AN INTERPRETATION OF *ARGAR v HOLDSWORTH*

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For many years it has been assumed that all parishioners legally qualified to intermarry have a legal right to be married in their parish church. In Blunt's *The Book of Church Law* it is expressed thus:

> 'Every person within the parish in which a church is situate has a common-law right to the use of it in time of Divine Service. . . . Much more have they a right to the use of the church whenever they are to be present for the performance of any offices as regards themselves. Hence the incumbent's control over all access to the church is limited by the rights of the parishioners to its use at such times as he may appoint to the celebration of any of the offices contained in the Book of Common Prayer: whether those of public worship . . . ; or whether those of a personal kind, . . . such as marriage.'[1]

This understanding of the law is repeated in *Halsbury's Laws of England*: persons 'are in general entitled to be married according to the rites of the Church of England in an authorised place if one of them possesses the legal qualification of residence'.[2] Garth Moore opined that 'It seems probable that every parishioner is entitled to marriage in church after banns, whether the parties are members of the Church of England or not.'[3] The 1970 Report *Church and State* reinforced this opinion: 'It appears probable, that if the other conditions of marriage are fulfilled, any two citizens of the country can claim to be married in their parish church and the incumbent has no right to refuse to marry them.'[4]

In his recent book on ecclesiastical law, Mark Hill repeats the received opinion: 'it is generally understood that there is a right to be married in one's parish church. The right derives from the minister's duty to solemnise marriage',[5] but he adds a thoughtful footnote in response to an unpublished paper by Norman Doe.[6] Dr Doe has now published his conclusions. He challenges the received understanding of the law on this particular point. 'The modern proposition about an autonomous parishioner's rights,' he writes, 'based in part on a misunderstanding of the structure of the 1753 statute,[7] has survived as an assumption or legal fiction. It has survived not least because it has met with judicial approval. However, judicial statements of the proposition have simply been *obiter*—though of high authority—and some of them are not clear.'[8]

The judicial authority most frequently quoted in support of the received understanding of the law is *Argar v Holdsworth*.[9] Indeed a full explanation of the law based on this case was supplied to the General Synod Working Party which produced *An Honourable Estate*:

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[1] J. H. Blunt, *The Book of Church Law*, revised by Sir W. G. F. Phillimore and G. Edwardes Jones (10th edn., London 1905), pp. 333, 334.

[2] 14 *Halsbury's Laws of England* (4th edn., London 1975), para 1003.

[3] *Moore's Introduction to English Canon Law* (3rd edn. by T. Briden and B. Hanson, Oxford 1992), p. 76.

[4] *Church and State*, Report of the Archbishops' Commission (London 1970), para 200.

[5] Mark Hill, *Ecclesiastical Law* (London 1995), p. 305.

[6] Mark Hill, p. 305, note 2.

[7] i.e. the Clandestine Marriages Act 1753 (26 Geo 2, c. 33).

[8] Norman Doe, *The Legal Framework of the Church of England* (Oxford 1996), p. 359.

[9] *Argar v Holdsworth* (1758) 2 Lee 515.

> 'In *Argar v Holdsworth* it was held that a minister who without just cause refuses to marry persons entitled to be married in his church commits an ecclesiastical offence for which he is punishable in the ecclesiastical courts.'[10]

But does the decision in *Argar v Holdsworth* lend its authority to so confident an assertion of the legal right of parishioners? Norman Doe goes on to cast doubt on the authoritative value of this case and to point out that, even if it does furnish a sound precedent, the case concerned the issue of a marriage by bishop's licence and no more: 'the case cannot be understood as authority for the proposition that a minister is under a duty to marry parishioners even against his wishes when the proposed form of marriage is by banns.'[11]

Norman Doe is close to the truth of the matter, and the aim of this paper is to study the case of *Argar v Holdsworth* in depth, using such original records of the trial as have survived in order to make clear both the issue that was at stake and all that can be known of what was actually decided.

