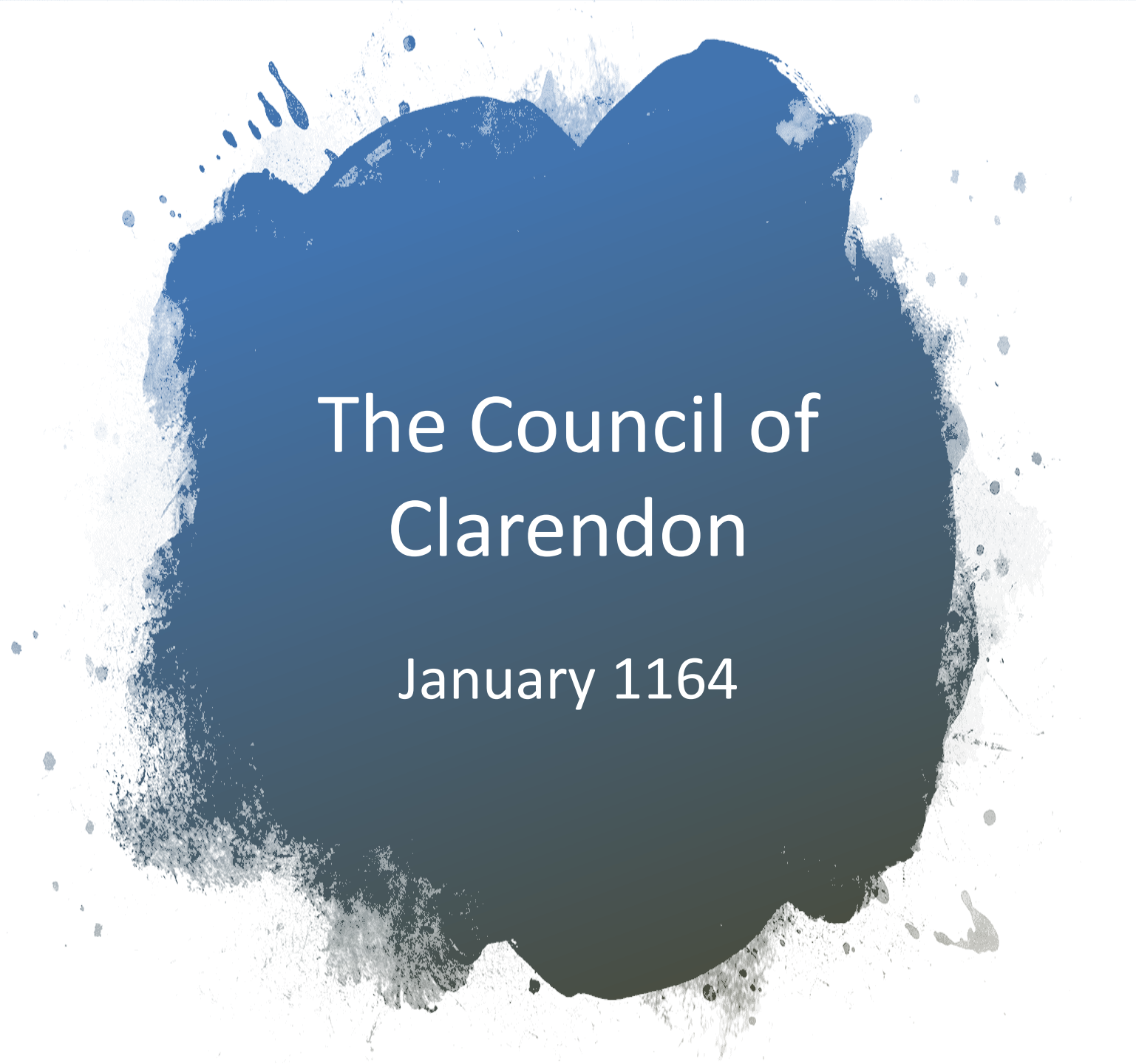




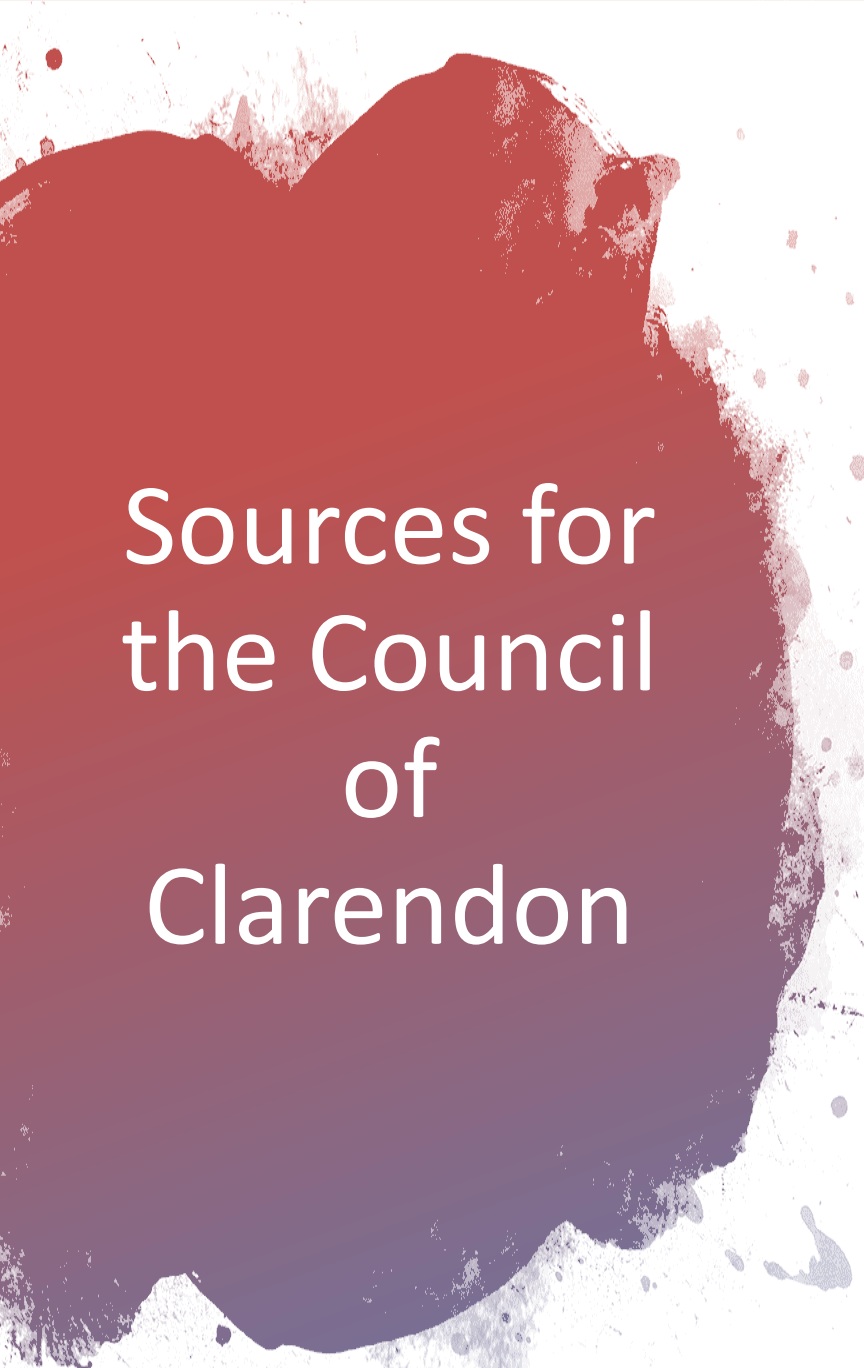
The Council of Clarendon

January 1164



To recap:

- The period between May 1162 and October 1163 saw relations between Henry and Thomas deteriorate
 - Thomas's resignation as chancellor
 - His grand gestures which might have been designed to establish his credibility with the bishops and the monks of Canterbury
 - His defiance of the king at Woodstock
 - The Council of Westminster and 'criminous clerks'



Sources for the Council of Clarendon

- Gilbert Foliot, *Multiplicem nobis* (1166)
- The 'Lives' e.g. those of Herbert of Bosham and William fitz Stephen, both of whom were present
- Full text in Gervase of Canterbury



Who was there?

- See text in handbook
- ‘before the archbishops and bishops and clergy, and the earls and barons and great men of the kingdom
- Look at the names
- This was a big gathering



Why was the Council called?

