

## ECCLESIASTICAL JURISDICTION

1. The importance of ecclesiastical jurisdiction, both as illustrative of *regnum* and *sacerdotium* and for its importance for Chancery procedure, and, more remotely, modern procedure.
2. Dolling c. Smith (1271-2)
  - a. Alice Dolling of Winterbourne Stoke appeared in the consistory court of Salisbury on 10 July 1271, claiming that William Smith was her husband. By 1271, the bishop of Salisbury has a regularly sitting court. We have seen that jurisdiction of the ecclesiastical as opposed to the secular courts was a contested matter, but formation of marriage, everyone agreed, was a matter for the church courts.
  - b. William denied the charge, and Alice was told to produce her witnesses before the dean of Amesbury. Below the level of the diocese there are archdeaconries. Within each archdeaconry in most places parishes are arranged into deaneries.
  - c. On 30 July, Alice appeared in court and asked for more time to produce her witnesses.
  - d. On 23 September, the depositions of her three witnesses were published in open court.
  - e. On 26 October, William confessed that he had had intercourse with Alice but denied that they had contracted marriage, claiming that he had been in Bulford, a town four miles from Winterbourne Stoke, on St Stephen's day, 26 December 1268, on which she alleged that they exchanged the words of marital consent. The dean of Amesbury was to examine William's ten witnesses.
  - f. On 18 November Alice countered that William was, indeed, in Winterbourne Stoke that day. Alice was to produce her witnesses before the rectors of two local parishes.
  - g. On 15 December, Alice answered William's claim with four witnesses who alleged that William had indeed been in Winterbourne Stoke on that St Stephen's day.
  - h. On 27 January the parties appeared before the court and disputed about the depositions.
  - i. On 11 February, the judge ordered William to produce his witnesses again, so that he could examine them about the continuity of William's presence in Bulford.
  - j. Over the course of period from 1-5 March, William said that could not produce his witnesses again, citing what seem to be formulaic excuses.
  - k. On 11 May of 1272, the official rendered sentence for Alice declaring that William was her lawful husband.
  - l. The three sets of depositions are included in the record: Alice's three women witnesses on her principal claim testify in considerable detail that Alice and William exchanged words of marital consent in the house of one John le Ankere on 26 December, St. Stephen's Day, two years previously. 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.

- m. William appealed the judgment to the provincial court of Canterbury, which held a number of hearings at none of which Alice appeared. The court asked its examiners to examine the record from Salisbury. Their report quite unusually survives, and it focuses not on William's exception but on Alice's proof of her basic complaint and finds that proof deficient. The court apparently agreed because in October of 1272, it reversed the judgment of the Salisbury court.
- 3. Ways of looking at *regnum* and *sacerdotium*:
  - a. king/pope; pope/English hierarchy; king/English hierarchy
  - b. king's law, church's law, local law
- 4. Ecclesiastical jurisdiction in summary:
  - a. The court of Rome—the pope is the 'universal ordinary'
    - papal judges delegate—the development of decretal letters
    - the Rota—developed at Avignon in the mid-14th century
  - b. The provincial court of York (3 dioceses) and the court of Arches in London for the southern province (14 English and 4 Welsh dioceses)
  - c. Episcopal courts—consistory court (civil cases at first instance and appeals from lower courts within the diocese) and court of audience (matters that the bishop wanted to handle personally)
  - d. Archidiaconal courts (mostly relatively minor criminal cases, some probate)
  - e. Peculiars, rural deans
- 5. The jurisdictional claims of the church:
  - a. Between clerics, against clerics or by or against widows and orphans
  - b. Church offices or property, church offenses, the sacraments (including marriage), the morals of both clergy and laity
- 6. The English settlement—in England, in contrast to some places on the Continent, jurisdiction was divided between the secular and ecclesiastical courts largely on the basis of subject-matter
  - a. Advowsons
  - b. Defamation
  - c. Testaments
  - d. Contracts
  - e. Marriage
  - f. Benefice
  - g. Tithes
  - h. Morals offenses
  - i. "Big" criminal cases
- 7. The law applied in these cases: Maitland was right and Stubbs was wrong, but they may not have been asking the right question

8. Development of the settlement (see *Materials*, p. IX–37)
  - a. The compromise of Avranches of 1176
  - b. Consistent caption of excommunicates
  - c. 1163–1300, the development of the writ of prohibition
  - d. 1286, *Circumspecte agatis*
  - e. 1316, *Articuli cleri*
  - f. 1351, 1353, Provisors I, *Praemunire* I
  - g. 1391, 1393, Provisors II, *Praemunire* II
  - h. 1401, De heretico comburendo
  - i. 1533, Ecclesiastical Appeals Act
9. Where was the line as defined by the writs?
  - a. Lay debts and chattels which are neither matrimonial nor testamentary
  - b. Cases involving advowsons or more than 1/4 of the revenues of the church
  - c. Trespass, but see defamation
10. The Decline of Ecclesiastical Jurisdiction
  - a. In the late fifteenth and early sixteenth centuries—this may be connected with a misinterpretation or a reinerpretation of the statute of *Praemunire*. Could it be the result of a change of attitude in this period?
  - b. The decline of ecclesiastical jurisdiction in the face of massive and conflicting relitious changes in the first half of the 16th century.
  - c. Revival in the reign of Elizabeth particularly in cases of defamation and tithes
  - d. Abolition in the Interregnum
  - e. Restored in 1660, but went into steep decline until abolished, for most purposes, in the 19th century