

## TUDOR CONSTITUTIONAL DOCUMENTS

A.D. 1485—1603

## The Foundations of the Tudor Monarchy

In his treatise *The Governence of England*<sup>1</sup>, Sir John Fortescue, who lived under Henry VI, recommends a policy which is not unlike that adopted and pursued with striking ability by Henry VII, the first of the Tudor kings. The two main evils present to Fortescue's mind are the power of the great nobles and the poverty of the Crown. He entitles one of his chapters, 'Here he sheweth the perils that may come to the King by overmighty subjects'<sup>2</sup>; another, 'The harm that cometh of a King's poverty'<sup>3</sup>; and a third, 'How great good will grow of the firm endowing of the Crown.'<sup>4</sup>

As Fortescue's editor points out, 'Many of the lords were . . . enormously rich. Their estates were concentrated in fewer hands, and the lands of a man like Warwick represented the accumulations of two or three wealthy families. They engrossed offices as greedily as lands, their pensions and annuities exhausted the revenues of the Crown, they made large fortunes out of the French wars which drained the royal exchequer, and they were among the chief wool-growers and sometimes wool-merchants in the kingdom.'<sup>5</sup> They were rich enough to keep on foot small armies of retainers, and their influence in their localities was sufficient to enable them to control the nomination of local officers, and to pervert to their own ends the administration of justice. The justices of the peace and even the royal judges could be corrupted, juries bribed or intimidated, and claims to property maintained by force. Thus came about the condition of things described in the *Paston Letters*, in which the law was powerless against great offenders, and open violence reigned supreme<sup>6</sup>.

For this state of things Fortescue has remedies to propose. It is important that 'the King's livelihood, above such revenues as shall be assigned for his ordinary charges, be greater than the livelihood of the greatest lord in England,'<sup>7</sup> for it is necessary 'that the King have great possessions and peculiar livelihood for his own surety, namely, when any of his lords shall happen to be so excessively great as there might thereby grow peril to his estate. For certainly there may no greater peril grow to a prince than to have a subject

<sup>1</sup> Plummer's edition. The full titles of the works referred to in the footnotes are printed on pp. xviii to xxii above.

<sup>2</sup> Ch. ix.

<sup>3</sup> Ch. v.

<sup>4</sup> Ch. xix.

<sup>5</sup> Fortescue, p. 17.

<sup>6</sup> The *Paston Letters* assume that it is useless to institute legal proceedings unless the sheriff and the jury can be secured beforehand. For instance, 'extorcious amerciaments' were taken of the Prior of Westacre; he was also robbed of 'a flock of hogs,' and his man was set 'openly and shamefully' and with 'great oppression' in the stocks. But 'of these,' the letter-writer goes on to say, 'and of many more worse, it is a great folly to labour in as for any indictments but if ye be right sure of the sheriff's office' (*Letters*, i, 191).

<sup>7</sup> p. 128.

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equipollent to himself.<sup>1</sup> To this end there should be ‘a general resumption, made by authority of Parliament,<sup>2</sup> of lands alienated or given away by the Crown, and the establishment of ‘a worshipful and a notable council’ which could prevent fresh alienations and control future rewards. The council was no longer to be composed ‘of great princes and of the greatest lords of the land,’<sup>3</sup> but almost entirely of persons chosen because of their business capacity<sup>4</sup>. The King should also reclaim the patronage of the Crown and appoint to all offices himself, and no man should ‘have any office of the King’s gift, but he be first sworn that he is servant to none other man, or will serve any other man or take his clothing or fee while he serveth the King.’<sup>5</sup> The accumulation of offices is to be prevented, for no man is to have ‘more offices than one, except that the King’s brethren may have two offices.’<sup>6</sup> ‘And when the King, by the means aforesaid or otherwise, hath gotten again his livelihood, if then it would like his most noble Grace to establish, and as who saith, amortise the same livelihood to his Crown, so as it may never be aliened therefrom without the assent of his Parliament, which then would be as a new foundation of his crown, he shall be thereby the greatest founder of the world.’<sup>7</sup> The Crown will then be endowed, as if it were a bishopric, an abbey, or a university, and the King will no longer have overmighty subjects ‘equipollent to himself.’

