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# The Royal Authority

AND THE

## Early English Universities

A Thesis presented to the Faculty of Philosophy of the  
University of Pennsylvania

BY

JAMES F. WILLARD

In Partial Fulfillment of the Requirements for the  
Degree Doctor of Philosophy

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PHILADELPHIA  
1902.











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## INTRODUCTION.

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When the thirteenth century opened there were in Oxford a number of masters and scholars who had assembled in that place for the purpose of study. Cambridge soon after also showed signs of becoming a seat of learning. The organization of these bodies was very primitive, they had few customs to bind them together and no statutes of their own making, for no body existed as yet which could make statutes. The bishop's representative, the chancellor, however, served, even at this early date, to give some unity to these gatherings. Before, therefore, they could attract the attention of the king they would have to attain a larger size and more importance. During the early part of the thirteenth century, then, the universities may be regarded as a body of students "held together rather by a loose code of professional customs or etiquette than by any formal body of written laws."<sup>1</sup>

Out of these slightly coherent bodies of scholars grew, during the middle ages, the mighty corporations of later times. During the thirteenth and fourteenth centuries the universities gain royal, papal and episcopal recognition. They gain rights not enjoyed by the members of the ecclesiastical organization in general. They put on a corporate existence, making statutes binding upon their own members, receiving grants of privileges and of land in their own name, and in the world gaining recognition as powers to be cultivated and encouraged. Within their respective towns they become the dominant authorities, gathering to themselves many of the former borough rights and privileges and gradually taking the place of the government of these boroughs in some of their most important activi-

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<sup>1</sup> O. H. S. *Collectanea*, II., Rashdall, 195.

ties. Both the towns of Oxford and Cambridge found themselves hemmed in on all sides by the universities; their petitions for redress were often disregarded, their struggles for redress generally brought only a worse fate upon them.

The end of the fourteenth century witnessed a vast change in the relative position of the opposing corporations. At the beginning of the thirteenth century the universities had been weak, unorganized and unprivileged; at the end of the fourteenth century they had numerous students, a strong organization and many rights. They now controlled the city markets of their towns, the care of the streets and pavements was in their charge, they had gained some police functions, the town gaols were open for their use, and the townsmen might not even rate their houses for the students to suit themselves. Oxford had gained a complete immunity from the power of the bishop and Cambridge was soon to do likewise. Both had gained an exemption from the royal and ecclesiastical judges in all but a few well marked cases, so that their authority over their own members was in many respects absolute. On the material side also they had grown. Large amounts of money and much land had been given them by pious persons, libraries were started, schools endowed and halls built during this formative period of the universities.

This growth, in its main outlines, with special reference to the royal administration, is to be the subject of this study. While many powers came from the grants of the pope or bishop, the almost constant and unwavering attitude of favor on the part of the crown toward the students is the great cause of this development. Without the royal interference the universities could not have attained the great importance that they finally did attain, for it was not within the power of either the popes or bishops to give to them the privileges they obtained through the good will of the several kings of England.

Before proceeding to the organization and privileges of these universities it will be necessary, first of all, to consider the composition of these bodies, deciding, in so far as it is possible, what persons or classes of persons came within this organization and enjoyed these privileges and also deciding within what limits these privileges were exercised. The process of definition of the terms scholar, scholar's servant and the like, was gradual, increasing in accuracy and clearness as the universities became more independent of outside control.

The most natural question and the first to be answered was that of the content of the term scholar. Were all the clergy who dwelt within the town to enjoy the privileges of the university whether they came there to study or for other reasons? It must be understood that the teaching body, the masters, always enjoyed all the privileges of the university. The first definition of a scholar is contained in the royal writs of the year 1231, sent to both universities. In the case of Oxford the motive of the action was the disturbance caused by certain men who pretended to be scholars, and as the Cambridge writ is dated at Oxford, it is the direct result of the troubles in that place. The sheriff was commanded by the king to proclaim in his name that no clerk should remain in the universities who was not under the tuition of some master and any such found within the town after a period of fifteen days was to be arrested and imprisoned by the sheriff.<sup>2</sup> In these orders Henry III may have been only following a university custom, for later we find the same general principle embodied in the statutes. About 1250,<sup>3</sup> or later, the university of Oxford passed a statute to the effect that every scholar should have his own master upon whose roll his name must be entered and under whom he

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<sup>2</sup> Wood, *Annals*, ed. Gutch, I., 206; Cooper, *Annals*, I., 41.

<sup>3</sup> *Munimenta academica*, I., 17. Anstey ascribes them to this date. Rashdall, O. H. S., *Coll.*, II., 195, thinks them of a later date; cf. *Mun. acad.*, II., 444.

should hear at least one lecture daily. A similar rule was also in force in Cambridge. In the settlement of a dispute between the university and the archdeacon of Ely, of the year 1276, it is stated that the university had made a statute commanding that no one should receive a scholar who had not a fixed master within fifteen days after his entrance into the university and whose name was not upon the master's matriculation roll.<sup>4</sup> In the Cambridge regulation express mention was made of the royal command before noticed. Both universities provided that all infringements of these rules would subject the offender to imprisonment or expulsion.

The name most frequently coupled with that of scholar is scholar's servant. That these early enjoyed the privileges of the university cannot be doubted, yet it is impossible to assign an exact date upon which they were given the right to enjoy such rights for the first time. It is very probable that custom here, as elsewhere, antedated by many years the exact definitions which have come down to us. During the latter part of the thirteenth century, however, their right to participate in the privileges of the scholars is recognized in both universities. The earliest extant definition is that of the university of Cambridge. The decree of the bishop of Ely, dated 1276, states that there is in force a university statute providing "that the household servants of the scholars, the writers and others, who exercise offices that are peculiarly assigned to the use of the scholars shall enjoy the same exemptions and liberties as the scholars, so as not to answer before the archdeacon, as neither do the scholars who are their masters."<sup>5</sup> The bishop further defines scholars' servants to mean those residing in the houses with them, while serving them in person and also defines "writers and others" as "writers, illuminators, and stationers, who serve the

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<sup>4</sup> Cooper, I., 57.

<sup>5</sup> Ibid., I., 56-57; see also Ibid., I., 141 (1393-94).

scholars only."<sup>6</sup> Almost identically the same classes of men are privileged along with the scholars in Oxford. In 1290 the list of those enjoying the rights of the scholars is stated by the king to include parchment makers, illuminators, writers, barbers, and other men who wear the same habit as the scholars.<sup>7</sup> The definition is made still clearer in 1345, when it is laid down that the servants proper must dwell within the houses of the masters and scholars. At the same time the list of other privileged persons is increased by the addition of the six bedels and the four sworn stationers of the university.<sup>8</sup>

In both universities, therefore, the servants of the scholars who lived with them or those artisans whose trades had particularly to do with the scholars, enjoyed their privileges and this continues to be the practice. There are often two uses of the term scholar's servant, one general, including all those who enjoy the privileges of the university while not students; the other special, including only those who are, strictly speaking, servants. The lists vary but little in later times. That of Oxford in 1356<sup>9</sup> is the same as the earlier ones and though in 1454<sup>10</sup> and 1524<sup>11</sup> there are some new trades mentioned, these are due rather to an extension of the above definition than to any new principle. In Cambridge also the earlier definitions are preserved in later times.<sup>12</sup>

The geographical limits within which the universities exercised their authority over such persons were at first indefinite. During the thirteenth century the phrase, town and suburbs, seems to cover in a general way these limits for Oxford.<sup>13</sup> The word town is fairly

<sup>6</sup> Cooper, I., 57.

<sup>7</sup> *Mun. acad.*, I., 52; cf. Lyte, *History of Oxford*, 171.

<sup>8</sup> *Ibid.*, I., 148.

<sup>9</sup> *Ibid.*, I., 175.

<sup>10</sup> Rashdall, *Hist. universities*, II., II., 409, note 4.

<sup>11</sup> Rogers, *Oxford city documents*, 53 sq.

<sup>12</sup> Cooper, I., 104 (1354); *Ibid.*, I., 127, 141; *Rot. parl.*, III., 325 b.

<sup>13</sup> Wood, I., 234.

definite, especially when the walls enclosed it as was the case in Oxford, but suburbs was likely to be very vague. Contests arose in Oxford over the extent of the latter term, the most noted being that between the university and Richard d'Amory, who disputed the claim of the chancellor to jurisdiction within the hundred without the north gate of Oxford. In the settlement of the matter, the hundred was defined to be within the suburbs and thus the chancellor could exercise his powers throughout its territory.<sup>14</sup> An accurate delineation of the boundaries within which the university could exercise its chartered rights was given in 1401.<sup>15</sup> These were St. Bartholomew's Hospital, on the east, to Botley, on the west, Godstow bridge, on the north, and Badley Wood, on the south, a much larger area being included than the former suburbs about the town. Cambridge does not seem to have gained any fuller definition of its jurisdictional limits during the period under discussion than that of the town and suburbs.

The actual management of the affairs of the university was entrusted to the teaching body, the masters or regents. Those who had taken the master's degree but who were not actively engaged in teaching, the non-regents, were a reserve body whose consent was necessary to certain of the more important actions of the universities.<sup>16</sup> In Oxford there were three bodies which took part in the public business:<sup>17</sup> the black congregation, composed of the regents in arts, which elected the proctors, and as the previous congregation prepared the statutes which were later to be acted upon by the other bodies; the congregation of regents or lesser congregation, composed of the regent masters of all the faculties, which elected the chancellor, transacted the ordinary business of the university, financial or re-

<sup>14</sup> *Mun. acad.*, I., 173-180 (1356); cf. *Ibid.*, I., 43-45, for an earlier case.

<sup>15</sup> Wood, I., 538; Rashdall, *op. cit.*, II., II., 411.

<sup>16</sup> Mullinger, *University of Cambridge*, I., 140, n. 2.

<sup>17</sup> Rashdall, *op. cit.*, II., II., 373 sq.; Lyte, *Hist. Ox.*, 233-234.



lating to the teaching methods, and which also acted as a court of appeal from the chancellor's court in certain cases; and finally the congregation of regents and non-regents or the great congregation, which was the statute making body, the final court of appeal within the university and the organization which had final control over all matters relating to the activities of the university. In Cambridge there were but two congregations, that of the regents and that of the regents and non-regents.<sup>18</sup> There was no previous congregation to prepare legislation.<sup>19</sup> In Cambridge, as in Oxford, the congregation of regents was the active administrative and governing body of the university, but the non-regents had a greater share in this business than in Oxford and even claimed a certain part in the election of the chancellor.

= Congregation

The earliest grants made in the universities contain the name of an official at their head, the chancellor. Originally appointed by the bishop to watch over the clergy assembled in Oxford or Cambridge for the purpose of study, during the thirteenth century he became the real head of these bodies, the president of their greater congregations and the official recipient of many of their privileges. His election gradually passed from the hands of the bishop into those of the congregation of regents, although his election had to be confirmed by the bishop before he might assume the duties of his office. This last hold of the bishop over the chancellor's election was taken away from the bishop of Lincoln in 1368,<sup>20</sup> and from the bishop of Ely in 1401.<sup>21</sup> He was in both cases, elected for two years from among the regents of the university, the usual practice in Oxford being to select a doctor of theology or of canon law to fill the place.<sup>22</sup> Though the chancellor became in the

} He does not see the immense importance of this

<sup>18</sup> Mullinger, op. cit., I., 142-143.

<sup>19</sup> Rashdall, op. cit., II., II., 554.

<sup>20</sup> *Mun. acad.*, I., 228-230.

<sup>21</sup> Cooper, I., 146.

<sup>22</sup> Lyte, op. cit., 231.

fullest sense the head of the university, it must be remembered that the origin of his power was episcopal and also that he never seems entirely to amalgamate with the university teaching body. He always appears to be a power outside of it, giving his sanction to its statutes and punishing its members through his own special and peculiar privileges. In both bodies the chancellor is nevertheless the chief administrative official.

Next in importance to the chancellor were the proctors. In each university these were two in number, elected annually, in Oxford by the regents in arts,<sup>23</sup> and in Cambridge by the congregation of regents.<sup>24</sup> They were the real representatives of the universities, owing their existence to those bodies alone. Their duty it was to watch over the obedience to the statutes; they summoned the Black Congregation in Oxford, they had general charge of the administration of the finances of the universities, they exacted the fines incurred under the statutes and attended to other matters of a like administrative character.<sup>25</sup> When the chancellor received administrative powers from the king they are generally associated with him and in some cases, as in the case of the market in Oxford, they gradually superseded him.

The subordinate officials are not of much importance with respect to this study. The bedels were the most prominent among these minor officers. In Oxford they "served writs and citations and conducted offenders to prison, beside watching to see that the proper ceremonies were observed upon all public occasions."<sup>26</sup> They had similar functions in Cambridge, and attended the chancellor and proctors wherever these might go.<sup>27</sup> They were generally attached to some faculty of the university. The taxors, four in number in Oxford, two in

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<sup>23</sup> Lyte, *op. cit.*, 231.

<sup>24</sup> Mullinger, *op. cit.*, I., 144.

<sup>25</sup> Mullinger, *op. cit.*, I., 144; Lyte, *op. cit.*, 231; Rashdall, *op. cit.*, II., II., 372-373; *Mun. acad.*, II., 486; and *Ibid.*, I., 110.

<sup>26</sup> Lyte, *op. cit.*, 230.

<sup>27</sup> Mullinger, *op. cit.*, I., 144-145.

Cambridge, were regents of the university elected for the purpose of seeing to the fixing of the rent of the inns and halls inhabited by the scholars. Their association with the Cambridge proctors for the regulation of some matters connected with the market is apart from their original position.<sup>28</sup> The Oxford judicial system gave rise to certain minor judicial officials, the judges who tried civil suits known as the hebdomadarii. These judges, one sitting each week, were doctors in civil and canon law; later, however, certain bachelors in those faculties were admitted to the office.<sup>29</sup> The right of direct appeal from their judgments to the chancellor was always recognized. Cambridge allowed its masters to try certain minor cases in which scholars were the defendants, except when the latter renounced this jurisdiction.<sup>30</sup>

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<sup>28</sup> Mullinger, *op. cit.*, I., 145.

<sup>29</sup> Lyte, *op. cit.*, 232-233; *Mun. acad.*, I., 69.

<sup>30</sup> Rashdall, *op. cit.*, II., II., 554; *Docs. relating to the univ. and colleges of Camb.*, I., 328.

## CHAPTER I.

### THE JUDICIAL POWERS OF THE CHANCELLOR.

The most prominent increase of university powers under the fostering care of the central government was that of the judicial privileges of the chancellor. Without the royal grants the chancellor could not have gained his wide authority over cases which ordinarily belonged to the royal or local justices; without the aid of the king he could not have effectively enforced his judgments; and without his timely interference even the chancellor's ecclesiastical jurisdiction might have been greatly circumscribed and retarded in its development. Only, indeed, from the central authority of the kingdom could this aid come, for the local officials were jealous and very often had good reason for feeling aggrieved and revengeful. If the latter could have had their way in this matter the universities would have remained mere unorganized gatherings of students without coercive powers over even their own members. That the universities did increase in importance and strength, generally at the expense of some local authority, is due for the most part to the action of the successive English kings living during the thirteenth and fourteenth centuries, who, widely divergent in character as they may be, had at least this one point in common, they all favored these two great institutions of learning.

In its origin the judicial power of the chancellor was ecclesiastical. He was an episcopal official placed over a body of clerics to regulate their conduct as the bishop's representative. When this body grew to be an organized university his position changed and he was now the head of the university with increased judicial powers because of this position. He gained by this transformation certain rights over the various laymen whose trades

connected them with the university and later by papal grant, in Oxford, he was given jurisdiction over the various ecclesiastics who would otherwise have been exempt even from the episcopal courts.<sup>1</sup> After the universities had attained a certain prominence the crown began to grant judicial powers and to these grants the chancellor owed his position of judge over cases otherwise belonging to the courts of the royal justices. The completed powers of the chancellor are, therefore, three-fold in origin, ecclesiastical, university and royal, though it must not be imagined that he ever made this distinction clear in practice. The great reason for the increase of his privileges seems to be the influence of the royal favor. The kings made large grants to the universities and these appear to encourage the chancellor to claim exemptions from the episcopal power and to seek bulls of confirmation from the pope. Nothing, indeed, succeeded like success during the middle ages. Once given rights the chancellor was led to usurp others, feeling fairly sure that he would be supported in his usurpation. And not alone the kings, but the other clergy did support him. On account of the importance of the royal grants they will be considered first, although the chancellor did have a certain delegated ecclesiastical jurisdiction before the universities had come under the notice of the crown. In order to prevent confusion the two universities will be considered separately.

The first royal grant of judicial powers to the chancellor of Oxford was that of cognizance of certain civil cases. By his letters patent of May 10, 1244,<sup>2</sup> Henry III conferred upon him the right to try all cases arising in Oxford or its suburbs, relating to controversies over debts, the rent of houses, the price of victuals, horses, or clothes and all other contracts of movables, to which a clerk was a party. It is a matter of some doubt whether this privilege referred to any cases other than

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<sup>1</sup> Rashdall, *op. cit.*, II., II., 430.

<sup>2</sup> Wood, I., 234; Rashdall, *op. cit.*, II., II., 393-394.

those to which the scholar was the defendant.<sup>3</sup> The grant, because of the actual jurisdiction it gave, as well as because of its effect as a precedent, has been called the magna charta of the university of Oxford.<sup>4</sup> In spite of the long struggle of the English clergy for the right of trying cases of contracts they never gained this power and, therefore, in this his first great grant, Henry made a differentiation of the university from the clergy of the realm. And, indeed, he was the only power able to make this change in policy. In the year 1260 the constable of Oxford raised the point that the Jews did not come under this jurisdiction of the chancellor since "they did not form a part of the ordinary community of the town."<sup>5</sup> A jury of inquisition being summoned upon the case, it decided that the chancellor had full cognizance of all bargains and contracts between the scholars and the Jews, excepting those matters belonging to the crown and pleas of land. Edward I, in his writ of the year 1275,<sup>6</sup> gave to this authority over civil cases the form it was to retain during the remainder of our period, with some slight additions not affecting the principle. By this grant the chancellor of Oxford was given the cognizance of all personal actions to which either party was a scholar, thus widening his authority if the former grant was limited to cases where the scholars were defendants. From this time forward, therefore, the chancellor could summon the burgesses and other laymen of the town to answer in his court for all cases where a student was either plaintiff or defendant. The finding of the jury of 1260 was also made permanent by the same king in 1286 when he allowed the chancellor full cognizance of all personal actions and contracts between

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<sup>3</sup> Rashdall, *op. cit.*, II., II., 398.

<sup>4</sup> Lyte, *op. cit.*, 42.

<sup>5</sup> Wood, I., 260; O. H. S. *Coll.*, II., Neubauer, *The Jews in Oxford*, 285.

<sup>6</sup> *Ibid.*, I., 301-302; *Report deputy keeper pub. records*, 44 (1883), 207; confirmed 2 Ed. II., 1 Ed. III., 4 Rich. II.

the scholars and the Jews.<sup>7</sup> He was given the power of imprisoning and excommunicating them and of calling upon the constable of the castle to enforce his mandates. Although the powers of the chancellor, in this respect, had been extended to the suburbs of Oxford, the bailiff of the hundred without the north gate disputed his rights within that district in 1288.<sup>8</sup> The king's council, however, decided against this claim and removed him from his office. Having brought the question of the civil jurisdiction down to the year of the great settlement, 1290, we shall now turn to the jurisdiction of the chancellor over criminal cases.

