1936

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THE WRIT OF PROHIBITION TO COURT CHRISTIAN

By Norma Adams*

When a party to a suit in our state courts—a Minnesota probate court, for example—petitions for relief by writ of prohibition, he seeks one of the most ancient remedies of the English common law. From the age of Glanvill writs of prohibition have been issued to restrain proceedings in inferior courts and in courts of rival jurisdiction "upon the suggestion that either the cause originally or some collateral matter arising therein does not belong to that jurisdiction." In the 13th century the most formidable rival of the common law was that hierarchy of ecclesiastical courts known to the middle ages as court christian. The writ to restrain proceedings in court christian anticipated our modern remedy by writ of prohibition,—a remedy which has preserved the primary function and many of the characteristics of its ancestry.

Origin

Writs to restrain legal proceedings probably date from the very beginning of the writ process. The twelfth century pleas collected by Bigelow include several writs which were issued to protect the party from vexatious suit. One of these, dated as early as the year 1160, is an injunction by the king's court, forbidding a de-

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*Of Monticello College, Godfrey, Ill. This article was written while the author was Sterling Fellow in History at Yale University, and was revised with the advice of Prof. George E. Woodbine of Yale. The material was collected at the University of Minnesota.

1 In re Martin’s Estate, (1931) 182 Minn. 576, 235 N. W. 279; In re Davidson, (1926) 168 Minn. 147, 210 N. W. 40. For other Minnesota cases in which the parties have sought relief by writ of prohibition to an inferior court or judicial officer, see State ex rel. Princeton v. District Court of Hennepin County, (1929) 179 Minn. 90, 228 N. W. 444; State ex rel. Townsend v. Ward, (1897) 70 Minn. 58, 72 N. W. 825; State v. Young, (1881) 29 Minn. 474, 9 N. W. 737; State v. St. Paul Municipal Court, (1879) 26 Minn. 162, 2 N. W. 166.


3 Of these pleas, the earliest is the case of Abbot Walter v. The Bishop of Chichester, (1148), Bigelow, Placita Anglo-Normannica 156. The fact that the words ne quis eos injuste ponat in placitum appear in two early writs of protection may indicate that originally the restraint of legal proceedings was a remedy for the party. Bigelow, Placita Anglo-Normannica 172, 256.
mandant to seek his land in a manorial court. By the end of Henry II's reign, when the treatise ascribed to Glanvill was written, two remedies to stay legal proceedings had become de cursu or fixed in form. One was the breve de pace habenda, or writ of peace, which bade the sheriff proceed no further in a real action or cause the lord of a manorial court to cease from trying a similar action, because the tenant had put himself on the grand assize of the king. Although this writ was addressed to the judge and not to the parties, it was a remedy to protect the tenant from suit by his adversary until the respective rights in the land could be determined by use of the royal procedure. Refusal to obey a writ of peace constituted both contempt of the king and injury to the party.

The second writ of course given by Glanvill was the prohibition to court christian.

"Prohibitio," says Cowel's Interpreter, "is a writ to forbid any court, either spiritual or secular, to proceed in any cause there depending, upon suggestion that the cognizance thereof belongeth not to the same court... But is now most usually taken for that writ which lieth for one that is impleaded in the court christian, for a cause belonging to the temporal jurisdiction, or the conusance of the king's-court."

How early this remedy against the ecclesiastical courts in England originated we do not know. The first reference which implies its use is printed in Madox, History of the Exchequer, and dates from the year 1185, only a short time before Glanvill's treatise. Two men were amerced in that year, one for suing, the

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5 Bigelow, Placita Anglo-Normannica 1187; 225; 3 Historical Collections Staffordshire 30; Maitland, Bracton's Note Book no. 1847.
6 An interesting early case, based on a writ of peace, reminds us of the prohibition not only because of its form but also because it seems to question the jurisdiction of the lord's court, "since in the time of Henry the father, no freeman was accustomed to be impleaded for his free tenement in this court other than by writ of the lord king or of his chief justice." 3 Curia Regis Rolls 108. Cf. Glanvill, De Legibus lib. XII, c. 25. The defendant who had proceeded against the writ of peace denied injuriam et contemptum. 3 Curia Regis Rolls 109. For other cases in which the writ de pace habenda was used see 1 Curia Regis Rolls 3; 3 ibid. 339; 5 ibid. 225; 3 Historical Collections Staffordshire 30; Maitland, Bracton's Note Book no. 1847.
7 Cowel, A Law Dictionary or The Interpreter of Words and Terms tit. Prohibitio. Cf. writ issued in the case of the monks of Canterbury v. Archbishop Baldwin (1187) a writ which seems to anticipate the prohibition to ecclesiastical judges delegated by the papacy. Bigelow, Placita Anglo-Normannica 240. Writs of prohibition to courts other than court christian appear infrequently on the close and patent rolls of the period. Cf. 1 Rotuli Litterarum Clausarum Clausarum 103a.
other for hearing, a plea in court christian. Increased knowl-
edge of the canon law of the church and the legal reforms of
Henry II had made a judicial conflict between church and state
inevitable, and it is reasonable to suppose that the same conditions
which led to the Constitutions of Clarendon and to the death of
Thomas Becket also explain the formation and use of the writ of
prohibition.

FORM OF THE WRIT

Whatever the circumstances of their origin, two distinct forms
of prohibition to court christian were known to Glanvill. The
first was a writ prohibiting the ecclesiastical judges from hearing
a plea touching lay fee. It read:

“The king to those ecclesiastical judges greeting: I prohibit
you from holding the plea in court christian between N. and R.
touching the lay fee of the aforesaid R., whence he (R) com-
plains that the aforesaid N. impleaded him in court christian be-
fore you, because that plea belongs to the crown and to my dignity.”

The second was a writ to protect patrons of churches against
a suit in court christian which might damage their rights of ad-
vowson. This writ, which was known by its wording as the
indicavit, read as follows:

“The king to those ecclesiastical judges greeting: R has in-
dicated to me that although T., his clerk, should hold by his pre-
sentment the church in that vill which is of his advowson, as he
says, N., a clerk, seeking the same church from the advowson of
M., a knight, drew him in plea before you in court christian.
If, indeed, said N. should deraign that church from the advow-
son of said M., it is clear that then said R. would incur thereby
the loss of his advowson. And since disputes touching advowsons
of churches belong to the crown and to my dignity, I prohibit
you from proceeding in that case until it shall have been deraigned
in my court to which of them the advowson of that church shall
belong.”

Like the regular writ of prohibition given above, this writ
of indicavit was addressed to the ecclesiastical judges and for-
bade them to hear the plea because it belonged to the crown and
royal dignity. Unlike the regular form, however, it was in the
nature of an interlocutory injunction. It insisted that the plea
should be abated only until the rights of patronage could be de-
termined in the king’s court, on the assumption that continua-

8Madox, History of the Exchequer f. 390; Bigelow, Placita Anglo-
Normannica 278.
9Glanvill, De Legibus lib. XII, c. 21.
10Ibid. lib. IV, c. 13.
tion in court christian would result in loss to the personal rights of the defendant.

