

The Oriel College Lawsuit, 1724-26

By F. J. VARLEY

IN order to understand the lawsuit between Henry Edmunds representing the Fellows of Oriel and the Bishop of Lincoln (who had supported Provost Carter), which is described below, it is necessary in the first place to remember that Oriel College at its foundation received two sets of statutes in rapid succession. According to the first statutes (Jan. 1326), the Crown, represented by the Lord Chancellor, was to exercise the rights of 'Visitor,' to the extent of confirming the elections of Provosts or settling disputes about the same. A few months later, in May 1326, a second, quite different, set of statutes was drawn up, giving the Bishop of Lincoln the rights of 'Visitor,' with regard to the election and removal of Provosts and Fellows, and the interpretation and reforming of statutes. The reason for this change was probably political; owing to the growing difficulties of Edward II, it may have been felt that the Bishop of Lincoln was a safer patron, though there is much to be said for the later view that the statutes were imposed on the college as the price of his patronage. At the time, this change of 'Visitor' was probably not so sensational as it would have appeared in later times, when the conception of an academic 'Visitor' had become more sharply defined. The term 'Visitor' is not used in either set of statutes.¹ In the 14th century, probably both the Crown and the Bishop could be regarded as having potential rights over the college; quite apart from the terms of the statutes, the Bishop of Lincoln, as Ordinary of the Diocese, had the right of visiting and correcting all ecclesiastical institutions in the diocese not formally exempted (as Oriel was not); while the King, as founder and 'patron paramount,' could have intervened in the college, as he frequently did in monasteries, hospitals and chantries, in the case of chronic disputes and maladministration. That is by the way, however. The main point is that for four centuries, from 1326 to 1726, the second set of statutes were generally considered

¹ The early history of College Visitors seems difficult and obscure, and needs investigating. Considering the great struggles that took place over monastic or capitular claims to exemption, how was it that the Bishops of Lincoln allowed with so little opposition or protest the setting up of what came to be in effect so many little 'peculiar' in their diocese, dependent upon external prelates—Merton upon the Archbishop of Canterbury, Exeter upon the Bishop of Exeter, and so forth? Does the Bishop of Lincoln's capture of Oriel mean that he was beginning to be alive to the danger of the situation, and was trying to stake out his claims over Oxford?

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to have superseded the first set, and therefore the Bishop of Lincoln was regarded as the 'Visitor' in the modern sense. In the lawsuit of 1724-6, the opposing Fellows, as we shall see, by way of outflanking the Bishop of Lincoln, who was supporting the Provost, appealed to the first set of statutes, and so claimed the Crown as Visitor.

The leading persons in the struggle were, on the one hand, Provost George Carter (Fellow 1694, Provost 1709-27), and his chief supporter, Joseph Bowles (Fellow 1718-29); and on the other hand, Thomas Wicksey (or Weeksey) (Fellow 1709-29), Richard Dyer (Fellow 1673-1728), Walter Hodges (Fellow 1716, later Provost 1727-57), and above all, the leader of the Fellowship candidates rejected by Carter, Henry Edmunds (Fellow 1721-46).

What were the motives underlying this bitter internal struggle? In the first place, it was a constitutional struggle between the Provost and the Fellows, to decide whether the college was to be an autocracy or an aristocracy; and in this it was the lineal descendant of those numerous struggles which took place throughout the middle ages between bishops and their chapters, between abbots and their convents. It shows that the mediaeval passion for asserting corporate or official legal rights was still very much alive in the 18th century. At this very time, an almost exactly similar constitutional struggle was going on, on a much larger scale, at Trinity College, Cambridge, where the terrific Dr. Bentley was defying not only his own Fellows, but the University, and the Courts of Kings Bench and the House of Lords as well. It is interesting to notice that at Trinity, as at Oriel, the claim of the Crown and the local Bishop (in this case Ely) as Visitor was the question at issue. Secondly, there must have been some personal and temperamental differences at the root of the split of the college into two parties. Hearne (no doubt exaggerating) goes so far as to attribute the suicide of one of the Fellows, Thomas Ward, in 1721, to the personal animosities which were then leading up to the struggle. The rejected claimants of course had the strongest of personal motives for pursuing the struggle. Finally one wonders whether politics played any part. It would be impossible to represent it as a straight fight between a Whig Provost and Tory or Jacobite Fellows; the opposing Fellows no doubt represented various shades of political opinion. But it is significant that Hearne (who, in spite of his prejudices and exaggerations, must at any rate have known who were his friends and who were his foes in politics) shows strong sympathies with Dyer in particular among the opposing Fellows, and strong dislike of the Provost, whom he accuses of wishing to fill the college with 'Bangorians' (*i.e.* followers of Hoadly): 'he mightily desired a Bishoprick, and would have done (as plainly appeared) anything whatsoever for one.' Provost Carter's own memorandum book shows plainly that he was an ambitious man, and very anxious to be in favour with

