THE INTERREGNUM COURT OF CHANCERY

A Study of the Career and Writings of John Lisle, Lord Commissioner of the Great Seal (1649-1659)

by

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PART I

JOHN LISLE: POLITICIAN AND JURIST OF THE INTERREGNUM

INTRODUCTION

John Lisle was one of the most powerful, yet one of the least well known political personages of the English civil wars and Interregnum. His reputation survives only as one of regicide and unswerving loyalty to the military phase of Oliver Cromwell's Protectorate. For these two aspects of his political career from 1640 to 1660, John Lisle has suffered in the works of authors from his day to the present. However, there was considerably more in Lisle's life than regicide and devotion to Cromwell. He was one of the lords commissioners of the great seal during the Interregnum. Yet his precedence in the High Court of Chancery is invariably accompanied by disparagement of his abilities as a lawyer and equity judge. Nevertheless, Lisle presided in Chancery as one of the lords commissioners for the whole of the Interregnum, and his work at the seals does not support the later statements of his detractors.

Lisle was indeed a regicide, and perhaps that fact more than any of his activities accounts for his relative obscurity in the history of the Interregnum. While the present work is primarily a history of the Chancery and equity during the Interregnum, it is related through the writings and career of John Lisle. For this reason, it is necessary to establish

firmly Lisle's rise in the state to the highest judicial office for the Interregnum, Lord Commissioner of the Great Seal. For the most part, Lisle's life before election in 1640 to the Long Parliament still remains obscure. Part I of the dissertation will, therefore, attempt to relate what is known of Lisle's life before 1640; his various relatives and associates; his early career in Parliament; the change in his parliamentary career after 1644; his political career as a high executive and judicial officer after 1649; and finally his flight and death after the Restoration of the monarchy in 1660. Lisle's work in the Long Parliament from 1640 to 1649 was the overriding factor in his selection as a commissioner of the seal in 1649. His politics from 1649 to 1659 maintained his appointment to the Chancery bench.

CHAPTER I

EARLY LIFE AND PARLIAMENTARY CAREER TO 1644

John Lisle, eldest son of Sir William Lisle, came from a family of landed gentry at Wotton Park, Isle of Wight. Although his birthdate is uncertain, it was probably about 1610. What is known of Lisle's early life is quite fragmentary. His godfather, Sir John Oglander of Nunwell, Isle of Wight, wrote in his notebook that the Lisle family was of the two oldest in the Isle of Wight with many branches going back hundreds of years. They "lived well," he wrote, and "hoped to continue to do so."[1] Lisle's mother was Bridget Hungerford, daughter of Sir John Hungerford, of the influential family in Gloucestershire and Wiltshire.[2]

The Lisle family was large, with many uncles, aunts and brothers and sisters. Lisle's uncles included Thomas Lisle of Palmes, Hampshire; John Lisle, later a captain in the Parliament's Navy; Anthony and Edward Lisle.[3] His sisters were Mary, wife of Alexander Thistlethwaite of Winterslow, Wiltshire; Mabell, wife of Thomas Meutx of Kingston-upon-Thames; Bridgett, wife of William Jennings, son of an ironmonger; Anne, wife of John Cole of Odiham, Hampshire; and Elizabeth.[4] Lisle's brothers included William (later knighted in 1665), Edward, Richard,[5] and Daniel.[6] Lisle

was the oldest of these sons of Sir William and was therefore heir to Sir William's estate at Wotton, Isle of Wight. Some discrepancy appears in the sources whether John or William was the eldest son. The question arises from the fact after 1660 John was attainted for his Interregnum activities while William made his peace with the King and inherited most of the Lisle property. After the death of John in exile in 1664, his brother became Sir William.

In marriage, John Lisle was very successful financially. Lisle's first marriage was with Mary Elizabeth Hobart, the daughter of Sir Henry Hobart, Lord Chief Justice of the Common Pleas. They were married 15 February 1632, in London at Highgate. For agreeing to this union, the Lisle family received £4,000 in gold, which Oglander reported was the largest amount the Isle of Wight had ever seen. In addition, the advantages for a lawyer to marry the daughter of a former Lord Chief Justice were considerable.[7] That next summer the Lisles entertained the Lady Hobart, her daughter and John for two months from 12 July to 17 September.[8] Oglander wrote that Lisle "showed his masterpiece both in getting her, and in his will for marrying her, for she was none of the handsomest -- as you may perceive by these lines made at her wedding: Neither well-proportioned, fair nor wise: All these defects four thousand pounds supplies."[9] The marriage ended a little over a year later in the death of Elizabeth in childbirth, 15 March 1633.[10]

The second marriage was as profitable for Lisle as the first. In 1636 Alice Beconsawe, daughter of Sir White Becon-

sawe, brought Lisle several estates in Hampshire.[11] At least three sons and two daughters were produced in this union. Triphene married one Lloyd and later one Grove, producing a daughter, who married Lord James Russell, fifth son of William Russell, First Duke of Bedford. Bridget married Hezekiah Usher of Boston, Massachusetts, the president of Harvard College.[12] Of Lisle's three sons, Beconsawe, William and John, only John survived his father. Beconsawe followed his father in a law career and was admitted to the Middle Temple 1 May 1649, as the son and heir of John Lisle, a master of the bench.[13] When Beconsawe died in 1658, his brother William received his place at the Middle Temple upon the recommendation of Lord Commissioner Lisle.[14]

John Lisle secured the advancement of his son William to the degree of the Utter Bar of the Middle Temple, and to the chamber that Lisle himself had had at the Temple.[15] I cannot determine how much longer William lived; he was alive in 1660,[16] but in 1679, Lisle's third son John is listed as the heir of his mother Alice to the manor of Moyles Court, which would have been William's had he lived.[17] The youngest son did inherit the various properties of the Lisle family in addition to some of his wife's, Katherine Croke, and his second wife's, Anna Howe. John Lisle died in 1709.[18]

Lisle's brother William also followed a law career and entered the Middle Temple bound to John, 21 April 1634.[19] William was called to the bar of the Temple 4 June 1641,[20] and is known to have practiced law during the civil wars, for he resigned a case in June 1644, to follow parliamentary commissioners into the country.[21] William undoubtedly pro-

fited from his brother John's position in the government, as William also held some offices of trust. By act of Parliament 16 July 1651, William became one of the trustees at Drury House for the sale of the estates of delinquents,[22] and was subsequently appointed to this office on several occasions.[23] William also served on the Committee of Middlesex for the assessment of £120,000 in December 1652, and on the Committee of Northamptonshire for the assessment of £100,000 in January 1660.[24] The experience which William Lisle gained in acting as trustee for the sale of delinquents' estates, explains his acting as executor and attorney for some who found themselves before the Committee for Compounding with Delinquents at Goldsmiths' Hall.[25]

It has been generally assumed that William Lisle was a Royalist because he was thought to have been involved in the plot to rescue Charles I when he was imprisoned at Carisbrooke Castle, Isle of Wight, in January 1648. Charles was to be aided by a general rising of Royalists on the island led by William Lisle and young John Oglander, Sir John's son. But it was not William the brother but William the son who planned the escape. The attempt, as all the others, was abortive, and in 1651 the particulars became known when the Royalist Thomas Cooke was examined at Whitehall.[26] William supposedly fled the kingdom into exile with Charles II,[27] but it is extremely doubtful that either William ever left England. William Lisle, John's brother, was made a bencher of the Middle Temple in 1663, a master of Chancery in 1665, and a knight in 1665, the year after his brother's death in

Switzerland.[28] At that time William was also able to recover some of the estates that were his brother John's as heir of their father.[29] William may also have owned land in Northamptonshire and Cambridgeshire before the civil wars.[30]

John Lisle's brother Daniel, third son of the elder Sir William, likewise entered the Middle Temple as his brothers had before him, and later profited by his brother John's influential position in the new government after 1649. Daniel entered the Middle Temple 16 November 1646, bound with his brother William and George Ryves.[31] He probably took no part in the military aspects of the war, but later he served as a special representative of the Parliament to the Queen of Sweden.[32] Daniel was appointed by order of Parliament 25 February 1652, and Lord Commissioner Whitelocke, John Lisle's colleague at the seals, reported to the Council of State on his appointment 10 March 1652.[33] Daniel traveled to Hamburg and Lübeck by the ship Lion and was well received at both ports of call.[34] He returned to England by 22 July 1652, and lived until 20 August 1663.[35]

It is not difficult to reconcile Daniel Lisle's appointment of high trust in government when one places it in the context of other members of the Lisle family who profited by John Lisle's position of power in the state. If one considers Daniel's appointment with the other examples of nepotism beginning with John Lisle's brother-in-law, Alexander Thistlethwaite, who became High Sheriff of Wiltshire in October 1645,[36] when Lisle first came to a degree of influence in Parliament, then it becomes apparent that Lisle was not

averse to using his influence for the benefit of others in his family. Lisle placed his son William as clerk of the injunctions to the lords commissioners of the great seal.[37] And as already mentioned above, William Lisle, the brother of John, served as a member of the Drury House Committee for the disposal of delinquents' estates.[38] Then, of course, there is Lisle's brother Daniel, appointed emissary to Sweden.[39] An additional example of nepotism is contained in a letter from Lisle to Henry Cromwell in Ireland concerning William Jennings, Lisle's brother-in-law. Jennings had served under General Blake in the Parliament's Navy, and as Lisle wrote, thanking Cromwell for former kindnesses shown toward Jennings, the letter is obviously to secure another position for Jennings.[40] There is also the accusation that Lisle allowed undue influence in a Chancery case wherein one party was his brother-in-law, John Cole. Although this case will be considered in detail below, it is worth mentioning at this time as an example of at least a suspected instance of unfair access to an important official.[41] These examples demonstrate that Lisle's family received considerable benefit from his high offices.

As a representative of the country gentry, a significant portion of Lisle's wealth was in land. The elder Sir William's estate of Wotton Park, Isle of Wight, was John's inheritance as eldest son, but in fact, he gained possession of the estate before his father's death in 1648. In 1642, Sir William surrendered all his estates to John in return for John's buying Sir William out of debt and for an annuity.[42]

Sir John Oglander reported this transaction, but in an emotional entry, depicting John as a rogue, who stole his father's estate and gave him one room and £150 a year.[43] Wotton remained in the Lisle family until about 1750, when the direct Lisle line ended.[44]

Lisle maintained several estates and manors from his marriage to Alice Beconsawe in 1636 until his flight from England in 1660. One of these estates was Moyles Court, also known as Rockford Moyles, in the parish of Ellingham, Hampshire. It passed to Lisle in 1638 when Sir White Beconsawe died. A permanent conveyance of 1658 confirmed the Lisle title, but after the Restoration, Moyles Court followed a rather tortuous provenance. When Lisle fled the country in 1660, it was leased to Anne Duke, widow of Robert Duke, as a forfeited estate of the regicide. The estate was recovered by Alice Lisle as her personal estate after her husband's death in 1664, but was again forfeited upon Alice's attainder in 1685. Subsequently, Moyles Court was restored to John Lisle, Alice's son, after the Revolution of 1688, in whose possession it remained until his death, when it passed into the hands of the William Lisle, John's brother, branch of the family.[45] The premises of Moyles Court were sold in December 1819, on the death of Charles Croke Lisle.[46]

Lisle also held the manor of Holt in the parish of Bradford-on-Avon, Wiltshire. Holt Manor was an inheritance from his father and had been in the family for several generations. It was recovered by William Lisle at the Restoration.[47] John Lisle also came by at least two prosperous

estates in Hampshire as a result of the civil wars when he purchased them from the commissioners for the sale of delinquents' property. One was Crux Easton, Hampshire, which passed to his brother William at the Restoration and formed the residence of that branch of the family in Hampshire, the most famous of whom was Edward Lisle, the horticulturist, to whom the estate of Moyles Court also passed in 1723.[48] Lisle also purchased the manor of Chilbolton, Hampshire, in 1650 by the same process.[49] There were probably other purchases by Lisle made in like manner. The above description of Lisle's estates is not intended to be definitive, but it serves to show that Lisle had a well established land base in two counties, Hampshire, Isle of Wight, and Wiltshire.

John Lisle's early education is not known. He probably studied with a private tutor, for what is certain is that Lisle matriculated at Magdalen Hall, Oxford, 25 January 1626, and received the Bachelor of Arts degree the next month, February 1626.[50] Within two months, 28 April 1626, Lisle entered the Middle Temple as son and heir apparent of Sir William Lisle, bound with Thomas Bedman and Richard Peare.[51] His residence at the Middle Temple was certainly not uneventful. On 28 January 1631, John Lisle, William Oglander, and two others caused a tumult at the Temple. They drove the masters from the common room and set themselves up as the parliament of the Temple. For this action they were very nearly expelled from the Middle Temple. However, Lord Chief Justice Sir James Whitelocke and Justice Harvey sent Oglander

and one other to King's Bench prison, while Lisle and the fourth were fined £5 and placed on good behavior, 11 February 1631.[52]

Lisle received his call to the bar of the Middle Temple 22 November 1633, but was not made a bencher of the Temple until he became a commissioner of the great seal 9 February 1649.[53] The normal course of readings was suspended for the period 1642 to 1661, making it impossible for one to receive a call as bencher upon serving as reader. Therefore, it became the usual practice to make a man a bencher when he became a judge if he had not been a reader at the inn before that event. Bulstrode Whitelocke, earlier in the year 1648, had been made a bencher when he became a commissioner of the great seal; later Nathaniel Fiennes was in 1655 made a bencher upon elevation to the Chancery bench.[54]

Although it must be admitted that there is little evidence of Lisle's practice as a lawyer after his call to the bar in 1633, there is just a hint that he had some practice. Lisle was fined 30 October 1635 along with Edward Hyde for failing to attend a reading at the Middle Temple.[55] This reference at least indicates that Lisle was still resident at the inn after his call to the bar. In 1637, the Middle Temple undertook the remodelling of a wing which contained Lisle's rooms. He subscribed to the improvements with funds as required of one living in the Temple. For the next two years during the reconstruction, Lisle would not have lived in the Temple, and in June 1640, he sold his chambers to the

Evelyn brothers, one of whom was John, the diarist.[56] The "Minutes of Chancery" for 1639 show that Lisle had several cases in that court.[57] Furthermore, Lisle was selected in 1640 as recorder for the borough of Winchester, Hampshire,[58] an important legal office in local government. When his friend and associate, Bulstrode Whitelocke, sought to identify him as a member of the Long Parliament in 1641, it was as a lawyer member of the Commons.[59]

Although it was not a requirement that the recorder of a borough be a lawyer, he was usually a London lawyer of some ability. The recorder, under the Winchester Corporation Charter of 30 Elizabeth, was the city judicial officer, responsible for holding the city Quarter Sessions and defending the city in the Westminster courts if necessary. As a high officer of the city, that body furnished him a furred gown, and he represented the corporation as a justice at the county Sessions of the Peace on the bench of justices.[60] Lisle, as recorder, would then have had a place on all commissions of the peace, in at least an ex officio capacity. In Gloucestershire all recorders were ex officio justices of the peace. With two other justices the recorder could hold the Quarter Sessions and with the mayor and five justices, he could hold General Gaol Delivery, except for treason.[61] The office of borough recorder was indeed an advantageous one for an aspiring lawyer, who also had political ambitions which required a firm basis of support to hold a seat in Parliament. Selection by a borough as their recorder in this period is also a good indication of the aspirant's legal abilities.

While his career after the call to the bar in 1633

until election to the Short Parliament for Winchester in 1640 is relatively obscure, election to the Long Parliament for the same borough began a long and important public career for John Lisle. It is speculative at best to offer reasons for Lisle's joining the forces in the Long Parliament who opposed the activities of the government of Charles I during the eleven previous years. His training as a common lawyer and his position in the country gentry, yet excluded from the government of the kingdom, place Lisle in a group swelled by others like him, for example, Edward Hyde, Bulstrode Whitelocke, and John Pym. There have been several works on the political alignments of members within the Long Parliament. These works, however, cannot hope to fathom all the personal reasons for such alignments, and no great personal reasons have been offered for Lisle's presence in the Parliamentary Party.

Sir William Lisle, John's father, had been a victim of Charles' forced loans, but only for £20, and one of his brothers-in-law, a Beconsawe, was imprisoned for failure to pay a forced loan.[62] Lisle's first father-in-law, Sir Henry Hobart, was sometimes an outspoken critic of the government under James I.[63] Nevertheless, the records show no direct actions against Lisle himself.

The best explanation available is that Lisle was a member of that "country" part of the gentry and common lawyers who felt their lack of participation in the formulation of government policies and the need for the gentry's "sounding board," the Parliament, as a means of implementing the energy

and talents they possessed. Professor Eusden, in his work on lawyers and the civil wars, has defined three general categories of lawyers in 1640, which is useful in determining Lisle's membership in the opposition ranks of the early Long Parliament. Eusden describes those lawyers who thought the furtherance of Parliament to be their primary objective (John Eliot and John Pym); those who were "antiquarians" and writers of legal history (Henry Finch, Robert Cotton, and John and Henry Spelman); and those who were essentially practioners (Coke, Hyde, and Whitelocke, Sir James and Bulstrode).[64] One can easily see where John Lisle might fit into the categories. He was certainly not an antiquarian and was too young to be considered a man of eminent practice. Moreover, Lisle's whole parliamentary career demonstrates his adherence to the cause of Pym and Eliot.

As a lawyer of the Middle Temple, Lisle may also have been disconcerted by the King's activities in disrupting the jealously guarded internal control of the Inns of Court. Royal policy makers regarded the inns as hotbeds of religious non-conformism and ordered certain high church rituals and clergymen to supplant those maintained by the inns. In order to gain control of the governing bodies of the inns, the King created numerous King's Counsels, who had to be summoned to the Benchers' Tables out of courtesy. While the original idea of King's Counsel was to aid in crown suits, it afforded the King an excellent opportunity of placing only his favorites on the governing bodies of the inns.[65]

The eleven years of personal rule by Charles and his favorites had eliminated men like John Lisle, who had governing talents and the interest necessary for them to use those talents. Lisle was a young man when he entered Parliament, only thirty years old, and he undoubtedly realized that under the system as it existed, he had little chance of ever participating significantly in the government of the kingdom. Several years as a country lawyer and commissioner of sewers in Hampshire may have convinced Lisle that a public career was his natural inclination.[66] Although he had risen to the office of recorder of the county town of Winchester by 1640, Lisle could hope for no further advancement in public affairs without the aid of a court patron or other means of influence such as service in the House of Commons. Lisle's first wife, Elizabeth Hobart, might have provided the needed influence in court circles, but that marriage had not survived the birth of their child in March 1633. That means of advancement was cut off for him although Lisle probably had friends such as Sir Robert Crane, who had married another of Chief Justice Hobart's daughters.[67] Nor was Lisle's relationship with the Hungerfords of Wiltshire of value, as their sympathies also lay with the opposition party in the Long Parliament. However, they may have aided him in advancement within the Parliament. For a man such as Lisle, who has been described as ambitious and whose subsequent career shows him to have been that and more, the advent of the Long Parliament and its committee system under John Pym was the outlet Lisle needed.

It was in the committee system of the Long Parliament that Lisle began to show his ability for administration. A study of the Long Parliament under Pym's guidance from 1641 to 1644 demonstrates the development of a professional class of committeemen who were the "administrators" of the Long Parliament. They were members of Pym's Middle Party and were mostly non-political as opposed to the political activists such as Oliver St. John.[68] Mary Keeler has identified an inner group who controlled the workings of the opposition committees in 1640. Among the members of this inner group were John Pym, Sir Edward Hungerford, Sir Edward Hyde, and Sir Guy Palmes, all of whom, except possibly Pym, were close associates or relatives of John Lisle.[69] Hungerford was Lisle's uncle and Palmes an old friend from Hampshire. Hyde was a close associate from the Middle Temple and Wiltshire as well as his wife's cousin.[70] These men of some standing in the early days of the Long Parliament afforded Lisle the necessary patronage to procure his advancement in that body's committee system. Lisle was a member of this new executive branch of Parliament, the committee system. In fact, he ranks highly as an active committeeman, serving on fifty-six committees in five categories. These five categories show Lisle to have had special interests in army administration, finance, county committees, Ireland, and religion, in descending order of frequency.[71]

Lisle served on several of the more important committees of the early months of 1641. In January 1641, Lisle was on

the committee to prepare charges against the Earl of Strafford.[72] In February 1641, he managed the bill before the Lords for disbanding the Irish Army and disarming English Papists.[73] March 1641 saw Lisle's participation in sweeping away the Court of Star Chamber and trial by combat.[74] In his action against the Earl of Strafford and against the Star Chamber, as symbols of the royal prerogative, Lisle acted no differently from many other gentry lawyers such as Oliver St. John, Edward Hyde, and Bulstrode Whitelocke. When the King moved to the North in February 1642, Lisle was one of the leading proponents of a defensive posture for Parliament in preparing for armed conflict. However, in doing so he was joined by men of the Middle Party (Pym), future Radicals (St. John), and future Royalists (Holles). Lisle's early advocacy of Parliament's rights and its armed resistance in support of those rights is not, therefore, necessarily indicative that he was at heart always a regicide. Pym and Holles certainly were not; nor was Lisle in 1642.

What Lisle's first year in Parliament does indicate is a penchant for committee work and administrative detail that was by 1649 to make him one of the most powerful and influential parliamentary bureaucrats. His parliamentary career is not difficult to trace. Lisle's political power base lay in an active participation in the county committees for Hampshire, Southampton, the Isle of Wight, Wiltshire, and eventually the Eastern Association. Furthermore, his successful management of the bill for Tonnage and Poundage for the Middle Party in the spring of 1641 must have

established his worth to the leaders of Parliament and the "middle group" who controlled the course of opposition.[75] The Tonnage and Poundage Act undoubtedly consumed a great deal of time and effort by Lisle in reconciling the diverse interests involved in its passage. Lisle's importance in the passage of this bill is registered in his selection as chairman of the Committee of the Whole for Tonnage and Poundage in May 1641,[76] and in his responsibility for amending the bill before final approval in June 1641.[77] In trusting to Lisle's management so important a measure and one which played so prominent a role in the remonstrances before and after 1640, the leaders of Parliament, such as Pym, demonstrated the faith they had in his loyalty and ability.

Earlier in January 1641, Lisle and several other more prominent members of Parliament, including some peers, began to gather evidence against the Earl of Strafford.[78] Intimately associated with the attack on the earl was the move to disband the Irish Army and to disarm suspected Papists in England, a move in which Lisle also participated. In fact, Parliament entrusted Lisle with the management of the bill for this before the Lords.[79] He also demonstrated his opposition to the old regime in commitment to the abolition of the Court of Star Chamber and trial by combat.[80] From the very inception of the Long Parliament Lisle may be numbered among those members favorably disposed to an end of the King's arbitrary government. More important for his later career, Lisle established himself as one willing to carry out the daily functions of parliamentary government, to give wholeheartedly of his time and fortune in the

executive affairs necessary in parliamentary management. It is not difficult to trace Lisle's later preeminence in Commonwealth civil affairs to his early assiduous efforts to establish the supremacy of Parliament in the state. One might impugn his motives by accusing Lisle of motivation in self-interest for his own political advancement. Such a charge would undoubtedly be true, at least in part. However, as J. H. Hexter has pointed out, personal advancement and the welfare of the kingdom had become so blurred that even the individuals themselves could hardly determine the reasons for their actions.[81]

We have yet to consider Lisle's activities on the county committees from 1641 to 1644. As a member of the county committee for Hampshire and deputy lieutenant of that county since 1642 was his sole foray into the realm of military action. In August 1642, William Lewis, Thomas Jervoise, William Waller, John Fielden, Robert Wallop, and Lisle, as deputy lieutenants, appealed to Speaker William Lenthall for the necessary supplies for the Hampshire militia to resist Royalist forces.[82] The King had gone to the North in January 1642, and Lisle had been vociferous in his advocacy of armed resistance to any forces raised by the King against Parliament.[83] It was not merely a verbal commitment against the King and his followers. Lisle contributed heavily in April 1642 to the cause of Parliament from his own funds.[84] This investment was probably made with an eye to the future for reimbursement from the confiscated estates of Royalists in which Lisle shared.[85] In the subsequent

demands of 1643 and 1644 made by Parliament for money from counties under their control, Lisle consistently appeared on the committees for Hampshire, Southampton, Isle of Wight, and Wiltshire.[86]

From his office as a deputy lieutenant of Hampshire, Lisle acquired the sobriquet, "major" Lisle, used by later historians to give an aura of the military to Cromwell's appointments.[87] Although Lisle may have had a courtesy title of "major" for aiding in procurement of regiments in Hampshire, there is little to associate him with purely military activity during the civil wars. In July and August 1641, Parliament sent Lisle to the North to be with the army facing the Scots.[88] His attendance on the army in this instance was more probably as a parliamentary watchdog. Lisle may even have represented Parliament among the Scots in gaining their cooperation with the English Parliament. In Hampshire and Sussex, it is possible that Lisle did serve with Sir William Waller in his 1643 to 1644 campaign against Sir Ralph Hopton's army. As a deputy lieutenant, responsible for raising the militia, it follows that he might have done so. Nevertheless, the southern campaign was short lived, and Hampshire was secure by January 1644, when Winchester fell to Waller. If Lisle participated in Waller's campaign in the South, he had at best a brief career. This would explain the charge that he was not distinguished in military matters. William Godwin, when writing of the Civil War in Hampshire, found nothing to report of Lisle's activities.[89]

Lisle probably acted in the capacity of liaison for the Hampshire forces and the Parliament. In preparation for the

war in Hampshire, Lisle received leave from Parliament in August 1642, to transport some his personal possessions up to London.[90] In December 1643, Parliament sent Lisle and Sir Henry Vane to arrest Lady Aubogny as a spy for the Royalists in London,[91] precluding his presence in Hampshire. And Lisle was certainly in Parliament during the siege of Winchester in January 1644, for he reported to Parliament on a bill for raising troops in Kent, Sussex, Surrey, and Southampton.[92] These brief instances of his acting in Parliament do not entirely preclude his participation in military activities. In fact, there is an unmistakable absence of Lisle's name in the daily activity of Parliament during much of the year 1643. He could have been with the Hampshire forces under Waller in 1643, but not at the final reduction of Winchester in December and January.

It would be safer to conclude that Lisle confined his military activity to raising the militia and to levying and collecting the taxes imposed by Parliament on the counties. There is ample evidence to show that he was actively engaged in this more administrative form of prosecuting war. In Parliament's requisitions on the southern counties in February, April, May, and August 1643, Lisle was entrusted along with his deputy lieutenant colleagues to gather and return Hampshire money to Parliament.[93] In November 1643, Lisle assisted in the merger of the Hampshire militia into the Eastern Association of Kent, Surrey, and Sussex, under the command of Sir William Waller.[94]

Lisle's later devotion to the Self-denying Ordinance indicates that he certainly had nothing of a military nature

to lose by forfeiting his association with the Hampshire militia. Prospects for advancement in a career as a committee administrator in Parliament no doubt looked better in 1644 after the death of Pym and the subsequent realignment of politics in Parliament. Lisle's four years of training in the management of parliamentary business of Pym's group had served him well. The adoption of the more vociferous position of the "war party" after Pym's death insured his continued presence in Parliament. As with the fortunes of so many other members and the conduct of opposition to the King, the death of Pym masked a fundamental change in Lisle's parliamentary career. In the years that followed, until the death of the King and the establishment of the Commonwealth, Lisle became one of the most powerful, if not one of most well known, men in Parliament. He was no longer the young understudy of parliamentary management but a leader, a purger of the old army, and a chairman of the potent and insidious Committee for Compounding with Delinquents, a quasi-judicial committee which sat at Goldsmiths' Hall.

NOTES

[1]Francis Bamford, ed., A Royalist's Notebook; The Commonplace Book of Sir John Oglander Kt. of Nunwell (London, 1936), p. 159. Hereafter cited as Oglander Notebook.

[2]G. D. Squibb, ed., Wiltshire Visitation of Pedigrees, 1623 . . . (London, 1954), p. 93. Sir Edward Hungerford was Lisle's uncle and Anthony Hungerford his cousin. Mary F. Keeler, Publications of the American Philosophical Society, Vol. XXXVI: The Long Parliament, 1640-1641; A Biographical Study of Its Members (Philadelphia, 1954), pp. 225-6. Hereafter cited as Keeler, Long Parliament. Sir Edward probably aided Lisle's advancement in Parliament as he was one of the

"inner group" of early Pym committeemen, identified by Mary Keeler, " 'There are No Remedies for Many Things but by a Parliament'. Some Opposition Committees, 1640," Conflict in Stuart England. Essays in Honour of Wallace Notestein, edited by W. A. Aiken and B. D. Henning (New York, 1960), pp. 143-4. Hereafter cited as Keeler, "Opposition Committees," Essays for Notestein. See also, The Victoria County History: Wiltshire (8 vols.; Westminster, 1903-4), VIII, 81.

[3]W. H. Rylands, ed., Pedigrees from the Visitation of Hampshire . . . finished in 1634 (London, 1913), pp. 52-3. P.R.O., Registers Entry Books of Orders and Decrees, C33/200, f. 770 (Thomas Lisle's Case, 1653). Thomas Lisle and John Lisle, two of Sir William's brothers, may have been in the King's service before 1640. Great Britain, P.R.O., Calendar of State Papers, Domestic, Charles I (1635), IX, 4 and (1634), VII, 340, 555.

[4]Rylands, Pedigrees of Hampshire in 1634, pp. 52-3. For Mabell and Thomas Meutx see Ibid., p. 135. Thomas Meutx may have been a relative of Thomas Meautys or Mewtis, a Royalist, also of Kingston. G. E. Aylmer, The King's Servants, The Civil Service of Charles I, 1625-1642 (London, 1961), p. 291. For Anne and John Cole see The Victoria County History, Hampshire, (4 vols.; Westminster, 1903-4), IV, 631. Hereafter cited as VCH, Hants. For Mary and Alexander Thistlethwaite see Squibb, Wiltshire Pedigrees of 1623, p. 194, and G. W. Marshall, ed., The Visitation of Wiltshire, 1623 (London, 1882), p. 5. Thistlethwaite was High Sheriff of Wiltshire, appointed by Parliament in January 1646, and ordered to hold the election for burgess of Hindon. Commons Journal, IV, 414. For Bridgett and William Jennings see Oglander Notebook, p. 83.

[5]Rylands, Pedigrees of Hampshire in 1634, pp. 52-3. Charles H. Hopwood, ed., Middle Temple Records: Minutes of Parliament of the Middle Temple, Vol. III: 1650-1703, pp. 818-19. Hereafter cited as MTR, Minutes of Parliament.

[6]MTR, Minutes of Parliament, II, 943. Among the Oglander Papers of the Isle of Wight Record Office, Carisbrooke Castle, there is a pedigree of the Lisles of Wotton. Isle of Wight Record Office, OG/14/28.

[7]Oglander Notebook, p. 72. [8]Ibid., p. 83

[9]Ibid., p. 87.

[10]Ibid., p. 86. Elizabeth Hobart Lisle was buried at Highgate Chapel, 17 March 1633. Percy Lovell and William Marsham, eds., Survey of London, Vol. 17: The Village of Highgate (London, 1936), p. 11.

[11]The year was probably 1636. Keeler, Long Parliament, p. 252. The Dictionary of National Biography (1909), XXXIII, 339, gives the year as 1630, which is impossible.

[12]DNB (1909), XXXIII, 340.

[13]MTR, Minutes of Parliament, III, 1014.

[14]Ibid., III, 1118, 1120. See also P.R.O., Chancery Inquisitions Post Mortem (Ser. 2), DLXXXVI, 120. VCH, Hants., IV, 565n.

[15]MTR, Minutes of Parliament, III, 1133-34, 1118, 1120.

[16]CSPD, Charles II (1660-61), I, 341.

[17]Hampshire Record Office, Earl of Normanton Papers, Box 5, Bundle 54 (Abstracts of Titles to Moyles Court).

[18]Ibid., Box 5, Bundle 54 (Moyles Court Pedigree to c. 1730).

[19]MTR, Minutes of Parliament, II, 818-19.

[20]Middle Temple Bench Book (2nd ed.; London, 1937), p. 128.

[21]Historical Manuscripts Commission, 6th Report, p. 15. Hereafter cited as HMC.

[22]C. H. Firth and R. S. Rait, eds., Acts and Ordinances of the Interregnum, 1642-1660 (3 vols.; London, 1911), II, 522. Hereafter cited as Firth and Rait, Acts and Ordinances. Mark Noble, Memoirs of the Protectorate House of Cromwell (2 vols.; Birmingham, 1724), II, 469. See also Great Britain, P.R.O., Calendar of the Committee for Compounding, pp. 464 and 467.

[23]Firth and Rait, Acts and Ordinances, II, 592 and 639.

[24]Ibid., II, 669 and 1375.

[25]Calendar of Committee for Compounding, p. 970.

[26]HMC, 13th Rep., Duke of Portland Papers, I, 589.

[27]VCH, Wilts., VII, 20; VCH, Hants., IV, 313.

[28]MTR. Minutes of Parliament, III, 1189; Middle Temple Bench Book, p. 128.

[29]VCH, Hants., IV, 313.

[30]William Lisle complained to Sir John Coke in March 1636, that his property near Cambridge had been attacked by thieves, HMC, 12th Rep., Cowper Mss., II, 109.

[31]MTR, Minutes of Parliament, II, 943.

[32]HMC, 14th Rep., Duke of Portland Papers, I, 633-34.

[33]CSPD, Commonwealth (1651-52), IV, 173.

[34]Ibid., pp. 180-2 and 234.

[35]Ibid., p. 342. F. A. Inderwick, ed., Calendar of Inner Temple Records, III, 445, relates that "Daniel Lisle of the Middle Temple, gent., was buried in the round walke the twentieth of August, 1663."

[36]Commons Journal, IV, 300 and 323-4.

[37]CSPD, Commonwealth (1651-2), IV, 163.

[38]Firth and Rait, Acts and Ordinances, II, 592.

[39]HMC, 14th Rep., Duke of Portland Papers, I, 633-34.

[40]John Lisle to Henry Cromwell, 5 June 1657, British Museum, Lansdowne Mss., #822, f. 81.

[41]HMC, 7th Rep., p. 122.

[42]CSPD, Charles I (1645-47), XXI, 288.

[43]Oglander Notebook, pp. 123-25.

[44]VCH, Hants., V, 205.

[45]Ibid., IV, 563-64 and 565. Hants. R. O., Earl of Normanton Papers, Box 5, Bundle 54. Anne Duke later received Ellingham Manor and the Abbey Lands, Christ Church, Hampshire, belonging to Lisle. CSPD. Charles II (1660-61), I, 342.

[46]Hants. R. O., Earl of Normanton Papers, Box 6, Bundle 65d, (Moyles Court, particulars of sale and valuation).

[47]VCH, Wilts., VII, 20. CSPD, Charles II (1660-61), I, 341.

[48]VCH, Hants., IV, 313. Hants. R. O., Earl of Normanton Papers, Box 5, Bundle 54, (Moyles Court Pedigree). CSPD, Charles II (1660-61), p.341.

[49]VCH, Hants., III, 404.

[50]DNB (1909), XI, 1220.

[51]MTR, Minutes of Parliament, II, 705-6.

[52]Middle Temple Bench Book, pp. 72-3.

[53]Register of Admissions to the Honourable Society of the Middle Temple (3 vols.; London, 1949), I, 117.

[54]I B. Williamson, The Temple, London (London,1925), pp. 419-20. Middle Temple Bench Book, p. 30.

[55]MTR, Minutes of Parliament, II, 840.

[56]Williamson, The Temple, London, pp. 376-7.

[57]P.R.O., Minutes of Chancery (1639), C37/1, passim.

[58]Keeler, Long Parliament, p. 252.

[59]Bulstrode Whitelocke, Memorials of English Affairs . . . (London, 1682), p. 54.

[60]J. S. Furley, City Government of Winchester from the Records of the XIV and XV Centuries (Oxford, 1923), pp. 49-51.

[61]W. B.Willcox, Gloucestershire, 1590-1640 (London, 1940), pp. 17n and 205. J. H. Gleason, The Justices of the Peace in England, 1558 to 1640 (Oxford, 1969), passim. For the office of Recorder of London, see Valerie Pearl, London and the Outbreak of the Puritan Revolution, City Government and National Politics, 1625-43 (Oxford, 1961), p. 66.

[62]Oglander Notebook, p. 13n. Keeler, Long Parliament, p. 252.

[63]J. W. Wallace, Reporters (1870), pp. 220-29.

[64]John D. Eusden, Puritans, Lawyers, and Politics in Early Seventeenth-Century England (New Haven, 1958), pp. 41-3. Keeler, Long Parliament, p. 228.

[65]Eusden, Puritans, Lawyers, and Politics, pp. 52-4, 58-9, and 87-8. Williamson, The Temple, London, pp. 384-96. Some of Lisle's colleagues at the Middle Temple in the 1630's were Edward Littleton, Whitelocke, Edmund Prideaux, Challoner Chute, John Wyld, Selden, and Henry Rolle; all except Littleton were supporters of opposition to the King. Williamson, The Temple, London, pp. 445-63.

[66]Keeler, Long Parliament, p. 252.

[67]Keeler, Long Parliament, p. 145. Crane married Dorothy, daughter of Sir Henry Hobart, and she died in 1624.

[68]Lottie Glow, "Parliamentary Committees, 1641-1644." unpublished Ph.D. dissertation (University of Adelaide, Australia, 1963), p. 304. J. H. Hexter, The Reign of King Pym (Cambridge, Mass., 1941), relates the activities of Pym's Middle Party until his death in 1643.

[69]Keeler, "Opposition Committees," Essays for Notestein, p. 144.

[70]Keeler, Long Parliament, p. 228. For Hyde's disaffection from the cause of Parliament see Irene Coltman, Private Men and Public Causes (London, 1962).

[71]Glow, "Parliamentary Committees," pp. 731, 734, and 285.

[72]Commons Journal, II, 64.

[73]Ibid., II, 85. [74]Ibid., II, 101.

[75]Hexter, King Pym, passim. Commons Journal, II, 107.

[76]Commons Journal, II, 160. There is an interesting aspect of Lisle's work on the Tonnage and Poundage bill. His is not associated at any time with the Ship Money committees even though he demonstrates an interest in fiscal matters. In the State Papers there is mentioned a John Lisle of Paddington, as a collector of Ship Money from 1637 to 1638, summoned as a defaulter for not producing the taxes which he had failed to collect. While this John Lisle may not have been our John Lisle or may have been John's uncle, it is not impossible that it was in fact he, as Keeler has pointed out that a one time collector of Ship Money might very well oppose it later in Parliament. However, collectors did not serve on the committees concerned with that tax. Simon D'Ewes was a collector but was barred from the committee for Ship Money in 1640. CSPD, Charles I (1637-38), XII, 91, XIII, 8, 17. Keeler, "Opposition Committees," Essays for Notestein, pp. 132-3 and 140. As for Lisle's living in Paddington, Middlesex, in 1637-38, it will be recalled that he had left his chambers at the Middle Temple in 1637 because of the remodelling.

[77]Commons Journal, II, 164-5 and 174-5.

[78]Ibid., II, 64. [79]Ibid., II, 85, 113.

[80]Ibid., II, 101. [81]Hexter, King Pym, p. 73.

[82]HMC, 13 th Rep., Duke of Portland Papers, I, 13.

[83]Whitelocke, Memorials (1682), p. 57.

[84]Commons Journal, II, 509. DNB (1909), XI, 1221.

[85]Firth and Rait, Acts and Ordinances, I, 113. Commons Journal, III, 396; IV, 153.

[86]Firth and Rait, Acts and Ordinances, I, 91, 124, 148, 230, and 780. Commons Journal, IV, 98.

[87]John Lord Campbell, The Lives of the Lord Chancellors and Keepers of the Great Seal of England, First Series (3 vols.; 2nd ed.; London, 1846). Stuart Prall, The Agitation

for Law Reform during the Puritan Revolution, 1640-1660 (The Hague, 1966).

[88]Commons Journal, II, 217 and 263.

[89]G. N. Godwin, The Civil War in Hampshire, 1642-45 (Rev. ed.; London, 1904).

[90]Commons Journal, II, 721.

[91]C. H. Firth, ed., The Memoirs of Edmund Ludlow . . . 1625-1672 (2 vols.; Oxford, 1894), I, 68.

[92]Commons Journal, III, 396.

[93]Firth and Rait, Acts and Ordinances, I, 91, 124, 148, and 230.

[94]Ibid., I, 235.

CHAPTER II

PARLIAMENTARY LEADER AND REGICIDE

The death of John Pym in December 1643 ended the "middle party" politics adhered to by many Parliament men content until 1644 to pursue that course. Pym was the cohesive factor of that Middle Party; but he was gone. The crystallizing of political alignments in the Commons after Pym's death swayed Lisle from his relatively non-political role as a committee manager for the Middle Party under Pym's leadership. Lisle moved after late 1643 into the radical group in Parliament that eventually became the dominant faction in the Commons. From the beginning of the Long Parliament, Lisle had certainly been no partisan of the King, and after 1643 he became one of the most vociferous opponents of royal power, more and more the proponent of the supremacy of Parliament.

Lisle's faith in the absolute competence of Parliament to rule the kingdom brought an ideological split with other lawyers in the Commons, who had begun to fear the power of the Parliament in relation to the supremacy of the common law. Lawyers like Bulstrode Whitelocke, John Maynard, and Sir Thomas Widdrington were practicing barristers who could not compromise their belief in the competency of the common

law even in the extraordinary circumstances of civil war. Lisle in his activities on certain committees, which will be discussed below, ensured his career as a professional parliamentary administrator and consequently his future as an Interregnum Chancery judge. His colleagues, such as Whitelocke and other lawyers, had by 1644 softened on their views of settling the kingdom, and after the end of the first civil war, they developed a somewhat disdainful attitude toward Lisle and lawyers of his type.

How much influence religion had in Lisle's support of the radical course in Parliament after 1644 is not clear. He was on some committees for religion, but it was of only minor interest to him. It would be tempting to say that Lisle was an ardent Independent after 1643-44, because it was advantageous for him to be so. One thing is certain, he supported the Independent faction in the Commons, but his main interests were not religious, but the administration of the army, the finance of the state, and the impugnation of those not as ardent in the cause as he.

There is a visible chain of committee positions which determined Lisle's advancement in Parliament from the obscure young member for Winchester to his appointment as a commissioner of the great seal and as a member of the Council of State in February 1649. The primary areas of activity for Lisle from 1644 to 1649 were army administration, finance, county administration, and the security of the state. His conduct in each of these important areas indicates the underlying philosophy of the thorcughgoing parliamentarian and ensured his promotion to the highest counsels of the kingdom.

Lisle's active participation in army affairs began in early 1644 when he was appointed by the Commons to manage the complaints made against Colonel William Carne of Hampshire. In army matters, such as Colonel Carne's case, Lisle acted as liaison between the Commons and the Committee of Both Kingdoms at Derby House,[1] a committee of the English and Scots parliaments for coordination of the war effort. Matters concerning individuals in the army continued to be referred to Lisle during the spring and summer when he had charge of investingating colonels Rous and Harvey.[2] He prepared letters to Sir William Waller for the Derby House Committee,[3] and was on the committee to answer the Earl of Essex's letter of June 1644, wherein Essex complained of Parliament's failure to supply his army.[4] The conflict between Essex and the Derby House Committee had been brewing for some time, and the Parliament's answer to him was to obey the instructions of the committee; Parliament would see to supplying the army.[5] Lisle, Oliver St. John, and William Pierrepont were the managers for answering Essex's letter.[6] By the end of June 1644, there was a committee for dealing with the problems of Essex's amateur army. Lisle was a member of this committee,[7] and on 5 July 1644, he became its chairman.[8]

During the late summer of 1644, the "peace party" in the Commons made their move to negotiate with the King, which resulted eventually in the proposed Treaty of Uxbridge. As part of the process Lisle participated in the drafting of bills and propositions to be sent to the King.[9] The battle of Marston Moor in July 1644, a complete victory for the

English and Scots forces of the North, and the stalemate of the war in the West in August, convinced Charles that peace would be worthwhile if he could bring Essex over to his side in negotiation for peace.[10] The utter annihilation of Essex's army in the West by September further encouraged the "peace party" in Parliament to make their move.[11] The final hope of the "radical party" in Parliament for a military victory now centered in the army of the Eastern Association, headed by the Earl of Manchester with Oliver Cromwell as his lieutenant general. By mid-September communication had been received from the King, and Lisle was on the committee to answer his letter.[12] Lisle prepared further considerations to the proposals for the King in the subsequent negotiations,[13] and he, Rous, Roger Hill, and Maynard prepared the instructions of the parliamentary committee treating with Charles at Uxbridge.[14]

In all these matters relating to the conduct of the war, Lisle maintained a close association with the Derby House Committee and served as a supporter of its policies in the Commons.[15] Whenever the King wrote to the Parliament, Lisle served on the committees to receive his letters.[16] His intimate association with the Derby House Committee, the body most concerned with the failure of parliamentary armies to achieve any permanent military victories, placed Lisle in a position to demonstrate his devotion to the cause in the coming struggle between the Earl of Manchester and Oliver Cromwell. As chairman of the committee reviewing the internal problems of the Lord General Essex's army, Lisle was an obvious prospect for an important role in the major contro-

versy of the winter 1644-45. Lisle had openly identified himself with the amorphous group of Independents since the death of Pym, but it is doubtful if the accusations of the Scots general Robert Baillie were completely accurate. Baillie accused the Independents of lying in wait to remove Essex and Manchester from the war.[17] However, he was correct in his observations of the overwhelming importance of the views of Cromwell and his associates in the Derby House Committee.[18] The frustration of military failure made possible Cromwell's moves in Parliament of late October and November. Cromwell had returned to his seat in Commons.

On 25 November, Cromwell made his accusation against the Earl of Manchester, who, he said, had failed to make significant progress against the forces of Charles.[19] Cromwell's charges were entrusted to a committee chaired by Zouch Tate, for prosecution before the House of Lords.[20] On 4 December, the receipt of counter charges by Manchester against Cromwell as an enemy of the kingdom brought the creation of a new committee, chaired by Lisle, "to consider the Privilege of this House . . . putting the same into a way of examination."[21]

During December the two committees gathered their evidence, with various persons appearing before them. In the course of the month relatively unobtrusive work produced a compromise solution which would appease the "radical or war party" because it would remove Essex and Manchester from military command, at the same time saving face for the peers by allowing them to resign. This measure was the famous Self-denying Ordinance, resolved by the Commons on 9 Decem-

ber.[22] Here again Lisle was in the midst of the planning group. He was on the committee to prepare the ordinance, which was adopted 19 December.[23]

The design of the ordinance as a compromise to halt the divisiveness of the recent dispute seemed at least for the present to produce a forced peace, notwithstanding the Lords' failure to act on the ordinance by late December.[24] Following the Lords' refusal of the ordinance in January 1645, Lisle took a leading part in the preparation of the Commons' statement attacking their rejection.[25] Further pressure being needed to gain the Lords' approval, the two committees of the Commons proceeded with the prosecution of Cromwell's charges. Their reports came on 20 January 1645, with Lisle reporting. First he made known the progress of his committee on the breach of privilege by Manchester. Further examinations were necessary, he said.[26] The Commons were stalling in hope of the peers' capitulation on the Self-denying Ordinance.

Lisle's influence had gone beyond his own committee now, as he also reported on the same day for Zouch Tate's committee. Therein he read a letter sent him by the Earl of Manchester (with the consent of the Lords) requesting knowledge of the information given against him so as to defend himself. No action was taken and the letter and reports remained in Lisle's care.[27] In Manchester's letter to Lisle there is demonstrated by Manchester and the Commons the significance of Lisle in managing this important impasse on the conduct of the war.

Acceleration of the work of the committee regulating Essex's army resolved the deadlock. This action was to allow the Lords to observe what kind of an army the promoters of the Self-denying Ordinance envisaged and thus secure the Lords' approval.[28] Although Zouch Tate was nominally chairman of this committee,[29] Lisle was the driving force within the body. It was he who assumed the Speaker's chair as chairman of the Committee of the Whole in the debates on the New Model Army, which began 21 January.[30] In each of these sessions of the Whole, Lisle held the chair,[31] no small demonstration of his interest in the controversy. The management of the propositions on the New Model before the Lords as well as replies to their objections were referred to Lisle all through the early spring of 1645.[32] In each of these temporary committees Lisle's name appears, but the other names vary with nature of the concerns. It is apparent, therefore, that Lisle was still the professional parliamentary administrator with the greatest knowledge of army matters, but now colored with a singular bias.

With the agreement of the Lords to the Self-denying Ordinance and the resignations of the earls of Essex, Denbigh, and Manchester from the army, it remained to bring to fruition the ideas for a godly professional army. As early as 1 February, by order of the Commons, Lisle wrote to Lord General Fairfax to come to London.[33] He also participated in securing the initial funds for the New Model.[34] But his most important function was the purging of army officers not fit for service and the establishing of a list of approved officers

for the New Model. Since January petitions from army officers had been coming in to Lisle as chairman of the committee on the Lord General's List. These petitions concerned charges against officers of the rank of captain and below, and requested Lisle's assistance in securing places in the army. It seems that in January, the chairmanship of the committee on Lord General Essex's army had passed to Lisle.[35] His knowledge of army affairs and army men was sought by the Derby House Committee,[36] and by the Commons when they were faced with desertion and mutiny of soldiers in May 1645.[37] With the urging of the Derby House Committee in June, Lisle's reports on the army officers were completed and managed by him before the Lords in July 1645.[38]

The influence of Lisle in the conduct of the war also extended to the navy, now headed by a commission after the Self-denying Ordinance required the resignation of the Earl of Warwick as Lord High Admiral. In the early spring Lisle had been on the committee for the preparation of the navy for the summer.[39] Lisle's appointment was no doubt in anticipation of the success of the Self-denying Ordinance which removed the Earl of Warwick from the office of Lord High Admiral, for on 15 April 1645, Lisle received the appointment as a commissioner for the office of Lord High Admiral and Warden of the Cinque Ports.[40]

The division between Cromwell and Manchester pointed to the later division between the Independents and the Presbyterians as well as between the Independents and the Scots. The New Model Army and the success of the armies of the North

in the spring of 1645 convinced Cromwell and the Independents that the Scots Army was unnecessary and even dangerous to the cause. It was therefore necessary to declare them redundant, pay them off, and remove them from English soil. The commissioners of Scotland in the Derby House Committee sensed the activity against them and their army. The Scots now began an attempt to secure their position. They had actively opposed Cromwell in his quarrel with Manchester. When the earl lost, they lost. The purge of the army by Lisle's committee on the Lord General's List had removed many Scots officers from the English army. Sitting in another capacity as one of the financial officers, Lisle had the duty of settling the accounts of these Scots officers and the Scots Army.[41] Papers on the Scots Army had been under consideration by Lisle since April 1645, when the reorganization of the army came into effect.[42] As chairman of the committee for the Northern Association, Lisle would also have had close dealings with the Scots Army.[43]

The committee to deal with the Scots was the old committee which had screened the delinquents who compounded with the county committees for their offenses. As the Parliament reformed itself in a more professional manner, a standing committee for raising money from delinquents to carry on the war came into being. This committee for compounding met at Goldsmiths' Hall and came to be called by that name. It was the Committee at Goldsmiths' Hall that provided the solution for paying the Scots and the New Model Army, which needed a regular income,[44] something Essex's army never had.

Through late 1645 and early 1646, the main occupation of the Committee at Goldsmiths' Hall was that of coming to an acceptable arrangement with the Scots. They continued to press the committee and Parliament for funds. In June 1645, Lisle reported to the Commons on their demands which the Scots made known to him in daily meetings.[45] On 20 June, he made a report against the Scots' taxing coal in Newcastle as unwarranted. Lisle advised it be discontinued at once.[46] The Scots were not easily put off, and the committee's efforts were taken up in 1646 with appeasing them without causing a breach between the two kingdoms.[47]

The discussion of Lisle's second major activity in Parliament is directly concerned with the Committee at Goldsmiths' Hall. The committee originated as the central committee on sequestrations of lands and estates of delinquents and for supervising the county committees which carried out the sequestrations and compounding. The committee underwent a reformation in Parliament's search for some efficient manner of funding the war. In this matter Lisle took a direct and active part.

The policies of compounding at the Goldsmiths' Hall in London were not popular with the Royalists, obviously, but neither were they acceptable to the local county committees who saw it as a usurpation not unlike those of Charles I in the 1630's.[48] In September 1642, Parliament indicated its basic policy toward recusants and adherents of the King when it determined these people would assume a great part of the financial burden of the war.[49] However, it was not until

March 1643 that the central parliamentary committee for compounding was empowered to act in the manner described above. The Committee for Compounding ensured the punishment of those not supporting Parliament and guaranteed an income for the war effort; this was possible under the ordinance for sequestration of property. Movable property was sold at auction; real estate was let to tenants with one-fifth of their rents going to the purposes of the state.[50]

The Committee for Sequestrations was entrusted under the ordinance of 30 January 1644 with responsibility for compounding with those delinquents who wished to pay a fine on their estates commensurate with their offenses. An investigation by the committee upon receipt of a reference from one of the houses of Parliament preceded a quasi-judicial hearing before the same body. After the delinquent swore the Covenant and the Negative Oath, the committee imposed a fine and wrote the particulars into a bill for passage as an ordinance.[51] The committee then used the money from the sequestered estates to pay debts which Parliament owed to those who had advanced money to Parliament or had suffered in the cause. An example is contained in a letter signed by Lisle from the Committee for Sequestrations in April 1644, in which Lord Capell was instructed to allow Sir William Brereton certain lands in Capell's estates at Watford, Hertfordshire.[52]

As more and more delinquents compounded after Marston Moor and the imminence of peace in late 1644, they were referred to the Committee at Goldsmiths' Hall. This committee, as seen above, attempted in late 1644 and 1645 to solve the

dual problem of paying the Scots and funding the New Model Army. The increase in compositions and the necessity of a permanent committee to administer the new financial policies transposed the Committee at Goldsmiths' Hall from one of a limited objective to a broad supervision of delinquents.[53] One writer described the Committee for Compounding as an executive arm of Parliament with the whole nation at its mercy. He accused the committee of failing to adhere to the normal course of justice but exercised an arbitrary power over persons and property.[54] It was indeed a powerful committee. The vast amount of knowledge about delinquents accumulated by the committee and its members furnished Lisle with a broad base of information on latent Royalists and their activities. And this accumulation of information would account for Lisle's involvement in the security of the state both before and after 1649.

A cursory examination of the calendar of the committee's papers, with the synopsis of the cases before it from 1644 to 1649 shows the kinship between the procedure and nature of the cases there and those of the Court of Chancery.[55] Indeed, after 1649 the Court of Chancery heard many cases on habeas corpus against delinquents who were still being held prisoner by Parliament. The very nature of the committee's procedure by bill of complaint, answer and oral hearing were similar to Chancery's procedure. Lisle's training in the work of the Committee at Goldsmiths' Hall was sound preparation for presiding on the Chancery bench.

Lisle's commitment to the financial affairs of the state was not confined to the one committee. He also sat on the Committee for Accompts and Advancement of Money, which came to be called the Committee at Haberdashers' Hall.[56] Here Lisle reported on the maneuvers of Royalists intended to avoid the fines and sequestrations imposed by the Committee at Goldsmiths' Hall. After Lisle's report on the case of the estate of William Murray, a close advisor of Charles I, who had left his estate in trust for his wife and children, the House resolved the estate to be sequestrable.[57]

Lisle was frequently named to committees for raising monies in the spring and summer of 1645.[58] The estates of delinquents continued to come under his supervision for administration and sale; those of Sir John Byram and Sir William Savile were two in June and July 1645.[59] But there were numerous others, which came before the committees. The appointment to the committee for taking the accompts of the kingdom placed Lisle in an excellent position to reward those who had acted for Parliament.[60] Sir William Waller, Lord General Fairfax, and the Elector Palatine received payments urged by Lisle in 1645 under a policy of reward and reimbursement for services.[61]

Oliver Cromwell also received some emolument realized from Royalist estates. In January 1646, the Commons voted that Cromwell receive £2500 from the estates of the Earl of Worcester, Lord Herbert, and Sir John Somersett in the county of Southampton.[62] It was Lisle's assignment to manage a payment for Cromwell from the manors of Abberston and Stehell

in the county of Southampton, belonging to the Marquis of Winchester, a Papist and delinquent.[63]

Lisle was certainly not averse to this procedure, for in November 1644, he obtained the mastership of the hospital at St. Cross near Winchester. Dr. William Lewis, provost of Oriel College, Oxford, and master of St. Cross, was a Royalist. Lewis was dispossessed of the mastership in November 1644.[64] Parliament thereupon invested Lisle with the mastership, to have all the rents and profits of St. Cross Hospital.[65] This grant to Lisle occurred during a rash of similar allotments to other members of the Commons. Denzil Holles accused the Radical Party of rewarding its adherents, naming Lisle as one of the unworthy recipients.[66] Parliament reconfirmed Lisle's mastership in October 1645.[67] A statement by Lisle in February 1646, setting forth the places he held and his losses,[68] must have convinced the Parliament of his necessity because the grant was subsequently passed under the great seal, quam diu se bene gesserint (for good behavior) in March 1648.[69] However, in June 1649, Lisle surrendered the mastership to John Cooke, solicitor general.[70] There is indication that Lisle's administration of the hospital was more profitable for the resident clergyman at St. Cross, who had only £8 a year under Dr. Lewis but £100 under Lisle, the equivalent of half the master's revenue.[71] Although Holles's accusation against Lisle's receipt of the mastership may be true, Lisle was certainly more generous with the profits of the sinecure than his predecessors were.

Before considering the highpoint of Lisle's career in Parliament at the trial of the King in January 1649, it would be well to establish his propensity for managing other trials for impeachment and treason between 1644 and 1649. As early as July 1642, Parliament employed Lisle in the impeachment proceedings against the Lord Mayor of London. In this impeachment trial he was associated with Serjeant John Wilde, Edmund Prideaux, Alexander Rigby, and Solicitor General St. John.[72] In the rash of purges of the Parliament and the impeachments Lisle and many noted lawyers took part. The desertion of Royalist members to the King's Parliament at Oxford brought a purge of the remaining Royalists in June 1644, managed by Prideaux, Lisle and Ellis.[73] Lisle, Rigby, Widdrington, Hill, and Ellis managed the impeachment of Lord Hounsdon before the Lords and with the aid of other lawyers that of Sir Robert Heath in July 1644.[74] With Selden and Whitelocke, two eminent lawyers, Lisle brought in the ordinance for the trial of Archbishop Laud in September 1644.[75] During 1645, Lisle reported many times on the suspicious or questionable activities of members of both houses.[76]

There occurred in July 1645 one of the more famous investigations for treason carried out by Parliament, that involving the accusation of Lord Savile against Denzil Holles and Bulstrode Whitelocke. They had been commissioners to the King in 1644 at the Treaty of Uxbridge. Savile wrote a letter to Parliament accusing Holles and Whitelocke of being correspondents of Lord Digby, the Royalist. When the charges were put in Parliament, Lisle served on the committee for

examining the charges.[77] Holles defended himself at that time, but Whitelocke was absent from the House. Lisle rose and called attention to that fact, desiring that his colleague Whitelocke be present to answer the charges. Lisle was to give Whitelcoke notice for the next day.[78] Later the Commons proceeded only against Holles, a fact of which Holles bitterly complained. Whitelocke was not bothered,[79] possibly because of his friend Lisle's presence on the committee and his influence with radical Solicitor General Oliver St. John.

The defeat of the King's forces at Naseby in June 1645, was one of those rare opportunities for a complete disclosure of the enemy's duplicity. The capture of the King's baggage train and personal correspondence provided the radical "war party" in Parliament with the fuel they needed to discredit any concessions in negotiations with Charles. When the letters were eventually deposited with Parliament, they were assigned 23 June to Zouch Tate's committee of which Lisle was a member.[80] The committee decided to make them public at a Common Hall in the City.[81] The letters were published with the commentary given in speeches at the Guildhall, 3 July.[82] The King's letters were of the greatest importance because of the propaganda they afforded the parliamentary leaders.[83]

Lisle was the opening speaker and set the tone of the proceedings at the Common Hall before the Lord Mayor and Aldermen. He called attention to the King's search for foreign troops; his wish to repeal laws against Papists; his vows to retain episcopacy and keep the royal control of the military. But the point in the King's letters, which Lisle singled out

for special attention, was Charles' disavowal of the Parliament at Westminster to be the true Parliament of England.[84] Lisle addressed the Hall on this point as follows:

> The last thing that I shall observe to you . . . is concerning the King's disavowing this Parliament, to be the Parliament of England; We cannot have greater assurance of anything from the King, then this present Parliament; There is no Law stronger, that gives a property to the Subject, then the Law is, to continue this present Parliament.
>
> This is so well knowne to the World, that Kingdomes and States abroad acknowledge it, and now for the King to disavow it, after it is confirmed and continued by Act of Parliament; after the King both so lately acknowledg'd it, now so suddainly to disavow it, How can we be more confident of any assurance or Act from His Majesty?[85]

A Royalist tract in answer to the disclosure at the Guildhall called Lisle's speech an ". . . Oration, whose masculine eloquence it seems, was thought worthiest to enjoy the Mayden-head of the Cities attention . . . ."[86] The choice of Lisle to serve this coup de grace to the King's reliability says much for his devotion to the cause and his ability to speak in situations demanding bitter political harangue. He was to register such capacity in subsequent incidents, for Lisle continued to act in the time between the wars as political character assassin for the Radicals.

