

A. WILLIAM SMITH c. ALICE DOLLING

(Court of Canterbury, 1271–72) in N. Adams & C. Donahue, eds.,
Select Cases from the Ecclesiastical Courts of the Province of Canterbury (Selden Soc’y no. 95, 1981) 127–38 [CD trans.]

Alice Dolling of Winterbourne Stoke (Wilts) complained to the official¹ of the bishop of Salisbury that a certain William Smith had married her and should be adjudged her husband. The case was heard by the official in the consistory court, and he gave sentence for the plaintiff. William appealed to the Court of Canterbury.² We have the *processus* sent to the higher court by the official of Salisbury, giving a brief summary of the proceedings, depositions of witnesses, and the original sentence. We also have various entries from the rolls of acta of the Court, and a separate document which contains the report of the examiners of the Court who examine the *processus* from Salisbury. The final entry in the case contains the definitive sentence reversing the judgment of the lower court. Translated below are the original *processus* (no. 1) and the examiners’ report (no. 4). The final *acta* in the Court of Canterbury (no. 5) indicate that the commissary of the official of Canterbury reversed the Salisbury decision on 31 October 1272.

No. 1

Processus before the official of Salisbury, 10 July, 1271 — 11 May, 1272

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. 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.

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.

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.

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.

Wednesday next before the feast of St. Edmund, king and martyr [28 October], 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.

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

¹ The word in this context means “judge.” He was appointed by the bishop.

² The Court of Canterbury was the appellate court for the province of Canterbury. The province included the diocese of Salisbury.

Amesbury and Richard de Rodbourne, and the way of further production precluded for her. On the same day 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.

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.

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.

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 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 women³ 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.⁴

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.

Production of William Smith on his exception of absence previously proposed

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 or 1269; see below fn. 3]. 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

³ Textual problem here. This may mean "leading a lewd woman".

⁴ An obscure phrase.

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.

John le Devenes sworn and carefully examined agrees in all things and through all things with the previously sworn John and Richard.

Hugh Baghe sworn and carefully examined agrees in all things and through all things with the previously sworn.

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, 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.

John son of the weaver sworn and carefully examined agrees in all things and through all things with the previously sworn Peter.

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.

* * *

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. 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."

No. 4

[An initial long paragraph in this document recites the procedural steps in the Salisbury court and those taken in the Court of Canterbury. The only thing worth noting is that the woman at no time appears in the proceedings at 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,⁵ 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.

No. 5

Acta, etc., on the Monday next after the feast of the apostles Simon and Jude [31 October 1272], continued and prorogued from the next preceding Saturday [29 October], in the year, etc., before us, brother Henry [Depham],⁶ etc., in a marriage case which is pending between Alice Dolling of Winterbourne Stoke, plaintiff, in no way appearing on the one side, and William Smith of Bulford, defendant, personally appearing on the other: to wit, since it appeared to us by the previous *acta* that that various iniquities had been proposed by the party of this W. against the *processus* held before the official of Salisbury between the same parties and transmitted by him under his seal and against the sentence that the same official rendered against this W., and that it had been decreed that the *processus* be handed over to masters P. le Conte and J. de Meriton, examiners of the said court, along with the aforesaid sentence and the mentioned iniquities, to be examined by them, and what they found to be referred to us in writing on the said Saturday, and that the same said Saturday had been fixed by us for the party of the said W. for doing and receiving what justice might persuade and to hear sentence, if the matter was clear, in the said case, and it also appeared that it had been decreed that the said Alice Dolling should be peremptorily cited by the said official of Salisbury that she appear before the said official or his commissary on the said Saturday and in the said place to proceed, do, and receive what justice might persuade and to hear sentence, if it was clear, and it also appeared by certifying letters of the lord official of Salisbury that the said Alice had been peremptorily cited for the said day and place to do and receive the aforesaid things, at length the said Alice long awaited, and, as is customary, many times called for by the crier's voice, did not care to appear. The party of this William charged this Alice with absence and contumacy and immediately asked that as a penalty for her contumacy the cause proceed as it ought to proceed. Whence, we, after waiting a long time, making reference [to the *acta*], there having also been recited before us in court that entire *processus* held before the mentioned official between the same parties, having fully understood this, we proceeded to sentencing in this manner:

"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 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

⁵ 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.

