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978-1-107-62636-2 - The Collected Historical Works of Sir Francis Palgrave, K. H.: The Rise and Progress of the English Commonwealth: Anglo-Saxon Period: Part II: Proofs and Illustrations

Edited by His Son Sir R. H. Inglis Palgrave

Excerpt

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PROOFS AND ILLUSTRATIONS.

Part II.

PROCEEDINGS BEFORE THE KING, &c.

THE administration of justice by the Sovereign in person is so completely out of the pale of our ordinary legal history, that it becomes important to present the reader with some of the authorities affording evidence of the manner in which, during the early era of the Anglo-Norman Monarchy, the King exercised the prerogatives, of issuing at his will and pleasure the process which ran in his name, and also of presiding in his own tribunal. The rolls of the "Curia Regis" have been preserved from the reign of Richard Cœur de Lion, and these are probably the earliest which ever existed. Glanville never employs any expressions which can lead us to suppose that, in his time, the transactions of the supreme tribunal were reduced into writing, so as to form what we now call a record, that term being then exclusively applied to verbal testimony; whilst Bracton, on the contrary, makes frequent quotations from the written pleadings. The absence, however, of those muniments in the reign of Henry II. is in some measure supplied by the accounts of suits and actions found in the Monastic Chronicles; and, even in the period which is elucidated by the regular memorials of the Courts, these narrations often afford the most curious comments upon the authentic muniment. The story of the lawsuit may be incorrect in its statements and partial in its colouring, but the tale places us in the situation of the parties themselves. In the precise technicality of the record, we discover no traces of the angry passions which were excited by the strife. The calm phraseology of the law, whether announcing weal or woe, is neither varied in tenor nor changed in tone. Still less, when we consider the regular course of the process—the entries of the writ, the return, the declaration, the issue, the judgment, can we see the nod which quickened the pen of

(See Part I., Chap. ix. &c.)(See Part I., p. 117.)

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Part II. the acute Prothonotary, or hear the sweet, soft whisper, prompting the solemn decision delivered from the seat of justice. All these concealed springs of action are disclosed by the narrator, who, when he filled the fair and glossy vellum of the ponderous volume which was to be kept under the triple keys of the superiors of the House, was little aware that the "*Secretum Abbatis*," as such a register was oftentimes called, would ultimately become the means of imparting all his confidences to posterity.

Suit between Hilary, Bishop of Chichester, and Walter, Abbot of Battle, concerning the exemption of the Abbey from Episcopal Jurisdiction. (No. 1.)

The long contested plea between the Bishop of Chichester and the Abbot of Battle arose out of the privileges conferred by the Conqueror upon the Monastery, which was to be at once the lasting monument of his victory, and the supposed atonement for the bloodshed which had been occasioned by the assertion of his claim.

King Willam bythogte him ek of the volc that was verlore
And aslawe eke thoru him, in bataile by vore,
There as the batayle was, an Abbey he let rere
Of Seyn Martin, vor her soules that ther aslawe were
And the monekes wel ynou feffede withoute fayle,
That ys ycluped in Englelond, Abbey of the Batayle¹.

[King William bethought him also of the people that were lost
And also slain through him in battle before,
There where the battle was he caused to be built an Abbey,
Dedicated to Saint Martin, for the souls of those who were slain
there.

And assuredly endowed the monks right well
—That is called in England, the Abbey of the Battle.]

The territory for one league around the site of the Church, thus founded under the advocacy of St. Martin, was granted to the monks with all the King's rights and prerogatives, as free as he held the same, quit of "Geld and Scot,"² and Danegeld, of Brigbote, Burghbote, and Fyrdwite; of suits to Shires and Hundreds; and with Sac and Soc and Toll and Theam, and all the powers by which territorial jurisdiction was exercised. And furthermore, in the plenary exercise of his royal authority, William declared that the Church of St. Martin of Battle was to be freed and exempted from all episcopal jurisdiction, in as ample a manner as the Church of Canterbury. The charter^a

Exemptions contained in the foundation Charter.

