

## OUTLINE — LAW SECTION 6

### TANCRED ON WITNESSES AND *SMITH C. DOLLING*

#### Tancred on Witnesses

1. Tancred of Bologna was a canonist at the beginning of the 13th century. He wrote what is perhaps the best known of the medieval treatises on procedure called an *ordo iudiciarius*. We argued on Wednesday that one of the principal efforts of the proceduralists of the 12th and 13th centuries, particularly in the area of proof, was to limit the judge's discretion. We also argued that there is evidence that by Tancred's time they may have realized that they had gone too far. A principal piece of this evidence is contained in a few brief paragraphs that are found in your Materials on IX-5 to IX-6, and below:
2. If we look at the topic sentences of the paragraphs, it looks as if a great many people can't testify, and that there's not much that the judge can do about it:
  - a. Slaves are prohibited.
  - b. Women are prohibited in criminal cases and for testaments.
  - c. Also prohibited is one younger than fourteen years, generally, in every case.
  - d. Prohibited is one who lacks discretion or is captive in mind ...
  - e. Prohibited are the infamous, and they are excluded from testimony.
  - f. Paupers are prohibited from testimony, both by the law of the forum and by the law of heaven.
  - g. Laymen are prohibited from giving testimony against clerics.
  - h. Infidels are prohibited to give testimony against the faithful.
  - i. All criminals are prohibited from testimony ...
  - j. Anyone is prohibited from giving testimony in his own case.
  - k. Judges, advocates and executors are prohibited from giving testimony in a case which they have handled.
  - l. Children are also prohibited from giving testimony for their parents and vice versa.
  - m. Family members and domestics are prohibited ...
  - n. Suspects and enemies are prohibited from giving testimony against their enemy.
3. What's Tancred got for authorities (they are all given in an Appendix to this passage in the Materials)?
  - a. Canonical material largely derived from pseudo-Isidore
  - b. Roman law for what it's worth
  - c. Decretal letters of popes who are his contemporaries or who came in the generation just before him

The way to read this stuff is to do what the author is inviting you to do: put the material in the citations together into an argument. Let's do it. We can't do it with all (this is good stuff to use for a paper), but let's pause on a couple of them.

Tancred: We dealt above with the genus of proofs. Now let us look at them by species, and first, concerning witnesses, because living voice is stronger than dead. Nov.73.3. And since more cases are determined by witnesses than by the other proofs, and very frequently greater debate arises about the statements of witnesses than about the other proofs, let us therefore examine witnesses

very fully, dividing the treatise on witnesses into many titles, on account of its prolixity. First, it is to be seen who can be witnesses and who not.

Tancred: Everyone can be a witness who is not prohibited, because the edict about witnesses, like that about proctors, is prohibitory; all, therefore, who are not prohibited can be admitted.

D.22.5.1.1.

D.22.5.1.1 (p. I–33): “ARCADIUS CHARISIUS, *Witnesses*, sole book: Oral evidence is often and necessarily given and should be sought particularly from those who are reliable. 1. Witnesses can be called not only in criminal cases but, when appropriate, in money suits, if not forbidden to testify nor excused from testimony by any statute.” Arcadius Charisius (Berger): “A little known jurist of the late third or the first half of the fourth century after Christ”, that is to say, he wrote after the Classical period. He wrote monographs on the office of the *praefectus praetorio*, on witnesses and on public charges (*munera*).

Tancred: Slaves are prohibited. 1 Comp. 5.36.10; C.4 q.3 c.3 s.40; C.4.20.11. Sometimes, nonetheless, the answer of a slave is relied on, as [in C.4 q.3 c.3 s.9] and then it ought to be taken with scourging, as [in *id.* s. 17]. If, however, the servile condition of a witness is objected to when he is brought in to testify, and he says they he was free from birth, his testimony ought to be received and reduced to writing, reserving the question for the time of disputations, and then if it is proved that he is a slave, his testimony shall be reproved. If he says, on the other hand, that he once was a slave but that he is now free, he ought not be received until he shows the instrument of his liberty; but if he says he does not have a copy of the instrument, his testimony is received and reduced to writing, but let it not be used for him who brought him in, unless he proves his liberty. C.4.20.11[10] (Nov.90.6 annexed).