We are scarcely justified in supposing that Henry VII consciously appropriated Fortescue’s ideas, but circumstances, aided by his own policy, placed him in the position where Fortescue had desired the King to be. The conditions at his accession favoured a king who sought to build up a strong monarchy and went to work in the right way. There had been a change in the balance of power within the kingdom, for the great houses had been exhausted and impoverished under the economic strain of the Civil Wars. And the impoverishment of the houses had been associated with the enrichment of the Crown, for both Yorkists and Lancastrians had confiscated the estates of their respective traitors and the gains of both dynasties had fallen to the Tudors. The humiliation of the baronage had left the Church in isolation, and a secularised Papacy could no longer give it effective support. Finally, the Crown was now steadily supported by the people at large, for a strong monarchy was a guarantee against a recrudescence of private war, and private war interfered in all kinds of ways with their common everyday happiness. The nation as a whole was weary of dynastic quarrels and eager for internal peace; and moreover it was now that Englishmen were finding new opportunities for commerce, and were beginning to open up the new worlds that lay on the other side of the sea.

Given these favourable conditions, Henry VII was the kind of king who could appreciate them, and use them for the building up of a strong monarchy. He was ‘one of the best sort of wonders,’ says Bacon, ‘a wonder

<sup>1</sup> p. 130.<sup>2</sup> p. 143.<sup>3</sup> p. 145.

<sup>4</sup> ‘xii spiritual men and xii temporal men, of the wisest and best disposed men that can be found in all the parts of this land’ (p. 146). These were to have a permanent tenure, and to them were to be added four lords spiritual and four lords temporal to be chosen every year.

<sup>5</sup> p. 153. ‘Clothing’ is a reference to ‘livery’: see p. 8*n.* below.<sup>6</sup> p. 153.<sup>7</sup> p. 154.

## HENRY VII'S POLICY

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for wise men'<sup>1</sup>; and he classes him with Louis XI and Ferdinand of Aragon as 'the three Magi of kings of those ages.'<sup>2</sup> Bacon was not a contemporary, but Bishop Fisher, in a sermon preached on the occasion of the King's funeral, is quite as appreciative. 'His politic wisdom in governance it was singular; his wit always quick and ready; his reason pithy and substantial; his memory fresh and holding; his experience notable; his counsels fortunate and taken by wise deliberation; his speech gracious in diverse languages; his person goodly and amiable, his natural complexion of the purest mixture; his issue fair and in good number. . . his dealing in times of perils and dangers was cold and sober with great hardiness.'<sup>3</sup> He was deemed abroad one of the wisest of European princes; and his policy was his own—it was not minister-made. 'He was of an high mind, and loved his own will and his own way; as one that revered himself, and would reign indeed, . . . not admitting any near or full approach either to his power or to his secrets.'<sup>4</sup> And, like the other members of his house, he knew how to establish and maintain full personal control of the business of government. 'He was a prince sad, serious, and full of thoughts and secret observations; and full of notes and memorials of his own hand, especially touching persons; as whom to employ, whom to reward, whom to inquire of, whom to beware of, what were the dependencies, what were the factions, and the like; keeping (as it were) a journal of his thoughts.'<sup>5</sup> This industrious, skilful, secretive statesman is the founder of the Tudor character; and when Henry VIII, Mary, and Elizabeth gave so much time to the mastery of the principles and details of government, they were only following in his steps.

The policy of such a king would be characterised by precision, effectiveness, a careful adaptation of adequate means to an end clearly conceived and well understood. Henry VII perceived that what England needed in his day was an efficient central administration controlled by a strong and wealthy royal house; and he set his policy steadily in this direction. It is true that avarice grew upon him with advancing years, but the experience of the Lancastrians had shewn that royal power depended upon wealth, and behind his 'miserliness' lay a principle of policy. He aimed at making the Crown richer than any noble or group of nobles. As Fortescue had advised, there was a resumption by Parliamentary authority of alienated Crown lands<sup>6</sup>.