In October 1647, the Commons impeached seven peers with Lisle as the manager before the Lords' House.[87] In July, the City mob had attacked the Commons to force the return of the City Militia to City control. They broke into the House forcing members to pass resolutions for this and to invite the King to London. The mob's action was condoned by the Common Council.[88] When the Commons finally gained

control of events with the aid of the army, they sought retribution from the City leaders. On 3 February 1648, Lisle attacked John Glyn, Recorder of London, with a scathing denunciation before a committee of Lords and Commons. Glyn, he said, was a party to the violence done Parliament the previous July, for supporting it in his role as a member of Parliament and for advising the City as their recorder to adopt the means they used. Lisle then asked the Lords, in view of the heinous crime, to deprive Glyn of his recordership and place William Steele as recorder.[89] Lisle designed this speech as a political harangue of the Radicals to promote Steele for the place of recorder.

Lisle was also active in screening those individuals who passed through the lines from Royalist to Parliament-held territory. At various times Lisle held membership on those committees which considered the fate of prisoners surrendering to the Parliament's forces.[90] He disposed of the prisoners after the battle of Naseby and participated in the composition of these prisoners before the Committee at Goldsmiths' Hall.[91] All their names passed through the committee for its consideration and to ensure that none having acted for Parliament were punished.[92]

During the pamphlet war between the Scots and the Parliament in 1646, Lisle acted as chairman of the committee to answer the Scots' charges. Two works of the Scots entitled Truths Manifest and Some Papers delivered in by the Scots Commissioners were committed to Lisle's committee for investigation and report to the House.[93] The same day, 13 April

1646, Lisle reported that the committee had discovered the author of Truths Manifest, that he should be sent for as a delinquent, and that his book be burned by the common hangman as false and scandalous.[94] The following day, Lisle reported on the second of these works, on which the committee had secured a confession of responsibility for publication.[95] Thereupon, Lisle's committee became a general committee to declare the intention of the Commons in dealing with the King; the settlement of the Church; the desire of Parliament for peace; adherence to the Covenant and Scots treaties; intentions against the use of arbitrary powers; punishment of delinquents; the Engagement; ". . . and whatever else they may determine worthy of consideration."[96] The Commons' action suggests that Lisle had moved into a definite policy making position in the Commons.

At the end of the first civil war Charles fled to the Scots Army, only to be surrendered to the the English Army and held at Holmby House, later at Hampton Court. Upon the escape of the King from Hampton Court to the Isle of Wight in November 1647, Lisle came to a position of direct authority over the future of Charles, both as to his office and to his person. When the initial chock of the King's flight from the army had dissipated, Parliament named a commission to meet with Charles in the Isle of Wight. Eight members of both houses, including Lisle, composed this commission.[97] The King had surrendered himself into the hands of Governor Robert Hammond of the Isle of Wight, whom Charles expected would be favorably disposed, or at least neutral.[98] In fact, Hammond was more under the control of the army and its par-

liamentary sympathizers than he had expected. In September Parliament sent Lisle and John Bulkeley to attend Hammond in the Isle of Wight and ensure that he settled the government there in a satisfactory manner.[99] Accusations have certainly been made against Cromwell and the Derby House Committee that they conspired to get the King to the Isle of Wight,[100] a topic which also caused divisions in Royalist groups.[101] Whatever the involvement of Cromwell and the parliamentary Radicals, Lisle was certainly deeply embroiled in the activity against the King after he arrived in the Isle of Wight.

A hitherto ignored narrative of Charles' captivity in the Isle of Wight sheds much light on Lisle's role in the period between the civil wars. John Bowring, an acquaintance of Lisle's, composed this work in 1660 as a petition to Charles II. It was not published until 1703 as part of a collection found in the library of the Marquis of Halifax, Sir George Savile.[102] Bowring's "Secret Transactions" was a narrative of the incarceration of the King and has been regarded as spurious or at best blessed with the benefit of hindsight. Consequently historians have ignored Bowring's narrative when considering the plight of the King in the Isle of Wight.[103] There are deficiencies to be found therein; suffice it to say here, however, that in many instances Bowring has been corroborated.[104]

Bowring declared his association with Lisle to be one from Bowring's childhood when Lisle often came to Bowring's

father's house to see Sir Guy Palmes.[105] He claims to have been a clerk of the council extraordinary through the intercessions of Lord Keeper Littleton and remained with the King until the battle of Naseby.[106] Bowring does not account for his time between the fall of Leicester to Fairfax and the opening of the narrative with the King at Hampton Court. On one of the King's journeys to Zion House, Bowring was present and recognized by the Prince Elector as an associate of Lisle's.[107] Hereupon, Bowring related, the King charged him to maintain his position with Lisle, for Charles might soon come under Lisle's control. Bowring, said the King, would then be very useful as a secret confidant. When Charles did come to the Isle of Wight, he relied upon Bowring to aid him,

> . . . which was not in the power at that time of any other Person living to do his Majesty any good, except they had a secret Interest with Lisle; and this the King understood very well; because his Majesty knew, that /Governor Robert/ Hammond received his orders from Lisle in all things, by reason Hammond was otherwise a Stranger to the Island.[108]

Here Bowring claims to have accompanied Lisle and the parliamentary commission to the Isle of Wight.[109]

During the negotiations in the Isle of Wight, Lisle kept Cromwell informed of proceedings by direct correspondence. Bowring related that Lisle's letters sought to induce Cromwell and the army to be more conciliatory toward the King should he agree to all the propositions of Parliament. Lisle even advocated confirmation of titles granted since 1644 as well as restoration of a revenue to the King.[110] Charles confounded the commissioners by his refusal to accept the propositions unchanged. The commission returned to Parlia-

ment empty handed, but with Charles left closely guarded in Carisbrooke Castle.

While the two kingdoms moved closer to a second civil war, Bowring went to Scotland on an errand for the King, and upon his return was examined on affairs in that kingdom by Lisle and Sir Nicholas Love. When Bowring informed them of the impending march of the Duke of Hamilton and his coming defeat at the hands of Cromwell, they and other members scoffed at him, until the news of Hamilton's defeat reached them, that is. At the end of the second civil war in the summer of 1648, Bowring was back in the Isle of Wight.[111]

In January 1648, after the failure of the first treaty in the Isle of Wight, there was an attempt to rescue Charles from Carisbrooke Castle. This attempt came close to involving John Lisle because it was undertaken by many young men of the Isle of Wight, including Lisle's son William, and the son of Sir John Oglander. They intended to surprise the castle one night, flee on horseback, take ship to Tichfield and rendezvous with a rebellious part of the Parliament's Navy. Lisle's son was to guide the navy to the island. However, the ships never appeared and the undertaking failed. The design became a matter of record in 1651 when Thomas Cooke, Royalist turned informer, confessed all to the Committee for Examinations.[112] It is unknown whether Lisle was apprised of these activities, but it certainly must have struck close when he learned of his son's duplicity.

Bowring wrote of another escape attempt for Charles in June 1648, in concert with another of the Lisle family. In May 1648, a rebellion had occurred in the Parliament's Navy anchored in the Thames. The mutineers put Vice Admiral Colonel Rainsborough off his ship and they sailed away in the Royalist cause.[113] Bowring claimed to have had an influence in the navy through a naval officer named Lisle, of the same family as John Lisle. This man was probably Lieutenant Thomas Lisle, a cousin of John Lisle, who may have secured his commission.[114] Thomas Lisle stood willing to serve the King if Bowring should give the signal, but Bowring left for London straight away, and we are not further enlightened on this venture.[115] It failed, if it existed at all, as so many of Charles' opportunities had failed through procrastination.

Bowring reported that both Governor Hammond and the King wrote to Lisle in July 1648 to remove the Parliament's resolution of non-addresses to the King.[116] Bowring carried these letters to London and delivered them himself 31 July. By 24 August commissioners were sent to the Isle of Wight and the non-addresses was removed.[117] It was at the time of this second treaty, that Charles through the agency of Bowring made an attempt for Lisle's support with an offer of a secretaryship of state, only to retract it later upon realizing he had already promised it to another.[118] Again in late October 1648, when Lisle's father Sir William died in the Isle of Wight, the King offered to confer a knighthood on Lisle.[119] It was unlikely that anything could have

induced Lisle in October 1648 to wait on Charles, when a move by the army against the King was imminent. Indeed, Lisle said at this juncture, ". . . it was too late, and he durst not do it;" and informed Bowring of the plans of the army.[120] In view of Lisle's movements from August to October 1648, they would preclude any rapprochement with the King.

After the failure of the first treaty of the Isle of Wight in December 1647, there occurred a rising, amateur at best, led by one Captain Burley, a former naval officer of Newport, Isle of Wight. The attempt to rescue the King amounted to little more than shouts in the streets of Newport, with Burley taken and held by the mayor.[121] However, trial was held in Winchester before Serjeant Wyld as justice of the assize and Lisle assisting on the bench as recorder of Winchester and justice of the Quarter Sessions.[122] The jury found Burley guilty of treason and he was executed. Lisle's presence at such a controversial trial against the known law of treason (that is treason can be only against the sovereign) suggests his later willingness to engage in similar trials, including that of Charles himself.

The services of Lisle as a judge in a controversial trial were soon needed again at Winchester. In April 1648, Charles planned an escape from Carisbrooke with the aid of some soldiers stationed there. One Thomas Osborne arranged the escape, but an information leak to the Derby House Committee frustrated the King's design. Osborne accused Major Edmund Rolfe of plotting a feigned escape with the intent

only to assassinate the King.[123] Rolfe was brought to trial 28 August 1648, at Winchester, again with Serjeant Wyld and Lisle on the bench. The charges were so patently false that the jury was instructed to find Rolfe not guilty, and he was.[124]

There was probably not much that occurred in the Isle of Wight, relating to the King, which Lisle and the Derby House Committee did not know. The correspondence of the committee with Governor Hammond demonstrates that all the escape plans of Charles were known to them, before Hammond even had any knowledge of the plans. The various planned escapes from July to November 1648 are reported by the committee to Hammond.[125] Lisle himself must have been deeply concerned with the espionage carried out by both sides. Bowring describes an incident in the autumn of 1648 when Charles sent a message to the Prince of Wales in Holland by way of a man who proved to be an informer. This man hurrying to London and to the Boar's Head in Holborn knew exactly to whom he must give his information, John Lisle.[126] This incident hints that Lisle and Sir Nicholas Love, who was on the "Secret Committee" and was a close associate of Lisle's from Hampshire, were responsible for searching out Royalist sympathizers and spies.[127]

In Parliament Lisle acted with great purpose against the negotiations at the Treaty of Newport begun 18 September 1648. The Independents opposed the basis for negotiation and Lisle, who attempted to speak against the treaty on the 26th was at first shouted down. Later Speaker Lenthall allowed him the liberty.[128] By allowing Charles to treat

on the basis of the propositions given at Hampton Court, Lisle charged, he ". . . had such advantages, as greater could not be given him, which might destroy all the godly party in the kingdom; since if this Vote should stand, he had not yet put the Parliament into a capacity to treat any other but as rebels, and they would still remain no more than such, in case the Treaty did not take effect."[129] On the question whether the King should be allowed to make propositions of his own rather than agreeing to those carried to him by the commissioners, Lisle echoed the prevailing distrust of the King in a speech on 2 October. Lisle accused Charles of aborting the treaty by surprising Parliament with propositions of his own. He continued, becoming more adamant in his opposition to allowing Charles any maneuverability:

> . . . therefore, since they [the commissioners] had refused to receive the King's Proposition, I suppose, said he, it becomes us likewise to lay them aside: and not only so, but to give further instructions to our commissioners, that if the king do not proceed with them upon each Proposition as before, they should declare against any further progress in the Treaty.[130]

Lisle's speech, supported by Sir John Evelyn, must have told, because the Commons by a unanimous vote rejected the King's counter propositions.[131]

Time was now quickly running out for Charles. His vacillation on the points of the treaty and his final refusal on the abolition of episcopacy precipitated by December a course of events which led to his abduction by the army and his trial before a special commission. The machinations of the Council of Officers at Derby House and their parliamentary allies, following the failure of the Treaty of Newport, have

been discussed by many authors. The army officers decided that Charles must be removed as King before peace would come to the three kingdoms. While Charles remained as King, there could be no return to the normal state of affairs. Charles had to be publicly held to account for causing the decade of civil war. Of course the officers ran the risk of stimulating latent sympathy for Charles, and they undoubtedly realized the chance they were taking in so unprecedented a move, accusing the sovereign of treason. In November, relations between the King and the Council of Officers gradually deteriorated. Most members of Parliament could not accept the army's idea of bringing the King to a public trial for his life. The trial of a King, who was the embodiment of the law, was too much of a strain upon their respect for the law. Lawyer members like Whitelocke and Widdrington viewed the law as semi-sacred and unchangeable. To try the King for treason would negate all that they as lawyers represented, as well as strike out the foundation of the kingdom, which they saw as the law. Lisle, who as a lawyer, might have held similar ideals, was more committed to the supremacy of Parliament, something to which Charles would never agree.

None of Lisle's actions or statements before or after January 1649, indicate an abhorrence of monarchy as an institution. However, his career as a professional parliamentary administrator rose or fell with the success or failure of the Long Parliament. The restoration of Charles to his proper place as a true king, without the necessary statutory guarantees for Parliament to continue as an important branch

of government would leave men like Lisle with nothing. To what extent their own security influenced men like Lisle cannot be certainly determined for the fusion of personal motives of the Radicals and their ideas for the welfare of the kingdom had occurred long before the King reached the scaffold at Whitehall.

In the public trial of Charles, it is possible to see the split between lawyers like Lisle and those like Whitelocke and Widdrington. The army's initiative in removing Charles to Hurst Castle on 1 December and their purge of the Parliament on 6 December eliminated any hard core dissent on proceeding against the King. The Commons appointed a committee, 23 December, (of which Lisle and Sir Nicholas Love were members) to consider ways of proceeding against the King.[132] Although the intent of this committee was only to frighten Charles into agreement with a favorable settlement,[133] within two weeks, 6 January, a new committee was created to devise the manner of trying Charles Stuart for treason.[134] On 1 January, Parliament had proposed that Chief Justice Rolle, Chief Justice St. John, and Chief Baron Wyld act as judges in a trial with 150 commissioners as a jury.[135] However, the idea was abandoned when neither the judges nor the Lords would agree to such a procedure.[136] Parliament then prepared a new ordinance with 135 commissioners to act as judges of both law and fact. A Common's resolution of 4 January, stating that their acts were the law of the land, without consent of peers or king, preceded the passage of this ordinance.[137] Thus the ordinance for the trial

of the King, naming 135 commissioners and the reasons for the trial, became on 6 January 1649, at least the de facto law of the land.[138]

In the subsequent meetings of the High Court of Justice, as the commission was styled, and in the actual trial of the King, Lisle took a leading part. He sat on the subcommittee of the court to determine the method of trying Charles and the procedure to be followed.[139] Lisle and Nicholas Love were the prominent managers for proving the case against the King. They served together on several committees and, as the journal of the court indicates, sat next to each other in the planning meetings of the High Court. They were also absent from the general meetings of the court on the same days.[140] On 15 January, Lisle and Love became members of the committee to advise counsel how to proceed when the King was present in court.[141] In fact, Lisle and Love were two of the most faithful of the commissioners, attending nearly all the general and committee meetings through all the trial.[142] Whitelocke and Widdrington, although named as commissioners, watched the preparations with disdain, but also with silence. On the day the trial opened, 20 January, they crept out of London to a house in the country, not to return until the day of sentencing.[143] Lacking the courage to sit on the court and oppose what they knew to be an indefensible procedure, they could only hide themselves, hopeful, by failing to see, it would go away like a bad dream.

At the first day of the trial, the court chose Lisle and William Say to sit on either side of the Lord President John Bradshaw, to advise him as assistants.[144] They sat on each side of Bradshaw in their black barrister gowns, with the Lord President in the scarlet of a judge.[145] The selection of Lisle to assist Bradshaw in points of law presented by the King certainly speaks for his ability as a lawyer and his commitment to the authority of the court. In all his appearances before the court, never did Charles acknowledge the jurisdiction of the court, nor did he seek a compromise such as abdication. By the 25th, the court proceeded on its own to hear evidence without a plea entered by the King, to be judged on a plea of guilty entered for him as in common law. The only matter remaining was the sentence and the manner of death. A committee, on which Lisle and Love served, drew up the sentence of death by beheading.[146]

For all his malice toward Charles, Lisle balked at the final act of signing the death warrant for the King. Neither his signature nor that of his close associate Love, appear on the warrant.[147] It may be that Lisle, as Edmund Ludlow reported of Nicholas Love, had believed that Charles, when faced with death, would capitulate and agree to any proposals offered him, and so save his life at the last.[148] On the other hand, perhaps the failure to place their names on the warrant was an attempt to leave themselves some argument for saving their own lives, should circumstances later prove it necessary. If this were Lisle's intention, it certainly aided him little, when the Royalists had their day eleven

years later. It is doubtful whether with all that Lisle had done against the King that the omission of his signature would discount all the intentions he had registered, or that Lisle could ever really have thought it would. Lisle did put his name to the official record of the trial submitted to Parliament for its inspection.[149]

The execution of the King prepared the way for a new order in the state. To this order Lisle dedicated himself. The first necessary item of business was to substitute for the King some form of executive arm of Parliament, a Council of State. On 7 February 1649, a committee of the Commons, composed of John Lisle, Cornelius Holland, Thomas Scot, Colonel Edmund Ludlow, and Luke Robinson, drafted an order for a Council of State, its instructions, and a list of its proposed members, not exceeding forty.[150] On the 13th, Parliament accepted the proposal for a Council of State,[151] and the next day confirmed the names submitted with the inclusion of the committee men, for a total of forty-one as a Council of State, nine to be a quorum.[152] The former committee, or any three of them, was to ensure that no disloyal members of Parliament resumed sitting and were to report on all those who had not sat since the trial of the King.[153]

Parliament moved quickly in bringing order to the Commonwealth. The courts of law and equity had been totally disrupted during the civil wars. It was necessary, therefore, that the people have faith in the new regime, especially in such functions as the courts. On 8 February 1649, the commissioners of the great seal since April 1648, Bulstrode White-

locke and Sir Thomas Widdrington, were summoned before the House to deliver up the seal, which was broken before them, and the pieces given them in payment for their services.[154] The same day Parliament appointed Whitelocke, Lisle, and Serjeant Richard Keble as lords commissioners of the great seal and invested them with the new seal. Whitelocke reported that he tried to excuse himself but to no avail, being voted nemine contradictente.[155] Of Lisle's selection Whitelocke wrote:

> Then Mr. John Lisle was named to be another of the commissioners, and after a short, and no eager excuse made by him, and his owning of their authority, (which he had sufficiently done before, as one of the high court of justice for the trial of the king), Mr. Lisle was voted to be another of the commissioners for the great seal.[156]

Two of the commissioners were a quorum and they were styled "lords" commissioners in view of the high office they executed.[157] Keble not being a member of the House, he was sent for, and the three approached the table of Speaker Lenthall, Whitelocke in the middle, Keble on the right, Lisle on the left, to receive the oath and seal. After debate Parliament decided their appointments were to be quam diu se bene gesserint.[158]

Whitelocke's bias against Lisle for participating in the King's trial is clearly visible in his account of Lisle's selection as a lord commissioner. It reveals more than bias, for his reference to Lisle's "high owning of their authority" is significant. Lisle was dedicated to the supremacy of the Parliament. How could he not desire appointment to such a high office of authority and trust? It was his due after ten years of faithful service as a manager of Parliament's

business. Was this appointment not the culmination of long years of hard work and devotion to the cause? Lisle was not exactly unprepared for the office of an equity judge as his career in Parliament and his legal training have exhibited. Many had come to the seals with less preparation for equity than Lisle. It is interesting that Lisle ten years later should note the installation of Sir Christopher Hatton as Lord Keeper in Elizabeth's reign. Hatton was one who had no experience as a judge but was honest, fair, and willing to learn.[159]

Whitelocke was no doubt chosen for his eminence in the legal profession as a pleader as well as to maintain continuity on the court. Whitelocke had served as a commissioner of the seal since the previous year. Keble's selection was probably to bring in one who was not a member of Parliament, thereby avoiding the apparent monopoly of the Chancery bench by members of the Commons. He was also tractable enough to satisfy the Radicals. For Lisle's part, it must be remembered that Chancery was not a judicial tribunal only, but an administrative office as well. Lisle's demonstration of administrative competence in Parliament had been well attested to by his long and active service.

The absence of an executive had placed a special burden upon Parliament during the wars with Charles. They solved this problem with the creation of standing committees such as the Committee of Both Kingdoms (later Both Houses or Derby House), the committee for "taking accompts of the kingdom,"

and those of Haberdashers' Hall and Goldsmiths' Hall. These committees, the latter of which Lisle chaired and the others of which he had had close association, were the managers of the kingdom for Parliament from 1644 to 1649. They even directed the activities of the county committees and heard appeals in their quasi-judicial proceedings.[160] Now, Lisle, as one who had served in the old executive of Parliament, became a member of the new executive in the offices of councillor and commissioner of the great seal.

NOTES

[1]CSPD, Charles I (1644), XIX, 38. Commons Journal, III, 635.

[2]Commons Journal, III, 544, 555, and 569.

[3]Ibid., III, 541. [4]Ibid., III, 542.

[5]Ibid., III, 542. [6]Ibid., III, 553.

[7]Ibid., III, 544. [8]Ibid., III, 551.

[9]Ibid., III, 594.

[10]Samuel R. Gardiner, History of the Civil War 1642-1649 (3 vols.; London, 1889), I, 461.

[11]Ibid., I, 468.

[12]Commons Journal, III, 629.

[13]Ibid., III, 647, 655. [14]Ibid., IV, 50.

[15]CSPD, Charles I (1644), XIX, 483. Commons Journal, IV, 135.

[16]Commons Journal, IV, 395.

[17]Robert Baillie, Letters and Journals . . . From the Beginning of the Civil Wars, in 1637, to the year 1662 . . . (2 vols.; Edinburgh, 1775), II, 66.

[18]Ibid., II, 62-3.

[19]David Masson and John Bruce, Camden Society, Series 2, vol. XII: The Quarrel between the Earl of Manchester and Oliver Cromwell: An Episode of the English Civil War (London, 1875), p. lxvii.

[20]Ibid., p. lxxx. Baillie, Letters and Journals, II, 76 and 77. Zouch Tate was probably an associate of Lisle's from the Middle Temple. Tate was also a brother-in-law of Sir Robert Crane and held estates in Hampshire. Keeler, Long Parliament, p. 357.

[21]Masson and Bruce, eds., Quarrel of Manchester and Cromwell, pp. lxxx-lxxxi.

[22]Commons Journal, III, 718.

[23]Ibid., III, 718. Masson and Bruce, eds., Quarrel between Manchester and Cromwell, p. lxxxix.

[24]Baillie, Letters and Journals, II, 78.

[25]Commons Journal, IV, 13.

[26]Ibid., IV, 25. CSPD, Charles I (1644-45), XX, 263.

[27]Commons Journal, IV, 25. CSPD, Charles I (1644-45), XX, 263.

[28]Masson and Bruce, eds., Quarrel between Manchester and Cromwell, p. xciii.

[29]Commons Journal, IV, 17. [30]Ibid., IV, 27.

[31]Ibid., IV, 28 and 31.

[32]Ibid., IV, 33, 42, 43, 46, 48, 50, 69, 70, 77.

[33]Ibid., IV, 39. [34]Ibid., IV, 71.

[35]Ibid., IV, 17, 60, and 77. CSPD, Charles I (1644-45), XX, 264-65.

[36]Commons Journal, IV, 112. [37]Ibid., IV, 60, 135, 143.

[38]Ibid., IV, 220. CSPD, Charles I (1644-45), XX, 597 and 598.

[39]Commons Journal, IV, 57.

[40]Ibid., IV, 38, 112, 140, and 142. Firth and Rait, Acts and Ordinances, I, 669.

[41]Commons Journal, IV, 140. [42]Ibid., IV, 121 and 137.

[43]Ibid., IV, 87, 138, and 194.

[44]Ibid., IV, 140. Calendar of the Committee for Compounding, p. 20.

[45]CSPD, Charles I (1644-45), XX, 597. HMC, 13th Rep., Duke of Portland Papers, I, 228. Commons Journal, IV, 148, 157, 175, and 178.

[46]Commons Journal, IV, 179. [47]Ibid., IV, 227, 422-23.

[48]Ivan Roots, The Great Rebellion 1642-1660 (London, 1966), pp. 71-2.

[49]Paul H. Hardacre, The Royalists during the Puritan Revolution (The Hague, 1956), p. 18.

[50]Ibid., p. 19. [51]Ibid., p. 22.

[52]B. M., Additional Manuscripts, #40630, f. 134.

[53]Hardacre, Royalists, pp. 23-4.

[54]J. P. Wallis, "Cromwell's Constitutional Experiments," Nineteenth Century, XLVII (1900), 445.

[55]Calendar of the Committee for Compounding, passim.

[56]Commons Journal, IV, 116 and 123.

[57]Ibid., IV, 144 and 148.

[58]Ibid., IV, 155, 157, 173, 301, and 304. Firth and Rait, Acts and Ordinances, I, 804.

[59]Commons Journal, IV, 166, 176, 201, 209, 211, 224, and 246.

[60]Ibid., IV, 265.

[61]Ibid., IV, 435. Firth and Rait, Acts and Ordinances, I, 785. Calendar of the Committee for Compounding, p. 2306.

[62]Commons Journal, IV, 416. [63]Ibid., IV, 426 and 430.

[64]John Milner, The History and Survey of the Antiquities of Winchester (3rd ed.; 2 vols.; Winchester, 1863), II, 21.

[65]Commons Journal, III, 695-96.

[66]Denzil Lord Holles, Memoirs of Denzil, Lord Holles, Baron of Ifield in Sussex: From the Year 1641 to 1648 (London, 1699), in Select Tracts Relating to the Civil Wars in England in the Reign of King Charles the First; . . . (London, 1815), ed. by Francis Maeseres, p. 268.

[67]HMC, 6th Rep., p. 79.

[68]HMC, 13th Rep., Duke of Portland Papers, I, 413.

[69]HMC, 7th Rep., p. 16.

[70]Whitelocke, Memorials (1682), p. 396.

[71]Calendar of the Committee for Compounding, pp. 402-3 and 652.

[72]Commons Journal, II, 681. [73]Ibid., III, 546.

[74]Ibid., III, 565 and 567. [75]Ibid., III, 628.

[76]Ibid., IV, 112, 133, 150, 163, 172, 215, 219, and 313.

[77]Ibid., IV, 167. Holles, Memoirs, in Maeseres, Select Tracts, p. 213. Whitelocke was definitely in correspondence with Sir Edward Hyde from 1645 to 1652. HMC, 3rd Rep., Marquis of Bath Papers, pp. 91-2. For Savile's examination on the accusations against Whitelocke and Holles see, HMC, 13th Rep., Duke of Portland Papers, I, 231 and 234.

[78]Whitelocke, Memorials (1682), pp. 148-49. Commons Journal, IV, 213.

[79]Holles, Memoirs, in Maeseres, Select Tracts, p. 214. Commons Journal, IV, 213.

[80]Commons Journal, IV, 183, 191, and 192.

[81]Ibid., IV, 190.

[82]John Lisle, Zouch Tate, and Mr. Brown, Three Speeches Spoken at a Common Hall (London, 1645).

[83]Walter Strickland to William Lenthall, 16 August 1645, HMC, 13th Rep., Duke of Portland Papers, I, 253. CSPD, Charles I (1645-47), XXI, 13.

[84]Three Speeches at Common Hall, pp. 3-6.

[85]Ibid., p. 7.

[86]A Key to the King's Cabinet . . . (London, 1645), p. 4.

[87]CSPD, Charles I (1645-47), XXI, 574.

[88]Gardiner, Civil War, III, 167. Lisle had been chairman of the committee that secured passage of the Militia Ordinance, Commons Journal, IV, 394, 395-6, 410, and 441-42.

[89]HMC, 7th Rep., p. 6. Commons Journal, V, 450.

[90]Commons Journal, III, 733; IV, 52.

[91]Ibid., IV, 177, 273, 304.

[92]Ibid., IV, 490. Firth and Rait, Acts and Ordinances, I, 937.

[93]Commons Journal, IV, 507. [94]Ibid., IV, 507.

[95]Ibid., IV, 508. [96]Ibid., IV, 508.

[97]Whitelocke, Memorials (1682), p. 285.

[98]John Ashburnham, A Narrative by John Ashburnham of His Attendance on King Charles the First from Oxford to the Scotch Army, and from Hampton Court to the Isle of Wight . . . (2 vols.; London, 1830). Sir John Berkeley, Memoirs of Sir John Berkeley (London, 1699), in Maeseres, Select Tracts. Holles, Memoirs, in Maeseres, Select Tracts, pp. 296-97. It is noteworthy that Robert Hammond was a close friend of Cromwell's, who called him "Robbin" and carefully advanced his career in the army. In 1644, Hammond was courtmartialed for a duel in which he killed one Major Gray. He was acquitted. Commons Journal, III, 633, 657, and 712. Later, in 1647, Hammond was invested with the governorship of the Isle of Wight only months before Charles fled there. Some have maintained that Cromwell planted Hammond in the Isle and then secretly encouraged Charles to flee there.

[99]George Hillier, A Narrative of the Attempted Escapes of Charles the First from Carisbrooke Castle . . . including the Letters of the King to Colonel Titus (London, 1852), p. 5.

[100]Holles, Memoirs, in Maeseres, Select Tracts, p. 296. Thomas May, A Breviary of . . . Parliament of England (London, 1655), in Maeseres, Select Tracts, p. 105. Sir Philip Warwick, Memoirs of the Reign of King Charles the First (Edinburgh, 1813), pp. 339-44. Ludlow, Memoirs, I, 168.

[101]Edward, Earl of Clarendon, The History of the Rebellion abd Civil Wars in England (6 vols.; Oxford, 1888), IV, 269-70. See also Ashburnham, Narrative, and Berkeley, Memoirs in Maeseres, Select Tracts.

[102]Bowring's "Secret Transactions" is contained in Miscellanies Historical and Philological: Being A Curious Collection of Private Papers Found in the Study of a Noble-

Man Lately Deceased (London, 1703), pp. 78-162. Hereafter cited as Bowring, "Secret Transactions," in Miscellanies. H. C. Foxcroft, The Lisle and Letters of Sir George Savile, First Marquis of Halifax (2 vols.; New York, 1898), II, 540-41.

[103]Ashburnham, Narrative, I, 152-54. Hillier, Narrative of . . . Charles I, pp. 127-29. Jack D. Jones, The Royal Prisoner, Charles I at Carisbrooke (London, 1965).

[104]Allan J. Busch, "The 'Secret Transactions' of John Bowring and Charles I in the Isle of Wight: A Reappraisal," Bibliographical Contributions, Vol. II (NYP).

[105]Bowring, "Secret Transactions," in Miscellanies, p. 80.

[106]Ibid., pp. 78-9. [107]Ibid., pp. 79-80.

[108]Ibid., pp. 80-1. [109]Ibid., p. 52.

[110]Ibid., p. 91. [111]Ibid., pp. 104-106.

[112]HMC, 13th Rep., Duke of Portland Papers, I, 589. Whitelocke, Memorials (1682), p. 287.

[113]Gardiner, Civil War, III, 384.

[114]Bowring, "Secret Transactions," in Miscellanies, p. 146; Lieutenant Thomas Lisle led the revolt against Colonel Rainsborough. He was Rainsborough's own lieutenant. J. R. Powell, The Navy in the English Civil War (London, 1962), pp. 152 and 157.

[115]Bowring, "Secret Transactions," in Miscellanies, pp. 146-47.

[116]Ibid., pp. 108-113. [117]Ibid., pp. 113-14.

[118]Ibid., pp. 122-23.

[119]Ibid., p. 154. Oglander Notebook, pp. 123-25.

[120]Bowring, "Secret Transactions," in Miscellanies, p. 154.

[121]Gardiner, Civil War, III, 286.

[122]Hillier, Narrative of Charles I, pp. 65-6. Gardiner, Civil War, III, 291-92.

[123]Gardiner, Civil War, III, 380n.

[124]Hillier, Narrative of Charles I, p. 196.

[125]CSPD. Charles I (1648-49), XXII, 220, 322-23, and 324.

[126]Bowring, "Secret Transactions," in Miscellanies, p. 135.

[127]Mark Noble, Lives of the Regicides (2 vols.; London, 1798), I, 92. See also Bowring, "Secret Transactions," in Miscellanies, p. 138, where he states that Nicholas Love once by intercession saved Bowring's life.

[128]Gardiner, Civil War, III, 472-73.

[129]William Cobbett, Parliamentary History of England from . . . 1066 to . . . 1803 (London, 1808), III, 1026. Hereafter cited as Parliamentary History.

[130]Ibid., III, 1038.

[131]Gardiner, Civil War, III, 477-78.

[132]Commons Journal, VI, 102.

[133]Gardiner, Civil War, III, 554.

[134]Firth and Rait, Acts and Ordinances, I, 1255.

[135]Gardiner, Civil War, III, 559.

[136]Ibid., III, 561. [137]Commons Journal, VI, 110.

[138]Ibid., VI, 113.

[139]T. B. Howell, A Complete Collection of State Trials . . . to the Year 1783 (21 vols.; London, 1816), IV, 1057. Hereafter cited as State Trials.

[140]John Nalson, Journal of the High Court of Justice (London, 1684), pp. 9-10.

[141]Ibid., p. 16. State Trials, IV, 1060.

[142]Nalson, Journal, passim. State Trials, IV, 1053.

[143]Cambell, Lord Chancellors, 1st Ser., III, 35-6.

[144]Nalson, Journal, p. 25. State Trials, IV, 1067. Ludlow, Memoirs, I, 214.

[145]C. V. Wedgwood, The Trial of Charles I (London, 1966), p. 127.

[146]Nalson, Journal, p. 82. State Trials, IV, 1113.

[147]Nalson, Journal, p. 111 opposite.

[148]Wedgwood, Trial of Charles I, p. 158. Gardiner, Civil War, III, 576-77.

[149]CSPD, Charles I (1648-49), XXII, 353. Nalson, Journal, p. 123.

[150]Parliamentary History, III, 1285.

[151]CSPD, Commonwealth (1649-50), I, 6. Firth and Rait, Acts and Ordinances, II, 2.

[152]Parliamentary History, III, 1287-90, 1346, 1362, and 1376.

[153]Ludlow, Memoirs, I, 222-23.

[154]HMC, De'Lisle and Dudley Mss., Vol. VI: Sidney Papers (1626-1698), p. 584. Parliamentary History, III, 1287.

[155]Whitelocke, Memorials (1682), p. 374.

[156]Ibid., p. 374. [157]Ibid., p. 374.

[158]Ibid., p. 374.

[159][John Lisle], "Abridgements of Chancery Causes," MS. D87, Department of Special Collections, University of Kansas Libraries, f. 248v. William Camden, The Historie of the Most Renowned and Victorious Princesse Elizabeth, Late Queen of England (London, 1630), Book 3, p. 127.

[160]A. H. Dodd, The Growth of Responsible Government (London, 1956), p. 40.

CHAPTER III

CROMWELLIAN POLITICO AND INTERREGNUM JURIST

1649 TO 1664

By January 1649, John Lisle had so consolidated his position in the state that when the new regime was established, with king or lords, the Parliament, or what was left of it, elected him to two of the highest offices in the new government, to be a member of the Council of State, the executive organ of Parliament, and as one the lords commissioners of the great seal to preside in the Court of Chancery.[1] Parliament charged the Council of State with the executive direction of the affairs of state, such as foreign relations, the army, and the enforcement of parliamentary acts. It was indeed a show of trust for Lisle to sit in the executive branch even though Parliament watched closely that the Council of State did not usurp the prerogatives of Parliament.[2] In view of Lisle's rise in the state during the years 1640 to 1649, his selection as one of the directors of the Commonwealth comes as no surprise. His participation in the King's trial and execution gave Lisle a vested

interest in the success of the experiment in republicanism.

Lisle combined membership in the executive body of the Commonwealth with his appointment to the bench of the highest judicial tribunal, the Court of Chancery. If the new Council of State was the successor of the old Privy Council, there was no reason why a judge of the Chancery bench should not sit at the Council table. Moreover, in considering the loud complaints of the Radicals against the courts in general and the Chancery in particular, was it not propitious for the successful Independent Party to have one of their own number on that court? In view of who the other two judges of the Chancery were in 1649, it is reasonable that the Independents should secure Lisle's place on the court. Of Lisle's colleagues in Chancery, Bulstrode Whitelocke was nominated first and Richard Keble last. All three were common lawyers, but Whitelocke and Keble were not Independents. The solution for a mixture of politics in Chancery was the Rump's decision to follow the pattern set during the civil wars of entrusting the great seal to several men so to avoid the unfortunate circumstance created by Lord Keeper Littleton's defection in 1643. There was, afterall, something mystical about the great seal; it was the symbol of the authority of the state and all things bearing its impression were as if by magic the law of the land. The new regime could hardly afford such an instrument to fall into the hands of any man who was not trustworthy.

While Whitelocke's eminence as a lawyer and his experience in Chancery were greater than Lisle's, there were problems in Whitelocke's appointment; he was not thoroughly trusted by the Independents. His father, Sir James, had been one of the great common law judges of the early seventeenth century. Whitelocke himself had a firm grounding in the legal profession. His family was Buckinghamshire gentry and certainly not declining gentry. He had been at the Middle Temple, where he and Lisle undoubtedly became acquainted in the years before the civil wars. In the 1630's, Whitelocke probably began his practice in London when he was about thirty years old; Lisle was yet a student at the Middle Temple. When the Long Parliament began, Whitelocke was numbered among those in opposition to crown policies, but not vehemently so. And even though his house in Buckinghamshire was ransacked by Royalist troops early in the war, Whitelocke, by 1644, became aligned with the more moderate Presbyterians in Parliament, such as Denzil Holles.[3] In fact, it was Holles and Whitelocke who stood accused by Savile of conspiracy with Lord Digby and Charles I to undercut the war posture of the Independents during the Treaty of Uxbridge. In this, Whitelocke came close to suffering the wrath of the radical element of Parliament. How Whitelocke managed to escape punishment in 1645 is obscure, but it may have been a result of ties with Independents like John Lisle, who spoke for him in Parliament on the treason charges.[4]

However, Whitelocke worked to reestablish his position in Parliament from 1645 to 1648. Only a few months after his embarrassment in the Uxbridge Treaty, Whitelocke received

from Parliament the grant of all Lord Keeper Littleton's books and manuscripts.[5] In January 1647, Parliament made a gift to Whitelocke of £2000, for his losses in the civil wars and for his faithful adherence to Parliament.[6] In the spring of 1648, Whitelocke became one of the five lords commissioners charged with hearing equity cases in Chancery, and in November he received the lucrative post of Attorney for the Duchy of Lancaster.[7] His appointments in 1648 showed the degree of trust which other members had in Whitelocke's ability as a lawyer and his dedication to the cause of Parliament.

However, the events of November 1648 to January 1649, generated yet another a crisis for him and his standing with the Parliament. When the King was brought to trial before the High Court of Justice, Whitelocke had a seat as one of the commissioners. He and Sir Thomas Widdrington declined participation. Although Whitelocke and Widdrington were willing to strip the King of some of his arbitrary powers, as tradition bound common lawyers they would not participate in regicide, the killing of a sovereign from whom the law theoretically emanated. Instead they chose the path of cowardice, or perhaps pragmatism, to save their own persons, rather than cast negative votes in the trial. Whitelocke never relinquished his distaste for "high courts of justice," a distaste Lisle never shared.

Even as late as 1651, Whitelocke's past duplicity returned to haunt him in the revelations of the ubiquitous

informer, Thomas Coke, in April 1651. Coke stated before the Committee for Examinations that the King had regarded Whitelocke as a friend during the Treaty of Uxbridge and that Sir Edward Hyde had often visited him to elicite support for the King in Parliament. "And," said Coke, "to this day he is esteemed at the King's Court as a person that complyes for his owne interest, and as one that is apt to shew civilities and curtesies to the King's partie upon all occasions."[8] Whitelocke certainly managed to weather this accusation in 1651, as did others such as John Bowring, when accused by Coke. Lisle's presence on the Committee for Examinations may account for the failure of these charges to have any effect.

So while the Rump recognized Whitelocke's eminence as a lawyer, his political loyalties were at least questionable. He had committed indiscretions in the past, but perhaps in some capacity utilizing his legal talents he could be useful to the Commonwealth. Whitelocke, therefore, continued in his place as a commissioner of the seal; Widdrington was dismissed, and replaced by Lisle. Whitelocke's earlier recounting of Lisle's nomination shows he was not altogether pleased with his new colleague. But Lisle was named.[9] Whitelocke was now adequately checked with the presence of one who was his personal friend and at the same time an ardent supporter of the Commonwealth.

Parliament's third appointment to the Chancery in 1649 was Richard Keble. In their choice of a third commissioner

Parliament found the most tractable lawyer of serjeant rank, who was not a member of Parliament. Keble, a dark horse, served a dual purpose on the bench. He had no political motivation, and he gave a semblance of non-parliamentary representation on the court. Little is known of Keble aside from his subsequent activity on the Chancery bench. He came from a family of lawyers in Newton, Suffolk, and was a member of Gray's Inn in 1609. He received his call to the bar in 1614 and served as reader for 1639. Certainly this was a respectable career. Parliament earlier dispatched Keble as a judge for the Welsh circuit in 1647 and named him a serjeant of law in 1648. In December 1648, he presided at the trial of some mutineers at Norwich Assizes, which probably secured his acceptability among Independents for the 1649 appointment to the Chancery. From then Keble served in Chancery and presided at some of the political trials of the High Court of Justice until his dismissal from the Chancery by Cromwell in April 1654.[10] Keble probably did not live long after his dismissal;[11] but his son Joseph practiced before the Chancery bar of the Interregnum and later published Reports of Cases in the King's Bench from 1660 to 1678.[12] Keble has been characterized as a sleepy, uninterested, old judge, but the Chancery records show that he took an active part in delivering opinions from the bench.[13]

Parliament's resolution appointing the new commissioners of the great seal granted Whitelocke, Lisle and Keble custody of the seal jointly and severally, with two of them to be a

quorum for sessions of the court.[14] As other judges of the Commonwealth, the lords commissioners received their office, quam diu se bene gesserint, and they were styled "lords" commissioners of the great seal with all the powers that a Lord Chancellor or Keeper had enjoyed in the past.[15] There was some dispute in Parliament over the titles for the commissioners, some members not wishing to have "lord" as part of the title, because it smacked of royalty. However, it was decided they should be addressed as "lords" to enhance the prestige of the court and give weight to their decisions.[16]

Before the new commissioners of the seal were elected by the Parliament, the old great seal was brought into the House, broken into pieces, and distributed to the old commissioners, Whitelocke and Widdrington, for their services.[17] The formal ceremony of installation for the commissioners followed on 7 February 1649, and was described by Whitelocke. Serjeant Keble had to be sent for as he was not a member of Parliament. When he arrived, the three approached the Speaker's table, Whitelocke in the center, Keble on the right, and Lisle on the left. Speaker William Lenthall (soon to be Master of the Rolls) administered the oath of office and invested the lords commissioners with the great seal. With the seal in its purse, the commissioners carried it to the rooms of John Browne, Clerk of the Parliament, sealed it with their own seals, and locked it away.[18]

Whether the lords commissioners began sitting immediately is not readily ascertained, for the records are not altogether

clear on the point. They probably began hearing causes soon, because the irregular sessions of Chancery over the preceding ten years had built up an enormous backlog of cases. Nevertheless, the earliest causes on record for 1649 are from Whitsun and Trinity terms of May and June. Lisle in his "Abridgements of Chancery Causes" reported a few cases for those terms, which suggests that the lords commissioners did not open formal hearings in Chancery until Whitsun Term 1649.[19]

Moreover, during the early months of the Commonwealth, the commissioners, Whitelocke and Lisle, were an extraordinarily busy and preoccupied two. Both Lisle and Whitelocke, as members of the Council of State, received countless routine executive and political duties to perform in addition to their presiding in Chancery. The latter was more than a full time position, but coupled with the many other duties ordered by Parliament and the Council of State, it is incredible that they accomplished any of them well.

The State Papers of the Commonwealth, being a record of the Council of State proceedings, disclose the many and various duties of the lords commissioners. In discussing the activities of the lords commissioners, those of an executive or political character must be considered separately from those directly connected with their offices as judges. The former may be divided into several categories, which readily present themselves, and it should be noted that they are totally confined to the Commonwealth, that is from 1649 to 1653, and do not extend into the Protectorate.

The most important category pertained to the security of the state. Lisle served on many committees concerned with the militia and the navy from 1649 to 1653,[20] and was selected as a Treasurer at War to oversee the funds raised for the army, and in particular those funds raised in Southampton, Wiltshire, and the Isle of Wight.[21] He was also consulted on security matters which affected the south coast, Southampton, the Isle of Wight, and Jersey.[22] The disposition of prisoners still held from the second civil war brought to Lisle the responsibility for examining some of them, in one instance being granted a personal disposition of a Scots prisoner, of his choice.[23] The attempt by Royalists to invade England from Scotland brought more printed propaganda, and Lisle sought out seditious publications while he worked to counter the claims of Charles Stuart to the throne of England.[24]

Another responsibility of the lords commissioners which Lisle shared was the preparation and scrutiny of bills in Parliament for that body's consideration. Some of these included bills on spying for the enemy,[25] on seizing the property of delinquents in England and Scotland,[26] on "liberty of tender conscience,"[27] on wine prices,[28] on fee-farm rents,[29] and on raising the militia in the Isle of Wight.[30] On some occasions Lisle acted as emissary from the Council of State to the Parliament, bearing bills for consideration and explaining them,[31] but this duty seems to have been confined to the first year of the Commonwealth.

The establishment of contact with representatives of foreign governments was a particularly difficult but very necessary affair for the new republic, and the lords commissioners were also employed in those negotiations. Whitelocke and Lisle were members of the committee for foreign relations,[32] and prepared commissions for official residents abroad.[33] As relations with the United Provinces strained to the breaking point, the lords commissioners were called upon to negotiate with the Dutch ambassador by examining and answering communications, studying the relations between the two countries. In 1652, Lisle was given special powers to treat with ambassadors extraordinary from that country.[34] It was also customary for one of the lords commissioners to attend the reception of foreign dignitaries such as the Duke of Florence,[35] the Duke of Oldenburg,[36] and the Portuquese ambassador.[37]

The lords commissioners heard petitions of private persons on order from Parliament or Council. They might be asked to examine the requested relief of those unjustly injured by acts of Parliament,[38] or to hear complaints against people who placed themselves above the law.[39] Petitions which arose from the sequestration of delinquents were likewise referred to them for arbitration.[40] Lisle personally directed the action of Alderman Fowke's petition to the Council in 1652, wherein he complained of sufferings under Charles I in 1628. Lisle recommended Fowke receive lands in Waltham Forest, Essex, worth £500 a year.[41] Moreover the practice of referring private petitions to the lords

commissioners carried over to the Protectorate, where one finds another petition on sequestration for delinquency referred to Lisle and four members of the Council.[42]

There were also "house-keeping" chores of the new government which received executive direction from the lords commissioners. These problems included the melting of coins, ordering the inland and foreign post, commissioning the writing of a history of the times, and settling the duties of Trinity House in directing maritime activities.[43] Both Lisle and Whitelocke were named governors of schools and almshouses in Westminster.[44] Such mundane tasks as direction of the cleaning of Whitehall Palace did not escape the lords commissioners.[45]

The above duties and responsibilities of the lords commissioners derived from their membership on the Council of State not from their appointment to the Chancery bench, but it is necessary to realize they were not only judges in Chancery but high executive functionaries as well. The new Commonwealth, as the old regime, did not draw clear distinctions between judicial and executive departments. Lisle remained a member of the Council of State until the advent of the Protectorate, when Cromwell removed all judges from the formal executive arrangement. Before 1654, however, Lisle and Whitelocke received appointments to the Council of State each successive year.[46] In the spring of 1652, Lisle even served as the Lord President of the Council

which brought him additional duties to perform in the name of the Council.[47]

It is not surprising that the Commonwealth made no strict delineation between executive and judicial functions. Had not Lord Chancellors, Keepers, and judges sat at the Council table in the past? Had they not managed the crown's business within the Lords' House of Parliament? The modern idea of separation and balance of powers among the branches of government had not developed to the extent of formal separation by 1650. The executive, the Council of State, was a collective leadership, why should not the highest judicial officers serve as did the army and other important persons? Lisle was not concerned with possible conflict of interest between the executive and judicial arms of government. In fact, one receives the distinct impression from the several entries of Council business in Lisle's "Abridgement" that the lords commissioners, at the apex of the judicial system, were quite naturally part of the executive. The very fact that Lisle entered Council business in his "Abridgements" shows that it was Chancery business as well.[48]

The Council of State often included the lords commissioners in committees more concerned with judicial matters. They were charged, as Lord Chancellors and Keepers in the past had been, with the general supervision of the administration of justice in the Commonwealth. Whitelocke, Lisle, Lord Chief Justice Henry Rolle, Lord Chief Justice Oliver St. John, and Lord Chief Baron John Wyld were a committee

of the Council of State to advise that body on matters of law.[49] The lords commissioners gave legal advice and made reports on particular questions such as violence in Westminster Hall and the prosecution of Colonel Lilburne.[50] They received personal references from the Council to do justice in Chancery on private petitions.[51] In addition to these more personal services to the Council, the lords commissioners were the chief administrative officers of the Commonwealth judiciary.

Parliament relied upon them in the matter of selecting judges for the central courts at Westminster although Parliament reserved the final power of appointment of all high court judges during both the Commonwealth and Protectorate.[52] The lords commissioners retained administrative authority over the appointment of judges for special trials,[53] and for issuance of commissions of oyer and terminer and general gaol delivery.[54] When the judges went on circuit for the assizes, it fell to the lords commissioners in the mode of the Lord Chancellors, to address the judges on pending legislation in Parliament, to give them their charges, and to pay them for their services.[55] The supervision of judges on circuit by the lords commissioners continued under the Protectorate.[56]

The commissions of the peace and commissions with quasi-judicial authority were also under the general supervision of the lords commissioners. They removed all justices of the peace from the county commissions if they had not taken the Engagement (an oath of allegiance to the Common-

wealth without king or lords) by April 1650,[57] and ordered all justices of the peace to administer the Engagement to others in their jurisdictions and report the same to the lords commissioners.[58] They appointed particular individuals to commissions of the peace when the appointment was in the best interests of the Commonwealth, such as the addition of Sir Henry Vane to the Lincolnshire commission.[59] Further, the lords commissioners received petitions from private parties on miscarriages of justice by the justices of the peace.[60] Quasi-judicial bodies came under their supervision, and they received petitions and complaints against the commissioners of sewers,[61] and the committees for sequestration.[62] On occasion the lords commissioners directed committees for sequestration to reconsider their decisions on the disposition of estates to provide for the dependents of a delinquent.[63] The selection of sheriffs for the counties, although not a direct responsibility of the lords commissioners, was a matter for their advice,[64] for the sheriffs could easily control the election of members of Parliament.

The period of the Commonwealth from 1649 to 1653 was a hiatus in the political and judicial careers of the lords commissioners, Lisle and Whitelocke. They were secure in their dominant roles of high executive and judicial officers. They were the architects of the Republic. But although the Council of State worked well as an executive, the Rump failed in the eyes of the army and the people to fulfill its

proper legislative role in the state. As the Rump failed to provide adequate legislative leadership, the country became restive. The opinion became current that the Rump had outlived its usefulness and should surrender up its authority to govern. With the end of the Commonwealth under the Long Parliament, Lisle's public career entered yet another phase.

The year 1653 brought an end to the Commonwealth as a republic governed by the Long Parliament. Leadership of the body ignobly titled the "Rump" was at an all time low. When it became perfectly obvious to all, including the army, that the Rump intended nothing more than to perpetuate itself, Lord General Oliver Cromwell dispersed them and their executive, the Council of State. The three kingdoms were then without a semblance of legitimate government.

John Lisle's career and position in the state were inextricably bound to the fate of the Long Parliament and the Commonwealth. The Long Parliament had raised him from an insignificant lawyer and member of Parliament in 1640, to the chairmanship of powerful committees and finally entrusted him with the symbol of their authority, the great seal. But he did not tumble from his pinnacle of power and prestige when the Commonwealth gave way to the Protectorate of Cromwell. In fact, short of his failure along with the other judges to hold seats on the new Council of State, there was no dimunition of his influence in the state. He and the other lords commissioners continued to attend the Council of State in an ex officio capacity when required.

Moreover, Lisle and Whitelocke remained in their places as lords commissioners of the great seal while Keble was deprived in favor of Sir Thomas Widdrington. Cromwell was no doubt reluctant to effect wholesale dismissals of the judges. He naturally desired the best available men in judicial office to maintain the prestige and confidence in his government while at the same time maintaining continuity on the bench.

Lisle was quite definitely an ardent supporter of the new regime. In that he owed his position to the Long Parliament, his reasons for such support might appear somewhat obscure. Nevertheless, the answer is relatively simple. Most obvious is that the end of the Commonwealth and the advent of the Protectorate was an accomplished fact, practically overnight. There was no opportunity for opposition. Lisle's adherence to Cromwell in the 1640's on such matters as the security of the state and army administration has been fully established. However, the view presented by authors such as Stuart Prall,[65] that Lisle was part of the military clique brought in by Cromwell, is unacceptable. Lisle was not associated closely with the military leadership of the Protector's Council of State nor does his career following the coup d'etat of 1653 necessarily prove his acting in concert with them. He was regarded as a member of the civil magistracy. His support of Cromwell in 1653 was more likely prompted by his long personal association with Cromwell in the cause and by the natural inclination of a lawyer and judge to desire a sound and legitimate basis for government under which to carry out his judicial functions.

Furthermore, there is the understandable instinct for self-preservation and the element of a trimmer in Lisle's adherence to the new regime. Lisle possessed something definitely feline in his ability always to land on his political feet.

After the summary dissolution of the Rump, a nominated assembly took its place under the authority of the Lord General Cromwell and the army, which had summoned it into existence. The failure of this assembly, the "Barebones Parliament," needs no elucidation here.[66] One of its measures, the abolition of Chancery, will be discussed later. The confusion which resulted from this unreliable assembly of saints, prompted Cromwell (on whom authority had again devolved), to seek a written constitution combining some form of rule by a single person with an elected assembly and an executive body or council to aid the supreme magistrate.[67] This new political arrangement under the "Instrument of Government" constituted Cromwell as Lord Protector, created an advisory body or council, and empowered the Protector to summon a parliament. The Council of State was actually the most powerful of the three as the Lord Protector was bound to take its advice.[68] It is significant that this smaller body was heavily military and that Lisle was not a member, a hint that he was not closely aligned with the military clique that created the first Protectorate.

Cromwell accepted the Instrument of Government on 12 December 1653. There followed on 16 December a very formal, pageantry conscious ceremony for the swearing of the Lord

Protector, one which reminded some of a definitely "royal" affair. John Lambert, the representative of the army, presented Cromwell with the sword of state. John Lisle, in his capacity as Lord Commissioner of the Great Seal, approached Cromwell, and after reading the Instrument of Government and presenting the form of an oath on parchment, swore Cromwell as Lord Protector.[69] Lisle's part in the swearing of Cromwell suggests his personal standing with the Lord Protector. Widdrington might have fulfilled the obligation as well. Had Whitelocke not been in Sweden, he too, even willing, might have sworn Cromwell. Whitelocke certainly was not opposed to the Protectorate or Cromwell's heading such a regime, for he too longed for a firm established government. Earlier in the year, Cromwell had even discussed the founding of the Protectorate with Whitelocke.[70] It was only the legislation of the Protectorate by proclamations that rankled Whitelocke, who thought it smacked of the Stuarts' rule by proclamations.[71]

Since the founding of the Commonwealth, Lisle had begun to consolidate his position in Hampshire, as a political power base. In December 1651, he secured the recordership of Southampton when the corporation requested the recorder, Thomas Levingston, to resign in favor to Lord Commissioner Lisle.[72] Although this office was not one of great financial value, paying only £5 a year, it did offer the holder other advantages. From the vantage of chief legal officer of Southampton, Lisle could control both his own political destiny and that of others in the county. The recorder

had considerable influence in the determination of members of Parliament for the borough and in the selection of other officers of the corporation. Francis Cole was elected as Town Clerk of Southampton in January 1658 upon the consent of Lisle.[74]

Lisle was at once, recorder of Southampton and Winchester in 1651, and it is observed in his "Abridgements" that he regarded it as questionable whether one could serve simultaneously as a judge and a recorder of a corporation.[75] From the attitude Lisle expressed therein on avoiding conflict of interest as a judge in Chancery, together with the precedents offered and his retaining the offices, Lisle must have resolved the problem satisfactorily for his own conscience.[76]

The office of recorder undoubtedly brought Lisle the support necessary for election as member of Parliament for Southampton City in Cromwell's first Protectorate Parliament.[77] He was again returned for Southampton in the second elected Parliament of the Protectorate in 1656.[78] In the first Protectorate Parliament called for 3 September 1654, the Protector regarded Lisle as one of the key men who would sit in that body as a government manager. In late August 1654, Lisle was called, together with Lord President Laurence, Chief Justice St. John, and Whitelocke (lately returned from Sweden), to discuss important questions to be placed before the Parliament when it met.[79] Here Lisle and the other judges were to act as political advisors to Cromwell and the Council on the forthcoming Parliament.

In choosing sheriffs, an important aspect of the control over election of members of Parliament, Lisle and the other lords commissioners assisted the Protector. According to Lisle, on 3 November 1654, the lords commissioners and Colonel Sydenham, a treasury commissioner, met in the Exchequer Chamber with the other judges and the Protector at 11:00 A.M. Earlier that morning the lords commissioners had proceeded through the courts of the Upper Bench and Common Pleas, saluting the judges as they passed along. From the Chancery bench, they instructed the other judges to meet with them in the Exchequer Chamber. At the appointed hour the two chief justices, Henry Rolle and Oliver St. John arrived with the other judges. When all were present in the Exchequer Chamber, the Protector told them to take the prescribed oath and proceed to the selection of sheriffs. However, Chief Justice Rolle objected to this proceeding by saying,

> . . . many of the great officers were not now, which were appoynted to be present by that statute [11 R. II], as the Privy Seale the lord Chamberlayne etc: and therefore the directives of the Statute could not be followed in all things, he thought it not fitt to take that oath [prescribed by 11 R. II].[80]

No one seems to have taken much notice of Rolle's protest, for they proceeded to selection of sheriffs shortly. After the judges had gone over the list of six names for each county, it was shortened to three. Three books of three were prepared for the Protector, the lords commissioners, and the commissioners of the treasury. The lords in the Exchequer Chamber then agreed to meet the Protector on 15 November for the final selection.[81]

On 15 November, when the list of three had been prepared, the Protector summoned the lords commissioners, Secretary of State John Thurloe, and two masters of the registry to Whitehall. Colonels Whalley and Jones of the Council were also present. Cromwell then had the list read to them as he pricked a name for each county and asked the advice of the lords commissioners on each name.[82] The selection of sheriffs was a very important political matter because they could ensure the Protector a suitable composition for the next Parliament. His careful solicitation of the advice of the lords commissioners demonstrates their continuing political importance.[83]

The 1654 Parliament fulfilled only its legal tenure of five months and was dismissed. There followed a rule by proclamation and the major generals under the Lord Protector for eighteen months before the meeting of the 1656 Parliament. Lisle was returned to this Parliament for Southampton City, but it was not without a fight in that borough. Opposition to Lisle as a member of Parliament for Southampton centered in Francis Cole, the Town Clerk, who is referred to as a burgess of the city with Lisle.[84] A campaign of pamphlet literature circulated through Southampton and the Isle of Wight to defeat Lisle and place John Bulkeley as member for the city.[85] However, Lisle carried the election by only four votes,[86] and it appears that in the final tally, 21 August, Bulkeley was recognized as the winner.[87] Failing in election at Southampton, Lisle waited until the Council struck ardent republicans like Bulkeley from the eligible list. Thereupon the Council recognized

Lisle as the duly returned member for Southampton.[88] The Parliament met 17 September and heard Cromwell's opening speech "from the throne." The Lord Protector was attended at the sermon by Dr. Owen in Westminster Abbey and at his speech in the Painted Chamber by the Council and the lords commissioners, Lisle and Fiennes.[89] Lisle was again firmly placed in the government of England.

