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Article 7

Edmund Plowden, Master Treasurer of the Middle Temple

Richard O'Sullivan

EDMUND PLOWDEN*

MASTER TREASURER OF THE MIDDLE TEMPLE (1561-1570)

RICHARD O'SULLIVAN

DENUO SURREXIT DOMUS: the Latin inscription high on the outside wall of this stately building announces and records the fact that in the year 1949, under the hand of our Royal Treasurer, Elizabeth the Queen, the Hall of the Middle Temple rose again and became once more the centre of our professional life and aspiration.

To those who early in the war had seen the destruction of these walls and the shattering of the screen and the disappearance of the Minstrels' Gallery; and to those who saw the timbers of the roof ablaze upon a certain midnight in March 1944, the restoration of *Domus* must seem something of a miracle.

All these things naturally link our thought with the work and the memory of Edmund Plowden who, in the reign of an earlier Queen Elizabeth, devoted his years as Treasurer and as Master of the House to the building of this noble Hall. Though his biography has never been written, his name has always been held in benediction among us. In Plowden Building is located the Treasury, from which the Inn is ruled; in the Hall corridor is a lamp of remembrance bearing his arms; his bust is always before us here; and the main window that looks out upon the garden and the river beyond is crowned again by the arms of Plowden, on which an augmentation of two fleurs-de-lis carries memories of the Crusade, and the achievement of an ancestor at the siege of Acre which won the gratitude and the good will of Richard Coeur-de-Lion.

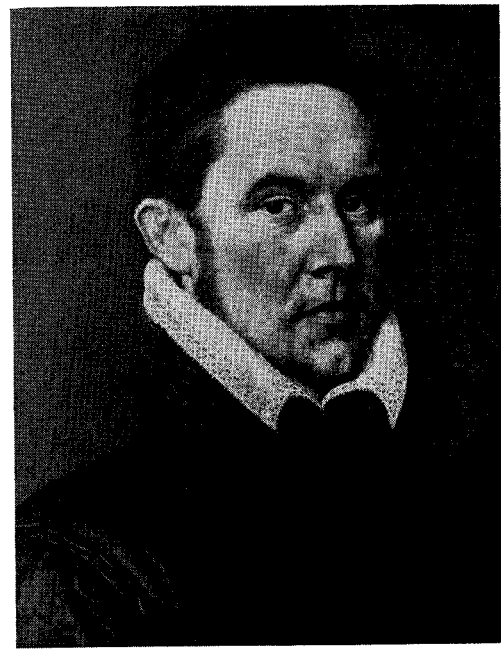
The Plowdens are an old Shropshire family with origins as early as the Saxon time. Edmund Plowden was born in 1518 and, always a firm adherent of the ancient faith, was destined to live through the political and religious revolutions of the reigns of Henry VIII, Edward VI, Mary and Elizabeth. He married Katherine, daughter of William Sheldon of Beoley in Worcestershire, and was the father of three

*A reading given in the presence of Her Majesty the Queen Mother at the Middle Temple Hall, November 12, 1952.

boys and three girls. He rebuilt the Hall at Plowden at the same time as he was planning the Hall of the Middle Temple.[1] His descendants still own and occupy the old Hall and the estate at Plowden;[2] and one of his descendants, Sir Edwin Plowden, is the Chief Planner of our modern welfare state.

Of the early education of Edmund Plowden we know little. Though he had no degree, both Cambridge and Oxford claim him. Since English law was not taught at either University before the middle of the eighteenth century, it is plain in any event that he learnt his law in London, like Thomas More, whose friend Erasmus said, that in those days it was no small part of nobility *(nonnulla nobilitatis pars)* to be educated in London: at the Inns of Court, which were "the University and Church Militant of the Common Law."

"In the 20th year of my age," says Plowden, "I entered upon the study of the law." It was a critical moment in English legal history. "In 1535," Maitland tells us, "the year in which More was done to death, the Year Books come to an end: in other words, the great stream of Law Reports that has been flowing for near two centuries and a half, ever since the days of Edward I, becomes discontinuous, and then runs dry."[3] And he cites some words of Burke: "To give judgment privately is to put an end to Reports. And to put an end to Reports is to



Portrait of Edmund Plowden (1518-1585) of the Middle Temple.

By courtesy of Mr. William Plowden of Plowden Hall, Shropshire, England.

1 The Hall at Plowden was equipped with several priests' hiding holes, which are still to be seen, and which correspond in style and character with the hiding holes at Harvington Hall, another recusant centre, in Worcestershire. Mass is said to-day at Plowden Hall in a chapel dedicated to St. Francis of Assisi.

2 Edmund (afterwards Sir Edmund) Plowden, a grandson of the great lawyer, links the history of the family with the history of the United States. About 1620, it seems, he sailed to America with a numerous company of emigrants and established the plantation of New Albion, "a habitable and fruitful island named Isle Plowden, otherwise Long Isle, about six leagues from the main, near de la Warre Bay, and forty leagues square of the adjoining continent of Virginia, as in the nature of a county palatine." By Charter dated July 1634, King Charles I granted and confirmed the island and lands to Sir Edmund Plowden, his heirs and assigns for ever, "with free and full power graciously to confer favours and honors upon the well-deserving citizens and inhabitants within the province . . . and to cut and stamp different pieces of gold such as shall be lawful, current and acceptable to all the inhabitants." See RECORDS OF THE PLOWDEN FAMILY, pp. 40-46; PLANTAGENET, A DESCRIPTION OF NEW ALBION (1648).

3 "The exact significance of this ominous event," says Maitland, "has never yet been duly explored but ominous it surely is." In a footnote he adds: "The cessation of the Year Books in 1535 at the moment when the Henrician Terror is at its height is dramatically appropriate." Maitland, *English Law and the Renaissance,* 1 ANGLO-AMERICAN LEGAL ESSAYS 192 (1907).

put an end to the law of England." At this critical moment the Shropshire lad, who was to be the author of the first and the most perfect series of Reports that mark the modern time, entered upon the study of the law. He entered, one may imagine, at one of the Inns of Chancery where new students read their preliminary lessons in ethics and politics, and learnt the outlines of the classical and Christian jurisprudence that gave life and energy to the Common Law.

