THE CASE OF PRIESTLY -v- HUGHES
1806 – 1816

At the age of twenty four, Zaccheus Hughes inherited substantial estates on the death of his elder brother, Owen, who died unmarried in 1756. The dominant estate was Trefan, one of the best known homesteads in Eifionydd, Caernarfonshire. Zaccheus was a clergyman and vicar of the nearby village of Llanystumdwy. In 1759, Zaccheus married an heiress, Jane, daughter of Morris Wynn of Hafodgarregog in Nantmor, Ardudwy. This considerably increased Zaccheus's estates.

The farmstead of Cae'n y Coed in Coed Felinrhyd near Maentwrog was a small and unimportant part of the Hafodgarregog estate. John Townsend of the 'Dating Old Welsh Houses Group' was kindly researching the writer's cottage at Cae'n y Coed and drew my attention to it having been part of this estate and to the sad story of the descent of the Trefan and Hafodgarregog estates described by Jan Morris.[1] In her book, it is stated that because Zaccheus' daughter-in-law was illegitimate, her marriage to Zaccheus' son was illegal. As a lawyer, I found this hard to understand: English law did not prevent the marriage of bastards – it would have caused considerable problems for royalty had it done so!

Colin A. Gresham[2] writes more at large on the matter and this paper relies partly on his account. But he merely states that the marriage was found not to be a legal one. What follows explores the reason for this finding, including the relevant law and the legal arguments, and the resulting reform. I have been greatly helped by the staff at Caernarvon Record Office[3] and at the Parliamentary Archives.

Zaccheus and Jane Hughes had only one child, John Wynn Hughes, who was born in 1760. At the age of thirty two, on 9 September 1792, he married by licence a local girl, Jane Jones of Pwllheli who was only aged sixteen.[4] She was also illegitimate,[5] the daughter of Jane Roberts, by Thomas Jones, who was buried at Denio on 5 November 1791. The mother, Jane Roberts, who was cook and housekeeper to John Wynn's father Zaccheus Hughes, consented to her daughter's marriage.[6]

There was one child of the marriage, a daughter, Jane Wynn Hughes born in 1794.[7] But on 30 January 1795, the father, John Wynn Hughes, died, allegedly intestate.[8] Jane Wynn inherited considerable estates in Caernarfonshire and Merioneth from her father, either as heiress at law or under the terms of the marriage settlement. Then, just over a year later, on 10 February 1796, Zaccheus Hughes died, also intestate.

Under the laws of inheritance, Zaccheus's estates were inherited by the heir at law who in this case was deemed to be the baby, Jane Wynn. This was because the legitimate child of a deceased eldest son can claim 'in stirpes' (or 'according to the roots') to put him or her in the position the father would have been in, had he been alive. So even a daughter would inherit in preference to a younger brother of a deceased father.[9]

The widowed mother, Jane Hughes, took possession of the estates of both her husband and her father-in-law, as guardian of her infant daughter. Jane was not entitled to dower of Zaccheus's estates, which at common law amounted to one third of the deceased husband's

real property; this was because entitlement to dower depended on the deceased husband either having had seisin of the property or at least the right to it. Seisin amounted to taking possession.[10] Because John Wynn died before his father, Zaccheus, he never had any right to the Trefan estate, although he and his wife and family may well have lived at Plas Trefan with Zaccheus. Jane was, however, guardian of her daughter with custody of the Trefan and other estates during the minority of her daughter, that is until she was twenty one or married. She would not however be entitled to the profits.[11]

Some people were unhappy at the baby, Jane Wynn, inheriting these large estates and her mother sent for a solicitor, Jack Jones of Cardigan, to advise her. Zaccheus had apparently requested Jane not to employ an attorney in the County of Carmarthen to manage the family affairs. On the recommendation of Mr Thomas of Llangforthan, Jane wrote to Jack Jones 'not chusing to employ any person in these parts for fear of their entering into a Combination against me in Conjunction with other persons that intends to injure me'. Jack Jones subsequently had to give sworn answers to a number of Interogatories (the 'Interrogatories')[12] in respect of his dealings with the Hughes.

