

THE ECCLESIASTICAL COURTS IN THE DIOCESE OF

CANTERBURY 1603-1665.

- by -

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ABSTRACT

The ecclesiastical courts at Canterbury have left a magnificent set of records many of them still largely unexplored. The seventeenth century collection includes examples of almost every type of material and the series of Act books are almost complete. They reveal a proud and highly trained ecclesiastical bureaucracy in this diocese which was almost certainly less corrupt than elsewhere and who provided a much wider and more efficient service than the nickname "the bawdy courts" implied. Undoubtedly they did attempt, not always very successfully, to discipline the morals of the Church's members but Instance business, the hearing of cases between party and party, and the granting of probate occupied a very large proportion of their time. In these spheres they provided an effective service the need for which was confirmed by the very small amount of interference they experienced from the Common law courts. While it is true that the diocese had advantages which made it unique, in that it covered a small area and had a special relationship with the Archbishop of Canterbury himself, a study of the organisation and procedure of these courts can nevertheless be very valuable. It shows the church courts working in a way which was presumably closer than elsewhere to the ideal envisaged by the Church and so helps to explain the character and scope of post-Reformation ecclesiastical jurisdiction.

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ABBREVIATIONS

The following abbreviations have been used:

C.S.P.D.	Calendar of State Papers, Domestic
Economic Problems	C. Hill, <u>Economic Problems of the Church</u> , Oxford, 1956.
Society and Puritanism	C. Hill, <u>Society and Puritanism in Pre-Revolutionary England</u> , London, 1964
Larking	Ed. L. Larking, <u>Proceedings Principally in the County of Kent</u> , Camden Society, 1862.
Melling	Ed. E. Melling, <u>Crime and Punishment, Kentish Sources VI</u> , Kent County Council, 1969.
P.R.C.	Maidstone Probate Registry Collection
P.R.O.	Public Record Office
T.R.H.S.	Transactions of the Royal Historical Society
Woodcock	B. L. Woodcock, <u>Medieval Ecclesiastical Courts in the Diocese of Canterbury</u> , Oxford, 1952.

NOTE ON TRANSCRIPTION

The names of places have been standardised according to the map of Kent parishes published by the Institute of Heraldic and Genealogical Studies, Northgate, Canterbury, otherwise the original spelling of all primary sources has been retained. However, contractions have been expanded and a minimum of punctuation has been inserted whenever it is needed to make the sense clear. Occasional explanatory words have been added in square brackets. Dating throughout is in the Old Style

(Julian Calendar) except that in the text the New Year has been taken as starting on 1 January. Where possible the page and folio numbers cited in the footnotes are those which the documents originally bore.

INTRODUCTION

The Jurisdiction of the Ecclesiastical Courts

Despite the Puritan Bill of 1601 demanding "the putting down and abolishing of certain idle courts,"<sup>1</sup> it has been argued that Tudor efficiency had in fact reinforced the medieval machinery of the Courts Christian, or ecclesiastical courts.<sup>2</sup> As has often been stated, it is certainly true that, in spite of many bitter attacks against the abuses of these courts, both before and during Henry VIII's reign, and the part their unpopularity played in creating the atmosphere which made the English Reformation possible, their powers and position were certainly not reduced by the ecclesiastical legislation of the Tudors. In 1532 appeals and citations to external courts were forbidden<sup>3</sup> and in 1534 the Act for Restraint of Appeals<sup>4</sup> made the final Court of Appeal for Ecclesiastical causes, the Crown in Chancery. From this developed the Court of Delegates, a special commission set up under the great seal, whenever necessary; otherwise the character and scope of ecclesiastical jurisdiction in England remained as it had been throughout the Middle Ages. Indeed, as Professor Sykes has pointed out, two acts of Henry VIII extended the jurisdiction of the Courts in the case of tithe to include non-ecclesiastical persons.<sup>5</sup>

1. J.E.Neale, Elizabeth and her Parliaments 1584-1610 London, 1957 p. 394
2. N.Sykes 'Review of Economic Problems of the Church' English Historical Review 1958 LXXIII, p. 298 and R.A.Marchant, The Puritans and the Church Courts in the Diocese of York 1560-1642, London, 1960 p. I
3. 23 H. VIII c.9
4. 25 H. VIII c.19
5. 27 H. VIII c.20 & 32 H. VIII c.7

So, when William Stoughton in his An Assertion for true and Christian church-policie published in 1604, argued that by "an act restoring jurisdiction to the Crown, the ancient jurisdiction of the courts ecclesiastical and spiritual was illegal," only a few common lawyers and the puritan minority took him seriously.

The purpose of these ecclesiastical courts was to apply discipline to church members, both lay and clerical. The annual April visitation, supplemented by a general chapter in September or October to which only the Minister and one churchwarden were called, was the chief means by which this was carried out and the means by which particular policies desired by the ecclesiastical authorities, or government of the day, were applied. Here we have an example of the greater efficiency of the post-Reformation courts for, as Brian L. Woodcock said, "From a review of post-Reformation Act books it can be seen that one of the great permanent changes in the application of ecclesiastical jurisdiction during the later sixteenth century was the substitution of a regular visitation and presentment system for the hitherto haphazard process of hauling people into court upon the instigation of the apparitors"<sup>1</sup> who in their turn frequently acted upon 'common fame.' Indeed the process of visitation was virtually continuous by the seventeenth century since the officials had to take the charges in turn, and therefore cases were spread throughout the year.

All presentments were made in order that an individual

1. Brian L. Woodcock, Medieval Ecclesiastical Courts in the Diocese of Canterbury Oxford, 1952 p.69

might be disciplined in the interests of the community and were prosecuted as causes of office, ex officio mero, by the judge himself. Most of these cases were dealt with summarily without the proctors and witnesses that instance business involved, although the defendant could insist upon these. Indeed much was done out of court in the house of the commissary-general, or the registrar, and many cases are incompletely recorded or only obliquely referred to as a result. If the defendant was accused of a heinous offence, or several offences, it was usual for the court to draw up articles which were read out to him in court, but in most cases the defendant was dealt with by word of mouth and only the briefest details of the case were recorded. This, of course, was common practice in the common law courts too. A fully engrossed record of all proceedings at a particular session in Kent is rare.<sup>1</sup> Records were only made for administrative convenience if they were needed to carry on the court's business. For this reason many of the questions the twentieth century reader would like to ask can never be answered. The reason why one defendant, charged with exactly the same offence as another was treated more harshly, was probably the result of the personal knowledge that the judge and his officials had of him, for those responsible for detaining offenders in the parishes through visitation also acted as judges at their trial. Similarly, the scribes understood perfectly well why the judge had stopped a case and saw no reason to give any explanation unless they felt so

1. Ed. Elizabeth Melling Crime and Punishment Kentish Sources VI Kent County Council, 1969 p.10

inclined. Pressure of court business almost certainly led to more succinct recording in some cases too. The scribes were only too glad to be able to write "Simile."

In addition much time was spent on the probate and administration of wills, intestacies, and other testamentary matters. Indeed there were very few days on which officials of the courts were not involved in matters of this nature. A third category of work was the hearing of cases between party and party, known as causes of instance, for canon law took cognizance of a wide variety of disputes. The chief categories of causes of instance in the post-Reformation period were: matrimonial, in which the judges retained a great disciplinary interest since they often decided whether the parties were really man and wife or whether a solemnization of marriage was of no effect; testamentary, including cases of ordinary debt; 'church suits', including many actions between rectors or impropriators and parishioners, concerning non-payment of tithe, and, actions between churchwardens and parishioners concerning the seating arrangements in the church; defamation; and causes concerning fees brought by the proctors against their clients or by parish clerks for the payment of their wages. Only one large category found by Woodcock in his study of the medieval courts at Canterbury does not appear, namely, cases of perjury. During Elizabeth's reign the jurisdiction of the courts in this field was limited to cases where the perjury had been committed in the ecclesiastical court.<sup>1</sup>

The records of this type of business, while generally meticulously kept at Canterbury, also impose their own

1. 5 Eliz. c.9

limitations. In most cases they confine themselves to a timetable of the stages of a case with very few details, except when the case was tried summarily. In addition the full record of the case may be scattered in any number of different Act books, Deposition books and loose papers. The final definitive sentence was also a separate document and apparently never filed. Consequently not many are extant. So when the Instance Act Book records the reading of the sentence the decision can often only be ascertained by noting which side asked for the sentence and secured costs, while no explanations can be found. Another difficulty arises in that many cases peter out with no record as to why. It may be because someone concerned, defendant or witness, refused to come into court. It may be because the mere bringing of an action led to a satisfactory settlement out of court. Or again, the prosecution may have withdrawn because the case could not be proved, or because of the expense. There are complete records, that is, libel or articles, allegations, responsions, interrogatories, depositions, a sentence, a bill of costs and a full account of the stages in the Act Book for only a handful of cases.<sup>1</sup>

The aim of this study is to consider the practice and business routine of these ecclesiastical courts in the diocese of Canterbury in the seventeenth century, a century which was to prove decisive in their history. How far were the Puritans justified in their attacks? Were the courts inefficient and corrupt? Did the Archbishops succeed in imposing their

1. See Appendix I

differing policies? What was the attitude of the great majority of the laity towards these courts? Why did the restored Anglican leaders of 1660 fail to re-establish firmly this part of their Church's past organisation? These are some of the questions which it is hoped this study, based on a selection of the extant records of the Consistory court and the Archdeacon's court in the diocese of Canterbury, to be found at the Cathedral Library in Canterbury, the Kent County Archives at Maidstone and Lambeth Palace Library, might play some part in answering. The extreme bulk of the material (there are some 64 Instance Act books for the years 1603-1643 and 1660-1665 and 76 books containing Comperta and Detecta for the same period, not to mention Deposition books, Libri Cleri, probate material and many boxes of miscellaneous documents)<sup>1</sup> has, of course, precluded any comparison with the working of these courts in other dioceses.

The diocese of Canterbury, covering only the greater part of Kent, an area East of a line drawn roughly from the mouth of the river Medway to the Kent-Sussex border and so to the English Channel,<sup>2</sup> was in fact unique in two ways. Its jurisdictions were subordinate directly to the Archbishop of Canterbury himself and not first to a Bishop within his own diocese and then to the Archbishop, and, the Archdeacon's Court was not subordinate to the Consistory court with a right of appeal from the former to the latter as elsewhere. Thus Canterbury was a simple diocese with one archdeaconry, its

1. See Appendix I

2. See Appendix III for map

boundaries co-extensive with those of the diocese. It was also a much smaller diocese than most. It was divided into only eleven rural deaneries: Sittingbourne, Sutton, Ospringe, Charing, Bridge, Westbere, Canterbury, Elham, Lympne, Sandwich and Dover, all of which were served by the two courts, the diocesan or Consistory court, presided over by the Archbishop's Commissary-General, and the Archdeacon's court, presided over by his Official Principal. They sat concurrently, though never on the same days, the right of appeal lying from both to the Court of Arches, the Archbishop's provincial court operating in Santa Maria de Arcubus, Bow church, London, or to the Court of Audience, the peripatetic court attendant on the Archbishop's person or household, and from either of these to the Court of Delegates established by Henry VIII in 1534. Indeed there is often no apparent reason why a case was taken to the Consistory court rather than to the Archdeacon's court or vice versa. In causes of Instance it was probably determined by convenience, for the courts sat on different days. By the seventeenth century neither court apparently went on circuit to hear instance business although they occasionally heard cases at the visitation itself. In normal circumstances the only exceptions to the choice which faced plaintiffs were that all matrimonial suits were reserved for the Consistory court as they had been since the time of Archbishop Lanfranc, and also cases arising when the 'bona notabilia,' the goods of the deceased, lay in more than one parish. When the goods lay in more than one diocese the case went to the Prerogative court for Probate, the powers of which had been delegated at Canterbury since about 1500, to the

Consistory court sitting in this capacity. Archbishop Dene had first delegated the court's powers in a case involving goods within the Canterbury diocese to the Commissary-General.<sup>1</sup> Before that prerogative wills were proved at Canterbury by special permission and even after then the Prerogative court in London was constantly questioning the rights of the Canterbury court.<sup>2</sup> Also outside the jurisdiction of the Archdeacon's court were the parishes in the Archbishop's personal patronage, known as exempt parishes, which were answerable to the Consistory court only. These parishes were scattered from one end of the diocese to the other and were to be found in every deanery except that of Sittingbourne. The Libri Cleri for Bancroft's visitation of 1607 in the exempt parishes gives 51 such parishes out of 286.<sup>3</sup> During an Archiepiscopal visitation the courts were, of course, officially suspended but, in practice, the Consistory court virtually continued to function normally for the whole diocese, with the same officials presiding and little change in procedure.<sup>4</sup> Special conditions also arose during a vacancy. Again, it was the Archdeacon's court that suffered.

Friction between the two courts was avoided in matters of correction by the use of 'letters of correction' or 'letters of

1. Miscellaneous papers in Ecclesiastical Suits. Papers concerning the Prerogative court of Canterbury including a copy made c. 1663 of the Commissary's plea in behalf of his claim to the prerogative wills and administrations of, and within, that diocese.
2. Lambeth MSS.2014 f.146 et seq. William Somner senior's defence of the Prerogative court at Canterbury, undated but probably 1635. This was almost certainly prepared by his son who recounts the court's past history and refers to three disputes in his father's time at the Registry.
3. 1607 Lambeth V.C.II/I/4 and W. Somner, Antiquities of Canterbury, ed. N. Battely, London 1703, pp.79-80
4. Infra pp.36-39

purgation.' Exhibition of one of these ensured that an offender cited twice, was not condemned twice. In the only examples found, the case in the Archdeacon's court was always dropped.<sup>1</sup> The confusion was often understandable as in the case of John Strout and his wife presented before the Archdeacon's court for incontinency before marriage by her father, Henry Brockman Esquire of Newington. It emerged that they had considered themselves married, by Strout himself, but had not obtained her father's consent and had in fact only just been legally married. This was not all, for they had been clandestinely married at Saltwood, which was not only not their parish but an exempt one. Hence the citation into the Consistory court. Strout tried to obtain dismissal there by referring to his citation before the Archdeacon's court but was forced to admit that Saltwood was an exempt parish. His case was stopped in the Archdeacon's court and penance was enjoined by the Consistory court which was then commuted.<sup>2</sup> In fact very few defendants seem to have been cited into both courts probably because the diocese was so small and possibly too because the post-Reformation officials took greater care before issuing a citation. Moreover, proctors and apparitors practised without discrimination in both courts so there was no necessity for them to press clients to use one court rather than another. In a diocese as large as that of Lincoln, covering

1. cf. Woodcock p.27 "there were probably some unfortunates who found themselves convicted in both courts for the same offence."

2. 1623 X.6.2, f.73b Archdeacon's court and Z.4.3. f.34b Consistory court

several counties, the situation would, of course, have been very different. There were not only several Archdeacons' courts but also a number of courts of Commissaries of the Bishop within the various Archdeaconries as well as the Consistory Court of the Bishop of Lincoln. While, however, there appears to have been little confusion between the two courts over discipline, other clients of the two courts were not averse to trying to play one court off against the other. Thus on 30 September 1623 a proctor asserted in the Archdeacon's court on his client's behalf, "that there dependeth in the Consistory Courte ... a cause or suite of instance .... instituted by her .... and the said partyes cited to appeare in the said Consistory courte and the said processe against them introduced before the entrance of this presented cause against her this defendant in this courte and before the presented citacion executed against her."<sup>1</sup> This was obviously investigated and a note added to the effect that "This cause was instituted here before ever the presented cause prealleged was instituted." Nevertheless Elizabeth Marsh persisted with her case in the Consistory court.<sup>2</sup>

It must be pointed out that the Consistory court and the Archdeacon's court did not possess exclusive jurisdiction within the diocese. There was still the Archbishop's Court of Audience, evidence for the existence of which frequently appears in the Canterbury records despite the belief of some commentators, particularly Thomas Oughton,<sup>3</sup> that it was declining. This

1. 1623 Y.5.22, f.215b

2. 1623 Z.I.7 f.126b

3. Thomas Oughton, Ordo Judicorum, London, 1728, pp. 15 & 16 of the Prologue

could hear cases directly as could the Court of Arches. Above all there was the Court of High Commission which dealt with many of the most important offenders. This probably explains the small number of cases concerning puritan preachers and opponents of Archbishop Laud to be found in the Consistory and Archdeaconry records. Indeed, Laud himself tells us this in his register when, in his visitation report to the King in 1634, he says that some separatists at Ashford and Maidstone have already been called into the High Commission.<sup>1</sup> On the other hand, Dr. Everitt has pointed out that ecclesiastical opposition in Kent was essentially moderate and that there were very few true puritan ministers.<sup>2</sup> It is, nevertheless, true that as early as 1603 Canterbury puritans were appearing before the Court of High Commission. The one extant record of this court held in Canterbury reveals that it sat in Christchurch or at the residence of the Bishop of Dover in the Cathedral precincts presided over by four commissioners, one of which was Sir George Newman, at that time both Commissary-General and Official Principal. The other court officials, proctors and apparitors, were also those employed in the local courts. However, though not formally subject to London's High Commission it was in practice, since there is a letter from Lambeth giving the diocesan commissioners instructions.<sup>3</sup> The accused were brought into court by letters

1. Register I Laud, f.215

2. A.M.Everitt, The Community of Kent and the Great Rebellion, Leicester, 1966, p.67

3. 1603 Maidstone P.R.C. 44/3 p.7

missive and then by mandates of attachment. The ex officio oath was, of course, administered before any questions were put and those who refused to take it were committed to the Westgate prison, as were those who were found guilty. One so committed was Robert Cushman, a grocer's apprentice of Canterbury, who persistently absented himself from divine service in his own parish to hear a sermon in another church. He was also suspected of being the author of certain libels which had appeared on various church doors in the city of Canterbury in October 1603.<sup>1</sup> Nearly twenty years later Robert Cushman was instrumental in the hiring of the Mayflower and himself set sail in the ill-fated Speedwell. He reached America the following year where he inspired the early settlers with his vigorous preaching.

Yet another limitation to this study has been the impracticability of attempting to correlate the practice of the courts with the injunctions of the Canon law except on specific details. However, as one would expect, no great discrepancies have been revealed between the procedure and practice of the courts of Canterbury and the procedure and practice of those courts elsewhere.<sup>2</sup>

1. 1603 Maidstone P.R.C. 44/3 pp. 126 and 127

2. E.R.C. Brinkworth, The Laudian Church in Buckinghamshire, University of Birmingham Historical Journal 1955-56 V, pp. 31 et seq. R.A. Marchant, The Puritans and the Church Courts in the Diocese of York 1560-1642, London 1960, passim. R. Peters, Oculus Episcopi, Manchester, 1963, passim. F.D. Price, 'The abuses of excommunication and the decline of ecclesiastical discipline under Queen Elizabeth', English Historical Review, 1942, LVII, pp. 106 et seq. B.W. Quintrell, The government of the County of Essex, unpublished PhD. thesis, London, 1965, Chapter V pp. 143 et seq.

CHAPTER I

The Sessions of the courts and their types  
of business

One of the most striking features of the post-Reformation courts in the diocese of Canterbury is their lack of mobility. No longer can one say as Woodcock did, "those proctors who worked in both courts must have been as long in the saddle as they were pleading the suits of their clients."<sup>1</sup> Except in special circumstances both the Consistory and the Archdeacon's courts sat in Canterbury, the former at the west end of the Cathedral under the Arundel Steeple<sup>2</sup> and the latter in the church of St. Margaret, and although both courts frequently continued their sessions elsewhere, very often in a private house, these were rarely outside Canterbury. In the normal course of events only visitations were held outside Canterbury and then only for a minority of the deaneries. The clergy and churchwardens of the deaneries of Charing and Lympne were requested to present themselves at Ashford, and those of Ospringe, Sittingbourne and Sutton at Faversham, Maidstone or Sittingbourne.<sup>3</sup> Except where exempt parishes were concerned, which were, of course, reserved for the Archbishop's Commissary-General, the Archdeacon himself often presided on these occasions, when the clergy were called upon to produce their instruments for consignation and to pay their procurations and the churchwardens

1. Woodcock p. 36

2. W. Somner, Antiquities of Canterbury, ed. N. Battely, London, 1703, part II, p. 29

3. Libri Cleri. See Appendix I

to take their oath of office and pay their fees. The bills for the past year were then called for and if not sent in the old churchwardens were cited to bring them into the court registry.<sup>1</sup> As this suggests all further proceedings arising from the visitation then took place at Canterbury.

Of the three main types of business administered by the courts, ex officio, instance and probate, by far the most time-consuming work of the courts was the causes of instance. These demanded regular sessions and efficiency, for litigants seeking remedy would soon be discouraged by confusing procedure, irregular sittings and delays. Indeed these were the very accusations frequently levied by the puritan opposition to the jurisdiction of the courts. In the Millenary petition 1603 the petitioners hoped that the "longsomeness of suits in ecclesiastical courts which hang sometimes two, three, four, five, six or seven years" might be restrained. Again in the Articles touching the reformation of abuses in ecclesiastical government, submitted to the House of Lords' Committee appointed to consider the bill of Bishop Williams of Lincoln in July 1641, article eight requested that, "all causes be ended within a year."<sup>2</sup> Such critics seem to have ignored the fact that, in Kent at least, it was six months to a year before misdemeanours, including private matters such as assault and trespass and breaches of economic regulations initiated by private individuals, were brought to

1. Visitation papers, No.26. An agenda for visitations prepared by William Sommer in 1634 (See note Appendix I)

2. C.S.P.D. 1641-1643 p.36

trial in the common law courts. It could even take two or three years to settle a case particularly in a small borough where quarter sessions were held irregularly.<sup>1</sup> In any case, the number of suits heard by the ecclesiastical courts steadily rose throughout the period. Each of the courts heard in these years up to one hundred and twenty causes in one session between 9 a.m. and 11 a.m. at regular fortnightly intervals with only short breaks of three weeks over Christmas, Easter and Whitsuntide and one of approximately nine weeks in the summer. Moreover, additional business was frequently carried out in varying places such as the house of the Judge, or the Registrar, either on the afternoon of the same day or even during an extra sitting on another day. It was very rare, however, although some cases have appeared, for a new cause to be introduced on these occasions which seem to have been used in the main for all sorts of administrative matters to expedite a case.

Thus, the courts were in session at least twenty times in the year working steadily at their business for a far greater part of the year than the Common Law courts. Indeed, of the new causes of instance started in the years 1603, 1613, 1623 and 1633<sup>2</sup> never more than ten per cent dragged on for more than a year. Although this figure ignores the fact that every year over half the cases brought before the courts apparently petered

1. Melling p.7

2. <u>New Instance cases</u>	<u>Consistory Court</u>	<u>Archdeacon's Court</u>
1603	147	211
1613	125	185
1623	189	263
1633	326	299*

\*The first folio of Y.6.8 is missing and Laud's Metropolitanical Visitation began in December so that there were no new cases at the last session of the year.

out, or ended in an excommunication which seems to have been ignored, it still suggests that instance business was dealt with in a recognised, regulated manner and, particularly, if the parties concerned were anxious to secure a settlement. Moreover, the disappearance of a case does not necessarily denote failure on the part of the court. That some of these cases were in fact successful is suggested by the quite large number of cases which only appear once. In most years these form over a third of the cases in which no conclusion was recorded and if one adds the number of cases which only appear twice the proportion is significantly increased.<sup>1</sup>

Although the amount of instance business handled by the Consistory court never reached the heights noted by Woodcock in the fifteenth century,<sup>2</sup> the growing number of cases proves that the courts were fulfilling a function almost up to the outbreak of the Civil War. In the first twenty years of the century instance business remained fairly constant but in the 1630's there were often over three hundred new cases in the Consistory court, and over four hundred cases altogether, being heard in one year. In these years the greater number of cases fell to the Consistory court probably as a result of the greater attention it received during the various archiepiscopal visitations. However, the Archdeacon's court still dealt with 286 new cases in 1636. Nor was this rise in the number of cases entirely accounted for by greater activity on the part of the

1. *Infra* pp. 81 - 84

2. Woodcock p. 84

clergy, for example in tithe causes. Those who used the courts cannot, therefore, have been wholly dissatisfied with the service they were receiving. Even after the break of twenty years created by the Civil War and its aftermath, a period more than long enough for people to have become used to seeking their remedies elsewhere, the number of instance causes a year was immediately over one hundred and fifty. It is true that at first nearly three-quarters of these were causes of tithe but these soon became a much smaller proportion of the total.

The causes recorded in the Instance Act books for the Canterbury courts in these years were generally instance suits or civil proceedings, but there was also a small proportion of office causes, or criminal proceedings, which were of two kinds. There were those, very few in number, promoted by the judge himself 'ex mero motu,' unmoved by anyone. These were usually cases of contempt or cases affecting the authority of the judge. It is not always clear from the brief outline in the Act book exactly what the grounds for prosecution were in such cases. Some examples in a collection of articles and libels made by William Somner, senior, registrar of the Consistory court, include a case brought against a minister for inserting, unknown to the churchwardens, a presentment out of malice, and another brought against a layman for laying violent hands on a minister in church.<sup>1</sup> Then there were also those 'promotum per' another party in which the judge was called into action. This was often

1. Z.3.15, f.179 and f.183

used in cases against clergymen and in some testamentary causes arising after probate had been granted. Proctors seeking to secure their fees usually used this form too, as did minors who needed a tutor to represent them. In all these cases the promoter had a direct interest in the outcome as he did in the more usual instant action.

All these proceedings covered in the Instance Acta then fall into one of five categories. Matrimonial causes had been reserved for the cognizance of the Archbishop by Lanfranc and later delegated to the Consistory court. During the Middle Ages such suits had constituted almost a third of the total<sup>1</sup> but by the seventeenth century this was far from the case. There were rarely more than ten cases in a year. However, they did provide The Consistory court with some of its most involved and longest cases such as that between Richard Austen and Anne Gilbert which was introduced into court on 1 February 1602/3<sup>2</sup> and appeared for the last time on 12 February two years later<sup>3</sup> when Richard Austen finally secured his costs of over £40. This case, like so many others in this period, involved a betrothal which provided it fulfilled all the necessary conditions was regarded as a valid marriage, though irregular if not subsequently solemnized 'in facis ecclesie.' Above all it had to have the 'consensus facit matrimonium' of both parties and many cases were the result of one party's claim that the contract had been conditional or even made under compulsion.<sup>4</sup>

1. Woodcock p. 85

2. 1602/3 Y.3.4, f.88b

3. 1604/5 Y.3.5, f.128

4. e.g. 1603 Ecclesiastical Suits, No.25, Allegations and No.26, Interrogatories in John Adams v. Emmelina Miller claimed Emmelina was compelled to make the contract.

Another quite frequent cause of matrimonial litigation at this time was jactation or boasting of marriage. This usually revealed a man's attempt to prevent the girl of his choice marrying another. Until the girl had established she was in no way contracted to him no banns could be called.<sup>1</sup> The majority of the remaining cases were requests for divorce or separation, occasionally supported by both parties, but rarely granted. The breakdown of a marriage, even when supported by both parties, was certainly not regarded as sufficient justification even for a separation.<sup>2</sup> Some tried to plead consanguinity, also without success.<sup>3</sup> Nothing less than bigamy seems to have secured an annulment in these years.<sup>4</sup>

Testamentary causes provided almost a third of the business in both courts, a far greater proportion than that discovered by Woodcock in the fifteenth century.<sup>5</sup> There was also other testamentary business from the diocese heard by the Consistory court sitting as the Prerogative court at Canterbury which held the sole jurisdiction where a testator had 'bona notabilia' in exempt and non-exempt parishes or in more than one diocese. The reasons for this great increase in testamentary litigation can only be guessed at. Greater material wealth may have been one reason. Thus a bitter dispute could arise over the property of John Sharpe who was apparently a lame seaman of no fixed address.<sup>6</sup> A schedule of the disputed articles included

1. e.g. 1622/23 Z.I.7, f.108b-109, Anna Baker v. Stephen Sare and 1633 Z.I.17, f.108b, Margaret Barret v. Matthew Gray.
2. e.g. 1603 Ecclesiastical Suits, No.14, Allegations signed by Ralph Bower and his wife and No.15, Sentence refusing a divorce.
3. e.g. 1603 Ecclesiastical Suits, No.2, Allegations in Anna Harrison v. Giles Harrison.
4. e.g. 1613 X.II.7, f.104-106, depositions in Joan Woodcock a. Collins v. Augustine Collins and Z.I.2, f.164b, sentence.
5. Woodcock pp. - , "the average number of suits introduced each year was between thirty and forty" out of over 500 cases.
6. 1603 X.II.8, f.92b-93b, depositions of Thomas Country Henry Rades and Thomas Harfleet in Alice Marsh a. Sharpe v. Edward Oxenden

considerable clothing said to be worth £12, jewellery and bills of debts totalling £80.<sup>1</sup> A better educated laity with a greater propensity for making wills and a greater interest in the legal administration of one another's goods may have been another reason. The circumstances in which a second will was made or a codicil added were often questioned.<sup>2</sup> One undoubted cause of litigation was the death rate. On 16 September 1623 the following case appeared in the Archdeacon's court: "In causa subtractionis legati promota per Salomon Collard parochie de Beweffeild Archidiaconatus Cantuarii administratorem bonorum juramentum et creditor et legatorius Thomas Collard nuper parochie de Alkham ... defuncti dum vixit legatorius in testamento sive ultima voluntate Ambrosii Collard .... contra Joannam Hobday alia Sutton uxor Johannis Sutton .... relictam et executorem testamenti sive ultime voluntatis Willelmi Hobday nuper de Alkham defuncti dum vixit executor testamenti sive ultime voluntatis precedentis Ambrosii Collard defuncti."<sup>3</sup>

This case also illustrates the fact that many testamentary causes were really causes of debt. The executors of the deceased were often claiming debts still owing to them, or other parties, as in the case of Collard v. Hobday, were claiming debts owing to them by the testator. Very often the testator's unpaid debts and legacies were the result of the executor not having enough money to discharge them. The discharge of administrations reveals the

1. 1602 Ecclesiastical Suits, No. 100

2. e.g. 1603 X.II.8, f. 74-75b, depositions concerning the will and codicil of James Knight

3. 1623 Y.5.22, f.20Ib

very large proportion, over forty per cent., of administrators faced with this problem.<sup>1</sup> This may have been the result of the fact that not many of the testators whose bequests later gave rise to litigation appear to have sought legal advice. Apart from a case concerning the will of a widow of a proctor of the courts there is only one testamentary cause in the year 1623 for which there is a deposition by a notary public.<sup>2</sup> There are depositions extant in twenty-two other testamentary causes in that year. Far more frequently the depositions tell of an unlettered man, such as John East, writing out the Will. Witnesses in the case arising out of the will of Miles Birkhead said that John East was of "noe credit or estimation among honest men," had been turned out of his place as parish clerk at Worth, Shelden and Norborne and was a very poor writer.<sup>3</sup> Other testamentary causes arose from the querying of wills proved in common form, that is by the sole oath of the executor.<sup>4</sup> Witnesses then had to be brought.<sup>5</sup>

The importance of the whole of this category of business can be seen in the fact that, whereas with the outbreak of the

1. 1600-1604 Maidstone P.R.C. 21/17 Accounts and inventories, and 1603 Ecclesiastical Suits No. 126, Materia in Alice Reeve v. Silvester Francklin, "so yt manifestlie appeareth that this accomptant and executrix hath payd and is to paie mor than the goodes of the testator, Nicholas Francklin."
2. 1623 X.II.14, passim
3. 1603 X.II.8, f.96 deposition of Roger Cockerfell. Also X.II.8, f.81b-82, deposition of Henry Heneker in another testamentary suit; "by ye unskilfulness of ye writer of ye same will there are in two principall words two letters omitted viz. in the worde or name Kemslye the letter S has been omitted and in the word or name Martha the letter R."
4. 1603 Maidstone P.R.C. 22/II, passim, shows that this was the usual practice at Canterbury.
5. e.g. 1624 Z.I.8, f.78 A widow had to take her oath that she "did see him sett to his marke with his owne hande" to the will which was "heretofore proved in common forme in this court."

Civil War the jurisdiction of the courts in other spheres broke down testamentary causes constituted 49 out of the 53 cases heard by the Consistory Court in 1642 and continued to be started in the Archdeacon's court until 12 September 1648.<sup>1</sup> Thus even after Parliament had passed an ordinance abolishing, among others, commissaries, archdeacons and other ecclesiastical officers, they continued to function for testamentary causes. Legal succession to property was difficult without proper probate and Parliament was eventually forced to set up its own Prerogative Court with the same powers as before and with Nathaniel Brent, Archbishop Laud's Commissary-General, as its Master or Keeper. Moreover, as soon as the ecclesiastical courts began to function again in 1661 testamentary cases were among the first to be introduced. Just under half the causes heard in the Archdeacon's court in the last four months of 1661 were testamentary matters.<sup>2</sup>

However, as one would expect, the biggest group of all were the 'church suits,' a miscellaneous collection of cases concerned with the organisation and administration of the church. These formed nearly a half of all the courts' business. It included causes concerning church seating, causes concerning procurations and dilapidations, causes arising out of the non-payment of the parish clerk's salary, causes, nearly always 'ex officio promoti,' arising out of a misdemeanour of the minister, or of the clerk, or of the churchwardens, and above all, causes of tithe.

The last of these in some years produced nearly forty per

1. 1642 Z.2.4. and Y.6.13

2. 1661 Y.6.13 f.245 et seq.

cent of the total business. Contrary to what one might expect, however, there was no well-defined fluctuation during these years. In the Canterbury diocese at least, Archbishop Bancroft's campaign is unremarkable. In the year 1603, 158 ~~tithe~~ causes were introduced into the two courts; six years later, when it has been claimed that Bancroft's efforts were at their height,<sup>1</sup> there were only 123.<sup>2</sup> Nor was there a great flood of Common law prohibitions. There were exactly two in that year and in three cases a decision reached in the King's courts was accepted. The proportion in which interference by the Common law is found in other years is very much the same and, in fact, far smaller than in Elizabeth's reign.<sup>3</sup> Similarly Archbishop Laud's ascendancy made less impact at Canterbury than might be expected. The number of cases did increase but they remained the same proportion of all the courts' business. Moreover, somewhat ironically, the greatest increase is noticeable in the number of cases brought by the lay impropiators. The proportion of ~~tithe~~ causes brought by these increased from approximately sixteen per cent in the 1620's to twenty-two per cent in the 1630's.

Indeed in 1603 parsons in the Canterbury diocese were fighting hard in these matters. Between the 9 February 1601/2 and the 14 January 1605/6 the Vicar of Lydd introduced ~~seen~~ causes against Thomas Godfrye, either seeking the restoration of payment in kind, or seeking to tithe a new product such as

1. Margaret James, 'The Political Implications of the Tithes' controversy in the English Revolution,' History 1941 ~~XXVI~~, p.3
2. 1609 Y.3.8. and Y.5.12
3. Maidstone P.R.C. 42/1 and 42/2 bundles of prohibitions

'pigeons.'<sup>1</sup> Others attempted to change a modus decimandi previously agreed, as did the Vicar of St. Nicholas Atwade in Thanet<sup>2</sup> and the Vicar of Reculver,<sup>3</sup> while the Vicar of Eastry fought an attempt to make him take the wheat of poorest quality by removing all but one stook left for the Vicar's agent to collect.<sup>4</sup> A similar trick was contested in 1623 by the Archdeacon himself in his capacity as Rector of Saltwood. Witnesses deposed that not all the barley was stoked and after tithing had taken place and it was removed, the loose barley which was raked up equalled about twenty sheaves.<sup>5</sup> Nor must one be deceived into thinking that the large number of tithe cases which petered out, in many years over fifty per cent of the total, proves their inability to secure any satisfaction. The fact that, when this happened the case very frequently appeared no more than once, suggests that starting a case often precipitated an agreement. John White deposed in a case brought by the Vicar of West Hythe in 1623 that, "some poor men and others for fear of suits in law and to avoyd trouble hæe payd tythes of pasturadge of barren cattle, wul of sheepe, colts, calves and milk and were not willing to trye the custome with the said Mr. Pownall and have payd by acre at rates far above the custome, some one som an other rate. And he sayth for quietness sake he, this deponent, hath payd to the said Mr. Pownall thrice as much

1. 1602-1603 X.II.8, f.16b-21b, depositions of Clement Stupney and John Wells.
2. 1604 X.II.8, f.169, deposition of Richard Langlye
3. 1603 X.II.8, f.78, depositions of Robert Knowles and John Hart
4. 1603 Ecclesiastical Suits, No.59, Libel
5. 1623 X.II.14, f.162-164b

as by the custome aforesaid was due unto him."<sup>1</sup> The substantial number of causes in these years<sup>2</sup> suggests that it is an exaggeration to say of the Canterbury diocese, "Not till Laud came to power did parsons receive real encouragement."<sup>3</sup>

Another interesting group of church suits in this century are those concerning pews. As has frequently been stated these were used to perpetuate the hierarchical principle in society and to maintain social status<sup>4</sup> although, a case heard in 1623 established that a pew in East Langdon church went with a house even if the owners were "poore and meane persons."<sup>5</sup> On the other hand, in 1603 John Edwards had fought a similar case against the churchwardens of Faversham on the grounds that he had acquired the house of the old priory of Davington without success.<sup>6</sup> In general these cases brought the upper strata of society into the courts. Thus Roger Manwood Esquire secured recognition on 13 April 1613, that four seats in Wingham church "ancyently belonged to the owners or inhabitants of the mannor or house called Wanderton"<sup>7</sup> and Richard Oxenden Esquire, a member of a family seeking to establish themselves as genty at Barham, soon settled his dispute with the churchwardens there.<sup>8</sup>

1. 1623 X.II.14 f.156

2. 1603 158 tithe causes

1609 123 tithe causes

1613 109 tithe causes

1623 154 tithe causes

While Laud's Metropolitanical Visitation between 5 December 1633 and 19 June 1634 saw the introduction of only 50 cases

3. Christopher Hill, Economic Problems of the Church, Oxford, 2nd Edition 1963, p.102

4. 1605 X.9.4, f.148b, the well known case at Adisham, as a result of which Sir George Newman wrote to the churchwardens that he had heard that, "some of the meaner sort were sitting in the highest pews and others of better ability were placed very lowe" and that every man should be "seated as beseemeth his degree and wealth."

5. 1623 X.II.14, f.143

6. 1603 Y.3.4, f.183b

7. 1613 Z.I.2, f.45b

8. 1622/3 Y.5.22 f.107b

Men of their standing generally had their way, at least in these matters. In 1633 Richard Franklin of Chart near Sutton obtained permission to enlarge his pew so that it might, "contain himselfe, his wife, children and others of his familie of the better ranke and condicon" by "adding thereunto, the parish clerk's seate thereunto adioyninge, and placinge the said clerke elsewhere."<sup>1</sup> However, he did have to pay for a new seat for the clerk and it had to be made first. These cases were often tried summarily, as this one was, and so, unlike most other types of case, there is a full account of the proceedings. This may lead to an exaggeration of their importance. It is well to remember that there were never more than five cases in each of the four years analysed in detail.<sup>2</sup>

Finally in this group one must look at the causes 'ex officio promoti.' These were very few in number but were generally unpleasant such as the case brought against Humphrey Foxall, sacristan of St. Peter's, Canterbury, in which he was found guilty of adultery, incontinence and other excesses,<sup>3</sup> and the case against Richard Collyns, holy-water clerk of Buckland, for fighting in the church and dragging up a dead carcass.<sup>4</sup> Often the exact grounds for the case are never revealed as in the case against a curate, Thomas Evans of Brookland, who had previously brought three defamation cases into court.<sup>5</sup> Others

1. 1633 Z.I.17, f.55b

2. i.e. 1603, 1613, 1623, 1633

3. 1633/34 Z.I.18, f.29

4. Z.3.15, f.53, Articles in William Somner's precedent book

5. 1603 Y.5.8, f.24b

seem to have been brought from malice, as in a case brought by a private individual against the curate of Adisham, on the grounds that on one Sunday there had been no service, nor sermon, and on two Sundays no evening prayer because he was sick or in London,<sup>1</sup> and, in another case brought by Nicholas Page of Harrietsham against Isaac Clarke. Clarke was forced to acknowledge that he had mown hay and corn on the Sabbath and was ordered to do penance.<sup>2</sup> It is far more usual to find this sort of case being tried 'ex officio mero' as a result of the churchwardens' presentments at a visitation.

Of the two remaining categories, that of defamation cases was the largest. It was never less than ten per cent and sometimes reached twenty-five per cent of all the cases in each year. The reason why they were brought into the church courts and not into the Common law courts was almost certainly because they concerned offences punishable in the church courts. Therefore, the slandered party was anxious to clear himself before the next visitation. William Cooper did when he forced John Russell to admit his fault in saying that Cooper "did comitt incontinency with the said Russell's wife before he, the said Russell, did marrie with her."<sup>3</sup> Robert Mersh of Hougham, however, failed to prevent Joanna Stockwell acknowledging in Hougham Church that he did "attempt the chastity of her." This had already taken place when the case came into court and nothing further was heard of the case.<sup>4</sup> The great majority of these

1. 1632/33 Z.I.17, f.89

2. 1633 Z.I.17, f.189

3. 1613 Y.5.15, f.46b

4. 1623 Y.5.22, f.133

cases involved, like these, an accusation of sexual incontinency. Other cases attacked either the minister, or the churchwardens, for making, or threatening to make, a presentment.<sup>1</sup> Although it is not always possible to ascertain the exact grounds for the accusation of defamation the almost complete absence of Common law prohibitions makes it almost certain that few cases concerned imputations of offences punishable in a secular court. There was one prohibition in the Archdeacon's court on 11 November, 1623<sup>2</sup> but the brevity of the court's record precludes any indication of the original grounds for the case. It is probable that by this time a clear distinction between defamation at Common law and ecclesiastical law was made and kept.<sup>3</sup>

Finally, a group concerning salaries formed a small but ever increasing group of cases throughout the period. They consisted almost entirely of proctors' attempts to secure payment by their clients. The noticeable increase in business in the 1630's increased their problems too for their cases for salary formed a far greater proportion of a whole year's work in those years. In 1613 they accounted for only four per cent of all the business, in 1623 they formed seven per cent, while in Laud's Metropolitanical visitation they accounted for fourteen per cent of the cases.

1. eg. 1603 X.II.8, f.99-100, depositions in Jane Bower v. David Phillips of Waltham, and 1613 X.II.7, f.103 Thomas Greenfield curate of Snargate v. Robert Norton who was reported to have said, "A plague on him for a knave he hath cost me tenne pounnds already in suite in Dymchurch court and that yt should cost him tenne pounnds more but he would ridd the parrish of a knave before Michaelmas."
2. 1623 Y.5.22, f.245b
3. See W. Holdsworth, History of English Law, London, 1922-38 VIII, p.348.

