ARCHDEACON OF CHELTENHAM v BLAND
A SLEDGEHAMMER TO CRACK A NUT

STEPHEN PIX[1]
Former City Rector of Oxford

1. INTRODUCTION

Before its enactment, the Ecclesiastical Jurisdiction Measure 1963 experienced a stormy passage during the debates in Church Assembly, being roundly attacked as unnecessarily complex and unwieldy by Garth Moore, who represented the University of Cambridge and was at that time Chancellor of the Dioceses of Durham, Gloucester and Southwark.[2] In view of this, it is ironic that the first case under the disciplinary sections of that Measure should have occurred in the Diocese of Gloucester and should have been heard at first instance by Moore, sitting with four assessors, in July 1969.

The case concerned the Reverend Michael Bland, Rector of Buckland with Laverton and Stanton with Snowshill. where he had been instituted on 16 June 1958. Bland was by all accounts a difficult man, of irascible temperament resulting perhaps from a thyroidal imbalance, who was deeply conscious of both his own personal dignity and that of the Church, at any rate as he saw it. He felt particularly deeply what he regarded as slights by the socially superior element in the community, to whom he referred as 'these horsey people'.[3]

It is not now known at what stage relations between Bland and his parishioners began to deteriorate, but proceedings were commenced on 17 May 1968 and some of the incidents complained of took place more than three years earlier. The articles set out eight offences, four of 'serious neglect of duty' and four of 'conduct unbecoming the office and work of a Clerk in Holy Orders'.[4] The allegations covered leaving Buckland Church before the service was ended, refusing to baptise a baby, preventing a father from entering Buckland Church to declare his unwillingness to consent

[1] The author is deeply indebted to His Honour Quentin Edwards QC for the loan of papers and notebooks pertaining to the case and for his helpful advice generously given both face to face and by letter, as well as to the Dean of the Arches and Auditor, Sheila Cameron QC, Chancellor Mark Hill, Chancellor Michael Goodman, Mr David Faull and Mr John Underwood for their written comments. He has tried, in the light of advice received, to remedy the defects which the earlier drafts displayed, but all the faults that remain are entirely his responsibility. The papers loaned by Quentin Edwards include duplicated volumes entitled *Exhibits, Transcript of Evidence and Pleadings* prepared by Messrs Winckworth & Pemberton and Messrs Lee, Bolton & Lee in connection with the appeal to the Arches Court of Canterbury. Many of the citations later in this article are from these sources.

[2] See T. Briden and B. Hanson, *Moore's Introduction to English Canon Law* (3rd edn, London 1992, p 113: [W]hen [the reader] turns to [the Ecclesiastical Jurisdiction Measure 1963]. designed very largely to simplify an outdated and complicated system, he will find, in place of the old system, a new one in many respects so cumbersome and unpractical that it is doubtful whether, in some of its aspects. any attempt will be made to use it more than the one time necessary to convince even its authors of its unserviceability for many of the purposes for which it was designed.'

[3] According to the examination in chief of John Douglas Haynes, *Transcript of Evidence*, p 8.

[4] Proceedings under the Measure are commenced by a complaint lodged with the diocesan registrar. Unless this is dismissed by the bishop it is referred to an examiner, who considers both written and oral sworn evidence. At this stage, if the examiner finds that there is substance to the complaint, the accused may ask the bishop to pronounce a censure by consent, or the matter may proceed to trial in the consistory court. A promoter is appointed, who sets out the case against the accused in articles charging the offence or offences specified by the examiner'. The case is heard by the diocesan chancellor, sitting with four assessors: see The Ecclesiastical Jurisdiction (Discipline) Rules 1964, SI 1964/1755, rr 3–15.

to the marriage of his minor son at the publication of banns, refusing without just cause to admit a visitor to the parish to holy communion, writing rude letters to parishioners and others, making offensive and hurtful remarks to parishioners, indulging in fits of temper in church, and indulging in fits of temper with parishioners elsewhere.

The promoter appointed was the Archdeacon of Cheltenham. Counsel for the promoter were the Worshipful Hugh Forbes QC (later Mr Justice Forbes) and Sheila Cameron (now Sheila Cameron QC, Dean of the Arches and Auditor), while Geoffrey Howe QC (now Lord Howe of Aberavon) and Quentin Edwards (until recently Chancellor Quentin Edwards QC and a circuit judge) appeared for Bland. In the consistory court Bland was acquitted of the first charge. that of leaving Buckland Church before the service was ended, but he was convicted of the remaining seven charges; the verdict was reached and censure pronounced on 31 July 1969. Several of the convictions and their attendant censures gave rise to serious questions of law, so there was an appeal to the Court of Arches, which was heard on 20, 21, 22 and 23 January and 3, 16 and 17 February 1970, with judgment being delivered on 6 April by the Deputy Dean of Arches, Sir Cecil Havers).[5]

2. SERIOUS NEGLECT OF DUTY

(a) *Refusal to baptise*

The first point of interest occurs in relation to the second charge, that of 'refusing to baptise a daughter of Mr. and Mrs. Haynes of Coruisk Cottage, Laverton'. The father, John Douglas Haynes, was a local schoolmaster who had not been confirmed, while his wife June was, as it so happened, second cousin to the then Archdeacon of Gloucester; she had been confirmed, and attended church from time to time. Bland had baptised their first two children, in 1961 and 1963 respectively, without any difficulty, but when the time came for the third child to be baptised problems arose.

