

## **Judicial relations between England and the Papacy before the Reformation: an appeal to the Rota, 1511-1514**

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**Citation to *this* Version:** Crowder, C. M. D. (Christopher Michael Dennis) & Izbicki, Thomas M.. *Judicial relations between England and the Papacy before the Reformation: an appeal to the Rota, 1511-1514*, 2019.  
Retrieved from <http://dx.doi.org/doi:10.7282/t3-d6we-8775>.



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JUDICIAL RELATIONS BETWEEN ENGLAND AND THE PAPACY BEFORE THE  
REFORMATION: AN APPEAL TO THE ROTA, 1511-1514

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<sup>1</sup> I am grateful to Adele Crowder for permission to go forward with her late husband's project. Edgar Graves collaborated with Christopher Crowder in the original research, a much larger project tracing English litigation before the Roman Rota. An archive of their photographs, transcripts, translations, notes and drafts is available at the Pontifical Institute of Medieval Studies, Toronto. Chris Nighman and Father James K. Farge provided access to these files.

An appeal to the Roman Rota launched in 1511 may seem unusual in the reign of Henry VIII because of the Statute of Praemunire, especially when the case involved prelates close to the crown. Two Statutes of Praemunire (1353 and 1393) had forbidden appeal of cases to the pope over royal objections or recognizing papal judicial authority as superior to the king's. These statutes of Edward III and Richard II respectively had aimed at limiting papal power in England, as did the several fourteenth-century statutes against papal provisions to English benefices. A Writ of Praemunire was available in cases of illicit appeals. However, the Statute and Writ seem to have fallen into disuse by early Tudor times except as a means of exacting payments from clerics.<sup>2</sup> The case discussed in this article shows a dispute being appealed to the Roman Rota early in the reign of Henry VIII, with the king intervening late in the proceedings without employing a Writ of Praemunire. Nothing was said by the king denying the bishops involved the right to appeal to Rome. This suggests that the Statute of Praemunire was revived as a political device to bring down Cardinal Wolsey in 1529, possibly on the advice of his enemies. Then it was used to promote the King's Great Matter and used soon thereafter to force the English clergy to accept the Royal Supremacy.<sup>3</sup>

### **The Rota**

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<sup>2</sup> On the history of these anti-papal enactments, see Richard H. Helmholz in *The Oxford History of the Laws of England*, vol. 1: *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 177-81; Steven G. Gunn, *Henry VII's New Men and the Making of Tudor England* (Oxford: Oxford University Press, 2016), 66, 82.

<sup>3</sup> J.J. Scarisbrick, *Henry VIII* (Berkeley: University of California Press, 1968), 235. On other uses of *Praemunire* against the clergy in this period, see *ibid*, 273-75, 278.

The Roman Rota by the sixteenth century was the most important judicial organ of the Roman see. Medieval popes, faced with increasing demands for judicial decisions, delegated some cases to what became known as the Rota; and, in 1331, John XXII had formalized the structure of this tribunal in the decree *Ratio juris*. The Rota had twelve equal judges, the auditors, led by the senior member as dean. Auditors tended to be trained in law; and they ranked next to the cardinals.<sup>4</sup> Each auditor had four notaries to record the hearings over which he presided in the form of books called manuals (*manualia actorum*).<sup>5</sup>

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<sup>4</sup> The fullest source on the Rota is Emmanuele Cerchiari, *Capellani papae et apostolicae sedis, auditores causarum sacri palatii apostolici seu Sacra Romana Rota ab origine ad diem usque 20 septembris 1870*, 4 vols, (Rome: Typis Polyglotis Vaticanis, 1919-21). German sources include Nikolaus Hilling, “Die Errichtung des Notarkollegiums an der Romanischen Rota durch Sixtus IV im Jahre 1477,” in *Festgabe Heinrich Finke zum 7 August 1904 gewidmet von seinem Schülern*, ed. Gottfried Buschbell et al. (Münster: Aschendorff, 1904), 169-94; idem, *Die Römische Rota und das Bistum Hildesheim am Ausgange des Mittelalters (1464-1513)* (Münster: Aschendorff, 1908); Emil Göller, “Zur Geschichte der Rota Romana: Ein Verzeichnis päpstlichen Rota-Auditoren vom Ende des 14 bis zur Mitte des 16 Jahrhunderts,” *Archiv für Katholisches Kirchenrecht* 91 (1911): 19-48; Egon Schneider, *Die Romische Rota nach geltendem Recht auf geschichtlicher Grundlage*, vol. 1 (Paderborn: Schöningh, 1914); Peter Herde, *Audientia Litterarum Contradictarum: Untersuchungen über die päpstlichen Justizbriefe und die Delegationgerichtsbarkeit vom 13 bis zur Beginn des 16 Jahrhunderts*, 2 vols. (Tübingen: Niemeyer, 1970); Johannes Baptist Sägmüller, “Die Entstehung der Rota bis zur Bulle Johannes XXII. *Ratio juris*, a. 1326,” *Theologische Quartalschrift* 77 (1895), 97-120; Erich Meuthen, “Rota und Rotamanuale des Baslerkonzils mit Notizen über den Rotanotar Johannes Wydenrod

Kirsi Salonen has commented that these manuals were not full registers. Instead they were concerned with procedure, saying little about the concrete details of the dispute or the value of legal arguments presented but tracking stages in the hearing of a case.<sup>6</sup> Surviving Rota manuals are listed in Archivio Segreto Vaticano, Indice 1057, but many are damaged or incomplete. Manuals generally were written in several notarial hands and are heavily abbreviated. They vary in length, with some of those recording English cases having as few as five entries. When an auditor was presiding over several cases at the same time, his notaries

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aus Koln,” in *Römische Kurie, Kirchliche Finanzen, Vatikanische Archiv: Studien au Ehren von Hermann Hoberg*, ed. Erwin Gatz, 2 vols. (Rome: Università Gregoriana, 1979), 2:473-518. See also Guillaume Mollat, “Contribution à l’histoire de l’aministration judiciaire de l’église romaine au XIV<sup>e</sup> siècle,” *Revue d’histoire ecclesiastique* 32 (1936): 877-928; Helmholz, *Oxford History of the Laws of England*, vol. 1, 210-11; Walter Ullmann, “A Decision of the *Rota Romana* on the Benefit of Clergy in England,” *Studia Gratiana* 13 (1967): 457-89; Jane E. Sayers, *Papal Judges Delegate in the Province of Canterbury, 1198-1254* (London: Oxford University Press, 1971), 1-19; J.J. Robertson “Canon Law as a Source,” in *Stair Tercentenary Studies*, ed. David Walker (Edinburgh: Stair Society, 1981); most recently, Kirsi Salonen, *Papal Justice in the Middle Ages: The Sacra Romana Rota* (Washington, DC: Catholic University of America Press, 2016), esp. 42-55.

<sup>5</sup> On surviving manuals, see Leonard E. Boyle, *A Survey of the Vatican Archives and of Its Medieval Holdings* (Toronto: PIMS, 1972), 90-92.

<sup>6</sup> Salonen, *Papal Justice in the Middle Ages*, 5-7, 32-39. Detailed discussions of proceedings under the learned law can be found in *Speculum Iuris Guilelmi Durandi...* (Venice: s.n., 1585).

recorded their progress chronologically in one manual, making it difficult to track an individual case.<sup>7</sup> Other documents appeared in *acta* delivered to the litigants, and those which survive are in local repositories.<sup>8</sup>

Between 1464 and 1534 forty-two English cases were appealed to the Rota, a very small number in comparison to those coming from Scotland.<sup>9</sup> One case, described in detail here, called *Wintoniensis jurisdictionis, or Wintoniensis, Londoniensis etc. approbationis testamentorum* or *Wintonienisis gravamina et censuram*, was recorded in Rota Manual 87. It is called “Winchester Jurisdiction” hereafter for convenience.<sup>10</sup> Not only is it the most fully reported of the English cases, it has been chosen because it exemplifies legal battles over diocesan and metropolitan rights, as well as over royal and ecclesiastical rights. Both confrontations were recurrent in England. “Winchester Jurisdiction” involved politics during two pontificates with English litigants of the greatest importance. The case also illustrates how complex a case in the Rota could be, especially for those not well versed in its procedures. This article has three sections: a

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<sup>7</sup> In the first 15 days covered by Manual 87, 27 December 1511-10 January 1512, there are 11 entries for “Winchester Jurisdiction” and 15 entries for 8 other cases.

<sup>8</sup> Salonen, *Papal Justice*, 5.

<sup>9</sup> In conversation with Christopher Crowder, Professor J.J. Robertson estimated that from the earliest extant manual to the middle of the sixteenth century, the Scottish Reformation, several thousand appeals from Scotland were heard in the Rota. This reflects the absence of effective regalian rights in Scotland in contrast to those in England.

<sup>10</sup> References to Archivio Segreto Vaticano Rota Manual 87, the manual that records “Winchester Jurisdiction”, *Wintoniensis jurisdictionis*, are from Crowder’s transcriptions. Crowder calls this Case 31 from its place in the sequence of 42 English cases in this period.

brief account of the legal process of an appeal to the Rota, a longer chronology of “Winchester Jurisdiction”, and an analysis of its political background in England and Rome at its conclusion.

### **Procedure in the Rota**

An appeal to the pope in the form of a petition could result in one of the auditors of the Rota being assigned the case. The petition was signed by the pontiff, the vice chancellor or (eventually) the *Signatura iustitiae*. The single auditor of the parallel court of the *Audiencia litterarum contradictarum*, also called the *Audiencia publica*, the papal curia’s recognised public forum, was also involved, becoming responsible for declaring progressive stages of the legal process.<sup>11</sup>

The auditor in charge of a case received a *libellus* or plaintiff’s accusation, usually in writing. This document was critical because the medieval church’s jurisprudence was rooted in Roman civil law, and so inherited the attitude that all was well unless there was a specific complaint. The process also turned on written documentation or written records of verbal testimony. In the forty-two English cases a hearing usually began when the commission was presented to the auditor by a *cursor*, an auxiliary officer of the papal court, normally in the presence of the notaries in the service of that auditor. This presentation was recorded by the auditor’s notary in the *Manuale*.<sup>12</sup>

The next, pretrial stage was establishing the mandates of proctors acting for the principals on each side of the dispute. In all cases, the contesting parties were cited to appear in Rome in person or by proxy through their proctors. (A proctor could act in several cases at the same time.)