In the Tudor period there were during term time at least one thousand students at the ten Inns of Chancery, and some eight hundred to a thousand students at the four Inns of Court. These students crowded into London from all parts of the realm. They were for the most part sons and heirs of Justices of the Peace, who were the groundwork and frame of Tudor administration. Sons follow their fathers; brothers are in residence together; county neighbours go bond for one another.

And so in term time and in vacation they make their exercises in the law, in mooting and in disputations, which gave their style and character to the science of pleading. Except on Mooting Nights, at every Mess, at dinner the rule was for the puisne to put a short case which the rest were bidden "throughoutly to argue, and not to depart under penalty of twelve pence." Thus they learned, in Shakespeare's phrase, to practise rhetoric in their common talk.[4]

The venerable Masters of the Bench endeavoured to maintain a firm discipline:

> How could communities,
> Degrees in schools, and brotherhoods
> in cities, . . .
> But by degree, stand in authentic place?

And so rules were made from time to time; gentlemen must not wear in their doublets or hose any light colour except scarlet or crimson; or wear any upper velvet cap or any scarf; or wings in their gowns, white jerkins, buskins or velvet shoes; double cuffs on their shirts, feathers or ribbons on their caps under penalty of 3*s.* 4*d.* for a first offence; and expulsion without redemption for the second. No gentleman being in Commons is to wear a beard of more than three weeks' growth, under penalty of 40*s.*, to be doubled every week after monition. Gentlemen shall not wear their study gowns further in the City than Fleet Bridge and Holborn Bridge, or further westward than the Savoy. Also, when in Commons they may not wear Spanish cloak, sword and buckler, or rapier, or hats; or gowns girded with a dagger in the back.

Though the four Honourable Societies were first of all schools for lawyers, their legal studies did not exclude the liberal arts, and there was an intense intellectual and social life. Dancing was part of the ancient

[4] In an inaugural lecture at Cambridge Sir Thomas Smith, Professor of Roman Civil Law (who was a contemporary with Plowden as Master of the Bench at the Middle Temple), exclaimed upon the skill in disputation shown by the students of English law at the Inns of Court. Their skill extended to matters of philosophy and theology: 'Etiam cum quid e philosophia, theologiave depromptum in quaestione ponatur, Deus bone! quam apte, quamque explicate singula resumunt, quanta cum facilitate et copia, quantaque cum gratia et venustate, vel confirmant sua, vel refellunt aliena! Certe nec dialecticae vim multum in eis desideres, nec eloquentiae splendorem.' Maitland, 1 ANGLO-AMERICAN LEGAL ESSAYS 200 (1907). For the special interest of Shakespeare in the Middle Temple, and of the Middle Temple in him, see Hotson, *Love's Labour's Won*, SHAKESPEARE'S SONNETS DATED (London, 1949). In this essay the opinion is offered that Shakespeare's *Troilus and Cressida* was written for, and played by, the students of the Middle Temple.

ritual of the place, and they were also given to music and to drama; with regular times for Revels, and Grand Christmas and the Reader's Feast. At the High Table on Grand Night were to be found the Honorary Fellows of the Inn, sea captains and great statesmen. On becoming Serjeant-at-Law a member ceased to belong to the Inn, and shared with the judges a common life at Serjeant's Inn close by. The Judges and Serjeants had their homes in the city or in the space between, and on their lawful occasions might be seen riding their mules on the way to the Courts at Westminster Hall. Thomas Wolsey as Lord Chancellor habitually rode on a mule all trapped in crimson velvet, with a saddle of the same and gilt stirrups, on his way to Westminster Hall where, in the Court of Chancery, Equity was done. Near by, in the Court of Common Pleas, the Judges administered all law and no equity; in the court of Queen's Bench (so it was said) they administered equity and law; in the Court of Exchequer, neither law nor equity.

The unique centralization of law in London—at Whitehall there were also the Court of Star Chamber and the Court of Requests—caused all the houses in Fleet Street in term time, and the streets and lanes adjoining, to use lodgings, victualling and letting-out chambers. The end of the Law term was the break-up of the London season. On the day after the end of Hilary or Trinity term it was usual for the Lord Chancellor, at a ceremonial sitting of the Court of Star Chamber, to deliver to Justices of the Peace and "gentlemen of sort and quality" the Queen's commandment, enjoining those who had left or forsaken their country dwellings to return home and attend to their public and social duties.

Like the Mootings in the Inns, the business of the Courts was conducted in Law French. The Common Law of England grew up in the French tongue:

> Our Parliament and its Statutes, our Privy Council and its ordinances, our peers, our barons, the commons of the realm, the Sovereign, the State, the nation, the people are French. . . . We must go, it seems, as far as the gallows, if we would find an English institution.[5]

One may recall the observation of Sir John Fortescue on the kind of talk that he, a Chief Justice in exile during the Wars of the Roses, heard at the Ile-de-France, in Paris and at St-Mihiel. The tongue they spoke was recognizably French but, as it seemed to Fortescue, *vulgariter quadam ruditate corrupta.* In the Minutes of Parliament for 3 November 1570 we read:

> It having been found that Mr Snagge, one of the Masters of "le Utter Barre," used English in a suit in the Guildhall before the Chief Justice [in an action] against Mr Fleetwoode, it is ordered by the Masters of the Bench that Snagge shall not be in Commons till the Parliament after Candlemas, and meanwhile shall keep away from his chamber till they decide whether he shall be expelled.[6]

The text-books and the Reports of Cases, which now began to be written down, were also in Law French. And so it is with the "exquisite and elaborate" Commentaries or Reports which Edmund Plowden started to write down in the reign of Edward VI for his own instruction. As his reputation grew, the existence of these private reports came

5 POLLOCK AND MAITLAND, 1 HISTORY OF ENGLISH LAW 81 (2d ed. 1899).

6 Middle Temple Records, p. 173. Our anxiety is relieved by an entry under date 8 February 1571: "Mr Snagge is restored to Commons because he has submitted to the order of the Bench, and has become reconciled to Mr Fleetwood."