Mr Haynes went to see Bland in October 1966, and an acrimonious discussion took place. It lasted for about forty minutes, and during the course of it Bland pointed out that Haynes had not come to church since the first two children were baptised, but had on occasion brought his wife and children by car and either waited for them outside the church, or gone home while the service took place, returning at the end to take them away. Haynes himself would have been quite content to let the child decide for herself in due time, but according to his evidence he made it clear that his wife would not be satisfied with that. The part of his evidence which relates to Bland's alleged refusal comes in cross-examination conducted by Geoffrey Howe QC:

> 'Q. As far as the main point of the conversation was concerned, his suggestion to you was that he would prefer the child to wait until old enough to decide for itself? A. No, he had already given his decision at the very start of the conversation. This was advice which he gave to me.
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> Q. His advice was that the child should present herself for baptism? A. That was his advice, yes. [...]
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> MR. HOWE: He explained to you as you told us that there was a form of service for a person of riper years, an older person? A. Yes, because I asked him about this. Yes, indeed.

[5] *Sub nom Bland v Archdeacon of Cheltenham* [1972] Fam 157, [1972] 1 All ER 1012, Ct of Arches. Sitting with the deputy dean were Canon F.C. Tindall, Prebendary F.A. Piachaud, Anthony Cripps QC and Michael Argyle QC.

> Q. And speaking for yourself, you were there alone of course, you said that if he put it that way you were prepared to accept that advice. A. Yes, [...] as far as I was concerned I would accept it, but [...] I told him at the time my wife would not accept this. I made this absolutely clear at the time.'[6]

In the Answer to Articles dated 26 June 1969 the charge was countered by setting out Bland's doctrinal grounds for resisting what he saw as the indiscriminate baptism of infants, and there followed this contention: 'In the premises the offence charged is, if an offence at all, an offence against the laws ecclesiastical involving matter of doctrine and this Honourable Court is not competent. under the provisions of the [...] Measure, to try the same.'[7] The reference is to section 6(1)(a) of the 1963 Measure, which provides that the consistory court has jurisdiction in 'an offence [...] not being an offence involving matter of doctrine, ritual or ceremonial'; section 10(1) gives jurisdiction in such cases to the Court of Ecclesiastical Causes Reserved. On this contention the chancellor gave judgment in these terms at the commencement of the hearing:

> 'The measure in my opinion makes an unfortunately sharp dichotomy or seeks to make it, between reserved cases and conduct cases and I have no doubt that as the years go by and we seek to operate this measure, we shall frequently come across difficulties such as the one which has arisen in this case. The substance of the charge against the Accused is that he did not baptise and indeed went so far as to refuse to baptise a child in his cure, and prima facie it seems to me to be clear that that is a conduct charge and not a reserved charge. It is said that the reasons why he took the line which he is alleged to have taken are due to his theological views and there is no doubt about it that there is room for more than one theological view as to the propriety or otherwise of baptising infants when there does not seem to be any reasonable chance that they are going to be brought up in the faith into which they are baptised or are not going to be properly brought up. But construing this measure as best I can, it seems to me that assuming that that is the line of defence to a refusal, such as is alleged, it does not of itself raise what the measure means by a matter involving doctrine, ritual or ceremonial. It is the motive behind the Accused's conduct[. T]he conduct itself remains as alleged, a straight forward, failure to perform the duty, the duty to baptise.'[8]

The Court of Arches on appeal accepted this argument, and the deputy dean substantially repeated it: 'The act of refusal to baptise a child is not a doctrinal offence as such and is not charged as such. It is concerned with pastoral work and activity.'[9] The point was well made by the chancellor, but he was over-pessimistic when he suggested that the distinction between conduct cases and reserved cases would crop up frequently in the years ahead. In fact, largely because of the unsatisfactory outcome of Bland's case, the disciplinary provisions in the 1963 Measure have been virtually unused, at least so far as actual court proceedings are concerned.[10]

The chancellor had ruled that a refusal to baptise was not of itself a matter of doctrine, even if the motive for the refusal arose from a doctrinal belief, and that in consequence the Gloucester Consistory Court had jurisdiction. However, there was another important point which this charge raised. At the time when the alleged

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[6] *Transcript of Evidence*, p 10.
[7] *Pleadings*, p 6.
[8] *Transcript of Evidence*, p 1.
[9] [1972] Fam 157 at 165B, [1972] 1 All ER 1012 at 1017d.
[10] See *eg Under Authority, The Report of the General Synod Working Party reviewing Clergy Discipline and the working of the Ecclesiastical Courts* (Church House Publishing 1996), pp 2–4, 65.

offence had taken place the Canons of 1603 were in force, and Canon 68 provided as follows:

> 'No minister shall refuse or delay to christen any child according to the form of the Book of Common Prayer, that is brought to the church to him upon Sundays and holidays to be christened (convenient warning being given him thereof before). And if he shall refuse to do so, he shall be suspended by the bishop of the diocese, from his ministry by the space of three months.'