Benevolences, heavy compositions from royal wards, the revival of disused feudal tenures, the exaction of large sums for the removal of outlawry in personal actions, fines for breaches of obsolete statutes, the systematic pressing of legal technicalities against individuals, a wholesale abuse of the ordinary process of law—all these methods, steadily and systematically practised, brought vast sums into the King's treasury. The rebellions of the reign also served to enrich the Crown with forfeitures. 'The less blood he drew,' says Bacon, 'the more he took of treasure'<sup>7</sup>; and so treason became a profitable part of the royal revenue. But all this was not common greed; it was statesmanship pursuing an intelligible purpose. Empson and Dudley,

<sup>1</sup> *Works*, vi, 238.<sup>2</sup> *Ib.* vi, 244.<sup>3</sup> Quoted from *The English Works of John Fisher* in H. A. L. Fisher, *Polit. Hist.* p. 125.<sup>4</sup> *Works*, vi, 240.<sup>5</sup> *Ib.* vi, 243.<sup>6</sup> Fisher, *Polit. Hist.* p. 126.<sup>7</sup> *Works*, vi, 239.

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the 'ravens wolves,' were not simply the agents of an extortioner; they were impoverishing the great houses with a definite end in view.

In another way also Empson and Dudley stand for a deliberate policy foreshadowed by Fortescue—the exclusion of the noble houses from the administration. Henry VII, as far as he was able to do so, employed only churchmen and lawyers; and churchmen were cheap, for they could be paid by ecclesiastical promotion. 'He chose his ministers from churchmen, and made bishops of his ministers.'<sup>1</sup> The leading men of the reign were not the 'great princes' and 'the greatest lords of the land' referred to by Fortescue<sup>2</sup>, but churchmen like Morton, Fox, and Warham, or laymen of the official class, such as Sir Reginald Bray, the son of a physician, Sir Thomas Lovell, whose mother was a Norwich alderman's daughter, or Sir Edward Poyning, the son of Jack Cade's carver and sword-bearer. Dudley was at any rate 'of a good family,'<sup>3</sup> but he was not a great noble, and Bacon's phrase concerning Empson, that he was 'the son of a sieve-maker,'<sup>4</sup> indicates his antecedents although it may not be literally true. The growth of this class of royal officials, entirely dependent upon the king, and serving as his protection against the revival in the government of the power of the houses, is a fact of considerable importance in the Tudor period. The remedy of the nobles against a policy which they hated was conspiracy; but against successful conspiracy the king was protected by his officials, who first entrapped his traitors for him and then secured their condemnation under the forms of law. This was made all the easier by Henry VII's secret service, an institution which Bacon is disposed to justify. 'As for his secret spies which he did employ both at home and abroad, by them to discover what practices and conspiracies were against him, surely his case required it; he had such moles perpetually working and casting to undermine him.'<sup>5</sup> This system passed as an heirloom to his successors. It was of the greatest service both to Henry VIII and to the government of Edward VI; and it was carried to high efficiency by Burghley and Walsingham, who were able by its aid to protect the life of Elizabeth against the assassination plots by which it was so continually threatened.

The reign of Henry VII suffers by contrast with the reigns that succeeded it, and its importance is sometimes underrated. There is little in the period that is stirring and picturesque; the story is confused and difficult to understand; and there is a remarkable deficiency of the original material of history. But if the reign is studied from the constitutional standpoint it will be seen that the massive foundations of the Tudor monarchy are being silently but well and truly laid. The great position of Henry VIII and his successors is, in part at any rate, of the nature of an inheritance.

Henry VII had done much to establish a new tradition for the English monarchy and to set it in a place apart. He arranged royal marriages for his children instead of allowing them to marry among the English nobility, and although a king careful of money he deliberately spent money in keeping up a splendid court. Thus 'the Crown withdrew to a position of splendid isolation.'<sup>6</sup> But he was hampered by unpopularity and by a defective title, and he

<sup>1</sup> Stubbs, *Lectures*, p. 342.

<sup>2</sup> p. 145.

<sup>3</sup> Bacon, *Works*, vi, 217.

<sup>4</sup> *Ib.*

<sup>5</sup> *Ib.* vi, 241.