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<sup>11</sup> Salonen, *Papal Justice*, 43-47.

<sup>12</sup> Salonen, *Papal Justice*, 44-46.

Professional advocates, usually clergy expert in canon law who were resident in Rome and familiar with the court's procedure, could be involved in the proceedings for their expertise. A summons to appear was usually proclaimed in the *Audiencia litterarum contradictarum*; then the Rota had its *cursor*s search Rome to find the principals or their proctors. If they did not appear, the Rota declared them contumacious and assigned a later date for a hearing. (Refusal to act as a proctor resulted in excommunication for three men during "Winchester Jurisdiction".<sup>13</sup>)

The first stage of the actual hearing was the presentation of the formal *libellus* by the plaintiff with specific articles offered in evidence. The defendant was presented with a copy and was allowed time to prepare a response. A dispute over the contents of the *libellus* could occur, with the defendant raising exceptions to which the plaintiff replied. The defendant could object at this stage to the case being assigned to the Rota, claim that the accusations were specious, or argue that the case should be heard locally rather than in Rome. Addressing the *libellus*, the defendant could reply point by point, *dicendum contra articulos*. The defendant's response was recorded, and a set of issues agreed by both parties was established if possible. There followed *litis contestatio*, with arguments on points of law or fact, with evidence presented for and against the plaintiff's case.

This evidentiary stage involved *positiones* extracted from the *libellus*. The defendant was to answer each or concede a point. Evidence on these contested points involved hearing

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<sup>13</sup> On 14 June 1512, Bernardus Mocharus, Thomas Regis and Thomas de Prato were conditionally excommunicated for refusing the *onus* of representing Pert; Manual 87, fol. 98v, 104r, 107v. A case could proceed in the absence of a contumacious litigant or proxy; see Salonen, *Papal Justice*, 48.



witnesses and examining documents submitted to the court. In many cases, ordering issue of “letters compulsory” came early, demanding that witnesses from afar away appear or that documents be sent to Rome. All testimony, oral or written, was notarized to be admissible. A written record of the stages of a case was often proclaimed in the *Audiencia litterarum contradictarum*.<sup>14</sup> These actions frequently were coupled with inhibition of any other action outside Rome until the dispute had been conducted, because the Rota claimed exclusive jurisdiction once it had accepted an appeal. (In England, this position was contrary to the letter of the Statute of Praemunire.) Each phase of a proceeding in the Rota could be held up by proctors not appearing or by frequent objections, some intended merely to delay the proceedings.

Eventually, having received the evidence and dealt with procedural actions of both sides, the auditor formulated a summary (*ponens*). He might consult his colleagues, especially those senior to him, in difficult cases; and, after receiving their input, he did a solemn public presentation of the issues. If no objections were raised by either party, he issued a definitive decision or judgment in the presence of both parties. A written record of the decision was made, notarized and registered. After the judgment was delivered, expenses were collected; and then the case was supposed to be closed. Appeals were possible within the Rota on procedural grounds, but they were handled swiftly to terminate the process. Nor could a litigant appeal more than twice. Once any appeals had been decided, the decision was supposed to be enforced at the local level with ecclesiastical censures for non-compliance possible.<sup>15</sup>

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<sup>14</sup> James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians and the Courts* (Chicago: University of Chicago Press, 2008); Salonen, *Papal Justice*, 49-51.

<sup>15</sup> Salonen, *Papal Justice*, 54-55, 178.

A normally case ended with award of costs and a tax to cover the cost of proceedings. Note, however, that in October 1512 one of the proctors, John Clerk, was threatened with excommunication if the recording notary was not paid within three days, which suggests that expenses might recur throughout the case, not just being paid at the end.<sup>16</sup> Beginning in the fourteenth century, decisions of the Rota were collected and copied to guide future litigation. These records focus more on procedural issues than matters of substance, making it difficult to determine how some of these cases were decided.<sup>17</sup>

This sketch of procedure is based on the accounts of the forty-two English cases, as well as secondary sources. One English case was almost contemporaneous with “Winchester Jurisdiction”; six were earlier. The issues all were different, but none was as complex or with the political prominence of “Winchester Jurisdiction”.

### **“Winchester Jurisdiction”, 1511-1513.**

The first convocation of Henry VIII’s reign met in January and February 1510; and it was the setting for complaints about interference by the metropolitan, Archbishop William Warham,

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<sup>16</sup> Manual 87, fol. 164r.

<sup>17</sup> Gero Dolezalek, "Rechtsprechung der Sacra Romana Rota – unter besonderer Berücksichtigung der Rotamanualien des Basler Konzils," in *Stagnation oder Fortbildung? Aspekte des allgemeinen Kirchenrechts im 14. und 15. Jahrhundert*, ed. Martin Bertram (Tübingen: Niemeyer, 2005), 133-57; idem, “*Quaestiones motae in Rota: Richterliche Beratungsnotizen aus dem vierzehnten Jahrhundert*,” in *Proceedings of the Fifth International Congress of Medieval Canon Law*, ed. Stephan Kuttner and Kenneth Pennington (Vatican City: Biblioteca Apostolica Vaticana, 1980), 99-114.

and his Canterbury officials in the business of some of his dioceses. A committee of convocation was assigned to examine these complaints. Richard Fox, bishop of Winchester, was dissatisfied with the committee's proposed reforms; and, by September 1511, he had rallied five more suffragan bishops to oppose the archbishop of Canterbury.

Fox, with Richard Fitzjames, bishop of London, Hugh Oldham, bishop of Exeter, William Smith, bishop of Lincoln, Richard Nykke, bishop of Norwich, and Geoffrey Blythe, bishop of Coventry and Lichfield, then appealed jointly to the pope against Archbishop Warham.<sup>18</sup> They addressed the pope, Julius II, as *Beatissime Pater*, describing themselves as

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<sup>18</sup> Fox undoubtedly took the lead in seeking to curtail Canterbury's prerogative claims. Of the five bishops associated with his appeal to Rome, occasionally called "accomplices" by Canterbury's proctors, two were doctors of theology: Geoffrey Blythe, bishop of Coventry and Lichfield, a graduate of Cambridge, and Richard Fitzjames, bishop of London from 1506, former Warden of Merton College. In the reign of Henry VII, Fitzjames was something of a court prelate, king's almoner and an executor of Henry's will. William Smith, bishop of Lincoln, the senior of the five in episcopal promotion, and Hugh Oldham, bishop of Exeter, were trained in civil and canon law at Oxford after studying together in their native Lancashire. Besides his contribution to the expenses of the suffragans' appeal to Rome (40 li.), Oldham gave 6000 marks at the time of Fox's foundation of Corpus Christi College, Oxford, in the interest of providing education for "such as who by their learning shall do good in the church and the commonwealth". Richard Nykke, who proved the longest serving of the bishops in "Winchester Jurisdiction", lived to a troubled old age. He was dead by January 1536 having had a career as a notable pluralist before being papally provided to the see of Norwich in 1501. Some twenty years earlier he had obtained his doctorate in both laws from the University of Bologna, having earlier

“your devoted creatures”. Their appeal was based on legislation by successive cardinal legates, Otto and Ottobuono, in the middle of the thirteenth century, which established the rights of diocesan bishops in testamentary jurisdiction, including the sequestering of goods, charging fees for the probate of wills and discharging executors.<sup>19</sup> The bishops stated that such rights had become established practice in the province of Canterbury, but that Archbishop Warham had trespassed on these customary rights, claiming and exercising jurisdiction over the wills of deceased persons who held goods in more than one diocese in the province. They also claimed that the archbishop and his officials had deprived them of revenues without their knowledge and that these officials were not properly qualified for their duties. Executors suffered trouble and expense through being summoned to attend Canterbury’s courts, even when this meant travelling

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been a member of Trinity Hall, Cambridge. Summaries of these bishops’ careers will be found for Blythe in A.B. Emden, *A Biographical Register of the University of Cambridge to 1500* (Cambridge: Cambridge University Press, 1963), 67, for Fitzjames in Emden, *A Biographical Register of the University of Oxford to A.D. 1500*, 3 vols. (Oxford: Clarendon Press, 1957-59), 2, 691-92, for Smith in *Biographical Register of the University of Oxford to A.D. 1500*, 3, 1721, for Oldham in *Biographical Register of the University of Oxford to A.D. 1500*, 2, 1396, and J.A.F. Thomson, *The Early Tudor Church and Society 1485-1529* (London: Longman, 1993), 127, and for Nykke in *Biographical Register of the University of Cambridge to 1500*, 430-431. The preponderance of legal training on the episcopal bench at this time has been noted frequently.

<sup>19</sup> William Lyndwood, *Provinciale, (seu constitutiones Angliae)... cui adjiciuntur Constitutiones Legatinae D. Othonis et D. Othoboni cardinalium...* (Oxford: Hall, 1679; Farnborough: Gregg, 1968), *Constitutiones Legatinae*, 107 with an extensive commentary by John of Acton; *ibid*, 107-110.

long distances.<sup>20</sup> In particular, the bishops protested against the right of the court of Canterbury to prove and administer the wills of testators who left goods in more than one diocese and to the value of 100 shillings or more. In no case should we presume that receipts from probate fees were a negligible aspect of such disputes.<sup>21</sup>

Disputes over wills between the archbishop of Canterbury and his suffragans were reported as early as 1275, and by 1287 some of the same dioceses confronting Warham had protested to the pope without receiving support. In the fourteenth century, the problems of administering wills of testators with goods in more than one diocese within the province of Canterbury had become significant.<sup>22</sup> Another cause of friction was the claim of archiepiscopal

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<sup>20</sup> London, Guildhall Library, MS 121/2034.

