IV.
Self-prohibition

(The conclusions of this section are summarized in the text immediately below.)

We now turn to cases on whether a man may prohibit his own suit. That problem could easily arise: e.g., A. sues B. in an ecclesiastical court. B. introduces a defense which in principle the common law should determine -- either a defense triable by jury as to fact or a legal defense within exclusive common law competence. A. seeks a Prohibition, whereas B. to all appearances is content for his defense to be verified or evaluated by the ecclesiastical court. Ought A. to have a Prohibition to stop the suit he initiated himself?

The answer to that question can be stated categorically: Basically, the courts did not consider self-prohibition objectionable. In the standard schematized case above, A. would get his Prohibition. If he waited until after sentence against him, or until after appeals, his chance of getting the Prohibition would still be excellent -- at least as good as B.’s chance if B. had sought the Prohibition after comparable delay. In a couple of cases, the courts refused to let ecclesiastical plaintiffs prohibit their own suits. The exceptions, however, are quite easily distinguishable. Deeply problematic cases on self-prohibition could have arisen. It was not always permitted. Cases therefore could have occurred in which the rationale of the mainline cases and of the exceptions had to be searched and generalized. In fact, however, there are no cases on this subject showing the courts in doubt or divided. Basically, self-prohibition was permitted; when it was not, it would have been outrageous to permit it. We shall accordingly need to do little more than note the relevant line of cases.

Before doing so, however, we should reflect on the implications of the courts’ attitude. In permitting self-prohibition, the courts obviously favored Prohibitions -- Prohibitions, not ecclesiastical defendants over ecclesiastical plaintiffs, (typically) parishioners over parsons. If a parson wanted a common law issue that arose in his tithe suit tried by jury, he could get it so tried; if the parishioner in that case thought his chance of convincing an ecclesiastical judge by witnesses was better than his
chances with a jury of his peers, he was out of luck. The central idea behind permitting self-prohibition was the “public stake” in Prohibitions: “Foreign” courts should not determine common law issues to the derogation of the “royal dignity.” It makes no difference how the common law court finds out that lay jurisdiction is in danger of being infringed -- from the ecclesiastical defendant, the ecclesiastical plaintiff, or a little bird. Private law considerations concerning the informer’s standing or moral title to common law assistance are irrelevant -- or *almost* irrelevant.

On the whole, the cases on self-foreclosure above also support the “public stake” approach. The courts were not really ready to say that a dilatory party destroys his right to a Prohibition. For -- the “public stake” theory says -- it is not primarily *his* right. As a private litigant, he may be in a weak position, but he still informs the common law courts of an offense against themselves and the King. He ought to have informed them earlier, but soon or late “foreign” courts who meddle where they have no business should be stopped. On the other hand, in self-foreclosure cases the exigencies of economy and fairness to private litigants caused the courts to compromise the “public stake” theory -- on occasion; without complete confidence; without an articulated view of the rival claims of “public” and “private” considerations. Permissiveness toward self-prohibition might, because of its implications, be urged as a reason for non-recognition of a party’s power to foreclose a Prohibition. Conversely, the intrusion of “private” considerations in self-foreclosure cases could be a reason for treating them as relevant in self-prohibition cases. For example: An ecclesiastical defendant who not only waited for sentence against him but took two appeals and lost them before seeking a Prohibition would at least be in danger of losing the Prohibition. Could it not be argued that an ecclesiastical plaintiff in comparable circumstances is at least the *a fortiori* case? (i.e., A. sues B. in the ecclesiastical court. A common law issue arises. Neither party seeks a Prohibition. A. loses, takes two appeals and loses twice again. Then A. seeks a Prohibition. Is A., as the original plaintiff, not in a slightly weaker position than B. would be if they were interchanged?) However, the courts show no signs of having considered that argument, or of being urged to in the terms in which I have stated it. On the other hand, self-prohibition was sometimes not permitted. Private justice was only *almost* irrelevant. In self-foreclosure cases, the courts explicitly reserved discretion to deny Prohibitions in the interest of private justice. Perhaps one should conclude that in self-prohi-
Self-prohibition cases, too, they reserved what can only be called discretion to take that interest into account. But problematic tests of such discretion were rare in the latter context.

