

OUTLINE — LECTURE 10

Smith c. Dolling

The role of cases in Continental European legal systems

1. Some comparative remarks.
2. The presence of case records in the medieval and early modern periods.

The *processus* in Salisbury in *Dolling c Smith*

10 July 1271—Alice Dolling appeared in the consistory court of Salisbury claiming that William Smith was her husband. William denied the charge, and Alice was told to produce her witnesses before the dean of Amesbury.

“A.D. 1271, Friday after the feast of the translation of St. Thomas, martyr [10 July], Alice of Winterbourne Stoke appeared against William Smith saying against him that he contracted marriage with her, wherefore she asked that he be adjudged her husband by sentence; she says this, etc. [not committing herself to proving each and every element in her libel but insofar as she proves so far may she obtain]. The man, joining issue, denies the contract; the parties sworn to tell the truth say the same thing as before. The reception and examination of witnesses is committed to the dean of Amesbury.”

30 July 1271—Alice asked for and obtained a second production of witnesses.

“Thursday next after the feast of St. Peter in chains [30 July], the parties appeared personally and the woman asked for a second production and got it.”

23 September 1271—The depositions of Alice’s three witnesses were published in open court.

“Wednesday next after the feast of St. Matthew the apostle [23 September], the parties appeared personally; the woman renounced further production; the attestations were published with the consent of the parties; the parties were given a copy; a day was given for sentencing if it was clear. The woman constituted her brother Roger her proctor in the acts to hear the definitive sentence.”

26 October 1271—William confessed that he had had intercourse with Alice six months previously but denied that they had contracted marriage, claiming that he had been in Bulford on the st Stephen’s day [26 December] almost three years previously, the day on which Alice alleged that they exchanged the words of marital consent in Winterbourne Stoke. (Technically, this was an exception against Alice’s witnesses, an allegation that they had perjured themselves.) The dean of Amesbury was to examine William’s witnesses.

“Monday next after the feast of the apostles Simon and Jude [26 October], the parties appeared personally; the man under interrogation confessed in court that he had carnal knowledge of the said Alice a half a year ago. The same man proposed an exception in the following form: ‘Before you, sir judge, I, William of Winterbourne Stoke, peremptorily excepting propose against the witnesses of Alice Dolling that they depose falsely because from the ninth hour of the day on which her witnesses depose that I contracted marriage with her until the first hour of the subsequent day I was continuously at Bulford, so that it would have been impossible for me at the hour about which the witnesses depose to have contracted marriage at Winterbourne Stoke. And this I offer to prove.’ The reception of the witnesses produced by the man on his exception and their examination is committed to the dean of Amesbury.”

18 November 1271—Alice answered William’s exception with a replication that alleged that William had indeed been in Winterbourne Stoke on 26 December 1268. The rectors Berwick and Orcheston were to examine Alice’s witnesses.

“Wednesday next before the feast of St. Edmund, king and martyr [18 November], the parties appeared personally; the woman made a replication of presence; let the woman produce her witnesses before the

rectors of Berwick and Orcheston, however many she wishes to produce before the next consistory; let the man also produce however many witnesses he wishes to produce about his absence before the said dean and the chaplain of Amesbury before the next consistory.”

15 December 1271—The depositions of William’s ten witnesses on his absence and Alice’s four witnesses on his presence were published in open court

“Tuesday after the feast of St. Lucy the virgin [15 December, 1271], the parties appeared personally; the woman excepting proposed that it was not her fault that her witnesses had not been examined and asked that they be admitted in court; they were sworn, their examination committed to the dean of Amesbury and Richard de Rodbourne, and the way of further production precluded for her. On the same day [this may not be right] the attestations both on absence and presence were published with the consent of the parties; copies of the attestations were offered to and obtained by the parties, and a day was given for doing what law shall dictate.”

27 January 1271/2—After some dispute a day was given for sentencing.

“Wednesday next after the octave of St. Hilary [27 January, 1271/2], the parties appeared personally, and when there had been some dispute among the parties about the attestations of the parties, a day was given for sentencing if it was clear.”

11 February 1271/2—William was ordered to produce his witnesses again so that the court might inquire more fully into the continuity of his absence.

“The day after St. Scholastica the virgin [11 February, 1271/2] the parties appeared personally. It was decreed that the aforesaid W. produce in the next consistory all his witnesses whom he had previously produced on his exception so that it might be inquired more fully about the continuity of absence.”

1–5 March, 1271/2—William alleged that he could not produce his witnesses again because some of them had died “and some of them had left the province for a pilgrimage and for other necessary cause.” The parties once more disputed about the process, and a day was once more given for sentence. [The Salisbury processus inserts the depositions of the witnesses at this point.]

“Tuesday after the feast of St. Mathias the apostle, continued until Wednesday, Thursday, Friday, Saturday next following [1–5 March, 1271/2], the parties appeared personally. The same man alleged that he could not produce his witnesses before us because some of them did not exist in the nature of things and some of them had left the province for a pilgrimage and for other necessary cause. And when the parties had disputed for a while about the processus, the same William demanded that a copy of the entire processus be made for him, which decreed and obtained, a day was given for doing what law shall dictate in the next consistory after Easter.”

11 May 1272—The official of Salisbury rendered sentence for Alice declaring that William was her lawful husband. [A later document in the case tells us that William immediately appealed to the Court of Canterbury.]

