

impossible to force the archbishop to submit to you so long as his suffragans continue unanimous and of the same opinion as himself. So even if you cannot detach all of them from him, you may at least by some means or other contrive to win some of them over to your side. Once this has been accomplished, the remainder will not easily maintain their opposition. With the bishops espousing your cause, if the archbishop alone should decide to persist obstinately in his opinion, he will not only fail to stand his ground, but may also easily incur sentence of suspension at the instigation of the bishops."¹ Schooled by this advice, the king summoned to his side at Gloucester those he deemed to be the more pliable among the bishops, namely Roger, archbishop of York, and the bishop of Lincoln,² on whom he so worked that they signified their willingness to confirm his customs, while he in turn promised to exact from them nothing which would contravene the privileges of their order. So these two submitted and solemnly engaged to do his pleasure. Not long afterwards the king won over Hilary, bishop of Chichester, to his party. . . .

126. The Constitutions of Clarendon (January 1164)

Following the abortive interview with the king at Northampton, the archbishop received letters from the pope and cardinals, advising him to submit to the king's demand for the legal surrender of "criminous clerks". Many of the bishops joined in this plea, and Thomas consented. The king summoned a council at Clarendon to give a solemn and public assent. Exactly what transpired when the council met in January 1164 is not clear. The debates, which stretched over three or four days, were certainly heated. In the earlier sessions the archbishops and bishops appear to have given a verbal promise to observe the "royal customs" in general terms. On the second, or possibly the third day, the king commanded that a formal statement embodying the customs of his grandfather should be drawn up and should receive the assent of all present. The resulting document embodies the Constitutions of Clarendon. It has been many times edited and translated; see Gervase of Canterbury, *Rolls Series*, I (1879), 178; and W. Stubbs, *Select Charters* (1913 edn), p. 163.

In the year 1164 from our Lord's Incarnation, being the fourth of the pontificate of Alexander,³ and the tenth of Henry II, most illustrious king of the English, in the presence of the said king was made this record and declaration of a certain part of the customs, liberties and privileges of his ancestors, that is, of King Henry, his grandfather, and of other things which ought to be observed and maintained in the realm. And by reason of the dissensions and discords which had arisen between the clergy and the justices of the lord king⁴ and the barons of the realm concerning the customs and privileges of the realm, this declaration was made in the presence of the archbishops, bishops and clergy, and of the earls, barons and magnates of the realm. And these

¹ Edward Grim (*Materials*, II, 377) and William of Canterbury (*ibid.*, I, 14) confirm this story of the intrigue of Arnulf of Lisieux, and their accounts are similar in substance to that of Roger. The unscrupulous bishop still continued to pose as a friend, well-wisher and counsellor to Thomas; see his letter in March 1165 (No. 135).

² Robert "de Chesney" 1148-66; Edward Grim (*loc. cit.*, ante) substitutes the bishop of London, and this is the more probable, for Gilbert Foliot, recently translated from Hereford, was by now the archbishop's most determined opponent.

³ Alexander III

⁴ the "criminous clerks" controversy

same customs were acknowledged by the archbishops and bishops, and the earls, barons, nobles and elders¹ of the realm. Thomas, archbishop of Canterbury; and Roger, archbishop of York; Gilbert, bishop of London; Henry, bishop of Winchester; Nigel, bishop of Ely; William, bishop of Norwich; Robert, bishop of Lincoln; Hilary, bishop of Chichester; Jocelyn, bishop of Salisbury; Richard, bishop of Chester; Bartholomew, bishop of Exeter; Robert, bishop of Hereford; David, bishop of St David's; and Roger, bishop-elect of Worcester, agreed, and by word of mouth steadfastly promised on the word of truth to the lord king and his heirs, that these customs should be kept and observed in good faith and without evil intent. There were present: Robert, earl of Leicester;² Reginald, earl of Cornwall; Conan, count of Brittany; John, count of Eu; Roger of Clare, the earl;³ Geoffrey of Manneville, the earl;⁴ Hugh, earl of Chester; William,⁵ earl of Arundel; Earl Patrick;⁶ William of Ferrières, the earl;⁷ Richard of Lucé; Reginald of Saint-Valery; Roger Bigot; Reginald "de Warenne"; Richer of Laigle;⁸ William of Briouze; Richard "de Camville"; Nigel "de Moubrai"; Simon "de Beauchamp"; Humphrey "de Bohun"; Matthew of Hereford; Walter of Mayenne; Manasser Bissett the steward; William Malet; William of Courcy; Robert of Dunsterville; Jocelyn "de Balliol"; William "de Lanvalis"; William "de Chesney"; Geoffrey "de Ver"; William of Hastings; Hugh of Morville; Alan "de Neville"; Simon fitz Peter; William Maudit the chamberlain; John Maudit; John the marshal; Peter "de Mara"; and many other magnates and nobles of the realm, both clerks and laymen.