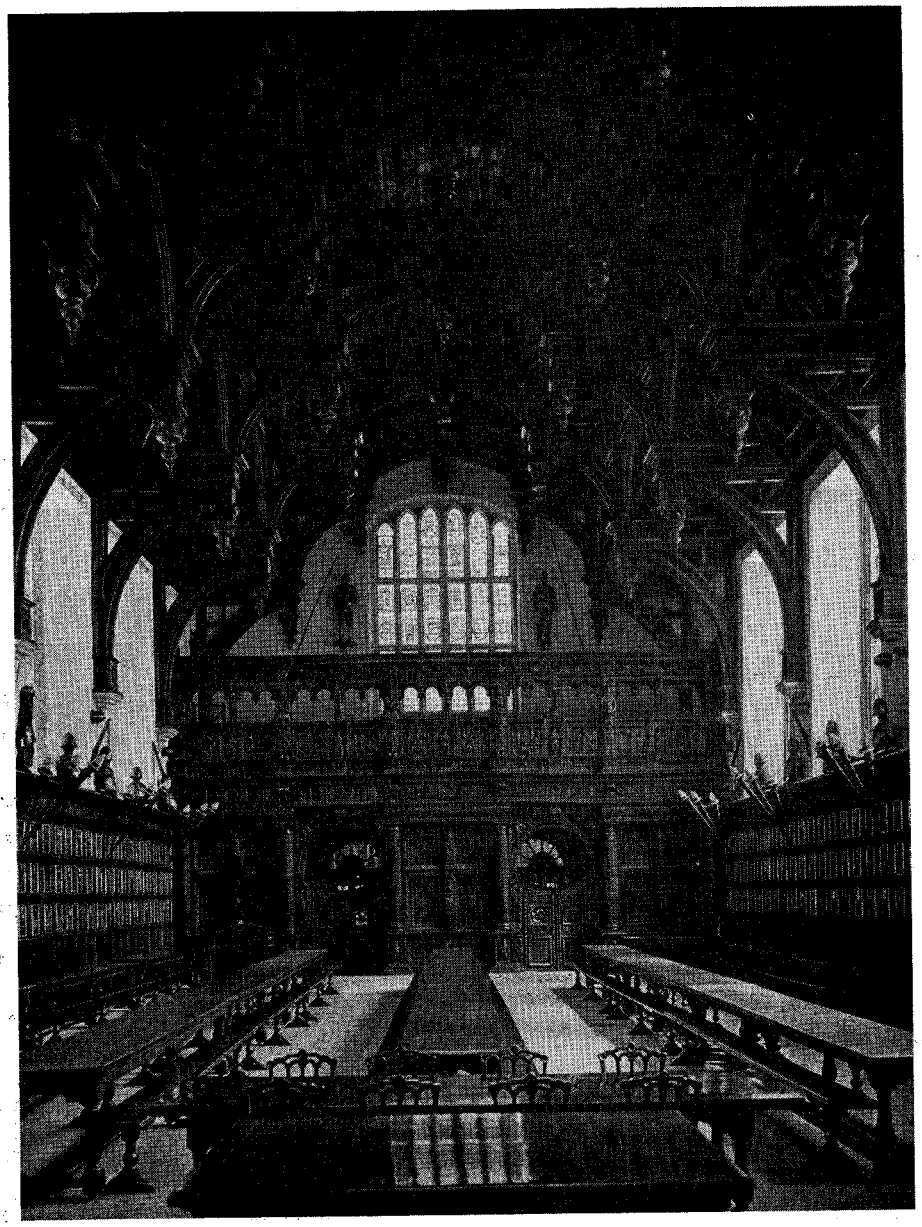
to be known to members of the Bench and of the Bar; they were borrowed and copied at high speed by barristers' clerks who were not expert in Law French. And the copies so made began to be offered for sale. At last in 1571, in self-defence and at the request of all the Judges and the Barons of the Exchequer, Plowden published at his own expense a first series of Reports, and in 1578-9 a second series.[7] The Reports are inscribed: "Edmund Plowden: To the students of the Common Law of England and especially to his companions of the Middle Temple wisheth increase of learning." On the title-page, he whom Professor Holdsworth has called the most learned lawyer in a century of learned lawyers, described himself with simplicity, and perhaps not without a certain secret pride, as an Apprentice of the Common Law.

In these Reports which cover a period of thirty years between the fourth year of Edward VI and the twenty-first year of Elizabeth (they deal mainly with arguments upon demurrers and special verdicts), we get a living picture of the scene in Court before the day when, in the language of Professor Holdsworth, interest tended to shift from the debate in Court to the decision of the Court, as wisdom gave way before authority.

One is particularly struck by the modesty, one might even say the humility, of the Judges. It looks as if they and Counsel appearing before them at the Bar were a debating society, in which, at any rate until the moment for the last word comes, the Judges have only a nominal precedence. They differ openly from one another upon the Bench, without even turning their backs on their colleagues when they state a dissenting opinion. Judges and Counsel alike are said to "argue" the matter; and they address their arguments to an imaginary "Sir." They do not address the Chief Justice, because he also uses the same style. Thus we read: "Bromley, Chief Justice, argued the same day that the others argued: 'Sir, as to this I say, that it is part of the matter in dispute.' " In a case of ejectment in the first year of Elizabeth, the Report says: "It was argued by the Court, namely by Weston, then being a Judge [he had already argued the case as Counsel], and by Anthony Browne, Justice, and Dyer, Chief Justice," and the Report continues in Law French: "Mes Syr Humfrey Browne adonques esteant un des Justices ne argua pas per reason que il fuit cy veiel que les senses fueront decay et son voice ne puit este oye del audience."