It was submitted on behalf of Bland at the beginning of the case that it was bad practice to charge an alleged refusal to baptise under the general heading of 'neglect of duty' in the 1963 Measure, because it was a specific offence under Canon 68. Moreover, this course could work unfairly on the accused because, whereas there was a fixed penalty of three months' suspension under Canon 68, under the 1963 Measure a much more severe censure, even one of deprivation, could be imposed, as was in fact done in Bland's case. The chancellor did not accept this argument in his judgment on the submission at first instance, and he was upheld on appeal.[11] In the Court of Arches the deputy dean expressed the point in these words: 'In some cases, however, while an act or omission is in itself an ecclesiastical offence, it can also fall within the ambit of "neglect of duty" or "conduct unbecoming" within the meaning of s 14 of the Measure.'

Later in the consistory court case, however, in a further attempt to justify the fact that the prosecution had proceeded under the general heading of neglect of duty instead of alleging a specific offence under Canon 68. the chancellor made a further, highly characteristic, comment about the source of the obligation to baptise. In his summing up to the assessors he said this:

> '[T]here are two Canons in the 1603 Canons, Canon 68 and Canon 69, which [deal] with the offence, in one case of refusing to christen or bury and the other case is in deferring to christen, if the child is in danger. Those two Canons were, I think, still in operation at the date when it is alleged that this incident took place in October 1966, though since then I think they have been repealed and are replaced by the new Code of Canons of which as yet it is very difficult to get a copy. But I want to say this about it: the offence is not created by the 1603 Canons or by the Canons which have taken their place. The offence, if offence there be, springs from the jus commune, the Common law of the church, which is also, since this is an established Church, part of the law of this land, and I am not proposing to give an exhaustive exposition of the law as it relates to baptism, because it is not necessary for the purposes of this case. Let it suffice to say simply this: that there is in law—and I so rule—there is in law a *prima facie* duty on an incumbent to baptise the children of his parishioners. I am very far from saying that there can be no occasions on which it is proper for an Incumbent not to baptise children. I say simply this: that there is a *prima facie* duty to do so. It is the breach of that duty with which he stands charged in this instance. It is not a breach of either of the particular duties as set out in the Canons of 1603. The particular duties as set out in the Canons of 1603 themselves spring from this overriding jus commune duty on the Incumbent to baptise.'[12]

Before Bland could be convicted of neglect of duty, it was necessary to show that there was a duty. Had he been accused of a breach of Canon 68 it would simply have

[11] *Transcript of Evidence*, p 2; [1972] Fam 157 at 161E–H, [1972] 1 All ER 1012 at 1014g, h.
[12] *Pleadings*, p 63. The duplicated volume entitled *Pleadings* contains not only the Articles, the Answer to the Articles, a Request for Further and Better Particulars and the Notice of Appeal, but also the Transcript of the Summing Up of the Chancellor.

been necessary to show that he had disobeyed the terms of the canon, and the penalty would have followed automatically. However, as the canon had not been mentioned in the articles, the chancellor clearly felt that this way was not open to him, and hence his appeal to the *jus commune*, the age-old practice of the Church, taken for granted in medieval times and surviving to the present day. This approach raises various problems, not the least of which are the historical questions of whether the duty to baptise the children of parishioners was indeed part of the ancestral and unquestioned custom of the Church and, even if it was, whether it was preserved by the legislation of the Reformation era.[13]

Perhaps because the chancellor was not relying on Canon 68 to define Bland's alleged offence. he did not direct the assessors to consider the facts in detail, with the result that it was far from clear that a refusal had been proved to have taken place. The evidence is ambiguous in that, although it was Mrs Haynes who was anxious for the child to be baptised, the request was actually made by Mr Haynes, who was comparatively indifferent and appeared happy to accept the idea that the child should be allowed to decide for herself when she was old enough to do so.

On appeal the chancellor was criticised for having 'declined to leave for the consideration of the assessors the question whether the duty to baptise had crystallised.'[14] The Court of Arches considered that he should have 'directed the assessors more clearly than he did that they could not find a refusal unless what was said at the interview by the appellant evinced a clear and fixed intention not to baptise the child when brought to the church.'[15] The evidence, even if accepted entirely at its face value, admitted of reasonable doubt, and it is arguable that the chancellor should have withdrawn this charge from the assessors on the grounds that there was insufficient evidence for them to find it proved.

(b) *Exclusion from church*

The third charge was of 'preventing Mr. Donald Bryant from entering Buckland Church to declare publicly his dissent to the marriage of his son at the time of publication of his son's banns of marriage.' The age of majority at that time was twenty-one, and when the alleged offence took place, 10 September 1967, Philip Bryant was twenty; he was not to attain his majority until 2 June 1968. The evidence showed that Bryant and his wife separated in 1964, and that the wife obtained a maintenance order against her husband in the Winchcombe Magistrates' Court. She was given custody of the two daughters of the marriage, but no custody order was made in respect of Philip, who was older. The parties were then divorced in 1965.

