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THE LAW OF BURIAL.





Gt. Brit. Laws, Statutes, &c. Mortuary Law

23-

THE  
LAW OF BURIAL:

INCLUDING ALL

THE BURIAL ACTS

AS MODIFIED OR AFFECTED BY

THE LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1894;  
ALL THE CHURCH BUILDING, NEW PARISH AND POOR  
LAW ACTS RELATING TO THE SUBJECT;

THE CREMATION ACT, 1902,

AND

THE OFFICIAL REGULATIONS OF THE HOME OFFICE AND  
LOCAL GOVERNMENT BOARD,

With Notes and Cases.

THIRD EDITION.

BY

JAMES BROOKE LITTLE, B.A.,

CH. CH. OXON., BARRISTER-AT-LAW, INNER TEMPLE;

*Editor of "The Agricultural Holdings Act, 1883," "The Law of Allotments,"  
"Archbold's Poor Law," "Poor Law Statutes," etc.*

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## PREFACE.

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**S**INCE the publication of the Second Edition of this Work in 1894, three further Acts of Parliament have been passed relating to the Law of Burial and the disposal of the dead. These are the Local Government (Joint Committees) Act, 1897, the Burial Act, 1900, and the Cremation Act, 1902. The first of these, as its title implies, regulates the appointment and composition of the Joint Committees of Parish and District Councils formed under s. 53 of the Local Government Act, 1894, to exercise the powers of existing burial boards which were transferred by that section to such councils. The chief objects of the Burial Act, 1900, are to equalise as nearly as possible the position of members of the Church of England and

Nonconformists with regard to interments in public burial grounds, and to assimilate the regulation of cemeteries established under the Public Health (Interments) Act, 1879, to that of burial grounds provided under the Burial Acts. To effect these purposes the Act makes considerable changes with regard to the necessity of obtaining consecration for part of the burial ground or cemetery, and the building of chapels for use of all denominations; places all ministers of religion who conduct funeral services in such burial grounds on the same footing as regards the amount and recovery of fees for performing such services; and, subject to the temporary maintenance of certain vested interests, abolishes all fees in respect of burials, except for services rendered. The Cremation Act, 1902, does not come into force until April 1st, 1903; its object is to authorise burial authorities to establish crematoria as well as burial grounds, and to subject the practice of cremation by any persons whatsoever to the regulations which the Home Secretary is authorised to issue.

An endeavour has been made to show in the notes to the various Statutes included in this Work, all the modifications of the law caused by recent legislation, and all decided cases up to the latest possible date are included.

The Lands Clauses Consolidation Acts have not been reprinted in this Edition. Although incorporated with the Burial Acts, they are of such a special nature that it was found of little use to print them without notes, while their full annotation was outside the compass of this Work.

J. B. L.

1, TANFIELD COURT,  
TEMPLE,  
*Sept.*, 1902.



## P R E F A C E

TO THE FIRST EDITION.

---

**T**H**E**R**E** are more than a hundred and twenty public Acts of Parliament relating in whole or in part to matters connected with the burial of the dead. They contain provisions dealing with the interment of bodies, the establishment of burial boards, the providing, enlarging, and repairing of burial grounds, churchyards, and cemeteries, and the preservation of order therein, the regulation of burial ceremonies, registration of burials, the burial of the poor, of suicides, murderers, and drowned persons, the removal of bodies, the closing of burial grounds, and the conversion of disused burial grounds into open spaces, the superintendence of tombstones and monuments, the destination of fees, the establishment of mortuaries, and other matters more or less connected with the subject of burial.

Most of these matters are dealt with piecemeal by Acts amended and re-amended, or in connection with other subjects. Hence a difficulty has been experienced in deciding which Acts, out of this chaos, should be printed in full and which should be shortened to one or more sections, or merely alluded to in a note, so as to give the fullest information possible within the compass of a work



of moderate dimensions. Those Acts relating exclusively to burial in general, or to the burial of classes of persons in particular, and to burial boards or burial grounds, are of course printed in full. The Church Building Acts have almost the same application to the providing of churchyards as to the building of churches, and it has been thought advisable to set out most of those Acts slightly abbreviated. On the other hand, the Acts relating to the poor contain, as a rule, specific sections dealing with burial, and in most cases it has been sufficient to set out such sections only. Of the Acts dealing with other matters, such as registration, preservation of order, establishment of mortuaries, the conversion of closed burial grounds into open spaces, etc., some have been set out in full and some abridged, as has appeared suitable.

In the introductory chapter the common and civil law relating to burial has been fully dealt with. The decided cases on the subject up to the present term have been noted, and references given to all the leading series of reports.

J. B. L.

TEMPLE,

*December, 1887.*

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## THE LAW OF BURIAL.

---

THERE is no property in a dead body (*a*) ; but after the death of any person, such person's executors have a right to the custody and possession of the body until it is properly buried ; and it is the duty of executors to bury the body of the deceased in a manner suitable to the estate he leaves behind him (*b*). Hence a creditor is not entitled to retain the dead body of his debtor as security for his debt ; nor could a gaoler of a prison in which a person died while lying in execution for debt lawfully detain the dead body on account of pecuniary claims (*c*). This was also the rule of the canon law (*d*).

Right to possession of dead body.

Nor can any person by will or other instrument legally dispose of his body after death. So where a testator by his will requested a friend to burn his body, and directed his executors to repay her the expense of so doing, but the body was, with the assent of the executors, who paid the funeral expenses, buried by the testator's widow in unconsecrated ground, and the friend afterwards applied to the Home Secretary for his licence to remove the body, on the pretence that she intended to bury it in consecrated ground, and then burned it and brought an action against the executors for the expenses, she was held not to be entitled to recover, on the ground that the right to bury a

Disposition of body by will.

(*a*) *Reg. v. Sharpe* (1857), *Dears. & B.* 160 ; 26 *L. J. M. C.* 47 ; 3 *Jur. (n.s.)* 192 ; 7 *Cox C. C.* 214.

(*b*) 2 *Bla. Com.* 508.

(*c*) *Reg. v. Fox* (1841), 2 *Q. B.* 246 ; 1 *G. & D.* 566 ; *Reg. v. Scott* (1841), 2 *Q. B.* 248 n.

(*d*) *Ayliffe's "Parergon,"* 135.



**Funeral Expenses.**

dead body is vested by law in the deceased's executors, and that directions in his will disposing of his body have no legal force (*e*).

**Anatomical bequests.**

In the interests of science, however, it is provided by statute that any person may either in writing at any time during his life, or verbally in the presence of two witnesses during the illness of which he died, direct that his body after death be examined anatomically (*f*), and also in the same manner forbid such examination (*g*).

**Stealing shrouds, etc.**

A corpse can possess no property, and the shroud remains the property of him in whom it was when wrapped round the dead body; and it should be so described in an indictment for stealing the shroud after burial (*h*).

## FUNERAL EXPENSES.

**Funeral expenses. Executor's liability.**

As the law casts upon an executor the duty of burying the body of the deceased, an undertaker who performs a funeral may recover from such executor (having assets) the reasonable and necessary expenses of such funeral without any specific contract (*i*), unless he has given credit to some other person, in which case the executor is not to be liable to the undertaker (*k*), but is liable to repay the person who employed the undertaker (*l*). If, however, the heir-at-law employs and voluntarily pays the undertaker, he cannot recover the amount so paid out of the personalty (*m*).

The undertaker may, however, look to the estate of the deceased for payment; and administration with the will

(*e*) *Williams v. Williams* (1882), 20 Ch. D. 659; 51 L. J. Ch. 385; 46 L. T. 275; 30 W. R. 438; 46 J. P. 726.

(*f*) Anatomy Act, 1832 (2 & 3 Will. 4, c. 75), s. 8.

(*g*) *Id.* s. 7.

(*h*) *Haynes's Case* (1613), 12 Co. Rep. 113.

(*i*) *Ambrose v. Kerrison* (1851), 10 C. B. 776; 20 L. J. C. P. 135.

(*k*) *Brice v. Wilson* (1834), 3 N. & M. 513; cited in *Green v. Salmon* (1838), 8 A. & E. 348.

(*l*) *Rogers v. Price* (1829), 3 Y. & J. 28.

(*m*) *Coleby v. Coleby* (1866), 12 Jur. (n.s.) 496.

annexed has been granted to a person as a creditor for funeral expenses, who had undertaken the funeral of the deceased at the request of the deceased's daughter, who was universal legatee and had promised that he should be paid out of the estate. The court, however, will not grant administration to an undertaker as a creditor for funeral expenses, unless it is informed of the circumstances in which the expenses were incurred, and by whose authority the applicant undertook the funeral (n).

When the deceased's estate is insolvent, only expenses which are strictly reasonable will be allowed (o). "For strictness," said Lord HOLT, "no funeral expenses are allowable against a creditor, except for the coffin, ringing the bell, parson, clerk, and bearers' fees, but not for pall or ornaments" (p). Lord HARDWICKE, upon exceptions to a master's report for not allowing £60 for the testator's funeral, said: "At law, where a person dies insolvent, the rule is that no more shall be allowed for a funeral than is necessary, at first 40s., then £5, and at last £10. I have often thought it a hard rule, even at law, as an executor is obliged to bury his testator before he can possibly know whether his assets are sufficient to pay his debts. But this court is not bound down by any such strict rules, especially where a testator leaves great sums in legacies, which is reasonable ground for an executor to believe the estate is solvent." In that case, £60 was allowed, and in subsequent cases larger sums have been allowed, though generally this has been where the estate is solvent (q). On the other hand, £79 was considered too much to expend on the funeral of a captain on half-pay as against creditors, and only £20 was allowed (r). The general

(n) *Newcombe v. Beloe* (1867), L. R. 1 P. M. & D. 314; *In the Goods of Fowler* (1852), 16 Jur. 894.

(o) *Edwards v. Edwards* (1834) 2 Cr. & M. 612.

(p) *Shelley's Case* (1692), 1 Salk. 296.

(q) See *Wms. Ex.*, 8th ed., pp. 972 *et seq.*

(r) *Hancock v. Podmore* (1830), 1 B. & Ad. 260.

**Funeral Expenses.**

rule is that the executor is entitled to reasonable expenses, and if he exceeds those, he must take his chance of the estate turning out insolvent (*s*). Also, extravagance is a species of *devastavit*, and shall be prejudicial to the executor, and not to the creditors or legatees of the deceased (*t*).

**Husband.**

A husband is liable for the necessary expenses of the decent interment of his wife, whether he has left her temporarily and gone abroad (*u*), or has separated from her altogether (*x*), and although she be buried without his knowledge or request; and it makes no difference to the husband's liability whether the person who buries the wife is an undertaker or any other person (*y*).

But a husband who is executor of his wife's will made under a testamentary power of appointment, is entitled to retain out of her estate the expenses of her funeral, although such estate was insufficient for creditors, and her will did not contain any charge of debts or funeral expenses (*z*).

**Infant widow.**

An infant widow, whose husband dies without leaving any assets, is liable upon a contract for her deceased husband's funeral expenses; but it would seem that a

**Infant child.**

child or more distant relation, being an infant, is not liable upon a contract for the burial of a parent or a relation (*a*).

**Parent.**

A parent is bound to provide "Christian" burial for the body of a deceased child, if he have the means; but if he has not the means, though the body remains unburied, and become a nuisance to the neighbourhood, he is not indictable for the nuisance, notwithstanding he

(*s*) *Edwards v. Edwards* (1834), 2 Cr. & M. 612.

(*t*) 2 Bla. Com. 508.

(*u*) *Jenkins v. Tucker* (1788), 1 H. Bl. 91.

(*x*) *Ambrose v. Kerrison* (1851), 10 C. B. 776; 20 L. J. C. P. 135.

(*y*) *Bradshaw v. Beard* (1862), 12 C. B. (N.S.) 344; 6 L. T. 458.

(*z*) *In re M'Myn, Lightbown v. M'Myn* (1886), 33 Ch. D. 575; 55 L. J. Ch. 845; 55 L. T. 834; 35 W. R. 179.

(*a*) *Chapple v. Cooper* (1844), 13 M. & W. 252; 13 L. J. Ex. 286.

**Funeral Expenses.**  
—

could have obtained money for the burial expenses by way of loan from the poor law authorities of the parish, for he is not bound to incur a debt (*b*). The expression "Christian" here applied to burial must, however, now be interpreted as meaning nothing more than "decent," since cremation is lawful (*c*). And a body may be buried in unconsecrated ground, and even if buried in consecrated ground, may be buried without any religious service (*d*).

Overseers were not bound either at common law or by 43 Eliz. c. 2, to bury a pauper settled in their parish who died in the parish, but not in any parish house, although it was held that they must provide for the interment of any person dying in a parish or union house (*e*). But the guardians of a union or parish are now empowered to bury the body of any poor person, dying within the union or parish, at the expense of the union or parish to which such person may have been chargeable (*f*); and in the event of any such person having any money or property in his possession or belonging to him, may reimburse themselves therefrom the expenses incurred in and about such burial (*g*). The guardians of any union or parish are also empowered to pay the costs of burial of any poor person dying out of the limits of such union or parish, who was at the time of death in receipt of relief from such guardians, and may recover such cost in like manner, and from the same parties as the cost of any relief (if given to such person when living) would have been recoverable (*h*). They may pay the cost of burial of pauper idiots sent to asylums (*i*); and the necessary expenses

(*b*) *Reg. v. Vann* (1851), 2 Den. C. C. 325; 21 L. J. M. C. 39; 15 Jur. 1090.

(*c*) *Reg. v. Price* (1884), 12 Q. B. D. 247; 53 L. J. M. C. 51; 33 W. R. 45; 15 Cox C. C. 389, and see p. 11, *post*.

(*d*) See the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 6.

(*e*) *Reg. v. Stewart* (1840), 12 A. & E. 773; 4 P. & D. 349.

(*f*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 31.

(*g*) Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 16.

(*h*) *Id.* s. 17.

(*i*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 13.

**Funeral Expenses.**

attending the burial of pauper lunatics in any institution for lunatics are to be borne by the union to which the lunatic is chargeable, or by the local authority liable for his maintenance (*j*).

It is also the duty of the relieving officer to bury the body of any deceased person, in respect of which an order has been made by a justice of the peace under the Infectious Disease (Prevention) Act, 1890 (*k*), or the Public Health (London) Act, 1891 (*l*), unless the friends or relatives of the deceased undertake to bury and do bury such body within the time limited by such order ; and any expense so incurred may be recovered by the guardians in a summary manner, from any person legally liable to pay the expenses of such burial.

**Householder.** Every householder in whose house the dead body of a poor person lies is (if no other person undertakes the duty) bound by common law to inter the body decently, unless any ecclesiastical prohibition attaches to the burial of such person (*m*).

**Seamen.** By s. 207 (1), (5) of the Merchant Shipping Act, 1894 (*n*), if any master, seaman, or apprentice receives injury in the service of the ship to which he belongs, and dies therefrom, the expense (if any) of his burial shall be defrayed by the owner of such ship, without any deduction on that account from the wages of such master, seaman, or apprentice. In other cases, the reasonable expenses incurred by the owner in respect of the burial of any seaman or apprentice, who dies whilst on service shall, if duly proved, be deducted from the wages of such seaman or apprentice.

**Burial of shipwrecked and drowned persons.** By the Burial of Drowned Persons Act, 1808 (48 Geo. 3, c. 75), it is provided that dead bodies cast

(*j*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 297.

(*k*) 53 & 54 Vict. c. 34, s. 10.

(*l*) 54 & 55 Vict. c. 76, s. 89.

(*m*) *Reg. v. Stewart* (1840), 12 A. & E. 773 ; 4 P. & D. 349.

(*n*) 57 & 58 Vict. c. 60.

## Funeral Expenses.

on shore from the sea remaining unclaimed must be removed by the churchwardens and overseers of the parish where such bodies are found, and decently interred in the churchyard of such parish. If the place where such bodies are cast up is extra-parochial, the duty is to be performed by the constable or headborough of such place (s. 1). And any churchwarden, overseer, constable, or headborough neglecting such duty is liable to a penalty of £5 (s. 7). The expenses incurred in the performance of such duty are payable in the first place by such churchwardens, etc. (s. 5), and must be repaid to them by the treasurer of the county (s. 6); but this provision is not to interfere with the right of lords of manors to pay the usual fee, if they are so disposed, as evidence of their right to wreckage, in which case such fee is to go towards repaying the expenses of the churchwardens, etc. (s. 13). As this Act only provided for the case of dead bodies cast up by the sea, and cases occurred of bodies coming to land from estuaries and rivers, its provisions were extended by the Burial of Drowned Persons Act, 1886 (49 & 50 Vict. c. 20), to all bodies found in, or cast on shore from, any tidal or navigable waters, and to all bodies found floating or sunken in any such waters and brought to shore.

49 & 50 Vict  
c. 20.

## REMOVAL OF DEAD BODIES.

As there is no property in a corpse, it cannot be the subject of larceny (*o*); though at one time it was felony to steal dead bodies for the purpose of witchcraft (*p*); but it is a misdemeanor to disinter a dead body without lawful authority, whether for the purpose of dissection or sale, or other indignity (*g*), or even for a pious and laudable purpose (*r*).

Illegal  
removal of  
bodies.

(*o*) *Rex v. Haynes* (1613), 12 Co. Rep. 113; 2 East P. C. 652.

(*p*) 1 Jac. 1, c. 12, repealed by 9 Geo. 2, c. 5.

(*g*) *Rex v. Lynn* (1788), 2 T. R. 733; *Foster v. Dodd* (1867), L. R. 3 Q. B. 67; 8 B. & S. 854; 37 L. J. Q. B. 28; 17 L. T. (N.S.) 614; 15 W. R. 155.

(*r*) *Reg. v. Sharpe* (1857), Dears. & B. 160; 26 L. J. M. C. 47; 7 Cox C. C. 214; 3 Jur. (N.S.) 192.

**Removal of Bodies.****Faculty for removal.**

If it is required merely to remove a body from one consecrated place of burial to another a faculty may in proper cases be obtained for that purpose; but the removal of bones from a churchyard without a faculty is illegal, and the person offending will be compelled to replace them (*s*). And where a faculty was obtained on a representation that it was desired to remove only a few remains, and under cover thereof a great quantity was removed, the faculty was revoked, and the remains ordered to be decently reinterred in their original position (*t*).

On an application for a faculty to remove a body from one place of burial to another, consideration will be paid to the expressed wishes of the deceased as to the place of burial (*u*); but where a body had been buried in a cemetery, a faculty was refused to the widow of the deceased to remove the body for the purposes of cremation (*x*).

In a proper case a faculty will be decreed for the removal of human remains from a church or burial ground on sanitary grounds, and provisions will be inserted in such faculty authorising members of families whose relatives are buried therein to remove the remains of their relatives to any particular churchyard or consecrated cemetery selected by them (*y*).

**Coroner's order.**

By the common law a coroner may order a body to be disinterred within a reasonable time after the death of the person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the first was insufficient (*z*). It is doubtful, however, whether by reason of s. 25 of the

(*s*) *Adlam v. Coulthurst* (1867), L. R. 2 A. & E. 30; 36 L. J. Ec. 14; 31 J. P. 820.

(*t*) *St. Pancras v. St. Martin-in-the-Fields* (1860), 6 Jur. (N.S.) 540.

(*u*) *Smith v. Roberts* (1877), cited in *In re Dixon*, [1892] P. 386.

(*x*) *In re Dixon*, [1892] P. 386.

(*y*) *Rector, etc. of St. Helen's, Bishopsgate, with St. Mary Outwich v. Parishioners*, [1892] P. 259.

(*z*) *Stanf. P. C. 51*; *Hale, Sum. 170*; 2 *Hawk. P. C. c. 9, s. 23*.

Burial Act, 1857, *post*, a coroner's order can be carried into effect without the licence of the Home Secretary. A faculty to disinter a corpse for the purpose of identifying it may be granted without waiting for a licence from the Home Secretary, but it cannot be carried into effect until such licence is obtained (*a*). Such a faculty operates only as a licence to do that which without a faculty would be an ecclesiastical offence, and does not dispense with any statutory restrictions upon the disinterment or removal of dead bodies (*b*).

**Removal of  
Bodies.**

Unless such a faculty authorising the removal of a body from one consecrated place to another has been obtained, or unless in obedience to a coroner's order, no person may disinter or remove any body or the remains of any body without the licence of a Secretary of State, under a penalty on summary conviction not exceeding £10 (*c*).

**Licence of  
Secretary of  
State.**

By the Infectious Disease (Prevention) Act, 1890, which applies to any rural or sanitary district after the adoption of the Act by such district, the dead body of any person dying of an infectious disease must not, without the sanction in writing of the medical officer of health or of a registered medical practitioner, be retained unburied for more than forty-eight hours elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom (*d*); and any justice may order such body so retained beyond forty-eight hours, and also the dead body of any person retained in any house or building so as to endanger the health of the inmates thereof or of any adjoining or neighbouring house or building, to be removed to any available mortuary, and buried within the time limited by such order. A justice

**Persons  
dying from  
infectious  
diseases.**

(*a*) *Re Sarah Pope* (1851), 15 Jur. 614; *Reg. v. Tristram* (No. 1), [1898] 2 Q. B. 371; 67 L. J. Q. B. 857; 79 L. T. 74; 46 W. R. 653.

(*b*) *Reg. v. Tristram* (No. 2) (1899), 80 L. T. 414; 47 W. R. 639; 63 J. P. 391.

(*c*) Burial Act, 1857 (20 & 21 Vict. c. 81), s. 25.

(*d*) 53 & 54 Vict. c. 34, s. 8.



**Removal of Bodies.** may also, in any case in which he may consider immediate burial of a dead body necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury, and do bury the dead body within the time limited by such order, it is the duty of the relieving officer to bury such body, and the guardians may recover the cost of such burial from any person legally liable to pay the same (*e*). Similar provisions are enacted by the Public Health Act, 1875 (*f*), and also with regard to London districts, by the Public Health (London) Act, 1891 (*g*). These latter Acts are, however, compulsory, and their efficacy does not depend upon their voluntary adoption by any district.

**Unidentified bodies.** By s. 93 of the Public Health (London) Act, 1891 (*g*), the London County Council is empowered to provide and fit up in London, one or two suitable buildings for the reception of dead bodies found in London, which are not identified, with a view of preserving them to afford an opportunity of identification; and the Home Secretary is empowered to make regulations as to the disposal and interment of such bodies.

#### RIGHT TO CHRISTIAN BURIAL.

**Cremation** The usual method of disposing of the remains of the dead in this country has from ancient times been by burial (*h*), and it is the only method contemplated by the law, ecclesiastical or civil. But the burning of a dead body is not unlawful, unless the process is conducted in such a manner as to amount to a nuisance at common law (*i*), or is resorted to for the purpose of preventing the coroner from holding an inquest (*j*).

(*e*) 53 & 54 Vict. c. 34, s. 10.

(*f*) 38 & 39 Vict. c. 55, s. 142.

(*g*) 54 & 55 Vict. c. 76, ss. 72, 89.

(*h*) *Gilbert v. Buzzard* (1820), 2 Hag. Con. 333; 3 Phillim. 335.

(*i*) *Reg. v. Price* (1884), 12 Q. B. D. 247; 53 L. J. M. C. 51; 33 W. R. 45; 15 Cox C. C. 389.

(*j*) *Reg. v. Stephenson* (1884), 13 Q. B. D. 331; 53 L. J. M. C. 176; 33 W. R. 44.

In many cases which have come before the courts, expressions have been used which imply that no method of disposing of the dead body other than by Christian burial (with certain ecclesiastical exceptions) is lawful in this country ; but these cases were all examined by STEPHEN, J., in his charge to the jury in *Reg. v. Price (k)*, and that learned judge expressed his opinion that those expressions must not be taken as deciding that no other method of disposing of the dead is lawful, and that the courts never intended to lay down any such rule. Where such expressions occur, therefore, they should be taken as indicating that a duty rested upon somebody of decently disposing of the dead body in question, but that such duty might be discharged either by burying it or disposing of it in some other lawful manner, such as by burning.

Apart from the question of the legality of cremation, every person dying in this country, and not within certain certain exclusions laid down by the ecclesiastical law, has a right to Christian burial (*l*), by which was generally meant, at least before 1880, burial "in the churchyard or some other sacred place wherein other Christians are usually buried, and the performing of the service of the Church at the time of the interment" (*m*). In the Church of England these exclusions are stated in the rubric of the Burial Service : "Here it is to be noted that the office ensuing is not to be used for any that die unbaptised or excommunicate, or have laid violent hands upon themselves." In addition to the three classes of persons mentioned in the rubric, there were formerly others to whom Christian burial was denied ; particularly to heretics, to persons not receiving the holy sacrament at least at Easter, and to persons killed in duels, tilts, or tournaments (*n*). Rubric.

The 68th Canon (1603) directs that "No minister shall 68th Canon. refuse or delay to christen any child, according to the form

(*k*) 12 Q. B. D. 247 ; 53 L. J. M. C. 51 ; 33 W. R. 45 ; 15 Cox C. C. 389.

(*l*) *Reg. v. Stewart* (1840), 12 A. & E. 773 ; 4 P. & D. 349.

(*m*) Ayliffe's "Parergon," 132.

(*n*) Gibs. 450.

**Right to  
Christian  
Burial.**

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of the Book of Common Prayer, that is brought to the church to him upon Sundays or holy days to be christened, or to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before, in such manner and form as is prescribed in the said Book of Common Prayer. And if he shall refuse to christen the one, or bury the other (except the party deceased were denounced excommunicated *majori excommunicatione* for some grievous and notorious crime, and no man able to testify of his repentance), he shall be suspended by the bishop of the diocese from his ministry by the space of three months."

**Refusal to  
bury.**

The reasons for exclusion laid down in the canon and rubric must be fully proved to justify a clergyman in refusing to bury the body of any person. Thus, where a clergyman refused to bury the body of a parishioner on a coroner's order for burial, the jury having returned a verdict of found drowned, assigning as his reason that such person had died in a state of intoxication, or was *felo de se*, it was held that the mere opinion of the clergyman did not justify his refusal, and that he must be suspended for three months (*o*). If any temporal inconvenience arise, as a nuisance from the neglect of interment of the dead body, the minister is punishable also by the temporal courts, on indictment or information (*p*).

The full burial service must be read, and a clergyman was suspended for omitting the words in the service expressing a hope that the deceased "resteth in our Lord Jesus Christ," being under the (erroneous) impression that the deceased was intoxicated when he died (*q*).

It was held by Dr. LUSHINGTON that a clergyman will be punished for refusing to perform the burial service

(*o*) *Cooper v. Dodd* (1850), 2 Rob. Ecc. 270; 14 Jur. 724.

(*p*) *Rez v. Taylor* (1720), Hil. 7 Geo. 1 B. R.; 1 Burn's Ecc. Law, 258; 1 Phil. Ecc. Law, 843; Serj. Hill's MSS. (7 D. 278); cited in *Andrews v. Cawthorne* (1744), Willes, p. 538 n.

(*q*) *Re Todd* (1844), 3 Notes of Cas. Ecc. & Ad., suppl. li.

over the body of a member of a family which is deposited in a private family vault, even though the member, being a married woman, has ceased to be a parishioner (r).

**Right to  
Christian  
Burial.**

The warning required by the canon must be given to the minister before the corpse is brought to the church. A warning that the corpse *has been* brought is insufficient, and a minister refusing to bury a corpse after warning only that the corpse has been so brought, is not liable to penalties (s). And after a suit against a minister in the Ecclesiastical Court for refusing to bury the corpse of one of his parishioners had been dismissed on the ground that convenient warning had not been given, the Court of Queen's Bench refused an application for a peremptory *mandamus*, on the ground that there had been no specific demand and refusal, though the minister had stated generally that he never would bury the body; but the court allowed the applicant to make a fresh demand (t).

By the interpretation placed upon this canon and the rubric, burial is to be refused to those who are not Christians at all, but not to those who are baptised according to the forms of some particular church or sect (u); and a clergyman of the Church of England is bound to read the burial service in the manner and form prescribed by the Book of Common Prayer over the corpse of any person who has been baptised with water and in the name of the Holy Trinity, if required to do so, though such baptism was performed by a layman. And the clergyman refusing to perform the office of interment after due notice of the death of a parishioner so baptised was punished by suspension (x). So baptism administered according to the custom of the body of

**Baptised  
persons.**

**Non-  
conformists.**

(r) *Nevill v. Baker*, Arches Court, November 22nd, 1862; cited 1 Phil. Ecc. Law, 655, and in *In re Sargent* (1890), 15 P. D., p. 169.

(s) *Titchmarsh v. Chapman* (1844), 8 Jur. 1077.

(t) *Ex parte Titchmarsh* (1845), 9 Jur. 159.

(u) *Kemp v. Wickes* (1809), 3 Phillim. 273, 292.

(x) *Escott v. Mastin* (1841), 4 Moo. P. C. C. 104; 6 Jur. 765; 2 Curt. 692.

**Right to  
Christian  
Burial.**

Independents (*y*) or of Primitive Methodists (*z*) is sufficient.

If an offence against this canon be proved against a clerk, the court has no discretion in inflicting the penalty, but must suspend the clerk for three months (*a*).

**Papists.**

Papists were (until 1844) not only permitted, but required to be buried by the Church, or a penalty was incurred by their representatives (*b*). And such burial was to be performed, not by putting the body into the ground without ceremony, but the minister was to read the service — “our Church,” says Sir John Nicholl, “knowing no such indecency as putting the body into the consecrated ground without the service being at the same time performed” (*c*).

**Service to be  
performed  
by minister  
of Church  
of England.**

By the law as it stood before 1880 no person, unless duly authorised, was permitted to perform the burial service of the Church of England in consecrated ground (*d*), and no minister of the Church of England was permitted to perform the service in unconsecrated ground. And if a dead body were buried in consecrated ground, it was necessary that the burial service of the Church of England alone should be performed over it (*c*).

**Burial Laws  
Amendment  
Act, 1880.**

But now, by the Burial Laws Amendment Act, 1880, in England, any relative, friend, or legal representative having the charge of, or being responsible for, the burial of a deceased person, may give forty-eight hours' notice to the rector, vicar, incumbent, or other officiating minister in charge of any parish, district, or place, that it is intended that such deceased person shall be buried in the churchyard or graveyard of such parish without

(*y*) *Titchmarsh v. Chapman* (1843), 3 Curt. 703, 840.

(*z*) *Nurse v. Henslowe* (1844), 3 Notes of Cas. Ec. & Ad. 272.

(*a*) *Escott v. Mastin* (1841), 4 Moo. P. C. C. 104; 6 Jur. 765; 2 Curt. 692.