- ‘...was made this remembrance or recognition of a certain part of the customs, liberties and dignities of his predecessors, that is to say of King Henry his grandfather and others, which ought to be observed and held in the kingdom...
- ‘because of dissensions and discords which had arisen between the clergy and the lord king’s justices, this recognition was made before...



Legal procedure

- What is being described is now standard legal procedure: a sworn declaration following investigation of what the customs were.
- Henry seems to have demanded – and got – verbal assent
- The king's men produced a draft (prepared in advance)
- What is new here is the production of WRITTEN customs that Henry wants to be sealed



Thomas's reaction

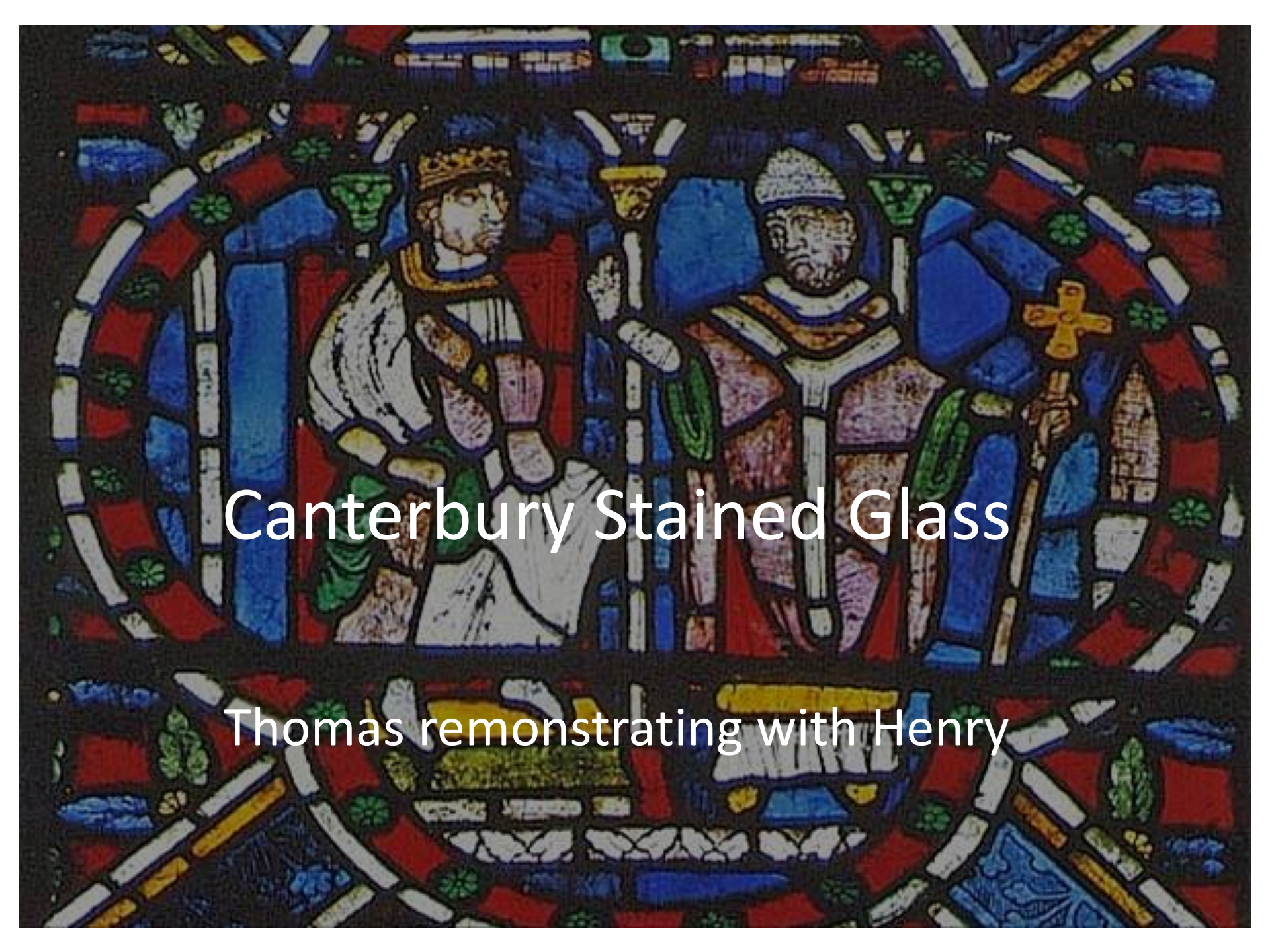
- Was to play for time by claiming to be too young to remember 'ancient customs' and too recently made archbishop

The next day ...