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the Government and with politically important patrons. After a college election on 23 March, 1716, he wrote, probably to Archbishop Wake, as follows :

The last time I payd my Duty to your Lordship I was very sensible of ye great Honour you did my college in inquiring after it and ye sincere kindness toward it in acquainting me what sort of persons were fitt to be chosen upon any vacancy. This Morning we chose three Fellows, and I can assure your Grace with the highest Satisfaction that they are not only good scholars but also true Freinds to the present Establishment. I have an intire confidence in them as to this particular inasmuch as those persons on whom they depend cheifly are wholly devoted to K. G. and his Ministry. The names of the young men are, Mr. Ingram brother to ye Ld. Irwin, Mr. Evans nephew to ye Bp. of Landaff, and Mr. Hodges whose relations live in Wiltshire. In all elections I assure yr Lordship I shall have a particular regard to mens Principles and Loyalty as well as their Learning.

It may be that Carter wished to fill the college and manage the college in accordance with the wishes of his patrons, and that he saw in the independence of the opposing Fellows and claimants, like Edmunds, an obstacle to his plans. In fairness to Carter, it must be remembered that if he was not blind to his personal interests, neither were his opponents, and that he, like them was no doubt convinced that the line of action he was taking was in the best interests of the College. His genuine loyalty and zeal for the college, even after his defeat, was shown in the most convincing of all ways by the generous benefactions which he left.

The protagonist against the arbitrary proceedings of Provost Carter and the Visitor was, as has been said above, Henry Edmunds of Jesus, who on 27 July, 1721, was elected Fellow of Oriel by 9 votes to 3, but rejected by the Provost, and on appeal, by the Visitor, then Bishop Gibson. What happened at his election, or on the subsequent appeal is not clear. The account given by Rannie¹ is quite unintelligible, but there is no doubt that Provost Carter entirely disregarded the wishes of the Fellows as expressed by a majority vote, and that the Visitor supported him in this attitude. When Bishop Gibson was translated to London, he was succeeded by Bishop Richard Reynolds, who was almost immediately concerned in the subsequent proceedings.

On 19 April, 1723, there was an election to fill 5 vacancies and Edmunds was again a candidate. The Provost and 13 Fellows were present, and the following were duly elected by the majority vote placed after their names, Edmunds (8), Pison (9), Parker (9), Martin (9), Fisher (10). On this occasion the Provost absolutely refused to admit any of them (*cujuslibet horum nominationi se non assentiri declaravit et penitus recusavitmittere*). There was an immediate appeal to the Visitor, who took a long time to consider his formal decision. It was received with a covering letter dated 4 Oct., 1723, in which

¹ *Oriel College*, p. 135.

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he offers to forgo his common law right of collation, if the Fellows can agree with the Provost in an election.

His formal decision is dated 2 Oct., 1723, Park Street, Westminster, where sitting with John Betterworth, commissary of the Bishop in the archdeaconry of Bucks., and John Andrew, like commissary in Huntingdon, and Henry Farrant, notary public, he 'pronounced and declared that in all Elections in the said House or College of Oriel, the consent of the Provost is necessary, and that as the Provost had not only not assented, but actually refused to admit, the Election was entirely void and of no effect.'

This ecclesiastical tribunal gives no reasons for its decision and the only provision in the statutes which might be relevant is the reference in the statutes of 1426, repeated in those of 1441, to the express consent of the Provost to the holding of an election being necessary, when he is absent from the College; but in this case the Provost was not only present but actively intervened in the election itself. It is not surprising that such a decision was received with dismay among the Fellows, and the offer in the letter being dependent on an agreement with the Provost, was clearly worthless. Bishop Reynolds does not seem to have expected any agreement, and proceeded to fill up three of the vacancies. Thereupon the Fellows may be said to have opened hostilities by issuing a manifesto, signed in the presence of John Greenway, notary public, by John Woodward (Senior Fellow), Thomas Wicksey, Samuel Catterall, Henry Brook and Alexander Rayner for themselves and also for the interest of Richard Dyer and Walter Hodges:

