The Legislation of Richard III

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"AND ALTHOUGH HE WERE A PRINCE in military virtue approved, jealous of the honour of the English nation, *and likewise a good law-maker, for the ease and solace of the common people;* yet his cruelties and parricides, in the opinion of all men, weighed down his virtues and merits; and in the opinion of wise men, even those virtues themselves were conceived to be rather feigned and affected things to serve his ambition, than true qualities ingenerate in his judgment or nature." [1] So wrote Bacon in Stuart times, and was echoed by Gairdner in 1878. Posterity may well be baffled by the psychological notions of eminent historians. It is difficult to imagine a ruler who was at once solicitous for the common people, and yet guilty of cruelties and parricides. The character of Richard III may be said to be in the process of restoration. It has been pointed out with much force that the traditional view of him as a monster of iniquity is borne out by little contemporary evidence, that St. Thomas More, during his reign, was a mere child, and that he, as also the Monk of Croyland, was much under the influence of Morton, Bishop of Ely, and afterwards Archbishop of Canterbury, whose hostility to Richard was notorious and persistent. But it is not the purpose of this article to enter into historical controversy, for which indeed the writer is but ill-equipped.[2] It is, however, its purpose to follow the divine exhortation "Every tree is known by his own fruit," [3] and to examine the legislation of the first and last

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[1] *History of King Henry VII*, vol. V, p. 6, *Works of Francis Bacon*, Baron of Verulam, Viscount St. Albans, Lord High Chancellor of England (edition of 1819, London).

[2] Reference to every important commentary is made in Appendix II of PAUL MURRAY KENDALL'S *Richard III*. See also the controversy between James Gairdner and Sir Clements Robert Markham, which concentrates mainly on the identity of the murderer of "the Princes in the Tower," in *English Historical Review*, vol. VI, 250, 444, 806.

[3] ST. LUKE, chapter VI, verse 44.

Parliament of Richard III, which sat in 1484. It cannot be suggested that from an evil and licentious ruler can never come a good law. Thus Nero, for whose character, at any rate during the later part of his reign, after his matricide, it would be idle to attempt to find a palliative or excuse, did in his early manhood issue the Sc. Neronianum, a statesmanlike measure which prevented the failure of legacies through inattention by the testator to technical rules.[4] Yet posterity might have been kinder to his memory, could it have been shown that the measure was not a solitary effort, but part of a consistent scheme of beneficent legislation. Can this be shown by the legislation of Richard III?

Gairdner tells us that the accession of Richard III must be dated 25 June, 1483,[5] a "sort of Parliament" having enacted the statute known as "Titulus Regius," which pronounced Edward V and his brother illegitimate, on the strength of Edward IV's marriage to Lady Eleanor Butler, who was still living when he went through a form of marriage with Elizabeth, Lady Grey, the mother of the boys.[6] The coronation of Richard III took place on 6th July, and it was intended that Parliament should assemble on 6th November. But this event was postponed, owing to Buckingham's uprising on behalf of Henry, Earl of Richmond, until 23 January, 1484. It passed fifteen public, and eighteen private statutes.

Of the private statutes the most interesting is Titulus Regius itself. It was repealed by Henry VII, who ordered the destruction of all copies, the original, of course, as Gairdner points out, being always preserved in the custody of the Master of the Rolls.[7] The repeal, in restoring the legitimacy of his

[4] GAIUS, *Institutiones Iuris Civilis*, II, 197, 218.

[5] *Dictionary of National Biography.*

[6] *Encyclopaedia Britannica.* This is enumerated as the first of the private statutes of Richard III. Dominic Mancini, who was in England in 1483, and left it just after Richard's coronation, makes no reference to Edward's pre-contract with Eleanor Butler, but does hint at a pre-contract overseas with another lady, who was, in all probability, Bona, sister of Louis XI of France (see SHAKESPEARE, *Henry VI*, Part 3, Act 4, Scene 3). But CHARLES ARTHUR JOHN ARMSTRONG, in his edition of MANCINI'S work, *The Usurpation of Richard III* (London, 1936), points out that there is no foundation for this story.

[7] *English Historical Review*, vol. VI, 444, 455.

queen, Elizabeth of York, furnished Henry with one more support, wherewith to bolster up his weak title through conquest, and his title by descent, which was weaker still. It was, however, a support whose usefulness he was very unwilling to acknowledge, as is shown by his ungracious delay in allowing the queen's coronation, which did not take place until the end of 1487, after the suppression of the rebellion of Lambert Simnel. But the repeal, paradoxically, furnishes fuel for the contradictory theories of Gairdner, that the Princes were murdered by Richard, and of Markham, that they were murdered by Henry. If they were already dead when Henry came to the throne, the destruction of Richard's title could but strengthen that of Henry. If, however, they survived their uncle, and were still alive when Titulus Regius was repealed, they, as well as their sister, were legitimated, and their title necessarily overrode that of Henry.

