 they became insufferable, and a kind of *modus vivendi* was arranged between the two parties.[2] The record of this agreement, known as "Le Convenit," has survived in the confirmations of later Bishops. The terms of the compromise, as is not unnatural, leave by far the greater advantage on the side of the Bishop; the chronicler indeed calls it "compositio . . . priori et conventui praejudicialis in multis,"[3] and from his point of view as a monk no doubt he was right. The judiciary of the palatinate pictured in this document consists of a staff of justices holding general eyres whenever the king's judges came into Yorkshire, and sitting in the mean time as a kind of permanent tribunal at Durham, while the old meetings of the county court continued. We read that "all the free men of the land and fee of the prior, and the reeve and

[1] Maitland, Domesday Book and Beyond, 283; and cf. Pollock and Maitland, i. 564.

[2] See the proëm to Le Convenit. This document is printed in various places and forms, but it cannot be better consulted than in the Feodarium Prioratus Dunelmensis (ed. Greenwell, Surtees Soc.), pp. 212–219.

[3] Graystanes, cap. iii, in Scriptores Tres, 37.

four men from every vill, shall come to the sessions of the justices concerning all pleas, and as often as these sessions are held in Yorkshire the Bishop shall cause them to be held by his justices in the bishopric."[1] A separate eyre was occasionally held in the outlying district of Norhamshire, but when this was not the case the men of those parts were obliged to come to Durham.[2] It very soon, however, became the custom to appoint an independent staff of justices for Norhamshire and Islandshire, who sat regularly at Norham.[3]

It is by inference rather than by direct information that we arrive at the existence of a body of justices distinct from the itinerant justices and sitting regularly at Durham. In the first place, we know that such a body sat at Westminster, and that the eyre was held only once in every seven or eight years. If, then, we find it mentioned that the Bishop's court dealt with such judicial business as would not naturally come before the county court, we may surmise that in the judicial arrangements of the palatinate the term "curia episcopi" corresponds to the "curia regis" of the kingdom. Now, we read that all amercements and profits arising from pleas of the crown, assizes, and all other pleas, which are determined by judgment, fine, or agreement in the court of the Bishop (*in curia episcopi*) with respect to land or fee of the prior, shall be divided, without difficulty or delay, between the Bishop and the prior; and again, that the prior shall have his free court in all things excepting pleas of the crown and pleas of land moved by the Bishop's writ.[4] But we know that after 1215

[1] "Ad placita justiciariorum de omnibus placitis venient omnes liberi homines, de terra vel de feudo Prioris, et de qualibet villa praepositus et quatuor homines, et quociens placita justiciariorum de omnibus placitis tenebuntur in Eboracenscire, Episcopus tociens faciet ea teneri per ballivos suos in Episcopatu suo": Feodarium, 214–215. There can be no doubt that "ballivos" refers to "justiciariorum" and should be understood to mean the Bishop's justices. For an instance of "ballivus" and "justiciarius" used interchangeably, see Richard I's "Form of Proceeding on the Judicial Visitation," § 25, in Stubbs, Select Charters, 263.

[2] Feodarium, 215.

[3] See an interesting case illustrating this, Rot. Bury, ann. 10, m. 14, curs. 29. The justices had attempted to sit at Holy Island, and were rebuked by the Bishop.

[4] Feodarium, 214, 215.

the sheriffs, and by consequence the county courts, were forbidden to deal with pleas of the crown, and that there was a growing tendency to increase the power of the justices.[1] If pleas of the crown were withdrawn from the prior and reserved for the Bishop, it follows that the Bishop had some machinery other than that of the county court for dealing with them; and this machinery must have consisted of a body of justices.

The *curia episcopi* has been compared to the *curia regis*, but the analogy must not be pressed so far as to suggest any development or differentiation in the former answering to the well-known growth of the latter. There are various reasons to explain this retarded development, but these may be reserved for later consideration. In the mean time we may understand the *curia episcopi* as a body of judicial officers, resident at Durham for the performance of other duties, such as those of chancellor, steward, or the like, and incidentally attending to such judicial business as could not properly or conveniently be transacted in the county court.[2] This arrangement of course did not exclude the regular meetings of the county court, which continued as usual to assemble. Presentations were here made,[3] and the full body of suitors was collected to meet the justices in eyre; here too the bailiffs of the prior "craved their court" in cases which they conceived to belong to the prior's jurisdiction.[4]

The great step has now been taken. The court of the Bishop of Durham has ceased to be a popular court in the hands of a great lord, and has developed into a little judicial system organized on the royal model. We have left behind us the great franchise and are face to face with the county palatine. The Bishop and

[1] Articles of the Barons, § 14, and Magna Carta, § 24, in Stubbs, Select Charters, 291, 300; cf. Stubbs, i. 680–681.

[2] There is a record of a fine levied "in curia episcopi Dunelmensis" in 1229 (see Bracton's Note Book, plac. 1223). This of course by itself proves nothing, but it is significant in this connection. For fines levied in various courts, see Pollock and Maitland, ii. 96–97.

[3] De placitis coronae . . . quod omnia attachiamenta fient per ballivum nostrum . . . et per visum ballivi Prioris Dunelmensis . . . et postea praesentabuntur in curia nostra": Le Convenit, in Feodarium, 214.

[4] Ibid., 215.

his great vassal, the prior, are now engaged in a struggle very like that which earlier took place between the king and the Bishop. The Convenit, as we have seen, did not satisfy the prior; but it was the outcome of a long inquiry in which was collected a large mass of evidence that has survived. The prior disputed the Bishop's right to the exclusive cognizance of pleas of the crown and cognate matters, and brought witnesses who testified that they had seen cases of rape, manslaughter, and infractions of the peace dealt with in the prior's court.[1] This may have been true, but, in view of the evidence adduced by the Bishop, the practice can only be regarded as an encroachment. Witnesses swore that felonies, larcenies and appeals of larceny, and the whole business of approvers were regularly dealt with in the Bishop's court,[2] which, as we have seen, also took cognizance of all real actions.[3] The procedure was the same as in the royal courts.[4]

We must now turn back for a moment and take up another thread in the story of the development which we are tracing. The royal charters, following on Fitz Geoffrey's case, assured to the palatine courts what was virtually an exclusive jurisdiction over all local matters. The ultimate supremacy of the crown, however, was marked by the customs of craving court and petitioning for pleas of the crown. That is to say, when in a civil action in the royal courts the cognizance of the plea belonged to the Bishop, either because one of the parties was a palatine subject or because the land in question lay within the bishopric, the Bishop's bailiff was obliged to appear before the king's justices and ask leave to transfer the plea to his master's court.[5]

[1] All the evidence has been printed in the Feodarium (pp. 218–301), under the general titles, "Attestaciones de Placitis de Corona" and Attestaciones Testium Juratorum . . . de Curia Prioris." For the present point see pp. 218–219.

[2] Ibid., 231, 273, 281.

[3] "De assisis et omnibus aliis placitis, quae terminabuntur per judicium vel finem vel concordiam," etc.: Le Convenit, in Ibid., 214.

[4] Attestaciones, in Ibid., 231, 269, 274, 276, 283, 285. Antiquarians may be interested in the fact that the court was held in the sheriff's house (Ibid., 252–253).

[5] See Maitland, Domesday Book and Beyond, 282; Pollock and Mait-

This practice of craving court was, in regard to Durham, quietly dropped in the course of the thirteenth century. The necessity of petitioning for pleas of the crown lasted until the end of the century. This consisted in a practice by which the Bishop's officers met the royal justices itinerant at the frontier of the bishopric and asserted the Bishop's immunity. They then asked of the justices a copy of the "articles of the eyre," and sought leave for the Bishop to issue a similar commission within his province. This formal mark of dependence was omitted by Bishop Bek, and, although there was some difficulty at the time, the matter was afterward allowed to drop.[1]

§ 18. Subsequent Growth of the Palatine Judiciary in the Thirteenth Century.

By the close of the thirteenth century various changes had taken place. The general eyre of the palatinate was held first in the bishopric, and was followed by an eyre in outlying districts.[2] The king now freely admitted the Bishop's right to hold pleas by his own writ and before his own justices.[3] Liberties, or exempt jurisdictions, also existed within the palatinate itself; there are recorded the names of no less than twelve persons holding more or less extensive franchises under the Bishop.[4]

land, i. 570–571, 627. The whole matter is well illustrated by the two following cases, which seem to mark the latest date at which this practice was insisted upon: "Alicia Basset petit versus Henricum de Puteaco villam de Icleflet. Ballivi episcopi Dunelmensis petunt inde curiam episcopi ad horam. Habeant eam" (Coram Rege, 2 John, roll 23, m. 12, Ebor.). "Inkelle de Smedeton optulit se iiii die versus Johannem Bec de placito duarum carucatarum et dimidiae in Smedeton. Et Walterus clericus optulit se versus eundem de dimidia carucata terrae in eadem villa. Et Johannes de Kirkeby, attornatus ejus, provenit et petiit utrum debent placitare versus eos desicut episcopus Dunelmensis petierat curiam suam et non vult placitare versus eos. Ideo recedunt sine die" (Ibid.).

[1] Northumberland Assize Rolls (Surtees Soc.), 358, 359; Plac. de Quo War., 604.

[2] Ibid.

[3] Ibid., The king's acknowledgment is implied in his return of the temporalities to the Bishop.

[4] Ibid.

It does not seem probable that there was any actual perambulation of the county for the purposes of the Bishop's general eyre; this step would scarcely have been necessary within a circumference of one hundred and eighty miles. The general eyre was also giving way before the sessions of justices sitting under special commissions. We hear first of justices of assize in 1304;[1] but the records are very meagre, and special commissions were no doubt issued earlier. Soon after this commissions of assize, gaol-delivery, and oyer and terminer become common enough.[2] It is worth noting, however, that the general eyre did not die easily: as late as 1349 we hear of the people of the palatinate praying the Bishop not to hold a general eyre which had been proclaimed.[3] We begin to hear definitely also of the existence of a permanent court at Durham. The record of a fine levied in 1304 reads thus: "Haec est finalis concordia facta in curia Domini Dunelmensis Episcopi apud Dunelmum," etc.[4] This is no doubt the *curia episcopi*, which has been already compared to the *curia regis*.

But the *curia episcopi* was, and was destined to remain, in a rudimentary condition. The Bishop within the palatinate was easily accessible, and once outside he shed all but the dignity of his temporal power, leaving his steward as his vicegerent.[5] There was no sovereign, then, in constant motion, drawing after him the great judicial officers and necessitating the establishment of a court of pleas at the capital, while the chancellor followed his person. Had Richard Danesty's lands lain within the palatinate, we should now lack the classical story of his afflictions and adventures. The area of the Bishop's jurisdiction was small, some 610,000 acres, and the number of his justiciables necessarily limited; the press of business, therefore, could not have been very great. One other circumstance contributed to this arrested development, namely, the multiplication of offices in the persons of a small number of men: thus the chancellor

[1] Rot. Bury, m. 18 dorse, curs. 29.
[2] Registrum, i. 299, ii. 716, 1171, 1258.
[3] Rot. i. Hatfield, ann. 4, m. 1 dorse, curs. 30.
[4] Rot. Bury, m. 18 dorse, curs. 29.
[5] See above, p. 78 ff.

and steward would also be justices, and, as at Westminster a century earlier, so now at Durham, it was difficult always to tell in precisely what capacity the great officers of government were sitting.

This point, since it throws light on the personnel of the palatine judiciary, may be allowed to detain us for a time. In 1242 Robert Fitz Mardrus, Walter de Merton, Richard Ducket, Geoffrey de Leucknore, and John de Lumnes were justices itinerant in the palatinate.[1] Of Robert nothing is known, but Walter de Merton is familiar to every student of English history. In 1242 he held a living in Durham, bestowed on him by the Bishop,[2] and was temporal chancellor and justice itinerant of the bishopric.[3] In 1256 he was still chancellor and justice, and a member of the Bishop's council as well.[4] He had probably retained the two former offices without interruption, for in 1247 he witnessed an important Durham charter.[5] In the mean time, however, he had entered the king's service, and in 1249 appears as a clerk in the royal chancery.[6] In 1256 the king, writing to the Bishop of Durham, describes Walter as "clericus noster et vester."[7] Richard Ducket, justice itinerant of the palatinate in 1242, sat as a justice at Westminster from 1232 until 1245.[8] Geoffrey de Leucknore, in 1242 steward of the palatinate and justice itinerant, passed over later into the king's service, and in 1255 is found as justice itinerant in Hunts, Northampton, and Bucks.[9] No information is forthcoming with regard to John de Lumnes.

In 1271 Roger de Seaton, William de Northborough, and Geoffrey Russell were justices itinerant in the palatinate.[10]

[1] This and much of the succeeding information is derived from an invaluable series of exemplifications on the chancery roll of Bishop Matthew, in the year 1598. Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

[2] Dictionary of National Biography, xxxvii, 297–299.

[3] Rot. Matthew, as above; see also Bishop Farnham's charter to the prior, A. D. 1242, Feodarium, 186.

[4] Matthew Paris, Chronica Majora, vi. 326–327, 331, 334.

[5] Scriptores Tres, App. No. lxxvii.

[6] Dictionary of National Biography, xxxvii, 297–299.

[7] Matthew Paris, Chronica Majora, vi. 327.

[8] Foss, Judges, ii. 312–313.

[9] Rot. Matthew, m. 16 dorse, No. 33, curs. 92; Feodarium, 186; Foss, Judges, iii, 118.

[10] Ibid.

Seaton was a justice at Westminster from 1268 until 1272; in 1274 he became chief justice of common pleas.[1] William de Northborough became one of the king's justices itinerant beyond the Trent in 1275,[2] and Geoffrey Russell was steward of the palatinate.[3] In 1279 Robert de Neville, Guiscard de Charron, Thomas de Herington, and Alan de Walkingham were justices itinerant in the palatinate.[4] Neville belonged to an important north-country family, but nothing more definite can be said of him. Guiscard de Charron was a person of great importance in the bishopric and was probably steward at this time.[5] Thomas de Herington was undoubtedly one of the officers of the palatinate, for we find him witnessing charters along with Charron.[6] Alan de Walkingham does not appear to have been a subject of the Bishop or to have had any local connection with the palatinate. In this year (1279), moreover, he was one of the king's justices itinerant in Yorkshire.[7]

It appears, then, that the body of palatine justices was composed of several of the great officers, along with persons of importance in the palatinate and one or more of the king's judges either actually on circuit or drawn from the bench at Westminster. It was by no means beneath a man's dignity to sit on the bench of the palatinate; Walter de Merton, as we know, held successively the great seals of Durham and England. There was thus a pretty regular interchange of persons between the royal and palatine judiciaries, a fact which may well be kept in mind, for it will help us to understand the development of the palatine judiciary and the treatment of the whole institution in the royal courts. A system of judicial machinery is the expres-

[1] Foss, Judges, iii. 152–153.
[2] Ibid., 136.
[3] Rot. Matthew, m. 16 dorse, No. 33, curs. 92.
[4] Ibid.
[5] In 1283 he was steward, and executor (in company with Robert Avenel, the temporal chancellor) of Bishop de Lisle's will; see the bull of Martin IV, Scriptores Tres, App. No. lxxi. In 1293 he had great liberties in the bishopric (Plac. de Quo War., 604), and was a justice (Feodarium, 200), an office which he seems to have retained throughout Bek's pontificate, as he reappears in 1295 and 1304 (Registrum, iii. 69, iv. 355). He was steward during the first years of Bek's pontificate, but probably not later; see Coldingham Chartulary, 2; Finchale Chartulary, 59.
[6] Feodarium, 116.
[7] Foss, Judges, iii. 37, 169.

sion of legal ideas scientifically arranged. We have found the machinery in the palatinate; and we begin to see, now that we know the channel through which legal ideas flowed in, that the judiciary was something more than a bungling copy of what existed in the kingdom. When we come to deal with the conflict of the royal and episcopal jurisdictions in the fifteenth century, we shall be able to explain something of the extreme tenderness with which the palatinate was treated, by remembering that many of the king's justices had at one time or another sat under the Bishop's commission.

From the beginning of the reign of Edward I we hear of chief justices in England, at first of king's bench, "capitalis justiciarius ad placita coram rege tenenda," and later of common pleas, with the chief baron of the exchequer following in due course somewhat later.[1] As early as 1289 we hear of a "major justiciarius" in the palatinate.[2] The office may have been held earlier by Robert de Neville, for there is record of a fine levied before him "et sociis suis" in 1278; and in a similar record, in which a list of all the justices is given, his name occurs first.[3] In the early years of the next century Bishop Kellaw's chief justice was the well-known Lambert de Trykingham, who at the same time was sitting at Westminster under the king's commission.[4] In 1349 occur the commissions issued by Bishop Hatfield for the appointment of Thomas Gray to be chief justice in the room of Thomas de Metham, who is removed from office. The court at this time consisted of five justices, but we learn nothing definite about the office of chief justice.[5] Here then is still another example of the arrested development which has been already noticed. This indeed follows logically from the other: if the courts were not divided there was no necessity for more than one presiding offi-

[1] Stubbs, ii. 290–291; Pollock and Maitland, i. 183.

[2] The office was held by William de Brompton, who figures in one of the most amusing of the chronicler's many delightful stories. See Graystanes, cap. xxii, in Scriptores Tres, 74.

[3] Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

[4] Registrum, ii. 868, 885; Foss, Judges, iii. 533–534.

[5] Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30. See also Rot. ii. Hatfield, ann. 36, m. 14 dorse, curs. 31; and, for a notice of the chief justice in the next century, Rot. A. Langley, ann. 2, m. 1, curs. 34.

cer, who might, had he so pleased, have called himself chief justice of king's bench or common pleas, or chief baron of the exchequer, with reference to the nature of the legal business before his court at any given moment.

§ 19. The Commission of the Peace and other later Developments.

Between the thirteenth and the sixteenth centuries certain changes took place affecting the judicial officers of the palatinate. The general eyre, as we have seen, gave way before the special commissions,[1] and these in turn were consolidated in so far as the same persons sat under all commissions.[2] This circumstance, however, did not prevent the Bishop from issuing special commissions as occasion might require. Thus in 1350, on the receipt of certain articles from the king looking toward the better administration of justice, Bishop Hatfield issued a special commission directing that his justices put these articles into execution.[3] The same Bishop on his own motion issued a similar commission in 1358, to inquire concerning all oppressions, extortions, and the like committed by his stewards, constables, sheriffs, chief forester, and other officers.[4]

In the fourteenth century also the beginnings of the commission of the peace can be discerned. *Conservatores pacis* for the county of Durham were appointed by the crown during the vacancy of the see that followed Bishop Bek's death in 1310.[5] The next year the new Bishop, Richard Kellaw, created Robert Hilton *custos pacis* for the county on account of the great number of vagabonds and disturbers of the peace then abroad. Hilton, who was a palatine baron,[6] was enjoined to act in accordance with the customs of the kingdom and of the royal liberty of Durham, and a general writ prescribing obedience to him was issued.[7] In 1345 Bishop Hatfield commissioned nine persons to

[1] Above, p. 174.

[2] There seems to have been no commission of *nisi prius* in the palatinate; under the circumstances indeed it would scarcely have been necessary.

[3] Rot. i. Hatfield, ann. 5, m. 2 dorse, curs. 30.

[4] Ibid., ann. 13, m. 1 dorse; cf. Rot. A. Langley, ann. 2, m. 4, curs. 34.

[5] Calendar of Patent Rolls, 1307–1313, p. 428.

[6] Above, p. 64.

[7] Registrum, i. 180–181.

execute the provisions of the statutes of Winchester, Northampton, and Westminster with regard to the conservation of the peace in Durham and Sadberg. They were directed to punish all offenders against the statutes, or else to take from them security for good behavior and for the maintenance of the peace. The same persons were further constituted justices of oyer and terminer, and were associated with others, "formerly custodians of the peace and justices of Richard [de Bury], late Bishop of Durham."[1] In 1369 the king appointed *custodes pacis* in all the counties of England, with the special functions of acting as commissioners of array and correcting the deficiency of the judges in executing the statute of laborers. A writ addressed to the Bishop of Durham directed him to appoint similar officers in the palatinate.[2]

In 1385 we meet with what seems to be the first appointment of justices of the peace under that title. The Bishop commissioned five persons "for the preservation of our peace and the execution of the statutes of Winchester, Northampton and Westminster in all our fairs and markets in Durham and Sadberg." This document is entered on the chancery roll under the rubric, "commissio justiciariorum ad pacem;" and the persons named in it were already sitting under other commissions.[3] Similar commissions are frequent enough throughout the fifteenth century, but it does not appear that a peace magistracy, as distinct from the ordinary judicial officers, arose in the bishopric until a later time.

During this period the Bishops employed an attorney-general, whose duty was to defend their interests in all courts, as well royal as palatine.[4] All the judges received a fixed stipend and an additional fee for every session held by them. In 1461 the salary of the chief justice was ten pounds, of an associate justice

[1] Rot. i. Hatfield, ann. 1, m. 1 dorse, curs. 30; cf. also Rot. A. Langley, ann. 3, m. 3 dorse, and ann. 4, m. 7, curs. 34.

[2] Foedera, iii. pt. ii. 863.

[3] Rot. Fordham, ann. 3, m. 4 dorse, curs. 32.

[4] This officer appears first in 1307. See the receipt roll of 1307, Boldon Book, App. xxv; receiver-general's account, A. D. 1461, Ecclesiastical Commissioners, ministers' accounts, 189816; Rot. i. Fox, ann. 1, m. 3, curs. 60.

ten marks; the attorney-general received forty shillings, the clerk of the chancery and the *custos rotulorum* forty shillings, and the clerk of the justices of the peace and the coroners sixty shillings.[1] The chancellor received, and still receives, a stipend of forty marks, with an allowance of fourteen shillings for wax and a fee for sessions, which varied from three shillings and seven pence in 1461 to one hundred pounds in 1850.[2]

We have now traced, as clearly as our sources of information permit, the steps by which a system of judicial machinery modelled on that of the kingdom was developed in Durham by the close of the thirteenth century. It remains to follow the history of that machinery down to 1536, when it was virtually destroyed. We shall deal first with the central institutions, considering in order the council and chancery, the exchequer, the courts christian and the courts of admiralty, marshalsea, and wards; we shall then examine whatever changes occurred in the staff of judicial officers, and shall close our inquiry with a few words about the local institutions of the palatinate.

§ 20. Judicial Aspect of the Bishop's Council.

The political and ministerial functions of the Bishop's council have already been considered. Attention must now be given to its judicial aspect. The story of the king's council, that fertile mother of legal institutions, is known; but we may profitably recall the course of that development which, having produced the central courts of justice, spared the council itself, clothed still with judicial functions and ready in the fulness of time to undergo another subdivision which should leave one of its members, the chancellor, in possession of peculiar and independent jurisdiction.[3] We may perhaps hope to find in Durham an equally clear growth producing a similar set of institutions,

[1] Receiver-general's account, A. D. 1461, Ecclesiastical Commissioners, ministers' accounts, 189816.

[2] Ibid. See also the case of Temple *v.* Ecclesiastical Commissioners, p. 207, below.

[3] Dicey, Privy Council, 1–24; Stubbs, i. 419–421; Pollock and Maitland, i. 176 ff.; Baildon, Select Cases in Chancery (Selden Soc.), Introd.

but here we shall be disappointed. The great difference in the two cases lay in the multiplication of palatine offices in single persons. The results of this practice have been noticed in another connection; it acted as an obstacle to the growth of institutions by eliminating the stimulus of competition. This principle is well illustrated by the position of the Bishop himself, who, as lord and ordinary, combined in his own person the highest temporal and spiritual power of the province. Further, the great officers, as we have seen, commonly sat as justices under the ordinary commissions. Under these conditions the chances of any serious rivalry between competing jurisdictions were not great. Our task, then, is not to trace the history of several distinct courts; we must seek rather for somewhat rudimentary analogues of these courts imbedded in a single body of varying aspects.

During the centuries that lie between the Norman Conquest and the death of Edward I we shall scarcely expect to find the palatine council concerning itself much with judicial matters, for it was not until the latter date that even the king's council took its place in the hierarchy of royal courts.[1] In the course of the elaborate litigation between the abbot of S. Albans and the Bishop of Durham in the first half of the thirteenth century, the council was actively interested in the various moves of the game, although not itself a tribunal.[2] Walter de Merton, chancellor and councillor, was also one of the justices before whom the litigation was conducted so long as it remained in the palatine courts. A little later we learn that two "famosi advocati" were members of Bishop Bek's council;[3] and a palatine account roll for the year 1307 mentions the expenses of the Bishop's council and of certain "narratores" during the Hilary and Easter terms.[4]

In the fourteenth century and later the council in its judicial

[1] Memoranda de Parliamento (ed. Maitland), Introd. lxxxiv–lxxxv.

[2] Matthew Paris, Chronica Majora, vi. 326–327, 331, 340.

[3] Walter of Hemingburgh, ii. 214.

[4] "In expensis Domini Stephani et aliorum de consilio et narratorum per iv. dies post festum Sancti Hillarii . . . 13*l.* 18*s.* 10½*d.*": receipt roll of 1307, Boldon Book, App. xxv–xxxvii, especially xxxv.

aspect had two functions: as a court of original instance it supplemented the ordinary courts of the palatinate by giving remedies beyond their competence; and in the last resort it corrected their mistakes. In both cases it took its sanction from the full power of the Bishop as lord royal. Thus, since the Bishop in the palatinate is in *loco regis*,[1] it is clearly impossible to proceed against him in his own court;[2] the only remedy against him will be by petition to the Bishop in council.[3] In such cases the council will not do justice itself, but it will provide a fitting remedy by means of a special commission to the justices. Thus in 1314 Ralph le Maceon and Emma his wife petition the Bishop for a certain piece of land formerly belonging to Emma's father; the Bishop, they complain, now holds the land although Emma is her father's heir, and they ask that justice be done them. The Bishop handed over this petition to his chancellor, who, together with several of the justices, took an inquest, on the finding of which the land was returned to the petitioners.[4]

This case is interesting on account of its early date and the light which it casts on the functions of the chancellor in these matters; but the point in hand is more clearly developed in a case from

[1] Abbrev. Plac., 257 a; and see Year Book, 14 Edw. III, Mich. 142–143.

[2] Bracton, fol. 382 b, vi. 18; Pollock and Maitland, i. 500–501. It is just possible, however, that early in the thirteenth century an action would lie against the Bishop in his own court. Thus in 1236 an action was brought against Ranulf earl of Chester, looking to the recovery of certain lands in the county palatine of Chester. The earl, by reason of his liberties, refused to plead, but invited the parties to come into the palatinate, where he promised to do them full justice, but whether through his council or in his ordinary courts does not appear. The bearing of the case, however, lies in the judgment of the royal court, which runs thus: "Et quia ita usitatum est hucusque quod pares sui et alii qui libertates habent consimiles sicut Episcopus Dunholmensis et comes marescallus respondent de terris et tenementis infra libertates suas per summoniciones factas ad terras suas et tenementa extra libertates suas, ideo consideratum est quod respondeat" (Bracton's Note Book, plac. 1213). The conditions of Durham and Chester are here represented as identical, and the earl palatine of the latter asserts that remedy against himself is to be had through his own courts.

[3] Pollock and Maitland, i. 176.

[4] Registrum, i. 511–513.

the year 1338, too long to be cited here.[1] The whole procedure is well illustrated in a case in 1372. Certain lands granted to Adam Galleway, a minor, had been occupied by his father, as nearest friend of the donee. The father had been put to forfeiture, and the land was seized and occupied by one of the Bishop's officers, who subsequently conveyed it to a third party. Adam's brother thereupon petitioned the council for the return of the land, on the ground that his father had had no estate in it. The council directed an inquest to be taken, and since the finding of the jury was favorable to the petitioner (as was usual in these cases), the land was returned to his brother by letters patent of the Bishop.[2]

Many kinds of cases came up in this fashion. Thus in 1362 a chantry priest, whose stipend was chargeable on the issues of a manor lately come into the Bishop's hand by reason of the death of the lord, complained that the escheator denied him payment of his due.[3] In 1361 the parson of Boldon asked for remedy against the Bishop's villeins, who had ejected him from a right of common and pasture.[4] In 1381 two persons represented that, although they and their ancestors had been free and of free estate, their goods and chattels had been seized on the ground that they were the Bishop's villeins.[5] This aspect of the council in its judicial capacity presents no difficulties; but before leaving it we may well notice — although the point will occur again — that during the fifteenth century the council, employing exactly

[1] Registrum, iii. 260–268; for a similar case see Ibid., 268–272.

[2] All the original instruments in this case are extant. They consist of the commission to the justices for the inquest, the writ to the sheriff to summon a panel, the justice's notice of the time and place of the inquest directed to the sheriff, the panel, and the return of the jury with the original seals. See Cursitor 154, Nos. 67–72; also the enrolment of letters patent embodying similar cases, Rot. Fordham, ann. 3, m. 6, curs. 32; Rot. DD. Langley, ann. 24, m. 2, curs. 37.

[3] Cursitor 154, Nos. 1–5.

[4] Ibid., Nos. 20–25. The return of the inquest was that the villeins had indeed made the ejectment "per imparcationem averiorum suorum," which was of course the act of the Bishop.

[5] Ibid., Nos. 52–56. The words here are interesting: "Inquisitio capta apud Dunelmum . . . coram . . . justiciariis domini episcopi assignatis ex consideratione totius consilii domini episcopi."

the method we have just been considering, dealt with cases that would have come before the court of admiralty, had such a tribunal then existed in the palatinate.

We have seen the council providing a remedy in the regular courts. It might also upon occasion act as a real tribunal, and this is its second or corrective function. A great writer, describing the palatine judiciary as he knew it in the seventeenth century, said: "If an erroneous judgment be given either in the chancery upon a judgment there according to the Common Law, or before the justices of the Bishop, a writ of error shall be brought before the Bishop himself."[1] That this was true in the fourteenth century appears from a case that came up in 1341. The question of possession of land in the counties of York and Lincoln was raised by the tenant's pleadings. This point was beyond the competence of the Bishop's court, and the plea was dismissed. The demandant then brought the case before the Bishop himself by a writ of error, when the judgment was reversed and the case sent back to the justices.[2]

There can be no doubt that this and similar cases came before the council. In the first place, the composition of it at this time is significant: in 1345 it consisted of the chancellor, the steward, the sheriff, one of the coroners, a clerk, two members of important families of the bishopric, and five justices.[3] In the second place, we know that the council was already acting as a court of justice; for in 1344 the king directed the Bishop to arrest all persons found within his liberty in possession of papal bulls, instruments, reservations, and the like, to cause them to be brought before himself and his council, and there to do justice upon them.[4]

[1] Coke, Fourth Institute, cap. xxxviii.

[2] Year Book 14 Edw. III, Mich. 142–144; cf. also Year Book 15 Edw. III, Hil. 364–366.

[3] Registrum, iv. 349.

[4] Foedera, iii. pt. i. 2–3. This is the king's proclamation against provisors; the words are: "Nos . . . vobis mandamus . . . quod, factis iteratis proclamatione et inhibitione . . . quod nullus . . . hujusmodi litteras, bullas [etc.] . . . infra idem regnum nostrum deferat . . . eos una cum litteris, bullis, processibus, reservationibus, et instrumentis, in libertate praedicta secum vel alibi inventis coram vobis et consilio vestro, statim cum eos

The council also vindicated the authority of the lower courts by punishing persons who were guilty of contempt of those courts in disregarding their mandates or otherwise resisting them. Thus in 1392 we find Robert Conyers and several others entering into recognizance with the Bishop to produce William de Elmedene in the chancery at Durham on a certain day, "there to hear the judgment of the council in regard to a certain contempt of the lord Bishop committed in his court at Durham before his justices there."[1] William's offence had been his refusal to find security for keeping the peace toward Hugh de Westwyk. This method could not have been altogether effective, for two years later it is recorded that John de Elmedene is to be produced in chancery under the same circumstances, "from session to session until he shall have come to terms with the lord Bishop about a certain fine for contempt."[2] These offences were no doubt the more readily drawn under the jurisdiction of the council from the fact that it was customary in Durham for those who were bound over to keep the peace to enter into a recognizance of debt with the Bishop, which by its terms could not be put into execution so long as the debtor observed the attached conditions.[3]

The council occasionally passed judgment as a board of arbitration between the Bishop and those who had claims against him. Thus in 1400 Thomas de Elmedene came into chancery and made recognizance with the Bishop in the sum of one hundred marks, under condition that he should abide by the ordinance and judgment of the Bishop and his council in respect to all matters in dispute between himself and the Bishop.[4]

capi et arestari contigeret, salvo et secure de tempore in tempus duci faciatis justiciam super hoc recepturos." The form sent to the sheriffs of England reads "consilio nostro" not "vestro." Similar writings were sent to Chester and the Cinque Ports.

[1] Rot. Skirlaw, ann. 4, m. 7, curs. 33; cf. Ibid., ann. 5, m. 10 dorse.

[2] Ibid., ann. 6, m. 11.

[3] Cf. Rot. Fordham, ann. 5, m. 8 dorse, curs. 32; and Rot. Skirlaw, ann. 14, m. 26. The writ of subpoena does not seem to have been used as early as this in Durham. Indeed, recognizances for all purposes lasted here much longer than in the kingdom, and even in contract gave way but slowly to the more convenient statute.

[4] Rot. Skirlaw, ann. 15, m. 28, curs. 33; cf. Rot. Fordham, ann. 6, m. 9, curs. 32.

§ 21. The Chancery.

We have now reached a point at which the chancery as a tribunal begins to take its place in the palatine judiciary. Let us turn back a little and trace, if we can, the story of this development. We hear nothing very definite of the chancery of Durham until the close of the thirteenth century; then we read in the *quo warranto* proceedings of 1293 that the Bishop of Durham has his chancery and holds pleas by his own writs.[1] As a secretarial department the chancery had perhaps existed from a considerably earlier period; but we are not concerned here with a bureau occupied in the production of diplomata. What, then, did that Northumberland jury mean when it informed Hugh de Cressingham and his brother justices that the Bishop of Durham had his chancery? Probably it meant no more than a bureau, as we have suggested, for it was preoccupied for the moment with the Bishop's writs. Had it been asked, however, to define the Bishop's chancery, it would no doubt have told a different story. Many of the jurors, it is likely, were holding land in Durham, and all knew that a man might go into chancery and make recognizance to fulfil some engagement. Judicial proceedings in chancery, moreover, could not have been strange to them, for the council in its judicial aspect sat in the chancery and the chancellor was an important member of the council. We may well doubt whether, at this period and for judicial purposes, the chancery and the council were distinguishable; indeed, we could scarcely expect to find them so.[2]

During the fourteenth century, however, the jurisdiction of chancery begins to take form: the bureau is becoming a tribunal. Already the jurisdiction of the council in cases of remedy against the Bishop is coming to be regarded as a matter for the chancellor. In the case of Ralph le Maceon (A. D. 1314), which has been already considered, we read that the Bishop,

[1] Plac. de Quo War., 604.

[2] Cf. Memoranda de Parliamento, Introd. xlvii. As will be seen, the admiralty jurisdiction of the Bishop did not cut loose from chancery and the council until the sixteenth century, a feat never properly achieved by the court of exchequer, which remained an aspect of chancery until 1836.

wishing to know the truth of the matter and the rights of the petitioners, delivered the petition to William de Denum, his chancellor, with directions to take an inquest, etc.[1] There is also the fragment of a plea illustrating the ordinary jurisdiction of chancery in 1360. The rubric, which alone is important for the present purpose, runs thus: "Placita in cancellaria domini Thomae episcopi Dunelmensis coram Johanne de Kyngestone cancellario ejusdem domini episcopi." The plea concerns one of the Bishop's tenants-in-chief, who had alienated his land without proper licence.[2]

The beginning of the chancellor's regular jurisdiction over cases brought up by petition to the council is well illustrated by the prior of Durham's case in 1376. During the vacancy of the priorate the Bishop had filled a living which was in the gift of the prior and convent. But the monks laid claim to immunity from the Bishop's privilege in this matter, granted to them by his letters patent, and the new prior set forth these facts in a petition to the Bishop and his council in chancery, asking for remedy against the grievance.[3] The case was heard by the chancellor; the prior exhibited the Bishop's letters patent; and the court, in perplexity, adjourned the hearing.[4] On the day appointed for giving judgment, proclamation was made that any one having information that would tend either to support or to defeat the right of the Bishop and his council in this matter should come forward and declare it. No one came, and judgment was accordingly awarded to the prior.[5] This affair pro-

[1] Registrum, i. 511, and cf. Ibid., 257.

[2] Cursitor 154, No. 83.

[3] "Prior Dunelmensis exhibuit domino episcopo et concilio suo in cancellaria sua Dunelmi quandam petitionem." The petition is in French. The plea is rubricated: "Placita apud Dunelmum in cancellaria domini episcopi Dunelmensis . . . coram Ricardo de Castro Bernardi cancellario."

[4] "Et quia nondum avisatur de judicio inde reddendo," etc.

[5] "Et proclamatum fuit in curia quod si quis dictum dominum episcopum aut consilium suum de aliquo jure ipsum dominum episcopum in hac parte concernente aut de contrario aliquorum praedicta petitione contentorum sciverit . . . veniat. Et nullus venit" (Rot. ii. Hatfield, ann. 31, m. 8, curs. 30.) In a similar case in 1365 there is no direct mention of the chancellor's participation. Two persons of a certain vill are directed to show cause in

duces unmistakably the impression of a beginning of the chancellor's jurisdiction. The court is tentative, perplexed, it has not yet measured its own scope. In later cases we shall find growth. In 1393 a case of idiocy was tried by the chancellor and three of the justices. The alleged idiot was examined, her insanity declared, and judgment given with respect to the disposal of her lands, which of course passed into the Bishop's hands.[1] In 1424 John Bynchestre came into the chancery in his own person, and said that Donald de Heselrig and his wife had granted him certain lands, which he held until it appeared by an inquest that the late prior of Durham, of whom Donald obtained the lands, had acquired them without proper licence, whereupon they were seized by the Bishop. For this John sought remedy against the Bishop.[2]

In the course of the fifteenth century we meet with cases which should be referred, we may suspect, to the equitable jurisdiction of the chancellor. Thus in 1478 Roger Yonge came into the chancery and confessed that he had made a certain feoffment without right or authority. This document is entered on the chancery roll in English.[3] In 1500 we hear of a *controversia* before the chancellor, in which the plaintiff is a Newcastle man and therefore outside the ordinary jurisdiction of the palatine courts. This matter, moreover, was determined not by a judgment but by a decree of the chancellor.[4] In 1513 the sheriff of Durham was directed to seize all the lands and goods of Scotsmen dwell-

chancery why the Bishop's under-forester should not make a certain levy on the tenants of that vill (Cursitor 162, Nos. 34–39).

[1] "Margareta de Alaynssheles venit hic in cancellaria Dunelmi . . . die Septembris anno pontificatus domini Walteri episcopi Dunelmensis quinto coram Roberto de Wycliffe tunc cancellario dicti domini episcopi ibidem et Radulfo de Eure et Willelmo Gaston tunc justiciariis dicti domini episcopi; et praedicti cancellarius et justiciarii examinaverunt praedictam Margaretam et invenerunt ipsam Margaretam omnino veram idiotam et nullam habentem discretionem per quod se possit gubernare; per quod consideratum fuit quod omnia terrae et tenementa quae sunt praedictae Margaretae infra regiam libertatem Dunelmensem saisientur in manum domini episcopi": Rot. Skirlaw, ann. 5, m. 9, curs. 33.

[2] Rot. E. Langley, ann. 18, m. 11, curs. 38.

[3] Rot. ii. Dudley, m. 8 dorse, curs. 55.

[4] Rot. iii. Fox, ann. 6, m. 6 dorse, curs. 62.

ing in the bishopric. The ejected Scots were furnished with a list of property thus confiscated, and all disputes and difficult cases arising out of the seizure were referred to the chancellor and treasurer.[1]

This evidence will not of course establish the existence of an English, or equity, side in the chancery of Durham in the fifteenth and early sixteenth centuries; but we know that early in the sixteenth century the equitable jurisdiction of the Durham chancery was no innovation. Spearman, the under-sheriff of the county, himself an antiquary and a careful student of the palatine records at a time when many more of them existed than have survived, gives some valuable information on this point. He says that until the beginning of the sixteenth century the Durham chancery was extremely irregular, and that its proceedings were recorded only in a desultory fashion and on paper. He also states that Cardinal Wolsey, when he became Bishop of Durham in 1523, reorganized the chancery upon a rational basis.[2] There is good reason for accepting this explanation.[3] The whole business of the Durham chancery was recorded upon one roll, or at the most upon two or three. Practically all the files have disappeared, and accordingly we have no original bills or petitions. On the other hand, the chancery of Durham survived the drastic reforms of Henry VIII, and toward the close of the century appears, as we shall see later, to be properly organized and running smoothly. Finally, it should be remembered that the judiciary of the palatinate followed at a moderate distance the development of that of the kingdom, and that statutes made at Westminster, unless with special provision to the contrary, extended to the palatinate. To this rule the statutes regulating chancery, for example that of 17 Ric. II, cap. 6, would be no exception.

Looking back over the ground we have covered, we shall con-

[1] Rot. i. Ruthall, ann. 5, m. 12, curs. 70.

[2] Spearman, Inquiry, 55–56. Spearman was under-sheriff of the county from 1665 until 1697.

[3] It should be remembered that such records as existed had been largely carried off or destroyed in the time of Wolsey. "The chancery of Durham," wrote Bishop Tunstall, "where al the records lay, was spoyled as wel of records as off all odyr stuff that was ther": Boldon Book, Pref. vi.

clude that the Bishop's council in its judicial aspect supplied the defects of the lower courts by offering to the Bishop's subjects a means by which they might obtain legal remedy against their lord. It also corrected the judgments of the lower courts when they had made an error in law. Toward the middle of the fourteenth century, cognizance of the first of these two categories of causes, which by this time was the chief business of the Latin side of the royal chancery,[1] passed from the Bishop's council to his chancellor. The chancery then develops independent jurisdiction, and by the middle of the fifteenth century begins to show traces of an equitable jurisdiction, which, however, owing to special reasons does not come clearly into view until late in the sixteenth century.

§ 22. The Court of Exchequer.