'We whose names are hereunto subscribed Fellows of Oriel College in Oxford to conserve and keep the Rights Liberties and Privileges which our Predecessors Fellows of Oriel College have immemorially peaceably and quietly enjoyed until on or about the 27th day of July 1721, and 19th day of April 1723 do protest against the admission or admissions of any pretended Fellow or Fellows Scholar or Scholars into the said College which have been or may hereafter be Nominated by the Right Reverend the Lord Bishop of Lincoln on pretence that the collating or disposal of vacant Fellowships in the said College devolves to him in case that the Provost and Fellows of the said College disagreed at the time of Election or Elections of Scholars into the vacant Fellowships. And particularly against the admission of Coppin, Dewey, and Lane, Bachelors of Art (sometime since nominated by the Right Reverend the Bishop of Lincoln to be Probationer Fellows of the said College by virtue of such pretended Power of Collation) to be perpetual Fellows of the said College.'

The notary public certified that this protest was signed on 19 November.

This had no effect on the Provost or the Bishop, and the Provost repeated his former tactics at the next election held on 11 April, 1724, with the virtual assurance that if an appeal against his refusal to admit Fellows elected by a

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majority were taken to the Visitor it was bound to fail. The rejected candidates with a body of the Fellows attended before John Greenway, who went with them to the Provost's lodgings, and after the interview, gave a certified account of the proceedings, at their request :

On 11 April 1724 Thomas Wicksey, M.A. Dean of Oriel, Richard Dyer, Henry Brook and Alexander Rayner M.As. and Fellows of Oriel, together with St John Chester and William Craster B.As. appeared before me John Greenway, a Public Notary, and the said (4 Fellows) asserted that they and four more of the Fellows being 8 Fellows out of 10 had rightly elected the said (2 B.As.) Probationer Fellows of Oriel College aforesaid, but believe that the Rev. Dr. Carter the Provost, would unjustly (as he had done before) deny to call a Chapter for admitting the aforesaid (2 B.As.) Probationer Fellows of Oriel College and therefore required me the said John Greenway to go with them to the said Provost. Whereupon I the said John Greenway between the hours of 9 and 11 o'clock of the forenoon of April 11 did go to the lodgings of the said Provost of Oriel in the Company of the said (4 Fellows) and (2 B.As.) when and where in the presence of the said George Carter, Provost of Oriel College aforesaid the said (4 Fellows) as well to support maintain and preserve their Rights, and the Rights of the other Fellows of Oriel College to elect Scholars or Probationer Fellows of that said College, and the said (2 B.As.) to preserve their rights profits and privileges which they ought to have and enjoy as Scholars or Probationer Fellows of Oriel College aforesaid, demanded and required the said Provost forthwith to call a Chapter or Meeting of the Fellows for admitting them the said (2 B.As.) Scholars or Probationer Fellows of Oriel College aforesaid. But the said Provost's answer to their demand or requisition was that the said (B.As.) were not elected and therefore they should not be admitted ; against which answer and other arbitrary proceedings of the said Provost, the said (4 Fellows) did protest and declare that to recover their Statutable and Customary Rights and Liberties lately unjustly and unlawfully invaded by the said Provost, they would use and pursue all lawful ways and means to recover and maintain the same.

The stage was now set for action, and it is unfortunate that it is not possible to reconstruct a more detailed account of the offensive, which—from the point of view of the college as a whole—achieved such a victory. The protest hinted at legal proceedings, but obviously to storm such an entrenched position was no easy task, and we know that from the outset the Bishop's legal advisers were quite confident.

Henry Edmunds, now a Fellow of Jesus, the veteran of the rejected candidates, chosen to take action, was a good lawyer, as his subsequent career shows. We do not know who wrote the 'Opinion on the Case.' Possibly it may have been Serjeant Matthew Skinner, the Recorder of Oxford, mentioned by Hearne as 'doing the College very great service.'

The proceedings took the form of a writ of attachment against the Bishop of Lincoln to show cause etc., and was set down for hearing in Easter Term, 1724, before the Court of Common Pleas sitting in the Middlesex Sessions at

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Westminster Hall, and the first hearing seems to have taken place on 14 May, when there was some argument about the status of a Diocesan as Visitor of an Oxford college, and on behalf of Edmunds an interim injunction appears to have been granted against the Bishop exercising Visitorial powers *pendente lite* (Hearne's Diary, 16 May, is mere hearsay).