Jack Jones came to Trefan and it seems, from the answers to the Interrogatories, that on 25 May 1793, Zaccheus and John Wynne had executed an Indenture of Release purporting to be a Settlement of their estates and that John Wynne also made a Will. Jane produced the Will and Settlement from a tin box. Jones advised Jane to prove the Will, take out Letters of Administration for Zaccheus's personal estate, make Jane Wynn a Ward of Court, and have a Receiver appointed of the estates. So Jane Wynn (by her next friend, her grandmother, Jane Roberts) petitioned the Court of Chancery and an Order was obtained requiring annual accounts to be kept and a Receiver, William Poole of Gogortham, Cardiganshire to be appointed.[13] Jack

Jones became responsible to the Receiver for collecting rents and making payments and his answers to the Interrogatories have schedules of accounts.

Zaccheus not only had an elder brother, but also three sisters. One of these, Elizabeth, married Owen Jones, a solicitor, from a local Llanystumdwy family which owned lands on the opposite bank of the River Dwyryd to Trefan. Elizabeth was the next heir of Zaccheus after Jane Wynne. Owen and Elizabeth had a daughter, Mary, born in 1767, who married Samuel Priestly of Leeds, shortly after the death of John Wynn Hughes.

It was not, however, until after the death of Elizabeth Jones on 17 April 1803, who died intestate, with Mary Priestly her only child and heiress at law, that the Priestlys took action.[14] In the Easter term 1804, Samuel and his wife Mary brought a personal action by way of a Bill in Chancery against Jane Wynn Hughes, an infant, and others.[15] They argued that the marriage of John Wynn Hughes was void because the Court of Chancery had not agreed to the marriage by licence of Jane Roberts and that this consent was required for marriage of a minor by Lord Hardwicke's Act for the better preventing clandestine marriages. So Mary Priestly was Zaccheus's heiress at law and entitled to his estates.

This was long before the Married Women's Property Acts of the later nineteenth century, so a husband acquired all his wife's property. It followed that if the marriage of John Wynne Hughes was not valid, Jane Wynn would inherit nothing from her father or from Zaccheus and Samuel Priestly, by his wife, would acquire all their estates.[16]

The case came on to be heard before the Master of the Rolls on 24 March 1806; he ordered that a case be made for the opinion of the Court of King's Bench. The case was finally settled for a hearing on 14 July 1807 by Mr Steele the appointed Master. It was twice argued before the judges, first in the Court in Easter term, 1808, and again in Hilary term, 1809, when the Attorney General, Sir Vicary Gibbs, appeared for the defendants. His involvement suggests that the government was concerned at the political implications of the action.[17]

The law report sums up the questions made in legal argument as firstly whether illegitimate children were bound by section 11 of the Marriage Act, 1753[18] requiring parental consent to the marriage of a minor and secondly, if so, whether the consent of a natural father or mother satisfied the requirement of the Act.

On the first question, it was argued for the Plaintiffs that as section 8 of the Act outlawing marriages solemnised without banns or licence includes the marriage of bastards, so must section 11 requiring parental consent. This was not apparently disputed by the defendants.

The Marriage Act, 1753 'for better preventing clandestine marriages' provides that where a minor marries by licence, the marriage is void unless consent to it is given by the father, or if the father is dead, by any guardian lawfully appointed, or if none, by the mother if living and unmarried, or if there is no such mother, by the guardian appointed by the Court of Chancery.

The second question was whether the words 'parents', 'father' and 'mother' included natural fathers and mothers. It was argued that the terms father and mother were used in their strict legal sense denoting legitimate parents of children born in wedlock. The Act was

following the common law which considers a bastard *nullius filius* or *nullius filia* (a son of no-one or a daughter of no-one). And although no consent of parents could be given for bastards, consent could and normally was obtained from a guardian appointed by the Court of Chancery.

The Court noted that the relationship of an illegitimate child to its parents was first recognised by statue in 1576.[19] But this was to burden the parents rather than the parish with maintenance of the child and used the term 'putative father' while a later statute in the 1660s[20] uses the terms 'putative fathers and lewd mothers of bastard children' – a good example of the differing view of the responsibility of the man and the woman.

The defendants referred to statutes of Henry VIII[21] and related cases prohibiting marriage within the Levitical degrees; this does speak of father, mother, brother, sister etc. But this was distinguished on the ground that the intent was to prohibit marriage between persons of the same natural blood, and not merely of the same civil or legal blood. A case was cited *(The King v Cornforth and Others*)[22] where a natural daughter under sixteen was taken away from the putative father but distinguished on the ground that the offence was not that a child had been taken without consent from a natural father but had been taken from someone who had 'by lawful means the governance of her'. Whether the child was legitimate and whether the person exercising governance was a putative father was therefore irrelevant.

