

The Records of the Bishop of Exeter's Consistory Court c. 1500—c. 1660

By *J. A. Vage, M.A.*
St. Catharine's College, Cambridge

The purpose of this article is to provide an introduction to the earliest surviving muniments of the bishop of Exeter's consistory court. A discussion of the more prominent and interesting aspects of these materials is prefaced by an account of the archival work undertaken upon the tribunal's records over the course of the last one hundred and fifty years.

I

THE years since the end of the last war have witnessed a marked growth of interest in the work and organization of the spiritual courts in England. What was once deemed a subject fit only for the hardened campaigner who was prepared to be closeted away for long periods of time among dusty records in the inhospitable surroundings of Cathedral chapels or episcopal registries has now through greatly improved means of access and methods of care and through a no less enlightened change in attitudes become the object of much painstaking and fruitful research. A "steady trickle" of publications has thus ensued which in gathering momentum over the years has tempered studies of individual tribunals with editions of samples of their muniments.¹ Yet despite this belated response it is clear that there is a considerable amount of labour which is still required to be expended upon the church courts not merely in relation to such broad themes as the impact which these bodies had upon society but also with regard to more technical matters such as the development of the law which the courts administered and the schooling and careers of their personnel.² Moreover, for various reasons, not all diocesan tribunals for which sufficient materials are extant have received equal attention although the findings already harvested indicate that it is upon the diversities as much as the similarities existing between sees in the practice of dispensing ecclesiastical justice that any overall assessment of the courts' role in this country will ultimately rest.

It is in this last mentioned area that the present article seeks to make a modest contribution, for its aim is to provide a means of introduction to the earliest surviving records of an important, but hitherto neglected tribunal, the bishop of Exeter's consistory court.³ At the height of its activity during the opening decades of the seventeenth century, the consistory served as the chief spiritual court for the counties of Devon, Exeter and Cornwall, exercising civil and criminal jurisdiction, both first instance and appellate, in almost all of the seven hundred or so parishes and chapelries which comprised the ancient diocese of Exeter. As a measure of the tribunal's judicial commitments, it may be noted that in 1609 some five hundred new civil suits were brought before the court whilst in 1621 approximately one thousand criminal prosecutions were initiated.⁴ Naturally, a busy tribunal such as this would generate a substantial quantity of documentation and would in turn, even when due allowance has been made for the effects of attrition, bequeath to present-day researchers a suitably impressive corpus of material. The pre 1660 muniments of the Exeter consistory court certainly do not disappoint in this respect although, it has to be confessed, almost no records relating to the tribunal have survived prior to 1500 (a particularly greivous loss this), whilst only a handful of documents exist for the period between 1500 and 1550.⁵

In the course of work upon these materials at the Devon Record Office, it became apparent to me that the two typescript catalogues which consituted the principal means of access to the court's archives contained a number of serious errors and inconsistencies which were detrimental to an effective use and understanding of the collection. Upon consultation with Mrs Rowe, Head of Record Services, it was agreed that I should prepare a descriptive listing of the consistory's pre 1660 muniments which would seek to remedy these defects. This handlist has recently been published by Devon County Council.⁶ At the same time I also prepared an extended introduction to accompany the listing which would relate the archival work undertaken upon the tribunal's records over the course of the last one hundred and fifty years and which would in addition discuss several of the more prominent and interesting aspects of the surviving materials. It is this introduction which is reproduced here.

II

By long custom and usage, the episcopal archives at Exeter have been divided into two quite distinct accumulations of records. On the one hand there are those documents which belong to the bishop's principal registry, documents distinguished by their intimate or generic association with the functions of prelacy. A list of 1641 notes them as including

the registers of institutions and ordinations, act books, will registers, audience court proceedings and diocesan visitation returns.⁷ On the other hand there are the records of the bishop's contentious jurisdiction, namely court act books, deposition books and cause papers, falling under the immediate authority of the chief judge of the diocese, the chancellor or official principal, and which comprise the registry of the consistory court.

Each of these groups of documents was in earlier centuries housed in separate repositories and administered by individual keepers or registrars appointed by the diocesan. The first reliable and explicit guide to the location of these stores is provided by a survey of 1812 which had been drawn up in response to an act of parliament of that year.⁸ From this report it is apparent that the muniments of the former collection, the principal registry, were then divided between two sites, firstly a chamber set over the chapel of St James on the south side of the choir of the Cathedral which contained mostly loose or bundled papers, chiefly glebe terriers, presentations, presentments, marriage licence bonds and parish register transcripts, and secondly the deputy registrar's house situated in North Street (Exeter) which had custody of the episcopal registers and the diocesan wills. The consistory court records were similarly apportioned between two locations, namely a chapel, that of St Edmund's, standing at the north-western end of the Cathedral wherein the tribunal normally met to transact its business, and "a room over the north porch". The former area seems to have lodged all the substantial court materials, "the court books, depositions and other court proceedings" (probably the majority of the cause papers), whilst the latter, one of several cubicles above the north porch, maintained the wills and parish register transcripts deriving from the bishop's peculiar jurisdiction in addition to some unspecified court records.⁹

It can only be a matter of speculation as to the general condition and order of the episcopal muniments in 1812. Yet although the report fails to comment directly upon the archives' well-being it is reasonably clear from what it has to say about the repositories themselves that the remains of the consistory were the poorer relation of the diocesan records. Thus, whilst the chamber above St James' chapel was "exceedingly well adapted for the purpose (of storing documents)", the room over the north porch, despite its sufficiency in size, was inadequately protected from the humid climate of the south-west so that it had taken the damp and a number of papers had been "much damaged". Meanwhile, down in the chapel, where as we have said the principal judicial materials appear to have been housed, damage sustained from the elements had been "considerable" and moreover

the records were "not safely secured". As a remedy and to prevent the occurrence of any further ills, the report recommended that repairs be made to the north porch area, essentially the reinforcement of the roofing fabric, and upon completion the transfer of all court documents thither.