The palatine court of exchequer was never differentiated from the Latin side of the chancery. We are told that the "court of chancery of this county Palatine was anciently, and still is [1665–1697], as a court of exchequer for the Bishop's Revenue, to determine matters between him and his tenants."[2] No judicial records of the palatine exchequer are now in existence, and probably none were ever kept. The same persons sat in both courts,[3] which were held in the same place.[4] We shall hear of

[1] Hale, Jurisdiction of the House of Lords, 47; Kerly, History of the Equitable Jurisdiction of the Court of Chancery, 27, 49–51.

[2] Spearman, Inquiry, 17; cf. also The Practice of the Court of Chancery of Durham, 7–8.

[3] The same person frequently held the offices of chancellor, and receiver-general, steward, or constable. Robert Wyclyff held the first and last offices in 1395 (Rot. Skirlaw, ann. 5, m. 9 dorse, curs. 33; Scriptores Tres, App. No. clxi). William Chancellor made a similar combination in Bishop Langley's time (Cursitor 211, Nos. 7–8). Henry Gillowe was chancellor and receiver-general from 1466 until 1472 (Auditor 5, No. 149). In 1476 John Keyling was appointed to both these offices by Bishop Dudley (Rot. i. Dudley, ann. 1, m. 1, curs. 54). Instances might readily be multiplied.

[4] From a survey made in 1388 we learn that the palace green contained the houses of the officers of the chancery and exchequer, and "una aula pro placitis justiciariorum" (Ecclesiastical Commissioners, ministers' accounts, 220195). A new exchequer was built by Bishop Nevill in 1437 (Chambre, cap. vii, in Scriptores Tres, 147).

the exchequer again in connection with the history of the Durham courts in the present century; but at no point in our study does this extremely rudimentary institution take on any importance.

§ 23. The Ecclesiastical Courts.

The system of spiritual courts in the palatinate and their relation to the temporal judiciary present certain curious features occasioned by the somewhat anomalous status of the Bishop. The application of the doctrine of capacities very early became necessary. In 1293 it is clearly expressed in these words: "Episcopus Dunelmensis habet duos status, videlicet, statum episcopi quoad spiritualia et statum comiti palacii quoad tenementa sua temporalia."[1] During the next century the courts pushed this doctrine to its logical conclusion, declaring that the Bishop, being in his diocese both lord and ordinary, might as lord address a writ to himself as ordinary.[2] But here the judges were only recognizing a state of things already in existence, for such writs are to be found as early as the beginning of the fourteenth century. The commonest are no doubt those modelled on the familiar "bref a levesque," by means of which the royal courts caused the bishop of any diocese to certify them of some matter of which he alone had cognizance, such as bastardy, marriage, divorce, or the like. From these the palatine instruments differ only in the address, which substitutes the Bishop for the king, thus: "Ricardus Dei gratia episcopus Dunelmensis venerabili in Christo patri Ricardo eadem gratia Dunelmensi episcopo salutem."[3] A similar document, of somewhat later date than the foregoing, directs a certain sum of money to be levied on the ecclesiastical goods of a parson, in satisfaction of a judgment obtained against him in the temporal courts of the Bishop. The address is the same, but the closing threat increases the whimsicality of the whole.[4]

[1] Rot. Parl., 21 Edw. I, i. 102–105.

[2] Year Book 14 Edw. III, Trin. 290–292.

[3] Registrum, ii. 890, A. D. 1312; cf. Ibid., 912–913, 945, A. D. 1313, and iii. 345, A. D. 1340.

[4] Ibid., iii. 336–337, A. D. 1340. The closing formula is worth preserv-

Along with these diplomatic grotesques should be classed a case which, interesting and instructive as it is, has also the advantage of illuminating the pages of a constitutional study with a rare gleam of humor. In 1463 William Byrd brought an action in the consistory court of Durham against Johanna Byrd, executrix of the will of her late husband John Byrd. In the course of the action Johanna obtained an interlocutory judgment against William for the sum of twenty shillings. When she sought execution of this judgment, William stopped the proceedings of the court by bringing a writ of prohibition from the Bishop's chancery in Durham. Thereupon Johanna represented that it was unreasonable to deny cognizance of the accessory to the court to which, as she maintained, the principal unquestionably belonged. The Bishop then issued his writ directing the official to proceed to execution of the judgment notwithstanding the former prohibition.[1]

Under these circumstances we should expect to find the spiritual jurisdiction faring better in an ecclesiastical state like Durham than it did under the somewhat jealous regime of the kingdom; but this on the whole was not the case. Apparently but one Bishop made any effort to extend his spiritual at the expense of his temporal jurisdiction. In 1303 the community of the bishopric petitioned the king and the Bishop against the encroachments and usurpations of the courts christian, and by the charter which, as we have seen, it was able to wring from the Bishop, succeeded in having them checked.[2] This appears to be the only tidings of such encroachment in the Durham records. At first sight it seems strange that the strife of these competing jurisdictions, so well known in the history of the kingdom, does not ring loudly through the annals of the palatinate. But the Bishop, it must be remembered, was a temporal baron, a great feudatory as well as a prelate, and in such cases of divided allegiance men have preferred to remain in equilibrium

ing: "Et sciatis quod nisi hujusmodi mandatum nostrum plenius exequemini, graviter ad vos capiemus." The spectacle of the Bishop threatening himself is not without its humor.

[1] Rot. iii. Booth, ann. 12, m. 11, curs. 50.

[2] Registrum, iii. 62; above, p. 132.

rather than to range themselves definitely on either side.[1] Again, it is not likely that the crown would have allowed any aggression on the part of the spiritual courts even in an exempt jurisdiction. Besides, the king administered the temporalities during vacancies, largely influenced the selection of a Bishop, and held always in the background the possibility of such violent measures as confiscation or invasion of the palatine liberties. It should also be remembered that the Bishop was charged with the task of governing a more or less turbulent community, distinctly opposed, as we have seen, to any extension of ecclesiastical jurisdiction. Finally, the temporal courts doubtless yielded as much revenue as the church tribunals, if not more.

§ 24. The Courts of Admiralty and Marshalsea.

The admiralty jurisdiction of the Bishops of Durham has a special though somewhat obscure history, which is examined in detail in another place.[2] It will be sufficient here to restate the conclusions to which the evidence leads. From a very early period, probably soon after the Norman Conquest, the Bishops of Durham, as lords of a great franchise, enjoyed those privileges which, pertaining to the king throughout the realm, later contributed largely to the development of a true admiralty jurisdiction. These were the right to wreck and to royal fish cast ashore, the regulation of ports and river commerce, including such matters as the erection or removal of weirs and kiddels, and the cognizance of pleas arising from naval or commercial relations.

In the kingdom the growth of the admiralty jurisdiction from the time of Edward III until that of Henry VIII was slow and imperfect; it was accomplished, moreover, under the pressure of foreign relations, a force that from the nature of the palatinate could not act upon the Bishops of Durham. Pleas that were later heard in the admiralty courts the Bishops dealt with either by special commission of oyer and terminer, or in their chan-

[1] This point is well treated in Jenks, Law and Politics in the Middle Ages, 312–317.

[2] Below, App. ii.

cery, or before their council on petition to that body. Obtaining in this fashion the profits of jurisdiction, they had little inducement to erect a new system of courts. After Henry VIII had reorganized the admiralty courts in the kingdom, however, the Bishops, partly in imitation of the royal model which now furnished them with a pattern easy to follow, and partly perhaps to indemnify themselves for a serious loss of jurisdiction under the terms of the statute of 1536, set up a court of admiralty in the county palatine. This step may have been taken during the reign of Henry VIII. In the next century we find the system well organized and obtaining general recognition.

From the beginning of the fourteenth century onward there is occasional reference to a court of marshalsea in the palatinate. This matter has no constitutional interest, and it may be dismissed here with a passing notice.[1] The word "marshalsea" is rather loosely used in the Durham records, but it seems to refer to two distinct institutions, (1) to the court of the marshal held for the regulation of military affairs and for the adjustment of disputes between members of the Bishop's household "within the verge," and (2) to the court of the clerk of the market held in all cities and boroughs in the county. These courts seem never to have been regarded, as in the kingdom, in the light of a grievance or an oppression.

§ 25. Local Courts.

The bishopric was divided into four wards,[2] in each of which in the thirteenth century was held a three-weekly tribunal corresponding to the hundred court.[3] Later these courts were

[1] For more detailed information on this subject, see the receipt roll of 1307, Boldon Book, App. xxxii; sheriffs' accounts, A. D. 1336, 1410, 1535, Auditor 1, Nos. 1, 2, 40; Rot. Fordham, ann. 5, m. 8 dorse, curs. 32; Rot. iii. Nevill, ann. 11, m. 4, curs. 44; Rot. i. Ruthall, ann. 4, m. 9, curs. 70; Calendar of Patent Rolls, 1307–1313, p. 384; Registrum, iv. 106: Calendar of Close Rolls, 1318–1323, p. 16; Rot. Parl., 7 Ric. II, iii. 177 a; 27 Hen. VIII, cap. xxiv, Statutes, iii. 556–557; Stubbs, ii. 338, 346, 639; Grazebrook, The Earl Marshal's Court.

[2] Registrum, iv. 276.

[3] Plac. de Quo War., 604.

continued for the purposes of the sheriff's tourn.[1] There were also the usual monthly meetings of the county court,[2] as well as the great meetings, the *plenus comitatus*.[3] Outlawry was decreed in the county court, which was also the proper place for the publication of all matters of general importance, such as statutes, proclamations, pardons, and the like.[4] Separate county courts were held in Norhamshire and the wapentake of Sadberg.[5] After the decadence of the general eyre in the bishopric, suit at the great meetings of the county court frequently occurs as an incident of tenure. The inference is that the obligation to attend these meetings was no longer general.[6]

After the fourteenth century, the bulk of the judicial business of the county court was transferred to the assizes and quarter sessions, though small civil suits were still heard in the older tribunal.[7] The county court of Durham was no exception to this rule; it seems to have survived chiefly for the purpose of such suits and of conveying land by surrender.[8]

[1] Registrum, iii. 346; Rot. Parl., 7 Ric. II, iii. 177 a; sheriffs' accounts, A. D. 1336, 1535, Auditor 1, Nos. 1, 40; receiver-general's account, A. D. 1454, Ecclesiastical Commissioners, ministers' accounts, 189696.

[2] Plac. de Quo War., 604.

[3] Feodarium, 214-215; Letters from Northern Registers, 214; Registrum, iii. 346.

[4] Foedera, iii. pt. i. 2; Rot. Parl. 7 Ric. II, iii. 177a; Letters from Northern Registers, 214; Registrum, iii. 346; above, p. 84.

[5] See an original inquest *post mortem*, Auditor 1, No. 3; Rot. vi. Nevill, ann. 15, m. 19, curs. 47; sheriff's account, A. D. 1535, Auditor 1, No. 40.

[6] Registrum, i. 258; Rot. E. Langley, ann. 17, m. 8, curs. 38; Pollock and Maitland, i. 256–257. The frequent appearance on the sheriffs' accounts of amercements "pro secta curiae" indicates that even those upon whom the obligation still rested were no longer very careful about fulfilling it.

[7] Gneist, English Constitution, i. 370–375; Prothero, Statutes and Documents, 76, 90, 96.

[8] Rot. iii. Booth (undated), m. 5 dorse, curs. 50. This is an instance of a small civil suit removed from the county court by a writ of *pone*, on the defendant's representation that the sheriff's deputy took an annual pension from the plaintiff; cf. Pollock and Maitland, ii. 663. For a case of land conveyed by surrender, see Rot. ii. Tunstall, ann. 2–3, m. 25, curs. 78. On the later history of the county court, see "A Collection of Rules and Orders of the County Court at Durham," in Collectanea ad Statum Civile . . . Comitatus Dunelmensis Spectantia; Hutchinson, Durham, ii. 278, note.

A court of pie-powder was held in the fairs and markets belonging to the Bishop,[1] and there were the usual halmotes, or local courts, on the manors of the palatinate as elsewhere in England; but they present no peculiar features.[2]

§ 26. The Act of Resumption in 1536.

We have now worked out the story of the palatine judiciary from the earliest times up to 1536. This date forms a landmark in the history of the institution, for in that year the judicial supremacy of the palatinate was by act of parliament transferred from the Bishop to the king. The judicial machinery, the development of which we have been tracing, continued to exist, shorn however of most of its importance; and the story of its vicissitudes from 1536 until the present day will now be followed.

Our point of departure will naturally be Henry VIII's sweeping measure. This is entitled "An acte for recontynuyng of certayne liberties and francheses heretofore taken from the Crowne."[3] It was of general application, but it had a particular effect on Durham, for the bishopric stood above all other liberties and honors in England except the counties palatine of Chester and Lancaster. These had now long been united to the crown, hence the transfer of the sanction of their judicial system from Henry Tudor *quâ comes palatinus* to Henry Tudor *quâ rex Angliae* was practically without result. In Durham, on the other hand, the lord palatine and the king were distinct physical persons, and Henry VIII's legislation operated to transfer much of the former's dignity to the latter.

The details of the act of 1536 are as follows. The Bishop loses his privilege of pardoning offences against the law, for this is held to be exclusively an attribute of royalty. He may no longer appoint judicial officers of any sort; all such officers are in future to be created under the king's authority and by his letters patent. All writs, indictments, and legal processes of any

[1] 17 Edw. IV, cap. ii, Statutes, ii. 462.

[2] Boldon Book, 31, 37, 38; Registrum, ii. 1132, iii. 61, iv. 338; Halmote Rolls (Surtees Soc.), i. Introd. viii, note.

[3] 27 Hen. VIII, cap. xiv, Statutes, iii. 555 ff.

description are to run in the name of the king; and offences are to be described as against the peace of the king, not, as formerly, as against that of the Bishop. From this it follows that the king is to take all fines and amercements imposed on judicial officers for contempt, misdemeanor, insufficient return of writs, or any remissness in the execution of their duties. It is distinctly stated that the liberties of the bishopric are to remain unaltered. All judicial officers are to retain the same powers and duties, although taking their sanction from the king instead of from the Bishop. Finally, and perhaps by way of consolation, it is provided that the Bishop of Durham for the time being, and his temporal chancellor, shall *ex officio* be justices of the peace for the county palatine.

It has been suggested that Henry was moved to this action by indignation against the people of Durham, who were known to have taken part enthusiastically in the Pilgrimage of Grace.[1] This theory is attractive and plausible, but unfortunately it will not stand in face of the facts. The act was passed in a parliament that met by prorogation on February 4, 1536, and was dissolved on April 4 next following.[2] The insurrection in the north did not break out until October. Importance also attaches to the fact that the legislation is not directed against Durham alone but is of general application; for Cromwell, whether at the king's suggestion or on his own motion, had conceived the plan of doing away with all the franchises and special jurisdictions in England. In his list of matters to be brought before the parliament that actually passed the act, the following note occurs: "For the dissolution of all franchises and liberties throughout this realm, and specially the franchise of spirituality."[3] If then, as Froude suggested, the increased activity of the central judiciary at this time was one of the forces making for rebellion in the northern counties,[4] it will be necessary to reverse the causal connection between the statute and the rebellion as proposed by the historians of Durham.

[1] Hutchinson, Durham, i. 420; Surtees, Durham, i. p. lxix.
[2] Parry, Parliaments of England, 203.
[3] Calendar of Letters and Papers, Henry VIII, x. No. 254.
[4] Froude, History of England, iii. 94–95.

But Cromwell's purpose was far in advance of his time, for in the sixteenth century there is no question of abolishing franchises so long as they can be accommodated to the expansion of royal authority. The independent organization of the Durham judiciary was scrupulously observed in the application of the new laws made by Henry VIII and Elizabeth.[1] But other means were found for reducing the palatinate, which, having been by Henry VIII deprived of its judicial independence in fact though not in name, was by his daughter most unblushingly robbed of its possessions. The queen, it is true, had the pretext of punishing the rebellion of 1569,[2] but her transactions with Bishop Barnes were without even this show of justification.[3]

It is likely that the chancery of Durham escaped the operation of Henry VIII's act; the chancellor was not primarily a judicial officer, and no mention is made of his appointment by the king. But toward the close of Elizabeth's reign the chancery of Durham was subjected to a certain degree of royal control. In 1596 a book of rules, regulating the practice of the palatine chancery, was drawn up and issued under the queen's authority.[4] In 1600 an equity case was heard "before Thomas Calverly esquire, chancellor of the Countie palatine of Durham; togeather with the assistance and in the presence of Edward Drewe, the Queen's Maiestie's seriant at Law, then and yet one of the Queen's Maiestie's justices itinerant in the said Countie and eftesones likewise at large."[5]

§ 27. The Palatine Judiciary in the Seventeenth and Eighteenth Centuries.

After this no change took place in the judicial machinery of the palatinate until the middle of the seventeenth century. With the outbreak of the war the palatine judiciary collapsed. The county had been seriously impoverished by the neighborhood of

[1] Cf. 5 Eliz., caps. xxiii, xxv–xxvii, Statutes, iv. pt. i. 453, 455, 456.

[2] 13 Eliz., cap. xvi, Ibid., iv. 459. Cf. Dyer's Reports, 286–289; Coke, Fourth Institute, 219; Sharpe, Memorials of the Rebellion of 1569.

[3] Strype, Annals, ii. App. 65–66.

[4] The Practice of the Court of Chancery of Durham, Introd. i.

[5] Rot. Matthew, ann. 5, m. 21, curs. 92.

the Scottish army and by the contributions that it had levied,[1] and when the army moved southward the Bishop and the dean fled incontinently.[2] In 1646 the palatinate was formally abolished and the lands of the see were put in the hands of trustees, in whom also all the *jura regalia* were vested.[3] The next year these trustees were directed to confer with the judges as to "how and in what manner Fines, and Common Recoveries, and other assurances, and also the Common Justice of the Kingdom, may be dispensed and carried on in the said County Palatine as in other parts of the Kingdom."[4] Sir Henry Vane and two other persons were directed to bring in an ordinance for this purpose.[5]

Legislation on this comparatively insignificant point dragged on, and the county palatine remained in judicial chaos. In 1648 the ordinance had not yet been brought in; a temporary arrangement was therefore made by sending Wastall, one of the trustees of the suppressed bishopric, to Durham under a commission of gaol-delivery.[6] In the same year the committee of the county jogged the memory of parliament by a petition praying for some speedy legislation.[7] Under this pressure parliament in 1649 ordered a conference between Thorpe, one of the barons of the exchequer, who went on the northern circuit in that year, the trustees of the bishopric, and the gentlemen of the county; these persons were to prepare and bring in an act designed to assimilate the county palatine to the northern circuit.[8] Four days after, this act was twice read and committed, and later in the same day reported and passed.[9]

In 1650 the county petitioned for a recontinuance of the local courts, which were probably popular.[10] This request did not obtain a favorable hearing, for in 1651 the reorganized parliament passed an act similar to that of 1649, but with arrangements considerably more definite for the registration of fines and recoveries, placing Durham in this respect on the same footing

[1] Hist. MSS. Com., Reports, iv. 28; Rushworth, Collections, ii. 1272.
[2] Rushworth, Collections, ii. 1239.
[3] Scobell, Acts and Ordinances, pt. i. 99–101, A. D. 1646, cap. lxiv.
[4] Commons' Journals, v. 246.
[5] Ibid.
[6] Ibid., 544.
[7] Ibid., 678.
[8] Ibid.
[9] Ibid., vi. 233, 236–237.
[10] Hutchinson, Durham, i. 514.

as any other county in the kingdom.[1] This step marked an improvement, but it did not go far enough; accordingly in the same year (1651) one of the trustees of the bishopric was ordered to bring in an act "to put the County Palatine of Duresme in such condition as other Counties of this Commonwealth are in."[2] This too was delayed, but an act passed in 1654 put Durham, for all judicial purposes, on the same basis as any other county in England;[3] and in this state it remained until the palatinate revived with the Restoration.

With the return of Charles II things went back unquestioned to their former status. John Cosin, a name familiar to all students of English church history, was made Bishop in November and at once proceeded to exercise all the judicial privileges enjoyed by his predecessors. It has been said that by the act abolishing feudal tenures the Bishops of Durham were deprived of their court of wards, and for this loss received a compensation.[4] It is, however, practically certain that the Bishops of Durham never maintained such a court. Henry VIII set up the court of wards in 1541, and it is true that the prerogative of the Bishop of Durham in respect to the holding of wardships is admitted by the terms of this legislation.[5] Such an admission, it might be said, is tantamount to an enabling clause for the Bishop to set up a court of wards; but even if this were the case, there is no record of any such court. Also the terms of the letters patent by which the Bishop received compensation after the act abol-

[1] The whole matter is to be arranged "according to the accustomed manner of taking Fines and Recoveries of Lands lying in any other county within the commonwealth of England." They are to be registered at Westminster, in the court of common pleas, in the same manner as fines of lands "lying within the counties of Monmouth and Hereford, or any other county or counties of England which are not or have not been counties palatine;" and all writs connected with these processes are to be made out by the cursitor of Monmouth and Hereford, who holds the same office for Durham. See Scobell, pt. ii. 156, A. D. 1651, cap. ix.

[2] Commons' Journals, vi. 599.

[3] Scobell, pt. ii. 305–307, A. D. 1654, cap. xxiii.

[4] Hutchinson, Durham, i. 539; 12 Car. II, cap. xxiv, Statutes, v, 259–266.

[5] 32 Hen. VIII, cap. xlvi, § 25, Statutes, iii. 805–806. The Bishop's right in the matter of wardships is mentioned in the so-called statute, "Praerogativa Regis," which is here referred to. See Statutes, i. 226.

ishing feudal tenures imply that he was being reimbursed for the loss of the profitable right of wardship, and not for the loss of jurisdiction connected with that right. A yearly rent of £880 due to the crown is remitted to the Bishop in view of his loss of revenue consequent upon the abolition of feudal tenures by the late act.[1] The fact that this statute is referred to by name as the "act for taking away the court of wards and liveries" may have occasioned the supposition that the Bishop maintained such a court, although the court referred to in the statute is the royal court of wards, and no mention is made of more than one such court.

Shortly before the revolution of 1688 an attempt was made to abolish the county palatine by act of parliament. This movement met with strong opposition at Durham, where the local courts were popular. Two petitions survive that were prepared at this time and intended no doubt for parliament, although it does not appear that they ever reached that body. The first, proceeding on general principles and on the high antiquity of the county palatine, points out the great convenience of the local courts to the inhabitants of Durham, who are provided with good and speedy justice without the necessity of going to Westminster.[2] The second petition is more elaborate; it represents that the suppression of the palatine courts will tend to the manifest disherison of the people of the county, "who were and are borne to the sure use and enjoyment of the Laws of the County (which are and always have been conformable to y^e^ Laws of the Land) and distributed at their doors, in the Courts within the County, with great ease and little charge." The petitioners are tradesmen of the city of Durham, and their chief line of reasoning is that, the courts once removed, the people of Durham county will no longer have any inducement to come into the city and accordingly will not spend their money there.[3]

[1] Rot. Cosin, No. 39, curs. 116.

[2] Hutchinson, Durham, i. 561.

[3] "Some Reasons for continuing the County Palatine of Durham and its Antient Jurisdiction and Courts of Law and Equity," and under this in another hand the phrase, "For the most part very trifling." Auditor 3, No. 138. There are twelve heads, of which the most cogent is the one quoted in the text. The vocation of the petitioners suggests the preoccupations

The effort to suppress the local courts of Durham at this time failed. There was, however, within the bishopric a strong party of reform which made itself heard again in the beginning of the eighteenth century. The leader of this movement was Gilbert Spearman, whose father, John Spearman, had been for many years under-sheriff of the county palatine. Spearman published in 1729 his "Inquiry," the joint work of his father and himself, his own share consisting of a violent attack upon the existing institutions of the palatinate.[1] Spearman did not succeed to his father's office, for Bishop Talbot abolished it with the dark intention, as our author points out, of corrupting juries.[2] Under these circumstances little penetration will be needed to discover the animus of the book.

The author objects first to the general principle of an independent jurisdiction in Durham and the means taken to preserve that independence. Next he calls attention to several undoubted abuses, which, as throwing light on the working of the Durham judiciary at this period, have much interest for us. For example, he complains that the court of chancery is held but once a year, and then for no more than a few days;[3] also that the abolition of the office of under-sheriff has reduced the sheriff's tourn to a mere formality, so that juries are no longer summoned or presentments made.[4] Then follow loud complaints against a somewhat unusual procedure in the attachment of goods, though the horrors of this injustice are mitigated by the author's admission (in a foot-note) that he has misread a statute.[5] A source of more serious complaint is against the members of the palatine bench. They are described as clergymen and tradesmen, whose ignorance of the law is sufficiently proved by the fact that one justice desired to see John Doe and Richard Roe in order

that led them to insist on the convenience of having justice delivered at one's door.

[1] Surtees, Durham, i. Introd. 7, and pt. ii. 95.

[2] Inquiry, 93–94. [3] Ibid., 56. [4] Ibid., 102–103.

[5] Ibid., 53–54. Spearman also rails against the very proper precaution taken in respect to attorneys in the palatinate, complaining that foreign attorneys are not allowed to practise there, and that others are required to take an oath not to carry any suit outside the jurisdiction when it is possible to have it determined within (Ibid., 55).

to reprimand them for their litigiousness. Even the Bishop, when he once appeared on the bench, seems to have fallen into the same error.[1] Judicial offices, it appears, were sold to unsuitable persons, and prosecutions in criminal cases were conducted by the Bishop's officers, not *ex officio* but at the expense of the prosecutor. And finally complaint is made that the records of the palatinate are improperly kept, a fact that we have cause to recognize and lament to-day.[2] There seems, indeed, to be little doubt that Bishop Talbot was neither a wise nor a disinterested administrator; certainly he was extremely unpopular among his subjects.[3] Spearman's attack then, although directed against the judicial system of the palatinate, falls short of its mark: it proves no more than that the system was improperly administered.

§ 28. The Palatine Judiciary in the Present Century.

Toward the close of the eighteenth century an effort was made to amend this state of things; and particularly to improve the chancery by securing the services of distinguished men; Lord Eldon and Sir Samuel Romilly each held at various times the office of chancellor of the county palatine.[4] With the opening years of the present century the court, despite the attempts made to revive it, had fallen into decrepitude. Between 1825 and 1836, 5084 writs issued out of the Durham chancery, and an average of six cases a year were heard there;[5] there is a total of sixty-one for the ten years, the smallest number for any one

[1] Spearman, Inquiry, 102–103.

[2] "The Repository or Office of Custos Rotulorum, where the Records of the County were anciently kept, is so moist, mouldered and decayed that most of the Ancient Records are either lost, eat by rats, or destroyed": Ibid., 103.

[3] Hutchinson, Durham, i. 572–573; Surtees, Durham, i. pp. cxx–cxxi.

[4] Temple *v.* Ecclesiastical Commissioners, in Law Journal Reports, 1854, xxiii. 673–676. See The Practice of the Court of Chancery of Durham, 9; Hansard, Debates, 3d Series, xxxiv. 123.

[5] Returns respecting the Courts of Durham, Parl. Papers, 1836, vol. xliii. 161–162. Five thousand and twenty-two of these writs were issued to the sheriff, and on his *capias* became the bases of actions in the court of pleas or county court.

year being four and the largest seven.[1] The court of pleas at this time was more active; during the same period it heard one hundred and fifty causes, though about half of these came up, by one writ or another, from the county court. The latter entertained a large number of actions, but principally those of debt in which the sum was under forty shillings.[2] A court of king's bench for Durham was intermittently held at Serjeant's Inn; Lord Denman was chief justice of this body in 1836.[3]

These courts were extremely popular; and when the government undertook to abolish them in its general reform, it met with so strong an opposition that it was found expedient to reorganize rather than to destroy the palatine judiciary. In 1835 Lord Melbourne suggested to the Church Inquiry Commission that it would be desirable to separate the palatine jurisdiction from the see of Durham; this suggestion was welcomed by the commissioners, who incorporated it in their second report, with the remark that its adoption would enable them further to reduce the revenues of the see.[4] It is worth noting that the idea of depriving the Bishop of Durham of his temporal power originated with Lord Melbourne. The movement was of course quite in harmony with the spirit of reform then agitating England; but neither the credit nor the responsibility of it should be laid at the door of the Ecclesiastical Commission, or at that of its predecessor, the Church Inquiry Commission.

The proceedings following on Lord Melbourne's suggestion and the report of the commissioners were extremely hurried, for the see was vacated by the death of Bishop Van Mildert early in 1836, and it was desirable to have it filled as soon as possible. The report was submitted on the fourth of March. On the twenty-fourth of that month the chancellor of the exchequer obtained leave to bring in a bill "for more perfectly uniting to the Crown the County-Palatine of Durham, and for the commo-

[1] Returns respecting the Courts of Durham, Parl. Papers, 1836, vol. xliii. 161–162.

[2] Ibid.

[3] Hansard, 3d Series, xxxiv. 300.

[4] Ibid., 6; Church Commissioners' Report (Second), in Parl. Papers, 1836, vol. xxxvi.

dious administration of justice within the same," which he somewhat disingenuously described "as intended to carry into effect the recommendation of the Commissioners of Inquiry relative to the See of Durham."[1] One of the members for Durham protested against any diminution of the Bishop's revenue, but nothing was said of the courts of justice.[2] When the bill was brought before the house of commons in May, it was found to provide for the complete abolition of the judicial system of the palatinate.[3]

The battle was fought out in the house of lords. The government explained that the bill was designed "to relieve and exonerate future Bishops of the diocese from the exercise of functions which, if not incompatible with an office of a religious and episcopal nature, at least interfered with the time for devotional and other duties annexed to the sacred character."[4] The bill was bitterly opposed by Lord Londonderry,[5] who produced in support of his arguments a great number of petitions from the county of Durham. All these followed one line, pointing out that the courts of the palatinate saved the people great expense in all matters of equity and administration in chancery, and in the recovery of small debts in the county court, by making it unnecessary for them to go to Westminster; and, further, that no abuse or corruption in the administration of justice in the palatinate had been proved.[6] Great pressure was brought to bear on the government for the preservation of the local courts of Durham. Lord Lyndhurst expressed the opinion that it would be desirable to retain the court of pleas,[7] and eventually Lord Eldon was induced to say as much for the chancery.[8]

The government at length gave way, and found a solution of the difficulty in the plan of attaching the franchise to the crown;

[1] Hansard, 3d Series, xxxii. 444. [2] Ibid., 444-445.

[3] Parl. Papers, 1836, vol. iii, Public Bills 136, 213.

[4] Hansard, 3d Series, xxxiii. 1179.

[5] Lord Londonderry was the representative of two ancient and powerful families of the palatinate, the Vanes and the Tempests. See Surtees, Durham, iii. 214.

[6] Hansard, 3d Series, xxxiv. 4-5.

[7] Ibid., xxxiii. 1178-1179. [8] Ibid., xxxiv. 122.

this step allowed the new Bishop to be installed at once, but committed no one to the indefinite retention of the palatine judiciary.[1] The credit of this scheme seems to be due to Lord Eldon. It was proposed on June 10, and on June 21 the bill became an act. The measure provides that the palatine jurisdiction of the Bishop of Durham shall be separated from the bishopric and vested in the crown "as a Franchise and Royalty separate from the Crown, and shall be exercised and enjoyed by His Majesty . . . as a separate Franchise and Royalty." The county court is specifically abolished, and the sheriff of Durham is authorized to hold the courts usual in other English counties. The king is to appoint a *custos rotulorum*, and provision is made for the compensation of office-holders who are deprived by the present act. The statute concludes with a definition of the extent of the county and certain reservations of rights to the bishopric.[2]

In spite of Lord Lyndhurst's opinion, the retention of the court of pleas did not prove quite successful. Accordingly in 1839 it was regulated, or rather reorganized, by "An Act for improving the practice and proceedings of the Court of Pleas for the County Palatine of Durham and Sadberge."[3] A comparison of this act with the state of things three centuries earlier affords an interesting comment on the ingenuity of English conservatism. The form and name of the palatine judiciary are retained, but everything that made it distinctively palatine, those immunities that so perplexed the fifteenth-century justices, are scrupulously removed. There is no longer the remotest possibility of a collision between the two jurisdictions. The Durham court of pleas was further regulated by the common-law procedure acts of 1852, 1854, and 1860. It did not, however, survive the tremendous judicial upheaval of 1870–79;[4] and in 1873 its jurisdiction was definitely transferred to the high court of justice.[5] Few English institutions have been more essentially

[1] Hansard, 3d Series, xxxiv. 298.

[2] 6–7 William IV, cap. xix, Statutes at Large, xiv. 67–68.

[3] 2–3 Vict., cap. xvi, Ibid., xv. 42–48.

[4] 17–18 Vict., cap. cxxv, § 101, Ibid., xxii. 455; 18–19 Vict., cap. lxvii, § 8, Ibid., xxii. 647; 23–24 Vict., cap. cxxvi, §§ 40, 41, Ibid., xxix. 958.

[5] 36–37 Vict., cap. lxvi, §§ 16, 77, 78, 92, Public General Statutes, 312, 340–343, 347.

foreign to the temper of the nation and to the tendency of its constitutional development; none has had a longer continuous existence.

More fortunate than the court of pleas, the chancery of Durham weathered the storm of judicial reorganization and still survives. Until recent years it has shown little activity. About 1850, indeed, it was nearly dead of inanition: the chancellor visited Durham but once or twice in the year, and remained no longer than the few hours between the arrival of one train and the departure of another. Practically the only business before the court was the administration of charitable bequests. The chancellor none the less took the old fees, namely, £100 for each session and a fixed stipend of forty marks (£26 13*s.* 4*d.*), with an allowance of fourteen shillings for wax. It seemed to the Ecclesiastical Commissioners in their economy that this fee should be withheld; whereupon Temple, the chancellor of Durham, brought an action against them. The lord chancellor held that, under the act 6–7 William IV, cap. xix, Temple should recover. "I feel not the least doubt," said he, "but that when the legislature passed this act, they contemplated that all that had *de facto* been paid to the officers, including the chancellor, should be continued, whether the payment could have been recoverable by an action against the Bishop or not. My opinion, therefore, is that the chancellor is entitled to what is now claimed."[1]

In 1889 the chancery court was overhauled and assimilated to the new judicial conditions of the kingdom by the "palatine court of Durham act" (52–53 Vict., cap. xlvii). The principal change introduced by this measure was the provision that appeals should in future lie to the court of appeal and thence to the house of lords, and that no appeal from any order or judgment of the chancellor of Durham should be taken directly to the house of lords.[2] Under the present chancellor the court has become relatively very active. A selection of cases from the year 1897 shows a considerable variety of matters dealt with, such as an attempt

[1] Temple *v.* Ecclesiastical Commissioners, in Law Journal Reports, 1854, xxiii. 673–676.

[2] 52–53 Vict., cap. xlvii, § 11, Public General Statutes, 195–196.

to establish a right of way, a breach of covenant in the alleged maintenance of a nuisance on land sold under restrictive conditions, and a number of administrative cases.[1]

We have now formed some notion of the organization of the palatine judiciary. We have traced its origin, its development, — in which it followed the model of the royal judiciary, but without producing the highly articulated system of courts that grew up in the kingdom, — its degeneration, and its final disappearance from the field of history, though not without visible traces left behind. With this knowledge we may pass to the more interesting consideration of the relation of the royal and palatine judicial systems.

[1] The Dean and Chapter *v.* T. Lickley; Wooler *v.* Lord Barnard; Wetherell *v.* Barney; Winter *v.* Berkeley. These cases are not reported, but a brief summary of them appears in the local journals. A collection of these unofficial reports has been very kindly loaned to me by the present chancellor of the county palatine, T. Milvain, Esq., Q. C.

CHAPTER VI.

THE PALATINE COURTS IN RELATION TO THE ROYAL JUDICIARY.

§ 29. Competence of the Palatine Courts.

In the preceding chapter an attempt has been made to show the origin and growth of a special jurisdiction in the bishopric of Durham, and the development of a system of law courts answering in most essentials to that of the kingdom. We shall now naturally ask what were the relations of these jurisdictions. In order to arrive at an answer to this question we must first understand the extent of the competence of the palatine judiciary, that is, we must try to discover what scope was, in the general theory of the law, normally assigned to the activities of the palatine courts.

We have already met with Henry II's charter granting to the Bishop of Durham the right to hold his court in respect to all matters of which his predecessors took cognizance, and laying on the people of the bishopric the obligation of pleading in that court and not elsewhere until the Bishop should make default of justice.[1] In another charter the king grants an indemnity for the mission of his justices into the bishopric.[2] These justices therefore did not ordinarily come into the bishopric, and litigants there were forced to carry their complaints to the local courts. The Bishop's justices, then, had a general competence, a cognizance of all local pleas. This doctrine was called into question between 1206 and 1208 in Geoffrey Fitz Geoffrey's case,[3] from which it appeared that the Bishop was, and had been, holding all pleas by his own writ to the exclusion of the king's writ. Geoffrey's case did no more than bring the matter into question, for in its conclusion the point of law was not deter-

[1] Scriptores Tres, App. No. xxxii.
[2] Ibid., No. xxxi.
[3] See below, App. i.

mined. In 1208 the Bishop died, and the see remained vacant until 1217. The point was soon after raised again, though in what shape we cannot tell. At any rate, in 1224 the king directed the justices of the palatinate to abstain from holding any pleas by the Bishop's writ until the king's court should have decided whether these writs and liberties belonged to the Bishop of Durham by right of his bishopric or were an usurpation on the king's crown and dignity.[1] The question, however, did not come before the king's court, and the Bishop continued to enjoy his privilege undisturbed. Possibly some compromise had been reached.[2] Five years later appears the elaborate and minute testimony of the "Convenit" and the "Attestaciones" to the exclusive local jurisdiction of the palatine courts,[3] and this is sufficiently confirmed by the *quo warranto* proceedings of Edward I.[4]

All this by way of review; and yet in a new connection it is possible to derive fresh conclusions from old material, as, for example, the fact that the supremacy of the palatine courts was local and subject in the last resort to the supreme authority of the king. We shall best arrive at a more detailed knowledge of the competence of the palatine courts by the negative process of examining the limitations set on that competence by the royal authority. The whole judicial system of the palatinate was overshadowed by the ultimate supremacy of the crown. This made itself little felt up to, and even during, the brilliant pontificate of Anthony Bek (1283–1310). After that time, however, the crown exerted its authority in various ways. For one thing, Bek's rule had been too brilliant; then too, the crown was now better able to act. "Kings," it has been said, "have long hands;"[5] and in the administration of justice the king's hands were brought very close to the bishopric by the presence of his judges in the five counties touching its boundaries. The kings of the fourteenth century, moreover, had pretty thoroughly

[1] Rot. Lit. Claus., 8 Hen. III, i. 631–632.

[2] Cf. Hutchinson, Durham, i. 197.

[3] See above, § 17.

[4] Plac. de Quo War., 604.

[5] "An nescis longas regibus esse manus?" Ovid, Heroïd. xvii. 166; cf. Dialogus de Scaccario, lib. ii. cap. iv, in Stubbs, Select Charters, 219.

vindicated their sovereignty, and one result of this circumstance was the immediate relation of the sovereign with all his subjects, in judicial matters. The inhabitants of the bishopric were the king's subjects also in the theory of the royal courts, which taught that in the dispensation of justice the king was supreme (*dominus superior*) over the whole kingdom and did justice to all.[1]

In the fourteenth century conflicts became more frequent and the theory of law more definite. The law taught that within the palatinate the Bishop was supreme in all things except matters touching the king's body, or unless he made default of justice.[2] In the latter case a writ, known from its opening words as *qu'il face droit*, issued in course to the Bishop. In this instrument the matter of complaint was stated, and the Bishop was enjoined to do justice so speedily and fully that the king might hear of the matter no more.[3] If this produced no effect, a writ of attachment against the Bishop might be procured,[4] a step which, as we shall see, set in motion a cumbrous and sometimes formidable machinery. This device was resorted to in various sorts of cases: thus a man asked to be released from prison on bail; a subject of the king complained that his opponent in a suit for damages had fled to the palatinate; an inhabitant of the bishopric had been disseised by the Bishop, and, unable to obtain remedy at home, applied to the king.[5]

The working of this process is illustrated in the case of Geoffrey of Hartlepool, who in 1305 was sued in the palatine courts for the attornment of certain rents in a manor in the bishopric. While the case was still pending, the king seized the temporalities of the see, and the case was continued before the royal justices in Durham. When the temporalities were returned in 1307 this case was specially reserved,[6] but later at the demand-

[1] Abbrev. Plac., 257 b.

[2] Year Book 14 Edw. II, Hil. 424; Rot. Parl., 2 Edw. III, ii. 14.

[3] Registrum, ii. 921, A. D. 1313; cf. Rot. Parl., 2 Edw. III, ii. 14.

[4] Year Book 14 Edw. II, Hil. 424.

[5] Rot. Parl., Edw. III, ii. 391 a; Registrum, ii. 1015–1016, 1030, 1032; Rot. Fordham, ann. 3, m. 4, curs. 32.

[6] Foedera, ii. pt. i. 5.

ant's request it was returned to the Bishop's court. In May, 1315, on the tenant's allegation of error, the record and process were ordered to be sent to the king's bench. The Bishop did nothing, and under the form known as *pluries* the writ was repeated in June, July, and October; but before the last writ reached Durham the Bishop was dead, and the case was probably settled at Westminster.[1] From this affair we may judge of the practical value of an appeal to the king. The royal courts were busy, and the bishopric was very far from Westminster in the fourteenth century. Except on parchment, therefore, the king was slow to wrath; and the Bishop knew many returns to a royal writ besides the one called for in that instrument.