Both the writ prohibiting actions of lay fee and that touching rights of advowson either in the regular or the indicavit form were in common use between the time of Glanvill and the age of Bracton. That period of fifty years, however, saw two important changes in the remedy by writ of prohibition. First, although the writ to the ecclesiastical judges remained the same, the writ to restrain the party suing in court christian, a writ which in Glanvill's treatise is addressed to the sheriff, soon became a writ of course separate from words of summons or attachment. By Bracton's time a writ directed to the party, an injunction in personam without any official as intermediary, was made to agree with each writ addressed to the judges. Second, the early thirteenth century brought a marked increase in the number of writs of prohibition which were available in the chancery. Instead of two forms, one touching lay fee and the other touching rights of advowson, Bracton gives us a dozen different writs of prohibition for the defendant who was injured by suit in a church court. Other writs are listed on the MS. registers of writs dating from this period or appear among chancery records. Of

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11 Except for an interlocutory injunction, issued on November 3, 1214, to prevent a plea in court Christian for damages incurred by a clerk during the interdict until the king could make an inquest (I Rota Litt. Clausarum 174b), no writs of prohibition to court Christian have been found on the chancery rolls of Richard and John. On the other hand, over forty cases based upon the writ are printed in the volumes of the Curia Regis Rolls.

12 Glanvill, De Legibus lib. IV, c. 14; ibid. lib. XII, c. 22.

13 Bracton, De Legibus f. 402. By the fourteenth century the registers gave a writ to the ecclesiastical judges, one to the party, a writ of attachment on the prohibition, and a writ appointing an attorney. Minor differences in wording may be noted in the clause of complaint and in the causal clause. For examples see Bracton, De Legibus fs. 403b, 404; Patent Rolls (1216-1225) 148; Patent Rolls (1232-47) 200; Close Rolls (1234-7) 356, 524, 540; ibid. (1237-42) 435-6, 521; ibid. (1259-61) 180; Calendar of Close Rolls (1296-1302) 198.

14 Bracton, De Legibus fs. 402 et seq. Bracton gives a regular writ touching either lay fee or chattels with its corresponding writs to judges delegate and to the party; several forms of writs touching rights of advowsons; a writ to protect the king's ministers, and three writs to prevent pleas of legitimacy from being referred to court Christian without a mandate from the justices. No doubt, these last three writs were included because the dispute over "special" bastardy was at its height at the time when Bracton wrote. No writ touching pleas of bastardy appears on the registers, and only one case has been found on the plea rolls in print which could have been based upon a writ of prohibition in this form. 2 Curia Regis Rolls (1925) 5, 8.

15 The earliest registers of writs are described by Maitland in The History of the Register of Writs, (1889) 3 Harv. L. Rev. 107 et seq. The
these the majority of cases on the plea rolls are based on one of three distinct forms: the writ prohibiting actions of lay fee, the writ touching rights of patronage, and a third writ which had become popular in the first quarter of the thirteenth century, i.e., the writ prohibiting pleas touching chattels and debts which were not derived from marriage or from last will and testament. To sue in court christian for lay fee, rights of advowson, or secular debts and chattels was to sue against the crown and dignity of the lord king.

first of these was a list of writs sent to the Irish chancery in 1227 and included writs of prohibition touching lay fee and advowsons. Another Cambridge MS. register, dating from 1236-67, adds a writ touching Chattels and debts not de matrimonio et testamento, a writ touching tithes and one against entertaining a cause in which B, who had been convicted of disseising A, complains that A, has defamed his person and estate. The writ concerning tithes may well be the prohibition de decimis separatis pro alio qutam pro rege which was of early date and appears on a MS. register of writs dating from the end of the thirteenth or beginning of the fourteenth centuries (MS. no. 24, Harvard Law Library, f. 21). The writ against bringing an action for defamation is not given by Bracton but appears again on a MS. register of the fourteenth century (Formulare Brevium, MS. no. 23, Harvard Law Library, f. 44d). Although defamation was sometimes used as an excuse for suing in court christian, only one thirteenth century case has been found which may have been based upon this form of the writ. Placitorum Abbreviatio 269b (1279). The third register which Maitland describes dates from the early years of Edward I's reign and includes prohibitions in a group of ecclesiastical writs. Those which are said to be of course are writs touching lay fee, rights of advowson, and secular chattels. Although of comparatively late date, this register does not include a regular writ of prohibition touching trespass against the peace, a writ which seems to have become a writ of course before the end of the thirteenth century. It appears on a MS. register (MS. no. 24, Harvard Law Library, fs. 204-21) which was probably begun in 1294. Several earlier writs for the protection of ministers anticipate the prohibition of trespass both in subject matter and in phraseology. Cf. Bracton, De Legibus f. 404; Close Rolls (1254-6) 230. For the writ in its de cursu form see Calendar of Close Rolls (1288-96) 330 et seq.

Examples of the various forms of writs of prohibition are found on the close and patent rolls in print and in Prynne, An Exact Chronological Vindication (known as Prynne's Records) 3 vols. in 6, 1665-70. The writs given by Prynne are of value because many date from the years for which no close rolls are yet in print, and also because they give us the complete Latin form of writs which have been calendared in the printed volumes.

The writ prohibiting pleas of chattels and debts not derived from marriage or last will does not seem to have been in use during the reign of John. Of the three cases dealing with chattels, none use the standard phrase nisi de matrimonio et testamento, 1 Curia Regis Rolls 433; Select Civil Pleas (3 Selden Society, 1889) no. 83; 2 Curia Regis Rolls 28; 6 Curia Regis Rolls 17, 47, 79. The first case based upon the writ in its de cursu form is Bracton's Note Book no. 48 (Michaelmas term, 1219). After the middle of the thirteenth century, the cases of chattels and debts far outnumber those of lay fee. Undoubtedly this increase is partly due to an increase in the amount of money in circulation in the early thirteenth century.
Although the early plea rolls leave many questions unanswered, it is possible from a study of the cases in print to reconstruct most of the procedure in an action based upon a writ of prohibition. Whenever a party feared the loss of his lay fee because he was being sued before an ecclesiastical judge, he sought in the chancery two original writs of prohibition touching lay fee, one addressed to his adversary in the church court, the other addressed to the judge who was hearing the plea. Whether the plaintiff was the king himself or an ordinary freeman, these two writs were his as of course if he could pay the necessary fees. He also did well to produce a libel, sealed with the seal of the ecclesiastical judges, which showed that his case was before the church court. Having obtained the writs, he then delivered

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17 Over three hundred cases of attachment on the writ of prohibition are in print for the long reign of Henry III. Of these the most valuable are the cases in the Note Book of Bracton. These cover the years between 1219 and 1240. From 1240 to the end of the century cases are found in local publications such as those of the Somerset Record Society, the William Salt Archaeological Society etc.; in the Placitorum Abbreviatioi; the Records of Prynne, and the Year Books of Edward I in the Rolls Series.

