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ARTICLE

The Chancery Court of York: a forgotten jurisdiction 'particularly circumstanced'?

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Abstract

Today, the Chancery Court is the appeal court for the province of York in the Church of England. There are some excellent specialised period-specific studies which take in the Chancery Court alongside other York church courts, mostly from the Borthwick Institute at York.[1] However, there is no book exclusively devoted to the Chancery Court setting out its full history. The court is also rather neglected in standard texts on the history of English ecclesiastical law. Even the great Richard Helmholz has no index entry on it in his monumental history of canon law in England.[2] Holdsworth in his well-known history of the common law has a page and a half on courts of the Archbishop of Canterbury; as to York's archiepiscopal courts, he simply states they 'corresponded' to those of Canterbury.[3] These are typical of most scholars today.[4] This article, therefore, seeks to redress this imbalance – to correct what seems to be a case of juridical amnesia and so to unveil the forgotten, or hidden, Chancery Court of York. It offers a short history of the identity, jurisdiction, officers, records and processes, and jurisprudence of the Chancery Court of York. It also points out some key differences between the Chancery Court and its Canterbury equivalent, the Arches Court. The article focuses mainly on its post-Reformation history, as treated in the dispersed secondary literature – and it adds to this what the English ecclesiastical lawyers since the Reformation – civilians, common lawyers, and clerical jurists – say about this York court.

Keywords: Chancery Court of York; Church of England; ecclesiastical law; legal history

[1] Notably W J Sheils, *Ecclesiastical Cause Papers at York: Files Transmitted on Appeal 1500–1883* (York, 1983).

[2] R H Helmholz, *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford, 2004); likewise in the index of his *The Profession of the Ecclesiastical Lawyers: A Historical Introduction* (Cambridge, 2019) but 63 mentions 'the archiepiscopal court of York'.

[3] W Holdsworth, *A History of English Law*, 7th edn (London, 1956), vol.I.599–600. See also J H Baker, *Introduction to English Legal History*, 4th edn (Oxford, 2007), 136.

[4] See for example C R Chapman, *Ecclesiastical Courts, their Officials and their Records* (Dursley, 1992), 1 index entry on the Chancery, Arches, 12; see also 75; M G Smith and P M Smith (eds), *The Church Courts, 1680–1840: From Canon to Ecclesiastical Law* (Lewiston, 2006), 76, 116, 118, 117, 125; G I O Duncan, *The High Court of Delegates* (Cambridge, 1971): no index entry; but see 318; R B Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500–1860* (Cambridge, 2006) 54, 912; and D Millon (ed), *Select Ecclesiastical Cases*

The identity of the Chancery Court

Most general commentaries on ecclesiastical law have an index entry for the Arches Court, but not for the Chancery Court: these include the works of the civilian John Godolphin (in 1678), clerical jurist Edmund Gibson (in 1713), and civilian John Ayliffe (in 1726). Nor does Godolphin's text on the 'Arches-Court' mention the Chancery.[5] This neglect might be linked to economics: Canterbury province was the principal market for these books; for example, Gibson in the table of subscribers for his two-volume work on ecclesiastical law, six pages of 12 columns list Canterbury subscribers; only one and part of a column list York subscribers.[6]

The same can be said of the specialised books on church courts. For instance, in 1728 the civilian Thomas Oughton designed his book primarily for use in London and the civilians who practised there at Doctors Commons where the Arches Court, Prerogative Court, and Consistory Court of the Diocese of London, were all located until the 1850s. He writes of his market: 'Farewell, then, child of my brain, offspring of my industry. Go forth into the capital of this kingdom'. Oughton discusses at length the Court of Arches and the Audience Courts of Canterbury, but not York.[7] Likewise Philip Floyer's 1748 book for church court proctors.[8]

This neglect continues later in the century. Richard Burn's influential four-volume book on ecclesiastical law (1763) has an index entry for the 'Arches, court' but not for the Chancery Court. He also lists the Arches in the index entries under 'Courts' but again he does not list the Chancery. Nor does Burn mention the Chancery in the text when discussing the Arches. This is surprising: Burn was diocesan chancellor of Carlisle and a priest in Westmorland.[9]

Much the same neglect prevails in the 19th century: for example, in his 1848 two-volume book on ecclesiastical law, the common lawyer Archibald Stephens has several index entries for the Arches but none for the Chancery, nor does his text discussion of the Arches mention the Chancery Court except in a footnote.[10] John Henry Blunt (1873) has no index entry for, nor discussion of, the Chancery as such, but he refers to 'the Provincial Court' and 'the Appeal Court of the Province'.[11] Similarly, in 1888 Eustace Smith simply writes: 'The Chancery Court occupies the same position in the province of York as the Court of Arches in the province of Canterbury, and is a general court of appeal for the Diocesan Courts of that province'.[12] Robert Phillimore in the 1895 edition of his two-volume *Ecclesiastical*

from the King's Courts 1272–1301 (London, 2009), vol 126 has 16 index entries for the Arches, none for the Chancery.

[5] Godolphin, *Repertorium Canonicum or An Abridgement of the Ecclesiastical Laws* (1678), 100–104.

[6] Gibson, *Codex Juris Ecclesiastici Anglicani* (1713) II: A Catalogue of the Subscribers.

[7] Oughton, *Ordo Judiciorum* (1728), in J Law (ed), *Forms of Ecclesiastical Law* (London, 1831), prolegomena 20, x–xxi; the Arches is indexed but not the Chancery.

[8] P Floyer, *The Proctor's Practice in the Ecclesiastical Courts* (1748), 3–13.

[9] Burn, *Ecclesiastical Law* (1763 edition) I, preface xxi, 90, 272. See below for Burn's contribution of jurisprudence.

[10] A J Stephens, *A Practical Treatise of the Laws Relating to the Clergy* (1848, reprinted 2010 by Nabu Press, South Carolina), 52, 67.

[11] J H Blunt, *The Book of Church Law* (London, 1873, 1899 edition), 228, 29.

[12] T E Smith, *A Summary of the Law and Practice of the Ecclesiastical Courts* (London, 1888), 14.

Law has a few lines on York's Chancery Court but no index entry for it, unlike for the Arches Court.[13] Similarly, standard texts of the 20th century have but few lines on the Chancery Court.[14]

Second, the Chancery Court itself also experienced an identity crisis in its own constitution. Like Canterbury, York had archdeacons' courts and diocesan consistory courts (the bishop or his official presiding), including that of the archbishop as diocesan, styled the Consistory Court of York (but in Canterbury the Commissary Court). But unlike Canterbury, the archbishop of York had a further diocesan court: the Exchequer Court (dealing with wills). Then came the provincial courts. Both archbishops had a Prerogative Court (for wills), an Audience Court (each archbishop reserving cases to himself and presiding personally), and a court in which a judge acted on behalf the archbishop – that is, in Canterbury, the Arches Court (the Dean of Arches presiding); and in York, the Chancery Court (Auditor presiding).

However, while Canterbury Audience Court merged with the Arches Court making a single court (Arches Court) about the time of the Restoration in 1660, there are two views about when a similar merger occurred in the province of York. Some suggest the York Audience and Chancery Courts did not merge until the 18th century. But others consider the York Audience Court and Chancery Court merged in the reign of Elizabeth I, 100 years before Canterbury, making a single court styled the 'Audience or Chancery Court of York' and after Elizabeth's time it became known simply as the Chancery Court of York.