As we turn over the pages of the Reports we find Plowden, as a Justice of the Peace for the County of Shropshire, at the Sessions held at Shrewsbury in July 1554, at which were decided several important Crown cases from divers counties in Wales. It seems to have been the habit in those days to try Welsh criminals at the next adjoining English county, before an English jury. The first of these cases is entitled *The*

7 "Better authority could not be cited," said Lord Ellenborough. "They bear most deservedly as high a character as any book of reports ever published in our law" is the testimony of Mr. Hargreave. "Distinguished for authenticity and accuracy and exceedingly interesting and instructive by the evidence they afford of the extensive learning, sound doctrine and logical skill of the ancient English Bar," says the great American Chancellor Kent: I COMM. 482 (1826); WALLACE, THE REPORTERS 144. And see Coke, Preface to III *Rep.*, and Preface to X *Rep.*, p. xxxiv: "Plowden's Commentaries, learnedly and curiously polished. . . . The author was an ancient apprentice of the law, of great gravity, knowledge and integrity."



Hall of the Middle Temple.

Reproduced with permission of the Honourable Society of the Middle Temple.

King and the Queen against Griffith Ap David Ap John. At the trial the Celtic genius appears in the matter of challenges, for we read:

> The Court perceived that the prisoners were minded to sever in the challenge of the whole panel, subtly and craftily to stay the trial . . . wherefore the Court said to the prisoners: We perceive your subtlety well enough, which merits but small favour from the Court; and therefore tell us if you will agree upon your challenge.

On another page is an important decision at Warwick Sessions: If A., intending to kill his wife, gives her a poisoned apple, and she, being ignorant of it, gives it to a child against whom A. never meant any harm, and against his will and persuasion; and the child eats it and dies, this is murder in A.; and a poisoning by him, but the wife, because ignorant, is not guilty.

Elsewhere the interesting case of *Partridge* v. *Strange* refers to the possible conflict between the knowledge a Judge may have as a Judge and the knowledge he may have as a private person; as in the case put by King Edward IV to Gascoin, Justice: If he saw one in his presence kill A.B., and another that was innocent was indicted for it before him, and found guilty of the murder, what would he do in such a case? And Gascoin answered he would respite the judgment because he knew the party was innocent, and make further relation to His Majesty to grant a pardon; but there and then he could not acquit the man and give judgment of his private knowledge.[8]

There is also the famous case of *Hales and Petit* which arose out of the suicide of Sir James Hales, one of the Justices of the Common Bench, who was found by a Coroner's Inquest to have drowned himself in a stream near Canterbury. The case, which was argued in the fourth year of Elizabeth, raised a question of forfeiture. If husband and wife are joint tenants of a term for years, and the husband becomes *felo de se,* is the lease forfeited? In law, yes. The Report contains two chief points of interest: first that the judgment of Dyer, Chief Justice, on the wrongfulness of suicide is taken straight from the *Summa* of St. Thomas Aquinas;[9] secondly, that Shakespeare came to know the ultra-metaphysical arguments that were used by Counsel in the case, and made fun of them in the gravedigger scene in *Hamlet.* (One reads not without relief in Foss that there is reason to believe the old Judge fell accidentally into the stream, as he was crossing the river by a narrow bridge, at the age of 85.)

It appears from the Reports that, apart from being Justice of the Peace in Shropshire, in the year 1562 Plowden had already been appointed Counsel to the Duchy of Lancaster; and if his name seldom appears otherwise in argument in his Reports of the reign of Mary and of Elizabeth, we may surely identify him with an advocate of singular power who always appears anonymously as an "apprentice of the Middle Temple." It is, one may recall, the way in which the author of Plowden's *Commentaries* describes himself on the title-page.[10]

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8 The problem is classical in the Schools. See SUMMA THEOLOGICA, II-II, q. 67, art. 2: "Whether it is lawful for a Judge to pronounce judgment against the truth that he knows, on account of evidence to the contrary?" See also HOLDSWORTH, IX HISTORY OF ENGLISH LAW 136.

9 SUMMA THEOLOGICA, II-II, q. 64, art. 5 Utrum aliqui liceat seipsum accidere. And see *Id.* q. 26, art. 5: Utrum homo magis debeat diligere proximum quam corpus proprium?

10 Plowden, it seems, was deeply versed in the philosophy of Aristotle. See his argument on the Natural Law in Sharington v. Strotton, at ff. 303-7; and his learned note on Equity at ff. 465-6. The works of Aristotle, in Latin translation, were (and are) available in the Library of the Middle Temple, and of Lincoln's Inn. Lord Campbell seems to think that the dominant philosophy in England in the sixteenth century was the philosophy of Aristotle and Aquinas: CAMPBELL, II LIVES OF THE LORD CHANCELLORS 199, 257, 309 (1855). See also the autographed *Catalogue of the Library of Sir Edward Coke,* Yale, 1950, which contains the classical works of Aristotle, Augustine, Aquinas; see especially pp. 1-21, 22 on the theological bases of the English law.

