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A HISTORY OF THE ECCLESIASTICAL COURTS OF  
THE DIOCESE OF CANTERBURY, 1566-1586, BASED  
ON THE CAUSE PAPERS BOUND WITHIN THE  
VOLUME MS.F.4.12

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Held within the University of Liverpool's Special Collections and Archives is MS.F.4.12, a single volume of cause papers originating from the Consistory Court and the Court of the Archdeacon in Canterbury. It stands out as a record of particular interest not least because of its content and research value but also due to it being housed in Liverpool when its origins lie elsewhere. Its twentieth-century ownership can be traced, with annotations made by F. William Cock explaining how he bought the volume from a Leicestershire antiques dealer in the first half of the century and by 1948 it had been deposited by Stella Permewan at the University of Liverpool upon the death of her son, a former student, but there is still little explanation as to why it left Canterbury in the first place. There are 271 extant leaves totalling 119 separate entries or papers covering an approximate date range of 20 years. The oldest dates from 1566 and the most recent 1586 but not all entries are dated. Based on the records' content and the officials of the court referred to, 1566 is almost certainly the oldest entry and whilst it is not certain that 1586 is the latest date it is unlikely to be much later.

The fuller more detailed on-line version of this article is accompanied by the transcription and translation of a sample of the entries contained in MS.F.4.12. [See KAS website [kentarchaeology.ac](http://kentarchaeology.ac)] Whilst the volume is too large for a full transcription the sample taken aims to cover all the different variables evident, such as the types of case heard, the officials named and the record types.

This article aims to offer an explanation of, and investigation into, the context surrounding the creation of the records bound in MS.F.4.12 as well as use them to illustrate how the ecclesiastical courts at this time would have operated.

## Official Records Produced by the Courts

Each court kept records of their business which can be particularly useful when investigating their proceedings. They provide the basis of the majority of studies into the different courts as the main tools from which to determine how they functioned, the sorts of cases they heard and the details of individual cases. An understanding of the format of the official records is clearly essential to formulating an understanding of the courts as well as an appreciation of what a record such as MS.F.4.12 can offer. Court records can be said to 'fall into two clearly defined classes – the Act Books and the Cause Papers'.<sup>1</sup>

*Act Books* detailed all the business of the court for any particular session. They could comprise entries for each individual proceeding by including the names of the plaintiff, the defendant, and often the proctor (the lawyer representing each party). Other entries might include the admission of officials to the court and the granting of licences. Whilst Act Books might be useful in tracking the types of case heard, the numbers of different case types and the officials of the court the entries themselves could be very brief and often excluded individual's names. Nevertheless, long series of Act Books have survived for many of the courts including those at Canterbury, making them a valuable source for tracking their fortunes.

*Cause papers* are much more detailed and follow the 'progress of an action through the courts'.<sup>2</sup> Papers were produced for each element of the process and by charting each step in more detail one might hope to be able to gain from them more information on the individuals involved in a case as well as the method in which it was dealt with. However, as useful as this record type should theoretically be it is very rare for all the records relating to one lawsuit to survive. In fact very often only one paper will survive if any at all. There is only one case referred to within MS.F.4.12 for which there is more than one entry – entries 25, a libel, and 28, a depositions, both referring to the same defamation case.

The series of cause papers listed in Canterbury Cathedral Archives only begin in 1595, after the period of MS.F.4.12, with only one or two individual papers relating to an earlier period. Consequently, the only records of the cases featured in MS.F.4.12 that will be found at Canterbury are likely to be within the Act Books, making MS.F.4.12 an apparently unique source for the details of cases arising in this period.

### The Diocese of Canterbury

The twenty years covered by MS.F.4.12 saw three Archbishops of Canterbury, Matthew Parker being the first (1559-1575) followed by Edmund Grindal (1575-1583) and John Whitgift (1583-1604). The

period also saw two Archdeacons, Edmund Freake (1564-1576) and William Redman (1576-1594). Parker was the first Archbishop following the tumultuous period of the Henrician Reformation and the Catholic Restoration of Mary I's reign, and has been acknowledged for his heavy engagement in propaganda and moulding of public opinion.<sup>3</sup> One might see this as part of the entrenchment of Protestantism and the restoring of stability to the operations of the church, thus placing MS.F.4.12 in a period of relative and continuing calm in comparison to earlier years.<sup>4</sup> Whilst the tumultuous events of the Reformation undoubtedly made great changes to the country 'the distinctive element in the Reformation experience of Englishmen was continuity in nearly all areas of church life'.<sup>5</sup> This arose from the fact that the church's structure was more or less unchanged and so the influence of the church courts remained fairly constant throughout.

Two separate courts operated at the diocesan level in Canterbury, that of the Consistory Court and the Court of the Archdeacon. Ecclesiastical courts across the country existed as part of a hierarchical system with the Court of the Archdeacon being the 'lowest in the hierarchy of courts ecclesiastical in the matter of appeals'.<sup>6</sup> Consistory courts, being the official courts of the bishop, came next and generally speaking acted as the court of appeal for cases from the Court of the Archdeacon. Above them were the provincial courts of appeal, known in the province of Canterbury as the Court of Arches and in the province of York as the Chancery Court. MS.F.4.12 features two entries from the Court of Arches.