The known facts of the case can be stated very simply. Prebendary Henry Holdsworth was Vicar of Townstal with the Chapels of St Saviour and St Petrox, Dartmouth, in the archdeaconry of Totnes and the diocese of Exeter. He was also a surrogate for marriage licences. William Argar, an exciseman resident in the Chapelry of St Saviour's, applied to Holdsworth in January 1756 to solemnise matrimony between him and Jane Howe, also a parishioner, by virtue of a bishop's licence obtained from the chancellor of the diocese, and Holdsworth refused. It is not possible to say why the vicar took this decision. The Holdsworths were an influential family in Dartmouth and dominated the political life of the borough from 1710 to 1832.[12] Argar was in a sensitive government post and the Holdsworths had close connections with the Howe family,[13] but the lack of other historical evidence renders all speculation on Holdsworth's motives futile. All one can establish is that Argar began a voluntary promotion of the Office of the Judge against Holdsworth in the archidiaconal court of Totnes on 15 May 1756.

No records belonging or relating to the court of the Archdeacon of Totnes have survived, but the regular proceedings of the ecclesiastical courts do afford some help on this particular occasion. Whenever a case went, for whatever reason, on appeal to a higher court, the lower court was obliged to forward, in writing, a complete transcript of all the acts done in that court up to the receipt of the monition from the higher court putting a stop to further proceedings.[14] This complete record is known as a process. Processes despatched to diocesan consistory courts from archidiaconal courts do not always survive. If the case went on a second appeal from the consistory court to the provincial court then the whole business of forwarding a complete transcript of the Acts of Court had to be repeated, including those of the court of first instance. Fortunately, many of the processes forwarded to the Court of Arches from 1660 to the nineteenth century have survived, including that of *Argar v Holdsworth*, and the initial stages of the case are supplied from the process to the Court of Arches.[15]

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[10] *An Honourable Estate*. Report of a Working Party of the General Synod of the Church of England (London 1988), p. 82. See also Sir William Dale *The Law of the Parish Church* (6th edn, London 1989), p. 61.

[11] Norman Doe, *The Legal Framework of the Church of England* (Oxford 1996), p. 360.

[12] Ray Freeman, *Dartmouth: a new history of the Port and its People* (Dartmouth 1983), pp. 78, 79.

[13] J. J. Alexander, 'Dartmouth as a Parliamentary Borough', *Transactions of the Devonshire Association*, 43, pp. 350–64.

[14] See Melanie Barber, 'Records of the Court of Arches in Lambeth Palace Library', 3 Ecc. LJ, pp. 10–19.

[15] Lambeth Palace Library (LPL), D 49, 50 and B 19/35. All references for the Court of Arches may be found in Jane Houston, *Catalogue of the Records of the Court of Arches at Lambeth Palace Library 1660–1913*, vol 85 (1972), published by The British Records Society. The account of the proceedings which follows is taken from these documents and from Devon Record Office (DRO) CC 844 Consistory Court Act Book.

Students of these ecclesiastical court records can often tell from the form taken by the initial Acts of Court whether or not a case was going to be troublesome. So it proves to be on this occasion. Holdsworth failed to appear in court on the day cited, either personally or by his proctor. Two months later, on 10 July 1756, Henry Noseworthy, his proctor, appeared and protested against any further proceedings. He argued that his client was a prebendary of the cathedral and in that capacity subject only to the jurisdiction of the bishop for any neglect of his duties. Thomas Trist, Argar's proctor, countered that argument by pointing out that Holdsworth was subject to the jurisdiction of the archdeacon by virtue of his residence in the archdeaconry. The judge dismissed the objection and set 24 July as the date on which Trist was to hand in his set of articles, the document which laid out in full the charges against Holdsworth.

On 7 August, Trist had still not delivered his articles. Argar appeared in person to explain the delay. At the request of his agent in London, he had forwarded to him the original marriage licence 'in order to frame articles and he believes the same is now before counsel for drawing the same'. Noseworthy asked the judge to dismiss his client but Trist asked for an extension of one more court day and no more. The judge agreed after fining Trist 2s. 6d. for protracting the suit.

These initial proceedings strongly suggest two stubborn litigants set on winning the case whatever it took. Holdsworth was going to avail himself of every procedural trick he could try. Argar was not going to trust a local, small time, proctor in Totnes to draw up the set of articles alone and unaided but was prepared for the additional expense of paying a lawyer in London.