Was this advice heeded? Certainly there are a number of indications to suggest that some plan of preservative action involving the tribunal's records was followed during the course of the last century, although much of its detail has unfortunately eluded us. Thus on 26 November 1819 the Exeter Dean and Chapter ordered the appropriation of the bell-toller's rooms situated above the north porch "for keeping the muniments of the consistorial court instead of the room now occupied for that purpose also over the north porch".¹⁰ The explanation of this manoeuvre would seem to be the acquisition of an enlarged area for the storage of documents and presumably by implication for additional documents. If such a reading is indeed correct one may perhaps view this decision as the necessary first step prior to a clearance of St Edmund's chapel and the evacuation of the main deposit of court materials, an idea supported by Canon Herbert Reynolds' appraisal of the episcopal muniments in 1895.¹¹ From this survey it is apparent that virtually all of the consistory's act books, deposition registers, and cause papers were indeed at this stage to be found over the north porch. Reynolds' account also mentions that many of the cause papers were residing in a series of tea chests which had been placed upon the floor of one of the chambers whilst the act and deposition volumes were stacked against the wall of the room, features which are at least suggestive of the removal of these documents from a previous depository.

Further evidence revelatory of an early interest in the care and preservation of the court's remains is provided by the tribunal's muniments themselves and in particular by the *libri actorum* and the deposition books. Many of these volumes carry markings upon their covers or initial pages in what appears to be a late eighteenth or nineteenth century hand. Some attempt at sorting seems to have been envisaged as the nature of these embellishments is either to describe the document or to indicate the years to which it relates, whilst the act books dating from the 1620s are also supplied with an elementary numbering system.¹² Almost certainly the author of this scheme was Ralph Barnes, an important yet rather neglected figure in the affairs of church government at Exeter during the last century, who served as both bishop's secretary and clerk to the Dean and Chapter.¹³ In terms of the management of the records of ecclesiastical authority, Barnes seems to have provided a positive and to some extent formative influence, a role which his dual office-holding made him especially

well-qualified to perform. Very likely it was he who was responsible for removing the bishop's registers from the deputy registrar's house, where security was less than desirable, to the safety of the diocesan registry in Palace-Gate located at the southern entrance to the Cathedral Close, and for setting these volumes in order, an operation which included the rebinding of several of their number. Similarly Barnes was also involved in restoring and indexing the early chapter act books and in overseeing the business of transferring documents to the Church Commissioners. Barnes seems to have been most active among the episcopal and capitular archives prior to 1850 and it is therefore a strong possibility that the sorting he carried out with the consistory court materials was linked both in time and intent to the rehousing of the tribunal's records. Indeed one may go further and suggest that his was the organising mind in this strategy and that the 1812 survey may well have been his own handiwork.¹⁴

Yet the impression of thoroughness and premeditation in the task of redeploying the court materials which is conveyed by the foregoing account tends to disguise the undoubted limitations of the nineteenth century archival venture. Barnes' main accomplishment seems to have been less to create order out of disorder with the tribunal's muniments, a chore possibly beyond his temperament or capabilities, than to simply restrict the process of documentary disintegration and decay. Yet even in this matter he was not altogether successful. The very avoidance of any serious ordering of the court records—as, for example, was the case with the cause papers—implies a somewhat superficial and expedient approach towards the preservation of already fragmentary and damp-ridden documents. Moreover, judging from the criticisms levelled at his exploits amongst the Dean and Chapter muniments, there was a tendency for Barnes to gather a mound of records into one convenient space and then to, in effect, close the door upon the collection. Such "jealous care" would do little to enhance the condition of the materials and indeed might well serve to further diminish the number of documents capable of being preserved.¹⁵ Consequently, when Reginald Lane-Poole examined the area above the north porch at the beginning of this century for the Historical Manuscripts Commission, he could only report the "very neglected condition" of its contents especially the court act books which stood "greatly in need of attention".¹⁶

Clearly, therefore, a much more intensive and methodical sorting of the consistory muniments was to be desired and the opportunity for such a course of action arose shortly after the end of the First World War when Prebendary J. F. Chanter, upon assuming the office of honorary archivist to the bishop, began a major reappraisal of the

entire episcopal archives.¹⁷ The most significant feature of this work, which occupied Chanter for much of the early 1920's and which included the repair and indexing of many of the bishop's registers, was the production of a catalogue of the diocesan records, a means of classification which continues to form the basis of the system of reference in use today. Unfortunately, despite the importance of this event, surprisingly little in the way of reliable or detailed information has survived to tell us how Chanter actually approached the task of arranging the large quantities of documents that had been placed at his disposal. In particular it is unclear precisely with what materials he dealt and how extensive the work he undertook may have been, especially as part of his labour has now been submerged by a more recent sorting.¹⁸ In so far as the consistory court records are concerned, some account of the condition in which these materials were found would have been invaluable and illuminating for today's student.¹⁹ Nevertheless, a few observations are possible.