A common point made by many studying the ecclesiastical courts is the impossibility of applying the findings of a study of one diocese more generally. Here Canterbury is no different having its own peculiarities. Two particularly relevant factors are its relatively small size and its close relationship with the archbishop. Firstly, its size meant it had only one archdeaconry (the largest diocese in the country at the time, Lincoln, had eight). A plurality of archdeacons served to reinforce the hierarchical system by placing the consistory court above those of the archdeacons as it held jurisdiction over the whole diocese and not just a small part of it. With the diocese of Canterbury being as small as it was the two courts shared the same geographical jurisdiction. Secondly, the Canterbury consistory court being the court of the archbishop meant that appeals from the archdeacon generally went directly to the provincial Court of the Arches, bypassing the consistory altogether.<sup>7</sup> Nevertheless some distinction did exist between the two, with the consistory retaining full jurisdiction over matrimonial causes and exempt parishes.<sup>8</sup>

In terms of content and structure, at first glance there is little to distinguish between the cause papers from the Consistory Court and the Archdeacon's Court other than the title given to the presiding official in their introduction. An analysis of the papers in terms of the above

distinctions between the two shows that 33 of the 53 cases brought before the consistory court were matrimonial causes or arose in exempt parishes. Yet this leaves 20 cases where there was no apparent reason for them to be held in the consistory over the archdeacon's court.

Brian Woodcock's explanation for this centres around the relationship between the two diocesan courts and their concurrent jurisdiction, with an individual's decisions on where the case should be held being based largely on convenience. The two courts would sit at different times and in different places around the diocese allowing someone bringing a suit to select the most appropriately placed and timed court.<sup>9</sup> The relatively small size of the diocese meant that both courts were easily accessible to the whole population. As such, anyone could instigate legal proceedings or gain access to either court without any great hindrance, making the records of the Consistory Court just as representative as those of the Archdeacon's Court. In other, larger, dioceses many people would have found the consistory courts much less accessible and have been more likely to conduct their business through the Court of the Archdeacon.

#### Process of a Lawsuit

Causes could be brought before the two courts in one of two ways, either as an instance cause or as an office cause. In both situations there would be a plaintiff and a defendant, or a 'pars agens' and a 'pars rea.' Instance causes were civil causes and were a form of private litigation between two individuals where it fell to the judge to 'restore to amity those who were in dispute, preferably by persuading them to come to agreement, but, failing that, by determining which of them was in the right'.<sup>10</sup> Private litigation took up much of the time of the courts and could dominate court days. Due to its nature in comparison to correction, or *ex officio*, causes (see below), they were also responsible for the bulk of an ecclesiastical lawyer's workload. Consequently they are also what constitute large amounts of the records of the courts still extant.<sup>11</sup>

Office causes were criminal causes and could in themselves come in two forms, those made '*ex officio mero*' and those made '*ex officio promotio*'. Both of these could generally be termed correction business and were concerned with spiritual discipline, a priority of the church courts.<sup>12</sup> The former would be a result of an individual being presented to the court by a churchwarden or during a bishop's visitation for behaviour considered to be immoral or in contempt of court and as such their actions were in direct contravention of the law and so they were challenged directly by the judge in which case there would just be a defendant standing against the judge as opposed to a plaintiff and a defendant standing against each other in a civil case. '*Ex officio promotio*' causes were instigated by the accusation of another parishioner. In this sense they were similar to

instance causes in the manner in which they were brought forward, but they would be carried out through the office and in relation to cases where the defendant was contravening canon or moral laws as opposed to just a civil dispute.

Most cases were plenary investigations and were undertaken through the examination of written evidence, thus producing large numbers of records. Cases could be addressed in a summary manner on the basis of oral testimonies, leaving little or no evidence in the court records, which often applied to cases that went uncontested or were related to simple matters.<sup>13</sup> Summary pleading was also common to the process of office causes.<sup>14</sup> Plenary cases on the contrary could result in a large number of records and continue for many months as each item would be produced on a separate court day. The following descriptions of record types outline some of the records created during this process, many examples of which can be found in MS.F.4.12.

### *Libel*

A libel can be defined as ‘a declaration or charge, drawn up in writing, on the part of the plaintiff, unto which the defendant is obliged to answer’,<sup>15</sup> and was the preliminary paper issued for instance causes clearly outlining the case and listing the evidence in numbered paragraphs. The prosecuting party would have been given a date on which they could present the libel to court and so the plaintiff was able to include the name of the judge who would hear the case, as seen in MS.F.4.12, which would only be possible if the court was scheduled in advance and its proceedings well organised. A libel was directed towards the judge themselves and sometimes included a paragraph at the end appealing to the judge regarding how they wished the case to proceed, as in entry 5, ff.12-13. In the section beginning ‘unde facta fide’ the proctor implores the judge on the part of his client to punish the defendant accordingly and make him liable for the legal expenses.

### *Articles*

The corresponding preliminary paper in office causes is known as the articles, as it theoretically represents the role of the judge articling against the defendant, notable in the phrase ‘obiicimus et articulamus’, which recurs regularly throughout the document. Like a libel it sets out the case against the defendant in a clear, structured way.

### *Citation*

The citation was the record that summoned the defendant to court.<sup>16</sup> The only examples in MS.F.4.12 originate from the Court of Arches in London

reinforcing the hierarchical structure of the church courts as cases that could not be settled at the level of the diocese were then being taken to the level of the province. Entry 49 is a good example of the formation of a citation and the elements that would be included. The parties involved are all named as well as the type of cause being disputed and the day on which the defendants are expected to appear. Citations are also much easier to date than some other records as the specific date on which it was delivered and the official who delivered it are given at the end.

### *Responsions*

Following the assessment of either the libel or articles in court it was up to the defendant to respond to each allegation that had been made in them. These would be known as responsions and tended to culminate in a document called an allegation which brought together all the facts that had been denied by the defendant.<sup>17</sup> The marginalia of several of the entries of MS.F.4.12 shows some form of response to have been recorded directly on to the libel or articles. Phrases such as 'credit' or 'non credit' appear alongside some items indicating that the defendant either believes or does not believe what is set out by the plaintiff in each point.