Even before he gained renown as lawyer and advocate, young Edmund Plowden won fame in Parliament. During the reign of Queen Mary he sat as a Borough member in three Parliaments; once as member for Wallingford, and twice for Wootton Bassett. While junior member for Wootton Bassett, in the Parliament which sat between November 1554 and January 1555, the authors of the parliamentary history record "a circumstance of a very extraordinary nature, the like of which we have not before met with in the course of this history. There was a voluntary secession of some members of the Commons who actually left the House when they saw the majority inclined to sacrifice everything to the Ministry."[11] The Ministry had in fact decided, after much debate and division of opinion in the Privy Council, to revive the old laws against heresy. According to Foss, it was this decision to revive the Acts against heresy which induced Plowden and some thirty companions to leave the House by way of protest. One gathers that, in their view, the coercion of conscience was repugnant to the genius of the Common Law. Queen Mary took offence, and directed her Attorney-General to indict Plowden and his companions before the Queen's Bench for leaving Parliament in defiance of her command and inhibition. The record of the proceeding is to be found in the *Institutes* of Sir Edward Coke.[12] Six of the members so indicted submitted to the mercy of the Court. Plowden pleaded a traverse "full of pregnancy," as Coke observes. Once a traverse had been pleaded (a demurrer not being joined), it might not have been easy for the Crown to prove the absence from Parliament of the defaulters, for no roll-call was taken, and there was no machinery to enforce attendance on busy apprentices in the law who were in the habit at all convenient times of slipping down the steps to Westminster Hall to continue their practice in the Courts.

The incident made no difference to the political life of Plowden, for he was re-elected to the next Parliament as senior member for Wootton Bassett. Nor does it seem that Queen Mary bore him any permanent ill-will. In 1557 he acted as Autumn Reader and in 1558 as Lent Reader at the Middle Temple. In March 1558 he succeeded to Plowden Hall and the estate on the death of his father. In October 1558 with certain other members of the Bar, he received the Queen's Writ to proceed at Easter 1559 to the degree and estate of Serjeant-at-Law. In November 1558 Queen Mary died, and the Writ abated. Queen Elizabeth did not include the name of Plowden in the new Writ she issued. The omission of his name from the new list of Serjeants coincided with the demotion of the Catholic Chief Justices of the Queen's Bench and the Common Pleas to offices of lesser rank in the Judiciary. And so for all his eminence in the profession, Edmund Plowden never became Serjeant-at-Law. Who now knows the name of any one of the Serjeants in the list from which the name of Edmund Plowden was eliminated? It is a curious reflection that if Plowden had been made Serjeant he would have had to leave the Middle Temple, and his Hall would never have been built.

In the year 1561 Plowden was elected Lent Reader at the Middle Temple. In the same year he became Treasurer and con-

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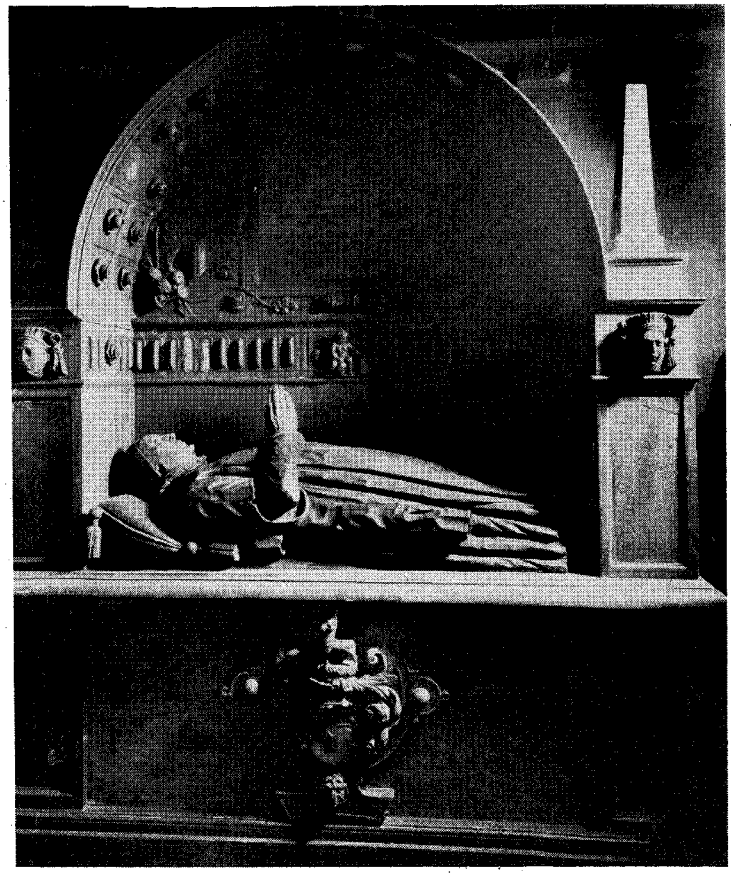
11 COBBETT, I PARLIAMENTARY HISTORY 625.

12 See COKE, INSTITUTES, pt. 4, pp. 16-19.



Tomb of Edmund Plowden in the Temple Church, London.
From the Royal Commission on Historical Monuments (London, England) reproduced with permission of the Controller of Her Britannic Majesty's Stationery Office.

tinued in office until 1570.[13] During this time he undertook the building of the new Hall in which he buried and enshrined the ambition that was otherwise denied him. The apprentice-at-law of the Middle Temple was now, and to the end of his days continued to be, a dominant figure in the life of the Inn, and in the profession of the law in England. A story Lord Chancellor Egerton used to tell illustrates the esteem in which he was held by his colleagues. It seems that Serjeant Lovelace as an apprentice in the law put his hand to a demurrer objecting that a certain Bill before the Star Chamber contained matters other than those mentioned in the Statute of Henry VII setting up the Star Chamber, and objecting accordingly to its jurisdiction in the particular case; and it seems that Edmund Plowden had also put his hand to the demurrer. On the cause being moved in Court, Lovelace was called upon to answer for the error he was alleged to have made in ob-

[13] On 27 November 1570 Matthew Smith was chosen Treasurer; "Mr Plowden remaining Proctor and promotor for the new Hall, both for building and collecting."

jecting to the jurisdiction; and Lovelace at the Bar made his excuse "that Mr Plowden's hand was first unto it, and that he supposed he might in anything follow St. Augustine."[14] As St. Augustine was the oracle of the schools of theology, so in the common talk of the time Edmund Plowden was the oracle of the law.