On the one hand, then, Burn in 1763 has one section on the Canterbury Arches Court and another on its Audience Court which ends by citing John Johnson writing in 1720: 'The archbishop of York has in like manner his court of audience'.[15] Similarly, like Stephens in 1848,[16] Phillimore in 1895 writes: 'In the province of York [there is] the Supreme Court, called the Chancery Court, the Consistory Court, and the Court of Audience'. However, presumably for both Canterbury and York, he writes: 'these Courts of Audience … are now I think obsolete, or at least only used on the rare occurrence of the trial of a bishop'; he cites for example Zouch (1636) and Oughton (1728).[17] The 1954 report of the archbishops' commission on ecclesiastical courts likewise states with regard to the Audience Court: 'In the Province of Canterbury its jurisdiction after the Restoration was merged in that of the Court of Arches. In the Province of York it appears to have maintained a separate existence into the eighteenth century'.[18] Similarly, according to Chapman, writing in 1992: 'In York … the Court of Audience jealously kept its business quite separate until well into the eighteenth century'.[19]

[13] Phillimore, *Ecclesiastical Law* (1895), II.922–923.

[14] See for example M Hill, *Ecclesiastical Law*, 4th edn (Oxford, 2018), paras 1.32, 2.59, 2.61, 6.64, 7.78, 7.81, 7.113; and L Leeder, *Ecclesiastical Law Handbook* (London, 1997), paras 2.38, 11.16–17.

[15] Burn (note 9), I.99, citing 'Johns. 255'; for Johnson, see note 27 below.

[16] Stephens (note 10), 'Audience': 'York has likewise his Court of Audience'.

[17] Phillimore (note 13), II.922–923; like Burn, he also cites Johnson, 'p. 281'.

[18] *The Ecclesiastical Courts: Principles of Reconstruction* (London, 1954), 9.

[19] Chapman (note 4), 26. The Borthwick Institute website echoes Chapman.

On the other hand, for Carson Ritchie writing in 1956: 'It can be said definitely that during the years 1575 to 1595 and almost certainly from 1570 to 1574 and ... 1595 to 1599, outside which time the court books seem to be missing, the Audience Court, whatever it may have been, and the Chancery Court, as it was afterwards known, were merged in the one court called the "Court of Audience or Chancery"'. One 'difficulty' as to 'the identity of the court' was that the court books of the Audience or Chancery Court were catalogued in Elizabeth's reign 'as if they belonged to two separate courts'. The books were 'split up and classified under "Audience" or "Chancery"' – i.e. as 'Chancery' books 1575–79 and 1585–95, and as 'Audience' court books 1570–74, and 1579–84. But in reality: 'All these books form a sequence, and belong to the same court' and after 1595 they are all catalogued as 'Chancery'. Moreover, the Chancery Court 'is quite frequently referred as either Audience or Chancery', or as 'this court of audience'; 'audience' proceedings are classed 'chancery' proceedings; and references to the court as 'chancery' not 'audience' are more frequent during this period.[20]

Whichever view is correct, by 1883 the commission on the ecclesiastical courts reports makes no mention of the Audience Court of York, only the Chancery Court.[21] Moreover, by the time of the third edition of Halsbury on ecclesiastical law (1957), needless to say, the title of the court was well settled: 'The provincial court of the Archbishop of York is called the Chancery Court of York'.[22] By 1959, in a study on the medieval period, Brentano concludes simply that the archiepiscopal courts of York 'developed over time into the Chancery Court and the Prerogative Court and the Consistory Court' – he is silent on the Audience Court.[23]

Thirdly, as to identity,[24] in *Dale's Case* (1881) Brett LJ in the Court of Appeal styled the Chancery Court as the 'Chancellor's Court of York'; and he agrees with Ritchie: 'From the time of Lord Coke there had been two provincial courts', one in Canterbury and in York, 'but each of them had another name, the former being known as the Court of Arches, and the latter as the Chancery Court of York'. Brett LJ also talks of 'the Provincial Court of York ... in other words ... the Chancellor's Court of York', which 'had existed for centuries'.[25]

In any event, today, as the Canons of the Church of England state, there is 'a court of the archbishop' called, 'in the case of the court for the province of York, the Chancery Court of York' which exercises 'appellate jurisdiction as provided in the Ecclesiastical Jurisdiction Measure 1963'; and its southern twin is the Court of Arches.[26] To jurisdiction we now turn.

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[20] C I A Ritchie, *The Ecclesiastical Courts of York* (Arbroath, 1956) 24–26: throughout Ritchie cites in the footnotes the relevant historic records of the courts.

[21] Report of the Commission on the Ecclesiastical Courts (1883) Historical Appendix I, 31, 32: 'the provincial courts ... of York [are] the Prerogative Court and the Chancery Court', cited by Ritchie, ibid, 11.

[22] Halsbury, *Ecclesiastical Law*, 3rd edn (1957), 500, citing for example *Voysey v Noble* (1871) LR 3 PC 357.

[23] R Brentano, *York Metropolitan Jurisdiction and Papal Judges Delegate 1279–1299* (University of California Publications in History No. 58, 1959) 4–10.

[24] 'Chancellor's Court' was also used in Elizabeth's reign for the Arches Court: see Ritchie (note 20), 24.

[25] *Dale's Case, Enraght's Case* (1881) 6 QBD 376, CA, 456–457: it concerned disobedience to an Arches decision.

[26] Canon G, para 2(a).

The jurisdiction of the Chancery Court

The law the medieval Archbishop of York's courts enforced was the foreign canon law of Rome, and the domestic laws of his own province. A provincial law of York from 1462 provided for the domestic laws of Canterbury (in Lyndwood's *Provinciale* 1434) to apply in York if not repugnant to York provincial law.[27] All the 'Provincial Constitutions of York', from the time of the Archbishop Gray (1216–56) were set out in the York Provinciale issued in 1518 by Wolsey, Archbishop of York; it was the counterpart of Lyndwood's Canterbury Provinciale.[28] After the 1530s, York's courts applied the national king's ecclesiastical law.[29]

Before and after the Reformation, the Audience and/or Chancery Court, and after merger the Chancery Court, had original jurisdiction, administrative functions, and appellate jurisdiction. By the late 13th century it heard: first instance cases; appeals from the York province dioceses; 'tuitorial appeals' to protect the person and goods of one who appealed to Rome until that appeal was concluded; and cases from Scotland because the Archbishop of York had jurisdiction over the Scottish diocese of Whithorn[30]; but in 1763 Burn writes: 'until about the year 1466′, the archbishop of York had jurisdiction 'over all the bishops of Scotland'.[31]

First, the original jurisdiction of the Audience and/or Chancery survived the Reformation.[32] It heard 'instance' cases, between private parties (e.g. over marriage) and 'office' cases, promoted *ex officio* by the judge or other ecclesiastical officer (e.g. a churchwarden) in 'correction' or 'criminal' suits against individuals. Three examples from three centuries.

Over 1570–74, 134 instance and office cases went to the court, including: 21 on institution to a benefice; seven on sexual immorality; four on administration of wills; three on clerical non-residence; two on marriage; and one on tithes. In 1594–95, there were 98 causes, with a similar breakdown.[33]

Over 1660–70, office and instance cases included: probate, ten; administration of wills, ten; withholding tithes, nine; defamation, seven; non-payment of church rate, five; withholding a legacy, three; care of children, two; restitution of conjugal rights, two; breach of contract to marry, two; conducting clandestine marriage, two; and one each for jactitation of marriage and annulment of marriage.[34]

Over 1750–60, suits included: pews, seven; probate, three; defamation, three; tuition of a child, two; correction, two; and one each for: removal of a tombstone from Barnard Castle chapel; disputed churchwardens' accounts; failure to exhibit

[27] J Johnson, *A Collection of the Laws and Canons of the Church of England* (1851 edition), ii. 512, translating the Latin text in Wilkins, *Concilia* (1737) iii. 663.