Tancred: Women are prohibited in criminal cases and for testaments. [C.33 q.5 c.17; 1 Comp. 5.36.10; D.28.1.20.6]. In other cases, however, pecuniary, spiritual, matrimonial, or any other, women can give testimony, as is contained in [D.28.1.20.6; D.22.5.18] and in [C.15 q.3 c.2; 1 Comp. 2.13.4; 1 Comp. 4.17.1; 3 Comp. 2.12.6].

In the pastiche of sources that Gratian’s followers put together in C.4 qq.2–3 (*Mats.*, pp. IX–2 to IX–4), they omitted, probably deliberately, two key Digest passages, both of which Tancred cites here (D.22.5.18 [p. I–40: “PAUL, *Adultery*, book 2: The fact that the *lex Julia* on adultery forbids a woman found guilty to give evidence shows that women have the right to give evidence at a trial.”] and D.28.1.20.6 [p. IX–8: “Ulpian On Sabinus, book 1: ... A woman cannot act as witness to a will, although she can be a witness in court; as is established by the *lex Julia de adulteriis*, which prohibits a witness who has been convicted of adultery from testifying or making a deposition.”]). Notice that both of these sources use the same argument from negative inference that Arcadius Charisius uses, and Tancred cites both of them to support his general proposition that “in any other case, woman can give testimony.”

The only thing Gratian has that seems to support Tancred (not in the section on witnesses, but another pastiche of Roman-law citations put in by his followers) is in C.15 q.3 c.2 [p. IX–8], where he seems to admit women as accusers in cases in which they are particularly concerned: “Papinian Monograph on Adultery, book 1 [D.48.2.2]: ‘Women are permitted to bring a public accusation for certain causes, for instance, if they do so on account of the death of any of those persons of either sex against whom they, if unwilling, can not be compelled to appear as witnesses, under the provisions of the law relating to public testimony. The Senate arrived at the same conclusion with reference to the Cornelian Law on Evidence. Women, however, are allowed to testify publicly in a criminal prosecution concerning the will of a freedman of their father or their mother. By the law relating to testaments, the right was conceded to wards, with the advice of their guardians, to institute a prosecution for the death of their father, just as a female ward is allowed to institute one for the death of her grandfather, since the Divine

Vespasian permitted wards to bring suit with reference to the will of their father; but they could proceed by means of an interdict just as if the will had not been produced.’ In the Code [C.9.1.4]: ‘If your wife thinks that the death of her cousin ought to be avenged, let her appear before the Governor of the province.’ In the Digest [48.4.8]: ‘Women are also heard in cases involving treason (*laesa maiestas*). A woman named Julia revealed the conspiracy of Lucius Cataline, and furnished the Consul, Marcus Tullius [Cicero], the evidence upon which to base the prosecution.’”

Going the other way, Gratian also has in the context of marriage (C.33 q.5 c.17 [p. IX–9]) a very strong statement (ascribed to Ambrose but really Augustine) on the subjection of women leading to their incapacity to testify: “It is fitting that a woman be subject to the power of a man, and to have no authority, nor can she teach, nor be a witness (*nec testis*), nor give faith, nor judge.”

A similar statement from Isidore of Seville may be found in 1 Comp. 5.36.10 [p. IX–7]: “Witnesses moreover are considered according to their condition, nature and life. By condition, if he is free, and not a slave. For frequently a slave suppresses testimony to the truth out of fear of his master. By nature, if he is a man not a woman (*non foemina*). For a woman always produces variable and changeable testimony (cf. Virgil, Aen. 4.569).”

On the other hand, the Roman law, somewhat tendentiously (suggesting more of a problem than the juristic authors let on), comes out the other way. Note that both Paul and Ulpian (D.22.5.18 and D.28.1.20.6) make the argument from silence out of the *lex Julia de adulteriis*.