(*b*) 3 Jac. 1, c. 5, s. 15, repealed by 7 & 8 Vict. c. 102.;

(*c*) *Kemp v. Wickes* (1809), 3 Phillim. 292.

(*d*) *Johnson v. Friend* (1860), 6 Jur. (N.S.) 280.

the performance of the burial service according to the rites of the Church of England, and the burial shall so take place accordingly. If the burial is desired to take place in a burial ground or cemetery vested in a burial authority, such notice must be given at such time and to such person as the burial authority shall direct (*e*). And proprietors of private cemeteries are authorised to make arrangements for such burials (*f*). Such notice must state the time of burial, but, unless otherwise mutually arranged, it must be between 10 A.M. and 6 P.M. in the summer, and 10 A.M. and 3 P.M. in the winter, on some day other than Sunday, Christmas Day, or Good Friday (*g*). Such burial may take place, at the option of the person giving the notice, either without any religious service, or with some orderly religious service, under which term is included every religious service used by any church, denomination, or person professing to be Christian (*h*). It must be conducted in a decent and orderly manner, and any person guilty of riotous or indecent behaviour, or obstructing such burial or service, or delivering an unauthorised address, not being part of such religious service, or wilfully endeavouring thereat to bring into contempt and obloquy the Christian religion, or the belief and worship of any church or denomination of Christians, or the members or any minister thereof, or any other person, is guilty of a misdemeanor (*i*).

No clergyman of the Church of England is to be subject to any penalties for performing the burial service in unconsecrated ground, and every person having charge of the burial of a deceased person who had a right of interment in a burial ground or cemetery vested in a burial board under the Burial Acts, or provided under any Act relating to the burial of the dead, is entitled to have the burial service performed in the unconsecrated

(*e*) Burial Act, 1900 (63 & 64 Vict. c. 15), s. 8.

(*f*) Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), ss. 1, 4.

(*g*) *Id.* s. 3.

(*h*) *Id.* s. 6.

(*i*) *Id.* s. 7.

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part thereof by any such clergyman who is willing to perform it (*k*). And if any service other than that of the Church of England, is performed by a clergyman of the Church of England, he may use such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved by the ordinary (*l*).

*Felo de se.*

In addition to the ecclesiastical exclusion from Christian burial of persons who have laid violent hands upon themselves, the civil law made special provision with regard to persons against whom a verdict of *felo de se* may be had. Formerly, the bodies of such persons were directed by the coroner to be buried in some public highway and a stake driven through them. This usage was put an end to by 4 Geo. 4, c. 52, which directed that such persons should be privately interred in the usual churchyard or burial place, but between the hours of nine and twelve at night, and without the rites of Christian burial. This Act is repealed by the Interments (*Felo de Se*) Act, 1882 (*m*), which provides that the coroner shall direct that the remains of any person *felo de se* be interred in the usual churchyard or burial place, and that the interment of such person may be made in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880, but does not further authorise the performing of any of the rites of Christian burial on the interment of any such person. Thus, any form of orderly religious service may now be used at the interment of a person *felo de se*, except that of the Church of England by a minister of the Church of England.

**Murderers**

The bodies of murderers were at one time denied burial altogether. By 25 Geo. 2, c. 37, it was directed that after execution the body of a murderer should be delivered to Surgeons Hall, or, if the execution took place out of

(*k*) 43 & 44 Vict. c. 41, s. 12.

(*l*) *Id.* s. 13.

(*m*) 45 & 46 Vict. c. 19.

Middlesex, to some surgeon to be named by the judge at the trial, to be dissected and anatomised; or the judge might order the body to be hung in chains. In no case was the body to be buried unless previously dissected and anatomised. The 9 Geo. 4, c. 31, which repealed this Act, also provided that the body of every murderer should, after execution, either be dissected or hung in chains. Dissection was abolished by the Anatomy Act, 1832 (n), s. 16, which directed the body either to be hung in chains or buried within the precincts of the prison, as the court might order; and finally, hanging in chains was abolished by 4 & 5 Will. 4, c. 26, and the body was directed in all cases to be buried within the precincts of the prison. This last statute was repealed by the Statute Law Revision Act, 1874, its place having been taken by the Offences against the Person Act, 1861 (o), s. 3, which directs that the body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction. This Act is, however, modified by the Capital Punishment Amendment Act, 1868 (p), s. 6, which provides that the body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him; provided that if there is no convenient space within the walls for such burial, the Secretary of State may, by writing, appoint some other place for that purpose.

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Christian  
Burial.

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#### PLACE OF BURIAL.

Every parishioner and inhabitant of a parish has a Churchyard. common law right to be buried in his parish churchyard or burial ground (q). It is also stated that by the custom of England every person may be buried in the

(n) 2 & 3 Will. 4, c. 75.

(o) 24 & 25 Vict. c. 100.

(p) 31 & 32 Vict. c. 24.

(q) *Rez v. Coleridge* (1819), 2 B. & Ald. 806; 1 Chit. 588.



**Place of  
Burial.**

churchyard of the parish where he dies (*r*). In *Taylor's Case* it was held that an information was grantable against a parson for opposing the burial of a parishioner in the churchyard; but as to refusing to read the service over the deceased, because he was never baptised, the Court of King's Bench would not interpose, that being a matter cognizable in the Ecclesiastical Court (*s*).

**Churches.**

But the practice of burying in churches seems to have prevailed before the existence of churchyards. The rapid crowding of the churches, however, with the dead bodies of all worshippers made it necessary to place a restriction upon the number of burials within the walls of the edifice, and the honour of interment within the sacred building was reserved to persons of great sanctity or considerable wealth.

In an ancient capitulary, of uncertain date and author, it is stated,—“It was of ancient use in these parts to bury the dead in the churches, and oftentimes places dedicated to Divine worship, and ordained for the offering of sacrifices to God, have been turned into cemeteries or charnel-houses (*polyandria*) by the tombs of the dead. Therefore it is our will that this thing cease, and that none be buried within the church, unless, indeed, it be the body of the priest, or of some righteous man, who, by the blamelessness of his life, shall have earned such haven for his dead body” (*t*). On which capitulary ABNEY, J., remarks (*u*) —“And as the parish priest was the sole judge of the merits of the dead and the fitness of burial in the church, and he would only determine who was a faithful layman, they only were judged faithful whose executors came up to the price of the priest, and they only were allowed burial in

(*r*) Degge, pt. i. chap. 12.

(*s*) *Rex v. Taylor* (1720), Hil. 7 Geo. 1, B. R.; 1 Burn's Ec. Law, 258; 1 Phil. Ec. Law, 843; Serj. Hill's MSS. (7 D. 278); cited in *Andrews v. Cawthorne* (1745), Willes, p. 538 n.

(*t*) Spel. Conc. 590, n. 9. *Capit. incert. Auct. loc. et temp. ad eccl. regimen congesta.*

(*u*) *Andrews v. Cawthorne* (1745), Willes, 536.

the church, and the poorer sort were buried in the church-yard." With which agrees Coke's 2 Inst. 489. Lord STOWELL says: "In our own country the practice of burying in churches is said to be anterior to that of burying in what are now called churchyards, but was reserved for persons of pre-eminent sanctity of life; men of less memorable merit were burial in enclosed places not connected with the sacred edifices themselves. But a constitution, imported from Rome in A.D. 750 by an Archbishop Cuthbert, took place at that time, and churches were surrounded by churchyards, appropriated entirely to the burial of those who had in their lives continued to attend Divine service in those churches, and who now became entitled to render back into those places their remains into the earth, the common mother of mankind, without payment of the ground which they were to occupy, or for the pious offices which solemnized the acts of interment" (x).

Place of  
Burial.

The origin of churchyards is thus described by Gibson: "Anciently the burying, not only in temples and churches, but even in cities, was expressly prohibited. Such was the law of the Twelve Tables: *Hominem mortuum intra urbem ne Sepelito*; and that of the Christian emperors: *Nemo apostolorum vel martyrum sedem (i.e., ecclesiam) humanis corporibus existimet esse concessam* (y). And the same practice is said to have continued in the Christian Church till the time of Gregory the Great, and in England yet longer, till the time of Cuthbert, Archbishop of Canterbury, by the first of which the following reason was given why it was more profitable to be buried within the precincts of a church than at a distance--viz., that the relatives of the dead, so often as they came to those sacred places, may remember the dead whose graves they behold, and offer prayers for them unto God (z), which reason was

(x) *Gilbert v. Buzzard* (1820), 3 Phillim. 349; 2 Hag. Con. 343.

(y) *Cod. l. i. t. 2, c. 2.*

(z) *Caus. 13, q. 2, c. 17.*

**Place of  
Burial.**

afterwards transferred into the body of the canon law ; and this superstition of praying for the dead seems to have been the true original of churchyards, as encompassing or adjoining to the church, which being laid out and enclosed for the common burial places of the respective parishes, every parishioner hath, and always had, a *right* to be buried in them" (a).

**Property in  
churchyard.**

The freehold of the churchyard is in the incumbent, but the soil belongs to the parishioners for burial therein. And the management of the churchyard is vested, on behalf of the parishioners, in the churchwardens conjointly with the incumbent. And though the right of a parishioner to be buried in the churchyard is absolute, and independent of the sanction of the incumbent (b), the minister and churchwardens have a discretion in what part of the churchyard he shall be buried ; and the minister cannot be compelled to bury the corpse in a vault or in any particular part of the churchyard (c). And an alleged custom for the inhabitants of a parish to bury as near as possible to their ancestors is bad (d).

**Vaults in  
churchyard.  
Faculty.**

The rector cannot lawfully grant away any part of the church or churchyard for the purpose of a vault for an individual or a family. "The rector," says BAYLEY, J. (e), "has the freehold of the church for public purposes, not for his own emolument, to supply places for burial from time to time as the necessities of the parish require, and not to grant away vaults, which, as it seems to me, cannot be done unless a faculty has been obtained." Nor has any parishioner an absolute right to have any portion of the churchyard set apart for his exclusive use. "The legal doctrine certainly is that the common cemetery

(a) Gibs. 453.

(b) *Maidman v. Malpas* (1794), 1 Hag. Con. 205. See 1 Buru's Ec. Law, 258 (a) ; 1 Phil. Ec. Law, 884.

(c) *Ex parte Blackmore* (1830), 1 B. & Ad. 122.

(d) *Fryer v. Johnson* (1755), 2 Wils. K. B. 28.

(e) *Bryan v. Whistler* (1828), 8 B. & C., p. 293 ; 2 M. & R. 318.

is not *res unius cetatis*, the exclusive property of one generation now departed, but is likewise the common property of the living and of generations yet unborn, and subject only to temporary appropriation. There exists a right of succession in the whole, a right which can only be lawfully obstructed in a portion of it by public authority, that of the ecclesiastical magistrate, who gives occasionally an exclusive title in a part of the public cemetery to the succession of a single family, or to an individual who has a claim to such a distinction, but he does not do that without just consideration of its expediency, and a due attention to the objections of those who oppose such an alienation from the common use. Even a brick grave without such authority is an aggression upon the common freehold interest, and carries the pretension of the dead to an extent that violates the just rights of the living" (*f*). So it was held that the churchwardens of a London parish were justified in refusing to allow a corpse to be buried in the churchyard in a patent iron coffin, except on payment of special fees to the churchwardens, on the ground that, owing to the apparent indestructibility of the material of the coffin, the ground would be thereby occupied for a longer time than was consonant with the rights of other and future parishioners (*f*). Where a faculty is sought to be had for erecting a vault in a churchyard, the court will scruple to decree it, without being satisfied that the proposed erection is not likely to be generally prejudicial to the parish, even though its issue be unopposed, either on the part of the parish, or of any particular parishioner (*g*).

It has been laid down that a faculty for erecting a vault will be limited in the same way as faculties for pews, "to the use of the family so long as they continue parishioners and inhabitants" (*h*); and that a faculty for

(*f*) *Gilbert v. Buzzard* (1820), 3 Phillim. 357; 2 Hag. Con. 353.

(*g*) *Rosher v. Vicar of Northfleet* (1825), 3 Add. E. R. 14.

(*h*) *Magnay v. Rector of St. Michael* (1827), 1 Hag. Ec. 48.

**Place of Burial.**

a pew limited to "A. B. and his heirs" is bad on the ground that his heirs may not be parishioners (*i*); but a faculty for a vault to "K. his family and successors" was approved by the Privy Council (*k*); and Oughton gives the form "to B. her heirs and family" (*l*); and a faculty for the reservation of a grave-space in a churchyard closed by Order in Council has been granted to a non-parishioner, member of the family of a parishioner (*m*).

**Vaults in church and chancel.**

But while the inhabitants of a parish have a common law right to be buried in the parish of which they are inhabitants, provided there is a burial ground available therein, they have no common law right to be buried within the chancel, and probably not within the church; and a faculty for a vault within the building, and certainly within the chancel, always confers on the grantee a right which he did not before possess (*n*).

A faculty for a vault cannot be granted in a church that is not consecrated. Where an old church had been pulled down and the new one, which would require re-consecration, had not yet been consecrated, an application for a faculty for a vault in the new church was accordingly refused (*o*).

It has been stated that no person may be buried in the church without leave of the incumbent, and of the incumbent only. "Neither the ordinary himself nor the churchwardens can grant licence of burying to any within the church, but the parson only, because the soil and freehold of the church is only in the parson and in none other" (*p*). And another reason given is that this "right of giving leave will appear to belong to the parson, not as having

(*i*) *Walter v. Gunner and Drury*, 1 Hag. Con. 321.

(*k*) *Rugg v. Kingsmill* (1867), L. R. 2 P. C. 59; 37 L. J. Eccl. 13; 18 L. T. 94; 5 Moo. P. C. (N.S.) 79.

(*l*) Oughton, *Ordo Judiciorum* (1738), vol. ii., p. 297, No. 322.

(*m*) *In re Sargent* (1890), 15 P. D. 168.

(*n*) *Rugg v. Kingsmill* (1867), L. R. 1 A. & E., p. 345.

(*o*) *Turner v. Rector of Hanwell* (1842), 1 Notes of Cas. Ec. & Ad. 368.

(*p*) *Francis v. Ley* (1615), Cro. Jac. 366; *Day v. Beddingfield* (1615), Noy, 104.

the freehold (at least, not in that respect alone), but in his general capacity of incumbent, and as the person whom the ecclesiastical laws appointed the judge of the fitness or unfitness of this or that person to have the favour of being buried in the church" (q). But it has been distinctly laid down in a modern decision that the grant of a faculty for the appropriation of a vault in a church or chapel is evidently within the discretion of the ordinary. The ecclesiastical law requires, before such faculty is decreed, that all persons interested in opposing the grant should be heard before the ordinary; but a faculty for the erection of monumental tablets, or for the construction of vaults in the chancel, may be legally granted without the consent of the vicar or perpetual curate; though he has a *persona standi*, by reason of his position as incumbent, to oppose the grant of such a faculty (r).

The grant of a faculty for a vault in a church or churchyard does not confer upon the grantee a freehold interest in it; that can only happen where the vault is in a private chapel or private aisle, the fee of which is in the owner of the chapel or aisle. What is really granted by the faculty is the use of the ground for a vault, so long as it is not required for the general use of the parishioners; and when it is so required, by the practice of the Ecclesiastical Courts the owner of the vault is entitled to have it removed to another site in the churchyard at the cost of the applicant for the new faculty (s).

If a parishioner desires to have a vault in the chancel, Lay rector. the consent of the lay rector (if there be one) must be had, and this on the ground not merely that the freehold is in him, but because of the burden of repair that is upon him (t). But the lay rector himself, though the freehold of

(q) Gibs. 453.

(r) *Rugg v. Kingsmill* (1867), L. R. 2 P. C. 59; 37 L. J. Ec. 13; 18 L. T. 94; 5 Moo. P. C. (n.s.) 79.

(s) *Vicar, etc. of St. Botolph without Aldgate v. Parishioners*, [1892] P., pp. 167, 168.

(t) *Rich v. Bushnell* (1827), 4 Hag. Ec. p. 172.

**Place of Burial.**

the chancel be in him, is not entitled as of right to make a vault or affix tablets in the chancel without leave of the ordinary; nor is he entitled to a faculty for such purposes without laying before the ordinary such particulars as will afford the vicar and the parishioners an opportunity of judging of it, and satisfy the ordinary that such vaults or tablets will not interrupt the parishioners in the use and enjoyment of the chancel; nor has the vicar an absolute veto, though he may show cause against the grant of a faculty (*u*).

The lay rector of a parish, in respect of his freehold property in the parish church and churchyard, can maintain an action in the High Court against a trespasser (*x*).

**Prescriptive rights.**

The right of burial in a chancel may be prescribed for as belonging to a messuage (*y*). "And upon the foundation of freehold the common law has one exception to the necessity of the leave of the parson, namely, where a burying-place within the church is prescribed for as belonging to a manor house, the freehold of which, they say, is in the owner of that house, and that by consequence he has a good action at law if he is hindered to bury there" (*z*).

**Non-parishioners or strangers.**

Non-parishioners cannot be buried in the churchyard without the consent both of the incumbent and churchwardens, and the incumbent may be restrained by injunction from burying non-parishioners in the churchyard without the leave of the churchwardens (*a*). It has even been doubted whether it is competent to the churchwardens to give such consent. But they certainly may if there is a custom to that effect. Lord STOWELL says:

(*u*) *Rich v. Bushnell* (1827), 4 Hag. Ec. p. 164.

(*x*) *Batten v. Gedye* (1889), 41 Ch. D. 507; 58 L. J. Ch. 549; 60 L. T. 802; 37 W. R. 540; 53 J. P. 501.

(*y*) *Waring v. Griffiths* (1758), 1 Burr. 441; 2 Ken. 183; *Harvey's Case*, cited in *Dawney v. Dee* (1621), Cro. Jac. 606.

(*z*) Gibs. 453.

(*a*) *Attorney-General v. Strong* (1868), 1 Seton's Judgments, etc. (6th ed.), 559; Kerr on Injunctions, 607.

“The churchwardens have been blamed in the argument for allowing strangers to be buried there. This is a permission, undoubtedly, which should be sparingly granted, since there could be no absolute claim of that kind; but I think there is enough shown to prove that the churchwardens in this parish are authorised to give such leave, since there is a table of fees produced in which there is one for the burial of strangers. The fees are paid both to the vicar and to the parish,—to the vicar of common right, and to the parish as established by custom” (b). And GIBBS, C.J., puts the right still more clearly: “The counsel for the defendant (the vicar) has been thundering anathemas against the churchwardens who, even with the assent of the vicar, shall permit the bodies of strangers to be deposited in their churchyard. If it could be shown that other parishioners sustained actual inconvenience it might be different, but if there be not that circumstance the churchwardens have the discretion lodged with them to judge of the probability of it, and if out-parishioners choose to be buried there, or their executors choose that they shall be, and to pay for it, no law, moral or ecclesiastical, human or divine, prevents them from so doing; and if they had agreed so to do, I am further of opinion that an action might be maintained on that agreement” (c). But notwithstanding the general right of the churchwardens and minister to allow the burial of strangers to take place in the parish churchyard, the Ecclesiastical Court will protect the parishioners from such right being abused by the indiscriminate admission of non-parishioners. Thus in Burn’s “Ecclesiastical Law,” vol. i., p. 258, it is stated that the *Churchwardens of Harrow-on-the-Hill*, upon a process against them for suffering strangers to be buried in their churchyard, were admonished by the ecclesiastical judge not to suffer the same for the future.

(b) *Bardin v. Calcott* (1789), 1 Hag. Con. 17.

(c) *Littlewood v. Williams* (1815), 6 Taunt., p. 282; 1 Marsh. 589.



**Place of  
Burial.**

Repair of  
fences, etc. of  
churchyard.

As the churchyard is free to the parishioners, the parishioners are bound of common right to repair the fences thereof. Coke, in his commentary on the Stat. de Circumspecte agatis (*d*), 13 Edw. 1, says: "The parishioners ought to repair the inclosure of the churchyard, because the bodies of the more common sort are buried there, and for the preservation of the burials of those that were, or should have been while they lived, the temples of the Holy Ghost; and *cæmeterium* is derived of the Greek verb κοιμάω, that is, *dormio*, and therefore, *Cæmeterium est quasi dormitorium, quia mortui dormire dicuntur usque ad resurrectionem*. And also, if the churchyard be not decently inclosed, the church, which is *domus Dei*, cannot decently be kept, and therefore this the parishioners ought to do *per consuetudinem notoriam et approbatam*, and the consusans thereof is allowed by this Act. In the same manner the parishioners ought by this Act to repair the church, for that it is the place where Divine service is celebrated and the bodies of the parishioners of the best quality are buried." And by a constitution of Archbishop Winchelsey, the parishioners shall repair the fence of the churchyard at their own cost (*e*); though by immemorial custom the vicar or an adjoining owner may be bound to repair, and may be sued at common law by the churchwardens for neglect, or indicted (*f*).

By the 85th Canon (1603), "The churchwardens or questmen shall take care that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as hath been in each place accustomed, at their charges, unto whom by law the same appertaineth." And churchwardens may maintain an action in Chancery to restrain a person from pulling down the wall of a churchyard (*g*). But though churchwardens are bound

(*d*) 2 Inst. 489.

(*e*) Lindw. 253.

(*f*) 2 Roll. Abr. 287; *Rez v. Reynell* (1805), 6 East, 315.

(*g*) *Marriott v. Tarpley* (1838), 9 Sim. 279; 7 L. J. Ch. 245.

by their office to keep the footpaths in the churchyard in proper order, they cannot make a new path without a faculty (*h*). Both the common and the canon law above alluded to no doubt presumed that there would be public funds in the hands of the churchwardens which would enable them to perform their duties with respect to the repair of the churchyard. Such funds were furnished by church rates up to the passing of the Compulsory Church Rate Abolition Act, 1868 (*i*); since that time, however, there seems to be no sanction for the law imposing such duties, which appear to be now of moral obligation only.

The Ecclesiastical Court has full jurisdiction to entertain an action and grant relief in respect of the interference with a churchway—such as a pathway within a churchyard—forming an approach for the parishioners to the parish church, and the High Court will not exercise jurisdiction in respect of such interference at the suit of a parishioner (*k*).

By 35 Edw. 1, stat. 2, which is a declaration of the common law (*l*), it is declared that “trees growing in the churchyard are to be reckoned amongst the goods of the church, the which laymen have no authority to dispose. But seeing that trees are often planted to defend the force of the wind from hurting the church, the parson is prohibited from felling them unadvisedly, unless the chancel of the church want repair; or if the body of the church doth need repair, then the parson in charity would do well to relieve the parishioners with bestowing on them the same trees.” If there be both a rector and a vicar of the parish, it is doubtful to which the trees and grass of the

Trees,  
herbage, etc.  
in church-  
yard.

(*h*) *Walter v. Montague* (1836), 1 Curt. 260.

(*i*) 31 & 32 Vict. c. 109.

(*k*) *Batten v. Gedye* (1889), 41 Ch. D. 507; 58 L. J. Ch. 549; 60 L. T. 802; 37 W. R. 540; 53 J. P. 501; distinguishing *Marriott v. Tarpley* (1838), 9 Sim. 279; 7 L. J. Ch. 245.

(*l*) *Isford's Case* (1614), 11 Co. Rep. 49 (b).

**Place of Burial.**

churchyard belong. Lindwood thinks to the rector, unless in the endowment of the vicarage they be otherwise assigned (*m*). But Rolle says to the vicar, as he is bound to repair the church, and should have the trees for that purpose (*n*). And if the parson commits waste by felling trees for his private use, the patron may have prohibition against him (*o*); but if the proceedings be taken against him under the statute 35 Edw. 1, stat. 2, it must be by indictment at common law (*p*).

According to Fitzherbert, if any one take the trees growing in a churchyard, the parson may sue him in the Court Christian for the sacrilege, citing 17 H. 3 (*q*), but this is doubted by Ayliffe (*r*).

The herbage of a churchyard and the loppings of the trees in it have been broadly stated to belong to the incumbent (*p*); but in that case the incumbent was rector; and it is otherwise when the incumbent is perpetual curate (*s*). An incumbent is not entitled to remove earth and bones from the churchyard for private use in his garden (*t*).

**Secularisation of churchyards.**

When a churchyard or burial ground has been once consecrated only an Act of Parliament can divest it of its sacred character, and a faculty cannot be granted for applying it to secular purposes (*u*); and land granted for burials, and consecrated for that purpose, does not (unless under the provisions of a special Act of Parliament)

(*m*) Lindw. 267.

(*n*) 2 Roll. Abr. 337, 311; *Bellamy's Case* (1616), 1 Roll. R. 255.

(*o*) *Liford's Case* (1614), 11 Co. Rep. 49 (*a*); *Bradley v. Strachey* (1740), Barn. C. 399; *Strachy v. Francis*, 2 Atk. 217; *Knight v. Moseley*, Amb. 176.

(*p*) *Cox v. Ricraft* (1757), 2 Lee, 373.

(*q*) Fitz. Abr. tit. Prohib. 26.

(*r*) Ayliffe's "Parergon," 137.

(*s*) *Greenslade v. Darby* (1868), L. R. 3 Q. B. 421; 9 B. & S. 428; 37 L. J. Q. B. 137; 16 W. R. 898; 18 L. T. (n.s.) 463.

(*t*) *Bennett v. Bonaker* (1828), 2 Hag. Ec. 25; 3 Hag. Ec. 50.

(*u*) *Reg. v. Twiss* (1869), L. R. 4 Q. B. 407; 38 L. J. Q. B. 228; 20 L. T. (n.s.) 522; 17 W. R. 766.

revert to the grantor upon the discontinuance of burials therein (*x*).

**Place of Burial.**

And so, when a parish was cited in the Spiritual Court to show cause why a licence should not be granted to build a charity school by a private person in part of the churchyard, the rector and parishioners objecting, prohibition was issued by the King's Bench, for "the Ecclesiastical Court has nothing to do with this, and cannot compel them without their consent" (*y*).

**Charity school.**

But if not prohibited, the Ecclesiastical Courts not unfrequently grant faculties for the secularisation of consecrated ground; as when the rector and churchwardens made the application, a faculty was granted for building an infant school upon part of a churchyard closed under the Burial Act, 1852 (*z*), s. 2 (*a*); and for building a National school in similar circumstances (*b*).

**Infant school.**

A faculty was granted allowing the construction of chambers under two disused churchyards in the City of London for the storing and transformation of electricity (*c*). And a faculty was also granted allowing the construction of flights of steps and entrances thereto in two disused churchyards in the City of London for the purpose of giving access to certain chambers for the storing and transformation of electricity, which were constructed underneath the public streets adjoining the churchyards (*d*).

Whether or not a faculty may be issued for appropriating a portion of a churchyard for the purpose of

**Enlarging highway.**

(*x*) *Campbell v. Mayor and Corporation of Liverpool* (1870), L. R. 9 Eq. 579.

(*y*) *Rector of St. George, Hanover Square v. Stewart* (1740), Stra. 1126. (z) 15 & 16 Vict. c. 85.

(*a*) *Russell v. St. Botolph's* (1859), 5 Jur. (N.S.) 300.

(*b*) *In re Bettison* (1874), L. R. 4 A. & E. 294.

(*c*) *In re St. Nicholas Cole Abbey*; *In re St. Benetfink Churchyard*, [1893] P. 58.

(*d*) *In re St. Benet Sherehog*; *In re St. Nicholas Acons*, [1893] P. 66 n.

**Place of Burial.**

widening a public highway has been variously decided. In the older cases it was held that there was no jurisdiction in the Ecclesiastical Court to sanction such a desecration of consecrated ground (*e*).

In recent years, however, a view has been taken with regard to the powers of the Court, which is more in conformity with the necessities or amenities of modern municipal life, and in numerous cases the faculty has been ordered to issue (*f*). In the case of *St. Botolph without Aldgate*, it was said that though it was contrary to the decisions of the Ecclesiastical Courts to sanction the curtailment of a churchyard used for burials, for the purpose of widening a public thoroughfare, those decisions were inapplicable to cases of churchyards closed for burials, situated in crowded thoroughfares, where it was proved that the congested state of traffic inconvenienced those who attended the services of the church as well as the public, and that it could only be conveniently remedied by permitting a strip of the churchyard to be thrown into the thoroughfare. But in the case of *St. Nicholas, Leicester*, no such distinction was drawn, and the faculty was granted on the broad ground that it was in that case proper that it should be granted, and that the Court had jurisdiction in any proper case to make the grant (*f*).

**Vestry room.**

A faculty was granted to build a vestry room on consecrated ground originally intended for a burial ground but never used as such, it being considered that the object of such vestry room was semi-ecclesiastical (*g*). A faculty has also been granted to erect a mortuary on part of a parish churchyard closed by Order in Council,

(*e*) *Harper v. Forbes and Sisson* (1859), 5 Jur. (N.S.) 275; *Rector of St. John's, Walbrook v. Parishioners* (1852), 2 Rob. Ec. 515; 16 Jur. 645; followed in *In re Plumstead Burial Ground*, [1895] P. 225.

(*f*) *St. Botolph without Aldgate (Vicar, etc. of) v. Parishioners* (No. 1), [1892] P. 161; *Hove, St. Andrew's (Vicar, etc. of) v. Mawn*, [1895] P. 228 n; *St. Nicholas, Leicester v. Langdon*, [1899] P. 19; *In re Bideford Parish*, [1900] P. 314.

(*g*) *Campbell v. Parishioners of Paddington* (1852), 16 Jur. 646.

including a *post-mortem* room, a room for holding inquests, and living rooms for the keeper of the mortuary (*h*). Place of Burial.

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Mortuary.

Public garden.

A faculty will in proper cases be granted to allow the use of a closed churchyard as a public garden, subject to rules as to keeping vaults in repair (*i*).

Levelling churchyard.

Where no substantial inconvenience was shown by one individual, who opposed the faculty, and when the plan had been adopted at a vestry, on a unanimous report of a committee, the court granted a faculty to level a churchyard, which was still used for interments, and lay flat upright head and footstones, in order that more ground might be utilized, and the appearance of the churchyard improved, with a clause that no expense should fall on individuals (*k*).

Subject to a sufficient rent being reserved and proper covenants for its payment to the ecclesiastical authority thereunto entitled being entered into by the parties benefited, the court will grant a faculty to owners of premises adjoining a churchyard to make a pathway across the churchyard to their premises, and to enclose such pathway with railings so as in effect to enjoy an exclusive right of way along such path (*l*). Pathway.

Now by the Disused Burial Grounds Act, 1884 (*m*), as amended by the Open Spaces Act, 1887 (*n*), s. 4, it is forbidden to erect any building, including any temporary or movable building, upon any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council, except for the purpose of enlarging a church, chapel, meeting-house, or other place of worship. The various No buildings on disused burial grounds.