If self-prohibition cases are seen through the categories of private justice, a distinct set of considerations comes into play. It is unintelligent to say that it is *ipso facto* “repugnant” to prohibit one’s own suit. Many sorts of claims -- e.g., a parson’s claim to tithes -- could only be asserted in an ecclesiastical court. A parson might know that his title to certain tithes depended on whether or not a certain *modus* was valid; he might sue with the sole intention of subjecting the *modus* to a legal test; he might prefer as an individual and intend as a “good subject” to have the test made at common law. Nevertheless, his only option was to start an ecclesiastical suit. If the parishioner would take no step to transfer the contention to the common law, surely the parson should be able to. Going a little deeper than “*ipso facto* repugnance,” however, an argument against self-prohibition can be made: Should every plaintiff not be presumed to have faith in his claim? I.e.: In the very act of bringing a lawsuit, is one not saying, “I believe that the truth of my claim will stand up to any fair factual investigation, and that its legal validity will be evident to any reasonable and impartial judge.”? Even when ground rules of the legal system require a man to sue where he might not choose to, is he still not saying that? *Ought* he not to have that kind of faith, or else refrain from suing? Litigation is after all an extreme way to settle conflicts. Is a kind of bias in the defendant’s favor not built into the very idea of law? The defendant has not started trouble, has not made demands on the time and energy of the courts, has not sought to secure his interests by the coercive power of the state. Is there not reason to allow defendants the procedural advantages they are on paper entitled to, while looking very hard at a plaintiff who, by maneuvering procedurally, casts doubt on his faith in the “natural justice” of his claim?

This line of argument obviously raises huge problems. It may be rejected as a general argument in its premises. It may be regarded as specious in particulars. For instance: While it makes sense of a sort to presume that a plaintiff has sufficient faith in the factual truth of his claim to entrust it to any putatively fair fact-finder, it makes less sense to suppose that faith in a claim’s legal validity ought to imply willingness to have it adjudicated by any fair-minded judge. Competence in the sense of
“expert ability” may accompany, and account for the distribution of, competence in the sense of “legal authority.” E.g.: A parson suing, perforce in the ecclesiastical court, to test the validity of a lease on which his tithes depend can hardly be supposed to entrust an inexpert ecclesiastical judge with the technical exposition of a conveyance. If, however, the argument above is conceded *some* force, it would justify looking hard -- if not *too* hard -- at ecclesiastical plaintiffs seeking Prohibitions. “Looking hard” would mean asking questions that need not be asked if the ecclesiastical plaintiff’s right to a Prohibition is just as good as the defendant’s. E.g.: Is the “common law issue” in question legal rather than factual? If illegal, is it one that genuinely requires special expertise? If not, is it one on which ecclesiastical rules are notoriously different from common law rules, so that the ecclesiastical court is likely to err? Has the ecclesiastical plaintiff sought a Prohibition as soon as possible, thus acting so as to rebut any presumption of willingness to have his claim adjudicated by the ecclesiastical court? *(Sed contra:)* Waiting until after sentence or until appeals are exhausted can be taken as acting consistently with the faith in his claim that a plaintiff ought to have. Perhaps common law intervention in an ecclesiastical plaintiff’s favor should always be delayed until an error in law can be attributed to the ecclesiastical court.) “Looking hard” at an ecclesiastical plaintiff’s application could also mean considering the structure of interests realistically: *De facto,* as posited above, a parson might prefer to have a *modus* tried at common law. But is a clergyman (of course, a parson could be a lay impropriator) really entitled to object to having his right to tithes judged by the Church if the parishioner is content? In an important sense, the ecclesiastical courts existed because the Church was a “franchise.” I.e.: It was privileged, subject to limits and controls, to look after its own people, the “spiritual estate,” and, in enforcing those people’s rights, also to enforce its corporate interests. If a lay defendant voluntarily trusts his interests to the law and procedure of the Church, can a member of the clerical order complain? This argument would probably cease to hold if the ecclesiastical plaintiff were not a clergyman (or even, like a lay impropriator, representative of an intrinsically “spiritual” right). Ecclesiastical plaintiffs could be ordinary laymen driven to the Church courts by what could be considered historically accidental delegations of functions -- e.g., an executor seeking to prove a will; a legatee seeking to recover his legacy.
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The very complexity of the problems I have outlined is a reason for doing what the courts substantially did -- allowing ecclesiastical plaintiffs to get Prohibitions as easily as ecclesiastical defendants. Exceptions were made only when it was intuitively obvious that to grant the Prohibition would be grossly unfair -- “in discretion,” one would have to say.