We have been dealing with a case in which the Bishop is alleged deliberately to have denied justice; he might, however, make default through inability to supply redress. This class of cases also needs illustration. In 1337 Ralph de Nevill brought an action in the palatine courts against certain persons whom he accused of having broken into his park. The defendants neither appeared nor essoined themselves, and in due course they were outlawed. Nevill then represented that they had left the palatinate and were dispersed through various counties of the kingdom. On this, the suit was sent out to the king's justices in Yorkshire, with a royal writ directing them to cause the arrest and imprisonment of the defendants wherever they might be found. Nevill supplied the justices with the necessary information, the defendants were apprehended, and the suit proceeded in the royal courts.[2]

Even the judgment of the Bishop himself was not final, for an appeal from it lay to the court of king's bench. Errors, as we have seen, might be assigned in the judgments of the Bishop's justices, and in this case the plea came before the Bishop himself.[3] Without this intermediate stage the case could not be drawn into the royal courts, although in the fourteenth century an unsuccessful attempt was made to authorize this step by

[1] Registrum, ii. 1056–1058, 1068–1070, 1077–1079, 1087–1090, 1110–1113.
[2] Ibid., iv. 215–221. The case is fully given and is extremely interesting.
[3] Coke, Fourth Institute, cap. xxxviii; see above, p. 184.

legislation.[1] When a writ of error was pending before the Bishop, the plaintiff in error often stimulated the action of the court with a royal writ directing the Bishop to do justice or give a decision, lest the king draw the case to his own court.[2] There is a case in the year 1341 which well illustrates the whole question. The plea had been begun by a writ of formedon before the Bishop's justices. The tenant pleaded in bar the deed of the demandant's ancestor, claiming that the demandant had assets by descent in York and Lincoln. The Bishop's justices could not try this issue, since beyond the limits of the bishopric they had no jurisdiction, and accordingly they dismissed the plea (parole without a day). The demandant then brought a writ of error before the Bishop, who reversed the judgment already given, on the ground that the plea should have been continued by adjournment, and gave the parties a new day before his justices. This was tantamount to sending the case from a higher to a lower court, a thing which could not legally be done. On the assignment of this error in the Bishop's judgment the king's writ issued, drawing the whole case before his justices. The judges showed much uncertainty in dealing with the case; the organization of the palatinate was unfamiliar to them, and the statement of counsel that "the Bishop is as king there, and can adjourn whither he pleases, and it is the custom there," was allowed to pass without question.[3]

This kind of limitation on the competence of the palatine courts, although in the ultimate analysis it may be referred to the royal supremacy, proceeded directly from the regular process of law. There was, however, another kind of limitation which was derived immediately from the royal prerogative. Thus the king forbade the Bishop to allow a suit, then pending in the palatine courts, to go by default on account of the absence of the defendant; and even the essentially hasty procedure of an assize

[1] Rot. Parl., 21 Edw. III, ii. 171 b; Fitz-Herbert, New Natura Brevium, fol. 20–21, pp. 44–46.

[2] Registrum, ii. 997–998, 1008–1009; cf. also Rot. Parl., 2 Edw. III, ii. 14.

[3] Year Book 14 Edw. III, Mich. 142–143. Cf. also Ibid., 15 Edw. III, Hil. 364–367; Fitz-Herbert, Abridgment, error 6, fol. 329, and recorde 37, fol. 67.

of novel disseisin was interrupted and suspended for some time by the king's certificate that the tenant was sitting in parliament and could not be allowed to absent himself.[1] Even in so serious a matter as homicide the course of justice might be checked at the king's pleasure. Thus in 1322 the Bishop of Durham was forbidden, until further notice, to molest certain persons who had killed John de Eure while pursuing him as the king's enemy.[2] John de Eure belonged to an important north-country family, and held considerable estates in Durham and Yorkshire. He was killed at Bishop's Aukland in Durham, and the king's precept seems to have issued on the understanding that he was concerned in Lancaster's conspiracy, though this charge proved to be unfounded.[3] The whole affair is obscure, and there is no light from the chroniclers; the principle, however, is clearly developed, that for purposes of public policy the king, of his prerogative, might suspend the course of justice in the palatinate.

In matters of private interest also the king's prerogative imposed limitations on the competence of the palatine courts. The allegation that a title was derived from the crown raised a presumption of its validity. Thus Edward III granted a manor within the palatinate to a certain R. Afterward, by a fine levied in the palatine courts between A and B, A recognized B's title to the manor and received it from him for life, to the exclusion of R. Thereupon R petitioned the king in parliament to provide him a remedy, and was answered that he should have the king's charter confirming the royal grant, and that no one might exclude him without answering at the common law.[4]

The royal prerogative also acted negatively as a limitation to the competence of the palatine courts. Thus, if the king were

[1] Registrum, 946–947, 955–956.

[2] Calendar of Close Rolls, 1318–1323. p. 430. The original record is very brief and contains nothing that can not be found in the calendar.

[3] Ibid., 474, 599, and cf. also Ibid., 379, 468, 614.

[4] Rot. Parl., 2 Edw. III, ii. 23 b. See also the interesting case of Peter de la Haye, in 1316 (Calendar of Close Rolls, 1313–1318, p. 360). The king's interest was involved here, because the manor of Streatlam, which Peter sought to recover, was a member of the seignory of Barnard Castle; and Barnard Castle, owing to certain particular reasons, was at that time in the king's hand (see above, § 5, and cf. Surtees, Durham, iv. 100–101).

party to a case which ordinarily would be cognizable only before the Bishop's justices, it would become necessary for the Bishop either to force the king to plead in the Bishop's court, or himself to renounce cognizance of the case. The latter alternative the Bishops never willingly adopted; hence they are often found attempting to force the king to plead in their courts, but always, as may be supposed, without success. The point was most often raised in the matter of advowsons. During vacancies of the see the king, who represented the Bishop in his temporal capacity, presented to the Bishop's livings that fell vacant before a successor was appointed. Now, it often happened that the king neglected to present to a living until the new Bishop had received the temporalities. In this case the Bishop would decline to admit the king's candidate. Then the king would bring a writ of *quare impedit* in the royal courts. To this the Bishop would make answer, by way of confession and avoidance, that the king indeed had the right to present but that the action should have been brought in the palatine courts.[1] Such a plea, however, was never allowed. Here again is seen the point with which we are concerned, namely, the inferiority of palatine privilege to royal prerogative.

We may now state our results with respect to the competence of the palatine courts. In theory all pleas arising between inhabitants of the palatinate, and all torts and crimes committed within its boundaries, were cognizable only by the courts of the palatinate, because, as justice Hillary pointed out, the king might not have jurisdiction in a place where he could not try.[2] In practice, however, this complete local cognizance was restricted by the fact that no court in the palatinate was final, and that its boundaries, although able to exclude the king's justices, were powerless against his prerogative.

We have seen that the Bishop of Durham was as king in

[1] Registrum, ii. 842–845, 948–949. In the former case the king's counsel said: "Quod dominus rex, ratione praerogativae et jurisdictionis suae, a qua corona hujusmodi libertatis primo sumpserit originem, et inde dependent, etc. [sic], attachiari non debet ad placitandum alibi, quam in curia sua, coram seipso, vel justiciariis suis."

[2] Ibid., ii. 921–922, iv. 240; Year Book 17 Edw. III, Trin. 36.

his province, and at the same time vassal and tenant of the king in England. We have seen also that the bishopric was furnished with an adequately developed judiciary, having competence over all the inhabitants of Durham, and, except in certain special cases, excluding the jurisdiction of the crown. We have thus before us the problem of determining the relations of two concurrent and sometimes competing jurisdictions. A moment's reflection will suggest numbers of cases in which the courts of the palatinate and those of the kingdom would find themselves in collision. Take, for a single example, the matter of vouching to warranty in the court of one jurisdiction when the vouchee lived in the other. How was the vouchee to be produced? Similar questions arise at every step in procedure from summons to outlawry or execution of judgment. The range of possible aspects under which the difficulty may present itself is very great. The simple case that we have put with regard to vouching to warranty, a process so important in medieval law, is capable of a surprising number of permutations. These would constantly arise in the counties adjoining Durham, and they must have been regulated by some ascertainable rule. So too with other difficulties. Our task then is, following the order of legal procedure, to determine so far as possible the nature of the difficulties that grew out of the clash of the royal and palatine jurisdictions, and the general principles by which these difficulties were adjusted. We shall find that at first the theory of the law is fluid; the process of crystallization does not begin until the fifteenth century is well under way.

§ 30. Summons and Arrest.

Beginning with the process of summons, let us see how it was applied to the Bishop. It is clear that within the palatinate the Bishop, *quâ* king, was beyond the ordinary process of law.[1] He could not, therefore, be summoned to answer in his own courts. Outside the palatinate, however, the Bishop of Durham, *quâ* feudal tenant of the king and landlord in various unfranchised counties, was naturally amenable to the laws of the

[1] See above, § 7.

realm. But, since the king's officers might not enter the palatinate in the execution of their office,[1] how could the Bishop be produced in the king's court? The first step was to disregard the palatinate by treating the Bishop as an ordinary feudal tenant. This action could of course have reference only to the Bishop's considerable estates in Yorkshire and Lincolnshire. Distress on these lands might freely be levied. Thus in the middle of the thirteenth century the abbot of S. Albans brought suit against the Bishop of Durham to recover the advowson of the church of Overconscliffe in the bishopric. The plea was long and intricate and involved the purchase of many costly writs, by means of which it was sought to bring the Bishop into court. Finally it became necessary to direct the sheriff of Yorkshire to produce the Bishop by distraining him "per omnes terras suas."[2]

During the thirteenth century, as has been already noted, the justices thought that an earl palatine might be forced to plead in the king's court with respect to lands lying in his county palatine,[3] but this doctrine seems to have proved impracticable. In the beginning of the next century the Bishop granted out a wardship in the palatinate which was claimed by a person dwelling in the kingdom. On this there issued to the sheriff of Lincoln a writ of *praecipe quod reddat* in respect to the Bishop of Durham, containing the usual formula "summoneatis, per bonos summonitores, praedictum episcopum, quod sit coram justitiariis nostris apud Westmonasterium . . . ostensurus quare non fecerit," etc.[4] The sheriff of course proceeded against the Bishop's

[1] Year Book 45 Edw. III, Trin. 17, and cf. Ibid., 17 Edw. III, Trin. 36. The contingency of the Bishop's merging his feudal identity in his character of mitred sovereign, and thus defying legal process, was at an early period provided against by the application of a doctrine of capacities. See Pollock and Maitland, i. 508; Stubbs, i. 499.

[2] Abbrev. Plac., 160 b; Matthew Paris, Chronica Majora, vi. 329–332, 340–341, 393–396. For a similar case in 1269, see Northumberland Assize Rolls (Surtees Soc.), 201.

[3] Bracton's Note Book, plac. 1127, 1213; above, p. 182, note 2.

[4] Registrum, ii. 967. See also a writ of *venire facias* to the sheriff of Northumberland, directing him to produce the Bishop of Durham in the exchequer at Westminster to answer regarding the will of his predecessor, Anthony Bek (Ibid., 1054).

lands in Lincolnshire, and had this summons been disregarded the law would have taken its course with regard to these lands. But it is questionable whether the Bishop could have been put to exigent or outlawed on such proceedings. In conclusion, then, the Bishop, although *quâ* king he was above the processes of the law in Durham, might still, *quâ* tenant-in-chief of the king, be summoned to the royal courts to answer in actions brought by persons not under the palatine jurisdiction, even though such actions had reference to lands and tenements lying within the palatinate. Summons of this sort was enforced by distraint on the Bishop's lands and tenements outside the palatinate.[1]

When it became necessary to produce an inhabitant of the palatinate in the royal courts, the first step was to levy distress on any lands or tenements that he might be holding outside the liberty. If he held no such lands, the sheriff could do nothing without further action on the part of the courts.[2] This action took the form of a special process, made in the name of the king, to compel the Bishop to produce the person required. At one time the judges doubted whether the Bishop might be used as the king's servant in this fashion; but this doubt gradually vanished, and in the practice of the fourteenth and especially of the fifteenth century, one might almost say that, for the purpose of producing the defendant in a civil action, the Bishop was regarded as standing to the king in the relation of the sheriff of a county.[3] The distinction here implied between the king and the

[1] It should be remembered that this process refers only to summons. The recovery of lands in the palatinate was a very different matter, and could not be accomplished in the royal courts.

[2] "Et praedictus R . . . et omnes alii non veniunt nec fuerunt attachiati, quia non fuerunt inventi eo quod fuerunt in libertate Episcopi Dunelmensis:" Northumberland Assize Rolls (Surtees Soc.), 14; A. D. 1255. Cf. Ibid., 195–197, A. D. 1269.

[3] "The king can not command him [the Bishop] as his servant to make summons" (Year Book 17 Edw. III, Trin. 36). It was said by justice Newton that the lord palatine, in producing a vouchee, was acting as the servant of the king's court (Ibid., 19 Hen. VI, Hil. 52, and cf. 33 Hen. VI, Mich. 52). At a much earlier time — although the case is not strictly analogous — we find the term servant applied to the Bishop in the following con-

royal courts is to be emphasized, because regular judicial writs would not issue to the Bishop; a special writ from the king was required.

The process of summons in the thirteenth century consisted of eight stages, and it was necessary to exhaust the resources of the first before passing to the second, and so through all the eight.[1] By the next century this elaborate and cumbersome method had been reduced to the three essential measures of summons, attachment, and the great distraint.[2] Bracton, however, knew of a process for compelling lords of franchises to produce their men in the king's court, which, in the event of persistent contumacy, resulted in the confiscation of the franchise.[3] That this process was never applied to the liberty of the Bishop of Durham may, in connection with other facts pointing in the same direction, be taken as evidence tending to show that the palatinate was placed on a footing different from and superior to that of the other great franchises of England. The elaborate thirteenth-century process of summons can not, for lack of material, be shown in its application to the palatinate, although we get a little light here and there.[4]

In the fourteenth century the material at our disposal becomes more abundant and furnishes several cases illustrating the point in hand. An outline of one of these will serve the present purpose. In 1313 the collectors of the customs at Hartlepool were directed by the king to appear in person at the exchequer at Westminster to render an account of the issues of their office.[5] The collectors disregarded this mandate; whereupon a precept

nection: "Episcopus minister ipsius Regis est ad ea que ad regale pertinent." (Abbrev. Plac., 257 b, printed at length in Registrum, iv. 14–74).

[1] Bracton, fol. 439–441, vi. 466–489.

[2] Pollock and Maitland, ii. 591 ff.

[3] Bracton, fol. 443, vi. 496.

[4] Bracton's Note Book, plac. 1096; cf. Coram Rege, 14 Edw. II, roll 242, m. 60.

[5] Inasmuch as Hartlepool was in the palatinate, one may wonder at the presence there of royal collectors. They were, however, appointed during the vacancy that followed Bishop Bek's death in 1310, and are now required to account for the customs "de tempore quo inde habuerunt custodiam ex commissione nostra."

issued to the sheriff of Northumberland bidding him distrain the contumacious persons by all their lands and chattels in his bailiwick. On the appointed day the sheriff returned that he had made no execution of the writ, because the town of Hartlepool and the collectors of the customs there were within the liberty of the Bishop of Durham. The king then issued a new writ, directing the Bishop to distrain the collectors by all their lands and chattels within his liberty in such fashion that neither they nor any one else might come at the property so distrained, which was to be held until the king's further pleasure was made known. The Bishop, meantime, was responsible to the king for the issues of the property while it remained in his hands. This was the great distress following on the summons and attachment which the sheriff of Northumberland had been directed to make. Even the great distress was not effectual, for the Bishop returned that one of the parties had nothing within the liberty, and that the other had been distrained in goods and chattels to the amount of 6*s.* 8*d.* Two months later the writ was issued again, under the form *alias*, and the Bishop returned that the same person had been distrained to the amount of 10*s.* This action seems to have produced the desired result, for we hear no more of the matter.[1]

It sometimes happened that, instead of resorting to the cumbersome method of making process against the Bishop, the king simply outlawed the defaulting party and effectuated this outlawry in the palatinate by giving notice of it to the Bishop. This seems to have been the most common method in the late fifteenth and early sixteenth centuries, but it was not unknown at an earlier period. Already in 1345 there is an instance of it. Sir Thomas Metham had brought an action before the king's justices against Henry Fox of Barnard Castle in the palatinate, to compel the latter to render him an account of certain money and rents. Henry did not appear and was outlawed. The king notified the Bishop of the outlawry, and directed him to arrest and imprison Henry if he should be found within the palatinate, and in the mean time to take possession of his lands and goods.[2]

[1] Registrum, ii. 978–980, 993–994. See the case of Lora de Harpyn, Ibid., 851–853, 866–868, 884–886, 893–895.

[2] Rot. i. Hatfield, ann. 1, m. 1 dorse, curs. 30.

In 1507 Ralph de Eure of York and Durham, having been impleaded successively by the king and certain London merchants, was twice outlawed in the hustings court at London. Notice of this action was transmitted to the Bishop, and the outlawry was put into effect in the palatinate.[1] This step was accomplished at that period by sending to the Bishop a royal writ declaring the terms and nature of the outlawry, together with the pains and penalties awaiting those who gave aid to the outlaw, and requiring him to cause its proclamation by the sheriff.[2]

Outlawry decreed in the kingdom might, then, by notification to the Bishop be rendered effectual in the palatinate. But does the converse of this proposition hold good? Let us examine our evidence. In the case of Ralph de Nevill, already noticed, the defendants, having been outlawed in the palatinate, were brought to justice in the king's courts, which thus tacitly admitted the validity of the decree.[3] In 1414 Robert Masham, a monk of Durham, was outlawed in the county court of the palatinate of Lancaster for non-appearance. This action was notified into the king's chancery, and Masham, having submitted to imprisonment at Lancaster, was pardoned by the king.[4] In 1472 one of the king's justices expressed the opinion that "outlawry decreed in Durham or Chester, which do not derive from parliament but are by prescription, is not binding in the royal courts."[5] But this statement must be taken as an expression of the general drift of the law rather than of its actual state; for, on the other hand, Edward IV's statute against liveries makes a special exception against proceeding to exigent and outlawry in counties palatine by writs or informations based on this statute, the implication being that, where no such reservation was made, the extreme measure might be resorted to.[6] Prob-

[1] Rot. i. Bainbridge, ann. 1, m. 20 dorse, curs. 68.

[2] Rot. i. Wolsey, ann. 2, m. 18, curs. 72.

[3] Registrum, iv. 215–221; above, p. 212.

[4] Scriptores Tres, App. No. clxxviii.

[5] Year Book 12 Edw. IV, Mich. 16.

[6] 8 Edw. IV, cap. ii, Statutes, ii. 428. See also 1 Hen. IV, cap. xviii, Ibid., 118; 9 Hen. V, cap. ii, Ibid., 204; 8 Hen. VI, cap. x, Ibid., 246–248; Year Book 19 Hen. VI, Hil. 1–2; Dalton, Office of Sheriffs, 380.

ably the law, by remaining vague on this point, secured to itself a very desirable latitude, and in any given case allowed policy to determine whether or no the palatine decree of outlawry should be recognized. Finally, although the palatine courts had no power to enforce their decree outside their jurisdiction, they might nevertheless, if the outlaw had lands in the palatinate, make it prudent for him to come to terms with them lest his lands be forfeited from himself and his heirs. Instances in which outlaws surrendered themselves at the Bishop's prison and subsequently purchased their pardons are not uncommon.[1]

Returning now to the more regular legal process, we find that under the political pressure of the fifteenth century certain changes had been introduced. The Lancastrian government found it almost impossible, not only to produce political offenders before the council, but even to serve upon them the instruments which would permit, failing their attendance, of their being outlawed. In 1454–1455 this point was raised in parliament, with particular reference to the disturbances in the northern counties created by the Percies.[2] An act was passed, and, contrary to established custom, transmitted by the king directly to the sheriff of Durham for proclamation. By the terms of this act, writs and letters of privy seal calling for the appearance of persons before the council were to be proclaimed by the sheriff in Durham, and such proclamation was to be taken for service of the instrument, which was then to be returned. The first default after such service would lead, if the offender were of noble estate, to the forfeiture of all offices, possessions, and the like; the second to the loss of estates, name and dignity of peerage, and place in parliament.[3]

In the sixteenth century the ordinary process for producing a person from the palatinate differed from that used in other counties only in the fact that between the king and the person wanted

[1] Rot. ii. Hatfield, ann. 34, m. 18, curs. 31; Rot. Fordham, ann. 2, m. 3, curs. 32; Rot. A. Langley, ann. 2, m. 1, curs. 34.

[2] Rot. Parl., v. 394–396. This is dated "Hen. VI, *anno incerto*"; but it belongs to the year 1455, for the year 32 Hen. VI is mentioned in the text, and the substance of the act is incorporated in the proclamation on the Durham roll, which is dated 1455.

[3] Rot. v. Nevill, ann. 17, m. 20–21 dorse, curs. 46.

there were two steps instead of one; namely, the Bishop and the sheriff. Thus an ordinary writ issued to the Bishop bidding him to direct his sheriff to secure the appearance of A, instead of immediately to the sheriff directing him to produce A.[1] In a real action in the royal courts, whether the land lay within or without the palatinate, the presence of the tenant could generally be secured by awarding the demandant judgment by default.[2]

In respect to the production of the clergy in the royal courts Durham did not differ from any other diocese of England. The royal officers might proceed directly against the clergy through their lay fees alone; in this regard the clergy did not differ from laymen, and were, within the palatinate, subject to the rules governing lay persons. In this matter, then, it is necessary to distinguish carefully between the dual capacity of the Bishop as ordinary and as lord. The clerk who held a lay fee in the palatinate would be summoned through the Bishop in the manner already described. If he held no lay fee, a well-recognized process of law would be applied to the Bishop of Durham, as to any other diocesan of England. This process consisted of four stages, as follows: (1) summons, to which the sheriff returns that he cannot distrain and that the clerk will not give pledges for his appearance; (2) mandate to the ordinary — sometimes to the archdeacon — directing him to sequester the ecclesiastical goods of the offender and to produce him at a given day; (3) writ of *pone* to the sheriff bidding him place the Bishop under surety to produce the clerk; (4) distress levied on the Bishop's barony. Here, as in most similar processes, the same writ is issued several times, under the forms *alias* and *pluries*, before the next step is taken.[3] The register of Bishop Kellaw shows many cases of this kind, of which the following is a good example.

[1] Rot. ii. Tunstall, ann. 13, m. 14 dorse, curs. 78.

[2] Pollock and Maitland, ii. 591; Northumberland Assize Rolls (Surtees Soc.), 14–15, A. D. 1255. A case involving land within the palatinate would scarcely come into the royal courts, for the demandant would probably bring his action in the palatine courts, where he might hope to recover the land itself and not merely its equivalent, which was the utmost the royal courts could procure for him.

[3] Bracton, fol. 442 b–443 b, vi. 490–501.

In 1312 an action was pending in the royal exchequer against the executors of the will of William de S. Botolph, formerly rector of Houghton in Durham. The sheriff of Northumberland had returned that one of the executors, Robert le Clerk, prebendary of Lanchester, had no lay fee by which he might be distrained. On this a writ issued to the Bishop bidding him distrain Robert, by the ecclesiastical benefices which he had in the bishopric, to appear at the exchequer on a certain day. The Bishop returned that the writ had reached him too late for execution.[1] Accordingly it was repeated six months later, and this time another Durham clerk, Ralph de Holbech, was included.[2] The Bishop returned that he had sequestered the ecclesiastical goods of the reluctant executors; but as this step failed to produce the required result, in July, two months later, a writ of *pone* against the Bishop issued to the sheriff of York. Robert le Clerk seems by this time to have satisfied his opponents, and the appearance of two of his co-executors was now demanded.[3] The Bishop proceeded to execution on the ecclesiastical goods of Ralph de Holbech to the amount of thirty-three marks, levied on the issues of his prebend in the collegiate church of Chester-le-Street, the amount in dispute at the exchequer being £43 6*s.* 8*d.*[4] Hence we are free to suppose that the writ of *pone* had its effect. But justice was not yet satisfied, for in December the order for distress was repeated, under the form *pluries*.[5] This issued again in October, 1314.[6] In the middle of November, however, Ralph must have appeared at the exchequer and made satisfaction; for toward the end of that month the king directed the sheriff of Yorkshire to remove the distress on the Bishop's lands, and the Bishop to relax the sequestration of Ralph's ecclesiastical property.[7]

We have seen, then, that when the Bishop of Durham was party to a civil action his presence in court was secured by means of distress levied on his extra-palatine lands; that the same process was applied to the lay inhabitant of the palatinate

[1] Registrum, ii. 907–908. [2] Ibid.
[3] Ibid., 954–955. [4] Ibid., 966–967. [5] Ibid., 996–997.
[6] Ibid., 1028–1029. [7] Ibid., 1032–1034.

unless he had no such lands, in which case the Bishop was directed to distrain on his palatine lands; and, finally, that a clerk having lay fee in or out of the palatinate would be summoned as a layman, but otherwise would be reached through the Bishop by a well-known process culminating in distress on the Bishop's barony. Turning now from civil to criminal procedure, let us see what method was there employed.

In the case of criminals who eluded arrest the English law of the middle ages had recourse to outlawry.[1] But this method was not always effective, for if an outlawed criminal or a person accused of crime left the realm there was of course no means of getting him into court. If, however, he took refuge within the palatinate, what course would be followed? We must distinguish here between persons accused or indicted, and persons actually convicted, of crime; for although, in point of fact, unwillingness to face an accusation would generally be accounted an admission of guilt, still, according to the arrangement of our discussion, the whole of criminal procedure lies between the accusation and the conviction of a person. Therefore since we are dealing here with summons and arrest, we shall confine ourselves to the category of accused persons.

The person accused of a crime, then, having taken refuge in the palatinate beyond the reach of the royal officers, would be outlawed, and this outlawry would, as we have seen, be made as effectual in the palatinate as elsewhere. From a very early period, however, this process was regarded as unsatisfactory, and there was a constant tendency to attach to the Bishop some measure of responsibility for the arrest and return of accused persons who had taken refuge in his liberty. In 1194 there is a case illustrating this feeling. A knight of the Bishop of Durham was appealed of rape, and the Bishop, being required to produce him in court, failed to do so; whereupon it was held that the Bishop should be summoned to Westminster to answer for his negligence.[2] Again, in 1204 the king notified Philip, then Bishop of Durham, that certain persons, having been put to forfeiture and outlawry in the kingdom of Scotland, had

[1] Pollock and Maitland, ii. 597.

[2] Rot. Cur. Reg. (ed. Palgrave), 6 Ric. I, i. 62.

found refuge in Holy Island.[1] The king, professing himself unwilling that such persons should find security or shelter in his land, directed the Bishop to take them wherever found in his province, and to retain them at the king's pleasure.[2]

This sentiment seems to have found its first articulate expression in the Assize of Clarendon;[3] it was repeated in a severer form in the statute of Westminster I, which provided that felons were to be pursued as well within franchises as without, and that lords of franchises and their bailiffs who were contumacious or negligent in this matter were to suffer respectively confiscation of the franchise and imprisonment.[4] This legislation did not apply to Durham: no royal officer might enter S. Cuthbert's patrimony in the execution of his office. Indeed, the very evils which it is here sought to prevent were common, and — to use a paradox — even lawful at a later date.

In 1341 it had been represented to the king and the Bishop that it was a common practice for persons who had committed crimes in the counties of York, Northumberland, Cumberland, and Westmoreland to defeat justice by removing to the franchise of Durham, where the king's writ did not run; and in like manner for the criminals of the franchise to remove to the neighboring counties. In this way, it was pointed out, criminals escaped punishment and both the Bishop and the king were deprived of the legitimate profits of jurisdiction and the benefit of possible forfeitures. The following arrangement was accordingly made by the king and the Bishop acting in common. In the case of a felon passing into the franchise from any of the four counties named above, the sheriff of the county in question by letters patent under his seal of office was to notify the sheriff or one of the coroners of Durham of the particulars of the crime and require the attachment of the criminal. After such notification the sheriff or one of the coroners of Durham

[1] An island off the coast of Northumberland, near the mouth of the Tweed. As a parcel of Islandshire it was accounted an integral part of the palatinate. See Raine, North Durham, 50 ff.

[2] Rot. Pat., 5 John, 41 b.

[3] See § 11, in Stubbs, Select Charters, 144.

[4] 3 Edw. I, cap. ix, Statutes, i. 29.

was to arrest the culprit, and, having brought him at the Bishop's expense to the nearest boundary of the franchise, was there to deliver him to the sheriff or other properly authorized officer of the county in which the crime had been committed. Under reversed conditions the same process was to apply, and the officer of the four counties would conduct the offenders to the marches of the franchise at the king's expense. In case the officers of either party to this agreement should prove negligent or refractory, writs would freely issue out of either chancery, charging them to perform their duty under grave penalties.[1]

Clearly, this was an experiment, and as such it was not immediately successful. Although it was the most obvious and logical solution of the difficulty, it was dropped, and several other suggestions were made before this one was eventually adopted. Thus, in 1384, the commonalties of the counties adjoining Chester and Durham represented to parliament that the men of these privileged districts were in the habit of making raids into those counties and there committing various crimes. "For these," runs the petition, "no punishment is appointed, nor forfeiture of the goods and chattels which they have in the county of Chester aforesaid, by reason of their franchise." The petitioners then pray that such forfeiture or other remedy be provided, and that the same ordinance be extended to the bishopric of Durham.[2] This was not done, and the matter stood over until the middle of the next century.

In 1433–1434, owing to the disturbed condition of the country and the constant miscarriages of justice, a strong effort was made to obviate this difficulty with regard to franchises. It was provided in parliament that "no lord nor none other persone, of what astate, degree, or condicion that he be, shalle wyttyngly resceyve, cherysshe, hold in household, or maintene, pilours, robbours, oppressours of the poeple, mansleers,

[1] Rot. Claus., 15 Edw. III, pt. iii. m. 9 dorse, printed in Registrum, iv. 244 ff.

[2] Rot. Parl., 8 Ric. II, iii. 201 a. The statute 1 Hen. IV, cap. xviii (Statutes, ii. 118), applies only to convicted persons, and to Chester, not to Durham.

felouns, outlawes, ravysshers of wemene ayenst the lawe, unlawfulle hunters of forestes, parkes or warennes, or any other open mysdoers, or any openly named or famed for suche, tille his innocence be declared."[1] To secure the enforcement of this measure the lords in parliament took a personal oath to support it;[2] and it was further provided that all lords whose liberties excluded the king's officers in the execution of their office should be commissioned to summon from their liberties such an assembly of persons as might seem to them expedient,[3] and to administer to these persons an oath to abide by the provisions of this statute and to aid in executing them. These oaths were to be certified into the royal chancery. Such a commission, together with the tenor of the act, was given to the Bishop of Durham in May, 1434.[4] This was probably not effective, for about 1466 the king wrote anxiously to Bishop Booth reminding him of the terms of the act and the personal responsibility to observe it resting on him as Bishop of Durham, and directing the royal letter and the Bishop's engagement publicly to be proclaimed.[5]

None of these experiments succeeded, but it was not until the re-establishment of comparative order under the Tudor dispensation that the reasonable method, suggested in 1341, was reverted to. Possibly this plan was either too reasonable or too modern for the fourteenth century, and was then regarded as an infringement of cherished liberties by the successors of Bishop Bury, who were certainly less advanced thinkers than that

[1] This is the form in which the decree is inscribed on the Durham roll, Rot. C. Langley, ann. 30, m. 10, curs. 36.

[2] Rot. Parl., 11–12 Hen. VI, iv. 421–422.

[3] "Tales quales sibi videbetur expedire ad certem diem et sub certis penis [venire facere]."

[4] Rot. C. Langley, ann. 30, m. 10, curs. 36. The terms of this act were also sent to the chamberlain and vice-chamberlain of Chester, who were commissioned to take the oaths of the people of Chester. See Calendar of Welsh Records, Recognizance Rolls of Chester, in Deputy-Keeper's Report, No. xxxvii, App. ii. 135.

[5] Rot. iii. Booth (undated), m. 15, curs. 50. The Bishop of Durham had been one of the late comers at parliament, but, like the rest of the lords, he swore to maintain the statute. See Rot. Parl., 11 Hen. VI, iv. 421–422.

studious prelate. For the rest, it is easy to understand how so orderly an arrangement had fallen into disuse during the chaotic fifteenth century. At all events, the first trace of the revival of this scheme is in 1495, when two persons impeached of treason were surrendered in the manner suggested.[1] In 1518 two persons, arrested on suspicion in Durham and "wanted" in Ripon, were handed over to the bailiff of that liberty.[2] In 1535 John Lawson, indicted of murder at Pruddoe in Northumberland, was delivered to the sheriff of that county.[3] This last case is of considerable interest. The king's writ recited the accusation and the fact that the supposed murderer had taken refuge in the palatinate, where he had immediately been imprisoned; since the murder was done, it proceeded, in the place and county aforesaid, "ubi cognitio rei magis et melius triatus et probatus fuerit quam infra dictum episcopatum," the man was therefore to be delivered by indenture to the sheriff of Northumberland. This writ was transmitted to the sheriff of the palatinate, with directions to put it into execution.

On this point, then, it may be concluded that accused persons taking refuge in the palatinate in order to avoid prosecution, could not, in the strict theory of medieval law, be forced to return to the royal jurisdiction. From an early time, however, there was a general feeling that the Bishops were respon-

[1] Rot. iii. Fox, ann. 11 Hen. VII, m. 1, curs. 62. The document is worth reproduction: "This indenture, made at Beriebrig, within the Bysshopprich of Duresme, the xxiiii day of Septembre, the xi yere of the reigne of oure sovereigne lord King Harry the VII, witnesseth that Sir Rauff Bowes Knyghte, Shireff of the said Bysshopprich, hath delyvered unto Willyam Conyers Esquyre, Bailleyff of the Fraunchise of Richmond, John Stapilton and John Skelton, appeched of Treson, safe and sound in their bodyes; he to convey them unto the Shirreff of Yorkshyre. In witnesse herof, either party to the partys of theys indenture or enterchangably, hath set to theyr sealys, the day, yere and place abovesaid."

[2] Rot. ii. Ruthall, ann. 10 Hen. VIII, m. 9, curs. 71. These persons had been arrested at Darlington, but the inquest found nothing against them. Since, however, they were notorious thieves and robbers within the liberty of Ripon, "by the commandement of my lord of Durham, upon dute maid to his lordship for the deliveraunce of the said Henry and John," the sheriff of Durham handed them over to the bailiff of the liberty of Ripon.

[3] Rot. ii. Tunstall, ann. 5, m. 5 dorse, curs. 78.

sible for the return of such persons. This feeling, in which the Bishops concurred, under pressure of the political necessities of the fifteenth century crystallized into legislation, the weakness of which was confessed by the special measures taken to enforce it. With the return of order under the Tudor despotism a well understood system of extradition was established. Finally, it is highly probable that at almost any period the crown would have been able to put sufficient extra-legal pressure on the Bishop to secure the arrest and return of any notorious criminal.[1]

We have now considered the question of summons from the point of view of the royal courts. Shifting our ground, let us see how the difficulties already noticed were met in the palatine courts. In order to secure the presence of a party to a civil action the Bishop's officers could not go beyond the attachment of whatever goods and chattels the party might be holding within the palatinate, but a cleric would probably be returned by the ordinary or by other spiritual authority. Graystanes has a story of two monks who resisted Bishop Bek's deposition of prior Hoton; the new prior "secured their attachment in York, accusing them of having stolen the goods of the house," and the men were finally returned.[2] The palatine courts, then, had no means of enforcing their jurisdiction over persons who were outside the province; such persons, however, might be and were arrested and tried if they ventured within the bounds of the palatinate.[3]

Pleas which the palatine courts were alone competent to try were referred to them by the royal courts. Thus in 1315 a ship belonging to Adam of King's Lynn in Norfolk went ashore on the coast of Durham. Although the ship's company reached land alive, the people of the place claimed wreck and proceeded

[1] From this generalization we must exclude the period of the Wars of the Roses, when the Bishops for obvious reasons generally followed the fortunes of the great northern houses of Percy and Nevill. A member of the latter family, it will be remembered, sat at Durham from 1438 until 1457.

[2] Graystanes, cap. xxiv, in Scriptores Tres, 77.

[3] Rot. E. Langley, ann. 21, m. 15, curs. 38; Rot. iii. Nevill (undated), m. 19, curs. 44.

to break up the ship and carry away the rigging and cargo. Adam thereupon complained to the king, and a writ issued to the Bishop directing him to hear the case and to do justice to the parties.[1] Pleas relating to land within the palatinate were in like manner referred to the palatine courts.[2] Contentious litigation, therefore, of which the palatine courts had exclusive cognizance, was in the nature of things secured to them. On the other hand, the rule that the Bishop was powerless to bring into his courts any one who was beyond the territorial limits of his franchise, shows one striking exception. In the *quo warranto* proceedings of 1293 we read that "the Bishop of Durham has such liberty that, if any of his men should be arrested in the body of the county of Northumberland at the suit of any inhabitant of the liberty of the Bishop, the bailiffs of the aforesaid Bishop shall replevy him, so as to have him at the march that is between the body of the county and the liberty of Durham, in a certain place that is called Holdenbourne, and there he will answer to the suit (*stabit legi*)."[3] This arrangement worked both ways, and was applicable also to the inhabitants of Northumberland.

We have now, so far as our material will admit, disposed of the matter of summons. We have seen how the royal courts might find it necessary to procure the attendance at their sessions of the Bishop of Durham or one of his subjects, lay or cleric; we have learned by what means this end was accomplished, and have observed that when their own power failed the royal courts appealed to the supreme power of the king to do justice to all his subjects. On the other hand we have seen how the palatine courts might find themselves in a like predicament, and how and to what extent they were able to extricate themselves.

[1] Registrum, ii. 1109; below, App. ii.
[2] Calendar of Close Rolls, 1313–1318, p. 360.
[3] Plac. de Quo War., 604.

§ 31. Voucher to Warranty.

Closely connected with the subject of summons, and indeed essentially another aspect of it although arising at a later stage in the procedure, is the matter of vouching to warranty. When, in the course of an action in either the royal or the palatine courts, persons outside the jurisdiction of the court were vouched to warranty, how was their attendance to be secured? Or failing that, in what other fashion could the obstacle be surmounted? The rule in these cases may be stated broadly thus: if the difficulty arose in the palatine courts, the record and process of the plea were sent out to the king's court, where the vouchees were produced, the warranty made, and the plea then returned to its original venue; if, on the other hand, the plea had been begun in the king's court and a subject of the Bishop having no land outside the palatinate were vouched to warranty, process then lay against the lord palatine to compel him to produce the vouchee. This method, it will be observed, is a departure from the general rule, which prescribed that issues which for lack of competence could not be tried in the king's court should be sent into the palatinate to be tried there, so far as the single point at issue was concerned.

Bracton, treating this matter somewhat academically, makes the question turn on the origin of the franchise. If the vouchee, he says, be beyond the power of the king, the voucher shall have no help. If, however, the vouchee be in a franchise where the king's writ does not run "propter dominum regem qui sibi [*i. e.* the lord of the franchise] libertatem concessit," process shall be made against the lord of the franchise to produce him.[1] In the estimation of the medieval law Durham was county palatine by prescription, and accordingly no process would lie against the Bishop. This conclusion does not tally with the facts, but the interesting point thus raised does not seem to have been considered by the early judges. As will be seen later, the practice of two centuries was in 1457 confirmed by a clear statement of the rule which we have formulated.

Turning now to the facts, we shall do well to consider the

[1] Bracton, fol. 283, vi. 24–26.

details of one or two important cases. In 1306 Odeliva and others brought an assize of mort d'ancestor against Geoffrey of Hartlepool for tenements in Hurcheworth Brian, in the county of Durham. The parties were all inhabitants of the palatinate, and the suit was brought in the court at Durham. Geoffrey vouched his father John, who warranted him and vouched Simon de Mora, also an inhabitant of the palatinate. Simon warranted and vouched Aymer de Rocheford and others, all of them outsiders without lands or tenements in the jurisdiction of the court. A day was given, and Simon was left to produce his warrantors as best he might. On the appointed day the warrantors did not appear, and the demandants prayed for judgment by default. On this Simon produced the king's writ directing the Bishop to send out the record and the parties "so that we, having finished the aforesaid plea of warranty in our court . . . may return it to you, to proceed in the same according to the law and custom of your liberty," etc. The parties appeared in the king's court, "and because it appeared by the record that those who were vouched to warranty were *extrinseci*, and that they were vouched by the help of the court of the lord king who is *dominus superior* of the whole kingdom, particularly when, by default of any one else, the same lord king is called to aid, therefore" the sheriff of Northumberland was directed to summon the warrantors.[1] This practice applied only to cases involving freehold.

There are also cases that illustrate the working of the system from the other side. At first the justices were a little doubtful as to the law. They felt that, if the vouchee were beyond their jurisdiction but within the realm, the king could unquestionably cause him to appear; but they hesitated about the method. Thus it was said: "If a man in this court vouch one in the county of Chester, process will be made against him to prove the warrant, for the king can do anything to do justice to the parties."[2] Even as late as 1355 the courts still showed an incli-

[1] Coram Rege 34 Edw. I, Mich., printed at length in Coke, Fourth Institute, cap. xxxviii; a summary is in Abbrev. Plac., 256a. For similar cases see Fitz-Herbert, Abridgment, voucher, 5, 18, fol. 188, 189; Year Books, 16 Edw. II, Trin. 479, and 18 Edw. III, Pasch. 20.

[2] Liber Assisarum, 8 Edw. III, 27.

nation to vacillate between two courses, either to make process against the lord palatine, or to proceed directly against the vouchee.[1] In 1457 there is an authoritative expression of the law on this point from Sir John Fortescue, who, in the course of delivering a learned and interesting opinion, took occasion to distinguish between the franchises of Wales and the counties palatine of Chester and Durham. "For," said he, "if one vouches another in Chester, summons *ad auxiliandum* will not issue in the county palatine, but a special writ will issue to the lord of the franchise to make process to summon the warrantor."[2]

Between these two simple aspects of the matter lie some troublesome variations. Thus, there is the case of a party in the palatinate who vouched to warranty several persons, some of whom were within the palatinate and others outside of it. On this the record was sent out to the king's court, and the voucher was directed to sue out two writs, one to the lord palatine to produce the vouchees from his jurisdiction, and the other to the sheriff of the county to summon the others in regular course. The warranty completed, the plea would be sent back to the palatine court. Two reasons are assigned for this solution of the problem: the ends of justice are more speedily and conveniently served in this way; and it is deemed more fitting that the process should be made before the king's justices "ut in curia magis digna."[3] The first is a matter of expediency, the second a matter of sentiment.

§ 32. The Venue.

The question of venue — the place whence the inquest should be drawn — was still troubling the royal courts in respect to the palatinate as late as the middle of the fourteenth century.[4] The nature of the palatinate — a district from which the king's justices could not summon a jury, although facts might be laid

[1] Year Book 18 Edw. III, Pasch. 20; Fitz-Herbert, Abridgment, voucher 5, fol. 188.

[2] Year Book 36 Hen. VI, 33; cf. Ibid., 19 Hen. VI, 12.

