THE RIGHT TO MARRY IN THE PARISH CHURCH: A REHABILITATION OF *ARGAR v HOLDSWORTH*

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The entitlement of all persons[1] *capable of validly contracting marriage to have such marriage solemnised in the church or chapel of the parish in which they live*[2] *was, until recently, widely accepted and often repeated.* Argar v Holdsworth[3] *is the case most often cited as evidencing the existence of this right. However, this received orthodoxy has recently been challenged from two sources. First, by Professor Norman Doe in* The Legal Framework of the Church of England[4] *and secondly by the late the Reverend Michael G. Smith, in an article in this Journal.*[5] *Both Doe and Smith throw doubt upon* Argar v Holdsworth *as providing any basis for proving the existence of such a right and Doe goes further in suggesting that the right to marry was abolished by the Marriage Act 1936 and has only survived since that date as a legal fiction. I seek to demonstrate that Smith's understanding of* Argar v Holdsworth *is seriously flawed and also that the criticisms levelled against this case as an authority both by Smith and by Doe cannot be upheld.*

BACKGROUND TO THE CASE

To appreciate the case of *Argar v Holdsworth* fully it is important to understand the context in which it was decided. On 25 March 1754 'An Act for the better preventing of clandestine Marriages',[6] better known as 'Lord Hardwick's Marriage Act' came into force. From that date onwards informal marriage was not only discouraged but was made utterly invalid. Prior to this date persons wishing to marry could contract a fully valid marriage by exchanging words of present intent to marry, or by exchanging words of future intent to marry and then consummating the marriage.[7] Provided that there were sufficient witnesses to prove that the exchange of promises had taken place, the marriage would be upheld as legally valid in the ecclesiastical courts. However, persons going through the same acts of 'informal marriage' from 25 March 1754 would no longer be validly married by so doing.[8] From that date on marriage would only be

[1] Subject to the Matrimonial Causes Act 1965, s 8(2), and the Marriage Act 1949, s 5A (added by the Marriage (Prohibited Degrees of Relationship) Act 1986, s 3).
[2] And, pursuant to the Marriage Act 1949, ss 6(4), 12, 72, in a church or chapel upon the electoral roll of which their name appears.
[3] *Argar v Holdsworth* (1758) 2 Lee 515; 161 ER 424.
[4] N Doe, *The Legal Framework of the Church of England: A Critical Study in a Comparative Context* (Oxford, Oxford University Press, 1996).
[5] M Smith, 'An Interpretation of *Argar v Holdsworth*' (1998) 5 Ecc LJ 34.
[6] Clandestine Marriages Act 1753 (26 Geo 2, c 33).
[7] J Jackson *The Formation and Annulment of Marriage* (London, Butterworths, 1969), p 14.
[8] The only exceptions in the Clandestine Marriages Act 1753, ss 17 and 18, were in

legally valid if conducted pursuant to the rites of the Church of England. in particular after banns were read or where a marriage licence had been obtained.

This was a major change in social practice. In order to communicate to ordinary people this drastic change in their ability to marry, the Act provided that it was to be read from the pulpits of every parish church on a Sunday in each of September, October, November and December 1753 and on four Sundays in each of the two subsequent years.[9]

It is therefore unsurprising that the first reported case directly dealing with the right to marry in the parish church took place in 1758, a mere four years after Lord Harwick's Marriage Act came into effect.[10] So long as the law recognised the validity of an informal marriage it is to be expected that no reported cases dealing with the matter would appear. Should a clergyman refuse to marry people who are competent to marry, they could simply marry each other in the presence of witnesses. This would have been a more effective remedy than to take proceedings against the clergyman concerned, and considerably cheaper. It appears many people preferred private marriage in any event, as the fight against clandestine marriage, both in canon law and in parliamentary legislation, continued for at least five centuries before Lord Hardwick's Act.