^a Liber de Situ...ecclesiæ de Bello et de possessionibus sibi a Rege Willielmo et aliis quibuslibet datis. (Bib. Cott. Domitian ii, f. 23.) [The book of the site etc. of the Church of Battle, and of

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by which these rights were imparted is attested by the Primates **Part II.** of Canterbury and York, and several other Prelates, Earls and Barons. Stigand, however, the Bishop of the South Saxons, in whose diocese the Abbey was locally situated, does not appear as an assenting party; and the subsequent transactions shew that he then objected to the grant. Gausbert was brought from Marmoustier¹ to be the head of the colony of Norman ecclesiastics, by which the new foundation was to be peopled; and when he sought consecration from the Prelate, the latter refused to officiate unless the Abbot-elect repaired to Chichester to receive the benediction: but the Norman appealed to his Sovereign, who forthwith ordained that the Bishop should perform the ceremony in the monastery, and the benediction was given to him by Stigand, before the altar of St. Martin. To remove all pretence of episcopal jurisdiction, William also ordered that the Bishop and his train should neither lodge in the monastery nor take a meal there. And to the end that, in aftertimes, the exemption might be placed beyond all doubt, William issued a writ^a addressed to Lanfranc, Archbishop of Canterbury, and to Stigand, declaring, or rather enacting, that all future Abbots should be consecrated at Battle, like Gausbert, and repeating and enforcing the clause that the church should be discharged from any ecclesiastical subjection, whether to the parent Abbey of Marmoustier, or to any other person whomsoever; and that as completely as Christ Church, Canterbury, or as the Chapel Royal of the King.

Battle Abbey—filled with Monks from Marmoustier—over whom Gausbert was appointed the first Abbot.

Stigand insists that Gausbert shall repair to Chichester to receive consecration—Gausbert appeals with success to William, who confirms the exemptions of the Abbey.

Exemptions from the jurisdiction of the Ordinary seem hitherto to have been very rare, if not entirely unknown, in England, or at least no grant can be produced which is free from suspicion, or which has not been the subject of contest; and as the Norman prelates used every endeavour to retain all the rights which had been enjoyed under the Anglo-Saxon Constitution, the privileges granted to Battle Abbey, to the detriment of the Diocesan, must have been viewed with discontent

the possessions granted by King William and certain others. (Cotton MS. Domitian ii, f. 23.)] *Monasticon*, III. 234. This valuable Manuscript, from which the subsequent extracts are taken, appears to have been compiled before the close of the reign of Hen. II.

^a *Monasticon*, III. 244. One of the original foundation charters, a magnificent and perfect specimen of ancient calligraphy, is now in the British Museum. *Cart. Ant. Harl.*, no. 83 A 12.

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Part II. and jealousy. Therefore, when Hilary, a learned and active prelate, had succeeded to the see in the reign of Stephen, he endeavoured to enforce his episcopal authority by summoning the Abbot, Walter de Lucy^a, to a synod at Chichester, and exacting hospitation in the Abbey, and in the Manor-houses which were situated upon its demesnes; and in addition to these tokens of supremacy, he insisted, notwithstanding the declarations of the Charters, that the Abbots of Battle should seek their consecration at his Cathedral. In these proceedings he was sanctioned by the joint authority of Pope Eugenius¹, and of Theobald, Archbishop of Canterbury; but his antagonist, a man of equal energy, was strong in the support which he received from his brother, Richard de Lucy, a powerful Baron who afterwards filled the office of Justiciar^b, and who appears to have been already distinguished for his eloquence and knowledge of the law. Bishop Hilary pronounced a sentence of suspension against the contumacious Abbot, who forthwith appealed to the Royal authority. Stephen immediately inhibited the Bishop from troubling the "Chapel of St. Martin," which, as the King's Royal Chapel, was to be freed from all exactions and oppressions; and he summoned both parties to appear before him at London, in order that, in the presence and with the counsel of his Bishops and his Barons, an end might be put to these dissensions. At the appointed day the Bishop did not attend, but the cause proceeded. Stephen caused the Charters to be read before him; and having been advised on the subject, he decreed that, according to the tenor of the grants, the Church of Battle was to be freed from all Episcopal subjection whatever.