Most of the other private statutes are of no particular interest. They follow the familiar contemporary pattern. Some confer benefits on individuals, others visit individuals with attainder. But it must be said, in favour of Richard, that the latter were by no means regularly implemented. Morton was one of the objects of an Act of Attainder, but, so far from suffering execution, was committed to the custody of Buckingham. Having encouraged his rebellion, he left him, when he found it doomed to failure, to face its consequences alone, and escaped to join Henry in France.[8] The sixth private statute is entitled "an Act against Margaret Countess of Richmond". She was Lady Margaret Beaufort, the mother of Henry VII, who, although she attended Anne Nevill, Richard III's queen, at his coronation, constituted a constant danger to him throughout his reign, by her regular communications with her exiled son. The statute stripped her of her property, but she never really lost it, for it was given into the custody of her second husband, Lord Stanley, whose treachery to Richard at Bosworth lost him the battle, his crown and his life.[9] Richard's magnanimity is in striking contrast to the unscrupulous chicanery of Henry, as shown in the Act of Attainder passed in

[8] BACON, *History of Henry VII*, *Works*, vol. V, p. 158.

[9] See GAIRDNER, *Life of Richard III*, p. 241, n. 2 (2nd ed., Cambridge, 1898).

the first year of his reign, against Richard's faithful followers. Henry's enactment may be described as conviction and confiscation by fiction, as it dated his accession as having occurred on the day before the Battle of Bosworth. It is satisfactory to note, that this nauseating falsification of history disgusted not only the contemporary Monk of Croyland, but also Henry's zealous apologist Gairdner.[10] The distaste of the English people took very practical shape ten years later, in the form of an Act of 1495, which laid down that in no case could loyalty to one who was at the time king *de facto* be treated as treason to a subsequent king.[11]

Let us turn to the Public Statutes of Richard III. Bacon gives vent to a certain impish and perverse strain which may be discerned in other parts of his writing, in the enigmatic sentence, "as for the politic and wholesome laws which were enacted in his time, they were interpreted to be but the brocage of an usurper, thereby to woo and win the hearts of the people, as being conscious to himself, that the true obligations of sovereignty in him failed, and were wanting." [12] If the implications of this sentence be resolutely probed, we shall surely find the tongue well embedded in the cheek! Richard was no doubt fortunate in his Chancellor Russell, Bishop of Lincoln, but much legislation in medieval times would never have come to fruition without the personal will, and sometimes initiative of the king.

The first of the "politic and wholesome laws" bears the heading, "All acts made by or against *cestui que use* shall be good against him, his heirs and feoffees in trust." Copious allusions to it are made by Bacon in his "Reading on the Statute of Uses.'" [13] Though, in the result, the extent of its effectiveness belied its promise, and disappointed the ingenuity of its author, it is neverthless an important landmark in the history of the use of land. Three problems, raised by the institution, at different times engaged the attention of the legisla-

[10] *Henry the Seventh (Twelve English Statesmen)*, pp. 37-38 (London, 1892).

[11] *Sir William Oldnall Russell on Crimes* (11th ed., by James William Cecil Turner, London, 1958), p. 224.

[12] *History of Henry VII*, *Works*, vol. V, p. 6.

[13] *Works*, vol. iv, p. 158.

ture. (a) The prevention of the evasion of the claims of creditors, and of the Statutes of Mortmain. This was effected by statutes extending from 1377 to 1530.[14] (b) The prevention of inroads on the royal revenue, through the diminution of feudal dues. This was drastically effected by the Statute of Uses, 1535, though a preliminary step had been taken by Henry VII in an Act of 1489, which gave to a lord the wardship of the heir of the *cestui que use*. (c) The quieting of title. This was the beneficent purpose of the Act of Richard III. There arrives a time, in the history of many legal institutions, when it becomes necessary, in order to do practical good, to disregard the symmetry of juristic theory. It is, of course, elementary learning that the trust interest is not tantamount to ownership, in that it may be overridden by the claims of a *bonâ fide* purchaser of the legal estate. But it is implicit in the doctrine of restitution of trust property, that the rights of a beneficiary are much higher than mere *iura in personam*, and approximate closely to *iura in rem*.[15] Likewise in juristic theory a purchaser must negotiate with, and pay his purchase money to, the feoffees to uses, but the ostensible owner must be the *cestui que use*, and the temptation assailing him, to pose as the legal owner and transfer what purported to be a legal title, at times proved irresistible. The statute of Richard III was passed to give legal effect to what had become an established practice. As Maitland put it, "henceforth both feoffee and *cestui que use* can make an estate. In effect it gave a sort of statutory power of alienating the legal estate."[16] Digby writes to the same effect, but adds that the statute did not wholly achieve its purpose,[17] citing, not very convincingly, in support of this estimate, the preamble to the Statute of Uses, 1535, which is a notoriously disingenuous document, alleging imaginary abuses as excuses for an Act, whose only real purpose was to replenish the shrinking royal purse, and stop up its outflow. Challis deals with the statute in the course of his general survey of

[14] HAROLD GREVILLE HANBURY, *Modern Equity* (7th ed., London, 1957), pp. 8-9.