One more given because it comes from the *Institutes* though Tancred doesn’t cite it: women cannot be witnesses to testaments. The reason for this is an archaic piece of history that Tancred probably did not know.

The question then is, what will be taken as the principle and what the exception. Into this some practicalities emerge. Pope Clement III, a slightly older contemporary of Tancred’s, dealing not with women but with father and son, says that relatives may be admitted in marriage cases. 1 Comp. 4.17.1 [p. IX–8 to 9]: “It seems to us .... Moreover, that parents, brothers and relatives of both sexes be admitted in their testifying to uphold or invalidate the marriage is approved both by ancient custom and the laws, and is similarly approved by both divine and human laws.”

Gratian seems to acknowledge and Gregory I certainly did [1 Comp. 2.13.4, p. IX–8] that women could accuse clerics of crimes when the crime was committed against that woman: “Since various crimes have been reported to us of the person of Epiphanius a priest, it is necessary that you examine everything quite carefully, and you are to hasten to bring here either the women (*mulieres*) with whom he is said to have had dealings or others whom you feel know anything about the same case, so that by ecclesiastical compulsion what is true can clearly be revealed.”

And Innocent III, the reigning pope when Tancred writes, confirms this in 3 Comp. 2.12.6 [p. IX–9]: “Since however about the marriage which the same [bishop]-elect is said to have contracted with a widow, witnesses were not received on account of the obstacle of appeal on the ground that laymen and women might not be received on such an article against him, as your letters intimated to us, although the messengers of the elect tried to prove otherwise before us, we, so that the objection of such an irregularity not remain undecided, commit to your discretion by apostolic writing and command that you receive legally witnesses, be they laymen or women, so long as they are fitting, who are brought forward to prove this within a month, and that you examine them prudently, solemnly excommunicating anyone who presumes to impede them from giving testimony to the truth.”

Tancred: Also prohibited is one younger than fourteen years, generally, in every case. C.4 q.3 c.1. Again, one younger than twenty years in a criminal case. C.4 q.3 c.3 s.14; D.22.5.19.1, 20. Nonetheless when he reaches the age of puberty he may testify about those things which he saw when he was below the age of puberty. And the same is to be said of a freed slave, for he can give

testimony about those things which he saw in the time of his servitude. D.50.16.99.2; D.37 c.14.

Tancred: Prohibited is one who lacks discretion or is captive in mind, just as he is excluded from the office of judging and of pleading. C.3 q.7 c.1; D.3.1.2.

Tancred: Prohibited are the infamous, and they are excluded from testimony. 1 Comp. 5.36.10; 1 Comp. 2.13.23; 2 Comp. 4.12.5; C.4 q.3 c.3 ?s.2. Nonetheless in excepted crimes the infamous can be admitted to testify, as in simony and the like, but not without torture. 3 Comp. 5.2.3; C.4 q.3 c.3 s.17.

Tancred: Paupers are prohibited from testimony, both by the law of the forum and by the law of heaven. C.2 q.1 c.7 s.3, c.14; Nov. 90.1. And some say this only obtains in criminal cases, and [others] that it generally obtains of any pauper who has less than fifty *aurei*. To me it seems that this is said only of those paupers who are presumed to suppress the truth upon receiving money, for if the witness is honest, so that there is no presumption against him that he would lie for money, he ought not be excluded from testimony; otherwise you would have to say that many holy and religious men, and even the apostles themselves, ought to be excluded, for they are paupers, having nothing.

C.2 q.1 c.7 s.3 (p. IX–14) comes from a remarkable letter of Gregory I. It is one of the few genuine pieces of canonic material that the compilers had on this topic. It says flat out that both accusers and witnesses should not be *inops*. C.2 q.1 c.14 (p. IX–12) is one of the pieces of Roman law that Gratian's followers added to the work. It mentions a requirement that accusers, not witnesses, have property worth at least fifty *aurei* (D.48.2.10). Nov. 90.1 (p. IX–13) seems to be limited to the situation in Constantinople. On the other hand, it also provides Tancred with his out about lives being regular and blameless.