Bryant heard from his elder daughter that Philip was planning to marry, and having taken advice from the incumbent of a nearby parish he went to see Bland in the Rectory at about 8.30 am on Sunday 10 September 1967, when the morning service was due to start in Buckland Church at 9 am. Bryant explained that he wished to object to the marriage of his son at the calling of the banns, and a dispute broke out between him and Bland on the church path. Bryant was examined in chief by Sheila Cameron, and described what happened as follows:

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[13] On the former point, see Rupert D.H. Bursell, *Liturgy, Order and the Law* (Clarendon Press 1996), p 139, n 73, and on the latter, see the Submission of the Clergy Act 1533, s 7. Moreover, according to Lord Westbury in *Bishop of Exeter v Marshall* (1868) LR 3HL 17 at 53–56, for custom to be operative as law it must have been 'continued and uniformly recognised and acted upon by bishops of the Anglican Church since the Reformation'.

[14] [1972] Fam 157 at 166A, B, 1 All ER 1012 at 1018a.

[15] *Ibid* at 166B, 1018a, b.

'Q. You went to the Rectory, did you? A. I went to the Rectory, yes I did.

Q. That was about half-past-eight? A. Yes.

Q. Yes. Did you see Mr. Bland? A. Yes, I did. [...]

Q. What did you say to him? A. I tried to avoid a scene and told him that my son was getting married, and that he was under age to get married and that he must obtain my permission - or he would be breaking the law. [...]

Q. What did Mr. Bland say when you told him this at the Rectory? A. He told me I couldn't object.

Q. Did he say why you couldn't object? A. [...] He didn't give me any reason. When I told him I was going into the church to object he said I couldn't. He then went back into his Rectory and 'phoned the police. [...]

Q. And when he came out and told you that the police were coming did you say anything further to him? A. I told him I was still going up to church to object about banns.

Q. And what did he say when you told him that? A. He said I could not go into the church. It was his church, and he could turn anyone out that he didn't want in the church.

Q. Did he walk past you towards the church at this point? A. Yes.

Q. And what did you do? A. I followed him up towards the church. [...]

Q. And what happened when you reached the porch of the church? A. He could see that I intended going in and he kept losing his temper and saying he was not going to let me in the church.

Q. How do you mean, he kept losing his temper? Describe it. [...] A. By his atmosphere.

Q. What do you mean by "his atmosphere", Mr. Bryant? A. Well, we all know his habits, and you could see from time to time - we living in the Parish...

Q. Yes, but we want to know about this particular morning, Mr. Bryant. What did he do to indicate to you that he was in a temper? A. Well, by the way he was walking and striding and shaking his arms about.

Q. Did anybody come out of the church while you were in the porch with Mr Bland and he was saying you couldn't go in? A. Yes. Mr. Pratt, the Churchwarden.

Q. Mr. Pratt? Yes. And what did Mr. Bland say to Mr. Pratt in your presence? A. He said to Mr. Pratt "Will you please explain to the people in church that I'm waiting for the police to come" because it was my proposal to object. Mr. Pratt went back in the church and told them and Mr. Bland came down the path with me again, and he could see that I meant it, and we stood on the - halfway up the path - and he said "You naughty little man, I'll knock you into the ground".

Q. Will you go a little more slowly, please, Mr. Bryant. You stood on the path? A. We stood on the path he squared up to me and said "I'll knock you into the ground you naughty little man". "You know what a whale of a temper I've got".

Q. What did you do Mr. Bryant, when Mr. Bland squared up and said this to you? A. I was prepared to defend myself.

Q. And then before anything happened did someone arrive on the scene? A. The police.'[16]

In the event Bryant did not go into the church, and on 14 September, at the offices of his wife's solicitors, he signed a form of consent to the marriage which, unbeknown to him, Bland had prepared and typed. In his evidence Bland denied having threatened Bryant, and said that although Bryant was not drunk he had been drinking, and that he had threatened to stand up in church and tell everyone what he thought of the Rector.[17]

It is ironic that at that time the law was that Bryant's consent was not required for the marriage of his minor son. This was conceded by the promoter's leading counsel in the following words:

'MR. FORBES: Well so far as one can make out his consent is not required under the Marriage Act. I think it is casus omissus, but as I read the matter, that is the situation and in fact as I indicated, I think, to the assessors, the situation under the Marriage Act is that where parents are divorced and the child is under age at the time of the divorce and no order for custody was made for the child, the child can marry under age without the consent of either parent.'[18]

That, though, was not material to the question whether Bland had been in neglect of duty by the way he treated Bryant. In his summing up the chancellor put the point to the assessors as follows:

'The charge against the accused is that he neglected his duty and that it was a serious neglect of duty, in that he was under a duty to let Mr. Bryant in to forbid the banns, and that to do what the accused on his own admission did, to do what on Mr. Bryant's showing he did. was a neglect of that duty. If, however, you come to the conclusion that Mr. Bryant had indicated that he was going to do more than that, and was going to get up and say what he thought of the accused in church, or if you come to the conclusion that that may be true, then of course that would provide a good reason for the accused's refusing to allow Mr. Bryant to come into church.'[19]

(c) *Repelling from Holy Communion*

The fourth charge was of 'repelling from Holy Communion without lawful cause Paul Raymer' on Sunday 17 September 1967. Mr Raymer was a reporter who attended Buckland Church for the 9 am service with two other reporters, a photographer, and a woman friend of one of them. They arrived at the church in two cars, and as they arrived Bland saw them and appeared to note down the registration numbers of their vehicles.

