

LETTERS TO THE EDITOR

PRAYERS AT CONSISTORY COURT

From Thomas A. Hoyle

Dear Editor,

Chancellor Edwards rightly exhorts the use of prayer to open Consistory Court hearings (1994 3 Ecc LJ 262).

However, I would respectfully suggest that the most appropriate person to open the proceedings with prayer is the Registrar.

By definition and qualification for office, he or she is a churchman who is familiar and comfortable with prayer. The Registrar may be, or may have been, a member of a PCC (notwithstanding r.9 CRR since he may have been co-opted to a PCC), he will be a member of a Church and a Christian family, but, more importantly, he has no axe to grind in a case as might the Archdeacon or the Incumbent. That he has no part in the Court's judgment is obvious. He is there (at the hearings) to advise on procedure and to ensure 'fair play'. By reading a prayer, he deflects from the Chancellor any hint of cant or humbug that he, the Chancellor, might suffer by being prayerful at one end of the case and judgmental at the other.

The last Consistory Court in the Blackburn Diocese was held in the hallowed portals of Burnley Crown Court, a modern and soulless building. Chancellor Spafford asked me to read the prayer. It seemed appropriate and reminded me of my role within the Faculty Jurisdiction to ensure that in all things churches and churchyards are dedicated to the worship of almighty God.

Yours faithfully,

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WORKING PARTY ON LAY OFFICE – HOLDERS

From Oswald Clark

Dear Editor,

I have been cogitating for some time over paragraph 10 of the General Committee's Memorandum of Evidence to the General Synod's Working Party on Lay Office-Holders (1994 3 Ecc. LJ p.356), in which it is asserted that 'the canon law and the laws ecclesiastical bind the laity'.

I accept this, of course, so far as the statutory laws ecclesiastical are concerned but surely the assertion as printed goes much too far. The clear conclusion of the Introduction to the 1947 Canon Law Report (p. 77) was that, so far as the generality of the laity is concerned, (ie those who are not office-holders) the Canons of 1603 bind only in so far as they declare ancient usage and law.

Surely, save in so far as later canons may (with statutory support) provide otherwise for particular persons or classes of persons, the canons in force

today bind the laity in general only in so far as they are supported by a statutory authority? At no time does the ordinary 'man in the pew' subscribe to the Canons – nor is he ever asked to do so – or have I missed something vital?

Yours faithfully

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The Chairman writes a personal response:

'Mr Oswald Clark is right as a matter of law. The memorandum was drafted after discussion in committee and is not well expressed. My personal contribution to the discussion was "That the canon law and the laws ecclesiastical bind the laity in conscience only" and I still believe that to be a true statement. The majority of the committee did not accept it as accurate; time was short and the committee settled upon the wording quoted by Mr Clark. It just shows that one should never draft in committee!'

From Brian Hanson

Dear Sir

In his letter of Mr Clark reiterates the conclusion of the 1947 Canon Law Report that 'the Canons in force today bind the laity in general only in so far as they are supported by a statutory authority' and he asks whether he has missed something vital.

The 1947 Report cited as its authority the case of *Middleton v Crofts* (1736 2 Atk 650) where Lord Hardwicke was of the opinion that, because the 1603 Canons had not been approved or confirmed by Parliament they did not of their own force and authority bind the laity. The Court accepted that many provisions of the Canons which were declaratory of ancient usage and law of the Church were binding on the laity by virtue of having been received and allowed by the Common Law of England. The practice of the primitive Church was noted where the laity were present at all synods and thus could be bound. Similarly it was argued that when the Empire became Christian no canon was made without the Emperor's consent which included the consent of the people as he had the whole legislative power. However, in the view of the Court, in this country the Sovereign does not possess the whole legislative power and therefore if the King and clergy in Convocation make a canon, 'this binds the clergy *in re ecclesiastica* but it does not bind the laity as they are not represented in Convocation and have not given their consent to the Canon'.

Could it be argued that since the conclusion expressed in the 1947 Report, the position has completely changed? Under the Synodical Government Measure 1969 the power to make Canons has passed from the Convocations to the General Synod in which the laity form a constituent House alongside the House of Bishops and the House of Clergy. No Canon may now be given final approval by the Synod except it is affirmed by each of the three Houses and,

together with the leaders of the Houses of Bishops and Clergy, the Chairman and vice-Chairman of the House of Laity must sign the Petition of Her Majesty requesting the Royal Licence to promulge the Canon. In a real sense no Canon may now become law without the consent of the laity elected from all dioceses within the Provinces of Canterbury and York. The question therefore arises whether all Canons which have been passed since the coming into being of the General Synod in 1970 are binding on the laity because their elected House must assent to each new Canon.

Yours faithfully,

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