(2023) 25 Ecc LJ 156–170 © Ecclesiastical Law Society 2023
doi:10.1017/S0956618X23000017

The Coronation Oath

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Over the past thirty years questions have been raised, and still remain, as to the proper scope of the sovereign's title, Defender of the Faith, in a multi-faith society. Such questions are not only politically important but are legally important, especially as they raise questions affecting the Church of England. Those questions need to be addressed before any suggested changes are actually implemented. These questions are different from those that arise in relation to the Coronation Oath Act 1688, but nonetheless are important. In spite of the uncompromising wording of that Act, changes to the oath taken by new sovereigns have historically taken place at subsequent coronations. This has led to both denials and affirmations of the legality of such changes. As similar changes are likely to take place in the future, it is important to consider whether the courts (civil or ecclesiastical) have jurisdiction to entertain challenges to the legality of the coronation itself, to the oath and to the actions of the relevant participants.

Keywords: Accession, coronation, *de minimis*, defender of (the) faith, oath

CONTEXT

In 1994, Prince Charles (as he then was) addressed the diversity of the United Kingdom in a conversation with his biographer, Jonathan Dimbleby, during a television documentary:[1]

> The Catholic subjects of the sovereign are equally important as the Anglican ones, as the Protestant ones. I think that the Islamic subjects or the Hindu subjects or the Zoroastrian subjects of the sovereign are of equal and real importance.

He then turned to his understanding of the sovereign's title, Defender of the Faith:

> I personally would rather see it as Defender of Faith, not the Faith, because it [the Defender of the Faith] means just one particular interpretation of the Faith, which I think is something that causes a deal of a problem. It has done for hundreds of years. Peoples have fought each other to the death over these things, which seems to me a peculiar waste of people's

1 Quoted in C Pepinster, *Defenders of the Faith* (London, 2022), 216.

> energy, when we're all equally aiming for the same goal, I think. So I would much rather it was seen as defending faith itself which is so often under threat in our days where, you know, the whole concept of faith itself or anything beyond this existence, beyond life itself is considered almost old-fashioned and irrelevant.

It was to this that Rabbi Dr Jonathan Romain was referring when he wrote to *The Times* on 1 December 2022. He said:[2]

> I take no pleasure in the census results showing the decline of Christianity, which has done so much to shape the values of this country. However, it raises the question whether the King should revert to his original declaration that he could be 'defender of faith'[3] rather than 'defender of the faith'.[4] Britain is now thoroughly multifaith, and a slight change in his title would be a way of acknowledging this transition without diminishing our Christian heritage or disestablishing.[5]

ACCESSION DECLARATION; DEFENDER OF THE FAITH; CORONATION OATH

However, any change (however seemingly slight) to the sovereign's title of Defender of the Faith would have constitutional ramifications; it could not be made lightly and it would require legislation to implement. In fact, any alteration would require legislation[6] as well as (arguably) lead to the undermining of the position of the Church of England as the established Church.[7] However, Queen Elizabeth II died on 8 September 2022 and the

2 In December 1991, Rabbi Romain had told Catherine Pepinster that 'Jewish people and those of many faiths and none [would] listen attentively [to the monarch] "because she is our Queen as much as anyone else's"': ibid, 252–253. The title Defender of the Faith had been ratified by An Act for the Ratification of the King's Stile 1543 (*sic*) in relation to 'the church of England, and also of Ireland'; in the rest of the Commonwealth, therefore, the monarch is not regarded as Defender of the Faith.

3 See, too, <https://secularism.org.uk> and, for example, <https:www.theguardian.com>, both accessed 28 November 2022.

4 The title was originally granted to King Henry VIII by Pope Leo X for 'his attack on heresy and defence of Papal authority': F L Cross and E A Livingstone (eds), *The Oxford Dictionary of the Christian Church* (3rd edn) (Oxford, 2005), 752. It was later withdrawn by Pope Paul III on Henry VIII's excommunication. However, in the meantime the title had been ratified by An Act for the Ratification of the King's Stile 1543 (*sic*); this Act was repealed during the reign of Philip and Mary but revived by the Act of Supremacy 1558, s 9. Other European countries also require their monarchs to be of a particular religious denomination: see R Hazell and B Morris (eds), *The Role of Monarchy in Modern Democracy* (Oxford, 2020), 196.

5 Another letter in the same newspaper on the same day, although not espousing disestablishment, nevertheless argued for stripping the General Synod of its right to generate its 'measures (*sic*) into law'.

6 However, nothing prevents a new monarch stating an intention to support other faiths in addition to that of the protestant religion, as indeed has happened in the case of King Charles III.