<sup>6</sup> Temperley, p. 249; see also note on p. 12 below.

## POSITION OF HENRY VIII

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had to face a series of rebellions before his authority was assured. For Henry VIII these difficulties scarcely existed. His title was never questioned, for he was 'of the progeny of the race of kings,' and in his person the Yorkist and Lancastrian claims were blended. Bacon in one of his *Fragments* notes of his accession that there was now 'no such thing as any great or mighty subject who might eclipse or overshadow the imperial power.'<sup>1</sup> And the beginning of the new King's reign is 'the birthday of loyalty, in the sense of personal devotion to the Crown.'<sup>2</sup> Foreign ambassadors in their private despatches to their governments had no motive for flattering Henry VIII, but they comment with something approaching enthusiasm upon his beauty of person, his horsemanship, his skill as a jousting and tennis-player, and his knowledge of music and languages<sup>3</sup>. This young, gracious, magnificent figure struck the imagination of his subjects, and the sovereign was no longer unpopular. Thus although the foundations of the Tudor monarchy were laid by his father, Henry VIII made his own contribution to their stability and permanence.

The constitutional documents of the reign of Henry VII<sup>4</sup> which are important for the present purpose are the Star Chamber Statute, the Statute of Treason, the Act concerning Corporations, and the Statute of Liveries. The first of these is printed in another section [p. 258]; it should however be noted here that the preamble, indicating the offences and abuses with which the persons named in the statute were specially commissioned to deal, enumerates exactly those which were characteristic of the social disorder described in the *Paston Letters* and alluded to by Fortescue—'unlawful maintenances, giving of liveries, signs, and tokens, and retainers by indenture,' 'untrue demeanings of sheriffs in making of panels, and other untrue returns,' 'taking of money by juries,' and 'great riots and unlawful assemblies.' The statute is intended to furnish fresh facilities for dealing effectively with disorder, and clearing up the troublesome situation which a period of civil war had created.

## (1) Statute of Treason, 1495

This statute ordained, as Bacon puts it, 'that no person that did assist in arms or otherwise the king for the time being, should after be impeached therefore or attainted. . . but if any such act of attainder did hap to be made, it should be void and of none effect.'<sup>5</sup> Henry VII took the precaution of excluding from the benefits of the Act all who should in future desert himself, but the intention was to do away with the dynastic proscriptions of the Civil Wars by protecting from the vengeance of the king *de jure*, when he came to his own again, those who adhered to the king *de facto* and the existing social order. It was 'a kind of *eirenikon*, founded upon the rough practical common-sense which generally commends itself to the English nation.'<sup>6</sup> The statute has been described as 'the earliest recognition to be found in English law of a possible difference between the person and the office of the King, though nothing can be more vague and indirect than the way in which the distinction is hinted at.'<sup>7</sup>

<sup>1</sup> *Works*, vi, 270.<sup>2</sup> Goldwin Smith, i, 297.<sup>3</sup> Pollard, *Henry VIII*, p. 39; cf. also *Factors*, p. 89.<sup>4</sup> See also Pollard, *Sources*, ii, 3-208.<sup>5</sup> *Works*, vi, 159. But see note on p. 6 below.<sup>6</sup> Fisher, *Polit. Hist.* p. 63.<sup>7</sup> Stephen, quoted in Holdsworth, iii, 359.

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*An Act that no person going with the King to the Wars  
shall be attaint of treason*