The activities of the 1656 Parliament, for example the prosecution of James Naylor for blasphemy before the bar of the House, pushed the country along to further excesses and consitutional changes in the spring of 1657. Fiennes and Lisle had been charged with the manipulation of this Parliament for the Protector and Council, and the most important consideration was the alteration of the Instrument of Government to provide for a "King" and the hereditary succession of that office. The leaders of the government were aware of the dangers involved with a government headed by a single person and no provision for the succession of that office. Cromwell was growing slower and weaker, and the incessant rumors of assassination brought out the significant weakness of the Instrument.[90] The feeling of revulsion which the civilians and the populace held for the military trappings of the Protectorate lended itself easily to the alternate of a civil kingship. Without an hereditary kingship there might well be a continuation of the military predominance in the state.[91]

Kingship for Cromwell was not a novel idea of the 1656 Parliament. Many assumed that the 1654 Parliament

was summoned to make Cromwell king.[92] The quest for kingship vested in the House of Cromwell had followed a tortuous journey since 1653, with Cromwell vacillating first favorable and then opposed. With the situation in 1657, Cromwell had again become more amenable to the proposition. The 1657 proposal for kingship emerged from the civilian faction of the Council, probably authored by Lord Broghil, but supported by Whitelocke, Lisle, Fiennes, and Glyn. There was a definite division between the military and civilian members of the Council and government officers over this question of monarchy. In March 1657, Lisle, Broghil, and Whitelocke all spoke in the House in favor of the resolution for Cromwell's elevation to King. Generals Desborough, Whalley, and Goffe all spoke in opposition.[93] The lawyers, judges, and civil magistracy sought some firm, legal basis for the Protectorate. The generals sought to preserve their preeminence in the state.

In the maneuvering which followed the introduction in the House of the amendment to the Instrument of Government, Lisle played an important role. He was committed to the policy of kingship for Cromwell and to the hereditary succession. With the military party rebuked by Cromwell, the supporters of the "Remonstrance" on monarchy went merrily on with reordering the government. During March 1657, the new constitution began to unfold. There was to be another house of Parliament, allowing some of the old lords and the new men of power to be a check upon a recalcitrant lower house. The army did not oppose this alteration in the

government. On 25 March, the House, after hearing speeches by Lisle, Broghil, Whitelocke, Desborough, Whalley, and Goffe, resolved to offer the title of "King" to the Lord Protector together with the other provisions contained in the "Humble Petition and Advice."[94] Cromwell, 3 April 1657, refused to accept the title of "King" and was obliged, therefore, to reject the whole of the Humble Petition and Advice, even though he wished to accept all but the kingship. The House went into debate on whether to renew the offer. A series of meetings followed between the supporters of monarchy and Cromwell, to explain why they felt he should accept. The first of these meetings was 11 April 1657, with Whitelocke, Fiennes, Lisle, Glyn, Lenthall, Wolseley, and Broghil the committee of the House to influence the Protector.[95]

The arguments of the committee given 11 April, were printed in a tract of 1660, entitled Monarchy Asserted to be the Best Form of Government.[96] All members of the committee spoke on different themes, endeavoring to point up the necessity of Cromwell's assumption of the title. Lisle spoke on the relationship between the people and the prince.

> I humbly conceive, that in this Title offered to your Highness by the Parliament, they do take the same care for your Highness, as Jethro took for Moses, they find the weight of the Government as it is now upon you under the Title of Protector is a burthen, that will weary both your self and the People likewise, and therefore they do desire your Highness will be pleased to accept of that Title that may be an ease to your Highness and to the People, the greatest weight and burthen of Government, is, when there is a jealousie between the Prince and the People for want of a right

> understanding, though neither Parliament nor People have a jealousie in your person; yet of the Title they have, ...[97]

However, should Cromwell accept the title, the people would understand. Jealousy would be greater without the title of "King." Lisle then sought to remind Cromwell that Parliament had offered the title after considerable deliberation. "Sir, the Parliament did think that your Highness was never able to provide to do Justice to the Nation for the future, unless your Highness accept of this Title." Lisle continued, that in order to set the proper relationship between People, Parliament, the Law, and the Governors, it could only be accomplished by his acceding to the wish of Parliament.

> If there was a proper time to make David King, when they covenanted with him at Hebron: it is now a proper time for you to accept this Title when Parliament hath brought this with a Covenant for the three Nations, that related both to their Civil and Spiritual Liberties.[98]

Lisle main concern was the natural one for a lawyer and judge. He advocated a return to a form of government firmly grounded upon law and the will of Parliament and people. To eliminate mistrust of the supreme magistrate and to relieve himself of a weighty burden so as to provide a proper administration of justice through a constitution for the three kingdoms, Cromwell should accept the title of "King."

Whitelocke, Lenthall, and Glyn all spoke in the same vein, for a firm grounding of the law. It was the lawyers and judges who were most concerned that Cromwell should become king. Their attitude is quite understandable in view of the fact that all the laws and legal procedures of the state found their right to exist in the will of the sovereign, whose continuity and immutability had always

been provided for by an hereditary succession. But Cromwell was not a lawyer and without the reverence for things neat and tidy in the legal sense. He was prepared, he said in his answer of 13 April, to exercise the power without the title of "King." The civil magistrates had carried out their duties under other authorities, Custodes Libertatis Angliae and Lord Protector. It was not the title that mattered.

Cromwell would not accept the crown, but he would and did accept the "Humble Petition and Advice," 25 May 1657, with kingship expunged and the other provisions intact. The most important feature of the Humble Petition and Advice was the reform of Parliament, making provision for a second house composed of "lords." The real problem with this innovation was the composition of the "other house." All loyal segments of the nations had to be represented there. Here Cromwell exercised an exclusive prerogative, and the final list was prepared by 10 December 1657.[99] Of the lawyers and judges Whitelocke, Lisle, Glyn, Steele, and Lenthall were called to sit.[100] Lord Commissioner Fiennes sat in the ancient place of the Lord Keeper as the speaker of this house,[101] a demonstration of Fiennes's more pre-eminent role of the two lords commissioners. After consultation with judges, all the new "lords" were placed on the commissions of the peace as barons.[102] However, this Parliament of 1657, even reformed, did not continue. Those republican members, bent upon the destruction of the Protectorate and its trappings of royalty and without the restraint of those

now moved to the "other house," caused Cromwell to summarily dissolve the assembly, 4 February 1658.[103]

This Parliament was Oliver's last. On the morning of 3 September 1658, the lords commissioners, Fiennes and Lisle, attended Cromwell to affix the great seal to a verbal warrant of the Lord Protector, proclaiming Richard Cromwell to be his successor.[104] That same day Lisle and others in the government put their signatures to the Humble Petition and Advice with the intent to signify their acceptance of Richard as the next Lord Protector.[105] Cromwell died at three o'clock that afternoon, following the celebration of his victories at Dunbar and Worcester.

Richard, of course, sought to ingratiate himself with those who had exercised power under Oliver. Lisle and Fiennes were confirmed in their offices. Army officers maneuvered for positions of favor and authority through meetings and advice to Richard. But there were signs of impending disaster in the state. Two judges, Windham and Nicholas, on the western circuit were dismissed by the Protector and Council of State for giving a charge to a jury contrary to official policy.[106] By November the Council was showing signs of bifurcation, cleaving into supporters of the Protectorate and republicans. Laurence, Montague, Fiennes, Jones, Thurloe, and Wolseley were with Richard, but Lisle showed signs of latent republicanism.[107] It is probable that Lisle did not enjoy the special relationship in Richard's administration that he had maintained in Oliver's and began to sense an imminent change in the government.

There are indications of Lisle's loss of favor with the new Protector. In late November 1658, action was taken to strip Lisle of his recordership of Southampton. The old recorder, Thomas Levingston, with the tacit support of Richard brought suit in the Upper Bench for restitution of his place. Levingston received confirmation of his old position 9 December 1658, although Lisle did not lose the recordership until April 1659.[108] As the recorder was important in election of members of Parliament and there was soon to be a new Parliament, this action by Richard is significant.

Furthermore, after expressions of admiration by Richard for Whitelocke, the latter was added to the Chancery bench in January 1659. Whitelocke's return to the Chancery was instigated by Fiennes, whom Whitelocke thought to be dissatisfied with Lisle's performance as an equity judge.[109] It is much more likely that Fiennes was dissatisfied with Lisle's politics in late 1658. If Whitelocke could be relied upon as a firm supporter of the Protectorate, there would be a majority of two on the Chancery bench to control the great seal for the Protector and avoid the dismissal of Lisle. Perhaps Lisle surmised that the Protector could not survive and had begun to pave the way for his continued presence in Chancery under another Commonwealth governed by the Rump. Whatever his political machinations, Lisle did not pave his way well enough, in the end losing his place in Chancery. Richard's Parliament ended disastrously, 22 April 1659. The Protectorate was doomed.

The Rump returned 8 May 1659, with William Lenthall in the Speaker's chair. The following day Lisle, Fiennes, and Whitelocke surrendered the great seal to the Parliament and were dismissed. Lisle had only a minor role in the government of the second Commonwealth. However, he was not completely forgotten by the Rump, for in January 1660, he became one of the commissioners for the Admiralty. Lisle's appointment to this post was probably to provide him some employment and income in lieu of past services to the state.

Within one year of his leaving the Chancery, the Interregnum ended and Lisle fled the kingdom. He had been far too dedicated to the regimes of the Interregnum not to have created many enemies among the Royalists. One of the most telling charges placed against Lisle, which brought his exception from pardon in 1660, was his full participation in the extraordinary proceedings of the High Court of Justice, constituted to conduct political trials for high treason. Lisle's violent death in 1664, which will be discussed later, was directly related to the hate he had engendered by his attitude toward those who challenged the governments from 1649 to 1659.

Before 1649, Lisle readily lent himself to political trials for the security of the state. Lisle presided at the trials of Captain Burley and Major Rolfe at Winchester in 1648 and was special advisor to Lord President Bradshaw at the trial of Charles I. After the establishment of the Commonwealth, the method of trial for the King was applied to others accused of treason. The chief adherents of the

King in the second civil war followed him in trials before high courts of justice in the spring of 1649. The Duke of Hamilton and Lord Capell were tried before Lord President Richard Keble, one of the lords commissioners, with Lisle as a member of the court. In December 1650, another High Court of Justice met at Norfolk,[110] and the business of these early courts of the Commonwealth were managed by a small committee selected from among those named to the commissions, called the Committee for Examinations.[111] Lisle was a member of this committee.

Again in November 1653, after the dissolution of the Rump, a High Court of Justice met, naming John Lisle, John Bradshaw, and thirty-one others as commissioners to try offenders under acts of January 1649, which forbade proclaiming Charles Stuart as King; May and June 1649, which defined treason; and January 1651, which protected the great seal of the Commonwealth. The commissions of the court ran until 1 August 1654.[112] The High Court had no cases to hear until June 1654, which probably accounts for the renewal of the commissions from 13 June until 20 August 1654.[113] By June, however, the court had three accused Royalist conspirators to call before it, John Gerard, Peter Vowell, and Somerset Fox.

These three stood accused of plotting against the life of the Lord Protector, bringing about a civil war, and proclaiming Charles Stuart. The High Court met the first time 13 June, and we have Lisle's own record of this meeting in his handwriting. They met at the Middle Temple with Lisle,

Judge Atkins, Judge Aske, Judge Nicholas, Serjeant Steele, the Recorder of London, and ten others present.[114] As Whitelocke was named in the commission of November 1653, but was conveniently in Sweden, he was not forced to take part in proceedings of which he would have disapproved.

Lord Commissioner Widdrington was prepared to administer the oath to the commissioners, but then the court met with difficulty. The judges were anxious for an excuse not to participate in the trial. Judge Atkins said he desired time because the trial's great importance and the little notice he had received made reflection necessary. Aske, Nicholas, and Steele agreed with Atkins, but Lisle was unwilling to postpone the proceedings. His influence over them is witnessed in the following speech:

> Thereupon, seeing we were likely to depart all of us at present, and do nothing, I said, viz., "That which we were empowered to put in execution, by virtue of the ordinance of the 13 of June 1654, was the ordinance declaring what offences shall be adjudged high treason, which ordinance is no new thing to us, and my lords the judges, especially, are no strangers to it. The last ordinance doth chiefly empower us to put that ordinance in execution, and we are to take an oath well and truly to do it, according to the best of our skill; so that unless any scruple the ordinance declaring what offences shall be high treason, and the manner of putting it in execution, I do not see any scruple in it; and therefore having considered of the first ordinance, which passed in June last, and having had the last ordinance by me and considered of it above 2 days, I am ready to take." Thereupon I took the oath . . . .[115]

This address by Lisle had a profound effect upon the judges, excepting Atkins who had left.[116] Aske, Nicholas, and Steele all meekly followed Lisle in taking the oath, but not all present were sworn because the quorum of thirteen was not reached. The court adjourned for two days.[117]

Atkins never sat on the court, for he discovered a conflict in the oath with previous oaths he had taken to do nothing contrary to the laws of England. A jury trial, he said, was necessary for cases of treason. Atkins was excused and Widdrington went on to swear the others.[118] A quorum being reached, Lisle was chosen president of the court, Mr. Phelps clerk, and Serjeant Glyn, Serjeant Ellis, and Edmund Prideaux counsel for the Commonwealth.[119] Lisle attempted an excuse from the presidency, saying he was inexperienced in such trials, but this was probably the usual one expected to show modesty when chosen for high office.

The trial opened in Chancery, 30 June 1654, and Lisle's account of the proceedings parallel closely those found in other sources.[120] It cannot be said that Lisle abused the prisoners during their trial although their fate was no doubt pre-judged and followed the usual pattern of state trials of the Tudors and Stuarts. Lisle advised Fox to plead rather than stand mute; he pleaded not guilty. Vowell offered a series of arguments against the procedure of the High Court; the lack of notice, the lack of counsel, and the lack of a jury. All thses were rebutted by Lisle and overruled by the court. To the lack of a jury, Lisle answered that the commissioners were more than twelve and were his peers.[121] Vowell went on to question the ordinance under which he was charged; it was a new law, it was contrary to Magna Carta, and it was but temporary. Counsel for the Commonwealth met these arguments, and Lisle advised Vowell to plead. He pleaded not guilty.[122] Gerard pleaded not guilty without

argument.[123] The Attorney General then proceeded with the evidence against them.

After an adjournment of three days, the court met again. Lisle took the lead in considering the evidence offered against the prisoners. In effect, Lisle dictated to the High Court the verdict they would find. Judge Nicholas and Recorder Steele concurred in Lisle's opinion of the guilt of all three accused, and they were found guilty as charged of raising forces against the Protector and compassing his death. It was resolved that they not suffer the usual common law penalty for treason but only death by hanging.[124]

When Lisle announced to the prisoners the verdict of the court, he gave a long speech prior to sentence. In this lecture, which must have been meant for a wider audience than the prisoners, Lisle reviewed their cases replete with moralizing and defense of the Protectorate and Cromwell. Lisle related all the late events in war and internal dissension to prove the dastardliness of their acts. The Lord President Lisle was clearly in control of the trial which was designed to serve as an example to all others. He said, "I beseech God that all others may take example by your punishments, for which end let the judgment of the Court be read."[125] It was a long pre-sentencing speech, and no others spoke except the prisoners when asked if they wished to make a statement. Of Lisle's feeling for the Lord Protector we can imagine from the following:

> And his Highness the Lord Protector, who dwelleth in the secret place of the Most High, and abideth under the shadow of the Almighty, whose life God hath protected both in peace and war, from the terror of the

> night, and from the arrow that flieth by day, for the honour, greatness, and happiness of these nations, his life and the nation's you would have taken away together, if God, in great mercy, had not prevented the execution of your most wicked and bloody design.[126]

The prisoners were not abused for they were allowed pen and paper and the company of their friends, but it is obvious from the nature of the trial that the Protectorate would allow no organized opposition to go unpunished.

Within the year another Royalist rising in Wiltshire and Devon brought more state trials for treason. The circumstances of the March 1655 rising were somewhat different from others. In March, the judges had gone on circuit with old Chief Justice Henry Rolle taking the western circuit. At Salisbury Assizes, Rolle and the other judges were attacked by a Royalist mob under the leadership of Colonel John Penruddock of Compton Chamberlayne, Wiltshire. They abused the judges, placing ropes around their necks and threatening to hang them. Rolle, who was infirm, nearly died of fright.[127] General Desborough easily captured the band later, but the circuit was disrupted. Rolle resigned soon after in June. In the meantime, a special assize was formed, comprising Lord Commissioner Lisle, Justice Windham, Serjeant Glyn, Recorder Steele, and Chief Justice Rolle to try the insurrectionists in the West.[123] Some of the conspirators were tried before the circuit judges at Salisbury in April 1655, but the two leaders, Penruddock and Jones, were taken to Exeter for later trial.[129] With three executed earlier at Salisbury, the latter two were tried and beheaded in Exeter by 13 May 1655.[130] All others in the group were reprieved

and pardoned making it obvious that the Protectorate sought only to punish the leaders as examples without causing a general bloodletting.

It was unusual for Lisle or any of the lords commissioners to go on circuit because the Chancery was open every term, even when the central common law courts closed for the assizes. Indeed, there are no other recorded instances of the lords commissioners acting as circuit judges. Nevertheless, Lisle was named in the commission of April 1655 for Oyer and Terminer for the western circuit and was therefore, regarded as the senior judicial officer. But he did not preside at the trials, Justice Windham, a common law judge, fulfilled that duty,[131] nor did Lisle take an active part in the judicial proceedings. He is not mentioned in an active capacity in any of the reports. However, in view of the post-Restoration petition of the Robert Duke family, which was directed against Lisle as the prime malefactors in Duke's death,[132] as one of the conspirators, it appears that Lisle's function was to serve in a different capacity than doing justice. It was no doubt to observe the political implications of the trials and the attitudes of the judges as the watchdog of the Protector and Council of State, to awe the prisoners, their adherents, and the westcountry men with the specter of Lisle's magnitude in the state.

The most notorious of the Interregnum political trials was that of Sir Henry Slingsby, Dr. John Hewitt, and John Mordaunt before the High Court of Justice. The activities and trial of these men have been fully covered in secondary

works;[133] here we are concerned primarily with Lisle's participation in the trial. The High Court of Justice was constituted in April 1658, under authority of an act of the 1657 Parliament to try offenders against the person or government of the Lord Protector. Originally Chief Justice Glyn was to preside over the commission 150 to try Slingsby, Hewitt, and Mordaunt,[134] who had been captured in the latest batch of Royalist conspirators. None of the other judges were even favorable to another High Court of Justice. In the end, even Glyn would not serve. Cromwell told him ". . . that lawyers are always full of quirks." "He /Glyn/ replied it could not be otherwise, when soldiers drew up the Act; . . . ."[135] C. H. Firth pointed out that Whitelocke was not opposed to trying the men but that it should be at common law, which was the feeling of the other judges as well.[136] The judges were ready to do the dirty work of the Protectorate in removing opposition so long as it was in accordance with recognized common law forms. To sit on a commission with laymen under authority of an extraodinary law was anathema to the professional judges, to all but Lisle that is.

John Lisle agreed to take the presidency of the High Court, and for this Firth described him as unscrupulous.[137] This is a somewhat harsh judgment when one considers that the court would have been constituted regardless and better that at least one judge was present to preside.[138] Lisle became Lord President,[139] but it was not believed, even by Royalists, that he would be very severe in his conduct of

the trial.[140] The trial received full coverage in the Royalist newsletters and although they objected to the High Court itself, they did not feel the conduct of the trial to be unfair.[141] In fact, Lisle followed his usual course of leniency to the accused during the trial, reserving his invectives for the sentencing.

In reading the accounts of the trial one finds that he was patient with the challenges to the jurisdiction of the High Court. To Slingsby, Lisle said that the Parliament had decided what was justice to them and that only the commission of Parliament and the Lord Protector under the great seal was sufficient authority to try him for treason.[142] Dr. John Hewitt offered a long discourse in challenge to the High Court's jurisdiction. He was answered by Lisle, "Dr. Hewitt, we know our own authority, it is not usual read Commissions to prisoners; the laws of England and acts of parliament are to be submitted to."[143] Nevertheless, Hewitt persisted in his demurrer and refused to plead. Lisle must have been exasperated by the divine's attitude for it was thought that some passion crept into his addresses to Dr. Hewitt.[144] In the end, Lisle had to remind Dr. Hewitt of the dangers inherent in such a course:

> Dr. Hewett, you have offered very much touching the jurisdiction of the court, in conclusion you must acquiesce; I must put you up to plead; you know the danger, if you do not plead, being required; if you stand mute and do not plead, it is equally as dangerous to you, as if you had confessed the crimes.[145]

In the case of John Lord Mordaunt, son of the Earl of Peterborough, there were no witnesses against him. The one state's witness had fled the country.[146] Some said it was in

collusion with the prosecutors because Cromwell did not want to see Mordaunt found guilty. Mordaunt cooperated by not challenging the High Court's jurisdiction.[147] Indeed, one can detect an abrupt change in Lisle's attitude toward Mordaunt compared with Slingsby and Hewitt. He said Mordaunt was young and knew little of the law, encouraging him to plead not guilty. "You seem to be a young gentleman," said Lisle, "I wish rather you would plead Not Guilty, or make an ingenuous confession."[148] Lisle's leniency to young Morduant during the trial carried over to the judgment and sentencing. While Slingsby and Hewitt received scathing denunciations and sentences of death from the Lord President, Mordaunt was acquitted by the single vote of Lisle in breaking a tie in the court.[149]

The public political trials of Royalists greatly damaged Lisle's position at the Restoration. Numerous petitions from families who suffered in the trials were made against Lisle,[150] charging him with being the foremost persecutor in the deaths of the Royalist insurrectionaries. Why then did Lisle participate in these trials when other lawyers and judges refused? An answer might be found in Lisle's regard for the security of the state, making necessary some extraordinary tribunal to punish offenders. One is reminded of the necessity of the Star Chamber to punish those beyond the normal procedure of the common law in the sixteenth century. Lisle was aware of the history and nature of the Star Chamber procedure whose equitable proceedings in the criminal law paralleled those of the

Chancery in the civil law. He used William Hudson's "Treatise of Star Chamber" in his own "Abridgements of Chancery Causes." Perhaps his condemnation of the Star Chamber in 1641 did not run as deeply as did that of other lawyers.

It would be wrong to draw direct parallels between the old Star Chamber and the High Courts of Justice of the Interregnum. The Star Chamber was never empowered to inflict the penalty of death. It could, however, destroy a man's reputation, which served as well in most cases. The main parallel is in the procedure, summary in nature before a body acting as both judge and jury for extraordinary cases. Treason was of course not an extraordinary crime, but a common law crime not triable in Star Chamber. It was here that the lawyers seemed to hedge when called to serve in the High Court of Justice. High treason was a purely common law crime, but the question might well be asked whether the old law on treason did not expire with the death of the King for treason could only be against the sovereign. Technically common law treason could not be committed during the Interregnum. Perhaps with an extraordinary law on treason for the Interregnum circumstances an extraordinary tribunal for its enforcement was called for as well.

With Lisle's presence at the trial of the King and at the several trials of Royalists for treason against the Commonwealth and the Protectorate, it would have been ironic had he faced such charges himself at the Restoration. However, he did not remain in the kingdom long enough after the

spring of 1660 to answer for his activities from 1640 to 1660. When dismissed from the seals in May 1659, Lisle did not lose all influence with the Rump Parliament. He was still very much in their trust and continued to sit in the Parliament at Westminster. In July 1659, Lisle served on the committees for Middlesex and Isle of Wight to settle the militia in those counties.[151] The following year, at least until late spring, he was still in favor, serving on committees to raise money in Southampton,[152] and to settle the militia in that town and county.[153] In February 1660, Lisle received an appointment as commissioner to direct the affairs of the Admiralty and navy.[154] He was no longer the pretigious person he once was, but Lisle was safe in his person as long as the Rump sat without the excluded members, Royalists and Presbyterians.

However, with General Monck's disaffection from the Rump and the readmission of all members of the Long Parliament, several members received summons to justify themselves before the bar of the House. Some justified themselves, such as Whitelocke; some confessed; some fled; Lisle attempted to petition several members in his behalf, but it went unread.[155] By 12 May 1660, Lisle and others, mostly regicides, had scurried out of London.[156] He probably bolted for his home at Wotton, Isle of Wight, to collect personal papers and effects. Sometime between 12 May and 22 May 1660, Lisle escaped out of the Isle of Wight to Dieppe, France.[157]

Lisle must have quickly understood that he had no chance of riding the storm against the regicides. The Par-

liament and the Royalists were anxious to secure some suitable persons as representative sacrifices for the King's return. Major General Harrison, Lisle, and William Say were excepted from an act of indemnity before it was even written, with other names to be added later.[158] Forty-three regicides were eventually named and proclaimed to surrender within fourteen days or forfeit any pardon.[159]

The authorities had little accurate information on the flight of the regicides. Lisle was reportedly taken at Dover with Sir Henry Mildmay and others trying to make for France.[160] Lisle undoubtedly made good his escape by way of the Isle of Wight to Dieppe. In June a Royalist in the Low Countries reported Lisle at Liege. Sir Henry de Vic requested instructions from Sir Edward Nicholas, Secretary of State, for apprehending Lisle who had come to Liege from Maastricht.[161] Some regicides at first looked to the Netherlands for refuge but could obtain no protection and so began their peregrinations. Lisle was tracked from city to city. In October, de Vic informed Nicholas of Lisle's presence again, this time headed for Hamburg.[162] But he was not captured, and we have no further information of travels except the report that he was thought to be in a French monastery.[163] For approximately eighteen months Lisle continued on the move until he joined the growing colony of fugitives at Geneva in 1662. In Switzerland the regicides found the relative safety they sought.

After almost two years of wandering in northern Europe, many of the regicides, such as Lisle, Nicholas Love,

Edmund Ludlow, William Say, and others found their refuge in Geneva. Most of what we know of their lives there is contained in Ludlow's Memoirs, wherein he relates their almost daily battle to maintain their safety and their dignity. Ludlow, Lisle, and the others continually sought the official protection of the city of Geneva, but never received it.

At first Lisle thought he had little to fear while Ludlow was alive because the latter would be assassinated before the others. Ludlow reminded Lisle that both he and Lisle were the most favored with the hatred of the Royalists and the royal family. But Lisle felt he could move about with relative immunity. He left Geneva for Vevay, and from Vevay he went to Lausanne. Ludlow warned him to be on his guard for Royalist agents were active in Swiss cities gathering information on Lisle especially.[165] In fact, it would seem that the Royalists had singled out Lisle for special attention. After a brief stay in Bern in 1664, Lisle felt that if he separated himself from the others, he would be safe.[166] Thus in 1664, he went to Lausanne and his death.

In July 1664, some attempts were made upon Lisle at Lausanne, after which attacks, Ludlow reported Lisle was much less certain of his safety. The authorities at Lausanne failed to apprehend the suspects and only banished them from the city.[167] Although Lisle became more cautious in his daily habits, even refusing to leave his rooms, it was not long before the Royalist agents managed to avenge the death of their martyred king. On the morning of Thursday,

11 August 1664, while on his way to church, Lisle was shot in the back and fell dead. With horses ready, the assassins cried "Vive le Roy" and rode quickly away.[168] Lisle's death may have had a beneficial result for the rest of the regicides, for the Swiss authorities now took greater precautions and Lisle was the only one to die in this way.[169]

There is no doubt but that the royal family procured Lisle's assassination. Evidence can be shown that the English government received progress reports on the tracking of the regicides, and Lisle's assassins were indirectly rewarded by the Queen Mother.[170] A man named Riodan was a principal agent who furnished information on the whereabouts of Ludlow, Whalley, Lisle, and Goffe at Bern. This was in December 1663.[171] Another agent named Gilman gave information in May 1663 of some regicides at Lausanne.[172] Thomas MacDonnell was rewarded in 1664 for some service in regard to Lisle. MacDonnell received a lieutenancy in the Footguards.[173]

On the identity of the actual assassins there is some confusion. However, by piecing together information on recurring names and aliases, it is possible to determine who the assassins probably were. Three men, all Irish Royalists, were involved in the actual murder.[174] Ludlow discovered in 1670 that the man who fired the shot which killed Lisle was named O'Croli, but he died soon after the assassination. There were two others, one named Cotter, who held the horses for the escape, and Riordan, alias MacCarttin, who had been active in tracking Lisle to Lausanne in 1663.[175] MacCarttin

was William MacCartain, who in a poem, dated 14 July 1700, named James FitzEdmond Cotter as the assassin of John Lisle.[176] Cotter received his reward from James, Duke of York, who raised Cotter from trooper to lieutenant colonel of the Foot-guards, gave him a knighthood, and an estate in county Cork.[177] He may well have used the alias MacDonnell and have been the man named above who received reward for services concerning Lisle.

At this point it would be well to mention Lisle's wife Alice as she achieved no little fame on her own some twenty years after Lisle's death. Ludlow does not report that she was present in Switzerland. It is more likely that she remained in England as she had friends in high places, especially Sir Edward Hyde, afterward Earl of Clarendon and Lord Chancellor.[178] She made claim to retain her estate at Moyles Court as her own property from the estate of her father.[179] Furthermore, Ludlow wrote that Lisle had a sealed box at Lausanne, which was to be kept for his wife,[180] indirectly demonstrating that Alice was not at Lausanne. She must have continued to live at Moyles Court until her famous trial for treason before Judge George Jeffrey's in 1685.

The trial of Alice Lisle at the Winchester Assizes in 1685 has become one of the most notorious cases in English legal history. After the abortive Monmouth Rebellion in 1685, two of Monmouth's party made their way to Moyles Court, seeking refuge from Alice Lisle.[181] That they knew where to find refuge suggests that Alice Lisle had earlier engaged in harboring radical Protestants. She was taken for accessory

to treason, tried before Jeffreys and beheaded at the Castle, Winchester, in September 1685. There has been considerable speculation among historians since 1685, that Alice Lisle was not apprised of the guilt of the parties at her house and that she was merely the victim of a purge carried out by Jeffreys because of Lisle's guilt as a regicide. The records of the trial and the conduct of Jeffreys do not indicate any bias arising from her husband's activities of twenty-five years earlier. However, the legal historians J. C. Muddiman and F. A. Inderwick believed her to be guilty and that she knew her guilt.[182] The only fault found with her trial is registered in the recent biography of Jeffreys by G. W. Keeton.[183] Therein Professor Keeton demonstrates that Alice Lisle was found guilty of treason by being an accessory before the principals were adjudged to be guilty of treason. Even here Jeffreys had not gone beyond the seventeenth century notion of accessory to a crime. In 1685, the law on treason and accessories after the fact had not evolved to the sophisticated modern version, requiring a conviction of the principals before the accessories. In other words, there must first be a crime before there can be an accessory to it. Nevertheless, as the law stood in 1685, Alice Lisle was fairly found guilty.[184] However, when William III became King in 1689, one of his first acts was to reverse the attainder of Alice Lisle and return her property to the rightful heirs.[185]

John Lisle began his political career in the Long Parliament. In a decade he had become one of the most important

committee chairmen of that body. All Royalists and delinquents were at his mercy as the Committee at Goldsmiths' Hall did its work. He participated fully in the trial of the King in 1649 and in the subsequent trials of Royalist conspirators. At the end his violent death was no small indication of the hatred of those he had persecuted for twenty years.

NOTES

[1]Whitelocke, Memorials (1682), p. 374.

[2]Roots, Great Rebellion, p. 143.

[3]Whitelocke served on the committee for the impeachment of the Earl of Strafford. Commons Journal, II, 98. In September 1644, Lisle assisted Whitelocke in gaining Parliament's aid for collection of a debt owed Whitelocke since 1638. Ibid., III, 631 and 633. See also HMC, 6th Rep., p. 27.

[4]For Savile's accusations see HMC. 13th Rep.. Duke of Portland Papers, pp. 231 and 234. Whitelocke's correspondence with Sir Edward Hyde, 1640 to 1652, could hardly have failed to escape notice by all radicals. HMC, 3rd Rep., Marquis of Bath Papers, pp. 191-92. Even in Royalist correspondence after 1652, Whitelocke was considered a friend of Hyde's as was Orlando Bridgeman. George Warner, ed., Camden Society, Series 2: The Nicholas Papers. Correspondence of Sir Edward Nicholas, Secretary of State, 1641-1660 (4 vols.; London, 1886, 1892, 1897, 1920), I, 316 and 317. Hereafter cited as Nicholas Papers. Camden Society.

[5]Commons Journal, IV, 274 and 452.

[6]HMC, 6th Rep., p. 151. Lords Journal, VIII, 640.

[7]HMC, 7th Rep., p. 65.

[8]HMC, 13th Rep., Duke of Portland Papers, I, 602.

[9]Whitelocke, Memorials (1682), p. 374.

[10]Edward Foss, The Judges of England . . . Interregnum, 1649-1660 (9 vols.; London, 1848-64), pp. 446-47. Hereafter cited as Foss, Judges of Interregnum.

[11]When Parliament investigated the 1649 case of Cole v. Rodney in 1656-57, Lord Commissioner Keble was conspicuously absent. J. T. Rutt, ed., The Diary of Thomas Burton (4 vols.; London, 1828), I, 19. Hereafter cited as Burton's Parliamentary Diary.

[12]P.R.O., "Minutes of the Chancery," C37/2-30, passim. Foss, Judges of Interregnum, p. 447.

[13]P.R.O., "Minutes of the Chancery," C37/2-30, passim.

[14]Whitelocke, Memorials (1682), p. 374.

[15]Ibid., p. 374. [16]Ibid., p. 374.

[17]Parliamentary History, III, 1287. HMC, De'Lisle and Dudley Mss., Vol. VI: Sydney Papers (1626-1698), p. 584.

[18]Whitelocke, Memorials (1682), p. 374. Aylmer, King's Servants, p. 358n.

[19]Cromwell v. Tracey (23 May 1649) and Cecil v. Parry (June 1649), [John Lisle], "Abridgements of Chancery Causes," MS. D87, Department of Special Collections, University of Kansas Libraries. Hereafter cited as Lisle MS.

[20]CSPD, Commonwealth (1649-1660), I, 17, 36, 449; III, 11, 16, 66, 315, and 499.

[21]Firth and Rait, Acts and Ordinances, II, 43, 45, 64, 308, 312, 477, 480, 562, 674, 677, 689, 1268, 1080, 1083.

[22]CSPD, Commonwealth (1649-1660), III, 66, 81, 162, 205; V, 116.

[23]Ibid., I, 49; II, 68; III, 2, 67, and 438.

[24]Ibid., III, 358 and 408. [25]Ibid., II, 5.

[26]Ibid., II, 46; IV, 467 and 496.

[27]Ibid., III, 9 and 16. [28]Ibid., III, 168.

[29]Ibid., IV, 81. [30]Ibid., III, 81.

[31]Ibid., I, 63, 138, and 448.

[32]Ibid., I, 37. [33]Ibid., II, 67.

[34]Ibid., I, 300; III, 19; IV, 94-5; V, 241.

[35]Ibid., III, 235. [36]Ibid., III, 477.

[37]Ibid., IV, 417. [38]Ibid., II, 435.

[39]Ibid., II, 118; III, 463.

[40]Calendar of the Committee for Compounding, p. 435. CSPD, Commonwealth (1649-1660), I, 22; V, 155 and 175.

[41]Ibid., IV, 416.

[42]Calendar of the Committee for Compounding, p. 695.

[43]CSPD, Commonwealth (1649-1660), I, 86; III, 455, 498; V, 124.

[44]Whitelocke, Memorials (1682), p. 427.

[45]CSPD, Commonwealth (1649-1660), III, 209.

[46]Firth and Rait, Acts and Ordinances, II, 335 and 500. Parliamentary History, III, 1362. CSPD, Commonwealth (1649-1660), IV, 505.

[47]B.M., Add. Mss., #22919, ff. 5 and 7. HMC, 8th Rep., p. 248a. John Thurloe, A Collection of the State Papers of John Thurloe (7 vols.; London, 1742), I, 205. CSPD, Commonwealth (1649-1660), IV, 178 and 189.

[48]Lisle MS., ff. 10r, 277v, 300v, 356v, 379r, and 380v.

[49]CSPD, Commonwealth (1649-1660), II, 18.

[50]Ibid., I, 154; II, 13 and 484.

[51]Ibid., III, 458; IV, 177.

[52]Commons Journal, III, 397. HMC, 7th Rep., p. 31.

[53]CSPD, Commonwealth (1649-1660), II, 239; IV, 440.

[54]Ibid., II, 6.

[55]Ibid., I, 591; II, 149.

[56]Ibid., V, 425.

[57]Ibid., II, 133.

[58]Ibid., II, 145.

[59]Ibid., II, 168 and 479.

[60]Ibid., IV, 268.

[61]Ibid., III, 27. HMC, 7th Rep., p. 37.

[62]CSPD, Commonwealth (1649-1660), III, 75.

[63]Calendar of the Committee for Compounding, p. 1599.

[64]Lisle MS., ff. 379r and 380v.

[65]Stuart E. Prall, The Agitation for Law Reform during the Puritan Revolution 1640-1660 (The Hague, 1966), p. 114.

[66]Roots, Great Rebellion, pp. 168-69.

[67]Ibid., p. 170. [68]Ibid., p. 171.

[69]Parliamentary History, III, 1426. Whitelocke, Memorials (1682), p. 552. HMC, Earl of Egmont Papers, Vol. I, pt. 2, p. 532.

[70]Whitelocke, Memorials (1682), p. 571.

[71]Roots, Great Rebellion, p. 175.

[72]J. S. Davies, A History of Southampton (Southampton, 1883), p. 184.

[73]Ibid., pp. 184-85. [74]Ibid., p. 188.

[75]Lisle MS., f. 32r. [76]Ibid., f. 32r.

[77]Parliamentary History, III, 1429.

[78]Ibid., III, 1482.

[79]CSPD, Commonwealth (1649-1660), VII, 337.

[80]Lisle MS., f. 379r. [81]Ibid., f. 379v.

[82]Ibid., f. 380v.

[83]Roots, Great Rebellion, pp. 181-83.

[84]Thurloe, State Papers, IV, 287.

[85]Ibid., IV, 287. [86]Ibid., Iv, 287.

[87]Ibid., IV, 329. Cole was a Leveller, who worked against Cromwell's Spanish War. Ibid., IV, 396-97. However, he worked with General Goffe in pursuing the Decimation Tax. Ibid., IV, 329.

[88]Wilbur C. Abbot, ed., The Writings and Speeches of Oliver Cromwell (4 vols.; Cambridge, 1947), IV, 230 and 283. The other member of the Council not returned in 1656 was Mulgrave. Ibid., IV, 230. See also C. H. Firth, The Last Years of the Protectorate, 1656-1658 (2 vols.; New York, 1964), I, 137.

[89]C. H. Firth, ed., Camden Society, Series 2: The Papers of William Clarke (4 vols.; London, 1891-1901), III, 72-3. Hereafter cited as Camden Society, Clarke Papers.

[90]Roots, Great Rebellion, pp. 210-11.

[91]Firth, Last Years of Protectorate, I, 126-27.

[92]Nicholas Papers, Camden Society, II, 82.

[93]Firth, Last Years of Protectorate, I, 147. Abbott, Writings of Cromwell, IV, 434.

[94]Firth, Last Years of Protectorate, I, 147-48.

[95]Abbott, Writings of Cromwell, IV, 460.

[96]Monarchy Asserted To be the best . . . Form of Government . . . (London, 1679). The authorship of this tract is disputed, whether composed by Whitelocke or Fiennes, but of course, it may have been any of those present at the interview.

[97]Monarchy Asserted (1679), p. 31.

[98]Ibid., pp. 32-3. For contemporary views of Cromwell's refusal of the title, see HMC, 5th Rep., Duke of Sutherland Papers, pp. 162-63.

[99]Parliamentary History, III, 1528.

[100]HMC, House of Lords Mss., New Series, IV, 503. Abbott, Writings of Cromwell, IV, 685n and 951.

[101]Clarke Papers, Camden Society, III, 133.

[102]Ibid., III, 142.

[103]Roots, Great Rebellion, p. 226.

[104]Lisle MS., f. 276v.

[105]Whitelocke, Memorials (1682), p. 675.

[106]Clarke Papers, Camden Society, III, 164-65.

[107]5 November 1658, Thurloe, State Papers, VII, 496-97.

[108]Davies, History of Southampton, pp. 184-85.

[109]Whitelocke, Memorials (1853), p. 676. One writer, a Royalist, thought Whitelocke's appointment to be a move by Richard for Whitelocke to preside in the Lords House, 11 January 1659. Clarke Papers, Camden Society, III, 173-74.

[110]CSPD, Commonwealth (1649-1660), II, 461.

[111]Ibid., II, 461.

[112]Ibid., X, 263. Lisle's name appeared first in the commission, indicating that he was the senior member of the court. Firth and Rait, Acts and Ordinances, II, 781.

[113]Firth and Rait, Acts and Ordinances, II, 917.

[114]CSPD, Commonwealth (1649-1660), VII, 233.

[115]Ibid., VII, 233. [116]Ibid., VII, 233.

[117]Ibid., VII, 233. [118]Ibid., VII, 234.

[119]The Trial of Mr. Jon Gerard, Mr. Peter Vowell, and Somerset Fox, by the High Court of Justice sitting in Westminster Hall on Friday 30 June 1654 (London, 1654), p. 1. CSPD, Commonwealth (1649-1660), VII, 234.

[120]Trial of Mr. John Gerard . . . (1654) and State Trials.

[121]CSPD, Commonwealth (1649-1660), VII, 234.

[122]Ibid., VII, 235.

[123]Trial of Mr. John Gerard . . . (1654), p. 3.

[124]CSPD, Commonwealth (1649-1660), VII, 235-36.

[125]Ibid., VII, 240. [126]Ibid., VII, 240.

[127]Clarke Papers, Camden Society, III, 30-1 and 32-4.

[128]F. A. Inderwick, The Interregnum, 1648-1660 (London, 1891), pp. 188-89.

[129]Clarke Papers, Camden Society, III, 35.

[130]Ibid., III, 38. For Penruddock's account of his trial see his letter to a friend, HMC, 3rd Rep., p. 298.

[131]HMC, 5th Rep., Duke of Sutherland Papers, p. 154.

[132]CSPD, Charles II (1660-61), I, 342.

[133]Firth, Last Years of Protectorate, II, 55-83.

[134]11 May 1658. HMC, 5th Rep., Duke of Sutherland Papers, p. 167.

[135]4 May 1658. Ibid., p. 181.

[136]Firth, Last Years of Protectorate, II, 71-2. State Trials, V, 875n.

[137]Firth, Last Years of Protectorate, II, 72.

[138]One authority states that no professional judge was present, but Lisle was the presiding officer. Roots, Great Rebellion, p. 228.

[139]Abbott, Writings of Cromwell, IV, 807.

[140]HMC, 5th Rep., Duke of Sutherland Papers, p. 180.

[141]Ibid., pp. 152 and 171. Nicholas Papers, Camden Society, III, 147, 151, and 153.

[142]State Trials, V, 875-86. [143]Ibid., V, 886.

[144]Nicholas Papers, Camden Society, IV, 41.

[145]State Trials, V, 888.

[146]Firth, Last Years of Protectorate, II, 78.

[147]Nicholas Papers, Camden Society, IV, 41.

[148]State Trials, V, 914 and 928-29.

[149]Ibid., V, 928-29. Clarendon, History of Rebellion, VI, 70.

[150]CSPD, Charles II (1660-61), I, 342 and 523.

[151]Firth and Rait, Acts and Ordinances, II, 1328 and 1333.

[152]Ibid., II, 1378. [153]Ibid., II, 1442.

[154]Ibid., II, 1407.

[155]12 May 1660. HMC, 5th Rep., Duke of Sutherland Papers, p. 207. Whitelocke managed to clear himself at the bar of the House without much trouble, 16 June 1660. Ibid., p. 207.

[156]Ignatius White to Sir George Lane, 12 May 1660. Thomas Carte, A Collection of Original Letters and Papers, Concerning . . . England, . . . 1641-1660 (2 vols.; London, 1739), II, 342.

[157]From "The Kingdom's Intelligencer," in Ludlow, Memoirs, II, 273n.

[158]Ludlow, Memoirs, II, 275.

[159]6 June 1660. CSPD, Charles II (1660-61), I, 41. For the names of some of those excepted from the act of indemnity, see HMC, 5th Rep., Duke of Sutherland Papers, p. 204.

[160]19 May and 22 May 1660. HMC, 5th Rep., Duke of Sutherland Papers, pp. 199 and 206.

[161]24 June 1660. Nicholas Papers, Camden Society, IV, 233.

[162]5 October 1660. Ibid., IV, 251.

[163]15 November 1660. HMC, 5th Rep., Duke of Sutherland Papers, p. 200.

[164]Ludlow, Memoirs, II, 335-37. Milner, History of Winchester, II, 27. For Nicholas Love, see VCH, Hants., II, 337.

[165]Ludlow, Memoirs, II, 337, 347, and 366-67.

[166]Ibid., II, 367. [167]Ibid., II, 369.

[168]Ibid., II, 370-72. For English newspaper accounts, see Ibid., II, Appendix VI, 487-89.

[169]Ibid., II, 372 and 381-82.

[170]CSPD, Charles II (1663-64), IV, 244 and 263.

[171]Ibid., IV, 380. Ludlow, Memoirs, II, 374, and Appendix VI, 482-83.

[172]CSPD, Charles II (1663-64), IV, 149.

[173]Ibid., IV, 419.

[174]Gilbert Burnet, Bishop of Salisbury, History of his Own Time (2nd ed.; 6 vols.; London, 1833), III, 63. Lord Macaulay, The History of England from the Accession of James II, ed. C. H. Firth (6 vols.; London, 1915), IV, 1770.

[175]Ludlow, Memoirs, II, 427.

[176]B.M., Egerton Mss., #154. DNB (1909), XII, 434.

[177]Notes and Queries, 7th Ser., VI, 467.

[178]O. Ogle, et al., Calendar of Clarendon State Papers (4 vols.; London, 1869-1932), I, 501. DNB (1909), XI, 1218.

[179]CSPD, Charles II (1660-61), I, 341. (October 1660). Macaulay, History, II, 629.

[180]Ludlow, Memoirs, II, 372n.

[181]HMC, 7th Rep., Verney Papers, p. 499.

[182]Notes and Queries, 13th Ser., CLIV, 321 and 357; CLV, 149.

[183]G. W. Keeton, Lord Chancellor Jeffreys and the Stuart Cause (London, 1965).

[184]Keeton, Jeffreys, p. 318-20.

[185]HMC, 5th Rep., Lechmere Papers, p. 300. For another account of Alice Lisle's trial in 1685, see F. A. Inderwick, Sidelights on the Stuarts (London, 1888).

PART II

JOHN LISLE'S "ABRIDGEMENTS OF CHANCERY CAUSES"

INTRODUCTION

Only the political aspect of Lisle's career from 1649 to 1660 has thus far been considered. There was another and more important side to his work during the Interregnum. From his experience in parliamentary management, his training as a common lawyer, and his vantage of power in 1649, Lisle secured the highest judicial office in the state, Lord Commissioner of the Great Seal. Despite the disparaging comments that have been used to describe his work at the seals as a judge in equity, new evidence is now available to show John Lisle as a competent and hard working judicial officer. This new evidence is Lisle's own collection of Chancery cases for the Interregnum. His compilation of Chancery cases for the years 1649 to 1659 provides important information on the conduct of equity in a period of great turmoil for the country and the Court of Chancery. Before examining Chancery and equity through Lisle's manuscript, it would be well to establish the nature and the importance of this manuscript. Part II is a discussion of John Lisle's "Abridgements of Chancery Causes" and its contents as a document in legal history.

CHAPTER IV

THE MANUSCRIPT

It has been commonplace among those considering the courts of justice of the Interregnum to label John Lisle as an illiterate, lacking in legal training, and one who "had little experience but very opionative [sic]."[1] From Whitelocke, Lisle's contemporary to Lord Campbell in the nineteenth century and Stuart Prall now recently,[2] Lisle has been regarded as a typical representative of an unfortunate hiatus in English legal history. While the views of Lord Campbell and Prall may be excused because of the paucity of information, and because they trusted Whitelocke for an impartial statement, it is inexcusable in Whitelocke who knew Lisle intimately. There must have been a certain amount of jealousy between the two as their careers paralleled each other through the years prior to the civil wars. The rivalry of Coke and Bacon was perhaps like that of Lisle and Whitelocke. Two men, both very able, but of different turns of mind, who never lost an opportunity to prevent the possible advancement of the other. While it is dangerous to place too much emphasis on paralleling careers,

it is apparent that Whitelocke and Lisle never agreed on the role of law in the troubled times of the civil wars and the Interregnum.

Evidence exists that Lisle was not the legally inept individual he has been portrayed to be. In the manuscript collection of the University of Kansas Libraries there is a lengthy manuscript book entitled "Abridgements of Chancery Causes."[3] It is without doubt the work of John Lisle. The manuscript is a very unimposing volume, bound in heavy brown leather over pressed paper, with the tie strings still in evidence but the binding having long given way from the spine. The 460 folios bear marks of age in the many water-stains and wormholes. At the head of the inside front cover there is the numeral "49" and the title "Abridgements of Chancery Causes," together with a list of rules to consult frequently in Chancery cases.

On the page opposite the cover, the bookplate shows the book to have been the property of Thomas Kyffin, Esq., of Maenan, Caernarvonshire, North Wales. The bookplate is in the style of those printed about 1700.[4] Several Thomas Kyffins are to be noted in the late seventeenth and early eighteenth centuries, but one who fills the requirements for possible ownership was the attorney general for the Anglesea Circuit from 1713 to 1727.[5] Investigation of the possible provenance of the manuscript suggests that it may have passed into the possession of William Lenthall, Master of the Rolls and Speaker of the Long Parliament, and

close associate of Lisle's at the time of Lisle's flight from England in 1660. The Lenthall family escaped attainder during the Restoration, and later intermarried with the Kyffin family of Maenan, Caernarvonshire.[6]

It is not surprising that a manuscript such as Lisle's should remain unidentified and unused for so long. There have been other recent "discoveries" of seventeenth century manuscripts even in the more obvious collections of the British Museum and the Bodleian Library. A record of cases kept by Lord Keeper Littleton while on circuit as a common law judge was identified by G. D. H. Hall in the Bodleian, as anonymous and as relegated to obscurity as Lisle's work.[7] The "Minutes of the Committee for Law Reform, 1651-2" were first examined in the British Museum in 1968.[8] A record of common law cases from the early seventeenth century kept by Sir Thomas Widdrington, Lisle's colleague, has yet to be used by historians.[9]

Evidence of the seventeenth century origin of this manuscript lies, first, in the kind of paper on which it is written. Its age is indicated by the watermark, which is the same for all the leaves of the book, "P Lamy." This mark is a "Crozier-Dovecot" from Lancashire about the year 1643.[10] On first examination the handwriting appeared to be that of a single person over a ten year period.[11] However, two and possibly three distinct styles of handwriting have been observed in the manuscript. Two are highly formal copy hands of the italic style and were employed only in the quotations from published sources.[12]

The third example of handwriting is that of the compiler. It is a scrawling secretary hand mixed with italic and is evident throughout the manuscript, except for the very infrequent examples of the professional copy hands. Only in entries made in the secretary hand does one find the use of the personal pronouns.[13] There are no truly accurate means of identifying the exact period in which a manuscript was written if it is in the secretary-italic hand. The only gauge is the amount of italic influence upon the secretary hand, and the real fusion of the two began after 1650 with more italic as the century continued.[14] While it is impossible to give a specific date to a seventeenth century manuscript by handwriting analysis, it is readily apparent that the Lisle manuscript was composed during the period of the mixing of the secretary and italic hands. The most obvious mixing was about 1660, placing the Lisle manuscript in this general period of mid-century. Furthermore, a comparison of this hand with a known holograph of Lisle's in the Public Record Office produced such striking similarities that there can be no doubt this manuscript is Lisle's.[15] Nevertheless, the inherent inadequacies of a handwriting analysis for purposes of either dating or establishing authorship requires reliance upon internal evidence for positive identification.

It can be demonstrated that the manuscript was composed by John Lisle. The first reference which offers some insight to authorship is an entry dated 10 October 1656, relating that the Lord Protector on that day nominated to Parliament for its approbation Nathaniel Fiennes and John Lisle to be

commissioner of the great seal.[16] The author then indicates that approval was forthcoming 11 October 1656 for John Lisle as commissioner, and he continued, citing an entry in the Close Rolls for the delivery of the great seal to "the lord ffenns & my selfe, by Richard lord Protector, imediately after the death of Oliver lord Protector,"[17] and "There is a copy of the oath as the lord ffennes & I tooke (as commissioners of the great seale) before the Counsell after the seale was delivered to us by Richard . . . ."[18]

Lisle gave the synopsis of Council of State meetings in several entries, the contents of which are prime indicators of authorship. In March 1655, Cromwell and the Council issued an order for the engraving of new seals (great seal, privy seal, and seal manual).[19] Pursuant to the striking of a new seal, Lisle entered in his book under the date of 15 June 1655 that there was to be found in the "Miscellany concerning the Chancery," an order,

> (sent to the lord ffienns & my selfe) of the lord Protector and His Councell, with a memorandum how the great seale was delivered to us by his Highnesse today, 15 June 1655 in presence of his councell, to be made use of by us or either of us & of our taking the oath. With an order that this entry of delivery of the great seale be enrolled . . . in the close roles in Chancery.[20]

There is corroboration of this passage found in William Clarke's papers; he wrote on 16 June 1655 that the old great seal was broken, and that Lisle and Fiennes were made commissioners of the new seal.[21] The State Papers for 15 June 1655 record that Nathaniel Fiennes and John Lisle were approved as commissioners of the great seal. The seal was delivered to both of them and either of them when they were summoned

before the Protector and duly entered in the Close Rolls of Chancery.[22]

The great seal was again altered in the summer of 1657. Lisle gave an interesting and detailed account of the incident for Saturday, 23 June 1657. "The Protector having altered his great seale, sent for my lord ffenes & my selfe . . . ." Cromwell then opened a "little black box wherein the new great seale was . . .," which they were to use in the future. Lisle and Fiennes then broke the old seal. Lisle made it quite clear that their breaking the seal and accepting the new seal did not make them "new commissioners," nor was the "new seal" to be considered "new." No new seal was created by the lords commissioners as they acted only on the instructions of the Protector and Council. "Soe wee took the new seale from his Highnesse & did break the other att Darby House. it weighed about 26 ℔ sterling, each of us having a piece."[23]

The following month, July 1657, Fiennes and Lisle were told by Cromwell they were empowered under commission of the great seal to swear the new Council of State. On Monday, 13 July 1657, Lisle wrote as follows:

> The lord ffenes and I were sent for to attend the protector with the great seale, & it was to such a commission to this effect videll: To give power to my lord ffienes & my selfe, to sweare the Lord President Laurence, & major Generall Desborough, 2 of his highnesses Councell, & to give them power after they were powered to sweare the rest that shall be chosen by his Highnesse to be councellors, as soon as this commission was sealed we did in the presence of his Highnesse, swear the lord Laurence, & Gen: Desborough in the Councell Chamber, a bible lying upon the table, & they taking the oath one after the other, with right hands held up.[24]

The above description is very like that found in the State Papers for the same date, 13 July 1657.[25]

In his use of the first person through all the manuscript, the author has placed himself as a "brother" and colleague of other commissioners of the great seal. In the discussion of a suit in the Petty Bag side of Chancery against Serjeant Richard Keble, Lisle wrote, "This action was brought against my brother Keble after he was turned out of his place & brought only against him & yet my brother Whitlock & I joyned in the order."[26] Other references to "my brother Keble" are found such as an opinion by Lisle on a case of scandal. "My brother Keble & I sayd nothing to them, but we might well have rebuked the couple . . . ."[27] For 3 May 1654, the author wrote, "This day my bro: Witherington & I went to attend the Lord Protector, in relation to the suites for alimony."[28] And in the following entry we find that the author was one of the known commissioners of the seal for the Interregnum. In the "Miscellany concerning the Chancery," he wrote, "you shall see the oath which the lord ffenes & I tooke when wee were made commissioners of the great seale."[29]

The preceding examples demonstrate that the author of the manuscript was a commissioner of the great seal for the whole of the Interregnum, that he was a colleague of all the known commissioners, Keble, Whitelocke, Widdrington, and Fiennes. There is only one person who meets the requirements, John Lisle.

This identification gives the manuscript a new significance in English legal history. Lisle was a judge in the Chancery at a momentous time in the history of that court. Historians have examined the courts and institutions for the Tudor period, but relatively little for the seventeenth century. The Chancery remains untouched. Perhaps the reason for this is the lack of materials for such an investigation. This paucity is quickly demonstrated when one realizes that the memoirs of Bulstrode Whitelocke must be counted as a prime source. Yet they consist primarily of a narrative of his diplomatic career and a justification of his political activities. The latest work by Stuart Prall on the legal reforms of the civil wars and Interregnum only reiterates information already known from the pamphlets of the period.[30] At no other time in its history (until the nineteenth century) did Chancery receive so much criticism as it did during the Interregnum. Indeed its very existence was threatened, and the abolition of the prerogative courts in 1641 served as an ominous warning to this vulnerable institution. The discovery of John Lisle's personal record of his work in Chancery provides vital new evidence for a study of this court in the most critical period of its existence.[31]

Although cursory examination of Lisle's manuscript might produce the conclusion that he compiled his work over the ten year period of his commissionership, further reflection on the method of compilation and the dates of publication of several of Lisle's references presents quite a different conclusion. Lisle began his book soon after leaving

the Chancery in May 1659 and discontinued it upon his flight in June 1660.[32] For purposes of dating the composition of the manuscript it was necessary to establish the dates of certain works cited by Lisle. While it was impossible to identify some of the editions, such as Sir Robert Brooke's La Graunde Abridgement and Sir James Dyer's An Exact Abridgement . . . because of their citation by section rather than by page or folio, it was possible to determine the edition of most. In fact there were several published from 1656 to 1659, none later than 1659. The lack of a reference to any work published after 1659 is significant as it precludes Lisle's working on the manuscript any later than his departure from England in June 1660. Furthermore, the preponderance of late 1650 editions suggests that Lisle at least put his major effort into the manuscript after his dismissal from the Chancery bench. For example, he used extensively the 1658 edition of Sir Edward Coke's Reports,[33] the 1657 edition of Sir George Croke's Reports and his Second Reports (1659),[34] the 1658 edition of Sir Henry Hobart's Reports,[35] and Rushworth's Historical Collections, Vol. I of 1659.[36]

Numerous examples from Lisle's use of these late editions demonstrate that he did not compile the manuscript until 1659. In a section concerning executors there is a citation from Croke's Second Report of 1659, entered before the citation of a 1655 case from the "Miscellany concerning the Chancery."[37] In consideration of proclamations, Lisle entered Hobart's views in Armested's Case before those of Coke in Magna Carta (2nd Institute), edition of 1642.[38] When he

wrote of "Councellors at Law," the entry from Hobart's edition of 1658 was made before those from Coke's Magna Carta (1642), Choyce Cases in Chancery (1652), and Orders of the Commissioners of the Great Seal (1649).[39] These examples could be continued.

It is obvious that the entries made from works published in 1658 or 1659 could not have been made until after their publication. One can also note that in many instances Lisle chose to enter citations from newer publications before those of older publications. If he had been engaged in his work on the "Abridgements" between 1649 and 1659, he certainly would not have waited until 1658 or 1659 to make entries from a work in circulation since 1642 or even earlier. However, it must be noted that there are entries made from the earlier editions before the later ones. Given the method of entering the cases as he found them elsewhere, the work seems to have been begun in 1659, after the publication of the latest edition found in the manuscript.

There are other indications that this assumption is true. Cases occurring after others in time were sometimes cited before cases occurring earlier in time.[40] Examples of cases are not as conclusive as those of published works because Lisle could have entered cases at different times before his departure from the court. Nevertheless, when they are added to the evidence provided by the published works, the argument for 1659 is greatly strengthened.

If Lisle did begin to compile an abridgement of Chancery cases from during his term in that court, he would only have

been following in the tradition of earlier judges. The most famous example was Sir Edward Coke, dismissed from the King's Bench by James I and ordered to prepare his reports of cases. Coke went on to write the sum total of his legal knowledge after leaving the bench. What better occupation for Lisle after being forced from the Chancery by politics, than to emulate the great Coke and retire to his books?

Nevertheless this answer is not sufficient and the question remains why Lisle should compile the sort of book he did and in particular why the Chancery? What possible motive could a man described as "idle and profligate" have in its construction? There could be little personal advantage in the arduous task of entering the thousands of cases taken from Chancery. Lisle was no longer on the bench to be sure -- so it was not a judge's reference book. Of course, if he planned a career as a Chancery lawyer after his dismissal from the bench, the "Abridgements" would have been helpful. They might also have been intended for publication as an aid to law students who might take up Chancery practice. It cannot be determined whether the manuscript was ever intended for publication. However, the possibility exists that it was, even though publication was not always necessary for manuscripts circulated freely among the legal profession.