⁶ Brother Henry, a monk of Christ Church, Canterbury, served as commissary of the official of the Court of Canterbury, *sede vacante*. For vacancy jurisdiction, see below § XIVB, note 9.

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.”.

B. ADAM ATTEBURY c. MATILDA DE LA LEYE

(Court of Canterbury, 1271–72) in N. Adams & C. Donahue, eds.,
Select Cases from the Ecclesiastical Courts of the Province of Canterbury (Selden Soc’y no. 95, 1981) 118–23 [CD trans.]

Unlike *Smith c. Dolling*, above p. XIV–2, this case first appears in the Court of Canterbury¹ as an appeal to the apostolic see in which the aid of the Court of Canterbury is sought to protect the appellant against action by the court below pending the appeal (a so-called “tutorial appeal”). Subsequent to proving his appeal in the Court of Canterbury, Adam agreed to abandon the appeal to the pope and have the Court of Canterbury hear the appeal. The first document translated below (No. 2) is the depositions of Adam’s witnesses on the tutorial appeal. The second document is the *processus* in the case below transmitted by the official of the archdeacon of Huntingdon² (No. 4) after the parties had agreed “to proceed with the principal [case].” in the Court of Canterbury. Other than two brief certificates by the official of the archdeacon of Huntingdon, no other documents survive from the case.

No. 2

Examination of witnesses produced on behalf of Adam Attebury.

Robert Crips, unlettered, sworn and examined, says that he was present in the church of All Saints’, at Hertford, Lincoln diocese, on the day of st Denis the martyr (9 October), around the third hour of the aforesaid day, A.D. 1271, before the official of the archdeacon of Huntingdon, hearing cases by ordinary authority, in a case of matrimony which was pending between Matilda de la Leye, plaintiff on one said, and Adam Attebury, defendant on the other, where on the said day and at the said hour the said official in the said case proceeding rashly, rendered an inequitable³ definitive sentence for the said woman against the aforesaid Adam, as he says.⁴ From this sentence as from an inequitable sentence, the same (Adam) appealed to the Holy See and to the see of Canterbury for protection of his appeal⁵ in English and without writing, as he says. Immediately afterwards master Thomas Pollard⁶ in writing and in Latin and afterwards orally in French, similarly appealed and asked for apostoli,⁷ as he says. These apostoli the said official refused to grant him, as he says. Asked how he knows this, he says he knows it because he was present and saw and heard these things done. Asked how he knows that the official was hearing the case by ordinary authority, he says he knows this because the same day the official held a full chapter openly, and this was one of the cases argued in this chapter. Asked why the said A. was called to judgment against the said woman, he says because the said woman asked that this A. be adjudged her husband because he contracted marriage [with her] by words expressing mutual consent, as he says, and he saw and heard this, as he says. Asked how he knows that the said official rashly proceeding rendered

¹ The Court of Canterbury was the appellate court for the province of Canterbury. The province included the diocese of Lincoln.

² The archdeacon of Huntingdon was subordinate to the bishop of Lincoln. As can be seen from this case, the area of jurisdiction of this archdeacon extended in this period beyond the small county of Huntingdon into the county of Hertfordshire. It will be noted that the appeal omits the intermediate court in the hierarchy, that of the bishop of Lincoln.

³ *iniquam*. The word can also mean “wicked,” not in the colloquial sense of that word.

⁴ The style of this deposition differs from that of the subsequent ones in that, among other things, this one is sprinkled with a large number of “as he says.” Before we draw the conclusion, however, that this examiner was skeptical of the veracity of this witness, we should remember that this deposition was taken in a different court. It may have been the style of the Court of Canterbury to use a large number of “as he says,” whereas it was not the style of the court of the official of the archdeacon of Huntingdon to do so.