(*h*) *Hansard v. St. Matthew, Bethnal Green* (1878), 4 P. D. 46.

(*i*) *Vicar of St. Botolph without Aldgate v. Parishioners* (No. 2), [1892] P. 173; *Re St. George's-in-the-East* (1876), 1 P. D. 311.

(*k*) *Sharpe and Sangster v. Hansard* (1830), 3 Hag. Ec. 335.

(*l*) *St. Gabriel, Fenchurch Street (Rector, etc. of) v. City of London Real Property Co., Ltd.*, [1896] P. 95.

(*m*) 47 & 48 Vict. c. 72.

(*n*) 50 & 51 Vict. c. 32.

**Place of Burial.**

cases decided upon the construction of these Acts will be found in the notes to the former Act, *post*.

**Open spaces.**

Any churchyard, cemetery, or burial ground closed for burials, situated within the metropolis, may, under the Metropolitan Open Spaces Act, 1881 (*o*), ss. 4, 5, be conveyed to the Metropolitan Board of Works, or to the local authority of the parish or district in which it is situate, to be kept as an open space; and such board or local authority may fence, drain, level, lay out, plant, ornament, light, seat and improve the same. The board or vestry, however, may not exercise any power of management with reference to any consecrated ground without a faculty, which may extend to the removal of any tombstone or monument under such conditions, and subject to such restrictions as to the bishop may seem fit (*p*). The provisions of this Act are, by the Open Spaces Act, 1887 (*q*), extended with slight modification to all sanitary districts in England, Wales, and Ireland.

**Alienation of lands for churchyards and burial grounds.**

Several statutes have from time to time been passed giving additional facilities to corporations, otherwise incapable of alienating land, and to limited owners, full powers of conveying sites for churchyards and burial grounds.

**51 Geo. 3, c. 115, s. 2.**

By the Gifts for Churches Act, 1811 (*r*), s. 2, any person or bodies, politic or corporate, seised of or entitled to the absolute and entire fee simple of any manor, may, by deed inrolled grant to the minister of any parish and his successors land, not exceeding five acres, parcel of such manor, and lying within such parish, for the purpose of erecting or enlarging a church or chapel, or for a churchyard or burying ground, or for enlarging a churchyard or burying ground for such parish, or for a glebe, or site for a mansion for such minister freed and discharged from

(*o*) 44 & 45 Vict. c. 34.

(*p*) *Vicar, etc. of St. Botolph without Aldgate v. Parishioners* (No. 2), [1892] P. 173.

(*q*) 50 & 51 Vict. c. 32.

(*r*) 51 Geo. 3, c. 115.

all rights of common. This statute does not, however, authorise a lord of the manor to make a grant of lands of the manor overriding customary rights other than rights of common ; as, for instance, the customary right to use the land in question as part of a village green (*s*).

**Place of  
Burial.**

By the Burial Ground Act, 1816 (*t*), every spiritual or ecclesiastical body corporate, which is not otherwise authorised to alienate lands, is empowered, subject to certain restrictions, to sell, for the purpose of consecration, such portion of any land held by such body corporate, not exceeding one acre, for enlarging any cemetery, churchyard, or burying ground. <sup>56 Geo. 3, c. 141.</sup>

By the Church Building Act, 1818 (*u*), powers are given to the Commissioners of Woods and the Duchies of Lancaster and Cornwall, and to all bodies politic and corporations, to grant sites for building churches and chapels with or without cemeteries thereto (*s*. 34). Parishes and extra-parochial places are enjoined to provide sites for the same purpose when so required by the commissioners under that Act (now the Ecclesiastical Commissioners), and empowered to take lands for such purpose (*s*. 35) ; with certain provisions for the assessment and payment of compensation if the owners are unwilling to treat (*ss*. 39—47). And all bodies politic, corporate, or collegiate, corporations aggregate and sole, tenants for life or in tail, husbands, guardians, trustees and feoffees in trust, committees, executors and administrators, and all other persons and trustees whatsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of *cestui que trusts*, whether infants, issue unborn, lunatics, idiots, *femes covert*, or other person or persons, and *femes covert*, seised or possessed in their own right, are empowered to sell and convey any lands and enfranchise any copyhold lands for <sup>58 Geo. 3, c. 45.</sup>

(*s*) *Forbes v. Ecclesiastical Commissioners for England* (1872), L. R. 15 Eq. 51 ; 41 L. J. Ch. 97 ; 27 L. T. 511 ; 21 W. R. 169.

(*t*) 56 Geo. 3, c. 141.

(*u*) 58 Geo. 3, c. 45.



**Place of Burial.**

the purpose of such sites (s. 36). Conveyances by lords of manors of lands taken from commons to be sufficient (s. 38). The commissioners are empowered to re-sell any lands purchased which are not wanted (s. 51); and may advance money to parishes for the purchase of any such site or sites (s. 54). Other borrowing powers are given to the churchwardens of a parish for the same purpose (ss. 58, 59).

59 Geo. 3,  
c. 134.

By s. 37 of the Church Building Act, 1819 (*x*), all the powers of granting lands for the purpose of building additional chapels or churches, and all borrowing powers contained in the Church Building Act, 1818 (*y*), are extended to the purposes of enlarging any churchyard or burial ground, or of making any new burial ground, and to borrowing moneys for the same. Section 38 enacts that every piece of land so added to any existing churchyard or burial ground, or set apart for a new burial ground, shall be consecrated, and the freehold thereof vest in the person or persons in whom was the freehold of the ancient churchyard. By s. 39 the commissioners are empowered to repair, alter, pull down and re-build the walls and fences of any churchyard or burial ground, and to fence in any new burial ground; and, with the consent of the justices, to stop up or vary any entrance to or path through any churchyard or burial ground.

3 Geo. 4,  
c. 72, s. 26.

By s. 26 of the Church Building Act, 1822 (*z*), parishes may, with the consent of the commissioners, buy land for a churchyard or burial ground, or for an addition to a churchyard or burial ground, and raise money for that purpose. And any such land, though situate outside the parish, shall be deemed part of the parish.

8 & 9 Vict.  
c. 70, s. 14.

By s. 14 of the Church Building Act, 1845 (*a*), any land obtained as a burial ground for any parish under the Church Building Act, 1819 (*x*), may be declared by the

(*x*) 59 Geo. 3, c. 134.  
(*y*) 58 Geo. 3, c. 45.

(*z*) 3 Geo. 4, c. 72.  
(*a*) 8 & 9 Vict. c. 70.

commissioners part of such parish for that purpose, though not within the bounds of such parish.

**Place of  
Burial.**

By the Consecration of Churchyards Act, 1867 (*b*), all the powers which are given by the Schools Sites Act, 1841 (*c*), and the Schools Sites Act, 1849 (*d*), enabling persons seised in fee simple, fee tail, or for life in any manor, or lands of freehold, copyhold, or customary tenure, to convey any quantity of land not exceeding one acre as a site for a school, are extended to enable such person to convey a similar quantity of land for the purpose of enlarging churchyards or burial places. And the same statute, as amended by the Consecration of Churchyards Act, 1868 (*e*), enables such grantor to reserve the exclusive right in perpetuity of burial in one-sixth of the land so granted. It is also made applicable to the burial grounds of union houses.

30 & 31 Vict.  
c. 133.

31 & 32 Vict.  
c. 47.

By the Places of Worship Sites Act, 1873 (*f*), a tenant in fee or in tail may, and a tenant for life or lives with the concurrence of the remainderman may, grant a site not exceeding one acre for the purpose, *inter alia*, of a burial place. A person equitably entitled only may convey without the concurrence of trustees; a wife may convey without acknowledgment of the deed; and a guardian of an infant or lunatic may convey.

36 & 37 Vict.  
c. 50.

By the Places of Worship Sites Amendment Act, 1882 (*g*), the authority conferred by the last mentioned Act is extended, subject to certain restrictions, to all corporations, lay or ecclesiastical, and to all officers, justices of the peace, trustees or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes. And provision is also made for the conveyance by a tenant for life or lives where the person next entitled in remainder is unborn or unascertained.

45 & 46 Vict.  
c. 21.

(*b*) 30 & 31 Vict. c. 133.

(*c*) 4 & 5 Vict. c. 38.

(*d*) 12 & 13 Vict. c. 49.

(*e*) 31 & 32 Vict. c. 47.

(*f*) 36 & 37 Vict. c. 50.

(*g*) 45 & 46 Vict. c. 21.

**Place of  
Burial.**

Burial  
grounds  
vested in  
trustees.

13 & 14 Vict.  
c. 28.

32 & 33 Vict.  
c. 26.

53 & 54 Vict.  
c. 19.

By the Trustee Appointment Act, 1850 (*h*), "an Act to render more simple and effectual the titles by which congregations or societies for the purposes of religious worship or education in England and Ireland hold property for such purposes," provision was made for the effectual vesting of such property in trustees, for the appointment of new trustees and the devolution of such property upon the new trustees. These provisions were extended by the Trustee Appointment Act, 1869 (*i*), which enacts that wherever freehold, leasehold, copyhold, or customary property in England or Wales has been or hereafter shall be acquired by any congregation or society, or body of persons associated for religious purposes as a burial ground, whether in use or closed, all the provisions of the Trustee Appointment Act, 1850 (*h*), made applicable to a chapel, meeting-house, or other place of religious worship, shall be applicable to such burial ground; provided always that nothing therein contained shall in any way interfere with the Burial Acts. And by the Trustees Appointment Act, 1890 (*k*), which is to be read and construed as one with the previously recited Acts, it is provided that the Trustee Appointment Act, 1850 (*h*), shall apply to and include any land acquired by trustees in connection with any society or body of persons comprising several congregations, or other sections or divisions, or component parts associated together for any religious purpose, when such land is held in trust for a burial ground: And the power for the appointment of new trustees by the Conveyancing and Law of Property Act, 1881 (*l*), or any other statutory power for the same purpose for the time being in force, shall apply to all land so held in trust; such statutory power being applicable, subject to certain restrictions, in all cases notwithstanding any special power of appointment in the trust deed. This

(*h*) 13 & 14 Vict. c. 28.

(*i*) 32 & 33 Vict. c. 26.

(*k*) 53 & 54 Vict. c. 19.

(*l*) 44 & 45 Vict. c. 41.

Act also contains provisions for vesting such land in the new trustees appointed under statutory powers ; for validating irregular appointments of trustees for the purposes of sale or mortgage, if no proceedings are taken to set aside such appointments for a period of six months ; and for providing evidence of the due appointment of trustees.

**Place of  
Burial.**

By the Consecration of Churchyards Act, 1867 (*m*), s. 1, a bishop may consecrate any land added to an existing churchyard without the presence of his chancellor.

Consecration  
of additional  
churchyards.  
30 & 31 Vict.  
c. 133.

By the Ecclesiastical Fees Act, 1867 (*n*), the two archbishops, their vicars-general, and the lord chancellor, with the consent of the Lords of the Treasury, were empowered to settle a table of fees to be paid to the chancellor, vicars-general, registrars, secretaries and other officers on (*inter alia*) the consecration of churches and churchyards and the granting of faculties in churches and churchyards. A table of fees fixed according to the statute was published in the London Gazette of March 19th, 1869 (*post*, Appendix E.).

Fees for  
consecration.  
30 & 31 Vict.  
c. 135.

By the Public Worship Regulation Act, 1874 (*o*), s. 8, when any representation is made under that Act, complaining that the incumbent (who, by s. 6, is defined as the person or persons in holy orders legally responsible for the due performance of divine service in any church, or of the order for the burial of the dead in any burial ground) has within the preceding twelve months used or permitted to be used in such burial ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture ; or has, within the preceding twelve months, failed to observe, or cause to be observed, the directions contained in the Book of Common Prayer relating to the performance, in such burial ground, of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from such services,

Regulation of  
services, etc.  
in burial  
grounds.

(*m*) 30 & 31 Vict. c. 133.

(*n*) 30 & 31 Vict. c. 135.

(*o*) 37 & 38 Vict. c. 85.

**Place of  
Burial.**

rites, and ceremonies, such representation shall, if the parties making the same, and the party complained of agree to submit to the directions of the bishop of the diocese thereon, be adjudicated on by such bishop, who shall pronounce such judgment and issue such monition (if any) as he may think proper, and no appeal shall lie from such judgment or monition; but if the parties do not agree to submit to the directions of the bishop, the representation shall be adjudicated on by the judge appointed under the Act to be official principal, upon whose judgment, or the monition issued in accordance therewith, an appeal shall lie to her Majesty in Council. For the purposes of the Act a burial ground means "any churchyard, cemetery, or burial ground, or the part of any cemetery or burial ground, in which, at the burial of any corpse therein, the order for the burial of the dead contained in the Book of Common Prayer is directed by law to be used."

Brawling in  
churchyards,  
etc.

5 & 6 Edw. 6,  
c. 4.

27 Geo. 3,  
c. 44.

23 & 24 Vict.  
c. 32.

By 5 & 6 Edw. 6, c. 4, as amended by the Ecclesiastical Courts Jurisdiction Act, 1860 (*p*), any clerk brawling in a churchyard may be suspended from his ministration for such time as the ordinary may think fit, and any clerk committing an assault therein is to be deemed *ipso facto* excommunicate. By the Ecclesiastical Suits Act, 1787 (*q*), no suit can be commenced in an ecclesiastical court for striking or brawling in a churchyard after eight months from the time when such offence was committed. By the Ecclesiastical Courts Jurisdiction Act, 1860 (*p*), the jurisdiction of ecclesiastical courts in suits for defamation and brawling is abolished as against persons not in holy orders (s. 1). Any persons guilty of riotous, violent, or indecent behaviour in a churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble any minister celebrating any divine service, rite, or office in a churchyard or burial ground, may, on summary conviction, be

(*p*) 23 & 24 Vict. c. 32.

(*q*) 27 Geo. 3, c. 44, s. 2.

fined £5 or imprisoned for two months (s. 2). An appeal lies to the quarter sessions from a conviction by the justices (s. 4).

Place of  
Burial  
—

Any nuisance in a churchyard falls properly within the cognizance of the Ecclesiastical Courts (r).

## MODE OF BURIAL.

A dead body must be carried to the grave decently covered (s), but it is not necessary that it should be buried in a coffin, though such may be the general practice. "That a body," says Lord STOWELL (t), "should be carried in a state of naked exposure would be a real offence to the living, as well as an apparent indignity to the dead. Some coverings have been deemed necessary in all civilised and Christian countries; but chests containing the bodies and descending into the grave along with them, and there remaining in decay, do not plead the same degree of necessity, nor the same universal use. In our country the use of coffins is extremely ancient. They are found of great apparent antiquity, of wood, of stone, of metals, of marble, and even of glass. A statute (u) has required that a funeral vestment shall be made of wool; and coffins must, by the same statute, be buried with wool, but the use of it is not enjoined. I observe that in the funeral service of the Church of England there is no mention (and indeed, as I should rather collect, a studied avoidance of the mention) of coffins. It is throughout the whole of that service the *corpse*, or the *body*. . . . I observe likewise, that in old tables of parish fees a distinction is stated between coffined funerals and uncoffined funerals, in point of payment. There is one of 1627,

(r) *Quiller v. Newton* (1690), Carth. 151.

(s) *Reg. v. Stewart* (1840), 12 A. & E. 773; 4 P. & D. 349.

(t) *Gilbert v. Buzzard* (1820), 3 Phillim. p. 350; 2 Hag. Con. 333.

(u) 30 Car. 2, c. 3, and 32 Car. 2, c. 1, now repealed by 54 Geo. 3, c. 108.

**Mode of Burial.**

quoted by Sir Henry Spelman in his tract, *De Sepulturá*, where a certain sum is charged for coffined burials, and half the same sum for uncoffined burials, and expressly under those general heads of coffined and uncoffined funerals. The law, to be found in many of our authoritative text writers, certainly says that a parishioner has a right to be buried in his own churchyard, but it is not quite so easy to find the rule in those authorities that gives him the right of burying a large chest or trunk along with himself. This is no part of his original abstract right, nor is it necessarily involved in it. That right, strictly taken, is to be returned to his parent earth for dissolution, and to be carried there for that purpose in a decent and inoffensive manner; when those purposes are answered, his rights are, perhaps, satisfied in the strict sense in which *his claims in the nature of absolute rights* can be supposed to extend."

**Mode of burial a matter of ecclesiastical cognizance.**

The mode of burying the dead is a matter of ecclesiastical cognizance; and, therefore, when the question was whether a parishioner had a right to be buried in the parish churchyard in an iron coffin, which was a new and unusual mode, the Court of Queen's Bench refused a *mandamus* to compel the minister to perform the burial. But ABBOTT, C.J., added, "If a clergyman should absolutely refuse to bury the body of a dead person brought for interment *in the usual way*, I am by no means prepared to say that this court would not grant a *mandamus* to compel him to inter the body" (x).

**Tolling bells.**

By the 67th Canon (1603) it is provided, "When any is passing out of this life, a bell shall be tolled, and the minister not then be slack to do his last duty. And after the party's death, if it so fall out, there shall be rung no more than one short peal, and one other before the burial, and one other after the burial."

(x) *Rez v. Coleridge* (1819), 2 B. & Ald. 806; 1 Chit. 588.

## FEES.

Fees.

No burial fee is due at common law, but it may be due by immemorial custom in any particular parish (*y*). The canon law forbade the payment or taking of any fee for burial. This prohibition is repeated in many canons and decrees of councils, collected by Spelman, who says (*z*), "The sum of their censure and decrees is this :

" 1. That nothing be exacted or required for any sepulture ; which word the Gloss. declareth to comprehend the ground or place of burial, and the ministry of the priest or parson about the same. And in some of the canons it is particularly so expressed.

" 2. That all customs for such taking are evil, impious, and void.

" 3. That the offence in taking is simony.

" 4. That the cognizance thereof belongeth to the bishop of the place.

" 5. That gifts of piety for the use of the church may, notwithstanding, be taken.

" 6. That none shall be buried in the body of the church."

" We do firmly enjoin," says Langton, " that burial, or baptism, or any ecclesiastical sacrament, or even matrimony, be denied to no one on account of any sum of money. And this because if, by the pious devotion of the faithful, anything have been accustomed to be paid, we will that in regard thereto justice be afterwards done to the churches by the ordinary of the place" (*a*). Which constitution Lindwood explains as meaning that the question of payment of money is not to be raised at the time of burial, so that the rite be denied or hindered to

(*y*) *Andrews v. Cawthorne* (1744), Willes, 536 ; *Dean of Exeter's Case* (1707), 1 Salk. 334.

(*z*) *Tract de Sepult.* (ed. 1723), p. 179.

(*a*) Lindwood, *Prov.* p. 278 ; *de simo. lib. v. tit. 2.*



Fees.

anyone, but that the bishop will afterwards take care that the customary payments are made to the church. And that although ministers may demand nothing for the rite or place of burial, yet laymen may be compelled to observe pious and praiseworthy customs. Hence, if aught be demanded for the grave, or performance of the rite, the demand shall fail. But if a custom be alleged to give a certain sum at the death of any person it shall prevail (b).

In one form or another, however, either as fee or gift, it was in very ancient times customary for money to be paid at the office of burial to the parson. As early as the laws of Canute it is stated, "Moreover, it is right that the *pecunia sepulchralis* (or *pecunia sepulturae*) be forthwith paid at the opening of the grave. And if anyone bury a dead body outside the bounds of his parish, nevertheless let the *pecunia sepulchralis* be paid to the church to which it rightly belongs" (c). It is pointed out by Spelman (d) that the Saxon word *saulsceat*, which is translated by *pecunia sepulchralis*, and in another version by *pec. sepulturae* (e), has no direct application to a burial fee or payment for the grave, but refers to the payment to be made for praying for the soul of the deceased, and this law only ordains the time for making this payment, viz., at the opening of the grave. Hence he infers that the origin of burial fees is to be found in the custom of paying priests to offer prayers for the souls of the dead.

*Canonica portio.*

With the growth of religious houses in this country much dispute arose between the parish priests and the monks on the subject of burial offerings. For "anciently all persons, in their wills, made a special oblation, or bequest, to the church at which they were to be interred; and the people in those days, depending much upon the prayers of the living for the good of their souls after death, those of better condition coveted oft-times to be

(b) Lindwood, Prov. p. 278; de simo. lib. v. tit. 2.

(c) 1 Spel. Conc., p. 545, c. 13.

(d) Tract de Sepult. p. 187.

(e) 1 Spel. Conc. p. 564, c. 20.

## Fees.

buried in religious houses, with a view to greater assistances which they hoped to receive from the solemn and constant devotions there ; also, where the oblations were like to be plentiful, the religious were led by that prospect to *desire* and *promote* it. By which means, parochial ministers would have been deprived of what belonged, *de jure communi*, to them, and to no other, if the laws, which indulged the superstitious conceit of being buried in religious houses, had not at the same time provided for the ancient parochial rights ; which sometimes was the third, sometimes the fourth part (according to the customs of different places) of what was given to the religious houses ; the laws, probably presuming that the oblations to those houses would be much larger than what was usually given to the parochial ministers. This was called the *canonica portio* ; and the oblation growing by custom into a fixed right of the parish minister, the Synod of London, A.D. 1102, represents it as such in all cases ; where it provides in general, *Ne corpora defunctorum extra parochiam suam sepelienda portentur, ut presbyteri parochiae perdant, quod inde illis debeatur* ; plainly intimating that none could lawfully be carried away, and buried in any other church, till they had paid the oblation, or lawful fee, to the parochial minister” (*f*).

No fee is payable where no service is done (*g*), and a custom to pay a fee where no service is done is void (*h*).

No fee payable where no service done.

In *Topsall v. Ferrers* (*i*), a suit by the rector and churchwardens of St. Botolph’s, Aldgate, for burial fees, where the person dying in that parish had been buried in a chancel elsewhere, an alleged custom that if any person died in a parish and were carried out of the same and buried elsewhere, the same fees were payable to the parson and churchwardens of the parish where he died,

(*f*) Gibs. 452.

(*g*) *Patten v. Castleman* (1753), 1 Lee, 387.

(*h*) *Naylor v. Scott* (1729), 2 Ld. Raym. 1558.

(*i*) (1618), Hob. 175.

Fees.

as were paid in the parish where he was buried, was held bad, "for this custom is against reason that he that is no parishioner, but may pass through the parish, or lie in an inn for a night, should be forced to be buried there, or to pay as if he were; and so upon the matter to pay twice for his burial." Which judgment was approved in *Burdeaux v. Lancaster (k)*, where a christening fee was in dispute, and HOLT, C.J., said: "Nothing can be due of common right; and how can a canon take money out of a layman's pockets."

Fees to churchwardens.

As by custom the parson became entitled to receive burial fees, so by custom the churchwardens of the parish in many places acquired the right to share the fees with the parson in order, it would seem, to meet the expenses of keeping the churchyard in repair. In *Gilbert v. Buzzard (l)*, Lord STOWELL says, "I am aware that very ancient canons forbid the taking of money for interment upon the ground that consecrated grounds were *res sacræ*, and that money payments for them were therefore acts of a simoniacal complexion. But this has not been the way of considering that matter since the Reformation (for the practice certainly goes back at least as far). It is founded upon reasonable considerations, and is subjected to the proper control of an authority of inspection. To inland and populous parishes the expense of keeping churchyards in an orderly and seemly condition is not small; and that of purchasing new churchyards, when the old ones are likely to become surcharged, is extremely oppressive. To answer such charges, both certain and contingent, it is surely not unreasonable that the actual use should contribute when it is called for." And with regard to London parishes, he says (*m*): "The incumbent by the general law has the freehold by acquiescence confirmed by usage. Parishes in this town have acquired

Custom in London parishes.

(k) (1697), 1 Salk. 332.

(l) (1820), 3 Phillim. p. 360; 2 Hag. Con. 333.

(m) 3 Phillim. 365.

common rights with the incumbent." So in an *Anonymous Case* (n) it was said "that the churchwardens have a right to the churchyard, and not to the church ; for the parson only has that, although here about London the churchwardens take money for breaking open the ground in the churches, and the parson only for the chancel."

Fees.

In *Andrews v. Symson* (o) it was held that the churchwardens of any parish may by custom have a fee for every burial within the church by reason that the parish is at the charge of repairing the floor. And where it was proved (p) that agreements had existed between the successive vicars and churchwardens of a parish for at least nearly a hundred years that certain fees should be taken upon the burial of strangers in the churchyard and divided equally between them, and an incoming vicar refused to accede to that agreement, and induced the sexton, to whom the fees had been paid in the first instance, to hand the whole amount over to him, it was held that the churchwardens were entitled to recover a moiety of the fees from the vicar in an action for money had and received. And churchwardens may have a right of fee for every burial in the chancel from a certain message (q), and for the burial of strangers in the churchyard. Lord STOWELL says : "The fees are paid both to the vicar and to the parish : to the vicar of common right, and to the parish as established by custom" (r).

When burial fees are due by custom, they are not recoverable in a court of common law, but must be sued for in the ecclesiastical court (s). But if the custom be denied, its existence must be tried in the common law

Fees  
recoverable in  
ecclesiastical  
court.

(n) (1682), 2 Show. 184.

(o) (1675), 3 Keb. 504, 523, 527 ; 1 Vent. 274.

(p) *Littlewood v. Williams* (1815), 6 Taunt. 276 ; 1 Marsh. 589.

(q) *Waring v. Griffiths* (1758), 1 Burr. 441 ; 2 Ken. 183.

(r) *Bardin v. Calcott* (1798), 1 Hag. Con. 17.

(s) *Spry v. Gallop* (1847), 16 M. & W. 716 ; 16 L. J. Ex. 218.

Fees.

courts (*t*). In *Spry v. Marylebone* (*u*), where the rector sued in the Consistory Court of London for fees said to be customarily payable by the guardians of the parish, and the custom was denied, it was said, "The first question is, what jurisdiction has the ecclesiastical court over the subject? It is clear that these courts have been permitted to exercise some jurisdiction, because the courts of common law in cases where prohibition has been moved for have granted such prohibition, not on the general ground that ecclesiastical courts were wholly incompetent to hold pleas of the subject-matter, but on special grounds, as because no service was rendered as the foundation of a fee, as in *Burdeaux v. Lancaster* (*x*), where a christening fee was claimed when the child was not baptised in the parish; and in *Topsall v. Ferrers* (*y*), where a burial fee was sued for when the corpse was not buried in the parish. Prohibition has been also granted because the fee was not accustomed and certain, and the ecclesiastical court could not try the custom where it was denied. The granting prohibition for such especial reasons establishes the jurisdiction, admits it to exist, and avoids the particular exercise of it for special reasons. This is shown by the *Dean of Exeter's Case* (*z*). Some jurisdiction is recognised by the statute *Circumspecte agatis* (*a*). . . . Customary burial fees, therefore, may be sued for here, at least, until the custom has been denied, and prohibition moved for *propter defectum triationis*." But from the same case it would seem that the jurisdiction of the ecclesiastical courts is confined strictly to the recovery of ancient and customary fees, and does not extend to the recovery of fees payable under a local Act of Parliament.

Immemorial  
custom.

As to what evidence is sufficient to prove a custom to pay fees, it was said in the same case, "By customary fees are meant such fees as have existed so long that the

(*t*) *Anderson v. Walker* (1691), 2 Lutw. 1030.

(*u*) (1839), 2 Curt. 11.

(*x*) (1697), 1 Salk. 332.

(*y*) (1618), Hob. 175.

(*z*) (1707), 1 Salk. 334.

(*a*) 13 Edw. 1.

origin cannot be traced. It need not be shown that they commenced before the time of legal memory; it is sufficient to show that they have existed so far as can be discovered. The foundation of all such fees is that they were originally given voluntarily." And it having been shown that the fees in question were customarily paid out of the poor rates, it was held that an immemorial custom was thereby disproved, as the poor rates did not exist before 43 Eliz. And in *Bryant v. Foot* (b), where it was sought to recover a marriage fee of thirteen shillings alleged to be due by immemorial custom, it was stated, "The true principle of the law applicable to this question is that when a fee has been received for a great length of time, the right to which could have had a legal origin, it may and ought to be assumed that it was received as of right during the whole period of legal memory, that is, from the reign of Richard I. to the present time, unless the contrary is proved."

Fees.

Customary fees for the burial of parishioners must be reasonable and certain. In *Bryant v. Foot*, cited above, it was held that thirteen shillings was a rank-fee. "The right to these fees may have had a legal origin before the time of memory; and the evidence that they have been taken in modern times, during a period of nearly fifty years, leads to the presumption that they were lawfully taken in the time of Richard I., unless the payment at that time be disproved. But we are of opinion that, considering the difference in the value of money in 1189 and the present time, of which the court will take judicial notice, it is impossible that a payment of such an amount upon every marriage in this parish can have been made at that period; that the objection of rankness therefore applies; that the claim is negatived; and that the plaintiff, who seeks to recover back this fee which he has paid, is entitled to the judgment which he has obtained" (c).

Fees must be reasonable and certain.

(b) (1868), L. R. 3 Q. B. 497; 37 L. J. Q. B. 217; 9 B. & S. 444; 16 W. R. 808; 18 L. T. (N.S.) 587.

(c) Per KELLY, C.B.

Fees.

And it was added, "We should be prepared to hold that a marriage fee must be a fixed fee, and cannot be of a varying amount." As the grounds upon which marriage fees and burial fees are payable are identical, this case is equally applicable to the question of burial fees.

Amount of  
fee.

According to Sir Simon Degge (*d*), every person may, by the custom of England, be buried in the churchyard of the parish where he dies without paying anything for breaking the soil. "And by like custom, every parishioner may be buried in any common part of the church or chancel, paying the accustomed fee to the parson for breaking the soil, which for the most part is 3*s.* 4*d.* in the church and 6*s.* 8*d.* in the chancel; and this is not for breaking of the floor, and that is the reason why in some places the churchwardens have the fee for breaking up the church, though of common right it belongs to the parson, and in this the custom must be observed." But Sir Henry Spelman exhibits the following table of fees (*e*) chargeable in a parish, approved by the bishop of the diocese in 1628, with the comment, *vidi puduitque videre.*

	<i>s.</i>	<i>d.</i>
Whosoever will be bury'd in the chancel, shall pay to } the parson as shall be agreed ... .. }	-	-
For interring the corps ... ..	10	0

## IN THE ISLES OF THE CHANCEL.

To the churchwardens for the ground ... ..	26	8
To the parson for interring the corps ... ..	6	8

## IN THE BODY OF THE CHURCH.

To the churchwardens for the ground ... ..	20	0
To the parish for interring the corps ... ..	6	8

## IN THE CHURCHYARD.

To the parson for interring } the corps ... .. }	Coffined {	2 8 }	Un-	coffined {	1 4
To him in like manner for } every child under 7 years }					

And these double of every stranger.