Further, prior to Lord Hardwick's Act, if the validity of a private marriage was challenged before the ecclesiastical court, the parties could be subject to a monition to solemnise their marriage in church. In this case a clergyman could hardly refuse to solemnise their marriage in church without being in contempt of the ecclesiastical court. However, section 13 of Lord Hardwick's Act specifically forbade the ecclesiastical courts from compelling a couple to celebrate marriage '*in facie Ecclesiæ*' by reason of any contract of matrimony they had entered into. After Lord Hardwick's Act, it could only be a matter of time before a refusal to marry led to legal proceedings.

THE FACTS OF THE CASE

In January 1756 William Argar asked Henry Holdsworth to solemnise matrimony between himself and Jane How, having obtained a licence for such marriage. However, for reasons that are not clear from the legal records that remain, Holdsworth refused and the protracted legal proceedings in *Argar v Holdsworth* began.

The published report of *Argar v Holdsworth* relates to only part of the proceedings. It was an appeal to the Court of Arches from the Exeter

respect of the Royal Family, and Quakers and Jews respectively.

[9] Ibid, s 19.

[10] In fact, the proceedings against Holdsworth were first commenced in the Totnes Archdeacon's Court in July 1756, two years after the commencement of the Act. This, and much of the history of the case contained within this article is taken from M Smith, 'An Interpretation of *Argar v Holdsworth*' (1998) 5 Ecc LJ 34, at p 35.

Consistory Court.[11] The appeal dealt with a dispute about the admission of articles against the Reverend Mr. Holdsworth. The first stage of ecclesiastical proceedings was for the applicant[12] to produce a document known as 'the articles' setting out both the facts relied upon and the law under which those facts, if proven, would constitute the offence complained of. The court would admit the articles[13] only if the judge was satisfied that that law was set out correctly and the facts pleaded constituted the offence complained of. Therefore cases in which there was a dispute about the law would be appealed at this stage. The second stage was to consider whether the evidence supplied by the parties was sufficient to prove the matters pleaded in the articles.[14] If so, the court would consider the appropriate remedy or sentence.

The part of *Argar v Holdsworth* that appears in the published reports took place on 24 April 1758.[15] The Chancellor of Exeter had rejected the third and fourth articles pleaded on behalf of Argar. Upon appeal to Sir George Lee, Dean of the Arches, the rejected articles were re-admitted, and the case remitted to the Archdeacon's Court.

Therefore, on the face of it, this case is authority that the propositions of law contained in the third and fourth articles were confirmed as good law by the Dean of the Arches. According to the published report these articles were as follows:

> 3d, that every minister is obliged by law to marry such of his parishioners as have resided a month in his parish: that the parties named in the licence are his parishioners, and have resided a month, and have obtained a licence to be married together; 4th, that Argar had a proper licence to marry How, and acquainted Holdsworth therewith, and desired him to marry them, but he refused.

In his judgement Lee said that he was of opinion that 'a licence was a legal authority for marriage, and that a minister was guilty of a breach of his duty who should refuse to marry pursuant to a proper licence from his ordinary.' He also observed that 'the Chancellor acted strangely in rejecting the article which alone pleaded the facts relative to this causes, and admitting those articles which pleaded only the general law.'

The combination of specifically admitting an article pleading a general duty to marry parishioners, and the particular comment relating to the

[11] The Exeter Consistory Court had heard the matter on appeal from the Court of the Archdeacon of Totnes.
[12] Or 'promoter' to use the correct terminology.
[13] That is, permit them to be relied upon as stating the case to be proven or met.
[14] This was in written form having been taken from the witnesses prior to the court proceedings, and if necessary challenged by way of interrogatories (written questions).
[15] The proceedings had started on 5 May 1756 and were not completed by 17 August 1759, the last date for which any evidence of the case exists. It is not known whether the case was ever completed.

duty in relation to a marriage licence, provides the reason why this case has been relied upon subsequently as evidencing a duty upon the clergy to marry parishioners.