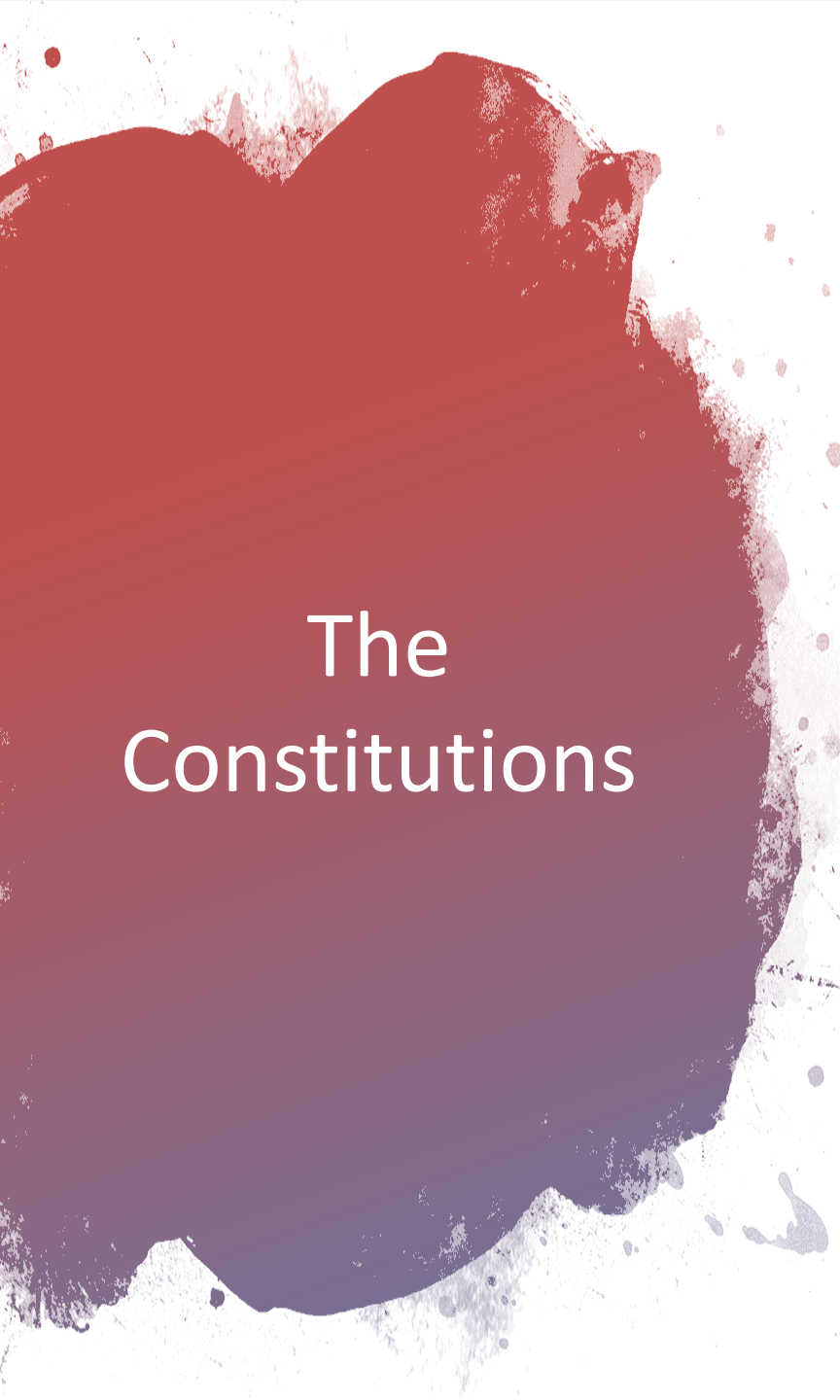
Written record
produced in the
form of a
chirograph

An example of a chirograph showing the seals of all
the parties and the way in which the document was



Canterbury Stained Glass

Thomas remonstrating with Henry



The Constitutions

- survive in a form which indicated whether they were seen as contentious and condemned by the pope or not.

Clause 1

- Are advowsons concerned with cure of souls (church / spiritual matter) or property (a matter for secular government)?
- The assize of darrein presentment (a recent legal innovation designed to deal with rival claims)

This clause was problematic

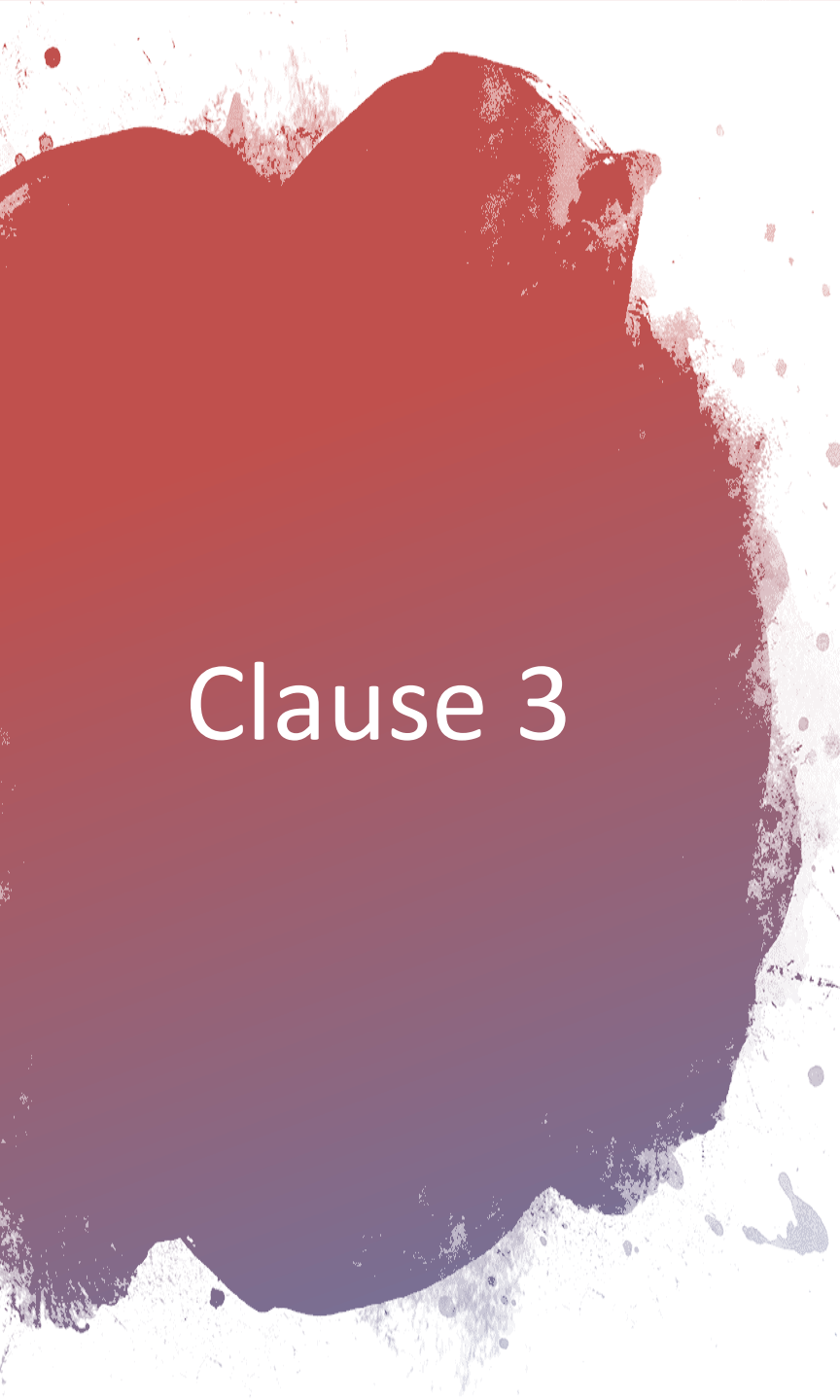
Why?