([Some mss. add:] Laymen are prohibited from giving testimony against clerics. This is true in a criminal case. 1 Comp. 2.13.14; C.2 q.7 c.14, c.5, where it is said that clerks are dangerous [*infesti*] for laymen, and throughout the same question. Except where the action is being brought only civilly, as is noted above concerning the trials of crimes. If, however, a civil case is brought against a cleric, laymen also are well admitted to testimony. 1 Comp. 2.13.22, at these words: "Because the aforesaid clerics do not have authenticated documents with which they can support their claim, ... we command you that you warn all these clerics, or those laymen whom they name, to show before you the truth of the matter that they know about this case." Similarly, a clerk cannot bear testimony against a layman in an accusation. C.2 q.7 c.51.)

Tancred: Infidels are prohibited to give testimony against the faithful. C.2 q.7 c.26; 2 Comp. 2.2.1.

Tancred: Bind up the aforesaid seven genera of prohibitions in these verses:

Conditio, sexus, aetas, discretio, fama,  
Et fortuna, fides: in testibus ista requires.  
[Condition, gender, age and discretion,  
Fame and fortune and truth,  
If these are lacking,  
Without the court's backing,  
From witnessing hold 'em aloof.]

[Cf. D.22.5.3 v<sup>o</sup> *inimicitia*; X 2.20.2 v<sup>o</sup> *vilissimi*.]

Tancred: Again, all criminals are prohibited from testimony, whether they were previously convicted of the crime or not, so long as they are convicted by way of exception, the crime being stated and proved. 1 Comp. 2.13.13, 12; 2 Comp. 2.11.1; 3 Comp. 2.4.1. And this is true in every case, according to the canons, except in excepted crimes. 3 Comp. 5.2.3, 4. What excepted crimes are and what the law is when they are tried is fully noted above in the title on crimes. And this is

the reason why all criminals are excluded from testimony, because they are infamous by canonical infamy. C.6 q.1 c.3, c.4.

Tancred: Again, anyone is prohibited from giving testimony in his own case. C.4 q.3 c.3 s.24; C.4.20.10. Nonetheless, anyone is admitted in the case of his own corporation. C.14 q.2 c.1; 1 Comp. 2.13.21; 3 Comp. 2.12.11.

Tancred: Judges, advocates and executors are prohibited from giving testimony in a case which they have handled. C.2 q.6 c.38; C.4 q.3 c.3 s.19. Truly, however, they can give testimony about those things that happened before them, if a question arises about it. 1 Comp. 2.20.35.

Tancred: Children are also prohibited from giving testimony for their parents and vice versa. C.4 q.3 c.3 s.23; C.4.20.6. Except in three cases. First, a father can be a witness to the testament of a son about [the latter's] *peculium castrense*. D.28.1.20.2. Second, to prove relationship or age. D.22.3.16. Third, in matrimonial cases. C.35 q.6 c.1; 1 Comp. 4.17.1; 2 Comp. 2.18.5.

Tancred: Again, family members and domestics are prohibited, those who can be commanded by reason of dominical or paternal power. C.3 q.5, throughout; C.1.12.6.

Tancred: Suspects and enemies are prohibited from giving testimony against their enemy. C.3 q.5 c.2. With this distinction: capital enemies and conspirators are to be heard in no situation. 3 Comp. 5.2.3, 4. And enemies because of a criminal litigation are not to be received before the end of the case. Enemies because of a pecuniary litigation can be admitted, but how much faith is to given them is reserved for the time of the disputation.

Tancred: In the aforesaid situations someone is prohibited by the laws, but the same thing sometimes also happens through the office of the judge, when he excludes an unbridled multitude of witnesses, decreeing a certain number, up to which they may be produced. 3 Comp. 2.12.10, 9; D.22.5.1.2.

The prohibition against the infamous testifying admits an exception in the case excepted crimes: simony being given as an example, and *Licet Heli* (3 Comp. 5.2.3; X 5.3.31) is cited in support of this proposition. The exclusion of criminals from testifying is again admits an exception in the case of excepted crimes, and, once more, *Licet Heli* is cited. The case is cited again in support of the proposition that capital enemies of the defendant are never admitted to testify.