His reputation was now so great that his name was embodied in proverbs. One of them, "The case is altered, quoth Plowden," passed into common use. The phrase is supposed to have originated in a case in which Plowden was advising a client as to his liability to statutory penalties for attending at Mass. On the facts, the case seemed to be conclusive against the client until he explained that the person who said the Mass was only a pretended priest, and actually an agent of the Government. "The case is altered," quoth Plowden, "no priest, no Mass." The phrase "The case is altered" is used by Shakespeare in *Henry VI,* and was taken by Ben Jonson as a title for one of his classical comedies. The words are even said to have been the last words spoken by Queen Elizabeth to the Lord Admiral as she lay dying: "My Lord, I am tied with a chain of iron about my feet . . . I am tied, tied, and the case is altered with me."[15]

In the early years of the reign of Queen Elizabeth, Plowden was naturally consulted by those of his co-religionists who found themselves in trouble with law. The passing of the new Act of Supremacy raised at once an interesting point of constitutional law. The Statute had been resisted by Convocation and had been opposed in the House of Lords by all the surviving Marian Bishops, who were immediately afterwards deprived of office. Now the enacting clause of every Statute declares that the Act has been passed "by and with the advice and consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled and by the authority of the same." Can a Statute be said to be enacted by and with the advice and consent of the Lords Spiritual if all the Lords Spiritual have voted against it? And if it has not the "advice and consent" of the Lords Spiritual, can it be a valid Statute? According to Maitland, "it was by no means so plain then as it is now that an Act against which the Spiritual Lords have voted as a body may still be an Act of the three estates."[16] He also points out that just at the critical time a mysterious silence falls upon the official journal of the House of Lords, so that if anyone wished to give proof that the Act of Supremacy had been carried against the voices of the Bishops, there would have been no official document ready to hand.

The constitutional issue was sharpened by the action of the new Bishop of Winchester who, pursuant to the powers given by Statute, summoned the deprived Bishop of London (then in prison in the Marshalsea) to take the Oath of Supremacy appointed to be taken by ecclesiastical persons. The deprived Bishop, Bonner, refused to take the Oath so offered and his refusal was certified into the Court of Queen's Bench, where he was indicted of a Praemunire. Bonner pleaded Not Guilty and, on the advice of Plowden, who never lacked courage in pleading (with him was Christopher

14 HOLDSWORTH, I HISTORY OF ENGLISH LAW 513. BAILDON, LES REPORTS DEL CASES IN CAMERA STELLATA, 301-2.

15 NICHOLLS, III PROGRESSES OF QUEEN ELIZABETH 612.

16 MAITLAND, II CAMBRIDGE MODERN HISTORY 570 ff., 586.

Wray), Bonner raised the constitutional issue, and alleged also that the supposed Bishop of Winchester was not a lawful Bishop at the time of the offering of the Oath. The main point here was that the Ordinal according to which the new Bishop of Winchester had been consecrated lacked all statutory recognition and authority.

According to the Report in Dyer "it was much debated among all the Justices whether Bonner may give evidence upon this issue, that he is Not Guilty, that the said Bishop of Winchester was not a Bishop at the time of the offering of the Oath; and resolved by all that, if the truth of the matter be such to fact, he shall be well received to it upon this issue and the jury shall try it."[17]

The point taken in the pleading was a good point. There is in existence, in the handwriting of Sir William Cecil, an admission that the Ordinal which was used was unauthorized in law: "This book is not established by Parliament."[18]

The legal difficulty was met or surmounted by a document drawn up and certified by a group of Roman civilian lawyers — a document redolent, one may say, of the Imperial and of the Papal Chancery—in which the Queen was made out of the plenitude of her power to "supply all defects." The new Elizabethan Bishops were compelled to petition the Parliament of 1566 for a declaration that they were lawful Bishops. Their prayer was granted, and an Act was passed entitled: "An Act declaring the making and consecrating of the Archbishops and Bishops of this realm to be good, lawful, and perfect," with the proviso that none of their past acts touching life and property were to be thereby validated; though (as Maitland points out) eleven out of some thirty-five Temporal Lords were for leaving the Archbishop and his Suffragans in their uncomfortably dubious position.[19] The proceedings against Bonner were stayed, and he was allowed to remain in prison.

Being incompetent in these matters, I say nothing about the theological issues that arose out of the alteration of the Ordinal according to which ministers of religion were ordained and Bishops consecrated.

It is of no small interest to reflect that Edmund Plowden was engaged in all this critical litigation on constitutional issues during the years, when, as Treasurer of the Middle Temple, he was ruling the Inn and building this great Hall. The wide tolerance of his fellow Benchers matched the quality of his courage. That his action did not diminish the esteem in which he was held appears clearly from the circumstance that in the year 1566 we find him at the Parliamentary Bar instructed by the Dean of Westminster to oppose a Bill which threatened to abolish the right of Sanctuary that was traditionally enjoyed by Westminster Abbey. As he fought the Bill and finally "dashed," that is, defeated it, Plowden will surely have had in mind the image of the Queen Mother of the little princes, in sanctuary at Westminster, being persuaded by the Archbishop of Canterbury to give up her younger son also to the care of his uncle the Protector; an episode which, as it is described by Thomas More in his *History of Richard III*, is said to be "more tragic than anything the English drama produced

17 Dyer, 243A.

18 BIRT, THE ELIZABETHAN RELIGIOUS SETTLEMENT 242-48.

19 Strype, Parker I, 108-9; ANNALS, I, ii, pp. 2-8; MAITLAND, II CAMBRIDGE MODERN HISTORY 570, 586 ff.

till the great age."[20]

The fortunes of another Queen, Mary Queen of Scots, also enlisted the sympathy and the professional interest of Plowden. In support of her claim, he prepared in a manuscript of 160 folio pages: "A Treatise of Succession written in the life-time of the most renowned Lady Mary, late Queen of Scots, wherein is sufficiently proved that neither foreign birth nor the last will and testament of King Henry VIII could debar her from her true and lawful title to the Crown of England." The manuscript was inscribed and dedicated to King James I by Francis Plowden, the son of Edmund. It was known to Sir Matthew Hale who, in his *Pleas of the Crown,* refers to "Mr. Plowden's learned tract touching the right of succession of Mary, Queen of Scotland."