Clause 2

- The king wishes to keep control of the patronage of churches in the royal demesne – i.e. churches which are held direct by royal grant.

Was this contentious?

Probably not.



Clause 3

- Clerks who are summoned to court to answer charges that seem to be secular in nature – i.e. to relate to crimes that are against common law or the law of the land are to appear in the king's court. Those who offend against church law are to appear in the church courts.
- However a royal justice is to discover from the church court how the matter is handled
- If a clerk confesses or is found guilty he is no longer to be protected by the church

Was Clause 3 contentious?

- Yes – though some of it is ambiguous. The king allows clerks to appear in a church court where this is appropriate BUT this undermines clerical immunity (whereby a clerk would appear in a church court whatever the charge) AND it seems to demand the competence of the secular court to PUNISH a clerk for matters pertaining to the church court
- *Traditur curie*



Clause 4

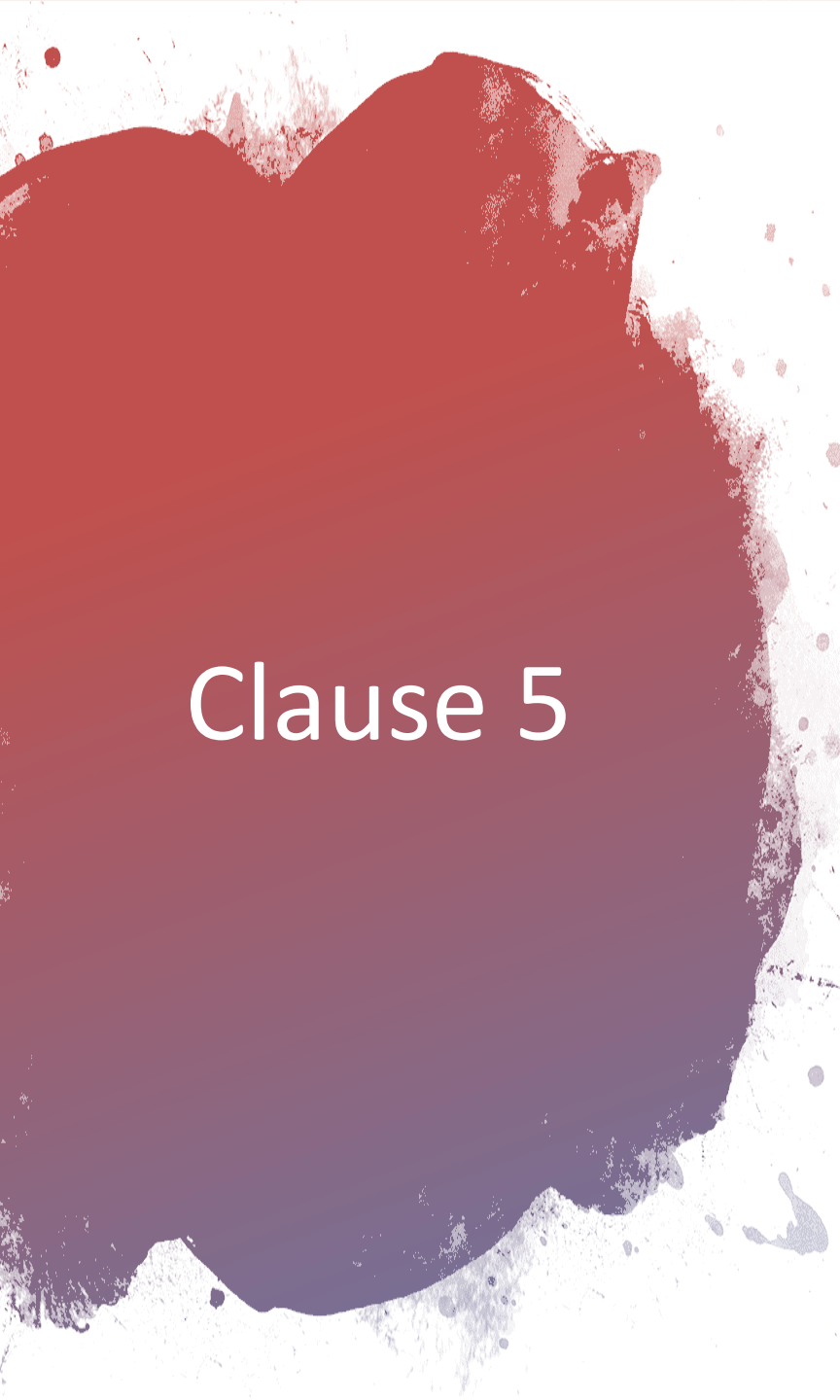
Any beneficed clergyman (i.e. those holding a benefice, that is, a living or church office) need the king's permission to leave the country. If the king so demands they can be asked to give security that they will do nothing to damage him or the kingdom.

Was this contentious?