We examined this decretal in some detail in the lecture last Wednesday. Once more, here's the bottom line (what lawyers call the 'holding'):

"Lest either the purity of innocence fall confounded or the evil of simony escape unpunished, we, weighing equity, deemed that not all the exceptions proposed against the witnesses be admitted, nor all repelled, but admitted to proof those exceptions that seem to prove that they [the witnesses] proceeded not from the zeal for justice but the tinder of malignity, to wit, conspiracies and capital enmities. We deem that the other opposed objections, like theft and adultery, because of the pervasiveness of the heresy of simony, in comparison with which all crimes are like nothing, are to be rejected, for even if they weaken the confidence in the witness in some measure, they do not totally remove it, especially when other indications (*adminicula*) support."

Tancred, with some support from Innocent's own decretal interpreting *Licet Heli*, takes this decretal and runs with it. He applies it to the infamous, an issue that was not present in *Licet Heli*; he applies it to all excepted crimes (there's support for this elsewhere, which he does not cite), and he spells out a procedure to be used in those situations where an enemy of the defendant is admitted to testify.

### ***Smith c. Dolling* (Mats. § 14A)**

1. Let me remind you of what we covered yesterday: Alice Dolling of Winterbourne Stoke claimed in the Consistory Court of Salisbury that William Smith also of Winterbourne Stoke

had contracted marriage with her. William denied this, and over the course of the summer of 1271 Alice produced four witnesses to the exchange of consent that she and William allegedly had on 26 December 1268. In the autumn, William confessed before the court that he had had intercourse with Alice, but alleged that her witnesses were lying when they said that she had contracted marriage with him on the day in question. Indeed, he said, on the day in question until the next morning, he was in Bulford, four miles away serving at an all-day guild feast. A couple of days later Alice replied to this allegation by saying that William was, indeed, in Winterbourne Stoke that day. Over the course of the autumn William produced ten witnesses to his exception of absence and Alice four witnesses to her replication of presence. After some maneuvering in the spring of 1272, the Salisbury court rendered judgment for Alice in May. William appealed to the appellate court in Canterbury, and in October of 1272, the Court of Canterbury reversed the judgment of the Salisbury court.

2. A few pieces of background before we take a look at the depositions:
  - a. The pattern of claim, exception, and replication that we see here is probably the product of the rule that one cannot introduce testimony directly contradicting testimony that has already been published.
  - b. This pattern of claim with proof taken on it, then another claim and proof taken on it is characteristic not only of medieval Romano-canonical it is also characteristic of continental procedure today.
  - c. One piece of the procedural maneuvering in the spring of 1272 may be worth emphasizing. The official of Salibury asked William to produce his witnesses again so that he, the official, could inquire about the continuity of William's absence. William returns and says he cannot produce his witnesses again because: "some of them did not exist in the nature of things [i.e., they were dead] and some of them had left the province for a pilgrimage and for other necessary cause."
3. The three sets of depositions have survived, and they are of some interest.

#### Production of Alice Dolling on the principal

Celia daughter of Richard Long sworn and carefully examined about the contract of marriage between William Smith of Stoke Winterbourne and Alice Dolling says that she saw and was present when the said William gave his faith in the hand of the said Alice by these words: "I William will have you Alice as wife so long as we both live, and thereto I give you my faith." And she replied, "And I Alice will have you as husband, and thereto I give you my faith." Asked about the hour, she says it was at the hour of sunset. Asked about the place, she says in the house of John le Ankere before the bed of the said women, Celia and Alice, on the west side of the house. Asked if they were standing or sitting, she says sitting. Asked about their clothes, she says that the man was dressed in a black tunic of Irish, an overtunic of russet, and a hood of the same color, and the woman was dressed in a tunic of white and a blue hood, and on her feet she had strapped shoes. Asked how she knows this, she says that she was present in the house when all this happened. Asked why the said William came there, she says to have carnal intercourse with her if he could. Asked if she ever saw them having intercourse, she says no, but she saw them naked in one bed. Asked who were present at the said contract, she says the contracting parties, she herself, Margaret, her sister, and no more.