7 According to *The Times* on 1 February 1993, the two archbishops indicated that they were likely to consult (unspecified) constitutional authorities and ecclesiastical lawyers 'at some time in the

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following morning the requisite declaration of accession of King Charles III (as he then became) was made;[8] in spite of the King's previously expressed strong views there had been no attempt in the meantime to change the title of Defender of Faith or to limit its ramifications.

Similarly, no attempts had by then been made to alter the coronation oath which is also concerned with the monarch's constitutional position in relation to the protestant religion and, in particular, to the Church of England. This is perhaps the more surprising as, since the Coronation Oath Act 1688, a number of changes have been made to that oath at different times without legislative authority. Such changes clearly may lead to questions arising as to the legitimacy of the oath once taken. The coronation of King Charles III has now been arranged for 6 May 2023 and, although the order of service has not yet been made public,[9] there has been no indication how, if at all, the terms of the coronation oath will then be altered. It is with any such possible changes that this article is primarily concerned and, in order to consider this situation in greater detail, it is necessary first to turn to the actual legislation involved, that is, to the Coronation Oath Act 1688 ('hereafter the 1688 Act').[10] Before doing so, however, it is also instructive to consider the *Liber Regalis*, the very ancient guide to English coronations.[11]

THE *LIBER REGALIS*

The precise date of the *Liber Regalis* is uncertain[12] but it does not appear to have been produced as a set order for the coronation for any one King or Queen in

future'. However, it was recognised that any change to the coronation oath 'might be difficult because the wording protected the church'. General interest still continues as the recent publication of C Pepinster, *Defenders of Faith* shows (note 1); see also Hazell and Morris (note 4).

8 See Extraordinary London issue 63812 of *The London Gazette* dated 12 September 2022; Extraordinary Edinburgh issue 29702 and Extraordinary Belfast issue 8508. In his oath relating to the security of the Church in Scotland, King Charles described himself as 'Defender of the Faith'.

9 On 21 January 2022, Buckingham Palace announced 'further details on the [coronation] ceremony'; this stated that 'As previously announced, the Service will reflect the Monarch's role today and look towards the future, while being rooted in longstanding traditions and pageantry' (see <https//www.royal.uk/coronation-weekend-plans-announced>, accessed 23 January 2023) Unfortunately, and in spite of rumours and speculation in the media, no further details are as yet forthcoming: see <https://www.bbc.co.uk/news/uk-64349942> for example, accessed 23 January 2023.

10 The short title was given by the Statute Law Revision Act 1948, Sch 2. See, too, the Bill of Rights, s 1; the Act of Settlement 1701, s 2; the Schedule to the Accession Declaration Act 1910 requires the new monarch to state: 'I [*here insert the name of the Sovereign*] do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my powers according to law'.

11 W H Bliss (ed), *Liber Regalis seu Ordo Consecrandi Regem Solum, Ordo Consecrandi Reginam Solam, Rubrica De Regis Exequiis, E Cod. Westmonasteriensi* (London, 1870). A facsimile of the *Liber Regalis* printed by Scholar Select is available on the internet. The original date of the *Liber Regalis* is uncertain but appears to be before 1380: preface, 5. This dating, however, depends upon internal dating alone and 'it is quite possible that it was used at the Coronations of Richard II and of his Queen': introduction, xv.

12 'The Liber Regalis is written in a clear bold hand, on thirty-three leaves of thick vellum. The illuminations, of which there are three that occupy nearly a whole page and one that fronts the

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particular but, rather, to be a copy of a guide transcribed in the fourteenth century for the use of the celebrant or master of ceremonies, with special rubrics applicable to the coronation of monarchs in Westminster Abbey.[13] Indeed, there is some evidence that its origin is even more remote and that it dates at least from some period anterior to the disuse of communion in both kinds.[14]

According to W H Bliss, although the earliest Christian coronation within the limits of what was then Great Britain and Ireland had been generally supposed to be that of Dermot, supreme monarch of Ireland, by his relative Columba,[15] it is 'worth noting that the outward form of consecration in England remained unaltered from the time of Ethelred of Mercia to that of George IV'.[16] He then repeats a theory as to the foundations of the coronation ceremony[17] which (however unacceptable in the present day) may help to explain some of the apparent anomalies in some of the subsequent ceremonies:[18]

> It is this, that the Church is the witness to the contract between the rulers and the subjects; in other words, that religion is the safeguard on one hand for the freedom of the people, on the other for the authority of the chief magistrate. If this view be adopted then follows the corollary which has some interest as touching on the often debated question of what are the three estates of the Realm: and the answer supplied by the above theory is, that they are not King, Lords, and Commons; nor Lords Temporal, Lords Spiritual, and Commons; but 1. Chief Magistrate, or whatever be the name of the supreme temporal power in the Kingdom: 2. Church, intermediate, as witnesses and guardian of rights; 3. Commons, or those governed.

