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**Churchwardens' Manual:**  
***THEIR DUTIES,***  
***POWERS, RIGHTS, AND PRIVILEGES.***

p. i

BY  
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*Bishop of Guildford and Archdeacon of Winchester.*

Third Edition.

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**PREFACE TO THE SECOND EDITION.**

p. iii

The fact that a Second Edition of this Manual has been called for within a few months of its first publication, shows, I think, that it has met a want which was previously felt by Clergy and Churchwardens. The whole of the Manual has been revised, and additions made with special reference to the Burial Laws, the position of District Churches as regards the Mother Church, and the conveyance of land or buildings to trustees for mission or other purposes, which it is hoped will add to its value.

G. H. G.

THE CLOSE,  
WINCHESTER.

*October, 1890.*

**PREFACE TO THE THIRD EDITION.**

p. iv

Additions have been made to the present Edition, especially with reference to the changes which the Local Government Act, 1894, has made as to the duties of Churchwardens. It is hoped that these additions may be found useful. I once more express the hope that this Manual may be found increasingly helpful in the hands of the Churchwardens in the carrying out of their very responsible duties as officers of the Church.

G. H. G.

THE CLOSE,  
WINCHESTER,  
1897.

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## The Duties of Churchwardens.

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I am so constantly asked in the course of my inspection of the Churches in the Archdeaconry of Winchester what are the duties and responsibilities of Churchwardens, that I have thought it might be useful to publish the following remarks, which were in substance delivered in my charge to the Clergy and Churchwardens of the Archdeaconry of Winchester in the Spring of 1889. Many requests were then made to me that I would publish my charge as a manual for Churchwardens, and it is in consequence of those requests that this publication has been put forth.

Let me first refer to the origin of the office. The name appears in connection with the ecclesiastical history of the fourth century. St. Augustine refers to certain officers in the Church called *seniores Ecclesiastici*. These officers were not ordained persons, but yet had some concern in the care of the Church. They were entrusted with the treasure and management of the outward affairs of the Church. These persons may be looked upon as the ecclesiastical ancestors of our present race of Churchwardens. [2] In Lyndwood's *Provinciale* there are allusions in some of the Provincial Constitutions of the fourteenth and fifteenth Centuries which seem to point to officers in connection with the Church corresponding to our present Churchwardens. It is not, however, until after the Reformation that we find their duties distinctly defined in successive Canons, as in 1571 (Cardwell's *Synodalia*, I, 122), in 1597 (Cardwell's *Synodalia*, I, 160), and in our own Canons of 1603.

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It is not desirable on the present occasion to trace the variations in the duties of Churchwardens through successive centuries. Each age has, of course, its own special features, and may require different treatment to its predecessor, but there is no doubt whatever as to the fact that ever since the Reformation Churchwardens have been recognised as officers of the Church, with their position and duties distinctly defined both by canon and statute law. Before particularising their duties I must point out what is the law as to their election.

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Who, then are qualified to be Churchwardens?

Aliens, Roman Catholics, Jews, children under ten years of age, and persons who have been convicted of felony are absolutely disqualified.

The following cannot be compelled to serve the office if they personally object to do so:

Peers, Sheriffs, Clergymen, Members of the House of Commons, Magistrates, Barristers and Solicitors, Physicians and Surgeons, Dissenting Ministers, Officers in the Navy or Army on full pay, men in the Militia or Army Reserve, Registrars of Births, Deaths, and Marriages, Officials of the Customs, Excise, or Post Office, and those already acting as Churchwardens elsewhere.

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With these exceptions the law of the land is that, if a householder dwelling in the parish be legally elected to the office, he must serve as Churchwarden. In old parishes dissenters, if elected, may appoint a deputy to be approved of by the Vestry. [4] But in parishes formed under the Acts 1 and 2, Will. IV, c. 38, sec. 16; 6 and 7 Vict., c. 37, sec. 17; or 19 and 20 Vict., c. 104, which re-enacts 6 and 7 Vict., c. 37, sec. 17, with reference to this point, it is expressly enacted that Churchwardens must be Churchmen. Churchwardens ought to be elected in new parishes twenty-one days after the consecration of the Church thereof.

Females, although there has been no legal decision authorising their appointment, are occasionally, if otherwise eligible, appointed to serve the office, but it is not likely that the Courts, if called upon, would be so ungallant as to compel a female householder, if elected, to serve against her will.

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In my own Archdeaconry there are several ladies who have been elected Churchwardens, and they do their duty right well.

A Churchwarden must be resident in the parish for which he is elected to serve. The contrary has been held to be the law for some years past, but a decision of the Court of Queen's Bench, reported in the *Times* of Nov. 20th, 1889, decides absolutely that both in new and old parishes none but residents are qualified to serve as Churchwardens. [5]

With reference to this point, the following memorandum has been issued for use in the diocese of Rochester by Chancellor Dibden:—

It is desirable, wherever practicable, to be careful that the persons chosen "live" in the

parish. It sometimes happens, however, that it is difficult to find suitable persons inside, and the parish wish to appoint an outsider. This should never be done if objection is raised even by a single parishioner, because the appointment is technically faulty, and could be set aside on *mandamus* on the application of even one individual. If, however, the parish vestry are unanimous, and the appointment is desirable in other respects, no harm will ensue from the fact that the chosen churchwarden is technically ineligible. Unless and until his position is challenged, as by a *mandamus*, he will have the same powers and rights as any other Churchwarden. For the election of a disqualified person as Churchwarden is not absolutely ineffective, but the person so elected, when once admitted, can do all lawful acts belonging to the office until he has been displaced.

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The 90th canon of 1603 (which is the date of the setting forth of the existing code of canons) directs that "the choice of . . . Churchwardens, or Questmen, Sidesmen, or Assistants, shall be yearly made in Easter week." An election at any other time is valid in law. [6]

It is supposed that the Churchwardens were called Questmen or Searchers from the fact that they were empowered and instructed to search for cases of heresy, or open sin, in their several parishes, and report them to their Ecclesiastical Superiors.

Two derivations are given of the title of Sidesmen. Some suppose that they are so called because they are elected as assistants to the Churchwardens to stand by their side; other suppose the word to be an abbreviation of Synodsmen, because in ancient times the Bishops summoned certain persons of credit from the various parishes in order to testify as to the morals of the clergy and people. These witnesses were called Testes Synodales, and hence some suppose the title of Sidesmen, or Synodsmen, to have taken its origin. Of late years in populous towns Sidesmen have often been elected, and are found to be of great help in assisting the Churchwardens in the execution of their duties.

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The Vestry at which the Churchwardens and Sidesmen (if any) are to be elected must be duly summoned. The notice summoning the Vestry must be signed either by the Incumbent, the Curate, one Churchwarden, or one Overseer of the poor. [7]

It is obviously advisable that the signatures of the Incumbent and of both Churchwardens should be attached to the notice of the Easter Vestry. This notice specifying the particular business to be transacted must be affixed on a Sunday, three clear days before the holding of the meetings, at or near the principal door of all the Churches and Chapels in the parish. [8a] The Incumbent of the parish is by law the ex-officio Chairman of the Vestry. [8b] In his absence the ratepayers present must elect a Chairman for the occasion. The Curate does not necessarily take his place as Chairman, unless elected to do so by the Vestry. The usual custom in parishes is for the Incumbent to nominate one Churchwarden and the parishioners the other. Sometimes the parishioners elect both. The canon [8c] indeed seems to point out the election of both Churchwardens by the joint consent of the Minister and the parishioners as the normal mode of action, and the nomination by the Incumbent of one and of the parishioners of another as only to be resorted to when they cannot arrive at a common agreement. But custom goes for a long way in this matter, and the usual course is certainly for the Incumbent to nominate one and the parishioners the other. In the absence of the Incumbent the Curate has the same right to nominate one Churchwarden as the Incumbent if present would have. [9a]

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In whatever manner the election may be carried out, the two Churchwardens subsequently stand on an absolute equality. The Incumbent's Churchwarden is not elected to look after the Incumbent's interests only, nor the parishioners' Churchwarden to look after the parishioners' interests only. The interests of both must be equally dear to the one and to the other. Nor can they act except jointly. The Vestry even is powerless to clothe one Churchwarden with authority to act against the will of his colleague in office. [9b] Any election by the parishioners must take place in the usual manner. Ratepayers present, whether paying directly or indirectly (32 and 33 Vic., c. 41, § 19), have a right to vote, and if a poll is demanded it cannot be refused by the Chairman. The votes must be taken in accordance with the provisions of the Vestry Acts, 58 Geo. III, cap. 69, sec. 2, 3, 4, and 59 Geo. III, cap. 85. If the votes are equal the Chairman has by right a casting vote, in addition to whatever number of votes he may have as an individual ratepayer. By 58 Geo. III, cap. 69, sec. 3, it is ordered that minutes of the proceedings shall be written out before the close of the Vestry, and after having been read be signed by the Chairman and any of the members present who may like to do so. [10a]

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In some new parishes there are select Vestries, but by the 14 and 15 Vict., cap. 97, sec. 23, in parishes formed under any Church Building Acts before 1851 they are abolished, and it was enacted that after that date no select Vestry should be formed. [10b]

The Churchwardens thus duly appointed must make the following declaration before the "ordinary, or other person" qualified to receive it:—

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"We do solemnly and sincerely declare that we will faithfully and diligently perform the duties of the Office of Churchwardens, to the best of our skill and understanding, and that we will present such persons and things as to our knowledge are presentable by the Ecclesiastical Laws of this Realm."