Ex officio business may have been and indeed was conducted in a far less haphazard manner than in the Middle Ages, but it was still recorded in a far less systematic manner than Instance business. The eighty or ninety visitation articles, or questions, contained in small paper-books and delivered at their swearing-in to the churchwardens of every parish fell into four main categories: the condition of the church and churchyard; the condition of the church's lands, buildings and other property; the conduct of public worship and the behaviour of the incumbent; and the moral standards and behaviour of the laity. This last category had been greatly extended in the sixteenth century by the questions necessitated by the legislation imposing subscription and licensing upon surgeons, physicians, midwives, preachers and teachers.<sup>1</sup> From the resulting churchwardens' presentments exhibited at the following year's visitation, the officials of the courts then compiled charges, comperta and detecta, which were then dealt with in the courts. But the normal sessions of the courts merely provided one of several opportunities for the dispatch of this business. The Ex officio Acta were arranged under deanery headings in the Archdeacon's court and parish headings in the Consistory court, not court sessions, and do not always provide a complete description of the handling of these cases. Only occasionally do they indicate where the cases were heard or by whom. In the majority of cases the scribe merely recorded the date and the

1. 3 Henry VIII c.2 : 39 Articles, 1562 : 25 Eliz. c.I

action taken on that day. In the Archdeacon's court it seems to have been customary to hear comperta and detecta on different days to Instance business but in the Consistory court most of the dates are the same as those given for Instance business.<sup>1</sup>

Whether comperta and detecta were heard at the beginning or the end of the session it is not possible to determine. Canon law laid it down that once all the office causes had been dealt with, the judge could adjourn the court at his discretion. The remaining suits of Instance were then held over without prejudice to the parties. One certainly finds it difficult to believe that all the business was heard between 9a.m. and 11 a.m. as the court headings of the 1630's state. For by the 1620's the Consistory court was hearing as many as 115 instance causes and ex officio business reached 20 cases on many occasions. Although many of the instance causes were rapidly dealt with, the proctor merely seeking a further term probatory, time to deliberate, undoubtedly more sessions must have continued into the afternoon than the records suggest and the many informal sessions held on other days in private houses or taverns, occasionally outside

1. Court Sittings in 1603 and 1613

Monday: Archdeacon's court. Comperta and Detecta from Canterbury, Dover, Elham, Bridge, Sandwich, Ospringe and Westbere deaneries.

Tuesday: Consistory court. Instance business and Comperta and Detecta

Wednesday: Archdeacon's court. Instance buiness

Thursday: Archdeacon's court. Comperta and Detecta from Charing, Lympne, Sutton and Sittingbourne deaneries

Court Sittings in 1623 and 1633

Monday: Archdeacon's court. Comperta and Detecta

Tuesday: Archdeacon's court. Instancebusiness

Wednesday: Archdeacon's court. Comperta and Detecta

Thursday: Consistory Court. Instancebusiness and Comperta and Detecta

Canterbury, must have been very necessary.<sup>1</sup> Probably also some cases were heard at the visitation itself<sup>2</sup> and there were almost certainly some cases which were never recorded.

The more informal records of the Ex Officio Acta also make it impossible to be sure which presentments had arisen as a result of which visitation. The scribe did not always insert, "Comperta et detecta exhibita in visitacione et celebrata in ecclesia parochiali de Ashford 19 Aprilis 1613" or "tenta apud Cantuar' 23 Septembris 1623 sequuntur." Most of the time the cases were recorded one after another throughout the year with only the dates, when some action was taken, given. It was customary for cases of a similar nature to be taken on the same day so that one finds under one date presentments for refusing to pay cesse from many parishes, under another a number of presentments for non-attendance at church or communion, and so on. Even when the scribe did indicate where the cases arising from a particular visitation began it was by no means certain that he would indicate where the cases ended. Not even in the case of a metropolitanical visitation<sup>3</sup> is it possible to ascertain exactly how many cases arose from it, although in theory both courts were inhibited and the Archbishop's commissioners

1. e.g. 1634 Lambeth V.C. 111/22, f.Ib, 22 December, Sir Nathaniel Brent heard a case in the house of Francis Barham of Maidstone
2. e.g. 1637 Z.4.6, f.30, a case was heard "pro tempore surrogato visitatore visitaconem ordinario tenen apud Ashford"
3. Between 1603 and 1642 the Canterbury diocese experienced three metropolitanical visitations those of Archbishop Bancroft from June to November 1607, Archbishop Abbot from August 1615 to March 1616 and Archbishop Laud from November 1633 to June 1634, together with what Laud called an ordinary or episcopal visitation held in 1637. Two books at Lambeth also bear the heading 'Ordinary Visitations' and cover the years 1629-1633 which suggests the introduction of this idea under Abbot.

supervised the visitation and the consequent disciplinary action. The registrar sometimes marked this by making a copy of the inhibition and commissioners' mandate and always by a careful heading, and, in many cases, a new book. Yet once again it is not always clear which were the last cases, for the registrar rarely bothered to make a copy of the relaxation. In fact there was little reason to make any great distinctions for the Commissary-General was always a commissioner and his court functioned in much the same way as usual. Indeed during Laud's Metropolitan visitation from 29 November 1633 to 30 June 1634<sup>1</sup> both courts virtually continued to function in their normal fashion. The commissioners heard some cases in St. Margaret's church on a Tuesday which was the usual day and place for the Archdeacon's court and sat again in the Cathedral on a Thursday. The Tuesday court had its own Instance Acta book<sup>2</sup> for the new causes which came before it but causes begun before the visitation continued to be heard the same day and recorded in the usual Archdeacon's Instance Acta.<sup>3</sup> The Thursday court's instance business, both new and old causes, continued to be recorded in the Consistory court book of previous years.<sup>4</sup> The records of the comperta and detecta resulting from the visitation are even more confusing. They are recorded from the exempt parishes at the end of a book

1. 1633 Z.I.17, f.256b and 1634 Z.I.18, f.141

2. 1633-34, Z.I.19

3. 1633-34, Y.6.8

4. 1633-34, Z.I.17

previously used for the so-called ordinary visitations and at the beginning of a new book<sup>1</sup> and in separate books for each deanery<sup>2</sup>. It is also apparent from the dates that cases were quite often heard outside the normal sessions of the court, but the absence of Libri Cleri for this visitation makes it impossible to know whether or not many were heard at the commissioners' initial visitation. It seems likely that this was so. These records also reveal that cases were still being heard when the official relaxation was received. All the Comperta and Detecta books have cases being heard until the end of 1634 by which time at least one other visitation had probably taken place. On 23 October 1634 eight parishes were presented for failing to hand in a bill which was certainly not the one required by the commissioners.<sup>3</sup> The majority of cases seem to have been heard in June and July, just before and after the official visitation ended.

This clearly illustrates one very interesting fact about the ordinary, or episcopal, and metropolitical visitations which were imposed by the authorities of the seventeenth century so much more frequently than in previous centuries; they made very little difference. They interrupted the routine of the Consistory and Archdeacon's courts but the officials of these extra visitations were invariably almost the same.<sup>4</sup>

1. 1633-34, Lambeth V.C. III/13 and V.C. III/22

2. See Appendix I

3. 1634, Lambeth V.C. III/22, f.78-79b

4. Visitation papers No. 29. An agreement between William Sherman, principal registrar during Laud's visitation, and William Somner, registrar of the Consistory court, giving the latter the registrarship during the visitation "with all the fees, profitts, commodities and emoluments due."

Among the commissioners in 1633 were Rufus Rogers, Richard Clarke and Edward Aldey, all previously active in the courts. Similarly the sessions of the court were held in the same places, the proctors and apparitors<sup>1</sup> were the same and even the questions they posed fell into the same categories. It is true that there were slight differences of emphasis. Thus Laud added questions about the "rayling off" of the communion table, was more insistent on the fencing in of the churchyard, refusing to allow a quickset hedge, and emphasised the reading of services on Wednesdays, Fridays and Holydays, while Bancroft's visitation seems to have uncovered a number of clergy involved in irregular marriages and Abbot's of 1616 concentrated at greater length on socially undesirable behaviour such as sexual offences, drunkenness and working on Sundays. However, the similarity between these visitations and those carried<sup>out</sup> in the normal course of events by the Archdeacon, or the Commissary, is very great. It may even be questioned whether they served any purpose in this diocese. They certainly caused inconvenience to the officials and to the laity<sup>2</sup> and it is very doubtful whether they achieved any more. If they did it was due to the work of the regular officials who took part in the visitation and completed the correction of the

1. Visitation papers No. 28. Memorandum dividing the courts and assigning the apparitors
2. e.g. 1633, Lambeth V.C. III/21, f.26, where the scribe entered under one presentment, "for these particular things detected formerly he hath bin presented before Sir Nathaniel Brent. It is yet depending."

cases which had arisen from it. Every visitation withdrew before the completion of its disciplinary action.

With or without these additional visitations it is clear that the number of cases of correction dealt with in the Canterbury courts had risen considerably since the Middle Ages.<sup>1</sup> By the seventeenth century ex officio business was taking up a very considerable proportion of the time of the judges, registrars and apparitors. Only the proctors did not benefit from this increase in business to any great extent for it was comparatively rare for a defendant to seek their aid, though they were used, particularly for the securing of absolution. It was becoming cheaper to pay a proctor than to lose a day's work or to lose face among one's neighbours and business associates by attending the court personally.

An analysis of the new instance causes and the ex officio cases in 1623 provides some indication of the amount of business involved.<sup>2</sup> The Archdeacon's court saw the introduction of 263 instance causes and the Consistory court 189 making a total of 452. Cases of correction totalled 723 made up of 428 cases in the Archdeacon's court and 295 in the Consistory court. The introduction in the 1630's of so many special visitations and the disappearance of the Ex Officio Act books for the deaneries of Dover, Elham, Ospringe and Westbere for these years makes it impossible to analyse later

1. Woodcock p.79

2. The following figures are for the calendar year and not related to the visitations of that year.

years in the same way. However, it seems certain that business increased until the sudden collapse of the courts with Laud's arrest and the parliamentary attack upon them in 1641. In the year 1637 there were 382 officecauses heard by the Consistory court, or the Archbishop's commissioners, and at least a further 221 in the deaneries of Canterbury and Charing<sup>1</sup> alone. Although these deaneries were two of the most heavily populated and invariably provided the Archdeacon's court with more business than other deaneries, it is clear that the remaining nine deaneries would have provided many more than the hundred or so cases needed to reach the 1623 total.<sup>2</sup> On the other hand the figures do not suggest such a great increase as to justify for Canterbury, Professor Trevor-Roper's statement that when Laud became Archbishop "the old machinery of the episcopal courts had merely to be put into effective operation after a period of abeyance ....."<sup>3</sup>

Although it can be classified into four groups ex officio business was far more varied than instance business. First there were the causes arising from the questions on the condition of the church and churchyard. The upkeep of these were the responsibility of the churchwardens who frequently found themselves cited to appear before the courts to answer for the repair of the roof of the church, or the bells, or the porch. Occasionally the responsibility for the repair of the

1. 1637, Z.3.16 The bound book of the Archbishop's Ordinary Visitation is torn and illegible in many places making it unusable for other deaneries and not completely reliable for Canterbury and Charing.
2. In 1623 thirty per cent of the office causes came from the deaneries of Canterbury and Charing
3. H.R.Trevor-Roper, Archbishop Laud, London 2nd Edition, 1963, p.102

Chancel could be passed on to the Rector, or impropriator, as when the owner of Burton House, Kennington, was forced to accept the responsibility for Kennington Chancel.<sup>1</sup>

Otherwise they usually "craved a reasonable time" as did the churchwardens of Thannington in 1623 who had reported that their bell was broken, the steeple needed repair, their surplice was old and worn and the pews were decayed.<sup>2</sup> Some indication of

their responsibilities under this heading can also be seen in the presentment made by St. Mary-in-the-Marsh in 1613.

"Wee have noe coveniente seate for our minister to reade the service in .... there wants a decente pulpitt ... wee have not the table of degress or Byshopp Jewell's Apologie. We have noe cushin for ye pulpitt at all, and the surplisse is soe little and shorte that hee is not fitt for our minister to weare."<sup>3</sup>

The churchwardens of Womenswold also presented a long list of omissions to Archbishop Abbot's commissioners. They had no carpet for the communion table, cloth or pulpit cushion, alms chest, pewter flagon, or chest for books and, although they had a large Bible it wanted binding, and even the seats wanted mending.<sup>4</sup>

It is not surprising that very often they were content to say, "the things that are wanting shall be with all convenient speed provided." Some of the churchwardens' greatest difficulties arose over seating.

It was their task to supervise the seating, including the erection or alteration of the pews. Sometimes this led

1. 1662 X.6.9, f.324

2. 1623 X.5.10, f.200

3. 1613 X.5.3, f.97b

4. 1616 Lambeth V.C. III/II, F.90b

to their involvement in instance causes as when Thomas Jenken, proprietor of the Manor and Court Lodge, Stowting," cutt in sunder an old pew of his owne head, which old pewe was anciently belonginge to the parish in generall."<sup>1</sup> On other occasions it led to disputes between the parishoners which forced them to make a presentment. The churchwardens of Hythe had to present Henry Mace and Nicholas Hutson "for that they sitt in the woemen's seets and stande sometymes at the woemens settes end soe that the woemen cannot pass in and owt ... and will take noe warning" and James Hobday for taking "a trushe out of the woemen's seets" and hurling it up at the high window.<sup>2</sup> Opposition in the parish to the demands of the officials often made their task more difficult as a churchwarden of St. Dunstan's made clear when he explained his failure to rail in the communion table in June 1639. The parishioners would "neither let him ... have a cesse graunted for the same purpose nor lett him doe it."<sup>3</sup> The excuse offered by the churchwardens of Hucking for their lack of an alms chest also suggests an unwillingness to spend money as well as disagreement over policy. For they said "this parish is small and those few that are in it live by their industrie not by almes."<sup>4</sup> Every visitation produced its crop of presentments for refusing to pay cesse for the repair of the church. In 1603 the churchwardens of Hothfield claimed that the parishioners would

1. 1634 Z.I.19, f.64b
2. 1603 X.9.3, f.123b-124b
3. 1639 X.6.10, f.196b
4. 1637 Z.4.6, f.83b

not join with them to repair the Chancel without the judge's authority and found themselves excommunicated for their failure to fulfil their responsibilities.<sup>1</sup>

The condition of the churchyard led to many more presentments. They frequently revealed it being used as grazing for horses, cattle, ewes and particularly hogs.<sup>2</sup> Even the clergy were involved in such misuse. In 1616 the Minister of St. Alphege, Canterbury, was warned to lay his woodstack further off because it was encroaching on the churchyard,<sup>3</sup> while in 1634 a curate was presented for letting out herbage in the churchyard.<sup>4</sup> In 1623 the Rector of St. Mary Bredman, Canterbury, tried to stop the age old custom of selling bread in his church porch,<sup>5</sup> and the churchwardens of St. Clement's, Sandwich, attacked a breach in the churchyard wall made for the use of the tenants of Richard File.<sup>6</sup> During Laud's episcopacy many churchwardens were themselves cited for their failure to provide a fence all round the churchyard. They were not allowed to keep a quickset hedge nor was a plea that Fordwich churchyard had always been bounded on one side by the river accepted.<sup>7</sup> That there were sometimes compensations for all these responsibilities is hinted at in the warning handed out to an ex-churchwarden in 1637. He was not to use the key, bought while he was churchwarden, to obtain

1. 1603 X.4.5, f.154

2. 1613 X.5.3, F.100, William Holmes was presented for "sitteing upp a hogestyne in our churchyarde and serving his piggs."

3. 1616 Lambeth V.C. III/II, f.68

4. 1634 Lambeth V.C. III/13, F.270

5. 1623 X.5.10, F.211b

6. 1623 X.5.7, part 2, f.81

7. 1637 X.6.10, f.150

access to the churchyard for the purpose of drying his hides and skins.<sup>1</sup>

Apart from the occasional citation of a minister for the repair of the parsonage or the parsonage barn, most of the presentments concerning the condition of the church's lands, buildings and other property led to the citation of the churchwardens too. Quite frequently they had to be called upon to present a terrier or to present the previous year's accounts. They also had to be reprimanded for withholding church property. In 1623 the Consistory court had to act in order to recover a communion cup and a book belonging to St. Martin's, Harbledowne, which the parish clerk had "laid to pawn."<sup>2</sup> The parish of Birchington also tried for years to recover twelve ewes from one Henry Archer. He was presented in 1603 "for that he doth keepe certeyn churche goods in his hands."<sup>3</sup> He agreed to pay forty shillings for their use during the previous four years and to restore them in 1607<sup>4</sup> but in 1613 he was still being presented for the same offence.<sup>5</sup> Other presentments arose over the requirement that the boundaries of the parish should be perambulated in rogation week even if there was only one household as Thomas Jackson, the Vicar of Milton, claimed in 1637.<sup>6</sup> However, few of the parishes administered much property outside the churchyard.

1. 1623 Z.3.16, f.41
2. 1623 Z.4.3, F.90
3. 1603 X.9.3, f.134
4. 1607 X.9.6, f.35
5. 1613 X.9.12, f.8
6. 1637 Z.3.16, f.36

The statement that there was no glebe was sometimes used to excuse, though without success, the failure to hand in a terrier.<sup>1</sup> There were really very few presentments under this heading compared with those on other matters.

The questions concerning the conduct of public worship and the behaviour of the incumbent were of course the ones which most frequently brought the clergy before the courts. In many cases they were comparatively small matters of discipline. Stephen Huffam, Vicar of St. Mary's, Sandwich, was admonished for administering communion to some who were not kneeling and persons other than his parishioners.<sup>2</sup> As a result of Laud's metropolitical visitation many clergy were called upon to present certificates to the judge to show that they were now reading prayers upon Wednesdays, Fridays and Holydays and holding catechism before evensong on Sundays. Other presentments arose as a result of the pluralism often made necessary by the poverty of the church, as this statement from the Buckland churchwardens shows: "he can serve the cure no oftener [once a month] by reason that he hath the cure of St. James's in Dover to serve allsoe, neyther will the tythes belonging to the vicaradge of Buckland mayntayne a curat ..."<sup>3</sup> The presentment of the parson of Murston for not reading the services at convenient hours but making "an end sometymes att twelve and sometymes at one of the clocke in the afternoone"<sup>4</sup>

1. e.g. 1637 Z.4.6, f.92 The excuse put forward by St. Alphege, Canterbury
2. 1623 Z.4.3, f.35
3. 1622/23 Z.4.3, f.13b
4. 1613 X.4.10, part 2, f.19

was the result of similar difficulties.

However, there were parsons like Mr. Jackson of St. George's, Canterbury, who were habitual offenders. The churchwardens were then obliged to make annual presentments. In 1637 Mr. Jackson was presented for not wearing a hood, not reading prayers upon Holydays, churching a woman before she had acknowledged her fault, not catechising and resorting to taverns.<sup>1</sup> Just over a year later it was being said that he never wore a surplice nor his hood, that he did not read the book of Common Prayer and that he did not walk the perambulation.<sup>2</sup> In such cases it is clear that disaffection from the church's policy was often involved. Indeed, St. George's was one of the many Canterbury churches which defied Laud. But it is sometimes difficult to be sure of this from the presentments themselves. When a curate is inhibited from preaching and another loses his cure it is clear that serious matters were involved but no reason appears in the record. It is only because Thomas Wilson of Otham eventually appeared before the Court of High Commission and became a leader of the opposition to Laud in Kent that the inhibition of his preaching in 1634 can be understood. Indeed it is likely that many heresy cases never came before the local courts at all. The registrar noted beside the presentment from Egerton of Stephen Pemble "that hath taken upon him the order of preisthood but now

1. 1637 X.6.10, f.120

2. 1638 X.6.10, f.174b

betaketh himselfe in the course of a layman" that he had not been cited because he had been deprived.<sup>1</sup> The minister of Womenswold was ordered to appear at Lambeth on 7 November 1607 when he admitted that he had "as yet never signed with the signe of the crosse in baptisme .... and cannot as yet be resolved to doe it."<sup>2</sup> He also refused to wear the surplice. It is probable that he appeared before the Court of Audience at Lambeth which could also hear cases directly as could the Court of Arches and the Court of High Commission. This may explain the suspiciously small number of cases concerning puritan clergy. On the other hand here is further evidence that ecclesiastical opposition in Kent was probably not as strong as in London, or Sussex.

There was one interesting case before the Consistory court in 1623. Henry Chantler, curate of St. Mary's, Dover, was said to have reprehended those who kneeled in prayer at their entrance into the church causing some to sit down immediately, without any reverence and with their hats on their heads. When ordered to preach in another sermon "that he hath beene mistaken in saying or preaching that men should not kneele and use any short iaculatory prayer at their coming into the church" he merely "troubled the congregation wurse then before and therewith not contented .....dispersed his opinion in writing to some about London and other places." As a result a special meeting of the court, held in the White Hart

1. 1607 X.9.6, f.7. This occured in the early days of Egerton's history as a centre for separatists, nearly thirty years before Laud paid the area so much attention. Infra pp.123-124
2. 1607 X.9.6, f.32

at Canterbury and presided over by Sir James Hussey, Commissary-General, and five well-known clergymen, suspended him from office. This apparently proved successful as within a month he secured absolution and the suspension was lifted.<sup>1</sup>

Cases like this, however, which brought about the suspension of a minister were comparatively few. The only presentments which brought about a number of suspensions in any one year were those concerning the abuse of Canon law regarding the celebration of marriage. Marrying a couple without the banns having been read, or without a licence, or in the prohibited time, or from another parish, quite frequently brought some clergy before the Consistory court.<sup>2</sup> This was an age when clandestine marriages were quite common and there was often a clergyman prepared to officiate, sometimes for financial reasons.<sup>3</sup> There were also always one or two cases each year of clergy living scandalously. The churchwardens of Norton presented their curate for being drunk "in suche an extraordinarye manner that the boyes in the streete make a laughing game of him."<sup>4</sup> Another curate was accused not only of being drunk but also of laying a wager that he would run a race naked and of impersonating men "very fondlye and palpablye" in the pulpit.<sup>5</sup> The Minister of Pluckley was said to forget himself in violent language and on one occasion this

1. 1623 Z.4.3, f.13b and f.51b

2. e.g. 1612/13 X.9.II f.217 the curate of Stodmarsh claimed that he had been "deceaved by the Alminacke."

3. e.g. 1663 Z.7.7, f.12. The Rector of Frinstead pleaded he was "in much want."

4. 1613 X.4.10, part 2, f.33b

5. 1607 X.9.6., f.58b

led to a brawl with Sir Edward Dering during a service.<sup>1</sup> Ministers were also accused of incontinency both before and outside marriage. William Brawnche of Bapchild cleared himself of the suspicion of incontinency with his servant but, that his parishioners remained unconvinced, is shown by the presentment of one for saying he had cleared himself "by his great purse."<sup>2</sup> Although it was a less heinous crime the vicar who was presented for making hay on a Sunday was obviously also setting a bad example.<sup>3</sup>

Finally there were in this group a few presentments in which the conduct of clergymen was not involved. Occasionally a parish clerk was cited for carrying out more than his duties. All attempts to use him to read the services, ask the banns or perform the burial service were strictly forbidden. A clerk who contradicted the minister by saying the congregation should sing psalm 133 not psalm 119 found himself before the court.<sup>4</sup> Other presentments concerning the conduct of public worship involved the churchwardens once again. Thus James Barley was presented "for not providinge wyne enough for the communicants" and "for that he bringeth the wyne by cupfulls from his owne howse."<sup>5</sup>

It was, however, the moral standards and behaviour of the laity which provided over seventy five per cent of the Ex Officio

1. 1634 Lambeth V.C.III/15, f.25. He said Sir Edward and his brother had disturbed him in his sermon by their loud talking
2. 1613 X.4.10 part 2, f.37 and f.38 (the second of two pages marked F.38)
3. 1607 X.9.6., f.43b
4. 1637 Z.3.16, f.42 The clerk then replied to the minister "pray begin it yourselfe then for I cannot sing it."
5. 1613 X.9.II, f.221

business brought before either court in any one year, just over a third of which might be called offences against the established church. These included not attending services on Sundays, or Holydays, disturbing services, failing to receive or to kneel for communion at Easter, refusing to be churched after the delivery of a child, denying a child baptism, or the opportunity to attend the catechism, interfering with or slandering the government of the church, persistently standing excommunicate and refusing to pay the church rate or other ecclesiastical dues such as burial dues or tithe.

Not all these presentments implied deliberate disobedience. Many had valid reasons for not attending church, some of which were actually given in the presentment. A very common explanation was that the offender was in debt and dared not show his face in church for fear of arrest. This was a genuine fear: in 1623 Daniel Hamings of St. Mary's Northgate, Canterbury, was presented for arresting the minister of Barham for debt "after evening prayer in ye churchyard on the Sabaoth."<sup>1</sup> Others obviously stayed away because of sickness, old age or business affairs<sup>2</sup> and soon assured the court of the correction of the fault by the presentation of a certificate stating that fact.<sup>3</sup> Similarly many of those presented for disturbing the

1. 1623 X.5.10, f.202b

2. e.g. 1603 X.9.3, f.101. John Best of Boughton-under-Bleane claimed that the plague had forced him to leave his house. 1613 X.9.II, f.229 William Danton was said to be "a very aged and decrepith man ... and dwellyth at the least a myl from the church." 1637 Z.4.6, f.111. A parishioner of Ivychurch told the churchwardens "that if the church could be brought a little nearer to him he would come oftener."

3. e.g. 1603 X.4.2, part I, f.152b A certificate from Appledore stated that Margaret Gibson had smallpox, that William Dorman and his wife, Robert Apse and his wife, William Mason and Catherine Newman had received communion and that Elizabeth Wylllet had not because her husband had wounded her with an axe.

service, such as the two men of Goudherst presented for sleeping during the epistle, gospel and sermon,<sup>1</sup> had no great quarrel with the church. Many unpleasant disturbances arose over a refusal to sit in the pew appointed by the churchwarden. Other incidents were purely private affairs such as the box on the ears one man received<sup>2</sup> and the "disquieting each other in their seate in the time of divine service to the trouble and offence of congregacon" reported of two women of Deal.<sup>3</sup>

About half the presentments for non-attendance at church, or creating a disturbance there, were the result of serious opposition to the church, its doctrine and government. There were always some who were presented for refusing to attend their parish church "for conscience sake." Thus the churchwardens of St. Andrews, Canterbury, reported in 1603 that Thomas Hunt will not come to his parish church unless there is a sermon because he says "he cannot be edified and saith he can and will defende it by the worde of god."<sup>4</sup> While he and many others insisted on a sermon others were presented for going out during the sermon.<sup>5</sup> Similarly there was doctrinal opposition behind the presentment of eight parishioners of St. Mary's, Dover, "for irreverent behaviour ..... not kneeling in time of the Lord's prayer, nor reading any other prayer, nor standing up at the saying of the creed, in which they do offend."<sup>6</sup> Other

1. 1623 Z.4.3, f.62

2. 1603 X.4.10, part 2, f.1

3. 1623 Z.4.3, f.40b

4. 1603 X.4.4, part 2, f.31

5. e.g. 1603 X.9.3, f.64 John Barling was said to be "a continewall goer owt in service or sermon tyme."

6. 1623 Z.4.3, f.27-29

presentments indicate that conventicles were being held. A parishioner of Newchurch was presented for "unseemly speeches against the Booke of Comon Prayer and allso for suffering som unlawful assemblyes at his house."<sup>1</sup> At the other end of the spectrum there were the recusants who were repeatedly presented and repeatedly excommunicated.

Most attacks on the clergy, or government of the church also had a serious difference of opinion behind them too although not all those who called the courts "bawdy courts" or abused the churchwardens for making a presentment were potential separatists.<sup>2</sup> But those presented as early as 1603 "for denyinge the authoritie of the churche and useinge evill speeches against the Lord Grace of Canterbury" and saying he was "Dr. Pearnese' boy and did mainteyne poperie"<sup>3</sup> certainly were. There were presentments of this nature from Egerton throughout the period. In 1607 their minister was swung "in a bell rope up and downe in the belfrye"<sup>4</sup> and in 1623 their curate was called "the servant of Baall" and said to use the idolatrous and superstitious "signe of the cross in baptisme."<sup>5</sup> However, even in 1637 and 1638 the number of presentments for attacks on ministers had not reached ten. Nor was there any great increase in the numbers of those presented for persistently remaining excommunicate except in specific areas such as Cranbrø k.

1. 1607 X.9.6., f.14b He affirmed that "he with all his harte alloweth of the Book of Common Prayer."
2. e.g. 1603 X.9.3, f.37b. Cicely Foche was presented for "that she verye contumaciouslye abused one of the churchwardens of our parishe and this whole courte<sup>n</sup> slanderous termes for presentinge her husband."
3. 1603 X.4.5, f.134
4. 1607 X.9.6, f.5b
5. 1623 Z.4.3, f.73b

It remained between six and ten per cent of all presentments throughout the period. Only the numbers refusing to pay their church rate increased significantly just before the outbreak of the Civil War. As early as 1633 a parishioner of Fordwich refused to pay his cesse for the ornamentation of the church<sup>1</sup> and from 1637 onwards the numbers of those refusing to pay their church rate grew steadily.<sup>2</sup> At no time were there many presentments for refusing to pay tithe. When disputes occurred they nearly always became causes of instance. There were, however, particularly during Laud's visitation of 1634, a number of prosecutions of tithe farmers for non-payment of their procurations.

While presentments arising from sexual offences formed a bigger group than any other they never reached the proportions of the fifteenth century found by Woodcock.<sup>3</sup> In 1474 he found nearly seventy per cent of the ex officio cases were sexual in character; in the seventeenth century they were never more than thirty-five per cent and they steadily declined throughout the period. In fact when the number of cases before the court increased in the 1630's those of a sexual character did not. The actual numbers of offenders brought before the Consistory court for sexual misbehaviour remained between seventy and eighty a year.

No year went by without at least twenty cases of incontinency before marriage. Any couple who had a child at

1. 1633 X.6.10 f.35b  
2. *Infra* pp.129-130  
3. Woodcock p.79

all early found themselves before the judge including a couple "being delivered of a child five or six weekes before the ordinary time."<sup>1</sup> When churchwardens studied the bills of marriages and christenings as they did at Ickham<sup>2</sup> it is not surprising that many did not wait for a presentment preferring instead to make a confession in private to the court.<sup>3</sup> At least as many cases arose from fornication and bastardy. Churchwardens who failed to present for these were in danger of being cited themselves. They also had to present those who harboured anyone guilty of any sexual offence even though they might be related to the guilty party. It was equally dangerous to let a room to one who was living apart from his wife as Robbert Geffrey of Bobbing found.<sup>4</sup> For anyone living apart from their spouse, however innocently, was in danger of presentment. One woman of St. George's, Canterbury, replied to her presentment "that she for her parte is very willinge to live with her husband if shee could tell wher he were."<sup>5</sup> Another, cited twice while her husband was at sea, asked that she should be "cited no more for this cause, so long as her husband shall absent himself from her and not shee from his company."<sup>6</sup> Incontinency before marriage, fornication or adultery, and failing to co-habit with a husband or a wife

1. 1623 Z.4.3, f.55

2. 1623 Z.4.3, f.48b "we cannot say it is a common fame but a suspicion there is of incontinency between Thomas Holman and Elizabeth Austen his now wife before marriage and the reason is because, as it appears by the bill of marriages and christenings, that a child was borne unto the foresaid persons in five months after that they were married but the child was so weak that in few days after the child died."

3. *Infra* p.95

4. 1603 X.4.10, part 2, f.8b Robert Geffrey said that the separated husband had hired his house to them and that he dwelt with them but he was still ordered to put him out and eventually certified the court that he had done so.

5. 1635 X.6.10 f.72

6. 1638 X.6.9. f.112b

were the main causes for presentment, though incest,<sup>1</sup> bigamy,<sup>2</sup> and exchanging husbands and wives<sup>3</sup> were not unknown.

Other socially undesirable behaviour led to presentments concerning blasphemy, swearing, slander, drunkenness and working on Sundays or other church festivals. Every year saw a few presented, such as Ann Barton of St. Mildred's, Canterbury, "for that shee is a common drunkard, swearer, curser and doth usuallye and comonly rayle and scowle with her neighborres to there greate offence and continuall disquiett."<sup>4</sup> Others were presented for brawling, particularly in the churchyard,<sup>5</sup> for singing ribald songs<sup>6</sup> and "for lurking in a victualling house." The churchwardens were expected to visit all ale-houses during divine service to guard against the last of these activities. But the greatest number of presentments arose from the pursuit of occupations on the Sabbath or other Holydays. The judges of both courts repeatedly organized drives against this in all the towns. Thus on 21 October, 1603 the Archdeacon's court had before it four brewers and twenty-one shopkeepers of Canterbury,<sup>7</sup> and on 9 January, 1622/23 five butchers, two mercers and three shoemakers of Hythe appeared before the Consistory court.<sup>8</sup>

1. e.g. 1603 X.9.3, f.116b and 1623 Z.4.6, f.86

2. e.g. 1607 X.9.6. f.68 This was transferred to the Court of Audience

3. e.g. 1607 X.9.6. f.74 and 1623 X.5.6, part 2 f.186b and 187

4. 1613 X.5.2, f.197

5. e.g. Z.4.3, f.42b for fighting in Stalisfield church during evening prayer on Easter day and f.69b for striking in the church porch of Hollingbourne.

6. e.g. 1607 X.9.6, f.4b

7. 1603 X.4.4. part 2, f.24 et seq.

8. 1622/23 Z.4.2, f.226 et seq.

Indeed performing any manual task on the Sabbath made a man liable to presentment. Peter Coale of Sellindge was even presented in 1664 for sweeping out the church on a Sunday although his explanation that Saturday night was too early because the pigeons fouled the seats was accepted.<sup>1</sup> The man whose compurgators agreed he did "sometymes barbe men in some parte of the divine service in Sittingbourne church"<sup>2</sup> had less reason to complain about his presentment.

The last sizeable group of ex officio cases arose out of licence requirements. The oldest of these were, of course, those concerning matrimony and each year there were a few who offended against these by having the banns called and not proceeding to matrimony, by being married without a licence, or in time prohibited without a licence, or by holding the ceremony outside the diocese. However, the greatest number of cases under this heading were the result of the failure to conform to the Tudor legislation imposing licensing upon surgeons, physicians, midwives and teachers. Every visitation produced a few presentments under each heading. The importance of the requirements for midwives is made clear in a note in the margin, "let the apparitor inquire after the woman where she was delivered and bring them and the wench," made when a woman had denied having a bastard.<sup>3</sup> The midwife was expected to report the delivery of any illegitimate child and, if possible, to

1. 1664 X.6.9 f.351

2. 1613 X.4.10 part 2 f.12b

3. 1623 Z.4.3, f.11b

obtain the name of the man responsible. Similarly, it was also important to the authorities that schoolteachers should be under their control for they could dispense undesirable doctrines as were Martyn Miller of Ashford who was presented on 17 February 1602/3 for using a book "concerninge predestinacon" and a man called Robinson who was presented on 1 February 1602/3 for preaching in Goudherst twice every Sunday though not licensed for preaching and maintaining "in his doctrine usurye and saithe there is noe hell."<sup>1</sup> Quite a number of schoolteachers were presented not for teaching without a licence but for preaching without one.

It is not surprising that the responsibility of presenting offenders in each of these groups and for other miscellaneous crimes, such as administering the goods of a deceased man without authority or burning a bond,<sup>2</sup> weighed very heavily on the shoulders of the churchwardens so that men were sometimes reluctant to be sworn. Others attempted to avoid their neighbours' recriminations by presenting an insufficient bill but for this John Ducke of Hollingbourne and others found themselves before the court.<sup>3</sup> Despite this, however, there was in the 1630's a noticeable increase in the number of parishes failing to submit a satisfactory bill or indeed one at all in the first instance. In 1623 only twenty-five

1. 1602/3 X.4.5, f.135b and X.9.3, f.52b

2. e.g. 1607 X.9.6, f.69

3. 1603 X.9.3, f.153. John Ducke was cited for not presenting "bowlinge in the parish in the tyme of devine service and hauntinge of the aylehouse by especially one Thomas Wade who beinge druncke went into the howse of Mr. William White vicar whoe had the pestilence then in his howse."

parishes failed to submit a bill of presentment immediately but at least sixty failed to do so in Laud's metropolitical visitation. In 1637 the number failing to present fell but it rose again in the three years prior to the Civil War, by which time many churchwardens were also failing to present the bills of baptisms, burials and marriages that were also required. The churchwardens' duties were onerous and unpopular.

Probate, the processes involved in proving testaments, granting letters of administration and other aspects provided the third main type of business and took up another large slice of the time of the officials of the courts. The executors had to take the will within four months to the appropriate court and after they had taken an oath, in which they swore to pay all debts and legacies so far as the deceased's goods extended and to have a true and just appraisal and inventory made, the names of the deceased and of the executors were recorded in the Liber Testamentorum Administrationem et Sequestratam Bonor. The inventory had to be registered then, or later,<sup>1</sup> and the value of the goods was usually recorded. When the judge had annexed his probate and seal on the original will it was impounded and filed and a probate copy was given to the executors. A true and just account of the administration of the deceased's goods had then to be presented to the court within a year. Upon the exhibition

1. e.g. 1603 Maidstone P.R.C. 3/26 f.61b Probate was granted on 15 November 1603 and the inventory was submitted on 11 February 1603/4. Sometimes a length of time in which to prepare the inventory was given.

of these accounts an entry was made in the Liber Computorum et Inventariorum Exhibiterum together with a list of the fees charged. In cases of intestacy after at least fourteen days the would-be administrators entered into a bond with two witnesses or sureties that was binding until the court was satisfied that the deceased's goods had been properly administered. In cases where a minor was involved the court appointed a guardian who gave a bond of tuition. Few days went by without some probate activity. In March 1603 the Archdeacon's court heard requests for probate or administration on sixteen days and in that year the goods of at least 311 persons came before it.<sup>1</sup> In the same year the Consistory court heard at least 158 requests.<sup>2</sup> A great deal of paper work was involved which provided the officials with some of their steadiest and most lucrative business.

Moreover, probate business was not always so straightforward. A caveat, or caution, to stop probate or the granting of an administration without the knowledge of the party who entered it, was quite frequently introduced creating more business. Occasionally the goods of the deceased were taken away to avoid the taking of letters of administration,<sup>3</sup> sometimes there was a suspicion that a will had been concealed<sup>4</sup> and there were often

1. 1603 Maidstone P.R.C. 3/26

2. 1603 Maidstone P.R.C. 22/II. But these probate registers cannot be regarded as comprehensive for probate was often granted on visitations and odd occasions so that entries were often made elsewhere. In 1603 there were 33 probate entries made in the Consistory Instance Acta Y.3.4 twelve of which concerned the granting of probate or letters of administration.

3. e.g. 1664 Maidstone P.R.C. 3/37, f.38b where the widow carried "diverse parcells of goods and household stuffe" into Sussex.

4. e.g. 1645 Maidstone P.R.C. 3/36 f.195 George and Lawrence Rook of Petham sons of the deceased took an oath upon the Holy Evangelist to clear themselves of such a charge.

problems raised by the creditors. Indeed, many close relatives refused to take administration preferring to pass the task on as the widow of Henry Pising did to "a principall creditor."<sup>1</sup> If the difficulties continued a testamentary suit was introduced into the Instance Acta in which case the final settlement might be delayed more than a year. Three items in the accounts submitted by the administrators of the goods of John Curlinge of St. Lawrence, Thanet, reveal some of the difficulties administrators, and executors, faced. They listed charges for a law suit with Richard Knowler who claimed the deceased's goods by deed of gift, charges resulting from the suit of Henry Hewet to make their account which they could not do because of Knowler's suit, and charges for yet another suit to make their account brought by Bennet King.<sup>2</sup> The reluctance of many to take letters of administration and even, the renunciation by some executors of their rights, is understandable. However, in the majority of cases the executors or administrators completed their task to the satisfaction of the courts whose task in this sphere was largely administrative rather than judicial. They provided a necessary service as William Somner pointed out in his defence of the Prerogative court at Canterbury: "whereas willes of the greatest moment may be proved in common forme and they and the inventories ingrossed and registered, and afterwards solemnely proved by witness and sentence for 4 Libri and seldome at above 5 libri chardges: that to do in the prerogative court at London will ordinarily cost as much more at least, besides expenses to travell to London about it."<sup>3</sup>

1. 1645 Maidstone P.R.C. 3/36, f.214

2. 1603 Maidstone P.R.C. 21/17 f.40b-42

3. Lambeth M.S.S. 2014 f.166

CHAPTER II

Instance Business : the procedure of the courts  
and the enforcement of their decisions

Instance business provided the courts with a considerable proportion of their work and has certainly left the clearest and most comprehensive records. They may not always provide a complete description of the handling of a particular case but it is possible to trace the course of the majority of cases and to obtain a reasonably clear picture of the procedure they employed.

The plaintiff, provided he was not a minor under twenty-five<sup>1</sup> in which case he needed a tutor to represent him, or excommunicate in which case he could not plead,<sup>2</sup> first constituted a proctor before the registrar in court or before a notary public and witnesses.<sup>3</sup> By the seventeenth century this was usually done in advance. A poor person was able to sue "in forma pauperis" but this was comparatively rare in instance business. There were no such cases in the Consistory court in the years 1603, 1613, 1623, 1633, 1634 or 1641-1643 and in the Archdeacon's court there was only one in 1603 and another was refused in the same year.<sup>4</sup> Once a proctor had been constituted he appeared before the judge and exhibited his proxy. This was the document in which the client authorised his proctor to act on his behalf and committed

1. Z.3.25, f.8 Precedent book

2. 1613 Y.5.15, f.159 On 27 September Helen Haymas was absolved so that she could prosecute a defamation cause.

3. There are no Liber Constitucionum Procurator for the seventeenth century.

4. 1602/2 Y.5.8, part I, f.117 and F.153

his welfare to him. The proctor could then act in most stages of the case except that the plaintiff's presence was occasionally required for interrogation and he was supposed to be in court for the reading of the sentence though the records suggest that this was not always enforced. The proctor's first action was to request the registrar to draw up a primary citation to the apparitor of the deanery concerned requiring him to summon the defendant to appear at the place and on the day assigned for the hearing. The apparitor returned the mandate of citation with his signature on the back certifying that it had been carried out. Very occasionally the plaintiff served his own citation. All these activities took place out of court.