[15] HANBURY, *Modern Equity*, p. 22.

[16] FREDERIC WILLIAM MAITLAND, *Equity* (revised by John Brunyate, Cambridge, 1936), p. 34.

[17] KENELM EDWARD DIGBY, *History of Real Property* (5th ed., Oxford, 1897), p. 345.

the nature of the use.[18] He remarks that though not repealed until 1863, it "never had any extensive operation." Its usefulness was undoubtedly curtailed by the Statute of Uses, but it played its part, as a most ingenious piece of mechanism, in the history of conveyancing.

Bacon refers to the saving, by clause (6) of the Statute "to every person or persons such right, title, action or interest, by reason of gift in tail thereof made, as they ought to have had, if this Act had not been made." It must be remembered that the statute was passed only eleven years after *Taltarum's Case*,[19] which turned mainly upon the mysteries of recoveries by single and by double voucher.[20] At that time, though recoveries were, as Holdsworth points out, in full working order,[21] they were regarded rather as devices for the evasion of the Statute *de donis conditionalibus*, than as genuine conveyances. Hence stemmed a tendency of statutes to protect entails. Bacon illustrates his exclusion of the use from the classification of rights into *iura in re* and *iura ad rem*, by limiting the ambit of this saving clause to entails of the possession, and leaving outside it the use of land, "because a use is no right nor interest." [22]

Bacon emphasized that the purpose of the statute was not to confer any benefit on the *cestui que use*, but to consolidate the position of his alienees; its oblique effect was, no doubt, to enable him to change his feoffees,[23] yet descent cast to the heir of the *cestui que use* would not toll an entry, and relegate the disseisee to a right of action, as in the case of a legal estate. The weakness of the statute was, that the feoffees retained

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[18] HENRY WILLIAM CHALLIS, *Real Property* (3rd ed., London, 1911), p. 386. He refers to a discussion of one interesting point raised by the statute, in Dyer, 283a, pl. 30.

[19] (1472), Year Book 12 Edw. IV, pl. 25, f. 19a.

[20] CHALLIS, *Real Property*, p. 309.

[21] SIR WILLIAM SEARLE HOLDSWORTH, *History of English Law*, vol. III (4th ed., London, 1935), p. 119.

[22] *Reading on the Statute of Uses, Works*, vol. IV, p. 161.

[23] *Reading*, pp. 176, 178. He calls it "the great statute for relief of those that come in by act of the party," in contradiction to statutes of Henry VII which give "further help and remedy to those that come in by act in law."

concurrent powers of alienation, so that many titles remained insecure.[24]

With the first statute should be read the fifth, which was probably passed *ex abundanti cautela,* as a reassurance that the first statute had not altered the old rule, that the king could not be a feoffee to uses.[25] Bacon records that, before becoming king, Richard III had been feoffee to several uses.[26] The fifth statute provides that "the lands whereof the king was enfeoffed jointly with others to the use of the feoffor, shall be in his co-feoffees."

The seventh statute is entitled: "Who shall be bound by a fine levied before the justices of the Common Pleas—and proclamations made thereof." It is an important episode in the history of the fine, which had a big part to play in the evolution of English conveyancing.[27] We must remind ourselves that it was an agreement of compromise made by leave of the Court, between the parties, originally to a genuine, but later to a fictitious action, whereby the lands concerned were acknowledged to belong to one of them; it was enrolled among the records of the Court. It was so named because, having the effect of a judgment in a writ of right, it put an end (*finis*) not only to the matter in dispute, but also to all claims to the land not made, when Bracton wrote, at the time of the fine, but in the reign of Edward I, within a year and a day afterwards. Parties having rights to land, of which they were not in possession, were thus liable to be barred of their rights by a fine "levied" by the tenant in possession, followed by "non-claim" on their part within the due time unless they were under some disability, such as infancy or lunacy. It is this doctrine of non-claim that is really the keynote of alienation by fine. The legislature was faced by the necessity for an equitable adjustment of the claims of (a) those entitled to the land, (b) those to

[24] *Reading,* p. 185.

[25] EDMUND PLOWDEN, *Commentaries,* (The Savoy, ed. of 1761), p. 238; *Rustomjee v. Reg.* (1876), 1 Q.B.D. 487.

[26] *Reading,* p. 200.