This declaration ought to be made at the visitation of the Bishop, Chancellor, or Archdeacon next ensuing upon the election. Until this declaration is made the Churchwarden is not legally qualified to act, and could not enforce his authority as Churchwarden if objected to. In case of the death of the Incumbent the parish would have no legal representative to act as the custodian of the temporalities of the Church in that particular parish. The fee payable by law at visitations is eighteen shillings (30 and 31 Vict., cap. 135). [11]

If there is a dispute as to whether a Churchwarden is legally elected or not, it is sometimes supposed that it is the Archdeacon's business at his visitation to decide the question. Of course Archdeacons are at all times ready, willing, and anxious to advise any persons who apply to them for advice to the best of their power. But it is no part of their duty, nor are they by law authorised to decide a disputed return. Their duty is simply that of returning officers to declare the election as certified to them by the Vestry. A copy of the minutes of the Vestry, in case of a dispute, should be laid before them, and the aggrieved party can, if he wishes to do so, apply for a mandamus commanding the Rector and Churchwardens to convene a Vestry to make a fresh election. It is for the court to grant or to refuse the application. I hope I may not be understood as recommending this course. I am merely stating what the law is. [12] But all these matters should, if possible, be settled out of court. Law-suits are apt to leave an unpleasant taste behind. If such a case should unhappily arise it might be advisable for the Archdeacon to suggest to the parties that they should agree to submit to his decision of the disputed question, and waive their right of appeal to a Court of Common Law. If this were agreed to the case might be amicably settled at once without resource being had to any external litigation.

If a Churchwarden duly elected ceases in the course of the year to reside in the parish he does not *ipso facto* vacate the office, though it is a good reason for resignation and the appointment of another in his place. [13]

The Churchwardens being thus duly elected, and having made the legal declaration at the visitation, continue in office until their successors are elected, and have in their turn made the said declaration.

What, then, are their duties?

The Local Government Act, 1894, has in many ways affected them.

Churchwardens in rural parishes are no longer *ex-officio* Overseers of the Poor. [14] An additional number of Overseers may be appointed to replace the Churchwardens, and reference in any Act to the Churchwardens and Overseers, shall, as respects any rural parish (except so far as those references relate to the affairs of the Church), be construed as references to the Overseers, and the legal interest in all property vested either in the Overseer of a rural parish (other than a property connected with the affairs of the Church, or held for an Ecclesiastical Charity), shall, if there is a Parish Council, vest in that Council.—V. 2, (a), (b), (c).

The Poor Relief Act, 1819, *i.e.*, 59 Geo. III, cap. 12, enabled Churchwardens and Overseers of a parish to acquire lands, &c., and they were made a Corporation for that special purpose alone, and for the specific purposes mentioned in the Act. Such lands, as regards rural parishes having a Parish Council, now come under the management of the Parish Council.

The Churchwardens of every rural parish are now only concerned as Churchwardens with the affairs of the Church. What changes then, it will be asked, are made with regard to Vestries?

Speaking generally as to rural parishes, the powers, duties, and liabilities of the Vestry except (i) so far as relates to the affairs of the Church or to Ecclesiastical Charities, or (ii) any power, duty, or liability, transferred by this Act from the Vestry to any other authority are transferred to the Parish Council.—6, a, 1, 2.

One word with regard to the expression, Ecclesiastical Charities. These words include a charity, the endowment whereof is held for some one or more of the following purposes:—

- (a.) Any spiritual purpose which is a legal purpose, or,
- (b.) For the benefit of any spiritual person, or ecclesiastical person as such, or
- (c.) For use, if a building, as a church, chapel, mission room, Sunday School, or otherwise by any particular church or denomination, or
- (d.) For the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of Divine service therein, or,
- (e.) Otherwise for the benefit of any particular church or denomination, or of any members thereof as such (Sec. 75, i).

Any endowment of a charity other than a building held in part only for some of the purposes aforesaid, will be dealt with by the Charity Commissioners on the application of any person interested.

The expression, Ecclesiastical Charity, includes any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act, mainly by or at the cost of members of any particular church or denomination.

The expression, affairs of the church, includes the distribution of offertories or other collections made in any church (sec. 75).

It may be well to add that the expression Parochial Charity, when used in the Act, means a charity the benefits of which are, or the separate distribution of the benefits of which is, confined to the inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes. (*Ibid.*) p. 17

These also come under the management of the Parish Council.

The provision of parish books and of a vestry room or parochial office, parish chest, and the holding or management of parish property not being property relating to affairs of the Church or held for an Ecclesiastical charity, are also in rural parishes transferred to the Parish Council.

The custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the Church or to Ecclesiastical charities, except documents directed by law to be kept with the public books, writings, and papers of the parish, remains as provided by law before the passing of the Local Government Act, *i.e.*, in the hands of the incumbent.

The Parish Council have a right to reasonable access to all such books and documents referred to above, and the incumbent and Churchwardens have a similar right with respect to books, etc., in the custody of the Parish Council (xvii, 8). p. 18

There is one matter connected with the particular section of the Local Government Act, 1894, now under consideration, which has given rise to some discussion. In whose custody should the Tithe Map and Award be placed? Should the Incumbent or the Parish Council have the charge of them? Now, I am no lawyer, and I should be very sorry to be supposed to give any opinion on a question which admits of so much argument on both sides. But I do very strongly deprecate any litigation on the matter. It is a very doubtful point, and he who takes the question into a Court of Law must at any rate be prepared to have to back up his opinion with a well-filled purse. The final paragraph of Section 17, Sub-section 8, almost seems as if the draughtsman of the act expected questions to arise under it. It runs thus:—"The Incumbent and Churchwardens on the one part, and the Parish Council on the other, shall have reasonable access to all such books documents, writings, and papers, as are referred to in this Sub-section, and any differences as to custody or access shall be determined by the County Council." Is it not just a case in which, if there is no cause for complaint, and no reasonable access refused, these documents should remain in their existing custody (usually that of the Incumbent), and that if differences arise, an amicable appeal should be made to the County Council, and the decision of that body acquiesced in by both parties? p. 19

This is evidently the opinion of the President of the Board of Agriculture (Mr. Chaplin), who on February 8th, 1897, in the House of Commons, replied as follows to a question on this subject:—

I am aware that questions have arisen with regard to the custody of documents under Sub-section 8 of Section 17 of the Local Government Act, 1894. The Act contemplated that this would be the case, and has provided that any questions as to such custody shall be determined by the County Council. The Local Government Board have no jurisdiction to determine questions as regards the Tithe Map, and it has been their practice to inform Parish Councils to this effect. I am advised that Tithe Maps are under the Tithe Commutation Act, 1836, to be kept "with the public books, writings, and papers of the parish," and the Sub-section to which I have referred requires therefore that they shall either remain in their existing custody or be deposited in such custody as the Parish Council may direct. p. 20

It may be well to mention here that when there is in a rural parish an existing Vestry Clerk appointed under the Trustees Act, 1850, he shall become the Clerk of the Parish Council, holding office by the same tenure as before, and while performing the duties shall not receive less salary or remuneration than before (sec. 81, 2, 4).