The King our Sovereign Lord, calling to his remembrance the duty of allegiance of his subjects of this his realm, and that they by reason of the same are bounden to serve their Prince and Sovereign Lord for the time being in his Wars for the defence of him and the land against every rebellion, power, and might reared against him, and with him to enter and abide in service in battle if the case so require; And that for the same service what fortune ever fall by chance in the same battle against the mind and weal of the Prince, as in this land sometime past hath been seen, That it is not reasonable but against all laws, reason, and good conscience that the said subjects going with their Sovereign Lord in Wars, attending upon him in his person, or being in other places by his commandment within this land or without, any thing should lose or forfeit for doing their true duty and service of allegiance: It be therefore ordained, enacted, and established... that from henceforth no manner of person nor persons, whatsoever he or they be, that attend upon the King and Sovereign Lord of this land for the time being in his person, and do him true and faithful service of allegiance in the same, or be in other places by his commandment, in his Wars within this land or without, that for the same deed and true service of allegiance he or they be in no wise convict or attaint of high treason nor of other offences for that cause by Act of Parliament or otherwise by any process of law, whereby he or any of them shall mowe<sup>1</sup> forfeit life, lands, tenements, rents, possessions, hereditaments, goods, chattels, or any other things, but to be for that deed and service utterly discharged of any vexation, trouble, or loss; And if any Act or Acts or other process of the law hereafter thereupon for the same happen to be made contrary to this ordinance, that then that Act or Acts or other processes of the law, whatsoever they shall be, stand and be utterly void<sup>2</sup>.

II. Provided alway that no person nor persons shall take any benefit or advantage by this Act which shall hereafter decline from his or their said allegiance.

11 Henr. VII, c. 1: *Statutes of the Realm*, ii, 568.

<sup>1</sup> See note on p. 24 below.

<sup>2</sup> Bacon points out that this provision is valueless: 'But the force and obligation of this law was in itself illusory, as to the latter part of it (by a precedent act of Parliament to bind or frustrate a future). For a supreme and absolute power cannot conclude itself, nor can that which is in nature revocable be made fixed; no more than if a man should appoint or declare by his will that if he made any later will it should be void.' But he adds the astute remark: 'But things that do not bind may satisfy for the time' (*Works*, vi, 160).

## RESTRAINT OF CORPORATIONS

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**(2) Act concerning Corporations, 1504**

Bacon says of Henry VII: 'In that part, both of justice and policy, which is the most durable part, and cut as it were in brass or marble—the making of good laws—he did excel'; and the new commercial development of Tudor England in particular is suggested by a mass of commercial and trade legislation<sup>1</sup>. Among these statutes the Act concerning Corporations is of constitutional rather than economic importance, for it asserts the right of the central government to complete industrial control. The exactions of the guilds, called by Bacon 'fraternities in evil,'<sup>2</sup> had been a principal cause of the decay of the towns. These exactions were now to pass under the supervision and limitation of the government. The statute may therefore be regarded as a contribution to the Tudor policy of asserting in all spheres the supremacy of the central authority.

The preamble recites an Act of 1437<sup>3</sup> 'which Act is now expired, and since the expiring of the same divers and many ordinances have been made by many and divers private bodies corporate within cities, towns, and boroughs, contrary to the King's prerogative, his laws, and to the common weal of his subjects'; and the substance of the statute re-enacts the earlier provisions with an important difference. The Act of 1437 had subjected guild ordinances to the review of the local administration—'the justices of the peace or the chief governors of cities'; the Act of 1504 brings into operation the central authority.

*De privatis et illicitis statutis non faciendis*

...Be it therefore ordained, established, and enacted...that no Masters, Wardens, and Fellowships of crafts or mysteries, nor any of them, nor any rulers of guilds or fraternities, take upon them to make any acts or ordinances, nor to execute any acts or ordinances by them here afore made, in disheritance or diminution of the prerogative of the King, nor of other, nor against the common profit of the people, but if the same acts or ordinances be examined and approved by the Chancellor, Treasurer of England, and Chief Justices of either Bench, or three of them, or before both the Justices of Assizes in their circuit or progress in that shire where such acts or ordinances be made, upon the pain of forfeiture of £40 for every time that they do the contrary<sup>4</sup>...

19 Henr. VII, c. 7: *Statutes of the Realm*, ii, 652.

**(3) Statute of Liveries, 1504**

The evils connected with livery and maintenance and the keeping of retainers find their original source in the Hundred Years War with France.

<sup>1</sup> An account of Henry VII's commercial policy is given in Fisher, pp. 96–109; see also Temperley, ch. v.      <sup>2</sup> *Works*, vi, 223.      <sup>3</sup> 15 Henr. VI, c. 6.

<sup>4</sup> The Act also contains a clause forbidding corporations to make acts or ordinances 'to restrain any person or persons to sue to the King's Highness or to any of his Courts.'