In the year 1569, while acting as Justice of the Peace at Abingdon in Berkshire (his principal place of residence was at Burghfield, not far from Reading), Plowden was confronted for the first time with a demand that he should take the Oath of Supremacy. He asked for time to study the question from all points of view, and having taken time, he informed his brother Justices that "he could not with safe conscience subscribe to the Oath"; for "he could not subscribe but belief must precede his subscription, and therefore great impiety would be in him if he should subscribe in full affirmance or belief of those things in which he is scrupulous in belief," assuring them "that he did not upon stubbornness or wilfulness forbear to subscribe, but only upon scrupulosity of conscience." He escaped further molestation for the time being on entering into recognizances for 200 marks "for his good abearing."

In the year 1575 (that is, before Dr. John Dee published his work on *The Perfect Art of Navigation),* in a case concerning the rights of a manor to wreck of the sea, Plowden opened the great argument as to the bounds of England and the sovereignty of the seas. The argument was adjusted by Queen Elizabeth to suit her maritime policy, and was developed on different lines in the Stuart time by Selden in his *Mare Clausum,* and by Grotius in the *Mare Liberum;* it was also taken up by Chief Justice Hale in an early treatise on *The Waste and Demesnes and Dominions of the King of England.*

In the year 1578 we find Plowden (with Thomas Bromley) acting as Counsel to the Archbishop of Canterbury in connection with some land at Battersea and some troublesome tenancies which the two lawyers were able to rearrange to the satisfaction of their distinguished client.

One of the last recorded appearances of Plowden as an advocate was in Walsingham's case, which completes the second series of Plowden's Reports in 1578-9. The case arose on a Bill of Intrusion, and had to do with the title to land in East Peckham in the County of Kent. The dispute had its origin in the rising of Sir Thomas Wyatt in the reign of Queen Mary, when he, with a great multitude of rebels and public enemies, "not having God before their eyes, nor considering their due allegiance, but seduced by the instigation of the devil," rode and marched towards the City of London with standards displayed; and with swords, spears, bows, arrows and coats of mail; "making a most fierce and terrible war at Charing Cross in the parish of St Martin's in the Fields and within the City

[20] In the same little volume is a character sketch of Jane Shore, one of the rarest things in English literature, the portrait of a sinner by a saint.

of Westminster."

In the argument before the Court of Exchequer the plaintiff in the action was represented by Serjeant Barham and "an apprentice of the Middle Temple." The defendant was represented by Serjeant Manwood. After a long argument which extended to many terms, judgment was given for the plaintiff. Now it so happened that in a case raising the same legal issue the Court of Common Pleas had given judgment the other way. The defendants in the first action accordingly brought the case on a Writ of Error into the Exchequer Chamber where, Barham being no longer alive, our apprentice of the Middle Temple appeared alone on the part of the plaintiff. After what seems to have been a really classical contest in the Exchequer Chamber, the apprentice won a decision for his client, Elizabeth the Queen.

Between argument and judgment in the Exchequer Chamber, Sir Nicholas Bacon, the Lord Keeper, died. In his Report Plowden describes him as "a man of great eloquence, gravity and wisdom." Who was to succeed Sir Nicholas Bacon as Lord Keeper or Lord Chancellor? The Queen was at arm's length with her Prime Minister Burleigh on the one hand, and with her favourite Leicester on the other. Against their common will she was at this very time meditating marriage with a French Prince, the Duc d'Alençon.[21] On the death of Bacon, she took the Great Seal into her own keeping and detained it for two months or more, lending it out for the sealing of Writs or Letters Patent, now to a member of the Burleigh party, and now to a member of the Leicester party, but always insisting on having the Great Seal back immediately into her own hands. It seems likely that during this time she invited Edmund Plowden to accept the office of Lord Chancellor. There is in the Plowden family and in the profession a strong tradition, not unsupported by writing, that at some time the Queen invited Plowden to be Lord Chancellor; and if the offer was made, it must have been at this time. In a well-known work[22] Serjeant Woolrych prints what is said to be a copy of the answer that Plowden wrote to the Queen: "Hold me, dread Sovereign, excused. . . . I should not have in charge Your Majesty's conscience one week before I should incur your displeasure."

After a delay of two months there was an outcry that, for the lack of a Lord Chancellor, injunctions could not be obtained, and that the hearing of causes was suspended. An intrigue in favour of Thomas Bromley, the Solicitor-General, led to his appointment in preference to the Attorney-General, Gilbert Gerard. Plowden made the entry in his Report: "Thomas Bromley, Esquire, born in the County of Salop, apprentice of the Inner Temple, was surrogated and made Knight and Lord Chancellor of England." The new Lord Chancellor showed himself vehemently opposed to the projected marriage with d'Alençon, and as we know it never took place.

In the course of the year 1579 there came into existence (it is printed in the Inner Temple Records)[23] a list of the "Readers and Chief Barristers of practice

[21] See LINGARD, VI HISTORY OF ENGLAND 149-54; CAMPBELL, II LIVES OF THE LORD CHANCELLORS 237-8 (1855).

[22] WOOLRYCH, I LIVES OF EMINENT SERJEANTS 115 (1869).

