

## SLANDER AND LIBEL.

vast jurisdiction to ecclesiastics which they exercised in the middle ages—causes which at the present time cannot be accurately weighed or estimated. According to Bentham, they gained this great jurisdiction “imperceptibly and in the dark, in the pitchy darkness of the very earliest ages.” It is easy to see that the jurisdiction was possessed by them, and it is not important for our present inquiry to ascertain the precise manner in which it was gained. To account for the growth of the ecclesiastical jurisdiction, as a jurisdiction independent of and co-ordinate with the jurisdiction of the courts of common law, we must consider that throughout Europe a great government existed independent of the separate local governments. The ecclesiastics were a nation by themselves. There was a spiritual and a temporal government. The temporal government was local, but the spiritual government was universal. The church, by its power, had taken, and each particular state, from its weakness, had granted to the church, the regulation of the larger portion of all that concerned the peaceful occupations of life. After the Norman conquest, the pope even claimed direct personal jurisdiction in England; and the claims for ecclesiastical jurisdiction and his own claims were continually strengthened and confirmed, until, in the time of Henry the Second, he had “well nigh recovered full and sole jurisdiction in all causes ecclesiastical and over all persons ecclesiastical, with power to dispose of all ecclesiastical benefices in England, whereby he had upon the matter made an absolute conquest of more than half the kingdom (for every one who could read the psalm of *miserere* was a clerk, and the clergy possessed the moiety of all temporal possessions); there remained nothing to make him owner and proprietor of all, but to get a surrender of the crown, and to make the king his farmer, and the people his villains, which he fully accomplished and brought to pass in the times of King John and Henry the Third.” \*

In the reign of King John, an alteration took place in the form of the king's court. By an article of his *Magna Charta* it was declared that Common Pleas should no longer follow the king. The Court of Common Pleas was fixed at Westminster, with a jurisdiction over pleas of land and wrongs not indictable. Indictable wrongs were *punished* civilly and criminally by the Court of Kings Bench, which had also further jurisdiction (to prevent a failure of justice) over suits brought against those persons who were at the time of the commencement of the suit in its custody. The Court of Exchequer, which was established by William the First, had jurisdiction to recover the king's debts and duties. The ecclesiastical courts had jurisdiction of spiritual matters. What is the meaning of the expressions, ecclesiastical matters or causes, or spiritual matters or causes, for all these expressions mean the

same thing? “Let us see when this distinction of ecclesiastical or spiritual causes from civil and temporal causes did first begin in point of jurisdiction. Assuredly for the space of three hundred years after Christ, this distinction was not known or heard of in the Christian world. For the causes of testaments, of matrimony, of bastardy and adultery, and the rest, which are called ecclesiastical or spiritual causes, were merely civil, and determined by the rules of the civil law, and subject only to the jurisdiction of the civil magistrate, as all civilians will testify with me. But after that the emperors had received the Christian faith, out of a zeal and desire they had to grace and honor the learned and godly bishops of that time, they were pleased to single out certain special causes wherein they granted jurisdiction unto the bishops. . . .

“This, then, is most certain, that the primitive jurisdiction in all these cases was in the civil magistrate, and so in right it remains to this day; and though it be derived from him, it remaineth in him as in the fountain. For every Christian monarch (as well as the godly kings of Judah) is *custos utriusque tabulæ*; and consequently hath power to punish not only treason, murder, theft, and all manner of force and fraud, but incest, adultery, usury, perjury, simony, sorcery, idolatry, blasphemy. Neither are these causes, in respect of their own quality and nature, to be distinguished one from another by the names of spiritual or temporal; for why is adultery a spiritual cause rather than murder, when they are both alike against the second table? or idolatry rather than perjury, both being offences likewise against the first table? And, indeed, if we consider the nature of these causes, it will seem somewhat absurd that they are distinguished by the name of spiritual and temporal; for, to speak properly, that which is opposed to spiritual should be termed carnal, and that which is opposed to temporal should be called eternal. And, therefore, if things were called by their proper names, adultery should not be called a spiritual offence, but a carnal. But shall I express plainly and briefly why these causes were first denominated some spiritual or ecclesiastical and others temporal and civil. Truly they were so called, not from the nature of the causes, as I said before, but from the quality of the persons whom the prince had made judges in those causes. The clergy did study spiritual things, and did profess to live *secundum spiritum*, and were called spiritual men; and therefore they called the causes wherein princes had given them spiritual jurisdiction spiritual causes, after their own name and quality. But because the lay magistrates were said to intend the things of this world, which are temporal and transitory, the clergy called them secular or temporal men, and the things wherein they were judges temporal causes. This distinction began first in the court of Rome; . . . and as all their courts are called spiritual courts, so all causes

\* Davies Rep. The case of *Præmunire*.