18 Often the term original writ is used to mean a writ by which a civil action was commenced as distinct from a judicial writ, issued during the course of an action. Writs of prohibition, like pardons, protections, licenses etc., did not originate an action. As will appear, the effect of the writ was to stop the action in a church court, thus making it necessary for the plaintiff to purchase a new writ if he wished to continue in a secular court. Otherwise, the result was an action, initiated not by the regular writ of prohibition, but by a writ of attachment on the prohibition. The writ of prohibition was original only in the sense that it issued out of the chancery. Maitland, The History of the Register of Original Writs, 3 Harv. L. Rev. (1889) 106. A distinction should be made, however, between this original writ of prohibition and the prohibitory writ issued by the justices as a final judgment.

19 Fitzherbert tells us that the king might sue out the writ of prohibition because, although the plea in court christian was between common persons, the suit was in derogation of the crown. Fitzherbert, The new Natura Brevium, 1687 ed., f. 40E. In the thirteenth century the king was plaintiff in many cases of attachment especially in those which involved royal rights of patronage.

20 A study of the fine rolls shows that the price of writs of prohibition did not always exceed that of other original writs. In John's reign, for example, Joscelin of Irenchester gave the king forty shillings for a writ of prohibition to court christian. Rotuli de Oblatis et Finibus 89; 1 Curia Regis Rolls 433.

21 There was considerable controversy among the justices of the seventeenth and eighteenth centuries whether writs of prohibition should issue ex debito justitiae or de gratia. See 5 Bacon, Abridgement, 1813 ed., sec 649; Justice v. Brown, (1668) Hardres 474. In the thirteenth century there is nothing to indicate that the chancellor either examined the libel for lack of jurisdiction or applied any doctrine of clean hands similar to that used in issuing an injunction. After the Circumspecte Agatis of 1286, which prevented the use of prohibition in suits for tithes amounting to less than a quarter of the value of the benefice, the plaintiff who sought an indicavit must
them himself in the presence of witnesses, and since the remedy was preventive and not remedial, he made this delivery at some time before the final sentence had been pronounced against him in the church court.\textsuperscript{22}

When either the ecclesiastical judge feared the consequences of disobedience, or the adversary was prepared to give up his suit in court Christian, delivery of the writs of prohibition brought an end to the litigation, acting as a final injunction. Cases of attachment for contempt of the writ, however, show that in the thirteenth century disobedience was a common occurrence. Ordinary judges in church courts as well as judges delegated by the pope were anxious to profit from an increase in their jurisdiction, and many a party litigant was willing to risk proceeding against the writ of prohibition in order to take advantage of canon law procedure. He knew that in so doing he was committing an offence against the crown, a crime laesae majestatis, and that he would be summoned or attached\textsuperscript{23} to appear before the king or before his justices to show cause.\textsuperscript{24} Nevertheless,

\begin{footnotes}
  \item first prove to the chancellor that his suit was for more than that amount. Not until the fourteenth century, however, do we find a petition that writs of prohibition should not be granted until either a libel or citation or other muniment, sealed, signed, or otherwise proved, had been discussed in the chancery and the decision made that the cognizance pertained to the secular court. 2 Rotuli Parliamentorum 207; 3 ibid. 120. Cf. Fitzherbert, The new Natura Brevium f. 45C.
  \item 2 Fitzherbert, The new Natura Brevium f. 45B; Bracton’s Note Book no. 1599.
  \item 2 Fitzherbert gives a writ of summons in a writ of prohibition touching pleas of advowson. Glanvill, De Legibus lib. IV, c. 14. References to summons are frequent in the Curia Regis Rolls of Richard and John but rarely appear in later cases. 1 Palgrave, Rotuli Curiae Regis 437; 2 ibid. 273; 1 Curia Regis Rolls 352, 426; 2 ibid. 28; 4 ibid. 132, 198; 6 ibid. 110; Plactt. Abbrev. 67a; Rolls of the Justices in Eyre (53 Selden Society, 1934) no. 1283; Bracton’s Note Book no. 350; (1897) 11 Somerset Record Society no. 1300; 5 Prynne’s Records 75. Like other forms of contempt, disregard of a writ of prohibition was punished by summary attachment even without previous summons. The majority of the thirteenth century cases are cases of attachment on the writ of prohibition. Glanvill’s writ of attachment follows the prohibition touching lay fee. Like that given in Bracton and on the registers of writs, it reads: “si praefatus R. fecerit te securum de clamore suo prosequendo, tunc pone per vadium et salvos plegios praedictum N. quod sit coram me vel iusticiis meis eo die ostensurus quare” etc. Glanvill, De Legibus lib. XI, c. 22; Bracton, De Legibus f. 409; MS. no. 24, Harvard Law Library f. 20. The Year Books often refer to a second attachment, a writ out of the rolls, issued by the justices when the case had continued in court Christian after the first writ of attachment had been delivered. (1302) Y. B. 30-31 Edward I, 454-5; (1304) Y. B. 32-3 Edward I, 14-17, 62-3.
  \item 24 In John’s reign the greater number of cases were tried at Westminster; one case begun before the king in Easter term, 1206, was completed before the justices de banco. 4 Curia Regis Rolls 110, 189, 208, 222. All but one of the cases of prohibition in Bracton’s Note Book were taken
\end{footnotes}
many men, some of them famous in the religious and political life of the thirteenth century, make up the list of defendants. Among them were clerks of all ranks from rural deans to archbishops and papal legates. Among them also were laymen who had preferred ecclesiastical to lay jurisdiction and were called into the royal courts to explain why they had sued in court christian contrary to a writ of prohibition.

Even a cursory study of the early cases of attachment on the writ of prohibition shows how unsatisfactory was the legal process of the thirteenth century. Parties who had been attached for suing or for hearing a plea in court christian were to find pledges for their appearance on the day named in the writ of attachment. In a large proportion of the cases they failed either to appear or to offer excuse. In the year 1201, for example, the

from the de banco records or from eyre rolls of Martin Pateshull and William Raleigh. Of the cases in local publications and in Prynne's Records, the majority were tried either at Westminster or before the itinerant justices, but a few were tried coram rege. Bracton's Note Book no. 1143; Placit. Abbrev. 107b, 108a, 111b, 134b; Coram Rege Roll of 1297 (British Record Society, 1898) 45, 71, 87; 5 Prynne, Records 104d, 107d; 4 Historical Collections of Staffordshire 112, 127; 5 ibid. 92; 6 ibid. (pt. 1, 1885) 208. See protest against citation coram rege in 2 Wilkins, Concilia 117-8; Graves, Circumspecte Agatis, (1928) 43 English Historical Review 4. A few attachment cases were tried before the council or before the barons of the exchequer. Select Cases before the Council (1243-1482) (35 Selden Society, 1918) 5-7; 4 Historical Collections Staffordshire 128, 130; Placit. Abbrev. 130b, 138b; Select Cases in the Exchequer of Pleas (48 Selden Society, 1931) no. 132a.