The most important observation to be made in this connection is why any collection of Chancery cases should be compiled in book form, let alone Lisle's? The answer lies in the fundamental change that Chancery had undergone since the early seventeenth century and finally completed in the

chancellorship of the Earl of Nottingham. Chancery had by the 1650's become a court, albeit based on a different set of principles, but nonetheless, bound to tradition in the same manner as the common law courts. This process was a continual one from the first orders of Sir Nicholas Bacon to bring some order to the chaos of Chancery pleading. The orders for procedure was continued by Lord Ellesmere, Sir Francis Bacon, and Lord Coventry, but it is the Interregnum that represents the complete takeover of Chancery by those who were themselves bound to the methods of the common law in the use of precedent in substantive law. An attempt to deprive Lord Chancellor Nottingham of the title "father of modern equity" would be wrong. On the contrary, his contribution was great in completing the conversion of Chancery to precedent.[41] However, his work was also the logical result of the Interregnum situation when Chancery, presided over by common lawyers and under attack by reformers, found it necessary to rely upon something other than the "Chancellor's Foot" on which to base its decisions. To border on the facetious, there being two or three commissioners of the great seal, they would have been hard put to find a certain "foot." It is not difficult to realize that the commissioners disagreed over points in law and equity. Lisle even reported differences of opinion among the lords commissioners,[42] and they with the judges of the common law.[43]

Differences had to be resolved in a manner maintaining decorum in the court and at the same time providing equity to the litigants. How the commissioners managed their own

court will be considered later, but in determining Lisle's motivation for the "Abridgements," the need for precedents in equity must have given rise to recording cases heard in Chancery in a way that they could be useful in subsequent actions before the court. It will be seen that the Interregnum Chancery, through establishing the "course of the court," sending the lawyers in pursuit of precedent, and frequently consulting with the common law judges, went a long way in binding the court to precedent. Other efforts on equity precedents will be discussed later, but at this point Lisle's manuscript serves as a good example to what extent the process had gone by 1660.

Lisle's book does not represent a scientific effort to set forth the procedure of Chancery from the filing of the plaintiff's bill to the final decree. The work is actually somewhat haphazard in its construction. The author headed each folio with a title under which there is a list of cases from the Interregnum Chancery, frequently intermingled with earlier Chancery, common law, and Star Chamber decisions. Subject headings have no particular order of appearance in the manuscript relative to their importance or chronology in Chancery procedure or litigation. Lisle, with blank book in hand, entered from front to back all the headings and types of causes heard in Chancery. Some are logically grouped, such as "Commissioners of the Great Seal" and "Master of the Rolls."[44] However, these titles probably suggested themselves to the author by association as he wrote them at the top of each folio. There are far more

exceptions to the above examples than there are consistencies.

If Lisle found that he had forgotten a title or group of equitable causes, he generally added them at the end of the work, to a verso side of a folio, or midway on a folio, with a separate title. When he failed to allow enough space for all the pertinent cases, he appended the additional cases further in the manuscript. He provided an elaborate system of cross-references, enabling one to find the continuation of a heading and similar cases under different headings. One point to keep in mind in this regard to organization, is that if the manuscript were intended for publication, as it may well have been, then any logical system of organization was unnecessary, for it could be provided before publication.

Under each heading, Lisle entered cases, examples, and matters of note as he culled them from various sources. Some description of how he set about to enter them in his "Abridgements" is necessary in order to accurately describe the work itself. After heading each folio, Lisle went to his library, selected a work, consulted a germane section, culled out the cases, and entered them under the appropriate headings. This method would have been that used in finding equity cases in legal authorities, such as Coke, Hobart, Bacon, and William Hudson's "Treatise on Star Chamber." In studying his methods of entering selections, it is seen most

readily in the use he made of Hudson's "Treatise." In a group of headings dealing with certain procedures of Chancery equally applicable to Star Chamber, selections from Hudson appear as the first entry in several consecutive folios.[45] Observation indicates that these were all made at one sitting because the ink and pen used are distinctive and identical in each entry.

In the selection of contemporary Chancery cases, Lisle referred to several collections of his own composition rather than to the public documents themselves, perhaps because, being out of office, he no longer had access to official records. The procedure described above was also used in selecting cases of contemporary nature. A collection of cases in hand, Lisle went through it page by page, entering the cases under the appropriate headings. Several cases from the same work were often entered in sequence under the same heading. An example is under the heading on "Chancery"[46] where in six separate entries, Lisle cited a work "Chancery Liber I" folio three and the eight sections found there. Under "Accidents," from "Chancery Liber 3" he made four consecutive entries, followed with three entries from "Chancery Liber 4" in the same manner.[47] Many examples could be given of this method, but the above examples suffice to illustrate the point.

While Lisle sat in his study perusing the sources and collections of cases, he found many matters of interest for the Chancery, which did not fall under any special topic: the "Pix,"[48] "Debate on Six Clerks,"[49] "Note on Fees."[50] These have usually been entered hastily on the verso of a

folio or midway on a folio where he found sufficient space. He entered references to Council of State meetings in a similar manner.

The Lisle manuscript is not only a fertile source for Chancery decisions of the Interregnum, but shows how thoroughly the common law procedure on precedent had permeated the equity tribunals by 1660. In earlier days no such collection of cases was necessary because the Chancellor decided each case as equity demanded in that instance. Further, the manuscript as "personal" relic of one of the judges of the Chancery, must tell us something about him as a judge and a person.

The production of this type of collection of cases and precedents was not unique for the law in the seventeenth century, in general, but it is unique for equity of the seventeenth century. Other judges like Henry Rolle, Chief Justice of the Upper Bench during the Interregnum, kept such a book for his own use, but it was organized as an encyclopedia, each topic being summaries from yearbooks, parliaments, and statutes.[51] However, Rolle was on a common law bench not in the Chancery. Many collections appeared during the years 1640 to 1660, including some of Chancery cases. These early Chancery collections, Tothill's Digest (1649) and Carew's Choyce Cases (1650), were of Elizabethan or early Stuart cases and often nothing more than case names and dates under a title.[52] The Lisle manuscript is more in the common law tradition for reporting cases in full and demonstrates his attachment to the common law idea of precedents.

The subject matter of the Lisle manuscript is certainly wide-ranging, with the majority of subjects naturally associated with topics of equity. In addition to the normal equity causes, there are some in areas which only came under Chancery jurisdiction since the civil wars. Examples of these are ecclesiastical court business and certain appellate jurisdiction. These entries are a profitable source for any study of the nature of Chancery jurisdiction under the Commonwealth and Protectorate. Lisle also made frequent mention of the organization and procedure in Chancery, providing a convenient source for the mechanics of Chancery in the Interregnum. Many of Lisle's entries contain information on persons and incidents not available elsewhere. The fact that the notations were made by an officer of high rank and proximity to other leaders makes the manuscript even more relevant for the history of the Court of Chancery. For Lisle, his "Abridgements of Chancery Causes" serves to show that he has suffered unjustly from the characterization of his legal abilities made by Whitelocke and preserved by historians.

The sources on which Lisle drew in compiling the "Abridgements" are important for an evaluation of his work as a judge and of the significance of the manuscript itself. There are two general types of sources which Lisle used, the legal authorities of the past and present and several collections of Chancery cases, which he had compiled and referred to as "mon booke." These two topics will be discussed in the following chapters.

NOTES

[1]Whitelocke, Memorials (1853), p. 676.

[2]Prall, Agitation for Law Reform, p. 114.

[3]/John Lisle/, "Abridgements of Chancery Causes," MS. D87, Department of Special Collections, University of Kansas Libraries. MS. D87 was purchased from T. Thorp Booksellers in 1966.

[4]W. J. Hardy, Book-Plates (London, 1893), p. 36 opposite.

[5]Thomas Kyffin, son of Richard Kyffin, sheriff of Caernarvonshire in 1663, was educated at Christ Church, Oxford, admitted to Lincoln's Inn, 28 May 1696, and called to the bar, 18 May 1702. He was appointed attorney general for Anglesea (Anglesea, Caernarvon, and Merioneth) 13 July 1713, and reappointed 14 February 1715 and 25 October 1727. Thomas Nicholas, ed., Annals and Antiquities of the Counties and County Families of Wales (2 vols.; London, 1872), I, 345. W. R. Williams, The History of the Great Sessions in Wales, 1542-1830 (Brecknock, 1899), p. 121. The Records of the Honourable Society of Lincoln's Inn; Admissions from A.D. 1420 to A.D. 1799 (2 vols.; London, 1896), I, 351, 396, and 445.

[6]Allan J. Busch, "A New Source for the Study of the High Court of Chancery: a Manuscript of John Lisle, Lord Commissioner of the Great Seal (1649-1659)," Bibliographical Contributions, Vol. I (1969), p. 9, note 14. The Lenthall-Kyffin family papers are now at Berkshire Record Office. See Berks. R. O., Lenthall-Kyffin Mss., N.R.A. ref. #0185.

[7]G. D. G. Hall, "An Assize Book of the Seventeenth Century," American Journal of Legal History, Vol. VII (1963), pp. 228-45.

[8]M. Cotterell, "The Hale Commission, 1652," English Historical Review, Vol. DXXXIII (1968), pp. 689-704.

[9]B. M., Lansdowne Mss., #1083.

[10]Identified as #1220 in Edward Heawood, Monumenta Chartae Papyraceae, Vol I: Watermarks; Mainly of the 17th and 18th Centuries (Hilversum, 1950), plate 163, p. 91.

[11]Busch, "New Source," Bibliographical Contributions, I, 3.

[12]Lisle MS., f. 56r, 73v, 80r, and 81v.

[13]Ibid., ff. 300r and 320r.

[14]N. Denholm-Young, Handwriting in England and Wales

(Cardiff, 1954), p. 71. See also L. C. Hector, The Handwriting of English Documents (London, 1958), p. 60. The "legal hand" closely resembled the secretary hand and was used by lawyers in private correspondence as well. G. E. Dawson and L. Kennedy-Skipton, Elizabethan Handwriting 1500-1650; A Manual (New York, 1966), plate #50, pp. 10 and 117. Examples of the italic influence on the secretary which correspond to folios 2 and 331 of the Lisle MS. are found in, Ibid., pp. 118-19.

[15]CSPD, Commonwealth (1649-1660), VII, 233-40. A photocopy was furnished by the P.R.O.

[16]Lisle MS., f. 31v.

[17]Ibid., f. 31v. These incidents are confirmed in Whitelocke's Memorials (1682), p. 643; Abbott, Writings of Cromwell, IV, 303-04; and Commons Journal, VII, 437-38.

[18]CSPD, Commonwealth (1649-1660), VIII, 83.

[19]Lisle MS., f. 320r. [20]Ibid., f. 319v.

[21]Clarke Papers, Camden Society, III, 44.

[22]CSPD. Commonwealth (1649-1660), VIII, 107; IX, 105.

[23]Lisle MS., ff. 320r and 356r.

[24]Ibid., f. 300r.

[25]CSPD, Commonwealth (1649-1660), XI, 26-7.

[26]Lisle MS., f. 376r. Keble lost his place in 1654.

[27]Lovett of Bedfordshire Case (1652), Ibid., f. 90r.

[28]Ibid., f. 103r. [29]Ibid., f. 320v.

[30]Prall, Agitation for Law Reform.

[31]Busch, "New Source," Bibliographical Contributions, I, 1.

[32]Consideration of the various sources used by Lisle will undertaken in later chapters.

[33]Sir Edward Coke, The Reports of Sir Edward Coke Kt. Late Lord Chief Justice of the Court of Kings-Bench; . . . ed. Sir Harbottle Grimston (London, 1658). Cf. Lisle Ms., f. 255r.

[34]Sir George Croke, The Reports of Sir George Croke

Knight; Late, one of the Justices of the Court of the Kings-Bench; . . . ed. Sir Harbottle Grimston (London, 1657) and The Second Part of the Reports . . . (London, 1659).

[35]Sir Henry Hobart, The Reports of That Reverend and Learned Judge, . . . Sir Henry Hobart . . . Lord Chief Justice of . . . Common Pleas. Purged from the Errors . . . (London, 1658).

[36]John Rushworth, Historical Collections of Private Passages of State, Weighty Matters in Law, Remarkable Proceedings in Five Parliaments . . . 1618 . . . 1629 (7 vols.; London, 1659-1701), Vol. I (1659).

[37]Lisle MS., f. 260r. [38]Ibid., f. 231v.

[39]Ibid., f. 109v.

[40]Earlsman v. Lord Roberts before Cowey v. Hunt, Ibid., f. 134r. Bayliffe of Ipswich v. Weston before St. Johns Hospital v. Sir Henry Anderson, Ibid., f. 127v. Croker v. Wise (1657) and Lady Chandois v. Lord Chandois (1657) before Gressam v. Gressam (1652), Ibid., ff. 37r, 37v, and 39r, all under the heading of "Bills of Review."

[41]For Lord Chancellor Nottingham see D. E. C. Yale, Selden Society Publications: Lord Chancellor Nottingham's Chancery Cases (2 vols.; London, 1957 and 1961).

[42]Tranter v. Poor of Christchurch (1650) and Raynsford v. Whistler (1653), Lisle MS., f. 212r.

[43]Ibid., f. 198r. [44]Ibid., ff. 32r-36v.

[45]Ibid., ff. 313r and 330r. [46]Ibid., f. 34r.

[47]Ibid., f. 49r.

[48]19 November 1656. Ibid., f. 65r.

[49]Ibid., f. 85v. [50]Ibid., f. 106r.

[51]William S. Holdsworth, Sources of English Law (London, 1928), p. 108.

[52]Ibid., pp. 90 and 96.

CHAPTER V

SOURCES OF THE MANUSCRIPT: JOHN LISLE'S CHANCERY BOOKS

The internal evidence of Lisle's "Abridgements of Chancery Causes" indicates that his writings were not confined to the one work. Turning now to an analysis of Lisle's other compositions, we find there are numerous entries in the Lisle manuscript, identified by Lisle only as "mon booke." Examination determined that they fall into three categories; three lengthy collections of Chancery cases, existing only in manuscript, several short treatises on aspects of law, equity, or administration, and two published works of doubtful authorship. Except for the two published works, none have been identified in extant form.

Lisle assigned the following titles to the three manuscript collections of Chancery cases; "mon parchment booke, entituled (Chancery Liber)", in seven volumes; "mon parchment booke, entituled (Pleas & Demurrers)"; and "mon booke, entituled (Miscellany concerning the Chancery)." Entries in the Lisle manuscript enabled the partial reconstruction of each of these undiscovered manuscript collections. They,

not the "Abridgements," truly represent Lisle's judicial and administrative work at the seals.

The largest work of the three was that entitled "Chancery Liber," for it comprised seven lengthy books dealing with Chancery, with each book assigned a particular function within the larger work. Chancery Liber 1 and 2 were collections concerned with the history, nature, and functions of the Chancery. Chancery Liber 2 also included some cases from the Petty Bag side of Chancery. Books 3, 4, 6, and 7 were composed entirely of equity decisions, each case representing a section number of the book, and they were arranged generally chronological. Of the seven books, Chancery Liber 5 had the fewest references in the "Abridgements," but it appears to have been a collection of cases from contemporary sources compiled in a topical fashion as opposed to the chronological method of books 3, 4, 6, and 7. I originally assumed that this set of Chancery books must have been one of the official series of records of the Chancery, most likely the Register's Entry Books of Orders and Decrees.[1] However, careful comparison of the Chancery Liber entries with the Register's Entry Books and others in the Chancery series eliminated any official source. The Chancery Liber were undoubtedly Lisle's personal record of cases heard in Chancery from 1649 to 1659. The very fact that Lisle conscientiously transcribed these cases for his own use patently refutes accusations of his idleness on the court.

Chancery Liber 1 was arranged topically, beginning on folio one, with "Commissioners of the Great Seale." In the "Abridgements" Lisle referred his reader to Liber I where he would find how commissioners of the seal were made, their oath, and things to dwell on "when they are first made." Folio two of Liber 1 contained a consideration whether a commissioner of the seal could retain his place as a recorder after an appointment to the bench.[2] This tppic was of interest to Lisle, who held recorderships of Winchester and Southampton. Liber 1 continued with a list of works bearing on the antecedents of Chancery, the office of Lord Chancellor, the succession of that office, courts of common law in Chancery, and acts of Parliament concerning the jurisdiction of the Chancellor.[3]

The equitable jurisdiction of Chancery was also elucidated in Liber 1. On this topic Lisle's authority was Sir Edward Coke and his disquisition on the antiquity of equity as traced to the case of John de Windsor v. Sir John Lisley in 17 Richard II.[4] The recent origin of equity in Chancery was based on the failure of the ancient authors, Mirror of Justice, Glanville, Bracton, and Fleta to mention any such jurisdiction.[5] The maxims that equity "ought not to intermeddle in matters determinable att law" and that the "Court of Equity is noe Court of record, may bind the person but neither reall nor personall estate, cannot impose a fine," were also found in Liber 1.[6]

Chancery Liber 1 contained disquisitions on the citing of precedents,[7] the writ of ne exeat regnum,[8] and perjury in an answer or deposition.[9] On decrees gained by practice or surprise, Lisle noted the contemporary case of Edwards v. Vernon, wherein the masters of Chancery found certain deletions in the depositions of Edwards. Chancery punished the plaintiff for the crime.[10] The case of Cromwell v. Tracey served as a basis for Lisle to write concerning bills of review, that if the decree were reversed upon a bill of review concerning lands, the plaintiff shall have possession, likewise the mean profits.[11] There was also a case upon praesentations made pleno jure and ad corroborandum titulum before the grant passed the great seal.[12] Administrative rules and procedures of Chancery were covered in sections on the issuing of writs and commissions,[13] bills of discovery,[14] charitable uses,[15] commissioners of sewers,[16] judges' patents,[17] warrants to the great seal,[18] letters under great seal,[19] and practice, covin and fraud.[20] These entries were often buttressed with contemporary cases in Chancery, by legal authorities, or by an interpretation of statute or common law.

An interesting aspect of Chancery Liber 1 was the space devoted there to the quandry of the judges when Cromwell died in 1658. Lisle posed the question "what is a good warrant" to the great seal? The situation involved Cromwell's appointment of a successor under the Humble Petition and Advice. Lisle reasoned that a verbal warrant from the Protector was sufficient authority to affix the great seal. He wrote as follows:

> And the Protector having power by the petition and advice to declare his successor in his life time, The lord ffienes and I (the Protector being dangerously sicke) came with the seale to Whitehall to the end that if /he/ would have declared to us, who his successor should have bene & required to putt that declaration of his under the great seale then to have donne it by his verbal warrant.[21]

Lisle continued with a description of a meeting of the commissioners of the great seal and the judges, 14 September 1658, to consider the position of the judges and commissioners upon Cromwell's death.[22] It was decided that the judges' patents expired as regarded their judicial duties, but continued for their magisterial duties until they received new patents.[23]

Chancery Liber 1 was the fruit of Lisle's efforts to compile the known history and information on the Chancery as a court of law and equity, to set it down in a useful manner to one who practiced or presided in that court. It possessed rules of procedure for Chancery in law, equity, and administration, including special problems of administration which arose during the Interregnum. Chancery Liber 1 would have been a book consulted frequently by one who faced these problems daily in court. It was a handy book of reference, compiled from reading and research in other works and from the personal experience of a Chancery judge.

The second book in Lisle's Chancery Liber was a more formal array of Chancery procedure, written for the most part in "law French." It was at least sixty-two folios, beginning with entries on the subpoena as the initial action in a Chancery case. Except for the contemporary cases of scire facias from the Petty Bag side of Chancery, Lisle arranged the book

by chapters. Chancery Liber 2, folio one, chapter one, appropriately dealt with the action of subpoena on behalf of the King.[24] The general nature of Chancery Liber 2 was that of a guide in opening an action in Chancery -- where a subpoena lay and where not.

Under each chapter heading for a particular action there followed a consideration on how the action was begun in Chancery. Lisle attempted to cover all the situations where the subpoena which began the suit would be granted and where not. In this second book of the Chancery Liber, we have another ready reference or set of short statements that could be easily applied by a judge or lawyer to each action in equity. In many entries Lisle discussed the action with examples which he felt would afford the reader the necessary similarities for application in subsequent cases.

One aspect of Chancery Liber 2 worthy of further attention was the inclusion of several cases on scire facias from the Petty Bag or common law side of Chancery. Although I will not be concerned with the Petty Bag, it might be well to give an explanation of this Chancery office. The Petty Bag, or common law side, of Chancery was the oldest judicial and secretarial office in that department of government. Therein were heard pleadings on writs and petitions of right, on recognizances acknowledged in Chancery, on traverses, on inquisitions post mortem, on writs of scire facias for repeal of letters patent, on partitions of land, and on all common law actions which involved an officer of that court. In effect, the Petty Bag was a common law court for all questions

which arose from the record keeping functions of the Chancery. With the decay in Chancery's importance as a secretariat and with the increasing jealousy of the common law courts, the Petty Bag had by 1640 ceased to be an important office of the Chancery. The remaining jurisdiction primarily concerned scire facias, recognizances, and the privilege of Chancery officers.

In the sections of Lisle's "Abridgements" dealing with recognizances and scire facias, the earlier cases of the Interregnum were extracted from Chancery Liber 2. It seems that Lisle when beginning his collection of Chancery cases in 1649 entered the Petty Bag cases in Chancery Liber 2 in an effort to separate them from the usual equity cases in Chancery. Confirmation of this assumption is observed in the entry of all cases on scire facias from 1649 in Chancery Liber 2.[25] No cases on scire facias for that year appeared in Chancery Liber 3, which also began in 1649.[26] That Lisle did not continue this procedure for Petty Bag cases is apparent from their inclusion in Chancery Liber 4.[27] The only explanation offered at this time is that Chancery Liber 2 became filled, and Lisle discontinued the separate entry of Petty Bag cases, there being so few of them not to justify entry in a special book.

We pass now to a consideration of Chancery Liber 3, 4, 6, and 7, which represented books much different from the first two in the collection. In these four works there was a chronological compilation of the cases heard in the equity court of Chancery, beginning on folio one of Chancery Liber 3 with Trinity and Whitsun terms 1649,[28] and the cases

terminated sometime in April 1659, with Lisle's last entry made in Chancery Liber 7.[29]

There are two difficulties in determining accurately the inclusive dates of each book. The major difficulty is that Lisle did not generally give a date with each case taken from Chancery Liber, but only for a few cases. However, with the few dates he has given, there is some indication of the times encompassed by each book. Secondly, the nature of Chancery procedure in equity prevents positive dating of cases in Chancery Liber by comparison with the public records. A Chancery case appeared many times in the public records from its inception with the plaintiff's request for a subpoena to the final decree. Lisle often chose to cite some important aspect of a case rather than the opening of an action or the final decision. Therefore, the date assigned the case in the Chancery records could be very different from Lisle's citation in the "Abridgements." Given these difficulties, some conclusions are still possible on the chronology of the Chancery Liber.

The beginning date for Chancery Liber 3 and the approximate ending date of Chancery Liber 7 correspond to Lisle's term in Chancery. Chancery Liber 3 included cases from Whitsun and Trinity terms 1649,[30] to Hillary Term 1651.[31] There is, however, a definite lack of cases for Michaelmas Term 1649 and Hillary Term 1650 in either the "Abridgements" or Chancery Liber 3. Also the number of folios in Chancery Liber 3 indicates a smaller book than its successors; it had a length of approximately thirty-five folios and 292

cases.[32] In searching for a plausible reason for the lack of 1649 and 1650 cases and for the brevity of the book, the illness of Lisle in the autumn of 1649 provided the necessary answer. Lisle was reportedly near death at that time.[33] Lisle's illness coupled with the numerous duties assigned him by the Council of State, including the political trials before the High Court of Justice, are sufficient explanation for both questions concerning omissions and brevity.[34]

Chancery Liber 4 began with Trinity Term 1651,[35] but possibly as early as Hillary Term 1651.[36] The bulk of the cases in Chancery Liber 4 quite obviously were from 1652 and 1653 because a case of 3 February 1653 appeared on folio thirty.[37] The fourth book continued into cases for the year 1653 as several dated entries from the "Abridgements" indicated.[38] Although an ending date for Chancery Liber 4 cannot be firmly fixed, it was probably in 1654, for there are many section numbers of cases beyond those dated for 1653.[39] The end of the fourth book is more clearly determined by examination of Chancery Liber 6.

Chancery Liber 4 very likely ended with cases of 1654 (old style) that is early 1655. This date seems reasonable because in the case of Anby v. Gower, found in the sixth book, the date of 1655 was given for section 162.[40] Further evidence for the 1655 date was found in two references for December 1655 from sections 289 and 303 in Chancery Liber 6.[41] Chancery Liber 6 was the largest of all the books, stretching to at least 805 entries.[42] It continued through the years

1656 and 1657, terminating with the cases of the Lent Term 1658.[43]

Chancery Liber 7 began on folio one, section one, with April 1658, for Lisle has provided that date in the "Abridgements."[44] The seventh book could not have extended beyond April 1659, the final month of Lisle's tenure at the great seal. It was one of the two shortest books in the collection, achieving forty folios and 170 entries.[45]

The complete collection, Chancery Liber 3, 4, 6, and 7, represents at the minimum about 3,000 cases for Lisle's ten years at the seals. This collection is certainly not the totality of Chancery cases for the decade of the Interregnum, but it does represent a considerable proportion of them and a vast effort by Lisle. Moreover, it is not the only collection of Chancery cases which Lisle made. There are two other extensive works which contained equity cases and other matters relative to the Chancery.

Lisle's Chancery book Pleas and Demurrers was a supplement to the Chancery Liber series. It contained those special cases in which the defendant chose not to make an "answer" in the normal Chancery procedure. The usual course in Chancery was for the defendant to prepare a highly formal answer to the plaintiff's bill of complaint. In his answer, the defendant refuted each particular of the bill, point by point. The plaintiff might then prepare a replication, the defendant a rejoinder, and so on. "Pleas" and "demurrers" lay outside this usual course of Chancery procedure although it should be noted that by the mid-seventeenth century they

were becoming far more frequent and more formal.[46] It is indeed significant that Lisle saw fit to compile a separate book on pleas and demurrers, for it shows the culmination of fifty years or more in the rise of these forms to distinct pleadings in Chancery.

Pleas were essentially delaying motions. They denied the jurisdiction of the court, requested suspension for the infancy of the defendant, and requested abatement for matters of form by the plaintiff. Other pleas might be of a peremptory nature which acknowledged the contents of the plaintiff's bill but claimed no wrong had been done. A demurrer was a plea which acknowledged the truth of the bill but alleged that the plaintiff had shown no cause for action. Chancery decided pleas and demurrers on special days of the term, in a summary procedure, either to allow the defendant's plea or to deny it with costs to the plaintiff and with an order for the defendant to make answer to the bill by a day. The advantage of a plea or demurrer was that it was not made on oath as the answer was, thereby avoiding the risk of perjury.

Lisle arranged his book on Pleas and Demurrers topically with cases listed under each topical heading. It was at least forty-six folios and probably longer.[47] One of the earliest cases entered, a bill of discovery for "love tokens" or pignora amoris, was demurred to on grounds that a clandestine marriage was involved which the plaintiff failed to mention and that the defendant was already married to another.

Lisle wrote that the court disallowed the demurrer because there was an implied agreement present in the gift of love tokens, to be restored if the marriage did not take place, regardless of any clandestine marriages in the meantime.[48] In a case where one sued in equity to avoid his own consent to an agreement and the defendant entered a plea on this point, Lisle reported that it was a good plea,

> that one shall never be admitted to sue in equity to avoyd his owne consent or agreement, for although some consents or agreements will not be releeved in equity, yet you shall never be admitted to sue in equity to avoyd your owne consent or agreement.[49]

The court also found it necessary on occasion to define a "plea." In a section on false pleas, Lisle reported a difference taken on a "plea in barr" and a temporary plea, the latter being a response or answer and the former a final plea. Further definition was necessary for a "plea in barr at law" and in equity. In law the decision on such a plea was final, in equity it may not be so, for it was the court's decision. To Lisle this posed the question what was actually a temporary plea and what was a plea in barr in a court of equity? They could amount to the same.[50] Under title of bankruptcy in the case of Shales v. Gore, the question arose whether a debt in equity, being for a sum of money decreed, was a debt under the Statute of Bankruptcy. The court found that one with such a debt was a creditor under the Statute of Bankruptcy and was entitled to share in distribution by the Commissioners for Bankruptcy.[51] In an appeal from judgment given by Commissioners for Policies and Assurances, the

defendant entered a plea that new matter alleged by the plaintiff could not be considered by the court on appeal. Lisle admitted the truth of this plea but added this note,

> nota in generall rule in all appeales you shall only goe upon the record and not upon new matter, unlesse it be new matter discovered since the decree or some matter that could not be examined in that court that made the decree. As to be releeved against judgment att law, new matter may be alleaged because that new matter was not pleadable att law.[52]

There were several other interesting points entered in Pleas and Demurrers on when infancy was a good plea in old mortgages,[53] and when a defendant might be forced to answer concerning lands beyond the sea.[54] However, the examples given sufficiently demonstrate the nature of Pleas and Demurrers. The compilation of this work is important in the history of Chancery because it marks another significant development in the evolution of equity. Pleas and demurrers in Elizabethan times had been mere informal answers by the defendant, but by the mid-seventeenth century they had attained the position of formal pleadings and were assigned a special status in the course of Chancery procedure.

The second of the major supplementary collections, Lisle's Miscellany concerning the Chancery, was a manuscript book of considerable length, 269 folios at least.[55] It dealt primarily with administrative details of the Chancery, which did not fall directly under the judicial functions of the court. This work, like the preceding, was arranged topically and is aptly described as a "miscellany." The topics found worthy of attention by Lisle seem extraordinarily various

but for the most part they relate to the administrative affairs of the Chancery. The first topic for consideration in the Miscellany was a case of a guardian for an infant admitted for the defense in a suit and whether the Chancery could assign a guardian for an infant's defense.[56] Chancery, as an administrative duty, frequently assigned guardians for wards involved in suits and assumed a general jurisdiction over all children not within the purveyance of the Court of Wards (which in Lisle's time had ceased to exist).[57]

There were questions which arose from Chancery's power in exemplifying documents under the great seal, on sequestrations ordered by Chancery, on fines extinguishing right in equity, and on the method of appointing commissioners of the great seal under the Instrument of Government.[58] Several folios were given over to cases where the court attempted to determine who was seised to a trust. Those cases reported by Lisle were tortuous and must have required much reflection by the court in unravelling the various copyholds, widowhoods, and dowers for determination of who was seised to a trust.[59]

Change of venue of a trial from one county to another by order of the Chancery occupied over twenty folios of the Miscellany. Beginning on folio fifty-three Lisle dealt with precedents for Chancery's exercise of this authority. Descriptions of cases and the orders of Chancery extended to cases of 31 Elizabeth, 11 James, 15 James, 2 Charles, and 10 Charles. All Lisle's precedents involved the undue influence by one party to the suit when a question of fact

in equity was referred to trial at law in the counties. In each case the court ordered trial to be held in a "foreign county" to ensure the indifference of the jury. These precedents all led to a case of 1651, Preston v. Story and Dickenson. The question was upon a point of custom on the death of the lord of a manor in Westmoreland, whether the fine should be charged to all the customary tenants or to the tenant in possession on the death of the lord or upon the land when the tenant alienated the same. To decide this question of custom more indifferently, the court ordered the trial held in Durham.[60] The change of venue received challenge on grounds that since it was a trial at law, the rule of law forbidding change of venue must prevail. Lisle maintained that change of venue was not possible at law but was in equity, noting the following reason,

> one reason why att law it must be tryed by a jury of the same county is quia de execution but it is not soe in case of Tryall directed for Chancery can order execution in any county.[61]

Lisle also used the Miscellany to record precedents on writs of error and Chancery jurisdiction in cases of bankruptcy. Lisle devoted at least forty folios to precedents in bankruptcy which indicates that Chancery's jurisdiction in those cases was receiving an increased interest during the Interregnum.[62] He used this book to enter notations relative to the internal administration of Chancery with entries on the commissioners of the great seal, the six clerks, the sixty attorneys, the Affidavit Office, and the fees of Chancery officers. The Miscellany served as an

authority book for issuing of writs, oaths, proclamations, warrants, and commissions. Lisle entered appeals from the Prerogative Court of Canterbury, from corporations, and appeals on patents and honors. There were also appeals from the Chancery to the lords commissioners of the great seal sitting with the common law judges and from the Chancery to the Lord Protector and the Parliament, as well as questions of reference from the Lord Protector to the Chancery. Purely administrative matters of Chancery, for example, the setting of wine rates, granting supersedeas, settling enclosures, ending states of infancy, assaying the pix, and taking of principal and security, were diverse topics presented in this manuscript book. The death of Lord Protector Cromwell received special attention with precedents from the deaths of previous supreme magistrates (kings) and the problems for the keepers of the seal and the judges created by their deaths.[63]

This book was indeed a "miscellany," but one must not fail to recognize a very important aspect of the Miscellany, that is the preeminence of precedents for use in the Chancery. If one could call it anything other than a "miscellany," one might well term it a "precedent book." Traditionally Chancery was not bound by precedent but by the will and conscience of the presiding officer. However, the Miscellany with its array of precedents for actions of the Chancery was in the same spirit as Lisle's Pleas and Demurrers, Chancery Liber and even the "Abridgements." Taken as a whole, Lisle's manuscript books comprise one large set of precedents

to which Lisle must have felt obliged to have recourse or quite obviously he would not have bothered with the compilation.

It was possible to reconstruct fairly accurately the three preceding works of Lisle. There were in addition to these more extensive collections a variety of smaller, infrequently cited treatises. As with the larger works, Lisle referred to them as "mon booke." First mentioned should be The 2nd Miscellany, a volume of about 156 folios, which received only one citation in Lisle's "Abridgements." The 2nd Miscellany was no doubt a continuation of the Miscellany, and it is ironic that this one citation should be from the last of Lisle's official acts as a commissioner of the great seal, the passing at the great seal of the Protector's proclamation for the dissolution of Parliament, 22 April 1659.[64]

Another book entitled, Proceedings, Forms and Presidents in a Parliamentary Way, comprised about fifty folios of entries arranged topically. There are two references to it; in one Lisle remarked on the refusal of judges and lords commissioners of the great seal to execute an order of the Parliament.[65] Parlement Begun September 3, 1654, was a work arranged chronologically with about forty folios. Two references were found to this work, which was apparently a record of the orders sent to the lords commissioners by the Parliament, Lord Protector, and Council during the 1654 Parliament. It shows that the commissioners of the seal did not regard themselves as the mere tools of the government.[66]

Temporall Matters Debated in Parlement, about fifty-three folios, received citation in the Lisle "Abridgements" only once, on letters patent and seals.[67] Accusing Motions, Impeachments, Charges, and Accusations in Parlement is referred to for information in regard to proceedings against great officers of state.[68]

The above manuscript books dealt primarily with the great seal as an administrative office for the government. However, Equitable Actions att Law was a collection of topical essays, such as "uses," with appended cases demonstrating when Chancery may interfere with cases normally settled at common law.[69] Another work, entitled Justices of the Peace, delineated the circumstances in which Chancery had cause to extend its jurisdiction into that usually under the county commissions of the peace.[70] Only one of these treatises had any philosophical content, The Best Policy etc., approximately 150 folios. It received one reference in the "Abridgements," under title, "Judges, A Lesson for all judges."[71] Perhaps Lisle gathered the information for this collection in preparing addresses to the judges before they went on circuit. The titles of two other works, The Table to Cookes Jurisdiction of Courts and Mon Abridgement to Cookes Pleas of the Crown, speak for themselves.[72] Very likely they were from Lisle's exercises at the Middle Temple where most students were encouraged to master the ancients with tables to their works.

The preceding works referred to by Lisle as "mon booke" were manuscripts and have not been discovered in any collec-

tions or in published form. There were, however, three mentioned in Lisle's "Abridgements" as "mon printed bundle concerning the Chancery." Each of these three, when cited in the "Abridgements," is titled "mon printed bundle . . .," followed by a second title, "Practice of the High Court of Chancery Unfolded," "Choyce Cases in Chancery," and "Proceedings of the High Court of Chancery."[73] There is also a fourth and shorter tract, called "The kings order and decree in Chancery for a rule to be observed by the Chancellor in the court exemplifyed and enrolled for a perpetuall record then anno 1615."[74] The former three were all lengthy treatises, the latter only four pages. All of them exist in published form. The "Practice," "Choyce Cases," and "Proceedings" were published anonymously in 1652, bound together, but with separate titles.[75] The "Kings Order and Decree, 1615," can be found in many places, for it is the published version of the reasons of Sir Francis Bacon, Randall Carew, Henry Montague, and Henry Yelverton given to James I for their positions on Chancery and the act of 4 Henry IV.

Care must be exercised in assigning these works to Lisle, merely on his claiming them as "mon printed bundle." The "Kings Order and Decree, 1615," is not the work of Lisle, but it offers some indication regarding the status of the other three. In searching among the manuscript collections of the British Museum, I found that the "Kings Order and Decree" appeared in many manuscript collections.[76] There were also several manuscripts with the title "Practice of Chancery."[77] None of these was the same as the published "Practice,"

the version Lisle used, but upon comparison they all bore similarities to one another. The probable solution is that many of these manuscripts circulated among the legal profession. At some juncture, Lisle obtained one or several copies of the "Practice" and procured its publication for his own use. An alternative is that Lisle obtained them after their publication and referred to them as his own books. The latter is not in keeping with his general procedure of citation for "mon booke," that is, he must have truly regarded them as his own, as he regarded the manuscripts as his own. That they were not totally Lisle's own work is implied in their anonymous publication.

The "Kings Order and Decree", Choyce Cases, and Proceedings were probably published as written in manuscript form with no alterations. Choyce Cases is a collection of Chancery cases from the years 1557 to 1606, none later. The cases are arranged in commentary form, covering various aspects of Chancery jurisdiction, and are reported more fully than those in William Tothill's Transactions of Chancery of 1649.[78] The Proceedings were not likely from the pen of John Lisle, as one of Lisle's entries in the "Abridgements" demonstrates. When writing of the procedural rules of Chancery, Lisle referred to Proceedings for the rule concerning the issuing of a subpoena to a plaintiff before the filing of his bill.[79] "There are Rules sett forth by the lord keeper and I conceive by Sir Nicholas Bacon: . . . ."[80] If Proceedings were Lisle's own work, he would have been as certain of the origin of the rule as the author of Proceedings was. The statment does indicate another authorship than

Lisle's. With the Practice liberties were taken to bring it up to date. One of the major differences between the Practice and its manuscript predecessors in the British Museum was the inclusion in the published form of cases from the 1640's. The overruling of a demurrer in 1644 was found in the form of a note in the Practice.[81] Whoever commissioned the printing was aware of decisions made by the lords commissioners during the civil wars.

The vast effort required in composing the Chancery Liber, Pleas and Demurrers, the Miscellany, and the various specialized collections belies the statement made by Lisle's contemporary, Bulstrode Whitelocke, that Lisle was unlearned in the law and relied only on his experience in working with the other lords commissioners. Lisle's politics and his participation in political trials were probably the origin of Whitelocke's derision. They may be valid criticism of Lisle as a judge in Whitelocke's style, but his politics are not evidence that he was incapable of carrying out his duties as an equity judge in Chancery. Lisle's unswerving devotion to the state, whatever the government, since 1641, no doubt occupied his time in the political arena, but it also assured his continued presence on the Chancery bench. Lisle did not come to the Chancery with the legal experience or the same reverence for the law that Whitelocke possessed; he came with the feeling and the eye of a professional administrator. That he was willing to overcome any deficiencies is demonstrated by his tedious compilations of Chancery cases. That he read widely in the legal authorities is reported in his

"Abridgements." He was also a collector of writings on the Chancery, as is indicated in his publication of several treatises which came to his library.

However, Lisle's efforts as a Chancery judge in compiling and collecting works on that court have implications deeper than a defense of his judicial ability. They tell us something of the minds and attitudes of Chancery judges and lawyers of the Interregnum. The fact that there was more than one judge in equity for all the Interregnum would tend to reduce the reliance on the conscience of the presiding officer in deciding cases. Furthermore, the Chancery judges were common lawyers. The common lawyer members of the Long Parliament had been successful in destroying all the prerogative courts save Chancery. Should it too be abolished as had the other relics of repressive prerogative government, or should it be made to conform to the example set by the common law courts? These lawyers well knew the advantages of a tribunal supplementing the inadequacies of the common law -- it should not be dismissed out of hand. With several common lawyers at the head of the equity court, that court completed the process of conforming to common law example, begun with the issuing of procedural rules and allowing procedural precedents. Chancery bound to its antecedents was far preferable to the lawyers than its abolition.

The lengthy books of cases kept by Lisle show that the common lawyers intended, consciously or not, to establish substantive rules for equity through the precedents found

in prior case decisions of that court. Equity would then become a set body of legal principles administered in another court, controlled by the common lawyers, and no longer the discretionary justice of the Lord Chancellor.

NOTES

[1]P.R.O., Register's Entry Books of Orders and Decrees, C33. Hereafter cited as P.R.O., C33. Busch, "New Source," Bibliographical Contributions, I, 6-7.

[2]Lisle MS., f. 32r.

[3]Chancery Liber 1, ff. 3-5, in Lisle MS., f. 34r.

[4]Chancery Liber 1, f. 3, in Lisle MS., f. 45r.

[5]Chancery Liber 1, f. 3, in Lisle MS., f. 45r.

[6]Chancery Liber 1, f. 3, in Lisle MS., f. 45r.

[7]Chancery Liber 1, f. 4, in Lisle MS., f. 163r.

[8]Chancery Liber 1, f. 13, in Lisle MS., f. 428r.

[9]Chancery Liber 1, f. 23, in Lisle MS., f. 411v.

[10]Chancery Liber 1, f. 28, in Lisle MS., f. 221r.

[11]Chancery Liber 1, f. 28, in Lisle MS., f. 39v.

[12]Dundell's Case, Chancery Liber 1, f. 28, in Lisle MS., f. 223r.

[13]Chancery Liber 1, f. 31, in Lisle MS., f. 249r.

[14]Chancery Liber 1, f. 30, in Lisle MS., ff. 51v and 52r.

[15]Chancery Liber 1, ff. 31 and 52, in Lisle MS., ff. 51v and 52r.

[16]Chancery Liber 1, f. 55, in Lisle MS., f. 105r.

[17]Chancery Liber 1, f. 45, in Lisle MS., f. 271v.

[18]Chancery Liber 1, ff. 44-5, in Lisle MS., ff. 276v and 277v.

[19]Chancery Liber 1, f. 45, in Lisle MS., f. 340v.

[20]Chancery Liber 1, ff. 31, 48, and 49, in Lisle MS., ff. 390r, 48r, and 48v, respectively.

[21]Chancery Liber 1, ff. 44-5, in Lisle MS., f. 276v.

[22]Chancery Liber 1, f. 45, in Lisle MS., f. 277v.

[23]Chancery Liber 1, f. 45, in Lisle MS., f. 277v.

[24]Lisle MS., f. 241r.

[25]Reynardson v. Watkins (1649), Lisle MS., f. 53r.

[26]Jennings v. Norton (1649), Chancery Liber 3, f. 1, in Lisle MS., f. 3r.

[27]Master of the Rolls v. Gulson, Chancery Liber 4, f. 15, in Lisle MS., f. 53r. Middleton v. Davey, Chancery Liber 7, f. 33, in Lisle MS., f. 53v.

[28]Jennings v. Norton (1649), Lisle MS., f. 3r.

[29]Countess of Dorset and Earl of Thanet v. Earl of Dorset (1658), Chancery Liber 7, f. 31, section 130, in Lisle MS., f. 48v.

[30]Jennings v. Norton (Lent 1649), Chancery Liber 3, f. 1, in Lisle MS., f. 3r. Schenkfield v. Stephenson (Trinity 1649), Chancery Liber 3, f. 7, section 51, in Lisle MS., f. 9r.

[31]Cole v. Rodney, Chancery Liber 3, f. 17, section 149, in Lisle MS., f. 133r. See also P.R.O., Petty Bag Office, Brevia Regia (Michaelmas 1650), C202/34. Thynn v. Thynn (1650), Chancery Liber 3, f. 24, section 196, in Lisle MS., f. 9v. See also Reports of Cases in Chancery (2 vols.; London, 1693), I, 162-64.

[32]Lisle MS., f. 201v.

[33]HMC, De'Lisle and Dudley Mss., Vol. VI: Sydney Papers (1626-1698), p. 461.

[34]Ibid., p. 461. Lisle made no appearance on the Chancery bench for Michaelmas Term 1649. P.R.O., Minutes of Chancery (1649), C37/2, passim.

[35]Master of the Rolls v. Gulson, Chancery Liber 4, f. 15, section 65, in Lisle MS., f. 53r. Cf., P.R.O., Petty Bag Office, Brevia Regia (Michaelmas 1652), C202/35.

[36]Pudsey v. Grove, Chancery Liber 4, ff. 29-30, section 120, in Lisle MS., f. 53v. Cf., P.R.O., Petty Bag Office, Brevia Regia (Hillary 1651), C202/35.

[37]Chancery Liber 4, f. 30, section 123, in Lisle MS., f. 253r.

[38]Henly v. Whitwick (October 1653), Chancery Liber 4, ff. 36-7, section 164, in Lisle MS., f. 220r and 386r. Cf., P.R.O., Chancery Proceedings, Six Clerks Series (1653), C5/389/59. Wield v. Lake and Earl of Leicester (December 1653), Chancery Liber 4, f. 50, section 225, in Lisle MS., f. 434r.

[39]Lisle MS., f. 403r.

[40]Ibid., ff. 7v and 412r. Cf., Reports of Cases in Chancery (1693), I, 168-69.

[41]Lisle MS., f. 407v.

[42]Ibid., f. 343r.

[43]Crofts v. Crofts, Chancery Liber 6, section 497, in Lisle MS., f. 153v. Cf., P.R.O., Chancery Proceedings, Six Clerks Series (1656), C6/132/34 and C8/133/31. Chetham's Case, Chancery Liber 6, f. 15, section 87, in Lisle MS., f. 153v. Cf., P.R.O., Petty Bag Office, Lunacy Commission (22 June 1657), C211/C4.

[44]Lisle MS., f. 356v.

[45]Ibid., f. 451v.

[46]W. J. Jones, The Elizabethan Court of Chancery (Oxford, 1967), pp. 210-11.

[47]Lisle MS., f. 161r.

[48]Bleigh v. Kneebone, Pleas and Demurrers, f. 5, section 10, in Lisle MS., f. 293r, 294r, and 349v.

[49]Squibbe and Dame Every v. Sir Henry Every, Pleas and Demurrers, f. 14, in Lisle MS., ff. 296v and 305v.

[50]Pleas and Demurrers, f. 14, in Lisle MS., f. 329v.

[51]Pleas and Demurrers, f. 28, section 2, in Lisle MS., f. 73r.

[52]Bulsteele v. Wicker, Pleas and Demurrers, f. 34, section 2, in Lisle MS., f. 429r.

[53]Pleas and Demurrers, f. 46, section 1, in Lisle MS., f. 414r.

[54]Pleas and Demurrers, f. 46, section 3, in Lisle MS., f. 162v.

[55]Lisle MS., f. 364r.

[56]Balstoke v. Byron, Miscellany Concerning the Chancery, ff. 1-4, in Lisle MS., f. 62r.

[57]Jones, Elizabethan Chancery, p. 384.

[58]Miscellany Concerning the Chancery, ff. 5-11 and 147, in Lisle MS., ff. 371r, 85r, 237r, and 32r, respectively.

[59]Miscellany Concerning the Chancery, ff. 12-30, in Lisle MS., ff. 426r and 218r, respectively.

[60]Miscellany Concerning the Chancery, ff. 69-73, in Lisle MS., f. 419r.

[61]Lisle MS., f. 419r.

[62]Miscellany Concerning the Chancery, ff. 30-128, in Lisle MS., f. 59v, 73r, and 73v, respectively.

[63]Miscellany Concerning the Chancery, ff. 253-58, in Lisle MS., ff. 32r, 241v, and 277v, respectively.

[64]The 2nd Miscellany, f. 156, in Lisle MS., f. 231v.

[65]Lisle MS., ff. 249v and 125v, respectively.

[66]Ibid., ff. 172v and 276v. [67]Ibid., ff. 314v and 336r.

[68]Ibid., f. 335v. [69]Ibid., f. 298r.

[70]Ibid., ff. 178v, 247v, and 265r.

[71]Ibid., f. 322v.

[72]Ibid., ff. 67v, 197r, and 249v.

[73]Ibid., ff. 48v, 82r, and 197r, respectively.

[74]Ibid., f. 441r.

[75]The Practice of the High Court of Chancery Unfolded (London, 1652). Choyce Cases in Chancery (London, 1652). Proceedings of the High Court of Chancery (London, 1652). These three books were bound together in the first edition of 1652. Subsequent editions exist for 1672 and 1870.

[76]B.M., Hargraves Mss., #249, and others.

[77]B.M., Harley Mss., #1576; Egerton Mss., #2254; and Additional Mss., #41661, ff. 130-152.

[78]William Tothill, Transactions of the High Court of Chancery (London, 1649).

[79]Proceedings of Chancery (1652), p. 1.

[80]Lisle MS., f. 408v.

[81]Practice of Chancery Unfolded (1652), p. 49.

CHAPTER VI

SOURCES OF THE MANUSCRIPT: THE LEGAL AUTHORITIES

John Lisle's "Abridgements" contains many references to legal authorities other than his own manuscript books. In reading and searching through other works, Lisle extracted passages pertinent to a particular topic of equity and entered them in his "Abridgements." Often his entries from other sources were accompanied by further elucidation and comment of Lisle's, or he took the passage without alteration. The authors cited in the "Abridgements" were as diverse as the topics of equity, and Lisle never restricted himself to authors of a particular bias.

In the preceding chapter, it was observed that Lisle industriously compiled contemporary cases in equity for application as precedent. His use of the legal authorities in the "Abridgements" is equally a demonstration of that reliance upon precedent. As an equity judge of the Interregnum, Lisle found it necessary to know more than the merits of the particular case before the court. Quite obviously, he also found it imperative to know what other judges had decided, not

only in Chancery, but in the courts of common law. This necessity to be familiar with similar cases of the past will be more fully understood when a full discussion of the problem of substantive precedent in equity is undertaken later. In considering Lisle's choice of legal authorities, it must be realized that he was forced to turn to the common law reporters because of the lack of Chancery reports. That he did turn to them and that he was heavily dependent upon them is not to be doubted.

Lisle was quite capable of using authors as antagonistic as Sir Edward Coke and Sir Francis Bacon, even to cite their works under the same or related topics.[1] In following this practice, he has compounded the difficulty inherent in discussing equity with the perplexing problem of widely divergent and disparate authoritative references. While it demonstrates Lisle's catholic attitude toward authority in precedent, it all but prevents any fixed opinion of his legal philosophy. Furthermore, it leaves the historian with a choice in discussing his authorities in the "Abridgements": to consider each author individually and the equitable topics in which he was cited, or to prepare an artificial, topical approach, grouping each authority under general subject headings, wherein the majority of the references appear in the "Abridgements." The former method would produce an itemized list of authors and categories of equity, something like a biographical dictionary. For that reason and because of the nature of equity, the topical approach seems to be of more value here.

Very generally, Lisle's authorities fall into four categories in their relation to equity -- philosophical, historical, procedural, and substantive. Some of them, of course, appear in more than one capacity, just as Lisle used them differently. It is proper to begin a discussion of his legal authorities on the fundamental nature of equity with the Dialogues between the Doctor of Divinity and the Student of the common Law by Christopher St. Germain. St. Germain lived from 1460 to 1540, and his Dialogues was first published in English in 1532. The Dialogues was the earliest of those works which showed the necessity of the Lord Chancellor's equitable jurisdiction for balancing the ambiguity of the common law. St. Germain's work provoked considerable discussion in the legal profession of the sixteenth century, and it possessed an amazing endurance, cited by nearly all legal authors from the sixteenth to the eighteenth century. Heavily influenced by the canon law training of its author, the Dialogues is primarily a work of philosophical nature, which establishes the necessity of conscience for augmenting the common law. The common law was unable to include the infinite variety of men's actions, but conscience, when applied in equity, insured justice in those cases excluded from the law.[2]

In the "Abridgements," it was on this very topic of "conscience" and the need for equity that Lisle relied upon St. Germain. Even during the Interregnum, common lawyers realized there were cases when a man did a wrong and the law

could not compel him to redress it.[3] A statement by Lisle that "Naturell equity /is/ stronger than any law" was supported by entries from the Dialogues, chapters sixteen and seventeen.[4] In searching for a definition of "conscience," as well as the errors which may occur in decisions based on conscience, Lisle found the answer in St. Germain's discourses of chapters fifteen, nineteen, and twenty.[5] Nevertheless, the common lawyers of the mid-seventeenth century had not come to the realization that law and equity could work as a unit, as is observed in Lisle's acceptance of St. Germain's dialogue on the six grounds of law, wherein equity was not to be found; equity was only suffered by the law as an unfortunate necessity.[6] On the specific topics of suits by infants and the setting aside of judgments at law, St. Germain also received Lisle's attention, for in suits by and against infants the questions of equity easily arose.[7] For setting aside judgments at law, Lisle struck upon St. Germain's statement that it would not be a violation of the rule of conscience for Chancery to refrain from that practice when prohibited by statute.[8] For the most part, Lisle used St. Germain only for the philosophical questions of "conscience" and the nature of equity.

Another authority from whom Lisle extracted entries on the philosophy of law was the great Sir Edward Coke, his Second and Fourth Institutes of the Laws of England, called Magna Carta and Jurisdiction of Courts. All Lisle's references to these two works came from the 1642 edition of Magna Carta

and the 1648 edition of Jurisdiction of Courts.[9] Lisle, of course, used other works of Coke's, but the First Institute on Littleton and the Reports did not lend themselves to the study of the fundamental principles of equity. In fact, none of Coke's writings can be described as truly philosophical, not in the sense that Sir Francis Bacon's are philosophical. Coke was always the practical advocate not the legal philosopher like Bacon. That is not to say Coke did not think, but that he thought in terms of the courtroom lawyer not the armchair philosopher. Furthermore, although Coke was not academically dishonest, he tended to use only those precedents which confirmed his prevailing legal and political opinions. An example was his reliance upon the spurious Mirror of Justices.[10] However, even Bacon recognized the importance of Coke's writings, and Lisle's extensive use of them demonstrates again how completely they were accepted by lawyers of his day, including judges in equity.

The equity judge and the common lawyer found in Coke's Magna Carta some practical advice on the nature of civil pleas, which could be useful in application to the equitable jurisdiction of Chancery.[11] On the question, what is "justice," Lisle accepted Coke's definition that justice flows from the king, who is present in all his courts, all persons having recourse to him by right of justice there. When Lisle cited Coke's statement that justice was to be given "freely without sale, fully without deniall, and speedily without delay," it was definitely applicable to the complaints and demands of the Interregnum for reform of law and equity.[12] It was

not unnatural that Lisle struck upon Coke's statement and used it for support in the 1655 controversy over the Ordinance for Regulation of the Chancery. Coke's discussion of the statute dividing the King's Bench and Common Pleas brought out that their union produced many discontinuances, trouble for juries, charges to litigants, and delays of justice.[13] These same deficiencies were extremely relevant for the Chancery of the Interregnum and were the very same deficiencies which the 1654 Ordinance attempted to correct. Of the three lords commissioners in 1655, only Lisle accepted the Ordinance for Regulation.

In Coke's Jurisdiction of Courts, Lisle found information pertinent to his own office in Chancery. He accepted Coke's exposition of the two jurisdictions of the Court of Chancery, that is, the jurisdiction in Latin proceedings, the Petty Bag,[14] and the jurisdiction in English proceedings, or the court of equity.[15] The former, wrote Coke, had statutory jurisdiction in certain cases, with trials of fact held in the King's Bench; the latter was no court of record, its decisions binding only the person, not estates, property, or chattels. Further, Coke granted this court only three general areas of causes: covin (fraud), accident, and breach of confidence.[16] Lisle must have given more than passing interest to Coke's report of Serjeant Robert Parning, made Lord Chancellor in 15 Edward III, for Lisle reproduced the following:

> This man /Parning/ knowing that he knew not the common law, could never well judge in equity (which is a just connection of law in some cases) did usually

> sit in the Court of Common Pleas, (which Court is the lock and key of the Common Law) and heard matters in law there debated, and many times would argue himselfe, as in the report of 17 Edw. 3, it appears.[17]

For the common law trained commissioners of the great seal, that statement gave great weight to their presence on the Chancery bench, especially for Lisle, who came there with relatively little experience in equity cases. That Lisle probably felt his lack of training for equity is corroborated by a reference in the "Abridgements" to Sir Christopher Hatton, who had no experience in Chancery but carried himself well.[18] Lisle in defense of his own position could resort to Coke's statement that knowledge of the common law, which Lisle had, was necessary for presiding in Chancery, and to Hatton's situation, where a lack of judicial experience was not a hindrance. The philosophical references to Coke were the hard practical philosophy of the pleader and not in the least similar to the entries made by Lisle from the writings of Coke's contemporary, Sir Francis Bacon.

Lisle had in his possession, Bacon's Advancement of Learning, edition of 1640, and the 1657 edition of William Rawley's Resuscitatio, a collection of Bacon's writings and speeches.[19] From the Resuscitatio, Lisle extracted much that was helpful in determining the nature of the office he held as a presiding officer of the Chancery as well as reminders for the conduct of judges in general. A good portion of his references to Bacon, taken from the Resuscitatio, were to Bacon's speech upon taking his place as Lord Keeper in 1617.[20] Bacon intended this speech as a rapprochement for Chancery

and the common law courts. Their conflict had reached a climax with the decision by James I in Peacham's Case (1615), giving equity an equal, if not superior, place with the law. Bacon had advised the King on maintaining the supremacy of equity at that time, and subsequently he became known as one of the important defenders of the prerogative courts. Lisle drew heavily on Bacon's speech, when he wrote of granting injunctions, hearing motions, staying causes under the great seal, avoiding delays and unnecessary charges, and containing the jurisdiction of Chancery. All were still complaints against Chancery in Lisle's day. The clamor against easily obtained injunctions from Chancery to suitors at law was especially loud during the Interregnum.

Although some of Lisle's references to the Resuscitatio were of a procedural nature, those to the Advancement of Learning were all of a philosophical nature, taken from Bacon's "Aphorisms" upon the law. One of these, on the "prepossessed or preoccupied judge,"[21] was aphorism seventeen of Book VIII, Advancement of Learning. Bacon reminded judges that they could be influenced more than they realized by the first information which came to them from the plaintiff. To avoid prejudice a judge should hear nothing to the merit of the case until both parties appeared before him.[22] This was admirable advice for a judge in equity.

The remainder of Lisle's references to the Advancement of Learning were from the aphorisms contained in "A Specimen of the Method of Treating Universal Justice; or, the Fountains of Equity." It should be pointed out that the overwhelming

number of these references by Lisle concerned the citation of precedents. Bacon was concerned with cases omitted out of the law yet good in equity. In those cases it was necessary to apply precedent with caution and judgment without excluding reason. If the public good were enhanced by the use of precedent, then it was a valid application in equity.[23] Bacon especially mentioned cases wherein precedent was rarely used, that there precedent must be applied cautiously, for example, history should not be applied as precedent in law. The rendering of history into law was frequently faulty and frustrated the true course of justice. The citation of precedents for the substance of a case was novel in Lisle's Chancery, and he could have found no better authority than Bacon on the fundamental nature of precedents. In his "Abridgements," Lisle cited all Bacon's aphorisms on precedent, eleven to thirty-one.[24]

On the necessity of courts of equity, Lisle referred to Bacon's aphorisms on the ability of "praetorian" courts to alleviate the rigor of the law and to fill the gaps in the common law. In fifteen short statements on courts of equity, Bacon set forth the nature of "praetorian" or summary courts and how the judges there should conduct themselves; Lisle used them all.[25] For the nature of appeals, writs of error, and bills of review, Lisle relied upon Bacon's "Of the Instability of Judgments" in aphorisms ninety-four to ninety-seven.[26] The principal points found there were: courts should never quarrel among themselves over jurisdiction to the detriment of the public good; the reversal of judgments

on appeal; writs of error and bills of review as difficult processes never undertaken without great cause.[27] Evidently the philosophical basis of Lisle's application of precedent in equity was in Bacon's writings. Moreover, Lisle's very use of Bacon at all says much for his impartiality as a lawyer and judge. He was able to rely upon both Coke and Bacon for certain aspects of equity, at a time when all that Bacon stood for as a statesman of Stuart England was completely discredited. Lisle was not so narrow-minded that he refused the use of Bacon's ideas on law where they were most beneficial.

There remain two minor references of Lisle's on topics of a philosophical nature. These were William West's Symboleography and Michael Hawke's Grounds of the Laws of England. William West was an attorney of the Inner Temple, whose work, Symboleography, first published in 1590, was a collection of precedents on many instruments used at law and equity. However, it also gave information on the nature of the law and equity when it applied to the instruments themselves. Lisle used the edition of 1632, which was derived from the 1594 edition but with precedents from equity and a discussion of that jurisdiction.[28] In the introductory section of part two of the Symboleography, West explained the nature of equity, and its authority as a court of conscience.[29] While Lisle cited West for problems more properly placed under Chancery procedure, there was one reference which was philosophical.