THE CORONATION OATH ACT 1688

Unsurprisingly the coronations of English monarchs until Elizabeth I were conducted in Latin; after that of Elizabeth I all coronations were conducted in English.[19] However, the need for the 1688 Act was made clear in its first

first leaf, with the initial letters and illuminated border of page 1, are of a date not later than 1380': ibid, preface, i. The best surviving example is in the custody of the Dean of Westminster Abbey.

13 It was thus more of an aide-memoire than a directive.

14 Ibid, introduction, xiv.

15 Ibid, iii.

16 Ibid, vi. That is from 675 AD to 1820 AD.

17 Ibid, vi.

18 Ibid, vi-vii.

19 J W Legg (ed), *Three Coronation Orders* (London, 1900), app I, vii and ix. This has now been reprinted by Forgotten Books (2012). For a copy of the oath taken by James II, see app I, 65–66. For further historical details and a different view of the legality of some of the more recent coronation oaths, see G Watt, *The Coronation Oath* (2017) 19 EccLJ 325–341. Both L Leader, *Ecclesiastical Law Handbook* (London, 1997), para 9.9, and M Hill, *Ecclesiastical Law* (4th edn) (Oxford, 2018), para 5.62 point out that for such a special occasion as a coronation the service must be approved in

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section, namely, that until that time the coronation oath had been 'framed in doubtful words':[20]

> Whereas by the Law and Ancient Usage of this Realme the Kings and Queens thereof have taken a Solemne Oath upon the Evangelists at Their respective Coronations to maintaine the Statutes Laws and Customs of the said Realme and all the People and Inhabitants thereof in their Spirituall and Civill Rights and Properties But forasmuch as the Oath itselfe on such Occasion Administred hath heretofore beene framed in doubtfull Words and Expressions with relation to ancient Laws and Constitutions at this time unknowne To the end therefore that One Uniforme Oath may be in all Times to come taken by the Kings and Queens of this Realme and to Them respectively Adminstred at the times of Their and every of Their Coronation.

The oath to be taken by the new monarchs, William and Mary, was set out in section 3;[21] the same oath was also to be taken by all subsequent monarchs 'any law statute or usage to the contrary notwithstanding'.[22]

accordance with the provisions of Canon B4. See, too, note 39. Canon A7 acknowledges that the monarch 'has supreme authority over all persons in all causes, as well ecclesiastical as civil'.

20 Coronation Oath Act 1688, s 1.

21 Section 2 merely clarifies that the oath set out in section 3 was that to be used in the coronation of William and Mary: 'May it please Your Majesties That the Oath herein Mentioned and hereafter Expressed shall and may be Adminstred to their most Excellent Majestyes King William and Queene Mary (whome God long preserve) at the time of Their Coronation in the presence of all Persons that shall be then and there present at the Solemnizeing thereof by the Archbishop of Canterbury or the Archbishop of Yorke or either of them or any other Bishop of this Realme whome the King's Majesty shall thereunto appoint and who shall be hereby thereunto respectively Authorized which Oath followeth and shall be Administred in this Manner . . .'. The provisions of section 3 were considered in *Williamson v Archbishop of Canterbury* (1994, unreported) where Morritt LJ said: 'The references in the Coronation Oath to "the Protestant Reformed Religion established by law" and "the settlement of the Church of England and the doctrine, worship, discipline and government thereof, as by law established in England" evidently refer to such religion, church, doctrine, worship, discipline and government so established from time to time, thereby admitting of changes in accordance with the law by which it is established' (quoted by C George KC in 'The Ecclesiastical Common Law: A Quarter-Century Retrospective' (2012) 14 Ecc LJ 20, at 26. I am grateful to Morag Ellis KC, the present Dean of the Arches and Auditor, for reminding me of this article). See, too, the Act of Settlement 1701 and the Union with Scotland Act 1706.