So the Plaintiffs' argument was that the Marriage Act, 1753 followed the common law and only legitimate parents could consent. The case of *The King v Edmonton*[23] was also cited where at least two of the judges favoured the contrary view, but it appeared they were relying on *The King v Cornforth and Others* which the Court considered could be distinguished. Probably though the decisive judgement was that of Sir William Scott in *Horner v Liddiard*[24]

opposing the judgement in *The King v Edmonton* and finding a marriage void where a mother, appointed guardian by the Will of a putative father, consented to a licence for her illegitimate daughter.

While the law report records counter arguments for the defendants as to the interpretation of the Act, they are not very convincing.[25] The strongest argument of the defendants was that, if natural parents could not consent to marriage by licence, this was *'casus omissus'* (matter omitted) and no consent was necessary for a licence for an illegitimate child to marry.

Four Judges heard the case. They took time for consideration but on 1 March 1809, three, Lord Ellenborough, the Lord Chief Justice of King's Bench, S. le Blanc, and J. Bayley held the consent invalid and the marriage void. The fourth, N. Grose, held that the consent for illegitimate minors was *casus omissus* in the statute and accordingly that the marriage was good and lawful.

On 18 July 1809, the case came back to the Master of the Rolls 'for further directions on the Judges' Certificate.' The Trefan estates were ordered to be conveyed to Mary Priestly or her assigns (including an assignment of a term of ninety nine years created by the Deed of 25 May 1793 by William Griffiths and William Williams in whom it was vested). Mary was also entitled to the Hafodgarregog estate subject to the trusts 'created therein by the said deed of 25 May 1793'.[26] The Receiver was also to account to her for all the rents and profits of the estates.

On 6 January 1810, Jane Wynne petitioned the Lord Chancellor on the rather unconvincing grounds that the case should have been tried by an action at law and that the

equitable relief given to the plaintiffs was inadmissible. Unsurprisingly on 23 July 1812, the Lord Chancellor upheld the decrees of the Master of the Rolls. But he clearly did not find it an easy decision. He took a day for consideration and then made a number of observations on the importance of the case agreeing that the case should 'by all means' be sent to the House of Lords.[27]

Finally on 10 November 1813 a petition was lodged by Jane Wynne appealing to the House of Lords and it is in this petition that much of the history of the case is set out. But when the appeal was about to be heard it was withdrawn on 1 April 1816 by consent with no payment of costs.[28] Clearly there was a last minute settlement but the terms of this have not been found. By this time Jane was of full age.

So the Hughes finally lost the case and were evicted not because the mother was illegitimate but because she married under age by licence and did not obtain the necessary consent of the Court of Chancery. Had she married by banns, no consent at all would have been necessary as, unlike legitimate parents, natural ones, not being legal guardians, could not prevent the publication of the banns.

The report of the case favours the plaintiff's arguments on the inability of natural parents to give valid consents to marriage. The general terms, father, mother and child, used in Acts of Parliament, must be taken to mean legitimate relations of that description, unless the contrary be expressed, or of necessity implied from the subject matter, or by reference to some other law which excludes the distinction. The true construction of the Marriage Act meant legitimate parents and children. There was a clear precedent for this view and the contrary cases could be distinguished.

Irrefutable logic, strict construction of the statue, and meticulous regard for precedent, led unerringly to a formulaic decision which flew in the face of common sense and was manifestly unjust. It is clear that the three judges did not find the decision easy. The Court took time for consideration; and Lord Ellenborough apparently had doubts.[29] The fourth judge, Grose, took the view that the Act had simply overlooked the position of illegitimate spouses but this, too, had its disadvantages as it would have removed the protection intended to be given to minors by the Act.

The case elicited much criticism. Hyde Hall[30] wrote that the Hughes properties had been lately taken from Zaccheus' grand-daughter 'under circumstances of such a nature to have excited a very general sympathy. By the non-observance of the provisions of the Marriage Act by her mother, she has in fact been illegitimated, and thus is afforded another instance of the mischiefs flowing from that law, which I cannot but regard as not only a gross and unnatural violation of natural right, but as an insolent attempt to divide the aristocracy from the rest of the people.'[31]

In 1820, John Fonblanque,[32] after describing the case, writes: 'a decision which appears to me, with reference to the general error that has prevailed upon the point, to call most strongly for the interference of the legislature'.