DOE'S CRITICISMS OF THE CASE

Doe complains that 'it is difficult to understand the *ratio* of *Argar v Holdsworth*,' but claims that it 'cannot be understood as authority for the proposition that a minister is under a duty to marry parishioners even against his wishes when the proposed form of marriage is by banns: it related only to marriage by licence.'[16]

Doe's criticism of the authority of this case is weakened by his misunderstanding of it. Doe states that this case:

> concerned the failure of a clergyman to marry a couple in accordance with an episcopal licence. In the consistory court the cleric was found guilty of neglect of duty. The Arches Court overturned the decision because the articles of prosecution were defective.[17]

That this perception of the case is defective is clear both from the published report, and also from Smith's article. First, it is unknown whether Holdsworth was ever in fact convicted of neglect of duty as the records that exist do not deal with that part of the case. Smith says of this:

> So, over five years after the committal of the alleged offence, there was still no outcome in the case of *Argar v Holdsworth*. There had been four interlocutory decrees but no definitive sentence. Unfortunately, at this juncture, as there were no further appeals, the trail goes stone cold. ... There is no way of knowing what the judgment was in this case or, indeed, if a judgment was ever delivered.[18]

The reported appeal related to the issue of whether the articles of the 'prosecution' represented a correct statement of the law. In so far as they were admitted, they were regarded as a correct statement of the law in the opinion of the judge admitting them.

Secondly, the 'articles of prosecution' were *not* found to be defective. On the contrary, the Dean of the Arches *admitted* those articles that the Chancellor had rejected. Therefore, the Dean of the Arches can be seen to have affirmed the propositions of law set out in them. On the basis of the case as reported, this includes the proposition of the general duty upon a clergyman to marry his parishioners.

Doe's main point, however, is that as *Argar v Holdsworth* dealt with a case where a common licence had been obtained, it does not provide authority for the right to marry pursuant to banns. This argument, however, does

[16] Doe, *Legal Framework* p 360.
[17] Doe, *Legal Framework* p 359.
[18] See Smith, 'An Interpretation of *Argar v Holdsworth*' p. 39.

not bear scrutiny. A licence is simply an ecclesiastical privilege exempting the parties from the necessity of having their banns called. Canon 101 of the Canons Ecclesiastical 1603 described what is now known as a common licence as,

> a faculty or licence ... for solemnisation of Matrimony betwixt ... persons, without thrice open publication of the banns, according to the Book of Common Prayer.

A marriage licence therefore simply puts the parties in the same position as if their banns had been read. This point is considered further below.

SMITH'S CRITICISMS OF THE CASE

Smith had undertaken considerable research into the original documentation of this case in the preparation of his article. His reading of the original processes as sent up to the Court of Arches, which are presently held in the archive at Lambeth Palace Library, reveal that the articles as reported are significantly different from how they were written in the original processes.

Smith argues that the original documentation 'throws doubt on the received understanding of the law for which [*Argar v Holdsworth*] is quoted'.[19] He claims, 'however one may seek to justify the received understanding that a parishioner has a legal right to be married in his parish church, the case of *Argar v Holdsworth* has no place in that justification.'[20] This is based on three main points; first that there is a difference in the content of the articles as reproduced in the law report and in the original processes, and that this difference suggests that 'Sir George Lee was confused by his own notes.'[21] Secondly, there is confusion between the report and the original processes in the numbering of the articles, and this adds weight to the suggestion of judicial confusion regarding the principles in the case. Thirdly, that the inaccurate reporting of the case explains how later commentators 'came to be misled into thinking that Sir George Lee was endorsing a general legal principle affecting all parishioners no matter what form the legal preliminaries to their marriages took.'[22]

Alleged inaccurate reporting

In reply to Smith's first point, it is certainly correct that article three in the law report contains the general declaration of obligation to marry in these terms: 'every minister is obliged by law to marry such of his parishioners as have resided a month in his parish'. Yet, article three as it appears in the processes reads as follows:

> Also we article and object that by the laws of this realm and the canons

[19] Smith, 'An Interpretation of *Argar v Holdsworth*', p. 41.
[20] Smith, 'An Interpretation of *Argar v Holdsworth*', p. 39.
[21] Smith, 'An Interpretation of *Argar v Holdsworth*', p. 39.
[22] Smith, 'An Interpretation of *Argar v Holdsworth*', p 40.