The first entry in the Liber Acta briefly records the nature of the case with the names of the plaintiff and defendant, the name of the plaintiff's proctor and the citation of the defendant by the apparitor with the date and place of the occasion. It was more usual to give the defendant adequate notice in Instance causes than in Ex Officio causes, however, examples of only one or two days' warning can easily be found.<sup>1</sup> In the majority of these cases the defendant lived in Canterbury and it is clear that in any case the defendant knew that a case was being instigated. The apparitor may have given only one day's notice to a defendant in Hollingbourne but other defendants in the same testamentary cause had been

1. e.g. 1623 X.I.7, f.136b Robert Hards cited Edward Russell of Sturry on 1 April to appear in a tithe cause on 3 April

cited a week before.<sup>1</sup> Of the thirty defendants in the Consistory court in 1603 who were cited only one or two days before their case was first heard, six were able to present proctors at once. Indeed Edward Sea of Herne was only cited one day before the court first heard his case on 11 May 1613<sup>2</sup> yet he was immediately represented by a proctor. Nevertheless, and despite the fact that the proportion of those receiving such short notice fell slightly in later years, the very short warning sometimes given must explain, at least in part, the failure of the defendant in almost fifty per cent of the cases to appear at this stage. It was even less usual for the defendant's proctor to appear at the first hearing. In the Consistory court in 1613 less than twenty-five per cent were represented by a proctor on the first occasion and in 1633 the figure was only just twenty per cent. A late citation could also cause difficulties at a later stage in the case as Mrs. Batherst of Goudherst did not hesitate to point out in the Archdeacon's court on 20 July, 1624, when she complained that her citation on a Sunday had prevented her reaching Canterbury "without violacion of the Saboth" until it was too late to give instructions to another proctor "her former proctor beinge suspended."<sup>3</sup>

If the defendant, or his proctor, did fail to appear a second citation "viis et modis," by ways and means,<sup>4</sup> might

1. 1623 Z.I.7, f.155

2. 1613 Z.I.2, f.56b

3. 1624 Y.5.23, f.97b

4. e.g. Maidstone P.R.C. 35/I A citation; "Alioquem per affixionem presentiorum huius in valvis exterioribus ecclesia ... vel domum eorum ... ubi morantur."



be dispatched. This was originally used when the primary citation failed because the defendant could not be found, or because the defendant had deliberately avoided the apparitor, or had offered violence to the apparitor. So the apparitor was ordered to cite the defendant personally, if possible, and also to fix the citation to the wall of his parish church, or to his house. Woodcock found that they were rarely used in the Middle Ages and not very often in the early sixteenth century.<sup>1</sup> This was far from so by the seventeenth century, however, when they were very common. In the year 1603 such a citation was issued in no less than forty-three of the 147 new causes in the Consistory court and in seventy-nine of the 326 new causes in 1633. It seems reasonable to suppose that these citations were being issued almost automatically when the first one had failed whatever the reason. The deposition of an apparitor in 1603 shows that their difficulties were many. John Farlye testified that he had been met by the uncle of one of the parties who asked to see his citation and wanted to keep it. He insisted that he must return it to the court and that he would speak to "Anne to cite and inhibit her according to his document but Mr. Mills said that her mother would speak to her so he departed."<sup>2</sup> Farlye was probably more easily intimidated because Mr. Christopher Mills was a gentleman of Canterbury living in the Queen's Palace there. After three citations the plaintiff's proctor could ask that the offender

1. Woodcock p.51  
2. 1603 X.II.8, f.118



be excommunicated, but he was often given a warning citation first, reserving excommunication and giving him further time to appear. It was a fundamental weakness of the system that no form of citation which the registrar sent out in the name of the judge contained any sufficiently compulsive threat of arrest, or distraint of goods, or even of entering into a bond. The two forms of citation differed only in the degree of thoroughness with which the apparitor was required to search for the addressee and the extent to which the search was publicised.<sup>1</sup> Here the secular court did have an advantage, rare though distraint of goods was in many cases, the threat was there, not to mention the possibility of arrest. It is only fair to add though that, in the opinion of Miss Melling, the series of writs designed to bring the offender into the secular court was "in many cases ineffective."<sup>2</sup>

When the defendant's proctor did appear he first asked for the libel, or the articles in an office cause, which contained the statement of the action, and the defendant was dismissed if it was not ready. After the proctor had received this he petitioned for a term probatory, a time to deliberate, the length of which was decided by the judge. It was inevitably at least the interval between two sessions of the court. The proctors were now in control of the case. The defending proctor produced the responsions, the defendant's answer and

1. e.g. 1661 Maidstone P.R.C. 35/2.A citation by ways and means bears the remark, "Executed this proces upon the howse doore of the within named Thomas Price ....and left a copie thereof affixed there the 14 December 1661."

2. Melling p.115

terms probatory were sought for the admission of witnesses and proofs, frequently a document, such as a lease or a will,<sup>1</sup> on behalf of both parties. Either party might be requested to give evidence personally, but this was not recorded in the Deposition books and there are consequently only a few loose Responsione Personalia extant. It is only when one of the proctors failed to obtain this personal appearance that mention of it is made in the Liber Acta.<sup>2</sup>

By the seventeenth century there was also a greater reluctance on the part of witnesses to respond to the primary citation. Decrees to compel witnesses to appear<sup>3</sup> and even suspension and excommunication<sup>4</sup> were all used with, in some cases, no effect. Their excuses were very rarely recorded in the acta. However, the answers of witnesses who did appear are revealing, such as that of Henry Milton of Dover in 1603. He said he had not attended an earlier examination because he had not been given good directions.<sup>5</sup> The answers of other witnesses suggest that loss of earnings and expenses were important factors. Many interrogatories questioned the witness about his expenses: whether he was going to bear any of the charges, whether he had received, or hoped to receive, any sums of money for his testimony? Some replied as Maria Pyttock of Deal did that "She cometh to testefy in this cause

1. Copies of such documents are frequently found at the back of an Instance Act book.
2. e.g. 1603/4 Y.3.5, f.16. Andrew Smitheat, a defendant in a tithe cause was accused of contumacy because of his refusal to present himself for examination.
3. e.g. 1613 Z.I.2, f.76b
4. e.g. 1603 Y.5.8, part I, f.174
5. 1603 X.II.8, f.154

at the request of George Veryer and at his charges" for she was of "lyttle worth."<sup>1</sup> Occasionally witnesses' expenses were approved by the judge.<sup>2</sup> There was also probably a reluctance to become involved, particularly in a defamation case. Richard Musset of Deal was sworn in such a case but then said he had heard nothing because "he went on his way."<sup>3</sup> Distance was another factor. In 1613 a bigamy case brought witnesses from Sutton and Cold Waltham in Sussex.<sup>4</sup> Occasionally a witness was sick or living so far from the place where the court was held that a commission was appointed and sent to hear the evidence. This privilege of being questioned in their own homes was also accorded to witnesses of some standing in society. A special commission was sent to St. Margaret Atcliffe in September 1603 to examine witnesses in the service of Sir Thomas Fane at Dover Castle.<sup>5</sup>

When the witnesses had been admitted and sworn a time and place was assigned for them to be examined in private. This sometimes took place on the same day after the public session of the court, but this was not normally the case, as it had been in the Middle Ages.<sup>6</sup> So even when a witness appeared immediately a proctor still had to wait for the examination before he could continue the case. The judge, or his surrogate, or the registrar, or a notary public of the latter's office,

1. 1603 X.II.8, f.98b

2. e.g. 1613 Z.I.2, f.76b. Expenses of 18d. were approved for a witness from Aldington

3. 1603/4 X.II.8, f.129

4. 1613 X.II.7, f.104

5. 1603 Ecclesiastical Suits, Nos. 148-160

6. Woodcock p.56

administered the interrogatories, or questions previously drawn up by the proctor, and a scribe wrote down the answers. The deposition was then read over to the witness who could add or subtract anything before signing it, or making his mark. Before the publication of the deposition on the next court day appointed exceptions against the witness could be entered by the opposing proctor and these might lead to additional questions concerning the witnesses' motives which had to be dealt with in a similar manner. There was no oral cross-examination as in the secular courts. On the other hand there was less danger of a witness being bullied into an admission that he could not then withdraw and the exceptions did usually elicit witnesses' motives. John Myles of Ashford, a witness in a defamation case, was forced to acknowledge that the plaintiff had given him two shillings for his day's work the first court day before he came forward to testify and that he had drunk at the Swan in Ashford in his company.<sup>1</sup> Other witnesses were also encouraged to comment on each other's characters. Thus a deponent might say that other witnesses were "weomen of very bad conscience and such as may easely be suborned or drawne to testefye an untruth."<sup>2</sup> The interrogatories were also very carefully framed to ascertain exactly what the witnesses' knowledge was; whether they knew certainly of their own knowledge? whether they believed it and what caused them to believe it? whether it was a matter of 'common fame?' whether they had been told what to say? A witness was even asked which "of the partyes litigant he favoureth most and

1. 1613 X.II.7, f.76

2. 1613 X.II.12, f.151. In Goodson v. Norwood, deposition of John Cockling.

would the victory in his cause if the same were in him to give and dispose?"<sup>1</sup> It was then the task of the judge to evaluate the worth of the statements that the witnesses of both sides had deposed.

Each of these stages took at least one term probatory so that with intervals of two or three weeks between sessions, and longer in the summer, a case could not be terminated quickly if the full procedure was invoked, the witnesses proved awkward or, the case was hard fought. But the judges retained considerable powers of discretion and many cases were dealt with far more quickly than would at first sight seem possible. If both parties wanted a speedy termination they would obtain it. Even instance causes were tried summarily on occasion<sup>2</sup> and it was possible to obtain a sentence within two months even in a plenary cause.<sup>3</sup> Eventually a term was assigned for the proctors to 'propound all acts' and finally the judge would decree that the parties be summoned to hear sentence. The sentence determining the case was known as the 'definitive sentence' to distinguish it from the 'interlocutory sentence' which the judge passed on incidental questions. Since the definitive sentence was a separate document, not many of which are extant<sup>4</sup> the record of a case may end with an entry of assignment to hear sentence and there is no guarantee that the

1. 1603 Ecclesiastical Suits, No.50 Interrogatories,

Shorte v. Poole

2. e.g. 1622/23 Z.I.7, f.108b-109 A case of jactation of marriage. Also 1633 Z.I.17, f.55b A cause concerning seating

3. e.g. 1603 Y.5.8, part 2, f.2 On 18 May a case concerning the will of Thomas Oliver of Upchurch was introduced and sentence was given on 20 July (f.35b) while in 1623 Y.6.7, f.288b, Maria Cheese began a defamation case in which sentence was given on 30 July (f.303b)

4. e.g. For the Consistory court there are 6 for 1603, 5 for 1613, 26 for 1623 and 33 for 1633.

sentence was actually given. Indeed since the sentence was one of the most expensive items<sup>1</sup> it may not have been.

However, in other cases, particularly testamentary suits, the reading of the sentence is noted in the acta together with a list of witnesses.

An appeal to a higher court could then be made provided it was initiated within fifteen days. Very few have been found in the Canterbury records but this may be because the scribes failed to note such an appeal since the matter was then moving out of their hands. A somewhat greater number of inhibitions from the Court of Arches and even the Court of Audience also suggests that parties in a cause did not always wait for a decision.

Once execution of sentence had been obtained the proctor who had won the case handed in a bill of expenses and steps were taken to make the losing party pay taxation, or costs. The fact that disputes over taxation often dragged on for several months may explain why costs were not always sought. Possibly too, there were a number of settlements out of court. But costs could be recovered which made a verdict, for example in a tithe cause, more desirable than one obtained in the secular courts. Thus in 1603 Laurence Johnson of Canterbury<sup>was</sup> ordered to pay 27/6 for tithes and 56/8 costs to James Bissell, and George Tucke of Westcliffe was ordered to pay £3.15.0. for tithes and £3.15.0. costs to the Rector of Hope.<sup>2</sup> Only the

1. Z.3.23, part I, f.183b. A copy of the orders of the court in John Edwards' precedent book in which a sentence cost 12/-. This is confirmed by many schedules of expenses.
2. 1603 Z.6.I. Schedule of excommunications. Under date 20 October.

tithe itself was recoverable in the Exchequer court.<sup>1</sup> In 1633 one defendant's proctor even failed to prevent costs being awarded on the grounds that the sum the plaintiff had eventually accepted had been offered before the citation.<sup>2</sup>

"All causes to be ended within the year" was one of the suggestions made in the Articles touching the Reformation of abuses in Ecclesiastical government submitted to the Lords' committee in July 1641.<sup>3</sup> Undoubtedly the methods employed in all plenary causes inevitably meant that cases lasted several months and when the witnesses or the defendant proved awkward the case might take much more than a year. One of the old cases appearing in 1603 had been begun in 1596. It went on so long that the claimant of a legacy died and it was carried on by his executor until 15 February, 1602/3 when costs of 26/8 were finally paid into court.<sup>4</sup> Similarly in a new case beginning that year it was 25 January, 1607/8 before Richard Jervis of Woodchurch obtained his expenses from Dunstan Honeyfolde, tithe farmer of Ashford, who had failed to prove his case for a tithe on hops.<sup>5</sup> But of the remaining 146 new causes which came before the Consistory Court in 1603, only twelve lasted more than a year and in a further seven absolution was sought by one of the parties over a year later. At the beginning of 1613 there were twelve cases started more than a year before, one of

1. Hill, Economic Problems, p.127

2. 1633, Z.I.17, f.114b. Tayler v. Court

3. C.S.P.D. 1641-43 p.36

4. 1596/7 Y.3.15, f.402b and 1602/3 Y.3.4. f.97 Gibbs v. Gibbs

5. 1607/8 Y.3.7, f.145b

them on 14 November, 1609,<sup>1</sup> but of the 125 new causes begun that year only eight lasted more than twelve months. In two of these cases the plaintiff decided to use the church's ultimate weapon, to seek the assistance of the secular arm by applying for a writ de excommunicato capiendo.<sup>2</sup> In one case this threat was sufficient and the case was closed with the absolution of the defendant and his payment of costs.<sup>3</sup> The situation was no different in the Archdeacon's court. Of the 263 new cases before that court in 1623 twenty remained unconcluded at the end of a year. Moreover, the increased amount of business in the 1630's might easily have led to cases taking longer but even then any deterioration was minimal. At the beginning of 1633 there were 35 causes begun in the Consistory court, more than a year earlier, and of the 326 new causes in that year only eleven lasted more than a year and four of those concerned costs which were granted so much more frequently than in the Common law courts. Similarly only twelve of the cases introduced during Laud's Metropolitanical visitation lasted more than a year and once again two were delayed by arguments over costs. There was never, in fact, a great backlog of work and the comparatively few cases that did drag on for more than a year can usually be attributed to the difficulties the courts were experiencing in securing recognition of their jurisdiction. It was all very well for the same articles to say "the defendants to answer within

1. 1609 Y.3.8, f.116b.A Case concerning the inventory of Richard Austen
2. 1616 Z.I.3, f.187 Lawse v. Farley and f.270b Horne v. Hay
3. 1616 f.258 Adrian Farley was absolved

twenty days after citation" and "both parties to examine their proofs within four months after" but few made any suggestions as to how this was to be achieved. Indeed other complainants in 1641 sought the abolition of the church's chief weapon, in the event of contumacy, excommunication.

This was the great weakness of the post-Reformation courts; they had no respected means of enforcing their authority. In the absence of an ability to imprison, faced with contumacy, a judge's only weapon was excommunication of the lesser and then the greater kind. The lesser, suspension ab ingressu ecclesiae, was rarely used at Canterbury in Instance business. The usual practice was to threaten excommunication, 'in scriptis schedula pena reservata,' to give the offender further time to appear before the greater excommunication was finally pronounced. Woodcock found that a time limit was nearly always imposed in earlier centuries<sup>1</sup> but this was less usual in the seventeenth century although it did occur. Some act books record the fact that the excommunications were pronounced at the beginning of a session. Schedules of excommunication were, however, filed separately and the resultant extant collections are very fragmentary and confusing. From these it appears that the pronouncement of excommunications resulting from Instance business, which by the canons of 1571 had to be carried out by a clergyman if the judge himself was not in Holy Orders, was normally reserved for the open session of the court. Only rarely were

1. Woodcock p.102

there none to be excommunicated. The excommunicate could not buy or sell anything involving the drawing up of a bond or deed, could not sue or give evidence in the courts,<sup>1</sup> could not make a will or receive a legacy or serve as an executor, administrator or guardian, in addition to suffering the deprivation of the sacraments and, in theory, the society of the faithful. If he remained obdurate he could be pronounced "excommunicato aggravato" when a letter of excommunication was read in his parish church and the bells were rung. A certificate was then returned to the court by the minister. This, however, was only rarely used in Instance business. If the offender had not sought absolution within forty days the court faced its greatest problem: should it let the matter rest, or should it call on the secular arm for assistance?

Rarely had the medieval courts been faced with this problem as Woodcock found.<sup>2</sup> But in the post-Reformation courts the problem was ever present. As R. G. Usher pointed out, "When the power of the keys was abolished, the efficiency of masses for the dead repudiated, the curse of the church had lost its meaning."<sup>3</sup> The truth of this can be seen in the large numbers who apparently never sought absolution, in the length of time even those who did so allowed to elapse, and in the fact that it was often obtained by proxy. An analysis of the cases before the Archdeacon's court in 1603 shows that one of the parties concerned was excommunicated in

1. 1635 Z.I.18, f.324b James Gardner was absolved so that he could give evidence in Allen v. Johnson and Keeling.
2. Woodcock p.96
3. R. G. Usher, The Reconstruction of the English Church, London 1910, vol. I, p.94

51 cases, out of whom only twenty are recorded as seeking absolution. Three of the twenty waited over a year before obtaining it and five of them obtained it through a proctor. While it is likely that some absolutions were never recorded it seems reasonable to suppose that any more who did seek absolution were somewhat dilatory in doing so. They probably waited until a crisis, such as a serious illness which seemed likely to end in death, necessitated it. In an additional nineteen cases in 1603 the last entry records the reservation of excommunication which obviously had no apparent effect. It does not appear from a cross-check with the schedules of excommunication for that year that anyone of these offenders was in fact excommunicated. The reason for this may have been the cost of obtaining the decree, for which the plaintiff was responsible, but in any case the threat was obviously not achieving its purpose. As the century wore on the situation apparently deteriorated. Of the 37 excommunicates resulting from the cases before the Archdeacon's court in 1623 only five obtained absolution according to the Instance Acta and a further sixteen were threatened with excommunication to no effect. Forty-three were excommunicated by the Consistory court in 1633 only seven of whom were apparently absolved and a further thirteen were threatened with excommunication without result. The hatred the use of this weapon was arousing in so many quarters<sup>1</sup> was an expensive price to pay for one which was

1. Ed. L. Larking, Proceedings principally in the County of Kent Camden Society, 1862, p.30. The Kent petition against Episcopacy .... "They doe generally abuse the great ordinance of excommunication making some times a gaine of it, to the gret discomfort of many poor soules who, for want of money can get no absolution." See also Christopher Hill, Society and Puritanism in Pre-Revolutionary England, London, 1964, p.361

having so little effect. It is, however, noticeable that the number of occasions on which it was used did in fact decrease over the years. The number of excommunications represents seventeen per cent of the cases in 1603, eleven per cent in 1623 and less than ten per cent in 1633. Neither officials nor litigants could be unaware of the futility of this weapon. If the excommunicate remained obdurate he had to be denounced every six months in his parish church and the registrar had to certify the Archbishop of all such persons every year. After twelve months the judge could proceed against him *ex officio* in a cause of heretical depravity and punish by penance with costs. Needless to say, since they could not bring him into court, no example of this occurring has been found.

Why then did the courts so rarely use their ultimate weapon; the right to invoke the secular arm by seeking a writ de *excommunicato capiendo* ordering the Sheriff to imprison the offender? An analysis of the years 1603, 1613, 1623, 1633 and 1641 has revealed only fourteen intended requests<sup>1</sup> altogether, less than five per cent of the cases ending in excommunication. Yet the threat of a *significavit* was sufficient to make Adrian Farley of High Halden pay his rector £3. 15. 0. tithe money and 35/- costs.<sup>2</sup> The failure of the courts to use the civil power certainly requires explanation. Various reasons have been put forward. It was a slow procedure and therefore expensive. It necessitated the judge asking the Archbishop to issue a *significavit* to Chancery seeking the royal writ de *excommunicato capiendo*. Despite a decision at Hampton Court in 1604 that "a writ out of the Chancery, to punish the contumacy shall be

1. Unfortunately there are no *significavit* lists after 1603  
to ascertain what happened  
2. *Supra* p.73

framed" and that excommunication should be taken away "both in name and nature"<sup>1</sup> nothing was done until the reign of George III. So the cumbersome procedure remained the only weapon for Canterbury litigants. It is likely too that, as F. D. Price suggested,<sup>2</sup> the judges were reluctant to use the procedure for reasons of mutual jealousy and above all because the Church was most anxious not to compromise itself with the State. This seems even more probable in the seventeenth century when Common lawyers, such as Coke in his Second part of the Institutes, were attacking them so bitterly. On the other hand, one of the few applications was made on behalf of the Archbishop himself<sup>3</sup> and more applications were made as the century wore on.

Whatever the reason, their failure to invoke the civil powers left them obliged to use the supreme spiritual penalty as a punishment for contumacy in failing to appear before the judge, for contumacy in refusing to accept the sentence of the court and for contumacy in refusing to pay the fees or costs. Every year saw a very considerable number of cases ending in the excommunication of one or other of the parties without a settlement having been reached. Thus the weapon of excommunication was brought into great disrepute by its continual unavailing use.

Both contemporary opponents and historians have, however,

1. Hill, Society and Puritanism, p.367
2. F.D. Price, The abuses of excommunication and the decline of ecclesiastical discipline under Queen Elizabeth, English Historical Review, 1942, LVII, pp.106 et seq.
3. 1623, Z.I.7, f.234. In a tithe cause against John Palmer

asserted that there were other reasons, equally if not more damaging to the reputation of the church courts, for their failure to exercise an acceptable jurisdiction. Their costs are said to have been extortionate, out of all proportion to their effectiveness and, indeed, to have impeded justice. At first sight the number of those excommunicated for failing to pay costs and the length of time many of those cases went on seem to justify such criticism. But these excommunications were the result of a failure to pay the other party's costs when a cause had been lost. The church's custom of seeking to make the losing party pay certainly increased the expense to the litigant who lost but can hardly be said to have impeded justice. In all these cases a sentence or agreement had been obtained. The question one needs to answer is: how many of those cases which were never concluded petered out because of costs? Unfortunately there is not enough evidence to answer such a question.

There are occasional references in the Liber Acta to sums of money which were either paid or were the cause of an excommunication. There are too a few extant schedules of expenses in the cause papers. From these it would appear that a citation cost from 8d. to 12d. and its execution, depending on the distance it was carried, anything from 6d. to 2/-, a proctor's fee was 12d for every appearance in court, a libel usually cost 4/- but was on occasion only 3/4, the expense of bringing witnesses into court depended on the circumstances and a sentence cost 12/-. In addition there were

of course many other expenses. A litigant would have to pay the registrar for decrees of various kinds, such as a decree to force witnesses to attend, or a decree to the defendant to hear sentence, and for copies of depositions.<sup>1</sup> If one considers Archbishop Whitgift's table of fees issued in 1597 to have been realistic, these charges were quite fair. In no case were they greater than he laid down and in two of the larger items they were less. Whitgift allowed a proctor 5/- for a libel and a sentence could cost 15/4; 6/- to the judge, 6/- to the registrar and 3/4 to the proctor. At Canterbury sentence cost 12/- which John Edwards, a proctor of the court, tells us was; 5/- for the judge, 3/4 for the registrar, 3/4 for the proctor and 4d. for the beadle.<sup>2</sup> When cases dragged on for years expenses were indeed heavy. The Vicar of Reculver's bill of expenses for a tithe cause which had lasted from 13 November, 1599 to 5 November, 1604 was £7. 7. 6.<sup>3</sup> The matrimonial case between Richard Austen and Anna Gilbert did not take so long but it necessitated a special commission to hear witnesses which cost £19. 17. 9.<sup>4</sup> so expenses totalled £40. 10. 0.<sup>5</sup> However, these were unusually high. It is more usual for any references to costs to be considerably less than £5. Twelve people appear in the excommunication files for the Archdeacon's court in 1603 and 1604 for failing to pay costs varying from 14/8 to £4. 3. 4.<sup>6</sup>

1. Appendix IIc
2. Z.3.23, f.183b
3. 1603 Ecclesiastical Suits No. 17
4. 1603 Ecclesiastical Suits No. 160
5. 1604/5 Y.3.5. f.128
6. 1603 Z.6.I. and 1604 Z.6.2. passim

There are even fewer examples of people in such difficulties in later Consistory court files although one or two of the bills were very great. For example, in 1623 there was one for £15 and another for £36,<sup>1</sup> while in 1633 there was one for £45.<sup>2</sup> The evidence is thus inconclusive though on balance it would seem unjust to accuse the courts at Canterbury of excessive charges. This is not, however, to deny that costs were a factor in the situation, as the increasing number of cases brought by the proctors themselves to recover fees shows. Over twenty per cent of the excommunications proclaimed in the Consistory court in 1634 were for failing to pay their proctor's fee.<sup>3</sup> John Fish, a proctor suspended in 1624, was still bringing cases to recover unpaid fees in 1627.<sup>4</sup> It seems likely that at least some of the unconcluded cases foundered upon the expenses of litigation.

However, not every unconcluded case was the fault of the court. The responsibility for the prosecution in Instance business rested on private individuals and they had to pay the expenses. In most cases where the record proceeds no further than the first entry with its reference to the citation of the defendant it seems probable that the plaintiff achieved his purpose. The threat of court action produced a satisfactory solution. No record was made by the scribe since it was almost certainly arranged outside the courts and

1. 1623 Lambeth V.C.III/2/I, f.38b and f.39

2. 1633/4 Lambeth V.C.III/2/2, f.118

3. 1634 Lambeth V.C.III/2/2, passim

4. 1627 Y.6.2, f.241 Fish v. the vicar of St. Peter's Sandwich

the plaintiff simply took no further action in the case. It seems likely that this happened too in, at least, a proportion of the cases which appear in the records only twice and yet have no entry of a penalty for contumacy. In 1623 the new cases brought before both courts totalled 452 of which as many as 294 were apparently never concluded according to the records. Forty-five of the 294 were terminated by an excommunication and a further 31 with a threat of excommunication. In these 76 cases the courts must be said to have failed even though at least some of the excommunicates received absolution eventually. This is a hard core of failures. But what of the remaining 218 cases? Sixty-eight of them only appear once and a further nineteen only twice, all of them without penalties for non-appearance; a total of 87, most of whose plaintiffs probably achieved their purpose. It certainly seems unlikely that the thirty-five plaintiffs in tithe causes would have let their cases drop so easily without some satisfaction, particularly as most of them had several tithe causes at a time before the judges, some of which they continued to pursue for many months and even years. The plaintiffs in testamentary causes and causes concerning fees also seem likely to have persisted longer with their cases if no satisfaction had been received. The remaining twenty-six defamation cases are the ones most likely to have achieved little. The plaintiff's determination in a defamation cause often wavered. He frequently ran into difficulties over witnesses and over a period of time his initial anger probably declined. In a fairly close-knit community the divisions had to be very deep to be maintained for any length of time. Sometimes they were, as Jane Covill of Milton explained in a

case in 1663. The parties "have of a long time been apt to fall out and quarell together" because they are "of the same trade and of a different way and judgment in matter of religion."<sup>1</sup> But in many cases the threat of court action probably produced a reconciliation. So the major proportion of the 87 almost still-born cases in 1623 probably achieved their purpose. This leaves 131 cases about which there can be no certainty, some undoubtedly failed because of the courts' deficiencies, others may also have achieved their purpose.

There were no significant changes in the proportion of unconcluded cases until the collapse of the courts in the years 1641-1642. The increase in business in the years prior to this certainly produced no deterioration in the courts' ability to enforce a solution. If anything the position improved slightly. In 1623 over sixty-five per cent of all the new cases in the Consistory court were unconcluded. In 1633 it was only just over fifty per cent. Similarly in 1623 over twenty per cent of those unconcluded cases were undoubtedly failures of the court in that they ended with an excommunication, or a threat of excommunication, but in 1633 the number in this category had fallen to eighteen per cent. Moreover, the proportion of cases disappearing very soon after their introduction increased, from twenty-nine per cent in 1623, to thirty-eight per cent in 1633. Since an even larger proportion of these abortive suits in 1633 were tithe causes and very few

1. 1663 X.II.18, f.16, Deposition of Jane Covill in Griffin v. Russell

of them were defamation cases it seems once again reasonable to suppose that many of these clients were content.

Other clients of the courts certainly did obtain redress. In some cases the scribe did write "concordantur." Many tithe causes ended in this way. It often meant the plaintiff accepting a sum which had been paid into the court earlier on in the case. On 21 June, 1603 James Lakes handed into the Consistory court on behalf of his client 16/8 and in July this sum was accepted,<sup>1</sup> while in a cause before the Archdeacon's court various small sums totalling 16/9 were deposited by the defendant in lieu of tithes and when an agreement was reached all but 8d. went back to the defendant.<sup>2</sup> Disputes over legacies were also dealt with in this way. Tithe and testamentary causes were the ones most frequently noted by the scribe as having been settled by agreement, but occasionally defamation cases were settled out of court. It was often a tithe or testamentary cause too when the scribe wrote "in statu quo est" which may sometimes have meant that the plaintiff was considering the acceptance of an offer. Sometimes the agreement was reached reluctantly and after considerable pressure had been put upon the defaulter. Many tithes were paid only after an excommunication and when petitioning for absolution. Very occasionally the settlement was imposed from outside. Sometimes a parallel tithe cause was being fought in the Common law courts and a decision was

1. 1603 Y.3.4, f.146 and f.150b. Fotherby v. Tilden  
2.1603 Y.5.8, part 2, f.8 Newman v. Waters

reached there which was accepted by the parties.<sup>1</sup> On 3 November, 1603 William Swifte, Rector of St. Andrews, Canterbury and later a Surrogate of the court, announced his intention of having his tithe cause transferred to the Court of Arches.<sup>2</sup> On 29 February, 1603/4 his opponent had the case withdrawn to the secular courts.<sup>3</sup> However, it was not only tithe causes that were sometimes settled in the Common law courts. In 1603 a cause concerning debt was settled in this way.<sup>4</sup>

Most frequently, of course, common law intervention meant the arrival of a prohibition. Every year a handful of tithe causes were withdrawn in this way, but the numbers were never very great in the Canterbury courts. Causes of debt were also withdrawn in this way. Other cases were inhibited by the higher ecclesiastical courts, the Court of Arches<sup>5</sup> and the Court of Audience.<sup>6</sup> Undoubtedly only the well to do could afford the cost of such an intervention. There were never many in any one year and most of the causes concerned were testamentary when there would be a considerable sum at stake. Nor was it unknown for the case to be returned to Canterbury. On 14 May, 1613 a licence of remission from the Court of Audience was exhibited in the Consistory court and a renewed attempt was made to obtain costs.<sup>7</sup> A small number of cases

1. e.g. 1610 Y.3.8, f.216b. Hall v. Prior, the tithe farmer of Ash accepted the Common law decision.
2. 1603 Y.5.8, part 2, f.66b Swifte v. White
3. 1603/4 Y.5.8, part 2, f.124b Swifte v. White
4. 1603 Y.5.8, part I, f.156b Goodhall v. Dowle
5. e.g. 1637 Ecclesiastical Suits, No. I An inhibition from the Court of Arches on behalf of a defendant ordered to pay costs in a defamation case
6. e.g. 1615/16 Y.5.16, f.289b Reade v. Reade
7. 1613 Z.I.2, f.62 Fidge v. Wood

were also stopped for no clear reason. The scribe simply wrote "Stet." This may have been by order of the judge on technical grounds. He may have considered there was no case, although the occasional use of "vacat" perhaps meant this, or a proctor might have failed to comply with the procedure.<sup>1</sup> It may even have been that a client had withdrawn.<sup>2</sup> It certainly seems unlikely that one tithe cause out of several brought by the Archdeacon himself would have been stopped for any other reason.<sup>3</sup>

For the remainder of the courts' clients a judgment, whether acceptable or not, was made. It could take the form of an interlocutory sentence. Originally a decision made by the judge on points at issue incidental to the hearing of the case, such as the settlement of legal points in a testamentary cause,<sup>4</sup> this had become, particularly in suits concerning church seating, a temporary settlement of the actual points at issue. A dispute over a pew between Sir Richard Oxenden and the churchwardens of Barham was settled immediately by an interlocutory sentence which was then later confirmed.<sup>5</sup> In fact in most cases of this kind the interlocutory sentence obviously ended the matter as there are no further entries.<sup>6</sup> The great majority of definitive sentences concluded testamentary

1. e.g. 1624 Z.I.8, f.86b. Beale, a testamentary cause in which the failure of the prosecution was given as the reason for the case being stopped.
2. e.g. 1623 Z.I.7, f.178. Mandley v. Sanders, a defamation cause stopped without reason but earlier on the proctors had failed to obtain the appearance of their witnesses.
3. 1633 Z.I.17, f.144b Kingsley v. Mapleden
4. e.g. 1623 Z.I.7, f.201 Le Noble v. New, a decision about the right to claim a legacy
5. 1623 Y.5.22, f.107b
6. e.g. 1633 Z.I.17, f.145. Ralph Buskine v. the churchwardens of Loose

causes in which a decision was obviously imperative. Failure to obtain one would cause great inconvenience and prevent the settlement of the estate. It was also of considerable importance to the individuals concerned that matrimonial causes should be seen to be decisively settled, particularly where boasting of marriage was inhibiting the banns. However, running away from a matrimonial problem was always possible. Giles Harrison, a curate of St. John's in Thanet, having failed to obtain a divorce fled to Windsor in Berkshire.<sup>1</sup> It was possible to manage, if somewhat uncomfortably since he would always be in danger of being summoned before the courts ex officio to explain his separation from his wife, without a sentence in such a case.<sup>2</sup> It was even less crucial that a sentence be secured in tithe and defamation causes. It is not surprising that <sup>only</sup> a few of these reached the stage of hearing sentence. It is usually in cases of this nature that the last entry in the records states that sentence will be pronounced and there is no certainty that it was. The outcome may by this time have been so obvious to the parties that neither was prepared to pay for it to be read. An exception would be the tithe causes which were quite obviously test causes for the whole parish. One sentence then might settle several more cases. Thus Thomas Warren, Rector of St. Peter's, Sandwich having introduced into the Consistory court in the last two months of 1633 eight causes of tithe, all of which either petered out or

1. 1603 Y.3.5, f.129b

2. Supra p.55

ended in the excommunication of the defendant, pursued the ninth for two years. He obtained a sentence but finally gave up over costs.<sup>1</sup> Similarly the vicar of St. Clement's, Sandwich began many tithe causes in both courts but only one did he pursue through seventy-three sessions. Sentence was read in his favour on the seventy-second occasion.<sup>2</sup>

This must not be taken as in any way typical of the length of time it took to obtain a sentence. Nearly all testamentary causes were completed well within a year and a considerable number in less than six months. Two months was probably the least the parties could expect, although sentence within a month was not unknown.<sup>3</sup> Indeed sentences within two or three months were by no means rare.<sup>4</sup> Matrimonial cases were dealt with fairly rapidly too. Sentence was read the following day in one divorce case.<sup>5</sup> Tithe and defamation cases usually took longer. They faced greater difficulties in presenting their proofs to the court. Although written proofs were presented in tithe causes they were far more frequently dependent on aged witnesses. All the witnesses, except one, in the tithe causes brought by the Vicar of Lydd at the beginning of the century were over sixty and the fullest depositions were made by Clement Stuputy, aged 77, who had lived in Lydd sixty years,

1. 1635 Z.I.18, f.347 Warren v. Forwood
2. 1637 Z.I.19, f.178. Fotherby v. Neame
3. 1623 Z.I.7, f.188b. 26 June, Kibbet v. Kibbet, and f.213b 24 July, sentence in Kibbet v. Kibbet.
4. Sentences in testamentary causes before the Consistory court

	<u>Within 3 mths.</u>	<u>Within 6 mths.</u>	<u>Within 12 mths.</u>	<u>Over a year</u>
1603	8	4	0	1
1613	4	1	2	1
1623	12	9	1	1
1633	7	11	6	1
5. 1603 Y.3.4, f.124b, 3 May, Harrison v. Harrison and 1603 Ecclesiastical Suits, No. 4. Sentence 4 May

and John Wells, aged 70, who had lived there forty-five years.<sup>1</sup> The longest cases were undoubtedly tithe causes. Very few of them received a sentence in less than a year.

Much has been made of the fact that only very rarely did a judge give any reason for his sentence and so, it is said, the tradition of precedents built up in Common law by the publication of reasoned judgments, one of its greatest strengths, was not possible.<sup>2</sup> The small number of extant sentences makes this difficult to prove or deny. Undoubtedly some sentences did go into considerable detail, particularly in tithe cases.<sup>3</sup> Moreover, the precedent books found at Canterbury and the meticulous attention they give to the legal arguments presented to the judges in libels and articles does not suggest contempt for traditions and precedents. There are three precedent books drawn up by officials active in the courts at the beginning of the seventeenth century namely: John Edwards, a proctor; Leonard Sweting, a proctor; and William Somner senior, registrar of the Consistory court. Somner's is a collection of articles and libels with no comment and only one sentence is included but the two proctors do give attention to the judges' sentences and explanations. John Edwards quotes a sentence in favour of a contracted marriage and against a later solemnised marriage.<sup>4</sup> This was obviously an interesting and

1. 1602 X.II.8, f.16b et seq. Depositions in Webb v. Godfrey
2. R.A.Marchant, The Puritans and the Church Courts in the Diocese of York 1560-1642, London 1960, p.5
3. e.g. 1603 Ecclesiastical Suits, Nos. 108 and 109 in Webb v. Godfrey
4. Z.3.23, part I, f.91b et seq.

important decision since many matrimonial causes raised this point. Leonard Sweting often goes into considerable detail. He describes a testamentary case in which a father died leaving his wife in charge of legacies for the children. She remarried and then died. The children's step-father married again and when he died the children's aunts sought guardianship of the children. Sweting then poses several questions. Can women be appointed guardians? Can the step-father's executor be compelled to pay their legacies before the children come of age? He answers these, and various other questions, with the arguments of Dr. John Hone: that only a mother, or a grandmother, may be a guardian; that an administrator of the father's goods can be appointed; and that he can recover the legacies for the children who may have them because the mother, in whose favour the will was, is dead.<sup>1</sup> There follow other testamentary and tithe cases which are treated in a similar way. Above all, it does not seem reasonable to suppose that judges who were doctors of law, often civil law, as all the Canterbury judges were,<sup>2</sup> would be unaware of the importance of past judgments. Indeed the emphasis on detailed and accurate records for all the courts' activities which at Canterbury can be seen stretching right back into the Middle Ages would seem otherwise to have been unnecessary. In the various defences of the Prerogative court at Canterbury they were always quoted. Reference to past precedents were certainly the traditional weapon

1. Z.3.25, f.270 et seq. "Practica Iudicialia et petitiones forenses," Leonard Sweting

2. Infra pp. 133 - 140

in these arguments.<sup>1</sup>

A contemporary criticism was voiced in article nine of the articles presented to the Lords in that it stipulated, that "the laws ecclesiastical in use in the kingdom be collected and abridged in the English tongue .... that Archbishops, Bishops etc. may understand (which now they do not) by what laws they are to be judged."<sup>2</sup> The use of Latin was not, of course, confined to the ecclesiastical courts and it was giving way there, as it was in the secular courts. After the initial heading giving the name of the witness, his parish, place of birth, age and the length of time he had known the parties which "must be written orderlye in the preface or preamble of the examinacon and in lattine,"<sup>3</sup> his deposition was written in English and would, of course, be read back to him in English. English was usually used too for any remarks made by either of the parties or witnesses that were recorded in the liber Acta. Indeed the use of Latin was rapidly becoming confined to the formal records and documents. Perhaps it was unfortunate that the sentences remained in Latin but some citations were in English, even before 1640.<sup>4</sup> In any case it seems clear that all the officials of the courts, including the apparitors who endorsed the citations, were completely familiar with at least the formal, routine Latin of the courts. What is more difficult to determine, is how far Latin was actually

1. Miscellaneous papers in Ecclesiastical Suits. Papers concerning the Prerogative court of Canterbury
2. C.S.P.D. 1641-43, p.36
3. Z.3.25, f.86b
4. Maidstone P.R.C. 35/I. Bundle of citations

spoken in the courts and whether or not this impeded justice. What evidence there is about the education and training of the proctors at Canterbury<sup>1</sup> suggests that they would be competent in the language. It is impossible to say more than this.

What kind of a sentence could the parties expect to receive? The ecclesiastical courts could not fine nor could they imprison. In any case most of the suits which came before them merely required adjudication. Indeed in a few cases the parties agreed to accept the judgment of an arbitrator rather than proceed with a suit in court. The three disputes found in which this happened were all referred to the Archbishop himself for a decision.<sup>2</sup> In both testamentary and tithing causes the courts were usually concerned with the allocation of money. Other cases, such as those concerning church seating, demanded an administrative decision. In all these cases the promulgation of the sentence in the parish church of the parties concerned might be ordered.<sup>3</sup> A need for some form of punishment did, however, arise in some matrimonial and many defamation causes and in these cases penance was imposed. Thus William Yokins was ordered to retract the statement, that Thomas Jones was a "drunken knave and that he would prove it," in Wingham parish church.<sup>4</sup> Similarly Joseph Romfeild was ordered to acknowledge his fault, in defaming Priscilla Ashenden, in St. Mildred's church, Canterbury, and to pay her costs of 25/-.<sup>5</sup>

1. *Infra* pp. 150-151

2. e.g. 1624 Z.I.8, f.83b "that the hearinge and determininge of this cause is referred unto the Reverend father in God George, Lord Archbishop of Canterbury .... by the consent of the parties litigant."

3. e.g. 1603 Y.3.4, f.189. Philpot, a testamentary cause in which the sentence was attached to the door of Folkestone parish church by an apparitor.

4. 1603 Y.3.4 f.102

5. 1623 Y.5.22, f.133

The requirement that the loser pay at least a part of the costs was also, of course, a form of punishment. In many cases, however, the court was not able to enforce this as the schedules of excommunication show, even though occasionally payment by instalment was allowed.<sup>1</sup> Nor did all those ordered to do so return schedules of penance signed by their minister. In many defamation cases the successful party probably had to be satisfied with the court's statement of his innocence. This was the judge's decision since compurgation was no longer used in Instance business. One example of the ordering of excommunication as part of a sentence has been found in the Archdeacon's court. Henry Fagg was ordered to be publicly excommunicated for wrongly securing the administration of the will of William Fagg of Newington.<sup>2</sup> This, of course, had involved perjury. He was absolved eighteen months later.

There can be little doubt that where Instance business was concerned the courts were neither altogether unsuccessful nor unpopular. The volume of litigation in itself denies any suggestion that the courts were completely incapable of exercising their jurisdiction. Nor did their judgment inevitably favour certain sections of the population. The Rector of Ivychurch had to pay costs in a tithe cause he lost.<sup>3</sup> The decision of the Courts Christian were not apparently unworthy of respect since so many clients persisted in their suits despite the difficulties and expense of litigation.

1. 1634 Z.I.19, f.8b. Coytmer v. Ginder. The Rector of Burmarsh paid two instalments of 6/4d.
2. 1614 Y.5.15, f.234
3. 1633 Z.I.17, f.292b. Jackson v. Huckmot

CHAPTER III

Ex Officio Business: the procedure of the courts  
and the extent of their success in enforcing  
Archbishops' policies and discipline.

