AN INDEX TO WILLS PROVED IN THE COURT OF THE CHANCELLOR OF THE UNIVERSITY OF OXFORD, AND TO SUCH OF THE RECORDS AND OTHER INSTRUMENTS AND PAPERS OF THAT COURT AS RELATE TO MATTERS OR CAUSES TESTAMENTARY

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JOHN GRIFFITHS

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PREFACE.

THE following Index has been made in obedience to the Act of Parliament, 23 and 24 Victoria, chapter 91, which relieved the University of Oxford from the necessity of surrendering possession of the documents to which the Index relates and transmitting them to the Registry of the Queen's Court of Probate.

Privilege of the University in the matter of Probate.

Until the 12th of January 1858, when that Court was established, the University possessed the right of having Wills proved, Letters of Administration granted, and all questions arising in Testamentary Causes determined, in its own Court.

Probable origin of the privilege.

The origin of the power thus vested in the Chancellor of the University, like the origin of the University itself, is lost in obscure antiquity. The most reasonable supposition appears to be, that, being part of the Chancellor's spiritual jurisdiction, it was at first derived, with the rest of that jurisdiction, from the Bishop of Lincoln, the Diocesan of the University, and was conferred by him virtually, if not expressly, when he confirmed the election of each successive Chancellor [1], and admitted him to his office. Long usage, supported by papal and royal grants, seems to have given the Chancellor a prescriptive right to this jurisdiction long before the University was freed from the necessity of sending him to the Bishop for confirmation; and from the year 1368, when Pope Urban V granted that exemption [2], the Chancellor entered on his office as soon as he was elected to it, and at once took in his own right and independently all kinds of jurisdiction which his predecessors had any way enjoyed before [3]. At any rate it is observable, that the Bishops of Lincoln and Archdeacons of Oxford who at any time called in question the spiritual power of the Chancellor seem never to have denied him all ecclesiastical jurisdiction, but only to have disputed its extent.

[1] Our earliest records concerning the office of the Chancellor speak of him as elected biennially.

[2] Wood's *Hist. Univ. Oxon.* an. 1368.

[3] See Twyne's *Collections*, MSS. in Arch. Univ., vol. 17, pp. 421, 437.

Antiquity of the privilege.

Be the origin however what it may, the privilege can be shewn to have existed for more than six centuries. For it was one of those customs of the University which were disputed by Bishop Oliver Sutton, soon after his advancement to the see of Lincoln in 1280, and which the whole body of Regents and Non-Regents then asserted against him, as having been enjoyed by them time out of mind, "a tempore quo non exstat memoria [4]."

Earliest known example.

The earliest known example of the custom is to be found in the Muniment Room of University College, and is more than five hundred years old. It is the Will of William Hampton, dated and proved in February 1337 [5], and comprised among the ancient title deeds of his dwelling-house called Hampton Hall, which was situate in the parish and street of St. Mildred, and, though now forming part of the site of the southern quadrangle of Lincoln College, belonged to University College during the period 1357–1463.

The privilege not surrendered in 1346, as Wood represents.

At the time when Hampton's Will was proved, and for some years previously [6], the extent of the spiritual jurisdiction exercised by the Chancellor was disputed by Cardinal Gailhardus de Mota, Archdeacon of Oxford, or rather by his agents or deputies; but in February 1346, after a discussion between certain duly authorised representatives of the Cardinal and of the University, an agreement was made, by which, if Wood's summary of it were to be taken as correct, this right of granting probate was surrendered to the Archdeacon [7]. The wording of the agreement is clumsy and confused, and there are some errors in the extant transcripts of

[4] "Item quod probationes testamentorum omnium Scholarium indistincte infra dictam Universitatem decedentium Cancellarius et Procuratores qui pro tempore fuerunt sine alicujus contradictione recipere, ac ordinarie [*sic* Bodl. 337, *al.* ordinarii] dictorum Scholarium, sive essent beneficiati sive non, dictae probationi fidem plenarie adhibere, de plano consueverunt." MSS. in Archiv. Univ. Oxon. A, 46 a; B, 71 b; C, 51 b: MS. Bodl. 337, 18 b. See Wood's *Hist. Univ. Oxon.* an. 1281.

[5] "Probatum fuit istud testamentum in Ecclesia fratrum Carmelitarum Oxon. Lincoln. Dioces. sexto kal. Martii anno Domini MCCCXXXVI^to coram nobis Johanne de Aylesbury Reverendi Viri Magistri Roberti de Stratford Cancellarii Universitatis Oxon. Commissario generali." From another document concerning the same property it appears that the testator was a Member of the University, "Scholaris Universitatis."