⁵ As indicated above, Adam subsequently abandoned his appeal to the Holy See, and the parties agreed to have the case determined in the Court of Canterbury.

⁶ Not otherwise identified, the title “master” suggests, but not quite prove, that Pollard was a university graduate.

⁷ These were letters of protection that were routinely granted to appellants. The fact that the official did not grant them (if the witness is to be believed) suggests that the official thought that the appeal was frivolous or that he was being a bully.

an inequitable definitive sentence against the mentioned A., he says that he knows this because he (the official) followed what was said by some witnesses produced against the aforesaid A. One of them was and is the sister of her who produced her. Alice the witness is noted⁸ as infamous for witchcraft and theft, and is commonly regarded as a prostitute in those parts. Asked who was present at the appeal thus taken, he says that he and his co-witness, John, and many others both clerk and lay, as he says.

[John de Raddeburne, also unlettered, testifies to the same effect, except that he does not know whether *apostoli* were granted or not.]

Processus before the official of the archdeacon of Huntingdon, 14 November, 1270 — (9 October), 1271.

To the venerable man of discretion the lord official of Canterbury constituted by the prior and chapter of Canterbury, sede vacante,⁹ the official of the archdeacon of Huntingdon greeting, and due and honorable reverence and obedience. At your mandate I transmit the processus held before my predecessor, that was pending between Matilda de la Leye, on one side, and Adam Attebury of Berkhamstead,¹⁰ on the other:

The aforesaid Adam was cited at the instance of the aforesaid Matilda for the Friday after the feast of st Martin in winter (14 November), A.D. 1270, at Harpenden.¹¹ The said woman issued a libel against the same Adam: “Matilda de la Leye says and proposes before you lord judge against Adam Attebury of Berkhamstead that the same A. contracted marriage with her, which having been proved, she asks that he be adjudged her husband by way of sentence.” When the libel was recited, Adam immediately joined issue (*litem contestando*) and said that what was told in the libel is not true and therefore what was asked for should not happen. Both parties having been sworn to tell the truth, the woman spoke as she had before, and the man persisted in denying it. When they were asked whether they had had sexual intercourse, both confessed the carnal coupling. A day was given to the woman to produce witnesses and to the man to see the witnesses swear and [to both parties] to do further what the law would require, to wit, the Friday just before the feast of st Lucy the virgin (12 December), in the place as before, in the aforesaid year. On the said day and in the said place, the said M. personally appeared, but the said A. in no way appeared. As a penalty for the contumacy of the said A., the judge admitted two witnesses who were sworn and examined and deposed as follows:

Lucy, wife of Richard the ploughman, sworn and examined, says that she saw and heard Adam Attebury contract with Matilda de la Leye in these words: “I give you my faith that I will have you¹² as my wife from this day forward.” She replied, “And I to have you as husband from henceforth, my sister Alice and Lucy wife of Richard the ploughman being witnesses.” Asked how she happened to see and hear this, she says that she came with them from Luton.¹³ Asked about the place, she says it was in the middle of a field called ‘le Riding’.¹⁴ Asked about the day and the hour, she says it on the vigil of st Hugh the bishop (16 November) seven years had passed; it was after dinner¹⁵ before the evening hour. Asked who were present, she said the contracting parties; she, Lucy, who had sworn, and Alice, sister of Matilda, and no more. Asked about the clothes, she says that the man was dressed in a tunic of russet¹⁶

⁸ *notatur*. The word frequently implies a formal charge brought in an ecclesiastical court. It will be noticed that Adam’s exception in the archdeacon’s court focused on Lucy, whereas this witness focuses on Alice.

⁹ Between the death of an archbishop and the appointment of another, the cathedral chapter of Canterbury (the prior and chapter) exercised the archbishop’s judicial and administrative functions. The vacancy of the see here is the one between the death of Archbishop Boniface of Savoy (18 July, 1270) and the consecration of Archbishop Robert Kilwardby (February, 1273).