### *Interrogatories and Depositions*

From here on each contested point could be considered in the court through the submission of evidence, usually in the form of statements from witnesses. Part of the reason for the production of large quantities of records was due to the way in which evidence was heard. Witnesses would not be questioned openly in court as would be expected in a modern court trial, instead the statements of witnesses would be taken in private and written down verbatim.<sup>18</sup> During this process depositions and interrogatories were produced, but there is some confusion amongst writers on the subject as to what each of these was and how they functioned. According to Woodcock interrogatories were questions produced by the proctor for either party and put to their own witnesses, with the answers then recorded as depositions. Another important point made by Woodcock is that there was no form of cross-examination, with each party having to rely upon their own witness testimonies to refute those of the opposition. This version of the process is agreed upon by both Colin Chapman and the guides produced by Nottingham University Manuscripts and Special Collections, although neither agrees that there was no form of cross-examination, arguing that interrogatories could be used by the defence to question the prosecution's witnesses.<sup>19</sup>

However, Purvis states that the original testimonies of the prosecution's witnesses were taken by asking them to answer for the statements laid

out in the libels or articles and were known as depositions and that the interrogatories were questions formulated by the defence to be put to those same witnesses, a process then repeated in reverse with the witnesses of the defence.<sup>20</sup> This is agreed upon entirely by both Tarver and the guides produced by the Borthwick Institute at the University of York.<sup>21</sup>

Seemingly Woodcock is alone in suggesting there was no cross-examination, leading one to believe that interrogatories could well have been a method for which the defence could question the prosecution's witnesses. MS.F.4.12, helps further as the only two related entries, 25 and 28, show the responses of witnesses in the depositions of entry 28 to follow the individual items set out in the original libel of entry 25 exactly, indicating that interrogatories were produced later for further questioning or as a form of cross-examination.

### *Exceptions and Additional Articles*

The defendant could then attack the credibility of the prosecution's witnesses in records known as articles of exception.<sup>22</sup> Several examples can be found in MS.F.4.12 – entry 59 is quite clear in its discrediting of witnesses accusing them of being adulterers and therefore undermining the value of their testimonies. However, looking to other papers labelled as exceptions in MS.F.4.12 it is clear that they were not solely concerned with discrediting of witnesses but, as in entry 58, could be a method for the defence to submit evidence or refute certain claims. In this case Peter Chittenden is able to defend himself against accusations made by Lord Francis Rawson claiming that he had not paid his tithes by stating that there was an agreement in place between the two of them that Chittenden would only pay a certain amount for the 8 acres of land he held in Headcorn on which he grew apples. These records are similar in structure to libels and articles, being set out item by item, but one noticeable difference is that they begin with the words 'In quodam causa'. Whilst the cause type and the names of the parties are given in exceptions it is difficult to understand the details surrounding the original charge, as in entry 58 when the document concentrates entirely on discrediting witnesses and does not give any details about the case itself. The plaintiff could also submit additional articles for which the process of witness testimonies would be undertaken again and the lawsuit would continue.

### *The Sentence*

The sentence was the final record produced marking the end of proceedings. An example of such can be found in MS.F.4.12 in entry 67, where a sentence is given from the Court of the Archdeacon. Sentences are immediately recognisable from the opening words 'auditis, visis,



intellectis ac plenarie et mature discussis'. Their structure differs greatly from other cause papers as they do not follow the item by item formula. Instead they are written out in one large paragraph, and are one of the shortest record types featured in MS.F.4.12 often only covering one side of a page. Unfortunately they are also the least useful for establishing information about a case as they are largely formulaic and full of extraneous language. They rarely give details of the punishment that was to be faced by the losing party, instead just describing who was deemed to be at fault and occasionally giving the type of punishment without any further details. Entry 12, for example, gives the verdict in the case of Mary Besbeeche, wife of Thomas, of the parish of Goudhurst against Alexander Courthoppe of the same parish. Besbeeche is the plaintiff in this case but the sentence explains that her claims have not been proven and consequently she is made liable for court costs and a lasting silence is imposed upon her with regard to the case. It does not however detail in anyway what her original claims were, or why they were not upheld.

#### Creator of MS.F.4.12

It is difficult to tell who the cause papers were originally produced by, be it the courts or the proctors to be presented to the court, and who owned them. An inscription on the recto of f.1 of 'Sum ex libris Will[elm]i Pers[iv]all' suggests initially that MS.F.4.12 belonged to an individual rather than the court itself. Such a collection of records could feasibly have been the working professional papers of an official of the court, such as a proctor. The lack of any order to them, and the fact that they clearly do not cover all the work of the courts for this period, lends credence to this assumption. However, whilst the inscription is clearly not a recent one, there is no evidence to support the idea of it being contemporary to the records. Private libraries and book collecting were not uncommon during this period and the volume could easily have belonged to a private owner such as William Perisvall [Percival], many years later.

Further evidence suggests that at least some of the records were produced by the courts themselves. The reverse of entry 71 is labelled 'copia libelli Sharpy c[ontra] Tolherst', meaning that it is a copy of the original libel that would have been submitted to the court by the proctor.<sup>23</sup> At least one other record is similarly labelled firmly placing them as products of the court itself. Whilst few are labelled as such there could be many more examples among the documents in MS.F.4.12. The nature of some records, such as depositions and sentences, means that they would have been produced by the court as usual practice, although copies could have been made to be given to the parties involved.

Several different hands can be identified throughout and, by linking some of these, patterns begin to emerge between the records and the

hands that produced them. For example, there are at least twenty records clearly in the same hand all of which are for cases appearing before the same official, Stephen Lakes. Four different officials feature as judges for the courts and Lakes accounts for just under half of the entries. The solid link between certain officials and the production of the records indicates that they were produced by the court and not a proctor, who would have submitted records before all the officials presiding over the court. Similar links can be made between other entries, for example there are only two entries for cases before one official, Vincent Denne, but both are in the same hand.