In our canons, which date from 1603, no fewer than eighteen refer to the duties of Churchwardens. One canon enjoins them to present to the ordinary those guilty of notorious crimes and scandals, hinderers of the Word of God, disturbers of Divine Service, and non-communicants at Easter. Other Canons refer to their duties in not allowing loiterers near the Church in time of Divine Service, in providing bread and wine for the Holy Communion, and marking those who present themselves at the Lord's Table. Others enjoin them to take care that no stranger be admitted to preach in Church without showing his licence; to provide a sure coffer for the safe keeping of the registers, and to see that the proper entries are therein made; to provide for the Church service books, font, Communion table, and pulpit, and a chest for alms; and further, to see that the Church is kept in sufficient reparation, that neither the Church or Churchyard be in any way profaned; that the bells be not rung at any time without good cause to be allowed by the minister of the place and by themselves; to see that the parishioners duly resort to their Church upon Sundays and holy days; that none stand idle in the Churchyard, or make any disturbance in the Church or Churchyard during the time of Divine Service; and further, call upon and exhort such as are negligent in resorting to the Church that they fail not to amend their ways; to keep the accounts connected with these matters; and, "last of all, going out of their office they shall truly deliver up to the parishioners whatever money or other things of right belonging to the parish which remaineth in their hands, that they may be delivered over by p. 21 p. 22

them to the next Churchwardens by bill indented.” [22]

In the fulfilment of these duties it is, in my opinion, difficult to exaggerate the influence for good which a Churchwarden may exercise in the parish in which his lot is cast. Of course it is possible to perform the duties perfunctorily, or to let them slide altogether; but if his heart is really in his work, if he is anxious to do all in his power that the ecclesiastical machinery in the parish should work smoothly, I will undertake to say that he will find plenty of scope for his energies. If lethargic or antagonistic he may greatly hinder the Church’s work; but if in a friendly spirit and with words of wisdom he is always ready to meet the Rector and consult as to the advisability of this or that particular course of action, the office becomes neither a surplusage nor a sinecure. There is nothing worse in a parish than either clerical or lay clan-ship. Isolation is good neither for the one nor the other. The interests of both are the same, and surely their hands should be joined together for common action in the common Master’s cause.

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And as it seems to me this side of his office comes into prominence in connection with the induction of a new Incumbent. For the entering upon a new cure is of undoubtedly great and solemn importance to the Parson himself, but it is hardly less so to the parish. How much depends, as regards the future peace, happiness, and prosperity of the parish, upon the relations existing between Pastor and flock. No doubt the character, zeal, energy, devotion, and even the idiosyncrasies, manner, and general bearing of the Incumbent are of vital importance. Courtesy begets courtesy. Consideration for the feelings of others is met in the same spirit. But sometimes, I fear the Laity suppose that the peace of a parish depends almost entirely upon the Clergyman. He is but a unit in the parochial system. If one thing is more absolutely necessary than another for the harmonious working of Clergy and Laity in a parish, or the welfare of the whole, it is that there should be no suspicions the one of the other. Perfect confidence and a generous trust should be the rule of all dealings between Incumbents and Churchwardens.

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It cannot but be expected that an Incumbent on first coming into a parish should find some things which he would prefer otherwise. The special hobbies, so to speak, of his predecessor may not be his. His energies may not be put forth on exactly the same lines as those of the Incumbent whom he succeeds. And then sometimes the staunch friends of the former ministry may look coldly and askant upon the new Rector’s labours and think that his very efforts in fresh and hitherto untried fields are reflections upon the past. It should not be so. All men are not cast in the same mould. One branch of ministerial work may be more congenial to one parish priest than another, and it is only natural that he should be more devoted to that particular portion of work in which he seems to be most successful. But changes are not synonymous with reflections upon a former *régime*. A man should not be made an offender for a word. A Churchwarden should be prepared in all good faith to transfer his allegiance, if called upon so to do, from one Incumbent to another. It is no disloyalty to do so. The “King is dead; long live the King” is loyalty alike to the past and to the newly reigning Sovereign. If old customs are changed, old practices discontinued, the Churchwarden should find out by private inquiry from his Rector the why and the wherefore, and if the change is for the better he should not let love of existing practice be stereotyped into a desire of a never changing system, which may perchance easily slide into lethargy and somnolent repose. In these days it does not do merely

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“Stare super antiquas vias.”

Some persons I know are so constituted that they suspect the existence of a snake under every blade of grass. It is not a happy disposition either for the person who is possessed with this idiosyncrasy, or in its reflex action upon others. True charity thinketh no evil. It is far better to be over sanguine in our charitable estimate of other men’s motives, even if we do sometimes ultimately find that our estimate was wrong, than to be constantly living in an atmosphere of suspicion. Suspicion and consequent mistrust often produce the very effects which otherwise would never have had any existence at all.

I have ventured to say these few words because I feel very strongly how much the ecclesiastical peace of a parish depends upon the harmonious action of the Incumbent and Churchwardens. It is not often that the case is otherwise. Generally speaking they work zealously and actively together, ready as occasion may arise to adopt, if necessary, new methods of warfare in the conflict against sin and evil as fellow-workers with the Clergy in the great work of the Church on earth.

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Let me then state, as briefly as I can, some of a Churchwarden’s duties.

I suppose him to be duly elected, and to have taken the declaration at the visitation either of the Bishop, the Chancellor, or the Archdeacon. It would be well that the first step should be to look to the fences of the Churchyard and the general state of the fabric of the Church—the roof, the tiles, the tower or spire, and the general fittings of the Church. If any of these are found to be seriously out of order, counsel should be at once taken with the Incumbent as to the proper course to be adopted. In these matters a stitch in time often saves nine, and though we have now no compulsory Church-rate to fall back upon for Church expenses, yet in an harmoniously worked parish there really ought to be no insurmountable difficulty in raising the sum necessary for the due repairs of the Church and for the services of the Sanctuary. Offerteries and subscriptions can be made to supplement one another, and if what is necessary in the way of repair is really honestly done year by year, it will be much easier to raise the funds wanted than if by neglect and postponement a large outlay is suddenly found to be absolutely necessary in order to avoid some dreadful catastrophe.

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In this general preliminary survey the state of the Churchyard will naturally come under his notice. The Churchyard is the freehold of the Incumbent, which he holds in trust for the service which it is intended to subserve. Sometimes an arrangement is made by him with the Churchwardens as to the keeping the Churchyard tidy. No doubt the Churchwardens are bound to see that the proper measures for this purpose are taken by themselves or the Incumbent. But although our Churches, speaking generally, are in good repair, yet it seems to me that in many cases sufficient attention is not paid to the keeping of the Churchyard in proper order. The days are gone by when horned cattle were allowed to find sweet pasture in the resting-place of the dead, but sheep still linger in some country districts. And there is often a temptation not always successfully resisted—when the Churchyard is large—that the crop of grass during the summer months should be allowed to grow without interference by scythe or machine, until fit to be cut for hay. But I do feel strongly that the temptation *should be* resisted. Nothing so quickly awakens doubtful feelings in the breast of a passer-by as to the zeal, energy and devotion of the Incumbent, as a Churchyard untidy and unkempt, paths full of weeds, hedges untrimmed, grass long and straggling. Nothing, on the other hand, is so grateful to all the parishioners of a particular parish as the Churchyard well kept and looked after, the graves neat and trimmed, the whole place by its very appearance asserting its right to the title of God's Acre. I do not like to see the Parsonage garden filled with lovely flowers, and in beautiful order, while the adjoining Churchyard is starved. Let each receive the attention which is its proper due.

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With regard to closed Churchyards the obligations of the Churchwardens in rural parishes with respect to maintaining and repairing closed Churchyards, wherever the expenses of such maintenance and repair are repayable out of the Poor Rate under the Burial Act, 1855, [30a] are transferred to the Parish Council. Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the Churchwardens subsequent to the passing of this Act shall give a certificate as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the Poor Rate (sec. 6, II, b).

It has been decided that [30b] if a Churchyard is closed by order in Council it must be kept in order by the Churchwardens, and if it be a Cemetery formed by a Burial Board, then by the Burial Board. In the former case the expenses would, under the Local Government Act, be repaid to the Churchwardens in rural parishes by the Parish Council, on presentation of the proper certificate as mentioned in the previous paragraph.

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If the Churchyard requires enlargement, and an adjoining piece of ground can be obtained, it is well to remember that a special Act has been passed (30 and 31 Vict., c. 133) for diminishing the expense connected with the consecration of ground so added to an old Churchyard. The form of conveyance is given in the Act; the powers given in the School Sites' Act "to persons being seised in fee simple, fee tail, or for life of and in any manor or lands of freehold, copyhold or customary tenure, and having the beneficial interest therein, to grant, convey, or enfranchise by way of gift, sale or exchange in fee simple, or for term of years, any quantity not exceeding one acre of such land as a site for a school" are "deemed to apply to all persons desirous of granting land for the purpose of such enlargement" (of an existing Churchyard) "in the same way as if the said land had been granted as a site for a school."