In cases involving crimes the authority of the chancellor was much slower in attaining definiteness than it was in civil cases. The first steps toward this jurisdiction were not in themselves grants of jurisdictional rights. A distinction was at first made in favor of the scholars. During the year 1248 Henry III granted that if an injury be done to a scholar the inquisition thereof should be made by the neighboring villages as well as by the burgesses of Oxford.<sup>9</sup> This was to prevent the passions of the burgesses from having full sway. Moreover, if a scholar should be slain the whole town should be punished for the deed. The distinction thus made between scholars and laymen was later made still clearer, not by a royal charter or letters patent, but by a custom which afterwards received the higher sanction. In 1251 the king released two scholars from gaol and promised that all scholars charged with light offenses should be handed over to the chancellor, as vice-regent of the bishop of Lincoln; those accused of more serious crimes were to be reserved for the bishop himself.<sup>10</sup> During the following years more scholars were released to the

<sup>7</sup> O. H. S., *Coll.*, II., Neubauer, op. cit., 286; *Cal. patent rolls Ed. I.*, 1281-92, 236; Wood, I., 325.

<sup>8</sup> *Mun. acad.*, I., 43-45; Wood, I., 327.

<sup>9</sup> Wood, I., 238-239; *Oxford city docs.*, Rogers, 212; confirmed *Cal. p. r., Ed. I.*, 1281-92, 258.

<sup>10</sup> *Ibid.*, I., 243; Lyte, op. cit., 45.

chancellor to be tried "according to the custom of the university."<sup>11</sup> Thus far the chancellor had gained powers over the students alone and only over their minor offences; but this naturally led up to the royal grants of 1255,<sup>12</sup> when he was released from any surveillance of the bishop, although he was given as yet no well defined jurisdictional powers. If a layman gravely injured a clerk, so ran the grant, he was to be placed in Oxford castle to remain there until the chancellor and university were satisfied. If the injury was slight he was to be imprisoned in the town gaol. Those scholars who gravely or slightly injured a layman were subject to a like imprisonment at the will of the chancellor. The important point in this letter is not that he could release scholars accused of light offenses, for he already did this, but that he could now release scholars accused of more serious crimes, and, especially, that he was given powers over laymen. The latter, though not a case of direct jurisdiction, would amount to the same thing, for he might keep the laymen in prison until they fully satisfied his demands.

The settlement of the chancellor's judicial powers over such cases as have been mentioned which occurred in 1290 was preserved with some additions and corrections during the remainder of our period. To the parliament of that year the burgesses, jealous of the increasing powers of the university, made their complaints, and the king acting as an arbitrator settled the points in dispute.<sup>13</sup> Answering the complaint of the mayor and burgesses that the chancellor released men arrested and imprisoned for violence by the officials of the town, Edward defined his criminal jurisdiction. The chancellor, henceforward, was to have cognizance of all trespasses in Oxford, where a clerk was a party, except pleas of the

<sup>11</sup> Lyte, *op. cit.*, 45 and notes.

<sup>12</sup> Rogers, *op. cit.*, 213-215; Stubbs, *Select charters*, ed. 1895, 377-378; Rashdall, *op. cit.*, II., II., 394.

<sup>13</sup> *Rot. parl.*, I., 33a; *Mun. acad.*, I., 46-56; Rashdall, *op. cit.*, II., II., 401; confirmed 8 Ed. II., 1 Ed. III.



death of a man and mayhem. These two cases are always excepted when grants are made to the chancellor, a new formula entering under Richard II, however, when he excepts felony and mayhem.<sup>14</sup> Cases involving a freehold were always free from the jurisdiction as they were from that of any of the ecclesiastical courts. When Pope Boniface IX, in 1395, confirmed the liberties of the university he stated that cases of homicide, mutilation and freehold were not within the cognizance of the chancellor's court.<sup>15</sup> Our suspicion that the chancellor fined those laymen who had injured clerks and were in consequence imprisoned, is confirmed by the complaint of the burgesses that he only releases such men after the payment of such heavy sums of money that they are ruined. In answer to this petition the king commanded moderation. The chancellor also received a distinct addition to his judicial authority over civil cases. He was given the right to jurisdiction, where a scholar was a party, over all persons passing through Oxford, and who were not burgesses of that place, in cases of contracts and trespasses made in Oxford. Further provisions were added that the chancellor should not release scholars imprisoned for mayhem or wounding until it was assured that the victim was not about to die and, also, that all burgesses should have at least one day's notice to appear before his court. These being in answer to direct complaints show the excesses to which the chancellor was liable.

As in other departments of the activity of the university, the burgesses of Oxford continually found cause for complaint in the exercise of the chancellor's judicial powers. The latter also had reason to be annoyed at the ill treatment and neglect of the townsmen. His power being naturally weakest in the suburbs of Oxford disorderly persons fled there, feeling safe from any interference from the town officials. As they became

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<sup>14</sup> Rashdall, II., II., 401.

<sup>15</sup> *Mun. acad.*, I., 78-81.

a source of trouble and of danger to such peaceful students who might have to pass through the suburbs, the chancellor petitioned parliament for redress and it was ordered that the town officials should pursue and take such persons in order to maintain the peace of the university.<sup>16</sup> In 1318 the preaching friars claimed to be exempt from the jurisdiction of the chancellor by a papal grant. The case being brought before Edward II, he decided that such friars were subject to the chancellor notwithstanding any grants of privileges from the pope.<sup>17</sup> The burgesses, on their part, complained that the university courts attracted royal pleas, fining and punishing those who accused scholars of felonies.<sup>18</sup> They also charged the chancellor with drawing to his court contracts between laymen and complained that he heavily fined the contestants and excommunicated all those who refused to submit to his judgments.<sup>19</sup> Other complaints were made that he gained cognizance through unlawful means of cases involving rents of free tenements.<sup>20</sup> The case of Walter de Harewell is a good example of the way in which the chancellor abused his power.<sup>21</sup> This man was accused by a clerk, William de Wyneye, of a crime done outside of the limits of the chancellor's jurisdiction in a foreign country. Nevertheless the chancellor took cognizance of the case and, in spite of the protests of Walter, committed him to prison until he should consent to pay a sum of money to William and until he should find sureties for his good faith. When he had done this his misfortunes did not end, for, having entered his house on his way to prison in order to make secure his chests and doors, he in-

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<sup>16</sup> *Rot. parl.*, I., 327a; O. H. S., *Coll.*, III., Smith, *Parl. pet.*, III-112; *Cal. p. r.*, Ed. II., 1313-17, 321; cf. *Ibid.*, Ed. III., 1327-30, 23.

<sup>17</sup> Wood, I., 399; *Cal. close rolls*, Ed. II., 1318-23, 31.

<sup>18</sup> O. H. S., *Coll.*, III., Smith, op. cit., 122 (circa 1320-22).

<sup>19</sup> *Ibid.*, 126-127 (2 Ed. III).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Rot. parl.*, II., 16b; O. H. S., *Coll.*, III., Smith, op. cit., 128 (1328).

curred the wrath of the chancellor and was banished from the town and his goods seized. The latter also threatened to imprison him for sixty days if he ever again entered Oxford. The king interfered in this case, ordering the angry chancellor not to pursue the matter further. The jealousy of the local officials of the university also showed itself in their reluctance to enforce the commands of the chancellor, for Edward III has continually to admonish the sheriff and the mayor and bailiffs to do their duty towards the university.<sup>22</sup>

The last and greatest dispute over the chancellor's judicial powers occurred during the years preceding 1356 when he contended with Richard d'Amory for authority over the hundred without the north gate of Oxford. The dispute was a general one involving matters of market regulation and the care of roads as well as the judicial affairs of the suburb. Richard claimed to have cognizance of all offences against the peace committed within the hundred, with all the fines arising from this jurisdiction. He included within these general lines cases where a scholar or other privileged person was a party, holding that the royal grants did not extend into his district. The matter came before Edward in the parliament of 1356 and was settled there.<sup>23</sup> As a result of this settlement the chancellor's jurisdiction was defined to include this territory. In it he was given cognizance of all cases of infringements of the university statutes or other pleas where a scholar or scholar's servant, in the general sense, was a party, pleas of mayhem, murder and freehold excepted.

The university received no new judicial powers during the fourteenth century beyond those already mentioned. Early in the fifteenth century a new judicial official, the seneschal or steward, was given some new powers by

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<sup>22</sup> *Cal. p. r., Ed. III., 1330-34, 208-209 (1331); Ibid., Ed. III., 1334-38, 67 (1334).*

<sup>23</sup> *Mun. acad., I., 173-180.*

Henry IV.<sup>24</sup> When one of those who were not students but who enjoyed their privileges was indicted for a felony before one of the royal justices, the chancellor was allowed henceforth to demand the man so that he might be tried before his appointee, the steward, in accordance with the laws of the land. The jury in such cases was to consist half of privileged persons and half of townsmen.

The development of the judicial power of the university of Cambridge was in some respects much more slow than in Oxford, yet the final result is about the same in both universities. The first signs of the future criminal jurisdiction of the chancellor appear in 1268 when it was enacted, as for Oxford in 1255, that in the event of a layman seriously injuring a clerk, or a clerk a layman, the culprit was to be imprisoned until satisfaction had been rendered according to the ideas of the chancellor.<sup>25</sup> The authority thus given to the chancellor would have the result noticed in the case of Oxford, that is, it would amount to a grant of the right to fine and punish, for the prisoner might not be released until he had fully satisfied the demands of the university official. That Edward I allowed this privilege is shown by the fact that during his reign certain clerks, imprisoned in the Tower of London, were, upon the chancellor's request, handed over to him.<sup>26</sup> The complaint was made, moreover, in 1293 that a layman imprisoned by the latter had been released by the town officials.<sup>27</sup> The power of imprisoning and detention formerly limited to grave injuries was, in 1317, extended to those of a less serious nature, but no grant of any authority to try criminal cases was made at the time.<sup>28</sup> Some further enactments were included intended to preserve order within the

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<sup>24</sup> Rashdall, *op. cit.*, II., II., 409-410; *Statutes of the colleges of Oxford*, III., 50.

<sup>25</sup> Cooper, I., 50-51.

<sup>26</sup> *Ibid.*, I., 62 (1289).

<sup>27</sup> *Ibid.*, I., 67.

<sup>28</sup> *Ibid.*, I., 75-76.

town. No burgess should knowingly hide a transgressor against a scholar.<sup>29</sup> Those bailiffs who neglected to do their duty when a scholar was injured or slain should be fined together with the townsmen.<sup>30</sup> The succeeding king, Edward III, finally gave the university some more positive powers. During the year 1352 he granted that the chancellor of Cambridge should have cognizance of all trespasses and excesses, where one party was a clerk, excepting cases of mayhem and felony.<sup>31</sup> This promising beginning was not destined to last, for during the following year it was repealed as being injurious to the interests of Queen Isabella, to whom the fee-farm of the town had been granted.<sup>32</sup> The reason for this was that the revenues of the borough would be diminished by the withdrawal of the fines from its court. In 1354 Edward sent letters close to the justices of the peace for the county of Cambridge commanding them to supersede all processes in their courts against stationers, book binders, writers and illuminators, connected with the university, except in cases of felony and mayhem, the cognizance of all such cases belonging to the chancellor, as had been accustomed.<sup>33</sup> This is possibly the royal recognition of the growth of a university custom, allowing the chancellor to try cases in which such privileged persons were defendants, although no official record of such a privilege can be found. At most it was a limited jurisdiction. Nevertheless it was not until 1383, long years after Oxford had received this authority, that Cambridge finally received its full right of trying criminal cases. Richard II, in that year, conferred upon the chancellor the cognizance of all cases of trespass and misdemeanor, done within the town of Cambridge or its suburbs, where a scholar or other privileged

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<sup>29</sup> Cooper, I., 75-76.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid., I., 103; Dyer, *Privileges of the univ. of Cambr.*, I., 19.

I., 19.

<sup>32</sup> Ibid., I., 104, (1353).

<sup>33</sup> Ibid., I., 104; *Docs. rel. univ. and coll. Cambr.*, I., 21.

person was a party.<sup>34</sup> There some examples recorded soon afterwards of the chancellor using this power to have cases removed to his court for trial and in this state the matter rests for our period.<sup>35</sup>

The growth of the chancellor's jurisdiction over civil cases was not so far behind that of Oxford as was the development of the powers already described. The university sent a petition to the parliament of 1304 that their chancellor might have the cognizance of cases of contracts and covenants between scholars and laymen, the royal prohibition not to run in such cases.<sup>36</sup> To this Edward I answered that they should have such powers as the university of Oxford had and he followed this up with the actual grant during the next year, 1305.<sup>37</sup> The members of the university were then given the right to cite the burgesses of the town before the chancellor's court for all personal actions, the king promising not to hinder such actions by his prohibition. The letter patent of the year 1317 was still more definite. This grant allowed "that all causes of clerks concerning loans, gifts and receipts, the taxing or leasing of houses, the hire, sale or loan of horses, cloth or victuals, and all other contracts respecting movable things happening in the town or suburbs, should be decided before the chancellor of the university only."<sup>38</sup> Edward III further made a grant of full power over personal actions in 1327.<sup>39</sup>

In Cambridge, as in Oxford, the growth of the chancellor's power was attended with certain excesses on his part which caused a feeling of jealousy to arise in the town. The burgesses complained in 1327 that the clerks of the university bought up actions of debt, trespass and contracts of the burgesses and of strangers and cited

<sup>34</sup> Cooper, I., 127.

<sup>35</sup> Ibid., I., 140 (1391); Ibid., 147 (1401); Ibid., I., 159 (1417).

<sup>36</sup> *Rot. parl.*, I., 161b.

<sup>37</sup> Cooper, I., 71; *Cal. p. r.*, Ed. I., 1301-07, 317; repeated in Ibid., Ed. II., 1315-17, 102 (1314).

<sup>38</sup> Ibid., I., 76; *Cal. p. r.*, Ed. II., 1313-17, 620; cf. Cooper, I., 95 (1343).

<sup>39</sup> *Cal. p. r.*, Ed. III., 1327-30, 61 (1327).

these men to appear before the chancellor's court, the latter enforcing their appearance by ecclesiastical censures.<sup>40</sup> The chancellor was at once commanded to forbid such action as it was contrary to the law of the land. The recurrence of such complaints at both universities leads to the belief that the scholars were doing a little profitable speculation, thinking, doubtless, to receive a favorable verdict in the chancellor's court. That they should even do this openly casts a reflection upon the impartiality of this court. There was also some cause for complaint on the other side. The chancellor and university in 1389 complained to parliament of the misdeeds of the burgesses.<sup>41</sup> They stated that the chancellor had been given cognizance of all personal actions and misdemeanors, except mayhem and felony, and that several scholars, having been indicted by the townsmen for crimes within the above limits the said indictments were quashed. Thereupon the townsmen indicted the chancellor and proctors for felony and would even have seized the former had he not fled. It was also charged that the burgesses accused the university officials in the courts upon the slightest pretexts and on that account they asked that they might not be indicted for any offences before the townsmen.

The year 1383, which witnessed the first complete grant of criminal jurisdiction, was also, and in the same grant, the year of the more accurate definition of the civil jurisdiction of the chancellor. Because of the vagueness of the privileges of the latter in cases where a scholar was a party, some of the royal justices had disallowed these powers. In consequence of a complaint to the king to this effect he granted to them in the above year the following privileges, or, we might say, definition of privileges.<sup>42</sup> The chancellor, or his deputies, were to have the right of trying all manner of personal

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<sup>40</sup> Cooper, I., 82.

<sup>41</sup> *Rot. parl.*, III., 260.

<sup>42</sup> Cooper, I., 127.

pleas, debts and all contracts and injuries as well as of trespasses against the peace and misdemeanors done in Cambridge or its suburbs, where a master, scholar, scholar's servant or common minister of the university was a party. Such pleas were to be held where the chancellor might see fit in the town or suburbs, and he might judge them according to the laws and customs of the university. All royal justices were commanded to allow the chancellor and his successors the full cognizance of all such cases and were forbidden to interfere unless he be found to be unjust. Those convicted were to be imprisoned in the Castle of Oxford or in any place in the town where the chancellor might desire them to be placed and the sheriff and the mayor and bailiffs were ordered to receive and keep such prisoners, who might be sent to either the castle or the town gaol. This is the fullest and most complete statement of the chancellor's judicial powers that is extant for our period.

There is in Cambridge a curious example of an exempt jurisdiction within that of the chancellor which has no parallel in Oxford. In 1276 there arose a dispute between the master of glomery, the superintendent of the grammar schools and the chancellor of the university. Hugh de Balsham, bishop of Ely, settled the matter by the following decision.<sup>43</sup> In cases of disputes where two glomerals, the grammar school boys, were the parties, or when they were the defendants in cases with scholars or townsmen, the master of glomery was given jurisdiction. If, however, the case involved the rent of houses rated by the masters and burgesses, or some grave crime, the chancellor was to have jurisdiction of the matter, as he should also have if when a scholar was the plaintiff, the latter should appeal to him. Naturally in all cases where the scholars were defendants the chancellor's court had full jurisdiction, nevertheless this court could not interfere in any of the above cases where

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<sup>43</sup> Cooper, I., 56-58; Fuller, *Hist. Cambr.*, 47-51; Rashdall, *op. cit.*, II., II., 555.



the glomerals or townsmen alone constituted the contestants.

The same period which witnessed the growth of the lay jurisdiction of the chancellor also witnessed his rise into prominence as an ecclesiastical judge. Although it must be acknowledged that royal grants or interference play but little part in this development, the knowledge of the favorable attitude of the crown toward the universities, seems to have been the strongest incentive leading the chancellor to strive for additional powers in other directions. In dealing with the chancellor's jurisdiction over ecclesiastical cases it will be necessary to confine most of our attention to Oxford. The Cambridge records are meagre in the first place, and, moreover, that university remains to a greater extent under the control of the bishop during our period than does Oxford.

Until the year 1214 nothing definite is known of the relations between the university of Oxford and the bishop of Lincoln. At that time a subordinate of the bishop, the chancellor, is mentioned as being "set over" the scholars to exercise over them the powers which the bishop would otherwise directly enjoy. Perhaps because of the distance of Oxford from the episcopal city and partly, perhaps, because of the growing independence of the university in other matters through royal grants, this institution during the following decades developed a number of customs which, to a large extent, interfered with the episcopal authority within its limits. By the year 1280 the university regarded its position strong enough to contest the authority of the bishop over its members.<sup>44</sup> The congregation in that year declared the following rights to have been theirs since time out of mind: that a scholar of the university might cite his adversary before the chancellor's court and that the defendant must answer there, that the probate of the wills of scholars belonged of right to the chancellor,

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<sup>44</sup> *Mun. acad.*, I., 41-43; Rashdall, *op. cit.*, II., II., 422.

that to the chancellor belonged the right of investigation into the moral misdeeds of the scholars, and that no master or scholar could be compelled to appear before any other than the chancellor's court for contracts entered into within the university. This usurpation of power, for it was no less, was resisted by the bishop, but, during the ensuing year these claims were ratified by a provincial synod of Canterbury, the only practical power left to the bishop being that of hearing appeals from the university courts.<sup>45</sup> At the end of the thirteenth century, therefore, the chancellor had gained an almost independent position with respect to the episcopal judicial powers.