Now of the acknowledged customs and privileges of the realm a certain part is contained in the present document, of which part these are the heads:

1. If a dispute shall arise between laymen, or between clerks and laymen, or between clerks, concerning advowson and presentation⁹ to churches, let it be treated and concluded in the court of the lord king.¹⁰
2. Churches within the fief of the lord king cannot be granted in perpetuity without his consent and concession.¹¹
3. Clerks cited and accused of any matter shall, when summoned by the king's justice, come before the king's court to answer there concerning matters which shall seem to the king's court to be answerable there, and before the ecclesiastical court for what shall seem to be answerable there, but in such a way that the justice of the king shall send to the court of holy Church to see how

¹ *antiquiores*

² Robert of Beaumont, see table 12

³ of Hertford

⁴ of Essex

⁵ William of Aubigny

⁶ of Salisbury

⁷ of Derby

⁸ Becket's patron as a young man, and responsible for introducing him to the court of Archbishop Theobald.

⁹ *Jus praesentationis* or right of patronage; the Church claimed that suits arising out of disputes concerning this right pertained to the cure of souls, while the king regarded them as questions of real property, which he was bound to protect. In Stephen's reign such suits had been heard in ecclesiastical courts. The king regarded this as usurpation and claimed in this clause to be restoring an older right and custom of his predecessors.

¹⁰ the *curia regis*

¹¹ i.e. churches on the king's estates must not be alienated. The object of this clause was to preserve the feudal services, and to this Becket raised no objection.

the case is there tried. And if the clerk shall be convicted or shall confess, the Church ought no longer to protect him.¹

4. It is not lawful for archbishops, bishops and beneficed clergy² of the realm to depart from the kingdom without the lord king's leave. And if they do so depart, they shall, if the king so please, give security that neither in going, nor in tarrying, nor in returning will they contrive evil or injury against the king or the kingdom.³

5. Excommunicates ought not to give pledges of security for future good behaviour⁴ nor take oaths, but only to give sufficient pledge of security to abide by the judgment of the Church in order to obtain absolution.

6. Laymen ought not to be accused save by accredited and lawful accusers and witnesses in the presence of the bishop, in such wise, however, that the archdeacon may not lose his right nor anything due to him thereby. And if the accused persons be such that no one either wishes or dares to prefer a charge against them, the sheriff, when requested by the bishop, shall cause twelve lawful men of the neighbourhood or township to swear before the bishop that they will manifest the truth of the matter to the best of their knowledge.⁵

7. No one who holds of the king in chief nor any of the officials of his demesne shall be excommunicated, nor the lands of any of them placed under interdict, unless application shall first be made to the lord king, if he be in the realm, or to his chief justice, if he be abroad, that right may be done him; in such wise that matters pertaining to the royal court shall be concluded there, and matters pertaining to the ecclesiastical court shall be sent thither to be dealt with.⁶

8. With regard to appeals, if they should arise, they should proceed from the archdeacon to the bishop, and from the bishop to the archbishop. And if the archbishop should fail to do justice, the case must finally be brought to the lord king, in order that by his command the dispute may be determined in the

¹ The interpretation usually accepted is that of F. W. Maitland in his essay VI, "Henry II and the criminal clerks", *Roman Canon Law in the Church of England* (1898), pp. 132-47. A clerk accused of a grave offence, murder and the like, is to answer before the king's justice for the breach of the king's peace committed by the felony. Then he is to be sent on to the ecclesiastical court to answer there, as a clerk, to the homicide, in which court the trial will take place (*res ibi tractabitur*). If convicted by this spiritual tribunal, he will be degraded, and the Church "ought no longer to protect him". He is then to be brought back to the king's court, now no longer a clerk but a mere layman, to be sentenced without further trial to the penalties appropriate to a layman, death or mutilation. The purpose of sending a royal officer to witness the proceedings in the ecclesiastical court is to prevent the possibility of the offender's escape. In this view purely ecclesiastical offences were not in question, there was no dispute between king and primate as to the competence of either tribunal, and the king was certainly not proposing that a clerk accused of a felony should be tried in a temporal court, which would have been a gross violation of the canon law, to which incidentally the king appealed in support of his claim. Hence the support which the king received from the English bishops generally at the council of Clarendon in this matter on the ground that his demand was not unreasonable. Becket opposed the clause on the ground that it was wrong that a man should be punished twice for the one offence.

