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NOTABLE ECCLESIASTICAL LAWYERS: XIV

William Somner (c 1598–1669)

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With the notable exception of an article by Rosemary O'Day, historians have paid little attention to the professional lives of the men who served as registrars in England's ecclesiastical courts.[1] That they held a necessary place in diocesan administration has been widely recognised, but they themselves have long been overshadowed by the better-known advocates and judges active in the courts.[2] Perhaps their duty to act as scribes, faithfully recording and preserving the court *acta*, has made it appear that their work could not have counted for much intellectually. Even the few prominent men among them – of whom the subject of this note was certainly one – have been celebrated for accomplishments that had little connection with the law or their professional lives.[3] A closer look at the career of William Somner offers a chance to redress the balance. It also has a second advantage: in several ways he was typical of many of the registrars who served in England's spiritual forum.

Somner was a local man – born in Canterbury and a lifelong resident of the city. A wall plaque attached to the house where he lived, at 3 Castle Street, preserves his memory for local passers-by to see.[4] As White Kennett (1660–1728), his biographer and later Bishop of Peterborough, described his subject's attachment to the cathedral city, 'neither his mind nor body could be mov'd any

1 R O'Day, 'The role of the registrar in diocesan administration' in R O'Day and F Heal (eds), *Continuity and Change: personnel and administration of the Church in England 1500–1642* (Leicester, 1976), pp 77–94.

2 See, eg, A Tarver, *Church Court Records* (Chichester, 1995), p 3; M Ingram, *Church Courts, Sex and Marriage in England, 1570–1640* (Cambridge, 1987), pp 62–63; R Rodes, *Lay Authority and Reformation in the English Church: Edward I to the Civil War* (Notre Dame, IN, and London, 1982), p 176; R Houlbrooke, *Church Courts and the People during the English Reformation 1520–1570* (Oxford, 1979), pp 25–26.

3 See P Sherlock, 'Somner, William' in *Oxford Dictionary of National Biography* (Oxford, 2004), online edition, <http://www.oxforddnb.com/view/article/26030>, accessed 28 Sept 2016; I Churchill, *Canterbury Administration: the administrative machinery of the Archbishopic of Canterbury* (London, 1933), vol I, pp 452–456. This treatment is compatible with the presentation found in J Ayliffe, *Parergon juris canonici Anglicani* (London, 1726), 'Of a notary or register, and his office'.

4 There is also a wall plaque in his honour in St Margaret's church in Canterbury, one the author has not been able to see.

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distance from it'.[5] His father, also named William, preceded him as registrar in the commissary court there, and if there is any truth to the story that the family's surname was derived from the term 'summoner', the men who served citations and process for the courts, both father and son also came from a family long associated with the church's courts.

As was then normal, the office of registrar was granted for the life of the holder.[6] The elder Somner's name was found in the court records until the day he died. Then, if not in practice before that, his son began at once to act as *registrarius specialiter deputatus*. He had served as the clerk in the registrary from the time he finished his own formal education at the free school in Canterbury, and after a short period he succeeded his father in the same office and with the same title. He held it until his own death more than thirty years later.[7] What intervened during his lifetime, of course, leaving him more leisure to undertake explorations of other fields of study, was the Interregnum. From that vantage point, he looked back at his office as having been both 'honest and worthy of praise'.[8] He lamented its demise. In hindsight, it now seems that the interval may actually have been fortunate. It allowed him to investigate and publish the scholarly works on the subjects upon which his reputation now rests.[9] At the time, however, he himself regarded the Civil Wars and Interregnum as an 'unhappy and destructive' period in the nation's history.[10]

THE OFFICE OF THE REGISTRAR

A respectable argument can be made that it was the registrar, rather than the chancellor, who occupied the most important place in the exercise of the ordinary jurisdiction of the English church's courts. The chancellors were the judges, of course, and as a rule they held academic qualifications that registrars lacked. Certainly they were in charge if they chose to be. However, it is remarkable how rare their appearances in many diocesan courts sometimes were. Of this feature of legal life in England the Canterbury act books from Somner's time provide a telling example. In the autumn of 1637, the chancellor was Sir Nathaniel Brent

5 W Kennett, 'Life of William Somner', p 4, annexed to the beginning of W Somner, *Treatise of Gavelkind* (second edition, London, 1726).
6 A registrar's patent from the fifteenth century is printed in B Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952), p 123.
7 Kennett, 'Life of William Somner', p 7.
8 W Somner, 'Preface' in *Dictionarium Saxonico-Latino-Anglicum* (Oxford, 1659, reprinted 1970), no 2.
9 See Kennett, 'Life of William Somner', p 39, remembering him as saying 'I was necessitated to betake myself to other thoughts' than the work of the ecclesiastical tribunals.
10 Somner, 'Preface', no 2. Little is known about his income during the Interregnum, but he was able to find at least occasional work as a notary: see J Houston, *Catalogue of Ecclesiastical Records of the Commonwealth 1643–1660 in the Lambeth Palace Library* (Farnborough, 1968), p 10.