Not until a later period did the university gain an exemption from the interference of the archdeacon of Oxford. Certain customs seem to have grown up here as in the case of the episcopal authority which were not acknowledged to exist by the archdeacon. When cardinal de Mota was made archdeacon in 1312-13, he did not come to England but sent deputies who made themselves extremely obnoxious by their extortions.<sup>46</sup> The university in 1325 began to resist their authority<sup>47</sup> and continued the fight until the controversy was settled by a compromise in 1345,<sup>48</sup> after the king had several times interceded with the pope on behalf of Oxford.<sup>49</sup> In the above year it was decided that the chancellor was to have "archidiaconal authority over all doctors, masters and scholars, religious and lay, as also over all rectors, vicars and chaplains within the university, unless they held cures in Oxford, in which case they were subjected to the ordinary jurisdiction of the archdeacon."<sup>50</sup> The chancellor was also to have jurisdiction over a well defined list of scholars' servants and other privileged

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<sup>45</sup> Rashdall, *op. cit.*, II., II., 422-423.

<sup>46</sup> O. H. S., *Coll.*, I., 16-19.

<sup>47</sup> Wood, I., 407-408.

<sup>48</sup> *Mun. acad.*, I., 148-152.

<sup>49</sup> Hardy, *Syllabus*, I., 234; I., 251.

<sup>50</sup> O. H. S., *Coll.*, I., 19.

persons except in cases involving the wills of writers, which were reserved to the archdeacon. Over all persons coming under the chancellor's general authority, but not included in the above list, the archdeacon was to have the rights pertaining to his office.<sup>51</sup> This is the last definition of the chancellor's ecclesiastical jurisdiction until the final statement of the pope in 1395, when he exempted the university from the jurisdiction of all archbishops, legates, bishops and other ecclesiastical judges.<sup>52</sup> By this bull the pope also gave to the chancellor judicial authority over "exempt persons such as the mendicants and monks of exempt monasteries, and exempt cases, such as assaults on clerks."<sup>53</sup>

The question of appeals has already been slightly noticed. The bishop, as was then said, could be appealed to after the university courts had failed to give satisfaction. Even this practice soon died out and in 1368 the course of appeals was said to be as follows: appeal in all cases, temporal or spiritual should be from any of the chancellor's deputies to the chancellor himself, from him to the congregation of regents, from their decision to the congregation of regents and non-regents and finally from their judgment in civil cases to the king and to the pope in spiritual matters.<sup>54</sup> The king also, in order to strengthen this university right of deciding its own cases, forbade other ecclesiastical courts to entertain cases pertaining to the chancellor's jurisdiction,<sup>55</sup> and also forbade any one to appeal out of the kingdom cases belonging to this same official.<sup>56</sup>

While the university of Cambridge was far behind Oxford in gaining exemption from the episcopal authority, it preceded the latter by many years in the settle-

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<sup>51</sup> *Mun. acad.*, I., 148-152; Wilkins, *Concilia*, II., 526-528; O. H. S., *Coll.*, I., 16-19; Rashdall, *op. cit.*, II., II., 423 n. 2.

<sup>52</sup> *Ibid.*, I., 78-80; Rashdall, *op. cit.*, II., II., 430.

<sup>53</sup> Rashdall, *op. cit.*, II., II., 430.

<sup>54</sup> *Mun. acad.*, I., 230-232.

<sup>55</sup> Wood, I., 478 (1362).

<sup>56</sup> *Ibid.*, I., 480 (1367); I., 515 (1384).

ment of its relations with the archdeacon. A controversy having arisen between the university and the archdeacon of Ely concerning their respective jurisdictions, the matter was, in 1276, referred to Hugh de Belsham, the bishop of Ely, and by him settled.<sup>57</sup> It seems that a custom had grown up in the university by which neither the scholars nor their servants appeared before the archdeacon for their misdeeds. After strictly defining the privileged classes, the bishop enacted that they should, as in former times, appear before the chancellor, while their families should answer to the archdeacon for all cases belonging to his jurisdiction. All the clergy holding cures in Cambridge, as in Oxford later, were to be subject to the archdeacon's authority. Those, however, who came to the town for the purpose of studying there were subject to the chancellor. At the end of this settlement the bishop expressly reserves to himself or to his official all appeals in ecclesiastical matters. The commanding tone of the document illustrates very well the strong position of the bishop at this time.

The bishop of Ely, within whose diocese Cambridge lay, long held this position of control over the university. It must not be understood that this control meant an active interference in the minutiae of university affairs, for the chancellor was the bishop's representative in all such matters. Moreover, custom, as elsewhere, would tend to make the position of the university independent in all but exceptional cases, long before the bishop would have acknowledged any formal rights. During the thirteenth century the bishop heard appeals from the decisions of the chancellor,<sup>58</sup> decided disputes between the latter and the masters,<sup>59</sup> and interfered in other ways; but during the fourteenth century he forbade frivolous appeals to himself by the scholars and others under the chancellor's jurisdiction.<sup>60</sup>

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<sup>57</sup> Cooper, I., 56-58; Fuller, *op. cit.*, 47 sq.

<sup>58</sup> Rashdall, *op. cit.*, II., II., 549.

<sup>59</sup> Cooper, I., 67 (1294).

<sup>60</sup> *Ibid.*, I., 94 (1341).

Some find in the papal bull of 1318 an exemption of the chancellor from the supervising power of the bishop, yet it has to be acknowledged that this exemption was not recognized by the bishops of Ely during the period following that date.<sup>61</sup> It was not until 1392 that the king commanded the bishop not to send citations interfering with the chancellor's court<sup>62</sup> and it was not until 1433 that the chancellor had his exclusive ecclesiastical jurisdiction finally recognized by the pope.<sup>63</sup>

As a lay judge and as an ecclesiastic, as we have seen, the chancellor had gained wide judicial powers. His position as the head of the university included yet other judicial duties which may, in theory at least, be distinguished from the above cases. He had the power to punish the students under certain of the university statutes, which power was due solely to the position of these bodies. His authority over the servants of scholars and over the various privileged artisans can also be referred to this side of his three-fold position. In the main, however, this distinction is theoretical, being so interwoven with his other powers as to be hardly distinguished from them: It is also of very little importance from the standpoint of this study.

The course of the development of the several judicial privileges of the chancellor having been traced, his means of enforcing these must be shown. Some coercive power was absolutely necessary so that he might bring an offending scholar to terms if the latter should refuse to obey his summons to appear at court. In this section some attention will also be paid to the means of punishment in the hands of the university officials.

As an ecclesiastic the chancellor had various means of punishing offenders and of enforcing his judgments. Being a judge in a clerical court he could impose the various penalties and punishments peculiar to the

<sup>61</sup> Mullinger, *Univ. of Cambridge*, I., 145-146.

<sup>62</sup> B.M. MSS., 5845, fol. 258; Rashdall, *op. cit.*, II., II., 549-550.

<sup>63</sup> Cooper, I., 185.

clergy; he could and did imprison the scholars, as we have seen him doing in the thirteenth century; and he could inflict the greatest punishment in the hands of an ecclesiastic, excommunication, upon those who displeased him or who refused to obey his commands.

During the thirteenth century the chancellors of both universities lacked the episcopal privilege of calling upon the secular arm to enforce their excommunications, yet they, nevertheless, did excommunicate men.<sup>64</sup> The first step taken by Oxford was to gain the assistance of the bishop and archbishop for enforcing its judgments. In 1279 the archbishop of Canterbury promised that all persons excommunicated by the chancellor of Oxford should be delivered to him no matter in what diocese they might be.<sup>65</sup> Seemingly this was not sufficient, for in 1295 the chancellor asked the aid of several of the bishops separately and some of them promised to take from the clerks the fruits of their livings if they should persist in their refusal to submit to the chancellor.<sup>66</sup>

The most effectual mode of enforcing excommunication was to gain the aid of the secular power through the grant of the writ named "de excommunicato capiendo." As often used, excommunication was in a way the last resort, the outlawry, of the ecclesiastic and it was necessary that it should be efficient. If, therefore, the man under the ban refused to appear after forty days had elapsed, the crown granted that the bishop might, by his writ, call upon the sheriff to take and imprison the guilty man until he satisfied the claims of the church.<sup>67</sup> The right to have this writ was given to the chancellor of Oxford by Edward II for a term of five

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<sup>64</sup> Wood, I., 262 (1262); *Ibid.*, I., 317 (1283); Cooper, I., 59 (1278).

<sup>65</sup> *Mun. acad.*, I., 341.

<sup>66</sup> Wood I., 347.

<sup>67</sup> Makower, *Cons. hist. of the church of England*, 437; Stubbs, *Cons. hist.*, ed. 1896, III., 357; Maitland, *Roman canon law*, 58-59.

years,<sup>68</sup> and the grant was renewed with great regularity during the fourteenth century until Henry IV bestowed it for twenty-five years.<sup>69</sup> Cambridge does not seem to have gained the right to demand this writ before 1383, for in 1382 the chancellor appealed to the bishop of Ely to send letters of notification to the king concerning certain of his excommunications.<sup>70</sup> But in 1383 Richard II gave him the right to signify his excommunications directly to the chancellor of England, who would issue the writ named "in the same manner as the chancellor of the university of Oxford has the like privilege."<sup>71</sup>

Disorderly and riotous students and those breaking the statutes in various ways were by the terms of the university regulations subject to various punishments, such as fines<sup>72</sup> or imprisonment.<sup>83</sup> The greatest penalty indicated in the statutes, banishment from the town, seems to have been assumed upon analogy with the practice of the town, it being the most effectual means of cutting off the offender from the rights and privileges of the university.<sup>74</sup>

The chancellor as a lay judge was in a peculiar position. Though he was the holder of an exempt jurisdiction, he had no prison of his own, not even an ecclesiastical gaol and he had but few police officials to aid him. It was, therefore, necessary that, although he was a cleric exercising ecclesiastical powers, he should be fitted into the administrative machinery of the lay power.

Almost from the beginnings of the university we find that the mayor and bailiffs of the two towns are expect-

<sup>68</sup> O. H. S. *Coll.* III., Smith, *Parl. pet.*, 121-122; cf. *Ibid.*, 96.

<sup>69</sup> Wood, I., 536 (1399); other examples—*Ibid.*, I., 433, 437, 443, 479, etc.

<sup>70</sup> Cooper, I., 126.

<sup>71</sup> *Cal. p. r., Rich. II.*, 1381-85, 241.

<sup>72</sup> *Mun. acad.*, I., 304-306, 314, 506, 666.

<sup>73</sup> *Ibid.*, I., 94.

<sup>74</sup> *Ibid.*, I., 119, 122, 127; Cooper, I., 57; *Rot. parl.*, II., 16b.

ed to assist the chancellor in arresting disorderly students, the royal commands soon leaving no room for doubt upon this point.<sup>75</sup> The sheriff also from an early date could be called upon by the chancellor to aid him. In 1231 both the universities were given the right to cite the sheriff of the counties to their assistance with this difference, that while the chancellor of Cambridge had to ask for this aid through the bishop of Ely,<sup>76</sup> the chancellor of Oxford could himself call directly upon the sheriff.<sup>77</sup> Since the process of summoning the sheriff through the bishop would be slow work at best, the Cambridge grant was soon amended, the chancellor being given the right of direct citation.<sup>78</sup> A reversal of this policy occurred in 1249,<sup>79</sup> when Henry revoked his former grant, but it was again renewed in 1255.<sup>80</sup> In both universities during the remainder of our period the sheriff's aid was at the command of the chancellor whenever it was deemed necessary to enforce order.<sup>81</sup> Ordinarily, however, the chancellor would not need the assistance of the sheriff, his own officials and the mayor and bailiffs being sufficient to make all necessary arrests.

The lack of a prison within which the chancellor could imprison malefactors was remedied in a similar fashion. Henry III commanded the mayor and bailiffs of Oxford to place the town gaol at the disposal of the chancellor so that he might place in it his rebellious clerks.<sup>82</sup> In the twenty-first year of the same king's reign he ordered that the royal prison in Oxford should

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<sup>75</sup> Rogers, *op. cit.*, 212 (1248); Cooper, I., 44 (1242); *Ibid.*, I., 50 (1260).

<sup>76</sup> *Royal letters Henry III.*, Shirley, I., 396-397.

<sup>77</sup> *Ibid.*, I., 399.

<sup>78</sup> Cooper, I., 44 (1242).

<sup>79</sup> *Ibid.*, I., 45.

<sup>80</sup> *Ibid.*, I., 46.

<sup>81</sup> B. M. MSS., *Faustina*, C. III., fol. 133 sq.; the same command repeated for Cambridge, 52 Henry III., 21 Ed. I., 10 Ed. II., 20 Ed. II., 1 Ed. III., 17 Rich. II., etc.; for Oxford, see Wood, I., 385, 404, 495.

<sup>82</sup> Wood, I., 205 (15 Henry III.).



be open to the chancellor for the same purpose.<sup>83</sup> A more definite grant was made during the year 1255, when he directed that in cases of slight injuries of a student the offending clerk or layman should be imprisoned in the town gaol, while for graver injuries they were to be imprisoned in Oxford castle.<sup>84</sup> At the end of the thirteenth century it may be assumed that the chancellor of Oxford had full rights in both the gaol and castle. Yet here again internal jealousies made themselves felt. The chancellor made the charge that, through the connivance of the mayor and bailiffs, the men he had sent to the town gaol were released, or, at least, allowed to escape.<sup>85</sup> On the other hand the burgesses complained of the harsh treatment of their fellow townsmen by the chancellor.<sup>86</sup> Even the sheriff had his cause for complaint, which was that the castle was overcrowded because of the excessive use of it by the chancellor as a place of imprisonment for trivial offenders.<sup>87</sup>

During the thirteenth century it seems that the Cambridge only gained the use of the town gaol.<sup>88</sup> The castle of Cambridge was opened to him in 1317, because of the ill treatment accorded to those students imprisoned in the town gaol.<sup>89</sup> After Edward III had confirmed this privilege,<sup>90</sup> the burgess, in 1327, complained to parliament that the chancellor's right of imprisoning laymen in the castle was repugnant to their borough privilege of not being impleaded without the town of Cambridge; the castle being outside of the town limits.<sup>91</sup> But the protest was of no avail. When Richard II came to the throne he gave the university a char-

<sup>83</sup> *Rot. claus.*, 21 Henry III., m. 19d.

<sup>84</sup> Rogers, *op. cit.*, 213-215.

<sup>85</sup> *O. H. S. Coll.*, III., Smith, *op. cit.*, 118; *Rot. parl.*, I., 373a; *O. H. S. Coll.*, I., 125.

<sup>86</sup> *Mun. acad.*, I., 50 (1290).

<sup>87</sup> *O. H. S. Coll.*, III., Smith, *op. cit.*, 134 (1334); *Rot. parl.*, II., 76b

<sup>88</sup> E. g. Cooper, I., 50-51 (1268).

<sup>89</sup> *Cal. p. r.*, *Ed. II.*, 1313-17, 665.

<sup>90</sup> Cooper, I., 82-83 (1327).

<sup>91</sup> *Ibid.*, I., 90.

ter fully and finally confirming the right of the chancellor to imprison all persons convicted before him in the castle of Cambridge, or elsewhere, as he might see fit, and the sheriff and town officials were commanded to receive and guard such prisoners.<sup>92</sup> The usual complaints of mutual ill treatment also occur here. In 1335 the university claimed that the prisoners were released by the town officials,<sup>93</sup> and the king had to send an order to them that no such releases should be made until the chancellor had demanded the prisoners.<sup>94</sup> If they refused to obey the king threatened dire punishment.

There is one interesting example of the royal measures in favor of the university, which must be noticed before leaving the question of the chancellor's power of imprisoning. Henry de Harwedon, the chancellor of Cambridge, in 1334, sent to prison a scholar named William de Wyvelingham. William considered himself ill treated and brought suit in the royal courts against Henry and received £100 damages. The chancellor at once appealed from this judgment, claiming the power to imprison the scholars and their servants for their crimes. The matter was finally brought before the parliament of 1338.<sup>95</sup> The results of this suit were felt in both universities. Edward III granted to Oxford in 1336, that the chancellor should not be imprisoned or disturbed because of any false imprisonment, as had lately happened in Cambridge.<sup>96</sup> The Cambridge chancellor received a like immunity in 1343, also on account of the above case.<sup>97</sup> Whether the king had the power to grant this privilege is extremely doubtful, for it was not the royal policy to cut off all chances of redress, but

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<sup>92</sup> Cooper, I., 127 (1383).

<sup>93</sup> *Ibid.*, I., 88.

<sup>94</sup> *Cal. c. r.*, *Ed. III.*, 1333-37, 559-560; cf. *Rot. parl.*, I., 381a (1320).

<sup>95</sup> Cooper, I., 86, 91; *Cal. c. r.*, *Ed. III.*, 1333-37, 703-704, 704, 726, 727, 733; *Rot. parl.*, II., 97a.

<sup>96</sup> Wood, I., 433; *ibid.*, I., 487 (1374).

<sup>97</sup> Cooper, I., 95.

the phrase, "in so far as in the power of the king," which is added, may be the saving clause.

Cases might possibly arise, however, in which all these various safeguards might prove unavailing. It is stated that certain men, having perpetrated misdeeds while within the range of the chancellor's authority, remove themselves from the town and suburbs to continue their evil deeds where no effective remedy can be had. In order that such a scholar or other person might be brought to terms, a grant was made to Oxford in 1341.<sup>98</sup> The chancellor was given the right to certify the names of such malefactors to the royal chancery, which would then see that justice was done. It is expressly added that the privileges of the university are to be in no wise prejudiced by the exercise of this privilege.

The chancellor, as might be supposed, used his various powers of coercion and imprisonment in whatever way suited him best. Because his power of excommunication was due to his position as an ecclesiastical judge would and did not deter him from using it in temporal cases. The fact that his judicial authority was a mixture of lay and ecclesiastical powers would lead naturally to a confusion of the two in practice. Indeed, the chancellor used his greatest clerical weapon against laymen for various crimes within his jurisdiction,<sup>99</sup> as he also did against the town officials for not preserving the peace,<sup>100</sup> and, moreover, he used it as a means of compelling the townsmen to bend to his will.<sup>101</sup> The king himself seems to aid this confusion, when, in 1355, he allowed the chancellor of Oxford to enforce the cleansing of the streets by ecclesiastical censures.<sup>102</sup>

<sup>98</sup> *Cal. p. r., Ed. III., 1340-43, 309-310.*

<sup>99</sup> *O. H. S., Coll. III., Smith, op. cit., 126-127; ibid., 122.*

<sup>100</sup> *Wood, I., 202, 317-318.*

<sup>101</sup> *Cooper, I., 59; O. H. S., Coll., III., 122, 137.*

<sup>102</sup> *Rot. chart., 29 Ed. III., No. 3.*

## CHAPTER II.

### THE UNIVERSITIES AND THE BOROUGHS.

The relation of the universities to the towns within which they were situated helps materially to show the attention paid by the royal government to the details of local activity. The universities gained a large share in many of the affairs of the boroughs not through grants from the dignitaries of the church, for this was clearly impossible, nor through local grants, but only through the favor of the kings. That the growth of such powers extends throughout the whole of the thirteenth and fourteenth centuries makes it clear, moreover, that this policy was peculiar to no one king or time. It is sometimes hard to realize that at this early period, before the era of paternalism, the royal administration entered so much into the life of the boroughs, especially after they had been given a large measure of local autonomy. On that account such a study as this may help, though slightly, owing to the peculiar conditions involved, to throw some light upon the royal interference elsewhere. In order that the resistance of the boroughs to the encroachments of the universities may be more fully appreciated, a brief outline of their chartered rights will first be given, before proceeding to the actual contact of the two corporations. No attempt will be made, indeed, to cover any but these chartered privileges, the growth of local customs lying too far afield.