The officials presiding over the Consistory Court were known as Commissaries-general, with the examples mentioned thus far (Denne and Lakes) both holding this office. By consulting the Archbishops' Registers held at Lambeth Palace Library it is possible to track the careers of some of these men, as they would have held other offices before becoming Commissary-general. In this instance the Registers show some of the officials featured in MS.F.4.12 being admitted to the Court of Arches as advocates (a formally educated lawyer, holding a higher office than a proctor). The ability to track the careers of these men on their way to this office means that we can be fairly certain in ruling out the possibility of William Persivall being a Commissary-general due to the lack of mention of his name.<sup>24</sup> Of further note is the way in which the presiding official, or judge, was introduced at the beginning of each record helping us to also rule out the possibility of Persivall having presided over the Court of the Archdeacon. A university education focusing on the study of civil law would also be a requirement for a gentleman wishing to hold such a high office. Whilst the names of the judges mentioned in MS.F.4.12 can be found within the published lists of the alumni of both Oxford and Cambridge University, no such entry can be found for a William Persivall.<sup>25</sup>

Proctors working at this time tended not to have a formal university education making the possibility of Persivall having been a proctor a real one. However, in Entry 4 of MS.F.4.12, a John Edwardes is mentioned by name as being the proctor representing one of the parties. This particular record stands out amongst the others as it is written in the first person from the perspective of Edwardes making entreaties to the judge on behalf of his client. Nevertheless, the fact that the name of a proctor is mentioned at all and that it is not William Persivall tends to suggest that he wasn't a proctor either as there seems little logical reason for him to keep another proctor's records.

Suggestions are made in the catalogues of diocesan administrative records held at the Borthwick Institute in York that official and private papers were found stored together with no attempt at separation.<sup>26</sup> Therefore it is quite possible that some private papers of court officials,

for example proctors, could be grouped in with official records of the court within MS.F.4.12. As such we might assume that the records bound within MS.F.4.12 did not belong to any one individual of the court but were grouped together at another point.

As can probably be deduced from the plenary process the records would have all been produced separately, so fully supporting them having been bound at a later date. The physical evidence for this is clear with the original folds evident on each folio. On the reverse of most entries is a label giving the names of the parties involved, for example 'Pyllesworthe c[ontra] Wood' which would have been clearly visible when the records were folded and stored in their original state.

The reasons for binding the records in the first place are not obvious, as cause papers listed for the Chester, York and Canterbury Consistory Courts in other archives are all loose.<sup>27</sup> With no logical order to the records we may assume that they were not bound as part of a system to keep relevant records together nor to facilitate future reference when required.<sup>28</sup> In fact if for some reason anyone needed to prove something to do with an earlier court case, entries in the act books would detail the specific procedures that had taken place. Instead the volume seems more likely to just be a method of preserving the papers of the court, possibly as a result of there being a large number of loose records with binding providing a solution to storage problems. Alternatively, the name of William Persivall may indicate that they were taken into a private collection and also offer some explanation as to the provenance of the record.

### Types of Cases Heard

The diocesan courts could deal with various issues, including testamentary matters, tithe disputes, cases of defamation, matrimonial disputes, and correction cases, examples of which can be found within MS.F.4.12.

#### *Tithe*

A 'tithe was a tax of approximately one-tenth, paid on all types of production by all types of producer'.<sup>30</sup> Disputes surrounding them are by far the most numerous in MS.F.4.12, a trend witnessed across England having grown in number since the Reformation.<sup>31</sup> The disputes arising from them in the courts often involved confusion over what goods were tithable, who they should be paid to and whether or not individuals were trying to hide produce to avoid paying tithes. Given the timing of the increase in tithe disputes it is tempting to assume that they resulted from anticlericalism or resentment towards the church. However several writers on the subject draw attention to how the administration of tithes lacked the religious characteristic widely assumed of it. R.C. Palmer

paints a picture of the collection of tithes as being social and economic rather than religious citing the commercial nature evident from the way in which tithes could be leased out.<sup>31</sup> However tithes would surely have always been of this nature, and so this does not explain the increase in tithe disputes following the Reformation except to say that it was not due solely to religious dissent.

Christopher Haigh highlights the changing economic decisions and rising inflation that made the continued use of the *modi decimandi* in place to collect tithes untenable.<sup>32</sup> The *modi* were agreements establishing a set amount that would be paid rather than calculating it seasonally and as inflation affected the value of real money the payments received as a result of the *modi* did not reflect the true value of the goods they represented. Furthermore, the dissolution of the monasteries and the selling off of their vast estates had transferred the ownership of many tithes to laymen with legislation being passed allowing them to contest their rights to tithe in the courts thereby contributing to a vast increase in recorded disputes.<sup>33</sup>

The detailed descriptions of the tithes owed are potentially of great use to the economic or social historian. Each case goes into great detail about the types and amounts of goods owned, and comparisons can be made to establish the relative wealth of those involved. In some instances where specific pieces of land are involved the name of that piece of land is also given making it possible to place disputes geographically. Entry 10 sees the clerk and rector of the parish church of Upper Hardres, Richard Pyllesworthe challenging Matthew Wood of the parish of Elham for tithes owed. Whilst Wood clearly doesn't reside in the same parish the rest of the record goes on to explain that he holds pasture land in the parish of Upper Hardres on which he clearly keeps sheep as it is claimed that he owes a total of 2 shillings for tithes owing in respect of land and lambs. Libels and articles relating to tithes in MS.F.4.12 make up some of the longest entries due to the way each type of tithable good could be listed and dealt with separately.