¹⁰ co. Herts.

¹¹ co. Herts.

¹² *volo te habere*. This is “I will have you,” not “I shall have you,” i.e., it is not unambiguously words of the future tense.

¹³ co. Beds., about 8 miles northeast of Berkhamstead.

¹⁴ Unidentified.

¹⁵ Medieval dinner tended to be in the early afternoon.

¹⁶ A coarse, home-spun woolen of reddish brown.

and an overtunic of hauberget,¹⁷ and the woman in a dress of burnet.¹⁸ Asked if she says these things out of fear or love or for money or a bribe, she says no, only that she might remain without peril from the oath she had sworn.

Alice, sworn and examined, says that she was present when Adam Attebury gave his faith to Matilda de la Leye in these words, “Matilda, I give you my faith that I shall have you¹⁹ henceforth as wife.” She replied, “Thank you, and I you as husband, my sister Alice and Lucy here present being witnesses.” Asked about the place, the lapse of time, the day, the hour, and the clothes of the contracting parties, she agrees in all things with Lucy, who had previously sworn. Asked who were present at the contract, she says the contracting parties and two witnesses.

The named parties having been peremptorily called and personally appearing at the chapter²⁰ held in the church of Great Gaddesden²¹ on the Friday next after the feast of st Vincent (23 January), [1271], the said M. renounced further production [of witnesses], the aforesaid attestations (depositions) were published at the request of the parties, and a copy was decreed for the parties and obtained. And after the parties had disputed about the aforesaid attestations for a while, the often-said A. at the chapter celebrated at Berkhamstead on the Thursday next after the feast of sts Perpetua and Felicity (5 March), in the aforesaid year, excepted against the witnesses of the said Matilda in this way:

“I Adam Attebury standing before you lord official of the lord archdeacon of Huntingdon, except against the person of Lucy, witness of Matilda de la Leye produced to testify against me in a marriage case, and propose that no faith is to be given to her because she is of ill fame, suspect life and opinion, and accused²² of theft and persevering in that crime. Again, because she is a pauper and without goods, and on account of her poverty strongly suspect, and on account of this to be repelled from testimony. These exceptions I propose in the alternative, and I ask that they be admitted and received, asking that one or the other of them having been proved, which can and should be enough to win the case for me, the testimony of the said Lucy should be annulled and pronounced null, and I should be absolved from the petition of the said Matilda.”

And after solemn dispute was held many times about the said exception, the parties being present, at length the judge in the chapter held at Berkhamstead on Thursday next before the feast of st Botolph (11 June), A.D. 1271, quashed the aforesaid exception with the advice of the legal experts sitting with him and asked the parties if they wished to propose anything other than what had previously been proposed in the said case. And because they proposed nothing lawful, the case was concluded, and the parties were assigned a day, to wit, the Friday next after the feast of st James the apostle (31 July), in the church of st Peter, Berkhamstead, in the aforesaid year. On this day and in this place, because the judge wanted to examine the processus, he set for the parties the day after the synod of Hertford in the church of All Saints to hear the definitive sentence precisely.²³ On which day and in this place, the parties appearing personally, the judge, with the counsel of prudent men, pronounced sentence in the marriage case in this form:

“In the name of God, amen. Having heard and fully understood the merits of a marriage case which is pending between Matilda de la Leye, on one side, and Adam Attebury, on the other, a libel having been offered, issue having been lawfully joined in the negative, an oath having been taken by each party to tell the truth, the woman asserting the marriage contract, the man denying and confessing carnal coupling with her, an exception proposed against the witnesses of the woman having lawfully been quashed,

¹⁷ This was a kind of cloth, not further identified, that frequently appears in conjunction with russet. O.E.D., s.v. *haberjet*.

¹⁸ A cloth of some dark color.

¹⁹ *habebo te*. These are unambiguously words of the future tense.

²⁰ Sessions of lower ecclesiastical courts tended to be called “chapters.”

²¹ co. Herts.