The process of checking and punishing crimes and misdemeanours which were answerable 'in foro ecclesiastico' was carried out almost entirely by visitation. The medieval methods of relying on incumbents and above all 'common fame' as reported by the apparitors had almost disappeared. Suits not arising out of presentments usually resulted from churchwardens' negligence. Every year there were charges against some churchwardens because they had failed to return their bill of presentments, or returned an inadequate bill. Occasionally the incumbent made a complaint as did the Vicar of Appledore in a long letter of 16 July, 1623 in which he said, since the churchwardens "seeme to have no reall intention to alter or renew the indecent pulpit ..... I have thought it my duty to informe your Court how clownish and undecent it is for ye house of God .....many who have seene it say shame that it is not mended or renewed."<sup>1</sup> Even less frequently the court heard charges made by a private individual. These were most commonly against a minister as in the rather unusual case of the father, Henry Brockman, presenting his daughter for incontinency with Mr. John Strout of Cheriton,<sup>2</sup> but other cases

1. 1623 X.6.I, f.201

2. Supra p.14

do appear.<sup>1</sup> Some too almost certainly anticipated a presentment by acknowledging their fault in private. Incontinency was frequently confessed in this way.<sup>2</sup> There were too a few charges presented by the officials of the courts themselves. Thus, in 1633 under the parish heading of Lympne an entry read, "Office contra Richard Jaggar" for "he hath very much abused and scandalized the authority and proceeding of this Courte by writing certaine invective lines upon the backside of an excommunication."<sup>3</sup> It is difficult to be sure to what extent apparitors were involved in presentments as in former times. Their constant journeys certainly gave them ample opportunity to assimilate 'common fame' which they could pass on to the judge. Quite possibly it was through them that the judges learnt an incorrect presentment had been made, so enabling them to force the churchwardens to submit another, such as that made from Appledore in 1603. "In our late presentment we omitted twoe thens because we could not tell his name, the other for that we are doubttefull whether he were still of our prishe or not."<sup>4</sup> Unfortunately the brief entry made by the scribe does not always make it absolutely clear whether a charge had arisen from a presentment with words such as "we the churchwardens present" or "to the twenty-first article we answer," both of which are used on occasion, but it seems reasonable to assume

1. eg. 1637 Z.4.6, f.17 Anna Cranbrook accused her husband of adultery before Edward Aldey and in his house.
2. e.g. 1632/3 X.6.10, f.19, and 1640/1 Z.4.7, f.90b
3. 1633 X.6.9, f.36b
4. 1603 X.4.2, part 1, f.158b

that the great majority of charges arose in this way, Even if the apparitors' contemporary critics were justified it is very doubtful whether their activities were any worse than those of the Common law informer.

The two churchwardens, upon whom the burden of presentment fell, were elected annually by the joint consent of the minister and his parishioners. If they failed to agree the minister elected one and the parishioners the other. Canon law made them responsible for the repair of the church and churchyard fences, the decent state of the church furniture and for the cleanliness of the church. They had to ensure that neither the building nor the churchyard was profaned by plays or games and that all parishioners resorted to their church and behaved in a seemly fashion. This last requirement forced churchwardens to leave the service themselves to look for offenders.<sup>1</sup> At the expiration of their office in Easter week they had to render their accounts to the parishioners and present any who had offended "their brethren, either by adultery, whoredom, usury and any other uncleanness, and wickedness of life."<sup>2</sup> Many presentments were made on the grounds that they were "offensive to the congregation."

Needless to say these men were often reluctant to take their oath of office and some, at first, refused. Article 27 of the Kent petition complained about "the imposing of oathes and

1. e.g. 1603 X.4.8 f.5b and f.6. Presentments were made "for suffering company to be drinking in his hous in time of divine service" and "for being in an alehouse during divine service"
2. See R. Phillimore, Ecclesiastical Law of the Church of England, London, 1895, Vol.II part IV pp.1055-1057 for the churchwardens' duties.

various and triviall articles yerely, upon churchwardens and sydemen, which, without perjury they cannot observe, unles they fall at jarre contynually with their Minister and Neighbours and wholly neglect their owne callings."<sup>1</sup> It could indeed be a most unrewarding office. Inserted into the Comperta and Detecta for the deanery of Lympne there is a letter from the parishioners of Bonnington to Mr. Thomas Scotte Esquire and others, the King's Majesty's Justices of the Peace, accusing Gilbert Cutlowe of being "a verey contentious and troublesome person movinge brawles, disquietnesse and molestation against the most parte of his neighebour." On this the Official has written, "It appereth to me that this is malitiously don becaus Cutlow hath presented some of thes partyes."<sup>2</sup> The churchwardens' responsibilities were very great and they could, of course, abuse them. The churchwardens of Newchurch were warned not to cite innocent persons after a presentment for keeping company scandalously and infamously had been dismissed.<sup>3</sup> Thomas Martine was presented for not attending church "having noe lawfull cause or excuse to ye contrarye" yet was dismissed "~~yet was dmississed~~" for he is notoriouslie knowne to be one of the singlers in Christchurch Canterburie and to attend there twice everie Sunday."<sup>4</sup> Robert Bacon, a churchwarden of Egerton, was excommunicated for failing to appear in court to substantiate a presentment.<sup>5</sup>

1. Larking p.37

2. 1603 X.4.2, part I, inserted between f.166b and f.167

3. 1607 X.9.6, f.136

4. 1603 X.4.4, part 2, f.7b

5. 1603 X.9.3, f.147b

Another reason for the unpopularity of the system was the cost it imposed on the parish. The charges appear to have varied, although some of the different sums in the accounts of the churchwardens of St. Andrew's, Canterbury<sup>1</sup> may have been the result of the idiosyncrasies of different churchwardens. Some seem to have itemised every charge, but some put the charges for two visitations together, while some added the charge for their oaths to the visitation fee and others simply wrote down a comprehensive figure. It does, however, seem that the 1604 canon which said churchwardens were not to be charged fees for more than their first bill of the year was not adhered to. The usual visitation fee seems to have been 1/4d, with a further 1/- for the taking of their oaths. In addition the churchwarden of St. Andrew's sometimes charged in their accounts for "writting our bylls of presentments" which could be 2/-,<sup>2</sup> for bills of recusants at 4d<sup>3</sup> and always for dinners at the visitation for the minister, churchwardens and sidesmen. These could be quite costly. In 1609 Mr. Swifte's dinner cost 12d and that of the churchwardens 2/8d.<sup>4</sup> The year of Archbishop Abbot's metropolitcal visitation was a particularly expensive one. They paid 3/- for the book of articles, 4/4d "for dynners at my Lord of Canterbury's visitation" and 1/- for the ringers in addition to the ordinary April visitation fees.<sup>5</sup> If they were called before the court, as they were in 1603 and 1612, there

1. Ed. Charles Cotton, Churchwardens' Accounts of the parish of St. Andrew, Canterbury, 1597-1625, Archaeologia Cantiana, 1923 XXXVI, pp 81 et seq.
2. Ibid p.109
3. Ibid p.90
4. Ibid p.95
5. Ibid p.105

were, of course, further charges for the citation and other fees. Moreover, St. Andrew's parish did not have to pay any travelling expenses as most other parishes did. These were often several shillings for Folkestone parish at the end of the sixteenth century.<sup>1</sup>

A few of the presentments were probably dealt with immediately and were never recorded in the acta but most of them were framed into charges to answer which the offender was summoned to Canterbury. There was, therefore, often considerable delay, as can be seen when offenders were able to obtain immediate dismissal on the grounds that they had corrected the fault since the visitation.<sup>2</sup> Having to appear in these circumstances must have been a source of considerable irritation, as must the very short notice they were given by the citation. Offenders living in Canterbury were lucky if they had more than two days' notice and, while it was usual for those living farther afield to have five or six days warning, examples can be found in every deanery, and in every year, of just one day's notice.<sup>3</sup> It is not surprising, therefore, that the primary citation often failed and that citation '~~vis~~ et modis' was frequently necessary. In the event of this failing excommunication might be reserved. In office business the defaulter was usually given a period of time, such as until Easter, or St. John the Baptist's day, which was sometimes extended two or three times. In the end, however, the

1. Ed. O. B. Grover, Folkestone Church Wardens' Accounts, 1487-1590 Folkestone Public Libarary, f.201 "Payed in expences and charges by the Churchewardens and sydemmen the xxth of Aprill at a visitacion at Canterbury and for horse hyre and horse meate that tyme ixs.vd."
2. e.g. 1603 X.4.5, f.134. Richard Russell was able to present a certificate of attendance at church since the visitation.
3. e.g. 1603 X.4.2, part I, f.163 Christopher White of Burmarsh was cited on 22 for 23 June (See Appendix III for map) and 1636/7 Z.4.6, f.22b A married couple living at Wye were cited on 15 for 16 March

judge could only either let the matter rest, which he sometimes did, or pronounce the accused excommunicate and then, if he still remained obdurate, apply for a significavit writ. This was done no more frequently in Ex Officio business than in Instance business. It was applied for in one case only in 1623 despite a considerable number of presentments for "standing excommunicate" some for as long as "three or four years."<sup>1</sup> Nevertheless the judges were content with aggravated excommunication except in a very few cases. In the case of John Dallison of Mersham a writ was applied for by a private individual, William Knott of Birchington<sup>2</sup> and only three instances of the significavit writ being applied for by the courts themselves have been found in the years analysed before the Civil War.<sup>3</sup>

When the accused first appeared he took the ex officio oath and then he was allowed to comment on the charges which a number did at considerable length. Widow Keete of Bonnington said that "she, being much wronged by the churchwardens in respect of her over censing, did unadvisedly sweare an oath but shee is sory for ye same."<sup>4</sup> A parishioner of St. Andrew's, Canterbury claimed that "if he should have kneeled upon his knees he being somewhat ... (illegible) he could scarce have bin seen by the minister."<sup>5</sup> This part of the proceedings was undoubtedly held in English.<sup>6</sup> In the majority of cases the accused did not employ a proctor nor, except when he asked to be allowed to purge himself, did he usually employ witnesses. The matter was left entirely in the judge's hands and he might pronounce sentence

1. 1623 Z.4.3, f.51b

2. 1623 X.4.3, f.16

3. See Appendix I Examples found 1603 X.9.3, f.38; 1613 X.5.2, f201b; and 1637 Z.4.6, f.20

4. 1603 X.4.2, part I, f.162

5. 1637 Z.3.16, f.18

6. Cf. Hill Society and Puritanism, p.310

or reserve judgment, or defer the hearing to another day to see further, or dismiss the accused, often with an admonition. Thus the man who supervised the detection of the accused also dismissed, or condemned, him.

However, the courts have been less criticised, then and since, for this than for the fact that "the courts proceeded, often on the basis of mere scandal and gossip" and retained "the archaic oath of compurgation, by which men from the locality were called upon to testify not to the fact of the accused's guilt or innocence, but to the general belief in it."<sup>1</sup> It is true that in the Canterbury diocese presentments were still made 'upon common fame' but they are a comparatively small minority and a very large proportion of those so charged, who dared to appear to justify themselves, were dismissed with no more than a warning. The wife of Roger Cockersole was even presented for that "she hath reared a fame that Elizabeth Diggins of our parishe hat been incontinent with knowen divers men."<sup>2</sup> Churchwardens were not anxious to make themselves unpopular and preferred to wait for more definite evidence, such as the birth of a bastard, or an untimely birth. Indeed the churchwardens of Biddenden were warned against presenting too easily on 'common fame.'<sup>3</sup> It may be questioned too whether the Common law was much further forward since presentments by a Hundred jury still led to indictment at the Quarter Sessions. "We present Ralfe Law for that he is knowen to be common drunker"<sup>4</sup> may have had no firmer foundation

1. Hill, Society and Puritanism, p.310

2. 1603 X.4.2, part I, f.157

3. 1603 X.4.8, f.14

4. Melling p.117 Presentment by a Hundred Jury at East Kent Quarter Sessions, Summer 1612

than many churchwardens' presentments.

The use of compurgation is perhaps less defensible. It was still frequently used particularly in connection with sexual offences and usually by the male members of the community. The number of compurgators, men, or women if the defendant was a woman, who would swear that they believed the defendant innocent of the charge laid against him, in that they believed he had taken a true oath, varied. It was decided by the judge in the light of the gravity of the offence, status and general credit of the accused, and credibility of the story. It was commonly four in Canterbury, although it could be as few as two, or as many as six or eight, but they all had to be of the same rank and quality as the accused. Compurgators who did not fulfil these conditions were turned away by the court.<sup>1</sup> A notice of the coming purgation had to be read in the parish church of the defendant and objectors were invited to appear in court too.<sup>2</sup> Compurgation was expensive, so that accusations could be made of men having bought their dismissal,<sup>3</sup> and it was also far more difficult for a woman to secure. There are in the records many cases where a man was able to purge himself of sexual incontinency while the woman accused with him was forced to admit her fault and perform penance.<sup>4</sup> It seems unlikely that all these men were innocent. That compurgation was unreliable

1. e.g. 1613 X.5.2, f.191b Compurgation was refused because "the said Stowe hath not produced householders but singlemen"
2. e.g. 1615 X.5.3, f.95b An objector appeared and so John Wood had to do penance despite the fact that four compurgators took their oaths
3. e.g. 1613 X.4.10, part 2, f.38
4. B.g. 1603 X.4.8, f.6b Richard Codd of Great Chart purged himself while Joan Harris did penance in Chart church.

can be seen in the case of Edward Berry of Northgate, Canterbury, who was able to produce six compurgators. The official, having received a letter from a witness of the incident, then had two witnesses brought into court, at which point three of the men withdrew.<sup>1</sup> Penance was usually awarded when compurgation failed. Once again, it seems to have been a male prerogative to have this more frequently commuted into a money payment.<sup>2</sup>

Penance was in fact still imposed for many faults, not just sexual incontinency. One might expect it to be imposed for wishing that a minister "had as many maggotts in his belly as ever sheep had that they might nettle him soundly,"<sup>3</sup> or for causing a disturbance during a church service, or for not frequenting church, but it was also imposed for drunkenness, being "a very brawling unquiet woman amongst her neighbours."<sup>4</sup> and for working on Sundays or Holydays. Twenty per cent of the penances performed as a result of Archbishop Abbot's metropolitanical visitation were for working on a Sunday.<sup>5</sup> This use of penance did not decline and it was performed. Although there are not many schedules with the signatures of the minister and churchwardens certifying that "this confession was publickly, penitently and formally pronounced"<sup>6</sup> extant, the return of such a certificate is frequently recorded in the acta. Penance was performed by fifty-two of the 377 accused before the Consistory court in 1637,

1. 1613 X.5.2, r.204

2. e.g. 1613 X.9.12, f.22 Edmond Goodwyn having failed to find four compurgators from Wye and two from Dover was able to commute his penance to £3.6.8. to the poor in each parish

3. 1637 Z.4.6, f.111b

4. 1623 Z.4.3, f.75

5. 1615-1616 Lambeth V.C. III/II passim

6. 1620 X.5.10 penance attached to f.138b

including a minister for marrying a couple without banns or a licence.<sup>1</sup> A further seven commuted their penance and a number obviously avoided it by refusing to appear and so being excommunicated. There was only one defendant, who appeared and was ordered to do penance, who failed to comply, although one couple did not satisfy the court until eighteen months later.<sup>2</sup>

It was performed in public, during or after morning service, or in private, in the vestry or even in a private house, in the presence of the incumbent, churchwardens and a few parishioners. Occasionally it might be performed before the court itself. On 3 February 1636/7 the leading citizens of Maidstone acknowledged their fault in setting up regulations by which, the Court of High Commission had decided, the mayor and jurats were meddling with church affairs, before the full Consistory court.<sup>3</sup> The instructions for the acknowledgment of the fault depended on the gravity of the offence and were in a schedule issued by the court. This contained the words to be used, the number of times the penance had to be performed, where and when and whether or not the accused had to be "clothed in a white sheet with a white wand in his, or her, hand."<sup>4</sup> There was apparently no fixed scale at Canterbury, such as Dr. Brinkworth found in Buckinghamshire.<sup>5</sup> An acknowledgment, "ad agnoscendum," was awarded for incontinency before marriage<sup>6</sup> and drunkenness,<sup>7</sup> as well as for working on Sundays

1. 1637 Z.4.6, f.32

2. 1638 Z.4.6, f.22b

3. 1636/7 Z.4.6, f.12 and C.S.P.D. 1635-1636 pp. 508-510

4. Appendix IIe

5. E.R.C. Brinkworth, *The Laudian Church in Buckinghamshire*, University of Birmingham Historical Journal 1955-56 V, p.34

6. 1637 Z.4.6, f.86

7. 1637 Z.3.16, f.293

and Holydays. In all these cases the acknowledgment had to be carried out before the minister, churchwardens and a few parishioners, outside divine service time, but the word "agnoscendi" was also used for the award of penance in service time, and with, as well as without, the white sheet of penance.<sup>1</sup> Dismissal depended upon the production of a certificate to the effect that the instructions had been fulfilled. Very occasionally dismissal was granted after one performance although it had been enjoined two or three times.<sup>2</sup> Commutation, when the guilty party offered money for the poor, or some other worthy cause appointed by the judge, was officially frowned upon and did not occur very frequently. It was obviously desired to avoid the ignominy of a public penance. One faced with such a prospect in 1632/3 said that he had "for a longe space and at least thirty yeares together lived in good repute and esteem among his honest neighbours and never offended in the like at any time heretofore and, that if hee and his said wife should be compelled to perform this penance enjoyed them, as aforesaid, it would redound to their greate hinderance, greater greife and allmost to their utter undoing."<sup>3</sup> Nevertheless commutation was not granted just to those who could pay large sums. While William Hannington of Dover might pay £10<sup>4</sup> and a parishioner of Charing £6. 13. 4.<sup>5</sup> others paid 13/4<sup>6</sup> and even 5/-<sup>7</sup>. Pleas made by parents for commutation of their

1. 1637 Z.3.16, f.279 A man guilty of fornication was ordered "agnoscendi eius culpam publice in ecclesia parochiali de Stapleherst predicto 3 vice linteis indutis per tempus divina"
2. e.g. 1633 X.6.9, f.36b Thomas Godfrey Esquire, a Justice of the Peace living in Sellendge, submitted through a proctor that Henry Jenken had done his penance for adultery once and that he and "the better sorte of the parishioners and inhabitants ..... were very well satisfied."
3. 1632/3 X.6.10, f.19
4. 1613 X.9.II f.248b
5. 1607 X.9.6, f.50
6. 1613 X.5.3, f.100b
7. 1615 X.5.2, f.202b

children's penance on compassionate grounds were also granted. This usually occurred when the accused had fled the country and parents grieved.<sup>1</sup> Quite common too was permission to commute the public part of the penance. Thus the public penance of a wealthy parishioner of Maidstone was commuted to 50/- and an acknowledgment of the fault before the minister, churchwardens and jurats<sup>2</sup> while poorer parishioners of Hucking paid only 5/- and performed their penance before the minister, churchwardens and four or six others.<sup>3</sup> In most cases the judge decreed, at the time, where the money was to go and a receipt signed by the churchwardens, or some responsible person, very often appears in the margin.<sup>4</sup> The recipients were the poor of the parish concerned, occasionally poor scholars,<sup>5</sup> and occasionally, particularly in Canterbury, one of the hospitals.<sup>6</sup> Payments could be made in instalments. In 1607 one defendant was told to pay 20/- by Christmas and 20/- by the feast of St. Matthew and to return to the court by Easter a certificate of payment signed by the Vicar.<sup>7</sup> When a parishioner of Willesborough failed to pay her full amount she was allowed to pay a small sum and allocated until the feast of the Annunciation, six months later, to pay the remainder. Failure to comply led to her excommunication but when she eventually sought absolution, over four years later, there was no further punishment imposed. She simply paid the outstanding sum.<sup>8</sup> Once the penance had been

1. e.g. 1623 X.6.5, f.48b A mother pleaded for commutation "for she hopeth by that meanes to regaine and bring backe her said sonn from beyond ye seas to live with her."

2. 1623 X.4.3, f.54b

3. 1637 Z.4.6, f.28b

4. e.g. 1613 X.9.II, f.230b The churchwardens of Reculver and Hoth acknowledged the receipt of 33/4d each.

5. e.g. 1607 X.9.6, f.50 £3.6.8. to the poor scholars of Charing

6. e.g. 1623 X.5.10, f.180 6/8d to Harbledowne hospital and 6/8d to St. John's hospital

7. 1607 X.9.6, f.30b

8. 1623 X.6.I, f.192b

performed, or the commutation paid, absolution was granted upon a petition, an oath of obedience to the judge and the mandates of the Church, and payment of the requisite fees.

Failure to comply with the mandates of the Church led, of course, to excommunication. At Canterbury this was nearly always of the 'greater kind.'<sup>1</sup> This 'supreme spiritual penalty' was in fact rarely used for the punishment of any fault save contumacy. It was not a punishment the officials of the courts wished to use but, as in Instance business, when the accused failed to appear they had no alternative. This led them even deeper into the mire in Ex Officio business for then they were faced with the problem of what to do with those like Avis Austen who "persisteth in her obstancy and being excommunicate maketh but a jest of it"<sup>2</sup> and the parishioner of Brenzett who maintained that "he was excommunicated in an oven and that he cared not for any of their curses."<sup>3</sup> This was a perennial problem for the courts to which, having discarded the significavit, they really had no answer. In fact they were reduced to proclaiming a second excommunication with or without aggravation. Nowhere is the futility of excommunication more clearly seen than in a presentment for standing excommunicate followed by "et in penam excommunicationem fore decrevit"<sup>4</sup> and this occurs quite frequently. Sometimes "excommunicatio aggravata" was used and sometimes "excommunicatio

1. 1622/23 Z.4.3, f.8b Thomas Browning was merely suspended, probably because he was a jurat of Hythe but this was unusual.

2. 1602 X.9.3, f.2

3. 1638 X.6.9, f.105b

4. e.g. 1615/16 Lambeth V.C. III/II f.58b

cum intimaco" but even if there was any real difference between them, neither had very much effect. The proctor who sought his client's absolution "dupliciis excommunicationis"<sup>1</sup> was merely stating the truth that excommunication was used again and again on the same person. Even though Canon law might allow this ("If a person be excommunicated by divers excommunications for divers offences, and produceth letters of absolution from one sentence; he shall not be discharged until he be absolved from them all")<sup>2</sup> it was hardly an action likely to inculcate respect. Richard Copland of Wye was excommunicated as a drunkard on 20 October, 1615 and was presented five times for standing excommunicate, the last occasion being on 4 December 1618. Each time he was excommunicated again and was never, according to the records, absolved. Presumably the parishioners of Wye just gave up presenting him.<sup>3</sup>

Not all remained as obdurate as this. A considerable number did eventually seek absolution, but often in their own time. Edmund Luddenden excommunicated for living apart from his wife on 8 October 1612 was eventually absolved on 26 August, 1620 when his wife had died.<sup>4</sup> Others were absolved because they wished to be married,<sup>5</sup> or they feared death might be imminent.<sup>6</sup> Not that excommunication was always the hinderance

1. 1663 Z.4.7, f.267b

2. R. Burn, Ecclesiastical Law, London 1781, 4th edition, II, p.229 Part of the Institutes of Justinian.

3. 1615-1618 X.5.8, ff.92b, 172b, 136, 150b 163b, 174

4. 1612-1620 X.9.II, f.54b and 202

5. e.g. 1605/6 X.4.4, part 2, f.11

6. e.g. 1617 X.5.2, f.206b A husband sought absolution for his wife sick in child bed because she was worried that she could not be churched, or receive Holy Communion, or have christian burial.

it should have been. In 1603 a couple, having been excommunicated for failing to follow up their banns with marriage, were married, and then asked the court for absolution.<sup>1</sup> In the same year there was trouble at Newenden over the Christian burial of an excommunicate.<sup>2</sup> Another indication of the scant respect felt for excommunication can be seen in the numbers of those who were absolved by proxy, although they were never as many in the Canterbury diocese as have been found elsewhere. In 1623 sixty per cent of those excommunicated by the Consistory court were absolved, the majority of them personally. In fact less than twelve per cent of those absolved were absolved by proxy and about the same percentage waited more than a year. Over sixty per cent of those said to be in a state of aggravated excommunication also sought absolution in that year. However, this picture did become worse. In 1637 barely forty-five per cent of those excommunicated were absolved, although the proportion absolved by proxy remained the same. Moreover, none of those who had remained excommunicate for some time and were therefore pronounced 'excommunicatio aggravata' bothered to secure absolution. Nevertheless, until the years immediately prior to the Civil War, although there was always a hard core of recalcitrants, even the weapon of excommunication did have considerable success.

Penance, or excommunication, was not, however, the only possible outcome of a charge. Those who could explain

1. 1603 X.9.3, f.98

2. 1603/4 X.4.8, f.22-23. A dispensation for the Christian burial of an excommunicate could, of course, be obtained. e.g. 1615 Lambeth V.C. III/II, f.4

their presentment were dismissed, sometimes without even an admonition. For others a warning not to repeat the offence was all that was considered necessary. In fact many presentments were excused or justified. Those presented for not attending church explained that they were no longer members of that parish,<sup>1</sup> or that they were hindered by old age, or sickness, or were away from home on business.<sup>2</sup> The reasons given for not attending communion were, of course, similar. Edward Willson of Saltwood claimed that "there hat bene but one communion within their parishe since Easter last at which time he .... was twenty mile from home"<sup>3</sup> and a parishioner of St. Paul's tried a more frivolous excuse saying that she had "noe apparrell fitting to receive in."<sup>4</sup> Unless they were shopkeepers, those presented for working on a Sunday were frequently able to justify themselves. In 1603 a parishioner of Hawkherst pointed out that he had attended church twice and "perceiving ye weather incling much to varie did only but cocke the same hay to preserve it."<sup>5</sup> In 1623 John Hills of Stourmouth pleaded it was necessary to repair a fence because his cattle were wandering<sup>6</sup> and John Bubb of St. Paul's, Canterbury claimed he had killed and dressed a bullock because it "was so wilde and untameable that there was no way to prevent great danger and hurt."<sup>7</sup>

1. e.g. 1603 X.9.3, f.119b Cited by Wingham, Thomas Millenden produced a certificate of residence in Sandwich.
2. e.g. 1633 X.6.10, f.21b "because he was sometimes sick and sometimes much imployed in other partes or places about his urgent business he hat not frequented his parish church soe well as he ought."
3. 1603 X.9.3, f.88
4. 1633 X.6.10, f.25
5. 1603 X.4.8, f.7
6. 1623 X.5.8, f.266b
7. 1623 X.5.10, f.196

The number of excuses of this nature were endless. Robert Ladd and William Row pleaded the necessity of working upon the pier at Dover because it was in great danger, and the town also, as a result of a great tempest.<sup>1</sup> Charges concerning the profanation of the Sabbath were the ones most commonly excused, but other kinds of charges might be explained too. Avis Austen was able to prevent herself being ordered to join her husband in the diocese of Chichester by drawing attention to an outbreak of the plague there.<sup>2</sup> James Puttoo was able to plead that the baptism of his child in the Dutch church by the Dutch minister was "ignorantly donne of him for if he had knowne my Lord Grace of Canterbury his pleasure in that case he would have had his child christened in the parishe church,"<sup>3</sup> and the churchwardens of Godmersham were forced to admit that their presentment of George Williamson for incontinency was the result of his wife's jealousy.<sup>4</sup>

In most of these cases, and others, a period of time was allocated during which the fault had to be corrected. This was the normal method for dealing with non-attendance at church, failure to receive communion, repairs to the church, and the provision of a book of Homilies, the latest translation of the Bible, or anything else that the Ordinary might require. The accused had to submit a certificate, signed by the incumbent to the effect that the matter had been corrected. In the event of failure the court usually extended the time and sometimes

1. 1636 Z.4.6, f.4
2. 1603 X.9,e, f.142b
3. 1636 X.6.10, f.85b
4. 1603 X.9.3, f.36

it was extended many times. William Potter, who had to repair the Vicarage of Tonge, was given first until St. Andrew's day in 1613/14, then until St. Peter's day in 1615, after which his time was extended yet again. Eventually on 19 June 1617 he submitted a certificate of completion.<sup>1</sup> The patience of the court was thus usually considerable. Even a man warned about carrying out an arrest in Mersham churchyard and cited again for the same offence, this time at Ruckinge, was merely warned again.<sup>2</sup> The court was also long-suffering where payments of money were concerned. It was very rare for anyone who had refused to pay his church rate to be excommunicated at once. If he was, it was usually because he was a notorious offender of the Church's mandate in other respects. Citation by the court was in fact normally sufficient to make such an offender pay. All those before the Consistory court for this offence in 1613 paid and only two had to be excommunicated first. It was not until Laud's Archiepiscopacy that the picture really changed. Very occasionally the cense was reduced as it was for a parishioner of St. Paul's, Canterbury in 1623 who secured a reduction from 8/- to 5/-<sup>3</sup> and it was not unknown for other church fees to be reduced. In the same year a parishioner of St. Mary's Northgate, Canterbury, had the burial fee for his child halved.<sup>4</sup>

Approximately ten per cent of the accused employed proctors. In most cases they were used to save a personal appearance

1. 1613-1617 X.4.10 part 2 f.5
2. 1623 X.6.I, f.193b
3. 1623 X.5.10, f.190b
4. 1623 X.5.10, f.192

and the consequent loss of a day's earnings. The proctor could make a request for time in which to present a certificate of attendance at church or communion, or even present such a certificate. He could give an excuse to the court, as Leonard Sweting did in 1605 when he explained a charge of incontinency was the result of a journey undertaken with another man on her husband's command.<sup>1</sup> Occasionally a proctor was used to secure the appearance in court of the churchwardens, or the minister, who had made the presentment,<sup>2</sup> or to argue that the presentment was invalid,<sup>3</sup> and even to introduce an inhibition from a higher court.<sup>4</sup> In 1613/14 Adam Wood of Tunstall employed a proctor to show that the reason why he had not paid a legacy left by his father to the church was that he had not sufficient goods to pay.<sup>5</sup> If the crime was a heinous one, articles might be drawn up and presented by a proctor on behalf of the judge, as they were against Henry Medcalfe of Otham for blaspheming at the Sacrament.<sup>6</sup> Sometimes the judge was forced to appoint a proctor by the appearance of a proctor for the accused. Thus, in 1603 James Lakes appeared for Daniel Chittenden of Smarden who was said to have drawn the blood of Abraham Stedman, so Alexander Norwood was assigned to prosecute and articles were handed in. The churchwardens were then cited and when they denied all knowledge,

1. 1605 X.4.8, f.4b

2. e.g. 1603 X.9.3, f.65 and f.69b. Two parishioners attempted to get Stephen Pemble, a curate of Egerton, into court. One succeeded and had his case dismissed with costs.

3. e.g. 1664/5 X.9.15, part I, f.25. Shindler argued that the presentment was invalid as it had not come from any sworn officer. The sexton had made it.

4. e.g. 1614 X.4.10, part 2, f.10

5. e.g. 1613/14 X.4.10, part 2, f.25

6. 1607 X.9.6, f.49b

other than by common fame, Norwood cited other witnesses. These, however, refused to appear and James Lakes secured the dismissal of his client on the grounds that no case had been made.<sup>1</sup> A case of suspected incontinency developed in a similar way in 1613. On that occasion witnesses did appear, including the curate, on the accused's behalf, and he was acquitted.<sup>2</sup> Quite a number of the cases which developed in this way became causes of instance, particularly those involving sexual offences which became matrimonial causes. Thus the presentment of William Oxenden, a gentleman of Wingham, on a charge of incontinency with his servant, Elizabeth Jones,<sup>3</sup> became a breach of promise suit.<sup>4</sup> Finally proctors were used to secure absolution although their use for this purpose declined throughout the period while, if anything, the number of cases where proctors appeared increased. There may have been an attempt to discourage absolution by proxy under Archbishop Laud. Certainly the Rector of St. Mary Magdalen, Canterbury, was refused absolution through a proctor on 12 May, 1638 and appeared in person four days later. He then claimed that he had already shown "all his instruments before required" which had been the cause of the excommunication and was absolved.<sup>5</sup>

The exact cost to the accused is not easily ascertained. In the absence of tables of fees; and financial records; one is dependent on marginal entries made by the scribes, and it is not always clear what they refer to; on accounts from

1. 1603 X.4.5, f.141b-142

2. 1613 X.5.3, f.105

3. 1613 X.9.II, f.212b

4. 1613 Z.I.2, f.50. On 27 May Oxenden was inhibited from any other marriage. f.62b

5. 1638 Z.3.16, f.16b and 17

other sources; and on contemporary remarks, often made by bitter critics of the church courts. Dr. Hill has suggested that a petition to the House of Commons in 1640 from the parishioners of Tenterden in which they claimed that ten poor servants had to pay fifteen or sixteen shillings' costs each, although they were dismissed, is a measure of the charges made by the courts.<sup>1</sup> The petition does not, however, state that these were the fees to the court. Indeed the petitioners stress that they were unjustly cited into the Ecclesiastical Court at Canterbury "twenty miles distant" and may well have included travelling costs in their estimate. It is not inconceivable either that they included the loss of a day's wages. Since witnesses before the courts usually admitted receiving five or six shillings expenses and similar sums were granted by the judge, some such explanation of fifteen or sixteen shillings seems necessary. Nor is it likely that they were really "poor servants" since fees were often waived in Ex Officio business "propter paupertatem."<sup>2</sup> Failing proof of complete poverty defendants were able to secure partial relief. A marginal note in 1634 gives the court fees for the absolution of one who had long stood excommunicate under which the scribe wrote, "My master the registrar is content to take half the absolution fee but she must pay the rest of the fees."<sup>3</sup> The accused was thus being asked to pay 7/5d instead of 9/11d. The original bill was:

1. Hill, Society and Puritanism, p.309 quoting Larking p.231
2. e.g. 1614 X.4.10, part 2, f.6b and 1620 X.4.10, part 2, f.18b
3. 1634 X.6.4 loose paper between f.240b and f.241

"2. citations 10d each + 5d for execution  
Absolution 5/- execution 5d  
Schedule (i.e. being proclaimed excommunicated) 12d  
Schedule 12d"

Such charges, although they might be resented, were not extortionate. The accounts of the churchwardens of St. Andrew's substantiate them. In 1604 they were cited about the repair of their churchyard gates and charged in their accounts 6d. for the "sompner" and 14d for the charges of the court.<sup>1</sup> In 1612 they again charged "for a sitasion in in the court" 1/2d.<sup>2</sup> Of course, it did cost the accused far more than the court fees and their citation before the court may well have cost the men of Tenterden fifteen or sixteen shillings "a piece." The churchwardens of St. Andrew's spent in two years, 8/8d on visitation fees and the writing out of their bills, and 19/3d on dinners for the minister and themselves.<sup>3</sup>

The court was not unmindful either of the difficulties the accused might experience in obtaining money at once. In such cases time in which to pay was granted. Henry Silvester of Northgate, Canterbury, was granted absolution on 11 December and ~~until~~ the feast of the Epiphany to pay the 5/6d fee.<sup>4</sup> In 1637 a parishioner of Holy Cross, Westgate, Canterbury, was allowed to pay her fees by instalments. She paid 12d immediately and the scribe noted that she was to pay "two shillings at latter

1. Ed. Charles Cotton, Churchwardens' Accounts of the parish of St. Andrew, Canterbury, 1597-1625, Archaeologia Cantiana, 1923, XXXVI, p.90
2. *Ibid* p. 101
3. *Ibid* p. 111
3. 1613 X.5.2, f.201

end of cherry time and two shillings and two pence at or before Michaelmas day."<sup>1</sup> Moreover, the fees were not always a great hardship. John Twyman of St. John's in Thanet was presented in 1618 for drunkenness, brawling and abusing the minister and "saying yf he be presented for it, it was but a iiis. iiijd. charge."<sup>2</sup> Similarly, in 1637 some parishioners of Deal were presented for saying "it was but a two and twenty pence matter." The greatest source of irritation was the fact that even if the accused showed himself to be innocent the fees still had to be paid. Thus, Anita Wooller, summoned for practising surgery without a licence, was able to produce one issued by the Mayor of Sandwich but still had to pay the fees, although a note in the margin of the presentment of Anna Herne, summoned for the same offence, says, "to pay the somner at his coming to Sandwiche 8d - gratis de mandat iudice."<sup>3</sup> The articles touching the reformation of abuses in ecclesiastical government<sup>4</sup> also make it clear that this was a cause of bitterness. "No proceedings hereafter ex officio mero but the Judge and Registrar shall pay the costs to the party innocent" they said. This was hardly realistic, unless they wished to muzzle completely the effectiveness of the courts which, of course, they did.

Any attempt to analyse the outcome of cases at once runs into many difficulties. First of all, there is the problem

1. 1637 Z.3.16 r.47b
2. 1618 X.9.14, f.329
3. 1613 X.9.11, f.230 and 230b
4. C.S.P.D. 1641-43 p.36

of trying to devise a system of classification and, having done so, in fitting some of the cases into them. Should a case dismissed because the accused pleaded ignorance be classified as 'dismissed because innocent or no charge,' or, as it has been, under 'dismissed with a warning or correction?' Similarly, should a man inhibited from practising surgery without a licence be classified as 'dismissed on correction' when he has already been inhibited once before and will probably have to be inhibited again? If a man, or woman, is absolved from excommunication but fails to return to the court as ordered, either a certificate of attendance at church or communion, or of penance, should this be counted as a failure on the part of the court? So long as there was no further presentment the court may well have been satisfied. Secondly, there are difficulties raised by the nature of the records. As has been said several times, the records are by no means complete. Sometimes they are too succinct and sometimes they are illegible. In particular absolutions sometimes turn up years later and in different books. This may account for the reduction in the percentage of those excommunicated in 1623 but who obtained absolution,<sup>1</sup> as soon as one adds the figures for the Archdeacon's court to those of the Consistory court. For the records for the former court are spread over many books. However, another explanation might be that, on the whole, the exempt parishes whose presentments came before the Consistory court were not areas where there were numbers of recalcitrant

1. Supra p.109

non-conformists. In 1623 there were a number of such persons, including recusants, presented in the Archdeacon's court, particularly from the deaneries of Sutton and Sittingbourne. The following table for all the cases before both courts in 1623 can, therefore, only be an approximate guide as to what happened to the people brought before the courts in that year.

<u>The Outcome of All Cases before the Consistory and Archdeacon's Courts in 1623 as an approximate percentage of the whole (over 650 cases).</u>	
Dismissed because innocent or no charge (including through compurgation)	4.2%
Dismissed with warning or correction of the fault	36.8%
Penance performed or commuted	22.2%
Excommunicated and absolved	10.0%
Excommunicated	13.6%
Stopped because abroad, or dead, or inhibited by another court	6.4%
Suspension or sequestration (clergy only)	0.75%
Significavit writ sought	0.15%
Apparently petered out	5.5%

Inaccurate though these figures are in many respects they do reveal considerable success on the part of the courts in the enforcement of discipline. Over seventy per cent of those brought before the courts were warned, forced to correct the fault or punished in some way; by penance, or having to seek absolution, or in the case of clergy, suspension or sequestration.

The court failed entirely, in that the case was never completed or absolution was never sought, in no more than twenty per cent of the cases and probably in less. The success of the courts did, of course, vary according to the type of case. Nearly ninety per cent of those brought before the courts for the non-payment of a church rate, or a burial fee, or the clerk's wages, or for working on a Sunday, or for brawling and drunkenness had their fault corrected. In the case of presentments concerned with sexual incontinency, or non-attendance at church, or abusing the Church or clergy, the success rate fell to around seventy per cent while only sixty per cent of those concerned with church repairs or the provision of certain furnishings, and barely fifty per cent of presentments of excommunicated persons, were corrected. Nevertheless, it could be argued that any bitterness about the courts in the Canterbury diocese might have been as much the result of the efficiency of the courts as of their inefficiency.

The success rate in any one year is not, however, the whole story. How many of those dismissed with a warning, or forbidden to practise in any of the medical professions, or who had presented a certificate of attendance at church or communion, were presented again within the next few years? The number of cases before each court has made this impossible to estimate accurately. There was certainly always a hard core of persistent offenders. The petition to the House of Commons from the parish of Smarden maintained that they had presented their curate, Terry, twice at Canterbury for drunkenness without redress and could "never heare that anythinge was said or done to him, by the said Court, for his amendment (unless itt were by

a purse potion that workes nott)".<sup>1</sup> Some churchwardens' presentments also drew attention to the courts' failures. "Wee have presented Thomasina Hoads widdow at any time this four yeares past for refusing to come to our church to partake of the word and sacrament and shee, haveing escaped the law soe long, careth not now what ye Court can doe unto her"<sup>2</sup> wrote the churchwardens of Borden. Grace Carrier of Newenden was presented for having a bastard and having had two bastards before and yet, as the churchwardens themselves said, she "never was punished for anie of them but standeth still excommunicate."<sup>3</sup> Thomasina Elliott of Boughton Aluph who was found guilty of fornication on 11 April, 1614 and declared excommunicate was presented four times for standing excommunicate before she finally performed her penance and received absolution on 24 April, 1626.<sup>4</sup> These failures of the courts are, however, at least understandable if inexcusable. Other failures of the courts to act are less easily explained. No reason is given for not attempting to secure the payment of a cesse "which hath beene divers times presented and noe order taken for ye payment wherefore we present ite againe; for the churchwardens are driven to disburse there owne monie for charges and know not how to be paid againe."<sup>5</sup> So repeated failures there undoubtedly were, but a detailed examination of several years<sup>6</sup> throughout the period has not produced any real evidence that the numbers

1. Larking p.115

2. 1623 X.6.3, f.241

3. 1603 X.4.8, f.8

4. 1614-1626, X.5.8, f.56b and f.269

5. 1603 X.5.5, f.152

6. See Appendix I

were very great, apart from two small but obdurate groups, the separatists and the recusants.