[27] On the history of the fine, see SIR FREDERICK POLLOCK and FREDERIC WILLIAM MAITLAND, *History of English Law* (2nd ed., Cambridge, 1898), vol. II, pp. 94 *et seq.;* HOLDSWORTH, *History of English Law,* vol. III, pp. 236 *et seq.*

whom it had been alienated. A statute of Edward III in 1360, as Holdsworth points out,[28] leaned over too far in favour of (a) by the very drastic provision that "the plea of non-claim of fines, which from henceforth shall be levied, shall not be taken or holden for any bar in time to come." This worked obvious injustice to alienees, who had bought the land in full confidence that the person levying the fine had a perfect title to convey. The seventh statute of Richard III introduced a much needed modification, by ensuring that a fine be brought to the notice of all persons interested in challenging its efficacy. Clause 3 not only provided for a public reading of the fine, during which all other pleas were to close, but also laid down that a transcript of it should be sent to the justices of assize and justices of the peace of the county concerned, to be proclaimed there. These stringent requirements ensured that the fine should be purged of any clandestine element. When the formalities had been duly observed, the fine should bind strangers as well as privies, except married women, unless parties to the fine. But Clause 3 is subject to Clause 4, which made a generous concession to those claiming title to the land; they need not at once come forward, but were given a period of five years from the proclamation, to assert their rights. Assurance was made doubly sure on this point by the tautologous Clause 7, which laid down that unless they sue within five years, they should be "concluded" by the fine. Clause 6 saved the rights of those under disability for five years after its cesser, thus giving practical effect to their exemption under Clause 3. Clause 8 is a general provision, saving the validity of fines at common law; a modern draftsman would have included in it words such as "except as expressly affected by this Act."

But the most interesting Clause is 5, which saves reversionary rights. The first of these to be mentioned are gifts in tail. The connection of these with fines has a peculiar history of its own. The Statute *de donis conditionalibus*, 1285, might from its start have been circumvented, as far as the issue in

[28] *History of English Law*, vol. III, p. 243. BACON remarks (*History of King Henry VII*, *Works*, vol. V, p. 61) that such a statute is "fit for times of war, when men's heads are troubled, that they cannot intend their estate, but statutes that quiet possession are fittest for times of peace."

tail were concerned, by the device of levying a fine, had not this danger been foreseen by the framers of the statute, who included in it the provision that "if a fine be levied hereafter upon such lands, it shall be void in the law; neither shall the heirs, or such as the reversion belongeth to, though they be of full age, within England, and out of prison, need to make their claim." This principle is reasserted by Clause 5 of the seventh statute of Richard III. The next milestone is a statute of Henry VII in 1489, which is known, very incorrectly, as the First Statute of Fines. It is noteworthy, not so much for its actual provisions, which are little more than embellishments of the statute of Richard III,[29] to whom belongs all the credit for a statesmanlike reform, as for a peculiar and unforeseen interpretation later put upon it by the Courts.[30] For it was held in 1528, that a fine levied by a tenant in tail with proclamations, which had, under the Statute of Henry VII, replaced the readings and transcripts required by the statute of Richard III, should finally bar the issue in tail, who were not even to be allowed any time to prosecute their claims upon the death of the tenant in tail. The judges appear to have regarded them as privies to the fine, who, along with parties, under the Statutes of Richard III and Henry VII alike, were barred at once. Such reasoning is, of course, most unsound, as the interests of the issue in tail must be diametrically opposed to those of a tenant in tail seeking to displace them, and the decision was clearly nothing but an indefensible judicial repeal of the provision of *de donis* which has been noted.[31] Yet its principle was expressly affirmed by the so-called Second Statute of Fines of Henry VIII, in 1541, by which it was enacted that all fines levied with proclamations, *whether before or after the Statute,* by any person of full age, of *any hereditaments entailed to him or any of his ancestors,* in possession, reversion, remainder, or in use, should be immediately after the fine levied, engrossed and proclamations made, deemed to all intents and purposes *a sufficient bar for ever* against such person and his heirs claiming the same hereditaments or any

[29] For the new provisions of the statute of Henry VII, see HOLDSWORTH, *History of English Law,* vol. III, p. 244.

[30] SIR ROBERT BROOKE, *La Graunde Abridgment* (London, 1586), tit. Fine, pl. 1; Dyer, 3a.

[31] *Supra,*

parcel thereof only by force of any such entail. This gave the relevant clause of *de donis* its quietus, but it must always be remembered that the fine did not affect the rights of those entitled in reversion after the failure of issue. Where a common recovery created a fee simple, the fine created but a base fee.