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In cases in which it is wished to provide a burial ground under a burial board, the first step to be taken is for a vestry to be summoned *seven* days before the holding of such meeting, to take the subject into consideration, and if it is agreed to proceed in the matter, a requisition to that effect must be sent to the Home Secretary, and the officials of the Home Office will send down full directions as to the mode of procedure. [32]

The following general information on this subject may be found of use:—

The enlargement of a Churchyard sometimes makes it necessary that graves should be built over, or the bodies therein contained removed to another part of the Churchyard, and it occasionally happens that the parties interested object to the former but are prepared to agree to the latter. It is well, therefore, to know that this removal can take place by faculty granted by the ordinary for that purpose without application to the Home Secretary (20 and 21 Vict., cap. 81, s. 25). When a Churchyard is closed and a cemetery has been provided under a burial board to be used for interments, the custody of the old registers belongs to the Incumbent, and he is entitled to the fees for certificates of burial previous to the closing of the Churchyard, but the custody of the registers of interments in the cemetery belongs to the chaplain or officer of the burial board. The Act 52 Geo. III., cap. 146, s. 4, requiring certificates of burials in any other place than the Churchyard of the Parish Church to be sent to the Incumbent, has been repealed as far as burials are concerned in grounds provided by the Burial Acts (20 and 21 Vict., cap. 81, s. 15).

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Then I wish that it were universally acknowledged that the next step should be for a new Churchwarden to inspect the Church goods which are placed under his charge; to see that they tally accurately with the list which ought to be kept in the iron chest of all movable articles belonging to the Church in that parish. [34a] If this were universally done we should not hear, as we do now unfortunately hear from time to time, of Church goods having disappeared during a vacancy, or of registers being missing which may be absolutely invaluable. Legally speaking, the safe custody of the furniture of the Church rests upon the Churchwardens. This list should be signed by the Incumbent and Churchwardens, and kept in the parish chest, and include all movable articles of Church furniture and belongings.

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There should also be a report on the fabric of the Church, mentioning the character, date, and



cost of alterations made, the date of consecration; if a modern Church the Act under which built. Any specially characteristic features of the Church should be mentioned.

The inventory of Church furniture should include Church plate, with copies of inscriptions and dates, Church linen, Service books of all kinds, furniture of the vestry, ornaments for the Holy Table, special gifts, brasses, lectern, everything in short that is moveable, the bells, with inscriptions, if any, and the rules for ringers, the parish register books, with dates carefully made of the first entry in each book. If there are any gaps in the registers it is well to mention them. Benefactions should be noted; also the nature of the tenure of the parish school, with an intimation as to where the trust deed is kept. A terrier of glebe lands, with any exchange noted, should be made. There should be a table of the customary fees charged, [35] and of any payments due to the Ecclesiastical Commission or to Queen Anne's Bounty, with the amount of any receipts due from any public body. It is clear that the more complete such a list can be made the more valuable will it be for future generations.

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It would also be very useful to keep in connection with this inventory a complete list of the various services held, with the amount of the offertories and the purposes to which they are devoted.

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Then with regard to insurance of the fabric. It is most important that this should be looked into. There is no excuse for any Church to remain uninsured. The premium for insurance is now fixed at such a low rate that the expense is really very small, and the Churchwardens should do all in their power to persuade the Vestry, if persuasion is necessary, to sanction the insurance of the Church for a proper sum. I have sometimes found, after making enquiries on the subject and having ascertained either that the Church was not insured, or, if insured, only for a very small sum, that the churchwardens always supposed it was "all right." Very seldom have any held back from doing their duty when it has been quietly pointed out to them. An Ecclesiastical Buildings Fire Office has been established on a sound basis, the offices of which are in Norfolk Street, Strand, London. It is doing a very large business, and whatever surplus profits accrue are appropriated to the support of Church work in the various Dioceses in proportion to the amount of insurances in each, and to such special objects as are recommended by the Bishop and Archdeacons. I may also mention Mutual Fire Insurance Offices, such as the Hand-in-Hand (New Bridge Street, London, E.C.) and the County Fire (Regent Street), which are old-established offices, and which periodically return to insurers a certain amount of the premiums paid on their policies in cases in which no fire has taken place during the preceding few years. Of this I am quite certain, that if an uninsured Church were unfortunately burned down, those in the parish interested in the erection of a new Church would have the greatest possible difficulty in raising the necessary funds, in the face of such a manifest want of due caution and forethought on the part of the proper authorities in past years.

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It is, perhaps, hardly necessary for me to say that a strictly accurate record of every sixpence that is spent upon these and such like matters must be kept by the Churchwardens, so that at the close of their year, when they pass on the parish books to their successors, they may be enabled to lay before them a clear and detailed account of all the receipts and expenses of the preceding year, with vouchers for all payments, and to hand over the actual balance remaining after all liabilities have been met.

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It is often supposed that Church Rates are abolished. But such is not the case. *Compulsory* Church Rates are done away with by 31 and 32 Vict., cap. 109, except in cases where the rates have been legally mortgaged, or are subject to private Acts of Parliament. Section 6, however, of the above Act states distinctly that "this Act shall not affect vestries, or the making, assessing, receiving, or otherwise dealing with any Church Rate, save in so far as relates to the recovery thereof"; and Section 9 authorises the appointment of trustees, the Incumbent, and two householders or owners or occupiers of land in the parish, to be nominated, one by the patron, the other by the Bishop of the Diocese in which the parish is situate. These trustees form a body corporate, and may, as circumstances require, pay to the Churchwardens any funds in their hands for the building, rebuilding, enlargement, and repair of any Church or Chapel, and any purpose to which, as before defined in the Act, Church Rates may be applied.

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Questions are so often put to me as to the relation existing between district parishes and the mother Church, that it may be useful if a few points are mentioned with respect to which difficulties occasionally arise. The preliminaries of marriage and the solemnization of the rite itself are a fruitful source of difficulty. They have however, as a matter of fact, been set at rest by a decision in the Court of Queen's Bench, in the case of *Fuller v. Alford*, before Mr. Justice Cave and Mr. Justice Day, which affects all new parishes hitherto created, or that may hereafter be created, under the Peel and Blandford Acts. The question at issue was as to the right of the inhabitants of a district parish to have their banns published and to be married in the Church of the mother parish, and as to the right of the Incumbent of the mother parish to publish the banns, solemnise the marriage, and receive the fees for the same in the case of residents in the district parish. The case is fully reported in the *Times* of March 9th, 1883. Mr. Justice Cave, in giving judgment for the Plaintiff, said that the Act of 1843 as well as that of 1856 (the words of the latter being clearer than those of the former) made the district a new parish for all ecclesiastical purposes, and banns of marriage might be published and marriages solemnized, and all the laws and customs then relating to them would apply to the new parish, the effect of which was that the banns must be published in the Church of the new parish. Though recent legislation had brought into prominence the civil character of the marriage contract, and had enabled it to be entered into before a Registrar, still he had no doubt that the solemnization of

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matrimony in a Church was within the words "ecclesiastical purposes." The inhabitants therefore of a district parish have no more right to have their banns asked or their marriage solemnised in the mother Church than they have in any other Church in England, so long as they reside in that district.

District parishes, it will be observed, are separate parishes *for Ecclesiastical purposes*. These words affect the question as to the right of the ratepaying parishioners of a new district voting for the Churchwardens of the old parish. This they have a right to do on the following ground:— The Churchwardens of an old parish have functions to perform which are rather secular than ecclesiastical. They are in some cases *ex-officio* Overseers, and in many cases officially concerned in the management of endowed charities. The creation therefore of a district for ecclesiastical purposes does not deprive the inhabitants of the new district of the right which they had before of voting for Churchwardens in the old civil parish of which they continue to be ratepayers. The ratepayers of the *whole* of the old parish have consequently a right to vote in vestry at the election of the Churchwardens in the old parish. The privilege, however, is not reciprocal, for the ratepayers in the old parish have no similar right of attending at the vestry and voting for Churchwardens in the new district, because they are elected "for ecclesiastical purposes" only.

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It would be impossible to speak of the duties of Churchwardens without touching upon the vexed questions of pews. I suppose that if we could turn the hands of the clock back for some centuries, and were then legislating for the future of the Church with our experience of the pew system by a prophetic anachronism clearly present in our minds, we should hardly suggest for legislation such laws as would bring about the existing state of things. With the Epistle of St. James in our thoughts there are some points in our present legal system which most persons find it difficult to justify. But it is a thorny subject, and I do not want to dogmatise. It is, perhaps, just the one very point with respect to which great caution is needed, much charity, much forbearance. You cannot ride rough-shod over old prejudices, or if you do you are sure sooner or later to suffer for it. No doubt in theory (to use the words of the Bishop of Carlisle) the Churchwardens, as the officers of the ordinary, have, subject to him, the sole appointment and arrangement of the seats. They are to act to the best of their judgment, and without favour, to the best advantage of all. <sup>[43]</sup> And for the most part, in new Churches, this arrangement works well. Either by agreement of the heads of the parish the Church is declared to be in the popular sense of the term "free and open," which is perhaps on the whole the best of all or else by mutual forbearance and general co-operation an arrangement is arrived at by which the worshippers in Church have from time to time seats allotted to them.