The recusants skilfully developed what might be called delaying tactics. It became the custom to claim, as Launcelot Hayward did in 1605 that there were "divers poynts of divinitye of which he was yett unresolved and standeth in doubte of" and to ask for time to confer with some learned ministers. Hayward was told to resort to the curate of Smarden, the Vicar of Charing and the Vicar of Headcorn before Lammass Day and he paid for absolution.<sup>1</sup> These tactics could be used again and again as they were by Mrs. Amy Wharton of Wychling in 1613 and 1614. She claimed to have frequented the Rector of Charing, the Rector of Boughton Malherbe and the Vicar of Lenham and the case against her was eventually stopped by the Offial on 23 September 1614.<sup>2</sup> Less than a year later John Finch of Milton was claiming that his wife had scruples of conscience, but that she was not "an obstinate recusante but ..willing to be instructed and satisfyed in those her doubttes." She was instructed to turn to her vicar. He died the following year causing further delay and on 6 September a proctor appeared to say that she was now living out of the diocese.<sup>3</sup> Indeed, "som compitant time to satisfie" their scruples was being sought by some right up to the outbreak of the Civil War.<sup>4</sup>

The extreme puritans, on the other hand, generally scorned to appear at all. They were clearly strong in and around Ashford

1. 1605 X.4.8, f.93

2. 1613-1614 X.4.10, part 2, f.11

3. 1615-1620 X.4.10, part 2, f94 and 95b

4. 1637-1640 X.6.10, f.118 John Best and William Gibbon of St. Paul's, Canterbury.

and particularly in the exempt parish of Egerton long before Archbishop Laud mentioned them in his report to the King after his first visitation in 1633.<sup>1</sup> The records certainly do not fully substantiate Professor Trevor-Roper's statement that from "1636 onwards sectaries and conventicles occupy far more official attention than before,"<sup>2</sup> nor, for that matter, Laud's own suggestion that "this parte came to be soe infected with such a humor of separation .....by too much connivance att their begining."<sup>3</sup> In 1603 four women who refused to be churched because as one said "her conscience would not suffer her to doe because she never red in the scripture of anie such kinde of churchinge of women"<sup>4</sup> were told to see their vicar but with no apparent success despite the excommunication of one. The dangers of these women setting a "presidente for other woemen to committ the like obstinacye"<sup>5</sup> were appreciated by the courts. In the same year a number were presented from Egerton for dancing on the Sabbath in time of evening prayer.<sup>6</sup> Bancroft's visitation also failed to make any impression on a group presented from Egerton for not receiving communion and there is the first hint of ~~separa~~ <sup>separa</sup> tism with the reference to the deprivation of Stephen Pemble. Parishioners of Egerton, now calling themselves "the holy brotherhood" were summoned again in 1623 for refusing to kneel at the holy communion

1. Register I Laud, f.215

2. H.R. Trevor-Roper Archbishop Laud, London, 2nd edition, 1963, p.313

3. Register I, Laud, f.254

4. 1603 X.4.5, f.161b

5. 1615 X.4.10, part 2, f.79

6. 1603 X.9.3, f.34b and f.60

and sitting at the creed. Only one appeared and he maintained that he did kneel whereupon he was dismissed with a warning, but he was soon in trouble again over his refusal to pay the court's fees.<sup>1</sup> Thus, although Laud's comment was justified in that the courts showed themselves unable to enforce conformity in these circumstances, these recalcitrants had certainly not been left in peace. Laud's visitation merely revealed a number like William Bowling already excommunicated for separating himself for two years and known to take his wife and apprentice with him to "Egerton or other places" and<sup>2</sup> the situation had not improved by the 1637 visitation when eleven people were presented from Egerton for standing excommunicate, some of them for eleven or twelve years, and for holding conventicles.<sup>3</sup> At a local level these, and other puritans, had received considerable attention for years. The courts undoubtedly failed to make a lasting impression but they almost certainly helped to push Robert Cushman and some of his companions into the New World. Cushman was before the local courts many times in the early years of the century as well as the Court of High Commission.<sup>4</sup> This was a trend that Laud failed to reverse. In 1634 the churchwardens of Cushman's old parish, St. Andrew's in Canterbury, reported one "for not frequenting his parishe church as hee ought to doe .....and we here that hee is goeing to New England."<sup>5</sup>

1. 1623 Z.4.3, f.72b and 73

2. 1634 Lambeth V.C. III/15, f.42

3. 1637 Z.4.6, f.45

4. *Supra* pp. 16-17 and e.g. 1603-1606 X.4.4, part 2, f.31b

5. 1636 X.6.10, f.77b

Of the Stuart Archbishops of the first half of the seventeenth century only Laud had a really distinctive policy. Bancroft's campaign to recover tithes in order to improve the standards of the clergy had no effect on Ex Officio business. His policy, and that of his successor, differed in other respects very little from that of his Tudor predecessors. Bancroft's visitation enforced the setting up of the Ten Commandments in various churches, including that of Egerton,<sup>1</sup> and attacked those who failed to kneel to receive the sacrament, who showed a lack of respect for the Book of Common Prayer and clergy who refused to wear the surplice or use the sign of the cross in baptism.<sup>2</sup> All these matters had been tackled by the courts in the years prior to the visitation and continued to be brought before them in succeeding years. Abbot's metropolitcal visitation concentrated on a careful examination of all ministers' qualifiactions, licences and letters and discovered one unlicensed preacher at Minster-in-Thamet.<sup>3</sup> Forty-one Rectors, Vicars or Ministers had to present themselves for a closer examination out of a total of 160 people presented.<sup>4</sup> There was also a number of cases for the non-payment of procurations, particularly by tithe farmers, most of which were later paid and two teachers were suspended, one at Wingham and one at Whitstable.<sup>5</sup> However, none of this marked any real change in policy.

1. 1607 X.9.6, f.7b

2. 1607 X.9.6, passim

3. 1606 Lambeth V.C. III/II, F.105

4. 1615-1616 Lambeth V.C. III/II, passim

5. 1615 Lambeth V.C. III/II, f.6

Laud's policies, on the other hand, are easily distinguishable from 1633 onwards. His insistence on the clergy holding services on Wednesdays, Fridays and Holydays, on catechising and giving notice of fast days is immediately apparent. In the Bridge deanery alone fourteen parishes were found to lack one or other of these, or all, in the visitation of 1634. At Waltham the churchwardens reported that "our minister doeth not use to reade service on Wednesdaies and Frydaies, nor on the eves on Sundaies, and no holydaies but will as hee saith if the parishioners would come to church for that purpose."<sup>1</sup> Similarly the number of churchwardens before the courts increased. They were seeking time for the completion of the new church furnishings or churchyard fences and, in some cases, trying to avoid having to comply. The Kent petitions of 1640 reveal that Laud was often, on the surface, successful. The parishioners of Monkton complained that their minister, Dr. Casaubon, had "pronounced new processe against the churchwardens to alter it [the altar] ; and on excommunication against them, for not being soe speedy therein as he required, to the parishes charge of xls. And to shew his unbridled humour, he caused the churchwarden then under excommunication, before he could be absolved, to bind himself by oath given him ex officio to perform within a limited tyme what was by him required."<sup>2</sup> One of Dr. Casaubon's other parishes, Minster, also complained that he "threatened your humble suppliants, that if they would not come upp to the rayle to receive the Communion, they should answer for it before

1. 1634 Lambeth V.C. III/14, f.28

2. Larking p.107

the High Commission; for fear whereof the greatest part of your petitioners, to the great griefe of their consciences, did go upp to the rayle to receive."<sup>1</sup> Thus, at least where the minister supported Laud he was successful. He faced greater impediments, however, where the minister was less conformable. Mr. Jackson of St. George's, Canterbury was several times before the courts for various misdemeanours, such as failing to wear a hood, and failing to say prayers on Wednesdays and Fridays, and his parishioners objected very strongly to the cesse made necessary by the pulling down of the east end of the Chancel. Twenty-six of them were cited for failing to pay in 1637.<sup>2</sup> Later the same year, the churchwardens were cited for failing to present their bill and Mr. Jackson was asked to exhibit his instruments of office again.<sup>3</sup> In 1639 there was further opposition from that parish to the railing of the altar and to kneeling to receive communion.<sup>4</sup> Similarly Mr. Daniel Bollen, Vicar of St. Mary's Northgate, Canterbury, was in trouble in company with other ministers for defying "a canonical admonition given to them, or at least some of them from the most reverend father in God, the Lord Archbishop of Canterbury ..... in express words that they should refrain taverns and all other drinking places because it was scandalous and offensive for ministers so to do yet they ....assembled themselves together with divers others to

1. Larking p.104-105
2. 1636/37 Z.3.16, f.1-5
3. 1637 Z.3.16, f.36
4. 1639 X.6.10, f.199

the number of eleven at the least .... at the sign of the Sunn in Canterbury, a public tavern, to eat a chine of beefe..."<sup>1</sup> Later there was considerable opposition in his parish, both to the payment of cesse and to receiving communion at Easter.<sup>2</sup> Indeed, one churchwarden of St. Mary's was before the court for refusing to subscribe to the presentments.

The futility of some of Laud's other policies can also be seen in the greater number of papists before the courts, without any noticeable success, and in the presentment of the Warden of St. John's hospital, Canterbury, for not taking his scholars to church. He pointed out that as they came from different parishes they ought to attend different churches."<sup>3</sup> The attack on recusants led to the citation of large numbers of foreigners living in and around Dover. Their cases either had to be dismissed, as they were subjects of the King of Spain "freed by the articles of peace between the Kings,"<sup>4</sup> or they petered out. Several of them did not understand English. The courts were no more successful in coping with the English people concerned. A large number were cited for attending Mass at the house of Thomas Garret in Dover but most failed to appear and nothing was achieved.<sup>5</sup> Yet another change in policy seemed to have little effect, namely the increased use of aggravated excommunication. It was pronounced seventeen times in the deanery of Charing during Laud's Metropolitanical visitation and in only one case did it produce a request for absolution and then not until 25 March, 1640.<sup>6</sup>

1. 1636/37 Z.4.6, f.14
2. 1638 Z.3.16, f.44b-47b
3. 1637 X.6.10, f.145b
4. 1637 Z.4.6, f.58-65
5. 1637 Z.4.6. f.65b
6. 1634 Lambeth V.C. III/15, f.43

However, with the exception of the opposition from the recusants and the extreme puritans, both of which had opposed the courts for many years, the antagonism that Laud's policies aroused seems to have been the result, at least to some extent, of their cost. St. George's, St. Paul's and St. Dunstan's of Canterbury all complained on these grounds and so did Sturry, Fordwich and Thanington.<sup>1</sup> St. James's, Dover, had still not removed their altar to the east end and railed it off by September, 1640<sup>2</sup> and in the meantime there had been presentments for non-payment of cesse, including the Rector for refusing to pay 40/-.<sup>3</sup> The Kent petitions reveal economic grounds for the opposition too. Monkton parishioners referred to the cost of the changes and Boughton under Blean said their minister "did threaten to scite the churchwardens to the Bishop's Court for not rayling in the Communion table alter wise, and, to that purpose, as your petitioners believe, did chose one Mr. William Baker, purposely to rayle in the said alter, and the said Baker hath rayled in the said table contrary to the will of the parish; and now we are like to be sued for the charge the said Baker was at for the said rayling."<sup>4</sup> Another striking feature of the records is the very large number of the clergy who refused the King his tenth in 1641. In May of that year the vicars of Postling, Lenham, Sevington, Lympne, Lynsted, Headcorn, Teynham, Upchurch, St. Mary's in Sandwich and Northborne and the rectors of Boughton Monchelsea, Kingsdown and Wychling were all

1. 169 X.6.10, f.196b-198b
2. 1640 Z.4.6, f.127
3. 1637 Z.4.6, f.30b and f.31
4. Larking p.175

cited for this.<sup>1</sup> Nor did they all pay. The Vicar of Lenham was threatened with sequestration. In June there was another group of six before the Consistory court and three more were to follow in July. The records, of course, reveal no reasons for this opposition, but it was certainly there. Whether it was because Laud's policies had touched everybody's pockets or not, he had certainly precipitated an unprecedented breakdown in co-operation. In 1638 fifteen parishes in the deanery of Lympne had to be cited before they produced any presentments at all and then the churchwardens of twenty-six parishes were cited for refusing to rail in the communion table. Many of these were not dismissed before the court was abandoned in the first months of 1642.

1. 1641 Z.4.7, f.98b

CHAPTER IV

The Personnel of the Courts.

The successes and the failures of the courts were determined not only by the procedure they employed, but also by their officials. Throughout the seventeenth century their ability to provide a fair trial was increasingly called into question in the House of Commons led by its Common lawyers. The antagonism so actively encouraged by Sir Edward Coke during Bancroft's primacy culminated in the bitter attacks on, and eventual abolition of the courts by Parliament in 1642. The Kent petition against episcopacy sent to Sir Edward Dering by Mr. Richard Robson of Cranbrook on the 1 December, 1640 and a condensed version of which Sir Edward presented to the House of Commons in the following January, played its part in the campaign. Indeed Sir Edward Dering became chairman of the sub-committee of religion appointed on 23 November, 1640 and the parishes of Kent were not slow to send in their complaints. There is little reason to suppose that these men of Kent disagreed with Parliament's resolution of 1 September, 1642 that "the government of the Church of England by Archbishops, Bishops, their Chancellors and Commissaries, Deans, Deans and Chapters, Archdeacons and other ecclesiastical officers hath been found by long experience to be a great impediment to the perfect reformation and growth of religion and very prejudicial to the state and government of this kingdom" and that

therefore "the same shall be taken away."<sup>1</sup>

Yet compared with statements being made elsewhere at the time the Kent petition is not, on the whole, specifically critical of the officials of the church courts. They attacked the too frequent use of excommunication "either for doing that which is lawfull, or for vaine, idle and triviall matters" and hinted at corruption when they continued "yea , they have made it (as they do all other things) a hooke or instrument, wherewith to empty men's purses, and advance their own greatness."<sup>2</sup> They also attacked the imposition of oaths, particularly upon churchwardens, comparing them to the Inquisition "reaching even to men's thoughts"<sup>3</sup> but it is apparent from their earlier articles that the causes of their opposition lay in the uses to which they were put, at least as much as in their misuse by the officials. Thus Article 22 attacked the strict observance of Holydays "whereby great sumes of mony are drawne out of men's purses for working on them" and Article 23 the "taking upon them the punishment of "whoredomes and adulteries by which they did "turne all into money for the filling of their purses."<sup>4</sup> The Kent petitions against the clergy received by Sir Edward Dering's committee were also comparatively moderate. Only a petition from Marden against the granting of marriage licences by the Prerogative court of Canterbury and the petition from Smarden concerning the drunkenness of their curate specifically complained of the laxity of the courts.<sup>5</sup> All other references

1. W.A.Shaw, A History of the English Church during the Civil Wars and under the Commonwealth, 1640-1660, London, 1900, I p.120-121

2. Larking p.36

3. Larking p.37

4. Larking p.35-36

5. Larking p.116

to the ecclesiastical courts arose as a result of complaints about Laud's innovations.

As this suggests there was probably less reason for questioning the honesty and justice of the officials of the courts in Canterbury than in some other dioceses.<sup>1</sup> The judges had received a far more intensive training than the majority of the Justices of the Peace. Indeed, three of them were also Justices of the Peace.<sup>2</sup> Canon 127 of 1604 stipulated that every ecclesiastical judge should be learned in civil and canon law, twenty-six years of age, at least an M.A. or LLB., well affected to religion and prepared to take an oath of the King's supremacy and subscribe to the 39 Articles. In fact during this period all the judges at Canterbury were doctors of law. It is true that they appointed surrogates and that Canon 128 only ordered that they should be, either a grave minister and a graduate, or a licensed public preacher and a beneficed man near the place where the courts are kept, or a Bachelor of Law, or a Master of Arts at the least who had some skill in civil and ecclesiastical law, but, how many Justices of the Peace could have fulfilled similar requirements?

From 1597 until his death on 7 June, 1627, if the community had any respect for the courts at Canterbury it was, at least in part, attributable to Sir George Newman. He was certainly a tireless judge of the Archdeacon's court from 19 January 1596/97<sup>3</sup> until his death at the age of sixty-five and of the

1. See Hill, Society and Puritanism, p.316-320

2. Sir George Newman and the surrogates Dr. Francis Rogers and Dr. Thomas Jackson.

J. H. Gleason, The Justice of the Peace in England, 1558-1640 Oxford, 1969, pp. 127, 133 and 136

3. 1596/97 Y.5.3, f.48 Admission as Official of the Archdeacon

Consistory court from 1 February 1596/97<sup>1</sup> until his resignation in 1617<sup>2</sup> in which year he became a judge of the Court of Audience.<sup>3</sup> In all those years, and as the leading commissioner in Bancroft's and Abbot's visitations, he presided over approximately seventy-five per cent of all the court sessions. He had become a scholar of Trinity Hall, Cambridge in 1581 where he obtained his LLB. and then his LLD in 1589. Exactly when he began to work in Canterbury courts is uncertain but he was certainly acting as Surrogate for the Commissary-General, Doctor Stephen Lakes, in the year before his own appointment.<sup>4</sup> So, unlike his successors, Sir James Hussey and Sir Nathaniel Brent, he served an apprenticeship in the Canterbury courts themselves. He also maintained his high record of attendance at the courts despite the fact that he was elected M.P. for Dover in 1601 and for Canterbury in 1614 and was also an active J.P.<sup>5</sup> and a Judge of the Cinque Ports.<sup>6</sup>

Yet early on in his career, in 1604-1605, Sir George Newman had been accused of serious corruption in the Court of Star Chamber.<sup>7</sup> In a case brought by Sir Thomas Roberts prosecution witnesses accused Newman of malicious citations to secure fees, accepting bribes to secure his favour, retaining money intended for pious uses, raising the fees of his predecessor, and of

1. 1596/97 U.3.15, f.401b Admission as Commissary-General
2. 1617 Z.1.4, f.31b 14 October, admission of Sir James Hussey as Commissary-General on a mandate from Lambeth.
3. 1611-18 C.S.P.D., p.489
4. e.g. X.8.15, f.157 15 September, 1596, Newman presided
5. Melling p.44. He was probably a J.P. as early as 1603 for there is reference in the ecclesiastical records to one presented as a notorious drunkard "now in prison committed by Dr. Newman." (1603 X.4.4, part 2, f.33) He was certainly a J.P. by 1606 when there is a list of persons bailed by him in the Quarter Sessions' papers. Maidstone ~~QM~~/SB/649
6. 1611-1618 C.S.P.D. pp.352, 414, 457 and 481. Correspondence with Lord Zouch and others in his capacity as a Cinque Port Judge.
7. I am indebted to Mr. Peter Clark of Magdalen College, Oxford, for drawing my attention to this case.  
P.R.O. Star Chamber 8/252/26

granting the administration of an estate to an official of the court who was neither kin nor creditor. His predecessor as Commissary-General and Official Principal, Dr. Stephen Lakes, stated that he had drawn up articles showing "how grievously he vexed ye poore subjects of ye diocese"<sup>1</sup> and presented them to the Archbishop but that an enquiry had been stopped on the request of the Dean and Archdeacon. However, Lakes claimed that the Dean had since regretted his action and that the Archdeacon now often sat in his own court because of the foul and heinous injustice there. Moreover, the Archdeacon intended to displace his Official.

Newman, of course, denied all the accusations as did all the officials of the courts who were examined. One would expect them to do so, since they probably felt their own livelihood was threatened. Yet, their whole-hearted support, particularly if Dr. Lakes' claims about the attitudes of the Dean and Archdeacon were true, is interesting. Moreover, many of the detailed explanations they gave are very convincing. John Edwards, a proctor, stated that some proctors had urged that it was desirable to give a sentence when a party in a suit yielded the administration rather than dismiss the party without further charge and that he "never heard that the said Dr. Newman did directe the same course to be used for his owne gaine."<sup>2</sup> Another proctor, Alexander Norwood, pointed out that the new 6d. fee taken for the administration of certain oaths had been authorised by the late canons and so had not been taken by Dr. Lakes<sup>3</sup> while Leonard Sweting said that he had not "knowne any but paied the same willingly."<sup>4</sup>

1. Ibid, f.50
2. Ibid, f.6b
3. Ibid, f.13
4. Ibid f.15b

Norwood also explained that the administration of the estate of George Rose had been granted to John Farley, an apparitor, because all his creditors refused "in respect the said Rose was farre indebted more than his goods would discharge."<sup>1</sup> The probate records reveal how frequently this did in fact happen. Farley almost certainly regretted the undertaking as William Somner revealed in his evidence ~~and~~ that he had been ~~sued~~ by the creditors in the Canterbury borough court.<sup>2</sup>

Even the prosecution witnesses helped the defence. Thomas Paramore, an Alderman of Canterbury, deposed that Newman had kept £17 of the estate of Brooke Huffam and having bestowed 40/- on Ash where Huffam's father had died "hath not imploied anie of the rest of the said monie in pios uses neither can this deponent say what the said Dr. Newman hath done with the residue." However, he then went on to say that he did "not knowe of anie som, or some of monie, or other rewards that the said Dr. Newman hath receaved within these three yeares last past for his favour in causes depending before him, nor of anie extorcons for probatte of wills and testaments, nor can further say anie thinge of anie oppression as unlawfull practices or other misdemenors used by the said Dr. Newman in his office or place."<sup>3</sup> John Beeching claimed that Newman having advised the prosecution of a case in pursuit of a legacy then gave judgment against it but admitted he had no knowledge of any

1. Ibid f.11

2. Ibid f.18b

3. Ibid f.4 et seq.

payment for his council.<sup>1</sup> Richard Botten and Richard Holden of Cranbrook both said they did not know of any money paid to secure favour for Benjamin Lyme accused of fornication.<sup>2</sup> Lyme himself having denied any payment, as one would expect, accused Sir Thomas Roberts of being a hard Justice of the Peace.<sup>3</sup>

The background to the case is also revealing. Sir Thomas Roberts was in dispute with Thomas Denn, who was coupled with Dr. George Newman in the Star Chamber case, over the lease of the parsonage of Cranbrook and Dr. George Newman had bought Denn's interest despite an order from the Court of Chancery.<sup>4</sup> Dr. Newman was certainly guilty of sharp practice in this and Sir Thomas Roberts' response, the introduction of another issue, on this occasion corruption, was common practice in this litigious age. Several defendants in a defamation cause before one church court began another against the plaintiff in the other church court, or even in the same court.<sup>5</sup> The evidence of Robert Berrie of Staplehurst that Dr. George Newman had charged him with being "an arrant drunkard" simply to obtain his fees had also arisen because he had been involved in a case at the Assizes against Dr. Robert Newman. George Newman obviously resented the attack on one he considered "a grave and learned man" and a translator of the Bible.<sup>6</sup> Indeed, many of the witnesses came from Cranbrook and Marden,

1. Ibid f.10

2. Ibid f.10b and f.29

3. Ibid - no folio

4. Ibid f.2-f.3 Deposition of Robert Sheppard, gentleman of Mereworth

5. e.g. 1663 X.II.18, f.9b Watts v. Church and f.16 Church v. Watts

6. Ibid f.1

areas notorious for their separatism. The evidence of John Netherfell that he had paid 12/2d. for absolution and that another couple had paid 34/4d. must be suspect for this reason.<sup>1</sup> Ralf Bailes, to whom he said he had paid it, strenuously denied it and deposed that Newman had distributed money to the poor and to scholars.<sup>2</sup> John Mosse of Warehorne said that he had received 40/- as a scholar of Peterhouse, Cambridge.<sup>3</sup> Alexander Norwood said "not anie thinge were so much monie."<sup>4</sup>

Dr. Stephen Lakes' vitriolic attack perhaps raises most doubts about Newman's integrity yet the very bitterness of his attack leaves one dubious. The records of the Archdeacon's court certainly do not support his claim that the Archdeacon himself was presiding. Dr. Newman presided over twelve sessions in 1604 and the Archdeacon over none. James Bissell and William Walsall presided over the remainder.<sup>5</sup> Newman's later career also contradicts Lakes' evidence. Sir George Newman was undoubtedly a man of his time. Favours were requested and expected. There is a letter in the State papers from Sir George and Sir Richard Sandys to Lord Zouch, Lord Warden of the Cinque Ports, begging that the punishment of Thomas Napleton of Faversham might be light because he was an honest man and a good subject and the accusation against him was malicious.<sup>6</sup> A year later Lord Zouch wrote to Sir George begging him to favour

1. Ibid f.27b and f.28

2. Ibid f.26

3. Ibid - no folio

4. Ibid f.13

5. 1604 Y.5.8, part 2 and Y.5.9. passim

6. 1611-18 C.S.P.D. p.457

Mr. Gybbs, in his suit with John Read about a seat in church, and not to allow him to be removed without sentence.<sup>1</sup> It will never be clear whether those who asked, during Archbishop Abbot's visitation, that their case might "stay till Dr. Newman come home to hear the matter"<sup>2</sup> were doing so because they respected him, or because he would favour them. Yet the evidence that he was exceptionally corrupt is not convincing. Almost certainly he earned the fine monument in which he is seen in the undress gown of a doctor of laws in St. Margaret's church, Canterbury where he presided over so many court sessions.

His successor as Commissary-General from 1617-1625 was Sir James Hussey, a doctor of civil law and Registrar of Oxford university from 1597-1610. Whereas Sir George Newman was not admitted as an advocate in the Court of Arches until the year following his appointments at Canterbury,<sup>3</sup> Sir James Hussey had been an advocate there since 25 January 1601/2.<sup>4</sup> He was never, therefore, as much a man of Canterbury as Sir George Newman was and retained his interests elsewhere. He was at Oxford in 1625 during an outbreak of the plague there which took his life. Consequently he never presided quite as frequently as Sir George Newman had and continued to do as the Official of the Archdeacon's court. There were twenty-two sessions of the Consistory court in 1623 out of which Sir James

1. 1611-18 C.S.P.D. p.574

2. 1615/16 Lambeth V.C. III/II, f.33

3. Register III Whitgift, f.90b 9 May 1598

4. Ibid f.137b

presided over only seven. Despite the fact that he did participate in twenty of the fifty-two extra sessions recorded in the Instance Acta of that year<sup>1</sup> it was his Surrogate, Richard Clarke, who bore the brunt of the work.

However, the surrogates of both courts in this period, which can almost be said to have been dominated by Sir George Newman, were all men of considerable ability and standing in the community. Richard Clarke was a Doctor of Divinity, a former Fellow of Christ's College, Cambridge and Lady Margaret preacher in 1596. He was inducted as Vicar of Minster-in-Thanet in 1597<sup>2</sup> a benefice which he was to retain until his death in 1634, although he was to hold, at different times, two other benefices in Kent. In 1616 the churchwardens of Minster said, rather endearingly, in their bill, "Wee have noe booke of homilies, because our Vicar or curate preachethe to us everye Sondaye." He was a Canon of Christchurch Cathedral from 1602 to 1612, Rector of Snargate from 1609 to 1611 and Vicar of Monkton with Birchington from 1611 until his death. Above all he was one of the translators of the Authorised version of the Bible. Not surprisingly, his will shows that he was a very wealthy man. Unfortunately there is no extant inventory but in his will he bequeathed £200 to be shared between his "quarrelsome sons," £500 to his daughter, £600 to his wife and £100 to each of his grandchildren quite apart from his household stuff which went to his wife, various

1. Z.I.7, passim

2. Register III, Whitgift F.91 19 October 1597

3. 1616, Z.5.6, part I, f.235b

gifts of books from his library and £20 "to the poor of the french congregation."<sup>1</sup> Since there seems to have been no attempt, as in earlier years, to keep the two courts distinct, he acted as **S**urrogate in both courts. However, while Sir George Newman was alive he ~~presided~~ much less frequently in the Archdeacon's court than in the Consistory court.

So did James Bissell who was a Surrogate for four Commissaries, Stephen Lakes, Sir George Newman, Sir James Hussey and Sir Nathaniel Brent and for the Officials too during the same period. He was Rector of St. Mary Bredmen in Canterbury from 1590 to his death on 29 January, 1637/38 and undoubtedly must have been one of the most experienced judges in the courts which he served for over forty years. Two other men shared the burden of the work in these years, William Walsall, Rector of St. Paul's from 1562 to 1621 and William Swifte, M.A., Rector of St. Andrew's, Canterbury from 1592 to 1624 and **g**reat grandfather of Dean Swift.<sup>2</sup> Both these men had been active in the courts since the end of Elizabeth's reign. There were others who presided over the courts occasionally including George Hovenden, a Canon of the Cathedral and father-in-law of Sir James Hussey, and the Archdeacons themselves both Charles Fotherby, Archdeacon from 1594<sup>3</sup> to 1619 and Dean of the Cathedral from 1615<sup>4</sup> to **1619** and Dr. William Kingsley, Archdeacon from 1619<sup>5</sup> to the outbreak of the Civil War. However, ninety per cent of the work in the first twenty-five

1. Maidstone P.R.C. 32/50, f.322 et seq.

2. Edward Hasted, History of Canterbury, Canterbury, 1799, pp. 82, 77, and 102 respectively

3. Register II, Whitgift f.325b

4. Register I, Abbot f.412

5. Register II, Abbot f.312b

years of the seventeenth century was carried out by six men: Sir George Newman, Sir James Hussey, Richard Clarke, James Bissell, William Swifte and William Walsall.

Unfortunately the formal court records tell us nothing about the men themselves apart from the fact that they were all fully qualified according to the 1604 Canons. All the clergymen at one time or another had tithe causes before the courts and it was not unknown for them to preside over a court in which such a cause was presented. James Bissell even absolved one of his opponents.<sup>1</sup> When, however, the sentence was read care was taken to avoid it being read by a Surrogate who was involved.<sup>2</sup> In any case a letter sent by Dr. Newman asking William Walsall to read a sentence in his absence<sup>3</sup> reveals the close supervision he gave to all the cases. In addition the formal procedure of the court almost certainly ensured that James Bissell's opportunities for influencing the court were no greater than they already were because he officiated in the courts. The fact that the Surrogates brought fewer cases than most other clergymen could be an indication that the pressure they could bring to bear on an offender was, in any case, quite considerable. The cases that they did bring usually petered out fairly rapidly which suggests an agreement was soon made as indeed was announced by James Bissell's proctor at the first hearing of his case against Thomas Stone.<sup>4</sup> While one does not expect to find widespread evidence of malpractice and corruption in the records

1. 1614 Z.I.2, f.190

2. 1603 Y.5.8, f.169 14 April James Bissell heard all the cases that day until the reading of the sentence in the tithe cause, Bissell v. Johnson when he was replaced by Sir George Newman

3. 1603 Ecclesiastical Suits. Letter dated 27 April, 1605

4. 1612/13 Y.5.5, f.46

of the courts themselves the fact that there is very little is not insignificant. As has been seen, in the majority of cases of commutation, the Canterbury scribes recorded the disposition of the money and there is often a receipt in the margin signed by the churchwardens, or the Vicar. Only one occasion has been found when a sum was clearly allocated to Sir George Newman. In 1622 Mr. Adam Brochull of St. Mildred's Cantabury, secured the commutation of his penance on the grounds that his father was "a very antient and Reverend preacher of God's holy word" and his payment was allocated as follows:

"To the prisoners of the castle of Canterbury	vis. viijd
To Westgate prison	vis. viijd
To Harbledowne hospitall	vis. viijd
To St. John's hospital	vis. viijd
To the poore of the parish of Northgate	xiiis ivd
To the parish of St. George's	xs
To Sir George Newman himself	xs "

together with 40/- to be given to the Archdeacon for distribution making a total of £5.<sup>1</sup> Certainly if, as Dr.Hill asserts "fees from commutation of penance went to pay the officers of the church courts"<sup>2</sup> one would not expect the scribes to record the fact. But why then record this occasion? It is clear that Richard Clarke did not obtain his great wealth in this way since other surrgates found it necessary to take out licences to teach<sup>3</sup> and there are obviously other reasons for his financial success.

In any case the judges undoubtedly had a comfortable income

1. 1622 X.5.10, f.180

2. Hill, Society and Puritanism, p.364

3. Rufus Rogers M.A. and James Bissell whose income from his benefice was so small it was not charged to the tenth. Edward Hasted, History of Canterbury, Canterbury, 1799, p.82

as the fees they received were considerable despite the fact that they were in some cases even less than Archbishop Whitgift had laid down. They received 5/- for every sentence, 12d. for every day of information in every cause (6d. from each party) 8d. for every witness presented to the court, and 12d. for every excommunication in a cause of Instance.<sup>1</sup> In Ex Officio business they probably received somewhat smaller fees. The few references to costs in the acta certainly suggest this but they undoubtedly received various small sums for every citation, suspension, excommunication and absolution. Moreover, like all the officials of the courts they received more from the administration of probate than from any other section of the courts' business. Since probate fees differed according to the size of the estate, and those responsible for drawing up the account rarely itemised every charge, it is almost impossible to be sure how much went to the judges. Archbishop Whitgift allowed the judge 10/- for every letter of quietus and 10/- for every administration where the goods exceeded 40/-. The arrangements made between the judges and their surrogates are unknown.

Sir Nathaniel Brent, doctor of civil law, appointed Commissary-General on Sir James Hussey's death, almost certainly continued any corrupt practices that there were. Indeed, there is attached to the record of one of the cases he heard in 1634 a receipt, signed by him, for £4.<sup>2</sup> However, the practice of

1. Z.3.23, Part I, f.183b

2. 1634 Lambeth V.C. III/22, f.1b

stating where the money was to go, and obtaining the churchwardens' acknowledgment, continued during his period of office. Sir Nathaniel Brent's other offices were probably far more lucrative and, in any case, he spent even less time in Canterbury than Sir James Hussey had. Two of his surrogates, on the other hand, were the same men. Richard Clarke continued to preside over both courts until his death at the end of September 1634, assisted by James Bissell and Edward Aldey, M.A., William Swifte's successor as Rector of St. Andrew's from 1624 to 1673. These men together with Rufus Rogers, M.A., Rector of St. Peter's from 1605 to 1651 even presided over most of the courts held during Laud's metropolitanical visitation.<sup>1</sup> Indeed during the last two or three years of his life, and until only a few days before his death, Richard Clarke was presiding over as many sessions of both courts as Sir George Newman had done earlier in the century.<sup>2</sup>

For, Sir George's successor as Official Principal from 29 July 1628<sup>3</sup> until the Civil War destroyed the Archdeacon's court, William Stede, doctor of laws, presided only a little more frequently than Sir Nathaniel Brent. In 1633 he presided over only four of the twenty-one sessions at which causes of instance were heard and in 1634 over none at all. So throughout the 1630's the surrogates were of great importance. On Richard Clarke's death two new men were commissioned for both courts, Francis

1. Edward Hasted, History of Canterbury, Canterbury, 1799 p.77 and p.97
2. 1634 Y.6.8; Z.U.18; and Z.I.19. passim. Clarke presided over every session of the Archdeacon's court from 6 November 1633 to 25 September 1634, and over every session of the Consistory court including during the metropolitanical visitation from 5 December 1633 to 23 September 1634. He was buried in the Cathedral on 29 September 1634.
3. 1628 Y.6.3, f.282b

Rogers, a doctor of theology and Rector of St. Margaret's from 1626 to 1638, and Thomas Jackson, doctor of theology, the Vicar of Chilham from 1622 to 1661.<sup>1</sup> Together with Rufus Rogers, Edward Aldey and, occasionally, James Bissell, they bore the burden of the work in both courts. In these later years James Bissell rarely presided over a formal session. This may have been because of his increasing age, although he was presiding over extra sessions as late as May 1637<sup>2</sup> or it may have been the result of greater attention being paid to the qualifications of the judges. All the other surrogates of these years were better qualified than the Rector of St. Mary Bredman. After his death, two more surrogates were appointed, Richard Alleyn, doctor of theology, and Rector of St. Mildred's, and Daniel Bollen, M.A., Vicar of St. Mary's Northgate,<sup>3</sup> the latter despite having earlier been cited before the courts himself. There is certainly no reason to suppose there was any drop in the academic standards of the judges of the Canterbury courts.

After the judge undoubtedly the most influential official was the Registrar who determined the time and order of the hearing of cases, supervised the dispatch of citations and letters of excommunication and the collection of fees, and controlled the activities of the scribes who kept the court records. His presence, or that of another notary public was necessary to authenticate all court proceedings. Indeed the Registrar was the man most responsible for the smooth running, or not so

1. 1634 Y.6.8, f.152b. Their admission to the Archdeacon's court and Edward Hasted, History of Canterbury, Canterbury 1799, p.81 and p.79
2. 1637 Y.6.10, unfoliated. Under 10 May 1637
3. Hasted, *ibid*, p.98 and p.87

smooth running of the courts. He received an intensive training; usually working up through the courts, starting as a scribe and later qualifying as a public notary. Two of the registrars for the Archdeacon's court in this period had even practised as proctors for several years.<sup>1</sup> The long service some of them gave to the courts is notable. For the whole of the period studied, including the post-Restoration years, the registrarship of the Consistory court was in the hands of the Somner family, to begin with William Somner, father of the antiquary,<sup>2</sup> and on his death in 1638 the antiquary himself.<sup>3</sup> Their neat and methodical keeping of the records, the majority of which were carefully foliated and indexed, might well be cited as an example of the way in which Tudor efficiency did reinforce the machinery of the ecclesiastical courts. They employed a number of assistants, among whom were many future proctors, and these men deputised for them from time to time, but the clarity of the Act books and other records of this period is without doubt the result of their supervision. William Somner senior's intense interest in and knowledge of the working of the courts can be seen in the collection of articles, libels and other documents from interesting cases that he made,<sup>4</sup> while that of his son can be seen in his references to them in his many papers, some of which were edited by Nicholas Battely in 1703.<sup>5</sup> An amusing

1. Thomas Lilliat was practising as a proctor in both courts in 1603 and was Registrar by 1606 and Henry Jenken was practising as a proctor in the 1630's and acting as Registrar in 1641.
2. 1624 X.II.14, f.173b Deposition in which he gave his age as 52 years and said that he had been in the Registry for 35 years
3. 1637/38 Z.2.I, f.100 20 March, William Somner, junior, took his oath of office.
4. Z.3.15
5. W.Somner, Antiquities of Canterbury, ed. N. Battely, London, 1703, passim but particularly Battely's Preface.

result of their meticulous attention to detail is their recording of the parish when a case was heard in their house, 5, St. Margaret's street. For the house was in two parishes and so we even know in which room they sat. In fact, in most cases, extra sittings took place in their small back room, in the parish of St. Margaret's. Only with the breakdown of civil and ecclesiastical administration during 1641 do the records become scrappy and obviously unreliable. In fact, the only extant Instance Act book for the Consistory court for December, 1640, and the first seven months of 1641 appears to be a rough draft,<sup>1</sup> otherwise throughout the period each court sitting is carefully recorded. The initial heading gives the name of the judge, the day and sometimes the hours, the place and the name of the Registrar or notary public.

It seems certain that the Registrar was usually appointed for life although no commissions of appointment have been found. Woodcock found life-appointments from the fifteenth century onwards<sup>2</sup> and only one piece of possibly contradictory evidence for the seventeenth century has been found.<sup>3</sup> It would certainly be against the trend elsewhere if it were otherwise. Indeed the immediate succession of William Somner junior on his father's death and a sentence in the former's will leaving a hundred pounds to his daughter due to him from "Mr. Vaughan which is to succeed me in the Registrar's place of the Consistory Court,"<sup>4</sup>

1. 1640-1641 Z.9.I which is duplicated by Z.2.4 from 8 July 1641

2. Woodcock p.39

3. From 1640 onwards Henry Jenken was acting as Registrar in the Archdeacon's court, a man who had previously been a proctor, and in 1661 a Henry Jenken appears as a proctor in the restored courts.

4. 1669 Maidstone P.R.C. 32/53, f.465

make it clear that appointments were regarded as private property. It is no easier to estimate the worth to the holder than the office of judge. There are odd references to the fees the Registrar received, such as in 1613 when the scribe noted that the Registrar should receive 3/- out of court fees totalling 7/6d<sup>1</sup> but they are far too few in number to give any indication as to the Registrar's income. However, the orders of the court given by John Edwards indicate some of the fees he received in Instance business. The proctors agreed to pay him "for the act of every new cause ..... on the parte of the partyes agente xiid and on the parte of the partyes defendante xiid." They also agreed to pay to the Registrar "for every wytnes producted" eight pence, for every sentence 3/4d and for every bill of expenses 12d<sup>2</sup>. If one assumes, therefore, that he received on average only 3/- per case, and he probably collected more, his fees from Instance business would have brought him over £27 in the Consistory court in 1603 and £48 in 1633 while in the Archdeacon's court the Registrar would have received over £31 in 1603 and £44 in 1633. In addition the Registrar received probate fees and fees from Ex Officio business. In his will William Somner senior was able to leave over £200 in legacies quite apart from his property and all its household goods<sup>3</sup> while the inventory of his son's goods totalled £1,408. 13. 2d. including mortgages and bonds worth £1,030.<sup>4</sup> Despite the fact that he had another source of income in his book it would seem that the office of Registrar

1. 1613 X.9.II, f.246b Case against Mark Davye and his wife of Charing
2. Z.3.23, Part I, f.183b
3. 1638 Maidstone P.R.C. 32/52, f.76b - f.77b
4. 1669 Maidstone P.R.C. 27/21, f. 89 et seq.

produced a very comfortable living.

The records yield less information about the Registrars of the Archdeacon's court. They changed more frequently and, despite the fact that at the beginning of the century their income was almost certainly greater than that of the Consistory court Registrar, they fell into the background during Metropolitan and Ordinary visitations. Hence Somner's agreement with Martin Hirst in 1662 concerning the distribution of fees at the end of that year's visitation.<sup>1</sup> The two longest serving Registrars in this period were Thomas Lilliat, a former proctor, and William Cranmer, the son of Thomas Cranmer, Registrar at the beginning of the century,<sup>2</sup> who covered between them almost the whole of the first forty years. However, Cranmer was never as regular in his attendance on the court as either of the two Somners. After his death, probably in 1638, there were at least two more Registrars of the Archdeacon's court before it finally gave up the administration of probate in 1648. Citations were signed first by George Kingsley and then by Henry Jenken.<sup>3</sup>

All these men employed many assistants. Their offices were certainly the training grounds for almost every proctor employed in the courts in these years, but these were not the only public notaries active in the courts. Unlike the judges and the proctors, the Registrars and their assistants apparently confined themselves to one court. In a deposition made in 1623 Peter Wynne was referred to as William Somner's servant and he was nearly always the notary public present,

1. Visitation papers No.32, It was agreed that, all the cases of the first five courts that could be, should be brought into the Archdeacon's court and accordingly all fees and emoluments should go to Martin Hirst "without any account hereof to the said William Somner."
2. Thomas Cranmer was the nephew of Archbishop Cranmer who had appointed his brother Archdeacon of Canterbury.
3. Maidstone P.R.C. 35/I Bundle of citations

in the absence of Somner himself, in the Consistory court in the next fifteen years. On the other hand they did change their masters for in the same deposition Stephen Strong was referred to as Mr. Cranmer's clerk, but who had been her husband's clerk<sup>1</sup> (Alexander Norwood, proctor and William Cranmer's brother-in-law). In addition to these public notaries there were also the scribes who prepared the many documents the court issued and noted the courts' activities. A number of these eventually qualified as public notaries. Unfortunately there is no register of the constitutions of proctors for the seventeenth century, but one for the end of Elizabeth's reign records Leonard Sweting as a scribe in the registry from 11 September, 1580, and as a notary public on 25 February 1582/83.<sup>2</sup> He was admitted as a proctor on 18 January, 1591/92. His fellow proctor at the beginning of the seventeenth century took longer to become a notary public. He was acting as a scribe on 1 May, 1580, but was still not a notary public by 12 July, 1584, when the register ends. Nevertheless, he was admitted as a proctor on 19 October 1591.<sup>4</sup> Norwood, of course, had important family connections having married Thomas Cranmer's daughter. Nevertheless, there was a definite ladder of promotion within the courts themselves. Those men who eventually became proctors spent between ten and fifteen years in the registry.