1148.
Hilary,
Bishop of
Chichester,
a Prelate of
great
learning
(see below,
p. 15, note b),
attempts to
exercise
Episcopal
jurisdiction
over the
Abbot,

who
appeals to
King
Stephen.

Stephen
orders the
Charters to
be read
before
him, and
decrees in
favour of
the Abbot.

Narratives of
the renewal
of the
Abbatial
Charters
(No. II.), of
the disputes
with the men
of Romney
(No. III.)
and with
Gilbert de
Balliol—
(No. IV.).

Upon the death of Stephen, the litigation was renewed and continued, until brought to an amicable settlement by the authority of his successor. The proceedings themselves are the best commentary upon the principles of constitutional jurisprudence which then prevailed: an observation which equally applies to the histories of the renewal of the Abbey Charters,—of the disputes relating to the rights of Dengy-marsh,—and of the suit which Abbot Walter prosecuted with so much success against Gilbert de Balliol.

^a Installed 1139. Died 1171. Upon his death the custody of the Abbey was committed, during four years, to Richard de Lucy, his brother.

^b See below, p. 10, note c.

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Many additions could have been made to these monastic **Part II.** narratives, but I have omitted them, in order to afford space for a document, which, as far as I am aware, is without a parallel, it being the only instance in which a layman is found detailing any portion of his own adventures or history. Richard de Anesty, the hero as well as the author of this most singular narrative, of which the original autograph is preserved in the repository in which Domesday is treasured, has afforded us so complete a development of the manner in which a Plaintiff was compelled to "follow his suit in person," that no language, except his own, could afford any adequate idea of the spirit and practice of our antient judicature. The cause of the litigation is, however, obscurely told, and we might have been still ignorant of the circumstances under which he was enabled to recover the land of "William my Uncle," but for the preservation of a report addressed to Pope Alexander III.¹, and inserted amongst the epistles of the celebrated John of Salisbury, who probably prepared the document for the use of the Judges-delegate, to whom the cause had been referred: it appears to have been the custom to apply to such learned "Clerks" when any official document of importance was required; and from this despatch we can collect the main facts upon which the case arose, and the legal principles which it involved.

Richard de Anesty—
narrative of his suit brought against Mabel de Francheville for the land of "William my Uncle"—
—i.e. William de Sackville (No. V.).

The individual whom Richard de Anesty designates as "William my Uncle," was William de Sackville^a, his sister

^a . . . Cum itaque jam dictus *Ricardus*, cognatus *Willelmi de Saccavilla* et nepos, sicut *sororis filium vulgus nepotem dicere consuevit*, petitionem hæreditatis ad bona Avunculi obtinenda instituerat, memorata *Mabilia* filia *Willelmi*, se illi in foro secularium iudicium, ubi res actitabatur, opposuit; asserens filiam nepoti in paternâ hæreditate præferendam. *Ricardus* verò, ei nihil juris hereditarii competere respondit; eo quod non esset ex legitimo suscepta matrimonio, sed adulterino procreata complexu. . . ut autem liquidius causam suam astrueret, et adversariam spuriam esse doceret, Avunculum suum *Willelmum*, cum quadam *Abbenda (Albreda) de Tregoz* matrimonium contraxisse asseruit, et exinde, illâ contra fidem conjugii derelictâ, duxisse *Adelitiam* filiam *Amfridi* Vicecomitis. (Joh. Sarisb. Ep. 89.) [When therefore the aforesaid *Richard*, the relative and nephew of *William de Sackville* (for sisters' sons were commonly called "nephews"), instituted a petition of heirship with a view to the possession of the goods of his Uncle, the above-mentioned *Mabel*, a daughter of *William*, put in a counter claim in the court of the