According to Raymer's evidence in chief, he and his companions took their seats in church and the service started. Bland appeared flustered and annoyed, mopping his brow a good deal. At the administration Raymer went forward to receive commu-

[16] *Transcript of Evidence*, pp 22–24.
[17] *Ibid*, pp 75–80.
[18] *Ibid*, p 54.
[19] *Pleadings*, p 71.

nion, but Bland passed him by with both the bread and the wine. After the service Raymer spoke to Bland and asked why he had refused him. Bland said that he had not been given notice of Raymer's intention to come, and that he did not have his name and address.[20] It appears, however, that the real reason was that Raymer was a reporter, and Bland suspected that he was in church for wrong motives and that he was not sufficiently devout and sincere to receive the sacrament. The chancellor summarised Bland's rather confused evidence in the first person, as follows:

> ' "[...] I agree that I passed Mr Raymer over both in regard to the Bread and the Wine. Though his demeanour was humble, whether he was devout or not was to me uncertain. I did say to him that he hadn't given notice and I did say that he could write to the Bishop. My real reason for passing him over wasn't because he had not given notice but because he was a reporter. I consider it my duty to administer Holy Communion to those who desire to receive it. I have a duty to refuse to administer the Sacrament if I think that the devoutness of the receiver is in question. It was in obedience to these dictums that I refused Mr. Raymer. I refused him the Sacrament because I questioned his devoutness. But I told him it was because he hadn't given notice".'[21]

There is a difficulty arising out of all three of these charges of serious neglect of duty, which is this: neglect of duty naturally suggests an absence of activity. A person who neglects his duty fails to do what ought to be done. In the case of a clergyman, instead of visiting his people he sits at home doing nothing; instead of preparing properly for public worship he does the absolute minimum; instead of teaching his people he leaves them to their own devices.

In none of these three alleged offences could it be said that Bland had done nothing. He had in all three cases taken positive action: he had refused to baptise a baby, he had excluded a man from church, and he had passed over a communicant at the rail. It is true that these actions had led to negative results - no baptism, no objection to banns, and no communion for Raymer - but the substance of the complaints against Bland was not what he had not done, but what he had done.

This possibly accounts for an otherwise inexplicable blunder on the part of the chancellor in his summing up. In a passage for which he was roundly taken to task by the Court of Arches on appeal, he tried to explain neglect of duty in terms of negligence at common law:

> 'Now, neglect is obviously, as the word implies, closely associated with something with which perhaps we are more familiar, namely, negligence. Negligence, though often used as synonymous with carelessness, in law means something more than carelessness. It means the breach of a duty to take care. You can be careless when you don't owe a duty. But if you are careless when you do owe a duty, then you become guilty of negligence. If [...] a man is a Clerk in Holy Orders, the care which he is expected to display on the occasions when he owes a duty of a professional sort, if I may so put it, is the care which you would ordinarily expect from the ordinary average run of parsons, if I may use such an expression.'[22]

In contrast, the Court of Arches considered that the words 'neglect of duty' did not require 'any elaboration and could be explained to the assessors in simple terms'.[23]

[20] *Transcript of Evidence*, pp 34f.
[21] *Pleadings*, pp 73f.
[22] *Ibid*, pp 58f.
[23] [1972] Fam 157 at 162D, 1 All ER 1012 at 1015d.

Counsel for the promoter and for Bland had different perceptions (perhaps not surprisingly) of how the charges should have been formulated. Counsel for the promoter chose to formulate the offences of 'serious neglect of duty' in the form prescribed by the specimen forms contained in the Rules, on the premise that the promoter would need to prove (i) an ecclesiastical duty, (ii) neglect (*ie* failure) to carry out that duty, and (iii) that in the particular circumstances it was serious.

Counsel for Bland took the view that the proper course would have been for the articles to charge specific pre-existing offences against the laws ecclesiastical, refusal to baptise contrary to Canon 68, and withholding the sacrament without lawful cause contrary to the Sacrament Act 1547. He spent a whole morning before the examiner dealing with objections to the articles, but his arguments were rejected and the case proceeded on the charges of serious neglect of duty. The chancellor's summing up on these charges turned out to be a dismal failure. The deputy dean said, in giving judgment on the appeal, 'A duty to take reasonable care was not the duty which the appellant had to perform and failure to perform that duty was not the offence charged.'[24] As a result of the misdirection the appeal was allowed on all three of the 'serious neglect of duty' charges.

3. CONDUCT UNBECOMING

The remaining four charges, all of 'conduct unbecoming the Office and work of a Clerk in Holy Orders', raised problems of a different kind. These arose because the incidents complained of had taken place over a fairly lengthy period of time, five of them more than three years before the proceedings were started.

(a) *Writing rude letters*

The fifth offence charged was of 'Writing rude letters to parishioners and other persons'. Seven letters were particularised, of which the first three had been written before 17 May 1965, and the charge relating to the seventh was struck out by the chancellor because it had not been part of the evidence disclosed in the course of the inquiry, and was introduced only when counsel for the promoter put it to Bland in cross examination before the examiner.