> and constitutions thereof every minister shall celebrate matrimony between two persons they or one of those having first obtained a Licence or Faculty and apply with such Licence and Faculty to the Rector Vicar and Curate of the Parish where one of the parties to be married have been resident for upwards of one month before obtaining such Licence or Faculty and we article and object jointly and severally as before.

Smith's first argument hangs on the fact that the original article three pleaded only the duty to celebrate matrimony where a licence has been obtained, whereas the published report implies a more general duty.

It is certainly the case that the duty in the published version of the articles is stated more widely than the terms of the duty stated in the process version of the articles. However, as indicated above there is no distinction between the general duty and a duty following the grant of a licence. The duty to marry persons who have first obtained a licence is simply part of the general duty to marry persons who have complied with a necessary preliminary. Therefore the shortened version as appears in the printed report was not due to Sir George Lee being 'confused by his own notes' but rather was a legitimate précis of the original article.

In support of this interpretation I agree with Smith when he says that it is likely, despite the report not specifically referring to the Clandestine Marriages Act 1753, the case was dealt with in the light of it. Smith notes elements of the drafting of the articles, the pleading of 'the Laws of this Realm' in addition to 'the Canons and Constitutions thereof' and the reference to the one-month residence period, suggest the influence of the new Act upon the person who drafted the articles.

Far more important than the details of drafting, however, is the upheaval in established legal practice caused by the Act. By making clandestine marriages void, this Act put an end to cases to determine whether a valid marriage existed as a result of some form of promise or ceremony entered into by the parties informally. Even a cursory glance through the ecclesiastical law reports earlier than 1754 shows how very common such cases were. Sir Walter Phillimore, perhaps somewhat regretfully, said that the Act put an end to 'this description of suit, than which none had been more fruitful in litigation, or had more abundantly exhausted the learning of civilians and canonists', describing these cases as being 'swept away, together with many of the most ancient provisions of our marriage law, by Lord Hardwick's marriage act...'[23]

Sir George Lee was the Dean of the Arches[24] from Hilary term 1752 to Michalmas term 1758. He therefore presided over the senior ecclesiastical courts during this dramatic change in legal practice, having been a practitioner in the field for many years before. He would have been fully

[23] This view is expressed in a footnote to the case of *Baxtar v Buckley* (1752) 2 Lee Ecc 42.
[24] And president of the High Court of Delegates.

aware of the impact of the 1753 Act.

In my view, Lee understood the new Act to state the right of people with the capacity to marry to be married in their parish church. For example, section 1 provides both that banns of marriage '*shall* be published' and that 'the Marriage *shall* be solemnised' in the church where the banns have been published.[25] Doe concedes that such a right was established by the 1753 Act.[26] Lee would also have known that the abolition of the more general right to marry informally would give power to the clergy to veto marriage completely if there was no general right to marry in the parish church. He would also have been aware that a licence to marry was simply a privilege granting exemption from the duty to have banns read, as described in Canon 101 of the Canons Ecclesiastical 1603.[27] Therefore, to him, a general duty to marry would have amounted to much the same thing as a duty to marry upon a licence, hence the reported version of the articles being his legitimate précis of the original processes.

Further, Smith and Doe's suggestion that a cleric has a duty of canonical obedience to obey a marriage licence does not detract from the basic right to marry in the parish church after a suitable preliminary. The distinction between these two duties can be seen in the way *Argar v Holdsworth* was pleaded, both in its original form and as reported. Article two pleads the canonical duty to obey the bishop who has granted the licence, whereas article three separately pleads a general duty 'by the laws of this realm and the canons and the constitutions thereof' to marry those having a licence for marriage. No objection was taken by Holdsworth to article two. It was article three, containing the more generally based duty that was rejected by the Chancellor of Exeter and authoritatively reinstated by Sir George Lee.