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(1574–1652).[11] The registrar was William Somner. During the year that followed, the consistory court met 21 times, or a little more than once every three weeks. Between fifty and sixty cases were heard in most of these sittings.[12] However, in only 2 of the 21 sessions did Brent himself appear (20 December 1637 and 10 May 1638). In the remaining 19 the position of judge was taken by a deputy.[13] By contrast, in all but one of these sessions the Act book records that the court met 'in the presence of William Somner, notary public and registrar'.[14] He was always there, or at least almost always there. In other words, if anyone had reason to seek out the help of Canterbury's consistory court, it was to Somner or to his office, not to the chancellor, that they would have had recourse.

A letter from Archbishop Laud to Somner, preserved by chance, confirms the relevance of these attendance figures.[15] The archbishop, prompted by what he described as 'the common voice of the country' and being himself required to reside in London, desired to be more fully informed of the 'carriage of the clergy' in his diocese. Persistent rumours had reached him, giving reason to suspect that some incumbents had acted in 'disorderly or negligent' ways. To investigate further, he thought first of his chancellor, but concluded that Brent's 'living so much from Canterbury' made it impossible for him to provide the necessary information. The archbishop turned instead to his principal registrar, saying that on this subject 'You cannot but have better knowledge than other men'. We know no more about the results of this request, and we may question the propriety of seeking such information from the man who might have a say in the trial of any delinquents he named, but the incident is surely an indication of the central place that Somner as registrar occupied in administration of the diocese. His biographer recorded that he had 'prosecuted the duties of his office with prudence and integrity'.[16] This rings true. He was dependable.

SOMNER AND THE LAW

As was true of most registrars and proctors, Somner did not attend either of the two English universities. He was instead put to a clerkship in the office presided

11 The figures that follow were compiled from the manuscript Act book, Canterbury Cathedral Archives (henceforth CCA), Act book Z.2.1. For Brent's career, see B Levack, *The Civil Lawyers in England: a political study* (Oxford, 1973), pp 212–213.

12 It is important to note, of course, that most cases required more than one sitting, so that the majority of cases heard in each session were continuations of those begun earlier.

13 Generally styled a surrogate, who in the majority of sessions was the Revd Edward Aldey, rector of the church of St Andrew, Canterbury.

14 The exception was the session of 24 May 1638, when Thomas Shindler acted 'in absentia registrarii'.

15 It is found in W Scott and J Bliss (eds), *Works of the Most Reverend Father in God, William Laud, DD*, 7 vols (Oxford, 1847–1857), vol VII, pp 268–269.

16 Kennett, 'Life of William Somner', pp 9–10.

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over by his father. We know so little about these offices (beyond their existence) that it would be idle to speculate about the education that took place within them. What we can legitimately ask is: how much law did young Somner learn there, and how much did he pick up in the course of his career as registrar? That is an answerable question, and we ask it first of the Roman and canon laws. The answer, manifest in his writings, is that he was familiar in fact with the texts of both laws and with some of the learned commentaries written to explain and enlarge their contents. His first work, *Antiquities of Canterbury*, contains a series of 'Observations upon the Commissary of Canterbury'.[17] In it he made regular use of the resources of the *ius commune*. He was not, it seems, as full in his knowledge or as expert in its use as an advocate would have been, but he knew where to look and which texts to cite. In discussing the place of archpriests in the church's legal system, for example, he referred to the relevant title of the Gregorian Decretals and the specialized commentary relevant to the subject written by the French jurist François Douaren (1509–1559).[18] He also made the appropriate connection with the equivalent English office of rural dean by citing contents of William Lyndwood's *Provinciale*, adding a reference to material on the subject found in the *Summa Sylvestrina*.[19]

He was capable also of using texts from the Roman law's Digest to explain current ecclesiastical practice in England, as in the manner of taking corporal possession of an ecclesiastical benefice. He noted two texts from the Digest to demonstrate what the requirement meant and what its derivation might have been.[20] More surprisingly, in discussing the extent of clerical immunities and the law of benefit of clergy, Somner not only invoked the authority of English sources such as Lyndwood's glosses but also cited the work of the Spanish jurist Diego de Covarrubias (1512–1577).[21] Somner and the Spaniard would not have seen eye to eye on many religious questions but, in the fashion that was accepted then but that is difficult to understand today, their differences did not prevent them from making use of reasoning and authorities found in the works of scholars across a religious divide.