[28] *The York Provinciale*, put forth by Thomas Wolsey, Archbishop of York, in the year 1518, edited and translated by R M Woolley (London, 1931).

[29] Post-Reformation ecclesiastical lawyers also write about the 'customs' of the province of York.

[30] Brentano (note 23), 4–10, 83–114.

[31] Burn, *Ecclesiastical Law* (1775 edition), I.177.

[32] R A Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York 1560–1640* (Cambridge, 1969) 80: 'The earlier history of the court from ... Henry VII has still to be written but in [Henry VIII's time] the Chancery list, although relatively small, was varied'.

[33] Ritchie (note 20), 29–31.

[34] Sheils (note 1), 26–34.

accounts; unlawful preaching; unlawful marriage; failure to attend a visitation; false visitation presentment; refusal to serve as churchwarden; assault on a churchwarden; breach of promise to marry; and the administration of a will.[35]

Second, the Chancery Court had an administrative or quasi-judicial function. For example, it issued five marriages licences in 1590, six in 1591, 15 in 1592, and 17 in 1597; in the years 1612–19, the court's licence book recorded about 41 institutions each year as well as licences for diocesan and provincial preachers, curates, readers, and school masters[36]; and over 21 months in the period 1618–20, the court licensed 39 curates, 52 schoolmasters, and 746 marriages.[37] The overall picture is that the Chancery Court was relatively busy with a varied case-load.

Thirdly, appellate jurisdiction. Pre-Reformation York provincial law protected its appeal jurisdiction: it forbad and penalised any appeals from York to Canterbury. Its appellate jurisdiction was preserved by Parliament in the 1530s, which also replaced the papal court of Rome as final appeal court in spiritual matters; appeals now lay from the Chancery Court (and the Arches) to a new court: the High Court of Delegates.[38] The jurisdiction of the archbishop (and his courts) passed in a vacancy in see to the York Dean and Chapter Court.[39]

However, the place of the Chancery in York province differed from that of the Arches in Canterbury: the Chancery was not the only provincial appellate court, but shared appeals with the archbishop's Audience Court (until merger) and his diocesan Consistory Court of York (until *c.* 1675). The Consistory Court heard first instance cases from York diocese (like any other diocesan court) and appeals from other dioceses in the province.[40] So, unlike in Canterbury, in York a party could appeal a decision of an archdeacon's court or a diocesan consistory court to the archbishop's Consistory Court or to his Audience and/or Chancery Court.[41]

In any event, after the Reformation, across the 16th century, Chancery Court appellate work did not change much as to subject matter, but it did as to caseload, for various reasons. According to Sheils: 'No appeal business is recorded as such in the act books of consistory or chancery until 1541'; the 1530s statutory changes to appeals 'brought uncertainty' to York.[42]

After 1559, appeals formed 'a small but integral part' of the York courts' business. They were split between the diocesan Consistory Court and provincial Chancery Court – most instance suits to the Consistory with office suits to Chancery; both dealt with wills. Over 1570–74 there was only one appeal a year; over 1579–84, there were seven, two each from Chester, Carlisle, and York, and one from Sodor and Man; none from Durham. The trend continued to *c.* 1624. There are several possible reasons. Obviously, one is that the Chancery shared appeals with diocesan Consistory Court; the normal appeal court was the Consistory; Chancery

[35] Sheils (note 1), 72–76.

[36] Marchant (note 32), 80–81.

[37] Sheils (note 1), 54. See also Marchant (note 32), 81–82.

[38] Act in Restraint of Appeals 1533 and Submission of the Clergy Act 1533.

[39] Sheils (note 1), xi, citing Chancery Act Books, 20–22 (on which, see further note 79, below).

[40] See also N Adams and C Donahue (eds), *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c. 1200–1301* (London, 1981), vol. 95, 656–678.

[41] Ritchie (note 20), 13; Sheils (note 1), i–ii.

[42] Sheils (note 1), iv: but there is one case in 1539 recorded as an appeal to the archbishop.

simply helped out to reduce Consistory's load. Another is that the Court of High Commission, set up by statute in 1559 (abolished 1641), 'drew a good deal of office [criminal] business away from the appellate courts'; and it was a more effective enforcer, with powers to arrest, fine, and imprison – the Chancery could only excommunicate.[43]

As the Court of High Commission enforced its unpopular Arminianism, so there was an increase in appeals against sentences in diocesan courts pursuing like policies. There were five in 1617–18; eight in 1627–28, and 14 in 1634–35. As a result, in the 15 or so years before the civil war, appeals represent about 7% of Chancery business, significantly higher than before. Moreover, the Archbishop of York's provincial visitation of 1633 resulted in a lot of correction cases in the Chancery Court.[44]

After the Restoration in 1660, the Chancery Court became the sole provincial appeal court for York when the diocesan Consistory Court lost is appellate jurisdiction. Sheils identifies 23 appeals to the Consistory Court in 1661–67 and 21 in 1667–1671. In 1672 there was 'an amalgamation' of the appellate jurisdiction of Consistory and Chancery but: 'The amalgamation of the courts ceased in the summer of 1675 [when] the chancellor, Henry Watkinson ... removed all appeals to the Chancery Court'. After 1680 no reference to appeal jurisdiction has been found in the act books of the Consistory. But the 233 appeals at York in 1625–34 dropped to 62 in the years 1675–1684.[45]

With regard to the 18th century, Troy Harris has compared the numbers of appeals in the Chancery Court with those in the Arches Court over 1725–45. The Arches heard 601: 211 in 1725–31; 242 in 1732–38; and 148 in 1739–45. The Chancery heard 130 – like Canterbury, they declined: 67 appeals in 1725–31, 44 in 1732–38, and 19 in 1739–45. The Canterbury province was larger and more populated than that of York and appeals from the diocesan Consistory Court of York went directly to the Court of Delegates[46]; but there were only 16 such appeals in this period; and, for instance, the consistory court of Durham diocese dealt with over 1400 causes over these years but only 18 went on appeal to the Chancery. In these years of the 130 appeals to the Chancery Court, 85 (over half) were from Chester – 57 from the Chester diocesan consistory court and 28 from Richmond archdeaconry court. Wills and disciplinary matters dominated the appeals – however, faculty and pew appeals were higher in the Chancery Court (19 out of 130) than in the Arches Court (41 out of 601).[47] By mid-century, almost all appeals to the Chancery concerned faculties issued by diocesan courts.[48]

[43] Sheils (note 1), iv–vi; Ritchie (note 20), 33; Marchant, *Church*, 64, 66, 68.

[44] Sheils (note 1), vi–vii. Marchant (note 32), 43, 48, 49, 71–80.

[45] Sheils (note 1), i–ii, vii–viii; Sheils disagrees with B D Till, *The Administrative System of the Ecclesiastical Courts in the Diocese and Province of York, Part III 1660–1883. A Study in Decline* (Borthwick Institute, 1963) 144–151, 181; at 248: appeals were removed from Consistory to Chancery in the mid-18th century.

[46] Because an appeal could not lie from the archbishop's Consistory to himself in Chancery.

[47] T L Harris, 'The Work of the English Ecclesiastical Courts, 1725–1745', in T L Harris (ed), *Studies in Canon Law and Common Law in Honor of R.H. Helmholz* (Berkeley, 2015) 251–279 at 259 and 269; at 252 he criticises Till (see above) – Harris sees no 'clear "decline"'.

[48] Sheils (note 1), v, citing Till (note 45), table at 250.