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It is not, however, in the case of new Churches that difficulties arise, except when these new Churches take the place of old ones. Then it may be that the old abuses of faculty pews and of supposed exclusive rights in certain holdings have to be contended with. Cases have occurred where supposed usurpers have been kept out of faculty pews when there is plenty of room, or of locking up the pew when the so-called owner is absent. Faculty pews are an anomaly, and I wish there were none, but if the title to them can be proved they are legal and must be dealt with accordingly. I do not imagine that any new faculties are now issued by the Courts, but in the rebuilding of old Churches the dealing with existing faculties requires very tender handling. It were heartily to be wished that all legal holders of faculty pews would consent to waive their rights for the future, for the sake of peace and the avoidance of jealousies. Of course in such a case the Churchwardens would feel it an obligation which it would be their pleasure to fulfil, to provide those who give up their rights with such accommodation as their families may require. But if, as is sometimes the case, they stand exclusively upon their rights, Churchwardens have no power to abrogate the law, and can only look forward to the future with hope, either that a short Act of Parliament may be passed enacting that at the death of the present owner of a faculty pew that particular faculty should cease, and determine, only excepting (unless with the consent of the owner) cases in which under the Church Building Acts the faculty was issued in consequence of money paid down for the building of the Church with the understanding that the faculty would be granted in consequence: or if this be not done that in the lapse of time some holder of the faculty may regard the matter from an unselfish standpoint and voluntarily resign his rights.

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Meanwhile it is well to remember with regard to existing faculty pews that:—

1. The form of appropriation in old faculties varies considerably. In order to ascertain the wording of a particular faculty application should be made to the Diocesan Registrar.
2. With regard to pews annexed by prescription to certain messuages the right to the pew passes with the messuage, the tenant of which for the time being has also *de jure* for the time being the prescriptive right to the pew. <sup>[46a]</sup>
3. No faculty can be legally granted entitling a non-parishioner to a seat in the body of the Church. <sup>[46b]</sup> Any faculty so worded as to allow this is void as far as that particular point is concerned.
4. No faculty gives power either to the owners and occupiers of the house in respect of which the faculty has been issued to let such seats apart from the houses, or to appropriate them to other persons.

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No Churchwarden should ever allow a parishioner to repair the pew which he may temporarily occupy. Such an act, if done with the sanction of the Churchwardens, may in after years seem to

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give a claim to proprietorship in that particular pew. Too great care cannot be taken to avoid any future misunderstanding.

The matter is too often looked upon as a party question. The great Duke of Wellington was no party man, and I cannot forbear from quoting in connection with this subject an extract from a letter written to my father, the Bishop of Winchester, in 1836, in response to an application to him to support a Diocesan Church Building Society, which was then in course of formation. The Duke writes concerning providing accommodation in country Churches as follows:—

“It has frequently occurred to me that when Church room is required the first thing to do is to prevail upon individuals to give up the pews which they cannot use . . . If more space was required I should propose that all pews should be given up, that the whole space of the Church should be laid open for the accommodation of all the parishioners indiscriminately, separate chairs of a cheap description being provided for their accommodation. This being done, and space being still required for the accommodation of the parishioners in their attendance upon Divine Service, I would propose to consider the mode of enlarging the Church, or if that could not be effected, of building another Church or Chapel. It must never be forgotten that another Church or Chapel would require the attendance of another Clergyman, who must live and must be remunerated. He can be remunerated only by the sale or hire of the pews and places in the new place of Divine worship; and here again would commence the evil which has in my opinion been the most efficient cause of the non-attendance at Divine worship of the lower classes of the people of this country.” [48]

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Surely these words, which (bearing in mind who was the writer of them) cannot be supposed to have been the offspring of heated ecclesiastical partisanship, are well worthy of consideration, even after the lapse of more than half a century. It does, indeed, seem sad that parochial difficulties should so often arise in respect of Church sittings. There is no part of the parochial machinery which more requires the free application of the oil of common sense—Christian charity and a true spirit of forbearing courtesy in order to avoid friction. Blessed are the peacemakers.

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Difficulties not unfrequently arise in connection with the conveyance of buildings or of land to be used not only for public worship, but also for meetings, classes, etc. The subject was under the consideration of the Committee of the Incorporated Church Building Society in 1889, and with the co-operation of their legal advisers a statement was issued clearly pointing out the advantages and the disadvantages of the several modes of procedure possible. With the permission of the Church Building Society’s Committee, I add in Appendix X a summary of the conveniences and inconveniences of the several Acts. The Minister and Churchwardens are not a corporation with perpetual succession under the common law, though often supposed so to be because they are specially so made for the purpose of carrying out the Schools Sites’ Acts. The advisers of the Church Building Society on the whole recommend that a conveyance should be made to individual Trustees, “which will be good according to the ordinary law of mortmain as a charitable conveyance, the only real objection to this being that if the conveyance be a gift, without price paid, it will fail if the grantor dies within twelve months.” A form of such conveyance has been settled for the parish of Staines. This form has been printed by the Church Building Society, but they recommend that it should be amended by adding a power, to be used if a consecrated Church is eventually built on the land, to revoke the trusts and convey the land and building for the purpose of a Church to any person or body lawfully authorised to accept such conveyance. If the Staines form is not adopted, it is on the whole recommended that action should be taken under 43 Geo. III, cap. 108. [50]

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I pass on to another point. On a vacancy occurring in an incumbency either through the resignation or death of the Incumbent, certain duties of considerable importance devolve upon the Churchwardens. During the vacancy they are in charge of the temporalities of the incumbency, and therefore it is necessary that a sequestration of the living should be issued, empowering them to do such things as are necessary in connection therewith. Application should at once be made with reference to this to the Bishop’s Registrar. It is then their duty to see that Church property, whether in connection with the fabric, endowment, or glebe, suffers no loss during the vacancy. They have also to provide for the services in Church and any occasional duty which may arise. A newly-appointed Incumbent does not become legally responsible for this until he has been instituted, or collated, as the case may be. But it would be well always if the Churchwardens, immediately on an appointment being notified to them, should communicate with the Incumbent-elect and consult with him as to the best mode of providing for the duty. It is well that Churchwardens should know that the license of a Curate does not lapse in consequence of the death of the Incumbent. Six weeks’ notice within six months after institution is legally necessary if a change is to be made. [52a] The widow of a deceased Incumbent has a right to remain in the parsonage house for two calendar months subsequent to the death of her husband. [52b] All these points should, if possible, be made a matter of friendly arrangement, but the actual law of the case is as I have stated it.

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There is one question sometimes asked by Churchwardens to which it may be well to refer. Have they the custody of the keys of the Church, the appointment of the organist, control over the Church music, and over the ringing of the Church bells?

With regard to the keys of the Church. It is the undoubted fact that the church is the freehold of

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the Incumbent, subject, of course, to the right of the parishioners to be present in it at all legal Services of a religious character. It may be often convenient that the Churchwardens should have a duplicate key of the Church, in order that they may be able to fulfil their duties in connection with the survey of the fabric, or for other causes, but this must be clearly understood to be subject to the will of the Incumbent.

The same with regard to the musical portion of the Service or appointment of the organist. Lord Stowell's words are:—

“The Minister has the right of directing the Service, *e.g.*, when the organ shall and shall not play, and when children shall chaunt and shall not chaunt, though the organist is paid and the children managed by the Churchwardens.” [53]

Nothing can be clearer or stronger than this.

So too with regard to the Church bells. The Churchwardens have the custody of the bells, and the bell ropes are in most cases Church property placed under their charge, but the law with reference to the ringing of the bells is undoubted; that for any occasion except that of Divine Service the permission of the Incumbent is absolutely necessary for the ringing of the bells. Without that permission they cannot be rung. [54]

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There is one further point on which a question sometimes arises in connection with offertories and collections in church. With reference to offertories gathered at the time of the celebration of Holy Communion at an ordinary Service the Churchwardens and Incumbent are expressly directed by the rubric to dispose of them to such pious and charitable uses as they shall think fit, wherein if they disagree it shall be disposed of as the Ordinary shall appoint. The Incumbent has the responsibility of arranging with reference to collections made not in connection with the celebration of the Holy Communion. Incumbents are thankful when the Churchwardens help them with their advice as to what objects shall be brought before the congregation. In the case of all collections, for whatsoever purpose they be made, it is most desirable for the avoiding of any possible difficulty that a written statement should be put upon the Church door on the Sunday after, stating the amount of the collections made on the previous Sunday. If the collection be made for any charitable or missionary society the official receipt for the money collected and sent should also be affixed to the church door.