The first letter, written on 10 January 1964 to Mr Howard Hadley Wilde, concerned a bill which Bland had sent to Wilde, who was at that time the parochial church council treasurer. Wilde wanted to know what the bill was for, and the reply he received contained this sentence: 'You are new to the village, an extremely casual and lukewarm churchman, and far from unwilling to participate in the nastiness and backbiting which pervade village affairs.'[25]

The second letter, dated 23 November 1964, was addressed to Mr Edward Stanford and concerned a letter which Stanford had written to a Mr Ryland, whom Stanford believed, erroneously, to be chairman of the parochial church council. This letter concerned the yew trees in the churchyard, which Stanford thought should be lopped. Bland, in whom as incumbent the freehold of the churchyard was vested, took exception to being by-passed, and in his letter to Stanford he wrote this:

> 'I have seen your letter to Mr. Ryland about the trees in my churchyard. I have, of course, observed that it is usual in your circle of acquaintance to ignore the incumbent of your Parish Church, but it may surprise you to learn that in certain matters

[24] [1972] Fam 157 at 163C, [1972] 1 All ER 1012 at 1015j.
[25] *Pleadings*, p 18. The letter is quoted *verbatim* in the transcript of the chancellor's summing up.

> the law offers me some protection from such calculated impertinence. The trees in the churchyard are my freehold property as incumbent, and Mr. Ryland has no control or say in the matter.'[26]

The third letter was written to Miss Muriel Evelyn Thorold on 14 May 1965. She had written to him for information about service times at Whitsun so that she could include them in a paper which she distributed, but had received no reply. She telephoned, but when Bland heard who was calling he put down his receiver. Miss Thorold then called at the Rectory, but Bland refused to come to the door. The following day she received a letter which said, 'Please do not come to the Rectory. I realise that you and your cousin have every encouragement from the Bishop to cause as much trouble as possible, and I wish to have nothing further to do with you.'[27]

The fourth letter, to Dr Rudolph Brinker and dated 29 August 1967, concerns a much more serious matter, that of the calling of banns. Brinker's daughter's name was on the electoral roll of nearby Broadway Parish Church, where she wished to be married on 16 September. As she lived in Buckland it was necessary for her banns to be called there, and the latest date for the first calling was 27 August, which had been drawing close. Bland took exception to reading the banns for a parishioner who intended to be married in a more fashionable church elsewhere, and Brinker was very worried that he would not do so, with potentially disastrous results.

In an attempt to obtain the necessary form and resolve the matter, Brinker attended a service in Buckland Church, in the hope of seeing Bland afterwards with his daughter, who arrived when the service was over. For their pains Brinker was rewarded with a letter containing these words:

> 'If your daughter does not care to attend divine service in the parish church here, it is the grossest insult that you should parade her outside the church gate on a Sunday immediately after the Holy Communion. It augurs ill for a marriage conceived and carried out with such brazen effrontery. [...] I shall take care to write to the officiating clergy before the ceremony.'[28]

The fifth letter, written on 1 September 1967 to the Revd John Roberts of Grappenhall Rectory, Warrington, was the one which Bland had said he would take care to write. It is worth quoting *in extenso* since it sets out very clearly the principles on which Bland proceeded and which he held dear:

> 'Reverend Sir,
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> I learn from my neighbour the Vicar of Broadway that you are to officiate in his church at the wedding of one of my parishioners. I enclose the certificate of banns.
>
> May I make three suggestions for your future guidance, as you are kind enough to take part of my duties upon yourself.
>
> Firstly, it would be more seemly if future ceremonies of this kind were to be by licence obtained from the surrogate, rather than by banns. It is extremely distasteful to me to be forced by law to proclaim at divine service the unprofessional and ungentlemanly conduct of a fellow-clergyman. As it is, you can be assured that the

[26] *Ibid*, p 19. See preceding footnote.
[27] *Ibid*, p 21.
[28] *Ibid*, p 23f.

worship of a small country parish, despicable though it may be, has been entirely upset for the past six weeks by this unnecessary formality.

Secondly, as I have no doubt that you will be visiting my parish for the wedding reception, perhaps you would be kind enough to refrain from discussing me with my parishioners or fellow clergy.

Thirdly, I understand from the Vicar of Broadway that you are the godfather of the bride. May I suggest that it is a gross perversion of your duties to encourage her to despise the ministrations of her own parish church. When she is married and settled elsewhere, it would be best if you were to encourage her to seek the ministrations of her parish priest. I notice that people who do not care for the day to day duties of church membership find it useful to import a strange clergyman on special occasions, as they thus escape the more responsible supervision of their own parson.

Perhaps you would pay close attention to these points when dealing with my parishioners.'[29]

The sixth letter was written to Mr John Winter Ryland, whose name cropped up in connection with the second letter, that to Mr Stanford. Ryland had given Bland's name and address to a Mr Payne, who had written a letter addressed to 'The Vicar, The Vicarage' instead of 'The Rector, The Rectory'. Bland had returned Payne's letter to him, and wrote to Ryland as follows:

'If you expect me to attend to correspondence, you must arrange for it to be properly addressed. I have found occasion today to return a communication from Payne, presumably sent at your instructions.