22 'And the said Oath shall be in like manner Adminstred to every King or Queene who shall Succeede to the Imperiall Crowne of this Realme at their respective Coronations by one of the Archbishops or Bishops of this Realme of England for the time being to be thereunto appointed by such King or Queene respectively and in the Presence of all Persons that shall be Attending Assisting or otherwise present at such their respective Coronations Any Law Statute or Usage to the contrary notwithstanding.' For a copy of the oath taken by James II, see Legg (note 19), app I, 65–66. This oath specifically asked if the King was prepared to take the oath 'usually taken by Your Predecessors'. For another copy of the oath taken by William and Mary, see Legg (note 19), 19–20. Every monarch 'must make, subscribe and repeat, sitting on the throne in the House of Lords, either on the first day of the meeting of the first Parliament after the accession, or at the coronation, whichever shall first happen, a declaration that he or she is a faithful protestant, and will, according to the true intent of the enactments which secure the protestant succession to the throne, uphold and maintain those enactments to the best of his or her powers

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The Arch-Bishop or Bishop shall say,
Will You solemnely Promise and Sweare to Governe *the People of this Kingdome of England and the Dominions thereto belonging according to the Statutes in Parlyament Agreed on and the Laws and Customs of the same?*[23]

The King and Queene shall say,
I solemnly Promise soe to doe.

Arch Bishop or Bishop,

Will You to Your power cause Law and Justice in Mercy to be Executed in all Your Judgements.

King and Queene,

I will.

Arch Bishop or Bishop.

Will You to the utmost of Your power Maintaine the Laws of God the true Profession of the Gospell and *the Protestant Reformed Religion Established by Law?* And *will You Preserve unto the Bishops and Clergy of this Realme* and to the Churches committed to their Charge all such Rights and Priviledges as by Law doe or shall appertaine unto them or any of them.[24]

King and Queene

All this I Promise to doe.[25]

according to law': Bill of Rights 1688, s 1; Act of Settlement 1701, s 2; Accession Declaration Act 1910, s 1. The latter provision also states that the declaration must be 'made, subscribed, and audibly repeated' by the monarch. The declaration was made by King Charles III on 9 September 2022.

23 The words in italics were modified at the coronation of the late Queen Elizabeth II in order to reflect the territories then held by the Crown; this was in accordance with the Accession Declaration Act 1910. The oath also necessarily reflected that the oath was to be taken by a single monarch and to be administered by the Archbishop. See further below.

24 At the last coronation, these words were altered but nonetheless reflected the content of the original. The words used were: 'Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel. Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?': *Coronation of Her Majesty Queen Elizabeth II The Form and Order of Service and the Music Sung in the Abbey Church of St Peter, Westminster, 2 June 1953* (London, 1953) 14.

25 At the coronation of Queen Elizabeth II the words 'All this I promise to do' were inserted before the final sentence. *Halsbury's Laws* (5th edn) (London, 2011), vol 34, para 810, note 4 says: 'The oath

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> After this the King and Queene laying His and Her Hand upon the Holy Gospells, shall say,
>
> King and Queene
>
> The things which I have here before promised I will performe and Keepe Soe help me God.
>
> Then the King and Queene shall kisse the Booke.

Unsurprisingly, as the 1688 Act had not been amended by the time of the coronation of Queen Victoria, the section forbidding any changes from the text then set out, caused difficulties. So few copies of the Queen's coronation service were published that Sir Robert Phillimore felt it desirable to set it at 'at some length'[26] in his book *The Ecclesiastical Law of the Church of England*:

> Madam, Is Your Majesty willing to take the Oath?
>
> *And the Queen answering*, I am willing.
>
> *The Archbishop ministereth these questions; and the Queen, having a copy of the printed Form and Order of the Coronation Service in Her Hands,*[27] *answers each Question severally as follows:*
>
> *Archb*. Will you solemnly promise and swear to govern the People of this United Kingdom of *Great Britain* and *Ireland*, and the Dominions thereunto belonging, according to the Statutes in Parliament agreed on, and the respective Laws and Customs of the Same?
>
> *Queen*. I promise so to do.
>
> *Archb*. Will you to your power cause Law and Justice in Mercy, to be executed in all your Judgments?

appears to have come first originally, because, presumably, the people would not have confirmed the election of the monarch had he not promised to govern according to law'.

26 R Phillimore, *The Ecclesiastical Law of the Church of England* (London, 1873), vol I, 1054, note (a); in the 1895 edition Sir Walter Phillimore, vol I, 813, note (a) replicates the first edition verbatim. Immediately before the oath itself is set out the document states: 'The sermon having ended, and Her Majesty having on Monday, the 20th Day of November, 1837, in the presence of the Two Houses of Parliament made and signed the Declaration, the Archbishop goes to the Queen, and standing before Her, says to the Queen . . .'. In the passage set out below, the italicisation and capitals are repeated as in the original. For references to the forms of service at the coronations between 1661 and 1821; see Bliss (note 11), app V, 55–56; Legg (note 19), 10, apps I, VIII and X.

27 It seems that the precise form of answers was regarded as so important that the Queen's memory could not be relied upon.