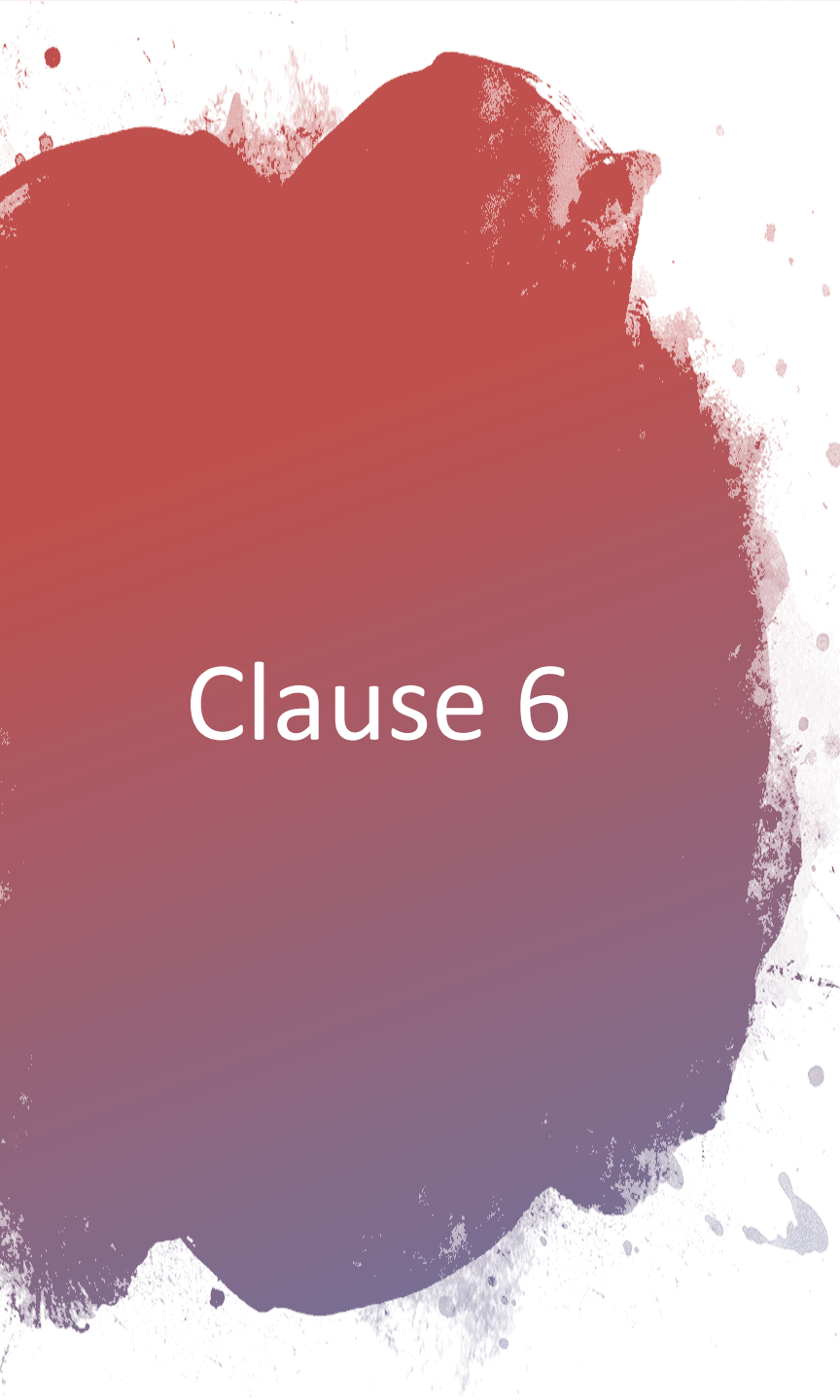
Yes – why?

- Henry was here reverting to rights asserted under William I, William II, and Henry I. They did not seek to forbid churchman to travel – just to control them.
- Note that neither Rome nor church councils are mentioned specifically
- This right has been breached under Stephen – remember Theobald and Thomas defying him
- The pope condemned this attempt to place (lay) restrictions on travel by churchmen



Clause 5

- Persons who are excommunicate should not be subject to undue exactions on the part of the church. In particular this states that they should pledge not only to accept the judgement of the court.
- Was this contentious?
- Yes – it may seem reasonable, but the church could have argued that they also need to pledge to behave in future as well.



Clause 6

- This asserts that due legal process is to be followed in making accusations.
- Was this contentious?
- Probably not



Clause 7

- No tenant in chief is to be excommunicated without the consent of the king or – if he is out of the country – his justiciar
- The boundaries of the secular and church courts are respected
- Was this contentious?



Yes – why?

- This had been a contentious issue in the near past – think of the case of William of Eynsford, whom Thomas had excommunicated, which in itself led to the reiteration of the king's rights. However subsequent accounts show that it did not ruffle feathers.

Clause 8

- When appeals are made they go from the archdeacon to the bishop and if necessary from the bishop to the archbishop. If things are still not sorted, the appeal goes to the king. It should be concluded at his command in the archbishop's court, and goes no further without his consent.
- Was this contentious?



Yes – why?

- This does not mention the pope or Rome but the inference is clear. This is to stop appeals either by clergy or by lay people summoned to church courts from taking their case to Rome. What is behind this is an increase in appeals to papal justice and the papacy as the final court of appeal.