Provost Carter was present at this hearing and sends Archbishop Wake some account of it :

'The point in question was whether the Bishop of Lincoln is Visitor of Oriel College ; it was proved that his Lordship had confirmed the Provosts, sent Injunctions to the College, and confirmed the Statutes which at any time the College made, and that these powers are granted him by the College Statutes, confirmed by the Broad Seal of Edward III. And these Statutes in the conclusion say likewise " Si in praescriptis ordinationibus aliqua obscura diminuta vel ambigua in futurum remittere contigeret vel oriri, per Episcopum Lincolnensem, qui pro tempore fuerit, declarentur suppleantur, et si necesse fuerit, corrigantur et etiam reformentur."

Notwithstanding all this some present in Westminster Hall at the hearing of this Cause were of opinion that the Court seemed inclined to determine that the Bishop is not Visitor. They have indeed put off this matter until the beginning of next Term. I need not tell your Grace that if the Judges pass such a sentence, all that my design that I have been doing toward the settling of my College will be defeated at once.'

In preparation for this hearing the Provost had sent up to the Bishop of Lincoln's house in Park Street, Westminster, the College Register ; two Charters of Edward II, 1317-1319 (*sic*) ; the first Statutes ; the Statutes ' we now use ' confirmed by Edward III with consent of Parliament ; a book of Statutes allowed in evidence by both parties ; and the Charter of James I. He also sent an analysis of the documentary evidence with his comments :

'I have here put together such powers as I find granted to the Lord Bishop of Lincoln by the Statutes of the College dated May 20 (*sic*) 1326 and confirmed by Edward III, and the Charter of James I, and here write down the words of the Statutes on which these Powers are founded on a Paper here enclosed (by themselves).

In my opinion his Lordship's Rights and Powers as Visitor is as fully given him as words can do, in these expressions " Eps Lincn Dom. et Personae ejusdem de *jure communi* et per praesentes Ordinationes specialiter subjectae existunt." He hath here all the Authority and Power which can belong to him by *Common Right* which I believe is great enough, but least that should not be thought sufficient the Statute adds that the College and all its members are by virtue of those present Ordinances likewise subject to him *specially* that is, whatever Power did not belong to him by *Common Right*, and could be conveyed by the College being put under *special* subjection, is here granted. He is not only Diocesan but likewise Special Visitor. So that these expressions do (as I understand them) give his Lordship all the Right Power and Authority over Oriel College, which it is possible for him to have over such a Body or Society. This Statute (clause) alone doth in my Judgement so clearly invest him with the Right of Visitor that nothing more need be pleaded on this occasion.'

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As the action was pending for just two years, it may be well to say a word about the Judges of the Court of Common Pleas, or the Common Bench. The Lord Chief Justice, Sir Peter King, had succeeded Lord Trevor in 1714, and Alexander Denton succeeded John Blencowe in 1722, the other Puisne Judges, Robert Tracy and Robert Dormer, had sat since 1714. Sir Peter King was appointed Lord Chancellor on 1 June, 1725, and on 3 June, Sir Robert Eyre was appointed Lord Chief Justice. He was also Chancellor of the Council of the Family of H.R.H. The Prince of Wales (afterwards George II). It is possible that this change in the personnel of the Court may have delayed the hearing, which in any event was likely to be a lengthy one, with important issues at stake, and much documentary evidence to be examined. How often the case came before the Court, the length of adjournments of the hearings, what interlocutory proceedings, if any, took place, cannot be known, in the absence of any record. The final judgment was delivered on 14 May, 1726. About 11 May Provost Carter writes to Archbishop Wake :

' Having received your Grace's Commands to take all imaginable care about the College Cause now depending in the Court of Common Pleas I have presumed so far upon your Grace's goodness, as to bring before you what I have hastily drawn up on that subject, which I have sent by the Warden of Merton who set out from Oxford for London yesterday. If your Grace can spare a quarter of an hour to look over these papers, you will see all that I know of which can be alleged for and against the Bishop of Lincoln's Visitation Power in Oriel College, as I am inclined to believe your Grace will think the Right is on his side [*alternate draft*: he hath a Right to it].

I cannot but be persuaded that my Lord Chief Justice who is so true a Lover of Right and Equity would be of the same Opinion, if he were fully acquainted with these affairs. But the Counsel on the Bishop's side gave him, as they have themselves, a very slight and imperfect Notion of it, and I cannot tell by what means the matter can ever be represented fully and clearly before his Lordship. (He then proceeds to detail at great length extracts from the statutes, records, etc., and to repeat his former arguments).