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Queen. I will.

Archb. Will you to the utmost of your Power maintain the Laws of GOD, the true Profession of the Gospel, and the Protestant Reformed Religion established by Law?[28] And will you maintain and preserve inviolably the Settlement of the United Church of *England* and *Ireland*, and the Doctrine, Worship, Discipline, and Government thereof, as by Law established within *England* and *Ireland* and the Territories thereunto belonging? And will you preserve unto the Bishops and Clergy of *England* and *Ireland*, and to the Churches thereto committed to their Charge, all such Rights and Privileges, as by Law do, or shall appertain to them, or any of Them?

Queen. All this I promise to do.

The Queen arising out of Her Chair, attended by Her supporters, and assisted by the Lord Great Chamberlain, the Sword of State being carried before Her, shall go the altar, and there make Her Solemn Oath in the sight of all the People, to observe the Premises: Laying Her right hand upon the Holy Gospel in the Great Bible,[29] *which was to be carried in the Procession, and is now brought from the altar by the Archbishop, and tendered to Her as She kneels upon the steps, saying these words:*

The things which I have before promised, I will perform, and keep. So help me GOD.[30]

The Queen kisseth the Book and signeth the Oath.[31]

As will become apparent the precise wording of the coronation oath is of great importance. As Graeme Watt pointed out in an article published in this *Journal* in 2017,[32] over the years there have been a number of alterations to the form of oath taken by various monarchs without express amendment to the 1688 Act; nevertheless, at least until the coronation of George VI, some

28 The reason for this alteration to the set wording appears to be in order to take into consideration the religious feelings of those in Scotland, Wales and Northern Ireland. See, generally, J L Weatherhead (ed), *The Constitution and Laws of the Church of Scotland* (Edinburgh, 1997); C A H Green, *The Constitution of the Church in Wales* (London, 1937); N Doe, *The Law in the Church of Wales* (Cardiff, 2002); N Doe (ed), *Essays in Canon Law* (Cardiff, 1992); N Doe (ed), *A New History of the Church in Wales* (Cambridge, 2002); P M H Bell, *Disestablishment in Ireland and Wales* (London, 1969).

29 A marginal note at this point states: 'The Bible to be brought'. The marginal note is repeated as a marginal note in R Phillimore (note 26), 1060.

30 *Halsbury's Laws* (5th edn) (London, 2011), vol 34, para 810, note 3 states: 'The ceremony represents the old elective principle, '*Non a regnando dicitur, sed a bene regnando et ad hoc electus est*'. [It is said that not by ruling but by ruling well, he was chosen for this'].

31 A further marginal note states: 'And a Silver Standish' (a standish is a stand for holding pens, ink, and other writing equipment: see the online *Oxford Dictionary of English*) This marginal note is also repeated in R Phillimore (note 26), 1060.

32 Watt (note 19), 326ff.

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statutory authority could be produced for each variation.[33] In spite of this, the then Prime Minister, Winston Churchill, expressed the view in 1953 that none of the changes since 1688 had legislative sanction. His justification for there being no legislative changes was, in part at least, that:[34]

> To accept the view that changes in the terms of the Oath which are necessary to reconcile it with a changed constitutional position cannot be made without the authority of an Act of Parliament would be to cast doubt upon the validity of the Oath administered to every Sovereign of this country since George I.

Graeme Watt summarised the position as follows:[35]

> The politician's response was that it would be dangerous, indeed impossible, to conclude that invalid oaths had been taken in the past. The law, however, will not permit recourse to such expediency.

THE CHALLENGE IN *BALL v THE QUEEN*

Before returning to the coronation of Elizabeth II, it is instructive to turn to the unusual case of *Ball v The Queen*.[36] The facts of the case are repeated from the judgment of Aldous LJ:[37]

33 Ibid, 328. The only authority cited for two alterations in the coronation oath taken by George VI was 'previous practice': see HC Deb 17 March 1937, vol. 321, col 2098W, Ramsey McDonald in his capacity as Lord President of the Council.

34 HC Deb 25 February 1953, vol 511, cols 2091–2092. I am indebted to Graeme Watt for all of these references. However, for the implied repeal of a constitutional statute, see *Thorburn v Sunderland CC* [2003] QB 151.

35 G Watt (note 19) 333. Fortunately, as Aldous LJ pointed out in an unreported judgment in *Ball v The Queen* (2000) [2000] Lexis Citation 3299, there are perfectly adequate legal reasons for upholding the legality of previous coronations (see below). I am indebted to Graeme Watt for a copy of the transcript.