By the middle of the thirteenth century, unjust suit against a writ of prohibition is sometimes referred to as a trespass. (1253-4) Placit. Abbrev. 130b; (1247) 5 Prynne's Records 105; (1256) ibid 112; (1275) Exchequer of Pleas no. 132a. By the end of the century suing or hearing a plea in a church court with or without receiving a writ of prohibition was considered a form of trespass against the peace and appears on rolls other than those of the king's courts. Cf. 3 Select Pleas in Manorial Courts (2 Selden Society, 1889) 113; Ault, Court Rolls of Ramsey Abbey, 94-5, 258; Calendar Early Mayor's Court Rolls of the City of London 28-30; 2 Borough Customs (21 Selden Society, (1906) 206; (1891) Oxford City Documents 225; Chester County Court Rolls (84 Chetham Society, N.S. 1925) 42, 188, 192; Leet Jurisdiction of Norwich (5 Selden Society, 1892) 3, 17, 30, 37, 45, 51, 53, 58.

Among the defendants were Jocelin of Bath and Wells and Eustace of Ely, famous bishops of the interdict; William Brewer and Walter Bronescumbe, bishops of Exeter; William of Blois, bishop of Worcester; the great Robert Grosseteste, reforming bishop of Lincoln, and John Romanus, notorious papal legate and treasurer of York. Close Rolls (1234-7) 356; 4 Curia Regis Rolls 198; Bracton's Note Book no. 355; Close Rolls (1237-42) 435-6, 521; Bracton's Note Book no. 1402; Close Rolls (1247-51) 535; ibid. (1253-4) 141 etc. Three of the sheriffs of Norfolk who were tried by Edward I between 1289 and 1293 were accused of having sued in church courts. State Trials of Edward I (9 Camden Society, 3rd. series, 1906) no. 76.

The most common excuses or essoins in cases of prohibition were essoins de malo veniendi (temporary delay) or de malo lecti (sick bed). 5 Prynne's Records 99d-101d; 3 Historical Collections Staffordshire 162; 2
prior of Bruton was attached to show why he had heard a plea in court christian for Henry de Karevill's lay fee contrary to a writ of prohibition.\(^{27}\) The prior did not appear or essoin himself, and the sheriff failed to send the names of his pledges. The record tells us that these first pledges were amerced for not producing him, that he was then placed under better pledges to reply three weeks after Martinmas, and that the sheriff was to be there at that time with the names of his sureties. When he failed to appear on the day named, these second pledges were amerced, and the sheriff was ordered to distrain the prior by all his lands and goods. Should the first distraint fail to produce him, it was followed by a second and even by a third, "and so," says Fleta, "attachment by means of the Great Distress runs in infinitum in personal civil actions."\(^{28}\) If the defendants were clerks who had no lay fees by which they could be distrained but held ecclesiastical benefices, a writ of venire facias to the bishop of the diocese ordered him to produce the defendant. Should the bishop be remiss he, too, was subject to distraint.\(^{29}\) Many a case of attachment on the writ of prohibition shows the "tedious forbearance"\(^{30}\) of this mesne process. In 1206 Robert of Welliland and the three ecclesiastical judges before whom he had sued in court christian were summoned to show why they had proceeded against a writ of prohibition.\(^{31}\) All defaulted, and were ordered placed under sureties to be before the king if the king were to be in England and if not before the justices at Westminster. On the day named they again failed to appear. This time Robert was put under better pledges, but the sheriff reported that the three judges were clerks and had no lay fees by which they could be distrained. Robert's pledges were summoned to be at Westminster one month after the octave of Saint John the Baptist, and the sheriff was ordered to attach the judges by better pledges to be there on the same day. Again Robert's

\(^{27}\) Karevill v. Prior of Bruton, (1201) 2 Curia Regis Rolls 44.

\(^{28}\) Fleta, 1647 ed., lib. II, c. 65. In one case the record says that distraint was by thirty cattle and wheat worth twelve marks. 5 Prynce's Records 177. In three cases the sheriff reported that the defendant had not been found. 2 Palgrave, Rotuli Curiae Regis 256; 5 Prynce's Records 104d, 127 (use of the capias if found).

\(^{29}\) 11 Somerset Record Society no. 1308; Bracton's Note Book no. 802.


pledges failed to produce him, and he was put under still better pledges who were to be summoned. After all this delay, the sheriff of Sussex was ordered to have Robert's body in court fifteen days after Michaelmas. The final entry at Michaelmas term tells us that Robert was amerced under surety of pledges for suing in court christian. Whether his co-defendants, the ecclesiastical judges, ever appeared before the court is doubtful.

Once the litigants were before the justices, a case of attachment on the prohibition proceeded in the usual manner of civil actions. The plaintiff appeared either in person or by attorney, i.e., one who had been put in his place for gain or for loss, and read his count: "I, A., complain of B., that he has unjustly vexed and grieved me in suing me in court christian touching my lay fee... by which I have damage, etc." His secta or suit of witnesses then testified in agreement with the count.

After the count and examination of the plaintiff's suit and of any records which he could produce, the defendant made his reply. Almost always he began by denying that he had ever received the writ of prohibition or that he had proceeded after it had been delivered to him. "Henry denied force and injury and fully denied against William," and if Henry could produce witnesses to confirm his oath he was without day on the denial alone. As a rule, however, he was not content with a denial. He would hasten to assure the justices that the case in court

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32Frequently abbots and priors of religious houses put monks in their places. Women often appointed their sons or husbands, although in one case a woman acts as attorney for her husband. Bracton's Note Book no. 1361. For writs appointing attorneys in cases of prohibition, see Close Rolls (1251-3) 220; 11 Somerset Record Society nos. 1297, 1317.

33Bracton, De Legibus 410a.

34If the suit was insufficient, or if there was any discrepancy between the testimony of the suit and the plaintiff's count, the action was defeated. Bracton's Note Book nos. 49, 665, 768, 762.

35Contempt of the writ of prohibition was not a legal fiction in the thirteenth century. The plaintiff not only named the place, the hour, and the witnesses present when the writ was delivered, but also included in his pleading the story of how the defendant had spurned the writ, thrown it to the ground and "wickedly trampled upon it." Bracton's Note Book no. 1467; Calendar of Close Rolls (1272-79) 572; (1292) Y. B. 21-22 Edward I, 94.

36Denial of force and injury, the usual denial in actions for damages, does not appear in cases of prohibition until almost the middle of the thirteenth century. The earliest cases found in print which use this expression are cases from the year 1241. Placit. Abbrev. 106b; 5 Prynne's Records 104.