There are three Issues to be tried, one whether the Bishop of Lincoln is Visitor of Oriel College, another, whether King Edward II was the Founder, the third, whether Mr. Edmunds and the other persons were elected Fellows. I understand that the Bishop of Lincoln's Counsel upon a conference was very clear and positive that the Court of Common Pleas cannot but give this point in favour of the Bishop, and declare that they were not elected even according to the late Chief Justice (*i.e.* Sir Peter King) his opinion, for the Bishop being, as his Lordship declared, interpreter of the Statutes, and the Bishop having given his Interpretation that the Provosts' Assent is necessary towards the Election of a Fellow, and Edmunds and the others having not had the Provost's Assent, it is plain they were not elected. They expect to succeed likewise on the First Issue, but this they think cannot be determined against them.

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The Court of Common Pleas might bring the matter, if they thought fit, into a very narrow compass, and as I am assured from very good Hands there would be an entire end put to this controversy if they would pass sentence or determine that Mr. Edmunds and the others were not elected [*alternate draft*: "the complainants would then desist."]

I have summarized below the copy of the proceedings (written in legal Latin) contained in the Dean's Register; this copy is certified to be a true copy by Samuel Catterall, the Dean:

Middlesex Sessions. Easter Term 1724.

Richard, Bishop of Lincoln, was *attached* to answer both his Majesty the King and Henry Edmunds, who pleads as well for His Majesty as himself, why he has presumed to exercise a Visitatorial Authority and Jurisdiction over the College or House of the Blessed Virgin Mary commonly called Oriel College, and in spite of an Injunction previously granted against him, in contempt of His said Majesty.

Accordingly Henry Edmunds pleads (quotes the Foundation Statutes of 21 Jan., 1326). By reason of the foundation and Endowment of the College by Edward II, he or his successors, or their Lord Chancellor, or the Keepers of the Great Seal, or some other person or persons, whom the King by Letters Patent under the Great Seal formally appoints to act for him and take his place ought to have exercised the Office of Visitor over the said College, and no other person (except the King) had or has or could attempt to have Visitatorial Authority and Jurisdiction in the College.

All disputes, admissions and other matters concerning the College should be determined by the King.

On 19 April, 1723, the Fellows duly elected presented themselves before the Provost George Carter, and requested that they might be received and admitted to their year of Probation in accordance with the Statutes of the College, but the said Provost though frequently requested and called upon to admit them absolutely and expressly refused on the ground that they had not been duly and legally elected.

Matters standing thus, the said Henry Edmunds further says that the said Richard, Bishop of Lincoln, well aware of the premises, but bent upon illegally disturbing and oppressing the College by the exercise of Visitatorial Authority, and disinheriting His present Majesty and the Crown (having no authority from His present Majesty by Letters Patent or otherwise to act for him) on 2 October, 1723, presumed unlawfully and improperly to exercise Visitatorial Authority and Jurisdiction over the College by interfering in the Election of Henry Edmunds and others. And the same Bishop under pretence of his Authority, pronounced their Election invalid and of no effect, and nominated and admitted 3 other persons. The same Bishop supposing that he had a Common Law right as Visitor of the College over the remaining vacancies, is endeavouring with all his might to confer them on some other persons to the hurt and in derogation of the rights of His present Majesty, his Crown and Dignity, and in contempt of His Majesty's person, and to the manifest injury of the said Henry Edmunds. And although on 14 May, 1724, the same Henry Edmunds had applied for and obtained an Injunction against the said Bishop from exercising his pretended Authority over the College, he has never ceased to do so, and is still proceeding in spite of the Injunction to the injury of the Crown and Dignity of His present Majesty and of Henry Edmunds himself, who pleads that he had suffered grave loss to the extent of £100 which he claims as damages.

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PLEA

The said Richard, Bishop of Lincoln by his Attorney Francis Emmerton says :

That the Provost and Fellows did not elect Henry Edmunds and the others.

Adam de Brome first founded and was the primary Founder of Oriel College. (quotes the Lincoln Statutes of 23 May, 1326, and 8 Dec., 1329, and the confirmation by Edward III by Letters Patent dated 18 March, 1330).

From the date of the Confirmation of the (Lincoln) Statutes by Letters Patent by the said Edward III right down to 2 October, 1723, the Bishops of Lincoln, from time to time, have exercised Visitatorial authority and jurisdiction over the said College, clear and undisputed, and they are the undoubted Visitors of Oriel College, as Henry Edmunds has had to admit.