It would appear that Chanter's principal contribution to the ordering of the tribunal's wares lay with the volumes of judicial proceedings, i.e. the registers of depositions and in particular the court act books. Judging from the markings which he (and before him, Barnes) made upon the *libri actorum* and their present mode of preservation, it is likely that the contents of a good many of these books had become separated from their original coverings and had split into sections or gatherings. Chanter's first task in this area, therefore, must have been to attempt a reunion of the dispersed pieces—themselves not necessarily too seriously damaged—with their wrappings or at least their companion parts. Once this operation had been completed the books could then be listed in chronological sequence. Almost immediately, however, Chanter seems to have encountered difficulties. Throughout his enterprise Chanter was hampered by a lack of adequate working space, a fact which no doubt accounts for the numerous errors and inconsistencies which have marred his otherwise commendable labours.²⁰ In terms of the act books such deficiencies have meant that misattribution, misdating and misarrangement are frequent occurrences.²¹ The most serious of these shortcomings is the last. The parallel series of *libri actorum*, a notable feature of the consistory survivals and further discussed below,²² would appear to have provided Chanter with a source of some puzzlement. Certainly he correctly identified the existence of these duplicate sets but his classification and apportionment of the volumes into their respective series was misleading to say the least. Chanter seems to have started from a false premise, for what have now in the present list been called "working copies"²³ of *libri actorum*—in other words the act books which were written into

during or shortly before or after the court sat—were described by him as “rough copies” to be contrasted with the *libri actorum* proper and what are here termed “fair copies”²⁴—editions of the tribunal’s acts painstakingly copied up at some later date in a blemish-free hand by one or a number of court scribes. The use of such phraseology would not be unduly troublesome were it not for the impression which is consequently given that the fair copies—Chanter’s *libri actorum*—are to be normally preferred to the working copies as a record of court proceedings and that they therefore contain an authoritative or authentic transcription of the acts initially entered into the working copies. However, whilst the latter does in general appear to be the case, there are important exceptions which point to the necessity of recognising the putative rough copies as the more reliable and complete account of the tribunal’s business activity.

Having thus begun from a position of some uncertainty, Chanter proceeded to compound his errors by mixing what are undoubtedly fair copy act books with working copies and describing them all as *libri actorum* whilst at the same time setting aside a number of working copies to form his rough copy series. It is difficult to see how Chanter determined this division. In his catalogue all the volumes he deemed rough copies were supplied with the suffix of a letter of the alphabet—thus 782a, 783a, and so on—to distinguish them from the numbers of his main *libri actorum* series. Consequently Chanter’s abrupt termination of the rough copy list with the act book for 1613-1614 would seem to imply some change in the administrative practice of the consistory registry. Yet as an examination of the succeeding act books in Chanter’s main series makes clear, the rough or working copies, which are identified not only by the poor handwriting of a busy scribe needing to work quickly, but also by their being bound up by the legal year running from September to July, in fact continue down to the Civil War and beyond into the nineteenth century. The confusion thus produced by Chanter’s organization is well illustrated by the placing in his catalogue of the working copy act book for 1614-1615 immediately after the fair copy book for 1618-1621. On the contrary, then, it is these latter fat volumes, each spanning several years, which constitute the subsidiary and therefore more interesting class of document.

Chanter’s involvement with the large quantities of cause papers is much less apparent and it is not at all clear how far he went towards putting them into any coherent pattern or determining the filing method of the registry. Certainly the occasional piece does bear signs of his examination but it is more likely that his association here was somewhat casual, picking out a paper simply because it contained a reference to a specific parish.²⁵ He also seems to have been prepared to

let others indulge in the process of searching in an area which most probably resembled a lucky dip.²⁶ Perhaps because of this intrinsically "amateur" approach, one is justified in believing that little more than salvage work may have been accomplished during Chanter's lifetime, a feeling, which if true, would only serve to underline the achievement of Miss Olive Moger who undertook the second major sorting of the consistory court records in the period immediately following the end of the Second World War.

The war years had witnessed the bombing of the Cathedral. A major casualty of the blitz was the bishop's muniment room above the chapel of St James and it was therefore with the voluminous contents of this store, contents which now apparently included not only the loose papers belonging to the principal registry but also the cause papers of the consistory court, that Miss Moger, a local record agent, was to be primarily concerned.²⁷ Miss Moger's first action here was to oversee the transference of these materials to the library of the Dean and Chapter where she proceeded to arrange the documents into classes and categories preparatory to their packaging and storage.²⁸ As the new listing indicates, a sufficient number of the consistory's cause papers had survived in their files to suggest the basis or shape of the registry's archival practice around which any reorganization might be constructed.²⁹ Nonetheless, it was also clear that some *ad hoc* measure would be necessary to deal with the large accumulations of cause papers which had become distanced from their files. For the early materials, those discussed here, Miss Moger decided to group all these documents by decade, at least those surviving for the seventeenth century where quantity permitted this method of division. The chief result of this work, the bundles of "libels, allegations and interrogatories",³⁰ thus include not only the normal constituents of the files of the same name, but also large numbers of strays from other broken files—sentences and *responsiones personalia* principally—and papers which were evidently never filed—audience court proceedings and depositions and personal answers taken on commission. Such is the extensive and heterogeneous nature of these bundles that it is most probable that many more files of all kinds have survived in a substantially complete form than might be supposed from a cursory examination of the listing.