A similar inquiry is possible to gauge the extent of Somner's knowledge of the English common law. Most of his professional work did not require use of common law sources, but few English civilians could ignore it entirely in a period when common lawyers were making aggressive use of writs of

17 See W Somner, *Antiquities of Canterbury* (London, 1640), pp 357–359.
18 *Ibid*, referring to Decretals 1.24.1–4, and to F Duarenus, *De sacris ecclesiae ministeriis ac beneficiis* (Paris, 1564), lib I, c 8, but possibly taken from the edition also found in the *Tractatus universi iuris*.
19 See W Lyndwood, *Provinciale* (*seu Constitutiones Angliae*) (Oxford, 1679), pp 14–15, sv *decanos rurales*; Sylvester Prierias (Mazzolini) (1456–1523), *Summa Sylvestrina* (Bologna, 1515), sv *archipresbyterii*.
20 Somner, *Antiquities*, p 177, describing the proper procedure as 'springing haply from these Laws in the Digest', citing D.41.1.9 and D.18.1.74.
21 *Ibid*, p 485, citing D de Covarrubias, *Liber practicarum quaestionum*, vol II, c 31.

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prohibition to limit the scope of ecclesiastical jurisdiction.[22] These attempts were much resented and resisted by the civilians, but they needed to know what they were up against. Very likely Somner did, but the primary reason for his venture into the common law was not that. It was the preparation for his work on gavelkind, the system of land tenure and succession that prevailed in Kent.[23] This was published in 1660,[24] but he began years before that, and the enforced leisure he enjoyed following the abolition of the ecclesiastical courts in the 1640s provided him with the leisure necessary to the project's completion.

The steps he took, and the primary approach he adopted are evident in the Canterbury Cathedral Library, for the books with which he began are still there and contain his marginal notations. He began with English statute books and with Bracton's *De legibus et consuetudinibus Angliae*, using a 1640 edition of this thirteenth-century work. The annotations in it are those of a man learning the laws of England rather than an experienced common lawyer. His marginal notations drew attention to anything involving Kent and gavelkind.[25] They corrected the text of Bracton where Somner detected an error.[26] They provided additional references to works on the common law, as to those from Edward Coke, Ralph Hengham, Glanvill and John Cowell.[27] And they drew conclusions from Bracton's text that were either mirrored or expanded in the practice of Somner's time.[28] What is missing is any attention to common law cases, either those from the yearbooks or those from contemporary practice. It seems, therefore, that Somner's interest in the secular law was limited by what he needed for his own work.

SOMNER AND THE DIOCESAN COURT AT CANTERBURY

The years during which the ecclesiastical courts were in eclipse were not wasted years for Somner. It was then that he wrote not only the work on gavelkind but also the other books upon which his reputation as a historian and antiquary rest. The Anglo-Saxon dictionary is the most celebrated of these, but he also published a *Treatise of the Roman Ports and Forts in Kent* (Oxford 1693) and several other minor works of the same character. He did not, however, forget his court, and he looked forward to its restauration. Among his unpublished

22 See C Gray, *The Writ of Prohibition: jurisdiction in early modern English law* (New York, 1994); J Baker, *Oxford History of the Laws of England: volume VI 1483–1558* (Oxford, 2003), pp 237–244.
23 Kennett, 'Life of William Somner', p 55, stating that it was this work that 'led him through a long course of Common Law and through the sense of very many Statutes'.
24 W Somner, *Treatise of Gavelkind, both Name and Thing* (London, 1660).
25 Eg, H de Bracton, *De legibus* (London 1640), Canterbury Cathedral Library W/C-3-7, pp 92, 311.
26 *Ibid*, p 373, correcting 'Henrici regis senis' to 'Henrici regis senioris'.
27 *Ibid*, p 126 (Coke's *Institutes*), p 158 (Hengham's *Summa*), p 61 (Glanvill's *Tractatus de legibus*), p 26 (Cowell's *Interpreter*).
28 *Ibid*, p 105, on the several royal courts where ordinary litigation took place.

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works was a 'Defense of the right of the Commissary of Canterbury to prove prerogative wills and administrations'. Preserved in a manuscript at Lambeth Palace, its claims rested on what he described as 'such proofs and grants [as] have been made for 236 years' that were established 'by our bookes'.[29] It was, he alleged, a jurisdiction shared with the Prerogative Court of Canterbury in London.

He would have been comforted, then, by the fact that what he hoped for actually happened. He preserved the last act book from before the Civil War, keeping it with him.[30] Its entries break off in 1643, and they had been confined to a few testamentary matters for the last few of these years. With the Restoration of the monarchy, however, the means for a return to the old ways opened up, and he did not miss the chance. Somner recorded *acta* for 15 July 1660 in the same act book and only half a folio away from the place where the last entry from 1643 appeared. The new entry of this action records that it had been taken 'in the presence of William Somner, notary public and registrar'. These were the identical words found in the act books of the 1630s.

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29 Lambeth Palace Library, London, MS 2014, no 10, f 150.
30 It is now CCA, Z.2.4.

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