[3] Ibid., 49 Edw. III, Pasch. 9–10.

[4] Reeves, English Law, ii. 410 ff.

there in the course of a plea which they were trying — added another difficulty to a matter already sufficiently intricate. As a general rule the venue was determined by one of two conditions, by the fact or by the land: in other words, by the place where a fact was alleged to have occurred, an instrument to have been executed, or an imprisonment made; or by the place where the land in question was situated.[1] If now, in the course of pleadings in the king's court, either or both of these matters were laid in the palatinate — where, since the king's writ does not run, he may not have jurisdiction[2] — what measures would be taken to secure a jury competent to try the issue? It would be rash to formulate a general rule in this matter, for the sense of the courts was shifting and the question was partly regulated by statute; we must then content ourselves with following, as best we may, the history of the practice.

In the thirteenth century the solution adopted was to transfer the cause to the palatine court, which summoned an inquest and, having determined the fact in question, returned the cause to the royal court. Bracton, enumerating the circumstances under which proceedings were stayed in a possessory assize, says: "If in any way it can be proven, as for example that such an one were born in another county where the king's writ does not run, let the justices, by the advice of the court, send to the county where he was born to inquire the truth of that article only. When the truth is determined let the justices proceed, for or against."[3] Thus, in 1314, in an action on an instrument bearing date at Hereford, imprisonment was alleged at Chester, whereupon the cause was transferred to the court of that county palatine because the main fact had occurred in its jurisdiction.[4]

It was very early discovered that the fact that the deeds alleged occurred, or the instruments produced bore date, at some place in the palatinate, might be pleaded in bar of the plaintiff's action. The law, at once recognizing the manifest

[1] Reeves, English Law, ii. 410 ff.
[2] Year Book 17 Edw. III, Trin. 36.
[3] Bracton, fol. 272 b, iv. 266.
[4] Year Book 8 Edw. III, Trin. 279.

injustice of this device, evolved a method for avoiding it. The plea was disallowed and the point determined by an inquest drawn from the counties adjoining the palatinate. In Geoffrey Fitz Geoffrey's case occurs what may well have been the very first instance of this practice. In that cause the Bishop of Durham's jurisdiction was called into question before the king's justices, and by them referred to a body of jurors composed of knights and freemen from the counties of York and Northumberland. This step did not meet the requirements of the case, and a writ issued *a latere* directing the Bishop to summon twelve knights from his own liberty to determine the matter.[1] Obviously this was an experiment, and a daring one. We may judge of its success from the fact that it was not repeated, although it was spontaneously suggested again two hundred years later, and was then argued at great length. The jurors who testified to the nature of the palatine privileges in the *quo warranto* proceedings of 1293 came from Northumberland;[2] and in one of Bishop Bek's numerous quarrels with the convent — this time about land — jurors were summoned from Northumberland "because the men of the bishopric were regarded with suspicion both by the Bishop and the prior."[3]

Two or three instances will serve to show the kind of cause in which this device of summoning jurors from a neighboring county was resorted to. In 1324, in an action of debt in the king's court, the defendant refused to answer to an obligation made in Chester, averring that it was as though made in Ireland or Durham, and that one was not bound to answer to obligations made in those places.[4] In a similar action in 1330 the defendant pleaded a payment made in Hartlepool; but the plaintiff answered, "Hartlepool is in the bishopric of Durham, from which place we can not make the inquest come.[5]

It was likewise suggested, as another solution of the difficulty,

[1] Curia Regis, 8 John, roll 36, m. 13 (Northumb.); below, App. i.

[2] Plac. de Quo War., 603, and cf. Northumberland Assize Rolls (Surtees Soc.), 312, A. D. 1278.

[3] Graystanes, cap. xxvi, in Scriptores Tres, 82.

[4] Year Book 18 Edw. II, Trin. 613.

[5] Ibid., 3 Edw. III, Hil. 9–10.

that on an instrument executed in the palatinate one should first bring an action in the palatine courts, since they alone had cognizance of pleas arising from contracts made within their jurisdiction; then, if the Bishop failed to do justice, an appeal would lie to the king. This was in an action brought against the prior of Durham. We do not know what course was pursued, but the case shows the uncertainty of the courts on this point in 1320.[1]

In 1335 an attempt was made to solve the problem by legislation. A statute enacted in that year recites that persons have frequently been delayed in their actions, both real and personal, because "a release, quit-claim, or other special deed, made within a franchise, within the bounds of the realm, where the king's writ runneth not," is pleaded in bar. Therefore it is provided that when such instruments are so pleaded and denied, although they bear date at a place within the franchise and witnesses of the franchise be named in them, still process shall be awarded in the county where the suit was brought. If the witnesses do not appear when the great distress has been returned, the court shall, notwithstanding their absence, proceed to take the inquest.[2] This arrangement is good so far as it goes, but it obviates only a few of the possible difficulties. In cases in which an instrument executed in a franchise was pleaded and admitted, as, for example, by way of confession and avoidance, the rule was to take the inquest from a neighboring county, and for this purpose a writ would issue to the sheriff of that county.[3]

The case also occurred under reversed conditions, as when an action was brought on an instrument executed in an unfranchised district but having reference to something within the palatinate. These cases were not of course covered by the terms of Edward III's legislation, but it was contended that

[1] Year Book 14 Edw. II, Hil. 424.

[2] 9 Edw. III, cap. iv, Statutes, i. 271–272. For a case that occurred before the statute, in which a release made in Chester was pleaded in bar of the action, see Liber Assisarum, 8 Edw. III, 27; Brooke, Abridgment, jurisdiction 104, fol. 53.

[3] Fitz-Herbert, Abridgment, visne 50, fol. 181; but see Ibid., No. 53.

they might be brought under the equity of the statute. The common practice, however, was to send the issue to be tried in the palatine court. Thus, in 1409, an action of debt was brought before the king's justices on the lease of a prebend based on tithes payable to the cathedral of Durham. The lease was executed at Fulham in Middlesex, and hence the question of venue arose. The court was divided as to what course should be followed. Justice Hankford said: "If the issue should be joined within the franchise of Durham, and it could not be tried there, they would send the record out, and we would try it and send it back again. In like manner, ought we not now to send the record to the franchise, and when it is tried they will send it back to this court?" Justice Tirwhit agreed to this, and added: "We have often sent to Lancaster when issue had to be taken of something in the palatinate."[1] This weight of opinion probably carried the day.

Again, in 1440 an action of debt was brought on a lease of lands in Lancaster while the instrument bore date in Middlesex. The court was divided as to whether the issue should be sent in to be tried or whether an inquest should be taken from an adjoining county. Justice Newton contended for the latter course, suggesting that the case came under the equity of the statute; but Ascough said that at the common law the king's justices were free to send to a county palatine to have anything tried there, that the statute was made only to remedy the long delays in the special cases it enumerated, but that "all other issues of things done in counties palatine will be tried there as before."[2] This was probably sound law, for Brooke, in his abridgment of this case, notes against Newton's contention the phrase, "lex contra, ut mihi videtur."[3]

Another class of cases generated much difficulty in this matter of venue. These required the determination of a fact or deed alleged to have occurred or to have been done within a palatinate; as, for example, if one pleaded that the conditions of an engagement had been fulfilled in Durham, and the issue were made up on a traverse of this plea. Here again the rule was

[1] Year Book 11 Hen. IV, 40. [2] Ibid., 19 Hen. VI, 12.
[3] Brooke, Abridgment, Cinke Portes 8, fol. 137.

to send the record in and let the palatine courts try the issue and afterward certify the king's justices. This rule, however, was not established without question; an interesting case that came up in 1440 shows in how fluid a state the law still was on this point.

The instance referred to was an action of debt on an obligation. The defendant alleged performance of the conditions of the obligation at a certain place in the county of Durham, and issue was joined on the plaintiff's denial of the performance. Three courses were suggested as possible: (1) to summon the inquest from a neighboring county, (2) to send the issue to be tried in Durham, (3) to procure the attendance of a panel from the franchise. For the third course it was argued that, since process would lie against a lord palatine to compel him to produce a vouchee, by a parity of reasoning similar process would lie against him to produce a body of jurors. But to this argument an objection was raised on a point of law: if the lord palatine summoned the inquest, he would necessarily award the *venire facias*, which must, however, issue from the record. This disposed of the third course. Against the second it was urged that to send the issue to be tried in Durham would be tantamount to transferring a plea from a higher to a lower court, a thing which might not be done. This objection was met by the answer that, although the record might not be sent down to a lower court to plead a plea, it might nevertheless be sent there to try an issue. It was then contended that by the equity of the statute[1] the issue should be tried in an adjoining county, for otherwise, if the jurors gave a false verdict, the party would be at his attaint in the king's court for a thing done in the franchise. In answer to this Sir John Fortescue observed that the suggestion was impracticable, because by the nature of the franchise the people who dwelt in Durham were exempt from coming outside that county to try any issue. To meet this argument an attempt was made to establish an analogy between the franchise of Durham and the city of London, whose citizens in spite of their high privilege were still under certain circumstances obliged to serve on juries; but the effort failed. An-

[1] 9 Edw. III, cap. iv, Statutes, i. 271–272.

other argument, based on the inferiority of the palatine courts, was met by the admission of their obedience to the king's court in all matters except those contrary to their franchise. In the end the majority of the court seem to have agreed that the present case was not covered by the statute, and that the issue should therefore be sent in to the county palatine to be tried there.[1] In a later case, in which refusal to pay was alleged in the palatinate of Chester, the issue was also sent to be tried in that county.[2]

Turning now to those cases involving the title to land, we shall find that, subject to some fluctuations of opinion, the tendency is to refer the issue to a body of jurors summoned from the neighboring counties. Thus in 1337 A brought an action of dower against B, who answered that A's husband had exchanged certain lands for others lying within the county palatine of Durham and belonging to B, and that in these lands A had her dower. A replied that, since the king's writ did not run in Durham, the court could not have cognizance of land there, and prayed judgment. This plea was disallowed; A then denied that she had dower in the lands in question, and on this ground the issue was formed. The court ordered the inquest to be taken "by the people of Northumberland, who are nearest to the franchise of Durham; as has often been done before."[3] When the circumstances were reversed, and the possession of lands and tenements in another county was pleaded in abatement of a writ brought in the palatine courts, then the issue was sent out to be tried in the king's court.[4] This complication arose in connection with other and less privileged franchises, and was then disposed of on the analogy of the course pursued when a tenement lay in two unenfranchised counties; that is, a double panel was returned, by the bailiff of the franchise and the sheriff of the county respectively, and from this body the jury was made up.[5] This process, as we have seen, could not be used

[1] Year Book 19 Hen. VI, Hil. 52.

[2] Ibid., 39 Hen. VI, Mich. 21–22. "The issue is tried in the place where it is alleged:" Fitz-Herbert, Abridgment, visne 18, fol. 180.

[3] Year Book 10 Edw. III, Trin. 41–42.

[4] Ibid., 14 Edw. III, Mich. 142–144.

[5] Liber Assisarum, 22 Edw. III, 3.

where Durham was concerned, but it was applied even to a franchise so highly privileged as the honor of Richmond; this was another phase of the distinction between the palatinate of Durham and even the most favored of the other franchises of the kingdom.[1]

It has been laid down as a general rule that under no circumstances could the king's officers take an inquest in the palatinate, and there are numerous cases in which the courts accepted this conclusion. The statement, although strictly accurate so far as regards the theory of the law, needs some modification in the history of its practice. Theory and practice have at the best of times been somewhat unduly sundered, but perhaps never more so than when the crown of England was freeing itself from the trammels of feudalism. When, in the course of this liberalization, the king encroached on the privileges of a franchise, the courts were not slow to formulate some high theory of law or sovereignty to support his action. "The king," they said in 1280, "can do anything to do justice to the parties."[2] By such high-handed dealings it happened that the royal officers more than once took inquests in the palatinate.

The whole question was brought to discussion by an unusually flagrant case of royal encroachment in the beginning of the fifteenth century, when Cardinal Langley held the see of Durham. The Cardinal-Bishop exhibited a petition in parliament, representing that, notwithstanding the well-ascertained and frequently-acknowledged liberties of the church of Durham, certain persons, by color of a commission from the king's chancery, had taken inquests at Hartlepool, Norham, Bedlington, and other places within the franchise of Durham; furthermore, that the returns of these inquests had been transferred to the royal chancery by a royal writ of *certiorari*, although it was well known that the king's writ did not run in Durham. The Bishop therefore prayed that these returns be removed from the chancery and cancelled, and that the rights of the Bishops of Durham in this respect be fully acknowledged.

[1] Year Books, 7 Edw. III, Mich. 56, and 7 Hen. VI, Trin. 40; Fitz-Herbert, Abridgment, visne 14, fol. 179.

[2] Liber Assisarum, 8 Edw. III, 27.

In the pleadings which followed, Sir William Eure, the king's counsel, made an able argument denying the right of the Bishops of Durham to have county palatine in their bishopric, and pointing out that the returns of many inquests taken between Tyne and Tees were then to be found in the royal chancery. These inquests are enumerated, but they do not present a body of exceptions formidable enough to shake the stability of the rule. There are thirteen in all, ranging from the tenth year of Edward I to the sixth of Henry V, but four of them were, as their dates show, taken *sede vacante* and hence cannot be counted. If, then, during a period of nearly a century and a half the Bishops of Durham could complain of no more than nine infringements of their privileges in even so vital a matter as this, they must undoubtedly be reckoned more fortunate than the lords of other franchises in England. Despite the force of Eure's argument, Langley's petition was granted, the objectionable returns were ordered to be removed from the chancery and destroyed, and on this and other points the Bishop's palatine rights were amply acknowledged.[1]

On the criminal side of this question of venue the rule is that the place where the offence is committed determines the venue of the trial. Thus in 1427 Sir John Jonsone of York, who had been found guilty of collecting at Barnard Castle in the palatinate an assembly of evil-doers armed in warlike fashion against the peace of the king and the Bishop, and in contravention of the ordinances and statutes provided for these cases, was pardoned by the Bishop.[2] In 1436 Thomas Reid of Welbery in Yorkshire, who had been found guilty of stealing a horse at Durham, was likewise pardoned by the Bishop.[3] A case that still better illustrates the point is that of Margaret Baker, a laborer of Newcastle-upon-Tyne in the county of Northumberland. About 1456 she was appealed in the Bishop's court at Durham of certain robberies alleged to have been committed by her at Gateshead, a town of the palatinate separated from Newcastle only by the breadth of the river Tyne. Margaret

[1] Rot. Parl., 11–12 Hen. VI, iv. 427–431.
[2] Rot. E. Langley, ann. 21, m. 15, curs. 38.
[3] Rot. C. Langley, ann. 30, m. 10, curs. 36.

was arrested and imprisoned at Durham. Before the justices of gaol-delivery she pleaded not guilty and put herself on the country. She was however found guilty and sentenced to be hanged.[1]

§ 33. Judgment and Execution.

We have now seen how the difficulties raised by the immunities of the palatinate were disposed of in the matter of summons; we have seen also that, even when the parties were produced in court and the issue formed, these immunities might again, in the questions of voucher and venue, prove an obstacle to the course of justice; and we have noticed how even these obstacles were surmounted by the ingenuity of the courts. It remains now to consider the final stage: when judgment has been obtained and the privileges of the palatinate are found to stand in the way of execution, what then is to be done? Real actions in this relation present little difficulty; the law is clear on this point: if you wish to obtain seisin of land in the palatinate you must bring your action in the palatine courts and not elsewhere, for it is definitely stated that "recovery *in banco* of lands in Durham, Lancaster, and Chester is void."[2] If, however, you will be content with an equivalent value, you may bring your action in the king's courts and there obtain remedy.[3] The justices were agreed, for example, that, if a man were surety for another to keep the peace and the second broke it, and if the surety had land in Durham, the king would send to the Bishop or his chancellor to make execution on the land.[4]

This rule against the recovery of realty in the palatinate shows a striking exception in the matter of advowson. "The king," it was held, "shall have a *quare impedit* for an advowson in Durham."[5] This was true of Wales and probably of other franchises also.[6] The writ was a royal writ, and the plea was of course

[1] Rot. iii. Nevill (undated), m. 19, curs. 44.

[2] Year Book 9 Hen. VII, Mich. 12.

[3] Ibid., 36 Hen. VI, 33. This is contained in a dictum of Sir J. Fortescue.

[4] Ibid., 1 Edw. IV, Mich. 9–10. For Chester, see Ibid., 21 Hen. VII, Mich. 35.

[5] Fitz-Herbert, Abridgment, *quare impedit* 165.

[6] Year Book 36 Hen. VI, 33.

heard in the king's courts in calm disregard of the Bishop's persistent efforts to force the king to plead these cases in the palatine courts.[1] The king might also associate himself with another person in an action of *quare impedit.* This principle is developed by the action brought in the middle of the thirteenth century by the abbot of S. Albans to recover against the Bishop of Durham the advowson of the church of Overconscliffe in the palatinate. The disseisin had occurred, it was alleged, during a vacancy at S. Albans, when the temporalities were in the hands of the king, whose interest in the case was thus enlisted. When the next abbot endeavored to present to the church, the lord of the manor of Overconscliffe brought an action of *quare impedit* against him in the palatine court. The abbot took judgment, but the Bishop delayed execution; whereupon the king by his writ directed him to see that judgment was executed, lest the complaint again come to the king and he be moved "manum ad hoc aliter apponere." An excuse was found, but in due time the king renewed his threat. Finally the Bishop, still inert, was summoned to Westminster, there to answer for his negligence; and by this means no doubt the abbot recovered his advowson.[2] This kind of difficulty was by no means uncommon, owing to the fact that the king presented to all churches in the Bishop's gift that happened to fall vacant while the temporalities of the see were in the king's hand.[3]

We may turn aside here to consider for a moment the question of the recovery of stolen goods which had been carried into the palatinate. This matter, although it is the effect of a judgment, is not in all strictness the execution of one; still it may appropriately be considered here, because, as in the matter of advowsons, it involves the recovery of the specific thing sought. The general rule was that goods stolen, forfeited, or misappropriated, which in the defeat of justice had been removed to the palatinate, might, if the king had any interest in the case (and the king's interest could probably always be secured by the use of the *quo minime* clause in the writ), be recovered

[1] Registrum, ii. 843, 948–949.

[2] Ibid., 991–992, 1042–1044, 1051–1052, 1060–1063, 1072–1075.

[3] Fitz-Herbert, New Natura Brevium, fol. 32.

through the Bishop. Thus in 1314 a company of merchants, having put out from Newcastle with cargoes of wool, were set upon near Scarborough on the coast of Yorkshire and deprived of their ships and merchandise. The ships of their assailants were manned in part by sailors of the royal navy, and hence the king's honor, if not his interest, was concerned in the case. On the complaint and suggestion of the aggrieved merchants a royal writ issued to the Bishop, bidding him keep watch for the stolen wool and ships, in order that, if they were found within the palatinate, they might be seized and held awaiting the king's pleasure.[1] Again, in 1319 a ship "manned by Scottish rebels" was captured off the Yorkshire coast and thus became royal forfeiture. But "certain malefactors and disturbers of the peace" made off with the ship and her cargo, which they carried to Hartlepool in the palatinate. The Bishop, by royal writ, was directed to attach these persons to appear before the king at York. This was done; whereupon another precept issued commanding the Bishop to replace the goods and chattels on the ship and to deliver her to the king's messengers sent to receive her.[2]

In 1353 the law was readjusted by statute, and after that time owners of ships manned by English subjects might, if their ships were cast ashore without technical wreck, recover their goods without invoking any special interest or favor from the king.[3] Merchants foreign and native freely availed themselves of this privilege,[4] and in the next century the provisions of the statute were incorporated in a treaty with Scotland. Thus in 1447 a ship belonging to certain Aberdeen merchants, and laden with goods in Flanders, went ashore off South Shields in the palatinate. A part of the cargo, having come to land, was seized by the Bishop's officers; whereupon the merchants in their petition to the Bishop showed that, by the provisions of a treaty between England and Scotland, in cases of wreck in which any person survived, such goods as were rescued should be returned to the survivor

[1] Registrum, ii. 1025–1027.

[2] Calendar of Close Rolls, 1318–1323, p. 62.

[3] 27 Edw. III, cap. xiii, Statutes, i. 338.

[4] Rot. C. Langley, ann. 26, m. 6, and ann. 27, m. 7, curs. 36. These cases are summarized below, App. ii.

whole and entire, — barring reasonable expenses in collecting and keeping the merchandise, — if appeal were made within a year before the justices competent in the place where the goods were found. On this representation the Bishop issued a commission of oyer and terminer, directing that the parties be heard and justice be done in the case.[1]

We come now to the method of executing judgments which for their satisfaction required a money payment. These naturally fall into several classes, determined by the circumstances of the particular cases. The first class comprises cases in which a judgment has been obtained requiring a money payment from a person having lands and goods within the palatinate but none outside. The rule in such instances was to procure a special writ to the Bishop directing him to make execution of the judgment within his liberty. If the Bishop neglected this precept, process would lie against him, at least in theory, up to the extremity of confiscation of his temporalities. In this matter there seems to have been but one rule for the palatinate and the other franchises of the kingdom, although in the case of the latter execution of the judgment was usually confided to the bailiff of the franchise. If the sheriff returned that the bailiff had done nothing in the matter, the writ *non omittas propter libertatem* issued to the sheriff, authorizing him to enter the franchise and himself execute judgment. If, on the other hand, the bailiff returned that he had made execution but could not produce the money "quia non inventi emptores," then the sheriff must levy on the goods and chattels of the bailiff up to the amount in question. But if the bailiff did nothing and still opposed the action of the sheriff, then the sheriff must summon a sufficient body of the freemen of the county and proceed by force and arms, imprisoning the bailiff and attaching the lord of the franchise to appear before the king's justices and show cause why his franchise should not be taken into the king's hand.[2]

[1] Rot. ii. Nevill, ann. 9, m. 13, curs. 43; cf. also Calendar of Patent Rolls, 1461–1467, pp. 489, 492, 552, and index *s. v.* "Wreck."

[2] Fleta, lib. ii. cap. lxvii, §§ 12–16; Fitz-Herbert, Abridgment, execution 101, fol. 375; Year Books, 7 Edw. III, Mich. 56; 8 Edw. III, Hil. 12; 15 Edw. III, Hil. 269, Pasch. 161.

A process similar to this was once applied to the palatinate, but under circumstances which indicate that the resulting confiscation of the liberty was essentially a political move, carried on, for appearance sake, under cover of the law.[1] It cannot therefore be denied that this method of executing judgment was theoretically applicable to the palatinate, but there is no record that it was ever resorted to in the ordinary course of law. This tenderness may have been due either to a lack of provocation on the part of the Bishops, or to a tendency to place the palatinate on a higher footing in respect to immunities than that occupied by the other franchises of the kingdom. What we

[1] Richard Hoton, prior of Durham, who had been elected despite Bishop Bek's opposition, resisted the latter's attempt to exercise the episcopal right of visitation over the convent. The quarrel thus begun soon broke into open violence. Bek deposed and imprisoned the prior, and terrorized the monks into electing a creature of his own. Hoton then made common cause with the discontented subjects of the Bishop who were preparing to resist the further development of the Bishop's temporal sovereignty. The deposed prior and the leaders of this movement determined to bring their grievances before parliament. They bribed the royal officers; but the king was also willing to check the growth of Bek's independence. In January, 1301, Hoton, having escaped from prison, was in the parliament at Lincoln, where he obtained leave to go to Rome. But his mission was unsuccessful, for Bek outbribed him at the Curia. Meanwhile the litigation proceeded at home, and Hoton obtained judgments against Bek involving heavy damages. Unable to obtain execution otherwise, Hoton purchased royal writs against the Bishop and procured the king's officers to be sent to Durham to execute them. On reaching Durham they were imprisoned by the Bishop. This act, together with the imprisonment of the prior in defiance of the king's letters of protection, was made the legal ground for the confiscation of the liberty in 1301. When the temporalities were returned in the following year the great Bruce and Balliol forfeitures were withheld. The animus of the king in this matter can scarcely be mistaken. The Bishop's local independence had reached such a point that it threatened to make him dangerous to the crown. His hot-headed indiscretion gave the king an opportunity of restraining this independence under the form of law, which thus became in the king's hand an instrument applied to the achievement of a political end. The king was further moved to severity by the fact that, in the parliament of Lincoln, Bek had openly opposed him by declaring himself in favor of the two earls. For details of this affair, see Graystanes, caps. xxii–xxviii, in Scriptores Tres, 73–85; Walter of Hemingburgh, ii. 213–219; Calendar of Patent Rolls, 1295–1301, pp. 89, 97, 174, 578; Abbrev. Plac., 243, 257; Registrum, iv. 1–80.

know of the history of the north country in general, and of Durham in particular, makes the first hypothesis extremely improbable; while the fact that we have already seen evidence of the tendency implied by the second will incline us the more readily to accept it.

In the execution of judgments obtained in the royal courts against persons resident in the palatinate the greatest attention was naturally paid to the satisfaction of the king's debts. Thus in 1316 the king directed the Bishop to levy to the amount of ten pounds on the lands and goods of a certain Peter de Bolton. Peter, who owed this sum to the king, had neither lands nor goods outside the liberty. The Bishop returned that Peter was dead, having left nothing beyond certain property to the value of five marks, which the Bishop had seized. Later the original writ was issued again under the form *alias*, and it appears from the return that the money had not yet been paid. As nothing further was done, we are free to conjecture that the king succeeded in getting his five marks.[1]

During times of vacancy, or when for any reason the temporalities were in the king's hands, the debts of the Bishop to the king were satisfied by a requisition on the episcopal income made directly to the receiver-general.[2] Whether, in the fourteenth century, process would lie against the Bishop to execute a judgment obtained by a private person against a palatine subject is not entirely clear; at any rate, we may be sure that the successful plaintiff would be obliged to purchase a special writ from the king, for even in the next century, when the law becomes far more definite in respect to the palatinate, such a writ could not be dispensed with. It is more probable that in such a case it would be necessary, or at least prudent, to take a judgment in the palatine courts, which for its execution could command the services of a judicial machinery with local competence. Thus we read that "in the case of execution on a statute staple

[1] Registrum, ii. 1045–1046, 1091–1092. Compare the case of Guiscard de Charron, very similar to this (Ibid., 1076–1077), and also that of the friars minor of Oxford (Ibid., 1084–1085). Although no judgment was passed in the last of these cases, the process is valuable for comparison.

[2] Rot. i. Booth, ann. 4 Edw. IV, m. 16, curs. 48.

where the debtor has no lands except in Durham, the party may pray that the tenor of the record be sent to the county palatine, and he shall have a writ to the Bishop bidding him do judgment." [1]

The second category of cases bearing on the execution of judgment embraces those which involve an evasion of justice; as, for example, where a man against whom a judgment had passed removed to the palatinate in order to escape execution by withdrawing himself from the jurisdiction of the royal courts. In these cases execution would be made through the Bishop, although it would sometimes be necessary, and always no doubt advisable, to secure a judgment in the palatine courts. Thus in 1385 Peter Tyloff, having been convicted in the court of the marches of robberies from certain Scotsmen to the amount of £113 6*s.* 8*d.*, took refuge in the palatinate. The king's writ was then sent to the Bishop, directing him to seize whatever lands, tenements, goods, or chattels Peter might be holding within the franchise, and to deliver them to John de Rennyll, one of the keepers of the marches.[2]

An earlier case (1314) — although it is not strictly in point since the evasion took place before judgment had passed — is of great value as illustrating the practical working of this matter. Robert de Welle, the king's bailiff in Tyndale, appointed as his deputy John de Derlyngton, who was soon afterward carried off and imprisoned by another John, "Scotus, inimicus et rebellis." Robert, at the instance of his deputy, ransomed him for forty marks. This sum he paid out of the issues of his bailiwick of Tyndale, and John took an oath in the presence of witnesses to reimburse him in such good season that he might not be behindhand with the king. John, without doing anything to redeem

[1] Year Book 1 Edw. IV, Mich. 10. See also Ibid., 15 Edw. III, Pasch. 161–162; Fitz-Herbert, New Natura Brevium, fol. 132, pp. 293–294; Brooke, Abridgment, statute merchant 45, fol. 241. In the seventeenth century there is a case in which the plaintiff appealed to the house of lords by petition. The defendant had taken refuge in the Bishop's castle of Craik in Yorkshire. This was in 1641; but in view of the state of England at that time not much importance may be attached to the case as a precedent. See Hist. MSS. Com., Reports, iv. 93.

[2] Rot. Fordham, ann. 3, m. 4, curs. 32.

his oath, fled to the palatinate, and Robert appealed to the king for help. The king sent to the Bishop, directing him to inform himself of the matter and then to compel John by every possible legal method to make satisfaction. Later, by a second writ, the Bishop was bidden to summon John, to make inquiry into the matter, and, if he found that the facts supported Robert's story, then to seize all of John's property in the palatinate up to the amount of forty marks.[1] Whatever process might in theory be employed for the coercion of the Bishop, the private litigant was probably much more certain of achieving his purpose if, armed with a judgment obtained in the Bishop's courts, he claimed the services of the Bishop's executive machinery.

When an evasion of justice occurred in a purely civil cause the process was somewhat curious; it is well illustrated in the following case. In 1385 the king's writ came to the palatinate addressed to the Bishop, his *locum tenens*, or his justices, directing them to arrest and imprison John and Gilbert of Newcastle if they were found within the liberty. These persons were bound to John Stot of Whitby in the sum of £15 13*s.* 4*d.* contracted, by statute merchant, two years previously before the mayor of Newcastle. Inasmuch as the appointed time for repayment had expired, the sheriff of Northumberland was directed to arrest the debtors; but he reported that they could not be found. The aid of the Bishop was therefore invoked. If John and Gilbert could be found in the palatinate they were to be imprisoned for three months. During this time they were to live in the Bishop's prison at their own expense, retaining possession of all their goods, chattels, lands, and tenements at their free disposition, in order that they might satisfy their creditor. If at the end of the appointed term they had failed to do so, then all their property was to be made over to John Stot to be held freely by him until he had obtained payment of his dues, while John and Gilbert were to remain in the Bishop's prison on a diet of bread and water provided at John Stot's cost. During this second state of coercion John and Gilbert might sell their lands and pay the debt; and in any case Stot was to have a reasonable allowance for costs and expenses. If John and Gilbert were not found in

[1] Registrum, ii. 1015–1016, 1023–1024.

the franchise, or if they proved to be clerics, the Bishop was to seize all their goods and deliver them to John Stot.[1]

By the sixteenth century this somewhat elaborate process had been simplified. Thus in 1528 the Bishop was notified by royal letters that a certain person of Northumberland had made default to his creditor, a Londoner, for a sum of money due on a statute staple. The Bishop was directed to order his sheriff to arrest the debtor and carry him to the king's prison, presumably in Newcastle, where he was to remain until the debt had been satisfied. In the mean time the Bishop was to cause an "extent" of the offender's lands and an appraisement of his goods within the palatinate to be made; the property was to be seized into the king's hand, and the certifications were to be returned by the sheriff into the chancery of Durham, and thence by the Bishop into the royal chancery.[2] When persons not resident in the palatinate came under a judgment passed in the palatine court, execution could only be made on whatever lands or goods the defendants might be holding in the palatinate. Thus in 1402 John de Hetworth of Ireland and John Scruteville were summoned in the Bishop's court to show cause why they had not fulfilled the terms of a recognizance made with the prior of Durham some years earlier, and why the money should not be raised from their goods and chattels in Durham. The defendants did not appear; accordingly the prior took judgment and obtained execution.[3]

On the purely criminal side of the question of judgment and execution two contingencies frequently had to be met. A person on whom sentence had been pronounced might, if he could escape, take refuge in the palatinate; once there, he might either trust to the immunities of the district to prevent his recapture, or else avail himself of the privilege of sanctuary at Durham or Hartlepool. How, then, in either of these cases could he be brought to justice? The first step was to outlaw him; then, as in the case

[1] Rot. Fordham, ann. 3, m. 4, curs. 32.

[2] Rot. ii. Wolsey, ann. 20 Hen. VIII, m. 1, curs. 73. For similar cases see, Rot. ii. Tunstall, ann. 15, m. 17 dorse; ann. 24 Hen. VIII, m. 3 dorse; ann. 27 Hen. VIII, m. 8 dorse, curs. 78.

[3] Rot. Skirlaw, ann. 14, m. 26, curs. 33.

of a criminal at large in the palatinate, the Bishop would be notified of the outlawry and directed to proclaim it in his liberty. Thus Humfrey Nevill, having been attainted of treason, was confined in the Tower, from which he made his escape in April, 1464. In the following January the attaint was renewed in parliament. In June, 1469, the king notified the Bishop of these facts and directed him to proclaim that any person finding Humfrey should take and hold him as a rebel and one out of the king's protection; that no one should comfort or receive him, but that he should be arrested and brought to the king with all possible speed.[1] On the receipt of such a precept the Bishop would issue a writ of *capias utlagatum* to his sheriff.[2] If the criminal were taken he would probably be handed over to the royal officers and the delivery would be recorded in an indenture, as was done in the case of accused persons. In the next century the Bishop's privilege in this field was but scantily respected. Thus in 1534 Thomas Cromwell ordered the arrest of four persons guilty of a murder in the county of York. They had fled to Scotland, but they subsequently returned to the bishopric of Durham, "where," says the record, "they ride about at their pleasure."[3]

On the other hand, that is when a person convicted of some crime in the palatinate fled beyond its limits, the palatine courts were powerless. Thus in 1279 John Forwender of Dunkirk and Elias Potson, a Flemish fisherman, fought in the streets of Hartlepool, and John slew his opponent. John was not arrested but fled to another country; hence, when the matter was presented at the general eyre at Sadberg in Durham, there was nothing to be done but to lay a fine on the borough of Hartlepool.[4] In certain cases the criminals might be arrested by the king's officers and returned to Durham for execution; but this course was at best uncertain, and the royal officers were perhaps little disposed to renounce possession of a criminal. Thus in 1511 Bishop

[1] Rot. iii. Booth, ann. 11, m. 10, curs. 50; cf. Rot. i. Wolsey, ann. 16 Hen. VIII, m. 18, curs. 72.

[2] Rot. ii. Wolsey, ann. 7, m. 1 dorse, curs. 73.

[3] Calendar of Letters and Papers, Henry VIII, vii. No. 990.

[4] Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

Ruthall complained to Wolsey that two strong thieves, Gerard Truedall and Newbye, who had been ordered to be sent to the bishopric, where they had committed felony, were still kept in Carlisle castle.[1] In 1523 occurred a case which proves that criminals were sometimes returned to the jurisdiction of the Durham courts. A certain Robert Lambert with a number of companions had murdered Christopher Radcliff at Sherston in the bishopric. Lambert then took sanctuary at Tynemouth in Northumberland. On this Wolsey wrote to Dacre, the king's lieutenant in the north, desiring him by all means to apprehend Lambert and to deliver him into the hands of Sir William Bulmer, the sheriff of Durham.[2] This was in 1523 (June 12), when Wolsey held the see of Durham; but the letter was unquestionably written in his capacity as chancellor, for it is among the state papers, not among the Durham records, and Wolsey concerned himself very little with the internal affairs of the palatinate, which indeed he never once visited.

Persons convicted of crime who fled to the palatinate and were unwilling to rely on the general immunities of that district might take sanctuary. Several churches afforded this security, but of these the cathedral at Durham was the most important. The shrine of S. Cuthbert was famous throughout England, and annually extended its protection to a considerable number of criminals. Free access to the shrine was regarded by the people of the bishopric as a valuable right, and was included in the charter of liberties which they obtained from Bishop Bek.[3] Inhabitants of the palatinate who had committed crimes there and subsequently took sanctuary in the cathedral, if they wished to abjure the realm, took their oath before the Bishop's coroner; by him they were handed over to the nearest constable, and so passed on from constable to constable until they reached the sea.[4] This method seems to differ a little from the process obtaining in the kingdom with regard to these cases.[5]

[1] Calendar of Letters and Papers, Henry VIII, i. No. 1924.

[2] Ibid., iii. pt. ii. No. 3095.

[3] Registrum, iii. 64.

[4] Sanctuarium Dunelmense (Surtees Soc.), pp. lxx, 30–31.

[5] Réville, L'Abjuratio Regni, in Revue Historique (1892), l. 17 *et passim*; Gross, Select Coroners' Rolls (Selden Soc.), Introd. xxv; Pollock and Mait-

In this connection an obscure but interesting question arises. If a person, having committed a crime in another county, were to take sanctuary in Durham and then choose to abjure the realm, before whom would his oath be taken? How, in fine, would the process be accomplished? Would the authorities of the cathedral hand over the guilty person to the palatine coroner or to the royal coroner, or to the former for transmission to the latter? The point, as we have said, is obscure. The Durham sanctuary rolls contain no case of this sort, although some light comes from the record of a thirteenth-century case. At the general eyre held at Sadberg in 1279 the borough of Hartlepool appeared by twelve burgesses and presented that Alicia de Lincolne took sanctuary at the church of S. Hilda in Hartlepool and there confessed herself a thief and abjured the realm before the coroner, and that the Bishop had her chattels to the amount of 11*s.* 6½*d.*[1] This case of course does no more than raise a presumption, for we can not be sure where Alicia's theft was committed, or even whether she were from another county, although her cognomen may perhaps imply that she was an *extrinseca*. Still, even in the case we have supposed, the probabilities are that there would be no extradition but that the criminal would be disposed of by the palatine officers. At least there would be no reason for returning the guilty person to the royal officers. The courts would have done their utmost, and it would remain only to debarrass the community of an undesirable member. Policy, in the middle ages as well as to-day, demanded that this should be done as simply and swiftly as possible.

The privilege of sanctuary seems to have been somewhat abused. At any rate it could not stand out against the thoroughness of the Tudor government, and in Henry VIII's reign it was closely regulated by a series of statutes.[2] The

land, ii. 588–589. This device of passing the criminal from one constable to another is matched in the kingdom by a method for transferring sanctuary men from one privileged place to another. See 32 Hen. VIII, cap. xii, § 8, Statutes, iii. 758.

[1] From an exemplification on Rot. Matthew, m. 16 dorse, No. 33, curs. 92.

[2] 22 Hen. VIII, cap. ii, Statutes, iii. 319; 26 Hen. VIII, cap. xiii, Ibid., 508–509; 32 Hen. VIII, cap. xii, Ibid., 756.

privileges of the cathedral of Durham were left untouched, although there is reason to believe that it was by no means impossible for the central government to procure the surrender of a man who had taken sanctuary at Durham. Just before the Pilgrimage of Grace (September 28, 1536) Sir Francis Bigod wrote to Cromwell regarding certain of his servants who, although sanctuary men at Durham, had been handed over to the sheriff of Yorkshire. Bigod asked that these persons be returned to sanctuary, because "Rafe Ewere, by help of serjeant Jennye, made untrue information to the Chancellor, whereupon they obtained his letters to the Bishop of Durham;" he claimed that on this ground "and according to grants made to the church of Durham" they should be restored, adding, "this would win the hearts of all the North, especially in the Bishopric, *adeo sunt suo dicati Cuthberto*."[1]

Clearly the Bishop of Durham was constrained to give up his sanctuary men on the chancellor's requisition; but whether this compulsion was a bit of Tudor usurpation or a right of the chancellor's office cannot be determined. The arrangement was probably necessary, for it was reported to Cromwell in 1534 that the great number of liberties and sanctuaries in the northern counties seriously embarrassed the administration of justice there and consequently diminished the king's revenues. "There are two great sanctuaries in Yorkshire," continues the anonymous writer, "beside the bishopric of Durham, where all murderers and felons resort, and have at least 100 miles compass;" and he closes with the recommendation that Durham alone should be sanctuary.[2] Cromwell went beyond this suggestion, by making a memorandum, in preparation for the meeting of parliament in 1536, "specially to speak of the utter destruction of sanctuaries."[3] This end he was not able to accomplish, and the cathedral of Durham retained its privilege, though subject to a restraint heretofore unknown.

[1] Calendar of Letters and Papers, Henry VIII, xi. No. 503. The question assumes greater importance from the fact that sanctuary men might be used as soldiers. See 22 Hen. VIII, cap. xiv, Statutes, iii. 332; MS. Cotton, Calig. B. i. 41, No. 71289.

[2] Calendar of Letters, etc., vii. No. 1669.

[3] Ibid., x. No. 254.

§ 34. Some Minor Questions.

One aspect of the legal relations of the palatinate and the kingdom, not indeed directly suggested by those which have been occupying our attention but still cognate to them, must now be considered. In the fourteenth century the doctrine was laid down that what is done in a franchise is not of record before the king's justices.[1] It can be shown, however, that this rule did not apply to the counties palatine, which were thus again differentiated from the other franchises of the kingdom. The interchange of record between the courts of the palatinate and those of the kingdom, not to plead a plea but to determine a single point beyond the competence of the court seised of the plea, would not alone be enough to establish the point in question. This relation existed also between the royal courts and those of private jurisdictions far less privileged than the palatinate.[2] But the discovery that a fine levied before the Bishop's justices was successfully pleaded in bar of an action in the king's court, and that a plea begun in the palatine courts was continued in the royal courts,[3] tempts us to assert that the courts of the Bishop were as much of record as those of the king. This would be going too far, however; for if the record of the Bishop were by any chance matched against that of the king, the former would unquestionably give way.[4] With this important reservation, the palatine courts may safely be termed courts of record.

It has already been shown that the legislation of parliament extended to the palatinate unless there were special provision to the contrary.[5] It was admitted that the palatine courts had possessed a general cognizance of pleas from a time prior to legal memory; but the question was raised as to whether they might take cognizance of an action created by statute, and therefore not existing at the time of what might be regarded as their

[1] Liber Assisarum, 8 Edw. III, 8.

[2] Glanvill, lib. viii. cap. 11; Pollock and Maitland, ii. 666.

[3] Bracton's Note Book, plac. 1223, A. D. 1237; Abbrev. Plac., 306a; Registrum, ii. 1056 ff.

[4] Rot. Parl., 2 Edw. III, ii. 23 b.