<sup>21</sup> Felicity Heal, *Of Prelates and Princes: A Study of the Economic and Social Position of the Tudor Episcopate* (Cambridge: Cambridge University Press, 1980), 62-63.

<sup>22</sup> Hugh Oldham, bishop of Exeter, alleged that Archbishop John Stratford, translated to Canterbury from Winchester in 1333, had allowed his suffragans to prove all wills within their dioceses. An earlier bishop of Exeter, Edmund Stafford, challenged the intervention of Archbishop Thomas Arundel in his jurisdiction over testators dying in his diocese while holding property in other dioceses of the province. The archbishop was alleged also to interfere in other aspects of diocesan administration, and Bishop Stafford appealed to the papacy for protection. When Archbishop Arundel died in February 1413 the Prior and Convent of Christ Church, Canterbury exercised their acknowledged right to take charge of archiepiscopal jurisdiction during the vacancy of the see. They issued a commission to the Registrar of the Court of Canterbury stating the prerogatives to be exercised by a commissary, including keeping a register

jurisdiction during vacancy of a see, which was, of course, a source of revenue. During Archbishop Henry Chichele's administration, matters were more peaceably ordered with a few exceptions, and probate fees were controlled.<sup>23</sup> Matters became confrontational again under Archbishop John Morton.<sup>24</sup> Pope Alexander VI issued a bull in 1494 confirming the testamentary jurisdiction of the archbishop of Canterbury, and the Prior and Convent of Christ Church Canterbury during a vacancy in the metropolitan see; and later another document, *motu proprio*, confirmed Canterbury's jurisdiction when testators held goods in more than one diocese of the province.<sup>25</sup>

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of the wills of any deceased persons *habendum mortis sue tempore bona notabilia in diversis diocesis dicte provincie*. See Irene J. Churchill, *Canterbury Administration*, 2 vols. (London: SPCK, 1933), 1:382-405; E. F. Jacob, *Medieval Records of the Archbishop of Canterbury* (London: Faith Press 1962), 35-49.

<sup>23</sup> E.F. Jacob, *Archbishop Henry Chichele* (London: Nelson, 1967), 23; *Register of Henry Chichele, Archbishop of Canterbury 1414-1443*, 4 vols., ed. E.F. Jacob and H.C. Johnson (Oxford: Oxford University Press, 1938-47), vol. 1, xi; *Ibid.* vol. 3, 16-18. As bishop of London, Richard Clifford appealed to Pope Martin V against encroachment on his probate jurisdiction by Archbishop Henry Chichele and his examiner-general in the case involving the wills of four London citizens. There is no date given in the registration of the appeal, but it must be later than Martin's election in November 1417.

<sup>24</sup> *Register of John Morton, Archbishop of Canterbury 1486-1500*, ed. Christopher Harper-Bill (Canterbury and York Society, 75; Leeds: Canterbury and York Society, 1987), 19, 101-108.

<sup>25</sup> Richard Helmholz has given a comprehensive account of the probate jurisdiction of English ecclesiastical courts in Chapter 7 of *The Oxford History of the Laws of England*, vol. 1, 387-432,

The petition of the bishops in 1511 suggested remedies and invited others who had suffered from the aggression of Archbishop Warham to join them. They asked the pope to assign their appeal to an auditor of the Sacred Palace capable of standing up to the archbishop. The name of Antonius Trivultius was suggested, as he had dealt with similar causes on behalf of the bishop of Winchester. The petitioners suggested the powers the auditor might need, including protection and safe access for those involved and sufficient sanctions to enforce his instructions, to the extent of calling on the secular arm.

A copy of this appeal is extant in the Guildhall Library, London, in a document from the archives of St. Paul's Cathedral.<sup>26</sup> Its upper margin is dated Rome, 18 September 1511, and bears the name of a referendary of the *Signatura*, giving the commission of the appeal for a judicial hearing before a named commissary. The signature of the referendary shows that the appeal was found acceptable and would be heard in the Rota. It was assigned at first to the Cardinal of Agen, Leonardo Grosso della Rovere, a relative of the reigning pope, Julius II. The document continues most unusually with a report of an altercation between that cardinal and two Englishmen, apparently representatives of Archbishop Warham, one of whom claimed that the

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generally confirming the received views. Lambeth Palace Library, *Cartae Antiquae et Miscellaneae*, VI/1, XVII/12, XVIII/16, among others, give some indication of the costs of administering wills; see Dorothy M. Owen, *A Catalogue of Lambeth Manuscripts* (London: Lambeth Palace Library, 1968), 889-901; Michael Kelly, *Canterbury Jurisdiction and Influence during the Episcopate of William Warham, 1503-1532*, Ph.D. thesis, Cambridge University, 1963, 69, n.1.

<sup>26</sup> London, Guildhall Library, MS 25, 121/2034, formerly D. and C. St. Paul's, A box 77, No 2034.

pope had acknowledged that the bishops had brought this suit to Rome merely to harass their archbishop.

This complex document includes marginal comments apparently written by a supporter of the archbishop. A note opposite the list of the bishops calls them *rebelles et malivoli*; and one, opposite the name of Trivultius, calls him an advocate of the adversaries and associated with the French interest in Rome. Nevertheless, when the proceedings got under way, the auditor was in fact Antonius Trivultius.<sup>27</sup> Manual 87 records that he was hearing several other cases at the same time. From 27 December 1511 to 10 January 1512 there are eleven entries for “Winchester Jurisdiction” and fifteen entries for eight other cases.

Reasons for such an appeal being made in 1510 included reaction to the previous consolidation of archiepiscopal prerogative under Archbishop Morton with papal support; a need for revenues by prelates meeting increasing demands from the papacy and the crown at a time

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<sup>27</sup> Trivultius was a Milanese doctor of both laws, see Cerchiari, *Sacra Romana Rota*, vol. 2, 84, 224. He had been appointed an auditor of the Rota in 1504 or 1505, and died in office in November 1522. He presided over numerous hearings recorded in Rota manuals earlier than Manual 87, and, by the time “Winchester Jurisdiction” opened in 1511, he was an experienced judge. He had heard a matrimonial *causa* from Lincoln diocese concerning Anthony Windsor and Elizabeth Lovet, dated to 1508, which is recorded in Manual 68 (1505-09) and is Graves’ Case 27. Possibly he was the auditor of choice for Fox and the other bishops on the recommendation of Bishop Smith of Lincoln, who was already a bishop at the time of Case 27.



when land value was depressed; and possible personal animosity between Fox and Warham.<sup>28</sup>

Fox was slightly the older; and both had served widely as diplomats under Henry VII, with Fox

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<sup>28</sup> *Oxford Dictionary of National Biography* [online], article 10/10051, “Fox”; article 28/28741, “Warham”. See also Geoffrey Parrish, *The Forgotten Primate, Archbishop Warham* (Hastings: Hastings and Bexhill Branch of the Historical Association, 1971), 22. Gunn places Warham in the tradition of Morton before him and Wolsey after him in extending the jurisdiction of Chancery and the King’s Council; see S. J. Gunn, *Early Tudor Government* (London: Macmillan, 1995), 78, 80, 82. Collaboration of Warham and Fox on the council is noted by Gunn and also by J. A. Guy, *The Cardinal’s Court: the Impact of Thomas Wolsey in Star Chamber* (Totawa, NJ: Rowman & Littlefield, 1977), 23; *Letters of Richard Fox 1486-1527*, ed. P.S. and H.M. Allen (Oxford: Clarendon Press, 1929), does not have anything relevant to “Winchester Jurisdiction”. For the conflicting loyalties of later medieval prelates, see Joan Greatrex, “Bishop Fox and the Benedictine Nuns of Winchester,” *Studies in Church History* 27 (1990): 223-35; R.B. Dobson, “The Bishops of Late Medieval England as Intermediaries between Church and State,” in *Etat et Eglise dans la genèse de l’etat modern: actes du colloque organisé par le Centre national de la recherche scientifique et la Casa de Velázquez, Madrid, 30 novembre et 1<sup>er</sup> décembre 1984*, ed. Jean-Philippe Genêt and Bernard Vincent (Madrid: Casa de Velázquez, 1986), 227-39. For the legalistic attitudes of the prelates, see Guy F. Lyle, “A University Mentality in the Middle Ages”, in *Colloques internationaux du CNRS 586* (Paris: CNRS, 1980), 223-24; C.T. Allmand, “Civil Lawyers,” in *The Civil Lawyers, Profession, Vocation and Culture in Late Medieval England: Essays Dedicated to the Memory of A. R. Myers*, ed. Cecil. H. Clough (Liverpool: Liverpool University Press, 1982), 155-80.

being described as that king's close advisor. Both were members of Henry VIII's council, Warham as Chancellor and Fox as Keeper of the Privy Seal.<sup>29</sup>

A difference between the two men had occurred over Robert Sherborn, a contemporary of Warham's at Winchester College and New College. Warham aided his friend in a career in which Sherborn acquired a formidable list of rich benefices before being papally provided to the bishopric of St. David's, a very poor see, in 1505. One of the benefices was the mastership of the Hospital of the Holy Cross in Winchester, on Fox's doorstep. Sherborn obtained a papal dispensation allowing him to retain this post, and he defended himself in Rome against Fox's disapproval. Their legal battle was described by Dr. Michael Kelly in the following terms, "Fox's interest in embarrassing and discrediting St. David's could only be aimed at Sherborn's mentor, Warham".<sup>30</sup>

Differences also occurred when, in 1505, Warham bought a considerable property at East Meon in the diocese of Winchester.<sup>31</sup> The rich agricultural district of East Meon was a prominent source of revenue for Winchester and even supplied goods directly to Bishop Fox's own

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<sup>29</sup> Andrew Allen Chibi, *Henry VIII's Bishops: Diplomats, Administrator, Scholars and Shepherds* (Cambridge: James Clarke, 2003), 296-97, 312-13.