REPLICATIO

So far as the preceding Plea is concerned, Henry Edmunds says that the allegation that he has made any admissions ought not to be accepted because the same Henry Edmunds has pleaded and says now, as before, that Edward II was the Founder of Oriel College, and prays that this should be the subject of inquisition.

REJOINDER

Richard, Bishop of Lincoln as before says that from the date of the Letters Patent of Edward III, 18 March, 1330, to 18 June, first year of James I, the Provost Scholars Officers and Servants of the College were elected, dealt with, governed and controlled under the Ordinances and Statutes referred to in his said Plea and others, all such Statutes made by the Provost and Scholars being duly and formally made valid by Letters Patent as the said Richard has pleaded, and on this issue he places himself on his Country.

The said Richard further says that from the date of the said Letters Patent of Edward III right down to 2 October, 1723, the Bishops of Lincoln for the time being, from time to time as often and whenever necessity or occasion arose have exercised their Visitatorial Authority, Power or Jurisdiction over Oriel College as Visitors of the said College—*modo et forma*, as stated in his Plea, and on this Issue also he places himself on his Country and the said Henry Edmunds likewise.

JUDGMENT

1. The Jury on oath say as regards the 1st Issue that the said Richard, Bishop of Lincoln, did not exercise his Visitatorial Authority or Jurisdiction over Oriel College contrary to the Injunction granted against him, as pleaded by Henry Edmunds.
2. The said Provost and 13 Fellows of the said College mentioned in the statement of the case, have elected the said Henry Edmunds, Robert Fysher, Philip Pipon, James Parker and Samuel Martin, and each of them as Scholars or Fellows of the said House or College *modo et forma*, as the said Henry Edmunds has alleged in his Statement of the case.
3. *Dominus Edwardus Secundus* was the Founder of the said College, as the said Henry Edmunds has alleged in his Statement.
4. The Provost Scholars Officers and Servants of the said College were not elected, dealt with, governed or controlled by the Ordinance specified above by Richard,

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Bishop of Lincoln or generally in the manner alleged by the said Bishop in his Rejoinder.

5 and last. The Bishops of Lincoln, for the time being, and from time to time, did not exercise their Visitation Authority Power or Jurisdiction as Visitors of the said College *modo et forma* in the manner alleged by the said Bishop of Lincoln in his Rejoinder.

The jury assigned 12 pence damages, besides fees amounting to 40 shillings, and Henry Edmunds asked for assessment of costs and judgment, and a set off was allowed to the Bishop of Lincoln by reason of the finding of the jury on 1st issue. The final amount awarded to the successful litigant is left blank in this copy.

The judgment must have been a bombshell for the Bishop and his counsel, and Provost Carter does not even refer to it! Rann's account¹ of his reactions to it is unaccountably charitable. The Provost, who had been closely concerned with the preparation of the Bishop's case, and had been allowed to attend conferences, could not possibly have been ignorant of the effect of the judgment, and his own account of his conduct shows that he deliberately intended to oppose and put every obstacle in the way of execution, and looks suspiciously like contempt of court.

The court having found that Edmunds and the others had been duly elected Fellows *modo et forma*, nothing remained for the Provost to do but to call a chapter and formally admit them. Shortly afterwards, Henry Edmunds called on the Provost who reports :

' Mr. Edmunds called upon me this morning desiring to know when I would be so kind as to admit him and the others into the Fellowships. We had a pretty deal of Discourse upon the subject, but the whole substance of what I said to him was this, that I was not fully satisfied that they had a right to be admitted, and that they must excuse me from doing it, until I had a proper Order or Mandate from the King, the Visitor. I told him that was the answer I should persist in and it was agreeable to the Opinion of my Friends and of my Counsel. He desired to know particularly who was of that Opinion. I told him he must excuse me from acquainting him. He said he would talk to you about it at the Assizes. I answered he might do what he would but that I should persist in this Resolution [*alternate draft* : " I believed I should not be in Oxford then "], and his best way would be to procure a Mandate as soon as he could.

I thought proper to acquaint you with this that you may have an answer ready if Mr. Edmunds or any of his Friends should speak to you about this Affair. You may assure them that I took this Resolution before I left London, and nothing can dissuade me from persuing it.'

Upon this refusal a joint petition was sent to the college by the five, reciting that ' on or about May 14, such election of your petitioners was found by a

¹ *Op. cit.*, p. 140.