1. 1624 X.II.14, f.174 Depositions in a testamentary cause concerning Elizabeth Norwood's will.
2. 1578-1585 Z.4.17, unfoliated.
3. 1591/92 Y.3.13, f.101
4. 1578-1585 Z.4.17, and 1591 Y.3.13, f.64

A proctor's function was to represent a client in court, to plead as he would have pleaded, to answer as he would have answered and to receive sentence on his behalf. He was formally admitted and swore to maintain the jurisdiction and privileges of the see of Canterbury and to faithfully execute his office to the best of his skill and knowledge.<sup>1</sup> For unprofessional conduct, such as absenting himself from court without the Judge's consent he could be suspended. This was not an idle threat at Canterbury. Three proctors were suspended for varying periods between 1603 and 1641.

Archbishop Abbot wrote to Sir James Hussey and Dr. William Kingsley in 1624: "there is a complainte lately come unto me that the number of procurators at Canterbury is increased above the ordinary and more than heretofore hath beene used .....and because these disorders tend to the impoverishinge of the Proctors and to the diminution of my prerogative on that behalf I have thought good to direct this my lettere unto you both ..... That no procurator be hereafter chosen without my consent and privyty. And whereas one Thomas Richardson is admitted by Sir George Newman into Mr. Archdeacon's court not being first admitted into my court by mee or my commissare (as ever heretofore hath been accustomed) whereby the number beginneth to bee increased I require you either joyntly or severally forthwith to suspend him from practizeing in any your courts and that hee be not from henceforth taken, or held,

1. Appendix IIa. A transcript of the oath taken by an eighteenth century Consistory court proctor.

for one of the Proctors there."<sup>1</sup> As a result Richardson, who had been admitted as a proctor on 25 May, 1624, was suspended by Dr. Kingsley on 6 July, 1624.<sup>2</sup> He had almost certainly been admitted because of the suspension of John Fish. However, the Archbishop's remark about the necessity of first admitting him to the Consistory court was ignored when Richardson was readmitted, again by Dr. Kingsley, on 22 July, 1625.<sup>3</sup> A second letter from the Archbishop this time "to my loving friend, Dr. Clarke, Surrogate to the Commissary" apparently accepted this. He wrote on this occasion, "whereas I have of late received, from gentlemen of credit some better testimony of Thomas Richardson of Canterbury than heretofore, and forasmuch as I hope that he will prove an honest man for the tyme to come, and for that also if he carry himself otherwise, he may hereafter as readily be removed as now received, I am therefore contented, and hereby do pray you that the sayd Richardson upon your next court daye be admitted."<sup>4</sup> Accordingly on 6 October, 1625, Richardson was admitted as a proctor of the Consistory court and took the oaths of allegiance and supremacy and his proctor's oath in the presence of the other proctors.<sup>5</sup> The suspension of John Fish which had provoked this series of incidents remains something of a mystery. It is recorded in neither Act book only being mentioned in the Archdeacon's court because of a client's complaint about

1. 1624 Y.5.23 f.87

2. 1624 Y.5.23, f.55b and f.87

3. 1625 Y.5.23, f.303

4. 1625 Z.I.9, f.87

5. 1625 Z.I.9, f.89 See Appendix IIb

insufficient time to secure a new proctor.<sup>1</sup> Fish was active in the Archdeacon's court on 11 May, 1624, but on 25 May Policarp Tanget was entering letters of substitution.<sup>2</sup> He appeared for a client in the Consistory court on 14 May, but on the 15 May Robert Lawse substituted for him<sup>3</sup> and he never returned. For several years, however, he continued to prosecute past clients for their fees.<sup>4</sup>

Two years before his suspension a brief entry in the Consistory court Acta had recorded the suspension, again for unspecified misconduct, of William Watmer but this was for only a short period.<sup>5</sup> Six weeks later he was again appearing for clients. Nevertheless this was a public humiliation, particularly as his suspension was proclaimed in every church in the city, for a man who had already been Mayor of Canterbury and was to be so again.<sup>6</sup> These cases do not substantiate Dr. Hill's statement that "bishops had little control over their nominal subordinates."<sup>7</sup>

Abbot's first letter also shows that care was taken to limit the number of proctors. It seems likely that the proctors themselves played some part in ensuring this as there are several references to their impoverishment if the number were to grow too great. They acted in both courts and yet the majority of the work was carried out by only two or three proctors and there were never more than five practising at

1. 1624 Y.5.23, f.97b Russell v. Bathurst.

2. 1624 Y.5.23, f.48b et seq.

3. 1624 Z.U.8, f.69 et seq.

4. e.g. 1625/26 Y.6.I, f.168b Fish v. Susanna Bacon

5. 1623 Z.I.7, f.175b

6. W. Somner, Antiquities of Canterbury, ed. N. Battely, London, 1703, p.184

7. Hill, Society and Puritanism, p.328

any one time. So much for the frequent contemporary criticism that there were too many proctors. At Canterbury control was exercised. The admission to the Consistory court of John Fish on 9 February, 1612/13, referred to an agreement made on 13 December, 1608, when he was accepted as a proctor to be fully admitted as a proctor when a vacancy arose, on condition that he had fulfilled his duties in the meantime. These were in the Registry. He certainly did not act as a proctor. When Leonard Sweting died William Walsall was instructed by Sir George Newman to admit him to the Consistory court.<sup>1</sup> The following day he was admitted to the Archdeacon's court.<sup>2</sup> On the death of another proctor later the same year Policarp Tanget was similarly admitted.<sup>3</sup>

In 1603 most of the work fell to Alexander Norwood and Leonard Sweting, with John Edwards, Thomas Lilliat and James Lakes each representing a few clients. John Edwards had been practising in the courts for at least thirty years<sup>4</sup> and was obviously accepting fewer clients as he drew near to sixty although he was still making occasional appearances even in 1613. He witnessed the admission of John Fish in that year. James Lakes was almost certainly related to Sir George Newman's predecessor. He had been admitted as a proctor soon after Norwood and Sweting<sup>5</sup> and had a considerable practice in the courts until his death in 1613. Leonard Sweting also died

1. 1612/13 Z.I.2, f.22b and 1608 Y.3.8, f.30b

2. 1612/13 Y.5.15, f.64

3. 1613 Z.I.2, f.97 and Y.5.15, f.149

4. Z.3.23, f.73b-f.74. A copy of a sentence in a testamentary cause given on 14 October, 1572, in which he was a proctor

5. 1592 Y.3.13 f.225b Admission of Lakes.

in that year and Alexander Norwood five years later. There is no evidence to suggest that any of these men were "of mediocre intellectual ability" as has been suggested by Dr. Peters.<sup>1</sup> They were certainly all public notaries and at least Norwood, Sweting and Policarp Tanget, who took James Lakes' place, had been trained in the registries of the courts. Leonard Sweting was the son of a Vicar of St. George's and had been educated at the King's School at the same time as Christopher Marlowe. His treatise on the practice of the courts illuminates their activities as does that by John Edwards. At the back of Sweting's treatise there is a catalogue of his extensive library. It includes a number of theological books, such as Luther's Commentary on the Galatians, and 'The fowre Evangelists and ye Epistells of St. Paul' in Latin by Erasmus; about sixty legal works covering both civil and ecclesiastical law; some of the writings of Julius Caesar, Horace, Ovid, Terence and Virgil; and oddments such as 'An introduction to the Italian tongue,' 'a book of hawking, hunting and fishing' and 'The tresurie of hidden secretes.'<sup>2</sup> Alexander Norwood left books valued at £9<sup>3</sup> and his daughter in her will left a number of books, including precedent books, to be divided between Leonard Browne, William Somner junior, and Thomas Marshall.<sup>4</sup>

1. R. Peters, Oculus Episcopi, Manchester, 1963, p. 61
2. Z.3.25, ff.327-329
3. 1618 Maidstone P.R.C. 10/49, f.177
4. 1630 Maidstone P.R.C. 17/67, f.446

Since Alexander's son, George Norwood, was still alive and a practising public notary there must have been a considerable collection of books in this family too.

There is perhaps less evidence about the proctors practising later in the century<sup>1</sup> but it does not contradict this picture of educated men of ability and standing in society practising in the Canterbury courts. All were active in the registries before their admission. William Watmer became an Alderman and was twice Mayor of Canterbury, in 1608 and 1629, He gained a reputation of helping those in need.<sup>2</sup> When Alderman Robert Wynne and his wife died suddenly in an outbreak of the plague in 1609, he took over his family of five children and the problems raised by the Alderman's intestacy. John and Peter Wynne were sent to the King's School for a time and Peter eventually became a notary public and William Somner's servant.<sup>3</sup> Thomas Shindler was also educated at the King's School. Many of them came from well-known local families, Policarp Tanget's father left over £252<sup>4</sup> and some came from families which had been practising in the courts for many years. Robert Lawse may have been a member of the family employed in the courts in Elizabeth's reign although he

1. 1613: John Edwards, Leonard Sweting replaced by John Fish, Alexander Norwood, and James Lakes replaced by Policarp Tanget.  
1623: John Fish, Policarp Tanget, William Watmer, Robert Lawse and Richard Birkenhed  
1633: Policarp Tanget, William Watmer, Richard Birkhened Thomas Richardson and Henry Jenken  
1642: Richard Birkhened, Thomas Richardson and Leonard Browne  
1661: Henry Jenken, Leonard Browne, and Thomas Shindler
2. 1624 X.5.10, f.223b "Of which some the right worshipfull Sir George Newman knight hath decreed iij libri to be delivered to Mr. William Watmer, Alderman, to the use of the poore children of the hospitall"
3. D. Gardiner, a Mayor of Canterbury; William Watmer the Children's Friend, Archaeologia Cantiana, 1948, LXI, pp.98-105
4. 1619 Maidstone P.R.C. II/I Loose account dated 20 September

himself was born in Norwich.<sup>1</sup> Henry Jenken was a nephew of Alexander Norwood.<sup>2</sup> In 1666 Leonard Browne became Mayor of Canterbury.<sup>3</sup> In addition to the part they played in borough affairs perhaps there is no better evidence of the respect felt for these men than in the fact that still no distinction was made in the Canterbury courts between proctors and advocates. Advocates, doctors or bachelors of law, were by tradition not called upon in Canterbury and this was rarely challenged. In 1641 Dr. Horsmanden, Vicar of Goudherst, consulted a Dr. Wood in a cause of tithe but it did not apparently benefit his case.<sup>4</sup>

However, while it can not be said that the proctors were indifferent and too many in number it could be argued that there were too few to deal with all the cases as efficiently and rapidly as was desirable. There may here be another cause of delay. Proctors who sought a further term probatory may well have been forced to do so on occasion because of their inability to keep abreast of their work. The fact that so many of them worked in the courts until within a few weeks of their death strengthens this suspicion. Leonard Sweting was active in the Archdeacon's court on 27 January 1612/13 and on the 9 February John Fische was admitted as proctor in the Consistory court in his place. Similarly James Lakes was active until the summer break in 1613 and on 20 September he was replaced by Policarp Tanget.

1. 1623 X.II.14, f.113b. Deposition in which he said he was 29 years old and had lived in Canterbury ~~twelve~~ years.
2. 1630 Maidstone P.R.C. 17/67, f.445b Ann Norwood's will.
3. W. Somner, Antiquities of Canterbury. ed N. Battely, London, 1703, p.184
4. 1641 Z.2.2 No folio Under date 22 July 1641 Horsmanden v. Broad

The amount of business handled by each proctor varied. It probably depended upon his reputation and his willingness to work. The two or three leading proctors in any one year certainly worked hard. There was no lack of business. A proctor might appear for as many as forty clients at one court session. Of course the length of these appearances varied. Sometimes he would merely ask for a term probatory, at other times he might read a long libel, or sustain an argument with the opposing proctor. Nevertheless this represents a considerable body of work and it would by no means be the whole of his week's work. He might be equally active in the other court and involved in probate activities and what little Ex Officio business for proctors there was. For example on 3 December, 1633 in the Archdeacon's court Richard Birkened appeared for 72 clients, Thomas Richardson for 37, William Watmer for 37, Henry Jenken for 17 and Policarp Tanget for 16 clients. Two days later in the Consistory court Richard Birkhened appeared for 68 clients, Thomas Richardson for 34, William Watmer for 49, Henry Jenken for 12 and Policarp Tanget for 26 clients. Since there were 42 sessions of the courts in most years it has proved impossible to assess the total number of separate appearances made by each proctor in any one year but Richard Birkened was certainly averaging 50 clients a session in 1633. An analysis of the number of new cases handled in a year by each proctor does give some indication of the amount of business each was obtaining. By this time at least one proctor was appearing in nearly every suit. It was very rare indeed for the plaintiff not to employ one although the defendant did so considerably

less frequently.<sup>1</sup>

1. Cf. Woodcock pp.44-45

Instance Business 1603	A	B	C
Possible number of clients (two per case)	294	422	716
Proportion of clients employing a proctor	65%	59%	444
Proportion of business handled by A. Norwood	40%	45%	191
Proportion of business handled by L. Sweting	37%	32%	152
Proportion of business handled by J. Lakes	17%	12%	62
Proportion of business handled by T. Lilliat	4%	6%	24
Proportion of business handled by J. Edwards	2%	5%	15
Instance Business 1613	A	B	C
Possible number of clients (two per case)	250	370	620
Proportion of clients employing a proctor	54%	58%	352
Proportion of business handled by A. Norwood	58%	55%	199
Proportion of business handled by L. Sweting <sup>1</sup>	3%	5%	15
Proportion of business handled by J. Lakes <sup>2</sup>	20%	21%	73
Proportion of business handled by J. Fish	17%	17%	59
Proportion of business handled by J. Edwards	0%	1%	2
Proportion of business handled by P. Tanget	2%	1%	4
1. Died February, 1612/13, Replaced by Fish			
2. Died August or September, 1613, Replaced by Tanget			
Instance Business 1623	A	B	C
Possible number of clients (two per case)	378	526	904
Proportion of clients employing a proctor	62%	58%	545
Proportion of business handled by J. Fish	35%	25%	158
Proportion of business handled by W. Watmer	22%	31%	148
Proportion of business handled by R. Lawse	18%	20%	103
Proportion of business handled by R. Birkhened	11%	13%	69
Proportion of business handled by P. Tanget	14%	11%	67

A: In the Consistory Court  
 B: In the Archdeacon's court  
 C: Estimated total number of clients

Instance Business 1633	A	B	C
Possible number of clients (two per case)	652	598	1250
Proportion of clients employing a proctor	60%	69%	805
Proportion of business handled by R. Birkhened	38%	36%	300
Proportion of business handled by W. Watmer	17%	20%	147
Proportion of business handled by T. Richardson	20%	22%	167
Proportion of business handled by H. Jenken	11%	14%	100
Proportion of business handled by P. Tanget	14%	8%	91

A: In the Consistory Court  
 B: In the Archdeacon's Court  
 C: Estimated total number of clients

At the beginning of the century the majority of this business was in the hands of two or three men. Alexander Norwood must have had between two hundred and fifty and three hundred clients a year as, in addition to his Instance business, he probably handled Probate for approximately seventy people and Ex Officio business for a further thirty.<sup>1</sup> However, the individual proctor's business did not steadily increase as the courts handled more and more business. No proctor was doing as well in 1623 as Alexander Norwood had been doing in 1603 although the practices of Richard Birkhened and Thomas Richardson reach a similar, if not greater size in the 1630's. Moreover by 1623 the courts were sustaining a greater number of proctors all of whom were obtaining a much more satisfactory

1. In 1603 Norwood handled testamentary business for 25 clients in the Consistory court (Maidstone P.R.C. 22/II) and for 47 in the Archdeacon's court (Maidstone P.R.C. 3/26) and appeared in 12 Ex Officio cases before the Consistory court (X.9.3) and in 12 from the three deaneries of Lympne (X.4.2) Canterbury (X.4.4.) and Charing (X.4.5 and X.4.8)

income than Thomas Lilliat and John Edwards had been in 1603. In the early years of the century the less favoured proctors must have found it essential to supplement their income with a considerable private practice.

There was apparently no attempt to specialise. Each proctor handled all types of business. Whenever possible a client who had had a previous case before the court would obviously tend to employ the same proctor so that individual proctors built up a clientele. Every proctor had a number of clerics who employed him in tithe causes. At the beginning of the century they also appear to have made a gentleman's agreement about their own cases. No proctor suing a client for his fees conducted his own case and in 1603 Sweting and Norwood generally acted for each other and Lakes and Lilliat for each other. However, in the 1620's nearly all the proctors employed Policarp Tanget in such cases who was, perhaps, introducing some specialisation. By 1633 it is very noticeable. Tanget himself employed Richard Birkhened but all the others with the exception of Henry Jenken employed Tanget. Jenken's cases were handled by Thomas Richardson but this did not prevent Richardson employing Tanget.

The income which the proctors derived from their fees was in most cases a comfortable one. In 1603 the average number of times a case appeared before the Consistory court was just over six and in 1613 it was just under six. The proctor acting for the plaintiff would therefore average six appearances for his client but, since a few clients would be defendants who might not employ a proctor immediately, the average number of appearances per client would probably be nearer five. For every appearance <sup>he received</sup> the fee of 12d. so, assuming he obtained his

fees, a basic annual income can be estimated for each proctor. Such an estimation may exaggerate the basic income of the less popular proctors who probably did not act in the long and difficult suits but such a sum was by no means the proctor's total income, not even for Instance business. Many cases would necessitate the drawing up of a libel for which the proctor would charge a further 4/-. In addition he would charge for every excommunication 6d., for every sentence 3/4d, for the drawing up of interrogatories for each witness 3/4d and for any schedule of costs 1/-.<sup>1</sup> Few clients would require all of these but every proctor could expect to earn considerably more than the basic income.

<u>Basic Income from Instance Business</u>	<u>1603</u>	<u>1613</u>	<u>1623</u>	<u>1633</u>
A. Norwood	£47. 15. 0.	£49. 15. 0.		
L. Sweting	£38. 0. 0.	£ 3. 15. 0.		
J. Lakes	£15. 10. 0.	£18. 15. 0.		
J. Fish		£14. 15. 0.	£39. 10. 0	
P. Tanget		£ 1. 0. 0.	£16. 15. 0	£22.15.0
W. Watmer		£37. 0. 0.	£37. 0.0	£36.15.0
R. Lawse			£25.15. 0	
R. Birkhened			£17. 5.0	£75. 0.0
T. Richardson				£47.15.0
H. Jenken				£25. 0.0.

Having obtained in most cases around £30 from their Instance business they could still expect to earn Probate fees

1. Z.3.23, part I f.183b

and small sums in Ex Officio business.<sup>1</sup> Not every executor or administrator used a proctor but when he did so the fees were high. They are not easily estimated. However, a fee for a proctor of around 6/- seems to have been quite common<sup>2</sup> apart from the fees for the drawing up of the account.<sup>3</sup>

Allowing 6/- for each client Norwood would have earned from his probate business in 1603 £21. 12s., Lakes £9 and Sweting £12.12s. Indeed in his defence of the Prerogative court at Canterbury Somner claimed that if it was taken away, "The proctors; being many in number, and the other inferior officers' places will faile for want of due and carefull officiating they being not able to live upon the execucon thereof, the maine part of their practice consisting in proving wills, administracons, accompts and suits for legacies and portions."<sup>4</sup> It does not seem unreasonable to assume therefore that a busy proctor earnt £50 or £60 a year while the annual income of Norwood, Richardson and Birkhened, at the height of their career, was probably well over £100. The amount of business such a proctor handled would of course necessitate the employment of at least one clerk as Ann Norwood's will in which she left a legacy to her father's clerk, Edward Peeres, shows.<sup>5</sup> Nevertheless the inventory of

1. e.g. In 1623 there were 46 Ex Officio cases in which a proctor or proctors appeared.
2. e.g. 1606 Maidstone P.R.C. I/I/3 The accounts of Elizabeth Harte administrator of the goods and chattels of Margaret Chese late of the parish of Whitstable. "... paid to Leonard Sweting ... for his proxy and fees to appeare in courte for her ... vis." And P.R.C. I/I/12 The accounts of Abraham Pettitt administrator of Jeames Campen's goods and chattels. "...paide for this accomptants procurator's fees for appearing for him in this cause, wherein hee is called at the suite of Edward Charles alias Carles to pas this accompte the some of vis."
3. e.g. P.R.C. I/I/12 ibid "paide for the draweing of this accompte in fowrme to exhibit into the cowrts, for the proxie and procurator's fee to doe the same as allsoe for registering and ingrossing of this accompte in parchment with the quietus est and all other charges thereaboutes the some of xviis."
4. Lambeth MSS. 2014 f.166
5. 1630 Maidstone P.R.C. 17/67 f.446

Alexander Norwood's goods in 1618 totalled £570. 7. 1d. which included £26 in ready money and £66. 13. 4d. in money owing to him.<sup>1</sup> Nine years later Robert Lawse, who never had a practice as successful as that of Norwood and was only 33 years' old when he died, was able to leave £348.17 which included £46 in ready money and £120 in books and debts.<sup>2</sup>

Business prospects for Canterbury proctors were certainly good. If they were corrupt it was certainly not from necessity. The records provide no evidence of corruption on their part, except for the unexplained suspensions, and some slight evidence to the contrary. The articles touching the reformation of abuses in ecclesiastical government attacked the proctors for taking fees for seeking a further term probatory and other critics at the time hinted that a 'continuance of days' was sometimes requested specifically to increase the fees. But, in October 1642 Birkenhead accused Richardson of letting his term probatory lapse in order to avoid charges for his client and Richardson agreed that he had done so because it "would have been a continuall chardge to his client to noe end nor purpose because the witnesses, would not appeere."<sup>3</sup> Nor does the use of a proctor to secure absolution by one who had claimed for six years that he had been unable to attend church because he was in debt, suggest exorbitant fees.<sup>4</sup>

Of all the court officials it was, of course, the apparitors who were most frequently charged with corruption. Whitgift himself had denounced "the infinite number of apparitors and

1. 1618 Maidstone P.R.C. 10/49, f.177

2. 1627 Maidstone P.R.C. 10/61 f.140

3. 1642 Y.6.13, f.54

4. 1611/12 X.9.6, f.9b A parishioner of New Romney

petty summoners hanging upon every court; two or three of them at once most commonly seizing upon the subject for every trifling offence, to make work to their courts."<sup>1</sup> It was their task to wait in the courts to execute the orders of the judge, take away citations, distribute books of articles, briefs and copies of special prayers and to carry the Registrar's correspondence. In carrying out these activities they were constantly journeying to and fro and this gave them many opportunities to hear gossip, or "common fame," which might then be passed on to the judge. They were probably encouraged therefore to act as informers even though regular visitation was taking place.

However, the number of apparitors at Canterbury does not appear to have been excessive. At the beginning of the seventeenth century nine apparitors covered the eleven deaneries for both courts. Thus, there was not even one for each deanery. Dover was combined with Elham, and Westbere with Ospringe, and between 1607 and 1610 Canterbury and Sandwich were also combined. The considerable distances an apparitor therefore had to cover may have been a cause of the lack of notice many citations gave. For example, in 1603 John Cranford, brother-in-law of Christopher Marlowe, a shoemaker and landlord of "The Windmill" in covering two deaneries, Westbere and Ospringe, travelled to Birchington just outside Margate on the one hand, and to Faversham and Thanet on the other.<sup>2</sup> It is not surprising that he eventually deserted the church courts in

1. Hill, Society and Puritanism, p.318, quoting Strype's Life of Whitgift, 11 p.446
2. See map Appendix III

favour of the Town Sergeants, the borough of Canterbury's equivalent of the apparitor. Henceforth his fees must have been earned a great deal more easily. Yet in the 1620's the increase in business apparently brought about a return to the late medieval practice of keeping the apparitors of the two courts distinct<sup>1</sup> which increased still further the areas covered by some men. For while the Archdeacon's court continued to employ eight or nine men, and so none covered more than two deaneries, the Consistory court employed only three men for the whole diocese. They did in fact confine themselves to three or four deaneries each but on 6 June, 1623, Edward Poore cited Maria Austen of Hawkherst on the Sussex border and on 7 June John Palmer of Maidstone, Thomas Brisland of Staplehurst and William Austen of Sittingbourne on the north coast of Kent.<sup>2</sup> Similarly George Winter carried citations to Charlton, Dover, Ewell and Liminge on 17 October 1633, on 18 October he was in Dover again, on 19 he was in Sevington and on 20 he was in Brookland, Lydd and Ivychurch on the Romney marshes.<sup>3</sup>

The task of the apparitor was certainly not easy. The instructions to an apparitor of the Consistory court prior to the ordinary visitation of 1637 ordered him to warn all parsons, vicars, tithe farmers, curates, stipendaries and schoolmasters "of everie parish within the deanaryes of Dover, Elham and Bridge" to appear before the commissioners in the parish church of St.

1. Woodcock p.48

2. 1623 Z.i.7, f.176-f.185b

3. 1633 Z.I.17, f.221b-234

Margaret's, Canterbury on Wednesday, 19 April, 1637, between the hours of eight and twelve and further to warn "all executores as have not proved the wills or taken letters of administracon of the goods of any that have dyed in those parishes then and there also to appear ....."<sup>1</sup> Many citations had well over fifty names on them. It was the duty of the apparitor to return the citations to the Registrar to certify that they had been carried out. There is no evidence that there was an apparitor-general at this time.<sup>2</sup> It was the Registrar who supervised their activities and to whom they were responsible. The few remaining citations show that sometimes an apparitor not only signed the citation, as he was required to do, but also gave a full account of his activities. Thus Richard Bull wrote on the back of one of his, "cited personally all the ministers dwelling and residing within the deanerie of Charinge severallye on severall dayes and tymes viz. upon the 5:7:8:9:10:11 and 13th dayes of Marche 1613 iuxta to the effecte menconed in this process excepte Mr. White, parson of Newingden, Mr. Reade, Vicar of Rolvinden and Mr. Lodrux curat at Egerton who were absent from their dwellinge howses and could not be mett withall yet word was left at their severall houses to the facte mentioned in this process."<sup>3</sup>

Contrary to what has been found elsewhere the Canterbury

1. 1637 Maidstone P.R.C. 35/1
2. Woodcock p.47
3. 1613 Maidstone P.R.C. 35/1

apparitors were certainly literate.<sup>1</sup> Not a single extant citation was signed with a mark. Although it is clear that on some occasions a scribe, probably at the registry, wrote out the required details and the apparitor merely signed it, on other occasions the same apparitor wrote his own comment.<sup>2</sup> Indeed there is evidence that like the other officials of the courts they were expected to prove their ability before they were officially licensed by the courts. They were allowed to employ deputies generally designated as "litteratum qui virtute juramenti sui"<sup>3</sup> and many apparitors first appear in the Acta in this way. For example on 8 April, 1613, Thomas Cooke "litteram" cited the curate of Appledore and on 17 April<sup>4</sup> he was admitted as an apparitor of the Archdeacon's court having been admitted as an apparitor for the deanery of Lympne by the Consistory court on 13 April.<sup>5</sup> When an apparitor was officially appointed by the court he was assigned a specific walk or circuit, within the jurisdiction such as a deanery, or group of deaneries, and took an oath in which he acknowledged the King's Supremacy and authority and promised faithfully to execute his office.<sup>6</sup> If he did not do so he was suspended. On 29 July 1633 Henry Williams

1. B. W. Quintrell, The government of the County of Essex, unpublished PhD. thesis, London 1965, p.166 Note 5 "most signed with a mark."
2. e.g. Maidstone P.R.C. 35/2 John Woolton signed most of his citations in a very unsteady hand yet on one he wrote "sought John Pamflet at his dwelling hous in Minster in Thanet the 18th of Aprill 1662 by mee John Woolton"
3. e.g. 1622/23 Z.I.7, f.126b John Cockes in Mersh v. Mersh.
4. 1613 X.5.3, f.89b
5. 1613 Z.I.2, f.45
6. 1634 X.6.10, f.38b Richard Bromley took such an oath when being assigned to the deaneries of Canterbury and Sandwich although the records of other appointments do not refer to such an oath.

apparitor for the deaneries of Canterbury and Sandwich, was suspended but was restored to his office on 28 September.<sup>1</sup> The scribe recorded no reasons, but on 22 September 1634 he was suspended again "for that he holdeth a singing man's place in the quire of Christchurch whereby the statutes of that church he is to give his due attendance."<sup>2</sup> This explanation reveals not only the exercise of some discipline and control over the apparitors, but also the employment of a man higher in society than might be expected. That standards were high at Canterbury, is however proved best of all by Thomas Shindler, a scholar of the King's School who was an apparitor of the Consistory court in 1636 and 1637, a notary public by 1641 and a proctor after the Restoration.

Moreover, most apparitors worked for the courts for many years. John Cranford was an exception. They changed their deaneries as John Farley and Nicholas Browne did on 16 January, 1609/10<sup>3</sup> but they remained active. Farley had been an apparitor for the deanery of Bridge since at least 1603 and was to remain an apparitor for the deaneries of Dover and Elham until after 1623. Browne was acting as a deputy in 1603 and he too was still working in 1623. Richard Bull of Bethersden probably gave over forty years' service as an apparitor for the deanery of Charing.<sup>4</sup> It seems possible that despite the hostility their work must have aroused they did have a greater

1. 1633 X.6.10, f.32

2. 1634 X.6.10, f.38b

3. 1609/10 Y.3.8, f.139

4. 1603 Maidstone P.R.C. 39/27, f.28 Deposed he was 30 years' old. 1642 Y.6.13 still acting as an apparitor.

standing in society than those of earlier centuries. The apparitor James Genvey may have been forced to initiate a defamation case against Richard Syms of Littlebourne in May, 1613, but he probably soon obtained redress since it was dropped, immediately.<sup>1</sup> Before the Reformation many people were cited before the courts for saying that the apparitors were thieves and blackmailers<sup>2</sup> but no such examples have been found for the seventeenth century. Moreover, George Winter deposed in a defamation cause that having done his office and cited Mary Turpyn he tried to persuade her that she should go to the plaintiff and agree with her but she answered "hang her beggagge quean I have done her noe wrong or the very like ....."<sup>3</sup>

Indications as to the income an apparitor might expect are very few. It has been suggested that they received 4d for carrying a citation and possibly 2d a mile. Certainly their fees were less than that of any other official but a reference to the fees paid by Mark Davye of Charing on 15 April, 1614 allocates 3/- to the Registrar and 2/- to the apparitor.<sup>4</sup> Schedules of expenses also include sums such as 18d for the execution of a citation<sup>5</sup> while in Canterbury itself the churchwardens of St. Andrew's charged a 6d summoner's fee to their accounts in 1604.<sup>6</sup> Even at only 6d a citation some

1. 1613. Z.I.2, f.55

2. Woodcock p.49

3. 1622/23 X.II.19, f.96b

4. 1614 X.9.11. f.246b

5. e.g. 1603 Ecclesiastical Suits No. 27. Schedule of costs 13 December 1603

6. Ed. Charles Cotton, Churchwardens' Accounts of the parish of St. Andrew, Canterbury, 1597-1625, Archaeologia Cantiana, 1923 XXXVI p.90

apparitors must have earned more than has been suggested. In 1603 Richard Bull carried out 220 citations in connection with with Ex Officio business alone<sup>1</sup> so that with further fees from Instance business and Probate he must have earned well over £10 in that year. In 1623 George Winter, as an apparitor of the Consistory court, carried nearly three hundred citations for Instance and Ex Officio business throughout the deaneries of Dover, Elham and Lympne.<sup>2</sup> He must have received at least 8d<sup>3</sup> a citation for each of these which would have earned him £10 before the addition of income earned from Probate business and the official citations and other documents the registry sent out.

Nevertheless the labelling by appraisers of most of Richard Sprackling's goods "owld" is not unexpected nor is the total sum of the inventory, £4. 0. 8d.<sup>4</sup> Similarly in 1624 Rober Sedweeke, apparitor, received 40/- commutation money because he was "very sick and in great want."<sup>5</sup> Not all apparitors earned as much as Richard Bull or George Winter. Yet while Edward Poore called himself a husbandman, his son, Henry Poore called himself a yeoman<sup>6</sup> and James Genvey was an innkeeper<sup>7</sup> who could afford to contemplate pursuing a defamation cause in the courts. John Farley and John Capitt could sign

1. 1603 X.4.5, X.4.8 and X.9.3, passim

2. 1623 Z.I.7, Z.I.8 and Z.4.2, Z.4.3, passim

3. 1613 Z.9.11, f.230b "to pay the somner at his coming to Sandwich 8d."

4. 1635 Maidstone P.R.C. 10/69, f.187

5. 1624 X.5.10, f.223b

6. 1627 X.II.16, f.226b Deposition of Edward Poore and 1668/69 X.I.18, f.18 Deposition of Henry Poore

7. 1623 X.II.14, f.149 Deposition of James Genvey

a bond to take an administration for three hundred pounds. Although the circumstances were exceptional and Humfry Clerke admitted that together they were probably not worth £100<sup>1</sup> they were almost certainly better off than Richard Sprackling. Above all the length of time they remained apparitors suggests they were obtaining a reasonable income.

Even if the small fees they received and their many opportunities to elicit gossip encouraged corruption they were probably no more corrupt than the 'insidious informer' of the Common law courts. For their critics ignored the fact that most Common law indictments were initiated by private individuals encouraged to take legal action by statutory rewards which were, all too frequently, a share in the resulting fine.<sup>2</sup>

1. P.R.O. Star Chamber 8/252/27, f.20
2. I am greatly indebted to Dr. William Urry, Canterbury Cathedral Archivist, from 1946 to 1969 for many of the biographical details in this chapter.

CHAPTER V

The Impact of the Civil War and the Restoration  
of the Courts 1660 - 1665

The Kentish petitioners of 1642 who requested that if excommunication was taken away there should be "some other power and authority speedily established for the suppressing of the heinous and now so much abounding sins of incest, adultery, fornication, and other crimes, and for the recovering of tithes, repairing of churches, probate of wills, church assesses,..... and especially for ministers who neglect the celebrating of the holy communion and of parishioners for not receiving"<sup>1</sup> may have been expressing quite a common opinion in their county. Their request certainly substantiates the possibility that there had been a considerable body of respect for the ecclesiastical courts and their work. Nevertheless opinion amongst the politically conscious and those who gained political power in 1640 was against such jurisdiction and so the various campaigns against the authority of the church courts culminated in their abolition. On 26 January, 1642/43 a bill for taking away all Archbishops, bishops, their chancellors and commissaries, deans, deans and chapters, archdeacons and other ecclesiastical officers was passed

1. Quoted in Hill, Society and Puritanism, p. 375.

by Parliament and a request that it receive the royal assent was included in the propositions for peace sent to the King at Oxford on 1 February.<sup>1</sup> Indeed ever since the arrest of Laud on 18 December a death sentence had hung over them.

However, the records at Canterbury do not bear out the claim that "the church courts declined in effectiveness from about 1639",<sup>2</sup> except in one sphere, the enforcement of Laud's policies concerning church furnishings.<sup>3</sup> Incontinence, swearing and drunkenness, non-attendance at church or communion, and working on holydays were all being punished no less effectively than before. Instance business too continued to keep the courts busy throughout 1639 and 1640. Their decline did not really become apparent until 1641 in which year they collapsed quite suddenly. It is difficult to assess the impact of Laud's arrest on his own diocese but it was probably quite considerable. A letter from Sir Nathaniel Brent to "my very loving friend Mr. William Somner Registrar" asking on the Archbishop's behalf for information about Mr. Wilson of Otham dated 12 October, 1640 suggests that Laud did not forget his special relationship with the diocese of Canterbury.<sup>4</sup> The sudden

1. W.A. Skew, A History of the English Church during the Civil Wars and under the Commonwealth, 1640-1660, London, 1900, I, p.120-121.

2. Hill, Society and Puritanism, p.342

3. Supra pp 126-130.

4. Z.3.14 A bound collection of letters and orders 1587-1695.

reduction in the number of Ex Officio cases before both courts suggests that the April visitation of that year, if indeed there was one,<sup>1</sup> was far from successful. The last cases introduced into the Archdeacon's court, until presentments began again after the Restoration, were started, in every deanery except Canterbury, in June or July, 1641 although cases already begun were still being heard in the first few months of 1642. New citations were being sent out by the Consistory court until July, 1642 but most of them were addressed, either to clergy who had not paid their tenth, or to churchwardens who had failed either to "certifie in writing a true copy of the Register book of all those that have been christened, married and buried within their parishes", or to "exhibit a bill of presentment of all such vices and enormities as are corrigible and by our authority to be punished".<sup>2</sup> The last penance ordered by the Consistory court was performed by Ellena Crowherst in Maidstone parish church between 16 June and 8 July, 1641.<sup>3</sup> The last excommunications were pronounced on 22 July, 1641 on a number of parishioners from Loose, either for not being at their own parish church in the months of January, February and March, or for not receiving the Sacrament at Easter.<sup>4</sup> Only one more

1. There are no extant Libri Cleri for this year.
2. 1640 Maidstone P.R.C. 35/I. Visitation citation.
3. 1641 Z.4.7, f.95.
4. 1641 Z.4.7, f.II**9b**.

case was concluded. William Merrey of Maidstone cleared himself of a charge of incontinency by swearing his corporal oath.<sup>1</sup> The last entry in nearly all the remaining cases was made by the scribe on 28 April, 1642. As far as Ex Officio business was concerned Parliament's resolution of 1 September, 1642, that the instruments of hierarchical church government should be taken away, was unnecessary.

Nor was there much Instance business to destroy by that time except that concerned with probate. New causes concerning tithe, matrimony, fees and defamation had been introduced into the Consistory court in 1641. Indeed on 22 July Rufus Rogers heard 107 cases in the Cathedral. On 7 October there were 70 cases, including three new defamation cases, four new tithe causes and a new testamentary case. But on 4 November there were only 34 cases to be heard and the only new cause was a testamentary one. In 1642 there were only three new causes which were not testamentary and not one of them was concluded although a defamation case was continued until 23 March, 1642/43.<sup>2</sup> Much the same had happened in the Archdeacon's court. There were eleven non-testamentary causes introduced there in 1642 only one of which was concluded. An interlocutory sentence was passed in a seating cause.<sup>3</sup> None of the other plaintiffs managed to bring a defendant into court.

1. 1641 Z.4.7, f. 120 b.

2. 1641-1643 Z.2.4, Unfoliated.

3. 1642 Y.6.13, f.38. Nods v. Godden and Hoysted.

Most of them gave up after two citations. Although it was not until 19 October, 1642 that a proctor stated that his "witnesses would not appeere in regard of the stop of proceedings conceived to bee ordered by Parliament,"<sup>1</sup> it is clear that the critical atmosphere prevailing in Parliament had stifled the courts long before. Since their greatest weakness had always been their inability to force reluctant defendants and witnesses into court their almost instantaneous collapse in the face of attack is not surprising. Emboldened by Parliament defendants and witnesses stood firm as one proctor explained on his client's behalf when pleading that "Thomas Terrie and Hamon Watson the witnesses subscribed to the will of the said William Kennet that can depose to the errors committed by the writer in peninge the same otherwise than his instructions were, have, since this suit instituted, often bin earnestly moved on severall cort days designed to them to come and testify in this cause which they from time to time have utterly refused to do affirming they would not come cite them never so much or so often to that end".<sup>2</sup>

This statement was made in a testamentary cause many of which continued to come before the courts. In fact Parliament's complete failure to provide alternative arrangements for the supervision of probate enabled the ecclesiastical courts to survive in a castrated form

1. 1642 Y.6.13, f.54. Cowle v. Merriman and Bridge.

2. 1644 Y.6.13, f. 112b. 26 March.

throughout the Civil War. Indeed until 12 November, 1645 both courts continued to meet at their usual fortnightly intervals, the Archdeacon's court on a Tuesday and the Consistory court on a Thursday. Even after Colonel Sandys and his troopers had closed the Cathedral on 22 August, 1642 the Consistory court sessions continued, according to the records, in the Cathedral until June 1643.<sup>1</sup> After 1 June the extant record of that court appears to be only a rough draft, since nearly all the cases recorded in it before that date are also recorded much more fully in another book, and there is no indication as to where the court was meeting.<sup>2</sup> The Archdeacon's court continued to hold its sessions in St. Margaret's church until March, 1643/44 after which it moved to Henry Jenken's house in the parish of St. Mildred's.<sup>3</sup> Rufus Rogers, and occasionally Richard Alleyn, presided in both courts accompanied by William Somner, Thomas Shindler or Richard Mascall in the Consistory court and by Henry Jenken or Leonard Browne in the Archdeacon's court. Business was, of course, slight but consistent. There were forty-one new cases before the Archdeacon's court in 1643, thirty-three in 1644, thirty-three in 1645 and thirty in 1646. The Consistory court heard twenty-one new cases in 1643 after which the extant record is so badly written and succinct

1. 1642-1643 Z.2.4. passim.

2. 1640-1646 Z.9.1.

3. 1641-1648 Y.6.13, f111b. First court held in Jenken's house.

that new cases cannot be traced with certainty. It is possible that new cases were known to be appearing before the court and were therefore written up straight away, in their final form, in a book which is now missing. However, the rough draft does reveal that as late as 7 November, 1644 there were twenty-eight cases dealt with at one session.<sup>1</sup> On 12 November, 1645 the two courts started to hold their sessions on the same day, usually a Tuesday. This continued until October, 1646 when the Consistory court records stop. There is no doubt about this as the next entry in the Probate Acta to that made on 30 October, 1646 is one made on 14 July, 1660.<sup>2</sup> Up to October, 1646 ninety-five executors or administrators had taken their oaths before the Consistory court in that year alone. The records of the Archdeacon's court also reveal a hiatus at this point, as a result of the ordinance of 9 October, 1646 abolishing episcopacy and ordering that all issues triable by the Ordinary should be tried by a jury. However, the Archdeacon's court resumed again on 2 December, 1646 with a note to that effect<sup>3</sup> and continued until 12 September, 1648.

The ~~is~~ work of Probate thus kept the courts alive for several years after Parliament had abolished them. Richard Birkhened, Thomas Richardson and Leonard Browne

1. 1644 Z.1.9, Unfoliated. Under date 7 November, 1644.
2. 1646 Maidstone P.R.C. 22/19, f.94b.
3. 1646. Y.6.13, f.216.

continued to practise as proctors. Elizabeth Harding's account of her administration of the goods of Thomas Harding of Woodchurch dated 22 October, 1646 included a proctor's fee of twelve pence for an addition made to the inventory of the deceased's goods and for casting up the total and for "drawing of this accompt in forme to exhibite into the court, for the proxie and proctor's fee to doe the same and.... also for registering and ingrossing the same in parchement, and Quietus est thereupon had and granted judges seale of office extraordinarie with lymitacon of porcons..... and all other ordinary and necessarie chardges...35s.6d.<sup>1</sup> As late as 3 June, 1645 John Wolton was officially licensed as an apparitor for the deaneries of Ospringe and Westbere.<sup>2</sup> He had in fact been acting in this capacity since before the outbreak of the Civil War and, together with George Warham and Thomas Allen, had carried the citations of both courts all over the diocese, as all of them were to continue to do for three more years. Three interesting entries in the Consistory court Comperta and Detecta also hint at a somewhat unexpected lingering respect for the jurisdiction of the courts. On 2 May, 1643 John Keete of Reculver not only acknowledged that he had committed adultery but promised to do penance before the whole

1. 1646 Maidstone P.R.C. 19/1/110.