<sup>30</sup> For a full record of this dispute and its ramifications in the Roman Curia, Kelly, *Canterbury Jurisdiction*, 45-48. See also *Calendar of Entries in the Papal Registers relating to Great Britain & Ireland, Papal Letters Volume XIX, 1503-1513, Julius II Lateran Registers, Part Two*, ed. Michael Haren (Dublin: Irish Manuscripts Commission, 1998), 534 no 1154.

<sup>31</sup> For the situation at East Meon see Crowder's note archived in the Hampshire Public Records at Winchester.

household. Disputes over the spiritualities of the churches of East Meon and Hambledon arose several times; and a permanent solution was not found until after the death of Bishop Fox in October 1528, when in 1531 Archbishop Warham signed an agreement concerning them.

**“Winchester Jurisdiction”. Procedure.**

The referendary’s letter referring “Winchester Jurisdiction” to the Rota was dated 18 September 1511. Earlier, on 7 April, Warham was aware of the likely course of events; and he had appointed proctors to represent him in Rome.<sup>32</sup> Fox appointed proctors on 5 June 1511. Surprisingly, neither of these actions is mentioned in their respective diocesan records.<sup>33</sup> The case got under way on 3 October; but the first entry in Rota Manual 87, which records “Winchester Jurisdiction”, is for 27 December 1511.<sup>34</sup> Therefore, an earlier part of the manual is missing.

On Saturday 27 December, the auditor, Trivultius, gave proctors representing the contending parties a date when they should agree on the places in England where the execution

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<sup>32</sup> MS Additional 48012 of the British Library is a seventeenth century formulary of Canterbury’s rights put together by Thomas Argull in the archiepiscopate of Mathew Parker. On fol. 5-6, under the heading *Procuratorium ad comparendum in Curia Romana*, Warham appointed three proctors to defend the prerogatives and rights of Canterbury before the pope, the auditors of the Sacred Palace or judges delegate.

<sup>33</sup> Evidence for the appointment of Bishop Fox’s proctors comes from the hearing of “Winchester Jurisdiction” in Rota Manual 87.

<sup>34</sup> Manual 87, fol. 1r, “ad specificandum loca pro executione compulsorium generalium”.

of letters compulsory should be proclaimed.<sup>35</sup> He had, therefore, already decided that evidence, in the form of documents and / or witnesses, should be obtained in England to assist the hearing in Rome. He appointed the next day at the third hour in his residence because it was a Sunday. There he appointed ten English cathedrals where letters compulsory should be posted. Later the same day he released (*relaxavit*) instructions attaching conditions as to how this was to be done. On 29 December, again *in domo*, the proctor for the bishop of Winchester, who had been named as the principal respondent in the letters compulsory, submitted the names of proctors who were to be present on his bishop's behalf during the proclamations in different dioceses. As well as the ten dioceses appointed by the auditor, he named proctors in the diocese of Worcester to protect the interest of his principal. Fox's proctor stated that he could not name proctors for a similar purpose in Canterbury itself for the same reason that had caused the original appeal to Rome. Nobody could be expected to come forward on Bishop Fox's behalf in a city which, Fox alleged, denied him and his fellow suffragans safe access.<sup>36</sup>

In the first two weeks of the manual's report each side was already employing two curial proctors and two from England. For the Winchester group, they were Marius de Peruschis, Marianus de Cuccinis, Walter Piers and William Stynt, and for Canterbury Thomas de Prato,

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<sup>35</sup> The phrase *in domo* should perhaps be translated as "in chambers".

<sup>36</sup> Manual 87, fol. 1r-v. Winchester's proctors protested in writing (*in quadam cedula*), but the letters were ordered issued. The auditor did specify, "Et ita quod dicte compulsoriales non exequantur in aliqua domo particulari ipsius archiepiscopi sed in cathedralibus aut collegiatis seu parochialibus ecclesiis opportunis". The auditor later ordered the letters compulsory be executed at Canterbury cathedral but not near the archbishop's residence; see fol. 7v.

Bernardus Mecharus, Thomas Pert (or Perte) and John Clerk (or Clerck). Both teams later named their own translators as they were required, offering the other side a choice from a panel of up to six.

A brief look at the careers of these four English ecclesiastical lawyers indicates the high qualifications and ability of the proctors. Walter Piers was a D. C. L. (Oxford 1505). He was priested in 1506 and held several benefices in the see of Winchester until 1536. Pert, a doctor of laws, was a senior official, *custos prerogative*, in the see of Canterbury, having previously been commissary of Bishop Fisher of Rochester. At his death in 1526, he was rector of three parishes, two in Lincoln and one in Canterbury; and he had been made a count palatine of the Lateran. Clerk was an M. A. (Cambridge 1502), and later obtained a doctorate of laws from the University of Bologna. He was involved in the business of the English Hospice at Rome under Cardinal Bainbridge. He had a long diplomatic career during which he became bishop of Bath and Wells, and he was King Henry's representative when the king received the title *Fidei Defensor* from Leo X. William Stynt was principal of an Oxford hall, and by 1517 a doctor in both laws. He was ordained priest in 1514; and he probably had died by 1521, when he was succeeded in the valuable benefice of Meonstoke by Walter Piers.<sup>37</sup>

By the end of the case, Canterbury's four initial proctors had been joined by Thomas Regis and John Coritin; and the appellant bishops' team had employed at various times Brian

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<sup>37</sup> *Calendar of Entries in the Papal Registers relating to Great Britain & Ireland, Julius II Lateran Registers, Part Two*, 53 no. 88; J.A.F. Thomson, *The Early Tudor Church and Society 1485-1529* (London: Longman, 1993), 109.

Higden, Bernardus Morenus de Rocheta, Gaspar de Esto, Raphael de Cuccinis, and Paulus Chamuntin. (A Gaspar de Ezio was presumably the same man as Gaspar de Esto.)

The early weeks of January 1512<sup>38</sup> were occupied with procedural challenges over the powers given by proctorial mandates, the places where letters compulsory were to be proclaimed, demanding the presence in Rome of witnesses or documents, and the measures to be taken to protect the interests of the petitioning bishops. On January 14, Marius de Peruschis, a Winchester proctor, obtained an inhibition of proceedings outside Rome.<sup>39</sup> John Clerk appeared the next day to say any inhibition should be declared before himself and Canterbury's other proctors.<sup>40</sup> In the last weeks of January, beginning on the 23<sup>rd</sup>, there was the first mention of *libelling*, speaking against the articles, and *producendum omnia*. Two dependent commissions were presented to the auditor in January and another in February related to the themes of the original petition, jurisdictional conflict and the probate of wills. (The bishops meanwhile had invited others to join them in their appeal against the actions of the archbishop.)<sup>41</sup>

Trivultius' notaries, perhaps two, made a separate entry for each hearing. Sometimes there were two hearings on the same day, rarely more than two, although ancillary activities like the swearing of witnesses, which took place outside the formal Rota hearings, were included in the appropriate entry. Each entry in Manual 87, like every other Rota manual, carries a title or *rubricella* in enlarged letters, beginning with the diocese where the cause originated and adding a

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<sup>38</sup> Manual 87, fol. 2v, 3r-v, 4v, 13v, 15r.

<sup>39</sup> Manual 87, fol. 12v, "cum inhibitione extra Romanam curiam".

<sup>40</sup> Manual 87, fol. 13r.

<sup>41</sup> Manual 87, fol. 20v, 31r.

brief indication of the matter or matters of that hearing. Manual 87 has one hundred and seventeen entries for “Winchester Jurisdiction”, the last of them dated more than a year after the others. For these there are as many as forty-two different *rubricellae*. Some of this variety is merely changes in the choice of words to describe the subject or alteration of the word order. *Wintoniensis jurisdictionis* is the subject of 35 entries and the proof of wills another twenty, although London replaced Winchester in some of the latter. London also headed the title in some of forty-eight entries where the subject of the hearing is *gravaminum et censurarum*. Accusations of contumacy, including for not producing evidence (*nichil procedentium*), made by opposing proctors appear frequently on the record.<sup>42</sup>

From early January 1512 to late March the proctors of the bishop of London took the lead in pursuing the bishops’ grievances, and the entries are headed *Londoniensis* or *Wintoniensis*. For the remaining twenty-four titles Winchester was the leading diocese, even when another diocese was joined in the title with it.

The Rota’s regulations forced a tight timetable on some procedures, allowing only a day or two for responses. In contrast, only three days, Monday, Wednesday and Friday, had official hearings; and there was a long summer recess between July and Michaelmas, a time when Rome was insufferably hot and often the site of serious infections. The court was also subject to delays when evidence in the form of men or documents had to be brought from England. Such documents were first produced on 19 March 1512, containing evidence about clashes pitting

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<sup>42</sup> E.g. Manual 87, fol. 39r-v, 47v.

Thomas Pert and Robert Pottyn (or Potyn) against Walter Piers, which spawned their own series of actions, which often obscure progress on the main case.<sup>43</sup>

The manual's record is obscured not only by changing *rubricellae*, but by the same men acting both as proctors in the major case and principals in side actions. Walter Piers was Fox's official in the diocese of Winchester. Thomas Pert, the archbishop's commissary at the provincial level, was coupled with Robert Pottyn in the charges Piers brought before the Rota. Pert was Warham's *apparitor* or summoner in the diocese of Winchester. His job was to see that the rights claimed by the archbishop were honoured. Probate of wills of those with goods in more than one diocese of the province was the most common occasion for Pert's intervention.<sup>44</sup> Documents in the Canterbury formulary, MS Additional 48012 of the British Library, provide evidence of a personal clash of Pert and Pottyn with Piers over the probate of wills and Canterbury's testamentary prerogatives. The formulary does not provide dates, but this confrontation seems likely to have begun before the issue was appealed to Rome.