(*d*) Degge's Parson's Comp. pp. 175, 176.

(*e*) Tract de Sepult. p. 185.

The chancellor of a diocese has no authority, except under an Act of Parliament, to fix or alter burial fees in any parish (*f*). **Fees.**  
Variation of fees.

No fee to the vicar of a parish for interments in the chancel is due of common right; and any special custom to such effect must limit the amount and be strictly proved (*g*). But the vicar may make a special contract for the payment of a fee, other than the customary burial fee, for the burial of a non-parishioner in a particular vault in the parish church (*h*). And this on the ground that when the incumbent is asked to do that which by law he is not bound to do, he may refuse, except upon certain conditions (*i*). Vicar's fees for burying in chancel.  
Non-parishioners.

The Ecclesiastical Commissioners may make and fix any table of fees (including burial fees) for any parish with the consent of the vestry of the parish, and may also make and fix any such table of fees for any extra-parochial place, or in or for any district chapelry or parochial chapelry in which any church or chapel shall be built or appropriated under the Church Building Acts, 1818 and 1819 (*k*), with the consent nevertheless, in all such cases, of the bishop of the diocese; and all fees so fixed may be demanded, received, sued for and recovered by the spiritual person or clerk or sexton to whom the same shall be assigned in like manner and by such and the same means as any ancient legal fees of a like nature may be sued for and recovered (*l*). Such table of fees must be registered in the registry of the diocese (*m*). Burial fees may be fixed by the Ecclesiastical Commissioners with consent of vestry and bishop.

(*f*) *Spry v. Marylebone* (1839), 2 Curt. 11.

(*g*) *Rich v. Bushnell* (1827), 4 Hag. Ec. 173.

(*h*) *Nevill v. Bridger* (1874), L. R. 9 Ex. 214; 43 L. J. Ex. 147; 30 L. T. 690; 22 W. R. 740.

(*i*) *Ex parte Blackmore* (1830), 1 B. & Ad. 122.

(*k*) 58 Geo. 3, c. 45; 59 Geo. 3, c. 134.

(*l*) Church Building Act, 1819 (59 Geo. 3, c. 134), s. 11.

(*m*) *Id.* s. 18.



**Mortuaries  
and Corse-  
presents.**

MORTUARIES AND CORSE-PRESENTS.

A mortuary has this resemblance to a burial fee, that it is a gift made by a man at his death to his parish church (*n*). It appears to have been made in Saxon times under the name of *saulsceat*.

By a canon of the Council of *Aenham* called by *Ethelred*, and subsequently confirmed by No. 13 of the *Eccl. Laws of Canute*, which treats *de pecuniâ quæ dicitur symbolum animæ*, it is ordained that the *saulsceat* (which in the Latin versions appears as *pecunia sepulchralis* (*o*) and *pecunia sepulturæ* (*p*)) shall be paid forthwith upon the opening of the grave to the parish church of the deceased, whether the body be buried within the parish or not.

By a constitution of Archbishop *Winchelsey* it was decreed, for the purpose of extinguishing the frequent disputes that arise between incumbents and parishioners, "that if the deceased have amongst his goods three, at the least, or more, animals of any sort, then, after the best has been reserved for the person legally entitled thereto (*i.e.*, the lord), let the second best be set aside for his own church from which he received the sacraments while he lived" (*q*).

This constitution is amplified by a synodal canon of *Simon Langham* (*r*), which declares that this due is to be taken "as a recompense for personal tithes and oblations not duly paid." *Lindwood* affirms (*s*) that this mortuary is the same as the *principale legatum*, "so called because persons dying were wont, and in some places still are wont, before all other legacies, to bequeath to God and the

(*n*) *Cowell's Dict. sub voc. Mortuary.*

(*o*) *Spel. Conc. 545.*

(*p*) *Spel. Conc. 564.*

(*q*) *Lindw. p. 184; Lib. iii. tit. 15, de Sepult.*

(*r*) *Lindw. p. 19; Lib. i. tit. 3, de Consue.*

(*s*) *Lindw. p. 196; Lib. iii. tit. 16, de dec.*

Church for the good of their souls their best or second-best beast. And Glanville, writing of the Form of Will, says: "In the first place he should remember his lord by the gift of the best and chief thing he possesses; then his own church; and afterwards other persons at his pleasure" (*t*). But Spelman argues (*u*), that "as by the ancient formulary of wills, and by the canon of the synod of Exeter (*x*), it is expressly directed that in all wills there shall be an especial legacy of somewhat to the parson for tithes and oblations forgotten or pretermitted, if a mortuary were for the same reason, then had the parson in many places two several recompenses for one and the same thing"; from which he infers that mortuaries were exactions by the Church without reference to tithes. Selden considers mortuaries to be offerings in satisfaction of tithes omitted, and to be the same as corse-presents. "The mortuary," he says (*y*), "was, by the canons, to be presented with the body at the burial, as a satisfaction of omission and negligence in paying to the Church those personal dues, and thence was it styled *corse-present*," and quotes a case of 4 Ed. 3, where a parson pleaded to an action of trespass for taking a horse, that the horse was brought for a mortuary with the dead body to the church, and there received by the parson according to the custom of the land and of Holy Church. Stillingfleet, however, distinguishes between mortuaries and corse-presents (*z*), that the first were a fixed right of the Church, but that corse-presents were free oblations. And Dugdale (*a*) has collected instances of wills in which occur together distinct bequests of money or goods "for a mortuary or corse-present," and of money for tithes forgotten, which leads him to differ from those who consider that the mortuary was a recompense for tithes omitted, and to agree with

**Mortuaries  
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(*t*) Glanv. Bk. 7, c. 5.

(*x*) Spel. Conc. vol. ii., 391.

(*u*) Tract de Sepult. p. 187.

(*y*) Seld. on Tythes, 287

(*z*) 1 Still. Ec. Cas. (ed. 1698), p. 248.

(*a*) Antiq. of Warwickshire, p. 929.

**Mortuaries  
and Corse-  
presents.**

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Spelman. It is suggested by Spelman (*b*) that the word corse-present signified the dues payable "when the corpse is carried either through or into another parish"; and Cowell (*c*) alleges that in some parts of the kingdom there is or was a custom to make payments to the parsons of parishes through which a corpse passed. But it should be noted that in the preamble to the statute 21 Hen. 8, c. 6, mortuaries are said to be "otherwise called" corse-presents, and are treated as identical.

Originating, as it did, only in the canon law, the payment of mortuaries could only be enforced by proof of a custom to pay. Coke says (*d*) in his comments on the statute *Circumspecte agatis*, "there is no mortuary due by law, but only by custom, which is proved by the words of this Act, viz., *ubi mortuarium dari consuevit*, and this Act alloweth conusans thereof to Court Christian."

21 Hen 8  
c. 6.

As in many cases the value of the mortuaries claimed was excessive, and the custom varied greatly in different places, a settlement was made by the statute 21 Hen. 8, c. 6, which, after reciting "forasmuch as question and doubt hath arisen upon the order, manner, and form of demanding, receiving, and claiming of mortuaries, otherwise called corse-presents, as well for the greatness and value of the same which, as hath been lately taken, is thought over-excessive to the poor people and other persons of this realm, as also for that such mortuaries or corse-presents have been demanded and levied for such as at the time of their death have had no property in any goods or chattels, and many times for travelling and wayfaring men in the place where they have fortunated to die; to the intent, therefore, that all doubt, contention, and uncertainty herein may be removed, and as well the generality of the king's people therein remedied, as also the parsons, vicars, parish priests, curates, and others having interest in such

(*b*) Tract de Sepult. 187.

(*c*) Dict. *sub voc.* Mortuary.

(*d*) Co. 2 Inst. 491, and see Fleta, Lib. ii. c. 60, par. 30.

mortuaries and corse-presents indifferently provided for," **Mortuaries and Corse-presents.** enacted "that no parson, vicar, curate, nor parish priest, nor any other spiritual person, nor their farmers, bailiffs, nor lessees, shall take, receive, or demand of any person within this realm, for any person dying within the same, any manner of mortuary or corse-present, nor any sum of money, nor anything for the same, more than is hereafter mentioned, nor shall convent or call any person before any judge spiritual for the recovery of any such mortuaries or corse-presents, or any other thing for the same more than is hereafter mentioned, on pain to forfeit for every time so demanding, receiving, taking, or conventing or calling any such person before any spiritual judge, so much in value as they shall take above the sum limited by this Act, and over that 40*s.* to the party grieved contrary to this Act, to be recovered by action of debt."

The Act then provides :—

1. That no man shall pay a mortuary unless he died possessed of goods to the value of 10 marks.

2. That no mortuary shall be paid or demanded, but in such places where they have used to be paid or given.

3. That they shall be paid but in one place, and that at the parties' most usual dwelling and habitation, and there but one mortuary after the rate following : if the deceased had at the time of his death in movable goods, clearly above his debts paid, 10 marks, and under the sum of £30, the mortuary should be 3*s.* 4*d.* ; if over £30 and under £40, mortuary 6*s.* 8*d.* ; if over £40, mortuary 10*s.*

4. No married woman, child, or person not keeping house, shall pay any mortuary, nor a wayfaring man, or other that was not resident where he died, but those to pay where they were last resident.

5. The parson or vicar, &c., not to be barred from taking any legacy or offering made to him.

6. No mortuary to be paid in Wales, or the marches thereof, or Berwick, but where accustomed, and to the

**Mortuaries and Corsepresents.** amount limited by this Act ; but the four Welsh bishops and the Archdeacon of Chester may notwithstanding take such mortuaries as they have hitherto been accustomed.

7. Where less has been accustomed to be taken than is limited by this Act, no more shall be taken than is due by custom.

13 Anne, c. 6. By 13 Anne, c. 6, so much of the said statute as continued the ancient privileges to the bishops of Wales is repealed, and the 28 Geo. 2, c. 6, s. 1, repeals the rest of the clause relating to the archdeaconry of Chester.

28 Geo. 2,  
c. 6.

How  
recoverable.

By the synodal canon of Simon Langham (*e*), it was declared "that persons refusing to pay a mortuary, due either by law or custom, should be compelled thereto before the local ordinaries by censure of the church." And Coke (*f*) says that "the Court Christian hath conusance of the enforcement of mortuaries." Degge expresses an opinion (*g*) that an action of debt will lie upon the statute 21 Hen. 8, c. 6, but that statute only gives a right to sue in the spiritual court. As late as 1816 it was stated by THOMSON, C.B., that it is a moot question whether mortuaries may be sued for at law, or whether they must not be proceeded for in the spiritual court under the statute 21 Hen. 8 (*h*). The statute *Articuli Cleri* (9 Edw. 2, c. 2) enacts that where a suit is for a mortuary, prohibition shall not be granted ; but where the custom is denied that any mortuary can be taken, then the custom is triable in the courts of common law (*i*), and if the custom be not proved prohibition will issue. But unless the custom be denied and the spiritual court refuse to admit the plea, the King's Bench will not grant prohibition (*k*).

(*e*) Lindw. p. 19, lib. i. tit. 3, de Consue.

(*f*) Co. 2 Inst. 491.

(*g*) Degge's Parson's Comp. 349.

(*h*) *Manby v. Curtis* (1816), 2 Price, 295.

(*i*) *Proud v. Piper* (1689), 3 Mod. 268 ; *White's Case* (1589), Cro. Eliz. 151 ; *Hinde v. Bishop of Chester* (1632), Cro. Car. 237.

(*k*) *Johnson v. Oldham* (1700), 1 Ld. Raym. 609 ; 12 Mod. 416 ; 1 Vent. 5.

And where the custom of payment was not denied, but **Mortuaries and Corse-presents.** it was alleged that the mortuary was of custom payable to the impropiator, and not to the vicar, prohibition was refused (*l*).

A bill in equity to discover whether the defendant's husband had died worth £40, so as to be liable to pay the plaintiff a mortuary, was dismissed as to the relief because the relief was properly at law *or* in the spiritual court (*m*).

Mortuaries were not within 7 & 8 Will. 3, c. 6, s. 2, by **Not within 7 & 8 Will. 3, c. 6, s. 2.** which justices of the peace are authorised to adjudicate upon complaints of subtraction of small tithes, offerings, oblations, and obventions (*n*).

Parochial agreements for the commutation of mortuaries **Commutation of mortuaries.** were authorised to be made by the Tithe Act, 1839 (*o*), s. 9 (*p*). But unless a special provision with regard to mortuaries is inserted in the parochial agreement, the provisions of the Tithe Commutation Act, 1836 (*q*), do not extend to them (s. 90).

#### MONUMENTS, ETC.

Although the freehold of the church and churchyard is **Property in monuments.** in the parson, the property in the monuments and tombstones remains in the persons who erected them, and the parson has no right to remove them. Trespass will lie at the suit of the erector of a tombstone against a person who wrongfully removes it from the churchyard and erases the inscription (*r*).

"Defacing of monuments," says Lord COKE, "is punishable by the common law, as it appears from the book of

(*l*) *Marke v. Gilbert* (1666), 1 Sid. 263.

(*m*) *Torrent v. Burley* (1727), 2 Stra. 715.

(*n*) *Ayrton v. Abbott* (1849), 14 Q. B. 1; 18 L. J. Q. B. 314; 14 Jur. 314.

(*o*) 2 & 3 Vict. c. 62.

(*p*) This section is now repealed by the Statute Law Revision Act (No. 2), 1890.

(*q*) 6 & 7 Will. 4, c. 71.

(*r*) *Spooner v. Brewster* (1825), 3 Bing. 136; 10 Moore, 494; 2 C. & P. 34.

**Monuments** the 9 Edw. 4, c. 14 (the *Lady Wiche's Case*, wife of Sir Hugh Wiche), and so it was agreed by the whole court in 10 Jac. 1, in the Common Pleas, in *Corven v. Pym* (s). And for the defacing thereof they that build or erect the same shall have the action during their lives (as the Lady Wiche had in the case of the 9 Edw. 4), and after their deceases the heir of the deceased shall have the action" (t). So, too, an action will lie for the removal or defacement of armour or ensigns of honour set up in a church at the suit of the heir and his heir in the honour and memory of whose ancestor they were set up. "And some hold," says COKE, "that the wife or executors that first set them up may have an action in that case against those that deface them in their time" (u).

A cemetery company sold an exclusive right of burial in perpetuity in an allotment of their cemetery; a body was buried there, and the company erected a memorial stone, which was not paid for. The company accordingly entered upon the allotment, and removed the stone and sold it:—*Held*, that an action of trespass lay against the company at the suit of the purchaser (x).

Faculty  
required for  
erecting.

No monument or ornament can legally be erected in a church or churchyard without the permission of the ordinary (y), but in practice the permission of the incumbent is usually substituted for that of the ordinary. "No monument," says Lord STOWELL (z), "can be erected without leave of the ordinary. All parishioners have a right to be buried in the churchyard without leave of the incumbent, but the permission of the ordinary is necessary before any monument can properly be erected. It is to his care that the fabric of the church is committed, that it shall not be injured or deformed by the caprice of

(s) (*Circ.* 1614), 12 Co. Rep. 105.

(t) 3 Inst. 202.

(u) 1 Co. Lit. 18 (b).

(x) *Sims v. The London Necropolis Co.* (1885), 1 T. L. R. 584.

(y) *Palmer v. Bishop of Exeter* (1724), 1 Stra. 576.

(z) *Maidman v. Malpas* (1794), 1 Hag. Con. 208.

individuals. The consent of the incumbent is taken on Monuments such occasions, and especially of the rector for monuments in the chancel. A faculty is likewise required, though it is frequently omitted under the confidence reposed in the minister, and the ecclesiastical court is not eager to interpose. But when cases are brought before it, it is necessary to enquire whether the thing is proper to be done, and whether the consent of the incumbent has been obtained." But no practice can absolutely legalise the erection of a monument without a faculty (a). And where churchwardens asserted a custom for them to set up monuments at their free will and pleasure, it was held to be bad, and against the general rule of law, which requires the consent of the ordinary (b). "The proper mode, strictly speaking," says Lord STOWELL, "is to apply to the ordinary for a faculty, who calls on all persons having a right to show cause why it should not be done, and hears and determines on the force of any objections that may be made against it. The 3rd Inst. leaves the matter at large, but all commentators say that the ordinary is to judge of the convenience of allowing tombs or monuments to be erected, and that, if done without his consent, he has sufficient authority to decree a removal" (c). If a tombstone be set up with the parson's consent alone, the ordinary may order it to be taken down if inconveniently placed; but if the ordinary does not interpose the parson's consent is sufficient (d). If a monument is once placed with the consent of the ordinary, the ordinary cannot remove it without making himself liable to an action by the heir of the person whose monument is affected (e).

A monument once set up, rightly or wrongly, cannot be taken down without the consent of the ordinary (f); and Faculty for removal or repair.

(a) *Seager v. Bowle* (1823), 1 Add. E. R. 554.

(b) *Beckwith v. Harding* (1818), 1 B. & Ald. 508.

(c) *Bardin v. Calcott* (1789), 1 Hag. Con. 14. And see *Gibs. Cod.* 454.

(d) *Hopper v. Davis* (1754), 1 Lee, 648.

(e) *Gibs. Cod.* 453; 3 Co. Inst. 202.

(f) *Maidman v. Malpas* (1794), 1 Hag. Con. 212.



**Monuments** if a churchwarden cause a monument to be removed he may be sued therefor in an ecclesiastical court (*g*). Where, however, a tombstone or monument has been lawfully erected, it may be repaired without a faculty for that purpose, though the consent of the churchwardens should be asked as a matter of form. Such consent the churchwardens would be bound to grant, and if they did not, they would be liable to censure of the ecclesiastical court (*h*).

Appeal from refusal to allow erection.

Though it is necessary, in the first place, to seek the consent of the incumbent to the erection of a monument, an appeal will lie to the ordinary from his refusal to consent, and the common law courts will not prohibit the ordinary from granting a faculty without the incumbent's consent (*i*). In like manner, the discretion of the ordinary must be exercised in a prudent and legal manner, and an appeal will lie from his decision to the Court of Arches (*k*).

Object of faculty is convenience of parishioners.

The chief object of the court in granting faculties in respect of monuments should be the convenience of the parishioners; and, therefore, a scheme for relaying all the tombstones in a churchyard, which was objected to by one parishioner only, and advocated by the majority, was approved, and a faculty ordered to issue (*l*).

Fees for monuments.

It is stated by Lord STOWELL (*m*) that a clergyman may legally demand and accept a fee for his consent to the erection of a monument. That statement was made in relation to a case where a rector refused permission for the erection of a tablet in the chancel unless a fee of £30 were paid. It does not necessarily follow from that decision that the erection of a headstone to a grave in a churchyard could be prevented for non-payment of a fee to the

(*g*) *Hutchins v. Denziloe* (1792), 1 Hag. Con. 172.

(*h*) *Bardin v. Calcott* (1789), 1 Hag. Con., p. 16.

(*i*) *Bulwer v. Hase* (1803), 3 East, 217.

(*k*) *Cart v. Marsh* (1738), 2 Stra. 1080.

(*l*) *Sharpe and Sangster v. Hansard* (1830), 3 Hag. Ec. 335.

(*m*) *Maidman v. Malpas* (1794), 1 Hag. Con. 208.

parson ; and it is submitted that the parson's right to demand a fee for the erection of monuments in a church-yard or body of a church will, in the same manner as burial fees, depend upon custom. A vicar or perpetual curate has no right to fees for the erection of monumental tablets or for the construction of vaults in the chancel (*n*). And it is doubtful whether a vicar can claim a fee for the erection of a monument or the construction of a vault in the body of the church (*o*).

It is within the province of an incumbent's duties to supervise the placing of inscriptions upon tombstones. Sir JENNER FUST says : "To the incumbent belongs the superintendence of the church and churchyard, and it is his duty to take care that no inscription should be placed there which could be made the means of disseminating doctrines inconsistent with those of the established religion (*p*). In that case it was held that an inscription, "*Pray for the soul of J. Woolfrey. It is a holy and wholesome thought to pray for the dead* (2 Mac. xii. 46)," was unobjectionable. But the discretion of the incumbent may be overruled by the ordinary, or by the superior ecclesiastical courts, and a faculty will be granted without the incumbent's consent if such consent is unreasonably withheld. Thus, where an incumbent refused to allow an inscription on a tombstone because in it a Wesleyan minister was styled "reverend," a faculty was, on appeal, ordered to issue by the Privy Council (*q*).

A bequest to keep a vault or tombstone in repair is void on the ground of perpetuity (*r*) ; but a bequest to the vicar and churchwardens of a sum of money the interest

Bequest for repairing tombstone.

(*n*) *Rugg v. Kingsmill* (1867), L. R. 2 P. C. 59 ; 39 L. J. Ec. 13 ; 18 L. T. 94 ; *Moo. P. C.* (N.S.) 79.

(*o*) *Rich v. Bushnell* (1827), 4 Hag. Ec. 172.

(*p*) *Brecks v. Woolfrey* (1838), 1 Curt. 880.

(*q*) *Keat v. Smith* (1876), L. R. 1 P. D. 73 ; 45 L. J. P. C. 10 ; 33 L. T. 794 ; 24 W. R. 375 ; reversing L. R. 4 A. & E. 398 ; 44 L. J. Ec. 70.

(*r*) *In re Vaughan, Vaughan v. Thomas* (1886), 33 Ch. D. 187 ; 55 L. T. 547 ; 35 W. R. 104 ; *Rickard v. Robson* (1862), 8 Jur. (N.S.) 685.

**Monuments** on which was to be applied so long as the law for the time being permitted in keeping up a grave and decorating the same with flowers, was held to be a valid gift for at least a period of twenty-one years from the testator's death (s). And a condition that a family vault shall be kept in repair, attached to a gift of stock to a certain charity with a gift over on non-compliance to another charity is valid (t).

A testator, by his will, gave a sum of money to trustees, and directed that it should be invested in the names of the vicar and churchwardens of a certain church, upon trust in the first place out of the income to maintain yearly and keep in good repair and condition a tomb belonging to the testator in the churchyard, and in the next place to divide and distribute the remainder among the poor recipients of certain almshouses :—*Held*, that the gift to maintain the tomb was invalid, and that the whole income of the fund went to the vicar and churchwardens on behalf of the almshouses (u).

As to bequests for repairing churchyards, see the Gifts for Churches Act (x), ss. 1, 2, and notes thereon, *post*.

#### THE BURIAL ACTS.

##### Objects of Burial Acts.

The chief objects of the Burial Acts are to provide for the closing of overfilled churchyards and burial grounds ; to establish burial boards, both in urban and rural districts, for the purpose of providing and managing new burial grounds : and to confer upon the executive government and the Privy Council large powers of supervision in respect of all places of burial.

(s) *Pirbright v. Salwey* (1896), W. N. 86.

(t) *In re Tyler, Tyler v. Tyler*, [1891] 3 Ch. 252.

(u) *In re Rogerson, Bird v. Lee*, [1901] 1 Ch. 715 ; following *Fisk v. Attorney-General* (1867), L. R. 4 Eq. 521 ; *Dawson v. Small* (1874), L. R. 18 Eq. 114 ; and *In re Birkett* (1878), 9 Ch. D. 576.

(x) 43 Geo. 3, c. 108.

The first of the unrepealed Burial Acts, 15 & 16 Vict. **Burial Acts.**  
 c. 85, originally applied only to the metropolis as defined  
 in that Act; but subsequently, by the 16 & 17 Vict.  
 c. 134, s. 7, most of its provisions were made of general  
 application. Those which remain applicable to the metro-  
 polis only are noticed, *post*, pp. 94—97.

Great alteration is made by the Local Government Act, Local  
Government  
Act, 1894. 1894 (*y*), in the constitution of the authorities for carrying  
 the Burial Acts into execution in rural parishes, by sub-  
 stituting parish councils for burial boards and transferring  
 the powers and duties of the vestries in part to the parish  
 councils and in part to the parish meetings created by that  
 Act. In urban districts in which there is a burial board, Urban  
districts. the district council may resolve that the powers, duties,  
 property, and liabilities of the burial board shall be trans-  
 ferred to the council, and in that event the burial board  
 will cease to exist, and the council will become the suc-  
 cessors of the board. Unless, however, the district council  
 so resolve the burial board will continue to exist, and to  
 carry the Burial Acts into execution as though the Local  
 Government Act, 1894, had not been passed. No future  
 burial board can, however, be formed in an urban district  
 without the approval of the council of that district. In  
 the following synopsis, therefore, the Burial Acts are  
 treated as unaffected by the Local Government Act, and  
 the changes which are introduced into their working by  
 that Act are detailed separately, *post*, pp. 101—116.

If it appear to his Majesty in Council, upon the Restraint on  
opening new  
burial  
grounds. representation of the Local Government Board, that for  
 the protection of the public health the opening of any new  
 burial ground in any city or town, or within any other  
 limits, save with the previous approval of a Secretary Discon-  
tinuance of  
burials. of State, should be prohibited, or that burials in any city  
 or town, or within any other limits, or in any burial  
 ground or place of burial should be wholly discontinued,

(*y*) 56 & 57 Vict. c. 73.

**Burial Acts.** or discontinued subject to any exception or qualification, it shall be lawful for his Majesty, by and with the advice of the Privy Council, to order that no new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or that after a time to be mentioned in the order burials therein shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order. Notice of such representation, and of the time for its consideration by the Privy Council, is to be published in the London Gazette, and affixed, at least one month before the time for such consideration, on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation; and ten days' notice of the intention to make such representation is to be given to the incumbent and vestry clerk or churchwardens of every parish of which the burial ground is intended to be affected (*z*).

Burial grounds of Quakers and Jews, etc.

An Order in Council so made may be varied by any subsequent order (*a*). No such order shall extend to burial grounds of Quakers or Jews, or to any non-parochial burial ground of any private person (*b*), or to any portion of a churchyard reserved to a donor with exclusive right of burial under the Consecration of Churchyards Act, 1867 (*c*), unless the same is expressly mentioned in such order.

Burials to be discontinued.

After the date mentioned in such order no burial shall be allowed to take place in any church, chapel, churchyard, or burial place, or elsewhere within the parts to which such order extends, or in any place of burial in which burials have by such order been ordered to be discontinued. Any person burying or assisting to bury a body in a burial place closed by Order in Council is guilty of a misdemeanor (*d*), and may be punished on

(*z*) 16 & 17 Vict. c. 134, s. 1; as amended by 63 & 64 Vict. c. 15, s. 4.

(*a*) 18 & 19 Vict. c. 87, s. 1.

(*c*) 30 & 31 Vict. c. 133, s. 9.

(*b*) 16 & 17 Vict. c. 134, s. 2.

(*d*) 16 & 17 Vict. c. 124, s. 3.

summary conviction by a fine not exceeding £10 (*e*). **Burial Acts.**  
 And after an order that no new burial ground shall be opened in any city or town, or within the limits therein mentioned, it is unlawful to provide or use any new burial ground or cemetery within such city or town, or within such limits, without the previous approval of the Local Government Board (*f*). **Penalties.**

No such order shall be made to discontinue burials in any cemetery established under an Act of Parliament (*g*) or in any burial ground or cemetery made after August 20th, 1853, with the approval of a Secretary of State or of the Local Government Board (*h*). And if any right of interment, by faculty or usage, in any church or vault or burial place affected by any order has been acquired before August 20th, 1853, the Local Government Board may, on being satisfied that the exercise of such right will not be injurious to health, grant a licence for the exercise of such right, subject to such restrictions as they may think fit; but such licence shall not prejudice the authority of the ordinary to prevent or control such interment (*i*). **Saving of rights to bury in vaults.**

A closed parochial burial ground must be kept in decent order, and the walls and fences repaired by the burial board of the district; and a closed churchyard must be kept in order and the fences in repair by the churchwardens of the parish in which it is situate. The expense must be defrayed out of the poor rates of the parish or place in which such burial ground is situate (*k*), whether it belong to such parish or place or not (*l*). **Keeping closed burial grounds in order**

(*e*) 18 & 19 Vict. c. 128, s. 2.

(*f*) 16 & 17 Vict. c. 134, s. 6; as amended by 63 & 64 Vict. c. 15, s. 4.

(*g*) *Id.*, by a company under a special Act (*Reg. v. Maude* (1857), 5 E. & B. 702; 25 L. J. Q. B. 45; 2 Jur. (N.S.) 182).

(*h*) 16 & 17 Vict. c. 134, s. 5; as amended by 63 & 64 Vict. c. 15, s. 4.

(*i*) 16 & 17 Vict. c. 134, s. 4; as amended by 63 & 64 Vict. c. 15, s. 4.

(*k*) 18 & 19 Vict. c. 128, s. 18.

(*l*) *Reg. v. Bishop Wearmouth* (1879), 5 Q. B. D. 67.

**Burial Acts.** An urban authority constituted a burial board may repair the fences of any closed burial ground within its jurisdiction, and shall keep it in a proper sanitary condition and prevent its desecration, and defray the expense out of the rates (*m*).

Purchase of closed burial grounds by vestry. The vestry of any parish in which a closed burial ground not belonging to the parish is situate, may purchase the same; and it shall thenceforth belong to the parish, subject to all conditions affecting other burial grounds in the parish (*n*).

Chapel of closed burial ground. When any closed burial ground is situate in a parish other than that to which it belongs, the incumbent and churchwardens of the parish to which it belongs may, with the consent of the vestries of the respective parishes and of the bishop of the diocese, convey any chapel, and the site thereof attached to such burial ground to trustees for the parish in which the same is situate (*o*).

Buildings on disused burial grounds. It is not lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship (*p*). The expression "disused burial ground" here means any ground, whether consecrated or not, which has at any time been set apart for the purpose of interment, but is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council; and the expression "building" includes any temporary or movable building (*q*).

Burial boards. In any parish in which no burial board has been appointed, the churchwardens or other persons to whom it belongs to convene meetings of the vestry are *required by law* to convene a meeting of the vestry of the parish for

(*m*) 24 & 25 Vict. c. 61, s. 21, re-enacted in Schedule V., Part 3, of Public Health Act, 1875.

(*n*) 20 & 21 Vict. c. 81, s. 8.

(*o*) 15 & 16 Vict. c. 85, s. 51.

(*p*) 47 & 48 Vict. c. 72, s. 3.