The 19th century saw great changes to the ecclesiastical courts. Parliament enacts statutes removing their jurisdiction over defamation (1851), wills and marriage (1857), and compulsory church rates (1868). Over 1857–83, there were only five appeals to the Chancery Court: two for pews, one faculty, one for drunkenness, and one to change a lock on a church door.[49]

Fourthly, there were appeals against Chancery decisions to the Court of Delegates. But not many. In Elizabeth's reign, a non-exhaustive list includes 'twelve causes from York to the Delegates, probably there were not many more'.[50] One set of edited reports of Delegates' cases records that over 1670–1750, 81 appeals went from the Arches to the Delegates but only two from York. [51] Two examples. In 1754, the Delegates decided 'to reverse the sentence given at York, and to affirm the sentence given at Durham' that a monument was erected lawfully if the parson consents to it – but the ordinary could remove it if 'inconveniently placed'.[52] But as to a Chester Consistory Court decision to uphold a codicil, affirmed by the Chancery Court, on appeal, in 1816, the Delegates held 'the judges of the courts below, as well in the first as in the second instance, had proceeded rightly, justly, and lawfully'.[53]

After 1832, appeals against Chancery (and Arches) decisions lie to the Privy Council, which by statute replaced the Court of Delegates. Further study is needed of these appeals: some were successful. For example, an appeal of 1871 concerned a charge against a York cleric for professing doctrine contrary to the Thirty-Nine Articles (Article 13, on atonement). The offence was committed in the diocese of London. The bishop of London commissioned an enquiry but the Archbishop of York sent letters of request to the Chancery, which then deprived the cleric. The Lord Chancellor stated, simply: 'their Lordships agree with the Official Principal and Chancellor of the Chancery Court of York, and affirm his decree'.[54]

Today, under the Ecclesiastical Jurisdiction Measure 1963, like the Court of Arches, the Chancery Court has no original but only appellate jurisdiction which is limited to faculties and clergy discipline.

The Officers of the Chancery Court

First, the judge. Over time, various offices and styles were attached to the judge of the Chancery Court. In the 13th century, the archbishop appointed an official principal and a vicar-general. The official was his judge; they included: Henry Corbridge (1267); Gilbert of St Leofard (1268); William Hextilibyr (1274); John Crowcumbe (1279); Thomas Adderbury (1288); Robert Pickering (1290); and Robert Lacy (1295). The vicar-general administered the province in the archbishop's absence. Sometimes one person held both offices, like John Nassington, doctor of

[49] Sheils (note 1), 92–104.

[50] Ritchie (note 20), 12–13: and it is somewhat difficult to tell where an appeal comes from; see also 234: Appendix.

[51] W H Bryson (ed), *Miscellaneous Reports of Cases in the Court of Delegates* (Richmond, 2016), 4.

[52] *Hopper v Davies*, 161 ER 234.

[53] *Henslow and Hadfield v Atkinson and Atkinson*, 161 ER 90–91, in a footnote.

[54] *Voysey v Noble* (1871) LR 3 PC 357 at 364.

civil and canon law.[55] A practice then arose for the judge to be both official principal *and* vicar general: it lasted.

From Tudor times, however, the judge is increasingly called 'auditor',[56] as well as official principal and vicar-general. The court used 'the seal of the Office of Vicar General in Spirituals of the Archbishop of York'. The 1604 Canons required all church judges to be 26 years of age, learned in civil and ecclesiastical law, well affected to religion, acceptable in life and manners, and take the oath of supremacy and subscribe the articles of religion. John Rokeby, Robert Lougher, John Bennet, John Gibson and Richard Percy were Elizabethan auditors, and doctors of civil law. Gibson, Lougher and Rokeby were admitted as advocates in London before coming to York.[57]

Some judges were northerners, some southerners.[58] One was Welsh: Robert Lougher, vicar-general 1577–85. At All Souls College, Oxford 1553, he graduated BCL 1558, and DCL 1564. He was also a cleric: archdeacon of Totnes and rector of two Devon parishes 1561–63. As a clergy proctor for Exeter diocese, he signed the Articles of Religion (1562). In 1565 he was elected principal of New Inn Hall, Oxford, made regius professor of civil law at Oxford, and admitted as an advocate at Doctors Commons. A disputant before Elizabeth I on her 1566 visit to Oxford, he resigned as principal of New Inn Hall 1570, and become an original fellow at Jesus College, Oxford (the Welsh college), when founded in 1571. In 1572 he was elected MP for Pembroke (Wales), in 1575 reappointed as principal at New Inn Hall (1575–80), and in 1576 was a visitor of Gloucester diocese. He married Elizabeth, grand-daughter of John Rastell, famous printer of law books and Thomas More's brother-in-law. Lougher died in Tenby (between 3 and 9 June 1585), leaving one son and at least three daughters.[59]

The practice then was for the archbishop to commission the judge to serve at the archbishop's pleasure or for a fixed term. This changed in the early 17th century: the archbishop granted to one person both offices of official principal and vicar-general for life by letters patent confirmed by the dean and chapter, so securing tenure and judicial independence.[60] In 1873, Phillimore writes: 'The style and title of the judge of the Chancery Court of York … was "Granville Harcourt Vernon, Master of Arts, Vicar General and Official Principal of the Most Reverend Father in God William, by Divine Providence Lord Archbishop of York, Primate of England and Metropolitan, lawfully authorized"'. Vernon was also judge of the Consistory.[61]

However, the Public Worship Regulation Act 1874 brought change. The Archbishops of Canterbury and York must jointly appoint one person as Dean of Arches and Auditor of the Chancery Court York and thus as official principal of both

[55] Brentano (note 23), 72, 73, 80.

[56] *The Ecclesiastical Courts: Principles of Reconstruction* (note 18), 8–9.

[57] Ritchie (note 20), 26–27, 61–65. See also Marchant (note 32), 41–60: judges in the 1620s–30s include: Matthew Dodsworth LLB; William Easdell LLD; Edmund Mainwaring DCL; and George Riddell DCL.

[58] They were also survivors: Helmholz, *Profession* (note 2), 63 on Rokeby and Palmer.

[59] *The Dictionary of National Biography* (Oxford, reprinted 1963–64), XII.151.

[60] *The Ecclesiastical Courts: Principles of Reconstruction* (note 18), 11.

[61] Phillimore (note 13), II.926.

provinces. Also, the Ecclesiastical Fees Act 1875 provided for the offices of official principal and vicar-general in the Province of York to be held by two persons,[62] as they originally were. This is the position today.[63]

Nevertheless, judicial practice reveals several styles for the Chancery judge: 'archbishop's chancellor' (1735); 'Official Principal and Chancellor of the Chancery Court of York' (1871); 'provincial Chancellor' (1881); and 'Official Principal or Auditor' (1881).[64] It seems that further work is needed to provide a definitive list of Auditors of the Chancery Court.[65]

Today by Measure, the titles 'Auditor' and 'Official Principal' continue. A person appointed must hold or have held high judicial office, or be qualified to be a Lord Justice of Appeal. Joint archiepiscopal appointment and royal approval continue. Provision is also made for retirement, resignation, removal, deputy, and oaths. In appeals from the disciplinary tribunal (clergy) or vicar general's court (bishops), the Auditor sits with four judges, two clergy, two lay. In faculty appeals, in practice the Auditor sits with two chancellors, one from each province.[66]

Second, the advocates (analogous to barristers today). As in the medieval south, there were provincial rules on these; for instance, the 1311 ordinances of Archbishop Greenfield limited the advocates in York to 12 (proctors to eight); advocates earned up to 50 shillings a year (proctors 10 shillings).[67]