As an example of the complexity of the proceedings and the multiple roles of the members of the legal teams, Marius de Peruschis, Winchester's curial proctor, pursued John Clerk on the authenticity of his status as Canterbury's proctor from 27 February to mid-March.<sup>45</sup>

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<sup>43</sup> Manual 87, fol. 53r, "Winton. Jurisdiction. contra Pert et Pottyn".

<sup>44</sup> For example, a case arising in 1411 from the will of Elizabeth Hampden of Combuk, who left property in 'diverse dioceses', involved Pert in his official role; see *Calendar of Entries in the Papal Registers relating to Great Britain & Ireland, Julius II Lateran Registers, Part Two*, 259-261 no. 446.

<sup>45</sup> Manual 87, fol. 38v-40r, 43r, 47v.



Marius simultaneously presented articles and produced evidence, while Clerk ignored repeated citations to appear before the court. However, back in January, Pert and Clerk had both appeared to claim status as proctors for Warham. On 23 January 1512 Clerk had been summoned on the initiative of Gaspar de Esto, Piers' curial proctor, to come and speak against the articles of the major case.<sup>46</sup> In the next two sessions Pert, as principal, was taken through further stages of Rota procedures by Gaspar, acting for Piers,<sup>47</sup> before appearing with Clerk as Canterbury's proctor on February 10, 13 and 16.<sup>48</sup> For most of March, including two entries which coupled his name with Robert Pottyn's, he faced demands of Marius de Peruschis acting for Bishop Fox. On those occasions, Pert was principal, while Clerk was proctor for Pottyn.<sup>49</sup>

The sequence in which Trivultius heard the various commissions involved in "Winchester Jurisdiction" does not follow an obvious pattern; but he kept them all on tight schedules, while proroguing or dismissing some. Occasionally, for example on 25 October 1512, he is recorded as having "the register",<sup>50</sup> which suggests that his notaries provided him with a full record of proceedings in parallel with the manual. Trivultius also had to deal with the delays and failures of the litigants and their representatives. When principals or proctors did not answer in the time frame set by the auditor, the other side claimed that they should be declared

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<sup>46</sup> Manual 87, fol. 20v. This is the first appearance of Gaspar de Esto in the manual. It is not clear when the articles to which Pert was called to respond had been presented or by whom.

<sup>47</sup> Manual 87, fol. 24r, 27v.

<sup>48</sup> Manual 87, fol. 30r, 32v, 33v.

<sup>49</sup> Manual 87, fol. 36r, 39v, 50v, 53r.

<sup>50</sup> Manual 87, fol. 173v, "qualiter dominus auditor habeat registrum in minibus animo expediendi causam"..

contumacious and penalised, and went forward with advancing its own case. Not infrequently, the party that had been accused of contumacy appeared at the end of a hearing and offered a verbal statement in general terms of which no details are given. This may have provided unofficial compliance with the auditor's terms.

On 19 March 1512, the first advance of real consequence in the hearing was registered; but it involved a subsidiary issue, conflict between proctors. The bishop of Winchester's proctor, Marius, produced documents recording an action by Piers, as commissary for Bishop Fox, against Pert and Pottyn; and he obtained the swearing of witnesses to their authenticity. Presumably this was evidence brought from England in response to letters compulsory. It comprised seventeen parchment folios in Latin written by two named notaries and sealed by the officiality of London. In their different roles, Pert as principal, Clerk as Pottyn's proctor, and both as Canterbury's proctors, the two men appeared at the end of several hearings after the production of these documents and after the witnesses had been sworn; and they offered only a verbal response in general terms. There is no indication of the nature of their defence, but it is clear that in these sessions the initiative lay with Winchester's proctor and with Piers.<sup>51</sup> On several occasions when witnesses were sworn to authenticate documents, they appear to have been selected from areas far from Canterbury and the appellant sees, for example, Paderborn, St. Andrews, and Dublin.

Just before the Rota's summer recess, in a long hearing on 2 July 1512, a Canterbury proctor produced a large bound book containing the constitutions of the province of Canterbury,

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<sup>51</sup> Manual 87, fol. 50v, 52v-53r, 57r, 60r. Of the 5 sworn witnesses were 2 from Scotland, 2 from Ireland and 1 from the London diocese.

almost certainly William Lyndwood's *Provinciale*, which documented past practices about wills in the province of Canterbury. This curial proctor was Bernardus Mecharus, acting for Pert and Pottyn.<sup>52</sup> (The evidentiary value of Warham's register also was in dispute, although it is unclear how it was presented in evidence.) Before the formal hearing began, Piers, as principal in his case against Pert and Pottyn, protested to the notary that no evidence should be received unless it had been accepted *judicialiter*. At the start of the official hearing, a *cursor* reported having cited Gaspar de Esto, Piers' curial proctor, to be present in the court when the book of constitutions was entered in evidence and witnesses were sworn to its authenticity. A particular passage relevant to the issues of "Winchester Jurisdiction" was to be abstracted and copied. This citation had been identified by Thomas Pert as principal, opposing Piers. Late on that same day and apparently in the auditor's residence, Pert and Pottyn's curial proctor asked that the relevant clause (*extrahi partitam ... copia partitie*) should be abstracted and accepted as evidence, properly attested, to which the other side would have to respond at the first opportunity. The clause in question hinged on the status of the archbishop of Canterbury as *legatus natus* and his right to have his subjects appear before him when summoned, wherever he happened to be in his diocese or province.<sup>53</sup> This right was one of the causes of complaint against the archbishop from executors and others because of the time and expense involved in travel.

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<sup>52</sup> Manual 87, fol. 123r-v., "ad videndum produci librum constitutionum provincie Cantuariensis".

<sup>53</sup> The Manual entry identifies the clause as "glosam designatam super titulo de judiciis c. quidam ruralium super verbo loco versiculo sed quero etc." Kelly, *Canterbury Jurisdiction*, 74 has noted that it is taken from William Lyndwood's *Provinciale*, Book 2, *De judiciis*, c. 2. See William Lyndwood, *Provinciale, (seu constitutiones Angliae)*, 82. Warham's Canterbury register

Piers and his proctor Gaspar were present for all this. The manual continues for another folio with arguments which Gaspar laid before the auditor for rejecting the evidence on the grounds that it was derived from a private and not a public document, rejecting the compilation by Lyndwood as a private. Gaspar also argued that the named witnesses should not be sworn. In repeated exchanges, Bernardus de Mecharus defended the quality of the Canterbury constitutions as presented and of the witnesses to them with equal determination. Having heard both sides, the auditor decided that the witnesses should be admitted to give their sworn evidence; but he gave Gaspar the chance to speak for his side on the next day.

Consequently, on Saturday 3 July, Piers appeared in person in the auditor's residence as principal and put questions to the two witnesses as they gave their evidence about the book of constitutions.<sup>54</sup> His purpose was to query the authority of the document and the credibility of the witnesses, but that standard procedure is not mentioned in the manual's record. The long hearing the day before had concluded with Gaspar demanding that the book should stay with the court until "Winchester Jurisdiction" had been decided, and not be returned to those who had brought it, as Bernard had proposed. It should be noted that these proceedings, central to the petition of

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has an entry headed *Quod registrum cantuariense faciat fidem*, Lambeth Palace Library, Archbishop Warham's register (unpubl.) fol. 177r-178v (in the first of 2 vols. foliated consecutively). It provides legal opinion, citing Aretinus, possibly Franciscus de Accoltis, that the archbishop's register had legal standing. It makes reference to the protests of suffragan bishops. What appears to be a rough draft of this entry, again citing Aretinus, is in the same repository, *Cartae Antiquae et Miscellaneae* II / 81. It is unclear whether Warham's representatives wanted his entire register sent to Rome (unlikely) or only excerpts.

<sup>54</sup> Manual 87, fol. 124r.

the appellant bishops, were reported as part of the subordinate cause between the officials who had been concerned with the issue on the ground.

From mid–September onward, the weeks were taken up with procedural exchanges about the status of proctors, of evidence and of witnesses and their testimony.<sup>55</sup> Incidental to this dicker-docker, one learns that by 8 October 1512 members of the considerable entourage of Cardinal Christopher Bainbridge, archbishop of York, became involved in the hearings of “Winchester Jurisdiction”. On that day, three of them were among eight witnesses whom Clerk, as proctor for Pert and Pottyn, presented to be sworn in support of his interpretation of the book of constitutions which had been entered as evidence in July.<sup>56</sup> Bainbridge was in Rome to promote the standing of Henry VIII with Julius II and with a very keen eye on his own

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<sup>55</sup> An item offered in evidence at this time was an unidentified “bull of Innocent” (*in vim bulle Innocentianae*); Manual 87, fol. 127v, 173v.

<sup>56</sup> Members of Bainbridge’s household were called as witnesses and took their oaths in their residences, including Bainbridge’s in *rione Parione*; see Manual 87, fol. 150r. These witnesses included Thomas Halsey, William Burbanke (or Burbanck), John Wolff, and John Grigge, who were associated with the management of the English Hospice in Rome. The abbot of Brianton refused to be sworn as a witness. Piers insisted that witnesses not be examined without his interpreter being present. Each side named several possible interpreters of whom the other side chose one.

advancement in the church. He was successful in both respects but did not live long enough to fully enjoy the fruits of his success.<sup>57</sup>

After the involvement of Bainbridge's suite, the simultaneous legal processes in "Winchester Jurisdiction" become obscure. In the subordinate case of Walter Piers against Thomas Pert and Robert Pottyn, who had been his direct opponents in England, it seemed a conclusion was close. At the end of October Winchester's proctors were looking for a sentence to conclude "Winchester Jurisdiction". Marius de Peruschis asked the auditor for a definitive sentence on 25 October.<sup>58</sup> On 29 October the auditor did indeed give his sentence and handed it to his notary, the case being given the title *Wintoniensis jurisdictionis* at that hearing.<sup>59</sup> Clerk, Pert and Pottyn's proctor, had been summoned to hear that decision, which was, therefore, presumably against Archbishop Warham. Since there is no mention of Clerk's presence in the entries for 29 October, he presumably stayed away. However, on 8 November, after the official business of a regular Monday sitting of the Rota, he and his curial colleague Thomas de Prato appeared in the auditor's residence to ask for the opportunity to appeal the sentence, which they were granted.<sup>60</sup> The appeal had no immediate outcome; and, by 22 December, some development had caused the auditor to grant a prorogation of the case for six months requested

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<sup>57</sup> For Bainbridge's career see David Chambers, *Cardinal Bainbridge in the Court of Rome, 1509 – 1514* (London: Oxford University Press, 1965).