(*q*) 50 & 51 Vict. c. 32, s. 4.

the purpose of determining whether a burial ground shall be provided under the Burial Acts for the parish :

(1.) Upon the requisition of ten or more ratepayers of the parish in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (r) ; or

(2.) When the Local Government Board give notice that it is their intention to make a representation to his Majesty in Council that burials shall be discontinued, wholly or in part, in a burial ground of the parish (s).

The same authorised persons may also, at their direction, call such vestry meeting at any time for the aforesaid purpose (s).

Public notice of such vestry meeting and the place and hour of holding the same, and the special purpose thereof, must 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 (t).

If it be resolved at such vestry meeting that a burial ground shall be provided, a copy of a resolution to that effect extracted from the minutes of the vestry, and signed by the chairman, must be sent to the Local Government Board (t). Such resolution should be in the following form: "That a burial ground under the Burial Acts be provided for the parish [or district, etc.] of ."

A burial board may be appointed for the following places *without any previous approval of the Local Government Board* :

1. Any parish or place having separate overseers of the poor and separately maintaining its own poor (u) or for which a separate poor rate is or can be made, or for which

(r) 15 & 16 Vict. c. 85, s. 10.

(s) 18 & 19 Vict. c. 128, s. 3.

(t) 15 & 16 Vict. c. 85, s. 10 ; as amended by 63 & 64 Vict. c. 15, s. 4.

(u) 15 & 16 Vict. c. 85, ss. 10, 52.



**Burial Acts.** a separate overseer is or can be appointed (*x*). Provided that such parish or place is not divided into districts for ecclesiastical purposes, of which districts any one shall have a separate burial ground (*y*).

2. Two or more parishes or places (1) united for all or any ecclesiastical purposes, or (2) which have heretofore had a church or burial ground for their joint use, or (3) of which the inhabitants have been accustomed to meet in one vestry for purposes common to such several parishes or places (*z*), provided that none of such parishes or places separately maintains its own poor, or has a separate burial ground (*a*).

3. A parish, township, or other district not separately maintaining its own poor, whether it has had a separate burial ground (*b*) or not (*c*).

If a burial board be appointed for a district of a parish under 18 & 19 Vict. c. 128, s. 12, the remainder of such parish may afterwards appoint a separate burial board (*d*). A district of a parish may also appoint a separate burial board, notwithstanding that a burial board has been appointed for the whole parish; but the ratepayers of the district remain liable for the expenses incurred by the burial board of the whole parish, or at least for those incurred prior to such separate appointment (*e*).

A burial board may be appointed, *but only with the previous sanction of the Local Government Board*, for

1. Two or more parishes or places (1) united for all or any ecclesiastical purposes, or (2) which have heretofore had a church or burial ground for their joint use, or (3) of which the inhabitants have been accustomed to meet in one vestry for purposes common to such several parishes

(*x*) 15 & 16 Vict. c. 85, s. 10; 29 & 30 Vict. c. 113, s. 18.

(*y*) 23 & 24 Vict. c. 64, s. 4.

(*z*) 18 & 19 Vict. c. 128, s. 11.

(*b*) 18 & 19 Vict. c. 128, s. 12.

(*a*) 20 & 21 Vict. c. 81, s. 9.

(*c*) 20 & 21 Vict. c. 81, s. 5.

(*d*) *Viner v. Tonbridge* (1859), 2 El. & El. 9; 28 L. J. M. C. 251; 5 Jur. (N.S.) 1293; 33 L. T. 202.

(*e*) *Reg. v. Walcot St. Swithin* (1862), 2 B. & S. 571; 31 L. J. M. C. 221; 10 W. R. 602.

or places, if any one or more of such parishes or places **Burial Acts.** separately maintains its own poor, or has a separate burial ground (*f*) ;

2. Any parish or place which has been divided into two or more districts for all or any ecclesiastical purposes, if any one or more of such districts has a separate burial ground (*g*).

When the approval of the Local Government Board is required by the Burial Acts to the appointment of a burial board, the vestry must, after passing the resolution before mentioned of their intention to provide a burial ground, proceed before taking any further steps to pass a resolution declaring the expediency of the appointment of a burial board, and give notice thereof to the Local Government Board, who may require such resolution to be published, with such particulars as may be deemed fit, so that notice thereof may be given to all persons interested. The resolution in such case should be in the following form with such alterations as may be necessary to suit the particular circumstances of the case. "That it is expedient that a burial board should be appointed under the Burial Acts for the parish [*or district*] of which includes the parishes [*or districts*] of and of , of which the parish [*or district*] of has a separate burial ground, [*or is separately rated to the poor*]." Approval of the resolution by the Local Government Board will be deemed approval of the appointment of the burial board ; but such board cannot be legally appointed until the resolution has been so approved (*h*).

If, however, it appear to the Local Government Board that any parish or place included in the district for which it is desired to appoint a burial board has a sufficient burial ground, or that otherwise it would not be expedient that

(*f*) 18 & 19 Vict. c. 128, s. 11 ; 20 & 21 Vict. c. 81, s. 9.

(*g*) 23 & 24 Vict. c. 64, s. 4.

(*h*) 34 & 35 Vict. c. 33, s. 1 ; as amended by 63 & 64 Vict. c. 15,

**Burial Acts.** the powers should be exercised in relation to such parish or place, the Board may direct that such parish or place shall be excepted ; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time and proceed in like manner in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted (*i*).

Joint burial board.

Vestries of parishes which have respectively resolved to provide burial grounds, may concur in providing one burial ground for their joint use, and agree as to the proportion of expenses to be borne by each parish, and the burial board appointed for such parishes respectively shall act as one joint burial board for all such parishes, and the settled proportion of expenses shall be defrayed by each parish out of the poor rates of such parish (*k*) ; and all acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, when a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority of the vestries of the majority of such parishes (*l*).

Dissolution of joint burial board.

When the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such agreement may be determined at any time before such burial ground has been provided, save that any expenses incurred by the joint board before its dissolution shall be defrayed by the joint board (*m*).

Burial boards for boroughs.

When any of the burial grounds of one or more parishes wholly or partly within a borough have been closed by Order in Council, his Majesty in Council may,

(*i*) 20 & 21 Vict. c. 81, s. 9 ; as amended by 63 & 64 Vict. c. 15, s. 4.

(*k*) 15 & 16 Vict. c. 85, s. 23.

(*l*) 20 & 21 Vict. c. 81, s. 1.

(*m*) 20 & 21 Vict. c. 81, s. 2.

upon petition of the town council of the borough, order **Burial Acts** that all the powers of a burial board shall vest in such town council (*n*); and such town council shall thereupon be a burial board for the borough; but none of the provisions of the Burial Acts respecting the constitution, incorporation, meetings, entries of proceedings, accounts of burial boards, and consent of vestries, shall apply to such town council (*o*). The expenses of such burial board are to be defrayed out of the borough fund and borough rates (*p*), or a special burial rate may be levied for the purpose (*q*). The burial ground provided by such town council shall be deemed to be provided for such parishes within the borough, as the council shall determine (*r*). Formerly, if any part of a parish for which such burial ground was provided was without the borough, the council might fix a higher rate of payment for interments of inhabitants in such outlying part (*s*). Such provision was, however, repealed by the Burial Act, 1900, inasmuch as by the operation of the Local Government Act, 1894, a parish which, before that Act, lay partly within and partly without a borough, was divided into separate parishes, and there cannot now be a parish partly within and partly without a borough. Any parish within the borough, having a sufficient separate burial ground, may be exempted by the Order in Council from the jurisdiction of the town council, acting as a burial board, and thereupon shall not contribute towards any rates levied by the town council for defraying the expenses of such burial board (*t*). The town council may appropriate land belonging to the borough for the purposes of a burial ground (*u*), but no burial ground shall be made within 100 yards of a dwelling-house without the consent of the owner and occupier (*w*).

If a vestry of a parish comprised in a local government **Local board may be burial board.**

(*n*) 17 & 18 Vict. c. 87, s. 1.

(*o*) *Id.*, s. 2.

(*p*) *Id.*, s. 3.

(*q*) 20 & 21 Vict. c. 81, s. 22.

(*r*) 17 & 18 Vict. c. 87, s. 7.

(*s*) *Id.*, s. 8.

(*t*) *Id.*, s. 9.

(*u*) *Id.*, s. 11.

(*w*) 17 & 18 Vict. c. 87, s. 12.

**Burial Acts.** district resolves to appoint a burial board, the local board of such district may, at the option of the vestry, be the burial board (*x*).

Urban authority.

The burial board of a district included in or continuous with the district of an urban authority, may by agreement transfer all its estate, powers, and duties to such urban authority (*y*); or the urban authority may, by resolution, transfer to themselves all the powers, duties, property, etc., of the burial board (*z*).

Under local Acts.

A local board of health created by a local Act of Parliament may exercise all the powers, rights, and privileges which are or can be exercised by a burial board (*a*). And nothing in the Burial Acts shall abridge, lessen, or defeat any powers, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local Act of Parliament (*b*).

Local boards of health and town commissioners.

In case it appears to his Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health, or of such commissioners, is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an Order in Council has been made for closing all or any of the burial grounds within the said district, his Majesty may, with the advice of his Privy Council, order that such local board shall be a burial board for the district of such local board, or that such

(*x*) 21 & 22 Vict. c. 98, s. 49; re-enacted in Schedule V., Part of Public Health Act, 1875.

(*y*) 29 & 30 Vict. c. 90, s. 44; re-enacted in Schedule V., Part 3, of Public Health Act, 1875.

(*z*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62.

(*a*) 18 & 19 Vict. c. 128, s. 20.

(*b*) *Id.*, s. 19.

commissioners shall be a burial board for the district of Burial Acts such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Burial Acts (except the provisions relating to the constitution or appointment, and resignation of members of burial boards) shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes, and the burial board thereof, and any burial ground, and any such places as aforesaid, provided by such burial board; save that no approval, sanction, or authorisation of any vestry shall be requisite: provided that notice of such petition, and of the time when it shall please his Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the London Gazette, and in one of the newspapers usually circulating in the district of such local board or of such commissioners one month at least before such petition is so considered: provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1875 (c).

When the necessary resolutions have been duly passed by the vestry, and the sanction of the Local Government Board (where requisite) has been obtained, the burial board may be appointed by the vestry. Its members must be ratepayers of the parish or place for which the burial board is appointed, but the incumbent of the parish may be a member, though not a ratepayer; they must be not less than three in number, nor more than nine: one-third, or as near as may be, go out of office every

(c) 20 & 21 Vict. c. 81, s. 4.

- Burial Acts.** year, but may be re-elected ; and any member may resign on giving notice to the churchwardens (*d*).
- Vacancies in burial boards.** Any vacancy in the burial board is to be filled up by the vestry within one month ; in default, the burial board may fill it up. Every person elected to fill a vacancy shall be a ratepayer (*e*). But an election by the vestry is good, though made after the month, if the burial board has not already filled up the vacancy (*f*).
- Contested election.** In the event of there being a contest for election to the board, the reasonable expenses of taking a poll may be paid by the burial board (*g*).
- Incorporation.** Every burial board is a corporation with perpetual succession and a common seal, and may sue and be sued, and may acquire and hold lands for the purpose of the Burial Acts, without licence in mortmain (*h*).
- Meetings.** A burial board may meet when it pleases ; it may be summoned at any time after forty-eight hours' notice by any two of its members for a special purpose mentioned in writing ; it must hold its meetings at its office or other convenient place previously publicly notified (*i*). Three members form a quorum (*k*).
- Quorum.**
- Officers and servants.** The board may appoint and remove such officers and servants as are necessary for the business of the board, and for the purposes of the burial ground, and fix and pay reasonable salaries and wages, and hire and rent a sufficient office (*l*).
- Minutes and account books.** Minutes of the proceedings of the board are to be entered in books kept for the purpose, and signed by at least two of the members present ; and correct books of account are to be kept (*m*). All such books are to be open to the inspection of every member of the board, church-
- Inspection.**

(*d*) 15 & 16 Vict. c. 85, s. 11.

(*e*) 18 & 19 Vict. c. 128, s. 4.

(*f*) *Reg. v. S. Weald* (1864), 5 B. & S. 391 ; 33 L. J. M. C. 193 ; 10 L. T. (N.S.) 498 ; 12 W. R. 873.

(*g*) 48 & 49 Vict. c. 21.

(*k*) 15 & 16 Vict. c. 85, s. 14.

(*h*) 15 & 16 Vict. c. 85, s. 24.

(*l*) *Id.*, s. 15.

(*i*) *Id.*, s. 13.

(*m*) *Id.*, s. 16.

warden, overseer, and ratepayer without fee, under a **Burial Acts**.  
penalty of £5 (*n*). The accounts are to be audited every <sup>Audit.</sup> March by two persons, not members of the board, appointed by the vestry, and a report thereon made by such auditors to the vestry (*o*). The expenses of an urban authority, acting as a burial board, will, however, be audited by the district auditor (*p*).

A burial board, with the sanction of the vestry and <sup>Borrowing Powers.</sup> the approval of the Treasury, may borrow money required for providing a burial ground and building a chapel thereon, and may mortgage the poor rates for that purpose (*q*).

A sinking fund for the purpose of paying off the prin- <sup>Sinking fund.</sup> cipal moneys borrowed on mortgages, must be provided by setting aside every year a sum equal to, or exceeding one-fiftieth part of a loan (*r*). The clauses of the Commissioners Clauses Act (*s*), ss. 75—88, which relate to mortgages, are made applicable to mortgages and other securities executed by burial boards (*t*). Instead of making mortgages, a burial board may raise money by granting terminable annuities for a life or lives, or for any <sup>Annuities.</sup> number of years not exceeding thirty years (*u*).

Burial boards may, if they can, at any time borrow money at lower rates of interest, and therewith pay off securities bearing higher rates (*v*). And if existing mortgages are called in, they may borrow on new mortgages to pay off the former mortgages (*x*).

The Public Works Loan Commissioners are authorised <sup>Loans by Public Works Loan Commissioners;</sup> to advance money to burial boards for the purposes of the Burial Acts upon the security of the poor rates (*y*). Burial

(*n*) 15 & 16 Vict. c. 85, s. 17.

(*o*) *Id.*, s. 18.

(*p*) Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 37.

(*q*) 15 & 16 Vict. c. 85, s. 20; 63 & 64 Vict. c. 15, s. 2.

(*r*) 20 & 21 Vict. c. 81, s. 20.

(*s*) 10 & 11 Vict. c. 16.

(*w*) 17 & 18 Vict. c. 87, s. 4.

(*t*) 20 & 21 Vict. c. 81, s. 19.

(*x*) *Id.*, s. 5.

(*u*) *Id.*, s. 21.

(*y*) 15 & 16 Vict. c. 85, s. 21.



**Burial Acts.** boards within the metropolis formerly might, under the usual provisions of the annual Metropolitan Board of Works (Money) Act, and subsequently, under similar provisions of the London County Council (Money) Acts, borrow such sums, not exceeding a specified aggregate, as the Board or Council might agree to advance, repayable in the manner specified in such Acts. Now, however, by the London Government Act, 1899 (*z*), the powers, duties, property, and liabilities of all burial boards in any metropolitan borough are transferred to the Borough Council, and the burial boards are abolished; and all sums required to be borrowed for the purposes of the Burial Acts must be borrowed by the Borough Council.

**Borrowing by improvement commissioners.** Improvement commissioners of any town who shall have been constituted a burial board may mortgage the improvement or burial rate to raise money for the purposes of the Burial Acts (*a*). The mortgage clauses of the Commissioners Clauses Act, 1847, will apply to all such mortgages (*b*).

**Expenses payable out of poor rate.** Expenses incurred by a burial board of any parish in carrying the Burial Acts into execution are chargeable upon and payable out of the poor rates of the parish; but the expenses to be incurred by the board in providing and laying out a burial ground, and in building the necessary chapel or chapels thereon, are not to exceed such sum as the vestry shall authorise. Upon receipt of a certificate under the hands of a quorum of the board of the sums required for defraying such expenses as aforesaid, the overseers (or other persons authorised to make and levy poor rates) shall pay such sums out of the poor rates as the board shall direct (*c*). And if the vestry of any parish refuse or neglect to authorise the expenditure of such sums as the burial board may declare necessary for providing and laying out a burial

On certificate of board.

On default of vestry Local Government Board may authorise expenditure.

(*z*) 62 & 63 Vict. c. 14, s. 4 (2).

(*a*) 25 & 26 Vict. c. 100, s. 1.

(*b*) *Id.*, s. 2.

(*c*) 15 & 16 Vict. c. 85, s. 19.

ground and building the necessary chapel therein, the Burial Acts. Local Government Board may, on representation to them by the burial board of such refusal or neglect, and after inquiry into the circumstances of the case, authorise the burial board to make such expenditure without the sanction of the vestry, and to do all such things as may be necessary for providing the money to meet such expenditure (*d*).

The raising of such sums as may be necessary for defraying the expenses of burial boards for districts not separately maintaining their own poor is provided for as follows :

1. If any district (whether a parish or township or sub-division), not separately maintaining its own poor, but having its own burial board, forms part of a parish which maintains its own poor, such burial board shall issue its certificate to the overseers of the parish for payment of the sums required for the expenses of the board ; and the overseers shall levy such sums either by addition to the parish rate, so far as the same affects the said district, or by a separate rate. Expenses of places not separately maintaining their own poor.
2. If a district, not separately maintaining its own poor, but having its own burial board, forms part of an incorporation or other union maintaining the poor of the places comprised therein by means of a common rate, the burial board shall issue its certificate to the persons authorised to make and collect or cause to be collected such common rate for payment of the sums required for the expenses of the board ; and such person shall levy such sums either by addition to the common rate, so far as the same affects the said district, or by a separate rate.
3. If a district not separately maintaining its own poor forms part only of a place or union of places not co-extensive with any area rated for the relief of the poor,

(*d*) 18 & 19 Vict. c. 128, s. 6 ; as amended by 63 & 64 Vict. c. 15, s. 2, 4.

**Burial Acts.** which place or union of places has one burial board, such burial board shall issue its certificate for payment of the portion of the expenses of the board to be borne by such district to the overseers of the parish of which such district forms part, if such parish maintains its own poor; or, if such parish does not maintain its own poor, to the persons authorised to make and collect the common rate of the poor law union to which such district belongs; and such overseers or other persons shall levy the sums required either by an addition to the parish or common rate (as the case may be), so far as the same affects the said district, or by a separate rate (*e*).

United  
parishes.

When a burial board is appointed for united parishes, its expenses must be apportioned among such parishes according to the value of the property in such several parishes rated to the relief of the poor, and the sum apportioned to each parish is to be paid out of the poor rates of such parish as though the burial board had been appointed for such parish alone (*f*).

Pauper burial  
grounds.

The expenses of keeping in order any burial ground established by the guardians of any parish or union for the burial of poor persons are payable out of the common fund of the parish or union (*g*).

Repair of  
closed burial  
ground.

The expenses of keeping closed burial grounds or churchyards in order and repair fall upon the poor rates of the parish or place, where such churchyard or burial ground is situate, unless there is some other fund legally chargeable with such expenses (*h*); and that although such burial ground belongs to another parish (*i*).

Expenses of  
local board  
in carrying  
out Burial  
Acts.

Any money required by a local board for defraying the expenses of carrying the Burial Acts into execution, or for paying moneys borrowed or interest thereon, or annuities granted under these Acts, or for establishing a sinking

(*e*) 18 & 19 Vict. c. 128, s. 13.

(*f*) *Id.*, s. 11.

(*i*) *Reg. v. Bishop Wearmouth* (1879), 5 Q. B. D. 67.

(*g*) 20 & 21 Vict. c. 81, s. 6.

(*h*) 18 & 19 Vict. c. 128, s. 18.

fund, may be paid out of the general district rates ; and **Burial Acts.** the local board may levy as part of the general district rate, or by a separate burial rate, such sums as may be necessary for the purposes aforesaid (*k*).

Whenever after repayment of moneys borrowed and the interest thereof, and after satisfying all the liabilities of the board, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year there shall be any surplus of income, the burial board shall pay the same to the overseers in aid of the rate for the relief of the poor (*l*). Income tax is payable on such surplus (*m*).

In cases of local boards of health or improvement commissioners constituted burial boards, such surplus is to be applied in aid of the general district or improvement rate (*n*).

A burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which it is appointed to act, and to make arrangements for facilitating interments therein (*o*).

It has always been the practice whenever an Order in Council has been made for discontinuing burials in any churchyard or burial ground, to make an order under 16 & 17 Vict. c. 134, s. 1, requiring the approval of the Secretary of State, or, since the Burial Act, 1900, of the Local Government Board, for any new burial ground within the limits served by the closed burial ground. If, therefore, any such Order in Council has been made affecting any place, the burial board should be careful to obtain the approval of the Local Government Board for the site of the *new* burial ground, and in purchasing land

(*k*) 23 & 24 Vict. c. 64, s. 1.

(*l*) 15 & 16 Vict. c. 85, s. 22.

(*m*) *Paddington Burial Board v. Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9 ; 53 L. J. Q. B. 224 ; 50 L. T. 211 ; 32 W. R. 551 ; 48 J. P. 311.

(*n*) 23 & 24 Vict. c. 64, s. 3.

(*o*) 15 & 16 Vict. c. 85, s. 25.

**Burial Acts.** to contract subject to such approval. A new burial ground so approved cannot be afterwards closed by any proceedings under the Burial Acts (*p*). And, although it is quite competent to a burial board of any place not affected by an Order in Council to provide a burial ground without such approval, yet, inasmuch as any new burial ground which has not been so approved is not exempt from the possibility of being closed at any time by an Order in Council, it is in all cases advisable to obtain such approval prior to the purchase of the land, as in such case the land is a far better security upon which to borrow money.

Purchase, etc.  
of lands.

The board may, with the approval of the vestry, purchase land for the purpose of forming a burial ground, or may purchase any existing cemetery or part thereof subject to subsisting rights already granted therein; or may contract for the right of burial therein (*q*), and for these purposes the Lands Clauses Consolidation Act, 1845 (*r*), with the exception of the provisions for the compulsory taking of lands and certain other provisions, is incorporated with the Burial Acts (*s*). The board may also, with the approval of the vestry, and of the guardians of the poor of the parish, and of the Local Government Board, appropriate for a burial ground land belonging to the parish; subject, however, to such condition as may be imposed by the Chancery Division of the High Court, in case such land is subject to any charitable trust (*t*).

Closed  
cemetery.

A burial board may acquire any closed cemetery adjoining or near to any land appropriated for a burial ground, for the purpose of erecting buildings thereon, or making approaches to such burial ground (*u*); and trustees of closed cemeteries may, with the sanction of the Local Government Board, let, lease, or sell such unconsecrated

(*p*) 15 & 16 Vict. c. 85, s. 7; as amended by 63 & 64 Vict. c. 15, s. 4; 18 & 19 Vict. c. 128, s. 21.

(*q*) 15 & 16 Vict. c. 85, s. 26.

(*r*) 8 & 9 Vict. c. 18.

(*s*) 15 & 16 Vict. c. 85, s. 27.

(*t*) *Id.*, s. 29.

(*u*) 20 & 21 Vict. c. 81, s. 26.

portions thereof as have not received interments ; the **Burial Acts.** money accruing therefrom, after discharge of liabilities, to be applied as the vestry directs in cases where the land was held in trust for the parish, and in other cases, to the *cestuis que trust* (x).

The board may have transferred to them a burial ground provided under the Church Building Acts, and enlarge the same by adding an unconsecrated part thereto (y). Transfer of churchyard.

Guardians of a parish or union becoming possessed of any land suitable for a burial ground may, with the consent of the Local Government Board, appropriate it for a burial ground for poor persons (z). Pauper burial ground.

The new burial ground may be situated either within or without the limits of the parish, or all or any of the parishes, for which it is provided ; but the burial board are bound to have reference to the convenience of access to it from the parish or parishes for which it is provided (a). Burial ground may be outside parish.

Land acquired under the Burial Acts for the purpose of a burial ground shall not be assessed to any rates at a higher value or rent than the value or rent at which it was assessed at the time it was so acquired (b). Assessment not to be raised.

No new burial ground shall be used for burials under the Burial Acts within the distance of one hundred yards from any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house (c). No burial ground within 100 yards of dwelling-house without consent.

The board may, with the approval of the vestry, sell any lands purchased by them under the Burial Acts, in which no interment shall have taken place (d) ; and, with Selling and letting surplus land.

(z) 20 & 21 Vict. c. 81, s. 24 ; as amended by 63 & 64 Vict. c. 15, s. 4.

(y) *Id.*, s. 7.

(z) *Id.*, s. 6.

(a) 15 & 16 Vict. c. 85, s. 25.

(b) 18 & 19 Vict. c. 128, s. 15.

(c) *Id.*, s. 9 ; *Cowley v. Byas* (1877), L. R. 5 Ch. D. 944 ; 26 W. R. 1 ; 41 J. P. 804.

(d) 15 & 16 Vict. c. 85, s. 28.

**Burial Acts.** the sanction of the Local Government Board, may let any land purchased by them which has not been consecrated, and in which no interment has taken place, if power be reserved to the board to resume possession of such land on giving six months' notice (*e*).

Laying out  
new burial  
grounds.

The board may lay out any burial ground provided by it in such manner as may be fitting and proper (*f*).

Consecrated  
and un-  
consecrated  
parts.

Before the passing of the Burial Act, 1900 (*g*), it was necessary that the burial ground should be divided into two such parts, one to be consecrated and the other to remain unconsecrated, as might be sanctioned by a Secretary of State (*h*); unless at a vestry specially called for the purpose it was unanimously resolved that the new ground should be held and used in all respects as the existing churchyard; in which case another ground not consecrated might be provided within ten years (*i*). Or the board might, with the approval of a Secretary of State, provide separate and distinct burial grounds to be used respectively as consecrated and unconsecrated burial grounds (*k*).

These provisions are repealed by the Burial Act, 1900, and now a burial board may, if they think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by a Secretary of State. If the burial board do not make the application within a reasonable time after a request in that behalf, and the Secretary of State is satisfied that a reasonable number of persons for whom, or within the area for which the burial ground is provided, desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make the application in respect of an approved portion of the burial ground,

(*e*) 18 & 19 Vict. c. 128, s. 17; as amended by 63 & 64 Vict. c. 15, s. 4.

(*f*) 15 & 16 Vict. c. 128, s. 30.

(*g*) 63 & 64 Vict. c. 15.

(*h*) 16 & 17 Vict. c. 134, s. 7.

(*i*) 18 & 19 Vict. c. 128, s. 10.

(*k*) 20 & 21 Vict. c. 81, s. 3.

and the bishop may consecrate accordingly, and it shall be **Burial Acts.**  
 the duty of the burial board to make such arrangements  
 as may be necessary for the consecration (*l*).

If upon the application of the burial board, the bishop  
 refuse to consecrate, an appeal lies to the archbishop ; and  
 if the archbishop certifies to the bishop that the ground is  
 in a fit and proper condition, then if the bishop still refuse  
 to consecrate, the archbishop may license the ground for  
 burials, and such licence shall have the same efficacy as  
 consecration (*m*). And prior to the decision of the bishop  
 and archbishop a Secretary of State may certify that all  
 necessary provisions have been complied with ; and there-  
 after it shall be lawful for any clergyman of the Church  
 of England to bury in such burial ground, though not  
 consecrated (*n*). This enactment, however, now appears  
 superfluous, as by s. 12 of the Burial Laws Amendment Act,  
 1880, the Church of England burial service may be legally  
 performed by any clergyman in unconsecrated ground.

Licence by  
 archbishop.

Certificate of  
 Secretary of  
 State.

No wall or fence is necessary between the consecrated and  
 unconsecrated portions of a burial ground, but boundary  
 marks of stone or iron must be placed between them (*o*).

Division  
 between  
 consecrated  
 and unconse-  
 crated parts.

The unconsecrated part of the burial ground shall be  
 allotted in such manner and in such portions as may be  
 sanctioned by a Secretary of State (*p*).

Allotment  
 of un-  
 consecrated  
 ground.

Any burial ground provided under the Burial Acts shall  
 be deemed the burial ground of the parish or parishes for  
 which the same is provided ; and the parishioners and  
 inhabitants of such parish or parishes, shall have the same  
 rights of sepulture therein as they would have had in the  
 burial ground or grounds of their respective parishes (*q*).

Burial ground  
 to be burial  
 ground of  
 parish.

Before the passing of the Burial Act, 1900, a burial  
 board might upon the consecrated part of the burial ground,  
 according to a plan approved by the bishop, build a chapel

Chapels.

(*l*) 63 & 64 Vict. c. 15, s. 1.

(*o*) *Id.*, s. 11.

(*m*) 20 & 21 Vict. c. 81, s. 12.

(*p*) 16 & 17 Vict. c. 134, s. 7.

(*n*) *Id.*, s. 13.

(*q*) 15 & 16 Vict. c. 85, s. 32.



**Burial Acts.** for the performance of the burial service according to the rites of the Church of England (*r*); but if such chapel were built, it was incumbent on the board to build upon the unconsecrated portion of the burial ground such chapel accommodation for the performance of burial service by persons not members of the Church of England, as might be approved by a Secretary of State (*s*). If, however, three-fourths of the vestry represented that such chapel on the unconsecrated portion was unnecessary, it was competent to the Secretary of State to dispense with the obligation to build the same (*t*).

These provisions are repealed by the Burial Act, 1900, and now a burial board may at their own cost erect on any part of their burial ground, which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for the exclusive use of any denomination. They may, also, at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use. Where such a request is made and the estimated costs are tendered to the burial board or reasonably secured, then, if the board refuse to grant the request or fail to give effect to it within a reasonable time, a Secretary of State may, if he thinks fit, by order in writing, require the board to erect, furnish, and maintain, or to give facilities for erecting, furnishing, and maintaining, such a chapel in accordance with directions given in the order, and the board shall comply with the order (*u*).

Chapel for adjoining burial grounds.

When the burial grounds of two parishes provided by the respective burial boards of such parishes adjoin each

(*r*) 15 & 16 Vict. c. 85, s. 30.

(*s*) 16 & 17 Vict. c. 134, s. 7.

(*t*) 18 & 19 Vict. c. 128, s. 14.

(*u*) 63 & 64 Vict. c. 16, s. 2.

other, the burial boards may agree to erect one chapel in **Burial Acts.** either of such burial grounds, or partly in one and partly in the other, for their common use ; and any burial board that has erected a chapel in its own burial ground may, with the sanction of a Secretary of State, contract with any other burial board, whose burial ground adjoins the one on which such chapel is built, for the common use of such chapel (*x*).