We may now review the cases. In Holcroft’s Case, a lessee of an impropriate parsonage sued for tithes. His title to the parsonage and tithes turned out to depend on the meaning and validity of several lease-assignments. He did not seek a Prohibition merely because that “common law issue” had arisen. Rather, he proffered proof of his assignments by a single witness, and sought a Prohibition only when and because the ecclesiastical court, owing to its usual two-witness rule, rejected his evidence. The Queen’s Bench granted the Prohibition. The only note of hesitation was sounded in the interest of the lessee (plaintiff-in-prohibition): Chief Justice Popham wondered how he would get back into the ecclesiastical court to claim his tithes once the validity of his assignments was determined at common law. Coke, the lessee’s counsel, had an answer: “Well enough, for we will prove the assignments here and then we will have a Consultation, and on the Consultation they will proceed.” (I.e.: In Coke’s opinion, a man could prohibit his own suit to get an issue determined at common law, then undo his own Prohibition by a Consultation -- no doubt a qualified Consultation, authorizing the ecclesiastical court to proceed \textit{ita quod} it treat the question of the assignments as conclusively decided.)

In Pyper v. Barnably the defendant in a tithe suit pleaded that the relevant land was not in the plaintiff’s parish. The original ecclesiastical court decided in the defendant’s favor -- i.e., that the land was in a different parish. The parson then appealed and lost again. Then he sought a Prohibition on the standard ground that issues concerning the bounds of parishes were triable at common law. Serjeant Heale, representing the parishioner, tried to make the general case against self-prohibition: The parson “chose them to be his judges,” the more so because he had taken

1 M. 39/40 Eliz. Q.B. Lansd. 1099, f.131.
2 H. 41 Eliz. Q.B. Add. 25,203, f.47b.
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an appeal. But Chief Justice Popham, speaking for the whole Court, invoked the “public stake” theory of Prohibitions to reject Heale’s argument: “...If the Court Christian will hold plea in derogation of the common law, the Court ex officio ought to restrain their proceedings.”

In Saunders v. Lashford, the general case against self-prohibition was again urged at the Bar. Again there was the added factor of an appeal. (A parson sued for tithes, lost, appealed, lost again, then sought a Prohibition on the ground that the validity of a lease had come in question.) The only Justices present, Yelverton and Fenner, thought the Prohibition should clearly be granted.

In Worts v. Clyfton the ecclesiastical plaintiff sought a Prohibition in a tithe suit dependent on two leases and a composition-real -- both “common law issues.” It does not appear from the report that the ecclesiastical court had given sentence or that there had been any appellate proceedings. The Court upheld self-prohibition is strong terms: “...et non refert, although the plaintiff in the Spiritual Court brings this prohibition to stay his own suit; for if this court hath knowledge by any means that the Spiritual Court meddles with temporal trials, they ought to grant a prohibition.”

In Napper’s Case, the defendants to a tithe suit pleaded a modus and made no move to get a Prohibition. The ecclesiastical judge was proceeding to examine witnesses as to the truth of the modus when the parson applied for a Prohibition. The Court issued a temporary stay to halt the examination of witnesses and assigned a day to show cause against the Prohibition. Although that step is less decisive than actually granting a Prohibition, it probably does not imply reluctance to allow self-prohibition. Prohibitions nisi and temporary stays were common, the point being to permit adversary debate before definitive issuance of the writ. It would, I think, be a little hard to let a man prohibit his own suit on a naked ex parte motion. However well-established the right to do so was, any such attempt raised a serious question. The other party should have

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3 P. 44 Eliz. Q.B. Add. 25.203, f.471.
4 M. 12 Jac. K.B. Croke Jac. 350.
5 Undated, probably Jac. C.P. Hobart, 286.
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his chance to argue against the Prohibition when there was any reasonable question about its legal propriety. That is all the Court gave him here.

Berd v ---.6 is obscurely reported, but it contains another express statement -- probably by counsel -- that self-prohibition is perfectly permissible. The Court granted the Prohibition, endorsing the point. The ecclesiastical plaintiff was suing to secure his right to a pew. Apparently his libel claimed on its face that the pew was appurtenant to his freehold. I assume that this fact as such was challenged, thus raising a real-property question within common law competence.