2. 1645 Y.6.13, f.158.

congregation. A month later the woman concerned made the same admission and promise.<sup>1</sup> The third entry is even more surprising. It records a request for the absolution, admittedly made by proxy, of Vincent Wood and his wife, Martha, excommunicated "for absenting themselves from our church, depraving the book of Common Prayer, not having received the communion and holding a conventicle in their house".<sup>2</sup> This was granted from St. John the Baptist's day on 20 April, 1643. It is thus clear that the ecclesiastical courts were certainly not destroyed in 1642. Probate business ensured their survival for several years. The fact that the courts had always held extra sessions in the house of the Judge or the Registrar probably helped them to survive longer too. There may have been activity which was unrecorded even after 1648.

Certainly when the Restoration came, as in so many other spheres, the immediate re-appearance of men trained and experienced in the work of the courts enabled them almost at once to fill the vacuum which the abolition of the Church of England's jurisdiction had left. At Canterbury the resurrection of the courts took place almost immediately. Once again it was the demands of Probate that made the courts necessary and the survival of Dr. Thomas Turner, the Dean of Canterbury since 1643,

1. 1643 Z.4.7, f.126
2. 1643 Z.4.7, f.113b.

and of Dr. William Stede, Official Principal of the Archdeacon since 1628, greatly facilitated their rapid revival. Two months before William Juxon's election as Archbishop of Canterbury, Sir Edmund Peirce, doctor of laws, was appointed Commissary-General by the Dean and Chapter sede vacante. On 14 and 15 July, 1660 in the house of Thomas Hardres Esquire and in the presence of the former Registrar, William Somner, he appointed four surrogates: Edward Aldey, the Rector of St. Andrew's who had been active in the courts since 1624; William Jordan, Vicar of St. Paul's; James Lambe, Vicar of Holy Cross, Westgate; and William Lovelace who was later in the year to be appointed to the benefice of St. Mary Magdalene.<sup>1</sup> On 24 July, 1660 the first probate request came before the Consistory court and by the end of 1660 that court had handled forty-seven requests.<sup>2</sup> The probate records for the Archdeacon's court in this year are unfortunately missing but on 1 September Dr. Stede appointed his surrogates. The same four men were appointed in the presence of Leonard Browne.<sup>3</sup> As Dr. Whiteman pointed out a great opportunity for reform was lost, at least in part, because the Interregnum did not last long enough. Continuity was not broken.<sup>4</sup>

1. 1660 Z.2.4. Unfoliated.

2. 1660 Maidstone P.R.C. 22/19, f.94b. et seq.

3. 1660 Y.6.13, f.245.

4. A. Whiteman, *The Re-establishment of the Church of England 1660-1663*, T.R.H.S., 1955, p.131.

As soon as the power to inflict coercive punishment was restored to the ecclesiastical courts in July, 1661 both courts at Canterbury began work at once. On Tuesday, 24 September, Edward Aldey presided over the first session of the Archdeacon's court in St. Margaret's church between the hours of nine and eleven. Martin Hirst was admitted as Registrar in the presence of Leonard Browne, Thomas Shindler and James Mapleton, all public notaries, and John Wolton apparitor. John Muns, William Plomer and James Willes were next licensed as apparitors and Thomas Shindler was admitted as a proctor. The court then proceeded to hear seven testamentary causes and one subtractionis salarii brought by the holy-water clerk of Stodmarsh. The proctors were Leonard Browne, Henry Jenken and Thomas Shindler, two of whom had certainly been active in the courts before their collapse and all of whom may have been.<sup>1</sup> A fortnight later the Vicar of Elham introduced the first causa subtractionis decimarum and two days after that on Thursday, 10 October, the first session of the Consistory court since 1646 took place in the Cathedral at the usual time. William Lovelace presided accompanied by George Juxon, notary public and William Somner, Registrar. All the causes introduced that day concerned either tithe or the recognition of the vicar's rights.<sup>2</sup> The Vicar of Lydd

1. Supra p. 148 and p.167.

2. 1661 Z.2.4, 10 October.

eventually secured recognition in all three of his cases although his proctor failed to obtain costs. Two cases brought by a tithe farmer petered out as did one brought by the Vicar of Elham but, since he secured the ex-communication of his opponent in another tithe case he brought before the Consistory court, it seems likely that he secured some satisfaction. The bringing of the same type of case, against different people, by the same plaintiff, into both courts, within two days of each other amply illustrates the absence of any differentiation between the two courts in most cases. Both courts met again a week later after which they resumed their pre-Interregnum pattern of meeting at fortnightly intervals. Edward Aldey presided most frequently in the first few months over both courts. As in the past the proctors practised in both courts but the apparitors were employed by one court only. Two of the three apparitors of the Consistory court had been active before the Interregnum, Henry Poore and Thomas Allen. The third, George Winter was probably the son of the George Winter who was an apparitor of the Consistory court in the 1620's. When making a deposition in 1622 the latter had given his age as forty-two.<sup>1</sup> With the appearance of the first defamation cause on 16 January, 1661/62 the revived courts can be said to have secured recognition.

1. 1622 X.11.19, f.96b.

Testamentary and tithe business could be expected to return to the church courts but the plaintiff in a defamation cause could almost certainly have looked to the Common law courts for redress.

Ex officio business was resumed by both courts in October 1661 too. Thomas Thatcher was one of the first to be cited to appear before the Consistory court for refusing to pay a cese of £3.2.0. and for not repairing his part of the Chancel of Frinsted church.<sup>1</sup> Despite the fact that he claimed he had been over-rated he paid the full sum. However, the court was not so successful in its other task of persuading him to repair the chancel. He argued that it was damaged by the keeping of a school there and failed to produce the certificate of repair which the judge stipulated. Amos Jacob of Ashford and a parishioner of Smeeth also appeared on 16 October for practising physic and surgery without a licence. Soon they were both licensed.<sup>2</sup> A fortnight later, on 7 November, there were fifteen Ex Officio cases before the court. Ex Officio business was thus resuscitated as well as Instance business although regular visitation and presentment was not fully restored until after Juxon's metropolitical visitation of 1663. There are no post-Restoration Libri Cleri prior to 1663 and the records of the Archdeacon's court are much more confused than

1. 1661 Z.4.7, f.128.

2. 1661 Z.4.7, f.130b.

formerly. As in the Consistory court *Comperta* and *Detecta* records started in October, 1661 in the Canterbury deanery and that of Bridge now combined with the deaneries of Dover and Elham but the first cases in the deaneries of Lympne now combined with Charing, Westbere and Ospringe; and Sutton now combined with Sittingbourne were not recorded until November, 1662.<sup>1</sup> From these it is clear that in November, 1662 the first priority was still the restoration of the presentment system. Forty-three parishes were cited in that month from the deaneries of LYmpne and Charing for the non-presentment of bills.<sup>2</sup> All but four had been presented by Easter 1663 when the Metropolitanical visitation began. The charges resulting from these kept the Archdeacon's court busy until the end of the year. But the battle was still not won. Twenty-four churchwardens and sidesmen had to be cited for failing to take their oath of office in 1663. The Vicar of Kennington submitted a certificate to the effect that two new churchwardens had been appointed, eight more took the oath, the claim of one that he was not of the parish concerned was accepted and the remainder were excommunicated.<sup>3</sup> Then at the end of the year eight parishes again failed to submit presentments until they had been cited at least once. A similar pattern emerged in the other deaneries so that by the end of 1663 the officials of the courts could claim that the machinery of visitation and

1. Appendix I. There are no post-Restoration records for Sandwich.

2. 1662-1663 X.6.9, f.301 et seq.

3. 1663 X.6.9, f.330 et seq.

presentment was in full working order again.

How successful was this rapid revival of the whole panoply of courts ? Did it work "in many ways well" as Dr. Whiteman asserted<sup>1</sup> or, without the Court of High Commission to back them up, did the church courts decline and the sentence of excommunication prove increasingly ineffectual ?<sup>2</sup>

Their task in Instance business was to provide their litigants with redress for their grievances and by so doing to establish a reputation which would perpetuate their existence. This would not be easy. While the Interregnum may not have been long enough to break the continuity of the system it was certainly long enough for a new generation to have grown up unaccustomed to seeking aid from such a quarter. On the other hand the church courts had obvious advantages over the Common law courts for many litigants in tithe, testamentary and matrimonial causes. Indeed, as one would expect, the majority of cases before both courts in the first twelve months fell into the first of these three categories. Out of the 150 cases started before the end of 1662 in the Consistory court, 125 were tithe causes and 15 were testamentary causes.<sup>3</sup> In the Archdeacon's court out of a total of 189 causes, 119 were tithe causes and 56 were

1. A. Whiteman, *The Re-establishment of the Church of England 1660-1663*, T.R.H.S., 1955, p.131.

2. Hill, *Economic Problems*, p.349.

3. 1661-1662 Z.2.4, passim.

testamentary causes.<sup>1</sup> When the metropolitical visitation took place in 1663 the situation was still very much the same. Of the 44 cases heard by the commissioners 28 were tithe causes, 3 were causes of dilapidation and 8 were testamentary causes.<sup>2</sup> The courts were still concerned almost exclusively with matters in which they had a vested interest. However, business was sustained, although at a level nearer that of the early years of the seventeenth century than the years prior to the Civil War. Unfortunately, there is a break in the Consistory court Act books from 12 March, 1662/63 to 18 January, 1665/66 but the deposition book for the period and the Act books of the Archdeacon's court reveal that business did not decline, at any rate, immediately. There were 158 new causes introduced into the Archdeacon's court in 1664 and 136 in 1665.<sup>3</sup> Moreover, the proportion of tithe causes decreased. More and more causes of defamation and testamentary causes, including cases of debt, came before the courts. Indeed before the end of Charles II's reign the reputation of the courts was such that some inhabitants of Deal brought a dispute over the payment for the renewal of their stocks before the Consistory court<sup>4</sup> and a parishioner of Shadoxhurst who had failed to secure payment for the upkeep of a bastard from an Anabaptist by taking him before the Justices also

1. 1661 Y.6.13, f.245 et seq. and 1662 Y.6.14, f.1 et seq.
2. 1663 Lambeth V.C. 111/23 passim.
3. 1664 Y.6.14 and 1665 Y.6.14 and Y.6.15 passim.
4. 1679 X.11.18, f.157-f.161. Depositions in Clarke v. Knowler and James.

began a suit in the Consistory court.<sup>1</sup>

Any attempt to assess how effective the courts were in obtaining a remedy for their clients in these years must be tentative. So long as business continued they were presumably fulfilling a function since clients entered Instance causes in the courts quite voluntarily. On the surface a larger number of cases than ever were never concluded and a very large number of defendants failed either to appear in court or to appoint a proctor. Yet men like the Vicar of Lydd and the Vicar of Newchurch continued to initiate suits. Moreover, since they were undoubtedly prepared to use excommunication, as a result of which they succeeded in some cases, it seems reasonable to suppose that they secured a satisfactory agreement in at least some of the cases which they did not pursue. Between October, 1661 and December, 1662 the Vicar of Lydd had eighteen tithe cases before the courts in six of which agreement was reached after a sentence of excommunication had been passed. He did not seek the excommunication of any of the remaining twelve defendants and yet on the 12 March, 1662/63 he obtained the excommunication of six against whom he had only begun cases on 12 February, 1662/62.<sup>2</sup> Presumably the twelve decided to seek a settlement out of court although three of them did initially appoint proctors

1. 1681. X.11.18, f.195-f.196. Depositions in Dale v. Milkested.
2. 1662-63 Z.2.4 and Lambeth V.C. 111/2/3, Excommunication schedules, *passim*.

to fight their case. Indeed the number of defendants who did go to the expense of appointing a proctor is another measure of the impact the restoration of the courts had made. They formed approximately thirty per cent. of all the defendants which was in fact six per cent more than in 1633. Seemingly defendants did not yet feel able to ignore the mandates of the courts completely. Nor did witnesses. Leonard Browne had some difficulty in getting his witnesses into court in the defamation case brought by Mary Watts against Catherine Church of Deal but they appeared eventually, as did witnesses in a retaliatory cause.<sup>1</sup> Witnesses were rarely brought forward in tithe causes after 1660 but they still appeared in nearly fifty per cent. of the testamentary and defamation causes. They came from all sections of society too. In 1662 and 1663 depositions were made before the Consistory court by, among others, a surgeon, the wife of a seaman, a labourer, a taylor, several gentlemen, two cordwainers, a husbandman, and a goldsmith.<sup>2</sup> Perhaps they and the defendants were intimidated by a greater willingness to threaten the use of the significavit writ. Dr. Meric Casaubon, a wealthy and powerful Laudian who had survived the numerous attacks made upon him after Laud's fall, was the first to apply for a writ de excommunicato capiendo on 2 October, 1662 and within two months William Holnes

1. 1662 Z.2.4, Under dates 18 September and 2 October, 1662. Also X.11.18, ff. 9b, 10 and 16. Depositions.

2. 1662-1663 X.11.18, passim.

of Fordwich was absolved in the Cathedral having agreed to accept the mandate of the Church of England.<sup>1</sup> On the same day Dr. Casaubon invoked the secular arm against John Cowell of St. Laurence in Thanet but this time with no dramatic result.<sup>2</sup> His example was apparently followed by others. On 27 January, 1663/64 the Vicar of Benenden applied for a significavit writ<sup>3</sup> and on 15 September, 1666 the previous incumbent of Tenterden, who had fought for more than three years a dilapidations' cause brought by the new Vicar, finally gave in when a significavit writ was threatened.<sup>4</sup>

It is, however, noticeable that there was a greater reluctance to use the weapon of excommunication than there had been before the Civil War. In particular it was never once used in the Consistory court in the years 1661 to 1665 to secure the payment of costs.<sup>5</sup> As in the past a number of cases concluded with a wrangle over costs which unlike those in the past was never settled. In fact costs were very rarely obtained after the Restoration which was, in many ways, sad. The award of costs had been one of the strengths of the ecclesiastical courts as Dr. Hill pointed out.<sup>6</sup> The church's dilemma was insoluble. If it did not run the risk of reviving the bitter attacks made on the use of excommunication as a weapon against contumacy

1. 1662 Z.2.4, Under date 11 December, 1662.

2. 1662 Z.2.4, Under date 2 October, 1662.

3. 1663/64 Lambeth V.C.111/23, f.28b.

4. 1666 Lambeth V.C. 111/23, f.59b.

5. 1662-1665 Lambeth V.C. 111/2/3, Excommunication files.

6. Hill, Economic Problems, p.127.

the wishes of its courts were in danger of being completely ignored and if it did use it, including the significavit if it was defied, the church was degraded nevertheless. The church was totally unable to secure acceptance of its authority without the support of the state.

Richard Baxter in his sermon to the House of Commons in 1660 had said, "The question is not whether bishops or no, but whether discipline or none." So, Dr. Hill has said, the church was restored in an attempt to bring back discipline for the lower orders.<sup>1</sup> Did it succeed and was it just a discipline for the lower orders? The answer depends in the first place on what is meant by the word 'discipline'. It is doubtful whether Richard Baxter would have approved of the disciplines which the church courts were imposing by 1662. There was certainly a smaller proportion of cases arising from sexual offences. In the years 1663 and 1664 they formed only five per cent. of all presentments made. By 1665 there were a few more cases and penances were again being imposed and performed. A number of penances for fornication which were returned to the Archdeacon's registry signed "these are to certify whom it may concern that the abovenamed....hath penitently performed his penance 3 several Lord's days" have survived.<sup>2</sup> Moreover, they were still performed clothed in a white sheet and carrying the white wand of penitence. Compurgation and commutation

1. Hill, Economic Problems, p.350.

2. 1664-1667 Maidstone P.R.C. 13/1. Bundle of very fragile penances.

had also returned. In 1664 two parishioners of Maidstone successfully purged themselves by bringing compurgators into court.<sup>1</sup> Commutation was still easier for a man to obtain. On 23 April, 1664 Simon Oldfeild was allowed to commute his penance for £5, and receipts signed by the churchwardens of St. Paul's and St. Mary Magdalen of Canterbury for £2.10s. each were attached to the page, but the widow charged with him was asked to pay £10.<sup>2</sup> In many ways the revival of these punishments to any extent at all was remarkable. Quite apart from the effects of the Interregnum at a time when ideas about moral behaviour were in any case changing, there had been a steady decline in the number of sexual offences before the courts since the Middle Ages. Nevertheless it remains true that the church courts failed to recover their control over sexual behaviour.

However, to say that "nonconformity came to engross the attention of the churchwardens, to the exclusion of other matters: so the establishment of toleration after 1689 brought the effective activity of church courts to an end."<sup>3</sup> is to do great injustice to the work of the courts after the Restoration. It is true that when sexual offences disappeared from the courts failure to conform

1. 1664 Z.7.7, f.41b and f.48.

2. 1664 X.9.15, part I, ff. 23b-24.

3. Hill, Economic Problems, p.389.

to the Church's teachings and regulations could be said to be the sole reason for being brought before the courts. But this had always been so and this was not nonconformity in the narrower post-1689 sense. Failure to attend communion or working on a holyday in the 1630's did not necessarily mean a man was a separatist. In the 1660's the probability that it did had certainly increased but it was not always so. Richard White presented for working on Christmas day pleaded "that for the present necessity of his cow he did thresh four sheaves of beanes and no more upon Christmas day last but he was that day at church and it is the first time of his offending in this kind and shall be the last."<sup>1</sup> Still less did a presentment for practising midwifery without a licence, or for failure to pay a church cesse, necessarily imply a radical disagreement with the Church of England. Twenty-five per cent. of the presentments before the Consistory court in the years 1663 and 1664 were for non-payment of a cesse and only twenty per cent. for nonconformity, including those who were to prove by no means obdurate. Approximately one quarter of those presented for not attending church in 1663 and 1664 either justified their absence by pleading age or sickness, or secured their dismissal by presenting a certificate of attendance. In addition five ministers submitted to correction in matters of doctrine. Thomas Haines of Boxley

1. 1665/66 Z.4.7, f.440b.

submitted a certificate signed by the churchwardens and some of his parishioners to the effect that he had "publikely and openly in the face of the congregacon on some Sunday or Lord's day declared in his church both his good liking herof [the use of the surplice, reading of the Litany and the directions of the Common Prayer Book] and his resolucon to conforme hereunto in all respects..... and did exhort and persuade them to obedience with him herein and particularly such of them as are foreiners to forbear their restort to his church and to keep home to their own parish churches....."<sup>1</sup> The curate of St. Mary-in-the-Marsh also produced testimonials that he had reformed himself in life and doctrine after he had called the cassock "a fooles coate" and the surplice "the ragg of the whore".<sup>2</sup> Penance was even successfully imposed for such offences. The parish clerk of Wye performed a penance for handing out "a very scurrilous and impudent libell scandalizeing the clergy and rites of ye church"<sup>3</sup> and in 1666 the Rector of Orlestone performed a penance before six of his neighbouring ministers in Ashford Parish church for speaking "rashly and unadvisedly before you, or some of you, and others of the charge then met together certaine words or expressions tending to your disturbance and interupcon of the business of the visitacon and to ye

1. 1663 Z.4.7, f.267.

2. 1664 X.9.15, part I, f.27.

derogacon of the King's Majestie's honour".<sup>1</sup> Thus by no means all the presentments for failing to comply with the doctrine and discipline of the established church were incorrigible.

In fact the courts played an important part in the re-imposition of the church's position in society as authorised by Parliament. They supervised the licensing regulations. Seventy-one were brought before the Consistory court between 16 October, 1661 and the end of 1662 for practising physic or surgery without a licence of which forty-two were subsequently licensed, sixteen agreed not to practise unless they received a licence, eleven cases were not pursued and only two had to be excommunicated. In the same period sixty-five were accused of practising midwifery without a licence of which twenty-seven were eventually licensed and only four were excommunicated for refusing to desist. Licences for teaching were also enforced. Eleven schoolmasters eventually obtained licences and the majority of the remainder apparently gave up teaching or left the diocese. Although presentments for disobeying these regulations were made in the next three years they were comparatively few in number and a proportion of them always complied. As one would expect the greatest opposition to the demands of the courts came from the schoolmasters, recruited in many cases from the defeated puritans, but not even their

1. 1666 Maidstone P.R.C. 13/1.

numbers were very great. Between 1663 and 1665 there were eight schoolmasters before the Consistory court who obstinately refused to conform. One in Wye had deliberately set up in rivalry against the free school run by the Minister of Wye who told the court "he persists and told me that he would try it out with mee".<sup>1</sup> Another threatened the free school in Canterbury. He had been licensed by the office of faculties in London and denied that it was qualified with the usual limitation of faculties "durante beneplacito". Brought before the court several times he claimed on 19 October, 1665 that he was prevented from returning to London by the plague.<sup>2</sup> In 1664 three of the others were threatened with an application for a significavit writ. One of these was eventually absolved on 28 September, 1669.<sup>3</sup> In the same period two surgeons and six midwives also persisted in ignoring the mandates of the court despite, as it was said of one midwife, "a judicial monicon given her to desist."<sup>4</sup> Yet the church courts can hardly be said to have entirely failed.

Similarly the courts played a vital part in the enforcement of church rates without which the churches would not have been repaired. The courts certainly had evidence of the needs in this respect. The following letter was submitted to Richard Chaworth, Archbishop Juxon's

1. 1663 Z.7.7, f.31.
2. 1665 Z.4.16, f.47b.
3. 1669 Z.7.7, f.9.
4. 1663 Z.4.7, f.255.

visitor in the metropolitical visitation. "These are humbly to certify whomsoever it may concern that the parish church of Hope All Saints in Romney Marsh, what with the late great stormes, what with the constant neglect of forty years continuance or more, especially in the late times which so much countenanced and connived at such neglects is, as to the Body and Stieple of it, quite ruined and fell downe, insomuch as that the chancell only of the said church.... is now left standing." In this case a dispensation had to be granted to the small number of parishioners to use and repair the chancel only.<sup>1</sup> Thomas Ferrall of Cranbrook was forced to return the font stone purchased by his mother as part of a freehold house into which it had been built.<sup>2</sup> It was important therefore that refusals to pay assessments towards the restoration of the parish churches should be rectified. In many cases the courts had to persist over several months, even years, but in the end a number paid. Of the fifty offenders before the Consistory court in 1661 and 1662 thirty-seven paid. In the deaneries of Lympne and Charing it took the majority of those who paid about two years to do so and one or two were threatened with the significavit writ before they did so.<sup>3</sup> This was not in fact a battle the courts really won. Nevertheless the success they did have was important to the survival of the parish churches.

1. 1663 Z.4.7, f.262.

2. 1664 X.6.9, f.354.

3. 1662-1664 X.6.9, f.301 et seq.

One of the most striking features of the post-Restoration courts is their much more frequent use of the significavit writ. An unpaid assessment of £7.18.4d. in Sibertswold brought an application for a significavit writ.<sup>1</sup> There were fifty-five people who were excommunicated in the deaneries of Lympne and Charing in 1663 and who did not seek absolution. Significavits were sought in five cases. While this is still a very small proportion of the total it is a much greater proportion than earlier in the century and presumably those chosen were selected with a view to securing the most intractable. Thus George Hamon of Bethersden had said that he went to church and that his child was "sprinkled" but refused to make any other answer when he was asked whether he went to his parish church.<sup>2</sup> On the other hand William Dunk of Hawkherst was also obviously a separatist. He refused to have his children baptised or to attend the parish church and was at one time accused of making away with the surplice.<sup>3</sup> Yet he escaped the significavit although he was in a state of aggravated excommunication. Similarly two men referred to as Quakers were excommunicated for refusing to pay their cesse and not attending church but no further action was taken.<sup>4</sup> Nor was further action taken against

1. 1663/64 Z.7.7, f.37.

2. 1663/X.6.9, f.334b.

3. 1663/64 X.6.9, f.344 and f.401b.

4. 1663 and 1665 Z.4.7, f.254b and f.441b.

"fanatics who do refuse church"<sup>1</sup> or against those described as "impugners and depravers of church."<sup>2</sup> The significavit was in fact most frequently threatened against those who refused to pay their cisse and those who taught without a licence. Aggravated excommunication was another weapon used more frequently than in the past. A couple from Worth, whose Vicar had pleaded for them and who consequently had been "absolved untill the next court after Easter next, to the end that in the interim, and before the excommunication be wholly taken off, triall may be made of the reality and syncerity of their promised conformity,"<sup>3</sup> were formally denounced in their parish church on 27 April, 1667 when they failed to conform. The officials of the courts were almost certainly aware of the ineffectiveness of their weapons but helpless in the face of the problems.

Nevertheless in the first few years after the Restoration the courts recovered a great deal of their former power and authority. The extent of their revival after their abolition for nearly twenty years was in fact remarkable. Nor was it entirely a discipline for the lower orders. The arbitration of two ministers settled a dispute between the parishioners of Newington and a member of the Dering family. Their minister, Henry Dering, was forced to take a fixed payment of £25

1. 1664 X.9.15, part I, f.33.

2. 1663 Z.7.7, f.21.

3. 1664 X.9.15, part I, f.6b. (the second of two pages f.6)

leaving all the other profits, tithes and emoluments to the parishioners for the provision of a curate.<sup>1</sup> Many of those presented for the non-payment of their cesser were considerable landowners. James Stredwicke of St. Paul's, Canterbury was forced to pay £4.0. 0.<sup>2</sup> John Watts of Sandhurst paid £3.14s.<sup>3</sup> and George Radwell of New Romney, £1.9.8d.<sup>4</sup> It was said of another when he appeared before the court for disturbing a burial service that as he was "a person of faire estate" he had "no small influence"<sup>5</sup> while Henry Grove, gentleman of St. Peter's, Canterbury was ordered to do penance in Christchurch Cathedral whilst the court was sitting or else in some parish church in the city before the minister and churchwardens. However, the last named obtained an inhibition from the Court of Arches having already been involved in "an unmannerly expostulacon with the judge".<sup>6</sup> Commutation too, when it was granted, was generally heavier than in the past. Despite her proctor's plea that she was "a very crazy and sickly person unaccustomed to travell, and much indisposed and unapt for it, and although innocent and guiltlesse (as she affirmeth) of the crime detected yet is not able to undergo and performe the law in that point of a canonicall purgacon, but willing to submitt to and suffer

1. 1662 Z.4.7, f.256b.
2. 1662 Z.4.7, f.147b.
3. 1662/63 Ibid, f.202b.
4. 1664 Ibid, f.207.
5. 1663 Z.4.16, f.35.
6. 1664 X.9.15, part I, f.39.

the law and the penalty", a parishioner of Maidstone had to pay £8 to the poor.<sup>1</sup> The courts were also prepared to help those less able to pay by remitting fees "in paupertate".<sup>2</sup> References to fees are again slight but there appears to have been little or no increase since the beginning of the century. One excommunicated for five years and against whom there had been a significavit writ applied for only paid 5/8d.<sup>3</sup> and most absolution fees seem to have been less.<sup>4</sup> However, an even smaller proportion than in earlier years employed a proctor in ex officio cases.

Despite this the courts were almost certainly providing a good living for their officials. Indeed some of them may have been overworked which may have led to a decline in their efficiency. There were only three proctors in these years and two of them. Leonard Browne and Thomas Shindler, acted as a deputy for the Registrars as well. One can perhaps understand Leonard Browne's admission on 29 July, 1663 "that by his forgetfulness to appeare for the said Goodwin, as he had express order from him, who thereupon relied upon him the said Browne for warning when to appear he, the said Goodwin, was excommunicated"<sup>5</sup> while one can not excuse it. Probate business as one would expect began

1. 1664 Z.7.7, f.65.

2. e.g. 1663 Z.7.7, f.26. A parishioner of Hollingbourne.

3. 1669 Z.7.7, f.9.

4. e.g. 1663, Z.4.6, f.28. 20d. and 1665 Z.4.7, f.428. 2/6d.

5. 1663 Z.4.7, f.245b. Forgetfulness was perhaps a characteristic of Leonard Browne since in 1641 he lost a certificate of penance which "came into his hands but upon search made he cannot now find it". Z.4.7, f.91.

to flourish again. Unfortunately the Probate Acta for the Consistory court are missing from September, 1663 to 1674 and the Archdeaconry court Probate Acta do not commence again until October, 1663 so an over-all picture is not possible. In 1662 Thomas Shindler had nine clients, Henry Jenken eleven and Leonard Browne thirteen in the Consistory court.<sup>1</sup> In 1664 Thomas Shindler had seventeen clients, Henru Jenken five and Leonard Browne twenty-one in the Archdeacon's court<sup>2</sup> which compares quite favourably with Probate business for the proctors prior to the Civil War. Moreover, because more defendants in Instance business were employing a proctor there was little decline for the proctors in that business either. A break in the Consistory court Instance records for two years after the metropolitical visitation again makes an over-all assessment impossible but in 1662 Henry Jenken had 121 clients, Leonard Browne 170 and Thomas Shindler 32 clients.<sup>3</sup> Shindler did not begin to act in Instance business in the Consistory court until 1663. Then Leonard Browne retained the largest proportion of the business but Thomas Shindler had almost as many clients as Jenken during the metropolitical visitation.<sup>4</sup>

There is no reason to doubt the integrity and efficiency of the courts' other officials in these years either. Sir Edmund Peirce was as well qualified as his predecessors. He had practised in the Court of Arches since 1 May, 1627

1. 1662 Maidstone P.R.C. 22/19, passim.

2. 1664 Maidstone P.R.C. 3/37, passim.

3. 1662 Z.2.4 and Y.6.14.

4. 1663 Lambeth V.C. 111/23. Browne had 31 clients during the five months of the visitation, Jenken 15 and Shindler 10.

when he was commissioned as a proctor there.<sup>1</sup> During the Metropolitan visitation he, or his surrogate, was frequently accompanied by Juxon's Vicar-General, Dr. Richard Chaworth, and until his death Dr. Thomas Turner, the Dean of Canterbury. When they pursued the father of a bastard to London and the court sat in a tavern in Chancery Lane to hear his case<sup>2</sup> they were certainly taking their task seriously. Perhaps more sessions, particularly those concerned with Ex Officio business, took place in private houses and taverns than in previous years and perhaps more than was desirable. The nature of the records makes it difficult to be sure of this but William Lovelace undoubtedly heard a number of cases in his house in the parish of St. Mary Bredin, Canterbury. The reputation of the Registrar of the Consistory court in these years is well known. If William Somner had not rescued most of the records of the ecclesiastical courts in 1642 much less would have been known about them. He witnessed the election of Juxon on 20 September, 1660 and was auditor to the Dean and Chapter as well as Registrar.<sup>3</sup> He was also preparing a second edition of "The Antiquities of Canterbury" when he died in 1669. He left considerable property including a house in the Cathedral precincts and a house in the village

1. 1627 Register 11 Abbot, f.219b.

2. 1664 Z.4.7, f.296 and f.298. John Tillison was cited by Thomas Allen on 20 October and the court decreed in London on 24 October that he should do penance in Canterbury but this was commuted to five marks for the poor.

3. 1660-1661 Treasurer's Book, p.55. William Somner Auditori et Registrario eidem pro termino Michaelis 1660 ex decreto £6.0.0. This was for a half year. When a routine was established he received £3.0.0 a quarter.

of Chartham and a library of books valued at £100.<sup>1</sup>  
The Registrar of the Archdeacon's court, Martin Hirst, was insignificant beside Somner but under him another Canterbury man who made a considerable reputation in the city later in the century, Paul Lukin, was trained.<sup>2</sup>  
There is no evidence either to suggest that the apparitors, fewer in number than ever, were giving a worse service than in the past.<sup>3</sup>

In fact the courts had been successfully revived. The Interregnum had failed to destroy them and they had helped to accomplish the re-imposition of the Anglican church as the established church. Without them the hierarchy, however much support it had received at Court and in Parliament, would have undoubtedly found its task very much more difficult.

1. 1669 Maidstone P.R.C. 32/53, f.464 b-f.465.
2. Memorial in St. Margaret's church to Paul Lukin, "proctor and auditor to the Dean and Chapter for twenty years."
3. There appear to have been nine in these years, including the Consistory court apparitors. They were, Thomas Allen, Henry Poore and George Winter for the Consistory court, and John Berry, Benjamin Harris, John Muns, William Plomer, James Willes and John Wolton.

CONCLUSION

The place of the Courts in seventeenth century  
society.

In the diocese of Canterbury there was certainly no question of the Laudian revival putting the old machinery of the episcopal courts into effective operation after a period of abeyance. The overwhelming number of post-Reformation records proves otherwise. In the fifty years before the Reformation Woodcock found Instance business for the Archdeacon's court in six Act books. Although there are breaks in these records these by no means account for the discrepancy between six and the thirty Act books of the Archdeacon's court between 1603 and 1640. All the medieval act books cover five years or more: in the seventeenth century the Registrar began a new book every two years.<sup>1</sup> Nor did they concern only one section of society, the lower orders. Their clients, particularly in Instance business, came from all quarters of the population. Nor were litigants from the upper ranks of society just tithe-farmers like Sir Edward Hales, J.P.,<sup>2</sup> or men like Edward Finch of Tenterden seeking recognition of their superior social standing by the acquisition of a pew,<sup>3</sup> often against the wishes of less influential parishioners. As William Somner pointed out in his defence

1. See Woodcock p.142 and Appendix I.

2. e.g. 1623 Y.5.22, f. 138 as tithe-farmer for Tenterden and f.174 as tithe-farmer for Minster-in-Sheppey.

3. 1662 Y.6.14 f.50.

of the Prerogative court at Canterbury they brought innumerable testamentary causes before the ecclesiastical judges<sup>1</sup> and were still doing so in 1642. In the May of that year Elizabeth Wilcock of New Romney began a case against William Lancaster Esquire, the Mayor of that town for denying her right to administer her husband's property<sup>2</sup> and in March, 1642/43 the nephew and executor of Sir Basil Dixwell, Lord of the Manor of Folkestone, introduced a suit which involved nearly all Sir Basil's immediate relatives.<sup>3</sup> In 1616 Sir Anthony Dering of Surrenden, father of Sir Edward Dering, had found himself threatened with excommunication as a result of a case brought by a legatee in a will of which he was one of the executors.<sup>4</sup> Sir William Twisden and Sir Isaac Sedley fought a very long case, in which Sir John Tufton was also involved, concerning a pew in the south aisle of the chapel in Great Chart church. On 21 March, 1622/23 Sir William Twisden was cited to a personal examination.<sup>5</sup> It seems unlikely that any of the leading families of the diocese could claim that no member at all had been involved in a suit before the church courts between 1603 and 1640.

Their litigiousness was not even confined to causes concerning tithe, church seating and probate. They were

1. Lambeth MSS. 2014, f.149. A list of prerogative wills including those of Sir Samuel Peyton of Knolton, Sir Norton Knatchbull of Mersham and Mr. William Finch of Tenterden whose inventory amounted to seven or eight thousand pounds.
2. 1642 Z.2.4, Under date 12 May.
3. 1642/43 Ibid, Under date 19 March.
4. 1616 Y.5.17, f.496. Testamentary cause concerning Thomas Brent's will.
5. 1622/23 Y.5.22, f.116b. The case did not end until September, 1626. Y.5.21, f.307.

involved in matrimonial and defamation suits too. James Masters Esquire of East Langdon having failed to win a defamation case against John Mersh, a member of a family often involved in court proceedings,<sup>1</sup> his proctor gave notice of an appeal to a higher court.<sup>2</sup> In 1604 Richard Austen of Littlebourne secured the recognition of his marriage to Anne Gilbert of St. Paul's, Canterbury despite all the pressure that her family brought to bear against him. When Anne refused to renounce her marriage, which had taken place at Dover Castle where she and Richard Austen were both completing their education as members of Sir Thomas Fane's household, her mother had her shut up in her chamber, refused to allow the apparitor to deliver a citation inhibiting another marriage, bribed a cousin to marry Anne and had her forcibly carried to Shorne, outside the diocese. The allegations put to Anne's new 'husband', Thomas Mills, reveal that he found the situation embarrassing and he proved only too willing to give up to Richard Austen, Anne and her dowry of £300 together with land to the value of £56 a year if her brother died. Richard Austen's own expectations were not negligible. His father offered to settle a jointure on Anne.<sup>3</sup>

1. Supra p.15.

2. 1624 Maidstone P.R.C. 18/18, Sentence dated 19 October and 1624 Y.5.23, f.129b.

3. 1603-1605 Y.3.4 and Y.3.5, passim and 1603 Ecclesiastical Suits Nos. 148-160.

There can be no doubt that the ecclesiastical courts, at least as far as Instance business was concerned, were frequented by all sections of society.

In fact the landed gentry and wealthy citizens of the diocese were not entirely immune from presentment either. David Gorham, when Mayor of Hythe, was presented for brawling with Thomas Browning, a jurat of the town, in the church porch on a Sunday after evensong and he did not deny it. Thomas Browning was suspended for the offence.<sup>1</sup> Richard Birkhened, a leading proctor of the court was forced to accept the unpopular office of churchwarden of St. Margaret's, Canterbury<sup>2</sup> and Richard Knatchbull was presented to the court for the non-payment of a church rate.<sup>3</sup> Sir Thomas Culpepper and Lady Strangford were made to reorganise the chancel of Sturry church according to Laud's instructions.<sup>4</sup> Indeed Finch Dering was excommunicated for failing to repair the chancel of Charing church, "for setting up of bords and not making a convenient light therein so that the minister can not see to read Devine service".<sup>5</sup> He was absolved and the chancel was repaired. William Oxenden, a gentleman of Wingham, also had to answer an accusation of incontinency with Elizabeth Jones whose father was accused of conveying her to London to

1. 1623 Z.4.3, f.2 and f.8b.

2. 1638 X.6.10, f.170.

3. 1612 X.9.11, f.159.

4. 1638 X.6.10, f.182.

5. 1623 Z.4.3, f.97b.

prevent her receiving her just punishment.<sup>1</sup> Some cases like these can be found in every year of the courts' records and certainly not just after Laud's induction as Archbishop of Canterbury, or even after his influence had begun Abbot's eclipse. No class of society was completely safe, not even the clergy,<sup>2</sup> until the courts were abolished. It is true that they were probably treated more gently than others but it is doubtful if the courts of the Middle Ages had ever exercised the same authority over these classes of society. In fact the courts may have come closer to exercising their authority impartially in these years than they had for some time. If this was so it probably contributed to the attacks which led to their downfall.

The vitriolic attacks made by their opponents and the speed and ease with which the courts were restored in 1660 both disclose the important position they held in society. They fulfilled functions which the silent majority still considered necessary. They attracted trained, professional men of ability like Sir George Newman into their employment. Although many entered the church's employment through their family connections<sup>3</sup> they showed no desire to leave it either. The Somners and all the proctors at Canterbury devoted the whole of their working lives to the church courts. Nor was there any apparent reluctance to return upon their restoration.

1. 1613 X.9.11, f.212 and f.213.

2. 1613 X.9.12, f.70. Dr. Benjamin Charier, Rector of Old Romney was deprived for non-residence despite the fact that he maintained a curate there.

3. Sir Nathaniel Brent married Archbishop Abbot's niece and there were many family connections between the other officials of the courts. See Chapter IV.

If the church courts served them well they in their turn were faithful to them. They certainly obtained a respectable income and position in society and were not ashamed of the Courts Christian.

The moderation of the Kent petitions suggests that if the Canterbury courts were corrupt they were no more so than was expected in that age. Charges were consistent and not noticeably excessive and while there may well have been unofficial costs those were to be found in the Common law courts too. This may account for the fact that Common law prohibitions were never numerous at Canterbury. Rivalry and friction between the ecclesiastical courts and the secular courts seem to have been at a minimum in Canterbury. References in the ecclesiastical records to the secular courts are simply statements of fact as when a presentment from Sutton Valence was recorded to the effect that Judith Clerke had "given reporte before Mr. Petman of one of her majestie's justices of the peace at Charte" that the father of her bastard was Richard Lees of Headcorn. Lee's proctor claimed that such a presentment was invalid and the charge was dropped.<sup>1</sup> The more frequent use of proctors which is apparent in both Instance and Ex Officio business in the post-Reformation courts also probably reduced corruption in some quarters since the opposing proctor would certainly draw attention to any irregularity which

1. 1603 X.4.5, f.140 b.

he might use to the advantage of his client. The interrogatories which were put to witnesses and sometimes the chief parties in the suit were undoubtedly designed to expose bribery and partiality.

In fact the meticulously kept records suggest that any contribution the ecclesiastical courts at Canterbury made to the friction which led to the Civil War was as much the result of their efficiency as of their inefficiency. If the church courts had carried out their work with unimpeachable integrity, they would still have been unpopular among the industrious sort".<sup>1</sup> They interfered in so many spheres of the daily life of every citizen. He must attend church, receive communion, conduct himself properly at all times, never becoming drunk, scolding or brawling, he must never seem to misbehave sexually or give any support to those who did and he must not only stop work when the church decreed but must pay tithes on the work he was allowed to do. It was so easy to find oneself before the church courts, apparently unjustly, as Richard Newman of Hythe did. He was presented "for that he did spew forth during divine service" and was able to prove that he was ill not drunk. But in order to do so he had to make a journey to Canterbury and, because he had failed to do so on the first two occasions he was cited, he had been excommunicated and therefore had

1. Hill, Society and Puritanism, p.316.

to secure absolution and pay the requisite fees.<sup>1</sup> Undoubtedly Richard Newman was infuriated by such treatment. Equally irritating must have been those charges concerning work on a holyday which the court then accepted had been necessary in the circumstances. In 1613 three men were presented for eating and drinking in time of divine service in the house of an innkeeper, John Barnes, who was therefore cited to the Archdeacon's court where he answered that "hee being churchwarden was att churche att service on that day the parties detected were drincking in his howse and he himselfe presented them".<sup>2</sup> There were countless sources of friction and Archbishop Laud added to them. If in the Canterbury diocese Laud did not have to revive the courts he certainly increased the antagonism they experienced by his policy. By giving even more attention to recusants and conventiclers he drew the attention of others to the inability of the courts to enforce their jurisdiction in these spheres. In 1603 the judge could ignore a letter from the minister and churchwardens of Smarden concerning the recusancy of Sir Henry James, Dame Dorcas his wife and various servants,<sup>3</sup> but in 1637 recusants presented to the church courts had to be excommunicated yet again. Above all, as has been seen, his attempts to impose an altar

1. 1640 341 Z.4.7, f.89.

2. 1613 X.4.10, part 2, f.30.

3. 1603 X.4.5, f.174. After recording their citation the scribe wrote "status quo".

railed in at the east end of the church, whether for doctrinal or economic reasons, aroused a storm of opposition and obstruction on a wide scale.