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Excerpt

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## 8 FOUNDATIONS OF THE TUDOR MONARCHY

From the time of Stephen onwards the feudal levies of the realm had been frequently supplemented by mercenaries drawn from the adventurers of Europe. The forty days of feudal service did not meet the case of a regular campaign oversea, and it was necessary for government to fall back on the professional soldier. In the reign of Edward III the Crown adopted the practice of contracting—or in the technical phrase, ‘indenting’<sup>1</sup>—with great lords and others, for the supply of men. By a further development of the system smaller men commanding levies of their own would bind themselves by indentures to place themselves and their men at the disposal of a greater lord in peace and war. Thus the military power at the disposal of a wealthy lord might be very great. As long as this military power was employed abroad it raised no dangerous questions, but when the English were driven from France, and the country was filled with disbanded soldiers, ready to indent or be indented, the way was prepared for the growth of the perilous practice of keeping retainers. These wore their lord’s badge<sup>2</sup>; they received their lord’s livery<sup>3</sup> and enjoyed his hospitality<sup>4</sup>; they were paid wages in money, varying from a mark to £4 or £5 a year according to their services and standing; and they could rely upon their lord’s protection in the courts of law from the legal consequences of crimes committed in his service<sup>5</sup>.

Great lords who thus controlled military power were under a standing temptation to employ it in private war or in other acts of violence. In 1411 Sir Robert Tirwhit, himself a royal judge, with 500 men at his back, set an ambush for Lord Roos, with whom he had a dispute about common of pasture, and when called in question, pleaded in his defence that he did not know that he had broken the law<sup>6</sup>. In 1455 the Earl of Devon, at the head of 4000 foot and 800 horse, plundered the cathedral at Exeter, held the canons to ransom, and committed ‘many other great and heinous inconveniences.’<sup>7</sup> In 1469 Sir John Fastolf’s castle of Caister, which was claimed by the Duke of Norfolk, was besieged by him in due form with a train of artillery and a force of 3000 men. The *Paston Letters*<sup>8</sup> give an account of the progress of the siege, which lasted for five weeks. At the end of that time provisions began to fail, and the place was ‘sore broken with guns,’ so the garrison surrendered and the Duke acquired the property. No mention is made of any appeal to the courts of law; yet the claimant who adopted this method of enforcing his rights was Earl Marshal, Constable of the Tower of London, and a Knight of the Garter<sup>9</sup>.

The Statute of Liveries of 1504 is only one in a series of statutes<sup>10</sup>

<sup>1</sup> See Plummer’s Introduction to Fortescue, *The Governance of England*, p. 15.

<sup>2</sup> The bear and the ragged staff, the badge of the Kingmaker, is still borne by the inmates of the Leicester Hospital at Warwick.

<sup>3</sup> ‘Livery’ was whatever was delivered to the retainer—livery of food or livery of ale, as well as livery of cloth. The term was not limited to a reward for the service of retainers; for instance litigants sometimes paid counsel in kind by livery of cloth and robes (Holdsworth, ii, 412).

<sup>4</sup> When Warwick the Kingmaker came to London, six oxen were eaten at a breakfast, and there was free food for all comers (Holinshed, iii, 301).

<sup>5</sup> This is what is technically known as ‘maintenance.’

<sup>6</sup> Holdsworth, ii, 347.

<sup>7</sup> Denton, p. 275.

<sup>8</sup> ii, pp. xlv, l–liii, 371 ff.

<sup>9</sup> Denton, p. 299.

<sup>10</sup> See note on p. 9 below.



## STATUTE OF LIVERIES

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designed to put down private war, their number being evidence, not of the vigour of the law but of its ineffectiveness. Henry VII's Act inflicts a penalty upon persons giving or taking livery, and by making indentures of retainers void it destroys the legal foundation upon which the system was based. The Act was limited to the life-time of the king, but larger causes were at work to end the abuse. The Tudor period supplied new outlets for lawless energy in the development of commerce and maritime enterprise, in the opening up of the New World, and finally in the war with Spain; and the retainers of the fifteenth century became the adventurers and mariner-pirates of the sixteenth. There were also new openings for the employment of capital, and great lords who had once spent their substance in the profuse hospitality which kept the private armies together, now found that they had something better to do with their money. Thus the problem of liveries solved itself.