When any closed burial ground belongs to a parish other than that in which it is situate, the incumbent and churchwardens of the parish to which such ground belongs may, with the consent of the vestry and bishop, convey it to trustees for the parish in which it is situate ; and after such conveyance, all obligations of the parish to which it originally belonged to repair the same, or to pay any stipend to the minister thereof, shall cease (*y*). Chapel of closed burial ground.

A burial board may enter into contracts for doing all works and things necessary for the purposes of the Burial Acts; the contracts to specify the several works to be done, the prices to be paid, the times when the works are to be executed, and the penalties for non-performance. But no contract for over £100 may be entered into without advertising for tenders fourteen days previously in a local newspaper (*z*). Contracts.

Burial boards may make arrangements for facilitating the conveyance of dead bodies to the burial ground, or may contract with a cemetery company to undertake such conveyance (*a*). Conveyance of corpses.

The exemption from payment of turnpike tolls granted by 3 Geo. 4, c. 126, s. 32, in cases where the funeral of any person took place within the parish where he died, is now extended to cases where the funeral takes place in the burial ground of such parish if outside the limits of the parish (*b*). Exemption from tolls.

(*x*) 18 & 19 Vict. c. 128, s. 16.

(*y*) 15 & 16 Vict. c. 85, s. 51.

(*z*) *Id.*, s. 31.

(*a*) *Id.*, s. 41.

(*b*) 20 & 21 Vict. c. 81, s. 14.

**Burial Acts.** A burial board may, and if there is no burial board in a parish, the churchwardens and overseers of the parish may, provide proper places for the reception of dead bodies before interment. And such churchwardens and overseers may for this purpose exercise all such powers as they might exercise for providing a workhouse for the parish (*c*).

**Mortuaries.**

Such mortuaries are subject to regulations made by the Local Government Board (*d*). Local authorities may, and if required by the Local Government Board, must, provide mortuaries, and may make byelaws for the management thereof, and provide for the interment of dead bodies received therein (*e*).

Regulation of burial grounds and vaults.

The general management, regulation, and control of the burial ground is vested in the burial board (*f*). Formerly a Secretary of State might, and now the Local Government Board may make regulations in relation thereto for the protection of public health and the maintenance of public decency (*g*), and the Local Government Board may from time to time direct inspection of any burial ground to ascertain the condition thereof, and whether such regulations have been observed. A penalty not exceeding £10 may, upon summary conviction, be imposed for non-compliance with such regulations, or for obstructing the inspector (*h*).

Order in Council, or Local Government Board may direct acts to be done.

Upon the representation of the Local Government Board, an Order in Council may be made directing churchwardens or other persons having the care of vaults or places of burial, to do such acts as may be necessary for preventing them becoming dangerous or injurious to the public health, and the expenses of doing such acts

(*c*) 15 & 16 Vict. c. 85, s. 42.

(*d*) *Id.*, s. 44; as amended by 63 & 64 Vict. c. 15, s. 4.

(*e*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 141.

(*f*) 15 & 16 Vict. c. 85, s. 38.

(*g*) *Id.*, s. 44; as amended by 63 & 64 Vict. c. 15, s. 4.

(*h*) 18 & 19 Vict. c. 128, s. 8; as amended by 63 & 64 Vict. c. 15, s. 4.

shall be paid out of the poor rates of the parish (i). And Burial Acts. if persons other than churchwardens neglect to comply with such directions, the Local Government Board may direct the churchwardens of the parish in which the vaults or place of burial are situate to do such acts, and the churchwardens shall thereupon obey such direction. Any person obstructing the churchwardens in obeying such directions is guilty of a misdemeanor (k).

It has been held by Ecclesiastical Courts that when an Order in Council or an order by the executive authority under these sections has been made to the above effect, to comply with which would necessitate interference with the fabric of the church, or removal of bodies from consecrated ground, it is necessary to obtain a faculty for that purpose (l). But unless the granting of the required faculty be regarded simply as a ministerial function of the ordinary, it is very doubtful whether this pretension on the part of the Ecclesiastical Court would be allowed to prevail.

The provisions of the Cemeteries Clauses Act, 1847 (m), Protection of burial grounds. with respect to the protection of the cemetery, are incorporated with the Burial Acts, and are applicable to any burial ground provided under those Acts (n).

A burial board may sell the exclusive right of burial, Sale of graves and vaults, etc. either in perpetuity or for a limited time, in any part of the burial ground, or the right of constructing a vault with exclusive right of burial therein, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription (o), provided that any question which may arise touching the fitness of any monumental

(i) 20 & 21 Vict. c. 81, s. 23; as amended by 63 & 64 Vict. c. 15, s. 4.

(k) 22 Vict. c. 1; as amended by 63 & 64 Vict. c. 15, s. 4.

(l) *Rector, etc. of St. Mary-at-Hill v. Parishioners*, [1892] P. 394; *Rector of St. Michael Bassishaw v. Parishioners*, [1893] P. 233.

(m) 10 & 11 Vict. c. 65.

(n) 15 & 16 Vict. c. 85, s. 40.

(o) *Id.*, s. 33.

**Burial Acts.** inscription in the consecrated part of the burial ground shall be determined by the bishop of the diocese (*p*).

Fees for interments, exclusive rights of burial, etc.

The burial board may, subject to the approval of the Local Government Board (*q*), fix and settle such fees and payments in respect of interments, of exclusive rights of burial, of the right of constructing vaults, and of erecting and placing monuments and inscriptions as they may think fit, and with the like approval of the Local Government Board, and consent of the vestry may revise the same. A list of such fees must be printed and affixed on some conspicuous part of the burial ground (*r*).

Fees of minister, clerk, and sexton.

The Burial Act, 1900, has made a considerable change with regard to the payment of fees to incumbents, clerks, and sextons in respect of burials in a burial ground. Before that Act the incumbent or minister, the clerk, and the sexton of a parish for which a burial ground was provided, were entitled to receive the same fees in respect of the burial in a new burial ground of the remains of parishioners or inhabitants of the parish of which they were incumbent or minister, clerk, or sexton, as they previously respectively enjoyed and received (*s*), and a burial board could not deprive any existing clerk or sexton of his right to such fees by appointing another person to do his duties (*t*).

Now no fee, other than fees payable to a sexton for services rendered by him are payable to any clerk or other ecclesiastical officer in respect of interments in a burial ground established under the Burial Acts (*u*).

As to the fees payable to the minister and sexton for services rendered at interments, the old system is

(*p*) 15 & 16 Vict. c. 85, s. 38.

(*q*) 18 & 19 Vict. c. 128, s. 7; as amended by 63 & 64 Vict. c. 15, s. 4.

(*r*) 15 & 16 Vict. c. 85, s. 34.

(*s*) *Id.*, s. 32.

(*t*) *Gell v. Birmingham* (1864), 10 L. T. (N.S.) 497; 28 J. P. 583.

(*u*) 63 & 64 Vict. c. 15, s. 3 (5).

abolished (*x*), and in place thereof it is provided that Burial Acts every burial authority shall submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications. Provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground (*y*).

If the burial authority fail to submit such a table on being requested to do so by the Secretary of State, the Secretary of State may make a table of fees (*z*).

The fees fixed by the table shall be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State (*a*).

It will be seen that under the new system all ministers of religion are placed on the same basis so far as regards the payment to them of fees for performing the burial service, and thus the old distinction between the customary rights of incumbents to such fees, and the contractual rights of Nonconformist ministers to payment for their services is abolished. And it appears that a minister is now entitled to be paid the settled fee whenever he performs the burial service at an interment, even though the body be that of a non-parishioner; whereas it was formerly held that he was not entitled to the customary fee on the burial of a non-parishioner (*b*).

The incumbent or minister was also entitled to be paid by the burial board out of the payments received by the

(*x*) 63 & 64 Vict. c. 15, s. 12, and Sched. II.

(*y*) *Id.*, s. 3 (1).

(*z*) *Id.*, s. 3 (2).

(*a*) *Id.*, s. 3 (3).

(*b*) *Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713; 68 L. T. 90; 40 W. R. 390.

Burial Acts board for the sale of exclusive rights of burial, the right of constructing vaults, erecting monuments, etc., in the consecrated portion of the burial ground (in lieu of the fees or sums to which he would have been entitled on the grant of the like rights in the burial ground of his parish), such fees or sums as should be settled or fixed by the vestry with the approval of the bishop, or if no such fees or sums should have been settled, then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish (c).

The Burial Act, 1900, abolishes these fees altogether, subject to the preservation of vested interests. The provisions of the Act in this respect are that no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any other matter whatsoever, in any burial ground maintained by a burial authority, except for services rendered by him, and this enactment shall apply to any such fee which is by law or custom payable to the churchwardens of any parish or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability, in like manner as it applies to fees payable to an incumbent.

Provided as follows :

(i.) Where, at the passing of this Act, fees other than for services rendered are payable in respect of any matter arising in any burial ground attached to or used for the purposes of a parish, and laid out and used before the passing of this Act, the like fees shall continue to be paid during the incumbency of the person who, at the passing of this Act, is the incumbent of the parish, or during a period of fifteen years from the passing of this Act, whichever is longer, or if the fees are not paid to the incumbent,

(c) 15 & 16 Vict. c. 85, s. 33.

or to any person claiming through or under him, Burial Acts. then during the said period of fifteen years, and shall be applicable to the like purposes as heretofore, and the burial authority shall collect and pay these fees in like manner as the fees to be paid for services rendered ;

(ii.) The Ecclesiastical Commissioners may at the request and subject to the approval of the incumbent, or other person interested, agree with any burial authority for such payment, periodical or otherwise, as may be thought equitable in commutation of the fees other than those claimed for services rendered, and an agreement so approved shall be binding on the persons for the time being interested, and the burial authority may make accordingly any payment so agreed upon. Where the fees are paid to an incumbent, or to any person claiming through or under him, the Ecclesiastical Commissioners shall apply the commutation money in the first instance to such compensation of the existing incumbent as they may deem equitable, regard being had to all the circumstances of the case ; and the residue, if any, for the augmentation of the benefice (*d*).

The words "incumbent" and "minister," in respect of any fee payable under the Burial Acts, mean the clergy-<sup>Meaning of "incumbent," "minister."</sup> man who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district had a burial ground on July 1st, 1852 ; and if any difference shall arise between two or more persons claiming to be such incumbent or minister, such difference shall be determined by the bishop of the diocese (*e*). This definition is not repealed by the Burial Act, 1900, which is to be construed

(*d*) 63 & 64 Vict. c. 15, s. 3 (4).

(*e*) 15 & 16 Vict. c. 85, s. 52.



**Burial Acts.** with the Burial Acts, 1852 to 1885 (*f*), but the definition of the word "minister" is obviously inapplicable to that word as used in the Burial Act, 1900, where it is used as signifying "any minister of religion."

**Incumbent,  
etc. of new  
parish.**

When any new parish or district is created under any of the New Parishes Acts of 1843, 1844, or 1856, and a burial ground has been or shall be provided for any parish or parishes out of rates to which such new parish or district or any part thereof shall have contributed, or contribute, or be liable to contribute, the incumbent of such new parish or district shall (subject to the rights of any existing incumbent), be entitled to perform the same duties, and shall have the same rights, privileges, and authorities, and the clerk and sexton shall, when necessary, perform the same duties upon the burial of the parishioners or inhabitants of such new parish or district or of such part thereof as shall have contributed to the rates as aforesaid, as though such burial ground were exclusively the burial ground of the new parish or district (*g*).

**Fees payable  
to church-  
wardens, etc.**

Where fees on interments, etc., were by law or custom payable to churchwardens or to trustees for or towards the payment of any stipend to the incumbent or minister, or the discharge of any debt or liability, such fees were receivable by the burial board and were paid to the parties entitled to receive the same; but at the request of such churchwardens or trustees, the burial board might, instead of paying such fees to them, apply them directly towards discharging any periodical payment or liability to which they may be applicable (*h*). The payment of all such fees is, however, to cease on the expiration of fifteen years after the passing of the Burial Act, 1901 (*i*).

Where by any local Act fees on interments in any burial ground of any parish are payable to the churchwardens of

(*f*) 63 & 64 Vict. c. 15, s. 13 (1).

(*g*) 20 & 21 Vict. c. 81, s. 5; as amended by 63 & 64 Vict. c. 15, s. 12, and Sched. II.

(*h*) 15 & 16 Vict. c. 85, s. 36.

(*i*) 63 & 64 Vict. c. 15, s. 3 (4).

such parish (except in the City of London), or to trustees **Burial Acts.** for the purpose of paying a stipend to the incumbent or minister, any fees which, under the Burial Acts or under any Act relating to any cemetery company, would, on the interment in the cemetery of any company of any body brought from such parish, be payable to such incumbent or minister, shall be payable to such churchwardens or trustees, and any surplus of such fees after payment of such stipend shall be paid to such incumbent or minister (*k*).

This provision does not, however, now apply to a burial ground maintained by a burial authority, and is repealed so far as relates to any such burial ground (*l*).

When a burial ground is provided for the common use of two or more parishes, an arrangement may be made by the incumbents of the various parishes for serving the same by a chaplain to be paid by such incumbents, or by deductions from the fees payable to them; and in case of dispute, the bishop shall confirm any scheme of the majority or of a moiety of such incumbents (*m*). Chaplain for several parishes.

When any body is buried in any cemetery established under the authority of Parliament at the expense of a union, parish, hospital, or infirmary, the fee payable to the incumbent on such interment shall not exceed 1*s.*, unless such incumbent has been accustomed to receive more, and in no case shall exceed 2*s.* 6*d.*; and nothing shall be payable to any parish or district officer in respect of such interment (*n*). Fees on pauper burials.

Before the Burial Act, 1900 (*o*), if a burial took place in consecrated ground without the service of the Church of England, any person who would have been entitled to a fee for such burial if it had taken place with the service of the Church of England was entitled to receive the same Fees when service of Church of England not used.

(*k*) 15 & 16 Vict. c. 85, s. 50.

(*l*) 63 & 64 Vict. c. 15, s. 12, and Sched. II.

(*m*) 15 & 16 Vict. c. 85, s. 39.

(*n*) *Id.*, s. 49; 16 & 17 Vict. c. 134, s. 7.

(*o*) 63 & 64 Vict. c. 15.

**Burial Acts.** fee as he would otherwise have received (*p*). The right to receive such fee, however, is now abolished in cases where the burial takes place in a burial ground established under the Burial Acts, subject, nevertheless, to the vested interests of present incumbents (*q*):

Register of burials under Burial Acts.

All burials in a burial ground provided under the Burial Acts must be registered in a book kept according to the laws in force by which registers are required to be kept by rectors, etc. of parishes or ecclesiastical districts (*r*). Such register is to distinguish between burials in consecrated and unconsecrated ground. It must be indexed, and a transcript of it sent to the registrar of the diocese. Searches may be made therein, subject to the provisions of the Births and Deaths Registration Act, 1836 (*s*), and copies of entries therein are admissible as evidence in courts of justice (*t*).

Registration, regulated by similar provisions, is now compulsory in respect of burials in every place of burial in England, and a penalty not exceeding £5 is imposed for neglecting to register or to conform to such provisions (*u*).

Destroying or forging register.

Any person wilfully destroying or injuring a register or transcript thereof, or forging any entry or copy of any entry therein, or giving a false certificate of an entry, or forging the seal of a burial board, is guilty of felony (*x*).

Coroner's order and registrar's certificate.

Every coroner's order for burial, and every registrar's certificate of death, must be delivered to the person who buries or performs any funeral or religious service for the burial of the deceased under a penalty not exceeding 40s.

(*p*) 43 & 44 Vict. c. 41, s. 5.

(*q*) 63 & 64 Vict. c. 15, s. 3 (4).

(*r*) 52 Geo. 3, c. 146; 6 & 7 Will. 4, c. 86, s. 35.

(*s*) 6 & 7 Will. 4, c. 86, s. 35.

(*t*) 16 & 17 Vict. c. 134, s. 8.

(*u*) Registration of Burials Act, 1864 (27 & 28 Vict. c. 97).

(*x*) 20 & 21 Vict. c. 81, s. 15.

And the person who buries or performs any funeral or religious service for the burial of any dead body, as to which no order or certificate has been delivered to him, must, within seven days of the burial, give notice thereof in writing to the registrar under a penalty not exceeding £10 (*y*).

When any burial takes place under the Burial Laws Amendment Act, 1880, the person having charge of or being responsible for such burial must, on the same or next day, transmit a certificate of such burial to the officiating minister in charge of the parish or district in which the churchyard or graveyard is situate, or to which it belongs, or, in the case of a burial ground or cemetery vested in a burial board, to the person required by the Burial Act, 1853 (*z*), s. 8, to keep the register of burials therein, who shall thereupon enter such burial in the proper register. Such entry shall state by whom the burial has been certified, instead of by whom the ceremony was performed; and any person wilfully making a false statement in such certificate, or any minister or other person refusing or neglecting to make such entry, is guilty of a misdemeanor (*a*).

Every order or certificate of a registrar given under the Births and Deaths Registration Act, 1874 (*b*), s. 17, must, in case of a burial under the Burial Laws Amendment Act, 1880, be delivered by the person to whom it is given to the person having charge of or being responsible for the burial, instead of to the person who buries or performs any funeral or religious service for the burial of the deceased, under a penalty not exceeding 40s. And the person who has charge of or is responsible for such burial, as to which no order or certificate has

(*y*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 17.

(*z*) 16 & 17 Vict. c. 134.

(*a*) 43 & 44 Vict. c. 41, s. 10.

(*b*) 37 & 38 Vict. c. 88.

**Metropolis.** been delivered, must, within seven days of the burial, give notice thereof in writing to the registrar under a penalty not exceeding £10 (*c*).

#### METROPOLIS.

The following provisions of the 15 & 16 Vict. c. 85, were not made of general application by 16 & 17 Vict. c. 134, s. 7, and remain solely applicable to the metropolis.

Discon-  
tinuance of  
burials.

If it appear to his Majesty in Council, upon the representation of the Local Government Board, that, for the protection of the public health, burials in any part of the metropolis, or in burial grounds or places of burial in the metropolis, should be wholly discontinued, or discontinued subject to any qualification or exception, it shall be lawful for his Majesty, by and with the advice of the Privy Council, to order that after a time mentioned in the order burials in such places shall be discontinued wholly, or subject to exceptions or qualifications mentioned in such order. Notice of such representation and of the time for its consideration by the Privy Council must be published in the London Gazette, and affixed at least one month before the time for such consideration to the doors of the churches and chapels of the parishes in which any burial grounds or places of burial to be affected by such representation are situate, or on some other conspicuous places within the parts of the metropolis to be affected; and ten days' notice of the intention to make such representation is to be given to the incumbent and vestry clerk of the parish of which the burial ground is intended to be affected (*d*). An Order in Council so made may be varied by any subsequent order (*e*). No such order shall

(*c*) 43 & 44 Vict. c. 41, s. 11; 44 & 45 Vict. c. 2.

(*d*) 15 & 16 Vict. c. 85, s. 2; as amended by 63 & 64 Vict. c. 15, s. 4.

(*e*) 18 & 19 Vict. c. 87, s. 1.

extend to burial grounds of Quakers or Jews, or to any Metropolis. non-parochial burial ground of any private person, unless the same is expressly mentioned in such order (*f*).

After the date mentioned in such order no burial shall be allowed to take place in any place of burial in which, or within the parts of the metropolis within which, burials are by such order directed to be discontinued; and any person burying or assisting in the burial of any body in any place so closed shall be guilty of a misdemeanor (*g*), and be liable on summary conviction to be fined a sum not exceeding £10 (*h*).

No such order shall be made to discontinue burials in the seven cemeteries specified in Schedule B. of the Burial Act, 1852 (*i*), nor to affect the right of burial of any person in St. Paul's or Westminster Abbey under his Majesty's sign-manual (*k*). And if any right of interment by faculty or usage in any church, or vault, or burial place affected by any order has been acquired before July 1st, 1852, the Local Government Board may, on being satisfied that the exercise of such right will not be injurious to health, grant a licence for the exercise of such right, subject to such restrictions as he may think fit; but such licence shall not prejudice the authority of the ordinary to prevent or control such interment (*l*).

After the burial place of any parish has been so closed, no parishioner or inhabitant of such parish shall be buried in any other parochial burial ground in the metropolis unless the body of any of his family or relations have been buried in such burial ground, and the persons having care of the funeral desire that on that account he should be

(*f*) 15 & 16 Vict. c. 85, s. 3.

(*g*) *Id.*, s. 4.

(*h*) 18 & 19 Vict. c. 128, s. 2.

(*i*) 15 & 16 Vict. c. 85, s. 7.

(*k*) *Id.*, s. 8.

(*l*) 15 & 16 Vict. c. 85, s. 6; as amended by 63 & 64 Vict. c. 15, s. 4.

**Metropolis.** there buried, and provided that such other burial ground has not been closed by Order in Council (*m*),

The metropolis for this purpose includes the cities and liberties of London and Westminster, the borough of Southwark, and all the parishes and places mentioned in Schedule A. of the Burial Act, 1852 (*n*). And no new burial ground or cemetery shall be provided or used in the metropolis, or within two miles thereof, without the previous approval of the Local Government Board (*o*).

City of  
London.

The Commissioners of Sewers of the City of London are the burial board for the parishes in the city and its liberties (*p*). Special provisions respecting such commissioners are contained in the City of London Burial Act, 1857 (*q*), *post*, and in the City of London Sewers Acts, 1848 and 1851 (*r*), for the sections of which relating to burials, see *post*.

By the London Government Act, 1899 (*s*), which abolished elective vestries and district boards in the county of London, and transferred their powers and duties to the councils of the newly created boroughs comprising the areas within which those powers were exercised, it is provided that where any of the adoptive Acts (which include the Burial Acts) is adopted within a metropolitan borough, the borough council shall be the authority for administering the Act, and where any such Act has been adopted before the appointed day (*i.e.*, November 1st, 1900, or thereabouts), and is administered by commissioners or a board, a scheme under this Act shall abolish the commissioners or board, and transfer their powers, duties, property, and liabilities to the borough council (*t*).

(*m*) 15 & 16 Vict. c. 85, s. 5.

(*n*) *Id.*, s. 53.

(*o*) *Id.*, s. 9; as amended by 63 & 64 Vict. c. 15, s. 4.

(*p*) 15 & 16 Vict. c. 81, s. 43.

(*q*) 20 & 21 Vict. c. 35.

(*r*) 11 & 12 Vict. c. clxiii, s. 110; 14 & 15 Vict. c. xci, ss. 32—36.

(*s*) 62 & 63 Vict. c. 14.

(*t*) *Id.*, s. 4 (2).

The effect of this enactment is to abolish every burial **Metropolis.** board for any area within a metropolitan borough which was in existence in November, 1900, and to transfer the powers, etc. of such board to the council of the borough comprising such area ; and by the Metropolis Management Act, 1855, the council may, if they think fit, appoint a committee to exercise such powers (u).

## CEMETERIES ESTABLISHED BY LOCAL AUTHORITIES.

Cemeteries may be provided by companies or private Proprietary owners under special Acts of Parliament. Such special cemetaries. Acts may incorporate the Cemeteries Clauses Act, 10 & 11 Vict. 1847 (v) ; and if that Act is incorporated therewith, c. 65. then all such of its clauses as are not expressly varied or excepted by the special Act, apply to the cemetery by the special Act authorised.

By the Public Health (Interments) Act, 1879 (x), it is provided that any local authority may acquire, construct, and maintain a cemetery ; and for that purpose all the provisions of the Public Health Act, 1875, as to a place to be provided by the local authority for the reception of the dead before interment, therein called a mortuary, shall extend to such cemetery. The cemetery may be either within or without the district of the local authority (s. 2) ; and the local authority may accept a donation of land for the purpose of a cemetery, or of money or other property for enabling them to acquire, construct, or maintain a cemetery (s. 3). Such cemetery is, by s. 4, declared to be subject to all the provisions of the Cemeteries Clauses Act, 1847 ; but these provisions have been considerably modified so far as they are appli-

Establishment of cemetaries by local authorities. 42 & 43 Vict. c. 31.

(u) 18 & 19 Vict. c. 120, s. 58 ; applied to metropolitan borough councils by 62 & 63 Vict. c. 14, s. 2 (5).

(v) 10 & 11 Vict. c. 65.

(x) 42 & 43 Vict. c. 31.



**Cemeteries.** cable to a cemetery established by a burial authority by the Burial Act, 1900 (*y*), especially as regards consecration, the provision of chapels, the payment of ecclesiastical fees, and the appointment of a chaplain.

**Consecration.** Before the passing of the Burial Act, 1900, no obligation was imposed upon a local authority who established a cemetery under the Public Health (Interments) Act, 1879, to apply to the bishop to consecrate any portion of the cemetery, although they were empowered to make such application (*z*). The Burial Act, 1900, authorises the local authority, if they think fit, to apply to the bishop to consecrate any portion of the cemetery approved in that behalf by a Secretary of State, and provides that if they do not make such application within a reasonable time after a request in that behalf, and the Secretary of State is satisfied that a reasonable number of the persons for whom, or within the area for which, the cemetery is provided desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make the application in respect of an approved portion of the cemetery, and the bishop may consecrate accordingly, and it shall be the duty of the local authority to make such arrangements as may be necessary for the consecration (*a*).

**Appropriation of portions of cemetery to various denominations.**

Formerly local authorities were empowered to appropriate the whole or a portion of that part of the cemetery which was not set apart for burials according to the rites of the Established Church as a place of burial for persons of particular denominations other than the Established Church (*b*). Now, however, the cemetery is made subject to the provisions of s. 7 of the Burial Act, 1853 (*c*), the

(*y*) 63 & 64 Vict. c. 15.

(*z*) 10 & 11 Vict. c. 65, s. 23.

(*a*) 63 & 64 Vict. c. 15, s. 1.

(*b*) 11 & 12 Vict. c. 65, s. 35.

(*c*) 16 & 17 Vict. c. 134.

effect of which is that any allotment or appropriation of a portion of the cemetery to the use of members of a particular denomination requires the sanction thereto of the Home Secretary (*d*). Cemeteries.

Before the Burial Act, 1900, if any part of the cemetery were consecrated, the local authority were under an obligation to build within such consecrated part, according to a plan approved by the bishop, a chapel for the performance of the burial service according to the rites of the Established Church (*e*). They were also empowered, if any part of the cemetery were left unconsecrated, to build any chapel or chapels upon such unconsecrated portion, and to allow burial services to be performed therein other than the service according to the rites of the Church of England (*f*).

These provisions are now superseded by the provisions of the Burial Act, 1900, which authorises a local authority to erect at their own cost on any part of their cemetery which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services ; but any chapel so erected shall not be consecrated or reserved for the exclusive use of any denomination. They may also, at the request and cost of residents belonging to any denomination, erect and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use ; and if they do not comply with such request within a reasonable time after the estimated costs are tendered or secured, a Secretary of State may order them to erect and maintain, or to give facilities for erecting and maintaining such chapel, and they must comply with such order (*g*).

(*d*) 63 & 64 Vict. c. 15, s. 9.

(*e*) 11 & 12 Vict. c. 65, s. 25.

(*f*) *Id.*, s. 36.

(*g*) 63 & 64 Vict. c. 15, s. 2.

**Cemeteries.** Before the Burial Act, 1900, if any part of the cemetery were consecrated, the local authority were bound to appoint a clerk in holy orders of the Established Church, approved by the bishop, to officiate as chaplain in the consecrated part of the cemetery (*h*), and to pay him such stipend as the bishop might approve (*i*), and an obligation was imposed on such chaplain to perform the burial service in the consecrated part of the cemetery over the bodies of all persons entitled to be buried there (*k*). It is now, however, provided that the incumbent of any ecclesiastical parish situate wholly or partly within the area for which a burial ground is provided under the Public Health (Interments) Act, 1879, shall, with respect to his own parishioners, and persons dying in his parish, be under the same obligation to perform funeral services in that burial ground as he is to perform funeral services in a burial ground provided under the Burial Acts, and the power of the burial authority to appoint a chaplain for a burial ground provided under the Public Health (Interments) Act, 1879, shall cease, and where there is no chaplain for a burial ground so provided, burials in the consecrated part of the ground shall be registered in like manner, and subject to the like provisions as burials in the unconsecrated part (*l*).

**Fees.** An incumbent or other minister of religion performing the burial service in a cemetery, whether in the consecrated or unconsecrated part, is now entitled to receive the fee fixed in a table of fees to be approved by the Home Secretary (*m*). Such fee is to be collected by the local authority, and paid by them to the incumbent or minister entitled to it (*n*).

(*h*) 11 & 12 Vict. c. 65, s. 27.

(*i*) *Id.*, s. 30.

(*k*) *Id.*, s. 28.

(*l*) 63 & 64 Vict. c. 15, s. 7.

(*m*) *Id.*, s. 3 (1).

(*n*) *Id.*, s. 3 (3).

## LOCAL GOVERNMENT ACT, 1894.

Local  
Government Act,  
1894.

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The Local Government Act, 1894 (o), though not affecting the substantive law of burial, made important alterations in the constitution of the authorities entrusted with the carrying into effect of the Burial Acts. Broadly speaking, the effect of the Act was, in an urban district, to transfer to the council of the district, at the option of the council, the powers, duties, and liabilities of any existing burial board within such district, and to restrain the future appointment of a burial board within the district without the sanction of the council ; in rural parishes to substitute the parish council for the burial board, and to apportion the powers and duties of the vestry under the Burial Acts between the parish council and the parish meeting ; and in burial board areas not comprised within one rural parish, to transfer the powers and duties of the burial board to the parish councils of the parishes wholly or partly comprised in that area, or if the area was partly comprised in an urban district, to those parish councils and the district council of the urban district, to be exercised by a joint committee appointed by those councils.

For the purposes of this Act, every parish in a rural Rural parish. sanitary district shall be a rural parish (s. 1 (2)). The definition of a rural sanitary district will be found in s. 9 of the Public Health Act, 1875. And where a parish was, on the passing of the Act (March 5th, 1894), situate partly within and partly without a rural sanitary district, the part of the parish within the rural district will, as from the appointed day, but subject to any alteration of area made by or in pursuance of this or any other Act, be a separate rural parish as though it had been constituted a separate parish under the Divided Parishes and Poor Law Amend-

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1894.**

ment Act, 1876 (*p*), (s. 1 (3)), and the Acts amending the same.

As an overseer may be appointed for a parish constituted a separate parish under the Divided Parishes and Poor Law Amendment Act, 1876, the separate parish formed by the operation of this section out of that part of an existing parish which is within a rural sanitary district will be a parish within the meaning of the Burial Acts for which a burial board could, under those Acts, be appointed, and for which, consequently, under this Act the parish meeting may adopt the Burial Acts under s. 7.

“Appointed day.”