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This leads me to mention another point of considerable importance. In these days of monetary difficulties and agricultural depression the frequency of offertories is often a question difficult of solution. It is perhaps still more difficult wisely to decide the objects for which the offertory shall be made. With regard to local objects there can of course be no question. We recognise in these days the power of the pence, and no one grumbles at the collection of money for purely parochial purposes. But it is when our people are asked for money for objects outside the parish that the difficulty really arises. But it ought to be remembered that we do not lead individual isolated lives apart from our fellows. The parish is not the centre of the universe. The tendency of the uneducated mind is to isolate itself from the interests of others, and to look at all matters from a purely selfish point of view. The parish is an accidental collection of individual souls in a particular diocese. The diocese is an aggregation of separate parishes scattered through an assigned area. The members of the Church in a particular parish and diocese are members of the Holy Catholic Church, which by its very nomenclature abrogates individual isolation. It follows, therefore, that parochial interests must not absorb attention to the exclusion of larger and less personal objects. The Body is one, and the members of the Body should work together for the good of the whole. Corporate as well as individual life is a reality, and this fact must not be lost sight of in connection with our offertories. I venture to say that a parish which confines its offertories to local and parochial purposes will lose by the very contraction of its sympathies. The duty that lies upon us as trustees of God's gifts to utilize them for His honour and glory, should be pointed out. The privilege of being allowed to help with our substance, those who stand in need of our assistance, should be duly urged; and the warmth which is thus kindled in the heart towards others will react in infusing fresh life into the support of parochial institutions. The habit of giving grows by use. The blood must not stagnate round the heart, or the extremities will soon suffer. Your fingers die because the action of the heart is weak. The promise is that “He that watereth others shall be watered also himself.”

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I have no intention of entering into many details in this matter, but I cannot be wrong in enforcing this principle. Church work at home and abroad, as distinct from parochial organizations, should be systematically brought before all congregations however small: Church work at home, including home missions; and Church work abroad, including foreign missionary societies.

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Let me give very emphatically this caution. If aggrieved parishioners come to a Churchwarden and endeavour to persuade him to join a cave of Adullam, he should be careful not to be rash or hasty in his answer. He must not take all for granted which heated partisans may allege, but remember there are always two sides to every question. We are none of us infallible in our judgment, and many matters after consultation with others assume a very different aspect to that which at first sight they seemed to present. If difficulties arise he must not threaten. It does more harm than good. Let him try what conciliation will do. Let him see whether common ground of action cannot be found. Certainly it is unwise to rush into print; it only tends to inflame the smouldering embers of a quarrel which, but for the unfortunate publicity given to it, might soon have come to a happy termination.

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Churchwardens *must* work with the Clergy and the Clergy with the Churchwardens if they are to be a blessing in the parish in which they are elected to serve. They have not been brought by chance into connection with the Incumbent of their parish, for chance is not a word to be found in the Christian's dictionary.

With regard to all these cases, if difficulties arise in connection with any of them it is seldom, if ever, wise to stand out for strict law. If the matter cannot be settled amicably the interposition of the Rural Dean or Archdeacon, or, as a final resort, the Bishop, will often smooth a wrinkled brow and restore to a parish the inestimable blessing of peace.

It is because I feel the great importance and usefulness of the office of a Churchwarden, that I have ventured, in accordance with the wish so kindly expressed by those to whom the foregoing words were in substance addressed, to publish them in this more permanent form; and I have only to express the hope that they may be found useful in pointing out to Churchwardens that their office, far from being a sinecure, may, if faithfully used, tend very directly to the furtherance of our common Master's cause, and that work done by them in a spirit of faith and love will not lose its reward in the great Hereafter.

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GEORGE HENRY GUILDFORD.

THE CLOSE, WINCHESTER,  
*August, 1897.*

## APPENDIX I.

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### QUEEN'S BENCH DIVISION.

**(Before LORD COLERIDGE and MR. JUSTICE MATHEW.)**

**THE QUEEN V. HARDING, VICAR OF BECKENHAM.**

This case raised the question whether, in new parishes under the Church Building Acts, it is necessary that Churchwardens shall be residents in the parish or whether it is enough that they are rated occupiers. The question had arisen under these circumstances. There was a new Church built and consecrated in Beckenham, Kent, in 1875, and by an Order in Council in 1878 a district was constituted and annexed to it under the Church Building Act, 59 Geo. III, cap. 134, sec. 16, constituting a "district chapelry." In 1885, on the death of the Incumbent, all the fees of the district became due and payable to the Minister of the new Church, and then, by the operation of Lord Blandford's Act (19 and 20 Vict., cap. 104), the district became a separate parish for ecclesiastical purposes; and the question was what effect this had as to the election of Churchwardens. Under 8 and 9 Vict., cap. 70, sec. 6, it was provided that "two fit and proper persons should be annually elected Churchwardens, they residing within the district;" and if that statute applied, it was admitted the Churchwardens must be resident. But it was disputed whether it did apply, or whether at common law Churchwardens must be resident. In Lord Blandford's Act it is provided, in sec. 14, that wherever and as soon as banns of marriage are authorised to be published in a consecrated Church or Chapel to which a district belongs, and the Incumbent is by such authority entitled, for his own benefit, to the fees arising from the performance of such services, then such district shall become and be a separate parish for ecclesiastical purposes, as is contemplated in 6 and 7 Vict., cap. 37, sec. 15, and all the provisions of the same shall apply; and then, under that Act, sec. 15, when any Church or Chapel shall be built, etc., such district shall from and after consecration be deemed to be a new parish for ecclesiastical purposes. This, however, did not in terms, it will be seen, deal with the present question, and appeared to leave it open, and so it will be seen it was discussed in the alternative on the ground that at common law Churchwardens must be resident, and that is not altered by one Act, and is re-enacted in the other. However, in the present case it appeared that it had not been so understood, and on April 25, 1889, when, at Easter, two Churchwardens were chosen for the new district parish of Christ Church, Beckenham, one of them was a gentleman who had been chosen in previous years, and who is not a resident, though he is a rated occupier in the parish. The gentleman in question, a Mr. Matthews, was elected by a majority of three; no objection was taken at the time, but afterwards his opponent, a Mr. Hayland, desired to raise the objection, and on June 24th last obtained a rule *nisi* for a *mandamus* to the vicar to hold a new election of churchwarden on the ground that the election of Mr. Matthews was invalid, as he was not a resident in the parish, he having premises there, a "store" and some stabling for which he was rated, but not living in the parish. The case now came on to be argued.

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Mr. Dibden appeared for the applicant.

Mr. Jeune, Q.C. (with Mr. Houghton), appeared on the part of the vicar to show cause.

Lord Coleridge said, in giving judgment, that the party elected was not entitled to hold the office. The effect of the statute was that the new parish was to be treated for all purposes as the old one—that it was to be subject to the same law. Now, it was necessary under the old law that churchwardens should be living in the parish. This gentleman was not so; and therefore was not under the old law "a fit and proper person" to hold the office of churchwarden. The Churchwarden had to discharge various duties which required knowledge of the parish and

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parishioners. It was said that there were authorities to the contrary in the Ecclesiastical Courts; but speaking of them with the utmost respect, those were ecclesiastical cases, and this was a common law case—that is, a case to be decided by the common law—and he did not think that by the common law a party not living in the parish, and perhaps living at a distance, was qualified to be elected, and, if elected, bound to serve the office of churchwarden. It appeared to be clear, rating would not be enough. It was admitted that there must be some kind of occupation equivalent to actual residence, and in the present case there was nothing of the kind. No doubt the parishioners were glad to have a respectable gentleman to fill the office. No doubt the word “residence” had received under different statutes different interpretations, the sense being necessarily different. Sometimes it meant where a man could be found during the day; sometimes it meant where he slept or lived; and for some purposes perhaps this gentleman might be deemed a resident, but for this purpose it was necessary that he should live in the parish, be acquainted with the parishioners, and thus be able to exercise the duties of his office, which were to be personally exercised. The rule for a *mandamus* to the vicar, therefore, must be made absolute.

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Mr. Justice Mathew concurred.

Rule absolute for a *mandamus*.

From the *Times*, Nov. 29th, 1889.

## APPENDIX II.

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### 7 Gul. IV, and 1 Vict., cap. 45, sec. 3.

Be it further enacted that no such notice of holding a Vestry shall be affixed on the principal door of such Church or Chapel unless the same shall previously have been signed by a Churchwarden of the Church or Chapel, or by the Rector, Vicar, or Curate of such parish, or by an Overseer of the Poor of such parish; but that every notice so signed shall be affixed on or near to the principal door of such Church or Chapel.

## APPENDIX III.

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### 58 Geo. III, cap. 69, 3rd June, 1818.