But who was the learned judge before whom the proctors would argue? By 1756, the post of Official, or judge, of the Archdeacon of Totnes was vacant and, in an unashamed act of nepotism, Archdeacon George Baker appointed his son, Thomas. The Reverend Thomas Baker (he was to be made a prebendary of Exeter Cathedral the following year[16]) had no legal training. He had just taken his degree of master of arts at Exeter College, Oxford, and was only 24 years of age.[17] He inherited a surrogate, or deputy judge, in the person of an older man, the Reverend John Wolridge, Vicar of Broadhempston.[18] Wolridge had some experience in the archidiaconal court, but the limited range of business transacted by that court would not have allowed him any scope for gaining more.

Appeals against his handling of two other cases strongly suggest that Baker made little effort to overcome his lack of legal knowledge. In *Bringman v Walker* (1759), a case of defamation, Baker assigned a term probatory to the plaintiff in the absence of the defendant. This was highly irregular in itself but, worse, he assigned the term before contestation of suit! Such an elementary blunder suggests that he had learned nothing in three years. Walker won an appeal on a grievance in the Exeter Consistory Court on 1 February 1760.[19]

In a testamentary case, *Smerden v Maddaford* (1760), Baker issued a monition to Maddaford to submit an account of a trusteeship of an estate from which he had already been discharged. Maddaford took his case on a grievance to the Exeter Consistory Court where the chancellor overturned the decision of the Official and his decision was upheld by the Dean of Arches on 2 May 1761.[20]

It was not likely that the proctors would accord much respect to the decisions of so young and inexperienced an Official. Irrespective of the Official's youth, Holdsworth's proctor had a good reason to take exception to the form of the articles when they were finally submitted on 21 August 1756. Drawing up the document

[16] John Le Neve and T. Duffus Hardy, *Fasti Ecclesiae Anglicanae* (Oxford 1854), I, 428.
[17] Foster, *Alumni Oxonienses 1715–1886* (Oxford 1896).
[18] John Venn, *Alumni Cantabrigienses from earliest times to 1751* (Cambridge 1927).
[19] DRO, cc 844 Consistory Court Act Book.
[20] LPL, B 19/36.

known as the articles in a criminal suit, and the libel in a civil one, was a crucial step in the preliminaries to any trial in the ecclesiastical courts.[21] A set of articles was never a succinct statement. Using an English criminal law analogy one can say that it approximated to a combination of indictment and opening statement for the prosecution. The articles set out the law and detailed the way or ways the reus, or defendant, had offended. Proctors had to take great care in drawing up the document. They had to ensure that nothing could be construed as matter belonging solely to the cognisance of the secular courts. If it did then they ran the risk of the other party getting a prohibition from one of the courts of Westminster Hall. The proctors had to be confident that they could prove everything alleged in the articles. Anything in the articles which the defendant denied had to be proved and the promoter lost the case if he failed in proof of any one article. Proctors also had to take care to frame the articles in such a way that there was a law applying to each of them; for example, it was no use including a description of behaviour which some canon or custom did not clearly forbid or require. If all the articles were couched only in general and vague terms or if they were not lawful, the judge could refuse to admit them and the defendant's proctor could lodge objections.

Henry Noseworthy, on Holdsworth's behalf, objected to the 3rd and 4th articles on the grounds that they were not concludent and included matters not admissible in law. In an appendix to this paper those articles, taken from the records of the Court of Arches at Lambeth Palace, are reproduced in full and set side by side with the version printed in Phillimore's law report.[22] There are two points to notice about them in particular.

First, it can be seen that the version in the law report, based, presumably, on Sir George Lee's notes of what he thought he remembered he had read in the process, differs from the articles actually submitted. Thomas Trist confined himself *solely* to the issue of a minister marrying on the strength of a licence. There was no general pleading that 'every minister is obliged by law to marry such of his parishioners who have resided a month in his parish'. And if such a plea was never in the articles so it could never have influenced any definitive sentence in the case for the following reason. The maxim was *sententia debet esse conformis libello.* A judge's sentence had to be in conformity with the charge. *Argar v Holdsworth* was a criminal case but proceeded not by mere office but by a voluntary promotion of the office of the judge. If the judge had proceeded by mere office it might have been otherwise because in cases of that nature the judge was acting *de plano*—on the level—in other words he came down from his raised seat and acted not so much as a judge but as a representative entrusted with upholding the holiness of the Church and its members. In this capacity he had a wider discretion because the end in view was the repentance and reform of the defendant.[23] When, as in this case, the office of the judge was voluntarily promoted, someone else took over the role of representative and the judge returned to his judgment seat and, in that capacity, would only consider granting whatever the proctors petitioned for.