² *personis*

³ The clause is designed to restrict the relations between the English clergy and Rome, and should be taken in conjunction with clause 8, dealing with appeals.

⁴ *ad remanens*; the clause is directed towards obtaining just treatment for excommunicates

⁵ *secundum conscientiam suam*; the sworn inquest is here applied in the form of the accusing jury

⁶ reaffirms and safeguards the separation of the two jurisdictions by William I; see No. 79

archbishop's court, in such wise that it proceed no further without the assent of the lord king.¹

9. If a dispute shall arise between a clerk and a layman, or between a layman and a clerk, in respect of any holding which the clerk desires to treat as free alms,² but the layman as lay fee,³ it shall be determined by the recognition of twelve lawful men through the deliberation, and in the presence of the king's chief justice, *whether*⁴ the holding pertains to free alms or to lay fee. And if it be judged to pertain to free alms, the plea shall be heard in the ecclesiastical court; but if to lay fee, it shall be heard in the king's court, unless both of them shall claim from the same bishop or baron. But if each of them appeal concerning this fief to the same bishop or baron, the plea shall be heard in the latter's court, in such wise that he who was originally in possession shall not lose possession by reason of the recognition that has been made, until the matter has been settled by the plea.

10. If any one of a city or castle or borough or demesne manor of the lord king be cited by archdeacon or bishop for any offence for which he is obliged to make answer to them, and he refuse to give satisfaction at their citations, it is highly proper to place him under interdict; but he ought not to be excommunicated until application has been made to the chief officer of the lord king in that town, in order that it may be adjudged meet for him to make satisfaction. But if the king's officer fails to act in this, he himself shall be at the mercy of the lord king, and thereafter the bishop shall be allowed to coerce the accused by ecclesiastical justice.

11. Archbishops, bishops and all beneficed clergy of the realm,⁵ who hold of the king in chief, have their possessions from the lord king by barony and are answerable for them to the king's justices and officers; they observe and perform all royal rights and customs and, like other barons, ought to be present at the judgments of the king's court together with the barons,⁶ until a case shall arise involving a judgment concerning mutilation or death.⁷

12. When an archbishopric or bishopric is vacant, or any abbey or priory of the king's demesne, it ought to be in the king's hand, and he shall receive from it all revenues and profits⁸ as part of his demesne. And when the time shall come to provide for the church, the lord king ought to summon⁹ the more important of the beneficed clergy of the church, and the election ought to take place in the lord king's chapel with the assent of the lord king and the advice

¹ i.e. no appeals may proceed to Rome without the king's consent. This clause aroused bitter hostility and was abandoned after the king's surrender at Avranches in 1172; see No. 156.

² the purely ecclesiastical tenure of frankalmoign ³ i.e. by the ordinary feudal tenures

⁴ the assize *Utrum*; a procedure invented by Henry II to deal with disputes regarding the form of tenure. The jury or sworn inquest procedure is here employed to ascertain a question of fact; see No. 58, p. 508.

⁵ *universae personae regni*

⁶ Ecclesiastical tenants-in-chief of the crown are to hold by ordinary feudal tenures and are to be bound by feudal law and custom. To this Becket raised no objection.

⁷ By canon law no ecclesiastic could be present at, or take part in "shedding of blood"; hence he is to be allowed to retire from the *curia regis* when sentences of this nature are pronounced.

⁸ *omnes redditus et exitus*

⁹ *mandare*

of the clergy of the realm whom he shall summon for this purpose. And the clerk elected shall there do homage and fealty to the lord king as his liege lord for his life and limbs and his earthly honour, saving his order, before he is consecrated.¹

13. If any of the magnates of the realm should forcibly prevent² an archbishop or bishop or archdeacon from doing justice to himself or to his people, the lord king ought to bring him to justice. And if perchance anyone should forcibly dispossess² the lord king of his right, the archbishops, bishops and archdeacons ought to bring him to justice, so that he may make satisfaction to the lord king.