As an extension of this work, Miss Moger also decided to create a number of smaller, specialist classes from the loose cause papers which she felt would be of particular value and interest to users of the court's muniments. One such group is that comprising "testamentary causes".³¹ The probate business of the consistory court and the principal registry seems to have been an especial concern of Miss Moger. Prior to the war she had, together with Sir Oswyn Murray, transcribed a

great many of the wills which had been proved at Exeter, a fortunate employment as it happened because the bomb damage sustained during 1942 completely destroyed the probate registry in Bedford Circus and with it virtually all of the surviving testaments and inventories. In the light of this major loss the cause papers relating to disputed wills, many of which contained details and verbatim extracts of the deceased's bequests, took on an added significance. What Miss Moger thus appears to have done was to isolate these materials from the bulk of the loose papers she had bundled and to group them separately, again by decade. At the same time she also calendared or abstracted the information which they furnished, repeating this latter exercise with those testamentary papers found among the original files. Two further important categories which Miss Moger created are the "Complaints against the Clergy",³² materials relating to ill-disciplined and criminous clerks mostly dating from the second half of the seventeenth and eighteenth centuries, and the "File of Special Cases",³³ very much a random compilation by no means entirely devoted to consistory affairs, or indeed consisting of that court's records.

The work which Miss Moger performed upon the tribunal's cause papers was as timely as it was desirable. Irrespective of the events of the war it is likely that any further prolonged period of residence in the Cathedral would have led to many more documents becoming unfit for handling or would have resulted in their loss altogether. Nonetheless a few qualifications regarding the nature of this sorting ought to be mentioned. It is uncertain, for example, to what extent Miss Moger saw her task in terms of a permanent reorganization or whether she envisaged a more searching appraisal to be carried out at some later date to replace an essentially stop-gap measure. Certainly the impression one gains from looking through the classes of materials which she herself was responsible for creating is of a partial and consequently less than satisfying division of these papers. The varied nature of the bundles of libels provides a major case in point. Here it would have been of some advantage and convenience to have extracted the sentences and *responsiones personalia* which were always filed separately, and to have formed a group or groups with them as an addendum to the extant files. Similarly with the papers relating to the proceedings of the episcopal audience court, their bulk seems never to have been so great as to warrant filing and they therefore would appear to require special treatment, although it is a debatable issue how far this particular tribunal was viewed as administratively independent of the consistory.³⁴ Again the depositions by commission represent a very important collection supplementing the evidence of witnesses recorded in the deposition registers. Many have survived, not only in the libel bundles,

but also throughout most of the other new divisions of the cause paper collection and it would have been of considerable value to have brought them all together, as presumably they were once so arranged, in order to extend the two small bundles of these depositions formed in Prebendary Chanter's time.³⁵ Certainly a valid criticism which is capable of being levelled at the present means of arrangement is the way in which each of these recently constituted classes fails either to accurately reflect its alleged composition or to be exclusive of other, similar groupings. Thus individual cases from "Complaints against the Clergy" have some of their papers among the bundles of libels, several of the processes are not processes at all but depositions taken on commission, some testamentary papers still remain in the libel bundles, whilst a number of the testamentary papers themselves are only marginally associated with probate disputes. More generally little attempt has been made to bring together related documents housed in the same box or item and it is also necessary to be beware of the mis-channelling of papers into wrong decades. Consequently in any search for the records of a particular cause one has to be prepared to look in several areas, not all of them obvious, to be certain of not having overlooked any relevant document.³⁶

III

(a) LIBRI ACTORUM³⁷

The *libri actorum* of the Exeter consistory court contain the procedural record of the tribunal's plenary jurisdiction. The causes found in these volumes are of two kinds, *ad instantiam partium* or civil suits and *ex officio promotio* actions which may be either civil or criminal in character. The procedural stages through which each case passed on its way to sentencing or abandonment are entered in the act books under separate sessional headings denoting the court's assemblies. At Exeter these meetings are known as either general or single sessions. The former gatherings occur at intervals of approximately three weeks throughout the course of each legal year and comprise five consecutive weekday sittings of the court. Mondays are reserved for the hearing of disputes emanating from the archdeaconry of Exeter, Tuesdays for cases from Totnes archdeaconry, Wednesdays for Cornish affairs and Thursdays for matters from Barnstaple whilst Fridays are usually given over to a mixture of suits from all four archdeaconries. Joining these principal assemblies of the tribunal together are the so-called single sessions, weekly meetings which are normally held on Fridays although other sittings might frequently occur. Business from all quarters of the diocese is despatched on these days.

Two general points about the use of the *libri actorum* should be

noted. Firstly, it is necessary to remember that because of the arrangement of the act books' contents into sessions each of which assembly records only that day's action taken in the causes before the court, the tracing of the full hearing of a specific case will require a careful and tedious search through many folios of a *liber actorum*.³⁸ Vigilance is the *sine qua non* of this work, for although some indication of the court session to which a case has been continued is normally supplied in the judicial record, it is by no means unusual to find this future appearance entered at another and quite different meeting of the tribunal. Secondly, it should also be remembered that the pleading of a cause brought before the court by means of plenary procedure was conducted through a series of written documents—libels, interrogatories and depositions—each of which item was representative of a specific stage in the course of that suit's progress, and which were subsequently filed after their production and perusal in court. Rather than reproduce the contents of these documents word-for-word in the *libri actorum*, the scribes of the act books satisfied themselves with simply noting the introduction of such materials into the proceedings and the reaction of the judge and the opposing party to these events. Thus, whilst the *libri actorum* provide the basic details of a cause, the names of the protagonists, the parish of their origin, the general subject of dispute—if the suit is one of the four possible *ad instantiam partium* actions³⁹—and a notice of the verdict reached, it must be to the accompanying cause papers, those documents exhibited in court, that one turns in order to gain a full knowledge of the circumstances of the matter which is at issue.