[6] See Wood's *Hist. Univ. Oxon.* ann. 1325, 1330.

[7] See Wood's *History*, an. 1345, ed. Gutch, vol. 1, p. 441. In the Latin edition the agreement or "Compositio" is printed at nearly full length, and its meaning is left to the intelligence of the reader.

it[8]; but, if a reader bears in mind the fact, which he may easily learn from other documents, that the Chancellor had claimed the right to exercise archidiaconal or ecclesiastical jurisdiction, especially by inflicting punishment for incontinence, over persons who stood in no special relation to the University, he may without much difficulty apprehend the terms of the arrangement. It first provides for the rights of the Chancellor; and these are expressed in three sentences or clauses. He was to have undisputed jurisdiction, "omnem et omnimodam jurisdictionem sine contradictione...Archidiaconi," over all Doctors, Masters, and Students of the University, clerical as well as lay; except only that the parochial clergy of the place were to be subject to the Archdeacon in the way of canonical obedience, going to him for induction to their benefices, and submitting to his visitation in respect to the books and furniture of their churches. The Chancellor was to have the like jurisdiction, without any exception at all, over the servants of all Masters and Students, and over the six Bedels, and the four Stationers or Booksellers of the University. And he was to have spiritual jurisdiction, described as "plenam jurisdictionem archidiaconalem," over all Writers or Transcribers actually employed in that capacity by Students; but upon the decease of such Writers the Archdeacon was to grant probate of their Wills or administration of their effects. Surely, if the phrase "omnis et omnimoda jurisdictio" in the first two clauses were not sufficient, this special reservation to the Archdeacon of the right to grant probate in the case of Writers shews clearly that in all the other classes of persons which had been enumerated that right was left with the Chancellor. The next sentence of the agreement provides concerning all other persons, "de caeteris personis omnibus," who in other respects belong to the Chancellor's jurisdiction, that the Archdeacon should have the right of punishing them in their lifetime for such acts as laid them open to spiritual correction, and of granting probate of their Wills after their decease[9]. Probably it was

[8] MS. A, 28 b; MS. Bodl. 337, 65 b; Twyne, vol. 17, p. 425.

[9] "De caeteris personis omnibus quae etiam alias de jure consuetudine seu privilegio ad jurisdictionem Cancellarii et dictae Universitatis pertinent habeat Dominus Archidiaconus correctionem et punitionem debitam super criminibus et excessibus ad jurisdictionem archidiaconalem pertinentibus, insinuationemque et approbationem testamentorum suorum ac omnia alia et singula quae negotium hoc concernunt."

from this sentence that Wood understood the Composition as providing that "the Archdeacon shall have the Probate of Wills;" but the "caeterae personae omnes" of whom it speaks are persons different, not merely from the Writers mentioned immediately before, but also from all the persons comprised in the preceding clauses, whose Wills, as we have observed, were to be admitted to probate by the Chancellor.

Persons within the scope of the privilege.

It appears then that in the middle of the fourteenth century the Chancellor's jurisdiction in testamentary matters applied to all Members of the University, and to all who were engaged in their service. In process of time it extended to all persons who partook of the privileges of the University in other respects: or perhaps it may be more correct to say, that in process of time persons of several other descriptions became entitled to partake of the privileges of the University, and that all who had the privileges were necessarily liable to the jurisdiction.

In a Composition made between the University and the City of Oxford soon after the middle of the fifteenth century, February 23, 1459, it was settled, "that these and none other "enioye the privileges of the Universite, that is to say, the "Chauncellor, alle Doctours, Maistres, and other graduatis; "alle studientz, alle Scolers, and alle Clerkes dwellyng with- "in the procinct of the Universite, of what condicion, ordre, "or degree so evere they be; every dailly contynuell servaunt "to eny of theym bifore rehearsed belonging; the Styward "of the Universite and feed men of the same Universite "with their menyall men; also alle Bedells with their dailly "servauntz and their housholdes; alle Stacioners, alle boke- "bynders, lympnours [*limners* or *illuminators, luminarii*], "Wryters, pergemeners [*parchment makers, pergamenarii*], "Barbours, the belle rynger of the Universite, with alle "their housholdis; alle Catours [*caters, caterers*], Manciples, "Spencers [*dispensers* or *stewards*], Cokes, lavenders [*laun-* "*dresses*], powere [*poor*] children of scolers or Clerkes with- "in the procincte of the said Universite; also alle other "servauntz takyng clothing or hyre by the yere, half yere, "or quarter of the yere, takyng atte leste for the yere vi*s.* "viii*d.*, for the half yere iii*s.* iiii*d.*, and the quarter xx*d.*, of "eny Doctour, Maister, graduat, Scoler, or Clere, withoute "fraude or malengyne [*evil design*]; also alle common "caryers, bryngers of scolers to the Universite, or their