From the views of Coke on judges in law and equity and the addition of West's views on this subject, we can see that

Lisle fully accepted the idea that a judge in equity must understand the common law.[30] When writing of the duties of judges spiritual and temporal, West set down principles for their direction. Spiritual judges were bound to take notice of the common law rules on inheritance and judge them according to temporal laws. Temporal judges were bound in conscience to take notice of the canon law when they judged in spiritual matters. Such as course was necessary, wrote West, to avoid the inconvenience which arose from contrary judgments in different courts.[31] A case in point was an heir, assigned his father's goods before death, was considered heir in common law and in equity, but not necessarily in canon law.[32] Lisle was obviously struck with the idea that an equity judge must be thoroughly versed in the common law to fulfill his obligations in equity. To ensure adherence to the maxim, equitas sequitur legem (equity follows the law), an equity judge found it absolutely necessary to understand the law. When presiding officers of the Chancery completely accepted that maxim, one more obstacle was overcome in the fusion of law and equity.

Michael Hawke, a barrister of the Middle Temple, was a contemporary of Lisle's. He is remembered primarily for his defense of the kingship for Cromwell, but Hawke also wrote Grounds of the Lawes of England (1657). Hawke declared that he devoted twenty years to the study of the laws of England and that he took much inspiration from the writings of Coke and Sir John Doderidge, a judge of the Common Pleas.[33] That Lisle cited Hawke at all is important. Hawke was a vocif-

erous supporter of Cromwell's kingship, a move which listed Lisle among its adherents.[34] As Lisle and Hawke were contemporaries and both of the Middle Temple, they probably knew each other. Because Hawke's work was both contemporary and little noticed among lawyers, personal collaboration could account for Lisle's use of his Grounds. Lisle's one reference to Hawke was from the discourse on equitas verborum (equity of words). When the words of the law provide one thing, all other things in like kind are provided for by those words. This, wrote Hawke, applied to the words of a statute as well; they enact all things of a like nature.[35] Lisle's failure to make more use of the Grounds suggests that it enjoyed little standing among lawyers of the Interregnum.

Some entries made by Lisle in the "Abridgements" were historical, either because the author was an historian or because Lisle used an historical incident from legal author. Lisle never, in the "Abridgements," made use of history or historians for precedents in equity. In this he followed the advice of Bacon that history is a poor source of precedent in law because the vagaries of historians color it with their inaccuracies and biases.

Historian's works cited in the "Abridgements" were used primarily to compile information on the office of Lord Chancellor and Lord Keeper. All the entries, but one, from John Rushworth's Historical Collections, volume one, pertain to the Lord Chancellor or the judges.[36] Lisle could use only the first volume of Rushworth's work as that volume alone

had appeared by 1659, when Lisle began his "Abridgements." Some entries from Rushworth are single item entries. One concerned a writ under the great seal summoning a peer to Parliament, which conflicted with a letter from the Lord Keeper Coventry to the contrary.[37] Lisle entered Rushworth's account of Bacon's impeachment and trial for corruption under proceedings against the Chancellor, Keeper, or Commissioner.[38] The judges' alterations of legal oaths, the judges' refusal to hear counsel, commissions for sequestrations, and judges' commissions on the death of the sovereign were examples of other entries from Rushworth.[39]

There were also several entries taken from Rushworth on the office of Chancellor. All these were from speeches delivered by Lord Keeper Coventry during the Parliaments of 1625, 1626, and 1628. The speeches of past Chancellors and Keepers were important to Lisle, for they dealt with grievances presented to James I in 1625, the selection of Sir John Finch as Speaker in 1625 and 1627, and the explanation of crown policies in 1626.[40] That Lisle gave so extensive coverage to Coventry's speeches as well as Bacon's published in the Resuscitatio (1657), indicates he was much concerned with the conduct of the Chancellor as the sovereign's representative in Parliament. When the "Lords House" was reconstituted under the Protectorate, the lords commissioners of the great seal delivered Cromwell's feelings to the House.

Lisle used William Camden's History of the Reign of Elizabeth,[41] edition of 1630, as he had Rushworth. He gave reference to the historical situation on the border of Scot-

land and England, where a Scot must witness against a Scot and an Englishman against an Englishman for there to be good proof.[42] For the creation of commissioners of the great seal and special commissions under royal patent for state trials, Lisle found similar incidents in Camden.[43] These entries have special significance for the Interregnum when the great seal was in commission and high courts of justice were established to conduct state trials under commissions from Parliament and Protector.

One reference to Camden is particularly interesting as it applies to Lisle. The appointment of Sir Christopher Hatton as Lord Chancellor by Elizabeth angered many of the judges and lawyers of the time for it was thought Hatton, having no experience and no legal training, was unfit for the office. Camden reported, however, ". . . bore hee the place with greatest state of all that ever we saw, and what was lacking in him in knowledge of the law, hee laboured to supply by equity and justice."[44] Hatton's exemplary execution of the office no doubt gave Lisle great personal satisfaction when his detractors accused him of incompetence. In confirmation of Lisle's interest in Hatton, we find that Lisle entered another version of his appointment in his only reference to William Gouldsborough's Reports, edition of 1652.[45]

Two of the authorities considered above are purely historical and one is a legal reporter. There is yet another of the legal reporters from whom Lisle entered historical notes. Sir George Croke's Reports was an important authority

for Lisle, and he used Croke extensively in citing substantive cases from Chancery and other courts.[46] However, from the Reports, Lisle obtained useful, historical information on the judicial personalities of the reigns of James I and Charles I, while Croke was a justice of the Common Pleas (1622-1628).[47] Croke was not an historian, but as Professor Holdsworth noted, it was the mark of the reporters of the late sixteenth and early seventeenth centuries to include incidents from the lives of the legal profession.[48]

Under "Judges" and "Serjeants" Lisle reported incidents from Croke to form the bulk of those entries. In determining that one must be sworn a serjeant at law before he is sworn as a judge, Lisle referred to Croke's account of Sir Nicholas Hyde and Sir Thomas Richardson, neither of whom was a serjeant, but received the order of the coif shortly before a seat on the bench.[49] More examples of this formality were included under the section for "Serjeants at Law." Sir Henry Yelverton's writ for justice of Common Pleas was altered to date it after the serjeant ceremony.[50] Sir James Weston and Sir Robert Heath were sworn serjeants merely to allow them to sit on the bench.[51] Lisle also entered other incidents, such as the intricacies of the serjeants' ceremony of swearing, the privilege of serjeants, and their aids in court.[52] Questions of the feasting and attendance on a judge when he had only been moved from one court to another and the determination of the beginning of a term when it fell on a special feast day, Lisle answered from Croke.

The death of Cromwell in 1658 presented the judges with the unique problem of how to proceed in their courts when their writs of office depended solely on the Protector. Examples from Croke proved beneficial in deciding the course they took. When Elizabeth died, all actions for the queen personally, or under a statute, or for a crime were discontinued sine die, but they remained on the record and the new monarch could proceed de novo. The informations stood; the proceedings stayed.[54] New writs for offices must be issued when the supreme magistrate dies.[55] The creation of the Protectorate form of government presented an analogous situation on the offices of the judges and the judicial process when the sovereign authority died. Lisle devoted some attention to the solution of it by examining historical incidents and the decisions in those cases. For such historical aid, Lisle turned to Croke and Rushworth.

Lisle applied historical information and legal philosophy only to specific questions. For the peculiar problems of the Interregnum, he looked to history for aid in solutions consistent with tradition. He did not, as Coke had, rely upon history as a crutch to be used as one would have it. Perhaps Lisle received inspiration from Bacon, who cautioned against such use of history in law. Lisle used history only to find analogous situations in areas related to the law and the Chancery.

Procedural reference was another purpose for Lisle's legal authorities. He cited two of these often and exclusively on procedural points. The first considered here was a

treatise by William Hudson on the Court of Star Chamber.[56] Hudson was a lawyer of the early seventeenth century and practiced primarily before the Star Chamber from 1605 to 1635, when he died. He supported the royal prerogative and openly worked against John Eliot and William Prynne for their activities in the 1629 Parliament. Hudson's treatise is one of the few works existing on the Star Chamber and is essentially sound although somewhat colored by his obvious bias in favor of the court.[57]

Hudson's treatise remained unpublished until it appeared in Francis Hargrave's Collectanea Juridica (1791); however, it did circulate in manuscript form among the legal profession.[58] It is doubtful that lawyers of Lisle's time knew the authorship of the manuscript because Lisle gave none in the "Abridgements," referring to the work only as "Camera Stellata." Many copies of the treatise exist, but none of them correspond to folio numbers of that one used by Lisle, suggesting that he had his own copy, which has not survived. Lisle's use of only the title and not the author, yet not prefixing the term "mon booke" lends credence to the theory developed earlier that those entitled "mon booke" were Lisle's own compositions, not borrowed manuscripts.

It is interesting that Lisle should rely upon the procedure of Star Chamber as authority for procedure in Chancery. That the procedure of the two prerogative courts was not dissimilar, is true, but the Star Chamber embodied the essence of Stuart prerogative government. For one of the staunchest Commonwealth men to realize the worth of a treatise on Star

Chamber and to apply it in Chancery speaks well for Lisle's impartiality. Indeed, Lisle was correct in assuming that much of Star Chamber criminal procedure could be utilized in Chancery civil procedure. It is also worth noting that Lisle regarded "Camera Stellata" highly because under many topics of equity, it was the first work to which he turned. Professor Holdsworth has pointed out the influence of procedure in Star Chamber which affected the other courts,[59] and Lisle's use of Hudson's work confirms that thesis.

The procedure of the two courts was closely related, one in the criminal law, the other in the civil. Just how closely they were related is plainly visible in Lisle's extensive application to procedure in Chancery of Hudson's treatise on procedure in Star Chamber. It is not necessary to record all the aspects of Chancery procedure in which Lisle applied Hudson's work. A few examples will suffice to illustrate the point. Hudson wrote of the "course of the court" (Star Chamber) and the citation of precedents as of binding force in law, and Lisle, on this point, chose Hudson as the primary authority.[60] The rules and the course of the court, wrote Hudson, were erected by wise men over a long period of time. They were necessary for they aided the judge in refuting those who would proceed in an inflammatory or irregular manner.

> Yet if it shall appeare that the generall course of the court will be mischievous in some one case, he hath power to alter the usuall forme in that particular case, for otherwise by the subtlety of mens inventions common course overcome good order. But this must be donne upon mighty considerations rarely and in open court.[61]

On the citation of precedents, Hudson wrote, "Presidents doe not rule law, but law is to rule presidents. But where presidents are soe many as they amount to the course of a court that makes a law."[62] These statements poignantly reflect the position on precedent reached by Chancery in the 1650's, and the position Star Chamber would have assumed had it survived. If it was the procedure of the Star Chamber in 1635, it was no less that of the Chancery in 1650. The adoption of this very principle, later publicly acknowledged by Lord Chancellor Nottingham, ensured that equity would be a separate set of rules, parallel to, but remaining outside the common law.

In beginning an action in Chancery there were striking similarities to that in Star Chamber. One procedure, bitterly complained of during the Interregnum, was the Chancery practice of issuing a subpoena ad respondendum to the defendant before the plaintiff filed his bill of complaint. Lord Chancellor Ellesmere had ordered the practice stopped, but Hudson explained that many inconveniences led to a repeal of the order and a return to the former practice so long as the bill had been filed before the return of the subpoena.[63] Lisle found in Hudson, the rules proposed by Sir Nicholas Bacon for the submission of plaintiffs' bills; they applied equally to Star Chamber and Chancery. In both courts the initial action was a form of complaint for redress of a wrong, be it criminal or civil.[64] One of Bacon's rules, reported by Hudson, which demanded that bills be no longer than fifteen pages, attracted Lisle's interest.[65]

For the defendant's answer the procedure was identical for the two courts. The defendant was allowed eight days to make answer or partial answer, plea or demurrer. For scandalous answers, the defendant's counsel was equally responsible in the eyes of the court and both were punished.[66] The development of different pleas in lieu of an answer was one of the innovations of the seventeenth century when Chancery began to develop a whole set of pleading rules nearly as complicated and binding as those in common law.[67] Hudson defined some of these pleas, and Lisle included them in the "Abridgement." One of the most frequent pleas was to the jurisdiction of the court. This plea was an attempt to remove the case to another court of equity, such as the Cinque Ports, Duchy Court, or the Stannaries.[68] Lisle added that in Chancery the cause was then suspended until the court ruled on the plea; one standing in contempt could not enter such a plea.[69]

A plea to the charge was entered if the defendant admitted the plaintiff's charge but alleged a matter pending in another court and could not answer.[70] Pleas to the disability of the person were a convenient way of avoiding a suit in Star Chamber and Chancery. One convicted of a felony, or under excommunication, was denied the plea in disability as a means of stopping justice, wrote Hudson, and the court at its discretion overruled the plea if the authority had been obtained by practice to avoid suit.[71] The Chancery of the Interregnum had developed a set procedure for opening suits and much of it was equivalent to that of the Star Cham-

ber. The above examples from Hudson's treatise on Star Chamber show that the abolition of that court did not end its influence on the procedure of the remaining prerogative court.

Another procedural reference, which Lisle frequently cited, was the Orders of the Commissioners of the Great Seal (1649).[72] These orders and rules for Chancery were written by Bulstrode Whitelocke and Richard Keble, two of the lords commissioners in 1649; Lisle was the third. It is odd that Lisle's name does not appear as one of the authors as he could hardly have been ignored. However, it is known that Lisle was extremely ill in the summer and autumn of 1649, which may account for the omission of his name.[73] The edition in the Thomason Tracts of the British Museum bears the date "November 1649," which lends credence to this assumption.[74] The Orders is a collection of rules used in the past by the Lord Chancellors and Lord Keepers with some additions and alterations. Therefore, they were certainly not revolutionary or designed to implement wholesale reforms in Chancery procedure. That they did not alleviate the entrenched inequities of Chancery was evidenced in the continued attacks on Chancery from 1649 to 1654. The Orders was an authority for Lisle on such topics as bills, answers, and subpoenas.[75] There were also several references on injunctions,[76] a major subject of complaint against the Interregnum Chancery, and several on the examination of witnesses.[77]

Some references to Bacon's works may be considered procedural. Bacon was interested in reform of law and equity.

As Lord Keeper, he issued his own set of orders to bring some method to Chancery procedure. His writings on precedents,[78] and on procedures in appeals and reviews,[79] in the Advancement of Learning were duly recognized by Lisle. Bacon's speech in 1617 when taking his seat in Chancery likewise contained many procedural dicta for Chancery with which Lisle was familiar. At that time Bacon spoke of the procedure for hearing motions, rules for injunctions, the conduct of the Lord Keeper, and for avoiding delays and unnecessary charges,[80] all of which Lisle incorporated into his "Abridgements" as useful reminders.[81]

There are three other authorities which Lisle used in essentially a procedural context although they would normally be considered common law reporters. William West's Symboleography, mentioned earlier, was in great part a collection of forms and commissions for pleading in the courts.[82] Those forms of pleading cited by Lisle were on wastes, meets and bounds, titles to land in Ireland, and policies and assurances.[83] Fitzherbert's Natura Brevium was used in much the same manner, as a reference for forms of writs for particular pleadings.[84] One of these was the writ for the security of the peace in the nature of a supplicavit out of the Chancery,[85] to which Lisle added the modern Chancery attitude on the supplicavit from the 1654 case of Mr. Bacon of Grays Inn.[86] He also used Fitzherbert's method of proceeding in suits of Right Patent in relation to the jurisdiction of the Cinque Ports.[87]

The Second Report of Edward Bulstrode, published in 1658, was another procedural reference found in the "Abridgements." Bulstrode was chief justice of the North Wales circuit and a relative of Bulstrode Whitelocke. His Reports cover the period 1610 to 1627.[88] From Bulstrode, Lisle took procedural references on audita querela, injunctions, and administrations.[89] The references to West, Fitzherbert, and Bulstrode were infrequent and formed only a small portion of Lisle's authorities. Lisle's most important procedural references were William Hudson, the Orders of the Commissioners, and Bacon. He used these three authorities extensively and they form the bulk of procedural references in the "Abridgements."

There is a natural tripartite division among Lisle's substantive authorities. There are the reporters of the sixteenth century upon whom Lisle relied in a limited way, and in specific aspects of equity recognized as Chancery jurisdiction. These areas of equitable jurisdiction are the ones historically associated with equity, fraudulent gifts and uses, collusion or covin, lunacy, and infants. The second group is composed of seventeenth century common law reporters, such as Coke, Sir Henry Hobart, and William Sheppard; they are extensively used by Lisle. One obvious reason for Lisle's interest in the latter set of reporters is that they also reported a few cases decided in Chancery. There were also points in their common law cases which he applied to equity. Only one of the substantive references was a work devoted to Chancery, William Tothill's Transac-

tions of the High Court of Chancery, published in 1649; indeed, this work was really the first on Chancery cases. However, the anonymous works, Practice of the High Court of Chancery and Choyce Cases in Chancery, are considered with Tothill's work as substantive references from works on the Chancery.

The first group is represented by the Reports of Sir James Dyer, the Abridgement of Sir Robert Brooke, and Thomas Ashe's Table to Coke's Reports. Dyer was a judge of the Commom Pleas in the late sixteenth century, and his Reports are generally regarded as the best of the old reports although they were not intended for publication.[90] Sir Robert Brooke was a lawyer and chief justice of the King's Bench of the early and mid-sixteenth century. He was known as one of the most learned judges of his century, and his La Graunde Abridgement was published after his death.[91] Thomas Ashe was not a sixteenth century reporter, but Lisle's application of his work places him more with Dyer and Brooke than with the seventeenth century reporters. Ashe was a compiler of abstracts and digests of the legal authorities and published several between 1600 and 1625.[92] One of these digests was Ashe's Table to Coke's Reports.[93]

The topics of equity referred to by Lisle from these three sources were those well within the common lawyer's view of equitable jurisdiction. In the sixteenth and early seventeenth centuries there was a recognized equitable jurisdiction and the common law reporters sometimes reported cases

which arose under that jurisdiction. From Dyer, Lisle cited cases concerning infants and procheine amy,[94] fraudulent uses and covin,[95] and the equitable remedy of "discovery."[96] From Brooke, there are substantive entries on fraudulent uses and gifts,[97] gardien and procheine amy,[98] and lunacy.[99] As Ashe's Table contained only brief comment on Coke's cases, Lisle gave only a few entries to his work. The three subjects cited were fraudulent gifts,[100] procheine amy,[101] and disclaimer for an infant.[102] Although these three reporters do not form a very important part of Lisle's substantive references, they do show that he was willing to delve into precedents of the preceding century for support in equity cases of the mid-seventeenth century.

The second set of substantive authorities were more contemporary with Lisle. Lisle may have even known Coke, Hobart, and Croke; Sheppard was editing and publishing works during Lisle's own career. From these authors, Lisle made references not only to the old accepted areas of equity, but also to cases from the expanding jurisdiction of Chancery in the early seventeenth century. The development of the equitable rules of trusts, and the related cases of marriage settlements and legacies, the administrative machinery for supervising these new developments, the expansion of specific relief and tempering the rigidity of the law were all, if not new to equity, at least active jurisdictions after Chancery's victory over the common law in 1616.[103]

Although Lisle used all of Coke's works in print by the 1650's, he was dependent on three books of the Institutes.

This dependence was not extended to Coke's Reports. The reason is apparent considering the nature of those cases Lisle examined in the Reports. Lisle reported fully Twynne's Case, from the Third Report of Coke.[104] Twynne's Case was an action in the Star Chamber in 1602, which involved a fraudulent conveyance to deceive the purchaser. Gooche's Case in Coke's Fifth Report was another which dealt with the problem of fraudulent conveyances decided in the King's Bench in 1591.[105] Two cases reported from Coke's Sixth Report were similar actions.[106] From the Nineth Report there were cases on the special verdicts of juries,[107] and on the testimony of witnesses.[108] From the Tenth and Eleventh Reports Lisle referred to cases on accounts,[109] and writs of error as they resemble bills of review,[110] but there was also a case involving a fraudulent conveyance.[111] The above cases represent the totality of Lisle's reliance upon Coke's Reports. The bulk of these applied to one area of equitable jurisdiction, fraudulent gifts and conveyances. It is not surprising that Lisle was unable to utilize Coke's Reports to any extent in Chancery, for Coke reported only a very few equity cases,[112] and he held a very restrictive view of the equitable jurisdiction of Chancery. The references Lisle gave to the Reports were to the accepted equity jurisdiction, which even Coke would not refute.

By far the most important use Lisle made of Coke was from the First, Second, and Fourth Institutes. In the First Institute, or Commentary upon Littleton's Tenures,[113] Lisle

made an exhaustive search for precedents for use in equity, especially for the relationship between equitable jurisdiction and several acts of Parliament. The significant aspect of Coke's Littleton for Lisle's "Abridgements" was the determination of when and where equity acted outside the laws of Parliament and how they restricted the application of equity to the land law.[114] There were other entries from the First Institute but they were limited to such topics as infants and procheine amy.

Coke's Second Institute or Magna Carta is a disquisition on the public law of England and the statutes.[115] In Coke's Magna Carta, Lisle found a wealth of definition and explanation for questions which arose in equity jurisdiction. Lisle entered Coke's explanations on the issuing of writs, subpoenas, and statutes and recognizances.[116] Rules on the behavior of judges and their duties,[117] descriptions of public offices, legal responsibilities and special persons before the law were all gleaned from Magna Carta.[118] Lisle made use of Coke's explanations of such topics as forfeitures, privilege, wills and testaments, protections under the great seal, trials, fees, use money, expositions, interrogatories, and proclamations.[119]

The Fourth Institute or Jurisdiction of Courts is an elaborate account of all the courts of England and the types of cases which fell within each jurisdiction.[120] It is, of course, colored with Coke's opinions on the constitutional controversies of the early seventeenth century. Lisle em-

ployed the Fourth Institute to elucidate the relationship between Chancery and other jurisdictions of England. It is important that Lisle did not make use of Coke's controversial descriptions of conflict between Chancery and the courts of common law. Rather, he concentrated on the minor jurisdictions which claimed to dispense equity. Among these were the Court of Requests, the Cinque Ports, Commissions of Delegates, the Admiralty Court, and the Lord Mayor's Court of London.[121] Lisle also accepted Coke's descriptions of the two jurisdictions of Chancery, ordinary and equitable.[122]

Lisle's reliance upon Coke shows a definite capability to discern what could be accepted in Coke and what had to be rejected. The sparing use of the Reports indicates that there was little to be found there which was applicable to Chancery. In the Institutes, Lisle made use of those sections which were beyond reproach and uncolored with Coke's prejudice against Chancery. The statutes on equity found in Coke's Littleton were not subject to controversy. One could not expect that a Chancery judge would give support to Coke's criticisms of equitable jurisdiction in Magna Carta and Jurisdiction of Courts. Nevertheless, Lisle found in the Institutes much that was beneficial for a judge in Chancery.

The Reports of Sir George Croke was one of Lisle's important substantive authorities. Croke's Reports covered cases over a period of sixty years (1582-1641), including both precedents and his own cases. Some of the reported cases were brief, but when Croke reported a case fully, it was very authoritative, especially those from the reigns

of James I and Charles I.[123] Croke was on the bench of the Common Pleas from 1625 to 1628, and the King's Bench from 1628 to 1640, where he demonstrated his independence in ruling against the government in the Ship Money Case.[124] A primary reason for Lisle's extensive use of Croke's Reports is that Croke reported some equity cases.[125]

The reporting of Chancery cases by the common law reporters of the early seventeenth century made it possible for the Chancery of the Interregnum to make at least a limited use of precedent before collections of equity cases appeared in the 1650's. In Croke, Lisle found cases on scire facias,[126] appeals to Chancery from commissioners for charitable uses,[127] trusts,[128] revocations,[129] Chancery jurisdiction,[130] and answers.[131]

Another important aspect of Croke's Reports for the development of equity in the seventeenth century was the great number of cases cited by Lisle from Croke on the new areas of equity. There were cases which dealt with family law, such as baron and feme, feme covert, alimony, feme sole, and dower.[132] Other areas into which Chancery had begun to insinuate its jurisdiction were legacies, wills and testaments,[133] and bankruptcy,[134] all of which required an expanded doctrine of administrative law for execution.[135] These examples demonstrate that the complexities of modern life led to new opportunities for the Lord Chancellor to extend the influence of equity at the expense of the less adaptable common law.

Lisle employed the Reports of Sir Henry Hobart as he had those of Croke.[136] Hobart's Reports carry the added interest that the author was Lisle's first father-in-law although Hobart had died before his daughter and Lisle were married. It is doubtful that Lisle ever knew Sir Henry well, but probably the two families were acquainted, the Hobarts in Sussex and the Lisles in Hampshire. Hobart had a long and successful career in the law; he was made a knight and serjeant at law in 1603, attorney to the Court of Wards in 1606, attorney general in 1607, and Lord Chief Justice of the Common Pleas in 1614, where he sat until his death in 1625.[137] Hobart's career paralleled those of Coke and Bacon, with Hobart filling the positions held by Coke as the latter moved up the chain of legal offices. He was respected by Coke and was generally regarded as a learned and prudent judge. The Reports were first published by an anonymous and careless editor several years after Hobart's death.[138] In addition to this first 1641 edition, the Reports were subsequently revised and edited by Lord Nottingham in the 1670's. It has been overlooked by most historians that there was an edition published in 1658, subtitled "Purged from the Errors," also anonymous.[139] This was the edition used by Lisle. It is just possible, although no corroboration has met with success, that Lisle was the anonymous editor of the 1641 and/or the 1658 editions of the Reports. Hobart's papers might easily have passed to Lisle when he married Elizabeth Hobart, the more so as he was a lawyer himself and Hobart was dead.

The marginal notes of the 1658 edition contain some matters after Hobart's death, which must have been added by the editor. Lisle used these marginal notes liberally. However, Lisle's editorship is not as yet conclusively demonstrated.

The Reports have been regarded as an excellent work and contained cases from King's Bench, Common Pleas, and Star Chamber from 1603 to 1625.[140] It was the cases from Star Chamber to which Lisle devoted the most attention. After stating the pertinent aspects of the case from Hobart, Lisle, in nearly every instance, gave its application for equity in Chancery. In one entry it would seem that Lisle had additional information, for he inserts a statement that did not occur in Hobart's recounting of the case.[141] The numerous notes which Lisle added to Hobart's Reports confirms the idea expressed earlier that Lisle adapted the reports of the common law reporters to his use in Chancery. In extracting those principles from the common law reports applicable to the equitable jurisdiction of Chancery, Lisle obtained the necessary precedents for altering the structure of equity decisions.

William Sheppard's Abridgements, called Epitome of all the Laws of England, published in 1656, had a greater significance for Lisle's work than any other source of substantive law.[142] It is the first work of its kind; an abridgement based upon scientifically constructed treatises on the various branches of the law, arranged alphabetically. Although the Epitome was not an excellent piece of work, it was the beginning of a new trend in works on the law, which

culminated in the legal encyclopedias of the eighteenth and nineteenth centuries.[143] Sheppard wrote many legal works and was active in bringing order to the collections of precedents for special areas of the law. Some of his efforts were reform oriented and solicited by leaders of the Commonwealth to support their reform efforts.[144] The political views of Sheppard and Lisle show a mutual affinity, and they were undoubtedly acquainted.

Lisle's "Abridgements" exhibit a certain similarity to Sheppard's Epitome, except for the alphabetical arrangement. As explained earlier, Lisle compiled cases under definite topical headings. The old method of abridging by listing each case alphabetically produced a heterogeneous mass of unrelated cases, which was highly unsatisfactory. The new type of abridgement was like that found in Lisle's "Abridgements," Sheppard's Epitome, and the Abridgements of Sir Henry Rolle and Sir Matthew Hale. Lawyers as early as the sixteenth century and even Sir Francis Bacon had recognized the difficulty of the old abridgements and had suggested the new approach.[145] As Lisle knew both Sheppard and Rolle, he was undoubtedly familiar with their ideas.

Another source for Lisle's "Abridgements" was a group of treatises on the Chancery. The first of these was William Tothill's Transactions of the High Court of Chancery, published in 1649.[146] Tothill had been one of the Six Clerks in Chancery, and his Transactions were published after his death by Sir Robert Holborne. The Transactions is really nothing more than an alphabetical index of cases taken from

the Register's Entry Books in Chancery.[147] Lisle gave only two references to the Transactions, on waste and practice,[148] indicating that Tothill's work was not very useful except as an index to precedents. However, it was the first of a series of books on the Chancery which began to appear in the 1650's. There quickly followed other works, such as Practice of the High Court of Chancery Unfolded (1652), Choyce Cases in Chancery (1652), and Proceedings of the High Court of Chancery (1652), all of which Lisle used. The Interregnum was the beginning for the publication of works on the Chancery and equity cases. If these publications appeared there must have been a need for them. Equity had entered a new period in its development when precedent became a major influence in the decisions of the Chancery.

Lisle's "Abridgements" was at once representative of the necessity for collections of equity cases for precedent and of contemporary thought on the construction of abridgements along the lines of the works of Rolle, Sheppard, and Hale. It was a combination of the new departure in legal literature together with one in the development of equitable principles, a symbol of the new system of legal education of the seventeenth century spoken of by Sir Matthew Hale.[149]

NOTES

[1]Lisle MS., f. 460r.

[2]Sir William Holdsworth, A History of English Law (16 vols.; London, 1924-1966), V, 266-67. Hereafter cited as Holdsworth, HEL.

[3]Lisle MS., f. 200v. Christopher St. Germain, Doctor and Student: or Dialogues Between a Doctor of Divinity, and A Student in the Laws . . . (London, 1721), chapter 18. I have been unable to identify the edition used by Lisle because he cited St. Germain by chapter number.

[4]Lisle MS., f. 175r. [5]Ibid., ff. 353r and 365r.

[6]St. Germain, Dialogues (1721), chapter 4. Lisle MS., f. 352r.

[7]St. Germain, Dialogues (1721), chapter 21. Lisle MS., f. 314r.

[8]St. Germain, Dialogues (1721), chapter 18. Lisle MS., f. 171r.

[9]Sir Edward Coke, The Second Part of the Institutes of the Lawes of England . . . (London, 1642), known as Magna Carta. The Fourth Part of the Institutes of the Lawes of England: Concerning the Jurisdictions of Courts (London, 1648), known as Jurisdiction of Courts.

[10]Sir William Holdsworth, Some Makers of English Law (Cambridge, 1966), p. 120. C. D. Bowen, The Lion and the Throne; the Life and Times of Sir Edward Coke. 1552-1634 (London, 1957), pp. 56 and 444.

[11]Lisle MS., f. 354v. Coke, Magna Carta (1642), p. 22.

[12]Lisle MS., f. 293v. Coke, Magna Carta (1642), pp. 55-6.

[13]Lisle MS., f. 278v. Coke, Magna Carta (1642), pp. 21-2.

[14]Lisle MS., f. 43r. Coke, Jurisdiction of Courts (1648), pp. 81-2.

[15]Lisle MS., f. 45v. Coke, Jurisdiction of Courts (1648), p. 84.

[16]Coke, Jurisdiction of Courts (1648), p. 84.

[17]Lisle MS., f. 36v. Coke, Jurisdiction of Courts (1648), p. 79.

[18]Lisle MS., f. 278v. William Camden, The Historie of the Most Renowned and Victorious Princesse Elizabeth Late Queen of England . . . (London, 1630), Book 3, p. 127. See also Lisle MS., f. 36v, and William West, Symboleography (London, 1632), p. 182.

[19]Sir Francis Bacon, Of the Advancement of Learning

and Proficience of Learning or the Partitions of Sciences . . . Interpreted by Gilbert Wats (Oxford, 1640). Resuscitatio, Or, Bringing into Publick Light Severall Pieces of the Works, . . . of . . . Francis Bacon . . . ed. William Rawley (London, 1657).

[20]Bacon, Resuscitatio (1657), pp. 79-86.

[21]Lisle MS., f. 104r.

[22]Bacon, Advancement of Learning (1640), pp. 385-86.

[23]Lisle MS., f. 163r. Bacon, Advancement of Learning (1640), pp. 438-39.

[24]Lisle MS., f. 163r and 163v. Bacon, Advancement of Learning (1640), pp. 438-43.

[25]Lisle MS., f. 319r. Bacon, Advancement of Learning (1640), pp. 444-47.

[26]Lisle MS., f. 326v. Bacon, Advancement of Learning (1640), pp. 462-63.

[27]Lisle MS., f. 326v. Bacon, Advancement of Learning (1640), pp. 462-63.

[28]Holdsworth, HEL, V, 349-90.

[29]Ibid., V, 273-74. [30]Lisle MS., f. 36v.

[31]Ibid., f. 36v. William West, The First Part of Symboleography Which may be Termed, . . . Presidents (London, 1632), part II, p. 182.

[32]Lisle MS., f. 36v.

[33]Michael Hawke, The Grounds of the Lawes of England (London, 1657), Preface.

[34]Perez Zagorin, A History of Political Thought in the English Revolution (London, 1954), pp. 93-4.

[35]Lisle MS., f. 204v. Hawke, Grounds (1657), p. 312.

[36]Rushworth, Historical Collections (1659), Vol. I.

[37]Lisle MS., f. 31v. Rushworth, Historical Collections (1659), I, 242.

[38]Lisle MS., f. 335v. Rushworth, Historical Collections (1659), I, 28-31.

[39]Lisle MS., ff. 378v, 416v, and 441v. Rushworth, Historical Collections(1659), I, 201-02, 169-71, 435-37, 653.

[40]Lisle MS., ff. 161r and 161v. Rushworth, Historical Collections (1659), I, 176, 206, 225, and 481.

[41]Camden, Elizabeth (1630).

[42]Lisle MS., f. 126r. Camden, Elizabeth (1630), book 3, p. 52.

[43]Lisle MS., ff. 418v and 435v. Camden, Elizabeth (1630), book 3, p. 82, and book 4, p. 34.

[44]Lisle MS., f. 248v. Camden, Elizabeth (1630), book 3, p. 127.

[45]Lisle MS., f. 319v. J. Gouldsborough, Reports of that Learned and Judicious Clerk J. Gouldsborough, Esq. Sometimes one of the Protonotaries of the Court of Common Pleas . . . ed. W. S. [Sheppard] (London, 1652), p. 46. These reports may not have been written by Gouldsborough, only copied by him. See, Wallace, Reporters, p. 206. Lisle probably used his reports for the Chancery cases found there. See, Holdsworth, HEL, V, 276.

[46]Sir George Croke, The Reports of Sir George Croke Knight; Late, one of the Justices of the Court of Kings-Bench, ed. Sir Harbottle Grimston (London, 1657), and The Second Part of the Reports of Sir George Croke Knight . . ., ed. Sir Harbottle Grimston (London, 1659).

[47]Wallace, Reporters, pp. 198-205. Holdsworth, HEL, V, 370.

[48]Holdsworth, HEL, V, 370.

[49]Lisle MS., f. 84v. Croke, Reports (1657), pp. 65 and 225.

[50]Lisle MS., f. 95v. Croke, Reports (1657), pp. 2-4.

[51]Lisle MS., f. 95v. Croke, Reports (1657), pp. 211 and 225.

[52]Lisle MS., ff. 95v and 96v. Croke, Reports (1657), pp. 67 and 84, and Second Reports, p. 1.

[53]Lisle MS., ff. 139v and 362v. Croke, Second Reports (1659), pp. 16 and 80.

[54]Lisle MS., f. 310v. Croke, Second Reports (1659), p. 14.

[55]Lisle MS., f. 310v. Croke, Second Reports (1659), p. 1.

[56]William Hudson, "A Treatise of the Court of Star Chamber," in Collectanea Juridica, ed. Francis Hargrave (2 vols.; London, 1791-2), II, 1-240.

[57]Holdsworth, HEL, V, 164-65.

[58]See B.M., Harley Mss., #1226. In this manuscript, Chief Justice Finch of the Common Pleas identified William Hudson as the author. See also I. Leadam, Selden Society, Vol. IX: Select Cases of the Star Chamber (London, 1903), p. xliv.

[59]Holdsworth, Sources of English Law, pp. 171-74.

[60]Lisle MS., ff. 163r and 313r.

[61]Hudson, "Treatise," in Collectanea Juridica, II, 4. Lisle MS., f. 313r.

[62]Lisle MS., f. 163r. Hudson, "Treatise," in Collectanea Juridica, II, 125.

[63]Lisle MS., f. 321r. Hudson, "Treatise," in Collectanea Juridica, II, 143-44.

[64]Hudson, "Treatise," in Collectanea Juridica, II, 150-58.

[65]Lisle MS., f. 329r.

[66]Lisle MS., ff. 21r and 109r. Hudson, "Treatise," in Collectanea Juridica, II, 161.

[67]Holdsworth, HEL, V, 285.

[68]Hudson, "Treatise," in Collectanea Juridica, II, 163.

[69]Lisle MS., f. 330r.

[70]Lisle MS., f. 337r. Hudson, "Treatise," in Collectanea Juridica, II, 163.

[71]Lisle MS., f. 318r. Hudson, "Treatise," in Collectanea Juridica, II, 133.

[72]Bulstrode Whitelocke and Richard Keble, Orders of the Commissioners of the Great Seal (London, 1649).

[73]B.M., Thomason Tracts, E 1377.

[74]Orders of the Commissioners (1649).

[75]Lisle MS., ff. 21v, 109v, 321r, 358v, 400v, 432v, and 456v.

[76]Ibid., ff. 282r-284r.

[77]Ibid., ff. 47r, 124v, 260v, and 377r.

[78]Bacon, Advancement of Learning (1640), pp. 438-43. Lisle MS., ff. 163r, 163v, and 460r.

[79]Bacon, Advancement of Learning (1640), pp. 462-63. Lisle MS., f. 326v.

[80]Bacon, Resuscitatio (1657), pp. 79-86.

[81]Lisle MS., ff. 266r, 391v, 427v, and 428v.

[82]Holdsworth, HEL, V, 162.

[83]West, Symboleography (1632), pp. 192-94. Lisle MS., ff. 159r and 161r.

[84]Holdsworth, HEL, V, 379.

[85]Anthony Fitzherbert, The New Natura Brevium of the Most Reverend Judge Mr. Anthony Fitzherbert . . . ed. Wm. Rastall in English (London, 1652), pp. 191-95. I have been unable to identify the edition used by Lisle because his citations are to F.N.B. section numbers, which are the same for every edition.

[86]Lisle MS., ff. 247r and 247v.

[87]F.N.B. (1652), pp. 7-8 and 128-29. Lisle MS., f. 228r.

[88]Edward Bulstrode, The Second Part of the Reports of Edward Bulstrode . . . of the late Reign of King James (London, 1658). Lisle used only the Second Reports.

[89]Scrivin v. Wright (1613), Bulstrode, Second Reports (1658), p. 12. Lisle MS., f. 179v. Heath v. Ridley (1614), Bulstrode, Second Reports (1658), p. 194. Lisle MS., f. 274r. Stephenson v. Wood (1613), Bulstrode, Second Reports (1658), pp. 3-4. Lisle MS., ff. 155r and 254v.

[90]Sir James Dyer, Reports of Cases in the Reigns of Henry VIII, Edward VI, Q. Mary and Q. Elizabeth . . . trans. John Vallant (3 parts; London, 1794). Lisle used one of the editions in law French but it was impossible to determine which one because the use of the section numbers. See Wallace, Reporters, pp. 126-32.

[91]Sir Robert Brooke, La Graunde Abridgement (London, 1586). I was unable to identify the edition used by Lisle because his citations were to Brooke's section numbers, which are the same for each edition. See Wallace, Reporters, pp. 132-34.

[92]Holdsworth, HEL, V, 374-75.

[93]Thomas Ashe, A General Table to All the Severall Books of the Reports of . . . Sir Edward Coke (London, 1652-53). This was the edition used by Lisle.

[94]Dyer, Reports (1794), f. 56a, s. 17 and f. 104b, ss. 12 and 13. Lisle MS., ff. 314r and 335r.

[95]Dyer, Reports (1794), f. 49b, s. 7-15 and f. 149a, s. 80. Lisle MS., ff. 183v, 189v, and 255v.

[96]Dyer, Reports (1794), f. 301a, s. 40. Lisle MS., f. 201v.

[97]Brooke, Abridgement (1586), Part I, ss. 17 and 19. Lisle MS., ff. 255v and 257r.

[98]Brooke, Abridgement (1586), Part I, s. 1 and Part II, ss. 3, 10, and 27. Lisle MS., f. 335r.

[99]Brooke, Abridgement (1586), Part II, s. 4. Lisle MS., f. 116r.

[100]Ashe, Table to Coke (1652), p. 70. Lisle MS., ff. 255r and 255v.

[101]Ashe, Table to Coke (1652), p. 39. Lisle MS., f. 335r.

[102]Ashe, Table to Coke (1652), p. 131. Lisle MS., f. 336r.

[103]Holdsworth, HEL, V, 303.

[104]Sir Edward Coke, The Reports of Sir Edward Coke Kt. Late Lord Chief Justice of England . . . (London, 1658), pp. 80-3. This is the edition used by Lisle for the Reports. Lisle MS., ff. 255r, 255v, 257r, and 258r.

[105]Gooche's Case, Coke, 5th Report (1658), p. 60. Lisle MS., ff. 255r and 258r.

[106]Packman's Case and Burrel's Case, Coke, 6th Report (1658), pp. 18 and 72-3. Lisle MS., ff. 255r and 258r.

[107]Dowman's Case, Coke, 9th Report (1658), p. 13. Lisle MS., f. 136r.

[108]Abbot of Strata Mercella, Coke, 9th Report (1658), p. 30. Lisle MS., f. 229r. Holdsworth indicates an error of historical judgment in this case, HEL, V, 474n.

[109]Case of the Marshalsea, Coke, 10th Report, p. 77. Lisle MS., f. 312v.

[110]Metcalf's Case, Coke, 11th Report (1658), pp. 39-41. Lisle MS., f. 40r. This case touched upon the important problem of Chancery interference with common law by means of the injunction. Holdsworth, HEL, V, 302-03.

[111]Case of Magdalen College (Cambridge), Coke, 11th Report (1658), p. 74. Lisle MS., f. 258r.

[112]Sir Edward Coke, The First Part of the Institutes of the Laws of England, Or A Commentary upon Littleton (5th ed.; London, 1656). This was the edition used by Lisle.

[113]Holdsworth, HEL, V, 465.

[114]Coke, Littleton (1656), passim. Lisle MS., f. 174r.

[115]Coke, Magna Carta (1642), pp. 40-1. Holdsworth, HEL, V, 468.

[116]Coke, Magna Carta (1642), pp. 4, 40-1, 54, 56-7, and 100. Lisle MS., ff. 139r, 96v, 298v, 428r.

[117]Coke, Magna Carta (1642), pp. 4, 15, 25, 62, 99-100. Lisle MS., ff. 430r, 376r, 454r, 246v, and 270v.

[118]Coke, Magna Carta (1642), pp. 14, 31-3, 75, and 99. Lisle MS., ff. 116v, 178v, 209v, 109v, and 207v.

[119]Coke, Magna Carta (1642), pp. 7, 23, 25, 51, 53, 56, 63, 67, 81, 88-9, and 100. Lisle MS., ff. 245v, 207v, 425v, 325v, 48v, 338v, 293v, 231r, 460r, 160v, 409v, and 359r.

[120]Coke, Jurisdiction of Courts (1648). Holdsworth, HEL, V, 470.

[121]Coke, Jurisdiction of Courts, pp. 97-8, 224, 335, 341m 142, 22, and 248. Lisle MS., ff. 228r, 254r, 165r, 440v, 451v, and 404v.

[122]Coke, Jurisdiction of Courts (1648), pp. 81-2 and 84-6. Lisle MS., ff. 43r and 43v.

[123]Wallace, Reporters, pp. 198-205.

[124]Holdsworth, HEL, V, 343.

[125]Wallace, Reporters, pp. 198-205. Holdsworth, HEL, V, 368-69.

[126]Croke, Reports (1657), pp. 240, 255, and 227-28. Lisle MS., ff. 53v and 108v. Second Reports (1659), p. 94. Lisle MS., f. 443v.

[127]Croke, Reports (1657), p. 40. Lisle MS., f. 123v.

[128]Croke, Reports (1657), pp. 39 and 312. Lisle MS., ff. 137r and 192v.

[129]Croke, Reports (1657), pp. 23-4, 51-2, 114-15. Lisle MS., ff. 168v, and 170v.

[130]Croke, Reports (1657), pp. 211-14. Second Reports (1659), p. 47. Lisle MS., ff. 162v and 260r.

[131]Croke, Reports (1657), pp. 321-22. Second Reports (1659), p. 8. Lisle MS., ff. 21v and 411v.

[132]Croke, Reports (1657), pp. 220, 16, 227, 68-9, 219-20, 222, 7, 191, 106, 219-20, 190-91. Second Reports (1659), p. 77.

[133]Croke, Reports (1657), pp. 42-5, 51-2, 94, 151, 157-59, 161, 283-84, and 293. Second Reports (1659), pp. 12, 29, 55, 92, and 104. Lisle MS., ff. 183v, 268v, 285v, 302r, 312r, 315v, 323v, 357v, 271v, 277v, 287v, 395v, and 294v.

[134]Croke, Reports (1657), pp. 31, 282, 148-50, and 176-77. Lisle MS., ff. 248v and 337v.

[135]Croke, Reports (1657), pp. 106, 62-3, and 293. Second Reports (1659), p. 47. Lisle MS., ff. 269r, 270v, 309v, 398v, and 260r.

[136]Sir Henry Hobart, The Reports of That Reverend and Learned Judge, . . . Sir Henry Hobart . . . Lord Chief Justice of . . . Common Pleas, Purged from the Errors (London, 1658). This is the edition used by Lisle.

[137]Wallace, Reporters, pp. 220-29.

[138]Ibid., pp. 220-29.

[139]Ibid., pp. 220-29. Holdsworth has committed the same error of omission, HEL, V, 359.

[140]Wallace, Reporters, pp. 220-29.

[141]Hobart, Reports (1658), p. 266. Lisle MS., f. 213r.

[142]William Sheppard, An Epitome of all the Common and Statutes Laws of this Nation. Now in Force (London, 1656).

[143]Holdsworth, HEL, V, 377. [144]Ibid., V, 390-91.

[145]Ibid., V, 376.

[146]William Tothill, The Transactions of the High Court of Chancery, Both by Practice and President . . . (London, 1649).

[147]Holdsworth, HEL, V, 277.

[148]Tothill, Transactions (1649), pp. 62 and 188. Lisle MS., ff. 97r and 390r.

[149]Holdsworth, HEL, V, 378.

PART III

THE COURT OF CHANCERY AND THE DEVELOPMENT OF EQUITY DURING THE INTERREGNUM

INTRODUCTION

With Lisle's career and reputation as a legal authority established through his "Abridgements," an examination of the Court of Chancery during the Interregnum is in order. Part III will attempt to elucidate the structure of Chancery as a court of equity and the activities of its chief officers on such problems as corruption and reform. The most important development in equity for the Interregnum, the recognition of substantive precedent as a basis for decisions, is examined in detail.

The Interregnum and the changes it brought in the Chancery bench, together with the demands of counsel and litigants for predictability in equity cases, determined the course of equity in its reliance upon precedent. This development was a momentous one for equity, for it ensured the continued existence of a body of legal principles, in the mode of the common law, but administered in a separate court. It had its detrimental effects too, on efficiency in law, for the fusion of law and equity in England required over two centuries and a sweeping series of reform acts to rectify what had begun in the years 1640 to 1660.

CHAPTER VII

THE LORDS COMMISSIONERS

The primary function of the office of Lord Commissioner of the Great Seal was the disposition of equity in the Court of Chancery. The eighteenth century historian, John Oldmixon, wrote that there were no records to which one could turn for a review of the activities of the lords commissioners during the Interregnum.[1] This statement was undoubtedly true in Oldmixon's time, even in Lord Campbell's, but the cataloguing of the public records in the nineteenth century and the discovery of such manuscript sources as Lisle's "Abridgements" provide the necessary resources for an account of the Chancery's administration of its equitable jurisdiction.

Parliament's control over the Court of Chancery began in 1642 when Lord Keeper Littleton fled to York, taking the great seal with him. The immediate consternation of Parliament after the defection of Littleton was compounded by their fear of the severe penalties one could suffer for counterfeiting the great seal. The result in Parliament was a reticence for striking a new great seal for their own use. They waited until May 1643 to make that bold move. Before May 1643, Parliament conducted its business by means of resolu-

tions, but for their acts to have the weight of law they had to be transformed by the application of the great seal. The Commons resolved, 20 May 1643, that a new great seal should be struck for the use of Parliament.[2] The Lords balked at treason and would not give their consent.[3] Thereupon the Commons ordered the striking of a great seal notwithstanding the Lords' refusal, 4 July 1643.[4] The Commons would act and secure their lordships' agreement later; the seal was engraved 28 September 1643.[5]

The following month, the Commons sought to induce the Lords' acceptance of the seal by setting forth their reasons for a new seal. The most weighty argument for the Lords was the general stoppage in the flow of justice from Westminster because all original writs had to pass the great seal as had all subpoenas and orders in Chancery.[6] On this principle, the Lords agreed to the new seal,[7] but later became intransigent over who was to have custody of it. On 10 November, John Earl of Rutland, Oliver Earl of Bolingbroke, Oliver St. John, solicitor general, John Wyld, serjeant at law, Edmund Prideaux, serjeant at law, and Samuel Browne, Clerk of Parliament became the commissioners of the great seal. Three or more and at least one from each house could use it with all the power and authority of any Lord Chancellor or Keeper. They kept the seal at Browne's house.[8] With only two of their number named in the commission, the Lords were reticent to cooperate. For encouraging the Lords' approval, the Commons directed all officers of all courts to cease

sending writs and commissions to the King's great seal in Oxford, but to forward them to the House of Lords "as a Motive to pass the Great Seal with Expedition."[9] The next day, 28 November, the Commons remonstrated with the Lords to act "int regard of the Obstructions in the Proceedings of Law and Justice for Want of it."[10] With one alteration in the commission, the Earl of Kent for the Earl of Rutland, the Lords approved the commission of six, 30 November.[11] In Hillary Term, 1644, the Chancery opened hearings after two years, Serjeant Wyld and Solicitor General St. John presiding.[12] All the officers of the Chancery and the other courts were required to subscribe to the Solemn League and Covenant, or forfeit their places.[13]

Even after 1644, Chancery business and justice in general was sporadic at best, as new hostilities broke out in the summer of 1645. When Cromwell became the dominant personality in the Parliamentary Party after the battle of Naseby in 1645, he attempted to force changes in the commission. His nominees were unacceptable to the Presbyterians and an impasse resulted, which led to the speakers of the two houses, William Lenthall and the Earl of Manchester serving temporarily as commissioners.[14] While the kingdom underwent a second civil war from 1647 to 1648, justice in the courts ground to a standstill. The two speakers naturally affixed the great seal to acts of Parliament, but the machinery of justice was entirely disrupted. The spring of 1648 brought a new concern for the plethora of equity causes pending since the early 1640's.

New commissioners were chosen to hear causes in equity.[15] This commission was Bulstrode Whitelocke, Sir Thomas Widdrington, both respected common lawyers, the Earl of Kent, and Lord Grey de Werke.[16] Their authority (it fell mainly on Whitelocke and Widdrington) to dispense equity at the great seal was sometimes challenged,[17] but they, especially Whitelocke, applied themselves with vigor to reduce the vast number of pending cases. Whitelocke tells us in his Memorials of the long hours of sittings, every day of the week,[18] but for the first time in several years equity was available to litigants.

The Commonwealth government faced a tremendous challenge in establishing its authority to govern and to govern efficiently and justly, not the least of which was the judicial function of the state. All eyes of a litigious citizenry would be upon the central courts of Westminster; many people were already calling for law reform and complete overhaul of the Chancery. The personnel of the high courts were important in supplying a certain amount of faith in the new government. F. A. Inderwick wrote that the lords commissioners of 1649 came into Chancery with as impressive credentials as any that might have been chosen to sit there.[19] All were common lawyers and possessed some experience, either in practicing or presiding, in the Court of Chancery.

Both Lisle and Whitelocke lived very well in their new positions at the head of the judiciary. Their families moved into the vacated chambers of members of the Middle Temple and probably remained there, strictly against convention, through

all the Interregnum.[20] In July 1649, Lisle requested Edmund Prideaux, the attorney general, to move Parliament for Whitelocke and Lisle to have the lease of the Duke of Buckingham's house for twenty-one years so they could work together easily at the business of the great seal. It had often been the practice of Lord Chancellors and Keepers to hold hearings and seals at their places of residence. The request was granted by Parliament at an annual rent of £40 because of the extensive repairs necessary after the building had been used as quarters for soldiers.[21] In February 1650, Lisle personally received "hangings and furniture" for three chambers in Whitehall, from the trustees for the sale of the King's goods.[22] On at least two occasions the lords commissioners were honored with feasting, music, and fanfare at the Middle Temple.[23] The lords commissioners were indeed high and important officers of the Commonwealth.

One of the first tasks of the lords commissioners was to follow the example of their seventeenth century predecessors and issue a set of rules and orders for the Chancery. When Parliament adjourned in August 1649, the lords commissioners, Speaker Lenthall, as Master of the Rolls, Attorney General Chute, Solicitor General Steele, and Serjeant Adams met, 18 August 1649, at Chute's house to begin work on rules for the Chancery.[24] Their work was subsequently published in November as A Collection of . . . Orders for . . . Chancery, containing 103 orders for better regulating Chancery procedure.[25] As earlier noted, Lisle took no part in the

preparation or publication of these orders, for he was seriously ill that autumn.[26]

The Orders of the Commissioners (1649) was composed in the main of former orders issued by Bacon and Lord Keeper Coventry. The lords commissioners and the law officers in their meetings went through the old orders and compiled a new set. There were some changes in the new rules. A full explanation of the rules governing "Pleas and Demurrers" was set out. The most important alteration was that pleas and demurrers had to be submitted by counsel and not by the defendant, thereby avoiding false pleas and the added expense of appearance of the defendant whether in person or by commission in the country.[27] Pleas were of no effect until filed with a Six Clerk of the Chancery; demurrers and pleas to jurisdiction had to be put in open court; failure to prove a plea brought a fine of forty shillings.[28] Other pleas of outlawry, of a former suit pending in Chancery, or in another court, were also good pleas, as was a demurrer for mistake.[29] All these pleas were met with fixed rates and allowed costs for failure to prove the plea or demurrer.[30] The full coverage of pleas and demurrers signifies the advanced position which these actions had reached in equity by 1650. The position of these special pleadings in equity is presented even more pointedly in Lisle's entering them in a special book of Chancery "Pleas and Demurrers."[31]

A second important point stressed in the new collection of Orders was the sequence in which cases were heard. There

had in the past been considerable chicanery, with bribes to the officers of the court, for altering the appearance of causes at hearing in Chancery.[32] The lords commissioners set down in Rule 58 that the Six Clerks must determine causes to be heard in order of priority of publication, but no cause could be heard the same term in which publication passed.[33]

The lords commissioners most likely began hearing causes in equity in Whitsun and Trinity terms, 1649. An examination of the Chancery Minutes shows that the court worked quite hard to reduce the mountain of cases before them. They sat at least four days a week, sometimes five, and often from five o'clock in the morning to five o'clock in the evening. Other days and evenings were necessary for reflection and consideration of references to the masters and private parties. It is obvious that most cases were dispatched each session, usually with a succinctness of proceedings. On some occasions, however, a single difficult case might occupy a whole day or even several days at hearing.[34]

The lords commissioners did not always sit together on each day of hearings at the great seal and no doubt divided the responsibilities, with at least two sitting at a seal. For more important causes the court would delay a decision until all three commissioners were present.[35] After 1654, when there were only two lords commissioners, it was not uncommon for only one of them to preside, as Lisle did on several occasions.[36] In more difficult causes, or those which touched upon the jurisdiction of the court, Chancery

often solicited the opinions of the common law judges or invited them to sit in Chancery and deliver their opinions in person.[37] In all proceedings from Trinity Term 1650, Lisle took an active role in the equity side of Chancery business, and in important causes he always gave a separate opinion.[38] That all the lords commissioners, including "sleepy," old Keble, applied themselves diligently to the Chancery business, is evident in the great reduction of causes standing by 1657. The Register's Entry Books of Orders and Decrees shows a decrease in the backlog of cases by that year.[39]

The "hearing" of an equity cause had replaced the written bill and answer as the most important phase of equity proceedings. The creation of a new series of Chancery records for the hearing of cause, the Chancery Minutes, is indicative of this new development in the Interregnum Chancery. Lisle, in his "Abridgements," made it quite evident that the hearing of a cause and the delivering of opinions at that time was a most important aspect of equity proceedings. It would seem from one entry in the "Abridgements" for 1650, that the senior Lord Commissioner delivered the general opinion of the court.[40] Puisne judges always delivered their opinions last, after first stating the cause.[41] It was permissible for the lords commissioners to deliver their personal feelings in a case, if they were set out in a preamble before the judicial decision.[42]

Lisle had many personal rules which he followed in delivering opinions and judgments at a hearing. His notes on

these rules show a great concern for fairness, impartiality, and decorum in Chancery hearings. He found Hobart's rules of justice, precedent, religion, and prudence (in order of importance) to be helpful, as well as Bacon's many cautions to judges.[43] For Lisle, judges must always be patient, never impassioned, or overly anxious to deliver their opinions or judgments.[44] In equity cases one must adhere to the rule of law if the equity were doubtful, and "Where the rule in equity is not proved, and where noe presidents or very few, There be very cautious."[45] We find that Lisle also injected religion into his opinions, as in his citation of Proverbs 16, verse 10,

> "A divine sentence is in the lipps of the king, his mouth transgresseth not in judgment." Nota it is a great helpe to one in judgment, to think of some divine sentence or to meditate of the rule of Gods word in relation to the matter.[46]

Furthermore, wrote Lisle, equity must be absolutely certain for the plaintiff to obtain a decree when the law was for the defendant, because ". . . equity ariseth from a cleere streame and not from a darke thick and muddy streame."[47]

While the conduct of a hearing was a serious matter, Lisle did inject some levity with a statement he took from Lord Keeper Coventry, who ". . . would use to say when they did ramble from the poynt, I thinke the plague is in the poynt, they are soe loathe to come att it."[48] Compassion, too, was not beyond the lords commissioners in a hearing, for in a 1651 case, the court suspended judgment for a plaintiff because he had cursed his father and younger brother, the defendant.[49] The court was also careful of a litigant's con-

duct of his own case, such as when Lord Commissioner Widdrington advised a party not to plead his own case, especially when it concerned a near relation.[50]

The lords commissioners and judges of the Interregnum were very cognizant of the impropriety of prejudice from the bench. Lisle approved of Chief Justice Rolle's decision in April 1655, not to deliver judgment against the Royalists who attacked him at Salisbury.[51] Whitelocke was accused of prejudice in a 1652 case and stepped down from the bench. Lisle thought it a scandal against Whitelocke and the court, and he and Keble very nearly imprisoned the litigant and his counsel for the outburst.[52] The court was reticent to treat important counsel harshly for scandalous harangues in court. Even when Serjeant Fountayne, at the bar of Chancery, accused the lords commissioners of misconduct in granting so many injunctions, they only gave him a mild rebuke when he might have gone to the Fleet Prison.[53]

An interesting insight to the lords commissioners' conduct of their court is afforded by an entry of Lisle's in his "Abridgements." It is a set of rules and cautions, entitled "My Selfe, How it is fitt to carry my selfe sur motions or Hearings." I take the liberty here of reproducing the lengthy quotation of Lisle's, because it gives a clear indication of how Lisle regarded his office as a lord commissioner and a judge in equity.

> 1. Never to vary from the rule in motions unlesse there be a particular reason for it. Not to consent to

> any decision unlesse cleer equity. Thereby you will have the rule of the court, or else the law take part with you if you differ in opinion. And by this means one shall be sure to avoyd any oblique things and doe service et suite all concerned:
>
> 2. Ever carry yur selfe with great respect to yur fellow Commissioners, remembering this rule "In honor preserving one another," and with great love and civility to the Councill, not to reflect or slight any of them, especially the great Councill, if you can possibly avoyd it, but yet shall to mayntayne the dignity of the Court, for by their respect and regard to the court the businesse of the court will be the moore easily despatched and compassed, but if they see you are enclinable to clash with them and to slight them, they will reflect either publickly or privately upon the court agayne, and the honour of the Court will be brought into question by it:
>
> 3. And be sure to carry yur selfe so to the object, as to satisfy them with reason without passion, with patience and humility, that they may see yur desire is only to doe justice:
>
> 4. It is always said these things doe reflect upon the court and spoken of, 1. That the court is too apt to propose references if any difficulty in the case whereas noe references ought to be proposed nisi inter near relations or the parties doe defer it, but lett the court give their judgment. 2. That the court doth not strictly mayntayne their privledges and dignity and in doing the contrary hath encouraged regulation by it. 3. Al punish registers et officers de court sur abusing parties plaintiff or defendant.[54]

Lisle's note to himself shows concern for his posture in hearings of the Chancery, his relationship to counsel and litigants and cognizance of the complaints levelled against the conduct of the court.

The three lords commissioners, Whitelocke, Lisle, and Keble continued in their places at the great seal through the Commonwealth. Chancery records show that they sat every term from May 1649 to April 1653, with the brief exceptions of Michaelmas 1650 to Hillary 1651.[55] These interruptions were probably due to the emergency situation caused in 1650

and 1651 by the Scots invasion of England and the Irish revolt. With the internal enemies vanquished by Cromwell's army, the Lord General returned in state to Westminster. He was met en route at Aylesbury by Whitelocke and Lisle, 10 September 1651, as he returned from the West.[56] Cromwell's release from military affairs allowed him more time to apply to domestic politics and foreboded the end of rule by the Rump. Everyone but most of the members of the Rump regarded that body's existence as only a temporary measure for troubled times.[57] By April 1653, however, it was obvious to all, including Cromwell, that the Rump would make no significant strides toward reform, nor would it dissolve itself in favor of free elections to a new Parliament. Therefore, on 20 April 1653, with the army behind him, the Lord General summarily dismissed the Rump and took the reins of government to himself.