Farmer’s Case7 had a complication. In this case, a tithe suit was prohibited on the ecclesiastical defendant’s motion, upon the standard surmise that the land was discharged in the hands of its former monastic owners. Pursuant to the Prohibition, the parties took issue on the fact of the discharge. At the trial, after the parties had presented all their evidence, plaintiff-in-Prohibition (ecclesiastical defendant) was nonsuited. (Probably his evidence manifestly failed to establish the discharge.) A Consultation returned the suit to the ecclesiastical court. The ecclesiastical defendant then pleaded the identical discharge and the spiritual judge was proceeding to try it. Thereupon, the ecclesiastical plaintiff sought and obtained a qualified Prohibition -- prohibiting the ecclesiastical judge from accepting the plea of discharge. (That was probably tantamount to ordering the ecclesiastical judge to give sentence for the parson-plaintiff, though there is no theoretical reason why the parishioner-defendant could not have some alternative defense.) The decision was surely sound. It amounted to requiring the ecclesiastical court to respect a res judicata -- and judicata in the competent court. Even if the discharge had not been as good as adjudged (by virtue of the probably-involuntary nonsuit at trial), the ecclesiastical defendant would have been in a weak position to object to the Prohibition: He took due exception to the ecclesiastical suit and had his chance to establish his discharge in the proper forum. If he had simply changed his mind -- i.e., simply dropped his Prohibition at an early stage and gone back to the ecclesiastical court, hoping to establish his discharge there -- it would be reasonable to prevent him by a second

7 Undated, probably Jac. C.P. Hobart, 286.
qualified Prohibition. The report gives no arguments against the course taken by the Court. I can imagine two: (a) 50 Edw. 3 forbids more than one Prohibition in the same suit. It does not say that there may be two if they are sought by different parties, or if one is a general Prohibition and the other qualified. The Court’s decision implies an exception to 50 Edw. 3 -- an undoubtedly sensible “exception without a rule,” like those occasionally made for second Prohibitions after ecclesiastical sentence when the first Prohibition had been inconveniently obtained before sentence. (b) A man may not prohibit his own suit, even in the special circumstances of this case. I.e.: If one adopted the arguments against self-prohibition in radical form (“self-prohibition is ipso facto repugnant”; or “a plaintiff always undertakes to make his claim good, wherever its adjudication falls”), then one could argue that the ecclesiastical plaintiff in our case was helpless -- even to take advantage of a res judicata, even though the other party was in a very weak moral position. The Court’s decision implies rejection of those arguments in radical form and hence encourages their rejection in more normal circumstances.

Over against the group of cases above, there are a few in which self-prohibition was not permitted. In a way the strongest such case is Kinsley v. Piggins (1630),\(^8\) in which the ecclesiastical suit was for defamation -- for saying that Kinsley “did keep a man in his house to bugger.” The suit was probably prohibitable because those words were actionable at common law, hence, by the usual rule, not actionable in the ecclesiastical court. They were actionable at common law because buggery was a statutory crime by 25 Hen. 8, c. 6. (Falsely accusing someone of a secular crime was the clearest case of common law defamation.) I say “probably” prohibitable, instead of “certainly,” because statutes creating secular crimes raised a special problem with respect to coordinating common law and ecclesiastical jurisdiction: If buggery was once an ecclesiastical offense but not a lay offense, and then it was made a lay offense by statute, it might be argued that it remained concurrently an ecclesiastical offense (depending on the constructed intent of the statute-makers). If it did remain an ecclesiastical offense, it could then be argued that the ecclesiastical court also retained concurrent jurisdiction over

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\(^8\) M. 6 Car. K.B. Harg. 39, f.133.
defamation consisting in the false imputation of that offense. In Kinsley v. Piggins, however, the Court did not need to go into those complexities, if indeed it would have been inclined to in other circumstances (instead of simply holding categorically that no ecclesiastical action lies when a common law action would lie for the same words). The Court refused the Prohibition in this case because Kinsley, the ecclesiastical plaintiff, was also plaintiff-in-Prohibition. So far as the report shows, that was the sole reason for the decision.