The second point to notice about this set of articles is the way Lee confused the 3rd, 4th and 5th articles. In his notes he combined the 3rd and 4th, calling them number 3, and treats the 5th article as number 4. To which articles did Holdsworth's proctor object? In his notes Lee indicates that it was the 3rd and 4th. Did he intend a

[21] The explanation which follows is taken largely from a study of Henry Consett. *The Practice of the Spiritual or Ecclesiastial Courts* (3rd edn. London, 1708), and Thomas Oughton. *Ordo Judiciorum: Sive Methodus Procedendi in Negotiis et Litibus in Foro Ecclesiastico—Civili Britannico et Hibernico* (2nd edn. London, 1738).

[22] *Argar v Holdsworth* (1758) 2 Lee 515.

[23] Unless, of course, proceedings concerned very serious offences by the clergy for which the penalty was deprivation. Such proceedings were, strictly speaking, conducted in the name not of the judge but of the bishop: see *Office v Prince Clerk* (1699) DRO. CC 753.

reference to the original numbering or to the altered numbering in his notes? It is more likely that Lee *intended* to refer to the original numbering because an argument can be put forward in support of objections to the 3rd and 4th but not to the 5th.

Holdsworth's proctor might have argued that the 3rd article was an innovation. Its inclusion was presumably prompted by section 4 of the recent Clandestine Marriages Act 1753, which laid down the minimum period of residence required before issuing a licence. The new Act, which abolished a section of the canon law of marriage, was not popular among ecclesiastical lawyers, and it may have been the case that the conservative minded were perturbed to see so specific a reference to one of its provisions. Presumably it was added to the set of articles in 1756 because it particularised the general mention of 'the Laws' in the 2nd article. The 4th article is very unusual, for it implies that there is an obligation on the part of the vicar to know all his parishioners together with the length of time each has resided in his parish. It constituted in itself a second accusation against Holdsworth's neglect of his pastoral duties, but no canon or constitution is cited in support. Noseworthy's objections were not simply another delaying tactic. He did not object to the 5th article, which contains the central charge against Holdsworth, but he wanted the judge not to consider an additional neglect which, if admitted by the judge and proved, could have told more heavily against his client. The objection to the 3rd article, on the other hand, does seem to be more difficult to justify because, with section 4, the new legislation had introduced a fresh factor into any general statement of the law.

John Wolridge overruled Noseworthy's objections and admitted the articles. He was only a surrogate so he would have consulted his superior before doing so. For the reasons suggested above, Noseworthy considered that he had good grounds for appeal. He took his grievance to the Consistory Court on 24 September. In a decree dated 4 March 1757, Chancellor Theophilus Blackall agreed and rejected the 3rd and 4th articles. Then he invoked his right as a superior judge to retain the case for trial in the Consistory Court. He also condemned Argar in costs. Argar appealed from this decision to the Arches Court. Sir George Lee's decision on this grievance is the one which appears in Phillimore's law report.

Lee was of opinion that 'a minister was guilty of a breach of his duty who should refuse to marry pursuant to a proper licence from his ordinary'. This was a judicial dictum of importance in this case but, in terms of a judgment, all Lee had to decide on was the merits of the grievance before him. He declared, on 24 April 1758, that there could be no objection to the 3rd and 4th articles because 'surely the Chancellor has acted very strangely in rejecting articles which alone pleaded the facts relative to this cause and admitting those articles which pleaded only the general law.'

As it appears on the printed page of Phillimore's Report, this is a very puzzling argument. The 2nd and 3rd articles seem to plead the general law; only with the 5th article, beginning 'And more particularly', does the proctor appear to move from the general to the particular. The 5th article pleaded the facts fully and, before the passage of the Clandestine Marriages Act 1753, would have been sufficient, if proved, to secure Holdsworth's condemnation. Where then does that leave the 4th article? If it too pleads the facts then the phrase 'And more particularly' belongs here rather than at the start of the 5th. Faced with such a problem, scholars of biblical texts might argue for a conflation of two separate sources, and it is possible that this is what occurred in this case. The Totnes proctor added some of the articles drawn up by the London counsel and these additions are the present 3rd and 4th articles in the process.