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Verdict of his Majesty's Court of Common Pleas at Westminster,' but the Provost 'has refused and still refuses to admit them' to their manifest detriment, and praying that the College take the case into consideration and admit them; and Chester and Craster petitioned in respect of their election on 10 April, 1724.

The college then took matters into its own hands, and at a chapter held in the college chapel on 18 July, 1726, the four presented themselves and were statutely admitted, and it was decided that James Parker should be admitted, when he presented himself.

There are two accounts of the scene in the chapel, the official one in the Dean's register, and an unofficial one signed by John Bowles in the Provost's memorandum book, which it is unnecessary to detail. Bowles says the Provost forbade the Fellows to admit without an order or mandate, and the official account that 'Se non sat persuasum habere dictos Petitores non (*sic*) fuisse rite et debite electos in socios Collegii praedicti.' After the ceremony the Liber Promptuarii was sent for, and the names of those Bachelors inserted by the Provost without the consent of the college struck out, and the names of the six inserted (Chester and Craster elected on 10 April, 1724). The account in the Dean's register says that the Provost had been ordered not to leave the chapter, but withdrew in company with Bowles, who shortly afterwards returned. On the same day Provost Carter wrote to Archbishop Wake :

'I think it my duty to acquaint your Grace that this morning some of my Fellows without any Order or Mandate admitted six Fellows into the seven vacant Fellowships that are void in my College on this occasion, though I forbade them to do it, and withdrew from the Meeting on their persisting in their Resolution.

They ground their Proceedings on one of the late Verdicts of the Court of Decree of the Court of Common Pleas which was that these Persons were duly elected Fellows. But I believe my Lord the King be declared Visitor of Oriel College; His Majesty is the only proper Judge, who are and who are not duly elected Fellows into the said College: upon which consideration I opposed their admission. (He goes on to say that the Statutes do not prescribe how "admission" is to take place, but that it is usually done by the Provost).

But I think the main point is whether they are duly elected, or whether my consent be not absolutely necessary toward the choice of a Fellow, for if I cannot obtain this Point, the Point about admission is of little moment.

However, looking upon their admission in this manner to be irregular, as likewise that they are not duly elected, I have made a complaint to the King our Visitor thereupon, and your Grace commanded me the last time I mentioned something relating to the College Dispute, to acquaint the Bishop of Lincoln with it. I thought I should not presume to trouble your Grace with the Petition, but have sent it to his Lordship, desiring the favour of him to present it to His Majesty. I hope your Grace in your great goodness will likewise assist and direct me in this Affair and promote the despatch of it.'

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He also wrote to the Bishop with the petition humbly entreating him to get it corrected if there were any faults or mistakes in matter or form, and present it to His Majesty 'if your Lordship in your great wisdom shall judge it proper—' also asking pardon for his presumption, and any mistakes 'which writing in very great haste have occasioned.' This strange document is as follows :

To the Kings Most Excellent Majesty—the Petition of George Carter, D.D., Provost of Oriel College in Oxon humbly showeth that whereas the House of the Blessed Virgin commonly called Oriel College [*alternative draft* : your Majesty's Royal College in the University of Oxford] of the Foundation of Edward II sometime King of England, of famous memory there should have been an Election into five vacant Fellowships on April 19 1723, and another Election into two vacant Fellowships on April 10 1724, at which said times no election was made, yet some of the Fellows have admitted ——— into the ——— of these vacant Fellowships contrary to the Statutes of the said College and in prejudice of your Petitioner's Right.

Your Petitioner humbly prays that your Majesty, the undoubted Visitor of the said College, would please graciously to take this matter into your Royal consideration and not suffer the above said Fellows to enjoy any Profits or Privileges belonging to Fellowships in the said College contrary to the Statutes, and the Interest of your Majesty's Royal Progenitors as well as to the prejudice of your Petitioner's Right and of the good Order Peace and Government of the said College till such time as they shall answer the Premises and your Majesty's Pleasure be known therein, and as in duty bound your Petitioner ever pray etc.

G. CARTER, Provost.

At the same time he wrote to a lawyer friend asking his assistance and advice in all matters of law :

'In all likelihood it will be a contest between me and some of my Fellows upon their admitting six Probationer Fellows. I beg leave to rely on your help on this occasion—inasmuch as the Cause doth chiefly concern the Right of the King our Visitor, I will acquaint you with the Particulars when I wait upon you.'

Perhaps it was as well for the Provost that the Bishop did not present this foolish petition to His Majesty; otherwise, considering the very prominent part he had taken in the litigation, he might well have been in trouble for contempt of court. It may safely be presumed that his legal advisers can have given him no encouragement in pursuing the extraordinary tactics he adopted after the judgment of the Court of Common Pleas.