3711 Somerset Record Society no. 1323. After the Articuli Cleri of 1316 Justice Thorpe argued that although no prohibition had been delivered, there might be an attachment on the writ because the statute was by law adjudged a prohibition, and the defendant must reply that he had never heard a lay plea in court christian. (1349) Y. B. 21 Edward III f. 29, no. 5.
christian was spiritual in nature, i.e., that it was a case touching matrimony or last will and testament; that it involved church land, or that it was an attempt to exact tithes which did not in any way affect the plaintiff's rights of advowson, etc. Thus Margery of Chednay explained that she had sued Robert in the church court for burning her chapel and its ornaments and for dragging out an image of Saint John by the neck, an offence which she thought belonged in a church court because it was sacrilege. Master Geoffrey Gates, archdeacon of Chichester, told the justices that he had not sued a plea in court christian touching lay chattels but rather a plea touching chattels which were purely spiritual, for, he said, it was the custom of Billinghurst that those who gave blessed bread on Sundays offer with the blessed bread ld. or a candle worth that amount. Because John, his adversary, had detained this oblation, the vicar had complained to the archdeacon and the archdeacon, as ordinary judge, had heard this plea as touching an oblation purely spiritual. Again, when the good dean of Beington was accused of suing Peter Mauley in court christian for wheat worth ten marks of silver, he said that the wheat had been willed to him by Peter's tenant, and since the case involved last will and testament it was spiritual and belonged in the spiritual court.

In addition to his denial, or to his plea that the case was spiritual, the defendant in an action of attachment on the writ of prohibition often took exception either to the plaintiff or to his count. He might refuse to answer because his opponent had been excommunicated by the church and until absolved was not capable of suing or of being sued in a court of law, or he might plead that the remedy by prohibition had been defeated because the plaintiff had allowed the case to continue in court christian up to the definitive sentence before bringing a writ of

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38 Robert Richardson v. Margery of Chednay, (1223) Bracton's Note Book no. 1585.
40 Peter Mauley v. The Dean of Beington, (1234) Bracton's Note Book no. 847. Replies such as these give us valuable information about the jurisdiction claimed by the church in the thirteenth century.
41 Bracton's Note Book nos. 552, 1388 (defendant obliged to seek absolution before the plea could continue) Bracton, De Legibus f. 408, Note Book no. 1403 (defendant allowed to sue because the bishop who was responsible for the excommunication was defendant in the same case). In (1302) Y. B. 30-31 Edward I, 454-6 the justices argued that when an action was founded on a charge of excommunication so that the excommunication was the cause of the suit, it might not be proposed as an exception.
Whether acquiescence in the proceeding in the church court deprived one of the right to a prohibition and constituted estoppel was not always clear to thirteenth century justices. In Easter term, 16 Henry III, for example, the archdeacon of Totton was allowed to proceed in court Christian because he showed that the plaintiff had signed a previous agreement to submit to the jurisdiction of the bishop. Bracton disagreed with the decisions of at least some of the justices. He held that even if one agreed in a written statement to reply in a church court, the writ of prohibition would be granted. Appeal to a superior ecclesiastical court, on the other hand, was sufficient cause to defeat an action. Thus, by appealing from the archdeacon to the bishop of Chester, Gilbert Croc recognized the jurisdiction of the church and lost his right to a writ of prohibition.

In addition to exceptions to the plaintiff, other legal exceptions were in common use, some to the writ itself and some to the plaintiff's count. One took exception to the place where the writ of attachment had been issued; another asked judgment of the writ because in attaching an ecclesiastical judge, the words *placitum secutus est*, he sued a plea, were used instead of *placitum tenuit*, he held a plea, or because the writ prohibited a plea of debt when the real cause of the action was theft of chattels. Any or all of these exceptions, if proved, served to defeat the action based on the writ of prohibition.

Whatever his defense, whether a denial of having received a writ, a legal exception, or a statement that the plea belonged in court Christian because it was spiritual, the defendant must make his proof. Cases of attachment furnish excellent examples of the use in the thirteenth century of wager of law or compurgation.

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42 Laches alone seldom defeated an action on a writ of prohibition but were sometimes used as an exception. 5 Prynne's Records 114; Bracton's Note Book no. 1599.
43 Ibid. no. 678. Grants and recognitions of debt agreeing to submit to ecclesiastical jurisdiction and renouncing all recourse to legal remedy in a secular court and "especially to the royal prohibition" appear to have been common during this period. 26 Historical Collections Staffordshire (N.S. 1924) 16, 75, 96, 98; Close Rolls (1259-61) 464; Y.B. 30-31 Edward I, 486; 1 Pollock and Maitland, History of English Law 2nd ed., note 3 at 251.
44 Bracton, De Legibus f. 401b. See the word "error" written by the annotator to Bracton's Note Book no. 678.
45 Ibid. no. 766; Bracton, De Legibus f. 408.
47 (1305) Y.B. 32-3 Edward I, 408.
48 Ibid. no. 555.
49 Ibid. no. 152. Cf. 5 Prynne's Records 92d.
This was the usual method of proving that one had not sued in contempt of a writ of prohibition. The defendant gave surety that he would come with his law on a certain day, there to defend himself with twelve hands, men who would support his oath of denial.\(^{50}\)

Although the great majority of cases of attachment on the writ of prohibition were decided by wager of law, some show the increased popularity of jury trial.\(^{51}\) As early as 1199 William of the Exchequer, accused by Hugh Mason of suing in court christian for a lay fee, came and denied all and put himself on lawful men of the neighborhood.\(^{52}\) Often the defendant denied suing in court christian for lay fee, chattels, or rights of advowson, and put himself on the country whether he had been guilty of contempt, or whether he had sued a plea which was spiritual and belonged to a church court. In 1222 the inquest was to inquire diligently whether the parties had committed sacrilege by breaking into a house on the land of the church in time of peace and robbing the chaplain of his books, or whether that offense was secular because committed during the civil war between John and the barons.\(^{53}\) Again the twelve were to inquire whether the ash grove in question belonged to a certain chapel or to the lay fee of the plaintiff, in other words, whether the plea dealt with church property and so belonged in a court christian or dealt with land held as lay fee which must be tried in a secular court.\(^{54}\)

If the defendant succeeded in making his law, or if the jury brought a verdict favorable to him, he was without day, and the plaintiff was amerced for a false claim. Of the printed cases

\(^{50}\)Wager of law continued to be the usual method of proof well into the fourteenth century. See (1309) Y.B. 2-3 Edward II (19 Selden Society, 1904) 138; Y.B. 5 Edward II (33 Selden Society, 1916) 118 (1312). Documentary evidence is used in five cases in Bracton's Note Book nos. 1680, 683, 350, 599, 678.

\(^{51}\)For the use of the jury in cases of attachment on the prohibition see 1 Curia Regis Rolls 103; Bracton's Note Book nos. 130, 1423, 547, 626, 755, 817; Placit. Abbrev. 106b; 11 Somerset Record Society no. 1392; 5 Pymne's Records 127d, 117, 114, 199; 5 Historical Collections Staffordshire 92; 6 ibid. (pt. 2, 1885) 169; Y.B. 30-31 Edward I, 454; Y.B. 32-3 Edward I, 426; Mayor's Rolls of the City of London 28, 88.