To prevent repetition, the following remarks must be taken, subject to the qualification that the new powers and duties of the parish council and parish meeting came into existence only “after the appointed day,” which varies for different purposes of the Act, but for rural parishes was not before November 8th, 1894 (s. 84).

Adoption of Burial Acts.

In every rural parish the parish meeting has the exclusive power of adopting the Burial Acts, 1852 to 1885 (s. 7 (1)), and this power is exercised by the parish meeting passing a resolution to provide a burial ground under the Burial Acts (s. 7 (8)). Under the Burial Acts the passing of such a resolution is a function of the vestry (15 & 16 Vict. c. 85, s. 10); such function is now therefore, in rural parishes, transferred from the vestry to the parish meeting. Not less than fourteen days notice of the meeting must, however, be given (Schedule I., Part I., rule 3).

A resolution to provide a burial ground under the Burial Acts is required to be passed by a simple majority of the vestry; therefore, a simple majority will be sufficient in the parish meeting to carry a similar resolution and adopt the Burial Acts (s. 7 (2)).

(*p*) 39 & 40 Vict. c. 61.

Moreover, a resolution to provide a burial ground under the Burial Acts can, under those Acts, be passed so as to affect a part only of a parish (see *ante*, pp. 65 *et seq.*); and as the passing of such a resolution is to be deemed an adoption of those Acts they may, therefore, under this Act, be adopted for a part only of a parish. If this is desired to be done the resolution need not be passed by the parish meeting for the whole parish, but it will be sufficient if it is passed by a parish meeting held for that part of the parish for which it is desired to provide a burial ground. Section 7 (4): "Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part." The Burial Acts cannot, however, be adopted under this Act for any indefinite part of a parish, but can only be adopted for a definite division of a parish for which a separate burial ground could have been provided under the Burial Acts, such as a township, ecclesiastical district, new parish, etc.

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Government Act,  
1894.**

Under the Burial Acts when the vestry has duly passed a resolution that it is expedient to provide a burial ground for the parish, its next duty is to proceed to the election of a burial board. But under this Act if a parish meeting pass the resolution before referred to, and thereby adopt the Burial Acts for the whole or part of the parish, then, if the parish has a parish council, no burial board is to be elected, but the parish council will be the authority for the execution of the Burial Acts (s. 7 (7)); that is to say, the parish council will, to all intents and purposes, be the burial board for the parish; but all regulations in the Burial Acts as to the qualification of members, place of meeting, quorum, etc., of a burial board, will be replaced by the corresponding regulations relative to a parish council contained in this Act.

Authority for  
execution of  
Burial Acts.

In urban districts, burial boards may still be appointed in the manner provided by the Burial Acts, but subject

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to the approval of the council of the district (s. 62 (2)).

If a rural parish has no parish council, a parish meeting which has passed a resolution to adopt the Burial Acts, is not in general empowered itself to act as the authority for the execution of those Acts, but must perform the duty of the vestry, transferred to it by s. 19 (4), and elect a burial board, which will be constituted in accordance with and regulated by the provisions of the Burial Acts, except that the powers and duties of the vestry with regard to the board will, for the most part, be exercised and performed by the parish meeting. The county council, however, is authorised, upon the application of the parish meeting, to confer on the meeting any of the powers conferred by the Act on a parish council (s. 19 (10)), and may consequently confer upon such meeting the powers which the parish council would have as the authority for the execution of the Burial Acts; and if that were done, the parish meeting would not appoint a burial board, but would itself act as such authority, or appoint a committee (s. 19 (3)) to act on its behalf.

**Powers of  
the parish  
council.**

As the parish council is to be the authority for the execution of the Burial Acts, it follows that whatever a burial board could do may now be done by the parish council. But under the Burial Acts certain matters could only be done by the burial board with the assent and approval of the vestry, and certain other matters were reserved to the vestry alone to do. With regard to the former matters it is provided that where under the Burial Acts the consent or approval of, or any other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for that purpose the expression "vestry" shall include any meeting of ratepayers or voters (s. 7 (3)). With regard to the matters, the execution of which is reserved to the vestry alone under the Burial Acts, as it is provided that the parish council shall be *the*

*authority* for the execution of those Acts, such provision would, apparently, be sufficient in itself to transfer to the parish council all the powers which the vestry may exercise in the execution of those Acts, except those specially transferred to the parish meeting; if, however, such transfer is not effected by that general provision, it is effected by s. 6 (1) (a), which provides that upon the parish council of a rural parish coming into office, there shall be transferred to that council the powers, duties, and liabilities of the vestry of the parish, except (i.) so far as relates to the affairs of the church or to ecclesiastical charities; and except (ii.) any power, duty, or liability transferred by that Act from the vestry to any other authority.

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Government Act,  
1894.

The general result of this legislation, therefore, is that whatever a burial board could do alone, or, if the matter did not relate to any expense or rate, could do with the assent or approval of the vestry; or whatever, after the election of a burial board, the vestry could do alone under the Burial Acts, not being a matter relating to the affairs of the church, may and will now be done by the parish council alone; and whatever the burial board could do in relation to any expense or rate with the assent or approval of the vestry, the parish council can now do with the assent and approval of the parish meeting.

Under the unrepealed sections of the Burial Acts, 1852 to 1900, the consent or approval of the vestry is required for the following matters which are within the executive powers of a burial board:

(a.) Determining the amount of the expenses to be incurred for or on account of a parish in providing and laying out a burial ground and building the necessary chapel thereon (Burial Act, 1852 (g), ss. 9, 19).

(b.) Appointing salaries, wages, and allowances for clerk, servants and officers, and hiring offices.

(g) 15 & 16 Vict. c. 85.



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Government Act,  
1894.**

(c.) Borrowing any money required for providing and laying out a burial ground and building a chapel or chapels thereon (Burial Act, 1852, s. 20).

(d.) Contracting for and purchasing any lands for the purpose of forming a burial ground, or making additions thereto ; or purchasing any cemetery or parts thereof subject to subsisting rights (*Id.*, s. 26).

(e.) Selling and disposing of any lands purchased under the Burial Acts (*Id.*, s. 28).

(f.) Appropriating parish lands for the purposes of a burial ground (*Id.*, s. 29).

(g.) Hiring or leasing mortuaries (*Id.*, s. 42).

(h.) Enlarging burial ground provided under Church Building Acts and transferred to the burial board, by the addition thereto of unconsecrated ground (Burial Act, 1857 (*r*), s. 7).

(i.) Purchasing closed cemetery adjoining burial ground or proposed burial ground, for the purpose of appropriating or erecting buildings for or making approaches to such burial ground (*Id.*, s. 26).

(j.) Borrowing money for the purpose of paying compensation to any clerk or ecclesiastical officer deprived of his right to fees by the Burial Act, 1900 (*s*), s. 3 (6).

Of these matters, all except (e) and (f) apparently have relation to an expense or rate, and the consent or approval of the parish meeting will, therefore, be required to enable the parish council to carry them into execution ; but selling superfluous lands and appropriating parish lands, entail neither expense nor a rate, and it would seem, therefore, that with regard to these matters, (e) and (f), the parish council may act upon their own authority without requiring the assent or approval of the parish meeting.

(*r*) 20 & 21 Vict. c. 81.

(*s*) 63 & 64 Vict. c. 15.

The borrowing powers of the parish council under the Burial Acts are, however, more restricted than those of a burial board. By s. 12 (3) it is provided: "A parish council shall not borrow for the purposes of any of the adoptive Acts otherwise than in accordance with this Act, but the charge for the purpose of any of the adoptive Acts shall ultimately be on the rate applicable to the purposes of that Act." The conditions, subject to which a parish council is enabled by the Act to borrow, are defined in s. 12 (1), (2):

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Government Act,  
1894.**

Borrowing  
powers.

"(1.) A parish council for any of the following purposes, that is to say—

"(a) for purchasing any land, or building any buildings, which the council are authorised to purchase or build; and

"(b) for any purpose for which the council are authorised to borrow under any of the adoptive Acts; and

"(c) for any permanent work or other thing which the council are authorised to execute or do, and the cost of which ought, in the opinion of the county council and the Local Government Board, to be spread over a term of years;

may, with the consent of the county council and the Local Government Board, borrow money in like manner and subject to the like conditions as a local authority may borrow for defraying expenses incurred in the execution of the Public Health Acts, and sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine of the Public Health Act, 1875, shall apply accordingly, except that the money shall be borrowed on the security of the poor rate and of the whole or part of the revenues of the parish council, and except that as respects the limit of the sum to be borrowed, one half

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of the assessable value shall be substituted for the assessable value for two years.

“(2.) A county council may lend to a parish council any money which the parish council are authorised to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of barrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may by general or special order impose.”

Restriction  
on expendi-  
ture.

There is also a further restriction upon the expenditure of the parish council which is not placed upon that of a burial board, inasmuch as by s. 11 (2), it is provided that “A parish council shall not, without the approval of the county council, incur any expense or liability which will involve a loan.” As the purchase of the land for a burial ground and laying out the same as a burial ground cannot in practice be effected without raising the moneys for such purposes by means of a loan, the parish council must, before entering into a contract for such purchase or work, in addition to obtaining the consent or approval of the parish meeting, obtain also the approval thereto of the county council.

Compulsory  
powers.

On the other hand, a burial board could not under any circumstances, except where parish lands were appropriated, obtain land for a burial ground otherwise than by agreement with the owners. Subject to certain conditions, however, the parish council will be able to acquire suitable land for the purpose compulsorily, if unable to obtain it by agreement or on reasonable terms. These conditions are contained in s. 9 of the Act, sub-s. (2) of which provides :

“(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for

any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation."

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Govern-  
ment Act,  
1894.**

The other sub-sections of s. 9 provide for the holding of an inquiry by the county council, and enable the county council to make an order putting in force, as respects the land required, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, with an appeal to the Local Government Board from the refusal of the county council to make such order. If the order is made by the county council it must be deposited with the Local Government Board, which is bound to confirm it if all proceedings with regard to its being made have been regular, subject, however, to the right of any person interested to memorialise the board to disallow it, which the Local Government Board may do after a further local inquiry has been held.

Wherever the parish council is the authority for the execution of the Burial Acts, its powers under these Acts may be exercised by a committee appointed by the council for that purpose, consisting wholly or partly of members of the council. Such a committee will hold office after its appointment until the next annual meeting of the council, and its acts must be submitted for approval to the council (s. 56 (1)).

**Committee  
of parish  
council.**

When the Burial Acts are adopted for a part only of the parish, such committee shall, if required by a parish meeting held for that part, consist partly of members of the council and partly of other persons representing the said part of the parish (s. 56 (2)).

In an urban district the council of the district may resolve that the powers, duties, property, and liabilities of any existing burial board within the district shall be

**Transfer of  
powers, etc.  
of existing  
burial boards.**

**Local  
Government Act,  
1894.**

transferred to the council from a date to be specified in the resolution, and such powers, etc. will be so transferred accordingly (s. 62 (1)). When such a transfer takes place the expenses of the district council in carrying the Burial Acts into execution must be paid out of the poor rates, and not out of the general district rate (t).

In rural parishes provision is made for three possible cases of an existing burial board.

Section 7 (5), enacts :

“(5.) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.”

It will be noticed that no option is allowed by this sub-section to an existing burial board to retain its powers, etc. The transfer takes place automatically by the operation of the Act. But in cases where the area for which a burial board has been appointed is a part only of a rural parish, though lying entirely within such parish, the transfer of the powers of the burial board to the parish council is made optional, but the option may be exercised either by the burial board itself or by the parish meeting for that part of the parish which is under the burial board. Section 53 (1) provides :

“(1.) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the

(t) *Rex v. Connah's Quay*, [1901] 2 K. B. 174.

authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.”

**Local  
Government Act,  
1894.**

There is a third case, where the area under the burial board is neither co-extensive with nor comprised within a single rural parish, and to meet this case it is provided by s. 53 (2) :

“(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.”

Considerable difficulty was experienced with regard to the appointment, status, and borrowing powers of the joint committees directed to be appointed by this sub-section, which was partially solved by the Local Government (Joint Committees) Act, 1897 (*u*). By s. 1 of that Act it is provided as follows :

“(1.) Where a joint committee is appointed under section fifty-three of the Local Government Act, 1894, for the purposes of the Burial Acts, 1852 to 1885—

Joint committees for Burial Acts. 56 & 57 Vict. c. 73.

“(a) any expenses incurred in carrying out those purposes shall be defrayed, any money borrowed for those purposes shall be borrowed, and any receipts

(\*) 60 & 61 Vict. c. 40.

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Government Act,  
1894.**

arising from those purposes shall be divided, by the councils appointing the committee in such proportion as they may agree upon, or, as in default of agreement, may be determined by the county council, or, if one of the councils so appointing is the council of a county borough, by the Local Government Board ;

“(b) the consent of the Local Government Board shall be required to the borrowing by any council of any money required to be borrowed for those purposes, but that consent shall be conclusive as to the power of the council to borrow, and no other consent shall be required either under the said Burial Acts, or the Local Government Act, 1894, or any other Act ;

“(c) Part IV. of the First Schedule to the Local Government Act, 1894, shall apply to the proceedings of the committee.

“(2.) If any difference arises as to the constitution of any such committee it may be determined by order of the Local Government Board.

“(3.) For the purposes of this section references to a council shall, in the case of a parish not having a parish council, include the parish meeting, and the parish meeting shall have the same power of borrowing for the purposes of the Burial Acts as a parish council would have.”

Transfer of  
property  
and debts of  
existing  
burial boards.

As the powers and duties of existing burial boards in rural parishes are transferred to the parish councils, so the property, debts, and liabilities of such boards also pass to the councils ; s. 67 provides :

“Where any powers and duties are transferred by this Act from one authority to another authority—

“(1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same ; and

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Government Act,  
1894.

“(2.) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act ; and

“(3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.”

In addition to this general provision there is a special provision to meet the case when the powers of a burial board for an area not co-extensive with a parish are transferred to the various parish and district councils or parish meetings of the parishes or parts of parishes included in such area. This provision is contained in s. 53 (3), (4) :

“(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

“(4.) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can



**Local  
Government Act,  
1894.**

properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right."

Expenses of parish council in execution of Burial Acts.

The poor rate will, as before, be the source from which in rural parishes the expenses of carrying into execution the Burial Acts will be defrayed (s. 7 (6)). But the demand note must show the proportion levied for the purpose of defraying any expenses incurred under the Burial Acts (s. 11 (5)). The expenses of the execution of these Acts are not included in or restricted to the sixpenny rate which is the limit of general expenditure of the parish council (s. 11 (3)).

The poor rate, and not the general district rate, is also the fund from which the expenses of carrying into execution the Burial Acts must be defrayed in cases where an urban district council resolves to take over the powers, duties, and liabilities of an existing burial board within the district (x).

Existing officers of burial boards.

When the powers and duties of any burial board were transferred by this Act to a parish council, the officers of the burial board became the officers of the parish council (s. 81 (1)).

Transfer of powers of churchwardens.

By s. 6 (1) (b), it is provided that, upon the parish council of a rural parish coming into office, then shall be transferred to that council—

"The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining

(x) *Rex v. Connak's Quay*, [1901] 2 K. B. 174.

and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855 : Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently 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."

**Local  
Government Act,  
1894.**

The churchwardens are bound under s. 18 of the Burial Act, 1855 (y), to maintain a closed churchyard in decent order, and to do the necessary repair of the walls and other fences thereof, the costs and expenses of which are to be repaid by the overseers upon the certificate of the churchwardens out of the poor rate. As the churchwardens can only give their certificate for costs and expenses already incurred, the result of the provisions in this sub-section will be that the churchwardens must continue to do the necessary repairs, at all events on the first occasion after the passing of this Act when such repairs, etc., are necessary. When the expenses for such repairs have been incurred, the churchwardens may, perhaps, prefer to appeal to members of the church for subscriptions to defray them, so as to keep the management of the churchyard out of the hands of the parish council ; and so long as the expenses are defrayed out of such subscriptions, or from any source other than the poor rate, the parish council will have no right to interfere with the churchyard. If, however, the churchwardens once give their certificate and obtain repayment of such expenses out of the poor rate, their authority over the churchyard is gone for ever, and the obligations of keeping it in order and repair vest thenceforth in the parish council.

(y) 18 & 19 Vict. c. 128.

**Local  
Government Act,  
1894.**

**Auditors.**

Summary  
proceeding  
for decision  
as to  
transfer of  
powers and  
property.

Under the Burial Acts two auditors are to be appointed annually by the vestry to audit the accounts of a burial board (15 & 16 Vict. c. 85, s. 18). These will be replaced in the case of a parish or district council by the district auditor as provided by s. 58 of this Act.

Any question arising as to whether any power, duty, or liability of a burial board is or is not transferred by this Act to any parish council, parish meeting, or district council, or any property is or is not vested in a parish council, or in the chairman and overseers of a rural parish, or in a district council, may, on the application of such council or meeting or of the burial board, be submitted for decision to the High Court in such summary manner as, subject to any rules of Court, may be directed by the Court; and an appeal will lie, with the leave of the High Court or of the Court of Appeal, but not otherwise, from the decision of the High Court to the Court of Appeal (s. 70).

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## THE BURIAL ACTS (a).

### BURIAL ACT, 1852.

(15 & 16 Vict. c. 85.)

*An Act to amend the Laws concerning the Burial of the Dead in the Metropolis (b).* [1st July 1852.]

Preamble recited that it was expedient to repeal the Metropolitan Interments Act, 1850 (13 & 14 Vict. c. 52), and to make other provision in relation to interments in and near the metropolis. Repealed by Statute Law Revision Act, 1892.

[1. 13 & 14 Vict. c. 52 repealed. And Her Majesty may continue additional members of board therein authorised.]

**Sect. 1.**

Repealed by the Statute Law Revision Act, 1875.

(a) These Acts are enumerated in the Short Titles Act, 1896 (59 & 60 Vict. c. 14), as follows :

15 & 16 Vict. c. 85.	The Burial Act, 1852.	} The Burial Acts, 1852—1885.
16 & 17 Vict. c. 134.	The Burial Act, 1853.	
17 & 18 Vict. c. 87.	The Burial Act, 1854.	
18 & 19 Vict. c. 128.	The Burial Act, 1855.	
20 & 21 Vict. c. 35.	The City of London Burial Act, 1857.	
20 & 21 Vict. c. 81.	The Burial Act, 1857.	
22 Vict. c. 1.	The Burial Act, 1859.	
23 & 24 Vict. c. 64.	The Burial Act, 1860.	
25 & 26 Vict. c. 100.	The Burial Act, 1862.	
34 & 35 Vict. c. 33.	The Burial Act, 1871.	
43 & 44 Vict. c. 41.	The Burial Laws Amendment Act, 1880.	
44 & 45 Vict. c. 2.	The Burial and Registration Acts (Doubts Removal) Act, 1881.	
48 & 49 Vict. c. 21.	The Burial Boards (Contested Elections) Act, 1885.	

To these must now be added the Burial Act, 1900 (63 & 64 Vict. c. 15). By the Burial Act, 1871, all the Burial Acts, 1852—1871 (not including, however, the City of London Burial Act, 1857) are to be read as one Act ; and the Burial Act, 1900, is by s. 13 of that Act to be construed with the Burial Acts, 1852—1885.

(b) By the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 7, all the sections of this Act from ss. 10—42 (both inclusive), and ss. 44, 50—52, are made of general application. The remaining sections remain applicable to the metropolis alone.

**Sect. 2.**

Orders in Council for discontinuance of burials in metropolis. [*Metropolis.*]

2. In case it appear to her Majesty in Council, upon the representation of *one of Her Majesty's principal Secretaries of State*, that for the protection of the public health burials in any part or parts of the metropolis, or in any burial grounds or places of burial in the metropolis, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for her Majesty, by and with the advice of her Privy Council, to order that after a time mentioned in the order burials in such part or parts of the metropolis or in such burial grounds or places of burial shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require; provided that notice of such representation, and of the time when it shall please her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the London Gazette, and shall be affixed on the doors of the churches or chapels of the parishes in which any burial grounds or places of burial affected by such representation shall be situate, or on some other conspicuous places within the part or parts of the metropolis affected by such representation, one calendar month . . . at the least before such representation is so considered: Provided always, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk of such parish.

For definitions of "the metropolis," see s. 53, *infra*.

The powers and duties of the Secretary of State under this section are transferred to the Local Government Board by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4.

The churchwardens or other persons, to whom it belongs to call meetings of the vestry of any parish for which no burial board has been appointed, are required forthwith, after notice is given of the intention of the Secretary of State (now the Local Government Board) to make a representation in relation to discontinuing burials in a burial ground, to call a meeting of the vestry for the purpose of determining whether a burial ground shall be provided for the parish (18 & 19 Vict. c. 128, s. 3).

Orders in Council made under this section may be varied or their operation postponed, as seems fit to the King in Council (18 & 19 Vict. c. 128, s. 1).

A parish is under no obligation to elect and pay a vestry clerk

unless its population exceeds 2,000, and an order of the Local Government Board has been made putting in force in such parish the provisions of the Vestries Act, 1850 (13 & 14 Vict. c. 57). If there is no vestry clerk, it will apparently be sufficient to give the required notice to the incumbent of the parish.

For the effect of an Order in Council upon the property in a closed burial ground, and the duty of keeping the same in order, see note to 16 & 17 Vict. c. 134, s. 1, *post*.

By the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), as amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), it is forbidden to erect any buildings, including even temporary or movable buildings, upon any disused burial ground, whether closed by Order in Council or not, except for the purpose of enlarging some place of worship.

**Sect. 2.****NOTE.**

3. No such Order in Council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such Order in Council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

[Metropolis.]

4. It shall not be lawful, after the time mentioned in any such Order in Council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place or elsewhere, within the part or parts of the metropolis or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor.

Burial not to take place after Order in Council for discontinuance.

[Metropolis.]

For the exceptions in this Act, see ss. 6, 8, *infra*.

This section is made of general application by being re-enacted without the words "of the metropolis" by 16 & 17 Vict. c. 134, s. 3.

The provisions of this section do not forbid the depositing of the ashes of a cremated body in a church wherein burials have been

**Sect. 4.****NOTE.**

ordered to be discontinued, and a faculty may be granted to allow an urn containing such ashes to be placed in a niche in the wall of such church (*In re Kerr*, [1894] P. 284).

By 18 & 19 Vict. c. 128, s. 2, any person wilfully burying or assisting to bury any body in any church, chapel, churchyard, burial ground, or place of burial, or within the limits in which burials have, by Order in Council, been ordered to be discontinued, in violation of the provisions of any such order, may, on summary conviction, be fined a sum not exceeding £10.

Restrictions as to burial in the metropolis of inhabitants of parishes the burial grounds whereof are closed.

[*Metropolis.*]

5. After the time from which burials in any place of burial of any parish are required under this Act to be discontinued, the body of any parishioner or inhabitant of such parish shall not be buried in any burial ground within the metropolis belonging to any other parish within the metropolis, save where the body of any of the family or relatives of such parishioner or inhabitant has been interred in such burial ground, and the relatives or other persons having the care and direction of the funeral signify a desire that on that account the body of such parishioner or inhabitant should be there interred (such burial ground not being a burial ground in which burials have been ordered to be discontinued under this Act), and save as herein otherwise provided; and every person having the care or control of any burial ground, who knowingly authorises or permits any burial therein contrary to this enactment, shall be guilty of a misdemeanor.

Saving of certain rights to bury in vaults, etc.

[*Metropolis.*]

6. Provided always, that notwithstanding any such Order in Council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this Act, it shall be lawful for one of her Majesty's principal Secretaries of State from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such Secretary of State may

think fit; but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had, if this Act had not been passed.

**Sect. 6.**

This section is repeated *verbatim* in the General Act, 16 & 17 Vict. c. 134, s. 4, *post*.

The powers and duties of the Secretary of State under this section are transferred to the Local Government Board by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4.

Where persons had purchased the right of interment in perpetuity in vaults in a private burial ground subsequently closed by Order in Council, it was held that the owners in fee of the burial ground (who claimed as mortgagees) had no right to interfere in any way with such vaults, or to do any act which might prevent future interments therein (*Moreland v. Richardson* (1856), 24 Beav. 33; 3 Jur. (s.a.) 1189; 26 L. J. Ch. 690). In that case Lord ROMILLY, M.R., laid stress upon the provisions of this section, and said that he might not have been of the same opinion if the right of burial had not been preserved under it.

The right of burial in a chancel of any person dying in an ancient messuage may be acquired by prescription (*Waring v. Griffiths* (1758), 2 Keny. 183; 1 Burr. 440).

18 & 19 Vict. c. 128, s. 8, provides for the inspection of burial grounds and vaults. By Order in Council the churchwardens, or such other persons as may have the care of any vaults or places of burial, may be ordered to do such acts as are deemed requisite for preventing them becoming or continuing dangerous to the public health (20 & 21 Vict. c. 81, s. 23). And if "*such other persons*" do not obey such order, the churchwardens may be compelled to carry it into effect (22 Vict. c. 1).

A portion of a churchyard reserved to the donor of the land under the Consecration of Churchyards Act, 1867 (30 & 31 Vict. c. 133), with exclusive right of burial therein, can only be closed by a separate Order in Council, founded on a special report that further burials therein would be prejudicial to the public (30 & 31 Vict. c. 133, s. 11).

7. The provisions of this Act shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person in any of the cemeteries mentioned in the Schedule (B.) to this Act, or in any burial ground or cemetery to be hereafter provided with the approval of one of her Majesty's principal Secretaries of State, as herein mentioned.

Saving as to cemeteries in Schedule (B.) and new burial grounds. [*Metropolia.*]



**Sect. 7.****NOTE.**

This section is reproduced with slight variation in the general Act, 16 & 17 Vict. c. 134, s. 5.

This section is to have effect as if the reference therein to the Secretary of State were a reference to the Local Government Board (Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4).

Regulations for the protection of the public health and the maintenance of decency may be made by Order in Council in respect of all burials in common graves in any of these cemeteries (20 & 21 Vict. c. 81, s. 10).

By s. 9, *infra*, new burial grounds may not be provided in the metropolis except with the approval of a Secretary of State, or now of the Local Government Board.

Saving as to  
St. Paul's  
Cathedral  
and  
Westminster  
Abbey.

[Metropolis.]

8. Nothing in this Act contained shall extend to prevent the interment in the cathedral church of Saint Paul's, London, or in the collegiate church of St. Peter's, Westminster, of the body of any person, where her Majesty, by any writing under her Royal sign manual, shall signify her pleasure that the body be so interred.

New burial  
grounds to  
be approved  
by Secretary  
of State.

[Metropolis.]

9. No new burial ground or cemetery (parochial or non-parochial) shall be provided and used in the metropolis, or within two miles of any part thereof, without the previous approval of one of her Majesty's principal Secretaries of State.

The powers and duties of the Secretary of State under this section are transferred to the Local Government Board by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4.

For definition of "the metropolis," see s. 53, *infra*.

The distance from "the metropolis" will be measured as the crow flies (*Mouflet v. Cole* (1873), L. R. 8 Ex. 32; 42 L. J. Ex. 8; 27 L. T. 678; 21 W. R. 175).

By 16 & 17 Vict. c. 134, ss. 1, 6, his Majesty in Council may order that no new burial ground shall be opened in any city or town, or within any defined limits, without the previous approval of a Secretary of State (now the Local Government Board). There is, therefore, in the first place, an absolute prohibition against making a new burial ground within a radius of two miles of the metropolis without the approval of the Local Government Board; outside that radius the approval of the Board is also requisite, if the proposed new burial ground is within limits to which an Order in Council applies; if the proposed new burial ground is outside such limits, it can be made without the necessity of obtaining any such approval; although in every case it is advisable to obtain such approval, as a burial ground provided with such approval cannot afterwards be closed under the provisions of the Burial Acts (*supra*, s. 7), and thus offers a better security for a loan.

No new burial ground, or addition to an old burial ground, may be used under the Burial Acts within the distance of 100 yards from a dwelling-house, without the consent in writing of the owner, lessee,

and occupier of such dwelling-house (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 9).

**Sect. 9.**

**NOTE.**

10. Upon the requisition in writing of ten or more ratepayers of any parish [*in the metropolis*] 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 or 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*.

Provision of new burial ground by vestry.  
[*General.*]

This section is to have effect as if the reference therein to the Secretary of State were a reference to the Local Government Board (Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4).

For forms of requisition and resolution under this section, see Appendix F, Nos. 1, 2, *post*.

The provision requiring the requisition of ten or more ratepayers is dispensed with by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 3, which enables the churchwardens, etc. of a parish, in which no burial board has been appointed, at any time, at their discretion, to convene a meeting of the vestry for the purpose of determining whether a burial ground shall be provided for the parish; and makes it incumbent on them to call such meeting, if notice has been given of the intention of the Local Government Board to make a representation to his Majesty in Council that burials be discontinued in a burial ground of the parish.

See s. 52, *infra*, for interpretation of "vestry." If a select vestry has to be convened for the purposes of this section, then, if it consists of a definite number of vestrymen, every member must be duly summoned (*Dobson v. Fussy* (1831), 5 Moo. & P. 112; 7 Bing. 305), and a majority of the whole number must be present at the vestry meeting (*Blackett v. Blizzard* (1829), 9 B. & C. 851). And where by a local Act the management of the affairs of a parish was confided to a select vestry, consisting of an indefinite body, and it was provided that the vestry at their meetings, "or the major part of such of them as shall be assembled at such meetings," might do whatever could be done by an ordinary vestry, it was held that a majority of those present must

**Sect. 10.****NOTE.**

concur to pass a valid resolution, and that a resolution carried by a majority of those voting, but not by a majority of those present, was ineffectual (*Reg. v. Overseers of Christ Church, Middlesex* (1859), 7 El. & Bl. 409; 3 Jur. (n.s.) 1074; 27 L. J. M. C. 23).

As to necessary notices of vestry meetings, see note to 20 & 21 Vict. c. 81, s. 27, which section, however, provides that no resolution or proceeding of a vestry for the purposes of the Burial Acts is to be void or voidable for defect or irregularity of notice, or error in form of calling the vestry, or in the proceeding thereat, unless notice in writing of such defect, irregularity, or error be given at the vestry meeting, or within seven days after.