I am quite aware that in the discharge of my duties I must expect every kind of insolence from persons of your character, and that your family and servants and other hangers-on will follow your example, but anything or anybody sent to my house must conform to my standards and not to yours. I am fully aware that by encouraging Payne to be impertinent you hope to provide occasion for him to withdraw his family from church, and you would do well to peruse St. Matthew, chapter 18, verse 6. It is also about time you reconsidered your position as vice chairman of the parochial church council, and that of your wife as a member of it.'[30]

(b) *Making offensive remarks*

The sixth offence charged was of 'Making offensive and hurtful remarks to parishioners'. Five examples were given: that in a parochial church council meeting during 1965 Bland had said that he hated his parishioners; that at a parochial church council meeting in October 1965, when asked by the archdeacon why the meeting had not opened with prayer, he had remarked that the members were not worth it (or, perhaps, that the topics to be discussed did not merit it); that on 15 January 1967 he told Mrs Lucy Mildred Beasley that she had failed in her duties as a parent and as a church member and that her presence was not required in church; that in a parochial church council meeting at Easter 1967 he had said that if he came to church to conduct a service and found no-one there he would have achieved what he wanted and

[29] *Ibid*, p 32.
[30] *Ibid*, pp 33f.

could run the church as he wished, without Captain Scott's paid servants and tenants; and that on 6 August 1967 he had accused Dr Brinker of being a liar, and told him that he should be ashamed of participating in the Holy Communion when he merely wanted to hear his daughter's banns read.

(c) *Showing fits of temper*

The seventh and eighth offences concerned fits of temper, both in church and outside. Four instances were given under the seventh offence and three under the eighth, but one example from each will be sufficient here. On Advent Sunday 1967 in Buckland Church, according to the chancellor's summing up of Mrs Mavis Margaret Keyte's testimony,

> 'Captain and Mrs. Scott were present. "The accused was in an awful temper, crashing and tearing about. He was certain[ly] agitated. He took the service at a terrific pace. Outside, after the service, I waited with Mrs. Scott and heard the accused's voice. He was shouting very loudly at Captain Scott inside the church. Then he came out and tipped water out from the flower vase".'[31]

It seems that the reason for this performance was that Captain Scott had placed flowers on the altar, not realising that Bland did not like flowers in church during Advent and that he had previously removed them.

One Sunday evening in November 1966 Mr Pratt, one of the churchwardens, called at the Rectory. His evidence was summarised by the chancellor as follows:

> 'He said: "I called at the Rectory to discuss some minor electrical matter. Suddenly the accused's whole attitude changed. Shaking with temper he accused me of failing in my duties as Churchwarden, in failing to keep order in church, that is in not preventing members of the congregation from leaving church." By that he was referring to Miss Jenny Scott who had left before the sermon. "I knew nothing whatever about the incident, and I am afraid I smiled, whereupon he accused me of being amused by his discomfiture in front of Captain Scott's servants, and he slammed the door in my face. He was absolutely livid and shaking with temper".'[32]

(d) *Limitation*

That, then, is a summary of the kind of unbecoming conduct of which Bland stood accused, but several of the incidents had occurred outside the limitation period. The question of limitation was raised by leading counsel for Bland in the following exchange:

> 'MR. HOWE: [...] As you recollect, sir, under Section 16 of the [Ecclesiastical Jurisdiction] Measure [1963] "no proceedings under this Measure shall be instituted unless the act or omission constituting the offence, or the last of them if the offence consists of a series of acts or omissions, occurred within the period of 3 years, ending the day on which the proceedings are instituted".
>
> THE CHANCELLOR: That was what Section?

[31] *Ibid*, p 51.
[32] *Ibid*, pp 54f.

> MR. HOWE: Section 16 of the Measure. So that acts or omissions occurring before the 17th May, 1965 are prima facie outside the three year limitation period and all the matters that I have identified are outside the period.'[33]

The question was raised whether the acts or omissions which occurred outside the limitation period should be struck out, as follows: 'MR. HOWE: And in our submission they are properly to be criticised [...] as separate acts of conduct not amounting to a series. A series of conduct has to be joined or conjoined in some way by reference to topic, person, place [...]'.[34]

The chancellor countered by arguing that the *nexus* in charge five was in the writing of rude letters, in charge six it was in the making of offensive and personal remarks, while in charge eight it was in indulging in fits of temper. However, what he went on to say revealed all too clearly that he was allowing to the promoter the benefit of an argument which he was later to deny to Bland, that motive could be a decisive factor. He rejected Geoffrey Howe's argument in these words:

> 'For the same reason that I gave before I overrule this submission and will add only this that if it ever appeared to a Court that the framing of the charges in this way was a mere device for evading the limitation period the Court would be amply justified in striking it out. Since it does not seem to me that it is so in this case I shall leave those charges in so far as this submission is concerned.'[35]

The Court of Arches upheld the chancellor in his decision not to strike out those incidents which were outside the limitation period: there was indeed 'a series of acts or omissions'.[36] However, the court found that the chancellor had misdirected the assessors when he told them that they could convict if they found only one of the incidents which occurred within the limitation period proved, because there was no means of knowing how many were proved, nor what they were. This, the deputy dean explained, was unfair on Bland, and made it impossible for the chancellor to impose a fair sentence commensurate with the proven facts.[37] Moreover, it was necessary for the assessors to find more than one incident proved under each offence if they were to return a conviction, because ' [a] single act or omission cannot constitute a series of acts or omissions.'[38]

4. SENTENCE

In the consistory court the assessors returned a guilty verdict on all the charges apart from the first, and it fell to the chancellor to pronounce sentence. It is here that the unsatisfactory nature of both this case and the Measure under which it was brought is most clearly revealed, not in the sharpness of the dichotomy between conduct cases and reserved cases, but in the question of whether this type of legislation is pastoral or penal.