At the opening of the thirteenth century Oxford and Cambridge were fairly important boroughs with the beginnings of chartered rights. The Oxford burgesses had already gained the right to have their borough at fee-farm.<sup>1</sup> During the reign of Henry II the acquired the right to their guild merchant, the customary free-

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<sup>1</sup> Ogle, *Royal letters*, 5 (temp. Henry I.).

dom from tolls and the right to be impleaded within the borough for any claim made upon them individually, in such suits following the laws and customs of London.<sup>2</sup> Cambridge had, in the reign of Henry II, received its borough at farm, but not at fee-farm.<sup>3</sup> The latter right it did not gain until the reign of John.<sup>4</sup>

After the beginning of the century Cambridge quickly gained similar privileges to those which Oxford already enjoyed. John bestowed upon it a charter in 1201, in which he gave it the right to have a gild merchant, acquitted the burgesses of the usual long list of tolls and granted "that right should be done to them touching their lands and tenures within the borough according to the custom of the borough, and of all their debts which shall have been contracted at Cambridge and of the pledges made there, pleas shall be held at Cambridge."<sup>5</sup> At this time it also appears that the mayor and bailiffs held court five times a year concerning suits of land and once a week for personal actions.<sup>6</sup>

Both the boroughs received several accessions of privileges, almost at the same time, about the middle of this century. Cambridge in 1256<sup>7</sup> and Oxford in 1257<sup>8</sup> gained from Henry III the right to the much sought for return of writs exempting them from the interference of the sheriff in their local affairs. The former was also given the cognizance of the action now called replevin, and in addition was allowed to elect its own coroner "for making the attachments of pleas of our crown arising within the town of Cambridge."<sup>9</sup> It is a puzzling fact that, although no royal grant of such a privilege to Oxford can be found, during the later thir-

<sup>2</sup> Ogle, *op. cit.*, 2 sq.; Boase, *Oxford*, 33-34.

<sup>3</sup> Maitland and Bateson, *Cambr. borough charters*, introd. XIII and 3.

<sup>4</sup> *Ibid.*, 7 (1207).

<sup>5</sup> *Ibid.*, 5.

<sup>6</sup> *Ibid.*, introd., XVI.

<sup>7</sup> *Ibid.*, *op. cit.*, 15.

<sup>8</sup> Ogle, *op. cit.*, 8.

<sup>9</sup> Maitland and Bateson, *op. cit.*, 16.

teenth and early fourteenth centuries there are coroners in that borough whose titles and actions stamp them as almost surely borough coroners.<sup>10</sup> And indeed the right of electing a borough coroner was not infrequently granted to the boroughs, as the practice of other places easily shows.<sup>11</sup> When this fact is taken into consideration and when the large amount of judicial privileges enjoyed by the borough of Oxford is noticed, these lend an air of extreme probability to the assertion that the coroners we find in Oxford at the time were borough coroners. In the charter above mentioned Oxford also received the right of not being impleaded without the borough for any pleas concerning the town or for any crime committed within the town, unless these touched the king. It was further granted that, during the absence of the king, their mayor might present himself for confirmation to the barons of the exchequer, as did the mayor of London.<sup>12</sup> There are numerous examples recorded of the mayor having taken this oath in London during the period under discussion.<sup>13</sup>

An additional privilege was given to Oxford in a supplementary charter dated March 26, 1257,<sup>14</sup> which had already been bestowed upon Cambridge in 1256.<sup>15</sup> The burgesses or their goods, wherever found in the kingdom, should not hereafter be seized for debts for which they were not the sureties or principal debtors.

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<sup>10</sup> Gross, *Coroners' rolls*, introd. XX. Dr. Gross, reasoning from their titles, thinks that they are borough coroners; see also Rogers, *Oxford City Documents*, 147 sq. Their activities as shown in the coroners' rolls tend to confirm this idea, cf. *Coroners' rolls* (MSS. P. R. O.) numbers 128, 129, 135, all for "villa Oxon."

<sup>11</sup> Gross, loc. cit.; *Records of the borough of Nottingham*, I., 24. (1230); J. S. Davies, *History of Southampton*, 153 (1256); Seyer, *Charters of Bristol*, 21 (1256); *Rot. cart.* (R. C.) 65 (1 John) for Ipswich, etc.

<sup>12</sup> For the oath of the mayor see Riley, *Liber albus* (R. S.), I., 308.

<sup>13</sup> Madox, *History of the exchequer*, 50-51 (21 Ed. I); Ogle op. cit., 27, 69, 72, 74, 92, 93, 95, 103

<sup>14</sup> Ogle, op. cit., 10 sq.

<sup>15</sup> Maitland and Bateson, op. cit., 15.

The relief here afforded was from the practice of the boroughs of the time, they arresting a townsman for the debts of his fellow townsmen. The system was finally abolished by the first statute of Westminster (ch. 23). In the same Oxford charter it was granted that the burgesses should not forfeit their goods found in the possession of servants who had committed felonies.

The succeeding kings continued this policy of increasing the local authority of the boroughs. Edward I confirmed the charters of both Oxford and Cambridge, but gave to them no new privileges.<sup>16</sup> The latter, however, during the reign of Edward II,<sup>17</sup> and the former during the reign of Edward III,<sup>18</sup> received charters more clearly defining their judicial authority. Quoting from the Cambridge charter; "concerning trespasses or contracts made in the same borough and suburb, they may not sue or be sued outside that borough unless the matter concerns us, or our heirs, and that touching those trespasses and contracts or other internal affairs, they shall not be convicted by strangers but only by their own fellow citizens, unless the matter concerns us, or our heirs, or the commonality of the aforesaid borough."<sup>19</sup> The burgesses of Cambridge were also freed from various tolls throughout the kingdom, such as pavage and murage, as were also the burgesses of Oxford in their charter. The former were also given the right to bequeath their lands and tenements within their borough to whom they wished, as if the same were chattels, provided that such lands were not alienated in mortmain. A saving clause was added to both charters that these privileges were not to be to the injury of the university.

The great riots of 1355 in Oxford and of 1381 in Cambridge caused those boroughs to lose numerous and valued privileges, which were handed over to the uni-

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<sup>16</sup> Ogle, *op. cit.*, 16 (1301); Maitland and Bateson, *op. cit.*, 18-20 (1289).

<sup>17</sup> Maitland and Bateson, *op. cit.*, 21 sq. (1313).

<sup>18</sup> Ogle, *op. cit.*, 35 sq. (1327).

<sup>19</sup> Translation in Maitland, *etc.*, 22.

versities. The principal loss in both cases was of certain controlling rights over the assizes and other functions of their markets. On account of this deprivation the boroughs suffered a severe diminution of their revenues, for the fines and forfeits arising from the above control were now paid to the university officials who had taken charge. Their fee-farms thus became a heavier burden, since they were supposed to include such payments, and, in consequence, Cambridge received a new charter giving to the burgesses other sources of revenue.<sup>20</sup> The fines, americiaments, forfeited issues and other profits arising from the penalties imposed by the royal justices while in session in Cambridge were to be given to the town; those fines, however, arising from cases in which a scholar's servant was a party being excepted. Some disputes breaking out between the town and university over the latter clause, it was further defined in 1394.<sup>21</sup>

Such were, in general, the privileges given to the boroughs by the royal charters. As may be seen, they were cut off to a large extent from the interference of the royal administrative and judicial officials and having this local independence they were hostile to the increasing powers of the universities, which threatened to limit their own rights. That such a limitation did come about will be shown in this chapter, in which will be treated first of all those forms of the borough machinery of government upon which the presence of the universities had a marked effect.

One of the great problems in the university towns was the preservation of the peace, the riotous tendencies of the students and the hostility of the townsmen calling for special regulations for them. Henry III, during his reign, was making great efforts through his institution of watch and ward to bring about tranquility in the kingdom, by a system of night watching in the

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<sup>20</sup> Maitland and Bateson, *op. cit.*, 36-37 (1385).

<sup>21</sup> *Ibid.*, 39 sq.; Cooper, I., 141.



towns and by a scheme of mutual responsibility among the townsmen.<sup>22</sup> These regulations would of course apply to Oxford and Cambridge as they did to the other English towns. In 1248, while this system was as yet not fully developed, there are the beginnings of special royal regulations applying to Oxford, which are similar, it is true, to those already promulgated for the whole kingdom, but are also suited to the needs of the local conditions.<sup>23</sup> If a burgess killed or gravely injured a clerk the whole community was to be amerced and punished; but if these misdeeds were due to the negligence of the bailiffs they alone were to be punished. Whenever the mayor and bailiffs took their oath of fidelity in the common place of the borough, the chancellor of the university was to be warned in advance so that he might be present if he so desired, for in their oaths these officials were to swear to preserve the university liberties and customs. It was further provided that each burgess of Oxford should answer for his whole family, in order that, if a scholar was injured or killed by one of them, the burgesses might produce the malefactors that justice might be done according to the custom of the realm.

This, though important as showing the king's interest in the scholars, was but the beginning of the royal provisions. A little later, in 1255, some actual changes were made in the form of the borough government to insure the peace and tranquility of the university.<sup>24</sup> In his previous letter patent of the year 1248 Henry had spoken of two aldermen in the borough; he now provided that there should be four aldermen, with whom eight discreet burgesses were to be associated, all of whom should swear fidelity to the king and should assist the mayor and bailiffs in the preservation of the

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<sup>22</sup> Stubbs, *Select charters* (Ed. 1895), 362, 371, 374. The institution was made permanent by the statute of Winchester, 1285. Stubbs, *op. cit.*, 470.

<sup>23</sup> Rogers, *op. cit.*, 212.

<sup>24</sup> *Ibid.*, 213-215; Stubbs, *op. cit.*, 377-378.

king's peace, in the taking of the assizes and in the capturing of malefactors, disturbers of the peace, nocturnal vagabonds and receivers of robbers and transgressors. An additional safeguard was made in the provision that in each parish two men should be chosen, from among the parishioners, who should inquire as to the suspicious persons lodging in the parish. They were also to keep watch to see whether anyone received such persons for three nights in their houses, in which case the latter persons might be made to answer for them if necessary. This is the final form of the town organization for this purpose during our period, although there is an agreement made in 1290 between the town and the university that they should have the joint custody of the peace in Oxford.<sup>25</sup>

The Cambridge regulations of the year 1268 are much the same as those for Oxford of 1255. On the twenty-second of February, 1268, Henry III made the following changes in the borough organization for the sake of the peace of the university.<sup>26</sup> There should be two aldermen in Cambridge, who should have associated with them four of the more discreet burgesses of the town. Their duties were of exactly the same description as those of the similar officials in Oxford. The same provisions were also made for the two men in each parish whose duty it was to seek out suspected persons. There was, however, a later arrangement in Cambridge, which followed shortly after this one, to prevent the frequent clashings between the town and the university. Prince Edward in 1270 caused an agreement to be entered into by the two organizations for the better keeping of the peace between them.<sup>27</sup> Five scholars were to be chosen from those coming from the counties of England, three from the Scotchmen, two Welshmen and

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<sup>25</sup> *Mun. acad.*, I., 46-56.

<sup>26</sup> Cooper, I., 50-51; confirmed 20 Ed. I., 2 Ed. II., 1 Ed. III.

<sup>27</sup> Fuller, *op. cit.*, I., 45-46; confirmed 20 Ed. I., 2 Ed. II., 1 Ed. III.

three Irishmen, to whom should be joined ten burgesses, three from the suburbs and seven from the town itself. This body was to attend to the preservation of the peace and was especially intended, as its composition indicates, to prevent internal strife.

The settlements reached during the thirteenth century, as above noticed, remained through the fourteenth for the most part unchanged. Oxford, however, being a walled town, the watching of its gates during the night was a matter of much importance and here too the university steps in to interfere with the town functions. During the early part of the fourteenth century it gained control of one of these gates, the Southgate, preparing the way for its future management of the night police.<sup>28</sup> It may not be out of place to add here, that when the justices of the peace began to be appointed regularly after 1360 with their extensive powers, the chancellors of both Oxford and Cambridge were regularly placed upon the commissions for those towns.<sup>29</sup> A saving clause was always added that these justices were not to interfere with the university liberties.

Beyond the changes shown above there seem to have been no new officials created in the towns because of the presence of the universities except the taxors, whose functions will be described in a later section. Yet the effects along other lines were numerous and significant. The duties and activities of the town officials were modified and limited on every side by the interference of the central government on behalf of the student bodies. Some indications of this can be seen in the case of the peace regulations. This idea was carried so far that it is somewhat doubtful whether a thirteenth century burgess of Oxford would have recognized the government of his borough at the end of the following century.

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<sup>28</sup> *Cal. c. r., Ed. II., 1323-27, 616-17* (Oct., 1326); cf. *O. H. S. Coll., III., 102.*

<sup>29</sup> *Wood, I., 479, 481, 487; Stat. coll. Ox., III., 31, 42, etc.; Docs. rel., univ. and Cambr., I., 33, 34, 36, 38, 39, sq.*

At the head of the town governments was the mayor, who, before entering upon his office, had to take an oath to the commonality of the town and had also to make some expression of his fidelity to the crown. The oath of the mayor of Oxford has already been spoken of, as has the fact that when he took his oath to the town the chancellor might be present if he wished. A similar state of affairs existed in Cambridge, it being granted that, when the mayor and bailiffs were to take their oaths in the common hall, the chancellor should be forewarned so that he might attend.<sup>30</sup> The mayor was to swear to respect the liberties and customs of the university and that he would faithfully observe the assizes of bread, wine and ale. In consequence of their neglect of this duty, as shown in the university petitions to parliament,<sup>31</sup> the grant was made in 1336, that the chancellor or his locum tenens should annually, in the name of the king, receive the oath of the mayor and burgesses to maintain the peace of the university and town.<sup>32</sup>

The question of the health of the students and townsmen involving as it did the care of the streets and pavements and some sanitary regulations, caused the king to interfere many times with the town control of these matters; for Oxford and Cambridge like many other mediaeval towns were far from being clean in any modern sense.

From an early date the repair and cleansing of the streets and pavements occupies an important place in the affairs of both boroughs. They seem to have been in an almost constant state of disrepair, the universities sending complaint after complaint to parliament of their poor condition.<sup>33</sup> In answer to these petitions and, perhaps, because of a paternal interest in the health of the students, the king strove to remedy the evil by grants

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<sup>30</sup> Cooper, I., 75-76 (1317).

<sup>31</sup> *Rot. parl.*, I., 381a (1320); Cooper, I., 88 (1335).

<sup>32</sup> Cooper, I., 88; cf. *Ibid.*, I., 101-102.

<sup>33</sup> *Ibid.*, I., 78, 85, 88, 101-2; *Rot. parl.*, I., 381a; Wood, I., 361; O. H. S. *Coll.*, III., 104.

of pavage,<sup>34</sup> and by commands that the town officials should cause the pavements before the houses of the townsmen and students to be kept in good condition by distraining the owners for repairs.<sup>35</sup> The Oxford chancellor was early associated with the mayor and bailiffs to see that this duty was performed, and also to compel the obedience of the masters and scholars.<sup>36</sup> There was the same difficulty over the cleansing of the streets, the university finding in their uncleanness a cause of much sickness and death in the towns. To Oxford, after the riots of 1355, it was granted that its chancellor was to have the sole power of seeing to the cleansing of the streets of the town and suburbs and of punishing those who refused to obey his commands.<sup>37</sup> The mayor and bailiffs seem to have been unsuccessful in their attempts to suppress the evil and this was the result. After the statute of Cambridge, 1388, chapter XIII of which was a command that the towns of the kingdom be kept clean,<sup>38</sup> the chancellor of Cambridge was associated with the town officials to attend to this subject.<sup>39</sup>

In addition to the general question of cleanliness involved in the care of the streets, complaints were made at intervals and remedies granted concerning special instances of unsanitary conditions. The great ditch of the town was not scoured thoroughly by the mayor and bailiffs, and, in Oxford, they were commanded to do so at once.<sup>40</sup> The Cambridge chancellor was ordered to see to the cleaning of certain noxious gutters within the precincts of the university.<sup>41</sup> Edward I issued a mandate that the bakers and brewers of Oxford should not use the polluted waters of the Trillmill stream because such

<sup>34</sup> Cooper, I., 62, 80.

<sup>35</sup> *Cal. c. r.*, Ed. III., 1333-37, 554; *Cal. p. r.*, Ed. III., 1330-1334, 208.

<sup>36</sup> *Cal. p. r.*, Ed. III., 1330-34, 208; *Ibid.*, 1334-38, 32; *Ibid.*, 1338-40, 121, 334.

<sup>37</sup> Ogle, op. cit., 62 sq.; cf. *Mun. acad.*, I., 177 (1356), where the power was extended to the hundred without the north gate.

<sup>38</sup> *Stat. of the realm*, II., 59.

<sup>39</sup> Cooper, I., 140 (1391).

<sup>40</sup> *Ibid.*, I., 85; Ogle, op. cit., 72 (1371).

<sup>41</sup> *Ibid.*, I., 141 (1393).

a practice was hurtful to the health of the scholars.<sup>42</sup> The university of Oxford also complained that the preparing of parchments and skins within the walls of the town caused an awful stench to arise and therefore it prayed that these operations might be henceforth carried on without the town.<sup>43</sup> Although this extreme request was not granted by the king, he did command that the evil should be remedied. Another and great cause of annoyance in Oxford was the fact that the butchers and others killed their cattle within the town, throwing the offal and other refuse into the streets. This was said to have caused a large amount of sickness and death.<sup>44</sup> It seems from the answer to the royal writ that there was a public place set aside for the use of those killing cattle, in which they could also sell their meats, the rent of which place, one hundred shillings, was used toward the payment of the fee-farm of the town.<sup>45</sup> Nevertheless the mayor and bailiffs were ordered to make a proclamation against any such slaughtering of animals within the walls, and the chancellor of the university, the mayor of the town, and the warden of Merton college were appointed to act as overseers of the matter with the power to punish offenders.<sup>46</sup> The mayor and bailiffs objecting to this and the sheriff refusing to aid in the carrying out of this command, Edward issued another writ in which he reconstructed the commission.<sup>47</sup> The chancellor and warden were now chosen to supervise the execution of the order, the former being empowered to act alone if the latter refused to serve. On the same day the sheriff was commanded to make a proclamation of this regulation within the town of Oxford.<sup>48</sup>

But the royal care of the universities did not end there.

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<sup>42</sup> Wood, I., 344-45 (1293).

<sup>43</sup> O. H. S. *Coll.*, III., 104-105 (1305).