*De Retentionibus illicitis*

The King our Sovereign Lord calleth to his remembrance that where before this time divers statutes<sup>1</sup> for punishment of such persons that give or receive liveries, or that retain any person or persons or be retained with any person or persons...have been made and established, and that notwithstanding divers persons have taken upon them some to give and some to receive liveries and to retain and be retained...and little or nothing is or hath been done for the punishment of the offenders in that behalf, Wherefore our Sovereign Lord the King, by the advice [etc.]...hath ordained, stablished, and enacted that all his statutes and ordinances afore this time made against such as make unlawful retainers and such as so be retained, or that give or receive livery, be plainly observed and kept and put in due execution.

II. And over that, our said Sovereign Lord the King ordaineth, stablisheth, and enacteth by the said authority, that no person, of what estate or degree or condition he be,...privily or openly give any livery or sign or retain any person, other than such as he giveth household wages unto without fraud or colour, or that he by his manual servant<sup>2</sup> or his officer or man learned in the one law or in the other<sup>3</sup>, by any writing, oath, promise, livery, sign, badge, token, or in any other manner wise unlawfully retain; and if any do the contrary, that then he run and fall in the pain and forfeiture for every such livery and sign, badge or token, so accepted, 100s., and the taker and acceptor of every such livery, badge, token, or sign, to forfeit and pay for every such livery and sign, badge or token, so accepted, 100s., and for every month that

<sup>1</sup> Statutes were passed in 1399, 1401, 1406, 1411, 1414, 1429, and 1468; see Fortescue, pp. 27-8.

<sup>2</sup> *I. e.* a servant who works with his hands.

<sup>3</sup> *I. e.* learned either in the civil or in the canon law.

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he useth or keepeth such livery or sign, badge or token, after that he hath taken or accepted the same, to forfeit and pay 100s., and every person that [shall] by oath, writing, or promise, or in any other wise unlawfully retain, privily or openly, and also every such person that is so retained, to forfeit and pay for every such time 100s., and as well every person that so retaineth as every person that is so retained to forfeit and pay for every month that such retainer is continued, 100s....

III. And also it is ordained and enacted that no person of what estate [or] condition he be...name or cause himself to be named servant or retained to or with any person, or buy or cause to be bought or wear any gown as a livery gown, sign, or token of the suit or livery of any person, or any badge, token, or sign of any person, upon pain of forfeiture for every day or time that he doth, 40s., and also to have imprisonment by the discretion of the judges or persons afore whom he shall be thereof convicted, and that without bail or mainprize<sup>1</sup>.

\* \* \* \* \*

VI. Moreover the King our Sovereign Lord, by the advice, assent, and authority aforesaid, hath ordained, stablished, and enacted, that every person that will sue or complain before the Chancellor of England or the Keeper of the King's Great Seal in the Star Chamber<sup>2</sup>, or before the King in his Bench, or before the King and his Council attending upon his most royal person wheresoever he be, so that there be 3 of the same Council at the least of the which two shall be lords spiritual or temporal, against any person or persons offending or doing against the form of this ordinance or any other of the premises, be admitted by their discretion to give information...And that upon the same all such persons be called by writ, subpoena, privy seal, or otherwise, And the said Chancellor or Keeper of the Seal, the King in his Bench, or the said Council to have power to examine all persons defendants and every of them, as well by oath as otherwise, and to adjudge him or them convict or attain, as well by such examination as otherwise, in such penalties as is aforesaid as the case shall require;...And also the same party, plaintiff, or informer shall have such reasonable reward of that that by his complaint shall grow to the King as shall be thought reasonable by the discretion of the said Chancellor or Keeper of the Great Seal, Justices, or Council.

VII. And also it is enacted by the said authority that the said

<sup>1</sup> The old law drew a subtle distinction between mainprize and bail; see Jacob, *Law Dictionary*, under 'mainprize.'

<sup>2</sup> See p. 249 below.