The foregoing remarks concerning the general characteristics of the consistory's act books can be applied with varying degrees of precision to most church court *libri actorum*. To this extent, the survival of these volumes at Exeter cannot be considered to be especially noteworthy. Where, however, a premium does attach to the Exeter court books is in the way in which it is possible to identify from the surviving *libri actorum* at least two and probably three distinct sub-categories or series of act book. The first and principal sub-category is that of the so-called working or rough copy *libri actorum*. These were the act books which were produced and used whilst the court was in session and it is with them that the name *liber actorum* is normally associated. By the beginning of the 1580s the manner of construction of these volumes had settled into the following mould: three or four large gatherings of expansive and untidy script relevant to one legal year which were bound up in a limp parchment covering.⁴⁰ As far as it is possible to determine, this series of act book contains the full or certainly fullest record of the consistory court's judicial proceedings; hence the contemporary appellation of "libri primi".⁴¹

The second sub-category of *liber actorum* comprises what are described in the new listing as fair copy volumes. These act books form substantial tomes, each numbering between four and five hundred folios and each spanning several legal years. The stiff board covers and reinforced spines of these volumes are indicative of a careful and painstaking approach to the business of construction, an approach which is in marked contrast to the hasty assembly of the working copy *libri actorum*. The purpose of the fair copy act books would seem to have been to provide a neat and legible edition of the abbreviated script of the rough copies which could serve as a means of reference for past suits. Such an explanation would help to account for the restriction of the survival of these volumes to the period 1580 to 1620, the time of the consistory court's greatest activity and when the contents of the working copy act books are rather less ordered than usual. It should be noted, however, that whilst the fair copy volumes do in general provide a satisfactory account of the *acta* contained in the rough copies, a number of editorial practices have been employed by the transcribers to ease the burden of their labours. For example, causes which have evidently been abandoned but which are continued in the working copy act books from one session to the next "in status quo" are omitted from the fair editions almost immediately they lapse into this condition. Similarly, the occasional lengthy passage of judicial *acta* has been truncated in the transcript and a note advising the reader to consult the relevant "liber primus" substituted in its place. More seriously, the compilers of the fair copy volume which covers the period 1605 to 1609 have by design imperfectly entered and in a few instances neglected to include in this particular act book a large number of new causes brought before the court.⁴² Although the employment of these practices can be justified on the grounds of administrative convenience, the presence of such traits points to the desirability of using the rough copy *libri actorum* whenever possible even if this does mean having to penetrate an often impenetrable script.

The final sub-category of act book consists of one extant volume covering the period September 1615 to December 1616.⁴³ In condition and construction this *liber actorum* is of a piece with the working copy act books. However, the volume's much diminished size which entitles it to be regarded as a pocket edition of the court's acts, clearly distinguishes it from the main series of *libri actorum*. As the scribal hand of this book is the same as that which is to be found in the corresponding rough copy, it may reasonably be conjectured that the volume probably belonged to a actuary of the court or to the tribunal's registrar and thus constituted that individual's personal record or note-book of judicial proceedings. A comparison of the contents of the respective

volumes reveals that this unusual *liber actorum* contains only a selection of the causes coming before the court during the period which it covers, a point of some importance as a number of the post Restoration act books which remain undifferentiated in Chanter's catalogue can undoubtedly be placed in the same category.⁴⁴

(b) LIBRI EX OFFICIO

The *libri ex officio* contain the record of the consistory court's criminal or summary (*ex officio mero*) jurisdiction. These volumes are concerned with the routine apprehension of crime in the diocese throughout the course of each and every year and are therefore to be regarded as archivally, if not indeed administratively, distinct from the records of detection generated by the bishop's triennial visitations. The method of arranging the causes within the office books follows that of the *libri actorum* described above. Notices of the offence for which the defendant has been cited, his appearance and response to the accusation and the tribunal's reaction to that answer constitute the basic procedural details which are supplied in these volumes. However, as the judicial record is often defective in this respect it is necessary to resort to the accompanying cause papers—the churchwardens' bills of presentment, the *responsa* of defendants, citation mandates and schedules and certifications of excommunication and penance—in order to obtain the fullest picture of the court's disciplinary activities.

The foregoing advice, of course, presupposes the survival of a sufficient quantity of source-materials. Unfortunately, however, extremely few records among the extant muniments of the consistory court relate to that tribunal's summary jurisdiction. Two office act books and two files of *responsiones ex officio* in fact constitute the sum total of survivals prior to 1660 and both of these classes of document fall within the period 1620 to 1631.⁴⁵ Such a complete absence of consistory disciplinary material before the third decade of the seventeenth century cannot be attributed entirely to the processes of decay. Considerable losses have occurred amongst the court's civil records for this period, yet a sufficiently large number of documents has survived to enable a rounded image of the tribunal's plenary jurisdiction to be obtained. In contrast, the only evidence for the court's office work prior to 1620 consists of the occasional disciplinary case entered in the *libri actorum*⁴⁶ and two or three references to the existence of *libri ex officio* at the very end of the sixteenth and at the beginning of the seventeenth centuries.⁴⁷ Such a paucity of information has therefore suggested to the present writer that the regular correction of spiritual offenders at Exeter forms an aspect of the consistory court's jurisdiction which was of recent origin, an innovation which probably dates from the closing years of

Elizabeth's reign. Prior to this period it would seem that almost all the disciplinary work of the diocese was transacted by tribunals which operated in the archdeaconries and peculiars of the see. As much of this traffic was thus processed by courts belonging to the archdeacons and as the majority of these authorities' pre-Civil War records have perished along with the bishop's visitation *comperta* books, it will be apparent to what extent the diocese of Exeter is deficient in those materials which are generally recognised as being so necessary for an understanding of the course of religious and social change.