<sup>58</sup> Manual 87, fol. 173v-174r. On Monday 25 October, with the *rubricella Wintoniensis jurisdictionis*, Winchester's proctors asked for a conclusion and definitive sentence, having previously asked that Pert and Pottyn's proctors be present.

<sup>59</sup> Manual 87, fol. 176v.

<sup>60</sup> Manual 87, fol. 189v.

by the curial proctor acting for Piers, Marius de Peruschis.<sup>61</sup> Evidently there had been a major development late in 1512, possibly the first intervention of King Henry in the case; but the manual provides no reason for it. This delay proved to be final, but once more the manual provides no reasons.

After the Christmas recess, there was a long period of inactivity in “Winchester Jurisdiction”. “Winchester jurisdiction” revived on 19 April 1513, and from then until the beginning of May there was a sequence of retractions of proctorial authority. Stynt, as proctor for the bishop of Winchester, and his fellow litigants revoked the authority of Marius and all other substitute proctors on 19 April. On 28 April Clerk as proctor for the archbishop of Canterbury and for Pert and Pottyn did the same. The entry for the following day makes it clear that all this was happening because of an ordinance of the king of England.<sup>62</sup> On 30 April Brian Higdon, who had appeared earlier as the proctor for the bishop of London, revoked all substitute proctors in the name of all the protesting bishops.<sup>63</sup> The last consecutive entry in the manual is for 7 May 1513, when Stynt cast doubt on the willingness of Clerk, as Canterbury’s proctor, to accept the

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<sup>61</sup> Manual 87, fol. 233v, “et obtinuit prorogari fatalia ad sex menses “.

<sup>62</sup> Manual 87, fol. 302v, 303v, 305r.

<sup>63</sup> William E. Wilkie, *Cardinal Protectors of England: Rome and the Tudors before the Reformation* (Cambridge: Cambridge University Press, 1974), 79; Kelly, *Canterbury Jurisdiction*, 77-86 with 87-91 covering Henry’s intervention and the response to it by the contestants in “Winchester Jurisdiction”. For Julius’ letter of 12 March, Kelly cites as his source London, British Library, Cotton, Vitellius B, II, f. 22r. The text of the letter is ff. 23r-24v. See Scarisbrick, *Henry VIII*, 42 for the political context of Henry’s intervention. Vitellius B, II has a number of letters from Cardinal Bainbridge to Henry VIII.

royal ordinance.<sup>64</sup> Apart from Stynt's reservation of a possible future for "whatsoever causes were pending" in "Winchester Jurisdiction" on 9 March 1514, appointing Gaspar de Ezio and Paulus Chamuntin as substitute proctors, this ends the record in Manual 87.

### **The political background**

There were two reasons for the prorogation of "Winchester Jurisdiction": the actions of Henry VIII and changes in papal policy.

Cardinal Bainbridge, the archbishop of York, was involved in "Winchester Jurisdiction" when three men from his entourage were witnesses for the book of constitutions of Canterbury which was before the Rota in July 1512. Bainbridge had been in Rome as early as 1510 acting on royal orders, transmitted through Wolsey, to organize the affairs of the English Hospice, and was active (to the extent of being in the field with papal forces at Ferrara) in consolidating Julius II's determination to resist French advances in Italy. Julius was a della Rovere, and his family's tradition and territorial base made him highly suspicious of Louis XII's thrust to extend French influence, already established in northern Italy, to central Italy. The horizon for Julius was Italy; the defence of the papacy's independence, its territories and allies his preoccupation.<sup>65</sup>

By March 1512, Bainbridge had inspired the pope to write to King Henry urging him to use his royal authority to reconcile the parties before the Rota in "Winchester Jurisdiction", "for the quiet of his realm". The letter urged Henry to continue his efforts to reach a settlement of the

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<sup>64</sup> Manual 87, fol. 308v.

<sup>65</sup> Christine Shaw, *Julius II: The Warrior Pope* (Oxford: Blackwell, 1993), 245-78. This anti-French effort caused Louis to support the rebel Council of Pisa (1511-12), see *ibid*, 281-86, 291-92, 298.



complex issues of the case before the Rota, applauding “the steps which he has already taken”. If this was anything more than a contrivance to show the value of Bainbridge’s position in Rome as an intermediary between the pope and King Henry, it was some time before the letter, or the antecedent efforts by the king to which it refers, had any effect.<sup>66</sup> The king’s later actions to this end are recorded in a series of letters published by J.B. Sheppard in *Litterae Cantuarienses*.<sup>66</sup>

On 23 February 1513, Henry sent a letter, in English, to his “Most Reverend Father in God”, that is, to Warham. Referring to the dispute over probate between the archbishop and six of his province’s bishops, naming the bishop of Winchester first, the king notes that as long as it is appealed in the said court in Rome “it redounds to our dishonour”, as well as “bringing dissension in this our realm”. It shows disunity at a time when preparations for war with France were under way. With his council, the king has already tried to reach an agreed settlement of the dispute, some of the parties being members of the council and great officers of the realm. Those efforts had not been successful, prolonging the dispute. He received a letter from the pope commending his efforts to achieve a settlement and urging him to continue his attempts to reach an interim agreement until there was a better time for a definitive outcome in the court of Rome, if that proved necessary. The letter then sets out the decisions which the council had reached on three issues in dispute. First, the archbishop and the bishops are warned not to meddle in the administration of property, other than chattels, left by any testator. That is the recognised jurisdiction of the king’s courts. Secondly, for the time being, the king upholds the archbishop’s

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<sup>66</sup> *Litterae Cantuarienses* 3, ed. J.B. Sheppard (London: H.M.S.O., 1889), 416-19, 421-29, 434-35 [cited hereafter as *Lit. Cant.*]. The first letter was also sent to Bishop Fitzjames of London, with appropriate changes in the wording. It is in the bishop’s register, dated 23 February, without a year, see London, Guildhall Library, 9531/9ff./48v-49r.

claim to have jurisdiction over the will of a testator who dies outside his own diocese or one who has goods to bequeath in several dioceses of the province of Canterbury or has died intestate, if those goods or the debts owed by the deceased, together or singly, are valued at 10 li. or more. In all other cases, the bishop of the diocese or other ordinary has the right of probate and appraisal of the estate, without any interference from the archbishop. These provisions were to last for three years. The third issue addressed in the king's directive was the activity of the appraisers of the goods left by a testator. This was, in fact, covered by the second part of the royal mandate: the right of valuing the estate followed the right to probate.

The letter continues with the provision that if any dispute should arise over the implementation of the king's wishes, it would be decided by the king and his council or by arbitrators named by them. Although the royal directives would prevail for the next three years, they did not inhibit the parties from continuing to pursue their suit in Rome during that time, but they should signify their wish to continue their case in that court before 30 April next. The final passage of the letter requires Warham to provide written compliance with the royal instructions before 15 April 1513, at the same time as assuring him that it is the intention of the king to confirm the customs in place before the dispute arose without alteration of the rights of either side. This ambiguity offered Warham the opportunity to quibble in the series of letters which followed.

Warham was consistent in his replies to Henry's repeated demands that he accept the royal instructions, just as the other bishops had done. Warham's position was that he had inherited obligations from his predecessors. Among these was a duty to secure the repose of Christian souls by supervising the execution of the testaments which they had made when they were alive. More generally, he had a duty to preserve the rights of his see in the same condition

as they had been passed on to him. At his consecration as archbishop, he had sworn to uphold these, as well as other duties. These convictions were reflected in his response to Henry's letter of February. It was not delayed, but it was not submissive.

In a long, undated letter, probably written within the term of 15 April, sent by the king, Warham sets out his reservations regarding Henry's three demands. At the start of the letter, he makes clear that he had not been present when the council had discussed the dispute over probate and the prerogatives claimed by his metropolitan see; and he acknowledges the consideration shown in leaving the final determination of these issues open. After repeating the three issues addressed in Henry's letter, with a change in their order, Warham gives his answer. For the first he accepts the law that the king's courts had the pre-eminent right over property. As to the right of appraising a testator's goods or chattels, the king's third directive, he says that, because of fraudulent appraisals by executors and others, his predecessors, and he in his time, had found it necessary to appoint men under oath who would be indifferent. This ensured that the wishes of the testator were carried out, that his debts, if any, were duly paid, and avoided perjury. Although it is not apparent in the royal letter, it had been insinuated that Canterbury's officials who enforced such appraisals had taken a rake-off. If there were any such, the archbishop wrote that he had had nothing to do with it; and he promises that offenders will be prosecuted and made to pay double the amount which they had stolen. He himself would pay from his own revenues, if any guilty *apparitor* could not himself pay the fine. Warham charges his adversaries with wanting to keep Canterbury's *apparitores* out of their dioceses in order to conceal the estates which fell to Canterbury's prerogative jurisdiction. He then cites a couple of instances where his *apparitores* have been harassed by a diocesan bishop as a warning to other Canterbury officials not to exercise their office.

The decision to set the dividing line between diocesan and metropolitan rights of probate at goods of value of 10 li. or more is the matter that receives most attention in the letter. Warham tells the king that his predecessors from “time out of mind” had proved wills of men having goods in more than one diocese, worth as little as ten shillings on some occasions. He, on the other hand, had established 5 li. as the value below which he would not claim probate. His bishops had accepted this until Fox “had steered them to conspire against me”, using his position as executor of Henry VII’s will to discriminate against Warham’s friends and attach others to his support by choosing to settle with the latter, while ignoring the claims of the former. Nevertheless, when the arbitrators appointed by the king’s council had set the probate differential at 10 li., he had said that, if they could show that this had a basis in law, he would be content. Until then, he could not accept that ruling with a good conscience since it would cause him to perjure his oath “to maintain the right of my church”. Besides, he adds, the discontented bishops are but a few of his suffragans. Their demands will divide his province if they are confirmed after the interim period of three years which they have been conceded, some having the privilege and others not; and their demands are merely a tactic to influence the outcome of the appeal under way at Rome.