While Canterbury advocates practised from their London college Doctors Commons, there was it seems no equivalent at York. A Canterbury advocate had to be a doctor of law; but in York a bachelor of law seemed sufficient, although some were doctors (see below).[68] To be an advocate, a person had to have the archbishop's fiat, swear not to promote unjust causes, and be admitted by the official principal. This system survived the Reformation. In Elizabeth's reign, an advocate was paid 6 shillings a term, a proctor 5 shillings.[69] They were Oxbridge graduates, like: William Betson MA, Fellow of Pembroke College, Cambridge; Edmund Parkinson, fellow of Brasenose College, Oxford; Henry Scott, BCL Oxford, who unusually as well as being admitted advocate at York also studied at Gray's Inn London; and Marmaduke Lynne, LLD Cambridge: he practised to *c.* 1620.[70]

Third, proctors. Like solicitors today, they represented parties who gave them their proxy to manage an instance cause or were appointed by the judge for an office cause. Proctors practised only in the court to which they were admitted. Often son

[62] In Canterbury the Dean is official principal of the Arches, provincial vicar-general, and master of faculties.

[63] *The Ecclesiastical Courts: Principles of Reconstruction* (note 18), 10–11. cf. Archbishops' Commission Report, *The Canon Law of the Church of England* (London, 1947), 198, draft Canon 114: Auditor as 'Official Principal and Vicar General' of York province.

[64] Phillimore (note 13), II.1069: 1735 case; *Voysey v Noble* (1871) LR 3 PC 357; *Dale's Case, Enraght's Case* (1881) 6 QBD 376, CA, 456–457; *Sidney Faithorne Green (Clerk) v Lord Penzance et al* (1881) 6 App Cas 657 at 673.

[65] For a list of 'The chancellors of York *Diocese* since 1540' (emphasis added), see G Bray (ed), *The Anglican Canons 1529–1947* (Woodbridge, 1998), 914–915.

[66] Hill (note 14), para 2.60.

[67] Brentano (note 23), 76, citing Wilkins (note 27).

[68] J H Baker, *Monuments of Endlesse Labours: English Canonists and their Work, 1300–1900* (London, 1998) 59. See however Ritchie (note 20), 53.

[69] Ritchie (note 20), 61–63.

[70] Marchant (note 32), 247–251.

followed father as proctor, as Guy Fawkes' father Edward followed his father William. York proctors could be well-off; one Elizabethan proctor, William Fothergill, left £4 for the poor, lands, and books on civil law. In Canterbury, proctors in the early 18th century received fees of 1 shilling each court day; in York, 8 pence.[71] By 1832, there were eight proctors in the York courts.[72] With the abolition in 1857 of ecclesiastical jurisdiction over marriage and wills, the professions of both advocate and proctor withered; and, particularly from the 1870s, barristers and solicitors took over their work in the church courts.[73]

Fourth, the actuary, notary public or scribe of 'the acts of the court'. In 1311, they were limited at York to six.[74] After the Reformation, the Canterbury faculty office admitted a person as notary who then, like Oswald Gryesdell in 1589, was admitted to office 'in the consistorial place within the cathedral'; presented his 'letters of promotion' from Canterbury; and swore 'to draw faithful instruments adding or subtracting nothing'. By archiepiscopal decree proctors could also serve as notaries; and their scribbles often appear on the records: 'five eggs for a penny, t'is good cheape'.[75]

Fifth, the registrar registered and had custody of all the judicial acts of the court; and he examined witnesses and took their depositions. At York, the Principal Registrar, or Archbishop's Registrar, served the Chancery Court and the Consistory Court. William Fawkes held office for life, and John Stanhopp and Thomas Thompson shared it for a term of years from 1663. Their fees were fixed.[76] There could also be a deputy registrar. In an account of a case of 1731, mandamus was issued to order admission of a deputy registrar instead of another who was suspended by the archbishop.[77] The office of registrar continues today. The office apparitor, to enforce court orders, does not.[78]

The records and procedures of the Chancery Court

First, the records. These are held at the Borthwick Institute at York. For the Chancery and/or Audience Court there are Court Books (1525–1956); Abstract Books (1634–1948); and Cause Papers (1800–85); and other records among those for all the York courts (1300–2003). These include citations, faculties, registers, and marriage and other licences. There are also court officials' and proctors' papers, including abstract books. Advocates and proctors' opinions mostly date from the late 18th and early 19th centuries.[79] However: 'Unlike the records of the Arches Court, where

[71] Ritchie (note 20), 54–56.
[72] *The Ecclesiastical Courts: Principles of Reconstruction* (note 18), 14.
[73] Phillimore (note 13), II.939–40.
[74] Brentano (note 23), 76.
[75] Ritchie (note 20), 46–51.
[76] Ritchie (note 20), 51–52.
[77] Phillimore (note 13) II.941–3: 'In the case of *Rex v Ward*, in 4 Geo 2'.
[78] Ritchie (note 20), 44–45.
[79] Since 1953 the Registrar of York Diocese has deposited records there; for example Chancery Act Books [Chanc AB]; Abstract Books [Abs Bk]; Cause Papers [Chanc CP]; Citation Books [Cit Bk]; Faculty Books [Fac Bk] 1737–1983; and Formularies and Precedent Books [Prec Bk] from the 16th century and beyond.

process books may be checked against entries in the act books of a court specially hearing appeals, it is impossible to extract full details of all appeal business at York without scanning the whole series of Consistory and Chancery' act books.[80]

Second, procedure. General canon law governed this, from citation, through presenting the cause, to sentence and appeals. It was supplemented by provincial law, like the ordinances of 1311 which continued in the York courts after the Reformation: Archbishop Lee had them read out in full court in 1536 and 1538.[81] Then there are the forms for each stage, such as are found in the 'Cambridge Precedent Book', at Cambridge University Library (dated to the late 15th century): 'This book contains the form of all proceedings in matters ecclesiastical in the Court of York'; and the 'York Precedent Book', in the Bodleian; the name on its cover is thought to be John Martiall, scribe to the Chancery Court in the 1570s.[82] These books have forms for e.g. citations, sentences, contumacy, penance, excommunication, and absolution.[83]

Some commentaries on ecclesiastical law tell us a little about procedural practice distinctive to York. There are three examples. Conset (1685) writes how there can be 12, 15 or 20 court days in each of the four legal terms a year; 'in the Court of the Archbishop of York' there are 15.[84] Oughton (1728) explains that if the plaintiff is called thrice and does not appear, 'the suit is dismissed with costs, which are taxed, if no bill is tendered, at the sum of four nobles' under 'the ancient custom of the courts of the Archbishop of Canterbury'. However: 'In the courts of the lord Archbishop of York, these charges are seldom taxed at more than eight shillings', as 'I find it in several causes of that court, and especially *Lidgard and Richardson v Caleb Stopard*, Termino, Michaelis, 1665, Dr Burwell sitting as judge'.[85] And Burn (1763) writes that 'by the civil law', two witnesses must prove a contested will: 'And this, it is said, is the practice throughout the province of Canterbury. But within the province of York, it has been usual (though now discontinued in some of the dioceses) to swear one witness to the will'.[86]

Process was time-consuming, and delays not uncommon, although few cases took more than three years to complete. Delays in appeals were to some extent outside the control of the Chancery Court, especially in testamentary cases coming from the diocesan court of Sodor and Man. The 12 years it took a suit over the will of John Hebden to reach York in 1728 was rare.[87] The process was also satirised from time to time. In 1821, the Dean of York allegedly wrote a poem about a York annual visitation court – it is in the Minster Library; here is a snippet: 'Two or three parsons, two or

[80] Sheils (note 1), viii–xiii.