#### *An Act for the Regulation of Parish Vestries.*

Sec. 2.—For the more orderly conduct of Vestries be it further enacted that in case the Rector, or Vicar, or perpetual Curate, shall not be present the persons so assembled in pursuance of such notice shall forthwith nominate and appoint, by plurality of votes to be ascertained as hereinafter is directed, one of the inhabitants of such parish to be the Chairman of and preside in every such Vestry; and in all cases of equality of votes upon any question arising therein the Chairman shall, in addition to such vote or votes as he may by virtue of this Act be entitled to give in right of his assessment, have the casting vote; and minutes of the proceedings and resolutions of every Vestry shall be fairly and distinctly entered in a book, to be provided for that purpose by the Churchwardens and Overseers of the Poor, and shall be signed by the Chairman and by such other of the inhabitants present as shall think proper to sign the same.

Sec. 3.—And be it further enacted that in all such Vestries every inhabitant present, who shall by the last rate which shall have been made for the relief of the poor have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to fifty pounds, shall have and be entitled to give one vote and no more; and every inhabitant then present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to fifty pounds or upwards, whether in one or in more than one sum or charge, shall have and be entitled to give one vote for every twenty-five pounds of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate, so, nevertheless, that no inhabitant shall be entitled to give more than six votes; and in cases when two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and when one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole joint charge.

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Sec. 4.—Provided and be it further enacted that when any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same.

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Sec. 5.—Provided also and it is hereby further enacted that no person who shall have refused or

neglected to pay any rate for the relief of the poor which shall be due from him and shall have been demanded of him, *and* (see Sec. 3 of the next Act quoted) shall be entitled to vote or to be present in any Vestry of the parish for which such rate shall have been made, until he shall have paid the same.

### **59 Geo. III, c. 85, sec. 1.**

. . . From and after the passing of this Act, any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value arising from any lands, tenements, or hereditaments, situate in any parish in which any Vestry shall be holden under the said recited Act (58 Geo. III, c 69), although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such Vestry . . . and have the same privileges as though he were an inhabitant of the said parish.

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Sec. 3 of the same Act states that the word "*and*," marked in italics in the above quotation from Geo. III, c. 69, was inserted by mistake.

## **APPENDIX IV.**

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### **14 and 15 Vict., c. 97, sec. 23.**

From and after the passing of this Act no select Vestry shall be formed under the provisions of the Church Building Act, and every such select Vestry already formed under such provisions shall be and is hereby declared to be abolished, and all the powers and provisions therein enacted relative to such select Vestries shall henceforth cease and determine, provided that all matters and things done by any such select Vestry in pursuance of any powers given them by such Acts, or any of them, shall be and remain as valid as if such select Vestry had not been abolished.

## **APPENDIX V.**

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It was agreed in 1870 between some of the leading Laity of the Counties of Hants and Surrey and the then Bishop of the Diocese that the sum asked should only be five shillings, payable annually by each parish and ecclesiastical district by the hands of the Churchwardens. When there is an election of a Proctor to Convocation, an additional shilling is added, making the total due six shillings. It was also decided at the meeting before referred to that this charge might be defrayed out of the offertory or other voluntary collections for Church purposes in any parish or ecclesiastical district. I am happy to say that the cases are, comparatively speaking, rare in which the Churchwardens decline to pay this charge, reduced by voluntary action as it has been from the legal figure of eighteen shillings to either five shillings or in some years six shillings, the extra shilling being added when an election of a Proctor for the Archdeaconry takes place.

## **APPENDIX VI.**

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Canons agreed upon by the Convocation for the Province of Canterbury assembled by the king's licence in their Synod, A.D. 1603, published by His Majesty's authority under the Great Seal of England.

### **89. *The choice of Churchwardens and their Account.***

All Churchwardens or Questmen in every parish shall be chosen by the joint consent of the Minister and parishioners, if it may be; but if they cannot agree upon such a choice, then the Minister shall choose one, and the parishioners another: and without such a joint or several choice none shall take upon them to be Churchwardens: neither shall they continue any longer than one year in that office, except perhaps they be chosen again in like manner. And all Churchwardens at the end of their year, or within a month after at the most, shall before the Minister and the parishioners give up a just account of such money as they have received, and also what particularly they have bestowed in reparations and otherwise, for the use of the Church. And, last of all, going out of their office, they shall truly deliver up to the parishioners whatsoever money or other things of right belonging to the Church or parish, which remaineth in their hands, that it may be delivered over by them to the next Churchwardens by bill indented.

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### **90. *The choice of Sidemen, and their joint office with Churchwardens.***

The Churchwarden or Questmen of every parish, and two or three or more discreet persons in every parish, to be chosen for Sidemen or Assistants by the Minister and parishioners, if they can

agree (otherwise to be appointed by the Ordinary of the diocese), shall diligently see that all the parishioners duly resort to their Church upon all Sundays and Holy-days, and there continue the whole time of Divine Service; and none to walk or to stand idle or talking in the Church, or in the Churchyard, or in the Church-porch, during that time. And all such as shall be found slack or negligent in resorting to the Church (having no great or urgent cause of absence) they shall earnestly call upon them; and after due monition (if they amend not) they shall present them to the Ordinary of the place. The choice of which persons, *viz.*, Churchwardens or Questmen, Sidemen, or Assistants, shall be yearly made in Easter-week.

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85. *Churches to be kept in sufficient Reparations.*

The Churchwarden or Questmen shall take care and provide that the Churches be well and sufficiently repaired, and so from time to time kept and maintained, that the windows be well glazed, and that the floors be kept paved, plain and even, and all things there in such an orderly and decent sort, without dust, or anything that may be either noisome or unseemly, as best becometh the House of God, and is prescribed in an Homily to that effect. The like care they shall take that the Churchyards be well and sufficiently repaired, fenced and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges unto whom by law the same appertaineth: but especially they shall see that in every meeting of the congregation peace be well kept: and that all persons excommunicated, and so denounced, be kept out of the Church.

88. *Churches not to be profaned.*

p. 76

The Churchwardens, or Questmen, and their Assistants, shall suffer no plays, feasts, banquets, suppers, church-ales, drinkings, temporal courts, or leets, lay juries, musters, or any other profane usage, to be kept in the Church, Chapel, or Churchyard, neither the bells to be rung superstitiously upon holy days, or eves abrogated by the Book of Common Prayer, nor at any other times without good cause to be allowed by the Minister of the place, and by themselves.

52. *The names of strange Preachers to be noted in a book.*

That the Bishop may understand (if occasion so require) what sermons are made in every Church of his diocese and who presume to preach without licence, the Churchwardens and Sidemen shall see that the names of all Preachers, which come to their Church from any other place, be noted in a book which they shall have ready for that purpose; wherein every Preacher shall subscribe his name, the day when he preached, and the name of the Bishop of whom he had license to preach.

111. *Disturbers of Divine Service to be presented.*

p. 77

In all visitations of Bishops and Archdeacons the Churchwardens, or Questmen, and Sidemen shall truly and personally present the names of all those which behave themselves rudely and disorderly in the Church, or which by untimely ringing of bells, by walking, talking, or other noise, shall hinder the Minister or Preacher.

118. *The old Churchwardens to make their presentments before the new be sworn.*

The office of all Churchwardens and Sidemen shall be reputed ever hereafter to continue until the new Churchwardens that shall succeed them be sworn, which shall be the first week after Easter or some week following, according to the direction of the Ordinary, which time so appointed shall always be one of the two times in every year, when the Minister, and Churchwardens, and Sidemen of every parish shall exhibit to their several Ordinaries the presentments of such enormities as have happened in their parishes since their last presentments. And this duty they shall perform before the newly-chosen Churchwardens and Sidemen be sworn, and shall not be suffered to pass over the said presentments to those that are newly come into office and are by intendment ignorant of such crimes, under pain of those censures which are appointed for the reformation of such dalliers and dispensers with their own consciences and oaths.

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## APPENDIX VII.

### 18 and 19 Vict., cap. 128, sec. 18.

*Burial Board to keep in order closed burial grounds, etc.*

In every case in which any order in Council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the Burial Board, or Churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the Overseers upon the certificate of the Burial Board, or Churchwardens, *as the case may be*, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses.

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The words in italics have given rise to some dispute as to their interpretation. Some Burial Boards have claimed the right to maintain closed churchyards. The question was brought into the Court of Queen's Bench in 1879, and it was decided that a Burial Board was required to maintain a closed cemetery, and that Churchwardens were the proper persons to maintain a closed churchyard. [79]

## APPENDIX VIII.

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### 15 and 16 Vict., cap. 85, sec. 10.

*Churchwardens after order or at any time upon requisition of ten ratepayers to convene Vestry Meeting to determine whether a burial ground shall be provided.*

Upon the requisition in writing of ten or more ratepayers [80a] of any parish in the metropolis [80b] in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any Order in Council in relation to any burial ground in such parish has or has not been made), the Churchwardens and other persons to whom it belongs to convene meetings of the Vestry of such parish shall convene a meeting of the Vestry for the special purpose of determining whether a burial ground shall be provided under this Act for the parish; and public notice of such Vestry Meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the Vestry are given, at least seven days before holding such Vestry Meeting; and if it be resolved by the Vestry that a burial ground shall be provided under this Act for the parish, a copy of such resolution extracted from the minutes of the Vestry, and signed by the Chairman, shall be sent to one of Her Majesty's principal Secretaries of State.