Hard cases may make bad law but this one contributed to its improvement although the movement for reform took time to come to fruition. In 1817, Dr Phillimore ('conversant with the practise of ecclesiastical courts for eighteen years') introduced a bill in the House of Commons but it and two later bills were rejected in the Lords. At last, in 1822, he introduced

a somewhat amended bill. His speech is recorded in Hansard.[33] He explained that the 1753 Marriage Act was the first statute on the subject and marriage was previously governed by canon and common law. Minor sons could marry at the age of fourteen and daughters at the age of twelve,[34] and no parental consent was required. Irregular marriages such as those in the chapel of the Fleet Prison were common. The Act provided that marriages had to take place in an authorised place (normally a place of worship) and either after banns or by licence. By section 11, marriage of a minor without the prescribed consent was void.[35] The Act did not apply in Scotland.[36]

Dr Phillimore approved of the provisions of the Marriage Act which he acknowledged addressed inconveniences and abuses in the old system; but he argued that the Act's sanctions were too severe and inflexible and had themselves become engines of fraud. He instanced cases in which men, and less commonly women, had used the Act to have their marriage declared void for lack of any consent (or when consent was given by a mother when the father was still living), and for fraudulent misstatements of age. He cited cases where this had happened on occasion more than 20 years after the marriage; it had of course the effect of bastardising any children and allowed a spouse to terminate a marriage years later, when its invalidity was caused by their own misdemeanour.

Dr Phillimore then turned to the situation of marriages where one party was a minor and illegitimate, which he considered even more unsatisfactory. As the law stood, only the Court of Chancery could sanction a marriage of an illegitimate minor by license. He referred specifically to the cases of *Horner v Liddiard* and *Priestly v Hughes*.

Dr Phillimore's bill was passed on 22 July 1822, despite objections from the House of Lords, and became the Marriage Amendment Act, 3 Geo. IV c. 75. In Butterworth's digest of the Act,[37] R.P. Tyrwhitt observed that it repealed one of the most important provisions of the 1753 Marriage Act, namely that of the nullity of marriage of minors had without consent of parents or guardians and goes on: 'The soundness of the principle which establishes a right in parents or guardians to restrain infants from marrying without the consent of the former, appears unquestionable, and the difference between its application in the acts of 1753 and 1822, seems to be, that in the latter period the indissolubility of such marriage, when once contracted, has been asserted in the spirit of the ancient law, and of a stricter adherence to the dictates of religion: while a penalty, which can under no circumstances be other than a real punishment, is attached to the fraudulent means adopted in effecting such a marriage'.

The 1822 Act also addressed the situation in *Priestly v Hughes* directly by providing retrospectively in Section 2 that where any marriage by licence lacked the consent required by the 1753 Marriage Act, it should be a valid marriage if the parties had continued to live together as husband and wife till the death of one of them or until the passing of the Act. But, although the Act had retrospective effect, it came too late for Jane Wynn. By Section 5, Section 2 had no effect where a Court had already ruled a marriage invalid or a person illegitimate. It is to be noted also that the Act did not provide for natural parents to be able to consent to licences or to prohibit banns.

While the Act stopped the marriage of a minor being void for want of consent, it introduced drastic and complicated provisions for all those involved in the obtaining and issuing of licences or of banns. According to Dr Phillimore these complications were introduced by the Lords. Various oaths had to be sworn and transportation was threatened in

cases of perjury. This led to much dissatisfaction and complaint and allegedly a reduction in marriages. One aggrieved MP even claimed it was now not possible for him to marry and that he would have to remain a batchelor!

In 1823 a further Marriage Act was passed which simplified some of the provisions of the 1822 Act and contained a new provision under which anyone marrying a minor without the requisite consents could forfeit any right to property under the marriage if a case was brought within one year of the marriage by the person from whom consent should have been obtained. Section 21 also contained a curious provision making a clergyman liable to transportation if he celebrated a marriage outside the hours of 8 a.m. to 12 noon. While the marriage would have been valid, it is less certain if this remained the case after 1837 when the provision was re-enacted in a different form.[38] Subsequently the time was extended to 3 p.m.[39] giving rise to the ditty:

My daughter begs from door to door
A child of shame is she
For I was wed at half past four
Instead of ten to three.