Confused numbering

Smith's second argument alleges that there was confusion in the numbering between the original articles as they were copied into the processes, and the articles as they appear in the law report, which confusion in numbering undermines the authority of Lee's statement of the law. My view is that whilst this is true to a minor extent, it is not so in the way Smith suggests and does not undermine the authority of the case. In fact, Smith himself has inaccurately transcribed the articles from the original processes and this has created more confusion than that caused by the minor discrepancy between the original documents and the published case report.[28]

[25] Emphasis added.
[26] Doe, *Legal Framework of the Church of England*, p 359.
[27] Significantly, the phrase 'faculty or licence' in article three is a direct quote from the language of Canon 101.
[28] It may assist in understanding this rather involved argument to compare (1) the text of the articles as set out in the reported case at (1758) 2 Lee 516 and copied as Appendix II of this article, (2) Smith's transcript of the original articles published at (1998) 5 Ecc LJ 140, and (3) my transcript of the original articles which appears as Appendix I of this article.

Smith states, 'In [Lee's] notes he combined the 3rd and 4th, calling them number 3 and treats the 5th article as number 4.' However, this is simply not the case and Smith's own errors in transcription have confused the issue. Whilst it is true that the first part of article four as it appears in the processes appears as the second part of article three in the case report, nevertheless all the content of articles three and four as reproduced in the processes as copied into the Act Book (which is identical in wording to the articles in the original pleading), appears within articles three and four in the law reports and no other material intrudes.

Smith has misunderstood the original documents. Smith regards the fifth article as beginning with the words, 'and more particularly'. The part beginning 'and more particularly' sets out the detailed facts of the case. Having labelled this part of the articles as 'article five', Smith then says that it makes no sense for Sir George Lee to say when admitting articles three and four, that it is an error to reject the articles pleading the facts and admit only the articles pleading the general law.

However the part of the text commencing 'and more particularly' which Smith regards as article five, is in fact part of article four and is not a new article five. This is clear from three factors. First, the way the pleadings are copied into the Act book shows the numbering of the articles three, four and five to be as I have set it out in my transcript. There is a break in the text between each article with a manuscript number or the word 'also' separating each section. There is no breach in the manuscript text in the Act book dividing up article four, to support Smith's view that the second part of it is in fact a fifth article.

Secondly, with the exception of the first and last articles, the beginning of each article commences, 'we article and object (to you)' and the end of each article concludes, 'and we article and object (jointly and severally) as before.' This literary device marks the beginning and end of each article. Significantly, in his transcript Smith has left out these formulaic words, even though they appear in the original processes.

Using such a device was a common practice of pleading at the time the articles in *Argar v Holdsworth* were pleaded, and for many years before and after. Examples of this are taken from other original pleadings contained in the archive at Lambeth Palace Library. In the pleadings in *Baxter v Buckley*[29] dated 1748 and drafted by Sir George Lee himself, each paragraph of the pleadings apart from the first and last conclude, 'the Respondent knows and believes in his conscience to be true and the party proponant doth allege and propound as before.' In the pleadings in *Abram v Tucker*[30] dated 1749 the first paragraph ends 'the party proponant doth allege and propound everything in the Articles contained jointly and severally and as above' and each other paragraph, save for the final

[29] Lambeth Palace Library document number E37/51. This case is also reported at (1752) 2 Lee Ecc 42; 161 ER 17.
[30] Lambeth Palace Library document number E37/59.

one, ends 'the party proponant doth allege and propound as before'. In *Acton v Evance*[31] which was pleaded in 1782, around 25 years after *Argar v Holdsworth*, this formulaic approach to pleading continued. The first article ends 'and the party proponant doth allege and propound everything in this article contained jointly and severally'. All subsequent articles, except the last, end 'and the party proponant doth allege and propound as before.' Therefore for Smith to suggest that the fourth article ended after the words 'fifty-six' and that the fifth commenced 'and more particularly we object' does not make sense within this literary convention.

Thirdly, Smith appears to have taken his transcript of the articles solely from the copy contained in the Act book. However, Lambeth Palace Library actually holds the original document bearing the handwritten articles as drafted, dated 21 August 1756.[32] From this document it is also clear from the layout where each article begins and ends. My transcript of the articles, appended to this paper, is copied from the original pleadings, rather than the Act book. It confirms that the part commencing 'and more particularly we object' runs straight on from the words 'fifty-six' in the middle of a line and that therefore Smith is mistaken to suggest that there are two separate articles here.