[81] Sheils (note 1), ii–iii, citing Wilkins, *Concilia* (note 27), vol. ii, 409–415, and K F Burns, *The Administrative System of the Ecclesiastical Courts in the Diocese and Province of York, Part I: The Medieval Courts* (unpublished, Borthwick Institute), 116.

[82] Cambridge University Library, MS Add. 3115; Bodleian, Bucks. Archd. MS d4.

[83] Ritchie (note 20), 70–154 (general procedure) and 155–168 (criminal procedure).

[84] H Conset, *The Practice of the Spiritual or Ecclesiastical Courts* (1685), I.1.2 (3), marginal note; cited by Oughton (note 7), 9 .

[85] Oughton (note 7), LXIX.III (152) in a note of the editor J T Law.

[86] Burn, *Ecclesiastical Law* (1797 edition), IV.250–251.

[87] Sheils (note 1), xi.

three prayers, Two or three ladies, two or three stares ... Two or three oaths, that the pews were all mended, Two or three bows, and so the farce ended'.[88]

In the 19th century, York court practice was changed to mirror Canterbury. In 1830, Granville Harcourt Vernon, official principal at York, was asked by the Ecclesiastical Courts Commission: 'What peculiarities of practice are there in the court in York?'. He replied, first: 'There were some, but I have one by one disposed of them. Our court is particularly circumstanced with reference to its practice, which I found no authority for, except oral and traditional evidence among its practitioners'. Second: 'some advocates and proctors who had practised in it for ... forty or fifty years, and they were in possession, or considered themselves so, of the practice of the Court'. Third: 'when ... proceeding upon what I knew to be the law in Doctors' Commons, the advocates commonly met me with objections that this had never been the practice of this court'. Fourth: if 'authenticated by such other testimony as I could derive through the proctors, I yielded to it'. Fifth: 'but by degrees as I began to find my own ground stronger, and their memory perhaps weaker, I began to ... adopt the practice of Doctors' Commons' and 'I have assimilated in almost every material point the practice of the court to that of Doctors' Commons'.[89] One long-used practice, however, Vernon liked: 'my position is rather that of an arbitrator than of a judge, and I find, more particularly in matters that relate to the clergy and churchwardens, between the churchwardens and the parish, and between the clergy and the parishioners, by stopping the cause at the outset, the parties agreeing, not by any formal document, but by desiring to have my opinion on the case'.[90]

Vernon (1792–1879) had studied at Christ Church, Oxford, was called to the bar at Lincoln's Inn, and also served as an MP. He had been appointed at York by his father, the Archbishop of York, E V Vernon (d. 1847), who was later criticised for various acts of nepotism. By 1830, when he gave evidence to the commission, his income averaged £1200 pa, paying £200 to his deputy.[91] It seems he was the last official principal before the Act of 1874.[92]

However, despite the changes Vernon introduced, over 50 years later the Ecclesiastical Courts Commission still reports in 1883: 'The forms and historical development of the courts of the province of York vary considerably from those at Canterbury'.[93] Parliament played its part. The Church Discipline Act 1840 enabled the Auditor to make 'Orders' to expedite suits and improve 'the practice' of the court. The 'Rules of the Chancery Court of York' of 1885, for example, made by Lord Penzance (the first to be both Auditor and Dean) regulate process for dealing with

[88] Smith (note 4), 6, citing W Hickington, *Poems on Various Subjects* (Minster, Hailston Collection, 1821).

[89] Marchant (note 32), 236–237, citing Report 1832, 119; Marchant comments: with 'self-satisfaction, Vernon recorded his single-handed extinction of a legal tradition which the Reformation, the Stuart bureaucracy, the Puritan revolutionaries and all other disturbances in the even flow of history had alike failed to extinguish'.

[90] Marchant (note 32), 238 and 240; for example if a registrar doubts a will's validity, he consulted the chancellor.

[91] See https://www.historyofparliamentonline.org/volume/1820-1832/member/harcourt-vernon-granville-1792-1879.

[92] Phillimore so describes Vernon in the 1873 edition of his *Ecclesiastical Law*: see above.

[93] Ritchie (note 20), 70, citing Eccl Comm Hist App I.P.31.

cases involving disobeying monitions issued by the Chancery Court and disposing of such cases 'as justice and the law and practice of the Court may require'.[94]

Thirdly, the location of the Chancery Court. In the 13th century: 'The place of the auditor's court was not fixed'; it sat in, for instance, a chapel, Cawood manor, and Retford parish church.[95] In the late 16th century, the court met in various places including: the 'consistorial place within the metropolitical church'; the prebendal houses in the Close; and the archbishop's residence at Cawood Castle.[96] Formal change came in the 19th century.

The Public Worship Regulation Act 1874 (s 9) authorised the archbishop to require the Auditor to hear 'representations' in proceedings against clergy under the Act 'at any place within the diocese or province, or in London or Westminster'. This provision was considered by the Privy Council in 1881 in an appeal against a decision of Lord Penzance as Auditor who at Westminster imposed censures on a clerk in proceedings under the 1874 Act. Lord Selbourne conceded that 'the ordinary ecclesiastical law would require a proceeding of that Court to be taken locally within its jurisdiction, and that this proceeding was not so taken'; however, this proceeding was 'not taken under the general jurisdiction of that Court' but under the Act, 'which permits the decision to be taken in Westminster', both to 'hear' and to 'determine' it there, because 'hear' means 'hear and finally determine ... the whole matter'.[97]

In 1886, Lord Penzance made further Rules; they dealt with proceedings taken under the 1874 Act: 'in all suits ... in the Chancery Court of York, all hearings ... involving only the discussion of legal questions or questions of fact ... shall, if so directed by the judge, take place in London, including Westminster ... as the judge shall appoint'. However, all judgments, sentences, and decrees 'shall be ... issued in the Court at York in manner and form heretofore accustomed'.[98]

Lord Penzance defended these Rules in a case of 1886 he heard at Westminster: (1) 'all exercise of the powers of the Court should take place as hitherto at York' – process at Westminster 'should be limited to the hearing by the judge of the arguments of the parties or their counsel'; (2) the parties (under the rules) have no duty to attend the hearing; (3) the 1874 Act empowers 'the judge of the Court of the Northern Province to hold all his sittings in London in all cases arising under the Act'; (4) by Canon 125 of '1603', the place for hearings must be 'convenient' for the parties and 'indifferent for their travel'; (5) given 'judge and counsel must have travelled down from London to York and back', a London hearing was cheaper: 50 guineas to hear it in York; 10 in London; (6) to rule otherwise 'almost amounts to a denial of justice'; and (7) 'justice and convenience' outweigh 'slavish subservience'

[94] Smith (note 4), Appendix, 151–153. The 1840 Act also enabled a bishop to issue letters of request for the Chancery Court to try cases under that Act.

[95] Brentano (note 23), 72.

[96] Ritchie (note 20), 14.

[97] *Sidney Faithorne Green (Clerk) v Lord Penzance et al* (1881) 6 App Cas 657 at 664, 668, 689 and 673.

[98] Smith (note 4), Appendix, 153–154.

to 'technical rules' – 'it is in this spirit that the rules under consideration have been framed'.[99]

The jurisprudence of the Chancery Court

The Chancery Court, and those who are associated with it, have contributed much to the development of the jurisprudence, doctrine and principles of English ecclesiastical law.