The second statute is probably the most beneficent of all the legislation of Richard III. It provides, quite simply, that "the subjects of this realm shall not be charged with any benevolences, etc." Its terms are most emphatic. It describes benevolences as illegal exactions, and enacts that the king's subjects be not charged with them, "nor any like charge." It even attempts to arrest the power of future Parliaments to copy Edward IV's precedents, laying down that such charges are to be "damned and annulled for ever." [32] When we recall to mind Richard's unfailing devotion to his brother Edward IV, we must acknowledge that this statute is a very strong demonstration of Richard's even greater devotion to "the ease and solace of the common people." [33] The significance of the statute cannot be appreciated without some account of the medieval history of taxation. Stubbs pointed out that "out of taxation is born a Parliament." Henry II had adopted the jury system for the assessment of taxes. At the same time he taxed other interests than the landed interest. He taxed the merchants in the towns while giving recognition to the principle that the new sources of supply must have a voice in the contributions which they were called upon to make. The basic principle developed, that the king must, for the ordinary expenses of government, "live of his own," that is to say, on the money paid to him by his tenants *in capite* in commutation for feudal services; if he required an extraordinary grant, he must apply to Parliament. John's attempts to impose new taxes were checked by Clause 12 of the original issue of Magna Carta, wherein he agreed to levy no new aids or scutages except by the common counsel [34] of the realm. Clause 14, which, in common with Clause 12, reappears in no later issue of the

[32] Cf. ALBERT VENN DICEY, *Law of the Constitution* (10th ed. by Emlyn Capel Stewart Wade, London, 1959), p. 65.

[33] BACON, *History of King Henry VII* (*Works*, vol. V), p. 6; *supra*,

[34] Or through the Common Council, according as *Consilium* is spelled with an S or a C.

Charter, lays down the list of those whose counsel is to be taken.[35] The list contains no representative element, foreshadowing the present House of Commons, but Simon de Montfort, during the temporary deposition of Henry III, called to his Parliament of 1265 knights to represent the shires, and burgesses to represent the boroughs. This expedient was copied by Edward I in his Model Parliament of 1295. But it must not be thought that the Commons were henceforth invariably called; Edward I and his successors would call them if they desired to ask their advice, but chiefly in order to obtain their consent for new taxes, of whose legality they could not be certain. The Confirmatio Chartarum of 1297 affirms the right of the Commons to be parties to taxation, and so, as Maitland puts it, by the end of the fourteenth century there is no obvious method whereby a king can levy taxes without the sanction of Parliament.[36] In 1407, Henry IV, a king most markedly dependent on the goodwill of a Parliament which had condoned his usurpation, ventured to depart from the practice, which had become traditional during the reign of Richard II, that money grants be made by the Commons, and maintained his right to deliberate first with the Lords on all needs of the kingdom, including taxation; but he was forced to make an inglorious retreat by both Houses, who decided that no report be made to the king, until both Houses had agreed; a report should then be made by the Speaker.[37] The Wars of the Roses threw into confusion the middle years of the fifteenth century. Much of the flower of Parliament had perished, and Edward IV seems to have preferred to "wrest the law to his authority" by the imposition of benevolences, rather than to go back to the regular process of requests to a Parliament, which must have been politically inexperienced, and undergoing a painful process of reconstruction throughout the period of his reign. Richard III would appear to have been determined to turn his back on the abuses of the past, and rely on Parliament for all extraordinary grants, but treachery at home, and the certainty that an invasion by Rich-

[35] Or, those who form the Common Council (see n. 34).

[36] *Constitutional History of England* (Cambridge, 1908, reprinted 1920), p. 180.

[37] Sir William Reynell Anson, *Law and Custom of the Constitution* (Oxford, 1922; 5th ed. by Sir Maurice Gwyer), vol. I, p. 281.

mond from France, backed by French help, could only be a matter of time, forced him to keep the country in a state of readiness to meet it. Even Gairdner acquits Richard of a violation of his own statute. What he did, to cope with the exigencies of the moment, was to institute forced *loans*. But these differed radically from benevolences, which were out-and-out *gifts*. The repayment of the loans was safeguarded in every case by "good and sufficient pledges." [38]

But benevolences, to which Richard III, in his direst extremity, scorned to stoop, were unashamedly revived by the insatiable greed of Henry VII. In this policy he was much assisted by the unscrupulousness of "Cardinal Morton's fork," [39] and the nefarious activities of Empson and Dudley, the prototypes of all *agents provocateurs*. The money may be said, when first exacted, to have been needed for the war with France, but later Henry continued in his rapacious course simply for the purpose of filling his privy purse.[40] Some of his predecessors might have been justly condemned as spendthrifts, but of all rulers the most odious must be the inveterate miser, who hoards for the sake of hoarding.

The third statute gave much protection to the liberty of the subject, and sanctity of his property. It is entitled "Every Justice of the Peace may let a prisoner to mainprize. No officer shall seize the goods of a prisoner until he be attainted." The preamble recites the inconvenience of imprisonment pending trial, which may give full play to a prosecutor's malice. But the statute contains a provision of a different kind, empowering Justices to inquire into escapes and rescues [41] of persons "arrested and imprisoned [42] for felony." As to the goods of

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[38] GAIRDNER, *Life of Richard III*, 196.

[39] BACON, *History of King Henry VII* (*Works*, vol. V), p. 81.