Nevertheless the courts were not destroyed, either by Laud and his policies, or by their abolition during the Interregnum. The machinery of the courts was successfully revived and the potentiality of their organisation was still available. Some part in whatever success the Church of England had in re-establishing itself in 1662 must be attributed to them. They were, however, slowly and irrevocably being annihilated by their own fundamental weaknesses and external factors which were present long before Laud's archiepiscopacy. They had no weapon with which to enforce their jurisdiction except a spiritual one which as Dr. Hill has so clearly shown by the seventeenth century was "the rusty sword of the church".<sup>1</sup> The more frequent use of the significavit writ after the Restoration reveals a growing understanding that this was the problem. It also reveals an inability to revolutionise the system. The comparative ease with which ecclesiastical jurisdiction was restored, made possible to a large extent by the presence of the old officials, made any attempts to re-construct the system very unlikely. Men like Dr. Stede

1. Hill, Society and Puritanism, Chapter X, p.354 et seq.

and William Somner would be as anxious as the exiled Bishops and other leaders of the church to recover their old authority and respect. They were not in the mood for reformation. Moreover, political and social changes with their roots right back in the Renaissance and Reformation were against them. The decline in the number of sexual offences before the courts began then. The events of 1640 to 1660 merely accelerated a change in attitude towards moral misbehaviour. In the same way there was a gradual change taking place in the attitude towards the church's place in society. Dr. Hill has written, "Political developments after 1660 ultimately transformed the supremacy of the King over the Church into the supremacy of Parliament over King and Church"<sup>1</sup> and at Canterbury this was far more decisive than any possible corruption.

1. Hill, Society and Puritanism, p.343.

APPENDIX I.

The Manuscript Sources.

The manuscript sources are extensive. They are to be found in the Cathedral Library at Canterbury, the Archive office at Maidstone and the Library at Lambeth Palace. The majority of the material is at Canterbury. In theory only the probate material is deposited at Maidstone but in practice such a division was not possible and there is quite a lot of material at Maidstone which has nothing whatsoever to do with probate. Even testamentary deposition books have non-testamentary material in them. For example P.R.C. 39/27 f.19 et seq. has depositions heard in a tithe cause and f.23b et seq. has depositions heard in a defamation cause. In the same way there is no obvious reason why the small amount of material that has found its way to Lambeth Palace Library should have done so. Although most of the court records there are concerned with metropolitical or ordinary visitation material much similar material remained at Canterbury. In the tables explaining the manuscript sources only the Maidstone and Lambeth material has been prefixed with its depository. All other material is to be found at Canterbury.

Each court had its own registry and therefore, apart from the few precedent books, the material belongs either to the Consistory court or to the Archdeacons's court. In each case there is an almost complete series of Acta Curia inscribed Acta ad instantiam partium which

contain the bare details and a timetable of the stages of a case between two parties in a suit. On the few occasions when the case was heard summarily fuller details are given. Most of the entries are in Latin but the script is usually quite good except in the case of one or two Consistory court books just prior to the Civil War. Covering the same, although not all, the cases in the Instance Acta of the Consistory court are some deposition books containing the depositions made by witnesses. Once again the formal heading is in Latin but the witness's account is in English and signed by the witness. The script is sometimes poor. The Ex Officio books consist of Libri Cleri, the call books made at a visitation of the clergy, churchwardens and sometimes schoolmasters, surgeons, physicians and midwives and the Comperta et Detecta which record the presentments and what action was taken. The Consistory court Comperta et Detecta cover the exempt parishes only prior to the Civil War but in the 1660's the Consistory court appears to have summoned people before it from a much wider range of parishes. Those belonging to the Archdeacon's court are recorded in separate books for separate deaneries except that Dover and Elham are combined and Westbere and Ospringe are combined before the Civil War. After the Civil War Charing is combined with Lympne, Dover with Elham and Bridge, Westbere and Ospringe, Sutton with Sittingbourne and Sandwich is missing. There are some books missing in both series as the tables show. Many of the volumes contain papers loosely inserted between the leaves.

Each court also has excommunication files which contain excommunications resulting from both Instance and Office causes, and Probate Acta which includes the act books in which probate was registered, registers of accounts, accounts, commissions to take probate and administrations, bonds, caveats, guardians, inventories, wills, penances, temerarii and miscellaneous papers. Not all of these are extant for each court. There are also a number of loose papers in ecclesiastical suits of the Consistory court to be found at Canterbury, where they are boxed according to their year, and of the Archdeacon's court at Maidstone, where they are classed as miscellaneous papers. These consist of libels, which contain an outline of the case for the prosecution in a civil or instance cause; articles, an outline of the case for the prosecution in a criminal or office cause; allegations, the case for the defendant; responsions; any answers put forward on behalf of either the prosecution or the defence; interrogatories, questions to be put to the witnesses; schedules of excommunication; sentences; and bills of costs. Finally there are a number of precedent books compiled in several cases by officials of the courts.

The Canterbury manuscripts were first catalogues by C.E. Woodruff, M.A., in 1940 and the number assigned to each volume related to its place on the shelves. Since the volumes had not previously been sorted consecutive numbers do not necessarily mean consecutive years or even that they are of the same series. A further catalogue was later made but not completed by Brian L. Woodcock B.Litt.

and in the following tables I have tried to comprehend both the Woodruff and Woodcock catalogues and, in their appropriate places, the Maidstone and Lambeth material. It has been possible to examine in detail only a fraction of the volumes and these have been marked with an asterisk. The majority of the volumes are indexed and foliated but there are exceptions which have been noted.

THE CONSISTORY COURT.

Year	Instance Business		Probate: Maidstone		Ex Officio	
	Instance Acta	Deposition books	Probate Acta	Accounts	Libri Cleri	Comperta et Detecta
1603	Y.3.4*	X.11.8*	PRC.22/11*	PRC.21/17	Z.7.3.*	X.9.3*
1604	Y.3.4.* Y.3.5	X.11.8*	PRC.22/12	PRC.21/17	Z.7.3.	X.9.3 X.9.4.
1605	Y.3.2 Y.3.5 Y.3.6	X.11.8	PRC.22/12	PRC.20/1*	Z.7.3.	X.9.4
1606	Y.3.6	X.11.9 X.11.11A	PRC.22/12	PRC.20/1		X.9.4. X.9.5.
1607	Y.3.6 Y.3.7	X.11.11A	PRC.22/12	PRC.20/1	Lambeth* VC11/1/4	X.9.5 X.9.6.*
1608	Y.3.7 Y.3.8*	X.11.11A	PRC.22/12	PRC.20/1		X.9.7 X.9.8 X.9.10
1609	Y.3.8*	X.11.11B	PRC.22*12 PRC.22/13	PRC.20/2*		X.9.7 <del>X.9.8</del> X.9.10
1610	Y.3.8	X.11.11B	PRC.22/13	PRC.20/2	Lambeth* C.M.28/2	X.9.10
1611	Y.3.8 Z.1.1	X.11.11B X.11.7 X.11.12	PRC.22/13	PRC.20/2		X.9.10 X.9.11
1612	Z.1.1	X.11.7 X.11.12	PRC.22/13	PRC.20/2		X.9.11
1613	Z.1.2*	X.11.7* X.11.12*	PRC.22/13 PRC.22/14	PRC.20/2		X.9.11* X.9.12*
1614	Z.1.2	X.11.7 X.11.12	PRC.22/14	PRC.20/3		X.9.11 X.9.12
1615	Z.1.3	X.11.7 X.11.12 <del>X.11.15</del>	PRC.22/14	PRC.20/3		X.9.12 Lambeth VC111/11*
1616	Z.1.3	X.11.15	PRC.22/14 PRC.22/15	PRC.20/3		X.9.12 X.9.13 Lambeth VC111/11*

Year	Instance Business		Probate; Maidstone		Ex Officio	
	Instance Acta	Deposition books	Probate Acta	Accounts	Libri Cleri	Comperta et Detecta
1617	Z.1.3 Z.1.4	X.11.13 X.11.15	PRC.22/15	PRC.20/4		X.9.13
1618	Z.1.4	X.11.13 X.11.15	PRC.22/15	PRC.20/4		X.9.13 X.9.14
1619	Z.1.4 Z.1.5	X.11.13 X.11.15 X.11.14	PRC.22/15	PRC.20/4 PRC.20/5		X.9.14 Z.4.1
1620	Z.1.5 Z.1.6	X.11.13 X.11.15 X.11.14	PRC.22/15	PRC.20/5		Z.4.1
1621	Z.1.6	X.11.13 X.11.19 X.11.14	PRC.22/15	PRC.20/5		Z.4.2
1622	Z.1.6 Z.1.7	X.11.14 X.11.19	PRC.22/15 PRC.22/16	PRC.20/6		Z.4.2
1623	Z.1.7.* Z.1.8*	X.11.14 X.11.19	PRC.22/16	PRC.20/6		Z.4.3*
1624	Z.1.8 Z.1.9	X.11.14 X.11.19 X.11.16	PRC.22/16	PRC.20/6		Z.4.3
1625	Z.1.9 Z.1.10	X.11.14 X.11.16	PRC.22/16	PRC.20/7		Z.4.4
1626	Z.1.10 Z.1.11	X.11.14 X.11.16	PRC.22/16	PRC.20/7		Z.4.4
1627	Z.1.11 Z.1.12	X.11.16	PRC.22/16	PRC.20/8		Z.4.5
1628	Z.1.12 Z.1.13	X.11.16	PRC.22/16	PRC.20/8		Z.4.5
1629	Z.1.13		PRC.22/16	PRC.20/8		Z.4.5 Lambeth VC111/12
1630	Z.1.13		PRC.22/16 PRC.22/17	PRC.20/9		Z.4.5 Lambeth VC111/12

Year	Instance Business		Probate, Maidstone		Ex Officio	
	Instance Acta	Deposition books	Probate Acta	Accounts	Libri Cleri	Comperta et Detecta
1631	Z.1.16		PRC.22/17	PRC.20/9		Lambeth VC111/13*
1632	Z.1.17		PRC.22/17	PRC.20/10* PRC.20/11*		Lambeth VC111/13*
1633	Z.1.17* Z.1.19*		PRC.22/17	PRC.20/10 PRC.20/11		Lambeth VC111/13*
1634	Z.1.19* Z.1.18*		PRC.22/17 PRC.22/18	PRC.20/10 PRC.20/11		Lambeth VC111/13*
1635	Z.1.18		PRC.22/18	PRC.20/10 PRC.20/11		Lambeth VC111/22*
1636	Z.2.2* No folios or index.		PRC.22/18	PRC.20/10 PRC.20/11		Lambeth VC111/22*
1637	Z.2.2 Z.2.1		PRC.22/18	PRC.20/10 PRC.20/11	X.8.2. pt.3	Lambeth VC111/22* Z.4.6*
1638	Z.2.1		PRC.22/18	PRC.20/10 PRC.20/11		Z.4.6
1639	Z.2.1		PRC.22/18	PRC.20/10 PRC.20/11		Z.4.7*
1640	Z.2.2* Z.9.1* No folios or index		PRC.22/18			Z.4.7*
1641	Z.2.4* Partially indexed		PRC.22/18 PRC.22/19*			Z.4.7.*
1642	Z.2.4* Z.2.2* Z.9.1*		PRC.22/19*			Z.4.7*
1643	Z.2.4* Z.9.1*		PRC.22/19			
1644	Z.9.1*		PRC.22/19*			
1645	Z.9.1*		PRC.22/19*			
1646	Z.9.1*		PRC.22/19*			

Year	Instance Business		Probate; Maidstone		Ex Officio	
	Instance Acta	Deposition books	Probate Acta	Accounts	Libri Cleri	Comperta et Detecta
1660	Z.2.4*		PRC.22/19*			
1661	Z.2.4*		PRC, 22/19*			Z.4.7*
1662	Z.2.4*	X.11.18*	PRC.22/19*			Z.4.7*
1663	Z.2.4* Lambeth VC111/23* Lambeth VC111/24*	X.11.18*	PRC.22/19*		Z.7.4*	Z.4.7* X.9.15* pt.1.
1664	Lambeth VC111"23* VC111/24*	X.11.18*				Z.4.7* X.9.15* pt.1 Z.4.16*
1665	Lambeth VC111/23* VC111/24*	X.11.18*				Z.4.7* X.9.15* pt.1 Z.4.16*

In addition there are the following for the Consistory Court:

1. Papers in Ecclesiastical Suits. There are boxes for most years prior to the Civil War. I have used 1602\*, 1603\*, 1612\*, 1623\*, 1633\*, 1637\* and 1640\*.
  2. Schedules of excommunication. Lambeth VC111/2/1\*, VC111/2/2\* and VC111/2/3\* cover the years 1621 - 1665.
  3. Letters and orders. Z.3.14 1587 - 1695\*.
  4. Precedent books.
    - Z.3.15\* by William Somner.
    - Z.3.23\* by John Edwards.
    - Z.3.25\* by Leonard Swating.
    - Z.3.27
    - Z.5.8
    - Z.5.16
    - Z.5.17
  5. Visitation papers\*. These have not been traced since the appointment of Miss Anne Oakley, M.A. as Cathedral Archivist in July 1970.
  6. Probate material at Maidstone.
    - PRC.19/1\* to PRC.19/3, Accounts, 1636-1667.
    - PRC.21/17\*, Accounts and Inventories, 1600-1604.
    - PRC.23/1, Bonds, 1660-1663.
    - PRC.25/1, Caveats, 1628-1649 and 1660-1663.
    - PRC.26/1 to PRC.26/2, Guardians, 1631-1728.
    - PRC.27/1 to PRC.27/30, Inventories 1596-1685 except 1621-1625 and 1648-1659.
    - PRC.28/4 to PRC.28/20, Inventories' registers, 1601 - 1638.
    - PRC.29/1, Renunciations of administrations, 1660-1665.
    - PRC.30/1 to PRC.30/6, Temerarii. 1600-1678.
    - PRC.31, Wills. PRC.32. Registers of Wills.
    - PRC.35/1\*, Citations 1601-1640, 35/2\*, Citations 1661-1662.
    - PRC.36/1 to PRC.36/8, Commissions for administrations, 1618-1626, 1633-1639, and 1659-1688.
    - PRC.39/26 to PRC.39/54, Depositions registers, 1602-1690 - except 1649-1660. I have used PRC.39/27\*.
    - PRC.40/1 to PRC.40/4, Interrogatories, 1616-1631.
    - PRC.42\*, Prohibitions in causes of tithe, 1573-1728.
    - PRC.44, Precedent book, 1633.
- N.B. PRC.35/1 and 35/2 contain material relating to the Archdeacon's Court too.

THE ARCHDEACON'S COURT.

Year	Instance Business	Probate Maidstone		Ex Officio		
	Instance Acta	Probate Acta	Accounts	Libri Cleri	C. and D. Canterbury	C. and D. Sandwich
1603	Y.5.8A* Y.5.8B*	PRC.3/26*	PRC.2/12* PRC.2/13*	Z.8.2*	X.4.4.pt.1* X.4.4.pt.2*	X.2.5.pt.2 X.2.5.pt.3
1604	Y.5.8B Y.5.9	PRC.3/26	PRC.2/13 PRC.2/14	Z.8.2	X.4.4.pt.2	X.2.5.pt.3
1605	Y.5.9 Y.5.10	PRC.3/26	PRC.2/13 PRC.2/14 PRC.2/15	Z.8.2	X.4.4.pt.2	X.2.5.pt.3
1606	Y.5.10 Y.5.11	PRC.3/26 PRC.3/27	PRC.2/13 PRC.2/14 PRC.2/15	Z.8.2	X.4.4.pt.2	X.2.5.pt.3
1607	Y.5.11	PRC.3/27	PRC.2/13 PRC.2/14 PRC.2/15	Z.8.2	X.4.4.pt.2	X.2.5.pt.3
1608	Y.5.11 Y.5.12*	PRC.3/27	PRC.2/13 PRC.2/14 PRC.2/15	Z.8.2	X.4.4.pt.1 X.5.2	X.2.5.pt.3
1609	Y.5.12* Y.5.13*	PRC.3/27	PRC.2/13 PRC.2/14 PRC.2/15	Z.8.2	X.5.2	X.2.5.pt.3
1610	Y.5.13	PRC.3/28	PRC.2/13 PRC.2/14 PRC.2/15 PRC.2/16	Z.8.2	X.5.2	X.2.5.pt.3
1611	Y.5.13 Y.5.14	PRC.3/28	PRC.2/16 PRC.2/17	Z.8.2	X.5.2	X.2.5.pt.3 X.5.7.pt.1
1612	Y.5.14 Y.5.15*	PRC.3/28 PRC.3/29	PRC.2/16 PRC.2/17	Z.8.2	X.5.2	X.5.7.pt.1
1613	Y.5.15*	PRC.3/29	PRC.2/16 PRC.2/17 PRC.2/18	Z.8.2	X.5.2*	X.5.7.pt.1
1614	Y.5.15* Y.5.16	PRC.3/29	PRC.2/17 PRC.2/18 PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/24	Z.8.3	X.5.2	X.5.7.pt.1

Year	Ex. Officio.						
	C. and D Bridge	C. and D Dover Elham	C. and D & Lympne	C. and D Charing	C. and D Westbere Ospringe	C. and D Sutton	C. and D Sitting- bourne
1603	X.4.1 pt.1	X.4.7	X.4.2* pt.1&2	X.4.5* X.4.8*	X.4.6pt.1	X.3.10pt2	X.3.6pt2
1604	X.4.1 pt.1	X.4.7	X.4.2 pt.2	X.4.8	X.4.6pt.1	X.3.10.pt2	X.3.6pt2
1605	X.4.1 pt.1	X.4.7	X.4.2 pt.2	X.4.8	X.4.6pt1	X.3.10.pt2 X.4.9	X.3.6pt2 X.4.10pt1
1606	X.4.1 pt.2	X.4.7	X.4.2 pt.2	X.4.8 X.4.11	X.4.6.pt1 X.4.6.pt2	X.4.9	X.4.10pt1
1607	X.4.1. pt.2	X.4.7	X.4.2 pt.2	X.4.11	X.4.6.pt2	X.4.9	X.4.10pt1
1608	X.4.1. pt.2	X.4.7	X.4.2 pt.2	X.4.11 X.9.9	X.4.6.pt2	X.4.9	X.4.10pt1
1609	X.4.1 pt.2	X.4.7 X.5.4	X.4.2 pt.2 X.5.3	X.9.9	X.4.6.pt2	X.5.1.pt.1	X.4.10pt2
1610	X.4.1 pt.2	X.5.4	X.5.3	X.9.9 X.5.5	X.4.6.pt2 X.5.6.pt1	X.5.1.pt.1	X.4.10pt1
1611	X.4.1 pt2	X.5.4	X.5.3	X.5.5	X.5.6.pt1	X.5.1.pt.1	X.4.10pt1
1612	X.4.1 pt.2 X.5.8	X.5.4	X.5.3	X.5.5	X.5.6.pt1	X.5.1.pt.1	X.4.10pt1
1613	X.5.8	X.5.4	X.5.3*	X.5.5	X.5.6.pt1	X.5.1.pt.1 X.5.1.pt.2	X.4.10pt1* X.4.10pt2*
1614	X.5.8	X.5.4	X.5.3	X.5.5	X.5.6.pt1	X.5.1.pt.2	X.4.10pt2

Year	Instance Business	Probate Maidstone		Ex Officio		
		Instance Acta	Probate Acta	Accounts	Libri Cleri	C. and D. Canterbury
1615	Y.5.16	PRC.3/29	PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/24 PRC.2/26	Z.8.3	X.5.2 X.5.10	X.5.7.pt.1
1616	Y.5.16 Y.5.17	PRC.3/29 PRC.3/30	PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/24 PRC.2/26	Z.8.3	X.5.10	X.5.7.pt.1
1617	Y.5.17 Y.5.18	PRC.3/30	PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/24 PRC.2/26	Z.8.3	X.5.10	X.5.7.pt.1
1618	Y.5.18 Y.5.19	PRC.3/30	PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/24 PRC.2/26	Z.8.3	X.5.10	X.5.7.pt.1 X.5.7.pt.2
1619	Y.5.19	PRC.3/30 PRC.3/31	PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/24 PRC.2/26	Z.8.3	X.5.10	X.5.7.pt.2
1620	Y.5.19 Y.5.20	PRC.3/31	PRC.2/19 PRC.2/20 PRC.2/21 PRC.2/22 PRC.2/23 PRC.2/24 PRC.2/26	Z.8.3	X.5.10	X.5.7.pt.2
1621	Y.5.20 Y.5.21	PRC.3/31	PRC.2/20 PRC.2/22 PRC.2/23 PRC.2/24 PRC.2/26	Z.8.3	X.5.10	X.5.7.pt.2

Year	Ex Officio						
	C. and D Bridge	C. and D Dover & Elham	C. and D Lympne	C. and D Charing	C. and D Westbere & Ospringe	C. and D. Sutton	C. and D Sitting- bourne
1615	X.5.7. pt.1	X.5.4.	X.5.3	X.5.5 X.5.9	X.5.6.pt1	X.5.1.pt.2	X.4.10.pt2
1616	X.5.7. pt.1	X.5.4.	X.5.3 X.6.1	X.5.9	X.5.6.pt1	X.5.1.pt.2	X.4.10.pt2
1617	X.5.7. pt.1	X.5.4	X.6.1	X.5.9	X.5.6.pt1 X.5.6.pt2	X.5.1.pt.2	X.4.10.pt2
1618	X.5.7. pt.1 X.5.7. pt.2	X.5.4	X.6.1	X.5.9	X.5.6.pt2	X.5.1.pt.2	X.4.10.pt2
1619	X.5.7. pt.2	X.6.2	X.6.1	X.5.9	X.5.6.pt2	X.5.1.pt.2	X.4.10.pt2
1620	X.5.7. pt.2	X.6.2	X.6.1	X.5.9 X.6.7	X.5.6.pt2	X.5.1.pt.2	X.4.10.pt2 X.6.3
1621	X.5.7. pt.2	X.6.2	X.6.1	X.6.7	X.5.6.pt2	X.6.4	X.6.3

Year	Ex Officio						
	C.andD Bridge	C.and Dover & Elham	CandD & Lympe	C.andD Charing	C.and D Westbere Ospringe	C. and D Sutton	C. and D Sitting- bourne
1622	X.5.8	X.6.2	X.6.1	X.6.7	X.5.6.pt2	X.6.4	X.6.3
1623	X.5.8*	X.6.2*	X.6.1*	X.6.7*	X.5.6.pt2	X.6.4*	X.6.3*
1624	X.5.8 X.6.6	X.6.2	X.6.1	X.6.7	X.5.6.pt2	X.6.4	X.6.3
1625	X.6.6	X.6.2	X.6.1	X.6.7	X.5.6.pt2	X.6.4	X.6.3
1626	X.6.6	X.6.2	X.6.1	X.6.7	X.5.6.pt2	X.6.4	X.6.3
1627	X.6.6	X.6.2	X.6.1	X.6.7 X.6.8	X.5.6.pt2	X.6.4	X.6.3
1628	X.6.6	X.6.2	X.6.1	X.6.8		X.6.4	X.6.3
1629	X.6.6	X.6.2	X.6.1	X.6.8		X.6.4	X.6.3
1630	X.6.6	X.6.2	X.6.1	X.6.8		X.6.4	X.6.3
1631	X.6.6	X.6.2	X.6.1 X.6.9	X.6.8		X.6.4	X.6.3
1632	X.6.6	X.6.2	X.6.9	X.6.8		X.6.4	X.6.3
1633	X.6.6		X.6.9*	X.6.8		X.6.4	X.6.3

Year	Instance Business	Probate Maidstone		Ex Officio		
	Instance Acta	Probate Acta	Accounts	Libri Cleri	C. and D. Canterbury	C. and D. Sandwich
1634	Y.6.8	PRC.3/34	PRC.2/32 PRC.43/7 PRC.2/33 PRC.2/34		Lambeth * VC111/21 X.6.10	Lambeth VC111/18 X.5.7.pt.2
1635	Y.6.8 Y.6.9	PRC.3/34	PRC.2/33 PRC.2/34		X.6.10	X.5.7.pt.2
1636	Y.6.9 Y.6.10* No index or folio	PRC.3/34	PRC.2/33 PRC.2/34		X.6.10	X.5.7.pt.2
1637	Y.6.10	PRC.3/34 PRC.3/35	PRC.2/34 PRC.43/8		X.6.10* Z.3.16*	X.5.7.pt.2 Z.3.16*
1638	Y.6.10	PRC.3/35	PRC.2/34		X.6.10*	X.5.7.pt.2
1639		PRC.3/35	PRC.2/34		X.6.10* X.7.2	X.5.7.pt.2
1640	Y.6.11 No index Z.3.17 Y.6.12	PRC.3/35 PRC.3/36			X.7.2	X.7.4
1641	Y.6.12	PRC.3/36*			X.7.2 Ends October 1641	X.7.4 Ends July 1641
1642	Y.6.13*	PRC.3/36*				
1643	Y.6.13*	PRC.3/36*				
1644	Y.6.13*	PRC.3/36*				
1645	Y.6.13*	PRC.3/36*				
1646	Y.6.13*					
N.B.	Y.6.13 is not entirely Probate Acta as Woodcock states. It seems so because only testamentary business remained after 1642.					

Year	Ex Officio						
	C.andD Bridge	C.andD. Dover& Elham	C.andD. Lympne	C.andD. Charing	C.and D. Westbere& Ospringe	C.and D. Sutton	C. and D. Sitting- bourne
1634	Lambeth* VC111/14, X.6.6		Lambeth VC111/16, X.6.9	Lambeth* VC111/15, X.6.8	Lambeth VC111/17	Lambeth VC111/20 X.6.4	Lambeth* VC111/19 X.6.3
1635	X.6.6		X.6.9	X.6.8		X.6.4	X.6.3
1636	X.6.6		X,6,9	X.6.8		X.6.4 X.6.11 pt.2	X.6.3 X.6.11.pt1
1637	Z.3.16 X.6.6	Z.3.16	Z.3.16 X.6.9*	Z.3.16* X.6.8	Z.3.16	Z.3.16 X.6.11 pt.2	Z.3.16 X.6.11.pt1
1638	X.6.6		X.6.9*	X.6.8		X.6.11 pt.2	X.6.11.pt1
1639	X.6.6		X.6.9*		X.7.1	X.6.11 pt.2	X.6.11.pt1
1640	X.7.3		X.6.9*		X.7.1	X.6.11 pt2	X.6.11.pt1
1641	X.7.3 Ends June 1641		X.6.9* Ends July 1641		X.7.1 Ends July 1641	X.6.11 pt.2 Ends December 1641	X.6.11.pt1  Ends December 1641
1661	Oct. X.7.3	1661	Oct. X.6.9*	1662	Nov.1662 X.7.1	Nov.1662 X.6.11. pt.2	
1662	X.7.3		X.6.9*		X.7.1	X.6.11.pt.2	
1663	X.7.3		X.6.9*		X.7.1	X.6.11. pt.2	
1664	X.7.3		X.6.9		X.7.1	X.6.11. pt.2	
1665	X.7.3		X.6.9		X.7.1	X.6.11. pt.2	

Year	Instance Business	Probate Maidstone		Ex Officio		
	Instance Acta	Probate Acta	Accounts	Libri Cleri	C. and D. Canterbury	C. and D. Sandwich
1647	Y.6.13*					
1648	Y.6.13*					
1660	Y.6.13*					
1661	Y.6.13* Y.6.14*				X.7.2	
1662	Y.6.14*				X.7.2	
1663	Y.6.14	PRC.3/37*	PRC.43/7		X.7.2	
1664	Y.6.14	PRC.3/37*			X.7.2	
1665	Y.6.14 Y.6.15	PRC.3/37			X.7.2	

In addition there are the following for the Archdeacon's Court:

1. Miscellaneous papers. Maidstone P.R.C. 18/4 to 18/37.  
These cover the years 1602-1687, except 1604, 1605, 1629, 1634, 1647-1660. I have used PRC. 18/4\*, 18/18\*, and 18/30\*.
2. Schedules of excommunication. Z.6.1 to Z.6.10 cover the years 1597-1603. I have used Z.6.1\*, Z.6.2\*, Z.6.3\* and Z.6.9\*.
3. Probate material at Maidstone.  
PRC.1/1 to PRC.1/15. Accounts, 1602-1693.  
PRC.5/1 to PRC.5/5. Caveats, 1625-1665, except 1650-1881.  
PRC.8/1 to PRC.8/8. Guardians, 1584-1784.  
PRC.10/32 to PRC.10/72. Inventories' registers. 1602-1638.  
PRC.11/1 to PRC.11/49. Inventories. 1671-1685.  
PRC.13/1. Penances. 1663-1666.  
PRC.15/5 to PRC.15/12. Temerarii. 1601-1716.  
PRC.16. Wills.  
PRC.17. Registers of Wills.

OTHER MANUSCRIPT MATERIAL.

1. At Lambeth Palace Library.  
Archbishops' Registers: Whitgift, Bancroft, Abbot, Laud and Juxon.  
MSS. 2014 fl46 at seq. William Somner's defence of the Prerogative Court at Canterbury.  
I am grateful to Mr. P. Clark, Magdalen College, Oxford for drawing my attention to this manuscript.
2. At Maidstone.  
PRC.44/3. Records of the court of High Commission sitting at Canterbury. 1597-1603.
3. At the Public Record Office.  
P.R.O. Star Chamber 8/252/26. A corruption case against Sir George Newman.
4. At Canterbury.  
1661-1662. Treasurer's Accounts of the Dean and Chapter.

APPENDIX 11.

- a) The oath taken by a proctor in the eighteenth century.

I, George Plummer, to be admitted a proctor of this court do swear that I will never attempt or endeavour to hinder, diminish or injure the jurisdiction, rights or privileges to be lessened or prohibited, nor give any advice aid or countenance to any person or persons who shall procure or attempt the diminution, injury or prohibition of the same but that I shal and will to my power maintain all the jurisdiction, rights and privileges of the said see and moreover, that I will well and faithfully execute the office of a proctor of this court to the best of my skill and knowledge and that when I shall have any cause, or causes depending in this consistory court I will not be absent from court without leave of the Judge first asked and obtained. So help me God.

Miscellaneous papers in Ecclesiastical suits. Number 4 in bundle concerning the Prerogative court at Canterbury. Undated

- b) The admission of a proctor. 6 October 1625.

Quo die comparuit personaliter Thomas Richardson notarius publicus et petiit se in procuratorem generalem huius Curia exercere admitti quem dominus ad eius petitionem sic admisit prestito prius juramento per eundem de agnoscendo Regiam supremam majestatem iuxta Statutum tertio et septimo annis Serenissimi domini Jacobi nuper Regis etc. Necnon juramento a procuratore prestari solito in veteri libro contento et descripto ad exercendam etc. In presentiis magistrorum Watmer, Tangett, Lawse et Birkhened consentientium  
1625 Z.1.9, f89.

- c) A schedule of costs 26 January, 1612/13.

Schedula expensarum facarum et faciendi ex parte sive per partem Richardi Terrey parrochialia de Westwell, Cantuar, Dioc. in quadam causa diffamacionis sive convitij mota per ipsem contra Catherinam Gyles uxorem Roberti Gyles parrochialia de Westwell precedens sequuntur:

In primis pro citacione originali et execucione eiusdem ijs.

citacionis

Item pro procurator

ijs.

Item pro feodo procuratoris 29° Januarij ibidem iuxta ijs. etc. et actis curie	
Item pro feodo procuratoris 26° Februarij et certificata ijs. excomunicacionis	
Item pro libellis in dicta causa data	iijs.iiid.
Item pro feodo procuratoris xij Martii	xiid.
Item pro feodo procuratoris 2° Aprilis ibidem actis curie termine Pasche	ijs.
Item pro feodo procuratoris 30° Aprilis	xijd.
Item pro decreto pro testibus et execucione eiusdem decreti	iiijs.iiid.
Item pro feodo procuratoris 21° Maij 1611	xiid.
Item pro produccione quatuor testium super libello in dicta causa dato	vs.iiiijd.
Item pro feodo procuratoris iiij Junii	xiid.
Item pro copiis depocionum dictorum testium	iijs.
Item pro feodo procuratoris 18° Junii	xiid.
Item pro produccione Gyles super libello	xiid.
Item pro feodo procuratoris 2 <sup>do</sup> et 16: Julij	iis.
Item pro feodo procuratoris 30° Julij et actis Curie termine Trinitatis	iis.
Item pro feodo procuratoris 24° Septembris, 22° Octobris et 4° Novembris	iiis.
Item pro feodo procuratoris 19° Novembris	xiid.
Item pro feodo procuratoris iiij <sup>to</sup> Decembris	xiid.
Item pro interrogandis	iiis.
Item pro feodo procuratoris 17° Decembris	xiid.
Item pro copiis depocionum duorum testium productore et examine per partem Gyles	xxd.
Item pro feodo pro 14° Januarij 1611 iuxta etc. et actis Curie termine Hillarij	iis.
Item pro feodo procuratoris 28° Januarij xi Februarij et 24° Februarij	iiis.
Item pro feodo 10° Martii	xiid.
Item pro decreto pro Gyles ad plene condendo secundo articulo libelli	xid
Item pro execucione eiusdem decreti	xiid.
Item pro procuratoris 23 <sup>to</sup> Martij	xiid.
Item pro copie plenior consistoris Gyles	xiid.
Item pro feodo procuratoris 21° Aprilis 1612 et actis curie termine Pasche	iis.

Item pro feodo procuratoris v <sup>to</sup> Maij, 19 <sup>o</sup> Maij, 9 <sup>no</sup> Junij et 23 <sup>o</sup> Junij	iiiiis.
Item pro feodo procuratoris vii <sup>no</sup> Julij et actis curie termine Trinitatis	iis.
Item pro feodo procuratoris 21 Julij	xiid.
Item pro informacionis	xviiiid.
Item pro sententia diffinitiva	xiis.
Item pro feodo procuratoris 22 Septembris	xiid.
Item pro decreto pro Gyles ad dicendi causam quare sententia etc.	xid.
Item pro execucione eiusdem decreti	xiid.
Item pro feodo procuratoris vi Octobris et actionis curie termine Michaelis	iis.
Item pro decreto viis et modis pro Gyles ad dicendam causam etc	xid.
Item pro execucione eiusdem	xiid.
Item pro feodo procuratoris 20 Octobris, iii Novembris et 1 Decembris	iiiiis.
Item pro feodo procuratoris xv Decembris	xiid
Item pro decreto pro Gyles tum ad aidendi taxaconem expensare qui ad recipiendi pecuniam	xid.
Item pro excucione eiusdem decreti	xd.
Item pro feodo pro xij Januarii 1612 iuxta etc. etactis curie termini Hillarii	iis.
Item pro confeccione et taxacone schedule hoc	iis.
Item pro <sup>feodo</sup> procuratoris 26 Januarii iuxta et 1612 li	xiid.

Summa totalis iiii ixs. viiijd.

Taxamus ad summam iiij libris

Williamus Walsall clericus

Substitutus.

1612 Ecclesiastical Suits No.94.

d) A Visitation citation 8 September, 1608.

Charles Fotherbye batchelor of divinitie  
Archdeacon of Canterburie in the cathedrall and  
metropoliticallyll church of Christchurch in Canterburie  
to Nicholas Bissell our apparitor for the deanerye of  
Lympne within our archdeaconrye of Canterbury Greetinge.  
Theise are streightlie to charge and command you that you  
doe withall diligence peremptorilie cyte all parsons, vicar  
and curate and all ecclesiasticall persons whatsoever

within the deanerie and Archdeaconrie aforesaid that they and everie of them doe personallie appeere before us or our officiall or any other competant judge at the place and on ye daye hereunder writtten, then and there to doe as heretofore hath beene accustomed att the Generall holden for the said deanerie. And that you likewise warne of everie parish within the deanerie and Archdeaconry aforesaid one churchwarden then and there to appeere and that the sayd warden doe certifie in writeing a true copie of the Register booke of all those that have been christened, marryed and buried within their severall parishes sine the tyme of the last exhibition of their said bills or certificates at the last General specifyinge amonge ye note of buriall which be householders and also doe exhibit a bill of presentment of all such vices and enormities as are corrigible and by our authority to be punished and the same bill to be made and subscribed by ye churchwardens and sidemen of everie parish which took their actes (crossed out) at or since our Last Visitation with particuler answeare to everie article of the articles given them in charge. And further that you do give commandment toall parsons, vicars and curatts within the deanerie and archdeaconry aforesaid that they doe certifie their parishioners openlie in their parish churches of the said generall to the ende that those who have anything then and there to doe maye appeere accordinglie. And whatsoever you doe in or about the premises you shall dwlie certifie unto our Officiall or any other competent judge in this behalfe the daye and place underwritten together with these presentes. In witness wherof wee have sett our usual seale of office dated at Canterburie 8 day September 1608.

Thomas Lyllyatt registrat deputat

This deanery of Lympne is to appeare in the parishe church of Ashford on Monday being the 10 day of October next 1608 between the hours of 9 and 11 of the clock..... You must warne all persons whatsoever that are behinde for procurations that they provide to pay them on the daye and at the place abovesaid. You must also give warning unto Mr. John Mosse parson of Hope all Saints that he provide himself to preach on the day and at the time and place above specified.

32 parishes listed.

Maidstone P.R.C. 35/1 One of the citations in English.

e) A schedule of Penance, June 1620.

A schedule of certayne words to be uttered and spoken by Stephen Miles in the parrishe church of Northgate uppon three severall Sondayes in the time of dyvine service ymedetly after the readinge of the second lesson being penitentlye clothed in a white sheete with a white wand in his hand sayeing after the minister these as followeth viz.

Wheras I Stephen Myles of this parishe was presented for lyvinge incontinentlye with one Catherine Godden of the same parishe and uppon denyall of the same offence in courte was according to law injoined my purgacon and faylinge therein am by laws pronownced guiltye of the presentment. Nowe I doe here before almightye god and yow all here present, confesse and acknowledge this my fowle syn and offence, and am most hartelye sorrye therefore humblye beseechinge almightie god to pardon and forgive me and all those which were therefore iustlye offended to be with this my penitent confession and acknowledgement satisfied and contented promisinge by goods grace to leade the rest of my lyffe hereafter more honestlye and chastlye, which god graunt I maye performe. Amen.

Concordat cum actis curie

Thomas Lilliatt

Registrar deputat.

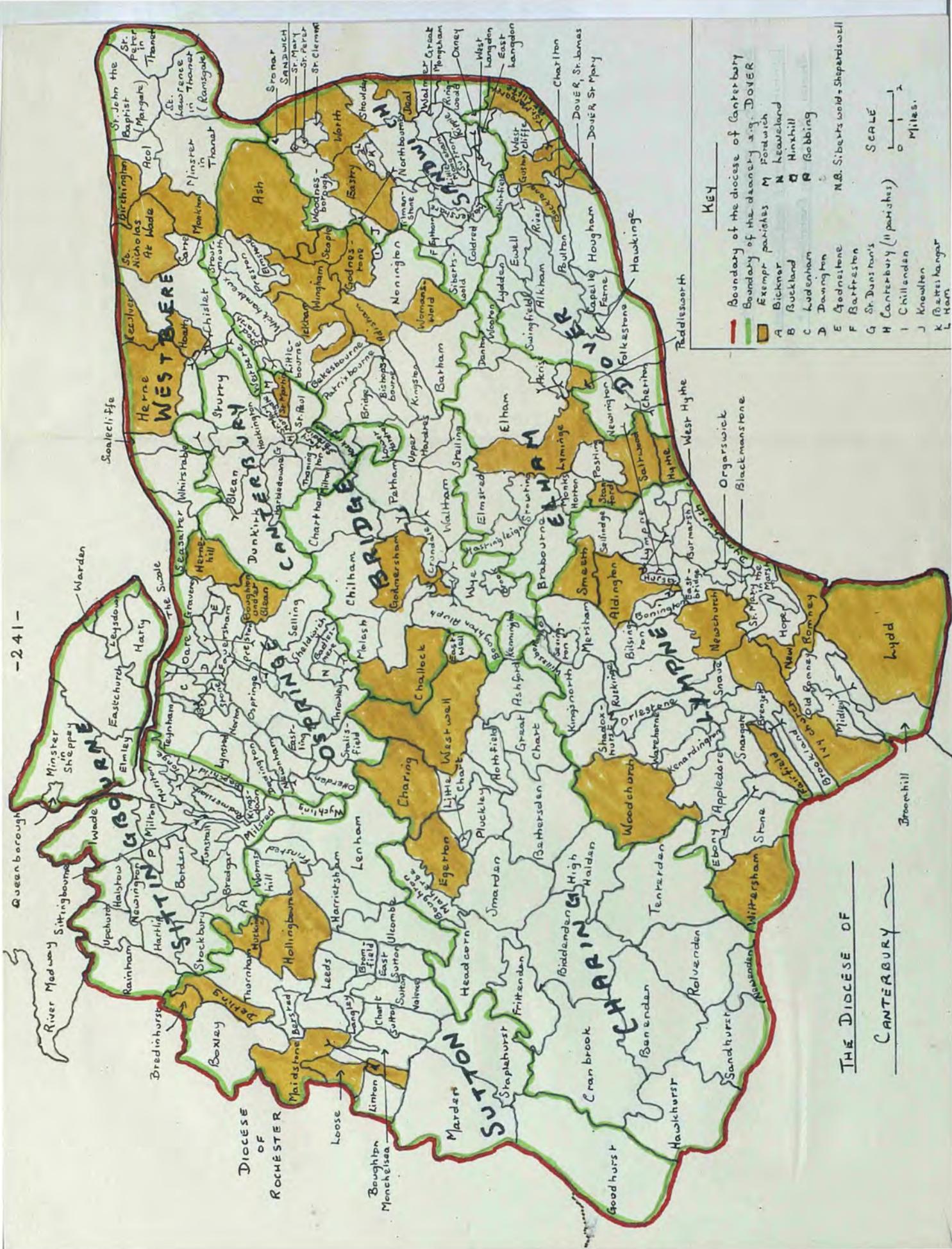
You must certifiye of the performinge of this order under the hands of the minister and churchwardens.

The bearer herof Stephen Miles hath accordinge to the iniunction performed his penance one three severall Sondayes that is to saye one the 18th, the 25th. of June and one the 2 of Julye 1620 which we whose names hereunder subscribed do testifiye,

Paull Wiciens (his mark)  
Churchwarden.

by me Sampson Kennardy  
minister cleric  
Jonas Waters  
Churchwarden

1620 X.5.10, f.80.



**KEY**

- Boundary of the diocese of Canterbury
- Boundary of the deanery e.g. DOVER
- Exempt parishes
- A Bickner
- B Buckland
- C Lodenham
- D Dawnington
- E Godnestone
- F Barfreston
- G St Dunstons
- H Canterbury (11 parishes)
- I Chillenden
- J Knowlton
- K Bakeshangar
- L Hart

N.B. St. Beets ward - Shepardswell

**SCALE**

0 1 2 Miles.

**THE DIOCESE OF  
CANTERBURY**

Based on a map published by the  
Institute of Heraldic and Genealogical  
Studies, Northgate, Canterbury, Kent.

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See Appendix 1.

B. Printed Material

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NB. (Although he calls them visitations of the Archdeacon he has in fact included the exempt parishes of the deanery of Westbere causing some confusion if one wishes to check the originals)

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