(c) DEPOSITIONS

Little is required to be said about the richly informative series of deposition books which contain the testimonies of witnesses given in instance and promoted office suits. These volumes, sometimes called registers at Exeter, survive from the early years of the sixteenth century when almost all of their contents are in latin until the final decade of the seventeenth century when the series seems to have been discontinued. They are particularly valuable for the Elizabethan period where their strong sequence helps to offset gaps among the *libri actorum* and the very poor incidence of cause papers.⁴⁸

One point, however, needs to be borne in mind: these volumes by no means include all the evidence which was taken by the court in the course of its plenary work. Indeed the deposition books only record those testimonies which were made personally in the consistory and therefore reflect the willingness or otherwise of witnesses and litigants to travel to Exeter. To ease the difficulties of this situation, it was court practice, upon proctorial request, to issue a commission *in partibus* to a number of local clergy, empowering them to convene a special sitting of the tribunal either in the parish church of one of the parties or in a neighbouring church. The scribe of this *ad hoc* session was usually one of the consistory's actuaries. When the depositions and personal answers had been secured,⁴⁹ it was his task to return the transcript or "process" of the proceedings to Exeter in time for a predetermined court day. As these commissions represent a means of devolution in a large diocese it is to be expected that they should be most frequently issued for causes originating from the remoter corners of Cornwall and Devon and that the deposition books should thus be correspondingly bare for these areas. However, whilst this expectation is indeed borne out by the available evidence, it should also be noted that commissions were regularly granted for disputes occurring in parishes near to Exeter, an incidence which suggests other reasons than simply distance for their use. Presumably the costs of transportation and of provisioning which would be incurred if large numbers of witnesses were brought to

court weighed heavily upon litigants' minds. Yet commissions cannot be considered to be cheap items. During the early seventeenth century they were taxed at a thirty shilling to three pound average, a cost which might raise a bill of expenses by as much as one third.

Commissions *in partibus* take several forms. Some are written upon parchment membranes stiched together as rolls, some are large sheets of paper tied by cord or string whilst others are small paper gatherings or booklets. A complete commission can be expected to include the following items: the mandate directed to the group of clergymen setting forth the details of the cause, for whom the witnesses are to appear, on what days and where the commission will sit, whom the scribe will be and by what date the process has to be returned to court; the libel or allegation to be put to the witnesses; the interrogatories of the opposing party; substitutions by proctors of a local agent to act on their behalf; and a synopsis of the commission's proceedings which prefaces the depositions themselves. As was mentioned above, many of these important documents have survived in the consistory court's archives especially among the bundles of libels.

(d) CAUSE PAPER FILES

It was court practice to file libels and related papers, *responsa*, sentences and schedules of expenses separately.⁵⁰ It is likely that citations and schedules of excommunication were also stored in this fashion, as they certainly were after 1660, but apart from a handful of these documents for the late 1550s, which incidentally are among the earliest surviving cause papers at Exeter, they have long since perished.⁵¹

Of these gatherings two groups of files, the *libelli*, *materies*, *allegationes*, *interrogationes et exhibita* and the *responsiones ex officio et certifficatoria exhibita*, merit special consideration.⁵² The former have arisen from the consistory's civil jurisdiction, the latter from the court's criminal authority. Both would seem to have been substantial compilations formed out of a wide range of materials—wider than their titles might at first suggest—which were sorted into annual bundles running from March to March. Their function as general repositories for the tribunal's documentation not only distinguishes them from the more specialised and restricted groupings of the other files but also invests them with their value for today's student. Thus because of the brevity of the entries contained in the court act books it is to these files that one should chiefly turn in order to acquire a clearer understanding of the procedure and conduct of litigation in the consistory.

This observation is especially true of the libel files. These gatherings comprise the central proctorial papers of a cause, the plaintiff's libel which sets forth the details of the matter in dispute—the pivot of all

instance activity at Exeter—the defendant's allegation or *materia*, which represents his assessment of the situation and which seeks to refute the points or positions, as they are called, advanced by the libel, the interrogatories which are put to witnesses summoned to give evidence and the exceptions which are subsequently lodged against their testimony. Beyond these principal materials may be found such items as positions additional and addenda expanding upon the contents of the libels and allegations, counter-allegations or *materia replicatoria* by the plaintiff and further lists of interrogatories and exceptions. Of course the more papers of this sort associated with a particular cause the more complex its path of litigation and pleading through the court is likely to have been and it should therefore be noted that the variety of cause papers contained within these files is closely linked to the predominant share which tithe suits—the contentious tithe—occupied in the business life of the consistory during the latter half of the sixteenth and early years of the seventeenth centuries. In addition to these proctorial documents, the files also comprise a large number—perhaps amounting to as much as a quarter of their full extent—of *exhibita*. Included here are such diverse specimens as churchwardens' and sequestrators' accounts, administrators' accounts, copies of wills and inventories and arbitration awards, all of which had been introduced into court as evidence by contestants. Then there are the court directives, various mandates arising from the course of action advocated in the preceding proctorial papers, in particular writs of prohibition from common law tribunals and inhibitions and remittals of appeals from superior ecclesiastical bodies, namely the Arches and the archbishop's audience court. Finally, it is possible to find numerous requests by archdeacons for significations against obstinate excommunicates, any number of transcripts taken from the pages of court act books (apparently produced for the benefit of proctors) and a few incidental pieces of correspondence together with the occasional draft cause paper and jotting.