<sup>44</sup> *Ibid.*, 135 (1339).

<sup>45</sup> Wood, I., 439, *Cal. p. r., Ed. III., 1338-40*, 306.

<sup>46</sup> *Cal. p. r., Ed. III., 1338-40*, 186 (Jan. 20, 1339).

<sup>47</sup> *Ibid.*, 306 (July 30, 1339).

<sup>48</sup> *Ibid.*

Besides the employment of various means to preserve the health of the students, he used others to preserve the quiet necessary for study, others for the moral welfare of the students, and yet others to prevent any unjust discrimination against them. All these interfered, to a greater or less extent, with the free control of the boroughs by the burgesses themselves.

The tournaments of the mediaeval period were often, as is well known, the scenes of great disorder. "Many sad casualties were caused by these meetings, though ordered with the best caution. Arms and legs were as often broken as spears. Much lewd people waited on these assemblies, light housewives as well as light horsemen repaired thereto. Yea, such was the clashing of swords, the rattling of arms, the sounding of trumpets, the neighing of horses, the shouting of men all day-time, with the roaring of riotous revellers all the night, that the scholars' studies were disturbed, safety endangered, lodging straightened, charges enlarged, all provisions being unconscionably enhanced.<sup>49</sup> These conditions were those that led Henry III, in 1252, to prohibit all tournaments in Cambridge or about it without his license, under pain of forfeiture of all the goods of the offender.<sup>50</sup> In 1270 he sent another writ which became the basis of the future strict royal policy.<sup>51</sup> The king, at the request of the university, then commanded that no tournaments, tiltings or other warlike games should be held in Cambridge or within five miles of that place, if the masters and scholars requested that they should not be allowed. Such warlike meetings were also forbidden to be held in or about Oxford, the regulation of 1306 making this order good within twelve miles of the town.<sup>52</sup> The action against tournaments is, however, but another instance of the localization of what

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<sup>49</sup> Mullinger, *op. cit.*, I., 138, quoting Fuller.

<sup>50</sup> B. M. MSS., *Faustina*, C. III., fol. 142a (36 Henry III.).

<sup>51</sup> Cooper, I., 53; confirmed 1292, 1309, 1327.

<sup>52</sup> Wood, I., 369; Hardy, *Syllabus*, 138.

was a general policy of the crown, as may be seen in the various writs prohibiting such meetings.<sup>53</sup>

An indirect cause of many of the smaller disturbances in the university towns, as also of the greater riots, was undoubtedly the practice of both the scholars and townsmen of carrying arms. That the authorities of the university of Oxford saw this the words of the statute of 1313 bear ample witness.<sup>54</sup> During the thirteenth century that university prohibited the carrying of weapons by the students,<sup>55</sup> and had later been promised assistance by the archbishop of Canterbury to enforce this command.<sup>56</sup> A compromise position was reached in 1313, the students having offered in their own behalf the plea of self defence.<sup>57</sup> By this compromise the carrying of arms was restricted to such times as when the students were entering or leaving the town after or upon entering upon a long journey. With this statute as its backing, the university appealed to parliament that the townsmen of Oxford be also forbidden to carry arms, for it said, they kill and wound many unarmed and unoffensive scholars.<sup>58</sup> Edward II gave his answer to this petition in a command that none but the town officials should be allowed to bear arms within the town. The next king, Edward III, passed a still more stringent enactment, forbidding the bringing in arms by the students under any pretext and commanding that they should not even keep armor or weapons in their lodgings.<sup>59</sup> All persons were, further, forbidden to sell them such articles under pain of imprisonment. He also forbade the carrying of weapons by all men except those officials of the town and of the royal administration

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<sup>53</sup> Palgrave, *Parliamentary writs*, II., II., app. 19, No. 18, sq.; *Ibid.*, II., II., app. 35, No. 26.

<sup>54</sup> *Mun. acad.*, I., 91.

<sup>55</sup> *Ibid.*, I., 16 (1250?).

<sup>56</sup> *Ibid.*, I., 40 (1279).

<sup>57</sup> *Ibid.*, I., 91.

<sup>58</sup> *Rot. parl.*, I., 373b; O. H. S. *Coll.*, III., 119 (1320).

<sup>59</sup> *Cal. p. r.*, Ed. III., 1334-38, 67 (1334); *ibid.*, 83; O. H. S., *Coll.*, I., 14 (1335).



whose duties demanded their use.<sup>60</sup> When the privileges of the town of Oxford were restored in 1335, after St. Scholastica's day, the cognizance of all unlawful bearers of arms, both lay and clerical, was reserved for the chancellor of the university.<sup>61</sup> The statutes of Cambridge have been lost for this early period and there seem to have been no royal writs upon this subject directed to that place; yet even there, in 1351, the university petitioned parliament for the power to seize all weapons that were being carried and to bind over offenders for their good behavior.<sup>62</sup>

It must not be deduced from these strict orders that the scholars and laymen did not carry arms or at least keep them within reach. During the riot on and after St. Scholastica's day, which followed the period of the statutes, the students, as well as the townsmen, were fully equipped for the fray.<sup>63</sup> The coroners' rolls for Oxford also bear witness to the seemingly general possession of arms by the students in open violation of the university commands.<sup>64</sup> It is interesting to note the variety of weapons in use, mention being made of bows, arrows, swords, knives, hatchets, shields and even of that curious weapon called a pole-axe. The weapons used were therefore not primitive stones or clubs, but almost the whole range of effective mediaeval offensive weapons.

The care of the morals of the students was left to the chancellor of the university; yet to remove temptation from their path it was ordered that in Cambridge a proclamation should be made four times a year to the effect that no harlot should remain within the town or its suburbs.<sup>65</sup> If such women did not depart within fifteen days after the making of the proclamation, they were to

<sup>60</sup> *Cal. p. r., Ed. III., 1334-38*, 83 (1334).

<sup>61</sup> Ogle, *op. cit.*, 62 sq. (1355).

<sup>62</sup> Cooper, I., 102.

<sup>63</sup> Lyte, *Hist. univ. Oxford*, 162 sq.

<sup>64</sup> Rogers, *op. cit.*, 150, 155, 163, 165, 168, 173.

<sup>65</sup> *Cal. p. r., Ed. II., 1313-17*, 665 (1327); *Ibid., Ed. III., 1327-30*, 60, 183 (1327).

be imprisoned at the will of the chancellor. They were also banished from Oxford in 1234, but the king allowed those arrested to be released soon afterward and made no systematic regulations for their control.<sup>66</sup> By the beginning of the fourteenth century, however, the chancellor of Oxford, seems to have gained the power to imprison and punish all such corruptors of the morals of the students.<sup>67</sup>

Yet another instance of the royal interference with the town affairs for the benefit of the students still remains to be treated before proceeding to the great example of such action, the organization of the markets. In order to prevent the unjust treatment of the scholars with respect to the rent of their rooms and houses, the crown approved the method, which was in use in all of the mediaeval universities,<sup>68</sup> of having the rent of these halls rated by a joint board of townsmen and masters. The first recorded mention of a distinction between lay and scholars' houses is found in 1244, when the papal legate, Nicolas, bishop of Tusculum, provided that the townsmen should remit one-half of the rent of the halls occupied by scholars for the ensuing ten years, as a penalty for their misdeeds.<sup>69</sup> Henry III followed this, in 1231, with a command to the townsmen not to overrate their houses so as to cause scholars to remain away from Oxford.<sup>70</sup> Later, in 1256, the same king by his confirmation extended the practice noted, granting that such houses should be rated every five years by a joint board of taxors chosen by the town and university.<sup>71</sup> This board was said in 1290 to be composed of two clerics and two laymen.<sup>72</sup> A custom grew out of

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<sup>66</sup> Wood, I., 217; Lyte, op. cit., 29; cf. *Mun. acad.*, I., 17.

<sup>67</sup> O. H. S., *Coll.*, III., 101-102 (1305).

<sup>68</sup> Rashdall, op. cit., II., II., 399-400.

<sup>69</sup> *Mun. acad.*, I., 1.

<sup>70</sup> Wood, I., 205-206; cf. *Mun. acad.*, I., 13, (1250?), which provides a penalty for overrating.

<sup>71</sup> Wood, I., 253; *Annales monast.*, (Osney), IV., 111, sub anuo 1256; cf. Wood, I., 275 (1269).

<sup>72</sup> *Mun. acad.*, I., 55-56.

these regulations that when once a house was let to scholars it should always be reserved for them, unless the owner wished to occupy it, Edward III sanctioning this practice in 1303.<sup>73</sup> The royal confirmation of this university usage was granted to Cambridge in 1231 because of the extortions of the townsmen.<sup>74</sup> The board was to be composed of two masters and two legal men of the town, who were to decide the rents of the scholars' houses every five years. The grant states that this was already according to the custom of the university. Cambridge also developed some customs looking toward a more complete control over these houses. After the rating had been made, if a scholar went to a householder and offered to pay the rent or to give security for its payment, the said householder was obliged to permit him to have the house or room, and if he did not do so the chancellor could admit the scholar notwithstanding his resistance.<sup>75</sup> When, in 1292, the prior of Bernewell refused to rent one of his houses on these terms, the chancellor put the scholars in possession of it, thus proving the effectiveness of this power.<sup>76</sup>

The last and greatest example of the royal interference with the borough management of its own affairs has now been reached. In the following account of the gradual acquisition by the universities of the control of the various assizes pertaining to the markets of Oxford and Cambridge, no attempt will be made to construct a complete history of the markets as borough organizations. From the point of view of this study it will only be necessary to notice the cases where the universities and the boroughs came in contact, and especially those requiring royal interposition. For the sake of clearness the two towns will be considered separately, the wide divergence which exists in the times when the uni-

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<sup>73</sup> Wood, I., 367; Rashdall, op. cit., II., II., 400.

<sup>74</sup> *Royal letters Henry III.*, Shirley I., 398-99; confirmed 20 Ed. I., 2 Ed. II., 1 Ed. III.

<sup>75</sup> Mullinger, op. cit., I., 218-221.

<sup>76</sup> Cooper, I., 65.

versities acquire the same privileges making any other method out of the question.

The preliminary stage of the development which gradually leads up to the great powers of the university of Oxford over various affairs connected with the market, was not one in which the latter was even an assisting factor. The townsmen, it seems, took advantage of the position of the students and overcharged them for their victuals. This being a violation of the mercantile spirit of the times, as shown in the royal regulations of prices, writs were sent to Oxford commanding the townsmen to observe the assizes and to charge only reasonable prices for their produce. Among the first restrictions upon the townsmen having the students in view, is the provision of the bishop of Tusculum, the papal legate before mentioned, in 1214, that the Oxford men should sell their victuals to the clerks at a reasonable price.<sup>77</sup> The king was, however, as was natural, the prime mover in this regulation from without. There were a number of royal commands sent to Oxford that the assizes should be observed,<sup>78</sup> that wine should be sold at a reasonable rate,<sup>79</sup> and some others of a like nature. These mandates were in the nature of an attempt to assure a fair treatment of the university without giving it any real power and are continued even when this body had acquired a fair amount of supervision over the market. Until, however, the latter gained a large amount of authority these were the only available means of preventing extortions. The failure of this system led in time to one of joint control and, when the abuses still continued, to the full powers of the university.

The assizes continuing to be badly administered by the officials of Oxford, the chancellor was given the right,

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<sup>77</sup> *Mun. acad.*, I., 2; O. H. S., *Coll.*, II., 46, Ogle, *The Oxford market*.

<sup>78</sup> Shirley, *op. cit.*, I., 482-483; Wood, I., 301, 403; Boase, *Oxford*, 43.

<sup>79</sup> *Ibid.*, I., 483.

in 1248, to be notified by the townsmen in order that he might be present at the taking of the assizes of bread and ale to insure their better observance.<sup>80</sup> That this should be more effective it was also provided that these assizes were to be of no avail if he had not been given this notification; but if he did not appear either in person or through deputies, after being warned, the trial was to proceed. Again, in 1255, among the several regulations passed by the king for the control of the bakers, the sale of wine and the supervision of the assizes, it was stated that the assize of bread and ale should be of no account unless the chancellor, or his deputies, were present, or had been summoned.<sup>81</sup> Thus far, therefore, the chancellor had only the right of being present as an onlooker, though his presence might have a salutary effect upon the actions of the town officials. This was corrected in 1268 when it was provided that, if the chancellor and proctors were not present in person or through deputies, the assize should not proceed.<sup>82</sup>

The university had been given, through these grants, a fair chance to interfere to some extent, by means of its officials, in the supervision of the Oxford market. The chancellor did not allow this chance of increasing his powers slip by without some result. A dispute arose, about 1280, over the disposal of the forfeits from the assizes, Edward I settling the matter later with the command that they be given to the hospital of St. John without the east gate of Oxford.<sup>83</sup> Some other points which were contested reached the parliament of 1290 and were there settled.<sup>84</sup> The town complained that the chancellor appropriated to himself the forfeited victuals and fines from regrators and forestallers to the injury of its fee-farm. The royal answer to this complaint made no mention of the fines, but stated that over re-

<sup>80</sup> Rogers, *op. cit.*, 213; Lyte, *op. cit.*, 44.

<sup>81</sup> *Ibid.*, 213-215; O. H. S., *Coll.*, II., 47.

<sup>82</sup> *Mun. acad.*, II., 779; O. H. S., *Coll.*, 47.

<sup>83</sup> Rogers, *op. cit.*, 215-216 (1284); O. H. S., *Coll.*, II., 47.

<sup>84</sup> *Mun. acad.*, I., 46-56; O. H. S., *Coll.*, II., 48.

grators and forestallers the mayor and chancellor were to have jurisdiction within the town and the sheriff without its limits. All forfeited goods were to be given to the Hospital of St. John above mentioned with the consent of the chancellor and mayor within and the chancellor and sheriff without Oxford.<sup>85</sup> This is yet another sign of the growing interest of the university in borough affairs. The petitions to the parliaments of 1304 and 1305 are particularly interesting illustrations of the difficulties of the townsmen in conducting their affairs in the face of the opposition of the university. The latter made the complaint that the composition between it and the town concerning the thirty-two regrators who were to be allowed in Oxford,<sup>86</sup> had not been observed, as the townsmen had allowed the number to be increased.<sup>87</sup> The response to the petition was that the composition should be heeded. Another complaint was made by the university that the millers charged too high a toll for grinding wheat.<sup>88</sup> The assizes also were neglected because of the vacancy of the sheriff's office.<sup>89</sup> Petition was also made that the bailiffs, who had in their charge the custody of the assize of bread and ale, did not, on the denunciation of the chancellor, punish delinquent bakers and brewers. And, finally it was asked that strangers coming to Oxford with fish and other victuals might sell the same without impediment. In the answering royal writ, it was granted that they might do so provided that they did not sell at retail and on condition that they paid such fees as were customary.<sup>90</sup>

While considering the above complaints the chron-

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<sup>85</sup> *Mun. acad.*, I., 49; *Ibid.*, I., 51-52, forfeited unfit victuals were to be given to the Hospital of St. John.

<sup>86</sup> This seems to refer to the agreement of 1278, although the number is there thirty-one and there is some dispute as to the reading of the manuscript. *Mun. acad.*, I., 38; Wood, I., 309; Lyte, *op. cit.*, 121; O. H. S., *Coll.*, III., 103.

<sup>87</sup> *Rot. parl.*, I., 163a (1304).

<sup>88</sup> O. H. S. *Coll.*, III., 104.

<sup>89</sup> *Ibid.*, III., 104.

<sup>90</sup> O. H. S., *Coll.*, III., 103; Ogle, *op. cit.*, 17; cf. O. H. S., *Coll.*, III., 112, 117-118, 118-119, 119-120; *Rot. parl.*, I., 327b, 373.

ological development of the market has been overlooked, so it will be necessary to retrace our steps. Because of the failure of the town to pay its customary fee-farm, Edward I, in 1295, seized into his own hands the assize of bread and ale, and, though leaving the actual operation of the assize in the hands of the usual officials, he commanded that all fines arising from this control should be paid to the constable of Oxford castle.<sup>91</sup> The king thus caused a serious loss of revenue to the town, and, moreover, the burgesses had still to pay one hundred shillings in their fee-farm for the fines which had been taken from them. Yet nothing was done to alleviate their condition during this reign. Edward II in consequence, perhaps, of a petition of the townsmen complaining of the injury to their fee-farm by this seizure,<sup>92</sup> granted that the chancellor of the university and the mayor of the town should have the custody of this assize upon an annual payment of one hundred shillings, the customary rental.<sup>93</sup> Even this did not relieve the burgesses, who had to pay the same sum in their fee-farm, while also paying this new amount, and it was not until the reign of Edward III that the payment of the one hundred shillings in their fee-farm was remitted.<sup>94</sup>

Two interesting occurrences happening in the reign of Edward II illustrate the extent of the university influence at that time. During the year 1319 the mayor and bailiffs were ordered to assign certain places in the market place for the accommodation of strangers, to

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<sup>91</sup> O. H. S., *Coll.*, III., 126. There seems to be some confusion over the significance of this seizure. Ogle, O. H. S., *Coll.*, II., 13, following Wood, I., 400, states that the king seized the clerkship of the market, yet this clerkship as defined by him, *op. cit.*, 44, seems to have special reference to the assize of weights and measures. And, moreover, none of the later actions of the kings bear out this idea.

<sup>92</sup> O. H. S., *Coll.*, III., (1323).

<sup>93</sup> Wood, I., 406; *Cal. c. r., Ed. II., 1323-27, 234* (1324).

<sup>94</sup> *Cal. p. r., Ed. III., 1338-40, 178, (1139)*.

distinguish them from the townsmen.<sup>95</sup> But they were not allowed to do this freely, for the chancellor's consent was made necessary to their action and in default of them he was empowered to proceed alone in the assignment. The reason for this arrangement of the sellers was to prevent the forestalling of such strangers by the townsmen, as the university complained had been done.<sup>96</sup> In 1325 again the mayor, having removed the pillory from its accustomed place, without the knowledge of the chancellor, was at once excommunicated by the latter for having violated the privileges of the university. In spite of his protests he had to acknowledge an infringement of the university rights and a removal was then agreed to.<sup>97</sup> Where the university gained any rights over the borough pillory is not very clear, but it may have been due to the fact that it was commonly used as a means of punishment for infractions of the assizes,<sup>98</sup> in which the university had a partial interest.

At the opening of Edward III's reign the assize of bread and ale was already under the joint control of the mayor and chancellor. The same position with regard to the assize of weights and measures was granted to the chancellor and mayor in the first year of the same king.<sup>99</sup> On March 6, 1328, he reaffirmed his father's settlement of the question of the control of the assize of bread and ale, with the addition that in the absence of the mayor or his deputy the chancellor might hold the assize alone.<sup>100</sup> That yearly rental of one hundred shillings was continued. On the same day the assize of weights and measures was granted on the same condi-

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<sup>95</sup> *Cal. c. r., Ed. II., 1318-23, 75*; *O. H. S., Coll., II., 13*; Wood, I., 400, 401.

<sup>96</sup> *Cal. c. r., loc. cit.*; *O. H. S., Coll., III., 117-118, 119-120*; *Rot. parl., I., 373*.

<sup>97</sup> Lyte, *op. cit.*, 125-126.