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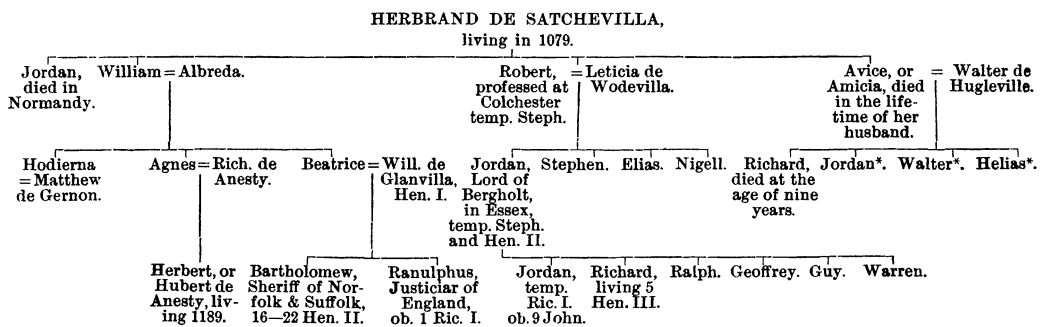
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Part II. being the mother of the Claimant. William de Sackville had given a promise of marriage to Albreda de Tregoz, but, in violation

secular justices, in which the action was being tried, asserting that a daughter had a prior claim to a nephew to be her father's heiress... But *Richard* answered that she had no right of heirship whatever, because she was not the child of lawful wedlock, but was the offspring of an adulterous amour... Moreover to make his claim more apparent and to prove that the counter-claimant was base-born, he asserted that his uncle *William* had entered into a contract (see p. 22, note b) of matrimony with one *Abbenda* (*Albreda*) *de Tregoz* and having subsequently deserted her in violation of his marriage vow, had married one *Adeliza* the daughter of the sheriff *Amfrid*. (Letters of John of Salisbury, 89.)

The statement of John of Salisbury is so clear, that we cannot doubt but that it is a correct report of the relationship which existed between the litigant parties; yet we cannot ascertain the situation which *William* ought to hold in the genealogy of the noble family of Sackville, the descent whereof has been thus [erroneously?] deduced by Collins, Morant, and Edmondson, who follow an ancient pedigree in the College of Arms:—



It is unnecessary to observe that Richard de Anesty could not have been the husband of one of the three co-heiresses of the person whose lands he claims in the character of nephew, and in default of lawful issue; nor is it probable that, under the circumstances of the case, he could be the grandson of Herbrand; yet it is certain that he did marry a daughter of a William de Sackville, for the entry upon the rolls of the 28 Hen. III., quoted by Morant, bears the appearance of authenticity.

Radulphus Gernon profert cartam donationis Willielmi de Sauca-villa pro terris datis per eundem Willielmum, Agneti et Hodiernæ

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of this engagement, he contracted a marriage with Adeliza, **Part II.** the daughter of the "Vice-comes Amfrid," by whom he had issue, but Mabel de Francavilla appears to have been the sole survivor. Albreda, thus abandoned, instituted proceedings in the ordinary ecclesiastical court; and as, in consequence of

filiabus suis; et dicit quod ista Agnes nupta fuit cuidam *Ricardo de Anesty*, qui habuit exitum Herbertum de Anesty, qui vixit tempore Regis Johannis et procreavit Nicholaum de Anesty, patrem Dionisiæ, quæ nupta fuit cum tota hæreditate Willielmo de Montecanisio. Et quod Hodierna soror ejusdem Agnetis fuit mater Radulphi Gernon qui vixit temp. Ric. I. (Plac. de Banco. 28 Hen. III.) [Ralph Gernon presents the charter of the gift of William de Sackville of the lands given by this same William to his daughters, Agnes and Hodierna; and he declares that this Agnes was married to one *Richard de Anesty*, who had issue, Herbert de Anesty, who lived in the reign of King John and was the father of Nicholas de Anesty, the father of Denise, who was married with all her inheritance to William de Munchensi; and that Hodierna, the sister of this same Agnes, was the mother of Ralph Gernon, who lived in the reign of Richard I. (Common Pleas. 28 Hen. III.)] Et in registro Abbatia de Colecestria annotatur quod Willielmus de Saukavill filius et hæres *R.* concessit prædictis Agneti et Hodiernæ filiabus suis terras vocatas Talbotts et Brinsic in parochia de Buers ad montem, quæ postea concessa fuerunt monachis ibidem. Et Jordanus Saucavilla filius et hæres confirmavit eas Abbatia.—Morant's Essex, ii. 224. [And in the register of the Abbey of Colchester it is noted that William de Sackville, the son and heir of *Richard*, did grant to the aforesaid Agnes and Hodierna, his daughters, the lands called Talbots and Brinsic in the parish of Mount Bures, which were subsequently granted to the monks of that place; and Jordan Sackville, the son and heir, did confirm them to the Abbey. (Morant's Essex, ii. 224.)]