No objection had been taken to the 5th article on the appeal to the Exeter Consistory Court and Chancellor Blackall had not rejected it for, if he had done so, then Holdsworth would have had no case to answer and there would have been no case to retain for a hearing in the Consistory Court. So why should Lee imply that the Chancellor had rejected *all* the articles setting out the facts of the case? The only

explanation that seems to fit the *ratio decidendi* is that Sir George Lee was confused by his own notes and, relying on them when he delivered his interlocutory decree, made the mistake of assuming that the 4th article was a part of the 3rd and that the 5th article was the 4th. Knowing that he had to pronounce on the correctness of the Chancellor's decision to reject the 3rd and 4th articles and believing that the 5th article was the rejected 4th, Lee assumed that Blackall had rejected all the articles that alleged the facts in the case. Such a confusion would make better sense of Lee's comment. He overturned the decision of the court below and remitted the case back to the archidiaconal court.

The court at Totnes resumed the hearing on 1 July 1758. Trist announced that he would be submitting additional articles which he did on 5 August, the 2nd article of which charged Holdsworth with marrying Jane Howe to John Bainbird.[24] On 2 September, in an effort to speed up the proceedings, Trist sought a monition for Holdsworth to give in his personal answer 'so far as matter pleaded in both [sets of] articles are not criminal'.

Opinion, and therefore practice, varied on the issue of whether or not a defendant or *reus* was required to give a personal answer in a criminal suit.[25] Generally it was considered reasonable on the grounds that if the defendant confessed to the truth of at least some of the articles then there would be no need to go to all the time and expense of proving them and the promoter could concentrate on proving only those articles which the defendant denied. Yet, ever since the statutory abolition of the oath *ex officio*, no defendant could be called upon to accuse himself. Noseworthy objected that all the articles brought against his client were criminal and that no answer could be required by law. Baker refused to decree a personal answer so Trist went on a grievance to the Consistory Court. A new Chancellor, James Carrington, decreed against the grievance and on 17 August 1759 remitted the case back to the Totnes court. Argar appealed from this decision to the Arches Court. On 1 July 1761 a new Dean of Arches, Dr Edward Simpson, upheld the decision of the court below and remitted the cause back to the archidiaconal court of Totnes.

So, over five years after the committal of the alleged offence, there was still no outcome in the case of *Argar v Holdsworth*. There had been four interlocutory decrees but no definitive sentence. Unfortunately, at this juncture, as there were no further appeals, the trail goes stone cold. It was pointed out earlier that the records of the Court of the Archdeacon of Totnes do not survive. There is no way of knowing what the judgment was in this case or, indeed, if a judgment was ever delivered. Holdsworth was dead by the middle of January 1763.[26] He solemnised no marriage and called no banns at St Saviour's Chapel after 6 April 1761; he performed no solemnisation of matrimony in St Clement's Church, Dartmouth after 14 February 1760. After these dates all was done either by a curate or by a neighbouring incumbent. But one cannot assume from this that Holdsworth had incurred a suspension. He may not have been a well man or he may have chosen not to be concerned.

Certain conclusions may still be drawn even if we do not know the outcome of this case. First, however one may seek to justify the received understanding that a parishioner has a legal right to be married in his parish church, the case of *Argar v Holdsworth* has no place in that justification. In both instances, the two decrees

[24] Holdsworth issued a licence himself and married Jane Howe to John Bainbird, of St Peter's, Ipswich, on 22 January 1758; see DRO St Saviour's, Dartmouth, Register of Marriages 1754–79, no. 35.

[25] Statements in writers such as Richard Burn's *Ecclesiastical Law* need to be treated with caution. In the Consistory Courts at this period, it was a regular practice to seek the personal answers of defendants in criminal causes. See Lichfield Joint Record Office, Consistory Court Act Book B/1/2/89, 188 *Walker v Armstead Clerk* (1704) and 244 *Moorwood v Wright Clerk* (1704); Greater London Record Office, London Consistory Court Sentence Book DL/C/161, Nov. 1726 Nov. 1728, 238, *Aymes v Tristram Clerk* (1727).

[26] DRO, CC 31 Bishop Keppel's Register, 125.

handed down by the Dean of Arches concerned points of procedure only. Sir George Lee's judicial dictum that every parochial minister has a duty to marry his parishioners if one of them produces a licence and may refuse only to delay in order to ascertain that it is genuine, is a strongly persuasive authority, but it still only applies in the context of the canonical obedience each clergyman owes to his bishop.