[5] Above, § 12.

grant of cognizance. The point was raised in a case in which a writ of maintenance was brought in an action of trespass pending in the court of a borough in which the mayor and burgesses had cognizance of pleas. It was contended that, since the action of maintenance did not lie at common law, and since the statute by which it was given was subsequent to the grant of cognizance, the action would not lie. In support of this argument it was urged that the same was true of counties palatine in which, by a parity of reasoning, no action created by statute would lie. But the entire court agreed that a writ of maintenance might well be brought in a county palatine.[1] It will be remembered that the new methods of procedure instituted by Henry II were introduced into the palatinate by royal charter, issued at the request of the Bishop's subjects.[2] Later, actions were brought in the palatine courts under the provisions of the statute of laborers;[3] and further, in Edward IV's statute against liveries it was provided that suits and actions arising under this legislation might be tried "in the court of the Bishop of Durham, in the County Palatine of Durham before the justices there."[4] It may be concluded that, from the time when new actions began to be created by statute, litigants in the palatine courts were free to avail themselves of these actions.

The position of the palatinate of Durham in the legal machinery of the kingdom up to the beginning of the sixteenth century may well be compared to the status of a dependent foreign country. It was an integral part of the realm in so far as it was dependent on the crown and had no foreign relations; but for legal purposes it was a district beyond the competence of the royal courts. Examples of such an anomalous status were at hand; in the thirteenth and fourteenth centuries paral-

[1] Year Book 14 Hen. IV, Hil. 20.

[2] See above, § 17.

[3] Rot. Hatfield, ann. 34, m. 11, curs. 31. This is a pardon to T. Coxhowe, who did not appear when an action of trespass was brought against him under the statute of laborers. See also commissions to the justices to execute this statute. Rot. i. Hatfield, ann. 1, m. 1 dorse, curs. 30, and Rot. A. Langley, ann. 2, m. 4, curs. 34. For an action under the statute 5 Ric. II, cap. vii, see Rot. v. Booth, m. 1, curs. 53.

[4] 8 Edw. IV, cap. ii, Statutes, ii, 426–427.

lels were frequently drawn between Durham and Wales, Ireland, or even Gascony.[1] This analogy, however, must not be insisted upon; indeed it broke down altogether under the keener analysis of the fifteenth-century lawyers. Still, since it was precisely in the fifteenth century that the law with regard to the palatinate began to crystallize, it will be better to return to the figure of parallels, which may be supposed rapidly to diverge at that period. Even in the fifteenth century justice Newton urged that "Gales et county-paleis sont tout d'un nature."[2] But in answer to this assertion it was shown that the record was not sent into Wales to be tried, for the issue might be taken in the adjoining county; and further that to the sheriff of that county the writ issued for the purpose of summons or execution. A subtler distinction than this was taken on the point of origin. Wales, Gascony, and Calais, said the lawyers, were added to the crown of England, but the counties palatine proceeded out of it.[3] This nicety was pushed to the point of differentiating between Chester and Durham, which were held to possess their privileges by prescription, and Lancaster, which received them by act of parliament.[4] The distinction between the palatinates and Wales was stated with great acumen and clearness in an admirable opinion delivered in 1458 by Sir John Fortescue, too long unfortunately to be quoted here.[5]

Thus all through our period, from the Norman Conquest until the practical extinction of the palatinate in 1536, the relations of the two legal systems were fluctuating and ill-defined, although showing a perceptible drift toward the extension of royal justice at the expense of the palatine immunities and privileges. Definition involves limitation, and the work of the fifteenth-century lawyers was to define the legal privileges of the palatinate, and thus to prepare the path for the sixteenth-century legislators, who swept them away. The great change came with

[1] Calendar of Close Rolls, 1313–1318, p. 30; Ibid., 1318–1323, p. 522; Liber Assisarum, 8 Edw. III, 27; Year Book 10 Edw. III, Trin. 41–42; Rot. Parl., 5 Ric. II, iii. 119.

[2] Year Book 19 Hen. IV, Mich. 12.

[3] Ibid., 21 Hen. VII, Mich. 33–34.

[4] Ibid., 19 Hen. VI, Mich. 12.

[5] Ibid., 36 Hen. VI, 33.

the statute of 1536[1] and with the erection in the next year of the Council of the North. This body drained all life out of the palatine judiciary by practically assuming the entire administration of justice in the northern counties. Some attention must be given therefore to the conditions that led to its erection and to its relations with the palatinate.

§ 35. The Council of the North and the Palatine Judiciary.

The plan of governing the north of England by means of a royal lieutenant and local council, vested with very considerable powers from the privy council, had been formed before the Pilgrimage of Grace. In 1522 the condition of the borders called for immediate attention, and in February of that year a secret council was organized and arrangements were made to send down a royal lieutenant in the summer.[2] This plan of government by a lieutenant and council continued until 1525, when a slight modification was made.[3] This consisted in placing the north under the nominal control of the king's natural son, Henry Fitz Roy, whose council carried on the actual work of administration. Henry was created duke of Richmond and appointed the king's lieutenant-general north of Trent.[4] The duke remained in the north until 1532, and during that period his council governed the northern counties.[5] After Richmond's departure his council, known now as the "council of the marches," continued to administer the north in co-operation with the duke of Northumberland, lord warden of the marches, until the outbreak of the Pilgrimage of Grace in the autumn of 1536.[6]

[1] 27 Hen. VIII, cap. xiv, Statutes, iii. 555.

[2] Calendar of Letters and Papers, Henry VIII, iii. pt. ii. No. 2075.

[3] Ibid., iii. pt. ii. Nos. 2186, 2271, 2412, 3240, 3286; iv. pt. i. Nos. 219, 762.

[4] Ibid., iv. pt. i. Nos. 1435, 1510; see also Dictionary of National Biography, xix. 204–205.

[5] Calendar of Letters, etc., iv. pt. i. Nos. 1727, 1773, 1779; pt. ii. Nos. 2402, 3477, 3552, 3610, 3628, 3629, 3849, 4133, 5430.

[6] State Papers, iv. Nos. ccxxv, ccxxix, ccxxxi, ccxxxv, ccxl; Calendar of Letters and Papers, Henry VIII, vi. Nos. 16, 51, 143, 150, 217; viii. Nos. 696, 945, 992–994.

It is clear that the jurisdiction of the lieutenant and council (or councils) extended over the palatinate from 1522 until 1537. In the first place, Bishops Ruthall and Wolsey were not the men to make any objection to such an infringement of their liberties. They were statesmen, whose interest and advantage lay in forwarding the Tudor policy of centralization; if the local exemptions to which their position as Bishops of Durham entitled them were injured in that process, they could not be concerned.[1] Each in his way flew at higher game than feudal sovereignty; the time for that was past; and thus it came that the palatinate, as the relic of feudalism the most alive and the least able to defend itself, was betrayed in the house of its friends. The acquiescence in these new arrangements of at least the upper classes of the palatinate may be inferred from the constant presence in the council of some of their number, particularly of the sheriff, Sir William Bulmer, and the chancellor, William Frankleyne.[2] Moreover, for an official residence the lieutenant and council had their choice among three places, Pontefract and Sheriff Hutton in Yorkshire and Barnard Castle in the bishopric.[3]

But there is also direct evidence that the council had jurisdiction over the palatinate. The lieutenant and part of the council from time to time sat with the justices of assize at Durham;[4] they summoned persons from the bishopric before them to answer charges and to give testimony;[5] and this tacit abolition of the episcopal franchise was one of the grievances put forward by the insurgents at the conference at Doncaster in 1536.[6]

[1] Ruthall was a privy councillor and secretary of state; he was constantly absent from his diocese, the affairs of which he neglected. Wolsey never once visited Durham; he cared for the bishopric only in so far as it produced revenue. See Chambre, cap. xiv, in Scriptores Tres, 151–152; Calendar of Letters and Papers, Henry VIII, iii. pt. ii. Nos. 2946, 3518; Surtees, Durham, i. pp. lxv–lxvi.

[2] Calendar of Letters and Papers, Henry VIII, iii. pt. ii. Nos. 2075, 2412; iv. pt. ii. Nos. 2402, 3552, 3689; vi. Nos. 51, 143; viii. No. 696.

[3] Ibid., iii. pt. ii. No. 2412.

[4] Ibid., iii. pt. ii. No. 3240; iv. pt. ii. Nos. 3477, 3610.

[5] Ibid., iii. pt. ii. Nos. 3295, 3296, and cf. v. No. 241.

[6] "The liberties of the church to have their old customs, as the county palatine at Durham:" Ibid., xi. No. 1246.

Between January and September, 1537, the north was vigorously pacified by the duke of Norfolk and a provisional council, which was at length organized on a permanent footing under the presidency of Cuthbert Tunstall, Bishop of Durham. Norfolk and his council were instructed to proceed under martial law, and the severity of their administration was greatly increased by the ill-timed risings at Hull and Carlisle in the beginning of the year.[1] By some oversight Durham had not been included in Norfolk's commission; but the duke and council proceeded nevertheless to hold an assize at Durham, "keeping secret our lack of authority," as they wrote the same day to the king. Henry applauded this discretion, and immediately sent down new commissions in which the bishopric was included.[2]

In July, 1537, the commission was issued for the permanent council, although that body was not organized until Norfolk had finished his task of pacification in September.[3] In the discussion that preceded the establishment of the Council of the North the king was recommended to take into his own hands, as far as possible, all lordships and special jurisdictions, and to extend the authority of the new body over Cumberland, Westmoreland, Northumberland, Durham, and York.[4] In adopting these suggestions the king expressed his intention of erecting "a standing counseill ther, for the conservation of those countreyes in quiete and thadministration of commen justice."[5]

The Council of the North took its sanction from the political and legal authority of the privy council, and its establishment was a part of the Tudor policy of subjecting the outlying districts of the kingdom to the direct control of the king and his council.[6] It was authorized to hear and determine all such offences as the holding of illegal assemblies and the like practices, by which the peace of the king's subjects was disturbed

[1] Ibid., xii. pt. i. Nos. 86, 98, 421, 422, 479, 498.

[2] Ibid., Nos. 615, 616, 666.

[3] State Papers, v. Nos. cccxxii, cccxxviii, cccxxx, cccxxxiii.

[4] Calendar of Letters and Papers, Henry VIII, xii. pt. i. No. 595.

[5] State Papers, i. No. lxxxix.

[6] Dicey, Privy Council, 81–83; Prothero, Statutes and Documents, Introd. cx–cxi.

in the counties of York, Northumberland, Westmoreland, and Durham, and in the cities of York, Kingston-on-Hull, and Newcastle-upon-Tyne. It was also to hear and determine all real actions and those concerning free tenements, as well as all personal actions of debt and like causes in which either of the parties was so oppressed by poverty that he could not easily prosecute his right in the ordinary courts. Justice was to be administered according to the law and custom of the kingdom of England, or "aliter secundum sanas discretiones vestras."[1]

Thus the ultimate royal authority, which had so long overshadowed the immunities of the palatinate and which had been immensely increased by the act of 1536, was now made tangible and ever present by the existence of this body, which was supreme in all legal affairs and which sat not only in the neighborhood but sometimes actually in the palatinate itself. Finally, Cuthbert Tunstall, the Bishop of Durham, was president of the council,[2] and was servilely devoted to the advancement of the king's schemes for the activity of the new body. This fact appears in one of his early reports to Cromwell.[3]

[1] The greater part of the commission is printed in Coke, Fourth Institute, cap. xlix.

[2] Calendar of Letters and Papers, Henry VIII, xii. pt. ii. No. 1016. See also Ibid., viii. No. 696; this document seems to be misplaced; Mr. Gairdner assigns it to the year 1535; it is signed "Cuthbert Duresme — Thomas Tempest — Willm. Frankeleyn — Robert Hyndmer — Robert Bowis — Robt. Meynell — John Metkalff — Richard Crosby."

[3] "And as touchinge all other persones, of what sorte of men so ever they bee, kynne or frende or other, that shall fortune to utter their stomakke agaynst the kinges hyghness or to be accused of the same, I for my parte shall bere them lesse favour than I wolde do to Turkes; for Turkes, albeyt they be infideles, yeat they bee of the same nature, men as we bee, and those that do rebell agaynst their naturall prince whome by Goddes lawe and mans lawe, they ought to defende, be to be reputed as no men but as serpents and wylde beestes. . . . There is also remaynyng at Duresme a preste commytted to warde by my Lord of Norfolke wherein also the Justices of Assise that shall come downe may bringe the minde of the Juge . . . . the xxi^st^ day of this monyth we [the Council] departe hence [from York] to Newecastell, there to tarry for orderinge of the maters of thoes North parties for a season . . . . surely at our repair thider all men that be wronged will complayn unto us:" 19 January, 1538, Record Office.

The powers granted by the commission, and the attitude of the Bishop, conspired to lay the judiciary of the palatinate at the feet of the council, which might remove any case from the palatine courts. Thus in 1547 a royal precept issued to the chief steward of the bishopric reciting the tenor of a plea heard before the council in session at Gateshead[1] ("in curia nostra apud Gateshed coram domino precedente et consilio nostro"). This was a plea between two of the Bishop's subjects relating to land in the palatinate. It had been begun in the palatine courts, "but afterwards, upon exaction of the matter before the president and council," was continued in the council. The council decreed in favor of the plaintiff, ordered the steward to put him in seisin, and directed the Bishop to allow execution of the order.[2] This tells the whole story. In the administration of law the palatinate has become a negligible quantity. It is not destroyed or swept away; that would have been inconsistent with the genius of the English race, which is before all things conservative of appearances; but the life that was in it has gone. The courts, as we know, remained; people found it economical and convenient to have justice dispensed at their very doors. It is not our business, however, to set forth the arrangements made or maintained for the convenience of a small community of our ancestors. The living organism with which we were concerned has become a heap of dry bones.

[1] Gateshead is in the county of Durham.

[2] Rot. ii. Tunstall, ann. 1 Edw. VI, m. 21 dorse, curs. 78. Two events may here be briefly mentioned. Just before the rebellion the people of Durham, treading in the path marked out by Coke, made a grandiloquent but ineffectual protest against the encroachments of the Council of the North on the liberties of the palatinate. The document is preserved in the Record Office (Auditor 3, No. 128, Customs against the Court of York). Again, in 1636, a man named Claxton brought suit in the palatine courts against one Lilburne, for the recovery of lands in the palatinate. Lilburne, to the dismay of his adversary, offered battle, and Claxton frantically petitioned the king for remedy against this inconvenient resuscitation of an obsolete legal engine (Calendar of State Papers, Domestic, 1636–1637, pp. 136, 181).

CHAPTER VII.

FINANCIAL ARRANGEMENTS IN THE PALATINATE.

§ 36. The Palatine Exchequer.

THE Bishops of Durham maintained at Durham an exchequer organized on much the same plan as that at Westminster. It is very difficult to present the history of this institution, because no description of it is in existence, and because its records for any period earlier than the middle of the fifteenth century have, with a few exceptions, disappeared. Under these circumstances the history of the palatine exchequer will have to be reconstructed chiefly by the comparison of such random notices as occur in the documents at our disposal.

We shall scarcely look for an exchequer in the palatinate before the accession of Bishop Pudsey in 1152. That prelate probably founded the institution; for, although the term *scaccarium* does not occur in any of the documents surviving from Pudsey's pontificate, notices of dues or money payable "at the four accustomed terms in the bishopric" are fairly frequent.[1] We may infer, therefore, that there was some sort of organization to receive and account for the money thus paid, particularly as Pudsey is known to have introduced changes into the government of the palatinate, and from his experience in the king's service to have been familiar with the fiscal methods in use at Westminster. The earliest mention of the Durham exchequer by that name occurs in 1219, in a papal confirmation of a grant of an annual pension payable at the exchequer of Durham.[2] If after this but little is heard of the exchequer until the beginning of the

[1] Boldon Book, App. xlii, xliv, xlv; Scriptores Tres, App. No. xlv; Feodarium, 177, 199.

[2] Calendar of Papal Registers, i. 62. The beneficiary was Petrus Sarracenus, a knight of the empire. In 1258 the Bishop was required by royal writ to continue the payment of this pension. See Memoranda Roll, 42 Hen. III, rot. 18 a, quoted in Madox, Exchequer, ii. 4, note.

fourteenth century, it is because the Durham records do not until then begin to be plentiful or even adequate.[1]

There is some difficulty with regard to the dates of the exchequer terms. The sessions of the royal exchequer corresponded with the four law terms, Easter, Trinity, Michaelmas, and Hilary;[2] and, as these were originally determined by the ecclesiastical ban laid upon secular business during certain seasons in the Christian year, it is not likely that the dates would vary very much in the bishopric. Accordingly in Bishop Pudsey's time the accustomed terms were the feasts of S. Cuthbert in Lent (March), S. John the Baptist (June 24), the translation of S. Cuthbert (September 4), and S. Martin (November 11). This arrangement, by including the two feasts of S. Cuthbert, gratified local pride without encroaching seriously upon the forbidden seasons; it also had the advantage of allowing the Bishop and officers of the palatinate to be present at the sessions of both the royal and the palatine exchequers. This probably was the true cause of the selection of the dates, for the Bishops of Durham frequently held the great seal of the kingdom,[3] and sometimes even, as in the case of Walter de Merton, shared with the king the services of a learned clerk.

The actual dates of the meetings of the palatine exchequer do not occur again until 1307, although we meet now and then with the phrase, "ad quatuor anni terminos in episcopatu nostro sta-

[1] An interpolation in the text of Boldon Book (p. 3) throws a little light on the exchequer during the pontificate of Bishop Kirkham, A. D. 1249–1260; it is as follows: "Gilbertus . . . tenet in mora de Newbotell xxxiv. acras terrae . . . reddendo annuatim Scaccario Dunolm. 28*s*. 4*d*. ad iv. terminos statutos in Episcopatu Dunolm. . . . Rogerus . . . tenet xlviii. acras in Helmygdene per divisas, sicut in carta quam habet de Domino Waltero Episcopo Dunolm. plenius continetur, reddendo 10*s*. ad Scaccarium Dunolm. ad iv. terminos in Episcopatu Dunolm. constitutos." The date is established by the fact that the manuscript from which Dr. Greenwell printed was transcribed just after Bishop Hatfield's death in 1381; but until the accession of Bishop Skirlaw in 1388 there had been but one Bishop Walter, *i. e.* Walter de Kirkham.

[2] Madox, Exchequer, ii. 5. Easter and Michaelmas were the most important; when necessary, certain supplementary sessions were also held.

[3] Between 1128 and 1530 six Bishops of Durham were chancellors of England for varying lengths of time. These were Geoffrey Rufus, Richard

tutos."[1] In 1307 the receiver-general accounted for receipts at the four major and five minor terms.[2] As the first membrane of the roll has been lost, we should be left in doubt whether the first major term was, as usual, the feast of S. Cuthbert in March, were it not for the fact that in 1357 we hear of the four great terms of the exchequer, beginning with the feast of S. Cuthbert in March.[3] The other three terms were S. John the Baptist, S. Cuthbert in September, as before, and Michaelmas, which was substituted for the feast of S. Martin, a change which seems to have been permanent. This arrangement appears to have continued,[4] and we hear no more of the minor terms, unless indeed they may be connected with a record, in 1435, of certain moneys payable at the exchequer at Christmas, Easter, and the feast of S. John the Baptist;[5] and even this record would supply the dates of two only. Probably these minor sessions occurred only under pressure of necessity, and were held when most convenient. The Michaelmas term seems eventually to have taken precedence over all the others; the sheriffs accounted then,[6] and, when in the fifteenth century the series of receiver-generals' rolls begins, the accounts run from Michaelmas to Michaelmas.[7]

de Marisco, Richard de Bury, Thomas Langley, Laurence Booth, and Thomas Wolsey. See Dugdale, Chronica Juridicialia.

[1] Boldon Book, 3; Registrum, ii. 1187, A. D. 1291; Rot. C. Langley, ann. 26, m. 3, curs. 36, A. D. 1299. Each of these two latter is an inspeximus of a charter of Bishop Bek.

[2] "Summa tocius receptus ad quatuor terminos majores et quinque minores:" Receipt roll of 1307, Boldon Book, App. xxx.

[3] This was an indenture of the farm of certain coal-mines. The farmers were to pay five hundred marks "a qatre grandes termes usez et accustumez en levesche de Duresme. . . . le premier terme de leur paiment a la sente Cuthberte en mars proschen et ensy de terme en terme:" Rot. i. Hatfield, ann. 12, m. 11 dorse, curs. 30.

[4] Registrum, i. 9, 10, A. D. 1311; Ibid., ii. 781–782, A. D. 1316; Rot. Fordham, ann. 5, m. 8 dorse, curs. 32, A. D. 1387; Rot. DD. Langley, ann. 30, m. 14, curs. 37, A. D. 1436.

[5] Rot. C. Langley, ann. 29, m. 15, curs. 36.

[6] Sheriffs' accounts, A. D. 1336, 1410, 1535, Auditor 1, Nos. 1, 2, 40.

[7] Receiver-generals' accounts, A. D. 1454, 1461, Ecclesiastical Commissioners, ministers' accounts, 189696, 189816; Ibid., A. D. 1466–1472, Auditor 5, No. 149.

It is extremely probable that the annual audit of the palatine accounts took place at Michaelmas. Persons were appointed for this purpose under a special commission, and there was a double audit, namely of all accounts of minor officers by three or four commissioners, of whom the receiver-general would ordinarily be one, and of the receiver-general's own account by another set of commissioners. Although Bishop Bek's receipt roll shows unmistakable signs of having been audited,[1] the first mention of the process is in 1312, in the shape of an acquittance of the account of the receiver-general of Norham. This document contains the following words: "Sciatis nos per auditores compotorum nostrorum recepisse et audivisse . . . compotum de Norham de omnibus receptis, expensis et liberatis factis ad scaccarium de Norham."[2] In December of the same year the Bishop appointed three persons to audit the accounts of all his officers, giving them full power to receive all moneys due to the Bishop, and to make such allowances and acquittances as they thought reasonable. Two at least were to serve, but they might associate with themselves whomsoever they chose.[3] Robert de Brompton, one of the three persons mentioned in this commission, was the Bishop's chancellor and receiver-general the following year,[4] and was also reappointed as an auditor.[5] Similar commissions may be found on the later chancery rolls of the palatinate; thus in 1404 Bishop Skirlaw appointed five auditors, including his steward, chancellor, and chamberlain.[6]

In 1314 Bishop Kellaw commissioned three persons to audit the accounts of Robert de Brompton, his receiver-general. These were Brompton's late associates in the audit of ministers' accounts, and William de Denum, one of the palatine justices and

[1] Against the note of certain expenses there is entered in the margin the remark, "Non allocatur adhuc quare oportet inde fieri inquisitio:" Boldon Book, App. xxxvii.

[2] Registrum, i. 251. [3] Ibid., 261. [4] Ibid., 454, 468.

[5] Ibid., 452–453, and cf. Ibid., ii. 682.

[6] Rot. Skirlaw, ann. 16, m. 31, curs. 33. The steward and the chancellor are mentioned by name, and Peter del Hay, armiger, figures as the Bishop's chamberlain in an indenture of a payment made to him by the steward (Ecclesiastical Commissioners, ministers' accounts, 221100). Another appointment of auditors is on Rot. B. Langley, ann. 11, m. 11, curs. 35.

sometime chancellor.[1] They received the usual authority to make acquittances and to disallow extravagant or unreasonable expenses, according to their discretion.[2] Provision for this kind of audit was made in the appointment of a receiver-general in 1420.[3] In the fifteenth century the auditors received a salary varying from five to ten pounds, according to their degree, besides their living expenses at the time of the audit; and, in case they did not reside at Durham, they had also the cost of their journey there and back.[4] This last item was protested in 1472, but was eventually allowed.[5] In general, allowances were made either by warrant from the Bishop,[6] which was of course unquestionable, or else by petition to the auditors, who then used their discretion. Every allowance was petitioned for separately on a scrap of parchment, and a collection of these for the year 1395 has survived.[7]

The annual audit in the royal exchequer has been called "rather

[1] Registrum, i. 257, ii. 1258. [2] Ibid., ii. 687.

[3] Rot. B. Langley, ann. 14, m. 18, curs. 35.

[4] Receiver-general's account, A. D. 1461, Ecclesiastical Commissioners, ministers' accounts, 189816; Ibid., A. D. 1466–1472, Auditor 5, No. 149.

[5] The sum of forty shillings was allowed for the expenses of John de Hartlepool in coming from Huntingdonshire to Howden and then on to Durham to audit the accounts, and in returning to Huntingdon; and twenty-three shillings and fourpence for the maintenance of himself and his horse while he was at Durham. A similar allowance of twenty shillings for the expenses of another auditor was made "eo quod consideratum est per consilium domini, per inspectionem compotorum praecedentium tam temporibus Roberti Nevill nuper Dunelmensis Episcopi quam Thomae Langley praedecessoris sui, quod tales expensae dicto Willielmo . . . allocantur:" Receiver-generals' accounts, A. D. 1466–1472, Auditor 5, No. 149.

[6] Registrum, i. 467, 562, 566. A good example is the Bishop's warrant to the sheriff, in 1410, with regard to the payment to the prior of the share of the profits of jurisdiction accruing to him under the terms of the Convenit. This is in French, and is addressed "al auditors des accountes des mes ministres en countee de Duresme;" it directs that "vous suffres les susditz priour et couvent avoir la moite de les susditz fines, issues, et amerciamentz de lours tenauntz reseantz, come desuis, et facez notre viconte . . . de avoir due allouance et discharge en son accont. Et cestez noz lettres vous enservent garrant" (Auditor 1, No. 2). There is in the Record Office a bundle of vouchers or warrants of this sort, most of them in English and dated 1400–1481, numbered Ecclesiastical Commissioners, ministers' accounts, 221161.

[7] Ecclesiastical Commissioners, ministers' accounts, 221160.

an expedient for punishment and warning than a scheme for enforcing ministerial good behaviour."[1] We get some notion of this aspect of the audit in the palatinate from an entry in the receiver-general's account for 1461. The sum of fourteen shillings and fourpence was paid to John Barton for riding to the four wards to discipline the collectors and other officers who neglected the days set for accounting. The auditors assigned ten shillings to the sub-keeper of the gaol at Durham for his faithful custody of the collectors, clerks, and other officers imprisoned there during the audit by reason of their debts to the Bishop.[2] There was probably also a certain amount of festivity in connection with the occasion, for the Bishop came to Durham Castle and considerable provision was made for the entertainment of the auditors.[3]

All the officers of the palatinate were responsible to the receiver-general for the issues of their office, and his account (which was analogous to the pells of issue and receipt) was a digest of their more detailed accounts. It does not appear that there was anything like a chancellor's antigraph to check the account of the receiver-general, and it is highly improbable that there should have been one, for, as we have seen, the offices of chancellor and receiver-general were commonly held by the same person. The sheriff, coroners, and the managers of the Bishop's mines kept separate account rolls, as did also some other of the minor officers; but these latter records have almost no constitutional value.[4] It does not appear that tallies were much used; nearly all business was transacted by indenture, a device which was used for both receipts and arrears. The little scraps of indented parchment, pierced through the centre, were strung together on a twisted

[1] Stubbs, ii. 612.

[2] Receiver-general's account, A. D. 1461, Ecclesiastical Commissioners, ministers' accounts, 189816.

[3] In 1461 the castle was cleaned and repaired, and quantities of hay, coals, candles, and the like were purchased in preparation for the audit (Ibid.). In 1472 and 1492 the *hospicius* of the Bishop was furnished with money for the purchase of corn, beer, and other victuals for the time of the audit (Auditor 5, No. 149; Ecclesiastical Commissioners, ministers' accounts, 189698).

[4] For an account of these documents, see below, App. iii.

wisp of sheepskin and joined to the account roll.[1] All these documents were in charge of the clerk of the exchequer.[2]

One of the greatest difficulties to be encountered in the study of the palatine exchequer is the fact that it was never properly differentiated from the chancery. As courts of law there was never any attempt to distinguish between them,[3] and there is evidence to show that even in fiscal matters the two bodies closely interpenetrated. This confusion must have been largely due to the fact, so often noticed in this study, that the chancellor and receiver-general were frequently identical. But there is more definite evidence. In 1336 the sheriff accounts for twenty pounds received from William Chancellor, constable of Durham, and paid into chancery.[4] In 1410 the sheriff reports that there are no profits of fines and amercements before the justices of oyer and terminer and gaol delivery, because the estreats were

[1] See Ecclesiastical Commissioners, ministers' accounts, 221160, a miscellaneous bundle. The first collection is endorsed thus, "ceulx sount les parcellez de William Forester, lan de Monsieur W[alter] Evesque de Duresme septisme," and consists of indentures of collectors who bind themselves in various sums of money to Robert de Wyclif. Wyclif was Bishop Skirlaw's constable, chancellor, and receiver-general (Scriptores Tres, App. No. clxi; Rot. Skirlaw, ann. 5, m. 9 dorse, and ann. 16, m. 31, curs. 33). Auditor 5, No. 149, is another miscellaneous bundle containing a sheaf of indentures as described above, of which the following is typical: "Haec indentura, facta apud Dunelmum xii^mo^ die Julii anno pontificatus domini Thomae Cardinalis [Wolsey] Episcopi Dunelmensis sexto, testat quod Radulfus . . . collector de Herrington deliberavit magistro Willelmo Frankleyn clerico, cancellario ac receptori generali scaccarii Dunelm. de exitibus officii sui dictae villae hujus anni, in primis 27*s*."

[2] See the appointment by Bishop Bainbridge, in 1507, of William Norton to be "clericum scaccarii nostri et custodem rotulorum omnium compotorum ministrorum nostrorum infra scaccarium nostrum Dunelmensem" (Rot. i. Bainbridge, ann. 1, m. 8, curs. 68). In the fifteenth century we meet with a clerk of the chancery and *custos rotulorum*, and a clerk of the great roll (Receiver-generals' accounts, A. D. 1461, 1472, Ecclesiastical Commissioners, ministers' accounts, 189816, and Auditor 5, No. 149; Rot. A. Booth, ann. 2, m. 6, curs. 48).

[3] See above, p. 190.

[4] "Et de xx*l* receptis de Willelmo Chauncellor, constabulario Dunelm. anno praecedente, pro equitancia istius computatoris liberatis in cancellaria Dunelm. eodem anno:" sheriff's account, A. D. 1336, Auditor 1, No. 1.

paid into the chancery of Durham and the chancellor is responsible for them.[1] The same arrangement was made in Sadberg in that year.[2] In 1466 the coroner accounts for certain sums of money paid to the receiver-general of the exchequer, "as is contained in a certain paper-book of receipts in the chancery at Durham."[3] Finally, we know that in the fifteenth century a new building was constructed for the joint accommodation of the exchequer and the chancery,[4] and there is evidence to show that these courts had both been held in the hall of Durham Castle.[5] There was a separate exchequer for Norham, and there is an independent but extremely fragmentary series of fiscal records for that district.[6]

§ 37. The Bishop's Revenue.

We have now to consider the Bishop's revenue. This was derived from two general sources, namely, from taxation and

[1] Sheriff's account, A. D. 1410, Auditor 1, No. 2.

[2] Ibid.

[3] Coroner's account, A. D. 1466, Ecclesiastical Commissioners, ministers' accounts, 189697.

[4] "Hic [Bishop Nevill] Scaccarium coram portis Castri Dunelmensis quadratum . . . construxit; in quo curia cancellariae, scaccariae receptoris computatorisque tenetur:" Chambre, cap. vii, in Scriptores Tres, 147.

[5] A survey of the Easington ward, made in 1388, describes the palace green (the space between the cathedral and the castle) as containing the houses of the officers of the chancery and the exchequer, with a hall for the law courts, "pro placitis justiciariorum" (Ecclesiastical Commissioners, ministers' accounts, 220195, fol. 1); but nothing is said of a separate building for either the chancery or the exchequer, which, had it existed, would certainly have been in this part of the city. Again, the receiver-general was commonly constable of the castle and accordingly lived there; and in the receiver-general's account for 1461, among other items, the cost of cleaning the exchequer and of procuring candles for the use of the chancery and exchequer at the time of the audit appears in close proximity to the expense for the purchase and fetching of coals for the castle at the time of the audit (Ecclesiastical Commissioners, ministers' accounts, 189816).

[6] Apparently there are no early receiver-generals' accounts, but three fifteenth-century sheriffs' accounts have survived (Auditor 1, Nos. 3, 4, 5). The exchequer of Norham is mentioned in the fourteenth century (Registrum, i. 251, Ibid., ii. 1157, 1158, 1177).

from the income accruing to the Bishop from his feudal and quasi-royal position. The subject of taxation, having already come before us in another connection, will not detain us long. No instances of direct contributions exacted by the Bishop in his province occur before the early fourteenth century, although this circumstance is probably due to the absence of documents bearing on the thirteenth century, a period when such a practice might have been expected to arise, since earlier than this the predominance of feudal ideas would probably have enabled the Bishops to obtain what they needed without recourse to the comparatively novel method of direct taxation.[1] Besides, the expression, in the charter of 1302, of the principle that "no carriage should be required of free men without certain grant,"[2] suggests both that the Bishops' subjects knew how to grant contributions (in kind if not in money), and that the Bishops had been taking them without such grant. Further evidence in this direction is found in the authorization, in 1314, of the Bishop's steward to assemble the people for the safety of the country and to impose taxes (*collectae*) upon them;[3] and in the fact that in 1344 the commonalty of the province granted the Bishop a sum of money which was to be assessed and raised "prout antiquitus fieri consuevit."[4] Although this is the first recorded case of a palatine tax, it cannot be doubted, in view of the evidence which has been considered, that such direct contributions were already well known.

The money was granted in 1344 to purchase a truce with the invading Scots; indeed, the state of the borders from the end of the thirteenth century would no doubt account for a good deal of taxation in the palatinate which under more favorable conditions would have been unnecessary. But this method of raising

[1] It is worth noting in this connection that the fumage, or hearth-penny, which before the Conquest was habitually paid to the king, had been from a very early time applied, in Durham, to the fabric of the cathedral, and for this reason was probably paid to the Bishop. See the mandate of Alexander III to the clergy of Durham, directing that this pious custom should be continued; Scriptores Tres, App. No. xxxvi. Cf. Dowell, History of Taxation, i. 12.

[2] Registrum, iii. 43, 64. [3] Ibid., ii. 686. [4] Ibid., iv. 273–277.

money was not reserved exclusively for the purchase of truces with the Scots. In 1348 the palatine assembly granted the Bishop four hundred marks, to be raised by a proportionate assessment on the wards of Durham and Sadberg. This money was granted to reimburse the Bishop for the extraordinary expenses occasioned by his efforts to preserve intact the liberties of the palatinate.[1] In 1311 the men of the palatinate induced the Bishop-elect, Richard Kellaw, to make fine with the king, who threatened to hold an eyre at Durham, promising to repay him. Kellaw expended a large sum for this purpose, and, although his subjects declined to reimburse him, it can not be doubted that a tax similar to that of 1348 was contemplated.[2] After 1348 there is no further case of an episcopal tax, but before the close of the fourteenth century the practice of extending to the palatinate the incidence of royal taxation begins to obtain, and by the middle of the fifteenth century the principle is well established.[3]

We conclude, then, that in the thirteenth and fourteenth centuries direct taxation of the palatinate was a regular, if not a very frequent, source of the Bishop's revenue; further, that it was reserved to meet extraordinary expenses, and hence, owing to the disturbed condition of the borders in the fourteenth century, was at that period more frequently resorted to; and, finally, that the increasing centralization of the national government, causing the palatinate to be drawn into the general responsibility and to partake of the national defence, removed at once the cause and the justification for local taxation.

With regard to the method of assessment and collection of the sums of money granted to the Bishop very little can be said. In 1344, when the first detailed statement occurs, the proportion payable by every ward of the palatinate was well established and was indicated in the commission of the collectors.[4] The sum thus assigned was to be collected in every vill and hamlet of every ward, either from the local community in a round sum or from individuals, according to the discretion of

[1] Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30; see also above, p. 119.

[2] Graystanes, cap. xxxiv, in Scriptores Tres, 93.

[3] See below, § 38.

[4] Registrum, iv. 274.

the collectors and the custom obtaining in former cases.[1] Authority to distrain and to imprison was given to the collectors, and for this purpose the services of the sheriff were placed at their disposal.[2] Finally, the money was to be raised within a given time and paid into the exchequer at Durham. The arrangements for raising the tax of 1348 were the same as those illustrated by the earlier document, but the commission in this case was much more brief.[3]

The Bishop of Durham as temporal lord also obtained grants of money from his clergy. In 1307 the receiver-general accounted for the issues of a tenth granted to the Bishop by the clergy of his diocese, but the sum mentioned is so small (*£27 4s. 4½d.*) that the collection had probably only just begun.[4] In 1311 the clergy of the diocese granted to the new Bishop, Richard Kellaw, a tenth of ecclesiastical benefices for one year, and a gross sum of *£854 17s. ¼d.* was collected.[5] A similar grant was made in 1313.[6] It is natural to suppose that if this privilege were constantly or even frequently exercised by the Bishop, his clergy would have enjoyed a measure of exemption from other taxation. But this, apparently, was not the case. The diocese of Durham paid its share of Peter's pence, although this went to the archbishop of York and not directly to Rome;[7] besides, as we shall see, Durham was included in the grants of spiritual taxation made by the popes to Edward I and Edward II.[8]

A new policy was adopted after Edward III's breach with Rome. In 1376 the king wrote to the archbishop of York that he had heard that the latter, by reason of certain papal letters, was about to visit the clergy and people of the diocese of Durham for the purpose of raising money from them; this the king for-

[1] Registrum, iv. 275. [2] Ibid., 275–277.

[3] Rot. i. Hatfield, ann. 4, m. 4 dorse, curs. 30.

[4] Receipt roll of 1307, Boldon Book, App. xxxiii–xxxiv.

[5] "Compotus . . . collectorum decimae Domino Ricardo . . . Dunelmensi Episcopo pro primo anno consecracionis suae per clerum suum concessae:" Scriptores Tres, App. No. lxxxvii.

[6] "Compotus decimae annualis concessae domino episcopo:" Registrum, i. 486; and see Ibid., 488.

[7] Liber Rubeus de Scaccario, ii. 750. [8] Below, § 38.

bade him to do. Such action was in harmony with Edward's policy, but the reason actually assigned for the king's prohibition is very interesting. This taxation, he says, is unheard of within legal memory, for the Bishop of Durham is earl palatine, and by royal authority has temporal jurisdiction over all his subjects, and he and his predecessors have always exercised such jurisdiction by their own officers.[1] However disingenuous the king may have been in assigning this reason, the fact that he did so shows at least that the Bishop's claim to a certain immunity from spiritual as well as from temporal taxation was quite familiar. Possibly some indulgence was shown to the clergy of Durham in the matter of general taxation when they had paid a special tax to their Bishop, but in any case we shall conclude that such special taxation was infrequent.

The regular revenue of the Bishop arose from his peculiar position as temporal lord. The bulk of it was predial in its origin, and differs very little from the ordinary returns of any great medieval landlord or land-owning corporation. But, since there were other and more interesting sources of income which were derived from the Bishop's unique privileges, it will be well to examine the whole subject under the convenient, if somewhat artificial, arrangement which we followed in studying the functions of the Bishop as lord palatine.

As supreme head of the civil government in the palatinate the Bishop held his limited right of taxation and also a restricted and even rudimentary right to take dues which may be regarded as half-way between tolls and customs duties. Thus in 1293 it was reported that all hides and fleeces attempted to be carried across the bridge at Berwick without the seal of cocket — that is, without having paid customs duty — were forfeited to the Bishop of Durham,[2] who held, as we know, the southern bank of the Tweed opposite Berwick. It is a very natural inference that if the Bishop was entitled to the forfeited goods, he was equally

[1] Rot. ii. Hatfield, ann. 50 Edw. III, m. 8, curs. 31. The royal letter appears here both in French and Latin, but without any important variations between the two versions. The Latin form is printed in Scriptores Tres, App. No. cxxvi.

[2] Plac. de Quo War., 604.

entitled to a share at least of the dues which they should have paid. On the southern bank of the Tyne the Bishop might collect a fee from every ship that put to shore;[1] and he also took tolls from vessels passing up and down the river, for one third of the stream was conceived to lie within his royal liberty.[2] In 1417 Bishop Langley recovered against the mayor and commonalty of Newcastle one third of the bridge over the Tyne, together with all franchises and *jura regalia* over that portion of the bridge.[3] These words undoubtedly imply the right to take tolls or customs on merchandise brought into the palatinate.

At the town of Hartlepool, the greatest seaport of the palatinate, the Bishop occasionally levied customs duties on wool and wine. His theoretical right was unquestioned, but his ability to enforce it was hampered by the fact that Hartlepool was part of the manor of Hart, which after its forfeiture by Robert Bruce was practically held of the king.[4] In 1334 the king appointed his controllers of customs in Hartlepool,[5] but this appointment was rescinded out of deference to the Bishop's privilege.[6] In 1327, again, the king appointed officers and searchers to carry out, in Hartlepool, the new arrangements forbidding the exportation of plate and precious metals and the importation of counterfeit money; but, on the Bishop's bringing suit in the exchequer, the king admitted that he had no right to make this appointment, and accordingly revoked it.[7] In 1344 the Bishop appointed a chief butler (*capitalis pincerna*) for the town of Hartlepool; this officer was to take prises of wine brought into that port, to keep the gauge of wine, and to take the ulnage of cloth.[8] The office was still maintained in the fifteenth century, but it could not have produced more than an occasional or a spasmodic revenue. In 1410 the sheriff reported

[1] Scriptores Tres, App. No. xxxv.

[2] Registrum, ii. 1014–1015, iv. 334–337.

[3] Scriptores Tres, App. No. clxxxii.

[4] On this question see Hutchinson, Durham, ii. 521; Surtees, Durham, iii. 99ff; Sharpe, History of Hartlepool, 197; above, p. 42.

[5] Calendar of Patent Rolls, 1330–1334, p. 545.

[6] Spearman, Inquiry, 6–7 (citing exchequer records for 8 Edw. III).

[7] Registrum, iv. 213–215, 221–222, 264–265.