²² *irretita*. The word normally implies a formal criminal charge.

²³ “Synods” were more important ecclesiastical gatherings than “chapters” and tended to be held once or twice a year. This one probably took place on 8 October 1271. See the first set of depositions.

because we find the complaint of the said Matilda was lawfully proven by the aforesaid witnesses, the subsequent carnal coupling adding support (*adminiculum prestante*), we by sentence and definitively adjudge the said Adam to be the husband of the said Matilda.

Farewell. Given at Shillington²⁴ on the morrow of st Mathias the apostle (26 February), A.D. 1272.

NOTES AND QUESTIONS

This case appeared on the exam that I gave in this course in 2003. Here are the “guide questions” that were offered on the exam.

(1) What institutions are evidenced by this case? Briefly, sketch out the prior and subsequent history of these institutions. (This is a question about framework; don’t spend a lot of time on it.)

(2) What is the form of procedure being used by these institutions? Briefly sketch out the prior and subsequent history of this form of procedure. (This is a question about framework; don’t spend a lot of time on it.)

(3) What is the nature of the exception that Adam makes to the testimony of Lucy? Why does Adam’s exception say that if he proves either of his exceptions against Lucy he will have won his case? How does the exception suggested by Adam’s witness, Robert, differ? To what extent are these exceptions supported by Tancred (above, p. IX–**Error! Bookmark not defined.**)? How would these exceptions have been treated under the procedure described in Maranta’s *Speculum aureum* (above, p. XII–**Error! Bookmark not defined.**)? under the *Ordonnance pour la procédure civile* (below, p. XVI–**Error! Bookmark not defined.**).

(4) What do your answers to question (3) tell you about how the law about witnesses developed between the thirteenth and the seventeenth centuries.

(5) Have Matilda’s witnesses (assuming that we believe them) said enough to allow her to prevail in the case under Alexander III’s rules about marriage formation? Have they said enough to allow her to prevail in the case in a jurisdiction that had adopted the rules about marriage formation prescribed by the council of Trent (below, p. XVI–**Error! Bookmark not defined.**)? by the *Ordonnance of Blois 2* (below, p. XVI–**Error! Bookmark not defined.**).

(6) Does this case tell you anything about why the council of Trent adopted the rules that it did? why the French adopted the *Ordonnance of Blois*?

(7) What does the ruling of the archdeacon of Huntingdon’s official tell us about the role of the judge as he interacts with the social situation of the parties?

(8) Considering how the Court of Canterbury ruled in *Smith c. Dolling* (above, p. XIV–2), how do you think that same court is going to rule in this case?

(9) What do your answers to the previous questions tell you about the relationship of procedural and substantive law in the history of Western legal development?

²⁴ co. Beds.

C. DECISION (HOLY ROMAN ROTA, 1360 X 1365)

in Bernardus de Bosqueto, *Decisiones Antiquiores*, in [Catholic Church. Rota Romana], *Do[minorum] de Rota Decisiones, Novae, Antiquae et Antiquiores* (Cologne 1581) 627–8 [CD trans.]

Peter, being married to Anna his wife, made many and various clothes and furniture [*arnesia*] for her, and he also gave her many and various jewels, saying “You may hold this [*teneas istud*].” It is true that the said Anna, while she was married, acquired money in various ways, some of which she handed over to the said Peter her husband, and she acquired with the notice of her husband nine florins for the fur edging of her cloaks, more or less, on one occasion or a number, and also many jewels, silver cups and spoons, and much cloth both for her cloaks and dresses, given her by her in-laws and friends of her husband to do with as she would [*ad beneplacitum sibi*]. At length Peter living on the verge of death [*vivens ad mortem*] made his testament in which he made their common children heirs, and constituted his wife, the said Anna, tutor, governor and administratrix both of the children and of the goods, but with benefit of inventory. Now it is asked whether the said Anna, the aforesaid wife, is held to put her above-written furniture and jewels in the inventory she is making, and also, since the said Peter her husband