There were no immediate changes in Chancery personnel when Cromwell dismissed the Rump. Whitelocke, Lisle, and Keble continued as the lords commissioners, until April 1654, but they heard only a few cases that final term of Lent 1654.[58] After the Barebones or Nominated Parliament, called by Cromwell for July 1653, met, it distinguished itself by unflagging dilatoriness and vociferous attacks on Chancery. This Parliament finally resigned its authority back into the hands of the Lord General in December 1653. The way was paved for arbitrary changes in the state by Cromwell. In November 1653, Cromwell dispatched Whitelocke to Sweden as Minister Extraordinary, notwithstanding his place in Chancery, which

he retained.[59] Lord Campbell explained this assignment for Whitelocke as an exile for his failure to support Cromwell in the Nominated Parliament. However, Secretary of State Thurloe assured Whitelocke that Cromwell thought well of him.[60] Indeed, Thurloe must have been right, for Cromwell, after establishing the Protectorate in April 1654, included Whitelocke in the reorganized Court of Chancery even though he was in Sweden, but Keble was dropped from the court.

On 4 April 1654, the Protector summoned Lisle and Sir Thomas Widdrington before the Council to inform them that they and Whitelocke were to be the lords commissioners. Cromwell delivered the great seal to them and they took the oath.[61] Keble, deprived of his place on the Chancery bench, probably did not live long after 1654.[62] Lisle fell ill in May 1654, and being unable to exercise his office, Widdrington was authorized to sit alone in the absence of both Lisle and Whitelocke.[63] Widdrington made his first appearance at a general seal of the Chancery in Whitsun Term, May 1654, and was sitting alone at that time.[64]

Cromwell was certainly not reputed for appointing incompetent men or sustaining them in either political, military, or judicial offices. He always sought out the best available men for positions. Men like Henry Rolle, Matthew Hale, Whitelocke, and Widdrington, all with recognized legal reputations, were retained by the Lord Protector.[65] Cromwell's choice and retention of the best available men in judicial office says much for Lisle's continued presence in Chancery. The Protector had the opportunity to release Lisle in April

1654, but he chose to retain him. Had Lisle been as incompetent an equity judge as Whitelocke and Campbell later stated, Cromwell could easily have moved Lisle from the Chancery to a position on the Council, or got rid of him altogether.

One attitude among the judges which the Protector would not tolerate was the failure to acknowledge fully the legitimacy of the Protectorate. The judges were all required to surrender their old patents and accept new ones issued in the name of the Lord Protector. John Bradshaw (former president of the High Court of Justice) had an ordinance from the Long Parliament to be chief justice of the county palatine of Chester, quam diu se bene gesserint and under the great seal of the custodes libertatis angliae. Cromwell ordered Bradshaw to surrender his old patent and accept a new one from the Protectorate. Bradshaw refused, both to the lords commissioners and to Cromwell himself. Bradshaw told Cromwell that he would serve as a judge for the Protectorate only under his previous patent. Cromwell deprived him of the office.[66] The lords commissioners, however, gave unswerving loyalty to the Lord Protector. They even refused to apply the great seal to letters patent ordered by the Council of State unless the Protector himself requested it be done.[67] It would seem the lords commissioners regarded Cromwell's signature as a "royal assent."

The alteration of Chancery personnel in April 1654, was not the last under the Protectorate. Whitelocke returned

to England in July 1654, just in time to participate in the final preparations of the Protector's reform of Chancery under the Ordinance of 22 August 1654. The reform ordinance will be discussed later. Cromwell was determined to pacify critics of the courts of law and equity by providing the necessary reforms, especially in Chancery. At the same time he wished to retain the support of the lawyers who must staff those courts, including Chancery. However, Cromwell could not appease everyone, neither those who wished for the abolition of the Chancery, nor some lawyers, such as Whitelocke and Widdrington. They resented the reform ordinance, which in some instances they felt was unworkable. From Michaelmas Term 1654 to Lent Term 1655, the lords commissioners managed to prevent the application of the ordinance.[68]

Nevertheless, by April 1655, Cromwell decided to force the lords commissioners to implement the reform ordinance or leave the Chancery bench.[69] The engraving of a new seal, ordered for the spring of 1655, afforded Cromwell a convenient opportunity to alter the personnel of the court should the lords commissioners resist the ordinance.[70] The lords commissioners would have to surrender the old seal, and he might deliver the new one to whom he pleased with minimum embarrassment for all concerned. Without a doubt the lords commissioners, especially Whitelocke and Widdrington, could see the "handwriting on the wall." In May 1655, Baron Thorpe of the Court of Exchequer and Justice Newdigate, while on circuit, refused to try the "Northern Risers" for treason against the Protectorate. For their refusal to act, their patents were

revoked.[71] A refusal of the assize judges to enforce the treason act of the Protectorate was analogous to the subsequent refusal of the lords commissioners to enforce the reform ordinance: both acts were threats to the Protector's sovereign power to legislate in the absence of Parliament.

During May 1655, speculation ran wild in Westminster concerning possible changes in the judiciary. Judges of the Western Assize were attacked by Royalists in March, and old Chief Justice Henry Rolle nearly died from the experience. The chances were good that he would not remain long at the Upper Bench. Recorder Steele became Chief Baron of the Exchequer on 27 May. Some thought Attorney General Prideaux would be made Lord Keeper and Lisle Master of the Rolls. Justice Glyn would take Rolle's place at the Upper Bench.[72] The rumormongers were active, but they were not entirely wrong either. Chief Justice Rolle did resign, 9 June, and Glyn moved to his place at the Upper Bench. Recorder Steele was sworn on 2 June as Lord Chief Baron. The lords commissioners swore him, with Whitelocke delivering the customary charge, reminding him of the weight of that office.[73] On 6 June, the Protector summoned the lords commissioners before the Council for their final answer on the reform ordinance.[74] Whitelocke and Widdrington refused to accede to the Protector's wishes and were dismissed, with direction to surrender the great seal on 8 June.[75]

The following day, 9 June, the new lords commissioners were informed of the Protector's choice. They were John Lisle and Nathaniel Fiennes, a member of the Council of

State.[76] Public recognition of the commissioners took place 15 June, before the Council, where they took the oath and received the Protector's new great seal. They were commissioned to make use of the seal either jointly or severally.[77] The old great seal was broken before the Council. The new seal featured on the obverse, "Oliver by the grace of God, Lord Protector of England, Scotland, and Ireland," and on the reverse, the Protector's arms, combined with those of England, Scotland, Ireland, and France, and Cromwell on horseback.[78] The final arrangement of the Protectorate was made, but Cromwell was not satisfied. The next month all the judges received a summons to Whitehall for 14 July, when the Protector addressed them with an admonitory speech about their duties before they began to sit for the summer term.[79]

The new Lord Commissioner Fiennes had certainly not come to Chancery with any great experience in the disposition of equity. He had had a varied career since the beginning of the civil wars. Nathaniel Fiennes was the son of the great trimmer, Lord Saye and Sele of Banbury, Oxfordshire. The younger Fiennes had from the outbreak of war fought on the side of Parliament, leading a military campaign in Hampshire in December 1642.[80] However, in October 1643, he ran afoul of the Parliamentary leadership when he surrendered the city of Bristol to the Royalists. For that he was secured in the Tower.[81] Fiennes had sat in the 1629 Parliament, where he gained a reputation for advanced religious views; in 1641 he became a leader in the "root and branch" bill.[82]

Under the patronage of Cromwell after 1644, Fiennes advanced steadily in the ranks of the army politicos and the

Independent radicals until the advent of the Commonwealth when he retired from politics because of his distaste for the Rump.[83] The establishment of the Protectorate brought Fiennes back into politics, resurrected as a member of the Protector's Council of State. In his capacity as a councillor, it fell to Fiennes to be a member of the committee of the Council to draft the Chancery Reform Ordinance of 1654.[84] Here we find the reason for his selection as a lord commissioner in 1655. What better way to secure compliance with the regulation than to have it enforced by the author?

Fiennes was not a lawyer although he studied law at the Middle Temple in his youth.[85] Nevertheless, the Middle Temple made him a bencher after the current practice of making judges benchers. One must presume that Fiennes was made a lord commissioner of the seal to ensure compliance with the reform ordinance. Lisle may have been retained to provide continuity on the court. His attitude and movements concerning the reform ordinance will be discussed later. It is probable that Fiennes sat in Chancery from the summer term of 1655 onwards, but he made no separate opinion in a case until January 1656.[86] After this debut, however, Fiennes took an active part in the proceedings of the court.

Lisle and Fiennes received confirmation of their offices from Parliament in October 1656. In accordance with the Instrument of Government, the judges had to be confirmed by the first Parliament after their appointment.[87] Cromwell, in preparation for another alteration in the struc-

ture of the Protectorate, ordered a new great seal for June 1657. Lisle reported that he and Fiennes were summoned before the Protector, 28 June 1657. Cromwell directed them to accept the new seal and to break the old one, each of them to have a piece of the twenty-six pound seal. Lisle and Fiennes did not consider themselves to be "new" commissioners, "nor did we make any new seal," but on order of the Protector and Council.[88] Then the lords commissioners swore the President of the Council, Henry Laurence, and Major General Desborough as members of the Council, 13 July 1657.[89] All this was in preparation for a new Parliament to meet in January 1658, for which the lords commissioners issued writs of election to the sheriffs,[90] including members from Scotland and Ireland.[91] The extraordinary nature of this procedure caused the lords commissioners to request they be allowed to seal them in the presence of the Protector.[92] This was not the only extraordinary aspect of the 1657 Parliament; it was also to have another "house" of Cromwellian peers, summoned in the manner of the old House of Lords. The Chancery sealed the summonses for the "other house," in December 1657.[93] Fiennes and Lisle had aided in the management of the Protector's interests in earlier sessions of Parliament,[94] but with the addition of the "other house" in which they were to sit after January 1658, in company with other loyal Cromwellians, the Protector's party lost much of the control they had previously maintained over the Commons.[95] Fiennes delivered a speech in the nature of a Lord Keeper's address to the Commons and Lords assembled in the Lords' chamber.[96]

In January 1658, Cromwell had only a few months to live. He died 3 September 1658 (a most propitious day for him) precipitating a new crisis in the state and consternation for the judges. Not long before the Protector's death, Lisle and Fiennes attended Cromwell in his chambers. The Humble Petition and Advice gave Cromwell the power to appoint a successor in his lifetime. The lords commissioners desired that he do so under the great seal by verbal warrant, thereby ensuring continuity in the government.[97] Upon Cromwell's death at three o'clock in the afternoon, 3 September, Lisle and Fiennes consulted Henry Scobell, Clerk of the Council, about their status and tenure as lords commissioners. Scobell advised them that they served quam diu se bene gesserint, by reason of their possession of the great seal itself -- only its being taken from them ended their tenure of office. For authority Scobell gave the action of the Lord Chancellor, the Bishop of Lincoln, when he sealed a proclamation after the death of King James.[98] By verbal warrants of 11 September 1658, Richard Cromwell, the new Protector, did order Lisle and Fiennes to seal the proclamation for his Protectorate and to retain all judges in their places until further notice.[99] The judges were confused, and the lords commissioners met with them 14 September to consider the following points, as reported by Lisle:

> 1. Whether there was not a discontinuance of all original suits and process both in law and courts of equity sur mort Protector. 2. Whether the keepers of the Seale were not to have a new delivery of the Seale and to be newly sworne and approved. 3. Whether justices de peace and shrives /sheriffs/ ought not to be newly sworne.[100]

The common law judges resolved their problem of tenure upon the plan offered by chief justices St. John and Glyn. When the Protector dies, patents quam diu se bene gesserint were void as to judicial acts and the judges may not act judicially until new patents were issued. However, judges could act in magisterial capacities before new patents were awarded.[101]

Richard encountered no opposition among the judges and Council in his assumption of the Protector's mantel. Lisle, Fiennes, and Lord President Laurence and the rest of the great officers swore allegiance to Richard Lord Protector, as the lawful successor of Oliver under the Humble Petition and Advice.[102] The officers of the army and the commissioners of the London militia followed suit.[103] Letters went out under the great seal to the county commissioners in Richard's name as supreme magistrate.[104] Affairs of state made a smooth transition, but Richard was not Oliver, and it was not long before his position in the state began to deteriorate. The judges and the lords commissioners were caught up in the shifting and springing politics of the autumn of 1658 and spring of 1659.

The Council became divided between the military and civilians, but neither could manage dominance for the time being. The civilians leaned more to the Protectorate which bordered on monarchy; the military more to republican forms.[105] The meeting of Richard's first Parliament in January 1659, precipitated a confrontation between the two factions. The writs went out from the Chancery on 9 December.[106] The lords commissioners, who were closely associated with the movement

for Cromwell's kingship and the Humble Petition and Advice, were now under attack from the republicans. It was to the destruction of that constitution that republicans like Scot, Haselrig, and Ludlow dedicated themselves in the 1659 Parliament.[107]

Lord Campbell interpreted the "loud complaints" against the lords commissioners as indicative of their incompetency.[108] A more logical basis for those complaints was their political activities, so pronounced during the Protectorate of Oliver, and their devotion to the Humble Petition and Advice. The general political situation of unrest in January 1659 and the lack of esteem for the regime among the people probably caused Richard to temper the personnel of the Chancery with the addition of Whitelocke to the court in January.[109] Although Whitelocke had supported Cromwell's kingship in 1657, he was certainly more non-political than either Lisle or Fiennes and elicited less opposition from both republicans and the army than they. Whitelocke recounted his call to the great seal in 1659, by stating that it was Fiennes who desired his reappointment because of Lisle's incompetency and "want of experience in that place [Chancery]."[110]

This statement of Whitelocke's must certainly come from his spleen rather than his mind, unless Fiennes indulged in a little flattery at Lisle's expense in order to convince Whitelocke he was needed in Chancery. In his Memorials, Whitelocke continually creates for himself a position of great worth to the state as well as public recognition and acclaim for his abilities. If one reads further in White-

locke's account of his return to Chancery, one finds that he mentions the need of Fiennes to attend the Protector and the Council during the Parliament, which is no doubt closer to the truth of the changes at the great seal than Lisle's incompetency.[111]

We know that for the Michaelmas Term of 1658, Lisle presided alone in Chancery on a great number of sittings, which hardly fulfilled the spirit of a commission for the great seal as opposed to a Lord Keeper.[112] Fiennes was likewise absent from the sittings of Chancery on most days of hearings after Whitelocke rejoined the Chancery in January.[113] For Hillary and Lent terms of 1659, the lords commissioners conducted the business of the court, sitting in pairs and singly, but usually without the assistance of Fiennes.[114]

Richard's recall of the Rump Parliament, 22 April 1659, to may 9 May, announced the end of the tenure of the three lords commissioners.[115] The last recorded day of hearings of the Chancery as composed of Lisle, Fiennes, and Whitelocke, was 6 May 1659.[116] Events then moved rapidly with the convening of the Rump on 9 May. One of the first actions of that body was to direct Lisle to surrender up the great seal of the Protectorate. It was broken and the pieces given to the three in payment for their services.[117] Speaker Lenthall, also Master of the Rolls, became the temporary keeper of the seal, struck on 14 May.[118] Shortly thereafter, John Bradshaw and John Fountayne, a Chancery lawyer, became the lords commissioners for the Michaelmas Term of 1659.[119] Whitelocke returned to Chancery again, 19 November 1659, as

sole Lord Keeper of the Great Seal.[120] Chancery records show that little business of the court was transacted after Michaelmas 1659, but Whitelocke continued to hold the seal until Edward Hyde returned at the Restoration as Lord Chancellor Clarendon in the summer of 1660.[121]

The chief office of the Chancery had run full circle in eighteen years. For the whole of the Interregnum that office had been in commission. It cannot be said that this arrangement for the Chancery had any ill effects on the court. That it did have an impact on the conduct of Chancery business in equity is without doubt. The lords commissioners applied themselves assiduously to the task of presiding in Chancery during a most difficult period in that institution's history. With the political pressures under which they were forced to work as judges, it is remarkable that they accomplished as much judicial business as they did. Their decisions in equity must have been of acceptable standards, for there was no sweeping reversal of Interregnum Chancery decisions at the Restoration.

NOTES

[1]John Oldmixon, Lives of the Lord Chancellors (2 vols.; London, 1708), II, 143.

[2]Parliamentary History, III, 115.

[3]Ibid., III, 118. [4]Ibid., III, 143-44.

[5]Campbell, Lord Chancellors, 1 ser., III, 7-8.

[6]Parliamentary History, III, 178.

[7]Ibid., III, 179. [8]Ibid., III, 180-83.

[9]Commons Journal, III, 320. [10]Ibid., III, 322.

[11]Campbell, Lord Chancellors, 1 ser., III, 9-12.

[12]Ibid., III, 9-12.

[13]CSPD, Charles I (1644), XIX, 9.

[14]Campbell, Lord Chancellors, 1 ser., III, 13-16.

[15]HMC, 7th Rep., p. 21.

[16]Campbell, Lord Chancellors, 1 ser., III, 17-18.

[17]Earneley v. Jenkins (1648), HMC, 7th Rep., p. 11.

[18]Whitelocke Papers, B.M., Add. Mss., #37344, f. 151v. Cf., D. M. Kerly, An Historical Sketch of the Equitable Jurisdiction of the Court of Chancery (Cambridge, 1890), p. 155.

[19]F. A. Inderwick, The Interregnum (1648-1660); Studies of the Commonwealth, Legislative, Social and Legal (London, 1891)

[20]Williamson, The Temple, London, pp. 424-25.

[21]Whitelocke, Memorials (1853), pp. 70 and 399.

[22]CSPD, Commonwealth (1649-1660), II, 526; IV, 33 and 44.

[23]Calendar of Middle Temple Records, pp. 164-65. Williamson, The Temple, London, pp. 441-42.

[24]Whitelocke, Memorials (1853), p. 421.

[25]Whitelocke and Keble, Orders of the Lords Commissioners (London, 1649).

[26]HMC, De'Lisle and Dudley Mss., Vol. VI: Sydney Papers, p. 461. P.R.O., Minutes of Chancery (1649), C37/2, passim.

[27]Orders of Commissioners (1649), p. 7.

[28]Ibid., pp. 8-9.

[29]Ibid., pp. 10-14.

[30]Kerly, Equity, p. 157.

[31]Lisle MS., f. 349v.

[32]Kerly, Equity, p. 157.

[33]Lisle MS., passim. P.R.O., Minutes of Chancery (1649), passim.

[34]Cromwell v. Denny, Lisle MS., f. 9v. This case must be regarded as unusual, as Lisle stated it was.

[35]P.R.O., Minutes of Chancery, C37/4, f. 58r. 21 June 1650.

[36]14 January 1656, Ibid., C37/19, f. 53v. 3 November 1658, Ibid., C37/24, f. 159v. 31 January 1659, Ibid., C37/25, f. 137r. 6 May 1659, Ibid., C37/25, f. 151v. 9 November 1658, Ibid., C37/26, f. 54v.

[37]Lisle MS., f. 198r, 19 October 1655. P.R.O., Minutes of Chancery, C37/24, f. 146v, 18 October 1658.

[38]Oldmixon, Lives of Lord Chancellors, II, 139.

[39]P.R.O., Register's Entry Books (1657), C33/211 and 212, passim.

[40]Guise v. Cambell (1650), Lisle MS., f. 213r.

[41]Lisle MS., f. 213r. [42]Ibid., f. 252v.

[43]Ibid., ff. 269r, 332v, 410v, 427v, and 433r. Bacon, Resuscitatio (1657), pp. 80 and 93-4.

[44]Lisle MS., f. 454r. [45]Ibid., f. 269r.

[46]Ibid., f. 269r. [47]Ibid., f. 8r.

[48]Ibid., f. 250r.

[49]Birch v. Birch, Ibid., f. 320r.

[50]Herbert v. Ivery (1655), Ibid., f. 149v.

[51]Ibid., f. 454r.

[52]Lovett of Bedfordshire Case (1652), Ibid., f. 90r.

[53]Fountayne's Case (1653), Ibid., f. 90r.

[54]Ibid., f. 225v.

[55]P.R.O., Minutes of Chancery, C37/4 and 5, passim.

[56]HMC, 13th Rep., Duke of Portland Papers, I, 616.

[57]Roots, Great Rebellion, pp. 142-43.

[58]P.R.O., Minutes of Chancery, C37/12, f. 38v.

[59]CSPD, Commonwealth (1649-1660), X, 146. Campbell, Lord Chancellors, 1 ser., III, 55.

[60]28 March 1654. HMC, 5th Rep., Malet Papers, p. 313. The Earl of Leicester wrote in his diary for 20 April 1653, that Cromwell had looked particularly at Whitelocke when he came to the Parliament and dismissed them in 1653. HMC, De'Lisle and Dudley Mss., Vol. VI: Sydney Papers, p. 615.

[61]CSPD, Commonwealth (1649-1660), VII, 73. Whitelocke, Memorials (1853), p. 568.

[62]Foss, Judges, p. 446.

[63]CSPD, Commonwealth (1649-1660), VII, 254.

[64]P.R.O., Minutes of Chancery, C37/12, f. 47v.

[65]Wallace, Reporters, p. 287. Parkes made this same point in his work, even though Parkes is heavily anti-Cromwell. Joseph Parkes, A History of the Court of Chancery . . . (London, 1828), p. 163n.

[66]Lisle MS., ff. 10v and 15v.

[67]8 February 1655. Lisle MS., f. 277v. This order of the Council was for the issuing of writs under the great seal to proclaim the declaration for raising £60,000 per month.

[68]Clarke Papers, Camden Society, III, 38.

[69]Whitelocke wrote that the Ordinance was suspended temporarily, 7 November 1654. Memorials (1853), p. 608.

[70]CSPD, Commonwealth (1649-1660), VIII, 137 and 152.

[71]Ibid., VIII, 83.

[72]HMC, 5th Rep., Duke of Sutherland Papers, p. 172.

[73]Clarke Papers, Camden Society, III, 41-3.

[74]Campbell, Lord Chancellors, 1 ser., III, 58-60.

[75]Clarke Papers, Camden Society, III, 43.

[76]Ibid., III, 42.

[77]Lisle MS., f. 320v. CSPD, Commonwealth (1649-1660), VIII, 207; IX, 105.

[78]Clarke Papers, Camden Society, III, 44.

[79]Ibid., III, 45.

[80]HMC, 5th Rep., p. 60.

[81]Ibid., pp. 110-11. Fiennes was allowed to resume his seat in Commons, 21 September 1645, after Bristol was surrendered up by the Royalists. HMC, 7th Rep., Verney Papers, p. 452. William Lilly, the astrologer, called Fiennes the "cowardly son" of a "false old Lord." William Lilly, Several Observations on the Life and Death of Charles I (London, 1651), in Maeseres, Select Tracts, p. 180.

[82]C. H. Firth, Oliver Cromwell and the Rule of the Puritans in England (London, 1900), pp. 49 and 54.

[83]Hexter, King Pym, p. 173.

[84]CSPD, Commonwealth (1649-1660), VIII, 153.

[85]Campbell, Lord Chancellors, 1 ser., III, 61-2. Oldmixon, Lives of Lord Chancellors, II, 143-44.

[86]P.R.O., Minutes of Chancery, C37/18, f. 21v.

[87]Lisle MS., f. 32r. Whitelocke, Memorials (1853), p. 643. Commons Journal, VII, 437-38. Abbott, Writings of Cromwell, IV, 303-04.

[88]Lisle MS., f. 320v.

[89]Lisle MS., ff. 300r and 356v. CSPD, Commonwealth (1649-1660), XI, 26-7.

[90]Lisle MS., f. 354v. [91]Ibid., ff. 277r and 393v.

[92]Ibid., f. 277r.

[93]Ibid., ff. 264r, 365r, and 393v.

[94]Campbell, Lord Chancellors, 1 ser., III, 62-3.

[95]Roots, Great Rebellion, p. 222.

[96]Ibid., pp. 223-24.

[97]Lisle MS., f. 276v. For a different account of Richard's nomination see Firth, Last Years of Protectorate, II, 304-07.

[98]Lisle MS., ff. 241v and 242v.

[99]Ibid., f. 277v. [100]Ibid., f. 277v.

[101]Ibid., f. 271v

[102]Ibid., f. 32r. Whitelocke, Memorials (1853), p. 675.

[103]Lisle MS., f. 277v. [104]Ibid., f. 342v.

[105]Roots, Great Rebellion, p. 235.

[106]Campbell, Lord Chancellors, 1 ser., III, 70.

[107]Roots, Great Rebellion, p. 235.

[108]Campbell, Lord Chancellors, 1 ser., III, 70.

[109]P.R.O., Miscellaneous Rolls of Petty Bag, C212/15.

[110]Whitelocke, Memorials (1853), p. 676.

[111]Ibid., p. 676.

[112]P.R.O., Minutes of Chancery, C37/26, f. 16r; C37/24, f. 159v; C37/26, f. 54v; C37/26, f. 74r; C37/25, f. 137r.

[113]Ibid., C37/27, f. 1r.

[114]February 1659, Ibid., C37/26, f. 171v. January 1659, Ibid., C37/27, f. 1r. April 1659, Ibid., C37/28, f. 10r.

[115]Lisle MS., f. 232r.

[116]P.R.O., Minutes of Chancery, C37/25, f. 151v.

[117]Nicholas Papers, Camden Society, IV, 139. Whitelocke, Memorials (1853), p. 678. Campbell, Lord Chancellors, 1 ser., III, 72.

[118]Parliamentary History, III, 1555-556. Nicholas Papers, Camden Society, IV, 156.

[119]P.R.O., Minutes of Chancery, C37/6, f. 125r. 5 October 1659.

[120]CSPD, Commonwealth (1649-1660), XIII, 269.

[121]CSPD, Charles II (1660-61), I, 189.

CHAPTER VIII

CHANCERY OFFICERS OF THE INTERREGNUM

An account of the lesser Chancery officers of the Interregnum is hampered by the lack of information pertaining to them as individuals.[1] Much of the source material concerning the Chancery of the Interregnum is oriented toward attacks upon the offices as a stimulus for reform, not upon the officers as persons. An extensive examination of the duties of Chancery officers for the Elizabethan period has been made by Professor W. J. Jones;[2] for these reasons, nothing more than a cursory consideration of some of the officers can be given here. However, some interesting aspects of the Chancery bar have been included.

One of the major points made by Jones in his work on the Elizabethan Chancery was that the offices of the Six Clerks, Register, and Clerks of the Petty Bag (the chief officers under the Lord Chancellor and Master of the Rolls) were a "closed shop" in that period, with no possibility of expansion of those offices. These officers purchased their patents in an age when all such positions were bought and sold as investments. None were interested in watering their profits by subdividing the responsibilities.[3] A comparison

of Jones's evidence for the Elizabethan period with that gathered by Aylmer for the early seventeenth century shows that the situation in Chancery had not changed, but had in fact become more aggravated by 1640.[4]

The many complaints lodged by pamphleteers of the 1640's and 1650's against Chancery officers, adequately demonstrated by Stuart Prall and Donald Veall,[5] ensures that matters had not altered appreciably even with all the reform rhetoric of those years. The arguments for and against reform of Chancery offices had very little effect. Things went on much as they had in the past and would continue. It is well to understand that the complaints against Chancery officials in 1600 were essentially the same in 1640, 1660, and even in 1830. The essence of the problem was an insufficient number of officers. The Chancery of 1650 was saddled with a staff designed for 1450, or 1550, but not for a litigious society, such as that of the seventeenth century.

There was no great change in the various officers of the Chancery at the establishment of the Commonwealth in 1649. They were still the major offices of Master of the Rolls, Masters in Ordinary, Six Clerks (and their sixty under-clerks), Register, Prothonotary, Affidavit Office, Examiners' Office, Usher, Cursitors, Clerks of Praesentations, Clerks of the Petty Bag, Sergeant at Arms, and others. Before 1642, the Lord Chancellor had the power to appoint Master in Ordinary, the cursitors, and some miscellaneous posts. The second ranking officer of the Chancery, the Master of the

Rolls, had the appointment of the Six Clerks, Clerks of the Petty Bag, Examiners, Porter, Usher, Crier and some others, although the Master of the Rolls lost control over the Six Clerks under Charles I and did not regain it until 1660.[6] After 1643, the Parliament assumed control of the Chancery and began to encroach upon the power of the two great officers in the appointment of lesser officials. All officers considered disloyal to the Parliament were dismissed,[7] and during the succeeding years of the civil wars none of the highest officers of the Chancery could maintain enough influence in Parliament to defend their rights of appointment. The establishment of the Commonwealth in 1649, brought some stability to the offices of the Lords Commissioners and the Master of the Rolls, thereby enabling them to reassert some of their ancient prerogatives of appointment.

The office of Master of the Rolls was an ancient and coveted position in the Chancery. That official was the most important of the twelve masters of Chancery by virtue of the special task reposed in him to keep the records of Chancery at the Rolls. By the sixteenth century, the Master of the Rolls was regarded as the second officer of the Chancery with some judicial capacity as the lieutenant of the Lord Chancellor. He assisted the Chancellor when called upon in the judicial business of the court by hearing causes at the Rolls. Of course, the Lord Chancellor was in theory the sole judge in equity and his approval was necessary for all final decrees made at the Rolls. Furthermore, the Master of the Rolls heard causes only when the Lord Chancellor was not sit-

ting in Chancery, perhaps twice a week, emphasizing the deputy nature of his judicial capacity. During the Interregnum there were no alterations in the position of the Master of the Rolls as a high Chancery officer, with some judicial authority.

When the King went to York in 1642, followed by Lord Keeper Littleton and the great seal, the way was open for changes in Chancery personnel. The Commons were anxious to bring the judicial offices under their control with loyal appointees. The striking of a new great seal in 1643 occasioned the appointment of William Lenthall, Speaker of the House, as Master of the Rolls, 22 November 1643.[8] Lenthall retained the office of Master of the Rolls for the whole of the civil wars and Interregnum.

William Lenthall, born in 1591, came from an Oxfordshire family. He studied at St. Alban's Hall, Oxford, from 1606 until he entered Lincoln's Inn in 1609. Lenthall was called to the bar of Lincoln's Inn in 1616, made a bencher in 1633, and was reader for 1638. He had a lucrative practice by 1641, which afforded him about £2,500 a year. As recorder of Woodstock in 1640, Lenthall became that borough's member of Parliament in 1640, and was elected Speaker that year.[9] Speaker Lenthall aligned himself with the Pym faction and readily became the public spokesman of that group in the Long Parliament. For his loyalty to the cause of Parliament, the Commons entrusted him with the lucrative office of Master of the Rolls, and temporarily in 1646-1647, made him one of the two commissioners of the great seal with the Earl

of Manchester. After the founding of the Commonwealth, Lenthall continued to preside over the Rump until its dissolution by Cromwell in 1653.

Without the encumbering and conflicting duties of Speaker, Lenthall was free to work in the Chancery as Master of the Rolls. Chancery records show that he began to hear causes at the Rolls at least by Michaelmas 1654,[10] although it may have been earlier as the records are somewhat incomplete for the Rolls. The Master of the Rolls usually sat three days a week, Tuesday, Thursday, and Saturday. In this matter of procedure, the Chancery did not adhere to the example of former times when the Master of the Rolls sat only when the Lord Chancellor did not, for the lords commissioners often presided in Chancery on the same days.[11] The question of the judicial capacity of the Master of the Rolls to hold hearings in equity had long been a point of dispute among lawyers. Most treatises of the seventeenth century have an opinion one way or the other on that question. However, one anonymous author could not understand complaints against the assistance of the Master of the Rolls in the Chancery if that assistance materially aided the course of justice.[12] The debate continued into the eighteenth century when in the first quarter century there was a proliferation of works on the judicial authority of the Master of the Rolls. None of negative views seem to have deterred the Master of the Rolls from hearing causes until the reform acts of the nineteenth century.

When Lenthall sat at the Rolls, he was assisted in that court by two of the Masters of Chancery in Ordinary, alternating the duty, but with the Master of the Rolls present in every case.[13] The masters gave their opinions from the bench just as the lords commissioners in Chancery,[14] and the proceedings at the Rolls were identical with the Chancery in every respect. On some occasions of particular importance the masters at the Rolls were attended by one or more common law judges, who gave opinions.[15] If a suitor was not satisfied with a decision at the Rolls, he could secure leave to bring the case before the lords commissioners the next term, an advantage of which many litigants availed themselves.[16] Although this process proved dilatory (as appeals usually do), the provision of an auxilary court for equity undoubtedly contributed to the rapid reduction of causes pending by 1657. The Chancery Minutes show that the Master of the Rolls continued to sit during 1655, 1656, and for at least part of 1657.[17]

Only once did Lenthall come near to losing his office. That occasion was the implementing of the Chancery reform ordinance of 1654, when Cromwell forced the issue in May 1655. Lenthall opposed the reform ordinance in unison with Whitelocke and Widdrington, saying he "would be hanged at the Rolls Gate before he would execute it."[18] Nevertheless, when the Protector deprived the two lords commissioners of their offices, Lenthall capitulated and accepted the ordinance. He received confirmation of his office 16 June 1655, along with

Lisle and Fiennes in the reformed court.[19] Lenthall remained Master of the Rolls until the Restoration. Thereupon, he retired to his estates, where he died in 1662.[20] His brother John was the infamous keeper of the Marshalsea Prison for the King's Bench, who retained that position for the Interregnum and was plaintiff in a lengthy and spectacular Chancery suit for fraud in a common law action for escape.[21]

Of the master of Chancery we know rather less than of Lenthall. We know the names of all, but very little about any of them. Their names and length of service are as follows: Edward Leech (1649-1652), John Page (1649-1655), Sir Thomas Bennett (1649-1660), Robert Aylett (1649-1655), William Child (1649-1659), Sir Justinian Lewen (1649-1651), John Sadler (1649-1656), Arthur Duck (1649-1650), Edwin Rich (1649-1660), William Hakewell (1649-1652), Edward Eltonhead (1649-1659), John Bond (1650-1655), Robert Keilway (1651-1660), Thomas Estcourt (1652-1660), Nathaniel Hobart (1652-1660), Arthur Barnardiston (1655), William Harrington (1655-1660), William Glascocke (1655-1659), Edmund Gyles (1655-1660), Thomas Bulstrode (1656-1660), Robert Warsup (1659-1660), and William Eden (1659-1660). The dates of tenure of the masters indicates something special about the year 1655. In April 1655, just when Cromwell insisted upon execution of the reform ordinance, Secretary Thurloe reported the names and year of appointment for the masters.

They were Thomas Bennett, doctor of law, master since 1636; William Child, doctor of law, since 1639; John Sadler, esq., since 1645; Edwin Rich, esq., since 1646; Edward Elto-

head, esq., since 1648; John Bond, doctor of law, since 1650; Robert Keilway, esq., since 1651; Thomas Estcourt, esq., since 1652; and Nathaniel Hobart, esq., since 1652.[22] Two others were masters until April 1655, Dr. Aylett and Mr. Page.[23] Dr. Bond was deprived in 1655 and Sadler in 1656. It is probable that Aylett, Page, Bond, and Sadler were dismissed for opposition to the reform ordinance.

Only two of the masters, Bennett and Child, attained mastership before 1640, both were civilians, and retained their offices until 1660. The remaining masters, who were in office in 1655, were appointees subsequent to Parliament's supremacy in the state. Only one, John Bond, was a civilian. All must have satisfied the Commonwealth of their loyalty or they would have been deprived as other judges and court officers were. One of the masters, John Sadler, was an active reformer. His name is found among the members of the extra-parliamentary commission for law reform in 1652.[24] Edwin Rich may have been related to the influential Puritan, noble family of the Earl of Warwick, whose son Robert married Cromwell's daughter. Robert Keilway was no doubt a descendant of the famous Robert Keilway of the Reports which bear that name;[25] he was a judge of the King's Bench and Common Pleas in the reigns of Henry VII and VIII.[26] Nathaniel Hobart was a younger son of Sir Henry Hobart, Chief Justice of the Common Pleas under James I, and therefore, a brother-in-law of John Lisle. Nathaniel Hobart was a practicing lawyer and a supporter of Parliamentary policies during the

civil wars.[27] Edward Eltonhead was a firm adherent of the Parliamentary cause as well as a good friend of Whitelocke's, as is ascertained from their correspondence during Whitelocke's stay in Sweden in 1653-1654.[28]

The masters of Chancery served a most important function. They were the repositories of knowledge about Chancery procedure, and they furnished reports to the lords commissioners on references made to them from the court. They were also responsible for taking accounts of the financial responsibilities of trustees, executors, and administrators. Suitors and reformers complained against the procedure of references to the masters because of the costs involved, both financial and time consumed. However, Lisle and the commissioners favored the procedure of references to the masters, which was an adherence to the example of former times.[29] It is not surprising that the lords commissioners should defend such references, for in acting in assistance to the judges of the court, the masters saved the court untold hours in time and labor in complicated cases. Furthermore, at a time when the Chancery became bound to procedural rules and was relying heavily upon substantive precedent, the lords commissioners needed assistants who could search the records and produce the known course of the court. They also administered oaths and took affidavits. In one proceeding which concerned a questionable affidavit, the court referred it to Master Rich to determine the course of the court on affidavits.[30]

One of the most controversial matters relative to the masters was their remuneration. They constantly complained

that their high fees were necessary because they received so little in salary; furthermore, they were important officers and should be paid as such. Their quarrel with the masters extraordinary stems from this very problem. Masters extraordinary were not to administer oaths in or near London; they were strictly for the provinces to secure sworn affidavits for the court. However, they continually encroached upon the territory of the masters in ordinary by taking affidavits as near London as possible.[31] By the 1650's, the masters extraordinary had become more bold.

During a meeting of the committee for Chancery reform in April 1654, Lisle reported that Serjeant Glyn believed they might even take a defendant's answer virtute officii as the masters in ordinary did, for it was only in the nature of an affidavit. Glyn went on to state that he knew no difference between a master in ordinary and a master extraordinary except that the former were required to attend in person in Chancery. Sir Thomas Widdrington, one of the lords commissioners at the time, countered Glyn by stating that masters extraordinary had never been allowed to take answers in the past so it was impossible at that juncture. Lisle noted that Glyn's comparison of answers to affidavits was a false analogy, for no affidavit could be admitted in evidence which concerned the merit of the cause; an answer was always to the merit of the cause and therefore, not in the nature of an affidavit.[32] Here then is the essential difference between masters in ordinary and extraordinary. Those in ordinary were important and essential sworn officers of the

court, capable of commenting on evidence to the merit of a cause while those masters extraordinary were necessary expedients for the convenience of distant witnesses and litigants.

The masters in ordinary seem never to have been seriously in danger of abolition during the Interregnum. On many occasions they alone knew the actual course of Chancery in difficult questions of procedure. Their acceptance by the lords commissioners is witnessed in their assistance as deputy judges in equity at the Rolls. It is likely, however, that the changes brought by the reform ordinance in 1655 diminished the fees of the masters in ordinary, and accounts for the alteration in their membership at that time.[33]

Another important office of the Chancery was that of the Six Clerks or Attorneys. This office was the most corrupt known to the seventeenth century government of England. At the same time, like the master of Chancery, the Six Clerks office fulfilled a necessary function in the preparation of cases for decision by the court. In early times they kept the records of Chancery under the supervision of the Master of the Rolls, and he had maintained the power of appointment for this office until the 1630's.[34]

The primary duty of the Six Clerks was to guide each case through Chancery as attorneys for both sides. They kept all the records of each case, and as they had a monopoly over this important aspect of Chancery, there was considerable opportunity for profiteering. They charged fees for every written document, often many copies, and for every duty per-

formed. It was a lucrative business, indeed, especially as business in Chancery increased during the seventeenth century. In 1650, it was estimated that a Six Clerk could expect at least £2,000 net income annually from fees.[35] These six positions were bought, sold, and reversioned, as if they were chattels; for all practical purposes they were. Men were willing to pay a high price for the opportunities a Six Clerk enjoyed.[36] Aylmer studied the careers of the Six Clerks of the early part of the century, and his results indicated considerable wealth was necessary to obtain the office, but even more wealth resulted from the investment.[37] However, the worst aspect of corruption applicable to the Six Clerks was their exercise of the office by deputy and their burdening the sixty underclerks with the duties of the Six Clerks. This practice ensured inefficiency and corruption in Chancery.

The sixty underclerks or attorneys often complained of their small remuneration by the Six Clerks in comparison with the large fees taken by the six while doing none of the work. Nevertheless, the Six Clerks would neither relinquish any of the profits nor would they allow their own numbers to be expanded, which amounted to the same thing. The argument between the Six Clerks and the sixty underclerks continued into the Interregnum. In June 1655, the office of the Six Clerks was altered to the Three Clerks, with the same duties as the Six Clerks but to be performed without deputies. The sixty clerks were paid according to the work done.[38] The changes in the Six Clerks office occasioned a suit between

the Six Clerks and the sixty underclerks in 1657, in which the lords commissioners heard arguments on both sides and issued an injunction against the Six Clerks to quiet possession.[39] The Six Clerks office was certainly a sad state of affairs, and the regulation ordinance brought to it some badly needed reforms, but it was short lived. The ordinance lapsed in 1657.

It is possible to determine only a few of the names of Six Clerks during the Interregnum. However, the Chancery reform ordinance of 1654 does give the names of the Three Clerks, and it is likely that they were three of the previous six. They were Lawrence Maidwell, Matthew Pindar, and Robert Hales.[40] Some light is shed upon the office of the Six Clerks by the career of one of their number who was dismissed in 1655. Nicholas Love was one of the Six Clerks and a "man of considerable influence in London" during the civil wars.[41] Love became a member of Parliament for the borough of Winchester in a by-election held after the exclusion of the Royalist William Ogle in 1643.[42] As one of the members for Winchester, Love became a colleague of Lisle's, the other member, who as recorder of Winchester, may have been instrumental in securing his selection. Love was a radical in Parliament and participated in the examination and punishment of Royalist spies before and during the Commonwealth. Earlier it was observed that he and Lisle were probably close friends at the trial of the King.[43] Love must have been a powerful and feared man, and his association

with Lisle gave him the necessary influence after 1649 to become one of the Six Clerks. That he did not survive the crisis of the reform ordinance does not speak well for his competency as a Six Clerk.

The Examiners' Office continued during the Interregnum,[44] but it has not been possible to determine conclusively the names of the two men who held this office. In 1651, they may have been one Rich and one Raven.[46] The two examiners performed an incidental task to the work of the Master of the Rolls.[47] There were two of these officers with possibly ten assistants by 1652.[48] They examined parties to a suit and their witnesses after they had been sworn by a master. There was always much rivalry between the examiners and the Six Clerks over the conduct of examinations and the deposit of the records of depositions in a case. The office was rife with slipshod procedures, which occurred when unsworn deputies took the examinations in a suit.[49]

The office of Register had become an important record keeping office of the Chancery by the late sixteenth century. The proliferation of written records in that period enhanced the position of the register. His major responsibility was the compiling of the necessary series of "Entry Books of Orders and Decrees" for orderly precedent in procedure. The office became even more important during the Interregnum when the series "Minutes of Chancery" began. Much of Chancery procedure and precedent depended upon accurate and efficient record keeping by the register and his deputies.

Miles Corbett, a member of Parliament and ardent radical of the civil wars, was register until 1652, when Henry Scobell, Clerk of Parliament, held the office in Corbett's absence.[50] The register did not personally compile the raw notes for the Entry Books but was responsible for their preparation. He sat in court with a deputy register, who did the actual notetaking. One important duty of the deputies was the keeping of the Chancery Minutes of hearings, both in Chancery and at the Rolls.

It is uncertain how many deputies served during the Interregnum, but some of their names are known. In 1652, Thomas Edwards, a deputy for thirty years, and Humphrey Jaggard filled the usual two places.[51] However, in 1653, we find that two names appear as deputies, Thomas Carpenter,[52] and William Goldesborough.[53] Sometime after February 1652, when Edwards and Jaggard were still listed as deputies, Carpenter and Goldesborough were given their places. There was a petition by Walter Long, member of the Long Parliament, in May 1660, to be deputy register.[54] He gave an account of the forcible expropriation of the Register's records in 1654 by William Goldesborough and Jasper Edwards.[55] It is probable that Thomas Edwards died about 1653, leaving the possession of his office in a confused state. Perhaps Long and Jasper Edwards (who may have been Edwards's heir) had claims upon the position, with Jasper selling the office to Goldesborough. In 1653, Parliament tried to force Chancery to accept Walter Long as deputy register, but the lords commissioners refused to admit him to that office.[56]

The Affidavit Office was of recent vintage as a recognized office of Chancery. Lord Ellesmere formed it in 1614 as part of his Chancery reforms.[57] It was generally regarded as an offshoot of the Register's Office. In 1655, the Affidavit Office was again combined with the Register by the reform ordinance. This action brought a petition from Sheffield Stubbs in 1657, as clerk of affidavits, requesting the office be restored to its 1654 position as a separate office. The lords commissioners granted the request.[58]

In 1655, the lords commissioners reported the names of various officers of Chancery. Those names are listed below: Richard Belcher, secretary to the lords commissioners for presentation of livings; Henry Hastings, clerk in Chancery for the lords commissioners; Thomas Hussey, prothonotary; William Swift, clerk to the lords commissioners for taking fines; Robert Corvile, clerk to the lords commissioners for appeals under the great seal; Bartholemew Beale, clerk of letters patent; Bartholemew Baldwin, clerk of the faculties, duties and registrations; John Bolles, clerk in Chancery; James Dewy, clerk of the warrants for justices of the peace; Abraham Browne, sealbearer to the lords commissioners; Henry Middleton, sergeant at arms to the lords commissioners; Roger Freeberry, crier; Thomas Wilbred, doorkeeper; Christopher Havergill, household messenger to the lords commissioners; Michael Baker, Thomas Parker, Keilway Gindott, Edward Osboldston, messengers to the lords commissioners.[59] The duties of these officials did not change for the Interregnum, and they are adequately covered in Jones's work on the Chancery.

Two flagrant examples of nepotism are exhibited in the list of officers reported by the lords commissioners in 1655. They were Francis Lenthall, usher, and William Lisle, clerk of the injunctions, a new office. The office of Usher was within the disposal of the Master of the Rolls. He was to keep order in the court and to provide the necessary record keeping materials, paper, ink, and pens. At one time he had the keeping of various causes for hearing on a certain day.[60] By the Interregnum, however, some of his duties, such as crier and doorkeeper were filled by subordinates. Another of his responsibilities was to attend the records at the Rolls and the Tower. Whether for the sake of convenience or just to "keep it in the family," William Lenthall secured the place of usher for his son Francis, sometime before 1652.[61]

Lisle procured the position of clerk of the injunctions for his son William. It was a new office for constant attendance upon the lords commissioners to present warrants and to act as a watchdog over the injunctions, preventing any to pass without a warrant from the lords commissioners.[62] The office was no doubt necessitated by the constant badgering of the Chancery judges for injunctions. The frequently unjustified granting of injunctions of which the lords commissioners may or may not have had knowledge was a constant source of complaint.[63] William Lisle was just beginning a career at the bar and was called to the bar of the Middle Temple at the special request of his father in February 1658.[64] In May 1658, William received the chambers at the

Temple, vacated by the death of his elder brother Beconsawe Lisle.[65] It is apparent that John Lisle was not averse to fostering his son's career.

There was an impressive array of talent at the Chancery bar during the Interregnum. All those holding official positions as counsel for the Commonwealth, the attorney general, solicitor general, recorder of London, attorney for the duchy of Lancaster had extensive private practice in Chancery. At nearly every sitting of the courts one finds at least one of the law officers acting as counsel for plaintiff or defendant.[66] They were undoubtedly drawn by the lucrativeness of Chancery practice. Reform minded lawyers, such as John Fountayne and John Rushworth (author of Historical Collections), were often in attendance.[67] Former and future judges Newdigate, Maynard, Widdrington, Windham, Glyn, and Serjeant Roger Hill practiced in Chancery.[68] Other prominent lawyers, Humphrey Churchill and Challoner Chute, were very active in Chancery. Edward Bulstrode, author of Bulstrode's Reports and a relative of Whitelocke's, made an occasional appearance in that court.[69] Joseph Keble, son of Lord Commissioner Keble, and William Lisle, John's brother, practiced in Chancery during the Interregnum. William Lisle had a practice before the civil wars and after the Restoration attained the office of master of Chancery.[70]

A significant point concerning the lawyers in Chancery is that nearly all, who were practicing there during the Interregnum, did so before 1640. The mention of a few of those appearing in Chancery in 1639 will demonstrate that fact.

Rich, Newdigate, Adams, Chute, Sheppard, Fountayne, Rolle, Croke, Thorpe, Atkyns, Prideaux, Parker, Windham, Bulstrode, Cock, Widdrington, Maynard, and even John Lisle, were all Chancery lawyers in 1639.[71] These men served as the lawyers and judges of the Interregnum and provided the continuity needed at bench and bar to preserve the legal system much as it had been before the Interregnum. Even more importantly, several of these Interregnum lawyers spanned those twenty years, 1640 to 1660. Fountayne, Maynard, Prideaux, Bulstrode, Hill, and William Lisle survived the Restoration and practiced for many years thereafter. Maynard and Prideaux were Chancery lawyers in Lord Nottingham's court. The significance here is readily apparent. These Chancery practioners were not likely to throw over all the procedures and attitudes they developed during the Interregnum. The work of the Interregnum Chancery lived on through these men who helped to push equity toward one of its most significant accomplishments, reliance upon precedent.

NOTES

[1]Aylmer, King's Servants, pp. 253-56, especially the case of Richard Smyth, a cursitor of Chancery, p. 255.

[2]Jones, Elizabethan Chancery, pp. 100-73.

[3]Ibid., pp. 100-01.

[4]A good half of the Chancery officers in 1630 exercised their offices through deputies which made for inefficient and dangerous procedures. Aylmer, King's Servants, p. 127.

[5]Prall, Agitation for Law Reform, and "Chancery Reform and the Puritan Revolution," The American Journal of Legal

History, VI (1962), 28-44. Donald Veall, The Popular Movement for Law Reform, 1640-1660 (London, 1970).

[6]Aylmer, King's Servants, pp. 71 and 73.

[7]3 December 1643. Commons Journal, III, 328.

[8]Whitelocke, Memorials (1853), p. 78.

[9]Foss, Judges, pp. 447-48. See also Berks. R.O., Lenthall-Kyffin Papers, N.R.A. ref. #0185.

[10]P.R.O., Minutes of Chancery (October 1654), C37/15, passim. The practice of hearing causes at the Rolls was being followed in 1639. Ibid., C37/1, passim.

[11]Ibid., C37/14, ff. 38r and 44r, Tuesdays and Saturdays, 28 and 30 October 1654, causes heard before the lords commissioners. Ibid., C37/15, ff. 21r and 29v, causes heard at the Rolls on the same days. These examples could be repeated for other days.

[12]Practice of High Court of Chancery (1652), pp. 67-8.

[13]P.R.O., Minutes of Chancery, C37/15, passim.

[14]See Master Nathaniel Hobart's opinion, Ibid., C37/15, f. 36v.

[15]Justice Newdigate sat at the Rolls in Sale v. Franklin (1654), Ibid., C37/15, f. 77v.

[16]Hobcroft v. Baker (1654), Ibid., C37/15, f. 59v. Plosworth v. Lowe (1654), Ibid., C37/15, f. 114v.

[17]Ibid., C37/17, f. 1r, begins, January 1656, and Ibid., C37/21, f. 197r, has a cause at the Rolls for January 1657.

[18]Whitelocke, Memorials (1853), pp. 625-26.

[19]Clarke Papers, Camden Society, III, 44.

[20]Foss, Judges, p. 452.

[21]Lenthall v. Child (1655), Lisle MS., f. 222r.

[22]Thurloe, State Papers, III, 410.

[23]P.R.O., Minutes of Chancery, C37/15, passim. Bennett, Rich, Child, Page, and Aylett were all active masters in 1639. Ibid., C37/1, passim.

[24]"Minutes of the Commission for Law-Reform, 1652," B.M., Add. Mss., #35863, f. 1r.

[25]Robert Keilway, Relationes Quo Rundam Casuum Selectorum ex libris Rob: Keilwey . . . (London, 1633). Lisle MS., f. 23r.

[26]Wallace, Reporters, pp. 119-20.

[27]HMC, 7th Rep., pp. 449-50, 458-60. Hobart, son of Sir Henry Hobart, was baptized 27 September 1636, at Highgate Chapel. Survey of London, Vol 17: Highgate, p. 11. Hobart and Lisle were probably well acquainted. Lisle was married at Highgate Chapel, and Sir Henry Hobart brought Lauderdale House, Highgate, and Waterlow Park from John Bond, another master of Chancery. Ibid., p. 11.

[28]Eltonhead to Whitelocke, 28 April 1654. Whitelocke Papers, B.M., Add. Mss., #37347, f. 236r.

[29]Lisle MS., f. 353r. The lords commissioners asked for reference on the masters of Chancery in ordinary. Ibid., f. 343r. The lords commissioners were only adhering to the procedure of former Chancellors, and references were frequent in 1639. P.R.O., Minutes of Chancery, C37/1, passim.

[30]13 December 1653. Lisle MS., f. 344r.

[31]Jones, Elizabethan Chancery, pp. 118-19.

[32]16 April 1654. Lisle MS., f. 343r.

[33]The profits and rights of masters in ordinary and extraordinary, for 1649, are found in, P.R.O., Miscellaneous Rolls of Petty Bag Office, C212/15.

[34]Jones, Elizabethan Chancery, p. 119. See also Aylmer, King's Servants, p. 73. The three clerks of the Petty Bag, who filled a comparable position to the Six Clerks but at the Petty Bag side of Chancery, are not considered here. Their office had declined in importance at the same rate as the function of the Petty Bag as a common law court declined in the seventeenth century. After 1652, they were John Thompson, Edward Hoskins, and Thomas Pury. CSPD, Commonwealth (1649-1660), IV, 162.

[35]Proposals Concerning the Chancery (London, 1650), p. 13.

[36]Aylmer, King's Servants, pp. 71-3.

[37]William Carne (1631-1640); George Evelyn (1606-1635); Robert Henly (1619-1632); Robert Caesar (1635-1637), Ibid., passim.

[38]"Ordinance Regulating Chancery, 22 August 1654," Article II.

[39]Lisle MS., ff. 164v and 212v.

[40]"Ordinance Regulating Chancery, 22 August 1654," Article II. See also, CSPD, Commonwealth (1649-1660), IX, 149.

[41]VCH, Hants., II, 325.

[42]Keeler, Long Parliament, p. 289.

[43]It is more than probable that Love had the support of William Lenthall, Speaker and Master of the Rolls, who had the power of appointment for Six Clerks. Love fled England for Switzerland with other regicides in 1660. Ludlow, Memoirs, II, 347.

[44]Lisle MS., f. 377v.

[46]Jones, Elizabethan Chancery, p. 135.

[47]In 1651, possibly they were Rich and Raven. J. Beames, General Orders of the High Court of Chancery from 1600 to /1815/(London, 1815), p. 121.

[48]Practice of High Court of Chancery Unfolded (1652), pp. 74-5.

[49]Jones, Elizabethan Chancery, pp. 136-43.

[50]CSPD, Commonwealth (1649-1660), IV, 161.

[51]Ibid., IV, 161-62.

[52]P.R.O., Minutes of Chancery (January 1653), C37/8, f. 2r.

[53]April 1653. Ibid., C37/9, f. 1r.

[54]HMC, 7th Rep., p. 79.

[55]Lisle MS., f. 344v.

[56]Lisle MS., f. 125v.

[57]Ibid., f. 343v.

[58]Keeler, Long Parliament, pp. 256-57.

[59]CSPD. Commonwealth (1649-1660), IV, 161-63. Lisle has given the annual salaries of the officers appointed by the lords commissioners: Secretary, £400; Clerk of Praesentations, £400; Seal Bearer, £200; Clerk of Dedimus, £140; Clerk of Dividens, £80; Clerk of Warrants to make justices of the peace, £80; Clerk of Injunctions, £60; House Messenger, £60; Receiver of Fines, £60. Lisle MS., f. 447v.

[60]Jones, Elizabethan Chancery, pp. 150-51.

[61]CSPD. Commonwealth (1649-1660), IV, 162.

[62]Ibid., IV, 163.

[63]MTR, Minutes of Parliament, III, 1133-134.

[64]See Fountayne's attack upon the lords commissioners in open court for readily granting injunctions. Lisle MS/, f. 90r.

[65]MTR, Minutes of Parliament, III, 1118 and 1120.

[66]P.R.O., Minutes of Chancery, C37, passim.

[67]These two have been labelled reform minded lawyers for their presence on the extra-parliamentary commission for law reform in 1652. B.M., Add. Mss., #35863, f. 1r.

[68]See the Roger Hill Papers, B.M., Add. Mss., #46500, ff. 52-106v.

[69]Edward Bulstrode, Reports (1659).

[70]Butcher v. Field (1651), P.R.O., Minutes of Chancery, C37/5, f. 58r. Glascock v. Morgan (1659), Ibid., C37/6, f. 130r.

[71]Ibid., C37/1, passim.

CHAPTER IX

JOHN LISLE AND THE CASE OF

COLE v. RODNEY

At various stages in his career after 1645, Lisle aided relatives and associates to attain positions of employment and afforded others a measure of protection. There is considerable evidence to suggest a degree of nepotism in Lisle's conduct as an official. Some examples are easily recognized, but most are unimportant or justifiable. The gravest charge against Lisle for undue influence arose in the Chancery case, where Lisle's brother-in-law was the plaintiff: Cole v. Rodney. However, before undertaking a thorough discussion of the case, it would be well to consider the more obvious instances of Lisle's influence in obtaining preferment for his relatives and associates.

As a commissioner of the Admiralty and Cinque Ports during the civil wars, Lisle probably secured places for two relatives. Lieutenant Thomas Lisle, most likely a nephew, was the naval officer who mutinied against Colonel Rainsborough and later intended to participate in the rescue attempt for Charles I from the Isle of Wight in 1648.[1] John Lisle, an uncle, who later rose to the rank of captain in

the Parliamentary Navy,[2] was still in the navy during the First Dutch War, when he was wounded.[3] Because of his loyal service to the Commonwealth, John Lisle was made a captain for the winter naval guard, a privilege, as most ships were idled in the winter.[4] It is significant that only a few days before Captain Lisle petitioned the Commissioners of the Admiralty on 18 October 1652 for the favor, John Lisle was named, 5 October, a commissioner from the Council of State to General Blake, commander of the navy.[5] With his nephew as the president pro tem of the Council of State and special commissioner to General Blake, Captain Lisle had considerable influence at his disposal. William Jennings was married to Lisle's sister Bridget,[6] and had served with General Blake during the Spanish War when the gold fleet was captured. In 1657, Lisle wrote to Henry Cromwell, Lord Deputy of Ireland, and requested Cromwell to find some suitable position for Jennings after his service in the navy.[7]

In 1645, another of Lisle's brothers-in-law, Alexander Thistlethwaite of Winterslow, Wiltshire, who had married Mary Lisle,[8] became parliamentary sheriff of Wiltshire.[9] Lisle was a member of the Wiltshire committee in Parliament, which was responsible for nominating and clearing all such appointments. Thistlethwaite continued an adherent of the parliamentary cause through the Interregnum and was returned to the 1656 Parliament of the Protectorate as member for Wiltshire, but as one in active opposition to the Cromwell regime.[10] In Parliament, Thistlethwaite became involved in the "exclusion

crisis," when the Council of State excluded many of the elected members from the House. Although he was not himself excluded, Thistlethwaite absented himself from Parliament until 31 December 1656, on which day he supported the resolution to allow excluded members to sit.[11] It is unlikely that Thistlethwaite could have been returned to the 1656 Parliament, harboring such rebellious thoughts against the Protectorate, or that he could have avoided exclusion when they were known unless he had political protection near the Protector.