14. The chattels of those who are under forfeiture to the king may not be retained by any church or cemetery against the king's justice, because they belong to the king, whether they be found within the churches or without.³

15. Pleas of debt due under pledge of faith, or even without pledge of faith, are to lie in the justice of the king.⁴

16. Sons of villeins ought not to be ordained without the consent of the lord on whose land they are known to have been born.⁵

This record of the aforesaid customs and privileges of the crown was drawn up by the archbishops, bishops, earls, barons, nobles and elders of the realm at Clarendon on the fourth day previous to the Purification of the Blessed Virgin Mary⁶ in the presence of the lord Henry,⁷ and of his father, the lord king. There are, moreover, many other great customs and privileges pertaining to holy mother-church and to the lord king and the barons of the realm which are not contained in this document. Let them be safe for holy Church and for our lord, the king and his heirs and the barons of the realm. And let them be inviolably observed for ever and ever.

127. Herbert of Bosham on the Constitutions of Clarendon (1164)

Despite his verbal promise Thomas Becket objected to the detailed concessions embodied in the Constitutions of Clarendon. He therefore at first refused his assent to them. Considerable pressure was then brought on him both by the bishops and the lay magnates. Finally, still reluctant, but overcome by threats and entreaties, he agreed to pledge his word to the observance of the "customs". Herbert of Bosham's comment on these events is given in *Materials for the History of Thomas Becket*, IV, 305.

When the customs had been written down in the form of a chirograph, the king demanded from the archbishop and his suffragans that for greater safety and security they should append their seals thereto. But the archbishop,

¹ The clause places on record the compromise regarding investitures reached by Henry I and Anselm in 1107; see No. 107, pp. 721-2.

² *defortiauerit*

³ A clause asserting the king's rights in respect of movable property left by those who had been condemned for treason or felony and had fled the country: such possessions were often stored within ecclesiastical precincts, where they enjoyed the customary privilege of sanctuary. The king regarded this as an abuse and an infringement of the "king's peace".

⁴ i.e. within the king's jurisdiction ⁵ A clause aimed at preventing the loss of villein services to the lords.

⁶ 29 January 1164

⁷ afterwards "the young king"

though exceeding sorrowful, disguised his real feelings, being unwilling further to vex the king. With some caution he did not utterly refuse, but asked that the question should be deferred for the present. Even if they were prepared to do so, he added, a short delay was fitting on account of the gravity of the business, since according to the Book of Wisdom no weighty matter should be decided without counsel; then, after deliberation, the bishops and he might more fittingly be asked to do so on another occasion. Nevertheless he accepted the documents containing the said customs with forethought and prudence, that he might have, as it were, his cause with him in writing. The archbishop of York received the second part of the chirograph, and the king kept the third to be deposited in the royal archives. So the archbishop departed from court and set out for Winchester.

128. Alan of Tewkesbury on events following the council of Clarendon (1164)

(*Materials for the History of Thomas Becket*, IV, 305)

And as he went there arose on the way a murmuring among his household. Some put forward the usual argument that the matter had to be so dealt with on account of the urgency of the times. Others were indignant that the Church's guarantee of freedom should have been forfeited by the consent of one man. Among the latter one man in particular insisted, "The civil power disturbs everything. Iniquity rages against Christ himself. The synagogue of Satan profanes the sanctuary of God. Princes have gathered together against the Lord's anointed. No man is safe who loves equity. In the world's judgment they alone are wise and to be respected who obey the prince to the uttermost. This tempest has shaken even the pillars of the Church, and when the shepherd has fled, the sheep are scattered before the wolf. From henceforth what place will there be for innocence; who will stand against the adversary or who will triumph in the battle when the leader is vanquished?" Thus murmured the archbishop's cross-bearer.¹ The rest were silent in perplexity, and he, taking up his parable, added more boldly, "What virtue is left to him who has betrayed his conscience and his reputation?" "Against whom are your words directed, my son?" said the archbishop. "Against yourself," he answered, "for you have today wholly betrayed both your conscience and your fame, and having left to posterity an example hateful to God and contrary to honour, you have now stretched forth your hands to observe impious customs and have joined with the wicked servants of Satan to the confusion of the Church's freedom." At this the archbishop groaned and said with sighs, "I repent and am so aghast at my transgression that I judge myself from henceforth unworthy as a priest to approach him whose Church I have thus basely

¹ Alexander Llewelyn