[40] BACON, *History*, III, writes "about this time began to be discovered in the king that disposition, which afterwards, nourished and whet on by bad counsellors and ministers, proved the blot of his times: which was the course he took to crush treasure out of his subjects' purses, by forfeitures upon penal laws. At this men did startle the more at this time, because it appeared plainly to be in the King's nature, and not out of his necessity, he being now in float for treasure." See also *ibid.*, 172, concerning a new commission, late in his reign, "for a general benevolence, though there were no wars, no fears."

[41] Cf. *Russell on Crime*, 11th ed., chapter 21.

[42] This would appear to refer only to untried prisoners.

suspected felons, these are not to be taken, before their owner be convicted, or attainted,[43] or the goods be lawfully forfeited. The sanction for this prohibition is an action of debt for double the value of the goods, against the sheriff and his officers, wherein the defendant is not to be permitted to wage his law, but the trial must be by jury. No essoins are to be permitted.[44] The action of debt, and the exclusion of essoins, appear to be "common form" in other statutes of Richard III.

The fourth statute is entitled "Of what credit and estate those persons must be which shall be impanelled in the sheriff's tourn." The preamble recites that perjury had been rife in the Court; the innocent had been convicted, the guilty acquitted. To cure these abuses, the statute laid down a property qualification for jurors, property at that time, and until late in the nineteenth century, connoting respectability. A juror must own freehold worth 20/–, or copyhold worth 26/8. A bailiff admitting a juror who lacked this qualification was rendered liable to a fine of 40/–, the sheriff himself, apparently, to a fine of 80/–, of which half was to go to the king, the other half to the informer. This statute is interesting in that it demonstrates that old institutions die hard. Though the sheriff's tourn was not actually abolished until 1887, its official end had been marked by a statute of 1461.[45] For a considerable time before that, it had steadily lost jurisdiction, serious crime having become the monopoly of the Curia Regis under the Assizes of Clarendon, 1166, and Northampton, 1176, and petty crime largely taken over by the Justices of the Peace.

The sixth statute is entitled, "Statute 17 Edward IV c. 2 rehearsed and made perpetual. That in every court of piepowders plaintiff or his attorney shall be sworn." The Courts of piepowder were concerned with inland, the Courts of the Staple with foreign trade. The object of the statute of 1477 was to ensure against the misuse of the Courts by stewards and other officers; the plaintiff must take an oath that the con-

[43] *Qu.*: does this refer to Act of Attainder, or is the word used in a special sense? GILES JACOB, *Law Dictionary* (8th ed., London, 1762).

[44] MAITLAND (*Forms of Action*, Cambridge ed., 1936, by A. H. Chaytor and W. J. Whittaker, p. 4), defines essoins as "excuses for non-appearance," and tells us that "the medieval law of essoins is vast in bulk."

[45] HOLDSWORTH, *History of English Law*, vol. I (7th ed., revised by Stanley Bertram Chrimes, London, 1957), p. 81.

tract in dispute was made in the time and under the jurisdiction of a fair. The preamble recites the danger of "feigned plaints," facilitated by actions which fail to correspond with the actual contracts. The penalty of 100/– against a steward who proceeded without such sworn deposition by the plaintiff, was made recoverable by action of debt. The oath of the plaintiff is not final; the defendant may traverse an allegation that a contract was made within the time and jurisdiction of a fair.

The eighth statute had the same broad object, the prevention of commercial dishonesty. It is entitled "The length and breadth of cloths, and the order of dyeing them and wools. The ability of the aulnager, and what cloths he may seal." [46] The safeguards are most elaborate, the provisions going into many technical details.

(a) Broad cloth must be fully watered before it be put up for sale.

(b) Broad cloth, and whole woollen cloth, must be 24 yards long, 2 yards broad "within the lifts." Half cloth must be 12-16 yards long. If the statutory dimensions are exceeded, the buyer need pay only for the difference.

(c) The town of origin of cloths is to be identified by the seal. The aulnager (sealer) is to be appointed by the Treasurer, who must be assured that he is expert in making cloth, and worth £100.

(d) Cloth must not be drawn or "tentored" after watering, and tentors [47] are not even to be kept in houses, but "in open places"; mayors must see "that all cloths, which shall be put upon tentors, shall not be drawn out in length or breadth otherwise than is before rehearsed."

(e) No "deceitful thing" is to be cast on cloth, and no chalk is to be used on white cloth. There is to be no *shearing* of cloth not fully watered.

(f) There must be no export of cloth not fully watered.[48]

(g) A penalty falls upon the seller, if cloth be dyed with *orchel* or *garecork*; "except that cork *made within England*

[46] Certain types of cloth are exempted.

[47] "A stretcher, or trier of cloth, used by dyers and clothiers, mentioned in statutes 1 Ric. III c. 8, and 39 Eliz. I c. 20."

[48] The extent of this prohibition is uncertain; clause 11 says "beyond seas"—*Qu.*: is Scotland included, as much trade between the two countries was by water?

may be used in dyeing upon wool *woded,* and also in dyeing all such cloth which is made only of wool, so that the same wool woded and cloth be perfectly boiled and maddered."