<sup>98</sup> *E. g., Stat. realm, I., 202*; *Cal. c. r., Ed. III., 133840, 178, etc.*

<sup>99</sup> *Cal. p. r., Ed. III., 1327-30, 21*.

<sup>100</sup> *Ibid., 248-249*.



tions, the rental excepted.<sup>101</sup> Later in the year, October 25th, Edward made the matter still more definite.<sup>102</sup> The chancellor, with the aldermen, was to have the custody of the measures of the assize, the pottle, gallon and quart, which custody the chancellor and mayor had in the past. All the fines, however, were to go to the mayor and bailiffs toward the fee-farm of the town. The assize of bread and ale and "of the weights thereto belonging" was placed under the control of the chancellor and mayor at a yearly rental of one hundred shillings. In both cases the town officials were subject to the call of the chancellor at any time in order that the assizes might be taken. If the mayor declined to be present at the assize of bread and ale the chancellor might take it alone and if the alderman proceeded in his absence, without due notice, their trial of the weights and measures would have to be repeated if the chancellor demanded it. In 1338 this settlement seems to have been agreed to in part at least at a meeting of the scholars and burgesses.<sup>103</sup>

From this time until the final stage of the development was reached there was practically no change in the general conditions, although some minor points were adjusted. The price of wine caused some little difficulty in 1331 and it was ordered that it should not exceed that of London by more than one half-penny on each gallon, the customary carriage rate.<sup>104</sup> Some additional clauses were added to the previous charter concerning the assizes in 1339, providing for the punishment of offenders.<sup>105</sup> The threat was made that, if the town officials were remiss in their assistance of the chancellor in the custody of the assizes, they should lose

<sup>101</sup> *Cal. p. r., Ed. III., 1327-30, 251.*

<sup>102</sup> *Ibid., 329; cf., Ibid., Ed. III., 1334-38, 232 (1336).*

<sup>103</sup> *Wood, I., 435.*

<sup>104</sup> *Cal. p. r., Ed. III., 1330-34, 28, 186, 390; cf. Stat. realm, I.,*

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<sup>105</sup> *Cal. p. r., Ed. III., 1338-40, 178, (1339).*

their liberties.<sup>106</sup> And, finally, in 1348, the town and university again came to an agreement, this time as to the joint control of the assize of weights and measures,<sup>107</sup> for it seems that the town had not fully accepted the former royal commands. According to this compromise if the mayor did not appear at the trial, the chancellor was to collect and hold the suspicious weights and measures until he came, and the mayor was to do likewise in the absence of the chancellor. When both parties were present these illegal measures could be destroyed. This agreement, though not in the terms of his own commands, was ratified by Edward III during the following year;<sup>108</sup> but it was destined to give way in a short time before the great settlement of 1355.

The town and gown fight on St. Scholastica's day, February 10, 1355, cannot be described here, for it is only with its effects that we are concerned.<sup>109</sup> It lasted several days, during its course some men were killed on both sides, and as a result of it the town was laid under an interdict by the bishop of Lincoln and the sheriff was removed from his office by a commission sent out by the king.<sup>110</sup> The town and the university had to give up their charters to Edward III and submit the matter to his decision.<sup>111</sup> When the university privileges were restored in the charter of June 27, 1255, it was given several new privileges.<sup>112</sup> In the town of Oxford and its suburbs the chancellor was to have forever the full and complete custody of the assizes of bread, wine and ale and the correction and punishment of all offenders against the same, with all fines, amerciaments and profits arising therefrom, rendering for this custody

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<sup>106</sup> Wood, I., 442 (1346).

<sup>107</sup> *Mun. acad.*, I., 159-167; O. H. S., *Coll.*, II., 52.

<sup>108</sup> O. H. S., *Coll.*, II., 52.

<sup>109</sup> Lyte, op. cit., 162-164; Boase, *Oxford*, 85 sq.; documents, Rogers, op. cit., 245 sq.

<sup>110</sup> B. M. MSS. *Add.*, 4507, fol. 23.

<sup>111</sup> Hardy, *Syllabus*, 381; Rogers, op. cit., 249-250.

<sup>112</sup> O. H. S., *Coll.*, II., 52-53; Ogle, op. cit., 62 sq.; confirmed *Cal. p. r., Rich. II., 1381-85*, 514 (1384).

the sum of one hundred shillings to the royal exchequer. This amount was, of course, merely the old payment made during the preceding period. The chancellor was also to have the full custody of the assize, assay and supervision of weights and measures within the same limits, with the power of destroying all false measures and of punishing delinquents. The fines arising from this authority were, however, to go to the mayor and bailiffs of Oxford in aid of their fee-farm. He was further granted complete jurisdiction over all forestallers, regrators and sellers of putrid flesh or fish in Oxford and its suburbs, the forfeited victuals to go to the hospital of St. John without the east gate, as in the past. In order to carry these commands more fully into effect the mayor and bailiffs were charged to hand over to the chancellor the standard weights and measures and the royal seal, which they had in their possession.<sup>113</sup>

The university, through its chancellor, had finally reached the goal towards which it had been striving for so long a period. Since it now had the upper hand the disputes with the town henceforward took on a new aspect, matters of definition and limitation of the chancellor's power replacing the older efforts of the university to lessen the power of the town government.

Almost immediately upon the reception of his new privileges by the chancellor, he became involved in a controversy over the custody of the assizes with Richard d'Amory, the holder in fee-farm from the crown of the hundred without the north gate of Oxford. The dispute was settled in favor of the chancellor by the king, the powers which he possessed over the various assizes and over forestallers and regrators and the like in Oxford, being extended to this hundred, with the proviso that nothing was to come to him from the sale or measurement of woollen cloth.<sup>114</sup> In his next attempt

<sup>113</sup> Ogle, *op. cit.*, 57.

<sup>114</sup> *Mun. acad.*, I., 176-178; *O. H. S., Coll.*, II., 53.

to extend his jurisdiction along these lines the chancellor was not so successful. He claimed the right of holding the assizes in the fair of the priory of St. Frideswides, but when the latter complained to Richard II this claim was disallowed.<sup>115</sup>

Meanwhile there had been some slight dissensions within the university over the disposal of the fines and forfeits from the assizes. Edward III ordered that, after the one hundred shillings rental had been deducted from the total amount of the fines, the remainder should be divided into two equal parts, one to go to the university, the other to the chancellor.<sup>116</sup> In 1401, however, this rent was remitted by Henry IV on condition that the university pay one penny each year to the exchequer at the feast of St. Michael.<sup>117</sup>

The growth of the powers of the university of Cambridge over the market was somewhat slower than at Oxford, although in its completed form the two were almost the same. One reason for this seems to be that there was not the same bitter hostility between the town and gown as it existed in the other borough.

The university soon gained a share in the supervision of the assizes, as did Oxford. In 1268, among the royal regulations for the better management of the market, it was granted that the chancellor might be present, if he wished, at the taking of the assize of bread and ale. If he should not be present because he was not notified, the assize was to be of no force.<sup>118</sup> Over regrators and forestallers the chancellor soon attained a partial jurisdiction. When Henry enacted, in 1268, that no regrator should buy victuals in the town to sell again at retail before the third hour, he did not mention the

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<sup>115</sup> *Rot. parl.*, III., 176; *Cal. p. r., Rich. II.*, 1381-85, 202 (1382); *O. H. S., Coll.*, II., 53-54.

<sup>116</sup> *Mun. acad.*, I., 187-188 (1356); *O. H. S., Coll.*, II., 53.

<sup>117</sup> *O. H. S., Coll.*, II., 54; Edward IV. confirmed this grant after the acts of resumption; Griffith, *Enactments in parl.*, 8-9 (12 and 13 Edward IV.).

<sup>118</sup> Cooper, I., 50-51; Dyer, *Privileges univ. Cambr.*, I., 64.

university.<sup>119</sup> Edward I, however, by his letter patent, granted that the chancellor and the mayor and bailiffs were to have cognizance of all such offenders within the town and the chancellor and sheriff of those without Cambridge, with respect to the infringement of the law and the disposal of the forfeits.<sup>120</sup> All the forfeited victuals were to be given to the hospital of St. John, Cambridge.

The early part of the fourteenth century brought no great change in the royal policy. Edward II made clearer the position of the chancellor by regulating the manner of his summons to the taking of the assize of bread and ale.<sup>121</sup> When the trial was to be made by the town officials, the chancellor or his locum tenens was to be secretly forewarned on the preceding day, so that he might be present if he so desired. Those who were deputed for this purpose by him were to swear to him not to reveal this warning before the assize should be taken. Again, in 1327, Edward III made some further rules as to the taking of this assize of bread and ale, because of the negligence and excesses of the mayor and bailiffs.<sup>122</sup> It had been charged that these had not been inflicting the punishments laid down in the charter of Henry III, for they had often fined a transgressor of the assizes twice and even thrice for his offence. Therefore the king commanded that the chancellor should be present at all the trials of bread and ale, so that such offenders might be punished according to the forms set forth in the above charter. It was, furthermore, provided that the names of the transgressors should be handed over to the chancellor or to his deputy, that he might see that they were duly punished. After

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<sup>119</sup> B. M. MSS. *Faustina*, C III., fol. 145 sq. where all the documents relating to regrators and forestallers are collected; Cooper, I., 50-51.

<sup>120</sup> *Cal. p. r.*, Ed. I., 1292-1301, 18; confirmed 2 Ed. II., 1 Ed. III.

<sup>121</sup> Cooper, I., 75-76 (1317).

<sup>122</sup> *Ibid.*, I., 82; cf. *Ibid.*, I., 78 (1320).

some other complaints of the neglect of the town officials,<sup>123</sup> the chancellor received an important accession of power. Hitherto the mayor and bailiffs had been at liberty to take the assize when they saw fit, provided that they forewarned the chancellor;<sup>124</sup> in 1336, however, it was ordered that they should make the trial as often as they should be summoned to do so by the chancellor.<sup>125</sup> This form the settlement maintained during the reign of Edward III. On the whole the growth of power seems to have been less eventful than that of Oxford, and there seem to have been fewer complaints and less reason for royal action than in the other town.

Almost immediately upon the accession of Richard II the university entered upon a new era of increased powers over the market. In addition to confirming their old grants he gave to it a large number of new privileges. Answering a petition made to him by the university he granted on November 6, 1378, that until the next parliament in case of the negligence of the mayor and bailiffs, the chancellor "might inquire of all things touching bread, ale, wine, flesh, fish and other victuals unduly sold, and weights and measures and punish transgressors."<sup>126</sup> The fines arising from this authority were, however, reserved to the king and others interested.<sup>127</sup> In answer to a petition of the next year requesting an extension of this privilege, he continued it for five years,<sup>128</sup> and in 1380 for seven years.<sup>129</sup> Though this was an increase, it did not give the chancellor full authority, for it was only operative in the event of the negligence of the regular officials. It was a corrective measure rather than a grant of initiative rights.

The final overthrow of the power of the town of Cam-

<sup>123</sup> Cooper, I., 88 (1335).

<sup>124</sup> B. M. Mss., 5822, fol. 252.

<sup>125</sup> Ibid.; *Cal. p. r., Ed. III., 1334-38*, 235; Cooper, I., 88.

<sup>126</sup> Cooper, I., 117.

<sup>127</sup> B. M. Mss., 5822, fol. 252.

<sup>128</sup> Ibid., fol. 252; Cooper, I., 118.

<sup>129</sup> Cooper, I., 119.

bridge over the assizes was due to a great riot in that place. The peasants revolt of 1381 took on an especially serious aspect there and, as a result of it, Richard demanded the charters of both the university and the borough.<sup>130</sup> All of their privileges having been taken into hands of the crown, the scholars were to live henceforward, until they were given new privileges, under the law of the land and the customs of the borough.<sup>131</sup> A settlement of the trouble was not reached until 1382, when, on February 17, Richard issued a charter to the university, granting to it many privileges formerly belonging to the town, and when, on May 1, he restored to the town its charters, less those rights now given to the university.<sup>132</sup>

The new charter granted to the university dealt principally with the question of the regulation of the assizes and matters of a similar nature. The chancellor and his successors forever were given the custody of the assize of bread, wine and ale within the town and suburbs of Cambridge with all fines, americiaments and forfeits therefrom arising. He was also put in possession of the assize and assay of weights and measures within the same district, having the power to burn and destroy all such measures as he should find to be false, and to seal such as were correct. The power to punish all breakers of this assize was also given to him. Fore-stallers, regrators, and sellers of putrid, corrupt or unfit fish, flesh, or other victuals were placed within his cognizance alone, and he was given the power to punish them and to receive all profits which might arise. For these privileges the chancellor was to render ten pounds each year to the royal treasury. The mayor and bailiffs were strictly commanded to assist the chancellor in the exercise of these powers if he should deem their aid necessary.<sup>133</sup> In addition, on March 13, 1382, Richard

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<sup>130</sup> For a full account of the trouble see Cooper, I., 120-125.

<sup>131</sup> Cooper, I., 124-125.

<sup>132</sup> Maitland and Bateson, *op. cit.*, 28 sq.; Cooper, I., 125.

<sup>133</sup> Cooper, I., 124-125.

sent letters patent to his justices, to the sheriff and to the mayor and bailiffs, charging them to observe all the above chartered rights.<sup>134</sup>

During the period following this charter the royal regulations did not touch the essential fact of the chancellor's power, but dealt with matters of definition, as we have noticed to have been the case in Oxford. It having been reported to the king that false weights and measures had been used at the Steresbrigge fair, the chancellor, in 1382, was ordered to watch over the assize of weights and measures in that place.<sup>135</sup> Again, in 1384, a closer definition was made of several of the chancellor's rights. A dispute arose between the latter and the town officials over the sizing and sealing of the bushels and other measures, and over the fees which were paid for this service. The university claimed this right as included in their charter, while the townsmen maintained that, as it was not expressly granted in the charter, it belonged to them.<sup>136</sup> The matter finally came before parliament, the sheriff collecting and holding the fees by the royal command during the interval.<sup>137</sup> In parliament it was decided that the chancellor had the right to size and seal all such measures in the fairs, markets and other places of the town, and that he should have whatever fees were received for this service.<sup>138</sup> This was declared to be within his rights because of the previous charter of Richard. In the same parliament and with its advice, Richard declared that the chancellor might summon the men of the town to make presentment upon oath concerning forestallers and regrators and putrid and corrupt fish, flesh and other victuals, and to punish those who refused by amerancements or in the manner used by the chancellor and scholars of Oxford.<sup>139</sup>

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<sup>134</sup> *Cal. p. r., Rich. II., 1381-85*, 104.

<sup>135</sup> Cooper, I., 126.

<sup>136</sup> *Ibid.*, I., 128.

<sup>137</sup> *Docs. rel. univ. and coll. Cambr.*, I., 29.

<sup>138</sup> *Rot. parl.*, III., 185; Cooper, I., 128-129.

<sup>139</sup> *Ibid.*



On the tenth of December the king sent his letters patent to the university to this effect,<sup>140</sup> and, on the twelfth, he made his wishes known to the town, forbidding the mayor and bailiffs under penalty of £100 to fine any such transgressors.<sup>141</sup>

The work of definition was continued during the remaining years of our period. In 1386, in consequence of a dispute over the meaning of the term victuals, candles and fuel were placed within that category and the cognizance of those selling these articles was given to the chancellor.<sup>142</sup> The university again petitioned the parliament of 1388 for a clearer definition of certain other phrases in their charters.<sup>143</sup> They asked that the clause relating to regrators might be changed to "amerced in the presence of the chancellor." Another clause stated that wine should be sold in Cambridge "indifferently to clerks and to laymen from the cask;" they asked that this might be amended to read that wine should not be sold for more than one half-penny per gallon above the London prices as was done at Oxford. This charge was that made for the carriage of the wine. Though it seems that no answer was given to this petition it illustrates extremely well the difficulties the university was having, which difficulties greatly resemble those of the town before the university had gained its increased powers.

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<sup>140</sup> *Cal. p. r., Rich. II., 1381-85, 514.*

<sup>141</sup> Cooper, I., 129.

<sup>142</sup> *Ibid., I., 131; Docs. rel. univ. and coll. Cambr., I., 30.*

<sup>143</sup> *Ibid., I., 132.*

## CHAPTER III.

### THE UNIVERSITIES AND THE CENTRAL GOVERNMENT.

The relation of the universities to the central government with its various officials, was in general that of the whole clerical body; yet there are a few cases of special treatment requiring a discussion here. Many of these relations have already been described in the preceding chapters and will, consequently, require only the briefest notice in this place.

From the judicial authority of the various royal justices the members of the university were exempted, except in the special cases noted of freehold, felony and mayhem, the chancellor trying the other cases by the consent of the king. In the event of a dispute arising concerning a free tenure or if a crime was committed which came under the above heading, the usual laws applying to the clergy would also apply to the privileged classes of the universities. When, therefore, a scholar was charged with a murder the coroner went through with the procedure customary in such cases,<sup>1</sup> the clerk being finally handed over to the bishop of Lincoln or of Ely for trial and punishment. The one exception to this rule during the period of this study was the right given to the seneschal of trying the scholars' servants in Oxford for their felonies.<sup>2</sup> Before the various royal justices, of assize, of gaol delivery and the like, the scholars were summoned and tried for their felonies, and here also the usual procedure was observed, the clerk being delivered to the bishop of the diocese for trial if the crime involved the death penalty. The gaol delivery rolls especially reveal an appalling amount of crime in the university towns, for they are

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<sup>1</sup> Cf. Gross, *Coroners' rolls*. Introduction; Pollock and Maitland, *History English law*, ed. 1895, I., 245 sq.; Rogers, *op. cit.*, *coroners' rolls*.

<sup>2</sup> *Supra*. 21.

filled with accounts of clerks who are charged with robbery, arson, murder, rape and other misdeeds. The abbreviation *lib. epi.*, delivered to the bishop, is found in the margin of almost every membrane of the Oxford or Cambridge rolls and at times in large numbers.<sup>3</sup>

From the ordinary judicial powers of the royal justices except in the cases noted the scholars were exempt, but when, as often happened, the great riots got beyond the control of the town and university authorities, the king always exercised the power to send commissions of oyer and terminer to the towns to settle the disturbance and to try the offenders.<sup>4</sup> The frequency of these commissions bears out the idea, gained elsewhere, of the great disorder in the universities of Oxford and Cambridge.

The sheriff had no authority over the clerks in the universities that he did not exercise over the other clergy. On the other hand he was compelled by royal commands to give to the chancellors the aid of his posse whenever the latter might desire it. The other royal officials, viz: purveyors, escheators, constables and the like, had no unusual relations with the scholars.

There are, however, certain conditions, with respect to taxation in which the universities differed from the rest of the clergy, which must be discussed. There may have been special rules elsewhere of a similar nature, but the cases which follow are due to grants made to Oxford and Cambridge, not to general enactments for the whole clerical body. The land, for example upon which were built the houses and halls in which the students or university officials dwelt, was in Oxford early recognized as being exempt from tallages, aids and other like dues.<sup>5</sup> This exemption rested upon a customary right of clerical immunity in the town,

<sup>3</sup> E. g. *Gaol delivery rolls* (Mss.), Nos. 113, 7a, 180.

<sup>4</sup> Wood, I., 263, 298, 326, 361, 385, 426, 448, 497; Cooper, I., 45, 48, 70, 79.