Margaret, sister of the said Celia, sworn and carefully examined about the aforesaid contract says that she saw and was present when the said William gave his faith to the said Alice by these words: "I William will have you Alice as wife as long as we shall live, and thereto I give you my faith." And she replied, "And I Alice will have you William as husband by such a pact." About the year, the day, the hour and the place, she agrees with the said Celia, her cowitness. Asked

about their clothing, she says that the man was wearing a gray tunic of Irish cloth, and an overtunic of gray and a hood of gray. About the clothes of the woman she agrees with her cowitness. About her knowledge, she agrees with the said Celia. Asked why the said W. came there, she says that she does not know, unless it was to have carnal intercourse with her. Concerning those in the house, she agrees with the said Celia. Asked if she ever saw them having intercourse, she says no, nor did she see them together in one bed.

Margaret daughter of Michael sworn and carefully examined about the marriage contract between William Smith of Stoke Winterbourne and Alice Dolling, says that on St. Stephen martyr's day at Christmas, two years ago, she was present and saw that William Smith whom the case is about gave his faith to the said Alice by these words: "I William take you Alice as my wife if holy church permits, and thereto I give you my faith." And Alice replied by these words. "And I Alice will have you as husband and will hold you as my husband." Asked about the hour she says that this was done before the hour of sunset. Asked about the place, she says in the house of John le Ankre in the southern part before the bed of the said Alice. Asked who were present, she says Celia daughter of Richard Long and Margaret the sister of Alice whom the case is about and the contracting parties and no more. Asked why the said William came there, she says she does not know. Asked if she ever saw them having intercourse, she says no. Asked in what garments they were clothed, she says that the said William was wearing an overtunic of russet and a hood and a tunic of grey Irish, and Alice was wearing a white tunic and a blue hood.

Production of William Smith on his exception of absence previously proposed

[There are actually ten witnesses; I've omitted those where the deposition simply says that the witness testified the same as the previous witness.]

John Chaplain, sworn and carefully examined, asked for what he was produced, says to prove a certain exception proposed by William Smith against Alice Dolling of Winterbourne in court. Asked what the exception is, he says that the said William proposed by way of exception that he was not present on St. Stephen's day on which the witnesses of the said woman depose that he ought to have contracted marriage with her. Asked where the said William was on the said day, he says that he well knows and that he saw him and spoke with him on the day of St. Stephen martyr, at Christmas there will be three years passed, at Bulford from the ninth hour of the aforesaid day of St. Stephen and for the entire night following up to midday on the following St. John's day [26–27 December, 1268]. Asked how he knows this, he says that they serve[d] a guild of parishioners in the said town of Bulford finding food and other things necessary for those serving, as is customary, along with Alice his mother. Asked where he was at table that day, he says in the house of Alice his mother at Bulford. Asked if he left at any hour of the aforesaid day or night, he says no. Asked how he knows this, he says that both of them were together at the said guild and in eating at the house of Alice the mother of the aforesaid William from the ninth hour until midnight, and immediately afterwards they went to the house of the mother of the aforesaid William where the said William spent the night. Asked who were at the guild, he says the guild brothers. Asked who the guild brothers are, he says almost all the better men of the parish. Asked if all his cowitnesses were present, he says yes. Asked if he knows Alice whom the case is about, he says no. Asked how far Winterbourne Stoke is from the town of Bulford, he says four miles. Asked how he recalls such a lapse of time, he says by this: that in the same year, the guild ceased.

Richard Sturre sworn, examined and carefully asked, says that William Smith whom the case is about was present in the town of Bulford from the ninth hour of St. Stephen, at Christmas there will be three years passed, continuously for the whole day and the night following and St. John's day until noon. Asked how he knows this he says by this that he saw him at the guild of Bulford and spoke with him and saw him serving as butler at the said guild until midnight. And the same day, along with Alice his mother, he found food and other necessities for the guild, as is customary, for each guild bother in his course when he came to him. About the rest he agrees

with John, previously sworn.