(h) Subjects are encouraged to inform as to cloth which fails to conform with the statutory requirements, by being given a vested interest in the penalty, which is to go, as to one third to the informer ("seisor"), one third to the Exchequer, one third to the local authority concerned. Concurrently, there is an action of debt, in the nature of a Roman *actio popularis,* whereby the informer can recover half, and whereto the defendant cannot wage his law.

(i) There is also a measure of restriction on the "buyer," which must be taken to mean the importer. The clause would seem to call for some implementation, for it does not make clear the functions of customs officials, nor whether the sales contemplated are made abroad, or over the ship's side, or after arrival of the goods in England.[49]

This statute may be said to provide a powerful index of Richard III's thoroughness, his insight into technical processes, and, above all, his appreciation of the necessity to keep in close touch and consultation with technical and commercial experts. He had a quality of manysidedness which recalls Henry II and Edward I.

The next five statutes are measures of protection of the English merchant against unfair foreign competition, and were no doubt strongly urged by the burgesses in the Commons. The tenth statute simply prolongs for ten years a statute of Edward IV of 1482, prohibiting the importation of wrought laces of silk. The title of the ninth statute is "In what sort Italian merchants may sell merchandizes. Several restraints of aliens." The evil to be guarded against is thus summarized: Foreign merchants sold goods in England, but spent the purchase-money abroad. What they bought in England, they resold in England at a high profit. They employed little or no

[49] "No stranger shall buy any wool which shall be sent, or shall pass through the *Streits of Marrock* by gallies, carrocks, ships etc., sorted, clacked, or parked, nor no wool whereof any locks or refuse shall be made, but that the same wool be as it is clipped, and purely wound without deceit, and merchantisable, after the growing of the country, without any sorting, bearding, clocking of locks, or refuse thereof to be made . . . upon pain to forfeit the same wool, and double value thereof."

English labour. The goods which they gained in England, they dissipated abroad among the King's enemies. Those falling within the mischief of the statute are curiously described as merchants of the "nation of Italy," [50] not made denizens.[51] The remedy prescribed is drastic. The merchants must change from retail to wholesale trade, and spend the purchase-money derived from their sales to retailers "in the commodities of this realm," on pain of forfeiting it. But the principle of *lex non cogit ad impossibilia* is preserved; they may carry out of the realm what they cannot sell in the realm within eight months. "Cells" of foreign merchants are discouraged by a provision that a "stranger" shall not be host to another "stranger," other than a compatriot. Restraints imposed on aliens in general, which foreshadow modern rules of the Home Office and Ministry of Labour, are that they (a) must not buy or sell, or make, wool or woollen cloth in England, (b) must not act as handicraftsmen, (c) must not employ servants, other than the King's subjects. The sanction for breach of these restrictions is an action of debt, without compurgation, in which half the proceeds go to the King, the other half to the plaintiff.

The twelfth statute has the same purpose of protection, but of native craftsmen. It differs from the tenth in that it contains no exceptions in favour of denizens. Its title is, "Certain merchandizes prohibited to be brought into this realm ready wrought."

Exemption of denizens is absent also from the eleventh statute. "Ten bowstaves shall be brought into this realm for every butt of malmsey." A thorough commentary on this statute is supplied by Coke, in his account of "The Court of the Leet, or view of Frankpledge." [52] The evil was that Vene-

[50] In view of the fact that the unification of Italy was still almost three centuries in the future, this phrase must presumably be taken as referring to merchants of the several Italian city-states.

[51] SIR WILLIAM BLACKSTONE (*Commentaries*, 16th ed., London, 1825), vol. I, p. 373, wrote, "a denizen is an alien born, but who has obtained *ex donatione regis* letters patent to make him a subject (dist. naturalization, which only Parliament can effect) . . . a denizen is *in a kind of middle state*, between alien and a natural-born subject, and partakes of both of them." Since the Naturalization Act, 1870, denization became practically obsolete, and is mentioned in few treatises on international law written since that date.

[52] SIR EDWARD COKE, *Fourth Institute* (5th ed., London, 1671), pp. 264-265.

tian merchants charged too high a price, up to double, for their bowstaves of stuff. The remedy was twofold, (a) to keep up the quality, by prohibiting the sale of the bowstaves "ungarbled", i.e., "until the good and sufficient be severed from the bad and insufficient," [53] (b) to force the merchants to bring in ten bowstaves to every butt of malmsey. Limb (a) appears very sound, but limb (b) crude; it is at least questionable whether the price of one commodity can be kept down by the compulsion to import another commodity with it.