### *Testamentary*

Testamentary cases heard in the diocesan courts differed to the granting of probate which was one of the main duties of the court but simply involved formally approving wills and giving the named executor the right to begin administering the goods of the deceased. However, the involvement of the courts stretched much further than this to the resolving of disputes arising from the administration of wills. The number of testamentary cases featuring in MS.F.4.12 is evidence of how often these disputes could occur. There were some situations regarding the administration of wills, however, that did not fall under the remit of the church courts and were heard by the secular courts. These could include disputes

surrounding debts owed to or owed by the deceased and the inheritance of real property, or land.<sup>34</sup>

The administration of a will without having been granted probate and legal permission to do so was an offence, and one which occurs regularly throughout MS.F.4.12.<sup>35</sup> Entries 1 and 6 both concern what is described as 'temerariam administracionem bonorum iurium et creditorum', or the reckless administration of goods, rights and credits. In both instances it is the executor suing another individual for their unlawful involvement with the deceased's will. For example, entry 1 sees Thomas Robyns being challenged in court for withholding the goods of the deceased by John Osbourne on behalf of Elizabeth Wibley who was the named executrix of her late father's will. As such we can see that cases of this type were not usually brought against a named executor for commencing their duties before formal permission had been granted but against other individuals for their unlawful involvement. The cases tend to follow a certain pattern by first establishing that the will was valid, that the plaintiff was lawfully named as the executor and then establishing the specific offence of the defendant, and in the case of entry 1 goes on to give a full inventory of the goods in question along with their value.

Non-payment of a legacy was another common reason for bringing a testamentary suit. Here the executor would generally be the defendant accused by another individual for failing to pay a legacy lawfully due to them according to the will. In these cases it could be found that legatees had been put off time and again by executors, or the executor often reasoned that goods were not worth as much as some individuals believed them to be or the debts of the deceased had reduced their value.<sup>36</sup>

These two types of testamentary dispute constitute the main reasons for the existence of testamentary causes in MS.F.4.12. However another major cause of dispute stemmed from someone dying intestate leading to the parties in a lawsuit disputing who the deceased's goods should be left to. Between the sixteenth and mid-seventeenth centuries there were increasing numbers of people making wills due to population and economic changes, making this less of a problem than it had been in previous years.<sup>37</sup> However, this also increases the likelihood of people disputing wills in court. Other causes of dispute could be the validity of the will, disputed inventories and the non-payment of tithes.<sup>38</sup>

### *Defamation*

Defamation causes have been a popular subject for researchers largely due to their personal and sexual nature and are one of the main reasons for these courts earning the epithet 'the bawdy courts'.<sup>39</sup> However, they make up only around 15 per cent of the cases recorded in MS.F.4.12 as opposed to tithe disputes which account for 39 per cent. Whilst this may

not be entirely representative due to the seemingly haphazard collection of papers it contains, defamation causes do not appear to have dominated the proceedings of the diocesan courts. In contrast to this others such as Martin Ingram state that 'suits alleging defamation of character, mostly concerning slanders of a sexual nature, formed one of the most prominent classes of litigation heard by the church courts in this period'.<sup>40</sup> Such conclusions made by other researchers does bring into question more forcefully the representativeness of MS.F.4.12, but the main issue of note with defamation cases around this time was their rise in popularity over the course of the century, something which cannot be measured from the contents of MS.F.4.12.<sup>41</sup> Consequently, it is important to be aware of the misleading nature of some statistics given as instances of tithing disputes were also on the rise, and whilst the number of defamation suits may have increased, the proportion in relation to other causes may not have altered in the same way.

What can be said for certain regarding defamation suits is that they were largely concerned with sexual slander. Of the instances of defamation in MS.F.4.12 where the cause can be discerned, only one, entry 5, does not involve sexual slander, where the words spoken by one Thomas Bowser of Elestine Badfelde are detailed in the libel as 'thow art or she is a wytch, & thow art, or she is nought of her body, or of thy body'. This is a trend highlighted elsewhere by C. Haigh who says that 'the vast majority of defamation suits at Chester resulted from sexual laxity, and during the whole of the sixteenth century only half a dozen of all the cases in which the nature of the slander is known concerned other allegations'.<sup>42</sup> Furthermore, it is the sexual behaviour of women that comes to light most often in the courts with only four of the seventeen suits in MS.F.4.12 relating to men.

The way in which the libels and articles presented before the courts in defamation cases often included in English the words that had been spoken in order to initiate the case makes them particularly useful to social historians investigating the prevailing culture of medieval society. However, the recurrence of the words 'a whore and an arrant whore' in both entries 26 and 73 as well as in several cases cited by L. Gowing and one by C. Haigh brings into question the accuracy of the terms recorded by the courts.<sup>43</sup> It seems unlikely that several individuals over a period of time and in three different places would have used the same term verbatim. Whilst the court in each case is clearly conveying the nature of the insult accurately, whether they are the exact words spoken is questionable, with the possibility that the church courts often repeated standard terms for insults with the same bearing.

Nearly all the defamation cases in MS.F.4.12 were the result of private litigation by individuals wanting to dispel rumours circulating about them, leading to the question as to why people felt the need to initiate these suits. For some writing on the issue the main basis for bringing

a defamation case related to the importance of 'good name, reputation, and honour', in medieval society.<sup>44</sup> A much more practical and pressing motive for initiating a defamation case was the need for an individual to prevent the possibility of the court itself bringing an office case against them for the actions they were reported to have committed.

The church at this time 'had a general responsibility to ensure the salvation of as many of its members as possible, and if necessary the conditions needed for salvation had to be enforced'.<sup>45</sup> The possibility of being taken to court for adultery or other sexual misbehaviour was a real one. This can be seen in entry 82 of MS.F.4.12, involving a correction case in which evidence is presented saying that the defendant was married in December of 1585 but by April 1586 had already had a child. The need to clear one's name promptly was reinforced by the fact that the churchwardens responsible for presenting members of the parish to court for reported misdemeanours were obliged to do so by law and could themselves face court if they did not. It was the criminal nature of the slanderous words that was problematic and as such did not just relate to cases of sexual misbehaviour. Because of this reasoning it was not just the church courts that witnessed many defamation cases but the common law courts as well where defamation cases involving slanderous words would be heard.