Walter de Ponte, sworn, examined and carefully asked, agrees in all things with the previously sworn John and Richard, adding however that they lay in one bed in the house of his mother at Bulford. Asked who spent the night in that house that night, he says the witness himself, William whom the case is about, and their mother and a serving maid and no more.

Peter son of Alice sworn and carefully examined says that he well knows and it well comes to his memory that William Smith whom the case is about was continuously in the town of Bulford on St. Stephen's day from the ninth hour through the whole day and the following night until the third hour of the next day, this year there will be three years elapsed. Asked how he knows this, he says that he saw him on the said St. Stephen's day eating and drinking at the table of the mother of the said William. Asked where the said W. went after dinner, he says to the guild at the hour of sunset and he stayed there with many others drinking until almost midnight, and afterwards he went to the home of his mother to bed and lay there until morning. Asked how he knows this, he says that he was in his company and is his next-door neighbor. Asked how he remembers when so much time has elapsed, he says by this that in the same year the guild ceased. Asked how far Bulford is from Maiden Winterbourne [today, Maddington, barely a speck on the map a couple of miles north of Winterbourne Stoke], he says three leagues. Asked if the said William left Bulford any hour of the day or night between the ninth hour of the aforesaid St. Stephen's day and the third hour of the following St. John's day, he says no.

Roger de Cowland sworn and carefully examined agrees in all things and through all things with the previously sworn P. and J. except that he does not give the reason for his knowledge.

Production of the said Alice about the presence of the said William

Edith of Winterbourne Stoke sworn and carefully examined about the presence of William Smith says that she saw the aforesaid William Smith in the eastern part of the church of St. Peter of Winterbourne Stoke, leading a crowd of women after him on the day of St. Stephen martyr there were three years past. Asked about the hour of the day, she says that it was after dinner before the hour of sunset. Asked about clothing, she says she does not recall. Asked where he went, she says she does not know. Asked how she remembers the lapse of time, she gives no cause of her knowledge. Asked if she saw him many times, she says only once. Asked who saw him with her, she says Edith, Alice and Agnes, her cowitnesses and many others of the parish.

Edith Dolling, the sister of her whom the case is about, sworn and carefully examined about the presence of William Smith, says the same as the aforesaid Edith in all things, adding that she saw him many times that day and that the man was dressed in a cloak of russet and a hood of blue, and that she herself went in his hand.

Agnes Grey sworn and examined says the same in all things as Edith the next previously sworn, except that she gives the reason for her knowledge of the lapse of time that she was pregnant at the time.

Alice daughter of William Chaplain sworn and carefully examined says the same in all things as the aforesworn Edith Dolling.

4. What are we to make of all this? What do you think? What's going on here?
  - a. Someone is lying.
  - b. Who's lying? What are the logical possibilities?
  - c. What can we surmise about the social standing of the parties and their witnesses?
    - i. The "northwest European marriage pattern"



ii. Life-cycle servanthood

5. Report of the examiners of the court of Canterbury:

“Item, having examined the statements of the witnesses of the said Alice on the *de presenti* marriage contract that she proposed, the first two witnesses seem to depose that they contracted between themselves by words of the future tense. And these witnesses were sisters of each other, as the second witness seems to depose. Item, the third witness seems to depose that the man contracted by words of the present tense and the woman by words of the future tense, and she says that the second witness is the sister of Alice.

“Item, having examined the witnesses of William produced on his exception of absence it seems that he proved by ten witnesses his absence at the same hour about which the witnesses of the said woman depose. Item, having inspected the statements of the witnesses produced on the replication of presence, they do not seem to obviate the statements of the witnesses on the exception of absence nor do they help the claim of the woman because they seem to speak of the previous year, and even if they are speaking about the same year they seem to depose less fully, and they are only four in number and the witnesses of the man are ten.”

6. Was justice done?