Secondly, a comparison of the wording of the articles actually admitted by the Official with the contents as remembered by Sir George Lee may help to explain how later commentators came to be misled into thinking that Sir George Lee was endorsing a general legal principle affecting all the parishioners no matter what form the legal preliminaries to their marriages took. Lee's précis of the 3rd and 4th articles was not composed as accurately as it could have been, and this may have led him to confuse the 5th article with the 4th. Joseph Phillimore's printed report, first published in 1833, has been the only source readily available for commentators to study.

Norman Doe wondered whether or not the Clandestine Marriages Act 1753 had any influence on this case. The mention of the one-month residence qualification in the 3rd article strongly suggests that the framer, be it Trist or the unnamed London counsel, did have the recent legislation in mind. The wording 'by the Laws, Canons and Constitutions' of the 2nd article and the 'by the laws of this Realm and the Canons and Constitutions thereof' of the 3rd article, raise a strong presumption. Comparison with an earlier case makes this clear.

In *The Office v Pease* (1738), Exeter Consistory Court,[27] the Rector of Clyst St George was articled against for marrying a couple clandestinely. His defence was that the man had taken the licence away promising to let him have it back in two or three days but had not kept his promise. After a fortnight Pease came in to court and confessed that neither of the parties were of his parish and that he was in breach of the canons. There was no mention of any statute or of the laws of the realm which one would expect to read if such a piece of legislation existed.

Canon 62 of 1604, which was declaratory of older canon law, provided a three-year suspension on any minister for marrying a couple on a licence when neither of the parties dwelt in that parish. Pease gave an undertaking not to repeat the offence and the Chancellor dismissed him with an admonition. One can only guess at the reason for imposing the lighest possible sentence. Perhaps it was Pease's first and only offence. The full rigour of the law was usually reserved for persistent offenders. Although Canon 62 imposed a three-year suspension for the offence *quocunque praetextu* (for any pretext whatsoever), the fact that Pease was proceeded against not by a voluntary or necessary promotion but by mere office afforded the judge more latitude in his sentencing. What this case does show is that, before the 1753 Act, as far as marriage by licence is concerned chancellors expected compliance with the canons requiring couples to be married in their parish church. The requirement, however, stemmed not from a design to control marriages but from a desire to detect and prevent clandestine ones. If the intention to enter matrimony was known to the parish priest and the banns had been duly published, then, with his consent, the marriage could take place in another parish church and not necessarily the one in which either one of the parties dwelt. Johnson commented on the issue first by repeating the requirement of the old law that parishioners should be married in their parish church, and then by saying:

> 'But then the Licence of the Curate, whose parishioners they were, was sufficient by the *Constit.* of Archbishop *Stratford*, L.5.T. c. *Humana*; and so it should in reason be now; but then the Curate must

[27] DRO CC 754b.

> do more than certifie the Publication of Banns, he must expressly, under his Hand, give leave to be married in another Church, and to the Curate of that other Church to marry them.'[28]

The practice understood by Johnson can be seen repeated in the entries in parish registers. What the 1753 Act did was not only to impose a duty on couples to be married in their own parish church but also to extinguish their right to be married elsewhere if they chose.

Sir Lewis Dibdin recognised the potential value of the process books surviving among the muniments of the Court of Arches as 'a set of precedents' for ecclesiastical law.[29] This paper provides an example of the use to which they can be put. They will never provide that elucidation of the law to be found in the printed judgments of such judges as Jenner-Fust, Nichols and Stowell, but they may help to supplement the judgments and observations of some law reports and surviving manuscript sources. The process in the case of *Argar v Holdsworth* may be said to mystify as much as to clarify, but it does throw doubt on the received understanding of the law for which this case is quoted as an authority and strengthens the argument of those who question that understanding.

[28] J. Johnson, *Clergyman's Vade Mecum* (1st edn, London 1706), p. 159; cf. *obiter* of Patterson J. in *Davis v Black* (1841) 1 QB 900: 'At common law parties may marry anywhere. It is true, however, that [the Clandestine Marriages Act 1753] ss. 1 & 4 confines them to the church of the parish where one of them has been resident for a certain time.'

[29] Quoted by Melanie Barber, 3 Ecc LJ 13.