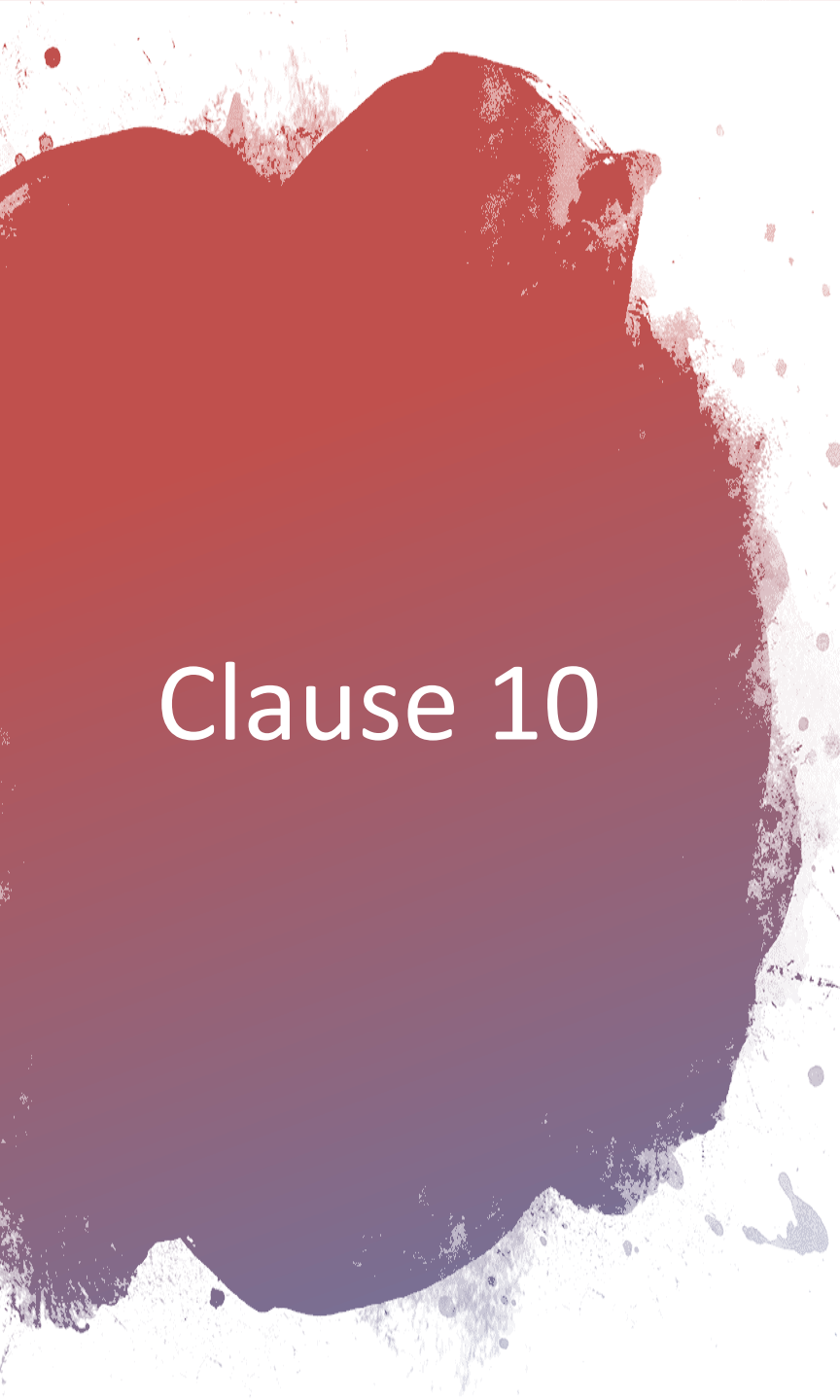
Clause 9

- This imagines a clerk and a layman coming to court over a piece of land that the clerk claims is held in free alms (i.e. it has been granted to hold for spiritual services only and is not subject to secular demands or services) but the lay man claims is a lay fee. The king's justice decided, after due legal procedure of a jury of recognition, and the case is tried in the appropriate court.



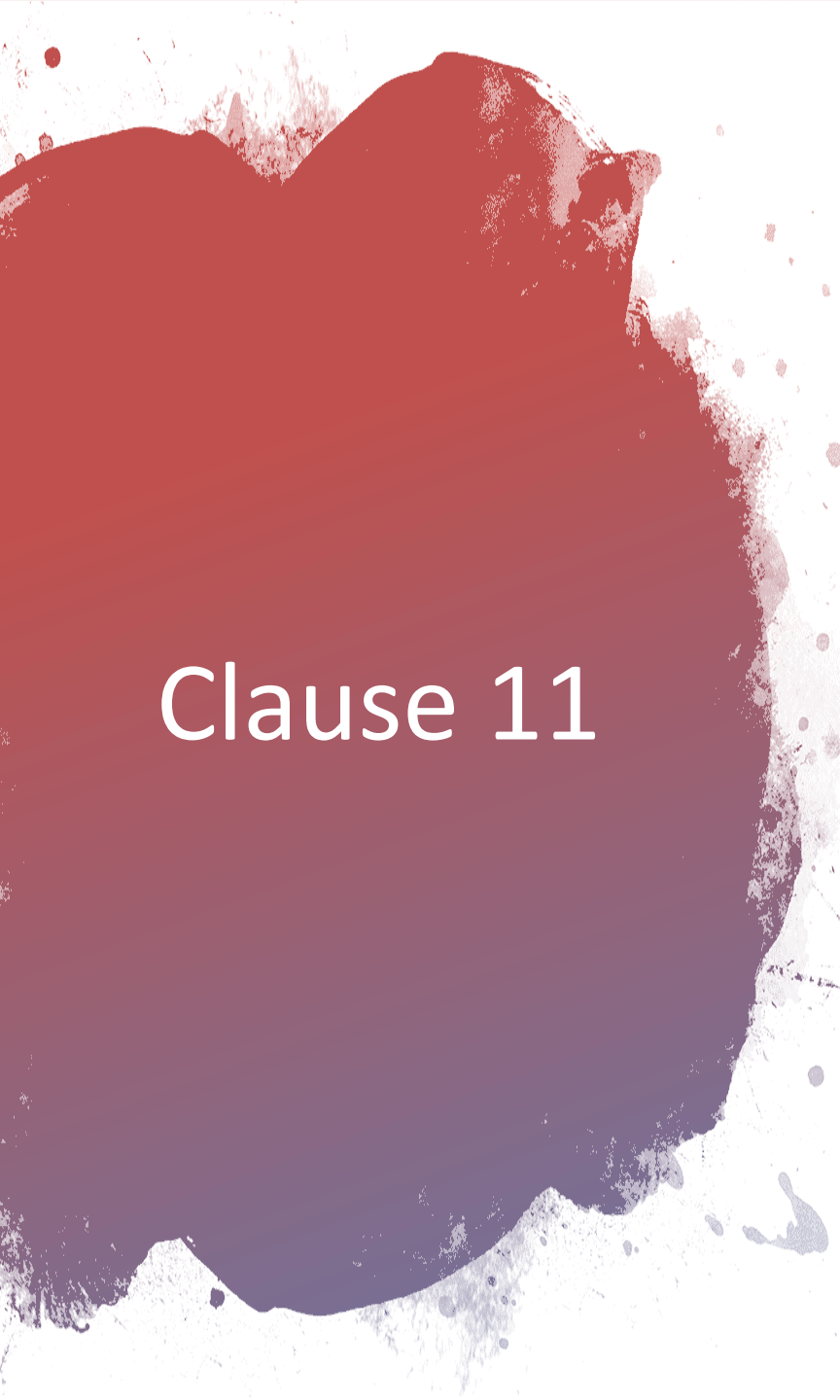
Contentious or not?

- It gives due recognition to the process of law and the case being tried in the appropriate court.
- However, it might be argued that it is not up to a jury of 12 to determine what is held in free alms.



Clause 10

- This returns to the question of excommunication. If someone is summoned to the church courts and fails to attend he can be excommunicated – but only with the king's permission, through his official.
- Contentious?
- Yes. Like clause 7 this does seem to have ruffled feathers.



Clause 11

- This contains a reminder that (arch)bishops hold their temporal lands of the king and as such are barons and answer to the royal officials for their rights and possessions. They ought to attend the king's court when required, but may be excused (as clerics) from attendance when someone is condemned to death or loss of a limb.