### *Matrimonial*

The jurisdiction of ecclesiastical courts over matrimonial matters was nearly complete, with the secular courts generally only dealing with disputes involving property rights and inheritance.<sup>46</sup> Only eight instances of matrimonial suits appear in MS.F.4.12 and discovering the nature of the dispute in two of the cases is made difficult by the types of records that they are represented by. One, entry 42, is a sentence and as such gives very little information on the details of the original suit, and the other, entry 59, is an exceptions concerned largely with discrediting the witnesses of the opposition. Consequently, the types of matrimonial disputes found in MS.F.4.12 can be based on just six entries, which cannot realistically be considered representative.

Nevertheless, the suits featured in MS.F.4.12 can still provide some level of insight into the kinds of matrimonial disputes that might feature before the ecclesiastical courts and in some respects they do follow the patterns described by others writing in the subject. Helmholz states that 'by far the most common matrimonial cause in the medieval Church courts was the suit brought to enforce a marriage contract', something that seems to hold true with the cases in MS.F.4.12.<sup>47</sup> Five of the six entries relate to the enforcement of marriage contracts, with a distinct possibility that entries 42 and 59 do also as the parties involved have different surnames and so clearly do not relate to a dispute concerning some form of separation

or adultery. The reason behind the high number of cases disputing the validity of or seeking to enforce marriage contracts lies in the nature of marriage contracts in this period. A marriage contract was legally binding not after a formal ceremony in a church as we might expect but following a verbal agreement or contract made between a couple using words in the present tense, *per verba de presenti*, for which no church official was required to be present.<sup>48</sup> This is evident in entry 102 in which William Asten of Tenterden is using the ecclesiastical courts to prove and enforce the existence of a verbal contract made between him and Marion Roger of Faversham. The private and verbal nature of marriage contracts meant that it often came down to the church courts to establish whether or not a valid marriage contract existed based on witness testimonies.

There is one entry in MS.F.4.12, entry 74, relating to divorce in which William Wood is suing his wife Elizabeth on the grounds of adultery. Such suits were relatively rare and whilst separation or annulment was possible on certain grounds, divorce as we know it today did not exist.<sup>49</sup> Annulments could be made on the grounds that the marriage was never valid in the first place, and the parties would be able to remarry but was problematic for women who were deprived of any dower rights and whose children would be considered as bastards.<sup>50</sup> Citing adultery as the basis for an unsatisfactory marriage, as William Wood does, could bring about a judicial separation 'from bed and board' but ultimately the marriage contract would still exist, so whilst they may no longer be living together, they would not be allowed to remarry so long as the other one lived.<sup>51</sup>

In conclusion, there is clearly much to be gleaned from the records of the old ecclesiastical courts whether it is for the purposes of historical research or simply to feed a general curiosity in the lives of the people they depict. Nevertheless there are still many questions posed about the period and by the existence of the records themselves for which the answers remain frustratingly elusive. Not least the question of how a record such as MS.F.4.12 came to be and how and why it left the diocese of Canterbury in the first place. The fact that so little of the original series of records survives makes the investigation into their history and the ability to offer concrete answers all the more difficult. No doubt further and more in-depth research linking in with other collections would help to depict a more detailed picture and maybe even answer questions surrounding the provenance of MS.F.4.12 but in the meantime we can only speculate on its current condition and location.

[Note. Readers are referred to an article in *Archaeologia Cantiana*, LXXXIX, 1974 – Peter Clark, 'The Ecclesiastical Commission at Canterbury: 1572-1603' – which describes the generally close working relationship between the Commission and the diocesan Church courts. Ed.]



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## BIBLIOGRAPHY

- Burrill, A.M., 1998, *A New Law Dictionary and Glossary: containing full definitions of the practical terms of the common and civil laws* (Union, New Jersey: The Lawbook Exchange Ltd).
- Chapman, C.R., 1997, *Ecclesiastical Courts, Officials & Records: Sin, Sex and Probate* (Dursley: Lochin Publishing).
- Churchill, I.J., 1933, *Canterbury Administration: The Administrative Machinery of the Archbishopric of Canterbury* Illustrated from Original Records (London: Society for Promoting Christian Knowledge).
- Dawley, P.M., 1954, *John Whitgift and the English Reformation* (New York: Charles Scribner's Sons).
- Dodds, B., 2008, 'Demesne and tithes: peasant agriculture in the late middle ages', *Agricultural History Review*, 56, 2, 123-141.
- Foster, J., 1891, *Alumni Oxoniensis: The Members of the University of Oxford, 1500-1714: Their Parentage, Birthplace, and Year of Birth, with a Record of Their Degrees: Being the Matriculation Register of the University* (Oxford: OUP).
- Gowing, L., 1993, 'Gender and the Language of Insult in Early Modern London', *History Workshop Journal*, 35, 1, pp. 1-21.
- Haigh, C., 2000, 'Anticlericalism and the English Reformation', in C. Haigh (ed.), *The English Reformation Revised*, CUP, pp. 56-74.
- Haigh, C., 1975, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78, 1-13.
- Hair, P., 1972, *Before the Bawdy Court* (London, Paul Elek Books).
- Helmholz, R., 1975, *Marriage Litigation in Medieval England*, CUP.
- Helmholz, R., 1979, 'Debt Claims and Probate Jurisdiction in Historical Perspective', *American Journal of Legal History*, 23, 68-82.
- Ingram, M., 1988, *Church Courts, Sex and Marriage in England, 1570-1640*, CUP.
- Ingram, M., 1981, 'Spousals Litigation in the English Ecclesiastical Courts c.1350-c.1640', in R.B. Outhwaite (ed.), *Marriage and Society: Studies in the Social History of Marriage* (London: Europa Publications), pp. 33-57.
- Morris, C., 1963, 'A Consistory Court in the Middle Ages', *Journal of Ecclesiastical History*, 14, 2, 150-159.
- Oldham, J.B., 1956, *English Blind-Stamped Bindings*, CUP.
- Outhwaite, R.B., 2006, *The Rise and Fall of the Ecclesiastical Courts 1550-1860*, CUP.
- Palmer, R.C., 2002, *Selling the Church: the English parish in law, commerce and religion, 1350-1550* (Chapel Hill: University of North Carolina Press).