Therefore, the correct arrangement of the articles as they appear in both the original pleadings and the Act Book, is (in paraphrase):

> 3) every minister is obliged to celebrate matrimony between two persons who have a licence and have been resident for one month or more in the parish
> 4) Argar and How resided in the parish for the requisite time, obtained a licence, presented themselves to Holdsworth for marriage but that he refused to marry them and failed to give any reasons for the refusal
> 5) by reason of the above Holdsworth has incurred ecclesiastical penalty

This arrangement of the articles makes sense of the law report's version, in which the fifth article pleaded that Holdsworth has incurred ecclesiastical censures, which is indeed what the fifth article originally pleaded. Therefore the only significant error in the reported text[33] is that the first part of article four is regarded as being the second part of three, leaving only the detailed particulars as four. This is both a more likely mistake,[34] and makes better sense of the reported case. It means that the totality of that which was rejected by the Chancellor, and only that so rejected, was reinstated by Lee. This arrangement of the articles makes it clear that article four does 'state the facts' and therefore it makes perfect sense for Lee to criticise the Chancellor for rejecting an article that pleads the facts. Further, given that

[31] Lambeth Palace Library document number E46/19.
[32] Its number is G131/21.
[33] Set out above.
[34] Indeed it is not known whether this was a mistake made by Sir George Lee in compiling his manuscript notes of the case, or a mistake by Sir William Phillimore in editing them for publication.

the reported version transposes some of the facts into article three. Lee's criticism of the Chancellor for rejecting articles pleading facts is even more understandable. This simple explanation does much to rehabilitate the case as an authority.

Once the first two criticisms of Smith have been dismissed, the third falls away. If the published report is substantially accurate in numbering, and completely accurate in content, then subsequent generations have not been 'misled', but have appropriately relied on this authority.

CONCLUSION

The interpretation of *Argar v Holdsworth* as good authority for the duty of the clergy to solemnise the marriage of those of their parishioners that desire it and have no legal impediment preventing it should be preferred to the revisionist views of Smith and Doe for three reasons. First, the duty to marry all parishioners who have complied with a necessary preliminary is consistent with the obligations set out in the Clandestine Marriages Act 1753 itself. Secondly, this interpretation of the case fits most neatly with both the manuscript pleadings when accurately read, and the summary of the law as given in the published case report. Thirdly, it gives Sir George Lee, the Dean of the Arches from 1752 to 1758, credit, when summarising the effect of his decision, for properly understanding the legal environment in which he lived and worked and on which we can but look back from a distance of 250 years.

APPENDIX I

TRANSCRIPT OF THE ARTICLES IN *ARGAR V HOLDSWORTH* AS THEY APPEAR IN THE ORIGINAL MANUSCRIPT PLEADINGS

Document G131/21 in Lambeth Palace Library

In the name of God, Amen.

We George Baker Clerk, Master of Arts, Archdeacon of the Archdeaconary of Totnes lately constituted do object, give and administer to you Henry Holdsworth Clerk, Vicar of Dartmouth in the County of Devon certain articles or interrogatories concerning your Soul's Health and the Reformation of your Manners and Neglect and especially for you not performing your duty and joining together in holy matrimony William Argar of the Parish of Saint Saviour Dartmouth in the County of Devon, Officer of Excise, and Jane How, of the same Place, spinster, notwithstanding they had obtained a Licence for that purpose at the Promotion of the said William Argar

First we article and object that you the said Henry Holdsworth were and are a Minister in Holy Orders according to the Rules of the

Church of England as by law established and for the space of five four three or at least two years last past have been Rector, Vicar or Curate of the Parish Church of St Saviours Dartmouth in the County of Devon and Diocese of Exeter and within the time aforesaid officiated as such and this was and is true, publick and notorious and the party proponant doth allege of any other time space or spaces of time and jointly or severally