The existence of a possible alternative basis for denying the Prohibition makes it harder to project from the case. Let us assume, however, that the Prohibition would certainly have been granted if it had been sought by the ecclesiastical defendant. Then what does the decision imply? The report is spare. Why Kinsley wanted to prohibit his own defamation suit is in no way indicated. The obvious motive would be to cut the other party off before he could vindicate himself. In a quarrel, Piggins accuses Kinsley of buggery. In his anger, Kinsley slaps a defamation suit on Piggins -- probably in the wrong court, but he doesn’t know any better, and what’s done is done. When he cools off, Kinsley thinks twice about having his sex-life reviewed in court -- the more so if there’s a chance of Piggins’ proving that he is a bugger, to his possible incrimination as well as embarrassment. But Piggins still wants to fight, hoping to win. He has no need for a Prohibition. For Kinsley, it’s the only way out.

The disparity between this sort of story and any account one might give of the motives and strategies of the parties to, say, tithe litigation is obvious. The greater part of litigation over defamation, whether at common law or in the ecclesiastical courts, was patent “quarrelling in the courts.” Though the judges tried to discourage it in various ways, it could not be prevented. To have granted the Prohibition in Kinsley v. Piggins would have been to cut off one litigative feud (without, on paper, preventing it from starting up again at common law). The price for that would have been unfairness to one disputant, Piggins, in a quarrel already joined. As defendant to an essentially criminal suit (for all ecclesiastical defamation suits, aiming not at damages but at some “penitential” act, were essentially criminal), he deserved the chance to clear himself of unbrotherly slander if he chose to. To deny the Prohibition was probably only to let the ecclesiastical judge determine factual questions (Were the
words spoken? Were they true?) -- a far cry from letting ecclesiastical judges decide such “common law issues” as the validity of a lease or the truth of a *modus*. They were indeed factual questions of a sort he was used to determining. (A defamation suit for “bugger” is not much different from one for “whore.” The latter was unquestionably within ecclesiastical jurisdiction. It is not as facetious as it sounds, on the other hand, to suggest that the legal definition of buggery might present rather more problems than simple whoredom. After sentence, Kinsley might have had a chance for Prohibition on surmise that the ecclesiastical court had erred in its understanding of “buggery.” The problem was whether penetration was necessary to constitute the crime.) One might conclude from Kinsley v. Piggins that an ecclesiastical plaintiff is estopped to prohibit his own suit when starting it was in the simplest sense his mistake -- i.e., when he could have sued at common law, or when he had no cause of action assertable anywhere. I wonder, however, whether such a rule would stand up against the “public stake” theory of Prohibitions in a serious matter -- e.g., if a man sued in an ecclesiastical court to recover a piece of ordinary secular property, to the blatant infringement of the common law, and the defendant made no objection. On the whole, Kinsley v. Piggins is best dismissed as an exception for the exceptional category of defamation suits.

Self-prohibition was also not permitted, again for the best of reasons, in Hutton v. Grimball. But the total effect of that case and another related one is to reinforce strongly the general rule that self-prohibition was entirely permissible. In both these cases, the ecclesiastical plaintiff sought a Prohibition based on 23 Hen. 8. That is to say, a man sued in the wrong diocese (not the defendant’s home diocese, where the statute required ecclesiastical suits to be brought), then tried to prohibit his own suit for that reason. One might suppose that self-prohibition would never be permitted in such cases: The fault the ecclesiastical plaintiff is trying to take advantage of is his own. The defendant, so far as appears, would just as soon be sued in the wrong ecclesiastical court as in the right one. Denying the Prohibition would not hand over an issue beyond ecclesiasti-
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cal competence to the ecclesiastical court. Nevertheless, in Langdale’s Case, the Court granted the Prohibition. The report gives only the holding. What the suit was about is not reported, so there is no basis even for asking whether there might have been any ulterior reason for granting the Prohibition. As it stands, the holding is stronger for self-prohibition than any other: A prohibitable suit should be prohibited, whoever moves for Prohibition and whatever the grounds.