36 *Ball v The Queen* [2000] Lexis Citation 3299. The case was an appeal against the judgment of Jonathan Parker J dismissing an appeal from an order of the District Judge striking out the claim. In dismissing the original appeal Jonathan Parker J had pointed out (see paragraph 6 of Aldous LJ's judgment) that Mr Ball 'did not seek any private remedy against the Crown, which in any case would be unacceptable as the Crown was not personally liable in civil matters; the relief that he sought was declaratory of his personal public rights.' Indeed, it is difficult to envisage any circumstance in which a private individual could found any civil action based on a failure properly to take, or administer (see the 1688 Act, s 4), the coronation oath; similarly, it is difficult to envisage a criminal case similarly founded and, even if there were, the Director of Public Prosecutions would be entitled to take over any prosecution and to offer no evidence if that course were thought advisable (partially, at least, a political decision): Prosecution of Offences Act 1985, s 6 (2). Similarly, it is difficult to envisage such an action being brought by a public body in such circumstances. Jonathan Parker J also decided that Mr Ball's action was an abuse of the court as he 'was seeking to use the Civil Justice System for a collateral purpose; namely for the purpose of resurrecting and publicising a piece of historical theory': Aldous LJ's judgment at para 7. See rule 3.4 (2)(b) of the Civil Procedure Rules: the court may strike out a statement of case if it appears to the court that 'the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings.' Questions of abuse are, of course, necessarily fact specific.

37 *Ball v The Queen* [2000] Lexis Citation 3299, paras 2–3.

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[2] Over at least the past five years Mr Ball has taken a keen interest in the life of George III. He tells me that he is in the process of completing a book about him. It seems that he has come to the conclusion that one Hannah Lightfoot, born on 12 October 1730, married George III before he married Princess Charlotte. From the pedigree of the Lightfoot family, it seems that she married Isaac Axford at Keith' chapel, Mayfair on 11 December 1753. However, Mr Ball believes that her marriage to George III did take place before the marriage of George III to Princess Charlotte. Upon that belief, Mr Ball contends that the marriage of George III to Princess Charlotte was bigamous and therefore void. Mr Ball contends that the monarchs that have reigned over the United Kingdom since George III have not been entitled to do so having regard to the Act of Settlement of 1701.

[3] It appears that Mr Ball has been active in putting forward his views. That is his privilege; and that is no concern of this court. I am concerned with the legal action that he started in the Weymouth District Registry. In his claim he sought:

> "The court is asked to declare that King George III, who held himself above the law, did commit bigamy and marry Hannah Lightfoot, before his Royal marriage to Princess Charlotte. The Crown has misled the nation.
>
> The court is asked to put this matter before a jury and order further investigation, since, by implication, Princess Charlotte of Wales is not the lawful heir to the throne.
>
> If the case against the lineage of the Crown is found, the remedy/relief shall be that Prince Charles may not be crowned King of England and that the wealth bequeathed to the Crown by King George III, plus interest, be awarded to the nation."

Aldous LJ then went on to briefly consider the submissions made by Mr Ball. Having dismissed the argument that the district judge should have recused himself from hearing the claim in court as well as on paper, he dismissed two further arguments that (a) Mr Ball's interest was a personal, rather than a public, one; and (b) that he had lost a right to work. Neither of the latter two arguments had merit particularly as there was a lack of evidence to support them. Moreover, Mr Ball's claim was both vexatious and an abuse of process because, to adjudicate on it, it would be necessary to decide whether a marriage in the eighteenth century was bigamous. Finally, Aldous LJ based his decision on four more constitutional arguments: (i) it is doubtful whether the reigning monarch, once crowned and proclaimed, can be disposed of by one

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of her judges;[38] (ii) the Crown descends according to its hereditary and descendable qualities at common law, subject to certain statutory provisions and the Queen had been 'accepted by Parliament, and by the nation, as the rightful person to inherit the Crown as at the date of her coronation'; (iii) on the death of the reigning monarch the Crown vests immediately in the person entitled to succeed and no objection was made at the time to the consequent proclamation; and (iv) 'the coronation is the solemn recognition on the part of the nation that regal authority is vested in the monarch and, on the part of the monarch, solemn recognition of fundamental rights. That being so, it is no longer open to challenge the authority vested in the monarch when crowned.'[39]

POSSIBLE GROUNDS UPON WHICH THE VALIDITY OF THE CORONATION MAY BE CHALLENGED?