\(^{52}\)Hugh Mason v. William of the Exchequer, (1199) 1 Curia Regis Rolls 103.

\(^{53}\)Bracton's Note Book no. 130. In this case and in case no. 547 the jurors were to appear before the sheriff and the coroners. For this use of the coroner, see Gross, Select Coroner's Rolls (9 Selden Society, 1895) xxvi.

\(^{54}\)Bracton's Note Book no. 755, an interesting use of the assize utrum. Cf. Thorne, Assize Utrumn and the Canon Law in England, (1933) 33 Col. L. Rev. 434.
in which a decision is recorded, over half were decided in favor of the party who had sued in court christian. The percentage is significant because it shows the ease with which a defendant could clear himself of a charge. Again and again he was quit, either because he had waged his law in denial of the count, or because of some legal default on the part of the plaintiff. In fact, of sixty cases completed on the records, less than thirty were decided in favor of the defendant because the case was spiritual; comparatively few of these were ever returned to the church courts. It was the royal justices who decided whether the final judgment would be a writ of prohibition or a writ to proceed notwithstanding the prohibition. Occasionally they were convinced that the case was spiritual, and the judges were told to proceed in court christian “since the plea does not belong to the crown and dignity of the lord king.” More often, the defendant was free from penalty but warned not to continue in the church court. Parson Simon might sue before ecclesiastical judges for an annuity of five pounds, since pensions belonged to a spiritual forum, but he must not continue his suit for more than that amount; the rest of his debt was secular and belonged to the king. Again the justices might acknowledge the truth of the defendant’s reply but suggest to him that instead of continuing in court christian he try one of the remedies offered by the common law courts. Let him put himself on the grand assize or sue out a writ of novel disseisin. When no such remedy was available in the chancery, a compromise between the parties often prevented the case from returning to the ecclesiastical jurisdiction. Although Mabel Castellis showed conclusively that the utensils which she wished to recover from her husband, John, were given to her at the time of her marriage, and that the plea belonged to the church, the justices did not return the case to the ordinary. Instead they proposed that Mabel give John five shillings and withdraw from her plea in court christian and that

55 Only ten of the defendants are told to continue in the church court. Bracton’s Note Book nos. 719, 799, 570, 293, 877, 755, 847; 5 Prynne’s Records 97d, 98d, 126d.

56 Bracton’s Note Book no. 755.

57 Bracton’s Note Book no. 453. Cf. ibid., nos. 442, 670; 5 Prynne’s Records 98. One case recorded in Prynne’s Records shows the justices allowing a case of chattels to proceed in court christian because the chattels were derived from matrimony but telling the ecclesiastical judges to make a reasonable appraisal of them and not yield them all to the use of the woman! 5 Prynne’s Records 97d.

58 Bracton’s Note Book nos. 910, 629, 665, 1671; 1 Curia Regis Rolls 21.
John renounce his claim to damages in the action on the writ of prohibition.\(^{59}\)

Failure to show cause for proceeding against the writ entailed a heavy penalty. Since hearing or suing in court christian after receipt of the prohibition was contempt of the king as well as an offense against the party, it was punished by imprisonment or amercement.\(^{60}\) A defendant was obliged to make fine with the king for as large an amount as the justices thought he could pay.\(^{61}\) It is probable that in the time of Glanvill, the action on a writ of prohibition aimed at punishment alone.\(^{62}\) The idea of damages, however, soon spread from the assize of novel disseisin to actions of prohibition. As early as the year 1206 we find Roger Breton complaining of suit in court christian for his lay fee in Bacetot against a prohibition of the lord king and of the justices "so that he was injured by the vexation caused him to the value of ten marks."\(^{63}\) By the opening years of Henry III's reign it was customary for the plaintiff to plead that he had suffered damage and to state the amount of compensation which he hoped to receive.\(^{64}\) In 1220, for example, John of Birston accused Henry Brimton of suing in court christian for his chattels by which he was damaged to the value of forty shillings. Henry explained that John had come during the war and seized him in the cemetery of the church and taken from him one of his horses and that he sued him in the church court for sacrilege to a sanctuary. John denied all and put himself

\(^{59}\) John, son of William Orfeur v. the Archdeacon of Westminster, (1229) Bracton's Note Book no. 341; ibid. nos. 423, 610, 73; 11 Somerset Record Society no. 1302; 4 Historical Collections Staffordshire 130. Occasionally license was given to the parties to make an agreement outside of court. 1 Curia Regis Rolls 405.

\(^{60}\) Imprisonment was less common. Presumably a defendant was in custody only until he found sureties or made fine with the king. Select Civil Pleas no. 83; Calendarium Rotulorum Patentium 5a; Bracton's Note Book nos. 50, 79, 1409, 351, 1464, 766; 5 Prynne's Records 199; Rolls of the Justices in Eyre no. 1283.

\(^{61}\) The amount of the fine ranged from three to four thousand marks. 5 Curia Regis Rolls 148 (3 marks); Bigelow, Placita 278 (10 marks); 1 Rotuli Litterarum Clausarum 32a (100 marks); ibid. 96b (50 marks); Calendar of Close Rolls (1288-96) 208 (100 L); 1 Rotuli Parliamentorum 103 (4,000 marks) etc.

\(^{62}\) 2 Pollock and Maitland, History of English Law, 2d ed., note 1 at 525.

\(^{63}\) Roger Breton v. Nicholas de Filingele, (1206) 4 Curia Regis Rolls 195. No instance of alleged damages in cases of prohibition has been found between 1206 and 1219. On the question of the spread of the idea of damages, see Woodbine, Origins of the Action of Trespass, 33 Yale L. J. (1924) 799-816; 34 ibid. (1925) 343-370.

\(^{64}\) This amount varied from twenty shillings to one hundred pounds. 5 Prynne's Records 98d, 116d.
on the jury. The record tells us that because Henry failed to come and the inquest was satisfied with John, John should recover his damages of forty shillings and Henry should be amerced, and the sheriff was ordered to distrain Henry and from his possessions to pay the forty shillings to John.65

THE WRIT OF PROHIBITION AS A REMEDY FOR THE PARTY

It is clear from a study of cases of attachment that the early writ of prohibition was primarily an instrument to prevent the ecclesiastical courts from exceeding their jurisdiction. On the assumption that judges who heard temporal pleas in court christian were guilty of contempt of the crown, the royal justices were able to limit and define the jurisdiction of the church.66 But the writ had still another function. It was issued on the supposition that continuation of the plea in a church court would result in damage to the party litigant. It was the only common law remedy available in the thirteenth century for the defendant who was unjustly drawn before spiritual judges.67 The complaints made to the justices show that in many instances the writ of prohibition actually protected the party from the abuse of legal process by his opponent. It is in these cases that prohibition seems to present an analogy to the later equitable relief afforded by the chancery.68