That is but half, if the most important half, of Warham’s letter. Continuing, he introduces, as a response to Henry’s request for unity in time of war, a passing reminder of Becket’s fortunes. He has no means of telling how extensive might be the support which his opponents could rally among “simple men”; but, in the event of the issue being arbitrated in the king’s council, those same adversaries would stir up far greater division than was represented by the current hearings in Rome. The decision to set the probate differential at 10 li., twice the accepted level, was prejudicial to the rights of Canterbury and advantageous to the protestors. It allowed

them to have what they wanted without having to establish their case in the Roman court. That court was the proper place for settling spiritual matters, rather than the king's council. The logic of Henry's claim that granting the more advantageous probate right to the bishops for three years would not alter the traditional status and rights of Canterbury is contradicted. Warham's adversaries would not give up their three-year tenure of rights which Canterbury had held for three hundred and fifty years and which all earlier attempts had failed to overthrow. The Prior and Convent of Canterbury would also be compromised by any concession on his part; they support his resistance to the royal proposals. A final paragraph pleads for Henry's understanding of the archbishop's position. He is a loyal and obedient subject, but he is under oath to defend the right of his church. His adversaries want to prejudice his standing with the king, although when they took office as bishops of the province they swore to maintain the collective right of Canterbury. He is ready to obey the king's grace, but only so far as that conforms to his obligations to the church's law, to his obedience to the pope and to the established possession of his church of Canterbury.

By the end of June 1513, Henry was on his way to fight in France. On the 22<sup>nd</sup> of that month, he wrote to Warham from Canterbury. The case had been taken out of the Rota's hands and passed to "certain of our council", but without any indication that the appeal to Rome violated royal rights. Those councillors had made certain directives and ordinances "for a time", requiring obedience and written acceptance. The bishops had obeyed and sent their certification. Warham, on the other hand, although he had assented to the withdrawal of the case from Rome and the intervention of the council, has now, to our surprise, responded with delays and excuses. This letter orders him to obey and to send letters of confirmation "immediately on receipt of these presents".

Still in June, Warham replied at length. He asked Henry to consider the responses to the royal directives, which he had already sent, “at a convenient leisure”. He stood by his earlier answers and repeated that the Prior and Convent approved of them. He again charged his opponents with presenting him in the worst possible light to profit from the revenues which they would gain from the future arrangements for probate. He re-emphasised his willingness to comply with the royal demands as far as his oath of office and the law of the church allowed. There is another reference to Becket, this time calling him a martyr. A long passage in the letter charged Fox with taking advantage of Warham’s absence from the council to advance his own reputation and blacken the archbishop’s, a tactic which Warham said he never would have used. With Henry about to campaign on the continent, Warham wished him success.

Henry’s third letter in the series was to his wife, written at Calais on 16 July. As queen, Catherine of Aragon was the titular head of the administration while the king was out of the country. The king tells her that Fox has informed him that an official of his diocese has been charged by Warham with obstructing Canterbury’s jurisdiction. Fox, Keeper of the Privy Seal, was with Henry in France. The queen was to summon “our Chancellor”, the archbishop, and, with the aid of some councillors, not only put an end to the molesting of Fox’s official, but also to have Warham certify “directly and precisely” that he would obey the instructions sent to him in Henry’s two earlier letters. The queen is asked to inform her husband of the results of her actions.

In the middle of August, Warham wrote to Queen Catherine from his London residence. He outlines the statement which he had given in the presence of the queen and two members of the council on 9 August. He rejects Fox’s accusation of interference in the diocese of Winchester. He had given his officials instructions not to exercise their offices in that diocese

while Fox was absent with the king in France. As for the rest of the letter, he repeats his now familiar position. Notwithstanding his readiness to obey the king, he has no choice but to protect the legitimate rights of his see. Again, he charges Fox with distracting Henry from the important business of the war with France by inventing trivial issues to discredit Warham.<sup>67</sup>

Well launched into his campaign, Henry wrote one more time to Warham, from Tournai on 29 September 1513. He has had the report from his wife. Fox and his adherents have accepted his instructions. In sharper and shorter terms than he has used before, he demands that Warham fall into line and provide confirmation of his obedience, which the king has repeatedly required, “immediately upon receipt of these letters”.<sup>68</sup> Warham received this letter on 27 October and replied from Mortlake on the 29<sup>th</sup>. He alters none of his earlier arguments. He professes obedience to the king *salvo ordine meo*. The letter addresses Fox as much as Henry: he is the instigator of these vexations and distractions, and his motive is material gain. This could have been a reminder that Fox had declined Canterbury in order to retain the much wealthier see of

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<sup>67</sup> *Lit. Cant.* 3:435-37. To a handwritten summary of this letter Graves (found among his papers) added a note that on 16 September 1513 the queen wrote to Wolsey. Among other current news she tells him of what she had done about the letter which the king had sent to her from Calais “a great while ago”. She had shown the letter to Warham in the presence of Sir Thomas Lovell and Mr. Englefield, “but until now could never get an answer from him”. Wolsey, not yet a bishop, was with Henry on campaign; and Catherine forwarded Warham’s delayed response through him; see *Letters and Papers, Foreign and Domestic, Henry VIII*, 2<sup>nd</sup> ed., vol. 1, Part 2 (London: Public Record Office, 1920), 1916, no. 2269.

<sup>68</sup> *Lit. Cant.* 3:429-30.

Winchester.<sup>69</sup> Fox would seem to have had a better understanding of the political climate than Warham. Dom David Knowles commented on the changed attitude of Englishmen generally, including the higher clergy, to the crown under the Tudors from the time of Henry VII, when loyalty to the reigning monarch could prevail over any other attachment.<sup>70</sup>

This extended correspondence shows a marked difference of temperament in the writers of these letters, of which Warham, at least, seems to have been fully aware. Henry VIII in 1513 was a youth who had recently inherited the most powerful position in the kingdom, which, in his earlier years, he had not been expected to occupy. Not only was he young and ambitious, he was impatient to be recognised by his continental contemporaries as a military champion to be reckoned with, whether as friend or foe. Warham had spent two decades of responsible office in the service of the crown. His administrative experience had been shaped in the responsible and careful practices of Henry VII's council. He was no novice. He was cautious. Above all, as his

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<sup>69</sup> Henry's letter from Tournai, *Lit. Cant.* 3:437-38; and Warham's from Mortlake, *ibid.* 439-40. There is much sixteenth-century manuscript evidence for Canterbury's defence of its right to jurisdiction, as metropolitan and *legatus natus*, from Warham to Archbishop Matthew Parker. The intention, it seems, was to consolidate Archbishop Morton's assertion of those rights. See CM XI/84 of Lambeth Palace Library and, in the British Library, MSS Additional 48012 and Cotton Cleopatra F. 1.

<sup>70</sup> David Knowles, *Religious Orders in England*, 3 vols. (Cambridge: Cambridge University Press, 1957-60), vol. 3, 189, 195, 197-98. The advice given to the young Thomas More to be wary in his dealings with Fox on account of the bishop of Winchester's primary devotion to the service of Henry VII provides a relevant piece of evidence for Knowles' judgement; see R.W. Chambers, *Thomas More* (New York: Harcourt-Brace, 1935), 97-98.



replies to Henry VIII repeat endlessly, he was conscious of the long history of his office of archbishop of Canterbury, and the obligations which it entailed. He was already feeling his age and finding himself put to one side by those councillors whose advice the young king preferred. He seems to have had no objection to surrendering the office of Chancellor to Wolsey.

Yet Warham proved to be remarkably long-lived. He died very nearly twenty-nine years after his final defiance of Henry's written instructions of October 1513. Typically, he was not consistent in his action over those years.<sup>71</sup> At the end of his life, facing the threat of *praemunire* if he did not accept the adjudication of Henry's divorce in England, and, added to that, in the face of the vocal anti-clericalism of the Reformation House of Commons, he repeated the mantra of Becket's resistance to Henry II. Earlier in 1514-1515, the anti-clerical outburst over Hunne's case and the Commons' exclusion of minor orders from the privileges of benefit of clergy had prompted similar, if less emphatic, statements on his part.<sup>72</sup> Yet at that very same time he was

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<sup>71</sup> James Gairdner, "Warham, William," in *Dictionary of National Biography*, ed. Leslie Stephen and Sidney Lee, vol. 49 (New York: Macmillan, 1889), 378-80, tracks the fluctuations of Warham's position during the divorce proceedings of Queen Catherine. J.J. Scarisbrick, *Oxford Dictionary of National Biography*, article 28/28741, "Warham", emphasized his inconsistencies. G.W. Bernard noted the pressure brought by the king's agents during the divorce and the breach with Rome; see "The Tyranny of Henry VIII," in *Authority and Consent in Tudor England: Essays Presented to C. S. L. Davies*, ed. G.W. Bernard and S.J. Gunn (Aldershot: Routledge, 2002), 119-21.

<sup>72</sup> Scarisbrick, *Oxford Dictionary of National Biography*, article 28/28741, "Warham"; G.W. Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church* (New

prepared to offer some compromises over his prerogative claim to the probate of certain classes of wills, the central issue which he had defended throughout “Winchester Jurisdiction”. In 1514 he reached agreement on the issue with Wolsey, recently appointed to his first bishopric at Lincoln. In June 1515, he and Bishop Fitzjames agreed to a similar composition affecting testators in the diocese of London. In 1523 he made another arrangement with Wolsey, now cardinal and legate *a latere*, which lasted until the latter’s disgrace. By this elaborately worded settlement, all wills of those holding goods and chattels in diverse dioceses of both their provinces would be proved and administered by two named commissaries “according to the demands of law, custom and prerogative”. The revenues were to be divided equally, the two commissaries, who were also appointed as sequestrators, keeping the accounts.<sup>73</sup> One of these

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Haven: Yale University Press, 2005), 63. Bernard notes (p. 177) that Warham’s defiance of the king did not last, perhaps because of his failing health.