The question nonetheless remains whether there might be other grounds on which the validity of the coronation oath may be challenged. These might arise either accidentally or intentionally. For example, just as the declaration on accession must be 'made, subscribed, and audibly repeated' by the monarch, it seems inherent to the taking of the coronation oath that it should equally be made audibly.[40] It would seem, too, that the oath as taken should be comprehensible.[41] However, if there should be a medical emergency falling short of one bringing the service to a halt,[42] but nevertheless affecting the

38 Paragraph 21 of the judgment. Aldous LJ stated that '. . . this is a point to which Mr Ball referred' but unfortunately does not expand on the reasons for his conclusion.

39 Consideration of these constitutional arguments is not within the scope of this article. Whilst an archbishop may well be informed of the proposed content of a forthcoming coronation service and, indeed, have agreed to those contents, the archbishop still remains bound by the ecclesiastical law under which no Anglican minister may lawfully use a form of service unless authorised by Canon B1, paras 1 and 2: 'Every minister shall use only the forms of service authorised by this Canon, except so far as he may exercise the discretion permitted by Canon B5.' Such a 'form of service' is defined by Canon B1, paras 1 and 3; a coronation service cannot be authorised by royal warrant (see Canon B1, paragraph 1(c)). However, the coronation service can be authorised by the archbishop pursuant to Canon B4, para 2; even if the archbishop does not issue an express authorisation, such an authorisation would doubtless be implied by its actual use. Not only must the archbishop ensure that the form of service 'in both words and order are reverent and seemly' but also that the form of service is 'neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter': Canon B4, para 2. (For an example of such a unilateral omission by an archbishop from an authorised service, see R D H Bursell, *Liturgy, Order and the Law* (Oxford, 1996), 57, note 183.) Any deviation from the terms of the coronation oath itself would be unlikely to raise any question of doctrine.

40 Note the words of the 1688 Act: 'in the presence of all persons that shall be attending assisting or otherwise present at such their respective coronations'. Although it may be doubted that each and everyone needs to be able to hear (for example, those who are deaf or those on the margins of the congregation), in these days of microphones and of media broadcasting it is virtually impossible to envisage a challenge on this ground.

41 It is well known that George VI suffered from a bad congenital stutter but that did not prevent his taking the oath.

42 If there is a total incapacity due to illness the provisions of the Regency Acts 1937 to 1953 apply.

https://doi.org/10.1017/S0956618X23000017 Published online by Cambridge University Press

speech of the monarch,[43] a problem might occur. In such an unfortunate case the questions of audibility and comprehensibility would be likely to depend on matters of fact and degree. Nonetheless, if those in charge of the service[44] felt that the service could safely proceed, their opinion would be likely to prevail. However, how would this cohere with the provisions of the 1688 Act?

> And the said oath shall be in like manner administered to every king or queen who shall succeed to the Imperial Crown of this Realm at their respective coronations by one of the archbishops or bishops of this realm of England for the time being to be thereunto appointed by such king or queen respectively and in the presence of all persons that shall be attending assisting or otherwise present at such their respective coronations *any law statute or usage to the contrary notwithstanding*.[45]

In addition, as has been seen, at her coronation Queen Victoria took the oath 'having a copy of the printed form and order of the coronation service in her hands' and from this it would seem that the precise form of answers was regarded as so important that the Queen's memory could not be relied upon. Nevertheless, as *Bennion* notes:[46]

> Unless the contrary intention appears, an enactment by implication imports the principle in the maxim *de minimis non curat lex* (the law does not concern itself with trifling matters).

Although it may be argued from the wording of the 1688 Act itself that there can no such a contrary intention, it may nevertheless equally be argued that the maxim remains necessary to make the 1688 Act workable in practice.[47] These arguments are equally applicable when considering any deviation from the set service from the point of view of the archbishops.[48] At the end of the day any

43 For example, due to an incipient stroke.
44 This would include both the archbishops and the Duke of Norfolk. It is also inconceivable that there would not be competent doctors and others with medical knowledge in attendance, if only in the congregation.
45 Emphasis added. See, too, note 24 above.
46 D Feldman et al, *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn) (London, 2020), §9.4.
47 For an example of the application of the principle within ecclesiastical law, see *St Mary, White Waltham* (2009) 12 Ecc LJ 122, where Chancellor Bursell QC (as he then was) said: 'Any priest or sexton is only too aware that the digging of graves in old churchyards human remains may be, *and frequently are*, inadvertently disturbed. In such cases no order of exhumation is obtained and what occurs is in my view embraced within the legal principle that the law is not concerned with very minor matters.' [emphasis added]. See, further *Halsbury's Laws* (5th edn) (London, 2011), vol 34, para 6, note 15; *Re St Michael and All Angels, Tettenhall Regis* [1996] Fam 44 at 49F-G and Q; and Bursell (note 39), 35–38.
48 See note 17 above.