It will be observed, however, that the Book of Colchester (probably one of the Registers mentioned by Tanner to be in the possession of the Earl of Kent) describes William as the son of *R.* de Sackville, and the father of Jordan, and that neither on the roll nor in the register is it mentioned that his wife's name was Albreda, or that Beatrice de Glanville was his daughter. We can, therefore, only arrive at the conclusion, that three Sackvilles, each named William, have probably been united into one individual by the compilers of the pedigree. Adeliza cannot be identified, though there are some reasons for supposing that her father belonged to the family of de Vere¹.

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Part II. the influence of her husband, she was unable to prosecute her suit with effect, she appealed afterwards, as it was alleged by Richard de Anesty, to the authority of Henry of Blois, Bishop of Winchester, the nephew of Henry I. and brother of Stephen, then Papal Legate in England. The Bishop obtained a rescript from Pope Innocent, in which the Holy Father, upon a statement of the case, declared that the espousals between William de Sackville and Albreda, having been contracted “per verba de præsentī,” the second marriage with Adeliza was illegal. Pursuant to this opinion, a sentence of nullity was pronounced in the Synod held at London^a before Henry of Blois; and William de Sackville, obedient to the decree, returned to Albreda, with whom he continued to cohabit until his dying day.

Statement of
Mabel de
Francheville.

This, it will be recollected, is the statement of Richard de Anesty. But it was contradicted in its most material points by the advocates of Mabel^b; and in fact, upon the death of her father, she entered upon the land. Richard de Anesty was therefore compelled to bring his writ against his adversaries, meaning Mabel and her husband, in the King’s Court, to which they pleaded, that the daughter was to be preferred before the nephew in the succession to the inheritance. Anesty replied, that Mabel, as the spurious issue of an adulterous marriage, was not the heir of her father. And the King’s Court therefore ordered that a question depending upon the canon law, “known to the clergy, but unknown to the laity,” should be decided by the ecclesiastical tribunal. The narrative, from this period, is very clear; and it is sufficient to observe that the suit was carried on with as much regularity, and, we must add, with as little expedition, as it could have been, if, instead of killing six horses in the pursuit of justice, the parties had tarried within the tranquil quadrangles of Doctors’ Commons. The justice of the ultimate decision is doubtful, and it is perhaps to be ascribed, in some degree, to the judicious application of the money taken “upon use” from Vives and Hakelot and their brethren. Besides which, it is evident that Richard Anesty was in the midst of his own powerful connexions and Peers, and that

^a Probably either in 1141 or 1143. Councils were held at London in these years, and in which Henry of Blois presided.—Wilkins, *Concilia*, I. pp. 419—421. He seems to have been appointed legate about 1139.

^b See below, pp. 22 ff., note b.

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the principal persons by whom the suit was to be decided were **Part II.** all more or less in his interest, and naturally favourable to his cause. The question of pre-contract is one upon which discordant opinions have been given by the Canonists; and even if the dissolution of the marriage with Adeliza may have been justified, it is doubtful whether the arguments urged on the part of Mabel against her consequent illegitimacy were not sufficient to protect her rights, according to the law as it was then practised and expounded.