Exactly a year later the Dean's register records that the probationer Fellows were admitted in perpetuity, in the absence of the Provost, by the Dean and Fellows. It is possible that he kept up the feud to the end, and that his absence was not due to illness, though he died on 30 September. Obstinate men seldom 'die of a broken heart.'

The suggestion that the judgment of the Court of Common Pleas was influenced by political considerations was made contemporaneously, but is

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devoid of any foundation. Contemporary legal opinion, as in Bentley's case, was that the disputed question of a Visitor could only be determined by the verdict of a jury, and this was never put to the test by the Fellows of Trinity, Cambridge.

As we have no record of the arguments of counsel for Edmunds it may be permissible, in the light of the judgment, to surmise the line they may have taken :

Edward II as giver of the first endowment to the college was the founder, for even if Adam de Brome joined the King in endowing (*fundatio percipiens*) the King alone is founder.

The foundation statutes are still in force, and were treated as valid by Lord Chancellor Bacon in 1618 on the election of Provost Lewis. The Bishop of Lincoln, taking advantage of the times, and his influence in the Council of the young King imposed upon the College a set of statutes of his own, without any shadow of authority, and induced the young King (Edward III) to confirm them, but the fact that Edward III confirmed his father's foundation, shows that he had no intention of overriding the foundation statutes or the royal prerogative, which has been exercised from time to time, *non obstante* the Lincoln statutes. The foundation statutes have never been repealed, and acquiescence in accepting the Lincoln statutes for however long a period cannot cure their initial invalidity. *Quod ab initio non valet in tractu temporis non convalescit.*

As Oxford colleges¹ have, at any rate from the time of the Reformation, been increasingly regarded as lay eleemosynary corporations, the incongruity of a Diocesan as Visitor, more especially since the carving out of the Diocese of Oxford from Lincoln in 1542, may have been stressed. Other arguments can, no doubt, be thought of, to induce the court to find for a royal foundation, and to reinforce the verdict of the jury, which seems quite reasonable, and unlikely to have been influenced by any desire to oblige the House of Hanover.

What was the effect and the historical significance of this great lawsuit? Can it be said to have modified the character of the college permanently? The most obvious effect was of course to substitute the Crown for the Bishop of Lincoln as Visitor; and the Crown remains the Visitor to this day. It was a change which was appropriate to the college as an ancient royal foundation. Beyond this point, the substitution of the statutes of January, 1326, for those of May, 1326, is not likely to have had any practical effect upon the life of the college. Although everyone took an oath to observe the statutes, Fellows of a college in unreformed Oxford did not inquire very closely into the mediaeval statutes which they were pledged to observe; no doubt they had the comfortable (but not strictly accurate) conviction that such statutes were entirely concerned

¹ See Tudor, *Charities* (ed. 1929), p. 195.

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with religious and academical observances long since obsolete. This attitude was prevalent in all corporate bodies ; for instance it took Henry Bradshaw in the late 19th century a great deal of research to discover what precisely were the statutes which the Canons of Lincoln cathedral swore to observe. And when men became more conscious or conscientious about these things, the Commissions supplied new statutes. In the widest sense, probably the most important result of the lawsuit was that it underlined the aristocratic, as opposed to an autocratic constitution of the College, and this in turn may have contributed something to the preservation of that academic independence and freedom of which the English universities are so rightly proud, and which has disappeared in so many countries during the last 150 years. It is worth remembering that this freedom has not always been unchallenged here. From the time of the Tudors down to the early 18th century, the university and the colleges had again and again to face pressure and interference, in one interest or another, from the government or from politically powerful persons. The famous Magdalen case was simply the most advertised of a whole series ; at Oriel, for instance, the government twice tried to impose its nominee as Provost, unsuccessfully in 1550, successfully in 1565. Now a college oligarchy, with all its faults, was probably more likely to resist external pressure than an autocrat like Carter, who was only too anxious to please those in power ; and so the assertion of the oligarchical or aristocratic principle was a matter of some importance.

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The Provost's Memorandum Book, kept by Provost Carter. [Full of information about the case from the Bishop of Lincoln's side].

It is unlikely that more than a record of the result of the case would be found in the Public Record Office, and the Examination of the Lincoln Diocesan Records has not reached this period ; present conditions preclude any research. The case has not been reported in any of the collections of Law Reports.