First, the treatises. There are five examples. One medieval jurist is John of Ayton (in Yorkshire) or Athon or Acton (in Suffolk). He read law at Cambridge and was doctor of both laws in 1335. An official of the Court at York, his gloss on the legatine constitutions of the province of Canterbury has been described as 'the most important single collection of local law for the English Church'; it refers, for instance, to a custom of York as to church court procedure.[100]

William Stoughton, BCL Oxford, was admitted advocate at York (1577) but did not practise. His *Assertion for True and Christian Church Politie* (printed in the Low Countries 1604), argues that the church courts should be replaced with a presbyterian system, and their civil causes should be passed to the secular courts where civilians would continue to practise.[101]

Henry Swinburne (1551–1624), born in Micklegate, York, and educated at Archbishop Holgate's School, was a notary public in the York diocesan Consistory Court, a student at Oxford graduating BCL 1579, and an advocate admitted at York 1581. He was Commissary of the Exchequer Court (1604–24) and Dean and Chapter Court (1613–24). He wrote *A Treatise of Spousals or Matrimonial Contracts* (printed 1686), but is best known for *A Brief Treatise of Testaments and Last Wills* (printed 1590). Its 600 pages are in English (not Latin) to be accessible to laypeople including 'young students of the civil law' – because the law, he wrote, was 'secretly hidden' in 'many books of strange countries, and foreign language'. He cites over 225 authors. It became a standard text, with a 7th edition in 1793. John Baker concludes: it was 'a model of clarity and scientific technique'; 'a landmark in jurisprudence'; and Swinburne is 'in the ranks of the famous', 'first writer on the canon law in English'.[102]

Henry Conset wrote *The Practice of the Spiritual or Ecclesiastical Courts* which he completed in 1681 and was published in 1685.[103] Although possibly a York proctor, he dwells overwhelmingly on Canterbury. Helmholz assesses him: 'his approach to legal opinions was very like that of his numerous fellow proctors of prior and succeeding

[99] *Noble v Ahier* (1886) 11 PD 158 at 159–168: 'It is of the essence of a fair administration of the law, that reasonable and adequate opportunity should be afforded to both parties to support their contentions ...; but their doing so is not obligatory ... and their abstention does not relieve the Court from the duty of a right decision'.

[100] Baker (note 68), 29–42, citing F M Powicke and C R Cheney, *Councils and Synods Relating to the English Church 1205–1313* (Oxford, 1964), ii, 739.

[101] Marchant (note 32), 247–251.

[102] Baker (note 68), 59, 60, 62, 65. Swinburne mentions that Dr Richard Percy at York (his patron and Exchequer Court commissary from 1570) was writing a code of canon law 'now well towards accomplishment'.

[103] Conset (note 84), ii: 'Eboraci Dat. Calend. Martus, Anno ... MDCLXXXI'.

generations'; he sometimes relies on continental jurists, but does not engage in 'the elaborate accumulating and weighing of opinions one finds in most Continental treatises', and so is 'unimpressive or unscholarly on this account'. Rather, he gives 'a brief citation, and one that went to the point, presumably the point that would have mattered in practice'. But this much-cited book saw a third edition in 1708.[104]

Another great York province jurist was Richard Burn (1709–85), diocesan chancellor of Carlisle and a parish priest in his native Westmorland. In his four-volume *Ecclesiastical Law* (1763), Burn acknowledges the help of Dr Topham, judge of York's Prerogative Court. The book was often cited, and for Baker it was 'a deserved success'; its 'style is almost Blackstonian in its classical grace and clarity' (Burn was engaged to edit the first posthumous edition of Blackstone); it earned Burn an Oxford DCL and 'reached a thirteenth (and last) edition in 1869′ – Phillimore edited the ninth edition (1842).[105] Today we have the leading text on ecclesiastical law, now in a fourth edition, by Mark Hill KC, the Diocesan Chancellor of Leeds.

Second, the Chancery Court helped develop the principles of ecclesiastical law. While we do not have edited volumes of its medieval caselaw (but we do for the Arches),[106] we know about its Elizabethan caselaw; in the 1570s, the archbishop held in a case that one cannot be appointed patron 'against a reasonable and good law' and even if it is 'good in law', it should not be against the 'custom of York', 'the common practice used here in like cases', and 'equity'.[107] In 1635, the court held that the final decision as to allocation of pews vests in the ordinary.[108] In a case *c.* 1735, the 'archbishop's chancellor' held that a diocesan bishop could 'only oblige' his diocesan chancellor to exhibit at the 'archbishop's court at York' an account of money received for commutations, but the bishop could not seek inhibition of the diocesan chancellor by the archbishop's chancellor; in 'obedience' the diocesan chancellor exhibited an account and then the archbishop's chancellor 'dismissed the chancellor without costs'.[109] It is said that the first faculty issued at York, in the modern sense, was in 1736.[110]

The main law reports of ecclesiastical cases are *The English Reports*, volumes 161–164, with cases going back to the 17th century. But they carry only decisions of the Canterbury courts at Doctors Commons: Arches Court, Prerogative Court of Canterbury, and Consistory Court of the Diocese of London. They carry no cases reported from York, although sometimes Chancery cases appear in the footnotes to the English Reports. As a result, we have to search for Chancery cases across a wide range of law reports. There are five examples from 1848 to 1919.

In 1849 it held that no cleric may 'set himself up as the authorised judge as to what practices shall be observed' in church nor violate the 'rules of forbearance, of

[104] Helmholz, *Profession* (note 2), 57–58 (proctor); Baker (note 68), 76 (non-practitioner); Holdsworth (note 3), xii (1958) 617 (practitioner); Conset (note 103), 1–11 (Canterbury focus).

[105] Baker (note 68), 115–124, at 116 and 118.

[106] Adams and Donahue (note 40).

[107] Ritchie (note 2), 67–68.

[108] Marchant (note 32), 77–78.

[109] Phillimore (note 13), II.1069: 'About the year 1735, Dr Burn says …'.

[110] Marchant (note 32), 75, citing P Winckworth, *A Verification of the Faculty Jurisdiction* (1953), 74.

Christian charity, and public decorum'; and indeed: 'the Judge is independent of the opinion of his Metropolitan'.[111]

In 1886, it held that letters of request sent to the Chancery Court for a clerk to answer a charge which constitutes a serious criminal offence should be rejected, on the basis that 'a charge of so grave a character ought not to be investigated by an ecclesiastical court, until the person charged had been tried and convicted by a criminal court of competent jurisdiction'.[112]

That same year (1886), the Auditor (Penzance) defines jurisdiction: 'The limits, territorial or otherwise, within which a Court has power over the individual suitor, and the subject matter of the suit, and the nature and extent of the remedies it is authorised to afford, or the censures it has the power to inflict, these are what constitute the limits of a Court's "jurisdiction"'.[113]

In 1892, the court held that if an admonition imposed on a cleric does not fix a date until which it is operative, that admonition does not last indefinitely; if the cleric did not repeat an offence 'for years', the admonition should not be enforced but a 'fresh suit' begun; this decision was made in the absence of authorities on how admonitions were hitherto treated.[114]

In 1919, the court allowed an appeal from Carlisle Consistory Court which had refused a faculty to insert in the east window of a church a depiction of the Crucifixion inscribed to the memory of those who fell in World War I. On the discretionary nature of faculty decisions, the court held: 'this Court is very loath indeed to interfere with the discretion exercised by the Consistory Court, but I confess that in this case it appears to me impossible to regard the decision of the learned Chancellor as based upon any discretion which can be called a judicial discretion'; indeed: 'The evidence he had before him is all in favour of the application'.[115] Today, Chancery Court decisions are on the website of the Ecclesiastical Law Association.[116]

Second, the autonomy of the Chancery Court and the binding effect of its decisions. The long-established principle is that Chancery Court decisions bind both the Chancery Court itself and the consistory courts in York province.[117] By the 19th century, it was settled that the Chancery Court was not bound by Arches Court decisions, and *vice versa*. For example, in the 1848 case on bowing, the Auditor cites an Arches' case on suspension, but does not follow it: he distinguishes it from his own.[118] By 1873, Phillimore is emphatic: 'The Provincial Courts … are independent of each other; the process of one province not running into the other'.[119] In the 20th century,

[111] *Burder v Hale,* (1849) *Notes of Cases 1848–9: Ecclesiastical and Maritime* 611 at 620–633 *per* Vernon.