" money, letter, or eny especiall message to eny scolere or " Clerk, or fecche of eny Scoler or Clerk fro the Universite, " for the tyme of such fecchyng or bryngyng or abidyng in " the Universite for that entent [10]."

Large as this list is, the following Index contains the names of several persons who are not brought within it by the description of them given in their Wills. Some of these, as for instance, surgeons and apothecaries, were certainly admitted to the privileges of the University under the title of their respective callings; and perhaps, notwithstanding the Composition of 1459, those privileges came in course of time to be granted to almost any applicant. But it is clear also that persons often got themselves entered among the servants of some College or Gownsman for the sake of enjoying the privileges, or rather for the sake of avoiding civic burdens, although they received no wages and their service was only nominal [11]. No one, even to recent times, could carry on any trade or exercise any profession in Oxford without having been admitted either to the freedom of the City or to the privileges of the University: but the fees and other pecuniary charges to which the citizens in former times were liable were far greater than those which were incurred by matriculated men [12]; and there were other duties likewise, the serving on juries, for example, from which privileged persons were anciently exempt. But the tendency of modern legislation is to annul all privileges: the Reform Act and the Municipal Corporations Act have greatly changed the position of the freemen of the City, and made the participation of the privileges of the University a matter of far less value than it used to be; and the number of townspeople desiring admission to them is not now a tenth part of what it was a hundred or even thirty years ago.

When Bishop Sutton in the year 1280 disputed the right District within

[10] MS. in Arch. Univ. Oxon., W. P., L. 3.

[11] See *Corp. Statt. Univ. Oxon.* Tit. II, § 7, p. 7, ed. 4to. 1768. By §§ 8 and 9 of the same statute it was provided that no one should be free of the City and privileged of the University at the same time.

[12] Privileged persons had an advantage over others in respect of taxation. See Wood's *History*, an. 1601; and *Registr. Privilegg. Univ. Oxon.* Cart. Edw. IV, §§ 46, 64; Cart. Hen. VIII, § 29. They were allowed to exercise any retail trade or handicraft by Cart. Hen. VIII, § 24.

the scope of the privilege.

of the Chancellor to grant probate of Wills, the custom alleged in reply did not extend beyond the Wills of students dying within the University [13]. At that time only three Colleges at the most had been settled in the place, University not before 1253, Balliol about 1265, Merton somewhat earlier than 1274; and the number of students who had died away from the University leaving property behind them here must have been exceedingly small. It is not surprising therefore that the only Wills then mentioned were those of students dying in Oxford. But, even if the actual place of death were ever a criterion for limiting the range of the jurisdiction, it soon ceased to be a matter of importance; and according to the analogy of archdeaconries, dioceses, and other districts, whether ecclesiastical or secular, the Chancellor's authority was called into exercise in respect of property lying within the precinct of the University, wheresoever the deceased possessor might have died, provided only that at the time of his death he were subject to that authority. The jurisdiction was determined by two considerations; first, if the deceased were either a student or a privileged person; secondly, if he left property within the limits of the University.

Jurisdiction of the Chancellor supreme, not subject to the Archbishop's prerogative.

But within those limits and in the case of those persons the jurisdiction of the Chancellor was absolute and supreme. No one but he could in such cases grant probate of a testator's Will or administration of an intestate's effects. Neither the Archdeacon nor the Bishop could interfere; and, strange to say, the Prerogative Court was equally powerless. The Chancellor exercised an authority, not subordinate to the Archbishop's, but coordinate with it. If a testator possessed *bona notabilia*, that is, property to the value of £5, in two or more dioceses of the same province, the right of granting probate of his Will was vested in the Judge of the Prerogative Court as Official of the Archbishop; but, if he also had property within the precinct of the University, the Archbishop's probate did not enable the executor to get this into his possession, but he was obliged to take out probate afresh from the Chancellor's Court.

This is a feature in the privilege for which it is not easy

[13] See before, note 4.