It is unlikely that Jane Wynn retained any rights to her father's estates under the marriage settlement.[40] But in view of the settlement of the petition to the House of Lords, Gresham is almost certainly correct in saying that some provision may have been made for Jane Hughes. In any event, on 9 June 1820 Jane married by licence William Williams of Cenas, Montgomery in St Peblig, the parish church of Llanbeglig, where Jane was then living. Caernarfon is within this parish. On 11 December 1823 the eldest child of the marriage, also William Williams, was baptised at St Mary's Church within the town walls and his father is named as 'curate of this parish'.

It is pleasant to leave Jane with the details of the 1851 census. The Wynn name is anglicised to Wynne. She is living in Menaifron in Llangeinwen in Anglesey and has three sons and two daughters, all of whom were born in Caernarfon except the youngest, who is aged eleven and was born in Anglesey. Her husband, William Williams, is now rector of the two parishes of Llangeinwen and Llangaffo. Her eldest son, William Wynne is curate of

Llangeinwen. Her mother, Jane Hughes, is living with her as an annuitant.[41] A memorial brass in the church of St Caffo records that William Williams was rector for fifty years and was also a Canon of Bangor Cathedral for thirty two years. Jane's son William eventually succeeded his father as rector.

Meanwhile the Priestlys prospered and extended their estates. But while on Mary's death in 1846, the eldest son inherited Trefan, the Hafodgarregog estate went to the second son, John, and remained in his family until at least 1973. Cae'n y Coed and Coed Felinrhyd were, however, sold to the Oakley family in the 1920s.

Gresham quotes Dr. William George, writing of the Priestly sisters in 1958:[42] 'As far as I am aware none of these people evinced the slightest interest in what was going on in the village, nor to my knowledge, did any of them at any time further the interest of the villagers in any way whatsoever.' According to Jan Morris the Priestly clan were never truly accepted.

JOHN PARSLOE

Talsarnau

[1] Morris, Jan: *A Writer's House in Wales* National Geographic Society, 2002.

[2] Colin A. Gresham, *Eifionydd: Study of Landownership from the Mediaeval Period to the Present Day* (Cardiff, 1973).

[3] See *Gwynedd Archives: Records re case of Priestley v Hughes XD/8/6/14-19.*

[4] The marriage was at St. Beuno's in the parish of Denio, near Pwllheli in Caernarfonshire, where the bride lived. The groom was from Llanystumdwy.

[5] She was baptized at Denio, on March 16 1776 as 'Jane an Illegitimate D$^{r.}$ of Jane Roberts Spinster'.

[6] A Statement dated 31 March 1812 (apparently by one Henry Ellis a Priestly servant or retainer) states that the father, Thomas Jones was the butler in the family in which the mother Jane Roberts was a scullery maid. Jane was later hired by Zaccheus Hughes as a cook and housekeeper. Zaccheus's son John was 'a young man of weak intellect, much given to liquor and women'. He was induced by 'the practices and influence' of Jane Roberts to marry her daughter; this was without the knowledge of his father or of his father's or his own family and therefore the marriage was 'clandestine in the general sense'. The son lived as part of the father's family and had no maintenance but what he derived from the bounty of his father (*Gwynedd Archives XD/8/6/18*).

[7] Jane was baptised on 3 July 1794 at Llanystumdwy as Jane daughter of John Hughes and Jane his wife.

[8] In the Interrogatories, Jack Jones stated that, after he had noted them, Jane replaced the Indenture of Release and the Will in the tin box and he believed she had subsequently proved the Will and that it was in the proper ecclesiastical court (*Gwynedd Archives XD/8/6/20*). As the House of Lords appeal and the Petition of the Priestlys to remove the Receiver state that John Wynn died intestate, it appears in fact that Jane never proved the Will.

[9] This is the *ius representationis* (or *right of representation*). Blackstone's Fourth Canon or Rule of Descent states that the lineal descendants, *in infinitum*, of any person deceased shall represent their ancestor; that is, shall stand in the same place as the person himself would have done, had he been living. See Henry Chitty ('Chitty'): *A Treatise of the Law of Descents* Joseph Butterworth and Son, 1825, p. 44, and discussed at length pp. 81- 4.

[10] Chitty pp. 49 and 316.