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question regarding deviation is likely to be one of fact and degree while bearing in mind the whole context of the coronation service and the statutory provisions.

One way of testing this is to apply the logical tool of *reduction ad absurdum*. There can be no doubt that the odd slip in wording (perhaps due to nervousness) should be ignored, at least if that slip does not affect the actual meaning of the oath. Equally, if two sentences were to be inverted, there should again be no possibility of a challenge to the validity of the oath unless it could be demonstrated that the inversion affects its meaning. In these circumstances a court would be likely to dismiss any consequent claim on the basis of its being an abuse of process in any event. However, if the *de minimis* provisions are indeed applicable, then there has been no breach of the law and the court would be entitled to strike out a claim as an abuse of process.[49] With this in mind, it is worth considering what occurred at the last coronation and the changes then made in the service:[50]

1. Apart from an (inconsequential) alteration to the wording of a direction (or rubric) immediately before the questions asked by the archbishop,[51] the first alteration to the wording required by the 1688 Act was in answer to the first question addressed to the Queen,[52] namely:

> Will you solemnly promise and swear to govern the Peoples of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, Pakistan and Ceylon, and of your Possessions and other Territories to any of them belonging or pertaining, according to their respective laws and customs?

There has been no legislative provision for alteration of the coronation oath by reason of a change to those governed by the monarch but it is obvious that it becomes necessary if there has been any change to that jurisdiction. Although in one sense this was a large amendment, it was nonetheless of no great consequence within the wider scope of the coronation and without any prior

49 In such circumstances rule 3.4(2)(b) of the Civil Procedure Rules apply: see note 36 above. At the coronation of Queen Elizabeth II the spellings used in the form of service unsurprisingly differed from those used in the 1688 Act. However, this could not raise the question of *de minimis* as the form of service prescribed by the Act requires that the oath is spoken and audible; it is therefore the spoken word, not the printed form, that is in question. However, if the *de minimis* principle does apply to the 1688 Act, the alterations to the original form of service set out in note 23 above would seem (at least in part) to fall within it.

50 *Coronation of Her Majesty Queen Elizabeth II* (note 24), 13–15.

51 cf. R Phillimore (note 26), vol I, 1060 and ibid at 14.

52 See the provisions of the Interpretation Act 1978, s 10: 'In any Act a reference to the sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being' (see, too, s 6). See, also, the Succession to the Crown Act 2013.

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objection apparently being made by those countries actually embraced by the alteration.[53] In these circumstances, any later challenge in the courts would no doubt be dismissed as frivolous or vexatious, even if the scope of the change might exclude it from the *de minimis* principle.

2. The same may be said in relation to the changes made to the second question asked of the Queen: in essence the question is no different from that previously of monarchs other than to reduce its ambit to England:

> Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?

These alterations were necessary by reason of the Welsh Church Act 1914, the Church in Scotland Act 1921 and the Republic of Ireland Act 1948, as well as to take into consideration the religious feelings of those within both Wales and Northern Ireland. In these circumstances a court would, of necessity, dismiss any claim argued solely on the basis of an alteration to the 1688 Act as both frivolous and vexatious.

CONCLUSION

By the time of the accession of King Charles III, no attempt had been made to alter the sovereign's title, Defender of the Faith, but this does not mean that such an attempt will not be made in the future. If it were, the effects would be far reaching, especially in relation to the Church of England. Although such a change would not directly affect the Church of England's relationship with the sovereign as having 'supreme authority over all persons in all causes, as well ecclesiastical as civil',[54] as has already been noted it would raise constitutional questions including the disestablishment of the Church of England.

Similarly, at the time of writing there has been no indication of any changes to be made to the coronation oath. Nonetheless, it seems likely that similar changes will be made as were made at previous coronations. This raises questions both as

53 Doubtless there would have been diplomatic exchanges with all those involved.
54 See Canon A7.

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to justiciability by the courts (both civil and ecclesiastical)[55] but also as to the breadth of challenges that might thereby arise. In this regard it seems that the courts possess sufficient jurisdiction both to entertain any such cases but also to adequately dispose of them, as occurred in the most unusual case of *Ball v The Queen*.[56]

55 Proceedings against an Anglican minister (including an archbishop) could be brought under the Clergy Discipline Measure 2003 or, if the proceedings relate to a matter involving 'doctrine, ritual or ceremonial', under the Ecclesiastical Jurisdiction Measure 1963.

56 The clergy, however, are concerned with any unauthorised deviations from the authorised service (see Canon B4, para 3, and note 39 above) rather than with the provisions of the 1688 Act.

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