Contentious or not?

- Probably not – although high profile cases, like those of Odo of Bayeux and William of St Calais, if in the consciousness of contemporary bishops, would have served as a reminder that a bishop could be tried as a baron.

Clause 12

- When a bishopric becomes vacant the revenues go into royal administration until a replacement is elected.
- The king gives his licence for an election, which should take place in the king's chapel
- The elect performs homage and fealty for his earthly honour, saving his order [i.e. the clerical order]



Contentious or not?

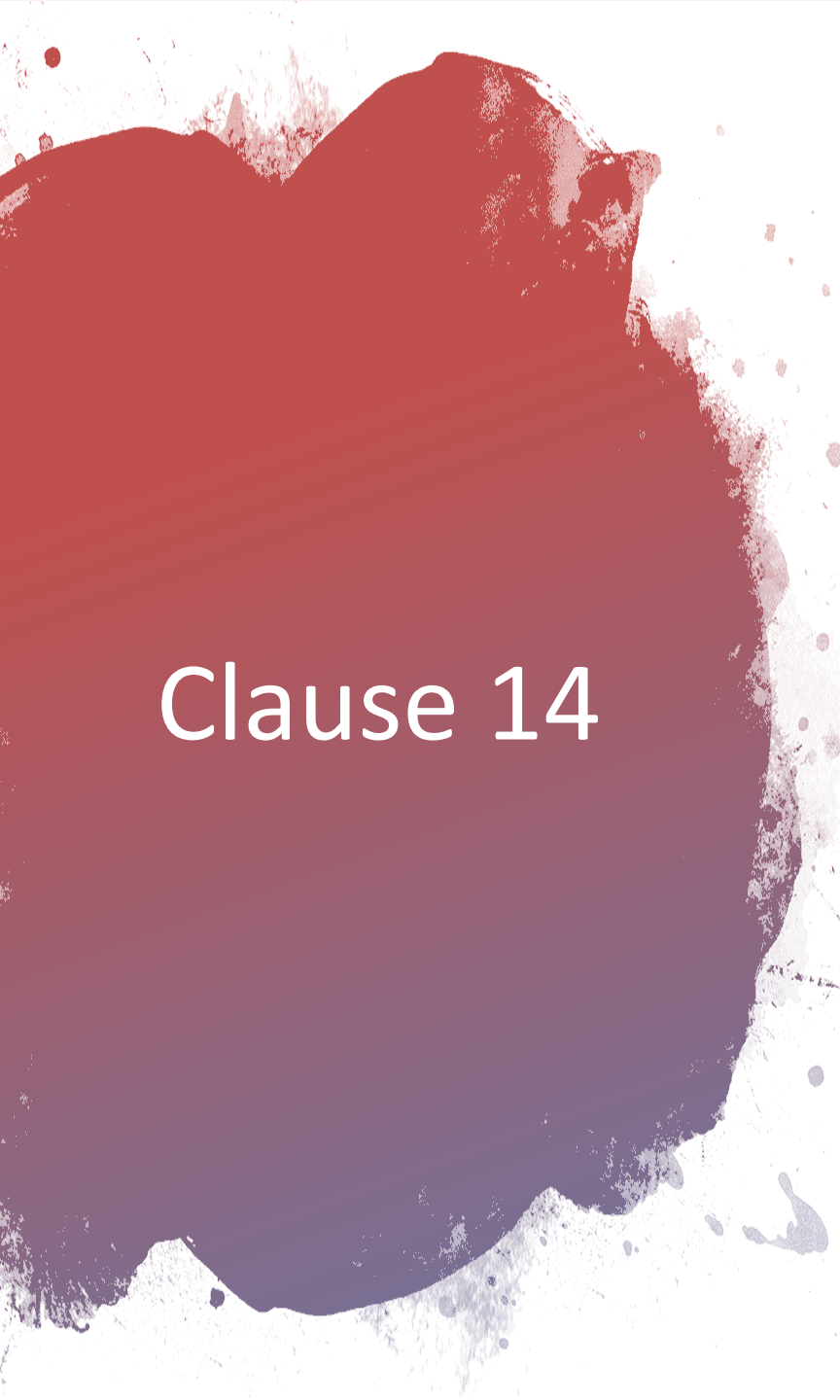
- In one way no. This has been standard practice since 1107 – in England the end of the Investiture Conflict, when the king gave up the right to invest bishops with the symbols of their spiritual office (ring and staff).
- However the pope condemned this.



Clause 13

- This invokes royal assistance for churchmen if they are impeded by any of the magnates, and thus there is no problem here.

Not contentious



Clause 14

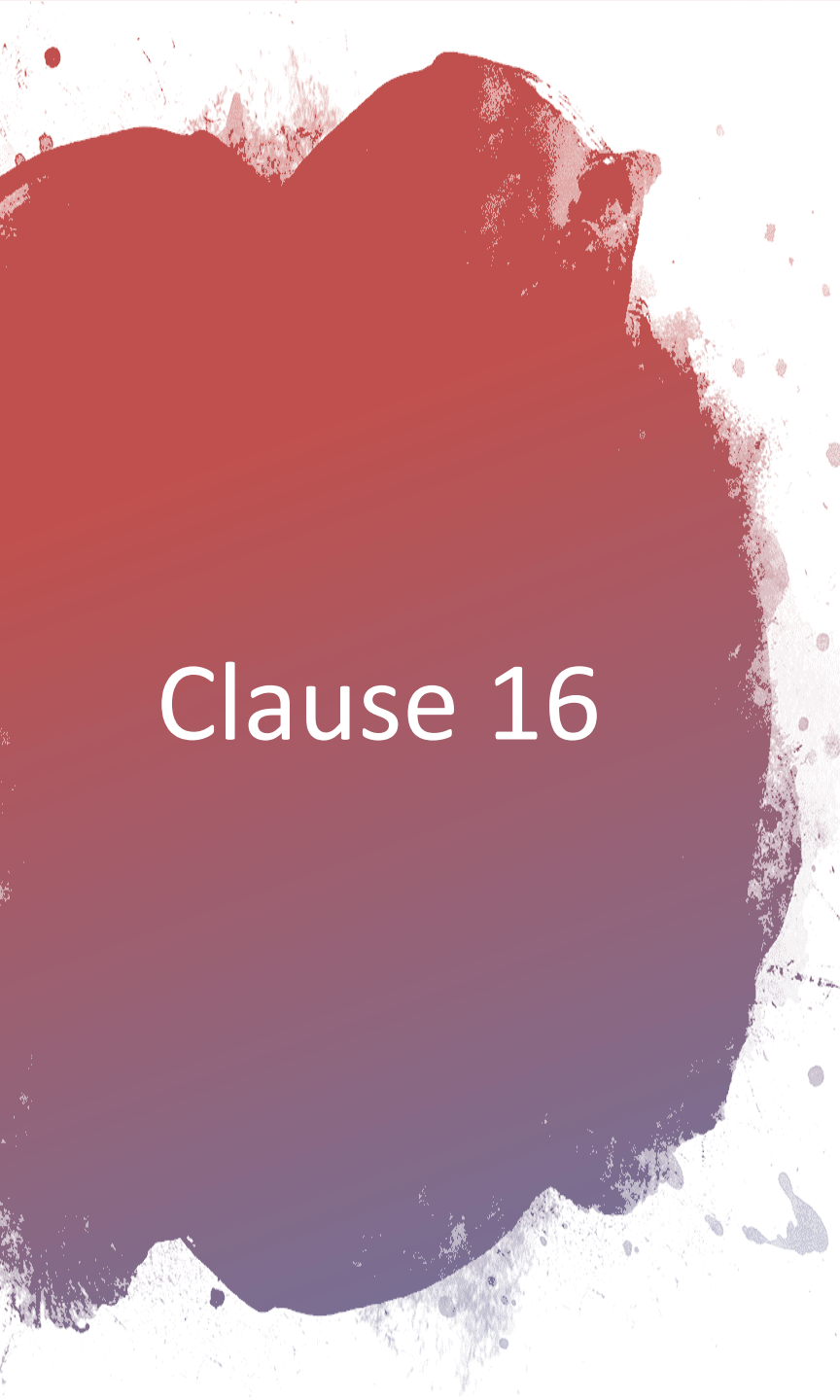
- No one in church or churchyard should seek to prevent goods forfeited to the king from passing this his justices.