[23] Calendar of Inner Temple Records, App. IV, A list of the Readers and Chief Barristers of the Inns of Court (P.R.O. State Papers, Dom. Eliz. vol. CXI, no. 27).

in the four Inns of Court," with an indication of their religious allegiance. The list shows that of the sixty leading barristers in 1579 one in three was a Papist. Plowden is entered as a Papist, "very learned, of good living." As if he had foreknowledge of things to come, in Trinity term 1580, Sir Thomas Bromley, the Lord Chancellor, was at pains from the Bench to state the good opinion he had of the great discretion, circumspection and honesty of Mr. Plowden, who, as it happened, had drawn the Conveyances and advised both parties in a transaction which came before the Court of Chancery. Towards the end of the year Articles of Religion were exhibited to the Lords of Her Majesty's most honourable Privy Council, "against Edmund Plowden of the Middle Temple," by a disaffected member of the Inn.[24] The State Paper Office contains a record of fines imposed on Plowden but no other action appears to have been taken.

The year 1581 was marked by the state trial of Edmund Campion and his companions, English priests from overseas who were accused of treason. The Chief Justice of the Queen's Bench, where the trial was held, was Sir Christopher Wray, sometime a Catholic recusant. In the dock stood Edmund Campion, a brilliant scholar of St. John's College, Oxford, sometime deacon in the Anglican Church, and now a Jesuit priest. Campion was one of a constellation of Oxford scholars, Fellows of New College and of Oriel and of Merton and of Corpus Christi and the rest, who had gone into exile in the Low Countries, and established at Douai and at Rome a school of theology and philosophy, which within a little while attracted as many as 150 students from England. Many of these after taking Orders returned home at great personal risk to minister the sacraments to those who, like Edmund Plowden, still clung to the Catholic faith. Edmund Campion was the most brilliant of the group. Against the possibility of his arrest, he had left with a law student in London a powerful Address to the Privy Council. But the young man failed to keep it secret, and being published abroad, it caused an immense excitement.

In the course of the trial of Edmund Campion, Plowden made his way into the Court. His old colleague the Chief Justice was behaving courteously to the accused, though he was engaged in work for which, one imagines, he had little heart.[25] And he surely had no desire that the proceedings should be reported. On seeing Plowden, the Chief Justice sent a message from the Bench inviting him to retire from the Court. Plowden, who was himself in peril of the law, withdrew. Edmund Campion was in due course found guilty and sentenced to death and executed. Within a month, Plowden made his will.

Early in 1582 there came to England from abroad a book of Christian devotion—*Of Prayer and Meditation*—dedicated to "The Right Honourable and Worshipful of the four principal Houses of Court in London professing the study of the Common Lawes of our realm," by Richard Hopkins, of Eton and King's College, Cambridge. In 1560 he was admitted a member of this Inn and later went into exile. After much study "being convinced that more spiritual profit attends books of devotion than of con-

[24] Records of the Plowden Family, pp. 25-6. State Papers, Dom. Eliz. vol. CXLIV, nos. 45, 46.

[25] See DICTIONARY OF NATIONAL BIOGRAPHY, *sub. nom.* Christopher Wray; Records of the Plowden Family, p. 27.

troversy in religion," he had composed this little work for his friends in the four Inns of Court.[26]

To Plowden it may have seemed that the return of Englishmen like Campion, and the appearance in England of books like that of Richard Hopkins, had in them the beginnings of hope for the minority of English men and women who still adhered to the ancient faith.[27]

Plowden was now not far from the end of his days; and it is good to read in the Records of the Inn for 1583 of a privilege extended to his son Francis Plowden "because his father has been very kind to the House." Early in 1585 Edmund Plowden died; and the large tolerance of death allowed him to be buried where he had asked in his will that he might be buried, in the Temple Church, between the body of his wife Katherine and the north wall, near the east end of the choir. A striking monument showed him lying at full length in his lawyer's robes, his hands being joined and pointed in prayer. The companions to whom he had dedicated his Commentaries and for whom he built this Hall, wrote his simple Epitaph, adding the words: *Mundo valedicens in Christo Jesu sancte obdormivit.*

In the same year Queen Elizabeth demised by letters patent to Edmund Plowden the younger, and Francis Plowden, his sons, the farm or mansion of Shiplake in the counties of Oxford and Berkshire to hold to them and their assigns for their lives successively. It was a recognition by Her Majesty (so we are told), of the merits of "the greatest and most honest lawyer of his age."

The official historian William Camden added a unique tribute, declaring that no one was more worthy of memory than Edmund Plowden, who in the learning of the laws of England was easily first, and in integrity of life among men of his own profession was second to none.

Serjeant Woolrych, who sought in vain to detach the memory of Edmund Plowden from the Middle Temple and to treat him as a member of Serjeant's Inn, declared that "Plowden is an ornament to our history."

In the last lines of the Epilogue to his *Institutes* Sir Edward Coke refers to "that great lawyer and sage of the law" Edmund Plowden, and cites the aphorism he had often heard him say: "Blessed be the amending hand."

May we not with equal right take these words of Plowden and, as we look upon those walls and the screen and the Minstrels' Gallery, and the timbers of this glorious roof, may we not also repeat, in humble duty and affection: "Blessed be the amending hand."

[26] Sir Edward Coke appears to have had a copy: *Catalogue of the Library of Sir Edward Coke*, p. 20, no. 270.

[27] Not the least persuasive of the statements in defence of the ancient faith was made in the lifetime of Plowden by Lady Cecil Stonor, a member of a family well known to the law, and which intermarried with the Plowden family during the penal times. Being asked the reason for her recusancy by the Justices of Oxford, she made answer: "I was born in such a time when Holy Mass was in great reverence, and was brought up in the same faith. In King Edward's time, this reverence was neglected and reproved by such as governed. In Queen Mary's it was restored with much applause, and now in this time it pleaseth the State to question them, as now they do me, who continue in this Catholic profession. The State would have the several changes which I have seen with mine eyes, good and laudable. Whether it can be so, I refer to your Lordships' consideration. I hold me still to that wherein I was born and bred, and find nothing taught in it but great virtue and sanctity, and so by the grace of God I will live and die in it." Stonor, by Julius Stonor, pp. 259-60.