An examination of the one intact file of *responsiones ex officio* would seem to reveal the adoption of a specific approach to the ordering of the contents of these bundles. Working upwards from the bottom to the label, i.e. following the manner of the file's construction, at least five or six distinct categories of document may be discerned. Firstly, there are the lists of persons sought by the court. These papers are compiled by the consistory's apparitors and contain markings as to their degree of success in finding those named in the listings together with a brief description of the offences for which the suspects are sought. Accompanying these lists are letters from the apparitors addressed to members of the court's central staff explaining the difficulties which they have

encountered in performing their work, suggesting the names of further wrong-doers to the tribunal, advice which often includes an assessment of such persons' wealth or ability to compound for any misdeed committed (an interesting side-light here upon the methods and motives involved in the detection of spiritual crime) and requesting that processes (citations) be despatched to summon them. Next follow the letters or certifications of innocence sent into court on behalf of defendants by members of the clergy and other local notables testifying to that individual's good standing in the community. Beyond are the schedules of penance which describe the nature of punishment for the convicted and the terms of its performance. A note of execution is appended by the defendant's incumbent. Then come several extracts of cases copied from office act books including those belonging to the archidiaconal tribunals and one or two lists of articles containing the questions put to suspects on their appearance in court. These are followed by the *responsa* themselves, the core of the file and a particularly valuable series of papers which record what those summoned had to say in mitigation or explanation of their alleged offences. Notes of the judicial decisions consequent upon these replies, which presumably are those entered in the *libri ex officio*, may be found in the margins and a comparison of the two elements reveals the latitude the court was prepared to exercise in arriving at its judgement. Finally, there is a section devoted to a mixture of all the preceding papers. These, on the basis of their chronology, would appear to be late corrections in the year for which the file is concerned and supply further indications of the consistory court's approach to the task of arranging its disciplinary business.⁵³

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NOTES AND REFERENCES

1. Houlbrooke, R. A., 1979. *Church Courts and the People during the English Reformation 1520-1570*, Oxford, 3.
2. Owen, D. M., 1975. Ecclesiastical Jurisdiction in England 1300-1550: The Records and their Interpretation. In Baker, D. (ed.), *Studies in Church History II: The Material Sources and Methods of Ecclesiastical History*, Oxford, 199-221, at p. 205.
3. Pill, D. H., 1968. Exeter Diocesan Courts in the early sixteenth century, *Rep. Trans. Devon. Ass. Advmt Sci.*, **100**, 45-53 and Cassidy, I., 1963. *The Episcopate of William Cotton, Bishop of Exeter, 1598-1621; with Special Reference to the State of the Clergy and the Administration of the Ecclesiastical Courts*, Oxford University B.Litt. thesis comprise the secondary literature on the pre 1660 consistory court. Both works, however, are unsatisfactory in their treatment of the tribunal. For a

- consideration of the post Restoration court see Smith, M. G., 1964. *A Study of the Administration of the Diocese of Exeter during the Episcopate of Sir Jonathan Trelawny, Baronet 13 April, 1689-14 June, 1707*, Oxford University B.D. thesis.
4. Devon Record Office, Chanter 785, 786, 763. Unless otherwise stated all manuscript citations will refer to documents located at the Devon Record Office.
 5. Court books survive from 1513, deposition registers from 1511 and cause papers from 1558.
 6. *The Records of the Bishop of Exeter's Consistory Court to 1660: Devon Record Office Handlist I*, Devon County Council, 1981.
 7. Chanter, 1694.
 8. CC.181/65/I. The act referred to was 52 Geo. III c. 146 'for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Burials, in England'. Clause 13 of the act concerned itself with 'providing proper places to preserve copies of Registers in Dioceses where it shall be found necessary' and to this end the bishop, his chancellor and the *custos rotulorum* of the relevant county were to inspect the various ecclesiastical registries within their diocese and report to the Privy Council before 1 Mar., 1813 (*A Collection of the Public General Statutes passed in the Fifty-Second Year of the Reign of His Majesty King George the Third*, London 1812, 1325-1334).
 9. These unspecified court records were probably the residue of the cause papers. The north porch area had been used as an overflow depository for the consistory court from at least the early seventeenth century (Exeter Cathedral Library, DC 4626/2/2). For a description of the various rooms above the north porch see, Reynolds, H. E., 1895. *The Ancient Diocese of Exeter*, Exeter, Appendix B.
 10. Ex. Cath. Lib., DC 3578, p. 265.
 11. Reynolds, H. E., 1895. *The Ancient Diocese of Exeter*, Appendix B.
 12. Chanter, 796, 798, 802-804, 807-808.
 13. Barnes was chapter clerk from 1810 until his death in 1869 (*ex info.* Mrs Erskine).
 14. Both CC. 181/65/1 and CC. 181/65/2, which is a rough draft of the former, appear to be in Barnes' handwriting.
 15. Comment by Stuart A. Moore in the preface to his calendar of the Exeter Dean and Chapter muniments (1873).
 16. *Historical Manuscripts Commission Reports, Various Collections*, 1907, iv, 13-22, at p. 22. This report is confined almost entirely to principal registry materials.
 17. CC. 182a, folder marked 'Exeter Diocesan Papers Miscellaneous found in Chanter's Catalogue', letter from Chanter to the bishop of Exeter, 9 Nov., 1920. Chanter's association with the diocesan muniments can be traced to the very early years of the century.
 18. Chanter would seem to have included records belonging to the Dean and Chapter and archdeaconry of Exeter in his survey (*ex info.* Mrs Erskine).
 19. Chanter appears to have submitted a general report on the state of the episcopal archives to the bishop in Nov. 1920, but this has not survived (CC. 182a, folder, Chanter to the bishop, 9 Nov., 1920).
 20. Note in Chanter catalogue. This consideration may also explain why two court books, the *liber actorum* for 1626-1627 (Chanter 800) and a *liber ex officio* (Chanter 762) were lost in the course of sorting (Moger catalogue, fo. 1).
 21. For examples of misattribution, see nn. 24 and 32 to *Handlist*. Regarding misdating, Chanter regularly failed to indicate whether he considered the New Year to begin on 25 Mar. (old style) or on 1 Jan. (new style). In addition, Chanter often misread dates entirely with the consequence that the act book series appeared to possess less continuity than it in fact does.
 22. See p. 15 *et seq.*
 23. Chanter 780, 781, 782a, 783a-c, 784a-e, 785a-b, d-e, 786a, c, 787a-b, 789-799, 801-808, 812, 813; British Library, Egerton 2631. These volumes cover the period 1572-1650.
 24. Chanter 782-784, 784f, 785-788. These volumes cover the period 1580-1621.