Second we article and object to you the said Henry Holdsworth that by the Laws, Canons, and Constitutions Ecclesiastical in this Realm that every Rector Vicar and Curate of the Church of England are in duty and by Law bound to obey the Licence or dispensation of the Bishop of the Diocese in which such Rector, Vicar or Curate have cure or such Bishops Vicar general and the persons offending in the premises are to be duly and Canonically punished and corrected for refusing to obey such Licence or Dispensation and we article and object to you every thing in this article contained jointly and severally

Also we article and object that by the Laws of this Realm and the Canons and Constitutions thereof any Minister shall celebrate Matrimony between two persons they or one of them having first obtained a Licence and Faculty to the Rector, Vicar or Curate of the Parish where one of the parties to be married have been resident for upward of one month before the obtaining of such Licence or Faculty and we article and object jointly and severally as before

Also we article and object that notwithstanding the Premises mentioned in the aforegoing articles you knew or ought to have known that William Argar and Jane How were both of the parish of St Saviours Dartmouth in the County of Devon and had respectively resided in the said parish for three two or at least one year previous to the month of December which was in the year of our Lord one thousand seven hundred and fifty five and in the month of January in the year of Our Lord one thousand seven hundred and fifty six and more particularly we object that the said William Argar having lawfully obtained a Licence or Faculty for the solemnisation of the said Marriage did on or about the eighth day of January last past inform you that he had obtained or presented unto you a Licence or Faculty for his Marriage with the said Jane How and in canonical hours, but that you not regarding the Dignity of your profession or Priestly Office did flee into a great passion and very much scold at and with undue threats and menaces to the said William Argar refuse to pay obedience as you might have done to the Licence or Faculty of your Diocesan and absolutely then denyed joining together in Holy Matrimony the said William Argar and Jane How and notwithstanding you was [sic] some days after in a mild and courteous manner desired

that you would join them the said William Argar and Jane How together in Holy Matrimony, yet you still obstinately refuse so to do or give any just reason why you did not and we article and object as before

Also we article and object that you the said Henry Holdsworth by reason of the premises mentioned and specified have incurred Ecclesiastical Censure and Punishments and are according to the Exigency of the Laws Ecclesiastical in this cause made and provided to be censured and punished and we article and object as before

Also we article and object to you the said Henry Holdsworth you were and are of St Saviours Parish in the County of Devon and within the Archdeaconry of Totnes in the said County and therefore subject to the jurisdiction of this Court and we article and object as before

Also we article and object to you that of and concerning the Premises it was and is rightly and lawfully complained to us and for and by reason thereof it is lawfully and duly objected and articled against you and we article and object as before

Lastly we article and object to you that all and singular the Premises were and are Publick and notorious and thereof there was and is a publick Voice, Fame and Report and of which legal Proof being made the Promoter of the Office prays Right and justice to be done and administer to him with Effect and that you the said Henry Holdsworth for your neglect or refusal aforesaid may be ecclesiastically Punished according to the Exigence of the Case and our Proof shall hereafter appear and that you may be Condemned in the Costs made and to be made on the part and behalf of the said Promoter in this suit and duly compelled to the payment thereof, he humbling imploring the Aid of Office in this behalf.

APPENDIX II

SUMMARY OF ARTICLES AS THEY APPEAR IN THE REPORTED CASE *ARGAR V HOLDSWORTH* [1758] 2 Lee 516; 161 ER 424

1st, that Holdsworth is a clerk and vicar of St. Saviour's in Dartmouth;

2nd, that by the canons, &c. every minister is to obey his ordinary's licence. &c;

3d, that every minister is obliged by law to marry such of his parishioners

as have resided a month in his parish; that the parties named in the licence are his parishioners, and have resided a month, and have obtained a licence to be married together;

4th, that Argar had a proper licence to marry How, and acquainted Holdsworth therewith, and desired him to marry them, but he refused;

5th, that he has thereby incurred ecclesiastical censures;

6th, that he is subject to the jurisdiction of the Court at Totness;

7th, pray he may be censured &c.

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