[8] Ibid., 295–296.

that "the ulnage of cloth in the wards of the county of Durham and the wapentake of Sadberg produced nothing this year; nor did the prises of wine in Hartlepool and elsewhere because no wines were brought in."[1] A similar account was made in 1452 in Norham.[2]

The Bishop as head of the civil government took a certain revenue from the municipal corporations of the palatinate. In the first place, the burgesses were willing to pay for one privilege or another. Thus in 1130, when the see was vacant, the burgesses of Durham paid five pounds "for the plea of Eustace Fitz-John;"[3] and, although by reason of the absence of documents we have no record of payments of this sort to the Bishop, we can not doubt that they were made. This inference follows from the fact that later in the same century the burgesses obtained their general charter from the Bishop,[4] and would therefore have been obliged to turn for individual privileges to the same source from which their general privilege was drawn. Again, for this and the other municipal charters granted by Bishop Pudsey the burgesses paid handsomely. After the boroughs had obtained the ordinary burghal privileges, one of the commonest forms of charter granted them contained leave to take a kind of *octroi*, known as murage, on merchandise brought into the borough.[5] The boroughs were also often put to farm, and thus rendered their various revenues in one sum. In 1307 the total amount from this source (£13 1*s.* 9*d.*)[6] was for various reasons unusually small; therefore, since in the same year the sum of £157 13*s.* 4*d.* is accounted for under the head of receipts from borough officers, it is to be supposed that only a few of the boroughs were put to farm. In 1387 the borough of Durham was demised to a number of persons for one hundred

[1] Sheriff's account, A. D. 1410, Auditor 1, No. 2.

[2] Norham sheriff's account, A. D. 1452, Ecclesiastical Commissioners, ministers' accounts, 189696.

[3] Pipe Roll 31 Hen. I, in Boldon Book, App. ii.

[4] See above, p. 35.

[5] Rot. ii. Hatfield, ann. 33, m. 13, curs. 31; Rot. Fordham, ann. 3, m. 4, curs. 32; Rot. Skirlaw, ann. 11, m. 21, curs. 33; Rot. A. Langley, ann. 2, m. 2, curs. 34; Rot. B. Langley, ann. 13, m. 16 dorse, curs. 35.

[6] Receipt roll of 1307, Boldon Book, App. xxv–xxxix.

and twenty years. The farmers took over all fairs, markets, privileges, and profits of jurisdiction, including the court of marshalsea, and bound themselves for £86 13*s.* 4*d.*, payable at the exchequer in four annual instalments.[1]

The Bishop also derived revenue from the various industrial corporations of the palatinate.[2] Under this head as well should be grouped the sale of privileges to individuals (as, for example, the right to hold a market or a fair) and the correlative right of the Bishop to institute *quo warranto* proceedings.[3] The right to forfeitures of war was, as we have seen, a less profitable source of revenue than might have been supposed, but this circumstance was owing to the cupidity and policy of the crown.[4] The Bishop's rudimentary foreign relations also produced occasional returns in the shape of plunder and ransom.[5]

In this context the subject of the episcopal mint may be most conveniently considered. From the Norman Conquest until the reign of Henry VIII there was a mint at Durham; coins struck there in the reigns of William I, Henry II, and all succeeding kings except the fourth and fifth Henries have survived.[6] These, however, are merely royal coins which happen to have been struck at Durham, for in early times local mints were of common occurrence, and several of them, such as those at Winchester, Canterbury, and Durham, survived.[7] At Durham, however, the mint had a twofold character, issuing episcopal as well as royal coins. The origin of this episcopal mint is very obscure. It was not a chartered mint, like that which the abbot of Reading maintained by direct royal grant,[8] but seems to have been first employed for purely palatine purposes, during the anarchy in Stephen's reign, by Bishop Geoffrey Rufus, who

[1] Rot. Fordham, ann. 5, m. 8 dorse, curs. 33.

[2] See Surtees, Durham, iv. pt. ii. 20 ff.; Rot. ii. Hatfield, ann. 28, m. 5, curs. 31; Rot. v. Nevill, ann. 10, m. 23 dorse, curs. 46.

[3] See above, pp. 34–35, 62.

[4] This subject is dealt with circumstantially above, § 5.

[5] See above, § 5.

[6] Ruding, Annals of the Coinage of Great Britain, ii. 164.

[7] Ashley, Economic History, i. 167–169; Leake, Historical Account of English Money, 65–66, 71, 81, 100.

[8] Leake, 91–92.

supported Stephen and who may have profited by the royal favor to issue an episcopal coinage.[1] This explanation is in all probability correct, for it is known that the right of coinage was much coveted and freely usurped by the feudal nobility of this period,[2] and that both the king and the empress countenanced what they could not, or did not care to, prevent.

The privilege seems temporarily to have disappeared under the general resumption of royal rights in 1154,[3] but it must have been revived soon afterward, only to be again suppressed. It is recorded in 1183 that the mint used to render ten marks, but that this sum was reduced to three marks by reason of the mint which the king had erected at Newcastle. Eventually it was quite abolished by the removal of the dies from Durham.[4] Richard I revived the privilege of the episcopal mint in favor of Bishop Philip of Poitou,[5] and during the vacancy preceding that Bishop's accession there was a profitable "cambium" or exchange, and also in all probability a certain amount of coinage at Durham.[6] During the vacancy in 1213 the keepers of the temporalities accounted for £4 12½*d.* "of the profit of exchange of one die (*cambii unius cunei*)."[7] In 1253 there seems to have been some question of the Bishop's title to the privilege of coinage; but after an inquest had been taken and the dies and coins from old time used and made in Durham had been produced, the Bishop's right was admitted and embodied in a charter.[8]

[1] Noble, Two Dissertations on the Mint of the Episcopal-Palatines of Durham, Dissert. i. 5 ff.

[2] Stubbs, i. 371.

[3] Noble, Dissert. i. 5.

[4] Boldon Book, 1–2. Ruding (Annals, 164) contends that the episcopal mint did not exist prior to Henry II.

[5] Roger of Hoveden, Chronica, iv. 13.

[6] Pipe Roll 8 Ric. I, in Boldon Book, App. xii.

[7] Pipe Roll 14 John, Ibid., xx. In 1208 all the local moneyers, assayers, and die-keepers were summoned to Winchester, where they surrendered their old dies and received new ones of a uniform type. See Ruding Annals, i. 179.

[8] "Quia per testimonium plurimum fidedignorum, et per antiquos cuneos coram nobis exhibitos, et eciam per monetam inde fabricatam quam venerabilis pater Walterus Dunelmensis Episcopus coram nobis protulit, accepimus," etc.: From an inspeximus of a charter dated 12 June, 37 Hen. III, on Rot. Pat. 11 Hen. VI, roll ii. m. 22.

The right was reaffirmed by the jury summoned in the *quo warranto* proceedings in 1293.[1]

This brings us to the pontificate of Bishop Bek, when we first meet with the evidence of the episcopal coins themselves. Only pennies were struck at Durham, but these were of silver as well as of the baser metals.[2] Coins of the successive Bishops from the reign of Edward I until that of Richard II are in existence. Noble says that during the reign of Richard II no coins were struck at Durham, but it is more probable that none of those struck at this period have survived; for in a survey of the Easington ward made in 1388 it is recorded that a certain house on the palace green at Durham was occupied by the Bishop's die-keeper (*cunator*), and that the dies in the hands of Wulkinus de Florencia, the Bishop's die-keeper, were worth forty shillings annually, although formerly they had rendered twenty marks.[3]

After this the mint seems to have fallen into disuse for a time, for, as Noble puts it, it is impossible to distinguish between the royal and episcopal coins struck at Durham during the reigns of the fourth, fifth, and sixth Henries. What probably happened was that the episcopal coinage was altogether in abeyance and that the royal coinage was carried on very largely at the mint in York; for in 1424 the Bishop received the text of an indenture made between the king and a certain goldsmith at York, with directions to publish it in his liberty.[4] This document was to the effect that Bartholomew Goldbetter had been appointed guardian of the king's exchanges at York.[5] Bartholomew's duties consisted principally in the purchase of bullion, which was transmitted to London to be coined, and in the collection of a seigniorage of five shillings in the pound gold. In 1473 the episcopal mint was re-established by letters patent of Edward IV authorizing the Bishop to make coining irons for pennies and half-pennies.[6] The Bishop at once commissioned a certain goldsmith at York to make, under supervision of the

[1] Plac. de Quo War., 604.
[2] Ruding, Annals, ii. 164 ff.
[3] Ecclesiastical Commissioners, ministers' accounts, 220195, fol. 1.
[4] Rot. E. Langley, ann. 18, m. 10, curs. 38.
[5] Rot. Claus. 2 Hen. VI, m. 8 dorse.
[6] Rot. Pat. 13 Edw. IV, printed in Foedera (ed. 1727), xi. 783.

chancellor, three dozens of trussels and two dozens of standards for pennies, "necessarye for oure mynte in Duresme . . . within our castelle of Duresme."[1] Bishop Booth, as it appears, introduced the custom of using his initial instead of his arms, and in general modelled his coinage upon that of the archbishops of York.[2]

But the privilege revived by Edward IV was of a limited nature; it was quite lost during the reign of Richard III, and, when it reappears in that of Henry VII, it was even further restricted by the obligation imposed on the Bishops to take their dies and puncheons from the royal exchequer.[3] For these instruments they paid a yearly rent of four marks, as appears from an indenture made in 1491 between Bishop Sherwood and George Straylle, a goldsmith of Durham. The latter was to occupy the episcopal mint for three years, paying four marks per annum to the warden of the Tower of London and discharging the Bishop of that sum.[4] This step in the direction of an assimilation of the palatine to the royal mint is quite in harmony with the tendency of the times. The palatinate was already something of a survival, and the Bishops were insisting chiefly on those privileges that were a source of revenue, with little regard to local independence. In particular, the English coinage underwent considerable changes during the reign of Henry VII. The pennies struck at Durham now bear the effigy of the king crowned and enthroned and on the reverse the arms of France and England. Their episcopal character is indicated only by the presence of the Bishop's initials on the reverse.[5] The mint at Durham thus practically lost its independence, but it did not at once cease to exist. In a statute of 1523 there is a saving clause for the mints of York, Canterbury, and Durham,[6] and during Wolsey's occupation of the see of Durham

[1] Rot. ii. Booth, ann. 17, m. 6, curs. 49; and cf. Rot. iii. Booth, ann. 3, m. 2, curs. 50. A trussel is a sort of puncheon or stamp.

[2] Noble, Dissert. ii.

[3] Foedera (ed. 1727), xii. 252.

[4] Rot. iii. Sherwood, 7 Hen. VII, m. 7, curs. 58.

[5] Noble, Dissert. ii.

[6] 14–15 Hen. VIII, cap. xii, Statutes, iii. 218.

a good deal of silver seems to have been coined there.[1] Noble believes that the abolition of the local mint is implied in the terms of the act of 1536, by which the palatinate was stripped of so large a measure of dignity and independence;[2] but there is nothing in the words of the statute to support this theory. The view of another writer,[3] that the Durham mint ceased without any formal abolition at the close of Bishop Tunstall's pontificate in 1559, commends itself as highly probable.

To sum up, then: the episcopal, as opposed to the royal, mint at Durham appears at some undetermined point in the twelfth century, but there is only documentary evidence of its existence until the pontificate of Bishop Bek, 1284–1311. From that period until after the Reformation, with a long interruption in the fifteenth century, the Bishops maintain their mint at Durham; but no gold is coined there, nor any coins above the denomination of a penny. The palatine mint has its greatest historical importance as a source of revenue rather than as an attribute of the Bishop's sovereignty. Although, as Noble tells us, the Bishops, "desirous of acquainting posterity that they enjoyed this sovereign privilege" (*i. e.* the right of coinage), placed their arms or some other particular device on their coins,[4] on the other hand, the constant royal supervision of the palatine mint and the king's frequent interference with it show that it was not a well-developed attribute of sovereignty. Doubtless, too, the Bishops of Durham, like other medieval lords, were far more intent on the immediate advantage of increased revenue than on the admiration of posterity.[5]

We pass now to the revenues which accrued to the Bishop from his position *in dominio*, or as supreme landlord of the palat-

[1] See Wolsey's letter from his chancellor on this subject, in Fiddes, Life of Wolsey, pt. ii. 206–209.

[2] 27 Hen. VIII, cap. xiv, Statutes, iii. 555.

[3] Ruding, Annals, 170.

[4] Noble, Dissert. i.

[5] Besides the works of Noble and Ruding, there is an essay by B. Bartlet, "The Episcopal Coins of Durham and the Monastic Coins of Reading," in Archaelogia, 1778, v. 335, reprinted by J. T. Brockett (Newcastle, 1817). This contains a few minor details not included in the account given above.

inate. These, with a few interesting exceptions, differ only in degree from ordinary manorial returns and the profitable incidents of feudal tenure enjoyed by any other great tenant-in-chief. In the latter group, however, the Bishop possessed certain peculiarly royal advantages, such as the right to take primer seisin and to have custody of the lands of idiots, but these, with the ordinary feudal incidents, have already been considered in another place.[1] The manorial returns were chiefly in kind, in stock, corn, wool, hay, cheese, hens, eggs, and the like; these were sold, and the profits were accounted for at the exchequer.[2]

One of the most profitable sources of the Bishop's revenue under this category consisted in the mines of iron, lead, and coals with which the county of Durham has always abounded. Already in the twelfth century we hear something of the mines of Durham. King Stephen seems to have possessed a mine, probably of iron, which he granted to Bishop Pudsey between 1152 and 1154.[3] Soon after this period Laurence, prior of Durham, had much to say, in somewhat mediocre verse, of the mineral wealth of his native county: —

". . . . . saxa Dunelmia venas
Innumeri varias aeris habere solent."[4]

Later he tells us that the Bishop took annually three great talents of silver.[5] This statement is not improbable, for silver is known to occur frequently in connection with lead, and the lead mines of the Weardale were rich and plentiful. In 1197 the keepers of the bishopric spent forty-three pounds and a fraction in the purchase and smelting of lead ore, and accounted for forty pounds profit on the transaction.[6] In the accounts for 1211–1213 the

[1] Above, § 6.

[2] Pipe Rolls 8 Ric. I, and 13–14 John, in Boldon Book, App. iii–xxiv; receipt roll of 1307, Ibid., xxv–xxxiv; see also Ibid., *passim*. In 1461 the receiver-general accounted for the expenses of driving cattle, taken from various tenants "pro firmis suis." See Ecclesiastical Commissioners, ministers' accounts, 189816.

[3] Scriptores Tres, App. No. xxvii.

[4] Laurentius Dunelmensis, Dialogi (Surtees Soc.), lib. ii. lines 109–110.

[5] Ibid., line 169. [6] Pipe Roll 8 Ric. I, in Boldon Book, App. xii.

sale of iron reappears frequently, but it is difficult to determine the exact amounts realized, for the iron is usually associated with some other product.[1] This is also true of the farm of mines accounted for in Bishop Bek's receipt roll of 1307.[2] In 1393 the receiver-general of Durham accounted for £3 12 from the mayor of Newcastle for two hundred and sixty "keles" or barges of coals furnished by the Bishop.[3] This industry flourished in the fifteenth century, and the account rolls of the *appruatores*, or superintendents, of the Bishop's coal-mines at Whickham and in the Weardale show that a considerable revenue was drawn from this quarter.[4] The iron of the Weardale was a staple medieval product and seems to have compared favorably with that produced in Sussex or in the forest of Dean, although it was inferior of course to the Spanish metal.[5] In 1409 a single forge in the Weardale produced 4184 stone of wrought iron,[6] and in 1433 four mines farmed to Sir William Eure yielded £112 13*s.* 4*d.* annually.[7] The mining of lead was also a fertile source of revenue to the Bishop. In 1426 the superintendent of the lead mines accounted for production to the value of £196 5*s.* 10*d.*; the greater part of the metal had been sent to the Bishop's agent in London, who sold it and applied the proceeds to the purchase of various articles required by his master, such as vestments and ecclesiastical plate and jewels.[8] In 1535 the king's commission-

[1] Pipe Roll 13–14 John, in Boldon Book, App. xii–xxiv.

[2] Ibid., xxv–xxxiv.

[3] Rot. Skirlaw, ann. 5, m. 9 dorse, curs. 33.

[4] Accounts of this sort exist for the years 1458–1461, 1467–1468, 1476–1477, 1500, 1509; these are in English and Latin, and give a great deal of useful and interesting information. See Ecclesiastical Commissioners, ministers' accounts, 190022–190028 inclusive.

[5] Rogers, History of Prices, iv. 398–399, and see Ibid., index, *s. v.* "Iron." In 1461 the constable of Durham purchased Spanish iron for certain particular purposes in the castle. See receiver-general's account, Ecclesiastical Commissioners, ministers' accounts, 189816.

[6] See the account of John Dalton, keeper of the Bishop's forge at Byrkeknott, Auditor 5, No. 149, printed in the English Historical Review, xiv. 509 ff.

[7] Rot. DD. Langley, ann. 27, m. 7, curs. 37.

[8] These two accounts are Ecclesiastical Commissioners, ministers' accounts, 190013–190014. They are full of circumstantial information with regard to the methods of mining and smelting lead and the prices of the

ers reported that the annual value of the farm of the coal, lead, and iron mines of the Bishop of Durham was £185.[1] In 1831 the manorial returns of the see for three years, including mines and quarries, amounted to £3011.[2]

The question of the sources of the Bishop's feudal revenue presents several points that require particular attention. The first of these is the matter of scutage. Arguing from the general theory of the Bishop's status quâ king, we should be inclined to predicate that, although the king as overlord might indeed take scutage from the Bishop himself, he could neither require this payment from the Bishop's military tenants nor yet prevent the Bishop from so doing. Let us see how far this theory will hold, if indeed it holds at all. In the first place it must be noted that the great honors and franchises, and even the honor of Wallingford, paid scutage in the twelfth and thirteenth centuries.[3] In the thirteenth century even the county palatine of Chester paid it.[4] In 1156 the Bishop of Durham paid ten pounds as scutage for ten knights' fees;[5] and, when a similar payment was required in 1158, he gave £333 6*s.* 8*d.* as a gift, and his knights contributed twenty marks, for all of which the sheriff of Yorkshire accounted.[6] In 1160 the Bishop paid twenty marks for ten knights' fees,[7] one mark for the same in 1161,[8] and ten marks again in 1167, although in this year he was charged with a larger sum for certain fees, for which he denied that he was

articles of luxury purchased for the Bishop. See also Rot. DD. Langley, ann. 24, m. 2 dorse, curs. 37; Ecclesiastical Commissioners, ministers' accounts, 190012, 190015–190021.

[1] See Valor Ecclesiasticus, v. 299.

[2] Report of the Commissioners on Ecclesiastical Revenue, in Parl. Papers, 1835, vol. xxii.

[3] See the Rotulus Honorium for 1186–1187, in the Liber Rubeus de Scaccario, i. 68–70. In 1208 the earl of Chester accounted for half of the scutage of the honor of Richmond (Ibid., ii. 749); and the following note of Swereford, the compiler of the Red Book, expresses the general principle: "Nota quod in ii rotulo Regis Johannis in diversis comitatibus amerciati sunt multi, et nullae allocantur libertates quia omnes redduntur in Thesauro" (Ibid., ii. 747).

[4] Ibid., i. 184–185.

[5] Ibid., 15.

[6] Ibid., 19.

[7] Ibid., 26.

[8] Ibid., 28.

responsible.[1] In 1171 he paid ten pounds,[2] but apparently he was not charged in 1186, or again in 1190.[3] During the vacancy in 1196 a scutage of ten pounds, together with the larger sum repudiated by the Bishop, was raised in the bishopric,[4] being paid by the lesser barons through the keepers and by the greater ones individually.[5] In 1199 the new Bishop paid twenty marks;[6] but from the scutage raised between 1201 and 1212 he was released by writ, although the sheriff of Northumberland reported that he had ten knights' fees in the wapentake of Sadberg.[7]

Henry II early in his reign required of each of his feudal tenants a detailed statement of the number of knights' fees held of him and of the terms upon which they were held. Bishop Pudsey, in his answer to this demand, reported the number of knights' fees held of him by old and new feoffment in Yorkshire, Lincolnshire, and "the lordship of the blessed Cuthbert"; on his own demesne, he says, there are no knights' fees, and in respect to all the fees enumerated in the report he is responsible to the king for the service of ten knights.[8] Now it is a curious fact that in the scutage of 1201 the Bishop is held responsible for ten knights' fees, which are reckoned as of the wapentake of Sadberg, for this corner of the palatinate was acquired by exchange and purchase from Richard I, and the transaction is therefore within legal memory.[9] The wapentake, moreover, when Pudsey acquired it, contained but two and a fraction knights' fees.[10] How, then, were these consolidated with the ten fees in the lands of S. Cuthbert for which the Bishop was already answerable, and the whole charged as ten fees in Sadberg? With our present information, that question cannot

[1] Liber Rubeus de Scaccario, i. 40.

[2] Ibid., 53. [3] Ibid., 62–70. [4] Ibid., 117.

[5] Pipe Roll 8 Ric. I, in Boldon Book, App. viii–ix.

[6] Liber Rubeus de Scaccario, i. 130.

[7] Ibid., i. 164, ii. 606.

[8] "Super dominium vero nostrum, de quo similiter mandare praecepistis, nulla sunt feoda militum nec ulla debemus. Nam de hiis omnibus, quos supra diximus, servitium x militum tantum vobis debemus. Valeat dominus meus" (Ibid., i. 416–418). On this point, see Pollock and Maitland, i. 241.

[9] Coldingham, caps. ix–x, in Scriptores Tres, 14–15.

[10] Scriptores Tres, App. Nos. xl–xli.

be answered. It is clear that in respect to the king the Bishop of Durham was treated like any other feudal tenant; but it is difficult to determine what method would have been used to distrain for scutage, since the king acknowledged that his officers might not enter the palatinate. In respect to the Bishop's right to levy scutage of his feudal tenants, it may be said that by once obtaining the king's licence for this purpose the Bishop acknowledged his inability to raise such a scutage. But the question is obscure, and the palatine accounts do not begin until the era of scutages is over.[1]

The question of the distraint of knighthood, which was perhaps as much a military as a financial measure, may be most conveniently treated at this point, for the military necessities of the palatinate were only occasional, while the demand for revenue was constant. Although the practice of forcing the assumption of knighthood on all persons of a certain property qualification first appeared in England in 1224, it did not assume great importance until 1278.[2] In that year the sheriffs were directed to force all persons having twenty librates of land, or a knight's fee of equivalent value, to assume the order of knighthood. This rule, which was to be enforced by distraint, was applicable not only to tenants-in-chief but to all persons having the requisite amount of land, of whomsoever they held.[3] Whichever horn of this dilemma might be chosen, the result was the same to the king, for there were fees for the reception of knighthood and fines for a refusal to assume the order.

There is no illustration of the way in which this measure was applied in the palatinate, but later evidence points emphatically to the conclusion that the Bishop, tacitly assuming his royal right, proceeded on his own behalf to enforce the new regulation in his province. In 1337, Bishop Bury represented to the king that, in spite of his acknowledged right to have *jura regalia* in the bishopric, he had been directed by a royal writ under the seal of the exchequer to enforce the assumption of knighthood on

[1] Rot. Lit. Claus., 8 Hen. III, i. 579; Pollock and Maitland, i. 232 note.

[2] Stubbs, Constitutional History, ii. 305–307, and Select Charters, 456–457.

[3] Stubbs, Select Charters, 457.

certain of his subjects, and in the event of their refusal to produce them at the exchequer to answer to the king; and this in spite of the fact that by reason of his privilege the Bishop was entitled to cognizance of matters of this sort and to the fees and profits arising from them in the bishopric. The king then directed the barons of the exchequer to hear and examine the bishop's evidence, and, if it proved satisfactory, to drop all further action in the matter.[1] Apparently no satisfactory conclusion was reached, for in 1346 we find the Bishop petitioning again, representing that by reason of his regality he has the right to distrain his subjects to assume knighthood and to take himself all issues and profits arising from this process; and that he and his predecessors had always enjoyed this privilege until the present writ issued out of the exchequer. The king directed that the writ be suspended until the Bishop's claim could be examined,[2] and there the matter ends. When it reappears in the documents in 1534 there is no longer any question of the Bishop's rights; he transmits to his sheriff the king's writ directing all persons, as well within liberties as without, having forty pounds a year, to take up the order of knighthood before a certain date, and enjoins the sheriff to execute it in the palatinate.[3] Although properly treated under the head of revenue, the real interest of this matter lies in the attitude of the Bishops toward their regality, to which they attributed all the potentialities of development latent in the crown.

Another interesting point that appears to be peculiar to the bishopric, or at least to the northern counties, is the nature of the payments made for cornage. These payments appear first in the year 1130, when, during the vacancy of the see, the keeper of the temporalities accounted for £110 5*s.* 5*d.* "for the cornage of cattle," and the same sum for "the cornage of animals."[4] In Boldon Book it is recorded that "two vills render 30*s.* for cornage,"[5] that "the vill of Shotton renders 11*s.* for cornage,"[6]

[1] Registrum, iv. 211–212; printed also in Foedera, ii. pt. ii, 961–962.
[2] Registrum, iv. 265–266.
[3] Rot. ii. Tunstall, ann. 4, m. 3 dorse, curs. 78.
[4] Pipe Roll 31 Hen. I, in Boldon Book, App. i–ii.
[5] Boldon Book, 8.
[6] Ibid., 9.

"Queringdonshire renders 78*s.* for cornage,"[1] and so on.[2] This item does not figure in the account of the bishopric during the vacancy of 1196, or during that of 1208–1213; but it reappears in 1307, when the receiver-general accounts for cornage in the four wards to the amount of £28 14*s.* 4*d.*;[3] but in the fifteenth century it has quite disappeared. Lyttleton thought that cornage was a tenure by the service of winding a horn to give notice of the approach of an invading army, and was peculiar to the Scottish borders.[4] This fantastic definition long satisfied the legal mind.[5] Canon Greenwell, the editor of Boldon Book, believes, however, that cornage was a tenure involving an annual payment of cattle, but commuted at some period earlier than the Conquest to a money payment.[6] This view, in so far as it defines cornage as a tenure conditioned by the possession of cattle, seems now to be generally accepted. Mr. Seebohm regards cornage as a tribute either for the possession of cattle or for the right of grazing them, and holds it to be incidental to the tenure of a share of arable land.[7] Professor Maitland has much of interest to say on various aspects of this subject, but accepts on the whole Mr. Seebohm's doctrine.[8] Finally, Mr. Hubert Hall, who has had the latest word on the subject, seems to connect cornage with the duty of military service as based on wealth in the possession of cattle.[9] The question is full of interest, but a discussion of it does not fall within the province of the present work.

This limitation must also apply to the interesting question raised by an entry, in the pipe roll of 1130, of certain payments from the thegns, drengs, and smalmen between Tyne and Tees. These terms recur from time to time in the earlier records of the

[1] Boldon Book, 10. [2] Ibid., 11, 12, 13, 14, etc.

[3] Receipt roll of 1307, Boldon Book, App. xxviii.

[4] Lyttleton, Tenures, § 156.

[5] See Spelman, Glossarium, *s. v.* "Cornagium."

[6] Boldon Book, glossary, *s. v.* "Cornagium," and App. lv–lvi.

[7] Seebohm, Village Community, 71.

[8] "Cornage . . . must in all probability originally have been a payment of so much per horn, or per head for the beasts which the tenant kept and turned out on the common pasture:" Maitland, in English Historical Review, v. 627; see also his Domesday Book and Beyond, 147.

[9] Liber Rubeus de Scaccario, ii. Preface, 245 ff.

palatinate, and seem to refer to certain ancient forms of tenure already considered obsolete in the twelfth century.[1]

We pass now to those revenues which the Bishop derived from his position *in jurisdictione*. We have already dealt with this subject in considering the growth of the palatine judiciary, and have pointed out the intimate connection between jurisdiction and revenue in early times.[2] During the vacancy of the see in 1130 the sum of two pounds was paid by the archdeacon of Durham for a plea of his men, and small sums were also paid by Clibert and Gamel the clerk for the duel of their men, by Hugh the man of Walter for the plea of his sister, and by the burgesses of Durham for the plea of Eustace Fitz-John, the whole reaching a total of fourteen pounds.[3] In 1197 the pleas and perquisites of the county, together with the sale of the chattels of a felon, of a Jew, and of several fugitives, produced in all £163 19*s.* 1*d.*[4] For the years between 1208 and 1211 the pleas and perquisites produced £1671 15*s.* 3*d.*, and there is also a payment of one hundred marks for the court of Durham, and another of ten marks made by one man for the plea of another.[5] In the following year the sum of £313 17*s.* 3*d.* is accounted for under the head of fines, pleas, and perquisites.[6] The care with which the profits arising from the jurisdiction of the Bishop over the prior's men were distributed between the Bishop and the prior in 1229 shows how important an item this was in the episcopal revenue.[7] In 1307, when the temporalities had been but recently returned to the Bishop, there were no profits from the sessions of the justices or from the sale of writs; [8] but the two tourns of the sheriff

[1] On the smalmen see Pipe Roll 31 Hen. I, in Boldon Book, App. ii; Ibid., 5, and App. lxiii; Ashley, Economic History, i. 23; Ducange, Glossarium, *s. v.* "Smalman." On the thegns and drengs see Feodarium, 98, 121, 157; Boldon Book, 16, 17, 19, 20, 26, 36, 37; Maitland, Northumbrian Tenures, in English Historical Review, v. 625–632; Maitland, Domesday Book and Beyond, 307–309; Pollock and Maitland, i. 258, 315.

[2] Above, §§ 16–17.

[3] Pipe Roll 31 Hen. I, in Boldon Book, App. i–iii.

[4] Pipe Roll 8 Ric. I, Ibid., iii–xiii.

[5] Pipe Roll 13 John, Ibid., xiii–xx.

[6] Pipe Roll 14 John, Ibid., xx–xxiv.

[7] Le Convenit, in Feodarium, 212–217; above, p. 169.

[8] Receipt roll of 1307, Boldon Book, App. xxxi.

produced £231 9*s.*, and the returns of the county court of Sadberg must be imbedded in the farm of the wapentake, which amounted to £39 15*s.* 11*d.*

In this class of revenues should also be included a forfeiture of nine pounds made before the king's marshal in the Bishop's court.[1] In 1336 the profits of jurisdiction accounted for by the sheriff amounted to £37 10*s.* 11*d.*, and included the amercements of the county, fines for suit of court, the sale of the chattels of felons and deodands, the profits of the court of marshalsea, and the assize of false measure.[2] The profits of the central courts did not always pass through the sheriff's hands. In 1410 the sheriff accounted for £27 6*s.* 2*d.*, which included, besides the items noted in the earlier account, the fines and amercements incurred before the justices of the peace and those commissioned to execute the statute of laborers; but "the estreats of the justices of gaol-delivery and oyer and terminer were paid into chancery, and the chancellor is responsible for them."[3] Very little revenue was taken from the courts in the outlying district of Norhamshire, for the sessions of the justices there appear frequently to have been omitted.[4] In 1535 the profits of jurisdiction in Durham amounted only to 55*s.* 10*d.*; all the usual sources are noted, but under the majority of them are the words "nichil hoc anno."[5] After 1537, as we have seen, the legal business of the bishopric was to a great extent taken over by the Council of the North.[6] The sale of writs, pardons, exemptions from jury duty, and mortmain licences, all of which fall under the head of judicial revenue, must considerably have increased the Bishop's income; there are no means, however, of de-

[1] Receipt roll of 1307, Boldon Book, App. xxv–xxxiv.

[2] Auditor 1, No. 1.

[3] Auditor 1, No. 2. The closeness with which this source of revenue was watched appears from the circumstance that against the entry, under the head of marshalsea, where the sheriff has noted "nothing because there was none held this year," the auditors have written, "let it be held next year on pain of forfeiture of his salary."

[4] Norham sheriffs' accounts, A. D. 1423, 1452, Auditor 1, No. 3; Ecclesiastical Commissioners, ministers' accounts, 189696.

[5] Sheriff's account, A. D. 1535, Auditor 1, No. 40.

[6] See above, § 35.

termining even approximately the annual returns from these sources.[1]

It is now time to form some idea of the amount of the Bishop's revenue. The total sum accounted for in 1130 is £1452 12*s.* 5*d.*,[2] but as Ranulf Flambard had died in September, 1128,[3] this account is for a period of two years. An examination of the account shows that a certain amount of restocking and general improvement had taken place, and that the farms of the bishopric and the episcopal manors had appreciated in the second year. Therefore, by averaging the farm of the bishopric in each year with the constant payments, such as cornage, and adding one half the sum of the incidental payments, which cannot be accurately assigned to either year, we obtain as the approximate revenue for the first year £633 18*s.* 1*d.*, and for the second year £809 10*s.* 2*d.*

During the next vacancy, which occurred in 1197, the gross revenue of the bishopric while it was in the king's hand amounted to £5058 16*s.* ½*d.* This sum for less than one year is undoubtedly abnormal, but its size may be partly accounted for by the fact that Bishop Pudsey, who at the time of his death was in the king's debt for the district of Sadberg, which he had purchased, had left directions that his obligation should be discharged. For this purpose a considerable sum — £438 6*d.* — was raised from the Bishop's feudal tenants, and a tallage was taken from the manors and boroughs of the bishopric.[4] The gross revenue from 1208 until 1211 was £16,787 14*s.* 10½*d.*,[5] which gives an average annual return of £5595 18*s.* 3¼*d.*; but this is probably larger than the Bishop's regular income, because of the consid-

[1] See above, pp. 68–74. A roll for the first year of Bishop Langley, 1406, contains a tariff of writs; novel disseisin cost 20*d.*, covenant 2*s.*, trespass from 20*d.* to 3*s.*, *cui in vita* 20*d.*, etc. Rot. B. Langley, ann. 1, m. 1, curs. 35. These figures of course do not permit us to form any notion of the ratio of comparison between this and other sources of revenue.

[2] Pipe Roll 31 Hen. I, in Boldon Book, App. i–iii.

[3] Stubbs, Registrum Sacrum Anglicanum (1897), 41.

[4] Pipe Roll 8 Ric. I, in Boldon Book, App. iii–xiii. On the Bishop's debt see Coldingham, cap. x, in Scriptores Tres, 15: "Jussit praeterea Regi ii mille marcas, quas pro Sathbergia et aliis dignitatibus promiserat, solui."

[5] Pipe Roll 13 John, in Boldon Book, App. xvi.

erable sums taken at this period in the form of fines for one privilege or another.[1] The returns for the following year were £2650 10*s.* 6½*d.*,[2] and this appears to have been the normal revenue.

In 1307 the gross receipts had risen again to £5695 ¾*d.*,[3] but Bishop Bek's great demands and increased resources will account for this change. No doubt much pressure was exerted by this magnificent prelate, who is said to have been called at Rome *pecuniae inimicus*;[4] besides, in this year the outlying districts of the palatinate, including the Isle of Man, which the Bishop held for the term of his life, contributed the handsome sum of £1293 5*s.* ¼*d.* In the taxation of Pope Nicholas the Bishop's temporalities were valued at £2666 13*s.* 4*d.*,[5] and these figures no doubt represent the normal revenue of the medieval Bishops. It was indeed a very considerable sum, exceeding the income of any other English prelate except the bishop of Winchester, whose temporalities amounted to £2977 15*s.* 10*d.*,[6] and comparing favorably with the regular royal receipts, which in 1300 were £58,155 16*s.* 2*d.*[7] The issues of the temporalities during the vacancy after Bishop Bek's death, a period of a little less than three months, amounted to £1536 8*s.* 9½*d.*[8]

In 1461 the gross receipts of the bishopric for one year were £1918 5*s.* 5¾*d.*[9] But at this period and earlier the Bishops must have contrived to accumulate a considerable amount of treasure, for in 1385 Bishop Fordham pardoned John Clerc, who had in 1369 stolen £2500 from Bishop Hatfield's treasure in the Castle

[1] Pipe Roll 13 John, in Boldon Book, App. xvi.

[2] Pipe Roll 14 John, Ibid., xx.

[3] Receipt roll of 1307, Boldon Book, App. xxv–xxxiv.

[4] "Cum semel equitaret versus curiam in civitate Romana, comes quidam de partibus illis, transiturus ex adverso et per familiam ejus, diutius admiratus familiae magnitudinem, quaesivit ab uno civium, 'Quis est iste qui hic transit?' Et respondit civis, 'Pecuniae inimicus:'" Graystanes, cap. xxv, in Scriptores Tres, 80.

[5] Taxatio Ecclesiastica, 314–318.

[6] For comparative revenues, see the summary of ecclesiastical taxation in Stubbs, ii. 600.

[7] Ibid., 596.

[8] Registrum, iv. 89–92.

[9] Receiver-general's account, A. D. 1461, Ecclesiastical Commissioners, ministers' accounts, 189816.

of Durham.[1] If the loss of this sum, equivalent to a year's income, had occasioned any outcry or serious inconvenience, the circumstance would assuredly have appeared either in the Durham historian or, in some form or other, on Bishop Hatfield's rolls; but both these sources are silent, and we can only conclude that the loss was not seriously felt. In 1535 the Bishop's income shows a slight shrinkage, being stated in that year as £2398 7*s.* 10*d.*; but as the estimate was made for purposes the least threatening of which was taxation, we can not be surprised that the statement was set as low as possible.[2] Financially the palatinate fared well at the hands of Henry VIII. It remained for his daughter Elizabeth to strip it of some of its richest possessions and seriously to reduce its income.[3] In 1831, however, Durham was still one of the richest sees in England, showing an average gross yearly income of £21,991, with an average net income of £19,066. At this time the average gross income of the see of Canterbury was £22,216, of York £13,798, of Winchester £12,107, and of London £15,133.[4]

§ 38. Financial Relations of the Palatinate and the Central Government.

We pass now to a consideration of the financial relations of the palatinate and the royal government. The principle that

[1] Rot. Fordham, ann. 3, m. 6, curs. 32.

[2] Valor Ecclesiasticus, v. 299 ff. The return was made by virtue of a commission directed to the Bishop himself and several local magnates, including William Frankleyne, archdeacon of Durham and chancellor of the palatinate.

[3] The queen, by act of parliament, confiscated more than a quarter of the palatinate. These "suppress" lands were eventually returned to the Bishop against an annual rent charge of £1020, but the great forfeiture of the earl of Westmoreland after the Rising in the North, which should by right have gone to the Bishop, was retained by the queen. The rent charge was somewhat reduced in 1604, by Bishop Matthew's surrender to the king of the outlying districts of Norhamshire and Islandshire. See Hutchinson, Durham, i. 455, 476, where a long and interesting letter from Bishop Pilkington to Cecil is printed; and see the account of Pilkington's case, above, pp. 48–50.

[4] Report of the Ecclesiastical Revenue Commissioners, in Parl. Papers, 3185, vol. xxii.

the king had no authority to tax the bishopric was observed from a very early period until the middle of the fifteenth century. The close connection between jurisdiction and revenue in the early history of England enables us, for the dark centuries before the Norman Conquest, to fall back on the line of reasoning which we followed in tracing the history of the palatine judiciary. We reached the conclusion that, from the elevation of S. Cuthbert to the see of Lindisfarne in 685 until the Norman Conquest, the successive Bishops of the diocese which was eventually to have Durham for its cathedral city were in possession of considerable and rapidly increasing estates. We also saw that these lands were granted to them with extensive immunities, and that they maintained a seignorial court, a circumstance which implied exemption from interference on the part of the king's officers.[1] Their lands, therefore, must have been free from taxation until the institution of Danegeld in 991.[2]

It has been doubted whether this tax was paid at all by the remote northern counties,[3] and there is no evidence that it was collected in the patrimony of S. Cuthbert. Immunity from Danegeld, moreover, was not unknown before the Conquest. There are striking examples of such exemption in Cornwall and Suffolk, where two churches taxed their tenants and yet paid no geld to the king.[4] Again, when under the Conqueror Danegeld became a regular tax, the sum payable by each county was determined by the Domesday survey;[5] and Durham was omitted from the survey, though not, as we have ventured to suggest, because of its inability to pay.[6] Furthermore, although the bishopric by reason of its vacancy was included in the earliest surviving pipe roll, it did not then pay Danegeld, nor yet when it appears again in the pipe roll of 1197 is there any account of

[1] Above, § 16. See also Maitland, Domesday Book and Beyond, 258–292.

[2] Maitland, Domesday Book and Beyond, 323; Stubbs, i. 118, 148.

[3] Maitland, Domesday Book and Beyond, 446.

[4] Domesday Book, i. 121, ii. 372, iv. 187, quoted in Maitland, Domesday Book and Beyond, 55.

[5] Stubbs, i. 431.

[6] Above, pp. 25–27.

carucage.[1] Symeon has a tale that Ranulf, a tax-gatherer, was sent by the Conqueror to force the people of the saint to contribute to the national revenue (*qui ipsius sancti populum regi tributum solvere compelleret*); but, S. Cuthbert, in his anger at such an infringement of his liberties, horribly visited Ranulf, who was glad to escape alive from the bishopric.[2] When due allowance has been made for the miraculous element in this tale, for the probable date of its composition (1104, about a generation later than the events described), and for the natural bias of the writer (a monk in a convent the endowment of which was derived from the Bishop), it is still of value; for it shows the local notion of the Bishop's privilege in the matter of taxation, and, in connection with the other facts that have come before us, goes far toward the support of our hypothesis.

It will be remembered that Henry II granted to the Bishop of Durham all liberties, free customs, and privileges enjoyed by his predecessors in the time of Henry I[3] and William II,[4] and in another charter, which seems to be a definition of this one, granted that all the lands and men of S. Cuthbert and of the monks of Durham should be free from shires and hundreds, trithings and wapentakes, and aids of sheriffs and reeves.[5] The same king issued a charter of indemnity against the mission of his justices to execute the Assize of Clarendon, stating that this action was not to be taken as a precedent because he wished that the lands of S. Cuthbert should have and enjoy all their old liberties and privileges.[6] It follows that the exclusion of the king's justices was one of these privileges, and it is known that the earlier circuits of this sort were made for financial not less than for judicial purposes.[7]

In Henry II's reign we meet with a new difficulty, in the

[1] Boldon Book, App. i–xiii. Although the sheriff compounded for Danegeld, it was accounted for by that name, and could not therefore, in the case of Durham, have been included in the farm of the county. See Madox, Exchequer, i. 685.

[2] Symeon, i. 107–108; cf. Metrical Life of S. Cuthbert (Surtees Soc.), lines 6235–6295.

[3] Scriptores Tres, App. No. xxxv. [4] Ibid., No. xxxiv.