25. Most of these papers relate to North Devon, the area of Chanter's birth and the focus of his historical pursuits. See his, *The Parish Clerks of Barnstaple 1500-1900*, *Rep. Trans. Devon. Ass. Advmt Sci.*, 36, 390-414.
26. See n. 69 to *Handlist*.
27. Presumably it was Chanter, perhaps shortly before the War, who transferred the cause papers to the bishop's muniment room. He may also have moved a number of the court books thither and to the diocesan registry.
28. *Pilgrim Trust Survey of Ecclesiastical Archives: Diocese of Exeter*, 1949, 2-3, 11-12. A catalogue of the cause papers was 'produced by Dec. 1947 and placed in the Cathedral Library 1949' (Moger catalogue, fo. 1). However, restorative work continued into the early 1950s. The cause papers were initially stored in the muniment tower of the Dean and Chapter whilst the principal registry documents were removed to the Roborough Library building on the site of Exeter University. During the 1950s both collections were transferred together with the remainder of the episcopal archives to the custody of the newly established Devon Record Office.
29. *Handlist*, 7-8.
30. CC. 1-7.
31. CC. 186-191.
32. CC. 178.
33. CC. 181.
34. See nn. 85, 87 and 109 to *Handlist* for the location of these papers.
35. Chanter 11035, 11038. See n. 69 to *Handlist* for the distribution of the depositions.
36. In the mid 1970s, Miss Rosemary Dunhill, then assistant archivist in the Devon Record Office and now deputy county archivist at the Northamptonshire Record Office, sorted through many of the pre 1660 cause paper items, adding piece numbers, compiling a partial card index to their contents and overseeing repairs to the more fragile documents. She also produced a number of typescript calendars to individual cause paper and principal registry classes.
37. I shall be discussing at length the interpretative issues which are raised in this section in my forthcoming Cambridge doctoral thesis, *The Diocese of Exeter 1560-1640: A Study of English Church Government in the Post Reformation Period*.
38. The two earliest extant *libri actorum* (Chanter 775, 776) which concern the years 1513-1518, have each cause's entire *acta* recorded under a single entry.
39. i.e. Matrimonial, testamentary, defamation and title suits.
40. The five earliest surviving *libri actorum* (Chanter 775-779) which span the period 1513-1563, are all working copy volumes but are of variable size and quality. 777 and 778, for example, often fail to supply details of the nature of the action or to record the forenames of litigants. 779 meanwhile is a large volume of fair copy proportions covering twenty-six months and containing numerous criminal prosecutions arising from Archbishop Parker's metropolitanical visitation of 1561.
41. Chanter 784, *sub* 10 Oct. 1595, Hatch *c.* Loves.
42. Chanter 785. A brief section of the succeeding fair copy act book is also affected in this way (Chanter 786, *sub* 26 Mar. 1610-27 Mar. 1610).
43. Chanter 790a.
44. Chanter 819, 820, 822.
45. Chanter 763, 764; CC. 134, 170.
46. e.g. Chanter 775, fo. 16v; Chanter 777, *sub* 11 Jan. 1529/30, Off. *c.* Guston.
47. Chanter 758 (1595); Chanter 760/902, p. 5 (1602).
48. Chanter 854, 854b, 855, 855a, 855b, 856, 857, 859-862, 864, 866, 867; CC. 179, 180. These volumes cover the period 1511-1649. Reynolds, H. E., 1892. *Odd Ways in Olden Days Down West or Tales of the Reformation in Devon and Cornwall*, Birmingham, prints a number of extracts from the deposition registers of the mid sixteenth century.
49. Commissions *in partibus* might be granted specifically to receive the personal answers of defendants and plaintiffs. It should also be noted that notwithstanding the maintenance of *responsiones personalia* files the deposition registers contain a number of personal answers taken in court at Exeter.

50. This practice was discontinued in the eighteenth century when cause papers were arranged according to cause.
51. These citations and excommunication schedules would appear to constitute the substance of a file for 1558-1559 and may be found in CC. 1, 2, 186.
52. CC. 15-25, 134, 170. The files of *responsiones ad instantiam* are CC. 84-92; the files of sentences, CC. 142-146; the files of schedules of expenses, CC. 161-162.
53. The *responsiones ex officio* files would seem to have been discontinued after the Restoration.