The thirteenth statute is specifically directed against denizens. Its title is, "The contents of vessels of wine and oil, which may not be sold till gauged." Its object is to prevent the sale of wine and oil in short measure and for excessive price. Vessels must henceforth contain "the old measure," which is carefully mentioned as appropriate for each tun, pipe, tertian, hogshead, barrel and rundlet. The safeguard for observance is that "vessels be not sold, until gauged by the King's gauger." One point of form in this statute is interesting. The preamble recites that the "short" vessels were imported before 1449, and refers to Henry VI, as "late in deed and not of right King of England." This description is of course consistent with the whole thesis on which was based the Yorkist claim to the throne, that Henry IV was a usurper, being the son of Edward III's fourth son, John of Gaunt, while at the time of Richard II's deposition there were descendants of the third son, Lionel of Clarence, whose claims, and those of the House of York with whom intermarriage had taken place, must be preferred. Henry VII thought, by the repeal of the statute Titulus Regius,[54] to have invalidated the title of Richard III, who thus, again consistently, is mentioned in Henry VII's Act of Attainder of his followers, simply as Richard, Duke of Gloucester. Yet this form seems to have been forgotten by the reign of Henry VIII, for a statute of 1537, which confirms the statute of Richard III now under discussion, alludes to him simply as "King Richard III."

The fourteenth statute takes us into the border land between constitutional and ecclesiastical law. It is entitled "Ac-

[53] Cf. 12 Edw. IV c. 2.

[54] *Supra,*

comptants for *dismes* of the clergy not chargeable to answer other men's suits in the exchequer." Jacob [55] tells us that the word "dismes" is used in two senses, of which only the second here concerns us, "the tenths of all spiritual livings given to the prince, which is called a perpetual disme." These dismes were granted to the King by the clergy in the provincial convocations.[56] The collectors, appearing before the exchequer, should be chargeable exclusively with these amounts, but other persons had seized the opportunity, to charge them with pretended dues. The statute sets out simply to prevent such fraudulent practices; the collectors are to be given their accounts at the exchequer, and are then *functi officio*. But this does not, of course, give them any privilege, if sued for a debt in any Court other than the Exchequer.

The fifteenth statute is one which we might have expected to find as a private, rather than a public statute. Its title is, "A resumption of all grants, and estates of land, etc., made to Elizabeth Grey late Queen of England." We must surely insert "as" before "late." The appellation "Queen," without qualification, would be inconsistent with the parenthesis, above noted, to the mention of Henry VI in the thirteenth statute.[57] The object of the statute must have been to bolster up the statute Titulus Regius, and to emphasize that the "marriage" of Edward IV to Lady Grey was invalid.[58] That Richard III had no intention of really impoverishing her is clear from the fact that all the available evidence goes to show that, after the initial scare, caused by the brush between the forces of Richard, and those of her brother, Lord Rivers, while the young Edward V was being brought to London, the outcome of which was the execution of Rivers, she lived on the friendliest terms with Richard, and brought her daughter to his court, thus providing, incidentally, an almost unanswerable argument against the view that Richard was responsible for the deaths of Edward V and his brother.[59] Further evidence, both of her friend-

[55] *Law Dictionary*. The first meaning is "tithes, or the tenth part of all the fruits of the earth, and of beasts, or labour, due to the clergy."

[56] Cf. MAITLAND, *Constitutional History of England*, 78.

[57] *Supra*,

[58] *Supra*,

[59] GAIRDNER, in his *Life of Richard III*, 250, writes of her that she "although reluctantly, gave one of her two sons into his keeping, and

ship with Richard III, and of his generosity to her, is provided by the Act of Henry VII, who, early in 1487, enclosed her for the rest of her life, which, in the event, was not long, in a convent at Bermondsey, having first stripped her of all her property, which, in view of the statute under discussion, can only have been bestowed upon her by Richard III in exchange for that which had been settled upon her as Queen, and which that statute took away. And it was expressly given as the reason for her treatment by Henry VII, that, as Bacon puts it, "she had delivered her two daughters out of sanctuary to King Richard, contrary to promise." [60]

Richard III suffered, throughout Tudor times, from the calumnies of a chorus of detractors. In more modern times his character has been vindicated by zealous apologists. This paper will have served its purpose if it has succeeded in portraying him as a singularly thoughtful and enlightened legislator, who brought to his task a profound knowledge of the nature of contemporary problems, and an enthusiastic determination to solve them in the best possible way, in the interests of every class of his subjects. It might be urged that Bacon, in the appraisal of him with which the paper began,[61] might have presented a truer picture if he had confined himself to the concessive clause and omitted the main body of the sentence.

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even after the murder of both, was persuaded to be reconciled and zealously to befriend him." Comment on the extreme unlikelihood of such inconsistent behaviour is surely superfluous! GAIRDNER'S disregard of elementary psychology is forcibly brought out by MISS JOSEPHINE TEY in her penetrating "historical detective" novel, *The Daughter of Time* (Harmondsworth, Middlesex, first published by Peter Davies, 1951, re-published by Penguin Books, Ltd., 1954).

[60] *History of King Henry VII*, 22. BACON conjectures that there must have been "some greater matter against her, which the King, upon reason of policy, and to avoid envy, would not publish."

[61] *Supra*,