Not contentious



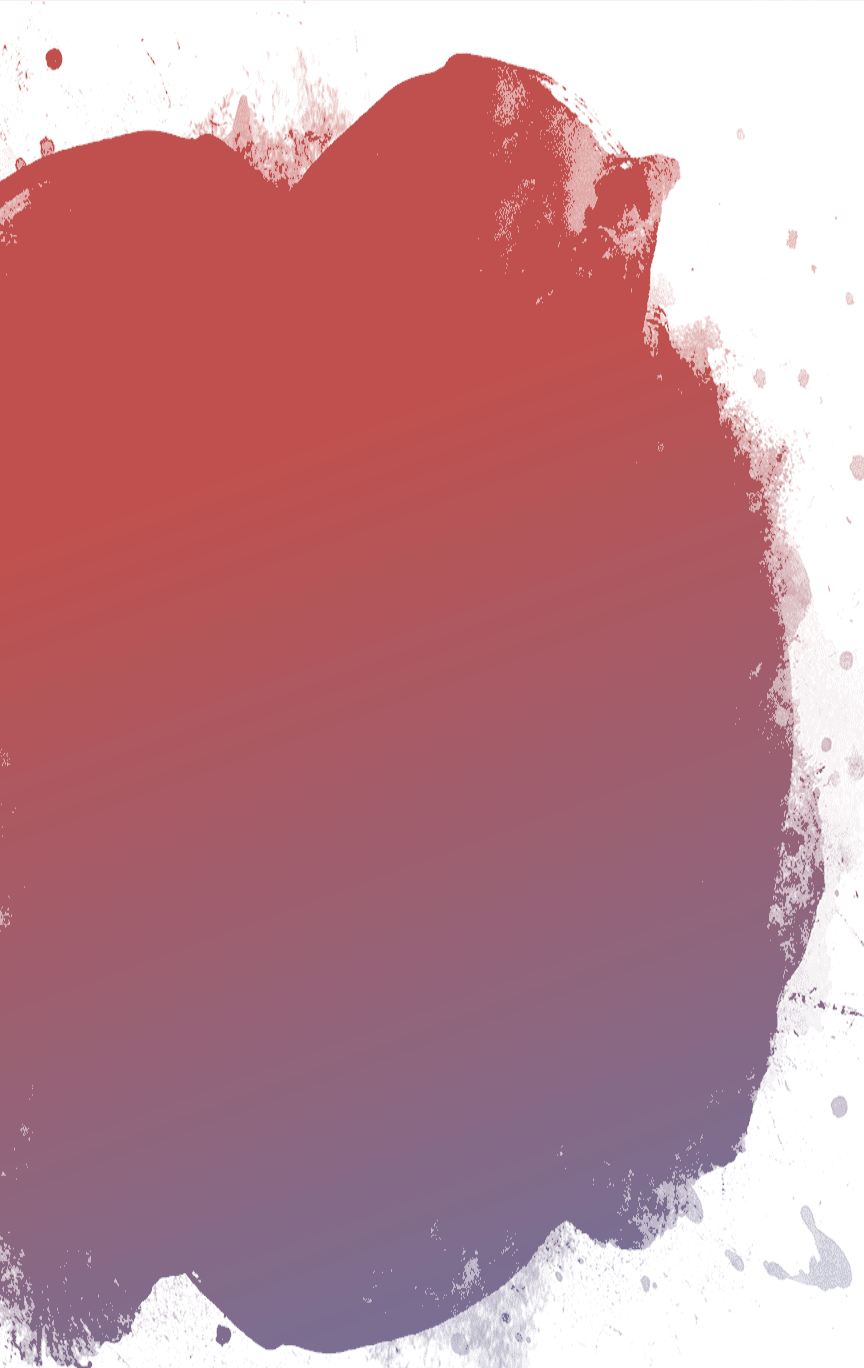
Clause 15

- This states that pleas concerning debts belong to the king's justice
- Contentious or not?
- Yes – these would have been judged to be a matter for the church courts



Clause 16

- Men born into the class of unfree should not be ordained except with the consent of the lord of the land on which they were born.
- Not contentious
- This would have seemed eminently reasonable to the church.

- 
- ‘There are indeed many other great customs and dignities of holy mother church and of the lord king and barons of the kingdom which are not included in this writing’
 - In other words, the Constitutions were not comprehensive. They may have represented what were current matters of debate.



So....

- Although the 'worst' clauses would have been 1, 3, 4, 8, 9, 12, many more were seen as unacceptable.



What happened next?

- Thomas accepted his part of the chirograph but did not seal it. He left Clarendon. The authors of the 'lives' suggest that his actions caused dissent. They seem to suggest that Thomas was in error in accepting his part of the chirograph which – although he did not seal it – suggests that he accepted the contents.