The chancellor at this point uttered the words which were to be so heavily criticised by the Court of Arches, much to his grief and chagrin:

> 'When it comes to selecting the sentence or censure which I should impose in this case, I remind myself that it has long been the practice of the Courts Spiritual, to

[33] *Transcript of Evidence*, p 57. The matters identified were the first three letters under the fifth offence, and the first item of behaviour in each of the sixth and eighth.
[34] *Ibid*, p 58.
[35] *Ibid*, p 60.
[36] [1972] Fam 157 at 168E, [1972] 1 All ER 1012 at 1020c, d.
[37] [1972] Fam 157 at 170F–H, [1972] 1 All ER 1012 at 1021h–1022b.
[38] [1972] Fam 157 at 168E, [1972] 1 All ER 1012 at 1020c.

> pass sentence pro salute animae - for the good of the soul - and I give that a wider interpretation, and say that I think it is my duty to pass sentence pro salute animarum - for the good of souls, which includes both the accused, the convicted Clerk himself, and the souls of those who were committed to his care. I am quite convinced that I should be failing in my duty if I did not do all that lies within my power to ensure that the convicted Clerk and the cures where he was working part company now for ever. I know of no way in which I can ensure this except by the censure or sentence of Deprivation.'[39]

On appeal the deputy dean said that 'this was a wholly wrong approach', and continued:

> 'The paramount consideration in selecting the appropriate sentence for an offence under the Measure should be the gravity of the offence. [...] There [was] no indication that the chancellor after having made up his mind to do all that lay in his power to part the appellant from his cures for ever, addressed his mind to the gravity of each particular offence. Indeed, he pronounced the same sentence of deprivation in respect of each of the seven offences although they varied widely in their gravity.'[40]

As the appeal succeeded on all but the fifth, letter-writing, charge, there was not much left on which a censure could be based, and the Court of Arches reduced the sentence from the severest censure, deprivation, to the lightest, that of rebuke. The case lay in ruins, and along with it any expectation that the Ecclesiastical Jurisdiction Measure 1963 would solve all the problems associated with enforcing discipline among the clergy, where previous legislative efforts had failed.[41]

5. CONCLUSION

Running through the whole sorry saga is the nature of the Measure itself. If it was intended to give administrative and executive teeth to those responsible for deploying the clergy in a pastorally effective manner, it ought not to have been drafted in the form of a statute dealing with criminal law. If, on the other hand, the legislation was to be the ecclesiastical version of a penal enactment of Parliament, the procedure should have been strictly observed, and if this had been done much of what was levelled against Bland would never have reached court in the first place.[42]

At the commencement of the trial, leading counsel for Bland made two submissions: that the four charges specifying more than one incident each were bad for duplicity,

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[39] *Pleadings*, pp 81 f.

[40] [1972] Fam 157 at 170F–H, [1972] 1 All ER 1012 at 1021h–1022b.

[41] The case proved to be a public relations failure too. The editorial in the *Evesham Journal & Four Shires Advertiser*, 7 August 1969, p 10, contains a trenchant attack on the proceedings, of which what follows is a short extract: 'The sentence of deprivation imposed on the Rector of Buckland is very harsh. It is a pretty poor outlook for parsons if they must please everybody or get out, and a little eccentricity has to bring down the awful penalty of deprivation. What man of character, of soul, of intellect, will want the job at that price? [...] The consistory court of the Bishop of Gloucester has used the full force of a quasi-inquisitorial steam-hammer to crack an eccentric. [...] This whole consistorial episode has been clumsy, unpleasant and unnecessary.'

[42] The Hawker Report (*Under Authority, The Report of the General Synod Working Party reviewing Clergy Discipline and the working of the Ecclesiastical Courts* (Church House Publishing 1996)), at the time of writing under consideration by the General Synod, advocates a Clergy Discipline Tribunal in place of the present consistory court and Court of Ecclesiastical Causes Reserved jurisdictions, together with a greatly simplified procedure and a more practical system of penalties. Even here, however, the fundamental question of the nature of the proceedings has not been squarely faced.

as would have been the case in a proper criminal court, and that those incidents which were outside the limitation period should be struck out as being statute barred. In his judgment on these submissions the chancellor deplored the absence of depositions. which would have been available in ordinary criminal proceedings,[43] and admitted: 'It is quite impossible for me to say by looking at the charges, whether or not there is a sufficient nexus to justify a charge such as the charge (v), or whether it is clear that charge (v) is bad for duplicity.'[44]

Despite these doubts, he declined both at that stage and later 'to strike out the charges on either the grounds of duplicity or on the limitation point.'[45] If he had grasped the nettle at that stage he might have made himself unpopular with those who were anxious to deal with what had clearly become a pressing pastoral problem, but at least he would not have been so badly stung in the end.

[43] This is a strange complaint for him to have made, since he could, and indeed should, have had before him the witness affidavits which had been prepared for the hearing before the examiner, as well as the examiner's notes of the cross-examinations.
[44] *Transcript of Evidence*, p 2.
[45] *Ibid*, p 3.