[11] Blackstone, Sir William: *Commentaries on the Laws of England 1765-69*, Vol. 1, Ch. XVII: The guardian by nature was the father or if the husband did not appoint a testamentary guardian, the mother on his death. 'If an estate be left to an infant the father is by common law the guardian and must account to the child for the profits.'

[12] *Gwynedd Archives XD/8/6/20.* Jack Jones swore his answers on 14 November 1799 in response to an Order of Mr Popham, a Chancery Master, dated 10 November 1798 in the continuing case of *Hughes v Hughes*, described in Note 13 below. Jones was no longer Jane's solicitor and there was some dispute in respect of the case.

[13] The Petition, in the case known as *Hughes v Hughes*, was lodged in Hilary Term, 1796 between Jane Wynn Hughes an Infant by Jane Roberts widow her next Friend (Plaintiff) and Jane Hughes widow (Defendant)) and heard on 18 March 1796. (HL/PO/JO/10/8/312 Main Papers 20 July 1813-12 Nov 1813 10 November: Hughes v Priestly et ux., petition and appeal). All the legal documents use the English spelling Wynne for Wynn.

[14] The threat of action was the reason Jack Jones was consulted by Jane in 1796. Following a rumour that action was to be taken at the Great Sessions at Conway, Jones was sent there to look after her interests. It seems nothing then came of it. Perhaps Elizabeth Jones was unwilling to proceed against Jane Wynn and so Samuel Priestly had to wait until she died. The proceedings were instituted in 1804, the year after her death, although the Statement referred to in Note 6 above says they were instituted in 1802.

[15] The action ('Hughes v Hughes') was Between Jane Wynn Hughes an Infant by Jane Roberts widow her next Friend, Plaintiff and Jane Hughes widow, Defendant (the parties to the Petition referred to in the Note 13 above, included, it appears, to obtain the dismissal of the Receiver) and Between Samuel Priestly and Mary his wife as Plaintiffs and Jane Hughes, Jane Wynn Hughes an infant by the said defendant Jane Hughes her guardian, Richard Edwards, Sir Robert Williams Vaughan Baronet, William Griffiths, William Williams and John Griffiths, Defendants.
The defendants, other than Jane Hughes and her daughter, must be trustees of the Estates. Unfortunately the Indentures referred to in the pleadings have not been found but the Priestlys petitioned for the Indentures of 24 and 25 May 1793 if in fact executed to be declared null and void. Presumably this is the Deed of Settlement referred to in Jack Jones' Interrogatories. In fact the Court appears to have given partial effect to the Deeds insofar as they related to tenancies in Hafodgarragog.
The name Priestly is often spelt Priestley in the proceedings.

[16] At common law, for Jane Wynn Hughes to be heir *per stirpes* of Zaccheus, the marriage of her parents had to be legal. Bastards cannot succeed to an estate by descent: Chitty p. 16. Bastards are incapable of being heirs: Chitty p. 17. The marriage of the parents must be legal: Chitty p. 23.
'*Dicitur haeres qui ex legitimis et iustis nuptiis procreatus*' (One is said to be an heir who is procreated from legal and just nuptials): Chitty p. 17, (Robinson Inh. 34 n.(k.) and '*Qui ex damnatio coitu nascunter inter liberos non*

computantur' (Whoever is born from condemned coition is not numbered among free people): Chitty pp. 17- 8, (Co. litt. 8).

[17] *Priestly -v- Hughes*, 11 East 1. The law report states that the case was first argued in Easter term 48 Geo 3 by Owen for the plaintiffs and Williams Sergt for the defendants; and again in Hilary term last by Lens Serjt for the plaintiffs and by the Attorney General for the defendants. In the judgement it is stated: 'The case has been twice argued before us by counsel'. It is not stated why these adjournments and changes of council occurred but the involvement of the Attorney General appears significant.
Sergt stands for Serjeant at Law, an elite order of attorneys, who had the exclusive privilege of arguing before the Court of Common Pleas and also supplied the judges for both Common Pleas and the Court of King's Bench. The Hughes petition was to the Court of Chancery because they were seeking an equitable relief and equity was the preserve of Chancery. But the case involved land law and real actions were heard in the Court of King's Bench. Hence the involvement of both Courts.

[18] Section 11 of the Marriage Act, 26 Geo II, c. 33, often called Lord Hardwicke's Marriage Act.

[19] 18 Eliz. c. 3.

[20] 13 &14 Car. II, s. 7.