<sup>5</sup> Wood, I., 217, 345; *Mun. acad.*, I., 52; Rashdall, *op. cit.*, II., II., 399.

which can be found at least in some other boroughs.<sup>6</sup> In 1313, Edward II directed that the sheriff should investigate the claim of the university of Cambridge that they were exempt from all tallages, no charters being advanced as a basis for the exemption on either side.<sup>7</sup> The king directed that, if they had been free from this tax in the past, they were to be free from it in this case also.

After the great riot of St. Scholastica's day, 1355, the chancellor of Oxford gained an important extension of his powers. Though he had judicial authority over the scholars' servants, they had up to this time been assessed their share of the taxes by the town officials. To prevent ill treatment at their hands, the chancellor was given the power to assess and collect the taxes from these men within the town and suburbs.<sup>8</sup> This right was defined to extend to the hundred without the north gate in 1356.<sup>9</sup> It seems that the chancellor of Cambridge did not gain this privilege, for there are no separate accounts of any sums handed over by him to the tax collectors, as we shall see was the case in Oxford.

With respect to the lay subsidies levied during the fourteenth century, the universities seem to stand in the same position as their class, the clergy, but their relation to the poll taxes was exceptional. They had a two-fold affinity to these taxes, for, while the scholars and masters would be taxed under the clerical grants, their servants would have to pay the lay taxes. In both universities the scholars would have their share of the poll taxes assessed and collected by the ecclesiastical collectors. The taxes upon the servants were, however, in

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<sup>6</sup> Bateson, *Rec. bor. Leicester*, I., 128 and introd. LIV.; Yorkshire inquisitions, Brown, II., 63, 115.

<sup>7</sup> *Cal. c. r., Ed. II., 1313-18*, 26. There seems to be some confusion in the precedents for this claim; e. g. Cooper, I., 72 (1312), where it seems that they are assessed; Maitland, *Township and borough*, 156 (1294), where they are probably exempt; Madox, *Firma burgi*, 59-60, where they are assessed.

<sup>8</sup> Ogle, *op. cit.*, 62 sq.

<sup>9</sup> *Mun. acad.*, I., 117.

Oxford assessed and collected, not by the regular officials appointed for this purpose, but by the chancellor, who then handed over the proceeds to the royal collectors.<sup>10</sup> An actual record of this being done was made in 1379 when the sub-collectors of the lay poll tax for the town of Oxford, rendered account for sixty shillings and two pence received from the chancellor for the ministers and servants of the scholars.<sup>11</sup>

The first lay poll tax granted to Edward II in 1377, was a simple levy of one groat, i. e., four pence, upon each lay person in the realm, male and female, over fourteen years of age, beggars being excused.<sup>12</sup> The clergy in their grant of the same year made a distinction between those beneficed and those unbeneficed, the former having to pay twelve pence, the latter four pence.<sup>13</sup> The university of Oxford at once complained of this tax upon unbeneficed clerics. As many of the scholars must have been in this class, Edward III, in answer to the petition, granted them a remission of the burden.<sup>14</sup> Owing, perhaps, to the slowness of the clerical collectors it was necessary that Richard II should renew this grant upon his accession,<sup>15</sup> after the university had petitioned him for that privilege.<sup>16</sup> A further exoneration appeared in 1381,<sup>17</sup> and a confirmation of the non-payment of this tax in 1382.<sup>18</sup> It appears that the proctors of Oxford collected the twelve pence levied upon the beneficed clergy.<sup>19</sup> Of Cambridge there are no exceptional circumstances or exemptions recorded.

The poll tax of the second year of Richard II took on

<sup>10</sup> *Stat. coll. Oxford*, III., 78 (1377); this being an extension of the grant of 1355 dealing with the lay subsidies in general.

<sup>11</sup> *L. R. T. Subsidy enrolled accounts*, no. 8 m. 4 d.; see appendix A.

<sup>12</sup> *Rot. parl.*, II., 364.

<sup>13</sup> Dowell, *A history of taxation in England*, ed. 1888, I., 92.

<sup>14</sup> This writ mentioned *Cal. p. r., Rich. II., 1377-81*, 606.

<sup>15</sup> Wood, I., 495.

<sup>16</sup> O. H. S., *Coll.*, III., 146-147.

<sup>17</sup> *Cal. p. r., Rich. II., 1377-81*, 606.

<sup>18</sup> Wood, I., 485.

<sup>19</sup> *Ibid.*, I., 495.

a new form. It was a graduated tax, each person paying according to his or her property. The lay poll tax levied various amounts upon the inhabitants of the kingdom from ten marks upon the duke of Lancaster, to one groat which everyone over sixteen years of age had to pay if they could afford no more. The clergy adopted a similar plan for their tax, the seculars and regulars alike paying according to the value of their benefices, while those who were unbeneficed and monks in the poorer houses were to pay four pence.<sup>21</sup> Mendicants and those under sixteen years of age were excused from payment. In 1380 the king granted that the unbeneficed scholars of the university of Oxford should be pardoned their share of this tax also.<sup>22</sup> It is with regard to the lay poll tax of this year that we have the notice which has been printed in the appendix.<sup>23</sup> The chancellor collected the money from the scholars' servants and delivered it to the royal collectors. (The clerical poll tax was this year assessed and collected by the chancellor and proctors in obedience to a command of the king. Again Cambridge does not offer any unusual features, the rolls of the lay tax bearing no mention of any separate amount received from the chancellor.<sup>25</sup>

The last poll tax was granted by the nation during the fourth year of Richard. Both the previous methods having proved to be unsatisfactory, the form of the lay tax was changed. Upon all lay persons, male and female, over fifteen years of age, mendicants excepted, a levy of twelve pence was to be made. The sum total for its population was to be laid upon each town or hundred, the individual, however, paying his share of this total according to his property.<sup>26</sup> The clerical grant was

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<sup>20</sup> *Rot. parl.*, III., 57 sq.

<sup>21</sup> Wilkins, *Concilia*, III., 141-142.

<sup>22</sup> *Cal. p. r.*, *Rich. II.*, 1377-81 426; *Stat. coll. Oxford*, III., 35.

<sup>23</sup> Appendix A.

<sup>24</sup> *Stat. coll. Ox.*, III., 78.

<sup>25</sup> *L. T. R.*, *Subsidy enrolled accounts*, no. 8 m 3 d.

<sup>26</sup> *Rot. parl.*, III., 90.

again a graduated poll tax, making the same distinction between beneficed and unbeneficed clergy as the former grants had done.<sup>27</sup> From this tax, as before, the unbeneficed scholars of Oxford were excused, on the testimony of the bishops that the beneficed members of the university had paid their share of the taxation.<sup>28</sup> The account of this poll tax, printed by Mr. Rogers,<sup>29</sup> is of interest as it shows that many men who served the scholars, but who lived in the suburbs, were assessed by the royal officials and not by the chancellor. The latter's list has been lost or mislaid, so that any estimates of the population of Oxford at this time are apt to be misleading.

During the fourteenth century there is a beginning of that policy which was carried to its completion during the fifteenth and sixteenth centuries, whereby the scholars and colleges were exempted from taxation.<sup>30</sup> In 1385 Richard is said to have exempted the scholars of Cambridge "from subsidies, tenths and fifteenths or other taxes for their tenements, schools or books."<sup>31</sup> If this general exemption was made it was seemingly only temporary, for during the fifteenth century the exemptions of special colleges continued.<sup>32</sup>

To those points of contact between the universities and the central government, which have been discussed, there may be added certain others which also illustrate the unique position of these institutions. It has been shown that some of the taxes were mitigated in favor of the scholars of Oxford and this same policy was carried out as to certain general laws.

The fourteenth century witnessed, in the enactments of Edward III and Richard II, an attempt on the part of the English crown to suppress certain ecclesiastical

<sup>27</sup> Wilkins, *Concilia*, III., 150.

<sup>28</sup> *Cal. p. r., Rich II., 1381-85*, 98.

<sup>29</sup> Rogers, *op. cit.*, 8 sq.

<sup>30</sup> Cooper, I., 272 (1504); *Ibid.*, I., 296 (1514).

<sup>31</sup> *Ibid.*, I., 129.

<sup>32</sup> *Docs. rel. univ. and coll. Cambr.*, I., 43-44; on Oxford, see *Stat. coll. Oxford*, III., 52, 55, 56, 57; Rogers, *op. cit.*, 105.

abuses, especially papal, throughout the kingdom. From the action of some of these the universities were exempted so that the scholars might not be discouraged in their endeavors to obtain knowledge. The statutes of provisors, enacted during reigns of the two kings mentioned, were among the foremost attempts to check the papal interference in England. In 1392-3, Richard was given the right to modify the statute of that year as he should wish, parliament adding that he should bear in mind the state of and relief of the universities of Oxford and Cambridge.<sup>33</sup> In consequence of this discretionary power, Richard granted, in 1399, to the chancellor and graduates of these universities, that they might sue at the apostolic see for provisions for benefices.<sup>34</sup> When Henry IV came to the throne the commons again asked that he should modify the aforesaid statute, bearing in mind the universities which "are the fountains of the clergy of this realm."<sup>35</sup> The same parliament petitioned against pluralities and non-residence asking however, that the scholars of the universities should be exempted from any restrictions upon such practices.<sup>36</sup> Henry, like Richard, granted the first of these requests, allowing the present and future graduates in divinity and law to sue for provisions at Rome.<sup>37</sup> The same exemption from the effect of this restriction was continued during the following years, in order that the clergy might be encouraged to study at the universities.<sup>38</sup> There is also recorded, during the fifteenth century, an example of the scholars and masters of Cambridge having been pardoned all *praemunires*, though this was not a general rule.<sup>39</sup>

There are some other cases of exemption from gen-

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<sup>33</sup> *Rot. parl.*, III., 301b; *O. H. S., Coll.*, III., 151.

<sup>34</sup> Wood, I., 535; Cooper, I., 144.

<sup>35</sup> *Rot. parl.*, III., 459a (1400-1401).

<sup>36</sup> *Ibid.*, III., 468a.

<sup>37</sup> Wood, I., 539-540 (1403); Cooper, I., 149.

<sup>38</sup> Cooper, I., 158 (1416), 186 (1437).

<sup>39</sup> *Ibid.*, I., 187 (1437).



eral laws of lesser note. When the regulations against beggars were passed in 1388 a provision was added that those scholars who went begging should be allowed to do so if they had letters testimonial from their chancellor.<sup>40</sup> The students who were commencing in the universities were also exempted from the effects of the statute of liveries passed during the early years of the fifteenth century.<sup>41</sup> When much later the stringent law was enacted against foreign artisans it was not extended to those who should be or were at the universities.<sup>42</sup> And, finally, there is in Oxford, a temporary and special exemption in certain cases from the prohibition against unlawful assemblies.<sup>43</sup>

The different subjects already treated have been largely a turning aside from some general rule to make special conditions for the universities. But the kings, besides encouraging them by exemptions and grants of rights and privileges taken from others, showed their favor in their still more positive and personal gifts and grants to these bodies. They stand in the position of direct benefactors of learning.

One phase of this fostering of the growth of the universities is seen in the royal desire that foreign students should study in England. In 1229, before the universities had reached a position of any importance, Henry III invited the French scholars, molested at home, to come to England, but he does not mention any particular place where they may study.<sup>44</sup> When, however, Oxford and Cambridge had attained pre-eminence as seats of learning, he was equally anxious that scholars should enter the kingdom, but then provided that they should study at either of these universities. When Scotland and England were open enemies during the fourteenth century, the English kings granted numer-

<sup>40</sup> *Stat. realm*, II., 58.

<sup>41</sup> Cooper, I., 182 (1429).

<sup>42</sup> *Ibid.*, I., 306 (1523).

<sup>43</sup> *Cal. p. r., Rich. II., 1381-85*, 526 (1385).

<sup>44</sup> Wood, I., 204; Cooper, I., 40.

ous licenses to Scotch students allowing them to peaceably enter the country to study at the universities.<sup>45</sup> Such licenses were also granted to Irish students.<sup>46</sup> Freedom of intercourse was also secured for the French students in the treaty of Bretigny of 1360.<sup>47</sup> Yet when foreign students proved unruly or England was at war with their home countries, the king did not hesitate to expell them from the realm.<sup>48</sup>

The English students, on the other hand, received more material aid than mere licenses to study. Already late in the twelfth century there are examples of the royal beneficence in the record of a number of subsidized students who were living in Oxford on the bounty of the crown.<sup>49</sup> Yet the royal aid did not end there, for there are records of grants of land and money made to separate colleges,<sup>50</sup> and Edward III endowed liberally a college for poor students in Cambridge of his own foundation.<sup>51</sup> Besides this, the several kings prevented by their prohibition, the growth of any universities other than Oxford and Cambridge. It is true, however, that in 1261 Henry III granted a license to the seceding students from Oxford to study at Northampton.<sup>52</sup> There they were joined by some scholars from Cambridge and the venture seemed in a fair way to succeed when he revoked his permission and directed the abolition of the newly formed university.<sup>53</sup> Again, in the fourteenth century, the students of Oxford, because of internal dissensions, fled from the town to study in peace at Stamford.<sup>54</sup> Their attempt was in vain, for, when their

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<sup>45</sup> Hardy, *Syllabus*, 391, 393, 419, 430, 432, 442, 503 sq.

<sup>46</sup> *Cal. p. r.*, Ed. I., 1292-1301, 139, 448; *Stat. coll. Oxford*, III., 47 sq.

<sup>47</sup> Cosneau, *Les grands traites de la guerre de cent ans*, 61.

<sup>48</sup> Wood, I., 485 (1369); Cooper, I., 169 (1422).

<sup>49</sup> O. H. S., *Coll.*, II., 184 (1195-1199); cf. Devon, *Issues of the exchequer*, 6 (1225); *Cal. c. r.*, Ed. II., 1307-13, 199 (1310).

<sup>50</sup> *Cal. p. r.*, Ed. III., 1327-30, 176, 195, 239; Cooper, I., 188.

<sup>51</sup> King's Hall.

<sup>52</sup> Rymer, *Foedera*, ed. Clarke, I., 403.

<sup>53</sup> Cooper, I., 48-49.

<sup>54</sup> On the whole question see O. H. S., *Coll.*, I., Henson, *The Stamford schism*.

numbers had grown sufficiently as to bring them into prominence, Edward III stamped out this embryo rival of the older universities. He stated in his writ to this effect "that schools or studies should not in any sort be anywhere held within the kingdom save in places where there are now universities."<sup>55</sup> And, indeed, during the remainder of our period there were no such institutions in England other than Oxford and Cambridge.

The more purely arbitrary actions of the royal power need not detain us for long. Without regarding the decree of banishment passed by the university the king is found restoring certain scholars to other privileges.<sup>56</sup> He exempted certain men from the action of the university statutes of Oxford, passed regulations as to degrees on his own initiative,<sup>58</sup> directed that certain men should not be allowed to teach because of their opinions,<sup>59</sup> and once at least settled a dispute as to an election in the university of Oxford.<sup>60</sup> Most of these matters were outside of the usual policy of royal interference and show to what extent the crown could and would go to enforce its control.

After all, one might ask, what actual benefits did the king receive from these universities? Was the honor of having two of the great universities of Europe within his kingdom the only recompense? And it must be answered there was little else. Indeed not much more would be necessary for a true head of the nation. In prestige and renown England gained much through the presence of the great teachers at the universities; great men came to visit and study there; their scholars

<sup>55</sup> Cooper, I., 87.

<sup>56</sup> *Stat. coll. Oxford*, III., 32,, 39, 41, Wood, I., 489.

<sup>57</sup> Wood, I., 487-488 (1375).

<sup>58</sup> *Stat. coll. Oxford*, III., 40.

<sup>59</sup> Wood, I., 524-525; *Stat. coll. Oxford*, III., 44; Hardy, *Syllabus*, I., 520.

<sup>60</sup> Wood, I., 516 (1385).

were leaders in the intellectual life of England as well as the wise advisers of the crown. To pious men the prayers of the receivers of the royal benefits might have added to the royal enjoyment of life, though such gifts did not prevent the Oxford students in the thirteenth century from actively aiding the barons.

Of actual aid asked from the universities by the kings there are but few examples. The earliest case of the kind occurred in 1243 when Henry III requested Oxford and Paris to decide a disputed episcopal election.<sup>61</sup> As Oxford gave a judgment favoring Henry the opposing bishop was publicly defamed in the schools. When the great schism broke out Richard II asked that university and Cambridge for their opinions concerning the matter.<sup>62</sup> Again when the great councils were being held the chancellors of Oxford and Cambridge were sent abroad to represent the universities and the honor of England at the council of Constance.<sup>63</sup> In 1413 the chancellors had been sent to the rival popes to express the royal decision upon their pretensions.<sup>64</sup> In secular affairs some use was also made of these great corporations. There are some examples of the king having asked the universities to send men to parliament to give him advice. He requested them, in 1300, to send lawyers to the parliament at Lincoln to advise him concerning the claim of his ancestors to Scotland and we know that Cambridge sent two men, Hugh Sampson and Roger de Waldene, to perform this duty.<sup>65</sup> When, again, Edward II had his long dispute with the king of France over the continuance in that country of his wife and eldest son, he caused an account of the state of affairs to be sent to the universities for publication there.<sup>66</sup> Later in the same year he requested that in

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<sup>61</sup> Wood, I., 233.

<sup>62</sup> *Ibid.*, I., 533-534; Cooper, I., 144 (1398).

<sup>63</sup> *Ibid.*, I., 509; Cooper, I., 158

<sup>64</sup> Cooper, I., 155.

<sup>65</sup> *Ibid.*, I., 69; I have not been able to find the names of the Oxford lawyers, though they were undoubtedly elected.

<sup>66</sup> *Cal. c. r., Ed. II., 1323-27, 551-552.*

their sermons and in their prayers they should vindicate his actions in this matter.<sup>67</sup> On the whole, therefore the positive and tangible benefits the crown received were few.

The marvelous growth of the universities traced in the preceding pages left them at the end of the fourteenth century in a position of almost complete theoretical independence of the local and royal authorities. They now had their own courts; they had prisons in which to place their offenders, even though these prisons were not their own, and they had officials whose duty it was to arrest and watch over any who they might imprison. The bishop, once strong in his control, had lost what authority he had over them and the archdeacon's powers had been restricted to very narrow limits. In the town their supervision had been extended over many of the important functions of the borough government and other actions they had gathered into their own hands. From the interference of the royal officials they had been to a large extent released through their judicial privileges and, in Oxford at least, through their powers over taxation. Certain local differences appear in their development but these are mainly due to the different positions of the two universities. The episcopal seat was farther from Oxford than from Cambridge and its release from the bishop's rule came sooner; the former also grew in numbers more quickly than the latter and reaching importance more quickly on this account, the royal benefits were generally first bestowed upon Oxford. These are but suggestions, for the real causes of the more rapid growth of Oxford can only be guessed, not shown, nevertheless the position of the universities at the end of our period is not noticeably different. Cambridge copied Oxford, it is true, in many points and the precedent for many of its royal grants was that Oxford already possessed such rights, yet this may be but another way of saying that the king

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<sup>67</sup> *Cal. c. r., Ed. II., 1323-27, 644 (1326); Cooper, I., 81.*

applied to new organizations the principles he saw working in older and tried institutions.