[112] *In the Matter of AB* (1886) 11 PD 56.

[113] *Noble v Ahier* (1886) 11 PD 158 at 162–164.

[114] *Hakes v Cox* [1892] P 110 at 120.

[115] *Re St Paul's Carlisle*, Chancery Ct of York [1919] P 134 at 142. See also *Dean v Green*, 8 PD 79.

[116] See https://www.ecclesiasticallawassociation.org.uk/judgments/, accessed 26 June 2025.

[117] Halsbury, *Ecclesiastical Law*, 4th edn (London, 1975), para 1271, note 7: *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 1 WLR 1183 at 1189; and *Re Rector and Churchwardens of St Nicholas, Plumstead* [1961] 1 All ER 298 at 299.

[118] *Burder v Hale,* Notes of Cases 1848–9, 611 at 620–633; Vernon cites *Burder v Langley*, I Notes of Ca 542.

[119] Phillimore (note 13), II.924.

the Chancery treated Arches decisions with the 'greatest respect'[120]; not surprising given Auditor and Dean are the same person. As a result, after several recent cases,[121] under a Measure of 2018, a decision of the Arches or of the Chancery Court is to be treated by the other court, and by the lower ecclesiastical courts in the province of the other court, as if a decision which the other court had itself taken.[122] The new rule has been considered recently twice by Chancellor Hill in Leeds Consistory Court.[123]

Third, Chancery case-law as assessed by other courts. On the one hand, courts might reject a decision of the Chancery Court; this happened in 1696 when the Court of Delegates reversed the decision of Dr Watkinson, chancellor of the Archbishop of York,[124] that children of legatees are competent witnesses of a will; the Delegates held they were not.[125] By way of contrast, in a marriage case of 1843, the Arches Court thought that *Moore v Moore* (1723) of the 'Court at York' had a 'considerable bearing' on its own decision.[126] And in 1866, the Privy Council in an appeal from the Chancery Court of York agreed with that court that if a church is rebuilt on its old foundations, including within it the same originally consecrated ground and no more, ecclesiastical law does not require the church to be re-consecrated.[127]

Conclusion

The provincial Chancery Court of York is not a *forgotten* court. It is more *hidden* than forgotten. It has its own distinct history: as said in 1830, it was 'particularly circumstanced'; although there are both similarities and differences between its history and that of the Arches Court. The court was neglected in works of the post-Reformation ecclesiastical lawyers who focus on the Arches. Before the Reformation, the archbishop of York's Audience and Chancery were separate courts, but they merged into the single Chancery Court probably under Elizabeth I, well before their Canterbury counterparts, which merged after the Restoration. The Chancery was also styled the Chancellor's Court of York well into the 19th century. Its medieval jurisdiction – original, administrative, appellate – continued after the Reformation. Unlike in Canterbury, it shared appeals with the diocesan Consistory Court of York until 1675 when it became the only provincial appeal court for York;

[120] Halsbury (note 117), para 1271, note 5. *St Mary, Tyne Dock (No. 2)* [1958] P 156 at 159; [1958] 1 All ER 1 at 8, 9.

[121] *Re St Nicholas Sevenoaks* [2005] 1 WLR 1011 at 1015, *per* Cameron Dean, in the Arches Court.

[122] Church of England (Miscellaneous Provisions) Measure 2018, s 7; courts are the vicar-general's court, a consistory court, or a disciplinary tribunal. The rule applies to decisions made before/after the rule commenced.

[123] *Re Clayton Cemetery, Bradford* [2019] ECC Lee 2; *Re All Saints, Darton* [2021] ECC Lee 6; see also *Re All Saints, Darton* [2022] ECC Lee 2, para 11, *per* Hill Ch: 'I adopt the "merits-based" approach ... of the ... Arches in *Re St Giles, Exhall* [2021] EACC 1 at paragraph 1.18'.

[124] Dr Watkinson's patent, 'as chancellor of York, 17 May 1673' is in the Bodleian: MS Tanner 150, fol 25; see also *Murgatroyd v Watkinson Chancellor to the Archbishop of York* (1729) 84 ER 1211 (KB).

[125] *Thwaites v Smith* (Del 1696) Bryson, 80; 24 ER 274: it cited Swinburne and several continental civilians.

[126] *Clowes v Clowes* (1843) II Notes of Cases, 1842–43, 77 at 83. Further work would be needed to determine conclusively whether *Moore v Moore* was a Chancery Court case, and not York Consistory Court.

[127] *Parker v Leach* (1866) 1 PC 312. It is cited in Halsbury (2011) paras 821, 835, 854.

after 1533, appeals against its decisions lay to the Delegates Court until replaced in 1832 by the Privy Council. Nineteenth-century reform reduced the Chancery's jurisdiction to faculties and clergy discipline, like today. Its historic officers included the judge, advocates, proctors, notaries public and registrar. There was no York equivalent to London's Doctors Commons. The practice of York after the 13th century was for the judge to be both official principal and vicar-general – this lasted until 1875. The judge was consistently known as Auditor from Tudor times, but also as 'Chancellor of the Chancery Court of York'. The Auditor and Dean of Arches were different people until 1874. The records of the court are voluminous. They point to procedures in part distinctive of York and its courts; further study is needed on the two York forms and precedents books (one 15th century, the other 16th century). The 19th century auditor Granville Harcourt Vernon single-handedly assimilated long-standing York court practices to those at Doctors Commons. The southern influence is also evident in statutory changes enabling the Chancery to sit in London, not York. The Chancery Court and those associated with it, have contributed much to ecclesiastical jurisprudence: in the treatises of Ayton, Stoughton, Swinburne, Conset and Burn; in developing principles of ecclesiastical law, particularly around the idea of the rule of law in the church; and in safe-guarding York provincial autonomy and the authority of Chancery caselaw. But we still await a full history of the Chancery Court, the senior court to, as Oughton put it in 1728, the 'beautiful consistory court of York'.[128] The Borthwick Institute York is the place to start.[129]

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[128] Oughton (note 7), LXVIII, 150, citing Conset.

[129] Its website lists: archive guides by D M Smith (1973, 1980), A Buchanan (1997) and J S Purvis (1968); medieval court studies, e.g. D M Smith (ed), 'Ecclesiastical cause papers at York: the court of York 1301–1399' (1988) *Borthwick Texts and Calendars* 14; D M Smith (ed), 'The Court of York, 1400–1499: a handlist of the cause papers and an index to the archiepiscopal court books' (2003) *Borthwick Texts and Calendars* 29; and specialised studies, e.g. R A Sharpe, 'Defamation and Sexual Slander in Early Modern England: The Church Court at York' (1981) *Borthwick Papers No. 58*, and P Evans (ed), 'Church Fabric in the York Diocese 1613–1899: the records of the Archbishop's faculty jurisdiction' (1995) *Borthwick Texts and Calendars* 19.

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