[21] 25 H. VIII, c. 22, s. 3 and 28 H. VIII c. 16, s. 2(a).

[22] *The King v Cornforth and Others* Hil. 15 Geo. II, 2 Stra. 1162 construing 4 & 5 Ph. & M. c. 8, s. 3. This case is a good example of the wrongs which the 1753 Marriage Act sought to stop. An illegitimate girl under 16 was taken against the will of the putative father who had brought her up and had custody. The defendant bribed his servants, and obtained a licence by swearing the girl was over twenty one. The consent of the girl was irrelevant; – the statute aimed to prevent 'maids and young women unmarried being allured and won by flattery and fair promises to contract matrimony'.

[23] E. 24, Geo III, B. R. 2 Const. 85.

[24] Dr. Croke's Rep. 180.

[25] For example, that the fact that it was common practise for consent of the Court of Chancery to be sought for the marriage of an illegitimate minor was simply because of uncertainty as to the law and that if natural parents could not give consent it could only be given by the Court of Chancery. This ignored the fact that there was no such problem with banns.

[26] According to the Plaintiffs undated petition for removal of the Receiver (*Gwynedd Archives XD/8/6/19*), Zaccheus' estate was vested in Richard Edwards or other defendants for Zaccheus and his heirs. (In her appeal to the House of Lords, however Jane Wynn states it was not vested in Richard Edwards and he was only seized to uses.) The indentures were probably the marriage settlement (which has not been found). If it was a strict settlement, John Wynne would have had only a life interest and on his death the property would have reverted to Zacheus or his heirs. Further as the Court held there was no marriage, and John Wynn was an only child and died intestate in his father's lifetime, his heir would inherit property not subject to the marriage settlement. Under English law until the Inheritance Act of 1833, a father could not be the direct heir of his son (Chitty p. 61: Blackstone's Canon 1). So Mary Priestly was the heir of both Zaccheus and his son.

[27] *Gwynedd Archives XD/8/6/14.*

[28] HL/PO/JO/10/8/312 Main Papers 20 July 1813-12 Nov 1813: 10 November: Hughes v Priestly et ux., petition and appeal.

[29] Dr Phillimore, when introducing his 1822 Marriage Bill in the House of Commons, referred to Lord Ellenborough's decision being made 'after some hesitation' (Hansard, HC Deb 27 March 1822, vol. 6 c. 1340).

[30] Edmund Hyde Hall, *A Description of Caernarvonshire (1809-11)*, Caernarvonshire Historical Society Record Series No. 2.

[31] Presumably one should read property owners for aristocracy. In practise and because of the cost, almost all marriages made void for want of consent will have involved property. The 1753 Marriage Act may be thought to have had the object of preserving family property as much as virginity.

[32] John Fonblanque, *A Treatise of Equity: With the Addition of Marginal References and Notes*, 1820, Vol II, p. 247.

[33] Hansard, HC Deb 27 March 1822, vol. 6 cc. 1326-62.

[34] This remained unchanged until the Age of Marriage Act, 1929 made 16 the minimum age for both sexes.

[35] Nullity of marriage for want of consent or being performed in a prescribed place was an innovation in the Hardwicke Act, especially as it was without time limit and applied not only after consummation but after the birth of children. There was some difficulty in reconciling it with Jesus's statement in Mathew 19.6: 'What therefore God hath joined together, let not man put asunder'.

[36] Resulting in the practice of elopements to Gretna Green.

[37] R.P. Tyrwhitt, *The Marriage Act 3 Geo. IV. c. 75.* Joseph Butterworth and Son, 2nd edition, 1822.

[38] Francis James Newman Rogers, *A Practical Arrangement of Ecclesiastical Law*, Saunders and Benning, 1840, pp. 537-9. Section 21 of the 1823 Marriage Act incorporated the provisions of Canon 62 d of the ecclesiastical Canons of 1603 which regulated marriage procedures; Section 20 of 6 & 7 W. IV, c. 85 includes the requirement as a requisite 'proviso' to any marriage in church. But neither Act avoids a marriage celebrated outside these hours.

[39] The 1886 Marriage Act extended the permitted hours to 3 p.m.

[40] See Note 26 above.

[41] It is very likely that her annuity was granted under the terms of the settlement of the petition to the House of Lords.

[42] Gresham p. 199. Dr George was David Lloyd George's brother.