These are the costs and charges which I, Richard de Anesty^a, Translation¹ of Richard de Anesty's Narrative. bestowed in recovering the land of William, my Uncle, to wit—
In the first place, I sent a certain man of mine own into Normandy, for the King's writ, whereby I impleaded my adversaries, 1158. and he spent half a mark² in that journey. And when my messenger brought me the writ, as soon as I received the writ, I proceeded to Sarum with the same, in order that it might be returned under the Queen's seal³; and in that journey I spent two marks of silver. And when I came back, I heard that Ralph Brito^b was about to cross the water: so I followed him

^a The family of Anstey, Anesty, or Hanesty, is said to have derived its name from Anstey in Hertfordshire. Richard de Anesty appears as a witness to the confirmation of the grant of Stamford and Ongar to Richard de Lucy (see below, p. 12). The witnesses to the ancient charters were almost always the suitors or "Peers" of the Baronial court. He was then probably a tenant of the honour of Boulogne, if not of Richard de Lucy himself (see below, pp. 10 ff., note c). Hubert, his son, in 1199, paid his relief for ten knight's fees in Essex and Hertfordshire, amongst which were the lordships of Great Braxted, Thorington, and Ridgwell (Essex), the latter being held of the honour of Boulogne. (Morant, vol. i. p. 450; vol. ii. pp. 137—341.) In Anesty, Hornead, Berkesdon, and Bracking (Hertfordshire), and Nutfield (Surrey), Hubert held three other knight's fees of the same honour, all of which descended to him from his father. Nicholas, the son of Hubert, died without male issue, leaving a daughter, Dyonisia, married to William de Montecaniso, in whose descendants the Anesty domains became vested.

^b Radulphus Brito accounted, 16 Hen. II. and subsequent years, for the issues of the Honour of Boulogne, then in the King's hands. (Magn. Rot. 16 Hen. II.; Madox, Baron. Angl. p. 63; Exch. pp. 180—203.) He was also Custos of the lands of Henry de Essex, 29 Hen. II., and

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Part II. to Southampton, for the sake of speaking to him, in order that he might purchase for me the King's writ^a, addressed to the Archbishop^b, because I knew that the plea would be removed into the Archbishop's court; and in that journey I spent twenty-two shillings¹ and seven pence, and I lost a palfrey which I had bought for fifteen shillings. And having returned from thence with the Queen's writ, I went to Ongar, and delivered the writ to Richard de Luci^c, who, having seen and heard the same, gave me

in the same year he paid an instalment of a fine by which he compounded for his quietus. (Madox, Exch. p. 691.) He was probably a tenant of the Honour of Boulogne, who had been appointed to act as the King's receiver or bailiff. The manor of Chigwell, in Essex, was granted by Richard de Lucy to this Ralph Brito, to be held of him by the service of one knight's fee; and the same manor was afterwards confirmed to Robert, the son of Ralph Brito, by Richard de Lucy, but to be held of Willielmus de Goldington. (Madox, Form. Angl., Nos. 75, 79, and 288.) Ralph Brito also held one knight's fee in Essex of Robertus de Helmar (Lib. Nig., p. 240), and about 23 Hen. II. he was one of the Justices Itinerant for the Counties of Essex and Hertford. (Madox, Exch. p. 90.)

^a This is not the exact case in which the King's writ is required to be addressed to the Archbishop by the Constitutions of Clarendon (c. 8); but the resort to the royal authority is quite in conformity to the spirit of the law:—De appellationibus si emererint, ab Archidiacono debent procedere ad Episcopum, ab Episcopo ad Archiepiscopum. Et si Archiepiscopus defuerit in justitiâ exhibenda, ad Dominum Regem est perveniendum postremo, ut præcepto ipsius, in curiâ Archiepiscopi, controversia terminetur, ita quod non debet ulterius procedere absque assensu domini Regis. [Concerning appeals, if they should arise, they should be referred by the Archdeacon to the Bishop, by the Bishop to the Archbishop. And if the Archbishop should fail to administer justice, the matter should, in the last resort, be referred to our Lord the King, so that, by his precept, the suit may be brought to a conclusion in the Archbishop's Court; with the understanding that no further appeal be made without the consent of our Lord the King.]

^b Theobald of Bec, who died 1160, and was succeeded by Thomas à Becket.

^c About this time Richard de Lucy was acting, together with Robert de Bellomonte, Earl of Leicester, as one of the Justiciars of England. From the custody of the seal being entrusted to the Queen, it seems that she was also one of the Regents. De Lucy filled the