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## APPENDIX IX.

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### 24 and 25 Vict., cap. 125, sec. 2.

The Overseers of any parish may, with the consent of the Vestry, provide proper depositories of all the documents, books, and papers belonging to such parish, for which no provision is otherwise made by law, and charge the cost thereof on the poor rate.

### 52 Geo. III, cap. 146, sec. 5.

And be it further enacted that the . . . register books . . . shall be kept by and remain in the power and custody of the Rector, Curate, or other officiating Minister of each respective parish or chapelry as aforesaid, and shall be by him safely and securely kept in a dry, well painted iron chest, to be provided and repaired, as occasion may require, at the expense of the parish or chapelry, and which said chest, containing the said books, shall be constantly kept locked in some dry, safe, and secure place within the usual place of residence of such Rector, Vicar, Curate, or other officiating minister, if resident within the parish or chapelry, or in the parish church or chapel; and the said books shall not, nor shall any of them, be taken or removed from or out of the said chest, at any time or for any cause whatever, except for the purpose of making such entries therein as aforesaid, or for the inspection of persons desirous to make search therein, or to obtain copies from or out of the same, or to be produced as evidence in some court of law or equity, or to be inspected as to the state and condition thereof, or for some other purposes of this Act; and that immediately after making such inspection, entries, or producing the said books respectively for the purposes aforesaid, the said books shall forthwith again be safely and securely deposited in the said chest.

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## APPENDIX X.

p. 84

### 43 Geo. III, cap. 108.

CONVENIENCES.—Permits conveyance of site to any Body Political or Corporate.

—Contains no clause avoiding the conveyance if Service is discontinued for a time.

INCONVENIENCES.—Requires the concurrence of Ordinary.

—Will be avoided (unless made for valuable consideration) if grantor dies within three months.

- Must be strictly for a Church or Chapel.
- Must be enrolled within six months.
- No provision for grant by a person under disability, *e.g.*, tenant for life.

***Place of Worship Sites' Act.***  
**36 & 37 Vict., cap. 50.**

CONVENIENCES.—Enables tenant for life to convey.

- Does not require consent of Ordinary.
- Deed will not be avoided by death of grantor within twelve months after execution of it.

INCONVENIENCES.—Contains no power of conveyance to a Body Corporate except permission given to make Ecclesiastical Commissioners trustees of the site.

- Contains clauses involving the loss of the property, (a) if the land be used for any other purpose than that of a site for a place of worship; (b) if Service be discontinued in the place of worship for one year. p. 85
- May give difficulty as to consecration, if the Mission Room becomes a Church, owing to possible reversion to profane uses on the temporary discontinuance of Services.

***School Sites' Act.***  
**4 & 5 Vict., cap 38; 7 & 8 Vict., cap. 37.**

CONVENIENCES.—Enable tenants for life to convey.

- Permit conveyance to Bodies Corporate making Minister and Churchwardens a corporation with perpetual succession for the purposes of these Acts.

INCONVENIENCES.—Contain clauses involving the loss of the property if used for other purposes than those of education.

- Require enrolment of deeds.

**Churchwardens' Manual**  
***NOTICES OF THE FIRST EDITION.***

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“Churchwardens will find in the *Churchwardens' Manual* some useful brief notes put together by the Bishop of Guildford relative to their duties, powers, rights and privileges.”—*Guardian*, April 9th.

“The Bishop of Guildford has just published a very useful little handbook for the use and guidance of Church wardens . . . The book is a most helpful one with regard to Church matters.”—*Hampshire Chronicle*.

“The Bishop of Guildford's *Churchwardens' Manual* meets a real want, in that it provides in small compass . . . a handy pocket book containing the many matters legal and ecclesiastical, which concern the Churchwarden's office . . . No one ought to assume it without being armed with such a work as this, and an Incumbent cannot do better than present his Churchwardens with this little Manual.”—*Church Times*.

“It is a Manual which ought to be in the possession of every holder of the important office of Churchwarden, and which other Churchmen also would do well to familiarise themselves with, as a better understanding of the subject would be greatly to the advantage of many parishes; clear, precise, handy and cheap, it is precisely the handbook that was wanted.”—*Winchester Observer*.

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**Footnotes:**

[2] *Smith's Christian Antiquities*, i, 391; *Bingham's Antiquities of the Christian Church*, B. ii, c. 19, sec. 19.

[4] 1 Will. and M., ch. 18, sec. 5; 31 Geo. III, ch. 32, sec. 7.

[5] See Appendix No. I.

[6] *Prideaux's Churchwardens' Guide*, p. 17.

[7] 7 Gul. IV, and 1 Vict. cap. 45, sec 3. See Appendix No. II

[8a] 7 Gul. IV and 1 Vict., cap. 45, sec. 1, 2.

[8b] Note 58 Geo. III, c. 69, sec. 2.

[8c] See Appendix No. VI.

[9a] Phillimore II, 1470.

[9b] *Dewdney v. Good* referred to in *Addresses delivered to the Churchwardens and Sidesmen of the Diocese of Liverpool*, by Thomas E. Espin, D.D., Chancellor of the Diocese. Liverpool: Holden, Church Street. p. 29.

[10a] See Appendix No. III.

[10b] See Appendix No. IV.

[11] As far, however, as the diocese of Winchester is concerned, see Appendix No. V.

[12] *Cripps' Practical Treatise on the Law relating to the Church and Clergy*, 6th Ed., pp. 178, 182.

[13] *Cripps' Practical Treatise on the Law relating to the Church and Clergy*, 6th Ed., p. 174. It may be a question whether Lord Coleridge's judgment as to the residence of Churchwardens may not affect this. See Appends No. I.

[14] Churchwardens are *ex officio* Overseers under the Poor Relief Act, 1601 (43 Eliz., c. 2, s. 1), only in the case of an ancient ecclesiastical parish, for which overseers are appointed under that Act.—*Jenkin's Local Government Act*, p. 25.

[22] See Appendix No VI.

[30a] 18 and 19 Vict., cap. 128, sec xviii. See Appendix No. VII.

[30b] *The Queen v. the Burial Board of Bishop Wearmouth.—Law Reports, Queen's Bench Division*, vol. v, p. 67. See Appendix VII.

[32] See Appendix No. VIII.

[34a] See Appendix No. IX.

See *An Address to Churchwardens*, by the Bishop of Carlisle, published by the S.P.C.K., p. 13.

[35] By 59 Geo. III, c. 134, s. 11.—The Ecclesiastical Commissioners are empowered to make a table of fees for any parish with the consent of the Vestry, and with the consent of the Bishop of the Diocese.

[43] Bishop of Carlisle's *Address to Churchwardens*, S.P.C.K., p. 17.

[46a] See *Fuller v. Lane*. 2 *Adams*, 419. *Prideaux's Churchwarden's Guide*, appendix, XLVI. *Phillimores' Ecclesiastical Law*, II, 1801-4.

[46b] *Fuller v. Lane*. *Prideaux's Guide*, XLV.

[48] *Life of Charles Richard Sumner, D.D., Bishop of Winchester* (Murray), by the Author of this manual, p. 250.

[50] In many Dioceses now a body of trustees has been appointed for the special purpose of holding Church properties. It is hoped that ere long every Diocese in the country will have its own special body for the purpose, with a carefully considered Trust Deed. I believe that the scheme in the Arch Diocese of Canterbury is found to work very satisfactorily.

[52a] 1 and 2 Vict., cap. 106, sec. 95.

[52b] Ditto, sec. 36.

[53] *Addresses delivered to the Churchwardens and Sidesmen of the Diocese of Liverpool*, by Thomas E. Espin, D.D., Chancellor of the Diocese; p. 29. Liverpool: Holden, Church Street.

[54] *Cripps' Practical Treatise on the Law relating to the Church and Clergy*, p. 190. See also Canon 88 in Appendix vi.

[79] In the Court of Appeal, 1879, *The Queen v. The Burial Board of Bishop Wearmouth.—Law Reports, Queen's Bench Division, Vol. V*, p. 67.

[80a] Sections 10 to 42 of this Act, inclusive, as well as secs. 44, 50, 51, and 52, are extended to the whole Country by 16 and 17 Vict., cap. 134, sec. 7.

[80b] The provision in this section as to the requisition of ten or more ratepayers is done away with by 18 and 19 Vict., cap. 128, sec. 3, by which it is enacted that a Vestry can be convened for the purpose without any previous requisition of the Churchwardens.

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