[5] Ibid., No. xxxiii. [6] Ibid., No. xxxi. [7] Stubbs, i. 655–656.

shape of the first tax on movables, the Saladin tithe. The question whether this might be levied in the bishopric was not tested. Pudsey took the cross, thus exonerating himself from the impost,[1] and, having raised large sums of money from his subjects, made elaborate preparations for the expedition.[2] Afterward he obtained from the pope absolution of his vow, and remained at home to share with the bishop of Ely the direction of the kingdom during Richard's absence,[3] though, as the event proved, he would have done better to have gone to the Holy Land.[4] During the vacancy which followed on the death of Bishop Philip of Poitou in 1208 the king appears to have raised money in the bishopric, although this step was regarded as an infringement of local privilege.[5]

The theory that contributions in England could only be raised by consent of the kingdom introduces a new factor into our problem. During the thirteenth century, before the complete organization of the parliament, it was always possible to deal separately with the *communitas* of each county. This was done in Yorkshire in 1220,[6] and a similar method was probably followed when in 1225 the people of the bishopric granted to the king a tax on movables.[7] We have already seen how this principle continued to be applied to the bishopric during the fourteenth and part of the fifteenth century, and how, while the theory was maintained, the practice gave way before the growing necessities of the kingdom and the increased centralization of government.[8] At this point, however, a brief recapitulation

[1] See the Ordinance of the Saladin Tithe, § 3, in Stubbs, Select Charters, 160.

[2] Episcopus vero cruce suscepta . . . non modicam a suis pecuniam extorsit," etc.: Coldingham, cap. viii, in Scriptores Tres, 13.

[3] Ibid., 14; and see the pope's dispensation, Ibid., App. No. xliv.

[4] Benedictus Abbas, ii. 106, 109, 110.

[5] "Homines quoque monachorum Dunhelmiae [qui] hic hactenus in quodam sinu patris latuerant, ad communes tallias et vexationes et onera compellebantur; nec eos beati Patris Cuthberti tuebatur reverentia; nec aliquod hiis remedium consuetudo antiqua neque ecclesiae conferre poterant privilegia:" Coldingham, cap. xix, in Scriptores Tres, 27.

[6] Stubbs, ii. 234.

[7] Rot. Lit. Claus., 9 Hen. III, ii. 75 b; above, p. 116.

[8] Above, § 12.

is needed. In 1374 the king, having raised a subsidy throughout the parishes of England including those of Durham, issued his letters patent to the men of Durham reciting that since they had allowed the collection of this tax by their own good will and mere motion, it was to be regarded as a favor and not drawn into a precedent.[1] The bishopric was excluded by name from the incidence of Richard II's disastrous poll-tax of 1380, and, although parliament petitioned against this favor, the request was not granted.[2] In 1437 Bishop Langley obtained royal letters of indemnity against a tax which had been raised in the palatinate. The enrolment of this document on the Bishop's chancery roll in 1449, together with the text of an act passed in that year for the collection of a subsidy throughout the kingdom without regard to immunities or exemptions, marks with a kind of silent protest the abandonment of the principle that the palatinate might not be taxed without its consent.[3]

So much for the theory; we turn now to the practice. In 1338 the king requested Bishop Bury to collect a representative assembly of his subjects and cause them to grant him one half of the wools of the palatinate, which were to be gathered by persons appointed for that purpose by the Bishop.[4] In 1374, as we have seen, the king levied a subsidy in the palatinate without leave or licence, but afterward issued letters of indemnity.[5] In 1437 the king, by threatening a tax and promising indemnity, was able through skilful flattery to raise from the men of the

[1] Rot. Parl., ii. App. 135, 461; Scriptores Tres, App. No. cxxv.

[2] Calendar of Patent Rolls, 1377–1381, p. 628.

[3] Rot. iii. Nevill, ann. 28 Hen. VI, m. 12, curs. 44. That the principle was not abandoned in the palatinate without a struggle is hinted in a document compiled between 1416 and 1446 by the prior of Durham, John Wessington. This work, entitled "Rotulus in quo recitantur compilationes factae per Johannem Wessyngton priorem pro defensione ecclesiae Dunolmensis," consists of a number of heads of arguments, most of which were based on historical investigation. The one bearing on the question in hand is as follows: "Item, quod homines episcopatus Dunolmensis liberi forent a solucione subsidii domino regi virtute libertatis suae" (Registrum, iv. 483–486; Scriptores Tres, App. No. ccxxviii).

[4] Registrum, iv. 225–231.

[5] Rot. Parl., ii. App. 135, 461; Scriptores Tres, App. No. cxxv.

bishopric rather more than their share of a subsidy that was being collected throughout the kingdom.[1] In 1449 the bishopric was included in the incidence of a general tax without any question of indemnity.[2] In 1488 the people of Durham refused to pay a tax of a tenth on movables, and the king's effort to coerce them produced a rebellion, though this was probably due as much to their loyalty to Richard III and their dislike of the earl of Northumberland, through whom the king had tried to exert his authority as to any sense of irritation at an infringement of their privileges.[3]

During the whole of the Tudor period the counties of Durham, Northumberland, Cumberland, and Westmoreland were exempted from taxation on the supposition that they were liable to be ravaged by the Scots.[4] In the seventeenth century, however, the county of Durham, although without parliamentary representation until 1673, bore its share of the financial burdens of the kingdom. It was assessed like the other counties for ship-money,[5] and in 1636 paid £2000 toward that ill-timed tax.[6] Indeed, the admission of the king's right to tax the county is

[1] Rot. iii. Nevill, ann. 15 Hen. VI, m. 12, curs. 44; see above, p. 117.

[2] Above, p. 118.

[3] The tax was granted for the war in France, "which monie the most part of them that dwelled in the bishoprike of Durham, and in the parties of Yorkeshire refused utterlie to paie; either for that they thought themselues ouercharged with the same; or were procured to show themselues disobedient, thorough the euill counsell of some seditious persons, which conspired against the king, to put him to new trouble." When the king, through the earl of Northumberland, declined to remit or abate the tax, "the rude and beastlie people hearing of this answer from the king, by and by with great violence set upon the earle . . . like unreasonable villaines, alledging all the fault to be in him, as chiefe author of the tax, furiouslie and cruellie murthered both him and diuerse of his household seruants. Diuerse affirme that the Northerne men bare against this earle continuall grudge euer since the death of king Richard, whom they entirelie favoured;" (Holinshed, Chronicles, iii. 769).

[4] Dowell, History of Taxation, i. 180, 195.

[5] Calendar of State Papers, Domestic, 1635–1636, p. 345.

[6] Ibid., 528. The payment of this tax was taken so much as a matter of course that, although in 1636 the people of Durham petitioned for a slight readjustment of the assessment, there is no hint of any protest against the tax itself. See Ibid., 330.

implied in the Bishop's petition against an order of the court of exchequer requiring the sheriffs of Durham to account there. The Bishop submitted that this demand was an infringement of the ancient rights of his county palatine, but he protested only against the fact that his sheriffs were required to go to the royal exchequer to account, and was apparently satisfied with an arrangement by which they should account to the king's auditor at Durham for such things as concerned the king.[1] The representation of the county in parliament put an end to any possible question of immunity from taxation.[2]

The question of ecclesiastical taxation presents few difficulties. The diocese of Durham embraced Northumberland as well as the palatinate, and the clergy of these counties, represented in convocation of the province of York, taxed themselves at the king's request, like those of any other English diocese. Durham was included in the assessment of the tenth granted by the pope to Edward I, and under the taxation of Pope Nicholas was valued at £10,917 4*s.* 9¼*d.*[3] The clergy made many grants to the king, and there is frequent reference to the collection of tenths, moieties, and subsidies in the diocese of Durham.[4]

[1] This petition was referred to a committee including Laud, Coke, and Windebanke, which rendered the decision noted above (Calendar of State Papers, Domestic, 1635, p. 487). Owing to the collapse of the palatinate during the rebellion and the protectorate, the sheriffs of Durham accounted at Westminster like those of any other county, but at the restoration they were released from this obligation. This release, a lengthy document, is preserved among the Durham records, Auditor 3, No. 130, and is also on the King's Remembrancer's Roll, 14 Car. II, Trin.

[2] See Surtees, Durham, i. App. No. ii; and Bean, Parliamentary Representation, 97.

[3] Taxatio Ecclesiastica, 314–318; and see Registrum, iii. 88 ff.

[4] Registrum, i. 187, 479, 611, 636–637, 641; Ibid., ii. 940–943, iv. 205–207.

CHAPTER VIII.

MILITARY AND NAVAL ARRANGEMENTS IN THE PALATINATE.

§ 39. Military Relations with the Central Government.

We must distinguish at the outset between the capacities of the Bishop as feudal tenant of the king, and as ruler of a province with local independence. In his feudal character he was obliged to render the military service incumbent on his fief, and this, as has been seen, consisted in the twelfth century of the service of ten knights.[1] But this contribution did not even approximately represent the Bishop's place in the feudal-military scheme of the kingdom; some notion of his consequence may be obtained from the importance attached by the king to the Bishop's support in the troubles of 1173–1174,[2] and, earlier still, from the determination of William Rufus to treat the Bishop as a feudatory and to secure possession of Durham Castle in the trial in 1088.[3] The Bishop's feudal services continued to be required even after the revival of the old system of national defence in England. Thus in 1313 the Bishop was notified to appear at Berwick on a certain day with the arms, horses, and soldiers which he owed the king, and for neglect of the summons he incurred a fine.[4] In his feudal relations, therefore, the Bishop of Durham did not differ from any other great lord in the kingdom.

Turning now from feudalism to the more ancient system of national defence, let us try to discover whether the obligation of the fyrd lay upon the men of S. Cuthbert during the Anglo-Saxon period. The question can be only answered conjecturally, though

[1] Liber Rubeus de Scaccario, i. 410–418.

[2] See above, p. 37. [3] Symeon, i. 171; Stubbs, i. 476.

[4] Registrum, ii. 986, 1010–1011. See a similar summons in Foedera, ii. pt. i. 583.

indeed it does not become important until, in the Angevin times, the Bishops found it necessary to define and assert their privileges in the face of the rapidly developing central government. Before the Norman Conquest probably not even the greatest of immunists could evade the obligation of the *trinoda necessitas*,[1] and there is no reason to suppose that the patrimony of S. Cuthbert offered an exception to this rule. This view is confirmed by the fact that the army which met and defeated the Scots at the battle of the Standard was recruited in Durham; and this army was furnished by the ancient fyrd system.[2]

After this there is a great gap in our information. The troubles of 1173–1174 no doubt gave occasion for national defence, but Bishop Pudsey was disloyal and took part with the rebels.[3] The Assize of Arms may have been applied in the palatinate, though the probabilities point both ways. On the one hand is the fact that, when the king wished to execute the Assize of Clarendon in Durham, he issued a charter of indemnity to the Bishop against this infringement of his liberties; and, on the other hand, in the succeeding century the military provisions of the statute of Winchester were applied to the bishopric without question. For the greater part of the thirteenth century the question lies in complete darkness; it is not known whether the men of Durham were called out by John's treacherous summons in 1205, though if they had gone it seems probable that the local historian would have mentioned an affair which in the rest of the kingdom was regarded as so great a scandal and grievance.[4]

[1] Maitland, Domesday Book and Beyond, 272–274.

[2] Stubbs, i. 350, 469–470. The fact that the army was recruited in Durham is not directly mentioned, but it is stated that archbishop Turstan directed that troops should be enlisted by the priest of every parish throughout his diocese; and the primary ecclesiastical significance of the word "diocese" is "metropolitan province." Furthermore, Robert Bruce and Bernard Balliol, two of the greatest barons of the bishopric, were among the leaders in the movement for national defence. See Richard of Hexham, in The Priory of Hexham (Surtees Soc.), i. 85–95; Ailred of Rievaulx, in Twysden, Scriptores Decem, 338–345; Ducange, Glossarium, *s. v.* "Diocesis."

[3] Coldingham, cap. vi, in Scriptores Tres, 10; Jordan Fantosme, Chronicle, lines 1603–1605.

[4] Stubbs, i. 587.

Toward the end of the century the old fyrd obligation reappears in the shape of a theory that the Bishops of Durham had a special duty in the defence of the borders. It used to be said that for this purpose the Conqueror erected the palatinate, and that the Bishop enjoyed his privileges in order that he might have greater freedom in the exercise of his duties on the border.[1] This theory is not clearly expressed, however, until the reign of Edward II, when it probably had its origin in the dislocated condition of the borders which followed on the extinction of the direct line of Scotland. Bishop Bek indeed, who loved war for its own sake,[2] gave to the king far more than the service required of him by his feudal relation. In 1298 he carried through the siege of the castle of Dirlton in Scotland,[3] and seems at that time to have had the whole conduct of the war on behalf of the king.[4] Unable himself to join in the campaign of 1300, he sent one hundred men at arms to aid the king,[5] and by his zeal in this matter, as has been seen, incurred the enmity of his subjects, whom he had twice led to Scotland despite their protests.[6] But that all this was much more than the king could command by right of his feudal relation to the Bishop appears from the terms of the king's request for the Bishop's aid against the Scots, who in 1303 had invaded Cumberland: the king asks that Bek shall send a certain contingent of men at arms, but he does not command him to do so; "affectuose rogamus" are the words.[7] Again in 1309, when precepts were issued to the sheriffs of England to muster a certain number of men from each county, the king requested the Bishop to send him three hundred men from the liberty of

[1] See above, § 3.

[2] Graystanes, cap. xviii, in Scriptores Tres, 64; and cf. Walter of Hemingburgh (ii. 215), who says of him, "non timens hominem neque regem."

[3] Walter of Hemingburgh, ii. 174–175.

[4] Rishanger, Chronica, 186.

[5] Roll of Caerlaverock (ed. Wright), 22–23. It is here said of him:—

> "En toutes les guerres le roi
> Avoit esté de noble aroi,
> A grant gens e à grans coustages."

[6] Graystaynes, cap. xxiii, in Scriptores Tres, 76; and see above, p. 128 ff.

[7] Foedera, i. pt. ii. 957.

Durham ;[1] and in order to help the Bishop to bear the unwonted expense of so great contributions, the king made over to him that part of the tenth granted to himself by the clergy in 1296 which fell upon the diocese of Durham.[2]

During the troubled reign of Edward II the Scots were particularly aggressive, and, as has been noticed in another connection, were dealt with somewhat independently by the people of the bishopric. But the practice of asking help from the Bishop continued. In 1311 the king asked that his commissioners might levy one foot-soldier from every vill in the palatinate, to serve for seven weeks at the expense of the vill; and at the same time he issued letters of indemnity reciting that this permission had been given at his urgent request and by the pure good will and free assent of the Bishop.[3] In March, 1314, the king asked for one thousand men equipped with bows, arrows, and other proper arms, to be raised in the palatinate by the process of "election" in every vill, under the supervision of the Bishop's officers; and the wording of the writ implied that he considered himself entitled to the contribution.[4] As the men were not immediately forthcoming, in May a second writ was issued, in which the contribution is put in the light of a favor rather than of a right upon which the king might insist.[5]

In 1315 a new element appeared which was destined to become predominant in the military arrangements of the palatinate. This was the device of sending a detachment of the royal army to Durham with a precept to the Bishop to allow its commanders

[1] "Et rogaverimus venerabilem patrem A[ntonium]," etc.: Foedera, ii. pt. i. 83.

[2] This fact appears in the return made to the king's writ issued in 1315 to inquire with regard to the collection of the tenth granted to his father. See Registrum, ii. 1048–1050.

[3] Registrum, i. 16–17.

[4] Ibid., ii. 989–990.

[5] Ibid., 1003–1004. The Bishop did what he could for the defence of the border, but he did not neglect to make his profit out of these efforts. Thus when, the next year, in the course of a suit in the palatine courts a vexatious royal writ was brought by one of the parties, the Bishop returned that he was so occupied with the defence of the border and with the safety of his own and the king's people that he had been unable to make any execution of the writ (Ibid., 1071).

to raise men in the franchise. The levy was to be made by the help of persons appointed by the Bishop. Following close on the terrible Scottish invasion, after which the people of the palatinate had so ingloriously bought an armistice, this document contained a strict prohibition against private truces,[1] — a somewhat cavalier treatment of the Bishop's privilege, occasioned no doubt by his incapacity or by his misfortune in repelling the Scottish inroads. In 1322 the Bishop, having obeyed a royal summons to follow the king to Scotland with all the able-bodied men of his liberty between the ages of sixteen and sixty, obtained letters of indemnity against the establishment of any precedent by this step.[2]

In the mean time the theory had taken shape that the Bishop of Durham enjoyed his franchise at the service of defending the borders. The king wrote to the pope in 1311, asking that on this ground the Bishop be excused from attendance at a general council;[3] and the Bishop's own letter states the matter very clearly.[4] Again in 1313 the Bishop was excused from attending parliament on the same plea.[5] The point is also well brought out in the correspondence relative to the election of Bishop Louis de Beaumont in 1318. The king, at the urgent intercession of the queen, asked the pope to provide Beaumont to the see of Durham, representing that he would be a brazen wall against the Scots.[6] In 1323 the king wrote to Beaumont, directing him to return immediately to his diocese, raise men, and attend to the

[1] Registrum, ii. 1100–1101. The document is also printed in Ibid., iv. 127–128; Foedera, ii. pt. i. 280.

[2] Foedera, ii. pt. i. 491.

[3] Registrum, i. 73–75.

[4] "Sed vestrae sanctitati, non sine gravi doloris amaritudine, significo quod praedictam diocesim Dunelmensem, quae est in Marchiis Angliae et Scotiae constituta (ad cujus defensionem et tuitionem, tam in temporalibus quam in spiritualibus, occasione terrarum, reddituum et libertatum praefatae ecclesiae Dunelmensis, et episcopis ejusdem qui pro tempore fuerint, largitione regum Angliae et aliorum Christi fidelium concessarum, ac suscepti regiminis specialiter sum astrictus) diri temporis adversitas, proh dolor! jam constringit." (Ibid., 92–95.)

[5] Ibid., 384.

[6] Foedera, ii. pt. i. 312, 325; Graystanes, cap. xxxvii, in Scriptores Tres, 98; cf. also Registrum, iv. 393–396.

defence of the border, and reminding him with some asperity that before his election he had assured the king that, if only some person of noble birth like himself were made Bishop of Durham, he would stand as a very wall of stone against the Scots.[1] The natural consequence of this theory was to give the king an increased hold over the military affairs of the palatinate, for, if it was the bishop's duty to defend the border, it was the king's business to see that that duty was discharged. To this source may be traced the growing practice of requiring large contributions of men and arms from the Bishop, who was afterward indemnified against the consequences of his generosity by letters patent. This was done in 1333 and again in 1335.[2]

Another means of raising troops was to require a given number of men of the Bishop and allow him to procure them by commissions of array.[3] This was probably the most regular but not the most convenient method; accordingly it gave way before the plan of notifying the Bishop that he should be obedient in all things to this or that nobleman, who, having received the conduct of the war, thus became the representative of the king. This method, as has been seen, was used under special circumstances in 1315. Again, in 1341, the Bishop was required to arm and array all the fencible men of his liberty, and to send them to Edward Balliol, who had the conduct of the war.[4] In 1369, when the sheriffs of England were directed to array all fencible men of the proper age in their counties in anticipation of an expected invasion, the Bishop of Durham was directed to do the same in his province.[5] In 1399, on the plea of an expected invasion of the French, the king directed the Bishop of Durham to array the clergy of his diocese; but this muster was managed by the Bishop's commissioners.[6]

[1] Foedera, ii. pt. i. 506.

[2] Calendar of Patent Rolls, 1330–1334, p. 460; Ibid., 1334–1338, p. 99; and cf. Parliamentary Writs, ii. 37, 46, 222, 585, 601.

[3] See Registrum, iv. 191, 198–199, 262, 269; Rot. Fordham, ann. 4, m. 4 dorse, curs. 32; Rot. A. Langley, ann. 3, m. 3 dorse, and ann. 9, m. 11 dorse, curs. 34. Commissions of this sort are of very common occurrence on the palatine chancery rolls.

[4] Foedera, ii. pt. ii. 1175.

[5] Ibid., iii. pt. ii. 863.

[6] Scriptores Tres, App. No. clxi. See the muster roll, Ibid., No. clxii.

In 1436 the pretence of regarding the Bishop's liberties is quite cast aside. The king writes that, since the Scots are preparing to besiege Berwick, the Bishop shall cause the royal order to be proclaimed in public places in his bishopric that all knights, esquires, and other fencible men are to hold themselves ready, equipped according to their degree, to go to the succor of the cities and castles of the marches, whenever and as often as they may be required by the earls of Northumberland and Westmoreland or by other persons commissioned by the king. This letter the Bishop transmitted to his sheriff, with directions to have it proclaimed in all public places in the franchise.[1] There is no longer, it will be noticed, any question of letters of indemnity. Under somewhat similar circumstances, in 1480, the Bishop made a futile effort to save his dignity. At this time the truce with Scotland had been broken, and the duke of Gloucester was appointed the king's representative to carry on the war. He was authorized to call out all the king's subjects in the marches of Scotland and the adjacent counties, of whatsoever state, degree, or condition they might be, and to require them to serve as long and as often as he chose to use them. Bishop Dudley in his commission recites this precept, and then, calling attention to the glorious victories of the duke of Gloucester and his constant support of the rights and royal liberties of the church of Durham, proceeds to authorize that most excellent prince to muster and array all the tenants, subjects, and officers of the palatinate.[2]

During the fifteenth century a new factor enters, though somewhat obscurely, into these affairs. This is the growing jurisdiction of that association of the wardens and councils of the marches which has been already noticed.[3] There is not much

[1] Rot. DD. Langley, ann. 31, m. 15, curs. 34.

[2] "Nos autem praefato excellenti principi, non solum propter ejus in armis obtentum honorem et victoriam, verum etiam propter ejus hactenus supportacionem jurium et libertatum regalium ecclesiae nostrae cathedralis Dunelmensis nobis habitam, damus et concedimus plenariam potestatem et auctoritatem ad omnes et singulos tenentes, officiarios, ministros, et subditos nostros infra episcopatum nostrum Dunelmensem, cujuscunque status, gradus aut condicionis fuerint, evocandi et levandi:" Rot. i. Dudley, ann. 4, m. 11, curs. 54.

[3] Above, § 35.

evidence on this point, but it looks as though in military affairs the privileges of the palatinate were never allowed to interfere with the complete freedom of action on the part of the authorities of the marches, and, further, that the Bishops always accepted this arrangement without question; undoubtedly, indeed, they were glad of any assistance in their arduous task of defending the borders, even though obtained at the cost of some infringement of their liberties. The king's commission in 1480 points to this view, for it gave to the duke of Gloucester authority over the marches and adjacent counties,[1] which for certain judicial purposes were reckoned with the marches.[2] Thus, again in 1497, when the Scots invaded England and sent an army to ravage the bishopric, Bishop Fox at once wrote to the earl of Surrey, the king's lieutenant in the north, asking for help; whereupon Surrey came to Durham and raised a large number of men in that county and in Yorkshire.[3] In 1499 the king wrote to the Bishop that the Scots were preparing to invade the marches, which he wished to have defended according to the ancient custom there used; accordingly all inhabitants of the bishopric between the ages of sixteen and sixty were commanded to array themselves and prepare to follow lord Nevill "and such other captains as by the right reverend father in God, the Bishop of Durham, and the said lord Nevill shall be assigned."[4]

In 1521 recourse was had to the device of a general levy in the palatinate, managed by the king's officers acting by virtue of the Bishop's commissions, which were issued at the king's direction.[5] This arrangement seems not to have been very successful, for the following year the Bishop issued a commission to inquire with regard to all persons who had been negligent in complying with the mandate, issued by the Bishop on the king's behalf, directing them to prepare to attend the king in the war

[1] Gloucester received full authority to summon "omnes et singulos ligeos et subditos nostros tam in merchiis nostris versus Scociam quam in comitatibus eisdem merchiis adjacentibus:" Rot. i. Dudley, ann. 4, m. 11, curs. 54.

[2] See 31 Hen. VI, cap. iii, Statutes, ii. 363.

[3] Holinshed, Chronicles, iii. 782–783.

[4] Rot. ii. Fox, ann. 15 Hen. VII, m. 3, curs. 61.

[5] Rot. i. Ruthall, ann. 13, m. 33, curs. 70.

against Scotland.[1] By this time, apparently, the military resources of the palatinate were for all practical purposes quite at the disposal of the king or his representatives.

The rest of the story is soon told. After the troubles of 1536 Tunstall, then Bishop of Durham, was made president of the newly organized Council of the North, and in due course became lord-lieutenant of the county. The latter office, however, was of less importance than may at first appear, owing to the fact that in military affairs the county was entirely subjected to the jurisdiction of the council. Indeed, from the establishment of the office until the close of the eighteenth century it was held only four times by the Bishop.[2] In the reign of Elizabeth the Bishop was responsible to the wardens of the marches for any assistance that they might require or that he might be able to give. Pilkington wrote to Cecil, complaining not of this obligation but of his inability to meet it by reason of the lands kept back from him by the queen. "The danger is great," he says; "the shire is smal. And yet if any of the wardens of the marches send for aid to the bishop, on the sudden, he must give them help."[3]

The question of any immunity from the general military responsibility of the realm does not appear; on the contrary, there is evidence enough that Durham was forced henceforth to bear its share of the burden along with the other counties. Thus in 1596 Bishop Matthew writes to Cecil that the people of the county "grieve because no county in the north is so charged with service as the small handful of the bishopric of Durham."[4] In the same year a body of light horsemen was raised in Yorkshire and Durham, to serve under the warden of the middle marches; their salaries were paid by warrant from the Council of the North.[5]

One final instance will illustrate the whole matter. In 1638 the king sent colonel Sir Thomas Morton into the north to execute the orders of the council for mustering the trained bands.

[1] Rot. i. Ruthall, ann. 14, m. 36, curs. 70.
[2] Surtees, Durham, i. p. cxlvii.
[3] Printed in Hutchinson, Durham, i. 455.
[4] Calendar of State Papers, Domestic, 1595–1597, pp. 183–184.
[5] Ibid., p. 160.

His "chiefest place of residence" was appointed at Durham, and the army was to be assembled and quartered there. The Bishop was directed to summon such of the deputy-lieutenants of the county as were colonels to meet Morton, and to appoint fitting days and places for the muster of the trained bands.[1] Here our interest in the matter ceases: whatever shadow of authority in military affairs the Bishop may have retained is no longer of any constitutional importance.

§ 40. Naval Arrangements.

In naval affairs the palatinate offers little or nothing of vital interest. This department is in close connection with that royal power of independent foreign relations which, as we have seen, the Bishops did not possess. Moreover, since the national defence depended in a high degree on the navy, it is not to be supposed that in this matter any consideration would be shown to individual interests or privileges. We shall find, then, in a somewhat brief review of our material, that in naval affairs the palatinate was practically subjected to royal control. One point, however, should be held in mind: the Bishop had but one important seaport, Hartlepool, and his rights there had been from the close of the thirteenth century subject to much dispute, although never theoretically denied.

In 1335 the king notified the Bishop that, in expectation of a foreign invasion, he had appointed in every county of the kingdom trustworthy persons to oversee the defence of the sea-coasts and ports, and to prepare in the latter all men and ships to resist the invasion. The Bishop was accordingly required to take like measures in the palatinate.[2] A similar command was issued in the following year, and, not being immediately complied with, was twice repeated with much insistence.[3] In 1345 the king ordered the impressment of all ships of a certain class that happened to be in commission in any part of England; and the Bishop, professing his desire to aid the king, directed that this

[1] Calendar of State Papers, Domestic, 1638–1639, pp. 179–180.
[2] Registrum, iv. 192–194. [3] Ibid., 197–198, 200–203.

order should be executed in the palatinate.[1] In 1360 a like measure was taken, but in a more peremptory fashion: the king ordered the Bishop to seize all the ships in his liberty, and to have them ready and drawn on shore prepared to meet an anticipated invasion of the French.[2]

In the reign of Edward III the admiral comes into importance, and the palatinate is soon subjected to the authority of that officer in all practical matters, although the Bishop retained in his own hands the jurisdiction of the admiralty.[3] Thus in 1402 the Bishop was notified that the king had appointed lord Richard de Grey to be admiral of the fleet from the Thames northward, and he was therefore required to be obedient to the same lord Richard in all things respecting his office within the liberty of Durham.[4] Again, in 1456 — to choose but one of a number of similar cases — the Bishop received orders to subject himself to the earl of Huntingdon, admiral of England, Ireland, and Aquitaine. Accordingly he transmitted this royal letter to the sheriffs of Durham and Sadberg, and Norham, with directions that it be publicly proclaimed and that due regard be given to its contents.[5] This method was quite justifiable; the Bishops would not have had even a theoretic ground for resisting it.

[1] Registrum, iv. 361–363. [2] Foedera, iii. pt. i. 471–472.

[3] See below, App. ii. It does not appear that the palatinate was directly subjected to the authority of the earl of Suffolk, who was admiral in 1344, when the impressment of ships alluded to above occurred. The Bishop's commission recites that the king had appointed Suffolk "admirallus flotae navium ab ore Thamisis versus partes boriales ad faciendum omnia et singula quae ad officium admiralli pertinent infra certos portus boriales." His jurisdiction therefore was restricted to specified ports, and the fact that the Bishop is issuing his commission for Hartlepool implies that that port was not so specified. See Registrum, iv. 361–363.

[4] Rot. Skirlaw, ann. 14, m. 26, curs. 33.

[5] Rot. v. Nevill, ann. 8, m. 21, curs. 46.

APPENDIX I.

GEOFFREY FITZ GEOFFREY'S CASE.

"GAUFRIDUS filius Gaufridi quaeritur quod Willelmus de Latton eum traxavit et implacitavit in curia episcopi Dunelmensis injuste de terra de Borderum per breve ejusdem episcopi et per aliud breve episcopi de terra de Silkesworth; et idcirco injuste quia nullus liber homo consuevit implacitari de libero tenemento suo in curia illa tempore regis Henrici patris per aliud breve quam breve regis vel ejus capitalis justiciarii: et cum hoc idcirco dixisset idem G[aufridus] in curia illa non potuit ei allocari, ut dicit, unde cum hoc vidisset venit in curia et petiit visum et tandem in tantum processit loquela quod posuit se in magnam assisam et petiit breve regis de pace ne episcopus teneret loquelam illam in curia sua quia idem Gaufridus posuerit se inde in magnam assisam. Et cum ipse breve illud ottulisset, Jordanus filius Scocland [1] unus de curia dixit quod non omitteret propter breve regis quin procederet in loquela illa. Et nisi aliud diceret . . . haberetur unde judicium suum ita quod coegeret ipsum G[aufridum] vadiare duellum inde; et hoc offert Marmoduc de Tweng, qui praesens tunc fuit, probare per corpus suum versus eundem Jordanum si ipse hoc defendere vellet per corpus suum vel per corpus alicujus de hominibus ipsius Marmaduc, si per alium quam per corpus suum hoc vellet defendere. Et Jordanus defendit injuriam et contemptum brevis domini regis. Et super hoc Gaufridus de Ancle attornatus episcopi pro episcopo et curia sua defendit injuriam et defenderet ubi et quantum et qualiter debebit salva dignitate curiae episcopi, et profert cartam [2] domini regis Johannis in qua continetur quod dominus rex confirmavit episcopo Philippo [3] omnes libertates, dignitates et possessiones quas Hugo [4] praedecessor suus habuit et tenuit et quibus usus fuit anno quo obiit. Et dicit quod hac libertate usus fuit idem Hugo episcopus anno quo

[1] This man was a baron of the palatinate, and one of the assessors of the Bishop's court. See Symeon, i. 158; Feodarium, 124; Pipe Roll 13 John, in Boldon Book, App. xiv; Surtees, Durham, i. pt. ii. 4–5; above, pp. 64, 113 note 1.

[2] Rot. Chart., 5 John, 120 b.

[3] Philip of Poitou, A. D. 1197–1208.

[4] Hugh Pudsey, A. D. 1153–1195.

obiit quod per brevia sua tenerentur placita in curia sua et non per brevia regis. Et ut veritatem dicat salva dignitate curiae dominii sui . . . quod Willelmus de Latton implacitavit eundem G[aufridum] in curia episcopi de praedictis terris et in tantum deducta fuit [loquela] quod praedictus G[aufridus] venit in curia et petiit visum terrae et habuit. Postea ad diem sibi datum venit G[aufridus] . . . et posuit se in magnam assisam tantum de una terra scilicet de Silkesworth si illam [1] habere possit [et cum non] possit illam habere optulit illam [2] defendere per corpus cujusdam liberi hominis sui et protulit [breve] de pace solummodo de terra de Silkesworth ne episcopus inde teneret placitum in curia sua [quia ?] idem G[aufridus] inde posuit se in magnam assisam. Quod breve cum suscepisset episcopus consuluit suos quod super breve regis ei esset agendum cum nulla magna assisa haberetur in curia sua ita quod providerunt inter se qui inquirerent ab ipso G[aufrido] an mallet praedictam terram defendere per duellum an tenere se ad magnam assisam et ad breve regis; et ipse elegit duellum et per corpus ipsius vadiavit duellum de una terra et per corpus alterius vadiavit duellum de alia terra, unde nullum breve accideret: et hoc offert derationare in curia sicut in curia qui recordum habet, et si hoc opus ei habere non poterit per considerationem curiae domini regis . . . salva dignitate curiae domini episcopi. E contrarie Gaufridus defendit quod nunquam . . . sicut versus illam qui recordum non habet nec unquam habuit, et offert derationare . . . quod ita est ut ipse dicit vel defendere quod non ita est . . . et petiit juratam per legales homines qui non sunt de libertate episcopi ut per eosdem . . . Dunelmensis episcopus . . . tempore regis Henrici patris usus est . . . eadem libertate. . . . Et si curia illa tunc temporis habuit [recordum?] . . . coram rege ad hoc recognoscendum xii milites de comitatu Ebor. et xii de comitatu Northumb. qui non sint de libertate episcopi; postea praeceptum [fuit] . . . quod episcopus venire faceret xii milites . . . ad hoc recognoscendum . . . de libertate sua, et ita quo teneam nodo mutantem Prothea vultus." [3]

It is, unfortunately, more than probable that the frequent and tantalizing lacunæ in the text of this record can never be filled out. Seemingly

[1] This must refer to "assisam" rather than to "terra," for it was uncertain whether the grand assize could be taken in the Bishop's court at this date, and shortly afterward the community of the bishopric purchased a royal charter definitely according to them that privilege. See Rot. Chart., 10 John, 182 a.

[2] This of course refers to "terra."

[3] "Quo teneam vultus mutantem Protea nodo?" Horace, Epist., lib. i. epist. i. l. 90. The case is recorded on the Curia Regis Roll, 7–8 John, No. 36, m. 13. A brief and unintelligent condensation will be found in Abbrev. Plac., 94.

the reporter did not understand the case, for, having entered it once on the roll, he cancelled what he had written and followed it by a second report in somewhat different form; possibly, therefore, he is responsible for the apposite though misquoted verse of Horace with which the record closes. The handwriting is bad, the ink faint, and the parchment much stained, rubbed, and worn. It had previously been subjected to some severe method for redeveloping the ink,[1] so that sizing and other treatment by the present author produced little reaction. Finally, a high authority on palaeography,[2] who carefully examined the document and kindly filled out many gaps in the writer's transcript, expressed the opinion that it would be impossible to recover or restore any more of the text.

The main question raised is whether the Bishop's court shall be assimilated to the seignorial or to the royal courts of the kingdom; in other words, whether the Bishop's court is a court of record competent to conduct the business of the grand assize and other convenient forms of procedure to be found only in the royal courts, or whether it must submit to the king's writ and resign cognizance of a plea when one of the parties demands recourse to the new procedure. The answer to this question involves a definition of the Bishop's franchise, and the issue, therefore, is whether that franchise is competent to exclude the king's jurisdiction or not. The Bishop's counsel accepts this issue and affirms the competence of the episcopal court. This contention is corroborated by the king's charter and by the historical argument that pleas were held by the Bishop's writ in the time of Hugh Pudsey, and also by the action of the tenant; for Geoffrey went far toward conceding the principle of the Bishop's exclusive jurisdiction, when, although having the king's writ in respect to at least one of the tenements in question, he went to the duel.

Now the logical conclusion of the Bishop's proposition is that whatever advantage the king furnishes to his justiciables the Bishop shall provide for his. But the Bishop was neither ready nor able to meet the emergency, for the offer made to Geoffrey was this: Will you defend by your body or will you stand by your writ of peace and your claim of a grand assize? It is not admitted, however, that if Geoffrey chooses the second alternative the Bishop will obey the writ and suspend proceedings. Geoffrey is required to make his choice, and, if he sticks to his writ, may be

[1] Possibly at the hands of the compiler of the Abbreviatio Placitorum, who certainly did not understand the case and made a very bad botch of his condensation.

[2] Mr. Scargill-Bird of the Public Record Office.

told that such a writ is out of place in Durham. This answer indeed was given him, and then, the Bishop's counsel said, Geoffrey abandoned his writ and waged battle as regards both pieces of land. The question is left open, and Geoffrey brings it before the king's justices for determination. What answer they gave we do not know, but it could not have been final, for, as we have seen, the men of the bishopric soon afterward fined with the king for permission to have the assizes of the kingdom.[1] The use of these, no doubt, became familiar at Durham during the long vacancy of the see from 1208 until 1217, when the local court was in the king's hands, and it was probably continued without question on the next Bishop's accession.

Geoffrey seems to have belonged to a well-known family of the bishopric descended from a nephew or, as is more probable, a son of Ranulf Flambard, who obtained from the Bishop the lordships of Silkesworth and Horden.[2] It is probable, therefore, that we should read "Horderum" rather than "Borderum," as it stands in the text. Such a slip would have been easy for a scribe unfamiliar with local names. A William de Latona toward the close of the twelfth century tests two charters conveying lands in Silkesworth held of Geoffrey, lord of Horden and Silkesworth;[3] and it is possible that this man held of the same lord, and that he or his son was the demandant when this case came up in the Bishop's court.

[1] Rot. Chart., 10 John, 182 a; Pipe Roll 13 John, in Boldon Book, App. xv.
[2] See Surtees, Durham, i. pt. ii. 243–244; Feodarium, 123–125.
[3] Feodarium, 124, 125.

APPENDIX II.

THE ADMIRALTY JURISDICTION OF THE BISHOPS OF DURHAM.

THERE is very little definite knowledge of the courts of admiralty in the kingdom previous to the sixteenth century. The earliest patent for an admiralty judge dates from the reign of Edward IV, but the regular series of admiralty records does not begin until 1524. The jurisdiction appears to have taken shape under the pressure of increased maritime relations in the reign of Edward III. Before this the incidents of the king's admiralty prerogative — the spoil of wreck, the right to royal fish, and the like — were attended to by means of writs to the sheriff or by special commissions of oyer and terminer, while disputes not touching the king were settled, so far as possible, in those privileged towns that had port jurisdiction. After 1357, however, it became necessary to erect some sort of tribunal in which foreigners might plead who had claims against the crown based on the depredations of English pirates or the like offences.[1] In tracing the history of the admiralty jurisdiction of the Bishops, then, we must first try to discover how early and to what extent they enjoyed the attributes of admiralty prerogative and the right to grant or regulate port jurisdiction.

The Bishop's right to whatever might be cast up by the sea on the coast of his province, such as wreck, royal fish, or the like, is first definitely heard of very early in the twelfth century. The story refers to a much earlier period (the incident occurs in connection with one of S. Cuthbert's miracles), but may safely be accepted as evidence of a state of things contemporary with its authorship.[2] In the twelfth century the royal right of wreck was being defined and limited, and before the reign of John it was regulated by a well-ascertained rule of law.[3] Very early in the thirteenth century we find the Bishop in exclusive pos-

[1] Marsden, Select Pleas in the Court of Admiralty (Selden Soc.), Introd.

[2] Symeon, ii. 343.

[3] Blackstone, Commentaries, book i. ch. viii.

session of this right in his province and engaged in an angry dispute as to the prior's share in the privilege. The testimony brought forward on either side throws a curious light on the whole question. The bulk of evidence produced by each party in the suit is about equal, but the witnesses on behalf of the Bishop were of much higher rank than those of the prior. The prior's witnesses, on the other hand, swore to seven specific cases in which boats, cobles, ships or their cargoes, or drowned beasts had gone ashore on the prior's lands and been taken by him as wreck. These cases had occurred during the pontificates of Bishops Pudsey, Philip of Poitou, and Richard Poor, and in one instance the deponent swore that the Bishop's officers knew of the proceeding.[1]

Although the Bishop brought eleven witnesses, only two of them related a specific case. But this one is very interesting. Oliver Fitz Rolland deposed that he had never himself seen a wreck, but he related one out of the many cases that had occurred in the pontificate of Bishop Philip. A ship laden with corn and wine, having anchored off Wearmouth, a place which belonged to the prior, was blown ashore and broken up, although all the crew escaped alive. Complaint was then made to the Bishop that the men of the prior had carried off the merchandise which formed the ship's cargo, and on this the Bishop sent the deponent and others to arrest the persons accused and lodge them in the Bishop's prison. This was accordingly done; whereupon Helyas Busard, one of the monks of Durham, excommunicated the deponent and his companions; but, when complaint was made to the Bishop, the monk, confessing that he had acted foolishly, withdrew his excommunication, and the goods were eventually restored to the men of the ship. Oliver explained that this was not wreck, because the ship's company had escaped alive; but that whenever a ship perished with all her company in any part of the bishopric, it was wreck and belonged to the Bishop.[2] Alexander de Elmedone said that he knew this story and had been present when the monk withdrew the sentence of excommunication.[3] The rest of the Bishop's evidence consisted of general assertions of prerogative, of which the following is a type: "Rogerus de Andrei, miles, juratus et requisitus . . . de wrec, dicit quod nunquam vidit contingere, sed dicit quod certus est quod episcopus debet habere in cujuscumque terra evenerit, et hac racione quia solus habet regalitatem in partibus illis."[4] However

[1] Attestaciones Testium, in Feodarium, 265, 270–271, 273, 276, 278, 279, 285 (the case in which the Bishop's officers are said to have been aware of the proceeding), 288.

[2] Ibid., 246.

[3] Ibid., 247.

[4] Ibid., 230–231, and see also 225, 226, 232, 235, 237, 243, 247, 253.

the case stood as between the Bishop and the prior,[1] it is clear that in the bishopric at this time the king would take nothing from a wreck.

