

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 (Consistory of Salisbury 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.

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.

Production of William Smith on his exception of absence previously proposed

[There are actually ten witnesses; I've omitted all but the first.]

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.

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 women¹ 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.²

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.

What was going on in this case?

1. Someone was lying.
2. Two of Alice's witnesses on the principal case seem to have been related to her: they were probably her half-sisters. One of Alice's replication witnesses may have been her full sister.

¹ Textual problem here. This may mean "leading a lewd woman".

² An obscure phrase.

3. The witnesses on the principal case are not completely clear about what words were exchanged: two of them seem to testify to *verba de futuro*, one of them to *verba de presenti* — but the tense of the verbs should make no difference when intercourse is conceded.
4. The replication witnesses do not seem to be talking about the same day as the first two sets of witnesses are, though this may be the result of scribal error in the depositions or a truncation of what actually happened in the *processus* rather than any confusion on the witnesses' part.
5. None of these observations is new. They are all made in a remarkable document that survives from the case on appeal. The judge of the provincial court of Canterbury asked the examiners of the court to look at the *processus* below and evaluate it for him. They committed their evaluation to parchment, and it is quoted in full above. In the end the examiners suggest that there are too many inconsistencies in Alice's basic story, that her witnesses on her principal claim are suspect because they are related to her, that the witnesses on William's exception tell a convincing story, that Alice's replication witnesses may not even be talking about the same day, and, besides, ten witnesses are better than four. The judge of the provincial court seems to have agreed; he reversed the official of Salisbury's decision. This, again, is quite in conformance with Tancred's advice about evaluating witnesses.

Some social history that may help

1. There is a 'northwest European marriage pattern'. First marriages tended to be relatively late, the women being in their late teens or early twenties, and the men not much older. From puberty to this relatively late marriage both men and women were not supposed to get married and, particularly the women, were supposed not to have sexual intercourse. During the awkward period between puberty and marriage, parents shipped out their children to serve as servants or apprentices for others. This is sometimes called 'life-cycle servanthood'. The women and men who worked as servants were able to save some money. They used this money to get married. It is tempting to think that Alice and her half-sister, Celia daughter of Richard Long were this kind of servant in the house of John le Ankere in 1268.
2. There were relatively few trades that were open to women in medieval England, but brewing ale was one that was. That seems to have been what William's mother, Alice, was doing in Bulford in 1268.

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 Pope Alexander III's decisions about the formation of marriage 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 problematic.
- d. As the late Michael Sheehan noted, the attitudes toward marriage reflected in the court records are extraordinarily individualistic.
- e. This individualism, however, has limits.

What does all this have to do with Alexander III and his decisions?

English Ecclesiastical Courts

1. 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
2. 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
3. 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
4. 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
- 5. The law applied in these cases: Maitland was right and Stubbs was wrong, but they may not have been asking the right question
- 6. 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
- 7. 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
- 8. 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 religious 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