In the development of the mediaeval corporation, therefore, the universities occupy an important though not an unique position. The English kings during the middle ages proceeded largely by analogy. When they granted powers to a new borough they generally gave it those possessed in whole or in part by some other borough. Thus Oxford was modeled after the fashion of London and other boroughs gained similar privileges by a similar process. Local divergences crept in to suit special conditions and special needs or as a particular favor from the crown, yet the point that strikes an observer is the underlying sameness of the royal charters and letters patent. And so it was in the case of the universities. The kings of England did not create a wholly new and exceptional institution, but applied to these gatherings of students the principles they had already used in the boroughs and toward the church organizations. An interesting analogy has been drawn between the powers possessed by the universities and those enjoyed by the merchants of the staple under the statute of 29 Edward III.<sup>68</sup> Their privileges and immunities do indeed bear a striking resemblance at many points, but all this means is that when the King wished to set off a body of men, scholars or merchants from probably hostile local authorities, he used similar means to attain his end. Analogies might be pursued along many lines and the result would undoubtedly be that we would find precedents for most of the royal grants to the universities. If, therefore, there is some underlying set of forms governing the development of the many corporations of England during the middle ages, this study of the privileges of the universities of Oxford and Cambridge will help to show that sameness in the powers of the various organizations of the time which has not, to my mind, been sufficiently emphasized.

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<sup>68</sup> B. M. Mss., 5959, *Plut. XX. A*, fol. 191 sq.

## APPENDIX A.

Poll Tax, 2 Richard II.

L. T. R. Subsidy Enrolled Accounts No. 8. 45 Edward III. to 4 Richard II. Membrane 4, dorse.

Compotus Willelmi Dagnill, Ricardi Salesbury Johannis de Bukyngham Johannis de Hampton Walteri Browne et Willelmi Chiselhampton collectorum subsidii predicti in villa Oxonie et suburbiis eiusdem tenandi et percipiendi ad opus Regis juxta assessionem et taxationem Johannis Gibbes Willelmi Codeshale Willelmi Northryn Nicholai Spicer Thome de Newyn et Roberti Dege assignatorum at dictum subsidium ibidem assidendum et taxandum ac numerum et nomina personarum et cuius status et gradus fuerint et alia que in hac parte requiruntur plenarie continentes distincte et aperte certificanda et huiusmodi assesiones et taxationes per indenturas huiusmodi contrarotulandas et super comptum predictorum collectorum ad scaccarium Regis testificandas et per rotulos indentatos predictorum assessorum et taxatorum ac collectorum super hunc comptum liberatas. De huiusmodi subsidio ut infra.

Iidem reddunt comptum de XXXVI li. VIII s. VI d. receptis de predicto subsidio contingente omnes personas tam dominos Magnatos quam Communitates in predicta villa Oxonie et suburbiis eiusdem Ministris et servientibus scolarium universitatis ibidem exceptis juxta assessionem et taxationem supradictas quarum personarum nomina status gradus et summe particulares singillatim annotantur in predictis rotulis indentatis ipsorum collectorum assessorum et taxatorum de particulis in thesaurio liberatis. Et de LX s. II d. receptis de subsidio predicto contigente predictos Ministros et servientes scolarium universitatis predicte per Cancellarium eiusdem universitatis assesso et tenato et per dictum Cancellarium predictis Collectoribus per in-

denturam liberatis quarum personarum nomina status et gradus singillatim annotantur in Indentura per dictum Cancellarium predictis virtute brevis Regis sibi directi liberata sicut continetur in eisdem rotulis de particulis in thesaurio liberatis.

Sumna Recepte XXXIX li. VIII s. VIII d. In thesaurio XXXV li. XVII s. II d. Et eisdem Collectoribus pro misis et expensis suis V s. Et in thesaurio LXVI s. VI d.

Et quieti sunt.

#### Appendix B.

There are numerous unpublished records like the following of student troubles in the university towns:

Coroners' Rolls, No. 128, dorse:

Casus Coronatoris de tempore Ade de Spalding ville Oxonie. De anno regni Regis Edwardi XXVto—

Adhuc de anno XXVI to. Villa Oxonie. Contigit die veneris proxima post festum Sancti Mathie apostoli anno regni Regis Edwardi XXVIto (February 28, 1298) sero quod Fulco Neyrnuyt clericus obiit in hospicio suo ubi manebat in parochia Sancte Mildride virginis Oxonie. Et die Sabati proxima sequente mane visus fuit per Adam de Spalding Coronatorem et habuit unam plagam in oculo sinistro cum quadam minuta . . . . dicta usque in cerebrum et sic fere per medium caput. Inquisicio inde capta fuit eodem die coram Coronatore predicto per quatuor parochias propinquiores vidilicet Sancte Mildride Sancti Petri Orientis beate Marie et Omnium Sanctorem. Et omnes Juratores in illa Inquisicione dicunt super Sacramentum suum quod die Lune in festo Sancti Mathie apostoli anno predicto statim post horam nonam predictus Fulco et Willelmus Neyrnuyt cum multis aliis clericis et eorum mancipiis venerunt in alto vico inter ecclesiam beate Marie et ecclesiam Omnium Sanctorum cum arcubus et sagittis gladiis et bocleariis fundis et aspidibus et aliis diversis armis et insultum fecerunt in omnes laicos quos attingere poterunt et multos male volneraverunt et domos et schop-



pas quorundam laicorum fregerunt et bona et catalla in eisdem inventa ceperunt et felonice asportaverunt contra pacem per quod hutesium magnum tenatum fuit ita quod plures laici supervenerunt ad perturbandum malefactores predictos. Et postquam predictus Fulco sagittaverat omnes sagittas suas tunc venit ad domum Edwardi de Hales et Basilie uxoris sue juxta ecclesiam beate Marie virginis et dictam domum viriliter insultavit cum aliis de societate sua qui volebant dictam domum intrasse et bona in eadem existencia depredasse. Sed predictus Edwardus stans in quodam solario defendebat domum suam cum arcu suo et ut predictus Fulco respexit ultra Targiam suam predictus Edwardus sagittavit eum in oculo sinistro per quod obiit die veneris supradicto. Set habuit omnia Jura ecclesiastica et vixit per quatuor dies.

Coroner's Roll No. 128, dorse:

Contigit die Jovis proxima post festum Exaltacionis Sancte Crucis anno regni Regis Edwardi XXVIto (September 18, 1298) quod Johannes Burel obiit in Gaolla ville Oxonie circa horam ignitegii. Et die veneris sequente mane visus fuit per Adam de Spalding Coronatorem et habuit unam plagam in cervice capitis mortalem continentem in longitudine sex pollices et in profunditate attigit usque ad cerebrum et in frontem capitis habuit quandam aliam plagam sed non mortalem. Inquisco inde capta fuit eodem die coram Coronatore predicto per quatuor parochias propinquiores videlicet Sancti Michaelis Borealis Sancte Mildride Sancte Martini et Omnium Sanctorum. Et omnes Juratores in illa Inquisitione dicunt super Sacramentum suum quod predictus Johannes Burel fuit die Jovis supradicto sero ad tabernam servisie ad domum Thome de Staunton cum aliis clericis de Hibernia. Et quidam Nicholaus de Vilers de Hibernia clericus et quidam Johannes de Suthfolk cum quibusdam aliis clericis sedebant in eadem domo bibentes in quadam societate per se et non cum aliis. Tandem mota fuit contencio verborum inter partes predictas et sic omnes exierunt a dicta domo con-

tendentes. Et statim postquam venerunt in vicum predictus Johannes Burel extraxit gladium suum et instanter insultabat predictum Nicholaum et ipse in quantum potuit fugit tenando hutesium et predictus Johannes de Suthfolk similiter fugit et dictus Johannes Burel semper persequabatur eos viriliter cum gladio suo extracto volens ipsos occidisse. Et dictus Nicholaus videns se nullo modo posse evadere periculum mortis extraxit gladium suum et vim vi repellendo et se ipsum defendendo ne occideretur percussit dictum Johannem Burel in fronti sed non mortaliter et idem Johannes nichilominus insultabat predictum Nicholaum cum gladio suo viriliter velocius et acerbius quam prius fecerat et ut occidisse voluit et debuit predictum Nicholaum venit predictus Johannes de Suthfolk et cum quadam hachia que vocatur Sparth quam habuit in manu sua percussit dictum Johannem Burel in cervice capitis ita quod de illa plaga obiit ut predictum est et statim propter hutesium tenatum prius per dictum Nicholaum supervenit multitudo populi et sic omnes attachiati fuerunt et inprisonati et ibidem predictus Johannes Burel obiit ut predictum est. Et postea predictus Nicholaus coram H. de Branteston et T. Neyrnuyt Justiciariis ad Gaolam ville Oxonie deliberandam assignatis deliberatus fuit per patriam. Et predictus Johannes de Suthfolk coram eisdem Justiciariis per patriam convictus fuit de morte illo et quia clericus fuit ideo liberatus fuit episcopo Lincolnensi.

Coroner's Roll, No. 23—Villa Cantebrigie, membrane 3:

Placita corone tenta coram Stephano Morys seniore et Edmundo Listere Coronatoribus libertatis ville predicte a die lune in Crastino Sancte Marie Magdalene anno regni Regis Edwardi tercii post conquestum XLIII [July 23, 1369] usque festum Sancte Luce Evangeliste anno regni regis Ricardi secundi post conquestum quarto [October 18, 1380].

Accidit apud Cantebrigian die Sabati in vigilia Pentecostes anno regni regis Edwardi tercii post conquestum

XLVIII [May 20, 1324] quod quidam Rogerus Kebbel inventus fuit mortuus habens unam plagam in capite ex parte dextra longitudinis quatuor pollicium et profunditatis duorum pollicium. Inquisicio facta de morte predicti Rogeri per Willelmum de Cumbertom Willelmum Hyndercle Johannem Colvile skynnere Johannem de Northfolk Johannem Coupere Robertum de Holm Ricardum Bowyere Andream Breustere Ricardum Ferrouer Johannem Albyn Johannem Hosyere et Thomam Maydenston. Qui dicunt super sacramentum suum quod die Martis in festo Sancti Marci Evangeliste anno supradicto [April 25, 1374] ante mediam noctem in Cantebria apud cornarium Sancti Benedicti quedam rixa oriebatur inter Magistrum Robertum Utesle et Johannem de Stowe Johannem Saunford et alios clericos et ceperunt pugnare inter se et cum nunciatum fuit sociis dicti Johannis Saunford de diversis hospiciis et de Aula Regis venerunt clerici ad dictum cornarium ad dictum Johannem Saunford succurrendum cum quibus venit dictus Rogerus Kebbel. Et quidam Ricardus Reyner venit cum uno pollax et dicto Rogero dedit plagam supradictam et sic eum felonice interfecit de qua plaga languebat a dicto feste Sancti Marci usque in vigiliam Pentecostes supradictam quo die obiit. Et statim post feloniam factam predictus Ricardus se retraxit. Et dicunt quod predictus Ricardus non habuit aliqua terras tenementa bona seu catalla que extendi seu appreciari possunt.

Rogerus Reyner clericus primo eum invenit plegii sui Henricus Masoun } Johanne(m) [*sic*] Curre

|                |                   |                   |                                   |                  |
|----------------|-------------------|-------------------|-----------------------------------|------------------|
| Quatuor vicini | {                 | Hugo Coupere      | {                                 | Henricus Amant   |
|                |                   | plegii sui        |                                   | Thomas Dount     |
|                |                   | Galfridus Soutere |                                   | Ricardus Malton  |
|                |                   | plegii sui        |                                   | Henricus Dounyng |
|                |                   | Hugo Forthe       |                                   | Thomas Catoun    |
|                |                   | plegii sui        |                                   | Ricardus Hoog    |
| {              | Ricardus Houghton | {                 | Hugo Scarre                       |                  |
|                | plegii sui        |                   | Johanne(m) [ <i>sic</i> ] Lokyere |                  |

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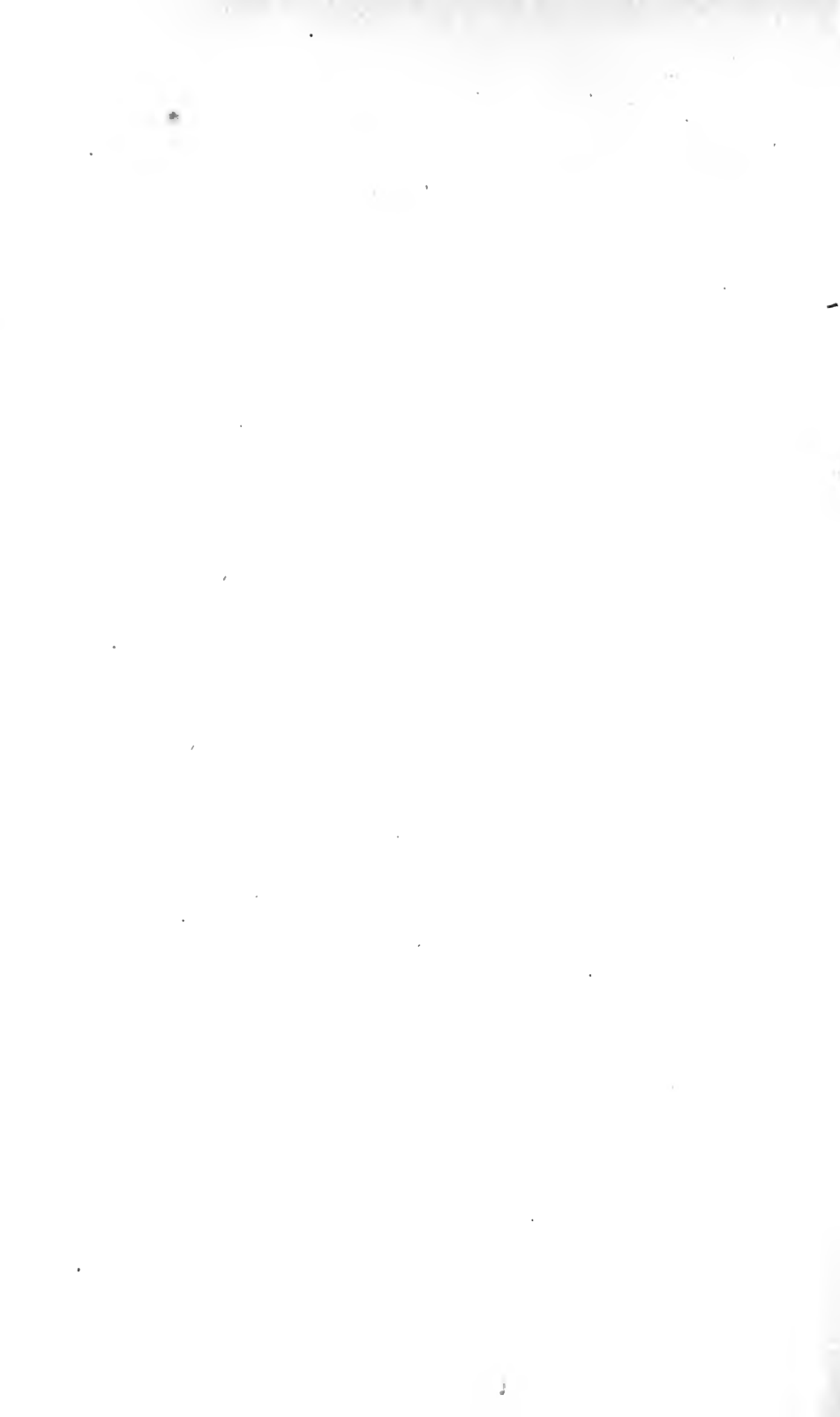
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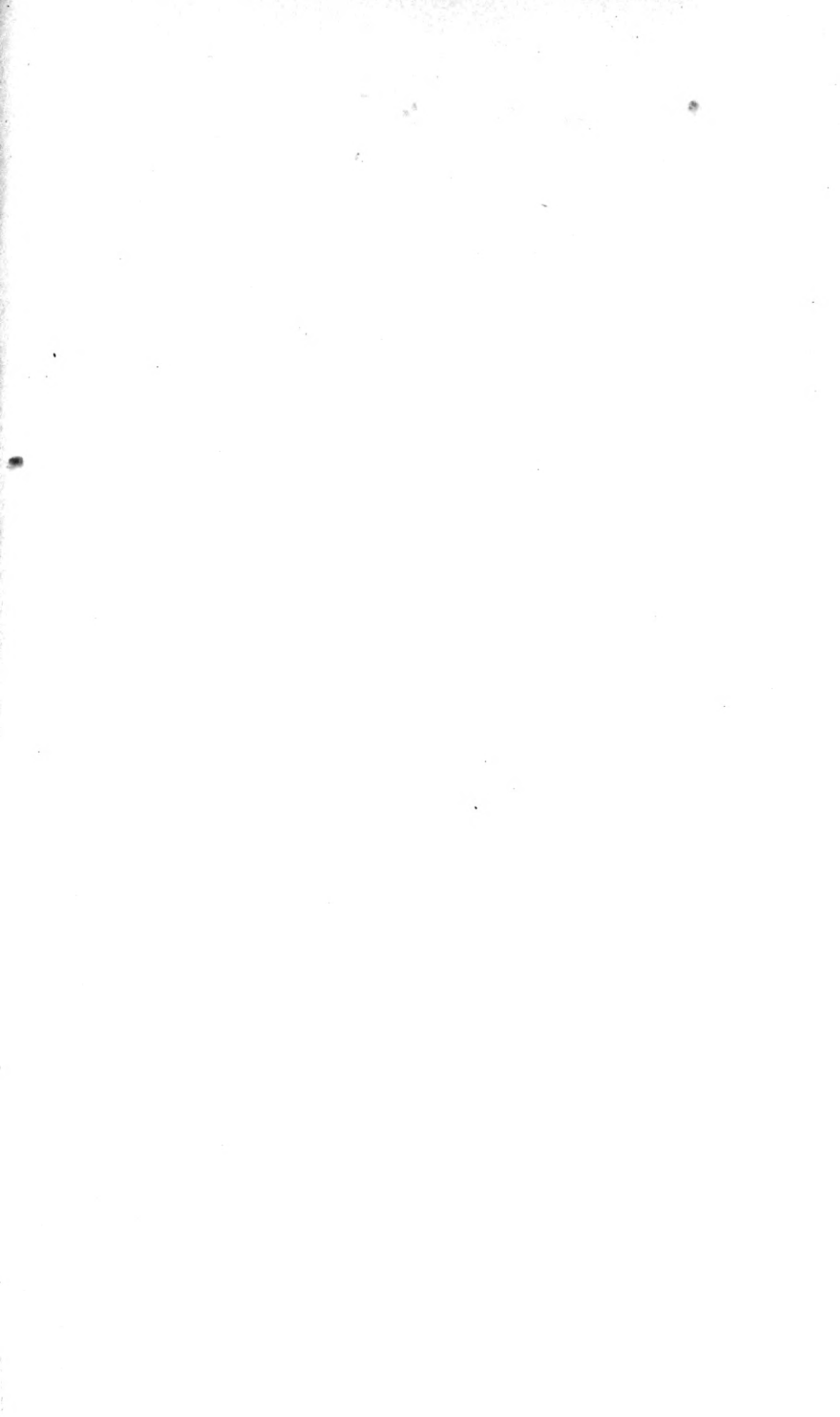
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