In 1302, after the palatine records had been examined, a memorandum was made with respect to the Bishop's right of wreck in Sadberg, a district which included the considerable seaport of Hartlepool. Three cases from the pontificate of Richard Poor are enumerated, in all of which the Bishop defeated the efforts of Peter de Brus, lord of the manor of Hart, to assert a right to have wreck at Hartlepool. Finally by the intercession of the earls of Albermarle and Lincoln the matter was adjusted, "ita quod ab illo die episcopus habuit wreccum maris, quotienscunque contigit, pacifice sine contradictione Petri de Brus et omnium aliorum."[2] It was likewise found that during the subsequent vacancy of the see a boat wrecked at Hartlepool and a whale that went ashore there became the property of the king,[3] and that, during the pontificates of Bishops Nicholas de Farnham (1241–1249) and Walter Kirkham (1249–1260), "nulla fuit contentio de wrek, quia episcopus habuit totem wrek . . . sine contradictione."[4]

In 1315 the Bishop excommunicated those who should infringe the right of wreck enjoyed by the monks of Farne under episcopal confirmation.[5] In the same year a case arising out of the loss of a ship on the coast of the bishopric was by the king referred to the Bishop for trial.[6] In 1341 the king issued a commission of oyer and terminer for the discovery and trial of certain persons who had infringed the right of wreck which from time immemorial the Bishops had enjoyed in Hoveden.[7] In 1343, when two sturgeons and two whales, which had come ashore at the same place, were carried away in defiance of the Bishop's right, a similar commission was ordered.[8] In 1364 occurred the case of a whale cast ashore at Seaton Carrowe and appropriated by the lord of the manor, who for this infringement was obliged to fine with the Bishop.[9] In 1410 the Bishop received £9 14*s.* 3*d.* as the proceeds of a wreck at Hartlepool.[10] In 1432 Bishop Nevill granted a limited right of wreck to the lord of a manor in the bishopric; the grantee paid an annual rent and engaged to surrender to the Bishop half of any royal fish or great ships that came to

[1] It was agreed that the proceeds of wreck occurring on the prior's land should be divided between him and the Bishop. See Le Convenit, in Feodarium, 215.

[2] Registrum, ii. 46–48. [3] Ibid.

[4] Ibid., and see also p. 60; cf. Surtees, Durham, iii. 100.

[5] Registrum, ii. 734. [5] Ibid., 1109; above, pp. 230–231.

[7] Registrum, iv. 251–252. [8] Foedera, ii. pt. ii. 1225.

[9] Rot. i. Hatfield, ann. 19, m. 14, curs. 30; above, p. 150.

[10] Sheriff's account, A. D. 1410, auditor 1, No. 2.

shore on his manor.[1] By this time the admiralty jurisdiction of the kingdom was already well known, and one of the subjects of inquiry, when the admiral or his representative visited any port judicially, had reference to wreck and royal fish.[2] In one respect, then, the Bishop has advanced far toward the development of a local admiralty jurisdiction.

In like manner, on the visitation of seaports, inquiry was made with regard to the obstruction of rivers, creeks, or water-courses by mills, bridges, weirs, kiddels, and the like.[3] But from the twelfth century the Bishops of Durham had had jurisdiction over the coasts of the bishopric, including the southern bank of Tyne, with respect to the landing of ships and traffic, and in the fourteenth century they were issuing commissions to inquire into obstruction of traffic. Henry II had granted to Bishop Pudsey the right to take port dues from ships touching at the southern bank of the Tyne.[4] This right was in dispute between the prior and the Bishop in 1228, and Adam de Prestone testified that in the time of Bishop Pudsey he had twice seen customs taken from ships at Billingham, which belonged to the convent.[5] The natural inference is that this was a regular practice in the Bishop's lands, and this view is confirmed by the fact that in Le Convenit[6] the Bishop reserved to himself all the customs of ships on the river Tees, saving to the prior his right of a ferry at Billingham.[7]

In 1314 the mayor and bailiffs of Newcastle, who had been interfering with the Bishop's rights over the southern part of the Tyne and with the privilege of his subjects in the navigation of that river, were checked by the king's writ.[8] This principle is expressed in an inquisition professedly taken in the reign of Henry I and recorded in that of his nephew, but known to us only as it appears in the register of Bishop Kellaw: "A Stanliburn' usque ad Tynemeuth', videlicet, usque in mare, medietas aquae de Tyna pertinet ad Sanctum Cuthbertum et ad episcopum Dunolmensem, et alia medietas ad comitatum de Northumbria; tertia pars, in medio aquae, erit communis et libera."[9] During the pontificate

[1] Rot. iv. Nevill, ann. 9, m. 8, curs. 45.

[2] De Officio Admiralitatis Anglie una cum Articulis concernentibus idem Officium (London, 1540), art. ix, xxiii.

[3] Ibid., art. vii.

[4] "Et volo et firmiter praecipio quod habeant libere et honorifice et quiete applicationes navium de parte sua in Tina, sicut habentur ex altera parte": Scriptores Tres, App. No. xxxv.

[5] Feodarium, 253.

[6] For this document, see above, p. 169, and below, App. iii.

[7] Le Convenit, in Feodarium, 215.

[8] Registrum, ii. 1014–1015.

[9] Ibid., iii. 40.

of Bishop Bury this right was called into question, and the king issued a commission to inquire into obstructions of navigation in the river Tyne. His commissioners, in their effort to remove weirs and kiddels in the southern part of the river, and in general to regulate navigation, met with opposition from the Bishop, who proceeded against them in his courts and eventually outlawed them. The king protested, and ordered the Bishop to relax the outlawry and allow the commissioners to discharge their duties lest a worse thing befall him.[1] The Bishop's answer was to issue his own commission to inquire into infringements of his rights in the southern half of the river and the interference with the freedom of commerce on the shores of the river and coasts of the bishopric which he and his subjects ought to enjoy.[2] It does not appear in what manner the question was eventually settled, but in the next century we find the Bishop issuing a commission to inquire into the state of the rivers in his province.[3]

In early times ordinary port jurisdiction supplied, however ineffectually, the place of the later admiralty courts.[4] Accordingly in the charter by which Bishop Pudsey erected the borough of Wearmouth, it is provided that "si placitum fuerit inter burgensem et mercatorem errantem, infra tertiam maris influxionem rectum inter se faciant."[5]

Since, then, the Bishops had such privileges and regalities, we shall not be surprised to find them disposing of cases which from their nature would have been dealt with in a court of admiralty, had such an institution existed in the palatinate. This point is illustrated in the early fourteenth century by three cases, which have already been noticed. Two of them involve the recovery of goods and a ship in dispute between the king and certain merchants by reason of piracy and an alleged wreck. The property had been taken to the palatinate and was brought back by royal writs sent to the Bishop.[6] The third case, which turned on the recovery of goods cast ashore in the bishopric when it was alleged that there had been no wreck, was referred to the Bishop with directions to hear the complaint of the injured party and to do him full justice.[7] This was in all probability disposed of by the Bishop in council.

[1] Registrum, iv. 258–261. [2] Ibid., 334–337.

[3] Rot. ii. Nevill, ann. 7, m. 8, curs. 43.

[4] De Officio Admiralitatis, etc., art. xxxviii; Marsden, Select Pleas in the Court of Admiralty (Selden Soc.), Introd.

[5] Boldon Book, App. xli.

[6] Registrum, ii. 1025–1027; Calendar of Close Rolls, 1318–1323, p. 62; above, p. 245.

[7] Registrum, ii. 1109; above, pp. 230–231.

In 1432 there is a case which throws much light on the subject. In that year a ship was wrecked and came ashore with her cargo of merchandise on the coast of the palatinate; both the ship and her cargo were then carried off by the people of the place where the alleged wreck had occurred. Thereupon Henry Hoop and other merchants of the Hanse represented to the Bishop of Durham that the ship and her cargo were their property and were consigned to Germany under command of a master in their employ, and that no foreigner was on board or in any way concerned in the matter. On these considerations therefore they prayed restitution of their property under the statute which provided for such cases.[1] Accordingly the Bishop issued his precept to the coroner of the Easington ward directing him to seize any goods that seemed likely to be those of the complainants, wherever and in whosesoever possession they might be found. The coroner was further to invite the complainants or their attorneys to prove their title to the goods so seized, which would then be immediately returned to them, after a reasonable allowance for salvage had been deducted. If for any reason it appeared that restitution should not be made, the coroner was to come before the Bishop in chancery and give his reasons for withholding the goods.[2] Here, then, is an instance in which a matter which obviously should have been dealt with in a court of admiralty was disposed of by the Bishop in his chancery.

In 1433 we have a case essentially similar to this although of somewhat different aspect. The Bishop was notified by letters under the common seal of the town of Bruges that a ship and her cargo, the exclusive property of certain merchants of Bruges, had been carried to Newcastle-upon-Tyne and the cargo there distributed as contraband of war (bona inimicorum). Some of these goods had subsequently found their way into the palatinate. The Bishop accordingly issued a commission of oyer and terminer, directing a search for these goods, which, wherever found, were to be seized and restored to the complainants.[3] A case that arose in 1447, although it has already come before us, cannot be omitted here. In that year a ship belonging to certain merchants of Aberdeen, returning from Flanders where she had taken a cargo of merchandise, went ashore at South Shields in the palatinate, and a part of the cargo, having come to land, was seized by the Bishop's officers. The owners of the ship thereupon represented to the Bishop that, by the provisions of

[1] 27 Edw. III, cap. xiii, Statutes, i. 338.
[2] Rot. C. Langley, ann. 26, m. 6, curs. 36.
[3] Ibid., ann. 27, m. 7, curs. 36.

a treaty between England and Scotland, in cases of wreck where there were any survivors such goods as were rescued should be restored to their owners whole and entire, barring allowance for reasonable expenses in collecting and keeping them; provided always that an appeal were made within a year of the event before the justices competent in the place where the goods had been found. Accordingly the Bishop issued his commission of oyer and terminer directing that the parties be heard and that justice be done in the case.[1] In 1500 a case relating to the possession of a ship belonging at South Shields in the palatinate and held in part ownership by persons in that town and Newcastle-upon-Tyne, was dealt with in the Bishop's chancery.[2]

During the reign of Henry VIII the admiralty jurisdiction of the kingdom was reformed and the courts reorganized.[3] It is not probable that any admiralty court was set up in Durham at this time; the old machinery was sufficient for the purposes of that limited district. The impetus to erect such a tribunal appears to have been given by the effort, made in the seventeenth century, to bring the palatinate under the jurisdiction of the royal court of admiralty. Thus in 1619 the duke of Buckingham, then admiral of England, issued a warrant appointing Matthew Dodesworth admiralty judge for Northumberland, Cumberland, and the bishopric of Durham.[4] This may have been done under a strained interpretation of the act of 1536, which vested in the crown the power to appoint all common-law judges in the palatinate.[5] In 1635 at Bedlington, a parcel of Durham although lying in Northumberland, serious trouble arose between the crews of two vessels, one from Holland and the other from Dunkirk. The combatants were lodged in the palatine gaol, but the case was referred to the Council of the North, which had to a great extent taken over the jurisdiction of the Bishop.[6] It is not, however, until 1640 that any objection to this arrangement seems to have been made. In that year the Bishop protested against a grant of certain rights on the river Wear which had been made by the duke of Northumberland, then admiral of England. To these rights the Bishop himself laid claim as "a privilege and perquisite properly belonging to my jurisdiction of admiralty."[7]

[1] Rot. ii. Nevill, ann. 9, m. 13, curs. 43; above, pp. 245–246. Cf. also Calendar of Patent Rolls, 1461–1467, pp. 489, 492, 552, and Ibid., index, *s. v.* "Wreck."

[2] Rot. iii. Fox, ann. 6, m. 6 dorse, curs. 62.

[3] Marsden, Select Pleas in the Court of Admiralty (Selden Soc.), Introd.

[4] Admiralty Records, Miscellaneous Bundles, ii. No. 239, Record Office.

[5] 27 Hen. VIII, cap. xiv, Statutes iii. 555.

[6] Calendar of State Papers, Domestic, 1635, pp. 370, 371, 407.

[7] Spearman, Inquiry, 32–34.

After the Restoration we find that this claim is admitted. The Bishop of Durham is then "admirallus admiralitatis infra comitatu palatino sive episcopatu Dunelmense";[1] and in the draft of an act settling the jurisdiction of the royal court of admiralty in 1661 there is a proviso that nothing in the act shall be construed to the prejudice of the "ancient jurisdiction and privileges of the Bishops of Durham in the admiralty, within the county Palatine of Durham and Sadberg."[2] In 1663 Walter Ettrick obtained from Bishop Cosin a patent granting to him "officium Registrarii et Scribatus et Registrariatus actionum, causarum et negotiorum quorumcunque in curia nostra nostra [sic] admiralitatis in comitatu palatino sive episcopatu Dunelmensi ex officio nostro mero, mixto vel promoto vel ad alicujus partis instantiam moto vel movendo."[3] The terms of this document do not admit of the hypothesis that the court of admiralty was instituted at that time. In 1666 John Sturfield was appointed marshal and serjeant-at-arms of this court, receiving "officium Mariscalli et Servientis ad clavam curiae vice-admiralitatis in comitatu palatino sive episcopatu Dunelmensi et partibus maritimis ejusdem . . . prout aliquis alius antehac idem officium . . . habuit et tenuit."[4] Finally, in 1683 we meet with a judge's commission, a portentous document, detailing at great length and with tedious verbosity the scope and nature of the jurisdiction of the palatine court of admiralty.[5] The gist of this document is that the palatine court corresponded in all essentials to the high court of admiralty, although in the last resort subordinate to that court.

This, then, is what we have found. From a period very shortly after the Norman Conquest the Bishops of Durham within their province possessed those prerogatives which in the kingdom developed afterward into admiralty jurisdiction. That development, between the reigns of Edward III and Henry VIII, was slow and incomplete; it was also accomplished largely under the pressure of foreign relations, an incentive which, in the nature of things, the Bishops of Durham could not feel. The Bishops, therefore, enjoying the profits of admiralty jurisdiction and disposing of such cases as arose either by special process on petition to their council or in chancery, had no inducement to institute a court of admiralty. During the sixteenth century the special jurisdiction of the palatinate was much abridged by statute, and the entire province was subjected to the control of the Council of the North. In the seventeenth century some effort was made to bring the bishopric under the jurisdiction of the high court of admiralty, but this attempt met with opposition. After the Res-

[1] Admiralty Records, Miscellaneous Bundles, ii. 206, Record Office.
[2] Lords' Journals, xi, 375.
[3] Auditor 3, No. 129.
[4] Ibid., No. 132.
[5] Ibid., No. 133.

toration the system of a local court of admiralty is found to be in full operation and is referred to as a matter of ancient right and custom.

Under these circumstances the question arises as to what were the mutual relations of these two jurisdictions. The evidence is troublesome and confused, a circumstance probably due in large measure to the fact that the matter itself was obscure and ill-defined. One thing, however, seems clear: whatever theory may have been expressed or allowed, the practical and final supremacy of the royal power could never be questioned. In the actual administration of naval affairs this control is sufficiently evident; and although the terms of the admiral's commissions do not necessarily imply jurisdiction in the bishopric, they certainly involve the principle of ultimate royal control there.[1] It is clear that when the palatine admiralty court was once fairly organized, an appeal might be taken from it to the high court of admiralty.[2] This fact appears from the case of Matthew Crake, who in 1640 had obtained from the duke of Northumberland a grant of rights on the river Wear, against which the Bishop protested. The matter was carried to the high court of admiralty, where in 1663 judge Exton made an historical report in the Bishop's favor, citing "ancient charters, records, and evidences."[3] Again, under the terms of a statute of Richard II[4] the Durham court, like the high court of admiralty, was regarded as subject to prohibitions issuing out of common pleas. An instance of this process has survived from the reign of Charles II, but, beyond its address to the Bishop as earl palatine and admiral and to the judge of the local court of vice-admiralty, it does not differ from the form ordinarily employed in the kingdom.[5]

The lords of other franchises besides Durham occasionally enjoyed a restricted measure of admiralty jurisdiction. The express exclusion of the admiral from privileged seaport towns was not uncommon in the fifteenth century; thus in 1465 the king made a definite grant of admi-

[1] Registrum, iv. 192–194, 197–198, 200–203, 361–363; Foedera, iii. pt. i. 471; Rot. Skirlaw, ann. 14, m. 26, curs. 33; Rot. v. Nevill, ann. 8, m. 21, curs. 46; above, § 40.

[2] Spearman, Inquiry, 32–34.

[3] Ibid. Spearman appears to have had access to this document, which seems no longer to exist. Its discovery, at least, has not rewarded a search through the Durham records, and Mr. Marsden informed me that he knew of nothing of the sort among the admiralty records. Exton, moreover, in his work on the admiralty (The Maritime Dicaeologie, London, 1664, fol.) makes no mention of the palatine jurisdiction.

[4] 13 Ric. II, stat. i. cap. v, Statutes, ii. 62.

[5] Admiralty Records, Miscellaneous Bundles, ii. 206, Record Office.

ralty jurisdiction to the Bishop of Bath and Wells.[1] In 1692 even the lord of a manor in Cornwall went so far as to lay claim to such jurisdiction within his manor.[2] The Bishops of Durham, as we have seen, enjoyed this right by prescription, for they never produced a charter in support of it; they also enjoyed it so fully as to be able to alienate part of the privilege to their subjects.

[1] Rot. Pat. 4 Edw. IV, pt. ii. m. 14.

[2] Newland *v.* Budden and Lord Arundell, Admiralty Records, Miscellaneous Books, 1057, Record Office.

APPENDIX III.

THE RECORDS OF THE PALATINATE.

THE manuscript records of the see and county palatine of Durham for any period earlier than the sixteenth century are extremely unsatisfactory. These records, which remained (it is too much to say were preserved) at Durham until 1870, have had a disastrous history. Already in the early sixteenth century they had been seriously injured by carelessness and wilful destruction.[1] Much evil of this sort was probably accomplished during the disturbances in Durham occasioned by the Pilgrimage of Grace and the Rising in the North, but the most serious destruction of the records occurred in the seventeenth century. Bishop Cosin (1660–1672) interested himself in the history and antiquities of his province, and seems to have had the intention of publishing a book on this subject. To this end the most valuable and ancient records were collected and set apart "in a great iron chest, which used to be kept in the gatehouse belonging to the castle at Durham."[2] At Bishop Cosin's death the contents of this chest, having come into the hands of his executors, "were removed with the Bishop's other writeings to Helperby, in Yorkshire, and they coming afterwards to the hands of Mr. Basset (who marryed the Lady Gerrard, and became intitled to the greatest part of the Bishop's estate), he thought fitt for preventing disputes which might arise about his estate, to direct that all the Bishop's writeings should be there burnt, which was accordingly done, some few years ago, by Mr. Hen.

[1] Bishop Tunstall (1530–1559) wrote regarding "the recovery of such charters and writings belonging to the Churche of Durham as by reason of my L[d] Cardinal [*i. e.* Wolsey] were comon to the King's hand, which I have received;" and again, "The chauncery of Durham, where al the records lay, was spoyled as wel of records as off all odyr stuff that was ther." In 1537 the following entry occurs on a payment roll: "Paid the morn after St. Luke's day [19 October] to Marmaduke Clargenet (5*s.*) and other of his company, and Robert Lewyn (5*s.*) for helping to save the records in the chauncery, in the time of spoyling of the same, 10*s.*" These citations are taken from Boldon Book, Pref., vii–viii. The records of the English side of chancery were mostly on paper and were ill preserved, and they have completely disappeared. See Spearman, Inquiry, 55–56; above, p. 189.

[2] This is from a manuscript "State of Records of y[e] County Palatine of Durham," compiled in the early eighteenth century, quoted in Scriptores Tres, Pref. xxi.

Jackson, his then steward, and upon this occasion there were eight or nine large chests of writeings all burnt, save a few only which Parson Tong endeavoured to secure, as relateing to the rights of his parish of Brancepeth, of which Bishop Cousins had been formerly Rector."[1] To-day even parson Tong's salvage has disappeared, as well as a volume of precious transcripts much used by Bishop Cosin and known as the Red Book.[2]

In the beginning of the present century the Durham records had already for some time been treated with conspicuous neglect. They seem, indeed, to have been regarded as so much waste paper or parchment; there are even tales of broken windows stopped with medieval parchment, and of kites made of documents invaluable to the historian. The awakened interest in historical studies which found expression in the act of 1838, placing the public records under the direction of the master of the rolls, extended to Durham in the year 1854, when Sir Thomas Duffus Hardy was deputy-keeper. By the record act all the records of the palatinate were placed in charge of the master of the rolls, who in 1854 directed the deputy-keeper to go to Durham, to investigate the manuscript material in existence there, and to arrange for its transfer to London. Hardy discovered that the framers of the record act had exceeded their authority in that they supposed that by the act of 6 William IV, cap. xix, the palatinate had been abolished, whereas in fact, although several of the courts had been swept away, the chancery remained and the palatine franchises had been vested in the crown.[3] The removal of the records was strongly opposed at Durham, although the county declined to entertain any proposals for their rearrangement or more careful preservation. In 1868, therefore, the master of the rolls issued a warrant directing the removal to London of all the records of the see and the palatinate, and by the year 1870 this had been accomplished.[4] Hardy found the records

[1] Scriptores Tres, Pref. xxi.

[2] On the destruction of records in the seventeenth century, see Ibid., Pref. xvi-xxiii; Surtees, Durham, iv. 107.

[3] On this point, see above pp. 205–206.

[4] For the details of this matter, see Deputy-Keepers' Reports, No. xvi (1855), p. 2, and App. iv. 44–93; No. xxix (1868), p. xii, and App. viii. 104–112; No. xxx (1869), pp. ix-xi, and App. ii. 82 ff. When the records reached London a large part of them, consisting of ministers' accounts, were claimed by the Ecclesiastical Commissioners as the administrators of the temporalities of the see. These, after some correspondence, were transferred to the office of the Ecclesiastical Commission, but subsequently all the records earlier than the reign of Henry VIII were by that body deposited in the Record Office, where they are not produced without the written permission of the secretary of the Commission.

in a very bad condition. They had been kept in improper places, and were in such a state of disorder and neglect that he was obliged to sort and arrange them. There was practically no calendar or even catalogue, and the documents from careless use had fallen into serious confusion. Once in London, they were carefully cleaned, arranged, and in general made available for the student's use. A series of calendars was at once undertaken, and also the publication of Bishop Kellaw's register, one of the earliest and in many respects the most important monument in this collection.

A large proportion of the manuscript material thus placed at the disposal of students consists of documents later than the reign of Henry VIII, dating for the most part from the seventeenth and eighteenth centuries. Over these we shall not linger; as has been explained, the present study concerns itself very little with the history of the palatinate after the act of 1536. There remain the manuscripts for the period 1066–1536, and here it may be stated that practically no Anglo-Saxon documents relating to the see of Durham are in existence.[1] Also at this point mention will be made of manuscript material only; printed sources will be noticed later.

Quite the most important of the manuscript records is the series of palatine chancery rolls, which is virtually complete from the pontificate of Bishop Richard de Bury (1333–1345). Forty of these rolls, varying in size and importance, cover the period 1333–1536. The first four of them (1333–1388) are "headed," or made up of membranes joined at the top in the exchequer fashion; the rest of the series are "continuous," or made up of membranes joined end to end in the chancery fashion. They are on the whole in good condition, and the hand is generally clear. The use of this material is greatly facilitated by a series of excellent calendars extending over the period 1333–1617.[2]

The contents of these rolls are of the most varied description, for the whole business of the chancery, as well as many private transactions, are recorded on them. The public instruments consist of commissions to the justices, patents of appointment to offices of one sort or another, pardons, and the enrolment of all royal documents officially commu-

[1] There is an English charter of Bishop Ranulf Flambard to the convent, and a late (1150) English charter appropriating a church and chapel in the bishopric to the see of York; but these have little constitutional value. See Feodarium, 98 note; Crawford Charters, in Anecdota Oxoniensia, Medieval and Modern, pt. vii. 34–35.

[2] These calendars are to be found in the Appendixes to the Deputy-Keepers' Reports, Nos. xxxi–xl inclusive.

nicated to the Bishop. Besides these there are writs, mandates to the sheriff and the escheator, transactions and occasionally pleadings in chancery, and a great mass of business relating to private contracts and other matters that could be managed by recognizance. The bulk and number of the rolls increase considerably in the fifteenth century. Thus the official record of Bishop Hatfield's long pontificate, 1345–1381, is contained in two rolls, while that of Bishop Nevill, 1438–1457, only half as long, extends over no less than six rolls. All of these documents are grouped in the class-list at the Record Office under the head of "Cursitors' Records."[1]

Two other sources of much importance exist under the same head. The first of these is a chancery file for the pontificate of Bishop Hatfield,[2] which contains the record and process of several very interesting cases, together with a large number of inquisitions *post mortem* and *ad quod damnum*, and some similar material of a much later date, which has for no apparent reason been included in this bundle. The second is a package of miscellaneous papers containing a mass of all sorts of material, varying in date from the fifteenth to the seventeenth century; the earlier part consists principally of precepts to the chancellor for the issue of documents under the great seal, such as pardons, licences, mandates, and writs, practically the only original documents of this sort that we have.[3] Another interesting record in this class is the original privy seal of Bishop Hatfield appointing a chief forester; this is in French, and is addressed to the chancellor directing him to issue letters patent under the great seal.[4]

The Auditors' Records include all documents connected with the fiscal organization of the palatinate. Of these the most important are the ministers' accounts, which for our period are sadly defective. Besides the great receipt roll of 1307, which being in print will be considered later, the Auditors' Records comprise a small number of receiver-generals' accounts for the second half of the fifteenth century, a few sheriffs' accounts, and a mass of account rolls and indentures of foresters, bailiffs, superintendents of lead and iron mines, and similar officers, which have practically no bearing on the subject of the present study. The fullest and most interesting of the receiver-generals' accounts is for the year 1460–1461,[5] but the others also have much value.[6] The

[1] For an explanation of the forms in which the manuscripts are cited, see below, p. 337.

[2] Cursitor, 154. [3] Ibid., 211. [4] Ibid., 145.

[5] Ecclesiastical Commissioners, ministers' accounts, 189816.

[6] Ibid., 189814–189829, 189696–189698, and Auditor 5, No. 149.

earliest sheriff's account is for the year 1335–1336;[1] no other occurs until the year 1409–1410,[2] and none again until 1477–1478,[3] although three sheriffs' accounts for Norhamshire have survived for the intervening period.[4] From 1480 until 1536 about half the years are represented.[5] The accounts of the local bailiffs and superintendents of mines, as has been said, contain little of value.

In this class also there are two miscellaneous bundles containing materials of widely divergent value. The first of these includes the receiver-general's account for 1472, several coroners' accounts of the early sixteenth century, which yield but little information, and a mass of indentures of receipt or indebtedness, which throw some light on the methods of the exchequer. This bundle also contains the accounts of the manager of the Bishop's property in London in 1526–1527, and a package ticketed "Documents selected to be retained for bundle 18[a]," which is composed of late seventeenth and eighteenth-century documents of a miscellaneous character.[6] Another and similar bundle includes a quantity of vouchers, bills, indentures, warrants to the exchequer, and the like, principally for the year 1480–1481, which are of considerable value.[7] There is also a survey of the Easington ward made in 1388, in the form of a small paper book, which affords some information.[8] Finally, the Auditors' Records also contain patents for the appointment of a registrar and of a judge of the palatine admiralty court, documents which although late —1660 and 1683 respectively — are of importance for our purpose because this court was not developed until the close of the sixteenth century.[9] A record of the highest value is the exemplification of a number of fines, pleas, assize rolls, and the like, all of them of the thirteenth century, which appears on the chancery roll of Bishop Matthew in 1597.[10]

The national manuscript records have yielded some material, especially one document of cardinal importance, the case of Geoffrey Fitz Geoffrey, which will be found in an appendix to this work.[11] It is not probable that the private manuscript collections of the United Kingdom contain anything of value for the period in question, although a good deal of the correspondence of the Bishops in the sixteenth and seventeenth centuries appears in the reports of the Historical Manuscripts Commission.

[1] Auditor 1, No. 1. [2] Ibid., No. 2. [3] Ibid., No. 6.
[4] Ibid., Nos. 3, 4, 5. [5] Ibid., Nos. 7–40. [6] Ibid., 5, No. 149.
[7] Ecclesiastical Commissioners, ministers' accounts, 221161.
[8] Ibid., 220195. [9] Auditor 3, Nos. 129, 133.
[10] Rot. Matthew, m. 16 dorse, No. 33, curs. 92.
[11] Above, App. i.

But these refer to the national rather than to the palatine government, and are state papers, not local records.

Such then are the principal manuscript sources of the present study. Only those of the first importance have been noted; but, in the hope of lightening the labors of possible future students, it should be added that the writer has examined, as he believes, all the palatine records of a date earlier than 1536.

We pass now to a very brief consideration of the printed sources. Quite the most important of these is the Registrum Palatinum Dunelmense, edited for the Rolls Series by the late Sir Thomas Duffus Hardy.[1] The bulk of this work consists of the register of Bishop Kellaw (1311–1316), which is the official record of the spiritual and temporal acts of that prelate. The third volume contains a miscellaneous collection of documents relating to the palatinate before and during the pontificate of Bishop Kellaw, together with the spiritual taxation of the diocese of Durham, a record of ordinations there from 1334 until 1345, and a portion of the register of Bishop Richard de Bury. The constitutions of Bishop Kellaw and a collection of statutes for Balliol College, Oxford, are contained in an appendix. The fourth volume comprises a collection of extracts from the national records having reference to Durham, made by Hardy in the course of a search for several missing folios of the Registrum. These he did not find, but the loss was partly supplied by the discovery of a transcript of some of the missing portions, which is printed in an appendix. This volume also contains the more interesting parts of Bishop Bury's chancery roll, and a letter-book or formulary compiled for the use of that prelate. The preface supplies some valuable palaeographical information and a list of abbreviations. The value of these volumes cannot be overestimated, for they present one of the six surviving episcopal registers of Durham,[2] and afford a mass of detailed information on the organization of the palatinate at the time of its highest development.

Next to the Registrum in order of importance come the Durham chronicles, Boldon Book, and several invaluable collections of documents drawn chiefly from the records of the dean and chapter of Durham and printed by the Surtees Society. Our knowledge of the history of the see from its foundation in 635 to the accession of Bishop Pudsey, in 1153, rests almost exclusively on the historical works ascribed

[1] 4 vols., London, 1873–1878.

[2] The others are those of Bury, Hatfield, Langley, Fox, and Tunstall. See Stubbs, Registrum Sacrum Anglicanum (1897); p. xvi.

to Symeon, a monk of Durham, and his continuators. These contain information supplied by earlier writers, principally by Beda, and of the lost Northumbrian annals. The whole work is too well known to require further description here.[1] The period from the accession of Bishop Pudsey to the Reformation is covered by the works of three writers less generally known than Symeon. These are (1) Liber de Statu Ecclesiae Dunhelmensis, by Geoffrey, a monk of Durham and sacrist of the priory of Coldingham, whose work extends from 1152 to 1214; (2) Historia de Statu Ecclesiae Dunhelmensis, extending from 1214 to 1336, by Robert de Graystanes, also a monk of Durham, who was elected Bishop in 1333, but under royal pressure gave way to Richard de Bury; and (3) Continuatio Historiae Dunelmensis, a compilation usually ascribed to William de Chambre, of whom, however, little or nothing is known. The work of Coldingham contains a good deal of valuable information, but has little further distinction; that of Graystanes not only throws much light on difficult constitutional points, but also, in spite of the bastard tongue in which it is written, achieves high literary value. Graystanes was a spirited writer, with a keen appreciation of the humorous aspect of the events which he records, and his work deserves to be more generally known. The continuation ascribed to Chambre is scarcely more than a compilation of historical notes and affords but little useful information. The works of these writers were printed by Wharton in 1691, but in a condensed and highly incorrect version.[2] In 1839 they were satisfactorily re-edited by Raine for the Surtees Society, in a work known as Historiae Dunelmensis Scriptores Tres.[3] Valuable accounts of particular events in Durham history are of course to be found in other chroniclers, notably Florence of Worcester, Matthew Paris, and Walter of Hemingburgh.

Boldon Book, the survey of the episcopal possessions made by the order of Bishop Pudsey in 1183, has been twice printed, first by Sir Henry Ellis,[4] and later by the Surtees Society, ably edited by canon Greenwell.[5] The value of the text of Boldon Book is well known; but canon Greenwell's edition includes a mass of less available but highly important material, consisting of seven charters of Bishop Pudsey and one of his successor, Philip of Poitou, and a number of documents illustrating the financial his-

[1] The Historical Works of Symeon of Durham, ed. Thomas Arnold, Rolls Series, 2 vols., 1882–1885.

[2] Anglia Sacra, i. 690–790.

[3] The iniquities of Wharton are sufficiently pilloried in the preface to this work, pp. viii–xvi.

[4] Domesday Book, iv. 565–587.

[5] Boldon Buke, Durham, 1852.

tory of the palatinate. These last comprise translations of such parts of the pipe rolls of 1130, 1197, 1211, and 1213 as relate to the bishopric of Durham, the see having been vacant at those dates. These documents were already in print, but in a form not readily accessible;[1] it is to be regretted, however, that they were not given by canon Greenwell in the original Latin. Finally, this collection includes the hitherto inedited palatine receipt roll for the year 1307, "Magnus Rotulus Recept. Dunelm. anno Antonii Episcopi xxv."[2] It is the earliest document of the kind in existence, and one that is unfortunately isolated, for the regular series does not begin until late in the fifteenth century. This is peculiarly valuable because, with the exception of a few charters and several fines preserved by inspeximus, it is the only original document that has survived from the pontificate of Bishop Bek.

Another highly important collection of documents is to be found in the appendix to the Historiae Dunelmensis Scriptores Tres. Although called an appendix, this is in effect three quarters of the work. It consists of a selection of the most interesting and valuable of the original documents and transcripts from the records of the dean and chapter of Durham, who, as successors of the prior and convent, inherited of course the muniments of that body. Although much of this material illustrates exclusively the history of the convent, there is still a considerable remainder which throws light on the institutions and organization of the palatinate. The collection covers the period 1066–1536. Its editor, Raine, who was not disposed to question too closely the authenticity of the documents which he printed, admitted the spurious foundation charters of the convent.

The spuriousness of these instruments was established in a work of which we have now to speak. This is the Feodarium Prioratus Dunelmensis, described by its editor, canon Greenwell, as "a survey of the estates of the Prior and Convent of Durham, illustrated by the original grants and other evidences."[3] The feodary itself forms but a small part

[1] Magnus Rotulus Pipae 31 Henrici I, ed. Hunter, Rec. Com., 1836; Pipe Rolls for the Northern Counties (Cumberland, Westmoreland, and Durham), published by the Society of Antiquaries of Newcastle-upon-Tyne, Newcastle, 1847.

[2] Canon Greenwell dates this document 1307, and for convenience sake the date has been retained in this work; in point of fact the 25th year of Bishop Bek ran from 4 September, 1307, until 4 September, 1308. Some difficulty is created by the fact that Bek received the temporalities on September 4, 1283, but was not consecrated until the following January. His accession, therefore, appears in Stubbs' Registrum (p. 66) as 1284; but see the authorities there cited, and Le Neve, Fasti (ed. Hardy), iii. 288.

[3] Published by the Surtees Society, Durham, 1872.

of the work, and for our purposes is practically unimportant. The editor has added, however, a series of original charters of the Bishops of Durham and other persons, which throw much light on the history of the palatine officers and the Bishop's council. Likewise among other documents printed in this volume we find the curious and highly important record known as Le Convenit, by which a *modus vivendi* was established between the Bishop and the convent;[1] also the depositions of witnesses brought by either side in the course of their long dispute.[2] These, but particularly Le Convenit, are of the utmost value as illustrating the development of the palatine judiciary in the early thirteenth century, and in general the growth of the Bishop's privilege at that critical period. Finally, it should be added that in his very able and interesting preface canon Greenwell has demonstrated that the foundation charters of the convent were actually forged in the early part of the twelfth century.[3]

These, then, are the leading printed sources for the constitutional history of the palatinate of Durham. Much indispensable information has been gathered elsewhere by the present writer, principally of course in the national records and in that ample series of local records which the Surtees Society has placed at the disposal of historical investigators.[4]

It remains only to add a few words in regard to the modern literature of the subject, and those of the most summary nature. The history of the county of Durham has been exhaustively treated by two writers, William Hutchinson in the last, and Robert Surtees in the present century.[5] The plan of these works is in the main identical, consisting of a relatively brief review of the general history of the see, in which each pontificate is separately treated, followed by accounts of every parish in

[1] See above, p. 169; Feodarium, 212–217.

[2] These are entitled "Attestaciones de placitis de corona in tempore Ricardi Dunelmensis episcopi;" "Attestaciones testium juratorum de capellis de Cornelle et Ankcrofte, de bosco de Heworthe, de curia prioris, de bosco mortuo in foresta, et de ecclesiis prioris. Isti testes fuerunt producti ex parte Ricardi episcopi, dicti Pauper, contra priorem et capitulum circa annum Domini mccxxviii;" "Attestaciones testium productorum pro parti prioris et capituli Dunelm., tempore Ricardi Pauper ante illam composicionem, quae vocatur le convenit, de privilegiis suis, anno Domini mccxxviii (Feodarium, 218–219, 220–261, 262–301).

[3] Feodarium, Pref. x–xii, xxxi–lxxx.

[4] Many documents are printed in the histories of Durham prepared by Hutchinson and Surtees, but the more important of these occur also in the collections already described, where they are usually given in a more accurate and reliable form. It should be added, however, that Hutchinson furnishes many extracts from the palatine chancery rolls not to be found elsewhere.

[5] Hutchinson, History of the County of Durham, 3 vols., Newcastle, 1785–1794; Surtees, History of the County of Durham, 4 vols., London, 1816–1840.

the county. These latter consist of a jumble of unrelated facts, from an epitaph or a pedigree to notes on the local flora, and they make very dreary reading. The general history in the two works has a good deal of value, and scattered up and down these impressive volumes there is an immense amount of useful information. This, however, it is difficult to come at, for the index to Hutchinson's work is useless and those in Surtees's volumes are provokingly incomplete. For the constitutional side both these writers have relied largely upon several collections of historical notes and extracts prepared in the last century by local antiquaries who were familiar with the Durham records.[1] For the purposes of the present study the work of Hutchinson is on the whole the more useful. He prints, from the transcripts already described, lists of the temporal officers of each Bishop, which are tolerably accurate and afford at least a valuable clue to other information. His general history, moreover, is fuller than that of Surtees, and he embodies in his foot-notes a large number of valuable documents. Most of these are now available elsewhere and may be more safely consulted in other editions, for Hutchinson, declining the dilemma of extension or the use of record type in printing his documents, indicated all contractions by an apostrophe. Surtees, on the other hand, produced a work that is far more readable than that of Hutchinson, and, so far as it goes, at least as accurate.

Next in importance to these large general works is a small pamphlet compiled toward the close of the seventeenth century by John Spearman, who was for many years under-sheriff of the county palatine.[2] Spearman was entirely familiar with the local records, and his work is rather a series of references to those sources, topically arranged, than a continuous essay. It is well constructed and of great value, but it is unfortunately very rare.

Coke, also, in his chapter on the palatinate affords a good deal of information, set forth indeed in his most crabbed and chaotic manner, bearing on the organization of the palatine judiciary and its relation with

[1] An account of these will be found in the prefaces of the first volumes of Hutchinson and Surtees respectively. See also Rud's Catalogue of the Manuscripts in Durham Cathedral, pp. 324–437. This gives the most valuable account of the transcripts in question, but the book is not easily available, having been privately printed at Durham in 1825.

[2] An Enquiry into the Ancient and Present State of the County Palatine of Durham, etc., by John and Gilbert Spearman, Edinburgh, 1729. Although the work of John Spearman was finished in 1697, it was first printed by his son at the above date. The curious circumstances under which the printing took place are set forth above, § 27.

the royal system. He prints a quantity of original material, and furnishes some valuable information with regard to the organization of the palatine chancery in his day.[1] The works of Selden, Spelman, Leland, and Camden have been largely relied upon by the historians of the county; they all contain more or less information, but require to be used with caution and with constant reference to their authorities, which unhappily they do not always cite.[2]

The Durham manuscript records are cited (in abbreviated form) according to their classification at the Public Record Office. Thus "Rot. A. Langley, ann. 1, m. 7, curs. 34," refers to the first of the series of palatine chancery rolls for the pontificate of Bishop Langley, classified as "Durham Cursitors' Records, No. 34." The date of the required entry and its position on the roll are indicated by the abbreviation "ann. 1, m. 7" = anno pontificatus 1, membrane 7. Miscellaneous records in this class are cited thus: "Cursitor 154, No. 17;" this indicates a bundle of manuscripts in which the contents are numbered consecutively. The financial records of the palatinate are normally classed as Durham Auditors' Records. Thus "Auditor 1, Nos. 1–40," comprises the sheriffs' accounts from 1336 to 1535. But, as has been said, a number of this class of records belong to the Ecclesiastical Commissioners, who have deposited them in the Record Office. For the sake of consistency and in order to facilitate immediate reference to the original authority, these, like all other manuscript records referred to in the present work, have been cited in such a manner as to enable them to be readily produced at the Record Office. Thus the Durham receiver-general's account for the year 1461 is cited in the foot-notes of this work as "Ecclesiastical Commissioners, ministers' accounts, 189816," and the student (armed with the necessary permission from the Ecclesiastical Commissioners) has only to write this reference on an application ticket at the Record Office to secure the production of the original document.

The subjoined bibliography is designed only to facilitate immediate reference to the works cited in the preceding study. Titles have in some cases been compressed, and only printed works are included.

[1] Coke, Fourth Institute, cap. xxxviii.

[2] Selden, Titles of Honor (1572), pt. ii. cap. v. § 8; Spelman, Glossarium Archaiologicum (1637), *s. v.* "Comes" and "De Comite Palatino;" Camden, Britannia (ed. Gibson, 1722), ii. 931–962; Leland, De Rebus Brittanicis Collectanea (ed. Hearne, 1770).

APPENDIX IV.

LIST OF WORKS CITED.

[Abbreviations used in the foot-notes of the text are indicated below by square brackets.]

[ABBREV. PLAC.] Abbreviatio placitorum. Rec. Com. [London], 1811.

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[CAL. ROT. PAT.] Calendarium rotulorum patentium. Rec. Com. [London], 1802.

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