- Phillimore, R., 1895, *The Ecclesiastical Law of the Church of England* (London: Sweet and Maxwell Ltd).
- Purvis, J.S., 1953, *An Introduction to Ecclesiastical Records* (London: St Anthony's Press).
- Sanders, V., 1983, 'The Household of Archbishop Parker and the Influencing of Public Opinion', *Journal of Ecclesiastical History*, 34, 4, pp. 534-547.
- Sharpe, J.A., 1953, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York* (Borthwick Institute: York).
- Tarver, A., 1995, *Church Court Records: An Introduction for Family and Local Historians* (Chichester: Phillimore & Co Ltd).
- Venn, J. & Venn, J.A., 1922, *Alumni Cantabrigiensis, A Biographical List of All Known Students, Graduates and Holders of Office at the University of Cambridge From the Earliest Times to 1900, Part I From the Earliest Times to 1751: Vol. i Abbas – Cutts* (Cambridge: CUP).
- Venn, J. & Venn, J.A., 1922, Ditto, *Vol. ii Dabbs – Juxton* (Cambridge: CUP).
- Venn, J. & Venn, J.A., 1924, Ditto, *Vol. iii Kaile – Ryves* (Cambridge: CUP).
- Venn, J. & Venn, J.A., 1927, Ditto, *Vol. iv Saal – Zuinglius* (Cambridge: CUP).
- Woodcock, B.L., 1952, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (London: OUP, 1952).
- The National Archives, Access to Archives 'York University, Borthwick institute of Historical Research, DR/C&P Correspondence and Working Papers of the Diocesan Registrar and Other Officials of the Archbishop of York' <http://www.nationalarchives.gov.uk/a2a/records.aspx?cat=193-dr&cid=0&kw=proctor#0> [viewed 22 July 2011].
- The University of Nottingham, Manuscripts and Special Collections, 'Introduction to Libels (Cause Papers)' <https://password.nottingham.ac.uk/manuscriptsandspecialcollections/collectionsindepth/archdeaconry/libels/introduction.aspx> [viewed 15 July 2011].
- The University of York, 'Cause Papers in the Diocesan Courts of the Archbishopric of York 1300 – 1858' <http://www.hrionline.ac.uk/causepapers/index.jsp> [Viewed 2 August 2011]
- The University of York Borthwick Institute for Archives, 'Church Court Records: How the Courts Work, Historical Background and Procedure', <http://www.york.ac.uk/library/borthwick/projects-exhibitions/church-court-records/cause-papers/how-courts-work/#production> [viewed 15 July 2011].
- Church Courts: Papers in Ecclesiastical Suits, 1595-1646, Canterbury Cathedral Archives, CCA-DCb-J/J.
- Diocese of Chester Records: Consistory Court Records 16th-20th Century, Cheshire Archives and Local Studies, EDC.
- The Courts of the Archbishop of York: Cause Papers, Early 14th Century - 1999, York University Borthwick Institute of Historical Research, CP, series E-J.

ENDNOTES

<sup>1</sup> J.S. Purvis, *An Introduction to Ecclesiastical Records* (London: St Anthony's Press, 1953), p. 64.

<sup>2</sup> A. Tarver, *Church Court Records: An Introduction for Family and Local Historians*, (Chichester: Phillimore & Co Ltd, 1995), p. 7.

<sup>3</sup> V. Sanders, 'The Household of Archbishop Parker and the Influencing of Public Opinion', *Journal of Ecclesiastical History*, 34, 4 (1983), p. 534.

<sup>4</sup> *Ibid.*, p. 545.

<sup>5</sup> P.M. Dawley, *John Whitgift and the English Reformation* (New York: Charles Scribner's Sons, 1954), p. 32.

<sup>6</sup> I.J. Churchill, *Canterbury Administration: The Administrative Machinery of the Archbishopric of Canterbury Illustrated from Original Records* (London: Society for Promoting Christian Knowledge, 1933), p. 44.

<sup>7</sup> B.L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (London: Oxford University Press, 1952), p. 13.

<sup>8</sup> Exempt parishes lay outside of the traditional administrative structure, usually due to their relation to the Archbishop either because there was an archiepiscopal residence in the parish or because the dean of the parish held some other official post in the Archbishop's administration making their subjection to the usual courts unsuitable; I.J. Churchill, *Canterbury Administration*, p. 83.

<sup>9</sup> B.L. Woodcock, *Medieval Ecclesiastical Courts*, p. 27.

<sup>10</sup> C. Morris, 'A Consistory Court in the Middle Ages', *Journal of Ecclesiastical History*, 14, 2 (1963), 150-151.

<sup>11</sup> B.L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury*, p. 31.

<sup>12</sup> A. Tarver, *Church Court Records*, p. 31.

<sup>13</sup> C.R. Chapman, *Ecclesiastical Courts, Officials and Record*, p. 47.

<sup>14</sup> A. Tarver, *Church Court Records*, p. 2.

<sup>15</sup> R. Phillimore, *The Ecclesiastical Law of the Church of England* (London: Sweet and Maxwell Ltd, 1895), p. 990.

<sup>16</sup> J.S. Purvis, *Ecclesiastical Records*, p. 65.

<sup>17</sup> J.S. Purvis, *Ecclesiastical Records* p. 66; A. Tarver, *Church Court Records*, p.15.

<sup>18</sup> B.L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury*, p. 56.