Lisle had always managed to give protection to members of his family and associates when they found themselves in difficult positions. Sir William, Lisle's father, was known to disapprove of Parliament's war against the King. His attitude would eventually have jeopardized the Lisle estates in the Isle of Wight through sequestration of Sir William's property as a delinquent. Lisle aided his father and himself by having Sir William's estates conveyed to himself, allowing his father an annuity and a place to live.[12] Sir John Oglander of the Isle of Wight, Lisle's godfather, was a known Royalist sympathizer and was imprisoned at least once for questioning. However, Oglander was released and his property remained intact, free of sequestration.[13] Lisle's son, William, who aided the King along with young Oglander in the abortive escape by sea from the Isle of Wight, avoided punishment even after Thomas Cooke the Royalist accused him in 1651.[14] Lisle's association with the trimmer, John Bowring, has been elucidated above.[15] Bowring would have been unable to do

even a quarter of the things he claimed without some protection in high places. Bowring claimed that he had influence with Lisle and Nicholas Love, both members of the Committee for Examinations (probably the Secret Committee).[16]

Lisle also promoted the interests of his family in the service of the Commonwealth. Daniel Lisle, his youngest brother, received a commission from Parliament as minister extraordinary to Sweden and Hamburg.[17] This was an important appointment granted by the Council of State and the Parliament in 1651. Sweden was a strong Protestant ally of England, the only one in fact. Daniel Lisle was well received during his two years of travel in northern Europe for the Commonwealth.[18] He was succeeded as envoy to Sweden by Bulstrode Whitelocke in 1653. In Chancery, Lisle obtained the office of clerk of injunctions for his son William in 1652.[19] Lisle's brother, William, was a commissioner for the sale of delinquents' property and had a large practice in Chancery. The interest of one of the lords commissioners in his career was certainly not harmful to William's practice. However, there is no indication of conflict of interest arising from this relationship between bench and bar. Whitelocke's uncle, Edward Bulstrode, also practiced at the Chancery bar. Similarly, William Lenthall's son Francis held the lucrative post of Usher in Chancery.[20] There is also evidence that Lisle solicited favors for his employees in the Chancery. In November 1652, Lisle recommended George Dewy, uncle of James Dewy, clerk for the warrants to justices of the peace, to the Navy Commissioners as purser for the commission.[21]

For some of the above examples there is no conclusive evidence confirming Lisle's influence as the deciding factor. Nevertheless, there is in each instance the shadow of Lisle's influence as a near relative or associate. In the seventeenth century there was no developed consciousness of conflict of interest or nepotism. If one could secure the necessary influence to obtain protection or preferment, he was merely more fortunate in having friends or relatives well-placed. Francis Bacon and Edward Coke freely used the aid of others in high places to gain advancement. If Oliver Cromwell could have Henry Ireton as a general, Henry Cromwell as Lord Deputy of Ireland, and Richard Cromwell as heir to the Protectorate, was it wrong for Lisle to aid those close to him?

Only one charge of corruption in office was ever made against Lisle as a high judicial officer of the Interregnum. The charge was one of undue influence by Lisle to the benefit of his brother-in-law, John Cole, in the cases of Cole v. Rodney and Rodney v. Cole.[22] These two cases lasted several years and attracted wide attention in Parliament when the redoubtable defendant George Rodney carried his appeal to that body. That the case was important to Lisle is obvious from the numerous entries he gave it in the "Abridgements." Cole v. Rodney and Rodney v. Cole are worthy of particular consideration, for they not only demonstrate a significant aspect of Lisle's career in Chancery, but they exhibit some of the weaknesses and abuses of Chancery which the court could do nothing to rectify.

Following quickly upon the Restoration, Sarah Rodney, widow of George Rodney, submitted a petition to the House of Lords in July 1660. In this petition, she made several claims and charges against the plaintiff John Cole, former Lord Commissioner Lisle, and John Stewkly, sheriff of Hampshire in 1649. The charge was as follows. John Cole of Odiham, Hampshire, combined with his wife Anne, her brother, Lord Commissioner Lisle, and John Stewkly, the sheriff, to set up in 1649, a vacated statute staple for £1,000, which was later extended illegally by Stewkly. At midnight, the last day of the statute, the sheriff broke up the doors of Rodney's house and put all the occupants out of possession. All Rodney's goods were seized and condemned at £3,460.[23] In 1656, Rodney sued Cole in Chancery for a judgment to gain satisfaction from Cole's estate. Here Sarah Rodney accused Lisle of exerting influence from the Chancery bench, which caused delays and allowed to conceal himself and his assets through fraudulent settlements. The judgment was ineffectual.[24] In 1660, the Statute of Limitations prohibited her from a remedy at law against Stewkly and from any other ordinary relief available in law. Therefore, she asked the Lords for compensation from the estates of John Cole, John Lisle, and John Stewkly.[25]

Given the time and circumstances in which these charges were made, they must necessarily be proved. In July 1660, none of the three named in Sarah Rodney's petition were in a position to answer the allegations. John Lisle was one of the most hated representatives of the Interregnum regimes and had fled to the continent to avoid a regicide's punish-

ment. Some facts present in her petition may well have been true, for example, that Cole was Lisle's brother-in-law or that Stewkly broke up the doors at midnight. Whether her peition may be interpreted in the manner she suggested must be determined by an examination of the case. Furthermore, as it is the only instance of charges impugning Lisle's impartiality as a Chancery judge, a complete disclosure of the case is in order.

Initially, Cole v. Rodney involved a sum of money owed by George Rodney to Cole's first wife, Alice Pawlett.[26] The debt was incurred in 1640,[27] and Rodney entered into a statute staple at that time to pay the debt in a term of years, probably ten. Accordingly, the statute was sealed and enrolled in the Statute Office of the Petty Bag to be returned there upon the lapse of the term of years.[28] In the intervening years, 1640 to 1649, Alice Cole died, and Cole married Lisle's sister Anne. John Lisle became lord commissioner of the great seal in 1649. As Cole did not marry Anne Lisle until after the statute was made and as Lisle did not become a commissioner until 1649, any collusion before 1649 is highly unlikely. The statute, acknowledged by Rodney, was for £500, when it was presented in the Statute Office in 1649.[29] However, when the clerk of the statutes received it, the seal was damaged.[30] Here then the trouble began.

The clerk of the statutes, as he was bound to do, refused to file the statute tendered by Cole.[31] Rodney had in the meantime made a bill of complaint in equity, which challenged Cole's statute staple on grounds that the money had been

paid.[32] Cole's request of the court was that the clerk of the statutes be ordered by the lords commissioners to certify the statute and file it with the seal damaged so that Cole could begin an action on a scire facias and make answer to Rodney's suit in equity. The Chancery acceded to Cole's request, and the clerk of the statutes certified and filed the statute in Michaelmas 1650.[33] Unless the statute was received and certified by the Petty Bag Office, Cole could not resist Rodney's suit to quash the statute.

In January 1650, the attorney for Cole had requested the court to extend the statute because the clerk would not certify the document with the seal damaged. The court had already stayed the statute, pending the answer to Rodney's bill, but Cole's attorney insisted that above £200 was still owed on the statute. Rodney's attorney maintained that the extent was grounded on information that the seal was damaged and broken; the clerk of the statutes could not certify what was not brought to him under proper seal. After hearing the arguments, the court thought fit to stay all proceedings on Rodney's injunction against the statute. The money was to remain in the sheriff's hands and the plaintiff (Cole) was not to call for it. In the meantime, Cole must put in his answer to Rodney's bill within one week; the cause would be speeded afterward.[34]

Cole reappeared in Chancery, as ordered, February 1650. At this hearing, Sir Thomas Widdrington was counsel for Cole. He desired the court to proceed with the extension of the statute and find Rodney in contempt. The clerk of the statutes

had direction to certify; the statute should be extended. The attorneys for Rodney only moved to dissolve the contempt. The court ruled that the plaintiff should have his extension, and if he levied more than was due, there would be remedy later; a liberate would be moved and accepted to prevent further extents. In the meantime, the plaintiff could not call for Rodney's goods from the sheriff's possession.[35] It was after these hearings that Cole received the favor of the court, ordering the clerk of the statutes to certify the statute and file it.

While such a procedure may seem extraordinary, it must certainly have happened often that statutes came to the Petty Bag with the seals broken or damaged. Lisle wrote that such action was not irregular in the Chancery. He saw no prejudice to Rodney's case by requiring the certification, for when the action upon the scire facias began, the statute would be discharged if Rodney had previously fulfilled its provisions. With a bill filed against Cole concerning the statute, it was necessary that the statute itself be certified before Cole made answer to Rodney's bill. Lisle wrote, "There were then offered to the court severall presidents, where Statutes have beene acknowledged and the seale hath beene broken before returned to the office, and the court hath ordered them upon petition to be filed."[36] In fact, other cases of a like nature of broken seals on statutes were heard in Chancery, and they were ordered to be certified by the clerk of the statutes.[37] Cole followed the proper course in making affidavit of the accident in breaking the

seal and of any inaccuracies in the statute. It was perfectly within the cognizance of the court to grant Cole's request and order the clerk to certify the statute.[38]

One can readily ascertain that this point of the court's directing the Statute Office to certify a statute with a defective seal was important to Lisle. It was no doubt one of the accusations brought against the court in the committee of Parliament which later investigated the case. However, regardless of anything else Lisle might have done, this action of the court cannot be laid on his shoulders alone. Afterall, the decision to give the orders to the clerk of the statutes and to extend the statute were made in open court before at least two of the lords commissioners,[39] and firmly based in precedent of Chancery practice.

Cole v. Rodney was decreed in favor of Cole. His statute was certified and filed in the Petty Bag. What happened in the meantime, before Rodney v. Cole came to a hearing, is somewhat obscure. We know that the statute was certified and enrolled in Michaelmas 1650.[40] A decree was not made in Rodney v. Cole until May 1653.[41] It is apparent that the sheriff did make his entry upon Rodney's premises and sell his property before the decree was made in the second case. This seems likely because the sale had indeed taken place before Rodney's appeals to the Lord Protector and the Parliament in 1655.[42] Furthermore, Whitelocke's comments in Cole v. Rodney concerned the undervaluation of the sheriff's sale of Rodney's property, placing the time of the sale before the conclusion of that case in 1650.[43] The most logi-

cal explanation is that the sheriff's action in seizing Rodney's property took place soon after the statute was certified by the Petty Bag. Cole and Stewkly may have been in league to bring this about as the sheriff did commit a breach of his duty in the sale, admitted by Lisle and stated by Whitelocke in open court. That breach was the undervaluation of Rodney's property. Lisle wrote under the heading in his "Abridgements," the "Court can do Wrong," "The sherife made the sale att an unreasonable undervaluation, as /he/ sold that for £100 worth £1,000." In this same entry Lisle reported that Whitelocke put the opinion of the court. Although Chancery was normally unable to give relief for undervaluation in sheriffs' sales; if the sale could not take place without an order from Chancery, the court could consider the valuation according to reason and equity to prevent Chancery from doing a wrong.[44] Lisle did not give the decision of the court on the undervaluation, but since Rodney continued his action claiming redress of the sheriff's action, it most likely favored Cole, or Cole successfully evaded the decision for Rodney.[45]

Rodney v. Cole finally came to hearing before the Master of the Rolls, 5 May 1653. The decree, made by Lenthall, was adverse to the plaintiff; Rodney appealed to the lords commissioners.[46] Rodney was no more successful at the great seal than he had been at the Rolls. The court affirmed the decision of the Master of the Rolls, 16 June 1653.[47] He did not relinquish his suit, for in March 1654, Rodney appealed the adverse decree at the Rolls to the Lord Protector. Cromwell

as was his usual procedure on petitions against decrees, referred the matter to the judge who made the decree, to examine and certify.[48] Here Rodney's petition languished for fifteen months, for we hear nothing more on Rodney v. Cole until July 1655, when the lords commissioners and the Master of the Rolls finally took up the reference of the Lord Protector. Lisle gave a full report of the Chancery's consideration of the Protector's reference.

The major point before the court upon reference was whether there had been a surprise in the signing and enrolling the decree at the Rolls in 1653. If there were a surprise, then the lords commissioners might take up the case again judicially. Rodney claimed a surprise in two ways. First, the decree was one in account with some directions concerning the taking of the account by the assigned master of Chancery. Decrees of account, claimed Rodney, should not be signed and enrolled until the account is perfected. To this Lisle offered a rebuttal that it is usual in Chancery to sign and enroll such decrees before the account is perfected. Challoner Chute, counsel for Rodney, even agreed in 1653, that there were above 500 precedents for that procedure. At common law, added Lisle, in cases of account there were two judgments, a preliminary account, and another completed afterward by the auditors.[49]

The second surprise, stated Rodney, came in the amount of notice given for the signing and enrolling of the decree in 1653. The decretall order was made 5 May 1653, and was

enrolled 23 May 1653. On the twentieth of May, the Master of the Rolls sent for the plaintiff and defendant to speak with them concerning the order. This was only three days before the signing and enrolling. At that time Cole said that even though Rodney had no notice of the order before it was signed and enrolled, there were, nevertheless, no words of prohibition in the order to prevent Cole from signing and enrolling the order in the meantime. There was no restriction which prevented Cole from signing and enrolling the decree, but Lisle wrote that it was done in all honesty by Cole and therefore no surprise.[50] Rodney, thus far, had obtained no advantage from his petition to the Lord Protector and the subsequent reference to the Chancery. However, Rodney was persistent. The forthcoming Parliament in 1656 provided a forum where he could carry his grievance and request for redress against the decisions of the Chancery.

By February 1656, Rodney had still not ceased his efforts to secure relief against Cole. It must have been obvious that Rodney would seek the aid of friends in the new Parliament. There were many members who would relish the opportunity to strike out at Lisle, the Chancery, and indirectly Cromwell's government, through a case of corruption in the judiciary. In February 1656, Cole came forward with an offer to Rodney, which Cole had entered in the Register's Books of Orders and Decrees. Therein Cole made known his desire to have an end to the proceedings. He proposed that both parties agree to submit to the determination of Lord Commissioner Fiennes, sitting alone in Chancery without his colleague

Lisle. Cole and Rodney would both be bound by Fiennes's decision. If Rodney would not signify his acceptance of the proposed reference to Fiennes but put Cole to any further trouble or attendance in the case, then Cole would withdraw his offer and be at liberty to adhere to the former decrees of the court. Upon motion in open court, the Chancery confirmed Cole's offer.[51]

This was a magnanimous offer by Cole and precluded any conflict of interest involving Cole and Lord Commissioner Lisle. On the other hand, should Rodney have accepted the proposal and Fiennes decided against him, it would not have stood him well in appealing to the Parliament, for he could not claim or infer any influence by Lisle. No doubt Rodney saw the possibilities here, or perhaps he had had enough of the Chancery and decided to pursue his cause in a higher tribunal. When the Parliament met in the autumn of 1656, Rodney was there with his private petition.

Parliament referred his petition to a committee of the House, chaired by Mr. Pedley, which met in the Painted Chamber of Westminster Hall. At one of the meetings, 22 November 1656, Lisle and Whitelocke had a verbal clash over responsibility for the decree and the manner in which it was obtained. The argument was short and they controlled themselves as the diarist Burton, reported: ". . . but they being both wise men, and deeply concerned in the business, suppressed their passion with an altum silentium."[52]

It will be recalled that Whitelocke, although no longer one of the lords commissioners since June 1655, had been pre-

sent as one of the judges in the original decrees. Whitelocke sat in the 1656 Parliament and even substituted as Speaker when Sir Thomas Widdrington was ill. One can imagine that Whitelocke hardly felt a duty in defending Lisle, who had retained his place at the seals, while Whitelocke suffered an ignominious dismissal. Why should he accept a share in the blame and damage his reputation in Parliament, especially as Lisle had been particularly named in the petition for collusion.

The committee met again, 10 December 1656, and Burton has reported their deliberations at length. He wrote that Lisle was hard put to justify himself in the charge levelled at both him and former Lord Commissioner Keble. Rodney's case was reviewed by the committee, and they found that Lisle and Keble overruled Whitelocke's dissenting opinion. Lord Chief Justice Glyn, Lenthall, Master of the Rolls, and Lisle's colleague, Fiennes, endeavored to persuade the committee that Lisle and Keble only ruled as they had because Cole misinformed them concerning the broken seal of the statute. Colonels Sydenham, White, and Clarke, members of the committee, encouraged the idea that their conduct was a personal miscarriage of justice. The opinion of all the lawyers and Chief Justice Glyn was that, if <u>any</u> wax remained on the seal, it was a good seal. The clerk of the statutes said there had been no wax; therefore, the statute was void. Furthermore, Chancery could only decree money due in arrears; they could not compel a party to renew a statute. All statutes that are

intact must be served before those with even slightly defaced seals.[53]

Lisle and Fiennes immediately rejoined that the judges were in error, because the statute with the earliest date, even if slightly defaced, must be served before all others. There was no difference, they stated, between a defaced statute and one cancelled without any trace of wax. In fact, Churchill, Cole's counsel, gave several precedents where Chancery ordered the certification of defaced statutes. Fiennes stated that lately the Petty Bag received a statute with the seal intact but the parchment turned to jelly. He added that what the lords commissioners did in those cases, they did ministerially not judicially. On these points, the committee and the lords commissioners disagreed, even on the precedents applied.[54] The committee was determined to exact retribution from the lords commissioners.

Three days later, 13 December, the committee returned to the Painted Chamber and Rodney's petition. At this meeting, there was, as Burton reported, a violent quarrel between Lisle and Whitelocke over where blame lay for the original decision in Cole v. Rodney. Keble did not attend these sessions, which suggests he must have died by 1656. Burton wrote that Lisle accused Whitelocke on several points for consenting to the decree. However, Whitelocke managed to answer to the committee's satisfaction. Lisle resorted to angry words, wrote Burton, but Whitelocke remained moderate in his replies. Lisle then left the chamber while the committee debated. Lenthall tried to convince the committee to compromise:

relieve Rodney and clear the lords commissioners, for the error was due only to Cole's misinformation. The committee turned to Cole's attorney for evidence on whether the seal of the statute had any wax and whether he and another lawyer had not tampered with the seal, by adding new wax. Another witness, Mr. Mason, a member of the Parliament, swore that the lawyers had tampered with the seal.[55]

The case as presented to the committee of the House was an appeal by Rodney against the decree in Cole v. Rodney, the certifying and extending of the claim of Cole against Rodney for the sum of money owed.[56] We do not have all the deliberations of this committee, but from what we have, it is obvious that the committee was not favorably impressed by the arguments of the lords commissioners or the Master of the Rolls. The committee resolved that the order of Chancery extending Cole's claim was irregularly obtained. Lands extended under the order were to be returned and the court must see that carried out. Cole must pay all Rodney's costs in Chancery. The decree in Rodney v. Cole had been surreptiously obtained and was set aside. The sheriff's sale to Cole of Rodney's property was fraudulent and void.[57] In all these particulars, the whole House concurred, 5 January 1657.[58]

The debate of the House on the committee's report is also reported by Burton in his diary. Colonel Sydenham of the Protector's Council introduced the issue before the whole House and requested that it be heard to do justice upon it for the honor of the House. Major-General Goffe

desired the petition be heard as a public and not a private matter for redressing grievances in the courts. Lord Strickland and Luke Robinson of the Protector's Council spoke for hearing the report as private business as it was a particular grievance.[59] From the support given the petition by the councillors, the Protector must have been anxious to dispose of the case. The House then resolved to hear the committee's report, which was duly read and approved by the House.[60] The House could not resolve the question of payment of the £200 owing on Rodney's principal debt. Evidence on Rodney's payment of the balance of the £520 originally owed was "suppository and supplemental with the House unsatisfied."[61]

The members of the House who were generally in opposition to the Protectorate form of government then made their move. Colonel John White spoke first.

> I shall willingly agree to wave the debate and question upon the £200 whether paid or not, because the House seems unsatisfied in it; but I cannot be of opinion that the judges have done their duty in this business, or that it is only error in judgment, and not of affection or corruption.[62]

Colonel White was unwilling to let the matter drop with reparation to the grieved party. The lords commissioners must undergo an enquiry into the propriety of their actions. In this he was supported by Lambert Godfrey and Mr. Moody. For the honor of the lords commissioners accused and the justice of the House, the judges must either be vindicated or punished. The committee had failed to make a judgment on that point.[63] It must be pointed out here that both Colonel White and Godfrey were well known anti-government members. White had by 1658, become an ardent opponent of Cromwell's regime and was

arrested in that year for being implicated in an anti-Protectorate propaganda campaign.[64] Godfrey was more interested in establishing the supremacy of Parliament over the Council and Protector.[65] Rodney v. Cole afforded an excellent opportunity to assert parliamentary supremacy over the courts and the Council of State.

Viscount Lisle, Luke Robinson, and Sir Gilbert Pickering, all councillors, came to the aid of the lords commissioners by advocating that the issue of their conduct be referred to the committee already charged with the business rather than to proceed with the debate in the House. Even Speaker Widdrington, whom it must be recalled was an attorney for Cole in 1650, was anxious that the House not engage in an inquisition on the intentions of the court of Chancery.[66] Colonel Sydenham, the councillor who originally brought the matter before the House, reversed his earlier position, and opposed any examination of the lords commissioners' intentions. He said that Rodney had been redressed and had not complained of the lords commissioners, but of Cole. Unless Rodney, himself, should accuse the judges, the House should go no further.

> If you go further, you will but lay a heavy prejudice upon those that have faithfully served you, or otherwise heavily reflect upon yourselves, which must be the issue one way or other.
>
> If you refer it to a Committee, I hope the Commissioners will take care to see the votes put in execution, and the party repaired. He desires not that any should be punished. I would have you proceed no further in it.[67]

The speakers in the debate were quite evidently divided between the government forces and those disposed to Parlia-

ment's supremacy and autonomy. The latter group did not forbear after Sydenham's speech against further enquiry. They merely shifted their approach somewhat. Major-General Boteler, Colonel Bampfield, and Colonel Matthews spoke for proceeding with the enquiry for the "honor of the lords commissioners, for their vindication." Colonel Whatham especially wanted Whitelocke cleared, and Colonel Matthews wanted the whole business heard at the bar of the House.[68] Lenthall, Master of the Rolls, said "I would not have you further enquire into the business. The party is relieved. He, I believe, desires no person's punishment."[69] Lenthall, of course, was one of the judges involved, having made the original decree in Rodney v. Cole. Any wholescale investigation of the Chancery could lead to his dismissal. Some speakers continued to be against carrying the matter further, others wanted the charge of corruption heard at the bar, especially Colonel Briscoe, who stated, "One of the judges [Lisle no doubt] is particularly charged in the remonstrance, and it imports your honour to enquire into it."[70]

To the suggestion that the implicated judges be required to appear at the bar and vindicate themselves, Speaker Widdrington delivered a sound rebuke. No one was coming to the bar of the House. Without a charge such procedure was out of the question, and even with a charge a member would first answer in his seat, later at the bar if necessary. The rule in such cases was elaborated by John Bond, one of the masters of Chancery.[71] According to Burton, the debate continued for sometime but with the House coming to no deci-

sion before adjournment.[72] After the House voted to satisfy Rodney, the main purpose of several members was to impugn the character of Lisle enough to cause his resignation or dismissal from the court.[73] Although Whitelocke was involved, he seems to have had more friends (or fewer enemies) among the anti-Protectorate forces of the 1656 Parliament.

Rodney v. Cole reappeared in Parliament within four months. On 26 May 1657, Burton recorded, the motion of Mr. Highland for Parliament to receive Rodney's petition to have the former resolutions of Parliament confirmed by an act of that body. Cole seems to have successfully avoided returning the full value of Rodney's property. The value had been set at £1,000, but the property given him by Cole was in Spain, unavailable to him; the remainder was worth only £100. The House referred the petition to the same committee as sat in January.[74] Rodney probably made good his claim with Parliament but failed in the execution, for again in February 1659, he petitioned Parliament's committee of grievances, headed by Colonel Terrill.[75] Quite obviously, Rodney was no match for Cole's ability to avoid compliance. Most likely Rodney never received full compensation, that is, if Sarah Rodney's petition is accepted as factual.

Lisle escaped any punishment and the case was dead. However, this does not mean that Cole v. Rodney and its counterpart had made no impression upon Lisle, nor does it infer that he had no feelings on the ramifications possible from such slip-shod procedure in Chancery. Far from it. He had come close to being labelled corrupt through the exi-

gencies of faulty procedures. Perhaps it was that which occasioned his remarks written in 1659 after dismissal from the bench.

> Rodney v. Cole. nota the order de Chancery to the Clarke de Statutes to certify that Statute the Seale being broken, occasioned great suites both att law Chancery, Parliament, upon References from lord Protector etc: Therefore I judge it the best way, when any petitions the Chancery, sur petition et affidavit that the Seale is broke by accident, or lost, or burned, and therefore to gett the Chancery to order the Clarke de Statutes to certify the Sta:/tute/ it is better for the Chancery to direct the defendant to exhib:/it/ a bill upon the equity of the accident, and thereupon the court can give him relief if he proves the equity, rather than to order the clarke to certify the Statute, for that doth enable a man to a suite in law by an order in equity meerly upon an affidavit, and doth make an affidavit to be as strong as a recognisance, and if this be ever fitt to be donne it is not fitt to be donne untill at least answer defend:/ant/ or bill exhibited confessing it or sur hearing proving it, but not sur petition et affidavit.[76]

Furthermore, Lisle never accepted the accusation that the court had done a wrong in Cole v. Rodney. In an entry of the "Abridgements," entitled the "Court can do no Wrong," Lisle linked the case with the following remarks for Prettiman v. Barney in 1651.

> When a wrong donne to defend:/ant/ by an order obtayned by pl:/aintiff/ The court shall not be said to do wrong because it is hereby in the courts power to make him that procured the order to make defend:/ant/ satisfaction.
>
> Whatsoever act the court doth do judicially out of that act does arise a power to make satisfaction for any wrong or injury done by that act.[77]

In assessing the cases of Cole v. Rodney and Rodney v. Cole, several points must be considered. First, did Lisle have a tendency toward corrupt practices in office? The known and suspected instances of Lisle's influence used for his friends and relatives have been presented. The question

is do those examples establish a disposition which would lead a judge, even of the seventeenth century to indulge in unfair practices in his own court when a close relative was a litigant? Frankly speaking, they might. However, in fairness to Lisle it must be reiterated that Cole v. Rodney was the only known case of corruption in office charged against Lisle. One such case does not brand him. Most of Lisle's contemporaries were loathe to examine the intentions of a high judge in his judicial decisions. To find a judge in error was a recognized judicial function of Parliament, but to question his intentions was another thing again. The examples of Lisle's influence were all drawn from his role as a politician and administrator, not as a judge. As a judge there is only the one charge of corruption. And that case must be considered not proven.

Lisle never gave even a hint in his notes on the case of Cole v. Rodney that he was accused of corruption. He must have realized that it was the procedure of Chancery in cases of damaged seals which caused him so much trouble in 1656. He certainly found it was the defect in Chancery procedure which caused the case to occasion so many appeals and references. In Lisle's notes on the case we can see that it did have an impact on him. After his leaving the Chancery in 1659, he reflected upon the case enough to write down where the problem arose and how it should be corrected. Lisle was not indisposed to change in Chancery when it proved necessary.

NOTES

[1]Bowring, "Secret Transactions," in Miscellanies, p. 146. Powell, Navy in Civil War, pp. 152 and 157.

[2]Naval Record Society Publications, Vol. 17: First Dutch War, II, 106.

[3]Ibid., II, 117.

[4]Ibid., II, 371-72.

[5]Ibid., II, 288.

[6]Oglander Notebook, p. 83.

[7]Lisle to Henry Cromwell, 5 June 1657, B.M., Lansdowne Mss., #822, f. 81.

[8]Squibb, Wiltshire Pedigrees, p. 194.

[9]Commons Journal, IV, 300 and 323-24.

[10]Burton, Parliamentary Diary, I, 194.

[11]Ibid., I, 287 and 290-91. Firth, Last Years of Protectorate, I, 20.

[12]Oglander Notebook, pp. 123-25. CSPD, Charles I (1645-1647), XXI, 288.

[13]Oglander Notebook,

[14]HMC, 13th Rep., Duke of Portland Papers, I, 589.

[15]See above p. 48.

[16]Bowring, "Secret Transactions," in Miscellanies, p. 138.

[17]CSPD, Commonwealth (1649-1660), IV, 173, 180 and 182.

[18]Ibid., IV, 234.

[19]Ibid., IV, 162.

[20]Ibid., IV, 162.

[21]Ibid., IV, 161-2 and 539.

[22]Cole v. Rodney (1649).

[23]26 July 1660. HMC, 7th Rep., p. 122. Lords Journal, XI, 40.

[24]Lords Journal, XI, 40. Rodney v. Cole (1653), P.R.O., Minutes of Chancery, C37/10, f. 29v.

[25]Lords Journal, XI, 40.

[26]Commons Journal, VII, 478.

[27]Ibid., VII, 478.

[28]Cole v. Rodney, P.R.O., Petty Bag Office, Brevia Regia (Trinity 1649), C202/34. This collection is for Statutes and Recognizances actions upon scire facias.

[29]Cole v. Rodney (1649), Lisle MS., f. 133r.

[30]Ibid., f. 133r. P.R.O., Minutes of Chancery (21 January 1650), C37/2, f. 5v.

[31]Cole v. Rodney (1649), Lisle MS., f. 133r.

[32]Ibid., f. 133r.

[33]Ibid., f. 133r. Cole v. Rodney (1650), P.R.O., Petty Bag Office, Brevia Regia (1650), C202/24. Writ of exception filed by defendant.

[34]Cole v. Rodney (21 January 1650), P.R.O., Minutes of Chancery, C37/2, f. 5v.

[35]February 1650, P.R.O., Minutes of Chancery, C37/2, f. 74r.

[36]Cole v. Rodney, Lisle MS., f. 133r.

[37]Harrington v. Roberts , Ibid., f. 133v. Gwillin v. Moore (1658), Ibid., f. 434v.

[38]Cole v. Rodney, Ibid., f. 245r.

[39]The argument between Lisle and Whitelocke before the parliamentary committee in 1656 indicates that it was probably a full court that heard the case in 1650. There is also evidence in a passage in Lisle's "Abridgements," chosen from a statement of Whitelocke's at some point in Cole v. Rodney, Lisle MS., f. 245r.

[40]P.R.O., Petty Bag Office, Brevia Regia (Michaelmas 1650), C202/34.

[41]P.R.O., Register's Entry Books (1655B), C33/206, f. 869r. 16 June 1653, P.R.O., Minutes of Chancery, C37/10, f. 29v.

[42]Rodney v. Cole (1655), Lisle MS., f. 221v. Commons Journal, VII, 479.

[43]Cole v. Rodney (1649), Lisle MS., f. 245r.

[44]Cole v. Rodney (1649), Ibid., f. 245r.

[45]Rodney v. Cole (1653), Ibid., f. 346r.

[46]Rodney v. Cole (1656), P.R.O., Register's Entry Books (1655B), C33/206, f. 869r.

[47]Rodney v. Cole (1653), P.R.O., Minutes of Chancery, C37/10, f. 29v.

[48]Rodney v. Cole (1654), Lisle MS., f. 346r.

[49]Rodney v. Cole (1655), Ibid., f. 221v. Rodney v. Cole (1655), Ibid., f. 153v.

[50]Rodney v. Cole (1655), Ibid., ff. 221v and 153v.

[51]Rodney v. Cole (1656), P.R.O., Register's Entry Books (1655B), C33/206, f. 869r.

[52]Burton, Parliamentary Diary, I, 19. Clarke Papers, Camden Society, III, 85.

[53]Burton, Parliamentary Diary, I, 105-06.

[54]Ibid., I, 106.

[55]Ibid., I, 135-36.

[56]Commons Journal, VII, 478.

[57]Ibid., VII, 479.

[58]Ibid., VII, 479.

[59]Burton, Parliamentary Diary, I, 300.

[60]Ibid., I, 300-01.

[61]Ibid., I, 300.

[62]Ibid., I, 301.

[63]Ibid., I, 301-02.

[64]Firth, Last Years of Protectorate, II, 35. Colonel John White was arrested 5 January 1657, with other leaders of the Fifth Monarchy and Anabaptists for seditions and commotions in London. White was a Republican and had engaged in circulating seditious literature against the Protectorate. Firth, Last Years of Protectorate, II, 35.

[65]Ibid., I, 20. Godfrey was active with Alexander Thistlethwaite in attempting the reseating of the excluded members in 1656. Ibid., I, 20. Lambert Godfrey was one of the most outspoken members of the 1656 Parliament against the policies of the Council. He also openly opposed the trial of James Naylor in 1656 and the power of the Protector to nominate "lords" to the "other house" in 1657. Ibid., I, 20 and 102; II, 8.

[66]Burton, Parliamentary Diary, I, 302.

[67]Ibid., I, 302-03. [68]Ibid., I, 303.

[69]Ibid., I, 303. It is worth note that Lenthall as Master of the Rolls, sat in the case of his brother against Child in 1654, although he was aissisted by Justice Atkyns. Even so, the Master of the Rolls and another master overruled Atkyns on an injunction against Child, and allowed it to stand. Lenthall (John) v. Child (1654), Lisle MS., f. 205r.

[70]Burton, Parliamentary Diary, I, 304.

[71]Ibid., I, 304.

[72]Ibid., I, 304. Clarke Papers, Camden Society, III, 85.

[73]Clarke Papers, Camden Society, III, 85.

[74]Burton, Parliamentary Diary, II, 130-31.

[75]Ibid., III, 306.

[76]Rodney v. Cole, Lisle MS., f. 134r.

[77]Ibid., f. 245r.

CHAPTER X

THE LORDS COMMISSIONERS AND CHANCERY REFORM

Reform of the law and the courts has been the subject of most interest in seventeenth century English legal history. Stuart Prall and Donald Veall have recently devoted their efforts to the reform movements of the Interregnum. The proliferation of reform pamphlets on law and the courts from 1645 to 1660 made possible a thorough understanding of the leading problems and solutions. They have been adequately examined by both the contemporary pamphleteers and the historians who have utilized that literature in their works. What has been neglected in the works on the reform movement during the Interregnum is an adequate treatment of the participation of the chief officers of the central courts in reform.

Great upheavals in society, such as the English civil wars, usually give an impetus to reform. However, civil war can equally provoke a conservative reaction toward reform through the search by the participants to reestablish the lost rights and liberties of former times. Law reform of the Interregnum was possibly hindered by just that tendency among lawyers. The common lawyers, who in 1640 aided

the cause of Parliament because they felt the pressure of changing times with the rise of the prerogative courts and legislation by proclamation, sought the reestablishment of the law and the courts as they had once been, before the advent of the Tudors. These men, or most of them, possessed no great reforming zeal. The common law found in the writings of Coke was their ideal. When the clash of arms in the first civil war was over, they had accomplished all they wanted. The Star Chamber and High Commission were gone; the regional prerogative courts were gone. The threat to centralized administration of justice in Westminster was gone. The common lawyers and their ancient institutions in Westminster were safe again.

However, the reforming zeal of some lawyers and of most dissident groups, such as the army, was not gone; in fact, it became greater as the Interregnum approached. The common lawyers found themselves in a dilemma. If they cooperated with the reformers, all they had fought for would be lost. If they failed to aid in the reforms, they could lose all anyway. Many groups demanded the complete abolition of the old forms common law and equity. That was certainly not what the lawyers desired as the fruits of the civil wars. Therein was the origin of their intransigence on the question of law reform. Nevertheless, there were some lawyers, such as Lisle, who were not completely committed to the ideal of the law as Coke wrote it. Lisle had never developed the deep seated distaste of courts "prerogative," but only for those controlled by the Stuarts. In Lisle's acceptance of

the necessity of "prerogative" courts (advanced thought for a seventeenth century lawyer), we can detect a willingness, not shared by many of his colleagues, to experiment with reform.

It is not difficult for one even slightly acquainted with the legal history of the seventeenth century that all was not well with the Court of Chancery; it was in need of reform. One only needs remember the humiliation of Sir Francis Bacon or read the steady stream of Chancery rules from Nicholas Bacon in the sixteenth century to those issued by the lords commissioners in 1649, to know that something was wrong in Chancery. When one finds the same orders against abuses by succeeding Chancellors, seemingly with no effect, how deeply rooted must those abuses have been? When the Lord Chancellor could be dismissed for bribery, how corrupt must the activities of other Chancery officers have been?

The charges levelled against Chancery in the early seventeenth century were the same as those of the nineteenth century. When George Norburie wrote in the reign of James I of the straining of Chancery authority beyond its jurisdiction, of impunity of some litigious persons, of the dilatory proceedings, of the inequity of most references to the masters, he could easily have been writing in 1650 or 1830.[1] The hearings of the Parliamentary Commission in the 1830's,[2] and the Dickensian Chancery case of Jarndyce v. Jarndyce in Bleak House (1853),[3] confirm the intransigence of Chancery toward reform. One would expect that reformers would have

taken their one opportunity in 300 years, to revamp the legal system. Indeed, some did try, and were not successful. Were all the lawyers and judges so opposed to change in their institutions? Did they fail to recognize that there were inadequacies in the Chancery? Was the Chancery entirely immune to change, even from 1649 to 1660?

In 1640, Lisle had been as opposed to the prerogative courts as any other lawyer. He took an active role in the elimination of the Star Chamber.[4] Chancery, too, was considered a "prerogative" court since its foundation was in the King's personal authority to do justice to all his subjects. However, the Chancery survived while the other two mainstays of prerogative justice did not. This survival was in spite of petitions to Parliament in 1640-1641, calling attention to several abuses (forever recurrent) of the Chancery and offering remedies for them.[5] Perhaps Parliament, once Star Chamber and High Commission were removed, lost zeal for reform. Perhaps they dared not tread too heavily upon the vested interests of their lawyer colleagues. Perhaps the civil wars after 1642 were of greater urgency than law reform. Nevertheless, no further action was taken concerning Chancery reform until after 1649. Even when Chancery returned to regular sessions in 1648, the primary concern was to diminish the backlog of cases pending, not reform.[6]

The founding of the Commonwealth in 1649 brought a renewed demand for reform of the law, especially of the Chancery and equity. The Commonwealth government did not shrink

from enquiry into matters concerning the law and the courts. In October 1649, Whitelocke, Lisle, Widdrington, the attorney general, the solicitor general, and Roger Hill, all lawyers and some judges, were directed by Parliament to give constant attendance to the committee for regulation of proceedings in law, which met every Friday.[7] Lawyers and judges were at least lending their assistance to a review of legal problems. In fact, the following month, Whitelocke and Lisle prepared the bill for Parliament which required all law and court proceedings to be in the English language.[8] This reform was more applicable to the common law courts, because Chancery business was always conducted in English. Furthermore, Lisle and Whitelocke appeared with other judges on Council of State committees in 1650 and 1651, for complaints and questions concerning the law.[9]

Pamphleteers kept up the pressure for reform, especially in Chancery, but some recognized, as did the author of Proposals concerning Chancery (1650), that Chancery was a necessary adjunct to the law.[10] The author of this particular work was probably a Chancery clerk, and he presented a reform of Chancery from within the court, which would maintain the principles of that court. The one successful attempt at reform of Chancery in 1655 incorporated many of those changes advocated in the Proposals.

Until 1968, one of the most frequently overlooked attempts at reform was the Parliamentary Commission for Law Reform of 1651-1652.[11] While the names of the commission members were known, it was assumed that they were only radicals dedicated

to the destruction of the law and its institutions.[12] However, several were prominent lawyers; especially notable were the chairman, Matthew Hale, John Rushworth, John Sadler, Richard Steele, and John Fountayne. The origin of the Hale Commission, as it has come to be called for its chairman, lay in the failure of the parliamentary committee to force reforms through the Parliament after two years of Commonwealth government. None of the commissioners were members of Parliament, but they were instructed to cooperate with the parliamentary committee for the consideration of inconveniences, delays, charges, and irregularities in the law and the courts.[13]

This commission sat from 30 January 1652 until 23 July 1652, three times a week, and produced sixteen bills, which were a fairly comprehensive system of reform for the judicial system.[14] None of these bills ever became statutes. It has been offered that the reform bills failed because of the animosity of the lawyer members of Parliament. While it may have been true of some, it was not true of the lawyers and judges who worked with the Hale Commission in advising them and drafting their bills for Parliament. Lisle and Whitelocke, both judges in the court which received the most scathing attacks from reformers, were members of the parliamentary committee and frequently aided the Hale Commission. It was Lisle who reported the list of names for appointment to the commission to the House and proposed the Lords House as their special chamber.[15] As Lisle was apparently managing the business of the parliamentary committee, he had considerable

influence in determining the membership of the commission; he would hardly have nominated those directly opposed to wishes of the lords commissioners in Chancery.

Serjeant John Fountayne investigated the proceedings of Chancery to discover just how costly a suit in that court would normally be.[16] The Chancery clerks and examiners promptly produced records in two days,[17] and the cursitors on 6 February.[18] Fountayne did not go softly with the court. Although he had been a practicing Chancery lawyer since 1629, the Rump had forbidden him to practice because of his comments on their failure to implement reforms of the legal system. The restrictions were removed when he became a member of the Hale Commission. Appearing in his first case after their removal, Fountayne proceeded to affront the court by "upbrayding them how easily they did grant injunctions, that any that asked might have them . . . ."[19] Lisle informs us that the court took little notice of the affrontery in open court. The lords commissioners did not wish to jeopardize his place on the Hale Commission by citing him for contempt, "but the court in regard he had bene imployed by the Parlement as a chief regulator, and now by that power, did give him liberty, without much sharpe language."[20]

Whitelocke and Lisle worked with the Hale Commission from the beginning but even more closely after the commission decided in March 1652 to meet with the parliamentary committee every Thursday at two o'clock.[21] The lords commissioners must have acted as a liaison between the commission and the parliamentary committee for they cleared commission bills

to the House?[22] They even drafted an act which represented one of the most important topics discussed in the Hale Commission, the institution of county registries for legal executions, wills and testaments, Chancery decrees, deeds, titles, and statutes staple and recognizances.[23] Such an act represented a considerable dimunition of Chancery business at least on the Petty Bag side, which was the enrollment or registering office of Chancery.[24] The support of the lords commissioners for the legislation pf the Hale Commission does not demonstrate antipathy to the cause of reform.

On 31 March 1652, the Hale Commission proceeded to the topic of Chancery reform. They entered in the record that there were two ways for considering the problem of Chancery: from the problem of process and from the problem of jurisdiction.[25] There followed almost two weeks of investigation of Chancery procedures. At the outset of its enquiry, the commission on 2 April, sent Fountayne, Hugh Peters, Sir Henry Blount, and Sir Anthony Ashley Cooper to confer with the lords commissioners.[26] Their purpose was to sound the opinion of the Chancery judges, "concerning the whole proceedings in Chancery."[27] Had the lords commissioners actively opposed the work of the Hale Commission, these men certainly would not have sought the consultation of the opposition.

Most of the topics brought before the commission were familiar to all, the proliferation of fees, the costly charges, and the exercise of office by deputy. Mention of these abuses in Chancery in Lisle's "Abridgements" indicates that he was not ignorant of them, nor that he was opposed to their rec-

tification.[28] Lisle was also concerned enough about the ills of Chancery to search out the views of his predecessors, especially Bacon's, on the subject.[29] He even proposed some original ideas on reform. A major problem in Chancery, wrote Lisle, was the low cost to the plaintiff should he lose a case. If Chancery followed the common law example of higher costs to the plaintiff, many unnecessary suits could be prevented.[30]

The complaint against the expanding jurisdiction of Chancery occupied much of the commission's time. A backlog of cases caused by a litigious society and a rigid common law caused the jurisdiction of Chancery to expand and yet fail to meet the needs of suitors. In the 1640's, the prerogative and ecclesiasitical courts were swept away.[31] The Court of Admiralty was under attack. Provincial courts, such as Duchy Chamber, Council of the North and Welsh Marches, County Palatine of Chester, and the Cinque Ports, which also heard cases in equity, were eliminated or restricted, but not replaced. Consequently suitors in outlying provinces were obliged to seek equity in Chancery at Westminster. After 1649, there were cries from the North and Welsh borders, that the price of centralization of justice was often no justice.

Lawyers and judges before the 1640's had often connived at increasing the traffic through their courts at the expense of other courts. It is also true that there were complaints from 1649 to 1660 against the increasing jurisdiction of Chancery and that this was due to the avarice of the judges

there. However, examination of some cases after 1649 does not show that the lords commissioners always favored the expanding jurisdiction of Chancery. Centralization of justice was a subject which the Hale Commission avoided. On three occasions it was brought before the commission. On 18 February 1652, centralization was cited as a hindrance to speedy justice.[32] On 12 March, there was a formal attempt to introduce consideration of the jurisdiction of the counties palatine. The Hale Commission decided it was not competent in the matter.[33] On 31 March, the commission discussed the inconvenience caused in judicature by the removal of the regional jurisdictions.[34] Nothing came of this discussion. Perhaps one reason for the commission's failure to take cognizance of the regional jurisdictions was Hale's known antipathy to decentralization of justice; Hale was not alone in this attitude.[35]

The question of Chancery's jurisdiction in Wales, the old provincial courts, and the counties palatine began in 1648, when appeals gradually made their way to Westminster.[36] For Wales, the Chancery was reluctant to extend its jurisdiction there other than for appeals, even on the basis of the Act of Union, 27 Henry VIII.[37] The lords commissioners recognized the jurisdiction in equity of the Liberty of the Cinque Ports but were cautious of claims of privilege by defendants living in those five towns.[38]

The jurisdictions of the provincial courts of the North (York) and the Welsh Marches (Ludlow) presented a more dif-

ficult problem. Although the Hale Commission would not consider these jurisdictions, the agitation for their reconstitution continued. In 1654, the Lord Protector received a petition for the reestablishment of the Duchy Chamber.[39] General Lambert introduced a measure in the 1656 Parliament for the reintroduction of the jurisdiction of the Council pf the North at York.[40] Lisle did not oppose the jurisdiction in equity of the counties palatine of Chester and Durham but denied that of the regional councils. The court at York, Lisle held, existed by prescription only. Such courts of equity were not true courts at all; the courts of the counties palatine existed by the incidents ascribed to counties palatine. If there was a county palatine, there was a court of equity.[41] There is some indication that by 1659, the Protectorate allowed the counties palatine to resume their jurisdictions. Lisle recorded a case in which the plaintiff in Chancery sought execution there on a decree against a plaintiff in the court of Chester.[42]

It is quite clear that centralization of justice was almost a religion among the lawyers and judges of the seventeenth century.[43] While the lords commissioners were not averse to all minor jurisdictions in equity, even they regarded the trend toward centralized justice and the elimination of local courts as a positive good. There were those lawyers who continued to push for more courts, such as William Sheppard, who thought too many courts preferable to too few.[44] Nevertheless, centralization continued, with the Interregnum accelerating its course.

An example of expanding Chancery jurisdiction, reluctantly approved by the court was the accession of the former ecclesiastical jurisdiction. As early as 1649, we find Lord Commissioner Keble laying down the rule "That all laws ecclesiastical issued originally out of this Court [Chancery], and by the taking away the ecclesiasticall courts it was agayne devolved into the Chancery."[45] It seems likely from the number of original suits in Chancery from 1649 to 1659, for legacies, wills, and administrations that litigants willing accepted the new jurisdiction of Chancery in these areas. In answer to complaints against suits for legacies going to the Chancery rather than the Common Pleas, Lisle could write only from a negative standpoint: "I conceive the mayne reason why legacies are sued for in the Chancery is because there is noe remedy for them att court of law, for a right save a remedy is a good ground of equity."[46] Much of the problem of wills and legacies would have been solved had the Hale Commission's plan for county registers been adopted.

Chancery also inherited questions of divorce and alimony from the ecclesiastical courts. In June 1649, Parliament adopted a law which made Chancery responsible for cases of divorce and alimony,[47] a jurisdiction it did attempt to exercise, but ineffectively. The Hale Commission proposed to remove this jurisdiction to the Common Pleas,[48] a move that the lords commissioners could hardly have disapproved. Divorce, separation, and alimony cases were nearly always sensitive affairs. The notorious case of Ivy v. Ivy in 1654 is an excellent example.

Thomas Ivy's wife, Theodosia, was not exceptionally faithful, but she sued Ivy for alimony after an alleged desertion. The case followed the usual procedure, with Chancery awarding Theodosia Ivy £300 annually. The exasperated Ivy, who had only gone into the country, then petitioned the Lord Protector against the decree in Chancery. Cromwell referred it to the Master of the Rolls. Finally, Cromwell, in the presence of the lords commissioners and both parties, attempted a reconciliation, to no avail.[49] Ivy then published a diatribe against the Chancery and the lords commissioners, villifying them for their hand in his marital troubles. At one point, Ivy wrote,

> After these things were laid open to the Lords Commissioners for the great Seal; I little expected that Vices should be received for Reasons; that such abominations should have been thought worthy the protection, not to say the encouragement of such eminent Judges; . . . .[50]

In Lisle's report of a conference with Cromwell, 3 May 1654, we see that the lords commissioners wished to divest themselves of this obnoxious responsibility.

> This day my brother Witherington and I went to attend the lord Protector, in relation to the suites for allimony, and my brother Witherington pressed the protector much either to put the business of Allimony into the prerogative court being a matter of an ecclesiasticall matter, and ever used heretofor by the ecclesiasticall court and not suitable neither to the multiplicity of businesses nor to the dignity of the Chancery, or else to repeale the act for Allimony or att least to suspend it till next parlement. I sayd that suites for Allimony were lobked upon even as aggrevances in parlement, as they did express themselves in the former parlement in the case of Arthur Stavely, ...[51]

Further review of the alimony question was undertaken by Parliament in 1657, but the jurisdiction remained with the Chancery.[52]

The lords commissioners were also displeased with some others jurisdictions of Chancery. Lisle reported that complaints were made against "great obstructions" in Chancery on proceedings for charitable uses.[53] In 1652, the Hale Commission recognized the failure of complainants in charitable uses to acheive their ends in Chancery and proposed to place those actions under the Common Pleas for administration.[54] Cromwell discussed the problem with Lisle and Fiennes in 1655. At that time they informed him of the procedure in Chancery on charitable uses but added that they could not alter the course of the court. The complainants must make written request to the Council for the advice of the judges. Although the written statements were forthcoming, they were unacceptable to Cromwell and were not presented to the Council.[55]

Similarly, the proceedings in bankruptcy were inequitable for the debtor.[56] Commissions of bankruptcy out of Chancery were expensive and dilatory. Moreover, those proceedings were dangerous for the commissioners of bankruptcy and for the lords commissioners in Chancery. They could be sued if any creditor, a party to the suit, thought a decision to be wrongly given by the judges. Lisle wrote of one such instance:

> If the court proceeds to doe any ministeriall act as to order the suspending of a commission of bankruptcy /obtainable only by creditors/, an action upon the case lyes against the commissioners or keeper of the great seale.[57]

An action was brought in the Petty Bag against Lord Commissioner Keble as one of the lords commissioners who ordered the suspension of a commission of bankruptcy, obtained by the petitioners.[58] "This action was brought against my brother

Keble," wrote Lisle, "after he was turned out of his place, and brought only against him and yet my brother Whitlock and I joyned in the order."[59] Herein was the danger for a Chancery judge who acted precipitately in favor of a debtor.

Chancery escaped reformation by the Hale Commission through Cromwell's dissolution of the Rump. The Chancery was challenged again and more vindictively by the Nominated Parliament of 1653. Exasperated by the failure to achieve any reform of the courts, the radical members of the new Parliament undertook debates on Chancery lasting two days, after which it voted the abolition of Chancery, 5 August 1653.[60] The impending abolition was undoubtedly known to the lords commissioners for they sat in the Parliament of 1653. Pamphleteers also joined in the call for abolition of Chancery; it seemed as though the court's days were numbered.[61] However, in his timely dissolution of the Nominated Parliament, 12 December 1653, Cromwell was the protector of Chancery as well as other English institutions.[62] The Lord Protector then embarked upon his own reformation of Chancery.

When Cromwell began his reform of Chancery in the spring of 1654, the court had been reduced by the loss of Whitelocke since November 1653. He was ambassador to Sweden from November 1653 to July 1654. By April 1654, Cromwell had decided on his plan for Chancery reform. He summoned Lisle and Keble to Whitehall and directed them to surrender the great seal. Within two days, a new court, composed of Lisle, Widdrington, and Whitelocke, was announced by the Lord Protector.[63] Lisle and Widdrington could hardly have failed to anticipate the impending changes directed at Chancery. As early as February

1654, Secretary Thurloe wrote to Whitelocke in Sweden that some alterations in the personnel of the court were pending.[64] Some of Whitelocke's friends suspected that the changes were designed to eliminate him from the Chancery bench. They were reassured by Secretary Thurloe that the surrender of the seal was only Cromwell's way of beginning a general reformation of the laws and Chancery.[65] On 13 April Cromwell met with Lisle, Widdrington, Lenthall, Matthe Hale, Serjeant John Glyn, Serjeant William Windham, and Challoner Chute on the reformation of the Chancery.[66] Here then is evidence that the lords commissioners (except for Whitelocke) and the judges were privy to the reformation of the Chancery at its inception. In fact, the lords commissioners, the common law judges, and the lawyers bore the brunt of initial work on the reformation ordinance, sitting long hours at the Rolls for that purpose.[67]

It has been generally assumed that Cromwell's ordinance for the Chancery was made without the aid of the lords commissioners or the lawyers.[68] However, Lisle recorded an account of a meeting of the Committee for Reformation of the Chancery, 16 April 1654, on the question of a defendant's answer before a master of Chancery. Lisle, Widdrington, and Serjeant Glyn were three of those present at that meeting.[69] Furthermore, if one compares the Ordinance as finally promulgated, one finds that Article VIII closely resembled Glyn's proposal on masters of Chancery.[70]

It is unlikely that most of the judges and lawyers would have participated in the committee work after May 1654, because the summer assizes demanded their attendance. How-

ever, the lords commissioners were available for committee work, that is, if the work on the ordinance had not been completed before July 1654, when Whitelocke returned. If the ordinance was complete by 1 July 1654, that would account for Whitelocke's later complaint of having no part in constructing it.[71] The Protector's Council may have made finishing touches to the ordinance before they issued it, 22 August 1654.

Nevertheless, the Ordinance for Regulation was not put into effect when the Chancery began its Michaelmas Term in October 1654. The new Parliament, elected in the summer months immediately undertook a reconsideration of the ordinance. Committee meetings began again in November, and the ordinance was formally suspended by Parliament.[72] Although the membership of this committee is unknown, Colonel Nathaniel Fiennes, member of Parliament and member of the Protector's Council, was on the committee.[73] Lisle at least attended the meetings of the committee.[74] He reported the deliberations of one meeting of the parliamentary committee, 26 October 1654. At that time, the committee discussed the examination of witnesses by commissions in the country and resolved the problem similarly to that found in Article XIX of the ordinance.[75] The lords commissioners were not ignorant of the committees work, but the work of this committee ended with Cromwell's dissolution of Parliament in January 1655. The final reformation of the Chancery now fell to Cromwell and the Council.

It is assumed that the lords commissioners continued to suspend the ordinance from operation in Chancery proceedings

from January to April 1655.[76] It was a suspension of a sort, for the Chancery did not hold sessions from January to April. There are no Chancery cases for the Hillary and Lent terms 1655, nor are there any records of Chancery proceedings for those terms.[77] Perhaps the failure of the lords commissioners to hold sessions of the Chancery before April 1655, explains why Cromwell waited until the end of April to direct the lords commissioners to implement the ordinance at that time. Without sessions of the court there was no reason to force the issue. It has been observed that a "revised" ordinance was produced during these early months of 1655 by a non-lawyer committee of the Council; there are no copies of a "revised" ordinance, nor does any source mention one.[78] Cromwell merely waited until the opening of a new term for the Chancery, and then instructed the lords commissioners to accept the Ordinance for Regulation of the Chancery of August 1654.

On 23 April 1655, the Lord Protector and the Council sent an order to the lords commissioners that they were to proceed according to the ordinance.[79] Whitelocke said that the chairman of the Council's law reform committee (probably Fiennes) informed the lords commissioners that the ordinance was the product of "good delibeartion and advice," and Cromwell desired their compliance. If Whitelocke was not altering his original statements, then he was certainly stalling for time because he informed the chairman that they had not been consulted in the making of the ordinance and desired time to consider of it.[80] That document had been in circulation

since August 1654. The judges, including Lisle, Widdrington, and Lenthall, were consulted at least several times; Whitelocke was not.

The Council proceeded as if the lords commissioners would cooperate. On 26 April, the committee of the Council requested Cromwell to appoint six masters of Chancery as called for by the ordinance. Except for the three chief clerks named in the ordinance, the lords commissioners were responsible for the appointment of the new officers.[81] The lords commissioners had not as yet answered the Council. On 1 May, some of the officers had not been appointed, but the Council instructed the lords commissioners to proceed with Chancery business on all other points of the ordinance.[82] Still no answer from the lords commissioners, and the Council again requested their answer on 1 May. Pressed now, Whitelocke, Widdrington, and Lenthall wrote to the Council on 4 May, that they could not "in judgment and conscience" adhere to the ordinance.[83] There was no mention of Lisle, either for or against the ordinance.

All these proceedings are strangely silent about Lisle. The usual explanation given is that Lisle merely went along with the regulation because he was a time-server, willing to submit to Cromwell in all things.[84] There is a better explanation. When the Council first sent the ordinance to the lords commissioners on 23 April, Lisle was absent from Westminster. He probably did not return until 7 or 8 May. In March, Chief Justice Rolle and other judges were attacked by Royalists on the western circuit of the assizes. Lisle, Rolle, Justice

Windham, Recorder Steele, and Serjeant Glyn composed a special commission to try the Royalists.[85] Lisle was in Salisbury on 12 April when some of the rebels were tried, and the commission moved on to Exeter to try Penruddock and his accomplices.[86] Other trials were held at Chard and did not end until a few days before 8 May.[87] Lisle placed himself at Salisbury, Exeter, and Chard in an entry of the "Abridgement," where he gave an account of the trials before the commission at Salisbury, Exeter, and Chard in April 1655.[88] The Chancery Minutes show Lisle as absent from Chancery sessions until 7 May.[89] Therefore, he was not present for most of the controversy between the Council and the lords commissioners. When the Council issued its final order on 8 May for the lords commissioners to proceed on the ordinance, it was opportune for Lisle to abide by the regulation and to disavow any previous action taken by his brother lords commissioners. On 13 May, Whitelocke, Widdrington, and Lenthall again refused to implement the ordinance,[90] and the end of Whitsun Term, 25 May, brought an end to their tenure at the great seal. That Lisle had remained silent all through the controversy is evident, as commentators of the time predicted there would be a whole new court the next term.[91]

The Lord Protector required the great seal from the lords commissioners, 6 June 1655. When Trinity Term opened, 26 June, there were two commissioners, Lisle and Nathaniel Fiennes.[92] Authors writing on this aspect of the Interregnum have referred to them as Colonel Fiennes and Major Lisle, the

new military regime for the Chancery.[93] There is no substantiation for that charge. Fiennes had served in the civil wars as a colonel but had reappeared in public life only in 1654 as a member of the first elected Protectorate Parliament. Lisle was never a military man; however, both were old and trusted associates of Cromwell.

With Whitsun Term, Lisle and Fiennes opened the new term in Chancery, and Fiennes took the lead in proclaiming the reformed Chancery. He gave the reasons which induced Cromwell to adopt the regulation for Chancery, after which statement the ordinance was read in open court. All were exhorted to abide by the new rules, with the old fees and profits of the officers swept away.[94] Lenthall remained as the Master of the Rolls after recanting his opposition to the ordinance. The only people who seemed really dissatisfied were the ousted Chancery clerks, Whitelocke, Widdrington, and those who desired complete abolition of Chancery. Lisle never recorded why he adhered to the regulation, and his reasons were no doubt mixed. Retaining his place in Chancery was a probable personal motive, but there is no reason to believe him incapable of a willingness to experiment. Fiennes was understandably dedicated to the new regulation.

After initial implementation, the ordinance has been considered largely a dead letter for the rest of the Interregnum. However, Parliament extended it in 1656 to 29 April 1657 and then to 4 February 1658. In March 1658, the lords commissioners reconfirmed the ordinances and the clauses pertaining to the fees of the chief clerks.[95] The court remained

firm against the complaints of displaced Chancery officers, who periodically lodged claims for their offices.[96] In March 1657, the lords commissioners found it necessary to issue an order, recorded by Lisle.

> . . . noe more or other fees be taken by any officer or minister of the Court of Chancery then have beene justly received during the 2 yeares last past. But without preiudice to the right of any person in relation to any fee that doth or may belong unto him by law.[97]

When the ordinance expired, 13 February 1658, the lords commissioners held a meeting with Lenthall, the attorney general, the solicitor general, and Serjeant John Maynard; they considered those rules which were fit to be published beyond the life of the ordinance. In the meantime, all proceedings in Chancery were ordered according to the regulation of 1654.[98]

Subsequently, the lords commissioners also met with Chief Justice Glyn on the question of fees in Chancery. Lisle and Fiennes were troubled about their control over fees after the expiration in 1658. Glyn was of the opinion that all judges, according to the examples of Chief Justice Rolle and Lord Chancellor Ellesmere, could regulate fees in their own courts. The lords commissioners had done so in 1649 when they disallowed some old fees in their Orders for Chancery.[99] As late in the Interregnum as January 1659, they were still fending off the claims of those damaged by the reforms of 1655.[100] All these examples of the lords commissioners' support for the ordinance should not lull one into imagining Lisle's blind obedience. Entries in the "Abridgements" indicate that he questioned several aspects of the ordinance.