<sup>73</sup> For the agreement with Wolsey, Lambeth Palace Library, *Cartae Antiquae et Miscellaneae*, C.M. XI/85. See also London, B. L. Cotton Cleopatra F II, f. 173r and 202b for this agreement. The Lambeth source is cited by Kelly, *Canterbury Jurisdiction*, 91. He dates it March 1514, but Wolsey was not consecrated bishop of Lincoln until the very end of that month. The original, which is Wolsey’s record of the agreement, is not dated. The agreement with Bishop Fitzjames, and this time the text was issued by Warham, is in identical terms; see London, Guildhall Library, MS 9351/9. ff /f. 55-v. Graves’ Book 1 of Transcriptions, 55-63, records the text of the archbishop’s agreement, dated 29 June 1414. Churchill, *Canterbury Administration*, vol. 1, 410-11 for the agreement of 1523. John Allen, once warden of the English Hospice in Rome, was one of the two commissaries, A.B. Emden, *A Biographical Register of the University of Oxford A.D.*

commissaries was John Allen, whom Warham had appointed as one of his proctors for “Winchester Jurisdiction” back in April 1512.

Meanwhile, Julius II died at the end of February 1513; and Leo X was consecrated as his successor in the middle of the following month. Before his election, Leo had been Cardinal Giulio de Medici. Florence’s political interest had been pro-French in order to counter the ambitions of Visconti Milan, and the same position was taken by the Medici when Visconti ambitions fell to their Sforza successors. In the course of 1513, therefore, papal policy, led by Leo, veered away from the hostility to France which had dominated the pontificate of Julius, with the intention of finding an accommodation with the established interest of the Valois kings in Italy. Leo’s policy was based on a larger vision of European politics. For him, the pressing danger was the steady advance of the Ottoman Turks through the Balkans to the Danube basin. This called for unity among the kings and princes of Christendom and the powers in fragmented Italy with the goal of launching a crusade against the infidel. Leo particularly could hope that Francis I would be amenable to going on crusade.<sup>74</sup>

Warham was not the only prelate to shift his ground from the position he had taken in “Winchester Jurisdiction”. The new pope was among them. Despite a request that King Henry should intervene in the case between Warham and his suffragans, Pope Leo X wrote in January

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*1501-1540* (Oxford: Clarendon Press, 1974), 8b. Wolsey as archbishop of York also clashed with Warham over probate; see Thomson, *The Early Tudor Church and Society*, 106.

<sup>74</sup> Bram Kempers. “‘Sans fictione ne dissimulacion’: The Crowns and Crusaders in the Stanza dell’Incendio,” in *Der Medici – Papst Leo X. und Frankreich*, ed. Götz-Rüdiger Tewes and Michael Rohlmann (Tübingen: Mohr Siebeck, 2002), pp. 373-428.

1514 to the abbots of Waverley, St. Mary Graces, Thame, Ford and Combe, appointing them defenders of English appellants to Rome. From the brief English summary in the printed calendar this would seem to be a deliberate reaffirmation of papal jurisdiction in spiritual causes arising in England, after “Winchester Jurisdiction” had been recalled to England.<sup>75</sup>

“Winchester Jurisdiction” was one of forty-two English appeals to the Rota in the eighty years before the breach with Rome, and those cases were a late and minor element in the large topic of English judicial relations with the papacy in the Middle Ages. “Winchester Jurisdiction” deserves the attention it has been given here because it illustrates relations between the English church and the crown before the break with Rome. Those relations were not marked by hostility. In normal conditions, the reverse was true. The king of England was, after all, a baptized member of the church and, from the time of his coronation, a consecrated and anointed sovereign. He understood that, like his bishops and indeed all ordained clergy, he would have to answer for the well-being of his people to God, under whom he ruled. At the same time, as a temporal ruler, his first concern was the security of his dynasty, not least in the light of the anxieties on that score after 1485, and its ability to survive challenges from neighbours and rivals. In the Anglo-Saxon code of law and in the first clause of Magna Carta, English kings had promised to defend the liberties of the church; but in the last resort, if his effective power to defend the traditions of the throne were at risk, an English monarch could fall back on his royal right. In some circumstances the immediate demands of his temporal office overrode the more remote obligations of his spiritual character. In a small way, “Winchester Jurisdiction”

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<sup>75</sup> *Letters and Papers, Foreign and Domestic, Henry VIII*, 2nd ed., 1, Part 2, 1920, 1529. This entry is taken from a calendar of Leo X’s *Regesta*, edited by Joseph Hergenröther in 1884, without any further context.

illustrates this balance. Probate and prerogative jurisdiction were perennial issues. Likewise, there was repeated recourse to regalian right.<sup>76</sup> These problems did not disappear with the break with Rome, they just re-appeared in different forms. All Henry VIII's successors accepted the Royal Supremacy; and, at least as late as the reign of Queen Anne, they tried to shape the Church of England to their taste.<sup>77</sup>

For Henry VIII the outcome of "Winchester Jurisdiction" provided an early vindication of the right to assert the wishes of the monarch in matters normally within the church's jurisdiction. This was achieved without resort to Praemunire proceedings. There is no way of telling what was in his mind when he found his way to divorcing Queen Catherine blocked not only by political alignments in Europe, but, nearer home, by scruples on the part of his clergy, especially Archbishop Warham. When he abandoned Cardinal Wolsey and did nothing to curb the aggressive criticisms of the clergy in the parliamentary Commons in the early 1530s, he could have recalled the success of his intervention in "Winchester Jurisdiction". However,

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<sup>76</sup> Margaret Howell, *Regalian Right in Medieval England* (London: Athlone Press, 1962).

<sup>77</sup> The law courts wrestled with questions of inheritance even longer. These matters, which had vexed the church in England before 1534, continued long after. That the king's intervention was continually sought by churchmen during the medieval period is attested by the recent vol. 100 of the Canterbury and York Society, *Petitions to the Crown from English Religious Houses, 1272-1485*, ed. Gwilym Dodd and Alison K. McHardy (Woodbridge: Boydell, 2010). In 1515 Henry VIII cut short Wolsey's attempt "to refer to Rome the vexed issues of what sort of immunities the clergy should enjoy in the English courts"; see *Cardinal Wolsey, Church, State and Art*, ed. S.J. Gunn and P.G. Lindley (Cambridge: Cambridge University Press, 1991), 14.

beginning in 1527, he went farther, employing Praemunire to promote his supremacy in ecclesiastical matters. Despite this, his bishops added the qualification to the Act of Supremacy “as far as the law of Christ allows”. This allowed them to accept the Supremacy without risking further Praemunire proceedings while salving their consciences.

### **Appendix: Winchester Defamation**

After a short recess at Easter, which was on 11 April 1512, Trivultius was presented with a commission tangential to the Winchester case, perhaps moved by its principals taking advantage of the bishops’ appeal to Rome. The manual calls it *Wintoniensis diffamationis et pretense perjurii*.<sup>78</sup> Its principals were John Douman [or Dolman], Richard Tollet and Robert Davel [or Dauell]. Archbishop Warham accused them of “conspiracy, rebellion and perjury” for not supporting the jurisdiction and customs of Canterbury. Their proctor, William Stynt, presented his proctorial mandates and told the court that his principals could not expect justice in England for the same reasons that had caused the suffragan bishops to appeal. He obtained an inhibition against any action outside Rome in this *causa* for seventy days.<sup>79</sup>

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<sup>78</sup> 3149, 21 April. Helmholz has made some interesting observations about defamation. Slander, spoken words, found little place in canon law. However, in sharp contrast, defamation in one form or another was the most frequent cause of litigation in England’s ecclesiastical courts in the medieval and early modern periods; see *Oxford History of the Laws of England*, vol. 1, Ch. 11.

<sup>79</sup> Manual 87, fol. 70v, 23 April. Stynt first was proctor for the bishop of Winchester on 5 January 1512; Manual 87, fol. 4r. John Dowman or Doulman was a central figure in the Winchester administration, a Cambridge D.C.L., canon of Lichfield, later archdeacon of Suffolk, and with several benefices in Winchester diocese, including Meonstoke. He and Tollet were both

Before the long summer recess there were two hearings on 5 July concerning this dependent commission. Robert Davel and Richard Tollet were still involved, but a John Voysy [or Veysey] replaced John Douman. After the summer vacation, on 2 September 1512, the same title continued. William Stynt as proctor obtained issue of letters compulsory for this subordinate cause.

Before the Christmas recess was called, *Wintoniensis diffamationis et pretense periurii* reappeared in the manual. A papal letter favoring the archbishop and threatening the three original plaintiffs with censures had been issued on 1 October.<sup>80</sup> A commission in that cause was delivered on 10 November; and from then until 4 December Marius de Peruschis presented the *libellus* and articles, while Clerk, in defence of Canterbury, reaffirmed his proctorial mandate and protested that the cause should never have come before the auditor.<sup>81</sup> There certainly was no further mention of Stynt or his principals, and the confrontation was between Marius, Winchester's proctor, and Canterbury's proctor, Clerk, instead. Why this subsidiary cause continued after 1 October is unclear, but it must have been a distraction from the complaints of Canterbury's suffragan bishops.

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advocates in the Court of Arches. On Tollet, see Thomson, *The Early Tudor Church and Society*, 62-63, 109-10

<sup>80</sup> *Calendar of Entries in the Papal Registers relating to Great Britain & Ireland, Julius II Lateran Registers, Part Two*, 309 no. 549.

<sup>81</sup> Manual 87, fol. 216v.