65 John of Briston v. Henry Brimton, (1220) Bracton's Note Book no. 1423. Cf. 11 Somerset Record Society no. 1302. Three other cases are recorded in which the plaintiff recovered the damages he had claimed. 5 Prynn's Records 119d, 125d, 138.
66 The writ was used not only to draw a clearer line between spiritual and temporal cases but also to appropriate for the common law courts that territory which Maitland called "neither very temporal nor very spiritual." Maitland, Roman Canon Law in the Church of England 56.
67 It must be remembered that in the middle ages the writ of prohibition was not the extraordinary remedy which it has become today. In spite of chapter viii of the Constitutions of Clarendon which claimed ultimate jurisdiction in ecclesiastical cases for the king, the 13th century was the great age of appeals to Rome. Court christian was a rival system of courts headed by the papal curia and administering the canon law. There was no remedy for the party in a church court by writ of error or certiorari. No appeal lay from court christian to the royal courts except by writ of prohibition.
68 The analogy between the writ of prohibition and the injunction has been suggested in an essay, The Early History of English Equity, read by Dr. H. D. Hazeltine before the International Congress of Historical Studies in London in 1913. Essays in Legal History edited by Vinogradoff 270-285. Although no historical connection has been established between the remedy by prohibition and the chancery remedy, points of similarity may be noted. Cf. 2 Pollock and Maitland, History of English Law, 2nd ed., 596 and note. For the vital difference in use between the injunction and the writ of prohibition today see State ex rel. Terminal R. Ass'n of St. Louis v. Tracy, (1911) 237 Mo. 109, 140 S. W. 888-90; High, A Treatise on Extraordinary Remedies, 2nd ed., 53.
The thirteenth century was a golden age for court Christian. Many spiritual judges were anxious to further the claims of the canon law, and at the same time to increase the profits of jurisdiction; as Bracton said, they attempted “to put their scythes into another’s harvest.” Some of these attempts savor of fraud. Thus William of Drogheda, who wrote his Summa on ecclesiastical procedure in 1239, pointed out various cautela or tricks which might be used by clerks who wished to attract litigation, i.e. “to accomplish indirectly that which one could not accomplish directly.” One cautela appears in a case of prohibition recorded in Bracton’s Note Book. Here Mary, wife of Nicholas Duket, no doubt with the advice of the ecclesiastical judges, made a “notional conversion” of her land into money value in order to claim that her plea touched upon last will and testament. She was not the only offender. Many a litigant, layman as well as clerk, tried to sue in court Christian by disguising the true nature of his plea. Some did so in order to take advantage of the differences in procedure between the canon law and the law administered by the king’s courts. Ralph de Dames sought his money and chattels in court Christian because he thought that he could have justice there more quickly; others chose the church because of the proverbial ease with which they could prove their debts. So common was this practice that the justices who opposed the church claim to try cases of debt as breach of faith told the king that defendants in court Christian were often vexed by the fact that in church courts a debt could be proved by two witnesses who were “minus idonei.” The writ of prohibition afforded relief to such defendants. It also served to protect the interests of parties in real actions. Thus Bracton tells us that it was common for claimants who by the common law could not inherit because they had been born before the marriage of their parents to sue first in court Christian and then to use the verdict of legitimate at the canon law. The writs prohibiting pleas touching bastardy until the question of legitimacy had been referred to the bishop

69Bracton, De Legibus f. 401.
70Maitland, William of Drogheda and the Universal Ordinary, (1897) 12 English Historical Review 653.
71Richard of Wimbeldon v. Mary Duket, (1219) Bracton’s Note Book no. 73.
72Walter Malesoures v. Ralph de Dames, (1229) Bracton’s Note Book no. 351.
73Raine, Historical papers and letters from Northern Registers, (1873) 71; 2 Pollock and Maitland, History of English Law 2nd ed., note 1 at 347; 2 Wilkins, Concilia 115.
by the royal justices was a means of preventing this practice in the interests of the lawful claimant.74

Again the writ of prohibition and attachments on it afforded relief to the defendant who suffered from unjust and excessive punishment by the spiritual forum. This was particularly true when the party seeking remedy by writ of prohibition was punished by excommunication. Excommunication was still the most dreaded and powerful weapon of the medieval church. The excommunicate was unable to serve as juror, to be witness in any court, to bring either a real or a personal action, or to recover land or money.75 Socially as well as spiritually he was an outcast, and if within forty days he had not submitted, he was imprisoned by a writ, de excommunicato capiendo, addressed to the sheriff.76 Often a plaintiff told the justices that after he had delivered a writ of prohibition, or after a final injunction had forbidden the judges to continue with the plea, a sentence of excommunication had been pronounced against him, and he had been forced to do penance or seized and imprisoned so that he could not sue.77 Richard, son of Geoffrey Wycomb, told the justices a long story of his grievances against a clerk named Nicholas of Wottesdene.78 He said that although Nicholas had been warned by the justices not to proceed with a temporal plea in court christian, he had spurned the writ and publicly excommunicated not only Richard himself but also all the guests dwelling in his house. He had forced these men to do public penance and had them imprisoned by the writ de excommunicato capiendo. Moreover, he had denied Richard the rites of the church, and when a funeral service for one of his friends was to have been celebrated in his house, Nicholas had appeared, denounced him as excommunicate, and persuaded all those who were present to remove

74 Bracton, De Legibus fs. 404b-405. For the conflict of jurisdiction over "special" bastardy and the refusal of the earls and barons of England to bring the common law into agreement with the canon law see 1 Bracton's Note Book 106, 117; 1 Statutes of the Realm 4; Close Rolls (1234-7) 354, 501.
76 Bracton, De Legibus f. 408b.
77 For interesting examples of the use of ecclesiastical punishment following the delivery of writs of prohibition, see 11 Somerset Record Society no. 1418; Placit. Abbrev. 121a; 5 Prynne’s Records 106, 198 (excommunication of all parties excepting the lord king); 4 Curia Regis Rolls 69 (use of the interdict); Bracton’s Note Book no. 351 (whole vill of Northampton placed under an interdict because of a writ of prohibition).
the dead body from his house to a hospital outside the town,—all "to the grave damage of Richard and in contempt of the prohibition of the justices." A study of cases of attachment shows how often such ecclesiastical punishment followed delivery of a writ of prohibition. In fact, it was customary for the final injunction, i.e., the prohibition to proceed further in the church court, to be followed by a mandatory injunction bidding the judges absolve the party from the sentence of excommunication which he had incurred in court christian.79

In addition to its use to prevent fraudulent suit in a church court and to relieve those who suffered unjustly from ecclesiastical punishment, the writ of prohibition was used to protect those ministers who carried out royal commands. Bracton said that whenever a mayor, sheriff, reeve, or bailiff, while in the pursuit of his duties, was endangered in court christian because he had arrested a clerk as a malefactor, a writ of prohibition would lie—"since it is manifestly against our crown and dignity, and also against our peace, that anyone of our bailiffs be drawn in plea in court christian by reason of his office or for anything that pertains to the conservation of our peace and for executing justice."80 In 1254 a writ of this kind protected William Beauchamp and John Hull, who had been cited by the parson of Linderrig to appear before the ecclesiastical judges to explain why they had entered the parson's house to keep the king's peace,81 and the next year a prohibition prevented the bishop of Winchester from suing Robert Wikewam and others of the king's bailiffs in court christian because they had distrained men of Winchester for debt.82

Jurors who made damaging statements during an inquest and were cited in the church court on a charge of defamation were also protected by the writ. When Master Robert of Picheford failed to recover his land by an assize, he sued the jurors in court christian, saying that they had defamed him. His opponents brought a writ to prevent the suit, presumably a writ of prohibition, and the jurors

79 Bracton's Note Book nos. 1585, 920, 1671, 1143; 11 Somerset Record Society no. 1302; 5 Prynne's Records 98. Cf. Bracton's Note Book no. 817 in which the archdeacon was told to absolve the defendant and the abbot was ordered to return the sheep which he had seized.