Lisle preserved the 1655 objections of Whitelocke and Widdrington. These objections were: the substitution of a writ of attachment to the sheriff instead of process by commission of rebellion or sergeant at arms; the original process out of Chancery being an open subpoena; all causes heard in one day; references made to at least three masters of Chancery for an account; no relief in Chancery for suits on legacies and bonds for money; every cause set down and heard the following term after publication; and all rules of the ordinance had the force of law.[101] Lisle freely admitted that it ". . . was found by experience an inconvenience in taking away the serieant att armes and commiss:/ions/ of rebellion in process before hearing . . . ." As the attachment went only to the sheriff, it fell out that if the sheriff were a friend of the attached, the attachment went unserved.[102] With open subpoenas it was found that the chicanery predicted by Whitelocke for alterations in them before service came true.[103] On Whitelocke's complaint of rules of the ordinance being made laws, Lisle wrote the following:

> This /Rules made laws/ was thought very inconvenient in the Reformation of the Chancery made by the lord Protector and his Councell for there the very proceedings of the Court were made into Lawes and noe power given to the Court to dispense with rules in some particular cases and such rules as rules may be good, but if all cases be binding as lawes, it may be destructive to many a good case. As it may be a good rule that one should have but one commission in a case, but I have knowne it fall out that his sollicitor trusted with papers for executing this commission hath dyed the day before executed and soe the papers concerning the executing of it not to be found. If upon affidavit of this accident it should not be in the courts power to grant new commission, the plaintiff hath lost his case, for he can have noe prooff to make his equity appeare.[104]

Lisle also found fault with the ordinance stipulation that no bond or payment of money could be sued for in Chancery after 25 March 1655. For Lisle, the clause was too vague, open to interpretation.[105] By November 1655, Lisle was informed by Chief Clerk Maydwell that since executions could no longer be made out to the party but only to the sheriff, it was impossible to get execution of many decrees.[106] Even the process for appeals under the ordinance was not beyond interpretation as the first cases of appeal adequately demonstrated.[107] Generally, Lisle and Fiennes followed the rule Lisle set down in the "Abridgements" on the ambiguity of the ordinance. Concerned with how to "carry" himself on the ordinance, Lisle wrote:

> If the words of the regulation in the ordinance have a doubtfull meaning (especially if inconvenience to justice happens thereby) it is good to doe as the judges would formerly upon doubtfull clauses in lawes, goe into the parlement house and know their sence thereupon. Soe may the judges in Chancery apply themselves to the protector and councell who made the law, and till their interpretation, follow the former rules of justice to avoyd injustice. And to say they had beene asked, when they intended it thus, they would have sayd nemy (as if noe reliefe there upon a bond, if money all payd), but they intended it where money was not payd, for the words are upon a bond for payment of money, but here the money is all payd.[108]

The above examples demonstrate that Lisle had some objections to the regulation, several of them identical with Whitelocke and Widdrington's. However, it is safe to assume that on the whole he approved of the reform measure. The extensions which the lords commissioners made of the ordinance after its expiration, enforcing many of its provisions on fees, subpoenas, and other matters indicates their acceptance

of the regulation. Fiennes may have been responsible for those extensions, but we have Lisle's own admission that he generally approved of the ordinance. Under a heading in his "Abridgements" on the "Good of the Chancery Regulating Ordinance," Lisle referred to Sir Edward Coke's Magna Carta, where Coke wrote that anything aiding in prevention of delays in justice is a good thing. To this citation of Coke's, Lisle added that the ordinance did prevent delays of justice and was therefore a positive asset to the laws of England.[109]

NOTES

[1]George Norburie, "The Abuses and Remedies of Chancery," in Collectanea Juridica (1791), I, 430-47.

[2]Parliamentary Papers (1830-31), VIII, pt.1.

[3]Charles Dickens, Bleak House (1853).

[4]Commons Journal, II, 101.

[5]CSPD, Charles I (1640-41), XVII, 330-31.

[6]Whitelocke Papers, B.M., Add. Mss., #37344, f. 151v.

[7]Commons Journal, VI, 490-92.

[8]Ibid., VI, 500.

[9]CSPD, Commonwealth (1650), XIV, 18; (1651), XV, 67.

[10]Proposals Concerning the Chancery (London, 1650).

[11]Cotterell, "The Hale Commission, 1652," EHR, DXXXIII (1968), 689-704. Donald Veall, The Popular Movement for Law Reform, 1640-1660 (London, 1970). Minutes of the extra-Parliamentary Commission for Law Reform, 1652, B.M., Add. Mss., #35863. Prall, "Chancery Reform and the Puritan Revolution," American Journal of Legal History, VI (1962), 28-30. Prall does make use of the minutes, nor does he even consider the Hale Commission, only the Barebones Parliament and the Ordinance of 1654.

[12]See Prall, Agitation for Law Reform. Cotterell, "Hale Commission, 1652," EHR, DXXXIII (1968), 689-704, has given a fairly complete analysis of the commission. G. B. Nourse, "Law Reform under the Commonwealth and Protectorate," Law Quarterly Review, DXXV (1959), 512-29, has given a good overview of law reform from the pamphelt literature, but no analysis.

[13]Whitelocke, Memorials (1853), pp. 520-21.

[14]Veall, Movement for Law Reform, pp. 83-4.

[15]Commons Journal, VII, 58.

[16]2 February 1652, B.M., Add. Mss., #35863, f. 6r.

[17]Ibid., f. 8r.

[18]Ibid., f. 8v.

[19]Lisle MS., f. 90r.

[20]Ibid., f. 201r.

[21]26 March 1652, B.M., Add. Mss., #35863, f. 44r.

[22]Ibid., f. 11v.

[23]Ibid., passim. This project was one recommended by William Sheppard as late as 1656, see England's Balme (1656), pp. 115-26.

[24]Whitelocke, Lisle, Chief Baron Lane, Attorney General Prideaux and A. A. Cooper, "The Draught of an Act for a County Register," in Two Tracts on the Benefit of Registering Deeds in England (London, 1666).

[25]B.M., Add. Mss., #35863, f. 52r. One question of jurisdiction which the Hale Commission failed to consider was the merging of law and equity to be heard in any of the courts. This procedure was recommended at least three times in Sheppard's England's Balme (1656), pp. 21, 64, and 99. Nothing was done with this proposal until the nineteenth century Judicature Acts.

[26]B.M., Add. Mss., #35863, f. 53v.

[27]Ibid., f. 53v.

[28]Lisle MS., ff. 55r, 196r, 215r, 295v, 322r, 359r, 394r, and 431r.

[29]Bacon, Resuscitatio (1657), pp. 80-2, 84-5, and 85-6.

[30]Lisle MS., f. 297r.

[31]It can be seen from the cases in Lisle's "Abridgements" that the jurisdiction of the Court of Requests passed into the Chancery, but all old causes had to be heard again for execution. Burges v. Plucknett (1649) and Athooke v. Parker

(1655), Lisle MS., f. 165r. In 1656, William Sheppard called for a reestablishment of this court for the Protector to hear the causes of paupers, England's Balme (1656), p. 64.

[32]B.M., Add. Mss., #35863, f. 17v.

[33]Ibid., f. 30v. [34]Ibid., ff. 50r and 50v.

[35]Veall, Movement for Law Reform, p. 176.

[36]HMC, 7th Rep., p. 58.

[37]Lisle MS., ff. 364v, 402r, and 421r.

[38]Ibid., f. 228r.

[39]HMC, 14th Rep., Kenyon Papers, p. 65.

[40]Clarke Papers, Camden Society, III, 80-1.

[41]Lisle MS., f. 447r. Lisle took exception to Hobart's definition of Chancery as a court by prescription. Lisle maintained Chancery was a fundamental court, Ibid., f. 45r. Depositions taken in Council of the North were refused in Chancery, but the Court of Exchequer was a court of equity in some cases by statute, 33 Henry VIII, c. 39 and 21 James I, c. 25. Hunsden v. Countess of Arundell, Hobart, Reports 1658), p. 112.

[42]Anion v. Cole (1659), Lisle MS., f. 402v.

[43]Veall, Movement for Law Reform, p. 176.

[44]Sheppard, England's Balme (1656), p. 20.

[45]Lisle MS., f. 88r. For confirmation by the Council of State in 1655, see CSPD, Commonwealth (1649-1660), IX, 4. See also, Lisle MS., f. 236r.

[46]Lisle MS., f. 59r. In Brodegate v. Pearce (1655), Lisle gave the same opinion, Lisle MS., f. 88r.

[47]Ibid., f. 103r.

[48]Veall, Movement for Law Reform, p. 188.

[49]Ivy's Case (1654), Lisle MS., f. 346r. Another good example is Ashton v. Ashton (1650), Reports of Cases in Chancery (1693), I, 164.

[50]Thomas Ivie, Alimony Arraign'd . . . (London, 1654). It is probable that after Ivy's tract was published in 1654, Cromwell settled the case, but to what end is unknown. This is apparent from a statement by Lisle that he and Widdrington

in 1654 asked Cromwell to hear and determine the case of Ivy v. Ivy, in order that some end be made to the case. Obviously the court was at its wits end. Lisle MS., f. 103v. For the subsequent career of Lady Ivy, see Sir John C. Fox, ed., The Lady Ivie's Trial for Great Park of Shadwell in the County of Middlesex before the Lord Chief Justice Jeffreys in 1684 (Oxford, 1929), pp. xix-xlviii.

[51]Lisle MS., f. 103r.

[52]Commons Journal, VII, 481. William Sheppard, writing in England's Balme (1656), pp. 143-44, would have Chancery retain this jurisdiction but that the amount of alimony be determined by justices of the peace.

[53]Lisle MS., f. 52r.

[54]Veall, Movement for Law Reform, p. 188.

[55]Lisle MS., f. 52r.

[56]Veall, Movement for Law Reform, p. 14. See also Stephen v. Horbert, Lisle MS., f. 301v.

[57]Lisle MS., f. 376r. [58]Ibid., f. 376r.

[59]Ibid., f. 376r.

[60]Commons Journal, VII, 296. Whitelocke, Memorials (1853), p. 562. Parliamentary History, III, 1412.

[61]Considerations touching Chancery (London, 1653). Continuance of Chancery (London, 1654). Observations concerning Chancery (London, 1654).

[62]Commons Journal, VII, 286.

[63]Lisle to Whitelocke, 3 April 1654, Whitelocke Papers, B.M. Add. Mss., #37347, f. 197v. Keble was much put out over his exclusion and became ill over it. Cockaine to Whitelocke, 14 April 1654, Ibid., f. 200v.

[64]Thurloe to Whitelocke, 4 February 1654, Ibid., f. 5r.

[65]Cockaine to Whitelocke, 3 April 1654, Ibid., f. 197r. Eltonhead to Whitelocke, 14 April 1654, Ibid., f. 236r.

[66]Thurloe v. Whitelocke, 13 April 1654, Ibid., ff. 199r and 199v.

[67]Cockaine to Whitelocke, 14 April 1654, Ibid., f. 200v.

[68]Veall, Movement for Law Reform, pp. 180-81n. Campbell, Lord Chancellors, 1 ser., III, 58. Prall, Agitation for

Law Reform, p. 106. Veall bases his assumption on the pamphlet by Edward Leigh, Second Considerations concerning the High Court of Chancery (1658), wherein Leigh said the work of the lawyers on reform came to failure. The ordinance is also discussed in R. Robinson, "Anticipations under the Commonwealth of Changes in the Law," Select Essays in Anglo-American Legal History (New York, 1909), I, 467-91.

[69]Lisle MS., f. 343r.

[70]Ordinance Regulating the Chancery, 22 August 1654.

[71]Whitelocke, Memorials (1853), p. 608.

[72]Ibid., p. 608. Burton, Parliamentary Diary, I, 1.

[73]CSPD, Commonwealth (1649-1660), VIII, 153.

[74]Lisle MS., f. 377r. [75]Ibid., f. 377r.

[76]Veall, Movement for Law Reform, p. 182. Prall, Agitation for Law Reform, p. 113.

[77]Lisle gave no cases for these months in his "Abridgements". P.R.O., Minutes of Chancery, C37, contain no entries for those months. The Michaelmas Term 1654, ended as usual in December, C37/14; C37/15 is the minutes at the Rolls; C37/16 begins with May 1655. There are no minutes for January to April 1655.

[78]Prall, Agitation for Law Reform, p. 113. Veall, Movement for Law Reform, p. 182n. Prall, "Chancery Reform," AJLH, VI (1962), pp. 43-4, is in error because he follows Campbell too closely. See Campbell, Lord Chancellors, 1 ser., III, 58.

[79]CSPD, Commonwealth (1649-1660), VIII, 137.

[80]Whitelocke, Memorials (1853), p. 622. Whitelocke probably hoped that he could force Cromwell to change his mind by a show of intransigence.

[81]CSPD, Commonwealth (1649-1660), VIII, 144.

[82]Ibid., VIII, 148.

[83]Ibid., VIII, 152. Parkes, History of Chancery, pp. 169-70.

[84]Campbell, Lord Chancellors, 1 ser., III, 58.

[85]Clarke Papers, Camden Society, III, 35. Inderwick, Interregnum, pp. 188-89.

[86]Clarke Papers, Camden Society, III, 35.

[87]Ibid., III, 37-8. [88]Lisle MS., f. 454r.

[89]P.R.O., Minutes of Chancery, C37/16, f. 22v.

[90]Clarke Papers, Camden Society, III, 39.

[91]Ibid., II, 302 and 307.

[92]CSPD, Commonwealth (1649-1660), VIII, 153. Thurloe, State Papers, III, 570.

[93]Prall, Agitation for Law Reform, p. 114. Here again Prall has errored by following Campbell.

[94]Thurloe, State Papers, III, 570. For criticism of Whitelocke's refusal see, Kerly, History of Equity, pp. 160-63; Parkes, History of Chancery, p. 181; Wallis, "Constitutional Experiments," Nineteenth Century, XLVII (1900), 452; Campbell, Lord Chancellors, 1 ser., III, 60; Prall, Agitation for Law Reform, p. 114. For praise of Lisle for his willingness to experiment with the ordinance see, Inderwick, Interregnum, p. 227.

[95]Parkes, History of Chancery, pp. 168-72. See also debates in Chancery, about 1657-58, on Six Clerks Office, Lisle MS., ff. 85v and 321v.

[96]CSPD, Commonwealth (1649-1660), IX, 149 and 282. Lisle did not favor the union of the Affidavit Office and the Register's Office as the Ordinance directed. The two had been separate since Lord Ellesmere's reforms in the early seventeenth century. Lisle MS., f. 343v.

[97]Lisle MS., f. 295v.

[98]Ibid., f. 399v. It appears that Lisle wanted to return to allowing subpoenas before the filing of a bill of complaint. He drew the reader's attention to Nicholas Bacon's reason for allowing the procedure. See Proceedings of the High Court of Chancery (1651), p. 1, as cited in Lisle MS., f. 408v.

[99]Lisle MS., f. 295v.

[100]CSPD, Commonwealth (1649-1660), XII, 263.

[101]Lisle MS., f. 297v. [102]Ibid., f. 297v.

[103]Ibid., f. 298v. [104]Ibid., f. 374r.

[105]Ibid., ff. 98v and 222v. [106]Ibid., f. 405r.

[107]Earl of Kingston v. Earl of Oxford and Hollis v. Earl of Suffolk, Lisle MS., f. 30r.

[108]Ibid., f. 275v. [109]Ibid., f. 278v.

CHAPTER XI

PRECEDENT IN EQUITY CAUSES

(1649-1660)

The greatest obstacle in determining the extent of precedent's use in equity cases is that the seventeenth century reporters, whether official or unofficial, did not always indicate when precedents were offered, or if offered, which cases were submitted. Reporters could hardly be expected to transcribe everything transpiring in court, so often, when precedent appeared in the argument of counsel, it was not reported. Moreover, precedent was much less a factual situation in a particular case than it was a "state of mind" of the judges and lawyers in common law or equity. Of course it is not practical to search through the entire range of cases in equity of the Interregnum to compile a list of those cases wherein precedent was cited and where not, in order to draw conclusions from statistics. That precedent was invoked often in equity from 1649 to 1660 can be stated with certainty from those cases which survive in a reported form. The important question is whether or not the Chancery judges

and lawyers of the Interregnum reached the "state of mind" necessary for recognizing precedent as of binding force in any cases.

Lord Chancellor Nottingham receives credit for being the first equity judge to recognize and to give binding force to precedent in equitable actions; thereby, he began the era of "modern equity" as a body of equitable principles in the same mode as the common law.[1] The following discussion of precedent in equity of the Interregnum is not intended to strip Nottingham of his title "father of modern equity," but to demonstrate the continuity from the Interregnum to the Restoration Chancery which enabled Nottingham to recognize, fully and officially, the force of precedent in equity. Lord Nottingham was certainly the great judge that historians and lawyers have credited him with being. However, no judge lives in isolation, and no judge can fail entirely to observe what his predecessors have done, especially if the separation from his predecessors amounts to only a few years. Only thirteen years separated Nottingham's Chanellorship from the Interregnum. Nottingham deserves the title "father of modern equity" not for inventing precedent in equity but for recognizing a fait accompli and continuing to build upon a situation created by his Interregnum predecessors in Chancery. Lord Nottingham gave equity the necessary impetus to become a mirror image of the common law, but the Chancery of the Interregnum laid the groundwork for Nottingham's capitulation to the common law model.

What was true of Nottingham's building upon the work of the Interregnum Chancery was also true of the latter which built upon the work of its predecessors in another sense. Procedural precedent, or the "course of the court," had reached the position of binding force in equity by 1640. However, the close relationship between procedure and substance in equity meant that the next step to precedent in substantive decisions was but a short one although resisted by Chancellors who sought to preserve the discretionary character of equitable decisions. For a variety of circumstances and reasons, the Chancery of the Interregnum moved on from the "course of the court"--what is actionable in a court of equity and what is not -- to an application of the weight of precedent in those instances where equity applied.

The analogy of stare decisis in common law and the development of procedural precedent in equity have a definite bearing upon the turn of the Interregnum Chancery to substantive precedent in equity. Therefore, by way of introduction, a discussion of procedural precedent is necessary.

There was a time when law and equity were both decided on the merits of each case irrespective of previous decisions. When clerics presided in the King's courts there was little need to know what past judges had ruled in order to make a just decision in a case before them. Even if the medieval judges had wished to use precedent, reports of cases were unavailable except within the memories of judges and counsel. As lay judges became more frequent in the fourteenth and

fifteenth centuries, courts became less certain of doing justice on the merits of each case. Not being infused with the principles of canon and civil law, lay judges were more inclined to rely upon custom and statute law. However, medieval statutes were often vague and imprecise while human activities tended to be prolific. Litigants were less inclined to rely upon the conscience of the judge to determine the merits of a case when he was not a cleric. Moreover, a judge's conscience left too much uncertainty about the judgment in a case. The chaos of the fifteenth century caused great doubts for the courts about just what the law was at any given time. The safest and easiest way for a judge to provide certainty and continuity in the law was to base his decisions on those of his predecessors. One of the indicators of certainty in law was the rigidity of the common law courts by the late fifteenth century. One needs only to look to the Provisions of Oxford of 1285 and the frozen writ system, to find a beginning of the process of certainty in the common law.

Even though the judges of the fourteenth and fifteenth centuries revered the decisions of their predecessors, it was difficult for them to know exactly what those decisions had been. Often they were remembered haphazardly and recorded likewise in manuscript reports. The records of the central courts were kept, it is true, in the Judgment Rolls and other series, but the monumental task of searching out cases from those records prevented any reliance upon the official records of the courts. It was not until the development of printed

reports in the sixteenth century that one finds the common law judges and lawyers turning to precedent for guidance in decisions.

The proliferation of printed reports of common law cases in the sixteenth century goes a long way to explain the common law's capitulation to precedent by the early seventeenth century. The most important of these printed reports were those of Sir Edward Coke. Coke's Reports, books one through eleven, appeared between 1600 and 1615. Coupled with his Institutes, which did not appear until the 1640's, Coke's Reports, so thorough and authoritative, in fact created the common law of England. Procedural certainty had been reached much earlier in the common law than in equity, but in substantive certainty the common law was only slightly in the lead. During the early seventeenth century, thanks to Coke's Reports and others of the sixteenth and seventeenth centuries, the common law gave itself over to the binding force of precedent, or the rule of stare decisis. By 1640, the law was as found in Coke and the other reporters.

Procedural precedent in equity came considerably later than in the common law, but when it did come, it seems not to have crept up stealthily, but to have taken hold firmly within a generation. W. J. Jones in his work on the Elizabethan Chancery elucidates clearly this revolution in equity jurisdiction. Thorough record keeping in Chancery was unnecessary, except for enrollment of decrees, so long as the office of Lord Chancellor was filled by a cleric of some magnitude.

The "revolution in Tudor government," which influenced so many aspects of bureaucracy, touched Chancery as well. Whole new sets of records were kept in Chancery after the middle of the sixteenth century, especially the Register's Entry Books of Orders and Decrees. This series recorded not only the judgments, but most of the arguments of counsel and the interlocutory orders. Moreover, the Entry Books were bound in book form (without indices) making them easier to use than the bulky and inaccessible judgment rolls, fine for storage but unsuitable for purposes of research.

The series of "Rules" governing the organization and procedure of Chancery began approximately at the time of the new record keeping mentioned above. The "Rules" of Nicholas Bacon, Lord Keeper (1558-1579), were the first to issue from the Chancery but were to continue from Bacon to the lords commissioners in 1649 and beyond. The appointment of Nicholas Bacon also began the accepted practice (notwithstanding Sir Thomas More) of entrusting a lay, common law trained man, with the great seal. This practice recognized the alteration of Chancery from a general secretariat to a court of judicial business. Bacon was succeeded at the great seal by three laymen, two of whom were common lawyers. Bromley, Hatton, and Puckering continued the practice of issuing rules governing Chancery procedure.

The last of the Tudor Chancellors, Lord Ellesmere, was the most important. He embarked upon administrative reforms, which transformed Chancery into a settled body of equitable

jurisdiction, bound over to rigid rules of procedure. Under Ellesmere, the court began to acquire the image of its Westminster colleagues. However, just as Chancery's common law partners were straining, and had been for some time, under the complexity and rigidity of their procedural rules, Chancery, by the passing of Ellesmere in 1617, strained and groaned under the burden of rules, which were used by litigants against the process and intent of equity. Ellesmere may be likened to Nottingham, for their contributions to equity were equally as far reaching. Building upon the groundwork laid by expanding record keeping and procedural rules of the late Tudor Chancellors, Ellesmere gave complete recognition to the fixity of procedural rules in equity. Nottingham, accepting the fixity of procedure and the groundwork laid by the Interregnum Chancery in substantive precedent, gave complete recognition to the necessity of case law in equity.

Sir Francis Bacon, as Lord Chancellor, followed the practice of issuing a comprehensive set of rules for Chancery. Bacon was primarily a theoretician, but he managed to clear the arrears of cases left by Ellesmere before he succumbed to charges of corruption in office. From Bacon's writings, it is clear that he did not oppose the use of precedent in cases of like nature. In the Advancement of Learning (1640), Bacon wrote, "In cases omitted, the Rule of Law is to be deduced from Cases of like nature; but with Caution and Judgment."[2] Nevertheless, there were as yet hardly enough accurately or fully reported cases to warrant the use of precedent in equity. Furthermore, a man of Bacon's capabilities

as a judge and legal thinker could hardly be expected to renounce his own discretion in the as yet unformed state of equity as body of legal principles.

Little need be said of Bishop Williams and Lord Coventry, except that the latter followed Bacon's rules for Chancery procedure and remained non-political. Coventry was the last of the Chancellors before the Long Parliament in 1640, the year of Coventry's death. Lord Keepers Finch and Littleton were not in a position to even preside in Chancery, and the court remained in a disrupted state until 1649. The lords commissioners of the great seal from 1643 to 1648 were impotent as judges in equity, as they were primarily custodians of the seal for acts of Parliament. Not until Whitelocke and Widdrington became lords commissioners in 1648 did Chancery resume its regular sessions.

The reliance of the Chancery judges of the Interregnum upon precedent, both procedural and substantive, was certainly not by chance, nor was it by express design of the lords commissioners. It was due to the peculiar circumstances which came to bear upon the court at a time when it had reached a maturation in respect to procedural precedent. The use of precedent in the Interregnum Chancery turned upon the nature of the court from 1649 to 1660, the record keeping of the court, the state of mind of the judges, the desires of the lawyers and litigants, and the participation of the common law judges. Moreover, the continuity of the bench and bar from the Interregnum to the Restoration ensured that

what had been established in Chancery from 1649 to 1660 was not lost but became a heritage for equity jurisdiction, recognized completely by Lord Nottingham.

While the Court of Chancery was under the control of Parliament and Protector from 1642 to 1660, at no time did one man hold the great seal as sole Lord Keeper or Chancellor. For this whole period there were at least two lords commissioners, and this arrangement found complete acceptance among the judges. Lisle wrote that "It is not sett that one man should be the Sole judge in the Chancery," for "The lord Bacon sayeth, lett not this court be assigned over to one man, but consist of many."[3] Generally, the lords commissioners did not preside on all occasions with a full court, but a vote of all the commissioners was necessary for a final decree. Even though Whitelocke might make claims for being "chief" commissioner, in theory all commissioners were equal.[4] The equality of the lords commissioners meant they must concur in all orders and decrees of the court to make them binding. It is hardly likely that they would agree in the decision of every case. That they did not always agree is evident from Lisle's making a separate entry in his "Abridgements" concerning a difference of opinion among the lords commissioners.[5]

In an early case of the Interregnum, Lisle stated that,

> . . . because the court did differ in their opinions, Therefore the court did order the cause to be stated by councell of each side, and the court referred the cause so to be stated to the lord chief justice, and Judge Jermin, to certify their opinions therein.[6]

Bereft of the disagreement's particulars, the records state only that the commissioners could not agree and took the

opinion of the judges.[7] However, the lords commissioners did not always refer differences to the judges. In a 1652 case, Lisle and Keble differed when Whitelocke was absent from the bench. Opinions were postponed until the third commissioner appeared. Lisle reported the result as follows:

> . . . and the lord Whitelocke having heard it (being unwilling to overrule either) for this reason as I conceive did desire it may be referred to Mr. Recorder and Mr. Newdigate councell of each side joyntly to end the diff: /erence/ inter pl:/aintiff/ et defend: /ant/.[8]

Lisle's comment on these occasional differences illustrates their delicate nature and that the commissioners were cautious to avoid confrontations among the judges. The three personalities of ambitious, swaggering Lisle, sleepy, neutral old Keble, and quiet, self-possessed, and haughty Whitelocke would probably cause many conflicts in difficult cases. However, except for the fiasco of Cole v. Rodney, discussed earlier, there are no indications of serious consequences arising from disagreement in equity cases. Perhaps one reason for this is expressed in the following note entered in Lisle's "Abridgement."

> You shall observe it often in Judge Crooks /Croke's/ reports that when 3 judges have beene there in their opinions upon joynt debate of the matter, yet if only one differed, they would give such respect to that one judge as not to overrule his opinion upon the first debate, but advise of it untill another debate or argument. The like is moore fitt when one of the commissioners of the seale doe a little doubt of a matter before them, it is fitt for the others especially att the first debate not to be too positive, but to desire rather to advise of it for a time.[9]

It is not surprising that the presence of three equal judges in the Court of Chancery led the lords commissioners

to resolve differences out of court if necessary. However, as will be observed below, the "hearing" of a cause in court had become the most important of the phases in an equity action. In a hearing, the lords commissioners were usually obliged to render an opinion or to make an order. They could not adjourn or refer every case. Furthermore, one of the major complaints against judges and the law of the Interregnum, as Sheppard wrote, was the uncertainty engendered by the differing of judges in one court with judges in another and judges in one court differing among themselves.[10] "Uncertainty" in the law is the key to the litigants' complaints against the law, whether in length and obscurity of the proceedings, or in the differences among the judges. The necessity of resolving differences of opinion, which led to uncertainty in the law, drove the lords commissioners to heed substantive as well as procedural precedents offered by counsel as an aid in deciding a case.

In addition to the composition of the court in 1649 as a motivation to precedent, one should not fail to recall the chaos of Chancery from 1640 to 1649, and the enormous backlog of cases created by that chaos. Whitelocke's description of the situation in 1648 and the size of the Register's Entry Books testify to the vast bulk of undecided cases. While one will never find an instance that the lords commissioners committed themselves to precedents to more rapidly dispose of cases, one of the easiest and fairest methods was a resort to the precedent of like cases. It was one of the pressing problems of the Chancery subsequent to 1648 to clear the

records of undecided cases. The presence of three judges in equity might retard decisions, but the use of precedent could compensate for the composition of the court as well as most differences that might occur.

In the study of Lisle's "Abridgements," one fact became clear for the Interregnum application of equity: it followed the common law. Lisle and the other lords commissioners (except Nathaniel Fiennes) were practicing common lawyers before they were equity judges. They willingly acceded to the rule laid down by Parliament in 1646, if there be a remedy at law there can be no relief in equity.[11] Moreover, in a case of 1649, Lisle stated that "Where the equity is doubtfull, it is best to be guided by the law."[12] Further evidence of Chancery's deference to the law can be seen in the innumerable references of fact to trial at law as well as questions of law to the judges for an opinion. There was nothing new in the assistance of the judges in the Court of Chancery; it had been proper at least since the time of Henry VIII.[13] Nevertheless, the frequency of the judges appearance on the Chancery bench from 1649 to 1660, left no doubt that the courts of Westminster were a working unit and that the lords commissioners harbored no reluctance to the infusion of common law principles by way of the judges into equity.

References to common law judges or a request for their presence on the Chancery bench appear when a point of law was insisted upon by counsel. When such a point arose, the lords commissioners reserved their opinions until the judges delivered theirs from the bench. The point of law might touch

any aspect of equity or points of law ruled upon in previous cases, from Coke, Croke, Hobart, or Bacon.[14] An opinion of Lisle's in one case of 1653 is worthy of note because he sets out the reasoning of the court in allowing opinions of the common law judges.

> There was a point of law insisted upon by the councell de pl:/aintiff/. The court sayd that if they did insist upon that point in law, they would not hastily overrule them on it but would either first have a case made upon the point in law, and have the judges opinion therein upon it, or else there may be a speciall verdict found, and so the judges to deliver their opinions upon argument.[15]

The impetus for an opinion from the common law judges might come from counsel as well as the court.[16] Nevertheless, the court did not always accept the opinions of other judges and would overrule their opinions in some cases.[17]

One cannot fail to notice the frequency of recourse by the lords commissioners to the assistance of the common law judges. Does it indicate the inability of the lords commissioners to preside adequately in their own court? It is hardly likely that the members of the common law benches possessed an ability far greater than the Chancery bench. The frequency of the judges' appearance in Chancery more likely stemmed from the uncertainty of the law and equity, which had been plagueing both for several decades. Judges, like lawyers and litigants, have always felt much safer and more just when they know the limits of the law in each case.[18]

The records of the Chancery on the equity side demonstrate that a change had occurred in that court by 1640, which made the use of precedent at once more important and

more viable as evidence in equity cases. One feature of Tudor record keeping which hindered the turn to precedent was the lack of indices to the records, especially to the Register's Entry Books of Orders and Decrees, the most important of the records for determining Chancery procedure.[19] However, by 1640, the Register was preparing indices to the Entry Books, providing the ease and speed necessary to search for precedent and the true and accurate orders and decrees.[20] Another significant feature of Chancery records which encouraged the propensity to use precedent was the beginning of the Chancery Minute Book series in 1639. There is one Minute Book for 1639, C37/1, and no more until 1649, when they began again. The importance of the Minute Book series for the application of precedent in equity decisions was the emphasis given the "hearing" in an equity case. Before the early seventeenth century, a Chancery case theoretically turned upon the "bill and answer," the Chancellor making his decision at the hearing after studying the bill and answer.

By the mid-seventeenth century, the hearing, as opposed to the bill and answer, had become the most important phase in an equity case. The Minute Books show this development clearly. Because the hearing was the scene of arguments and opinions of both the counsel and judges, it was much easier to present precedent for a motion of counsel and for the judges to rule on such a presentation. Furthermore, the Minutes recorded the substance of the remarks made by counsel and judges; the lawyers could have their appeal to precedent entered in the record. The keeping of indices to the Regis-

ter's Entry Books and the entry of proceedings of the hearing in the Minutes indicate both a reliance upon the past actions of the courts and a dependence upon precedent or at least a recognition that it might be necessary to discover what had passed in a prior case.

Before undertaking a consideration of some cases of the Interregnum wherein precedents were cited, it would be worthwhile to mention some collections of cases by reporters in the seventeenth century. The collection of cases in equity began about mid-century, but most of the early reports were brief, at best sketchy, and often lacked the final disposition in every case. The collecting of cases, in itself, demonstrates a change in the conduct of an equity case. The reporters would not have bothered with the labor in accumulating cases had there not been reason to do so. Most reports of the early seventeenth century dealt with common law cases, which was natural as the common law had by 1600 moved farther along the road to stare decisis than had Chancery. Tothill's Transactions of the High Court of Chancery (1649), used by Lisle, was an early example of equity reports, but it was mainly a guide to the Entry Books. Carew's Reports (1650), Choyce Cases (1651), and Practice of the High Court of Chancery (1651), are others.

All these reports were concerned with late Tudor and early Stuart cases, but none was published before the Interregnum. There must have been a particular need for the collections of equity cases by 1649.[21] William Sheppard's Epitome of all the Laws of England (1656), is more significant

than the earlier works.[22] This compilation was composed by a legal thinker of the Interregnum, and the author's section on Chancery and equity exhibits a penchant for precedent in equity cases. Lisle used Sheppard's Epitome extensively in his own "Abridgements." It is more than a coincidence that Sheppard's Epitome and Lisle's "Abridgement" bear a close resemblance in construction and probably in intent.

Lisle's other works, "Chancery Liber 1 to 7," "Pleas and Demurrers," "Miscellany concerning Chancery," and the "Abridgement" all testify to the importance of precedent and case law to the mind of an equity judge of the Interregnum. One cannot ignore the significance of Lisle's compilations. They are the manifestation of the will of a judge in equity to turn to precedent as an important determinant in his decisions. Furthermore, they might have provided future judges in equity with a collection of Interregnum cases for their use. It would seem that the "Abridgements" was used in such a manner by Thomas Kyffin, attorney general of the Angelsey Circuit in the early eighteenth century.[23]

It has been demonstrated that the "course of the court" existed in Lord Ellesmere's Chancellorship and that rules of procedure had become binding in Chancery by 1600.[24] Indeed, it is maintained that the procedural rules of Chancery had by 1649 reached the acme of their application in case law. The stage was set by a binding "course of the court," for the development of binding substantive rules by way of precedent. The process of binding precedent in procedure had advanced so

far by the Interregnum that the lords commissioners could inform the Lord Protector that they might only advise him of the "course of the court" in a particular case; they could not alter that course without express instructions from the Parliament.[25] Only in extreme circumstances, wherein a failure of justice would ensue, did the court suspend a recognized rule of the court.[26] From fixed rules of procedure in equity, was a logical move to precedent in substantive decisions.

The Chancellors of the early seventeenth century had been moving in the direction of substantive precedent, although the degree of their acceptance of this principle remains sketchy because of the inadequate court records. George Norburie, a legal critic of the reign of James I, though, reported that some judges, when uncertain of themselves, sought after precedents. However, he described this procedure in derogatory terms, that they only considered precedents to confirm preconceived notions in a case to satisfy their special interests.[27] The failure of the reporters to give note to the introduction of precedents in an equity case is explained somewhat by an entry of Lisle's from "Chancery Liber 1," where Lisle wrote about precedents in equity cases from the past. "And for the presidents they were grounded upon the sole opinion of the lord Chancellor, and passed sub silentio."[28] The introduction of precedent in an equity case of the Interregnum did not necessarily pass in silence. Very often they were acknowledged, debated, and ruled upon by the bench.

In observing some of the cases of the Interregnum, one finds that frequently the lords commissioners, in delivering their opinions, demonstrated that cases decided in the past could have bearing upon the case before them. The court's decision in a 1649 case on the obligation of trustees to sell lands for payment of debts contrary to the rights of remaindermen, took Coke's decision in Archer's Case as a model.[29] Widdrington found precedent in an equity decision of 39 Henry VI.[30] In one of his opinions from the bench, Lisle also referred to a decision in the reign of Charles I.[31] However, a precedent did not need the aura of antiquity for the court to recognize its binding quality. A decision of 1650 followed the lead of Cromwell v. Tracey made only the previous year.[32]

While the lords commissioners might cite a precedent decision, this was not the usual manner in which precedent was introduced. By far the most frequent situation arose from uncertainty among the lords commissioners at the end of a hearing when their opinions were to be delivered. In these instances the court directed counsel to search for precedents to be laid before the court or deposited with the Register for the court's perusal. If the lords commissioners could not agree in their opinions, counsel would be directed to produce cases of like nature as in a case of 1651, when none of the judges arrived at the same conclusion.[33] Precedents were required in Mayor of Exeter v. Dendney (1655), when Lisle failed to agree with Whitelocke and Widdrington on a lease for years determinable upon lives.[34] If one of the

lords commissioners disagreed with a precedent acknowledged by his colleagues, counsel was ordered to produce others.[35] Often, the court requested cases of like nature merely to clarify a point before delivering their opinions.[36] In at least one case of 1649, when counsel of one side disagreed with an opinion of the court on the rights of a feme covert, that counsel was sent to search for precedents to justify his disagreement.[37] In another pivotal case, Widdrington refused to deliver a decision of the court until another case had been decided, which might have ramifications for the former.[38]

The most forceful impetus for use of precedent in equity came from the counsel and the litigants. Their motives for such procedure was not always clear, but when counsel did introduce precedent in their arguments, the lords commissioners were forced to "distinguish," that is, the court had to determine whether the precedents submitted by counsel were of like nature to the case before them. The court might swiftly overrule a precedent if the prior case were inappropriate.[39] In others, counsel might strike upon an especially apt precedent and be rewarded with a favorable decision.[40] Lisle was adept at distinguishing precedents. In Hales v. Company of Drapers (1649), a case regarded important by Lisle, he overruled two precedents for being "doubtfull in the point," and had they been to the point they still would not have been sufficient as precedents and should not "oversway the court."[41] In Vaughan v. Eyton (1655), Lisle said the precedent of Green v. Awbry ". . . does not come home to their case." Whitelocke and Widdrington compromised here with a reference

to private parties.[42] Nevertheless, Lisle could find that a precedent strengthened the argument of counsel.[43] Sometimes, when the court was unsure of its ability to distinguish precedents, offered by counsel, they would be referred to the common law judges for an opinion on their applicability.[44] Even then, if the lords commissioners were still uncertain, they always retained the prerogative to decide the case without consideration of the judges opinions.

Lisle's report of Clench v. Burman (1649) is an excellent example of protracted debate at a hearing, which turned upon the precedents produced on both sides. That Lisle regarded the debate upon precedents as important is evident in the two folios devoted to the case in the "Abridgement."

> It was sayd that this court doth never intermeddle with marriage agreements but in case of settling of lands, but if it were an agreement to pay money, there is remedy att law. But in this case there is a difference for here the plaintiff not being party to the articles he hath noe remedy but in Chancery. In Tracies case there the executor did sue for a portion upon a marriage agreement and therefore referred to law, because had remedy att law, but here hath noe remedy att law, not being party al Articles. They that argued pro defendant Burman sayd videll: 1. The difference little from the case of Tracey and Poole. There upon a marriage agreement it was referred to law, and this court would not relieve, why should it in this case. 2. They cited the case inter Waddon et Lutterell, there was a marriage agreement and in pursuance de ceo, the man settles a joynture upon her he intended to make his wife and dyes before marriage and it was decreed that lands soe settled should be reconveyed to his heire.
>
> The councell plaintiff sayd this case differed much from the case of Poole and Tracey, for there the executor who had duty owing to her and had remedy att law was plaintiff but here the plaintiff hath noe remedy att law upon these articles. There it was referred to a tryall att law to try whether there was any such agreement. Here the agreement it selfe is confessed in the answer. There for that which was sayd that it is impossible to make a settlement according to the

> the agreement, the wife of Clench the sonne being dead, to that it was sayd it ought to be made . . . .
>
> Pro defendant fut dit. If Clench the father had sued the articles he could not have received the £1,000 portion in law or equity untill he had settled the land for that was to be precedent, and therefore a fortiori the sonne cannot sue the defendant Burman untill the land settled.
>
> Pro plaintiff. Although the plaintiff be noe party to the Articles of agreement yet he may sue thereupon for his advantage as it was donne in the case of Wiseman and Roper. In the case of the Earl of Pembroke and Spiller, thereupon a paroll agreement, the marriage being thereupon executed there was a decree for the plaintiff per curiam, Lett the fathers bring an action att law upon the articles, and after that wee will deliver our opinions in this case of the sonne and the 2 fathers. Att last presidents were directed to be shewne.[45]

Clench v. Burman demonstrates that even at the very beginning of the Interregnum in 1649, the decision in a whole case could turn upon the applicability of precedents argued by counsel and considered by the court. Lisle's reporting of the arguments in full confirms that the court regarded precedent as highly significant in the hearing of a cause. However, the absence of any comments by Lisle indicating Clench v. Burman to be extraordinary in any way, shows that arguments at hearing on precedent was taken as a matter of course.

In 1693, there appeared a book of precedents in equity causes, entitled Reports of Cases in Chancery, authorship unknown. The cases therein are reported fully, presumably taken from the Register's Entry Books, to which the author gave folio numbers. The work covers cases from 1 Charles I to 20 Charles II, and contains several cases from the Interregnum. Nearly all the cases reported for the years 1642 to 1660 were those in which the lords commissioners relied upon

precedent in their decisions. In fact, the purpose of the Reports was a defense of citing precedents in equity cases; the preface was taken from statements made by Lord Chief Justice Matthew Hale and Lord Keeper Orlando Bridgman on that subject.[46] Four of the Interregnum cases in the Reports were chosen for comparison with references in Lisle's "Abridgements." The results of this comparison clearly indicated that Lisle, consciously or not, recognized the importance of those decisions. They were all difficult cases and could not be easily dispatched.

Lisle entered briefs of these four cases as examples under several headings of his "Abridgements." Although the author of the Reports (1693) may have read the Register's Entry Books in their entirety from 1 Charles I to 20 Charles II, recording those cases that were important to him, it is unlikely that he did so. More likely, he knew of certain cases that had become leading cases in the early seventeenth century, and he then searched them out in the Chancery records for his compilation of precedents. Granted this line of argument, it is obvious that equity decisions of the Interregnum lived on beyond 1660 and that they were introduced as precedent by counsel after 1660.

The first of the four cases chosen for comparison, Anby v. Gower, decreed in 1655, involved the power of Chancery to compell a sale of lands by heirs to pay debts of the deceased when his executor failed to fulfill that provision of the will. Creditors of the deceased sued the heirs in equity for the satisfaction of the debts. The express pro-

vision of the will was for such a sale by the executor for satisfaction of the debts. The court saw the question as whether equity could force the heirs to fulfill the obligations of the executor if he failed in his trust under the will.[47] Two lines of reasoning were applied by the court in this case. In the first, Lisle stated that several cases were put to the court wherein Chancery supplied original and subsequent defects in conveying lands by deed or will. In Sheppard's Epitome, Lisle found instances of Chancery's doing just that and in Choyce Cases, he discovered a case of 19 Elizabeth, very like Anby v. Gower.[48]

The second line of reasoning by the court was in the transferring of an executor's trust to a third party. While the claims of the creditors might not be good in law against the heirs, yet in equity, their claims might be good as a trust on the lands due them by the heirs in possession.[49] The 1693 Reports stated that the court after considering the precedents and the opinions of the judges, ordered the plaintiffs to be relieved, the lands to be sold with the heirs (defendants) to join in the sale for the payment of the debts of the deceased.[50]

Wiseman v. Roper, decreed in 1646, and again in 1651, as the converse Roper v. Wiseman, became a leading case for suits on marriage agreements. The plaintiff married the relative of the defendant's brother, Sir Anthony Roper, against the wishes of his uncle, Sir Thomas Wiseman. To appease his uncle, the plaintiff secured an agreement from

Sir Anthony's brother and heir, an agreement that certain lands or their value descending to him from Sir Anthony would be conveyed to Sir Thomas Wiseman or to the plaintiff and his heirs, surviving Sir Thomas. Sir Anthony died in 1641, but the lands were so encumbered with debts that the plaintiff received nothing. He desired the court to force the defendant Roper to make good his agreement to the value of the lands as he had agreed prior to the marriage. Roper contended there had been no valuable consideration, and the agreement was only entered into for appeasing old Sir Thomas. Further, he argued, that the defendant had no right in the lands at the time of the agreement and could not convey something of which he had no possession and only a bare possibility of gaining possession free of encumbrances. The court determined quickly that the consideration was good. On the second point of the defendant, the court took the advice of the common law judges and secured precedents on both sides.

After due consideration, the court found the agreement good in equity by the precedents and ordered a performance in specie, for damages only were available at law. The land must be conveyed.[51] The court's order for specific performance of the defendant's covenants was again upheld by the House of Lords in 1648.[52] Not content with the decision, Roper appealed to the Chancery in 1651, for a reversal, offering precedents again, but the 1646 decree remained unchanged.[53] In 1658 and 1659, the court ruled on precedents submitted by Wiseman for a sequestration of Roper's property for non-compliance with the 1651 decree. Lisle reported the

sequestration was granted upon the precedents to prevent a "failure of justice."[54] One could contend that a "failure of justice" had already occurred by the delay from 1646 to 1659 for the fruits of a 1646 decree. Wiseman v. Roper became a leading case during the Interregnum for specific performance of agreements in marriage covenants, and the Reports of 1693 testify to its endurance in later equity.

The third example, Thynn v. Thynn (1650), concerned the omission of words in an agreement of 1640 for conveying lands for the advancement of the plaintiff's marriage. The defendant in equity, Sir Frederick, had taken advantage at law of the omission of words in the deed of conveyance and secured possession in law as the legal heir of the one who made the original conveyance. The plaintiff's rights were extinguished at law by the defendant's legal rights due to the chance mistake of the conveyancer.[55] Lisle reported that the case occasioned the introduction of numerous precedents where and where not the Chancery would supply defects in deeds to prevent an advantage at law. In this case the weight of precedent was with the plaintiff in equity, and the defendant was bound by the court to take no advantage at law of his legal rights as heir.[56] Thynn v. Thynn firmly established the precedent that a legal heir could not in equity and justice extinguish the rights of a legatee even if the conveyance were made only in advancement of a marriage, if his basis of action at law were the mistake in a deed of conveyance.

Duchess of Hambleton v. Lady Cranborne was an important case in the development of the equity of redemption. The

granting of equity of redemption in a deed was not a settled doctrine before the Interregnum. In this case the question was whether equity of redemption shall pass with a conveyance upon the intention of the conveyancer to do so. Further, if the conveyancer may pass equity of redemption by intention, so may he also revoke that intention during his lifetime. The duchess and Lady Cranborne were both daughters of the Earl of Dirleton. In one will he passed his estate equally to his daughters in the hands of trustees with equity of redemption to his wife, the Countess of Dirleton. The plaintiff contended that the earl's intention in the earlier will to convey his estate by trust was negated by a subsequent intention to leave the Duchess of Hambleton all his estate in trust with equity of redemption, having provided for his other daughter, Lady Cranborne, in his lifetime. The defense contended that the earl had no power to make such a conveyance by deed, not being seised to the properties at the time of the deed, which made it void in law and also in equity. Besides, it was the earl's intention always to divide his estate equally. Upon reading the second will of 1650, the court found that the earl had negated his earlier intention of equal division in favor of the Duchess of Hambleton.[57]

When the case was first joined in Chancery at hearing in Michaelmas 1653, Lisle showed an unwillingness to heed precedents submitted by the defense. Because of the near relationship of the parties, he proposed that the case be settled by friends. Keble concurred (Whitelocke was in Sweden).[58] The reference proposition failed, but still Lisle

refused the precedents. Instead he directed a trial at law on the intention of the earl to have the Duchess of Hambleton receive the trust of the lands by deed.[59] In May 1655, with two judges present, Justice Windham delivered the common law verdict and opinion that the intention was to pass the trust and equity of redemption to the duchess.

With a strong case now for the plaintiff (with precedents accepted), Lisle delivered the opinion of the court. He distiguished between precedents on both sides, and stated that if one could make equity of redemption by declaration of intention, one might subsequently void it by declaration of intention during his lifetime. Widdrington concurred in Lisle's opinion, stressing that the common law judges favored the intention to pass the trust, so be it. Whitelocke saw no distinguishing characteristics among the precedents,[60] the only question being the earl's intention.[61] The court, wrote Lisle, adhered to the precedents which showed that a trust passed in a conveyance by intention of the conveyor whether the legal words used to convey a legal interest were used or not.[62] It was decreed that the trustees must convey the estate to the plaintiff with the equity of redemption and pay the proportion necessary to redeem the mortgage on the estate.[63] Duchess of Hambleton v. Lady Cranborne and Countess of Dirleton pushed the development of the equity of redemption well along the way to its eighteenth century maturation, in that equity of redemption passed with a conveyance with other legal interests in an estate by a mere

intention. This was an added safeguard to the interests of the mortgagor in the lands to prevent undue advantage of the mortgagee when estates became involved in lengthy and tortuous family suits.

The Reports of Cases in Chancery (1693) signifies the persistence of Interregnum cases beyond the Restoration. But how was continuity provided from the Interregnum to the post-Restoration period? The solution is simple yet has not been touched upon before, for the reason that the Interregnum has been regarded as a detached, unfortunate hiatus in English legal history. Legal historians persisted in the assumption that because there was a significant break in the political arrangement of the kingdom that there was a corresponding break in the development of law and equity. It was unfortunate, we are to believe, but the development of the law ceased in 1640 and began again in 1660.[64] Here the legal historians have presumed something which is not demonstrable by fact. They must have assumed that all the lawyers and judges of the Interregnum vanished at the Restoration or ceased to practice. That assumption cannot be substantiated. The continuity and persistence of the law during political upheavals (one of the strengths of English law recognized by legal historians) applies to the Interregnum as well.

Though there was no continuity in the Chancery bench, there was considerable continuity among the practioners in that court. One of the most notable examples was Sir Matthew Hale, lawyer and judge of the Interregnum, who became chief

justice of the King's Bench after the Restoration. John Maynard, Edmund Prideaux, William Lisle, Challoner Chute, Roger Hill, and John Fountayne, all prominent at the Chancery bar of the Interregnum, continued their practice after 1660. Probably one of the most important lawyers in this category, a young man during the Interregnum, was Sir Heneage Finch, later the Earl of Nottingham and Lord Chancellor (1673-1683). Sir Orlando Bridgman, Lord Keeper (1667-1672), was the great conveyancer of the Interregnum. Sir Harbottle Grimston, Master of the Rolls (1660-1684), was an active lawyer and legal author before 1660. When one realizes that all these men, including the "father of modern equity," practiced in Chancery before and after the Restoration, it becomes obvious that the principles and procedures developed during the Interregnum would be perpetuated through them. Equity did not develop in the vacuum of the Interregnum only to disappear at the Restoration. The Chancery of the Interregnum had its impact upon the history of equity in its acceptance of precedent as a basis for equitable decisions.

NOTES

[1]Yale, ed., Nottingham's Chancery Cases, Selden Society, I, cxxiv.

[2]Bacon, Advancement of Learning (1640), pp. 438-39. Bacon's decisions were sometimes shaped by precedent, see Holdsworth, HEL, V, 240.

[3]Lisle MS., f. 35r.

[4]Some courtesy may have been given Whitelocke in that he was first named in Parliament's commission of 1649 and as senior commissioners to Lisle and Keble. The Minutes of

Chancery show that Whitelocke generally delivered his opinion last of the three. Lisle also stated in a case of 1650 that the court decided Whitelocke should deliver opinions of the whole court. Guise v. Cambell (1650), Lisle MS., f. 213r.

[5]Lisle MS., f. 212r.

[6]Tranter v. Poor of Christchurch (1650), Ibid., f. 212r.

[7]2 July 1650. P.R.O., Minutes of Chancery, C37/4, f. 92r.

[8]Raynsford v. Whistler (1652), Lisle MS., f. 212r.

[9]Lisle's additional note to Raynsford v. Whistler, Ibid., f. 212r.

[10]Sheppard, England's Balme (1656), pp. 4-5. Lack of certainty in the law is both an old and contemporary reason for precedent. John Selden, the famous legal antiquarian, wrote, "Equity is A Roguish thing, for Law wee have a measure, know what to trust too. Equity is according to ye conscience of him yt is Chancellor, and as yt is larger or narrower soe is equity. Tis all one as if they should make ye Standard for ye measure wee call A foot, to be ye Chancellors foot; what an uncertain measure would this be; One Chancellor has a long foot another A short foot a third an indifferent foot; tis ye same thing in ye Chancellors Conscience." Sir Frederick Pollock, ed., Table Talk of John Selden (London, 1927), p. 43. One of Whitelocke's reasons for excusing himself from serving on the Chancery bench in 1649 was his experience in 1648. He stated that the office of lord commissioner was grievous because the judge had no certain basis for his decisions. Whitelocke, Memorials (1853), p. 373; and see, Parkes, History of Chancery, p. 131. A. L. Goodhart believed that uncertainty was one of the most important forces in English law, which pushed the common law toward the rule of stare decisis, but that the adherence of the common law to that rule was one of its great weaknesses. A. L. Goodhart, Precedent in English and Continental Law; An Inaugural Lecture Delivered before the University of Oxford (London, 1934), pp. 14-41 and 12-3. For a brief but good explanation of the rule of stare decisis in law, see, Russell Moore, Stare Decisis; Some Treands in British and American Application of the Doctrine (New York, 1958).

[11]Order of the House of Commons, 21 October 1646. Lisle MS., f. 285r. The Ordinance Regulating the Chancery, 22 August 1654, confirmed this order.

[12]Clench v. Burman (1649), Lisle MS., f. 144r. For authority in this opinion, Lisle cited Hobart, Reports (1658), p. 33.

[13]"A Little Treatise Concerning Writs of Subpoena," in Francis Hargrave, ed., Collections of Tracts Relative to the Laws of England (Dublin, 1787), p. 332.

[14]Maxwell v. Lord Cranborne (1651); Herbert v. Spiller (1654); Cambell v. East India Company (1652); Phillips v. Farmer (1656); Fountaynes Case (1657); Six Clerks v. Sixty Attorneys (1657), Lisle MS., ff. 308r and 308v. St. Johns College v. Platt (1655) and Sewster v. Earl of Suffolk (1656), Ibid., f. 286r.

[15]Wield v. Lake (1653), Ibid., f. 286r.

[16]Humphrey Churchill moved Chancery for the common law judges' opinion in Anby v. Gower, 11 February 1656. P.R.O., Minutes of Chancery, C37/19, f. 87r.

[17]Draper v. Jeames (1650); Clarke v. Barker (1655); Lenthall v. Child (1654), Lisle MS., ff. 198r and 205r.

[18]Benjamin N. Cardoza, The Nature of the Judicial Process (New Haven, 1921), p. 161.

[19]Jones, Elizabethan Chancery, p. 144.

[20]See P.R.O., Indices to Register's Entry Books of Orders and Decrees, C33. They offer a term by term, alphabetical index to the Entry Books, and they are in a seventeenth century hand. Indices were not prepared for the Six Clerks' records until well into the nineteenth century.

[21]Holdsworth recognized this feature of the reports in equity, but he completely discounts any contributions of the Interregnum Chancery to the development of equity. It is only an unfortunate break in the history of English law. Holdsworth, HEL, V, 274-75 and 277.

[22]Sheppard, Epitome, pp. 193-226, was based in precedent in equity cases. It should be remembered that Sheppard was a proponent of certainty in the law and equity; see Sheppard, England's Balme (1656).

[23]Nicholas, ed., County Families of Wales, I, 345. Williams, Great Sessions in Wales, p. 121. Kyffin's bookplate appears on the inside front cover of the Lisle MS.

[24]Jones, Elizabethan Chancery, p. 15.

[25]Gressam v. Gressam (1653) and Ivy's Case (1654), Lisle MS., f. 346r.

[26]Lee v. Combes (18 June 1652). Whitelocke and Lenthall were instrumental in suspending the rule for notice. P.R.O., Minutes of Chancery, C37/7, f. 3v.

[27]Norburie, "Abuses and Remedies of Chancery," in Hargrave, ed., Collectanea Juridica, I, 446-47.

[28]Lisle MS., f. 163r. If a precedent passed sub silentio, it passed without comment from the court and was no precedent at all. Rupert Cross, Precedent in English Law (Oxford, 1968), pp. 142-43.

[29]Comes Winchelsea v. Twisden (1649), Lisle MS., f. 150r.

[30]Nicholas v. Say (1655), P.R.O., Minutes of Chancery, C37/16, f. 55r.

[31]Booker v. Marbury (1650), Ibid., C37/2, f. 70r.

[32]Marshall v. Paupers of Buckingham (1650), Ibid., C37/4, f. 17v.

[33]Hoore v. Plower (1651), Ibid., C37/6, f. 87v.

[34]Mayor, Bailiff and Commonalty of Exon v. Dendney (1655), Ibid., C37/19, f. 45r; Lisle MS., f. 415r; P.R.O., Register's Entry Books, C33/204, ff. 974r and 974v.

[35]Chambers v. Martin (1654), Lisle MS., f. 295r; P.R.O., Register's Entry Books, C33/201, f. 669v.

[36]Crane v. Carye (1658), P.R.O., Minutes of Chancery, C37/25, f. 91r. Robinson v. Rutts (1658), Ibid., C37/25, f. 105r. Bone v. Jones (1658), C37/25, f. 120r.

[37]Fettiplace v. Cambell (1649), Lisle MS., f. 41r.

[38]Kesar v. Adis (1654), Lisle MS., f. 375r. Poor of Acton v. Anderson (1654), Ibid., f. 375r. Widdrington announced he would suspend judgment until the outcome of Kesar v. Adis.

[39]English v. Earl of Leicester, P.R.O., Register's Entry Books, C33/201, f. 199r. Langley v. Jones (1653), a precedent in Wiseman v. Roper ruled not pertinent, Lisle MS., f. 248r.

[40]Lady Chandois v. Lord Chandois (1657), Lisle MS., f. 37v; P.R.O., Register's Entry Books, C33/208, f. 811r.

[41]Hales v. Company of Drapers (1649), Lisle MS., ff. 66r and 163r; P.R.O., Minutes of Chancery, C37/3, f. 74r.

[42]Vaughan v. Eyton (1655), P.R.O., Minutes of Chancery, C37/16, f. 27v.

[43]Windsor v. Bromley (1656), Ibid., C37/20, f. 29v.

[44]Stattard v. Walwyn (1658), Ibid., C37/25, f. 85v. Reference to Justice Hale. Golladon v. Mayherne (1659), Lenthall referred precedents to justices Atkyns and Newdigate, Ibid., C37/27, f. 19v.

[45]Clench v. Burman (1649), Lisle MS., ff. 11r and 11v. See also, Burman v. Clench and Applethwaite (1649), P.R.O., Minutes of Chancery, C37/2, f. 25v.

[46]Reports of Cases in Chancery (2 vols.; London, 1693), I, iii-viii. Other case of the Interregnum cited for their use of precedent were: Underwood v. Swain (1649); Smith v. Valence (1655); Cox v. Brown (1656); Goodwin v. Goodwin (1658); Cooper v. Tragonwell (1659).

[47]Anby v. Gower (1655), Reports (1693), I, 168.

[48]Sheppard, Epitome (1656), pp. 208-09; Choyce Cases (1651), Perke v. Peake, p. 124. Anby v. Gower (1655), Lisle MS., f. 169r.

[49]Anby v. Gower (1655), Lisle MS., f. 225r.

[50]Anby v. Gower (1655), Reports (1693), I, 169.

[51]Wiseman v. Roper (1646), Reports (1693), I, 158-60.

[52]HMC, 7th Rep., House of Lords Mss., p. 26.

[53]Roper v. Wiseman (1651), P.R.O., Minutes of Chancery, C37/5, f. 9v.

[54]Wiseman v. Roper (1659), Lisle MS., f. 85r. Wiseman v. Roper (1658), P.R.O., Minutes of Chancery, C37/25, f. 72v.

[55]Thynn v. Thynn (1650), Reports (1693), I, 162-64.

[56]Thynn v. Thynn (1650), Lisle MS., f. 169r. The defendant, Sir Frederick Thynn, was a Royalist. He requested permission to remain in London to attend his case in Chancery and promised not to interfere with Parliament while there. The Thynn's were a very wealthy family. HMC, 7th Rep., p. 32.

[57]Duchess of Hambleton v. Lady Cranborne and Countess of Dirleton (1655), Reports (1693), I, 165-68.

[58]Duchess of Hambleton v. Lady Cranborne (1653), P.R.O., Minutes of Chancery, C37/11, f. 60v.

[59]Ibid., C37/11, f. 83v.

[60]Whitelocke saw no difference in this case and that of Countess of Dirleton v. Lord Cranborne (1652). In this case if one has an equity of redemption and conveys the lands, this is an intention to pass equity of redemption. If one has equity of redemption, he pass equity of redemption of part of the lands, but if one sues for equity of redemption, he must sue to redeem all, not part. Lisle MS., f. 276r.

[61]Duchess of Hambleton v. Lady Cranborne (1655), P.R.O., Minutes of Chancery, C37 16, f. 10r.

[62]Duchess of Hambleton v. Lady Cranborne (1655), Lisle MS., f. 299r.

[63]Duchess of Hambleton v. Lady Cranborne (1655), Reports (1693), I, 167-68.

[64]Holdsworth, for example, maintained that modern equity could not develop during the Interregnum but only did so after Chancery was not controlled by Parliament. Holdsworth, HEL, V, 217-18.

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