<sup>19</sup> C. Chapman, *Ecclesiastical Courts, Officials & Records*, pp. 49-50; the University of Nottingham, Manuscripts and Special Collections, 'Introduction to Libels (Cause Papers)' <https://password.nottingham.ac.uk/manuscriptsandspecialcollections/collections/indepth/archdeaconry/libels/introduction.aspx> [viewed 15 July 2011].

<sup>20</sup> J.S. Purvis, *Ecclesiastical Records*, p. 66.

<sup>21</sup> A. Tarver, *Church Court Records*, p. 18; the University of York Borthwick Institute for Archives, 'Church Court Records: How the Courts Work, Historical Background and Procedure', <http://www.york.ac.uk/library/borthwick/projects-exhibitions/church-court-records/cause-papers/how-courts-work/#production> [viewed 15 July 2011].

<sup>22</sup> J.S. Purvis, *Ecclesiastical Records*, p. 67.

<sup>23</sup> A.M. Burrill, *A New Law Dictionary and Glossary: containing full definitions of the practical terms of the common and civil laws* (Union, New Jersey: The Lawbook Exchange Ltd., 1998), p. 283.

<sup>24</sup> Robert Bisshoppe appointment as advocate in the Court of Arches, 5 October 1570, Register of Matthew Parker, Archbishop's Registers, Lambeth Palace Library, Reg. Parker 1, f.291; Stephen Lakes' appointment as advocate in the Court of Arches, 24 April 1581, Register of Edmund Grindal, Archbishop's Registers, Lambeth Palace Library, Reg. Grindal 1, f.228.

<sup>25</sup> J. Foster, *Alumni Oxoniensis*, 1891; J. Venn & J.A. Venn, *Alumni Cantabrigiensis*, vol. i, 1922; J. Venn & J.A. Venn, *Alumni Cantabrigiensis*, vol. ii, 1922; J. Venn & J.A. Venn, *Alumni Cantabrigiensis*, vol. iii, 1924; J. Venn & J.A. Venn, *Alumni Cantabrigiensis*, vol. iv, 1927.

<sup>26</sup> The National Archives, Access to Archives: York University, Borthwick Institute of Historical Research: DR/C&P Correspondence and Working Papers of the Diocesan Registrar and Other Officials of the Archbishop of York. <http://www.nationalarchives.gov.uk/a2a/records.aspx?cat=193-dr&cid=0&kw=proctor#0> [viewed 22 July 2011].

<sup>27</sup> Diocese of Chester Records: Consistory Court Records 16th-20th Century, Cheshire Archives and Local Studies, EDC; the Courts of the Archbishop of York: Cause Papers, Early 14th Century - 1999, York University Borthwick Institute of Historical Research, CP, series E-J; Church Courts: Papers in Ecclesiastical Suits, 1595-1646, Canterbury Cathedral Archives, CCA-DCb-J/J.

<sup>28</sup> The pattern of wormholes in the pages suggests the order has not been altered over time.

<sup>29</sup> B. Dodds, 'Demesne and tithes: peasant agriculture in the late middle ages', *Agricultural History Review*, 56, 2 (2008), 125.

<sup>30</sup> R.B. Outhwaite, *The Rise and Fall of the Ecclesiastical Courts 1550-1860* (CUP, 2006) p. 25.

<sup>31</sup> R.C. Palmer, *Selling the Church: the English parish in law, commerce and religion, 1350-1550* (Chapel Hill: University of North Carolina Press, 2002), p. 32.

<sup>32</sup> C. Haigh, 'Anticlericalism and the English Reformation', in C. Haigh (ed.), *The English Reformation Revised* (CUP, 2000), p. 69.

<sup>33</sup> R.B. Outhwaite, *The Rise and Fall of the Ecclesiastical Courts*, p. 29.

<sup>34</sup> R. Helmholz, 'Debt Claims and Probate Jurisdiction in Historical Perspective', *American Journal of Legal History*, 23 (1979); R.B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts*, p. 7.

<sup>35</sup> A. Tarver, *Church Court records*, p. 64.

<sup>36</sup> R.B. Outhwaite, *The Rise and Fall of the Ecclesiastical Courts*, p. 34.

<sup>37</sup> *Ibid.*, p. 35.

<sup>38</sup> A. Tarver, *Church Court Records*, p. 59.

<sup>39</sup> P. Hair, *Before the Bawdy Court* (London: Paul Elek Books, 1972), p. 12.

<sup>40</sup> M. Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (CUP, 1988), p. 292.

<sup>41</sup> C. Haigh, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78 (1975), 2.

<sup>42</sup> *Ibid.*, 2-3.

<sup>43</sup> L. Gowing, 'Gender and the Language of Insult in Early Modern London', pp. 1, 14, 15; C. Haigh, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78 (1975), p. 5.

<sup>44</sup> J.A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York* (Borthwick Institute: York, 1953), p. 2.

<sup>45</sup> C. Haigh, 'Slander and the Church Courts in the Sixteenth Century', *Transactions of the Lancashire and Cheshire Antiquarian Society*, 78 (1975), p. 1.

<sup>46</sup> R. Helmholz, *Marriage Litigation in Medieval England* (CUP, 1975), p. 2.

<sup>47</sup> R. Helmholz, *Marriage Litigation*, p. 25.

<sup>48</sup> M. Ingram, *Church Courts, Sex and Marriage*, pp. 189-190.

<sup>49</sup> M. Ingram, 'Spousals Litigation in the English Ecclesiastical Courts c.1350-c.1640', in R.B. Outhwaite (ed.), *Marriage and Society: Studies in the Social History of Marriage*, (London: Europa Publications, 1981), p. 35.

<sup>50</sup> M. Ingram, *Church Courts, Sex and Marriage in England, 1570-1640*, p. 145.

<sup>51</sup> *Ibid.*, p. 146.