80 Bracton, De Legibus f. 404b.

81 Beauchamp and Hull v. Ralph of Linderrig (1254) 5 Prynne's Records 108. Prynne speaks of this case as an attachment for actions of trespass, goods, and chattels. Cf. ibid. 114d; Calendar of Close Rolls (1279-88) 56; ibid. (1288-96) 330; Cases before the Council 5-7.

82 Close Rolls (1254-6) 230.
were awarded damages of one mark.\textsuperscript{3} Although the cause of defamation pertained to court christian, the suit was in derogation of the crown and threatened injury to those engaged in the king’s business.

So popular did the writ of prohibition become both with laymen who sought relief from vexatious suit and with the royal justices who were jealous of ecclesiastical jurisdiction, that protests against its use were formulated by the clergy.\textsuperscript{84} Writs of prohibition and attachments, they maintained, were being used to prevent the trial of cases which were spiritual in nature—cases which involved the persons and possessions of clerks, tithes, sacrilege, and debts touching matrimony and last will and testament. Instead of a remedy to prevent unjust suit, the royal prohibition was becoming a remedy for all those who were contumacious and wanted to avoid spiritual censure. Apparently two things were needful: first, some method of appeal from the writ in cases which were spiritual; second, some authoritative definition of its use in cases which were claimed by both church and state. Bracton recognized the first need, that of appeal from writs of prohibition, and advised a practice whereby judges in court christian who doubted whether the case was spiritual were accustomed to consult the king’s justices whether they could proceed or not after they had received a writ of prohibition.\textsuperscript{85} A favorable reply to their inquiry, made in the king’s name or in that of the justices, allowed the case to proceed in court christian notwithstanding the prohibi-

\textsuperscript{3}Placit. Abbrev. 269b (1279). Cf. Close Rolls (1231-4) 572-3, a mandamus non procedatis forbidding the abbot of Messenden to try for perjury two recognitors in an assize of novel disseisin. A later instance of this use of the writ of prohibition appears in the Register of John of Trillek, bishop of Hereford, 1344-1359 (Canterbury and York Society, 1912) 323 where one Henry, archdeacon of Salisbury, was prevented from suing the parson of Ludlow in court christian on a charge of defamation, saying that the parson had influenced his tenants to pronounce against him in a trial for felony. See also the Prohibition to the Spiritual Court in Suits against Indictors for Defamation, (1326-7) 1 Edward III, st. 2, c. xii 1 Statutes of the Realm 256.

\textsuperscript{4}Of these petitions the most important were: The Grievances of the clergy in 1237, 1 Annales Monastici 254-7; Complaint and mandate of the king in 1247, Cole, Documents illustrative of English History 354, 4 Matthew Paris, Chronica Majora 579, 614; Articles of the Convocation at London, 1256, 1 Annales Monastici 406 et seq., 1 Wilkins, Concilia 725 et seq.; Records of the Council of Merton, 1258, consisting of the Articles of Merton, 1 Annales Monastici 412-22; the Grievances of Grosseteste, and the Privileges of the clergy compiled by Richard Marsh, 1 Annales Monastici 425-9; The Constitutions of Archbishop Boniface at Lambeth, 1261, 1 Wilkins, Concilia 746; the Articuli episcoporum compiled by Archbishop Peckham, 1285, with the king’s answer, 2 Wilkins, Concilia 115.

\textsuperscript{5}Bracton, De Legibus fs. 405b-406.
tion. This reply was later known as the writ of consultation, "so called, because, upon deliberation and consultation had, the judges find the prohibition to be illfounded, and therefore by this writ they return the cause to its original jurisdiction." In providing such a method of appeal where no remedy existed in the common law courts, the Statute of the Writ of Consultation of 18 Edward I merely recognized a practice which had been in use for over half a century.

In addition to the practice of consultation, the protests of the clergy called for some definition which would prevent the abuse of writs of prohibition in spiritual causes. Following dissatisfaction caused by an inquiry into ecclesiastical jurisdiction in the diocese of Norwich, a writ was sent to the itinerant justices in Norfolk in 1286 bidding them "act circumspectly" in dealing with the pleas of attachment on the prohibition which were before them for judgment. The Circumspecte Agatis, often treated by legal writers as a statute, is composed of this writ of a revised clause of a clerical petition and royal answer dating from 1280. It limited and defined the use of the writ of prohibition as a legal remedy, providing that it should not issue in cases of spiritual correction, sacrilege, church dues, violence to clerks, breach of faith, defamation etc. when no money penance was enjoined, or in cases of tithes amounting to less than a quarter of the value of the benefice.

In spite of this definition, the writ of prohibition continued in frequent use against the ecclesiastical courts both before and after the breach with Rome. It became the recognized instrument of the common law courts not only against the spiritual forum but also against other courts which encroached or threatened to encroach upon their jurisdiction. Although changes have come in form

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82 Blackstone, Commentaries 114. Although Bracton gives three writs of consultation, attributing one of them to the great justice, Martin Pateshull, none have been found on the MS. registers of writs before the fourteenth century. Formulare Brevium, MS. no. 23, Harvard Law Library f. 50. The writ of consultation was both original and judicial. It was often written on the back of the libel and sealed by the justiciar or the chancellor. Y.B. 32-3 Edward I, 408-9; Y.B. 30-31 Edward I, 440.

85 I Statutes of the Realm 108; 1 Rotuli Parlamentorum (18 Edward I) 32b, 47b.

88 See discussion of the Circumspecte Agatis and text as given by Graves, (1928) 43 English Historical Review 1 et seq.

89 I Statutes of the Realm 101 et seq.; 43 English Historical Review 15-16; cf. the provisions of the Articuli Cleri, I Statutes of the Realm 171 et seq.

90 The writ was used in an attempt to restrain the court of chancery,
and procedure, the remedy has retained its common law nature and its primary function. The practice of addressing the writ to the party as well as to the court, and the attachment for contempt even where no writ has been served, are practices reminiscent of the writ of prohibition to court christian and of its use in the thirteenth century.