“Wednesday after ‘Misericordia’ Sunday [11 May], A.D. 1272, the parties appeared personally and concluding the case asked that sentence be given. We the official of Salisbury proceeded to definitive sentence in this way: “In the name of the Father, amen. We the official of Salisbury having examined the merits of the aforesaid cause and having gone over the acts of court carefully, because we find the claim of the said Alice sufficiently proven, notwithstanding the exception proposed on the part of William, which is not proved clearly in its form, as it ought to be, adjudge William by sentence and definitively to be husband to the same Alice.”

The depositions in the Salisbury court

Alice first produced three witnesses, all women. The first testified that on December 26 two years previously she was present in the house of one John le Ankere in Winterbourne Stoke at nightfall, in front of the bed that she and Alice shared. William and Alice were sitting, probably on a bench in front of the

bed. He was dressed in a black tunic of Irish homespun with an overtunic and hood of russet; she was dressed in a white tunic with a blue hood and wore shoes with laces. William took her by the hand and said: “I William will have thee Alice as wife so long as we both shall live and to this I pledge my troth.” Alice replied: “And I Alice will have thee as husband and to this I pledge thee my troth.” Asked why William had come there, she said to have carnal knowledge of Alice if he could. Asked if she had ever seen them having intercourse, she said no, but she did see them lying together naked in the same bed. The second witness calls herself the sister of the first, and basically agrees with the first’s testimony, though she says that William’s tunic, overtunic and hood were all gray. She never saw them lying together. The third witness has a slightly different version of the words exchanged: William said: “I William take thee Alice as my wife if holy church allow it, and to this I pledge thee my troth.” She said: “I Alice will have thee as husband and will hold thee as husband.”

William’s ten witnesses, all men, tell a different story. William was in Bulford, four miles away, on St Stephen’s day two years previously. They give a vivid description of an all-day ale-feast, held by the parish guild. William was serving at the feast and could not possibly have been in Winterbourne that day.

Alice’s four replication witnesses, all women, say that they saw William in Winterbourne that day, where he is described as leading around a crowd of women or going hand-in-hand with a woman.

Proceedings on appeal to the Court of Canterbury

26 July 1272—William appeared in the Court of Canterbury, and Alice did not. William was given a day to propose exceptions to the processus before the official of Salisbury.

30 September – 4 October 1272—Alice did not appear. William proposed exceptions to the processus before the official of Salisbury. The judge (unnamed) ordered the examiners of the court to examine the processus and report back to him about it at the end of October. The report has survived and portions follow:

“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,¹ 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.”

29–31 October 1272—Once more Alice did not appear. The commissary of the official of the Court of Canterbury reversed the decision of the official of Salisbury.

“In the name of God, amen. Having heard and fully understood the merits of a marriage case formerly moved before the official of Salisbury, hearing the case by ordinary authority, between Alice Dolling of

¹ A neat point—Alice’s witnesses on the principal claim speak of an event on St. Stephen’s day, there were two years passed; William’s witnesses on his absence speak of period on St. Stephen’s day, there will be three years passed, i.e., on next St. Stephen’s day; Alice’s witnesses in replication speak of a period on St. Stephen’s day, there were three years passed. We cannot exclude the possibility of scribal error (‘erant’ for ‘erunt’), nor, it seems, could the examiners. The explanation may be, however, that Alice’s replication witnesses were examined after 26 December, 1271.

Winterbourne Stoke, Salisbury diocese, woman, plaintiff on the one side, and William called ‘Smith’ of Bulford, of the same diocese, defendant on the other, and afterwards lawfully devolved on the Court of Canterbury by appeal of the said William from the same official of Salisbury as from an iniquitous definitive sentence, and in the said court long litigated, there being recited before us in court the whole processus had before the official of Salisbury in the said cause between the same parties and the said sentence of the official of Salisbury, having uncovered the iniquities of them, because it lawfully appears to us that the said official of Salisbury rendered a rash sentence in the said case and the said William Smith has well appealed, we, brother Henry Depham, penitentiary of Christ Church Canterbury and commissary of the official, etc., with the counsel of legal experts sitting with us, pronounce the aforesaid sentence of the official of Salisbury rendered against the before-mentioned William in the said case to be unjust, and we quash the same sentence by the authority of the see of Canterbury, absolving the same William from the petition of the said Alice by sentence and definitively by the authority of the aforesaid see, decreeing that the aforesaid official of Salisbury be required by the lord official of Canterbury aforesaid to hold the said William as thus absolved and public and solemnly and to declare him thus absolved or have him [so] declared at times and places which the party of the said William might require in this matter.”

The ‘bottom line’

1. Can we draw any social conclusions from such cases?
 - a. Most liars cannot make things up out of nothing.
 - b. One hundred years after Alexander’s decisions news of them had reached Winterbourne Stoke.
 - c. Can we ever be sure that the witnesses are telling anything like what really happened?
 - d. Can we say anything about what happened in Winterbourne Stoke?
2. The cases give us some evidence that we can use to tell a story that might otherwise not be told:
 - a. People did seem to know what the rules were.
 - b. Because people knew what the rules were, they knew what they had to say in order to achieve the desired result in court.
 - c. What causes the courts sometimes to accept the results that the parties and witnesses are urging them to accept and sometimes to reject them is a complicated question, the answer to which is highly problematical.
 - d. Thirdly, as Michael Sheehan has noted, the attitudes toward marriage reflected in the court records are extraordinarily individualistic.
 - e. This individualism, however, has limits.