A year later in Hutton v. Grimball the same Court went the other way. But the circumstances were special: (a) The suit that was brought in the wrong diocese was for defamation. (Perhaps, as I argue in Kinsley v. Piggins, there were reasons against self-prohibition specific to defamation suits as a class.) (b) The Prohibition was sought after sentence against the ecclesiastical plaintiff, the ecclesiastical judge having found factually that the defamatory words were never spoken. (Thus, the effect of prohibiting would be to override the defendant’s vindication of himself, when he had been accused of a “crime” he had not committed, and to deprive him of his costs, when he had been unjustly vexed both by a groundless accusation and by being sued outside his home diocese.) It would have been dogmatic indeed to prohibit in this case. The equities were so clear that the decision can hardly be taken to overrule Langdale’s Case. The Court’s explanatory language, on the other hand, was general enough to count as reversing the earlier case. The judges said that only ecclesiastical defendants -- the victims of being improperly drawn out of their home dioceses -- could take advantage of 23 Hen. 8. They also said (in effect proposing an alternative ratio decidendi) that waiting on sentence constituted an admission of local jurisdiction within the ecclesiastical system, though not of ecclesiastical jurisdiction as against the common law. (This point could be made against an ecclesiastical defendant who waited too long to invoke 23 Hen. 8, as well as an ecclesiastical plaintiff. Cf. the partially contrary Executors of Smith v. Poyndreill above.) Finally, the Court expressly affirmed the practice it seemed on the surface to be violating in Hutton v. Grimball: “...it was admitted here that Prohibition may be granted at the suit of him who first sued in ecclesiastical court, and though it be at the suit of the party or ex officio it is not material.”

We may note, finally, two anomalous cases in which the right to prohibit one’s own suit was in a sense questioned. In neither is a final decision reported. In neither would a decision have signified much for the
straightforward problem of self-prohibition. In one case an executor was not permitted to prove the will in the ecclesiastical court because he could offer only one witness. He then sought a Prohibition analogous to the many aimed at preventing enforcement of the ecclesiastical two-witness rule. Two of the Justices took note of the fact that the executor was seeking to prohibit his own suit, though not in such a way as to suggest disapproval of self-prohibition in general. Self-prohibition was not the real problem in this case. The problem was whether there was anything to prohibit. (Ordinarily, a Prohibition stopped a suit in progress. Was there anything for the executor to stop here? He had not started a suit, but rather been prevented from taking the first ex parte step in an ecclesiastical proceeding. So, at least, the situation could be interpreted. On that interpretation, the question was in effect whether the executor could have a Prohibition to do the service of a Mandamus -- i.e., to prevent the ecclesiastical court from standing in the way of the executor’s administration of the estate, even if it could not be forced to accept the will directly. There may also have been a substantive question as to whether the ecclesiastical courts were entitled to apply their two-witness rule to probate, even though they were not allowed to apply it in other contexts. The judges adjourned the case without decision. If they had denied the Prohibition, they would only have furnished one very special example of “self-prohibition prohibited.”

The other anomalous case presented a complicated problem. Counsel threw in an objection to self-prohibition as reinforcement to arguments that were really substantive, as if to say, “It would be most unjust to grant the Prohibition in this case, especially since the ecclesiastical plaintiff is trying to prohibit her own suit.” In brief, Mrs. Harris sued White for defamation and won. White appealed and lost again. He appealed again and this time was successful -- the sentence below was reversed and costs awarded against Mrs. Harris. Between the first appeal and the second came a general pardon, which extended to White’s ecclesiastical offense of slander. Mrs. Harris sought a Prohibition to take advantage of the pardon and escape the costs. I.e.: She claimed that as of

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11 H. 2 Car. C.P. Harl. 5148, f.114.
12 Harris v. White. P. 1 Car. K.B. Lansd. 1063, f.120b.
the time the second appellate court decided against her the offense was wiped out by the pardon, and consequently that no “incident” of the suit grounded on that offense (the costs) could be given effect. Common sense might suggest offhand that Mrs. Harris’s cause was shaky, but in fact the application to cost awards of pardons covering the “principal” was a recurrently difficult problem, and Mrs. Harris’s case was formidably argued. The Court ended by issuing a temporary stay of ecclesiastical proceedings, reserving judgment on the Prohibition until later. If this conclusion suggests an inclination to grant the Prohibition, then we have another example of “self-prohibition permitted” -- and permitted in a “hard” case, where an excuse for preventing Mrs. Harris from escaping the costs might be welcome. If the conclusion suggests disinclination to prohibit, objection to self-prohibition can hardly be taken for the reason. The only reported judicial remark, by Justice Dodderidge, is a ruminative and doubting one as to how pardons should be handled -- i.e., going to the substance.