Where a general vestry co-exists with a select vestry provided under a local Act, the appointment of a burial board under this Act will lie with the vestry which exercises the general management of the parish. Thus, where by a local Act a select vestry was appointed for Liverpool to perform the functions of a board of guardians, the general vestry was held to be the proper body to elect a burial board (*Reg. v. Gladstone* (1859), 7 El. & Bl. 575; *S. C. sub nom. Ex parte Urquhart, In re The Burial Board of Liverpool*, 26 L. J. Q. B. 213; 3 Jur. (n.s.) 441). But where by a local Act a select vestry was appointed for Sunderland for the purpose of preserving better order in the parish, managing the affairs of the church, providing salaries for the churchwardens, rector, parish clerk and scavenger, etc., and since the passing of the Act had always acted in the general management of the parish, such select vestry was held to be the proper vestry to elect a burial board (*Reg. v. Peters* (1856), 6 El. & Bl. 225; *S. C. sub nom. Re The Sunderland Vestry*, 25 L. J. Q. B. 271; 2 Jur. (n.s.) 424).

Metropolitan vestries are abolished by the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4, and the power of adopting and administering the Burial Acts is transferred from the vestries and burial boards to the respective metropolitan borough councils.

A local board or town commissioners may be the burial board for their district, under 20 & 21 Vict. c. 81, s. 4. In such a case, the appointment is made by Order in Council, not by the vestries.

"Parish" is defined, s. 52, *post*, as meaning "Every place having separate overseers of the poor, and separately maintaining its own poor." This has been interpreted as meaning "every parish and every place having separate overseers of the poor, etc.," so as to include ancient parishes in a town for which a corporation had been appointed for the management of the poor, and for which one poor rate was levied (*Reg. v. Sudbury Burial Board* (1858), El. B. & E. 264; 27 L. J. Q. B. 232; 31 L. T. 161; 4 Jur. (n.s.) 948). Now, by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 5, repealing a somewhat similar provision in the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 18, "in every Act passed after the year 1866, whether before or after the commencement of this Act, the expression 'parish' shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed." Under ss. 10, 11 of this Act, therefore, a parish formed for ecclesiastical purposes only could not acquire a separate burial ground or appoint a burial board of its own. The power of appointing a burial board is given to such a parish by 18 & 19 Vict. c. 128, ss. 12, 13,

provided it previously had a separate burial ground; and 20 & 21 Vict. c. 81, s. 5, provides that any parish, new parish, township or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board. But if a common law parish is divided into districts or new parishes for ecclesiastical purposes under the Church Building Act, 1818 (58 Geo. 3, c. 45), or other Church Building Act, and none of the new districts or parishes appoint a separate burial board under 18 & 19 Vict. c. 128, or 20 & 21 Vict. c. 81, a burial board may be properly appointed for the original whole parish (*Reg. v. Overseers of Walcot* (1862), 2 B. & S. 555; 31 L. J. M. C. 217; 6 L. T. (N.S.) 320; 10 W. R. 599). But the appointment of such burial board for the whole parish will not prevent the district parishes from afterwards appointing separate burial boards for themselves under 18 & 19 Vict. c. 128, s. 12 (*Reg. v. Overseers of Tonbridge* (1884), 13 Q. B. D. 339; 53 L. J. 448), or under 20 & 21 Vict. c. 81, s. 5 (*Reg. v. Overseers of Walcot St. Swithin* (1862), 2 B. & S. 571; 31 L. J. M. C. 221; 10 W. R. 602). The common law parish is not, however, bound to appoint a burial board for the whole parish, but may omit any district that has the power of appointing a separate burial board, and appoint a burial board for the rest (*Viner v. Overseers of Tonbridge* (1859), 2 El. & El. 9; 28 L. J. M. C. 251; 5 Jur. (N.S.) 1293). And now by 23 & 24 Vict. c. 64, s. 4, if a parish is divided into two or more districts for ecclesiastical purposes, and any one of such districts has a separate burial ground, a burial board for the whole parish cannot be appointed without the approval of the Local Government Board.

**Rural parishes.**—By the Local Government Act, 1894, the parish meeting of a rural parish may adopt the Burial Acts (s. 7 (1)), by passing a resolution to provide a burial ground (s. 7 (8)); or a parish meeting held for a part of a rural parish, which, under the Burial Acts, might have provided a separate burial ground, may by a similar resolution adopt the Burial Acts for that part of the parish (s. 7 (4)).

For form of resolution, see Appendix F, No. 3, *post*.

The same majority is required for carrying such a resolution in a parish meeting as is required for carrying a similar resolution in a vestry meeting, that is, a bare majority is sufficient (s. 7 (2)). A "rural parish" is every parish in a rural sanitary district (s. 1 (2)); and a rural sanitary district is defined by s. 9 of the Public Health Act, 1875 (38 & 39 Vict. c. 55). And where any parish was on March 5th, 1894, partly within and partly without a rural sanitary district, the part of such parish which was then within such district will from the appointed day, but subject to any alteration of areas under the Act, be a separate rural parish for the purposes of the Act (s. 1 (3)). The rules applicable to the holding, and voting at, parish meetings are contained in the First Schedule to this Act, *post*. By r. 3 not less than fourteen days' notice must be given of a meeting at which the Burial Acts can be adopted. A parish meeting may be convened by the chairman of the parish council, or any two parish councillors, or the chairman of the parish meeting, or any six parochial electors (s. 45 (3)), and it would seem that any one of these may convene a parish meeting to determine whether a burial ground shall be provided for the parish. As, however, the powers,

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**NOTE.**

**Sect. 10.****NOTE.**

duties, and liabilities of churchwardens are transferred to the parish council, where a parish council exists (s. 6 (1) (b)), and it is incumbent on the churchwardens to call a meeting of the vestry to determine whether a burial ground shall be provided for the parish, if notice has been given of the intention of the Local Government Board to make a representation that burials be discontinued in a burial ground of the parish (18 & 19 Vict. c. 128, s. 3), it would seem to be the duty of the parish council in such a case to convene a parish meeting to determine the question if no other properly qualified persons do so.

By s. 51 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), public notice of a parish meeting must be given in the manner required for giving notice of vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the council, or to the persons convening the meeting desirable for giving publicity to the notice.

By the operation of s. 52 (5) of the Act, this section must be read in reference to a rural parish, as though the words "parish council" were used for "churchwardens," and "parish meeting" for "vestry," wherever they occur in this section.

In case vestry resolve to provide a burial ground, a burial board shall be appointed.  
[General.]

11. In case of such resolution as aforesaid the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly, at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate re-appointment: Provided always, that the incumbent of the parish shall be eligible to be appointed and re-appointed from time to time as one of the members of the said board, although not a ratepayer of the parish; provided also, that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry.

Resignation of members.

By the Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), *post*, all reasonable expenses of taking a poll of ratepayers in the case of a contested election of a burial board may be paid by the burial board.

By the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 34, if a person is adjudged bankrupt whilst holding the office of member of a burial board, his office shall thereupon become vacant.

It has often been asked whether a person elected upon a burial board ceases to be a member of the board upon ceasing to become a ratepayer of the parish for which the board is appointed. It is submitted that he would not; as this section only requires him to be a

ratepayer when appointed, and there is no provision in the Burial Acts disqualifying him from continuing to be a member by reason of his ceasing to be a ratepayer.

It is provided by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 4, that every vacancy in a burial board shall be filled up by the appointment of a ratepayer. It is probable that that provision would be construed as subject to the exception in favour of the incumbent contained in this section. See *Dean of Ely v. Bliss* (1842), 5 Beav. p. 582.

For investment of a town council with the powers of a burial board in boroughs, see the Burial Act, 1854 (17 & 18 Vict. c. 87); for the establishment of a local board of health or improvement commissioners as a burial board, see the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 4; for the powers of local authorities to acquire and maintain cemeteries, see the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

Sections 10—19, 24 of this Act do not apply to town councils acting as burial boards. See 17 & 18 Vict. c. 87, s. 2.

By 29 & 30 Vict. c. 90, s. 44 (re-enacted in the Third Part of Schedule V. of the Public Health Act, 1875 (38 & 39 Vict. c. 55)), when the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may by resolution of the vestry and by agreement with the urban authority transfer all its estate, powers, duties, and liabilities to the urban authority.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62 (1), a burial board cannot be appointed for any part of an urban district without the approval of the council of that district.

**Rural parishes.** — By the Local Government Act, 1894, if a resolution has been passed by the parish meeting, or by a parish meeting held for a part of the parish for which a separate burial ground could be provided under the Burial Acts, to provide a burial ground for the parish or such part of the parish and the parish has a parish council, the parish council shall be the authority for the execution of the Burial Acts (s. 7 (7)). In such a case, therefore, no burial board will be appointed under this section, but the parish council will be in fact the burial board for the parish, or the part of the parish for which it has been resolved to provide a burial ground. The provisions of the Burial Acts with regard to the appointment, constitution, convening, quorum, place of meeting, and resignation of members of a burial board will have no application to a parish council, which will be regulated in these particulars by the special provisions of the Local Government Act, 1894, relating thereto. The provisions of this section are, therefore, practically repealed so far as regards rural parishes which have a parish council.

The parish council may, however, appoint a committee consisting either wholly or partly of members of the council to exercise the powers of the council in respect of the Burial Acts; but such committee shall not hold office beyond the next annual meeting of the council, and the acts of the committee must be submitted to the council for their approval (s. 56 (1)). If it has been resolved to provide a burial ground for a part only of the parish, the parish

**Sect. 11.****NOTE.**

**Sect. 11.****NOTE.**

council is bound, if required by a parish meeting held for that part, to appoint annually to exercise its powers and duties under the Burial Acts for that part, a committee consisting partly of members of the council and partly of other persons representing the said part of the parish (s. 56 (2)).

If a rural parish is so small that it has no parish council, then in the improbable event of the parish meeting passing a resolution to provide a burial ground, it would seem that the parish meeting must elect a burial board under the powers conferred on the meeting by s. 19 (4) of the Local Government Act, 1894, which provides that where there is no parish council in a rural parish all the powers, duties, and liabilities of the vestry, so far as regards the Burial Acts, shall be transferred to the parish meeting. Although, however, this provision would enable the parish meeting to elect a burial board, the Act nowhere confers on the parish meeting (except in the particular case provided for in s. 53 (2)), the power to act as the authority for the execution of the Burial Acts, that is, to act itself as a burial board; and it would appear, therefore, that it must elect a burial board just as the vestry would have elected one under similar circumstances if the Local Government Act, 1894, had not been passed. It has been suggested that the parish meeting might appoint a committee of their own number for the purpose of exercising the powers and duties of a burial board under s. 19 (3) of that Act. But it is submitted that no body of persons can appoint a committee of their own number to exercise powers which such body of persons does not itself possess.

Vacancies to be filled up by vestry.

[12. *Any vacancies in the board may be filled up by the vestry when and as the vestry shall think fit.*]

This section is repealed by the Statute Law Revision Act, 1875, and its provisions are replaced by those of s. 4 of the Burial Act, 1855 (18 & 19 Vict. c. 128).

Meetings of the board.  
[General.]

13. The board shall meet [*at least once in every month*] at their office, or some other convenient place previously publicly notified; and the said board may meet at such [*other*] time as at any previous meeting shall be determined upon; and it shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours notice, the board for any special purpose mentioned in such writing, and to meet at such time as shall be appointed therein.

The words between brackets are repealed by s. 5 of the Burial Act, 1855 (18 & 19 Vict. c. 128). That section is again repealed by the Statute Law Revision Act, 1875. The result is that the board may meet when it pleases, as though the limitation in this section had never been enacted. See the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 11.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish this section will have no application, but the meetings and quorum of the council, or of the committee of the council to which the exercise of the powers and duties of the council in respect of the Burial Acts may be delegated, will be regulated by the provisions and rules of the Local Government Act, 1894.

**Sect. 13.**  
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**NOTE.**

14. At all meetings of the board any number not less than **Quorum.** three members of such board shall be a sufficient number [*General.*] for transacting business, and for exercising all the powers of the board.

Vacancies on the board are to be filled up within a month by the vestry, and if the vestry neglect to fill up any vacancy, the burial board may fill it up; and every board may act for any purpose notwithstanding any vacancies therein (18 & 19 Vict. c. 128, s. 4). It would appear from the decision in *Newhaven Local Board v. Newhaven School Board* (1885), 30 Ch. D. 350; 53 L. T. 571; 34 W. R. 172, upon somewhat similar provisions in the Public Health Act, 1875 (38 & 39 Vict. c. 55), that if the number of members of the board were reduced by resignations, etc., below three, the board could not validly fill up the vacancies; the provision that the board may act for any purpose notwithstanding any vacancies therein meaning only that so long as there is a quorum to act, the fact that the board had not its full complement of members is not to prejudice the acts of the quorum.

A rule nisi having been obtained against a burial board to show cause why a *mandamus* should not issue to compel them to apply to the bishop to consecrate a part of the new burial ground, all the members of the board except two resigned before the time fixed for showing cause; and on its being represented to the court that there would be no competent body to obey the *mandamus* if it were directed to issue, the matter was ordered to stand over to "await events" (*Reg. v. Attleborough Burial Board*, Times, February 11th, 1887).

**Rural parishes.**—The note to s. 13, *ante*, under this heading is applicable also to this section.

15. The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business. **Board may appoint and remove officers, etc.** [*General.*]

The contract for the engagement of the clerk and officers by the burial board should, in order to bind the board, be under seal



**Sect. 15.** (*Austin v. Bethnal Green Guardians*) (1874), L. R. 9 C. P. 91 ; 43 L. J. C. P. 100 ; 29 L. T. 807 ; 22 W. R. 406).

**NOTE.**

If a joint burial board is established for more than two parishes, acts of the burial board requiring the approval of the vestry may be done with the approval of the majority of the vestries (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 1).

The officers and servants which the board may appoint under this section do not include a chaplain, nor a sexton. The right of performing the burial service according to the rites of the Church of England, except so far as now modified by the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), is reserved to the incumbent or incumbents of the parish or parishes for which the burial ground is provided by s. 32, *infra*, which section also preserves the rights of the sexton. A burial board cannot replace a sexton by gravediggers appointed by the board, at all events so as to deprive the sexton of his right to earn the fees for his services (*Gell v. Birmingham* (1864), 10 L. T. (N.S.) 497, and the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3 (1), (5)). Nor can they throw on the rates the expense of providing persons to dig graves in place of the sexton (*Burial Board of St. Margaret's, Rochester v. Thompson* (1871), L. R. 6 C. P. 459 ; 40 L. J. C. P. 213 ; 24 L. T. 673 ; 19 W. R. 892).

A burial board may nominate a Nonconformist minister to perform burial services in the burial ground in cases where the person having charge of a funeral does not desire the service of any particular minister, but they cannot legally pay such minister a salary. He must be remunerated by the fee fixed under s. 3 (1) of the Burial Act, 1900 ; and he is not entitled to that fee if the service is performed by some other minister chosen by the person in charge of the funeral.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish, the powers of the burial board under this section will be exercised by the council ; and the approval of the parish meeting will be substituted for the approval of the vestry with regard to the expenses mentioned therein (Local Government Act, 1894 (56 & 57 Vict. c. 75), s. 7 (3)).

Where the powers and duties of a burial board are transferred by the Local Government Act, 1894, to a parish or district council, the officers of the burial board become the officers of such council by s. 81 of that Act.

Minutes of proceedings of board, and accounts.  
[*General.*]

**16.** Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them ; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the

signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred.

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The entries of proceedings need not necessarily be signed at the meetings at which such proceedings were transacted; it is sufficient if they are signed at a subsequent meeting. (See *Southampton Dock Co. v. Richards* (1840), 1 M. & Gr. 448; *Miles v. Bough* (1842), 3 Q. B. 845.)

The application to inspect the minutes and accounts must be made *bona fide* by a ratepayer. The W. district council, who were the burial board of the district, proposed to erect an infectious diseases hospital on a piece of vacant land in their possession as a burial board. An inquiry was held at which A. & Co., a firm of solicitors, had appeared in opposition to the scheme on behalf of a land company. H., a ratepayer, alleged that he desired to ascertain the circumstances in which the land was acquired, and whether it could be lawfully diverted for the purpose of the proposed hospital, and instructed A. & Co., as his solicitors, to apply to inspect the said books and documents. The application was refused on the ground that it must be made by the ratepayer personally, and that it was not made in good faith, but indirectly for the purpose of obtaining inspection of the books by A. & Co. on behalf of the land company. A rule for a *mandamus* to the council to allow A. & Co. to have inspection was discharged on the ground that the application was not made in good faith, being not for the benefit of H., the ratepayer, but for that of some other person (*Reg. v. Wimbledon Urban District Council* (1897), 14 T. L. R. 146).

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish, the first part of this section relative to minutes of proceedings will have no application, such matters being duly provided for by Schedule 1, Part III., to the Local Government Act, 1894 (56 & 57 Vict. c. 73). But the latter part of the section relative to the keeping of accounts, it is submitted, must be observed by the council, as the expenses of the council in respect of the execution of the Burial Acts are to be kept distinct from the general expenses of the council (*id.*, s. 11 (5)), and are not subject to the limitation of a sixpenny rate (*id.*, s. 11 (3)).

17. All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward; and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same;

Penalty for refusing to allow inspection of books, etc. [General.]

**Sect. 17.** and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds.

**Rural parishes.**—It is provided by s. 58 (4) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), that every parochial elector of a rural parish may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents, belonging to or under the control of the parish council of the parish or parish meeting. When, therefore, the parish council is the authority for the execution of the Burial Acts, that provision will take effect in addition to the provisions of this section.

**Audit of  
accounts  
[General.]**

**18.** The vestry shall yearly appoint two persons, not being members of the board, to be auditors of the accounts of the board; and at such time in the month of March in every year as the vestry shall appoint the board shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid; and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

In metropolitan boroughs the borough council exercises the powers of any burial board within the area of the borough (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4 (2)), and its accounts are audited in the same way as the accounts of the London County Council (*id.*, s. 14), that is, by the district auditors as provided by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 71, which incorporates the audit sections (ss. 247, 250) of the Public Health Act, 1875 (38 & 39 Vict. c. 55).

Where a district council exercises the powers of a burial board its accounts will be audited by the district auditor (Local Government Act, 1894, s. 58).

**Rural parishes.**—The accounts of a parish council, including the accounts of such council in the exercise of its powers under the Burial Acts, will be audited by the district auditor (Local Government Act, 1894, s. 58).

**Expenses to  
be paid out  
of the poor's  
rates.  
[General.]**

**19.** The expenses incurred or to be incurred by the burial board of any parish in carrying this Act into execution shall be chargeable upon and paid out of the rates for the

relief of the poor of such parish; the expenses to be so incurred for or on account of any parish in providing and laying out a burial ground under this Act and building the necessary chapel or chapels thereon not to exceed such sum as the vestry shall authorise to be expended for such purpose; and the overseers or other officers authorised to make and levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands of such number of members of the burial board as are authorised to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct.

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See ss. 25—29, *infra*, for the power of a burial board to acquire a burial ground; and s. 30, *infra*, for powers to lay out a burial ground and build chapels.

No powers are given to the vestry in this or any of the subsequent Acts to control the expenditure of a burial board in carrying this Act into execution, except the power given in this section of limiting the amount to be expended on the acquiring and laying out a burial ground and building a chapel, and such powers as are involved in the provisions of ss. 26, 28, 29, and 42, requiring the burial board to obtain the sanction or authority of the vestry for purchasing land for burial grounds (s. 26), selling surplus lands (s. 28), appropriating parish lands (s. 29), and providing mortuaries (s. 42). This section, however, provides that expenses incurred by the burial board *in carrying this Act into execution* shall be chargeable upon and paid out of the poor rates, and further requires the overseers upon receipt of a certificate from the board of the sums required from time to time for defraying *any such expenses as aforesaid*, to pay such sums out of the poor rates as the board shall direct. If, therefore, the burial board should incur expenses which ought to be disallowed by auditors as not being properly incurred by the board "in carrying this Act into execution," the overseers are not authorised under this section to pay the sums required by the certificate of the burial board in respect of such expenses. By this means effect can be given to the report of auditors, in cases where the burial board has incurred expenses altogether in excess of its powers. In other cases, however, the overseers have no option but to levy a rate and pay the sums required by the certificate; in case of their refusal, the remedy would be by *mandamus*. If the vestry will not authorise the expenditure required for acquiring and laying out a burial ground and building the necessary chapel or chapels thereon, the burial board may represent such refusal to the Local Government Board, who may by warrant dispense with the sanction of the vestry, and authorise the necessary expenditure (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 6).

The control of the vestry over the board is exemplified by the following case:—A burial board, appointed in July, 1883, selected

## BURIAL ACT, 1852.

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#### NOTE.

a site for a burial ground, but the vestry opposed the selection, and the Home Secretary refused an application by the board under 18 & 19 Vict. c. 128, s. 6, for power to borrow money to purchase the ground. Subsequently a donor presented the board with another site, which was approved by the Home Secretary, and after October, 1883, this ground was used for interments, although no formal conveyance was executed and the vestry never approved its acquisition. In November, 1883, the board resolved to make a call of £100 upon the overseers, and a certificate was signed directing the overseers to pay to the board that sum from the rates, for defraying the expenses of the board "incurred or to be incurred under the Burial Acts." The certificate did not set out any items in respect of which the £100 was wanted. The overseers refused to pay unless they were satisfied that the sum was required for legal purposes, on the ground that the vestry had never agreed to any burial ground nor to any expense for the purpose of acquiring one. The board applied for a *mandamus* to compel the overseers to pay over the money, but the court refused to grant it as the board did not show that they had any authority for expending the money (*Reg. v. Kilham Burial Board* (1885), 1 T. L. R. 577, 678).

The expenses of paying interest on mortgage moneys borrowed for the purpose of providing a burial ground, and the ordinary expenses of maintaining the burial ground, are properly defrayed by one rate (*Reg. v. Coleshill* (1862), 2 B. & S. 825; 9 Jur. (n.s.) 226; 31 L. J. Q. B. 219; 7 L. T. (n.s.) 244; affirmed, 34 L. J. Q. B. 96).

By the Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), *post*, all reasonable expenses of taking a poll of ratepayers in the case of a contested election of a burial board shall be considered as expenses incurred in carrying this Act into execution, and may be included in the certificate to the overseers.

The power of a burial board to build chapels at the expense of the ratepayers is now limited by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 2, to one chapel which is to be built (if at all) on a part of the burial ground which is not consecrated or set apart for the exclusive use of any particular denomination, and is not to be consecrated or reserved for the exclusive use of any denomination.

In boroughs where the town council is the burial board the expenses of carrying the Burial Acts into execution are payable out of the borough fund and borough rates (Burial Act, 1854 (17 & 18 Vict. c. 87), s. 3); power also being given to the council to levy a special burial rate for the purpose (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 22).

For provision as to payment of expenses of burial boards provided for united parishes, see the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 11; and of burial boards of places not separately maintaining their own poor, *id.*, s. 13.

Where the local authority provides a cemetery in accordance with the provisions of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), the payment of the expenses incurred is regulated by the Public Health Act, 1875 (38 & 39 Vict. c. 55), subject to the restrictions in respect of the building of chapels imposed by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 2.

**Rural parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, the authorisation of the parish meeting is substituted for the authorisation of the

vestry mentioned in this section (s. 7 (3) of the Local Government Act, 1894). The expenses of the execution of the Burial Acts are not included in the general expenses of the parish council, which must not exceed a sum equal to a sixpenny rate (*id.*, s. 11 (3)). Any charge, whether of principal or interest, in respect of any loan made for the purposes of the Burial Acts by the parish council, will fall upon the poor rate (*id.*, s. 12 (1), (3)). The demand note for any rate levied for defraying the expenses of a parish council or parish meeting, must state (*inter alia*) the proportion (if any) of the rate levied for the purposes of the Burial Acts (*id.*, s. 11 (4)).

The certificate to the overseers mentioned in this section must, in the case of a parish council, be under the hands of a quorum of the council or of a committee of the council appointed for the purpose of exercising the powers of a council under the Burial Acts in pursuance of s. 56 (1), unless such certificate can be considered as an order for the payment of money, in which it will be sufficient if it be signed by two members of the council (*id.*, Sched. I, Part 2, r. 14).

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NOTE.

20. Provided always, that it shall be lawful for the board, with the sanction of the vestry and the approval of the Treasury, to borrow any money required for providing and laying out any burial ground under this Act, and building a chapel or chapels thereon, or any of such purposes, and to charge the future poor rates of the parish with the payment of such money and interest thereon [*provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged*].

Borrowing powers of board.

[General.]

The words between brackets are repealed by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 18. That Act applies the mortgage clauses of the Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), to loans by burial boards (s. 19), provides for the establishment of a sinking fund in lieu of payment by annual instalments (s. 20), and empowers burial boards to borrow on terminable annuities instead of on mortgage (s. 21).

The sanction of the vestry, if improperly withheld, may upon representation by the burial board be dispensed with by warrant of the Local Government Board (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 6).

It is necessary that the proceedings of the vestry connected with the sanctioning of the loan be strictly regular in form, otherwise the board may be deemed to be without authority to borrow the amount required. See *Elt v. St. Mary's, Islington, Burial Board* (1854), 1 Kay, 449.

The Burial Act, 1854 (17 & 18 Vict. c. 87), empowers burial boards to borrow money at lower rates of interest to pay off securities bearing a higher rate (s. 4), and to borrow money to pay off former mortgages (s. 5).

Local authorities acting under the provisions of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), may borrow money for

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the purposes of that Act in accordance with the provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 233—244.

Charges upon the rates under these Acts are not affected by the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51).

**Rural parishes.**—Where a parish council is the authority for the execution of the Burial Acts, its powers of borrowing for the purposes of these Acts are defined by s. 12 of the Local Government Act, 1894, *post*; and as sub-s. (3) of that section provides that the parish council shall not borrow for the purposes of these Acts otherwise than in accordance with that Act, the provisions of this section are not applicable to the borrowing by a parish council for the purposes therein mentioned.

As the sanction of the vestry is required by this section for the borrowing of money for the purposes mentioned, it seems that the sanction of the parish meeting will be required to such borrowing by the parish council, as being an "expense or rate" in relation to which such sanction is required by s. 7 (3) of the Local Government Act, 1894. It has been suggested that the "expense" consists in providing the ground, etc., not in borrowing money with which to do so, and that, consequently, the sanction of the parish meeting is not required; but payment of interest on the borrowed money appears to be an "expense" sufficient to require the sanction of the parish meeting to the borrowing.

Advances by  
Public Works  
Loan Com-  
missioners  
(14 & 15 Vict.  
c. 23).

[General.]

**21.** The commissioners for carrying into execution an Act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, "to authorise for a further period the advance of money out of the Consolidated Fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any Act or Acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of this Act any loan under the provisions of the recited Act, or the several Acts therein-recited or referred to, upon security of the rates for the relief of the poor of the parish.

The Act 14 & 15 Vict. c. 23, is repealed by the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), which by ss. 10, 11, provides that the interest on any loan shall not be less than 5 per cent. per annum, unless a lower rate is authorised by the special Act relating to such loan; and that if no period within which a loan shall be repayable is mentioned in the special Act it shall be repayable by instalments within twenty years. By s. 55 of that Act a reference in any Act to the 14 & 15 Vict. c. 23, is to be deemed a reference to the corresponding enactment in that Act.

By the Public Works Loans Act, 1892 (55 & 56 Vict. c. 61), s. 2, the rate of interest on loans granted after June 28th, 1892, under s. 10 of the Public Works Loans Act, 1875, is reduced to 4 per cent.

**Bural parishes.**—From the note to a 20, *supra*, under this heading, it will be seen that this section has no application to loans to a parish council for the purposes of the Burial Acts.

**Sect. 21.**  
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**NOTE.**

22. The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the board in or towards defraying the expenses of such board under this Act; and whenever, after repayment of all moneys borrowed for the purposes of this Act in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this Act in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish.

Application  
of borrowed  
moneys.  
[General.]

No fees are now payable to the clerk of the parish (Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3 (5)). The "other fees herein directed to be otherwise paid" were such as might be payable to the churchwardens of any parish, or to trustees, for or towards the payment of the incumbent's stipend, or any other parochial purpose, or the discharge of any debt or liability, which by s. 36 of this Act were to be received by the burial board and paid to the parties entitled to receive the same. That section is now repealed by the Burial Act, 1900, and the said words have, therefore, now no application.

By the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 3, any surplus income, in case of local boards of health or improvement commissioners constituted burial boards, is to be applied in aid of the general district or improvement rate.

Under the provisions of the Burial Acts, a burial board practically carries on the business of burying the dead for the benefit of the parish; and any surplus remaining in its hands after paying expenses is, notwithstanding the provision in this section that it shall be paid to the overseers in aid of the poor rate, a "profit" within the meaning of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60. The burial board is consequently liable to be assessed to the income tax in respect of such surplus (*Paddington Burial Board v. Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9; 53 L. J. Q. B. 224; 50 L. T. 211; 32 W. R. 551; 48 J. P. 311).

The church trustees of the parish of St. Pancras, previously to the



**Sect. 22.****NOTE.**

passing of this Act, were entitled under the powers of special Acts to fix and receive fees for burials in the old burial ground of the parish, such fees being applicable, first, in defraying the expenses of the burial ground, and then in payment of the vicar's stipend, and for other parochial purposes. The old burial ground being closed, a new burial ground was provided under this Act, and a burial board appointed. By an agreement between the church trustees and the burial board, a scale of fees for ordinary interments in the cemetery at certain rates per head was fixed, and a certain portion of such fees was payable to the trustees. A railway company, under statutory powers, took part of an old burial ground belonging to another parish, and under an agreement, confirmed by Act of Parliament, became liable to remove the soil and human remains from a depth of three to about fifteen feet below the surface of the land taken, and to deposit the same in another place of interment. The defendants, as burial board of St. Pancras, entered into an agreement with the railway company whereby the company were, at their own cost, to effect the re-interment in the defendants' burial ground, and to pay £1,000 to the defendants as compensation for the use of the land and for the expense of supervising the re-interment. This agreement was carried out. An excavation was made in the burial ground, the soil and human remains were removed by the company and deposited in the hole so made, and the excavated earth was heaped on the top in the form of a mound. Some whole coffins were removed, but many of the human remains had crumbled away and become indistinguishable. The church trustees, suing through their clerk, brought this action claiming to be entitled to a fair proportion of the £1,000 paid to the defendants in respect of the re-interment:—*Held*, by KAY, J., and by the Court of Appeal, that the action failed on the ground that this was not such an interment as was contemplated either by the special Acts or by s. 36 of this Act in respect of which any fees were payable; and by KAY, J., that the proper application of the £1,000 was as surplus moneys under this section in aid of the rates out of which the burial ground had been provided (*Scadding v. St. Pancras Burial Board* (1889), W. N. 45, 120).

**Bural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the provisions of this section will apply with the substitution therein for the word "board" the word "parish council," and for the words "at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced," the words "on the 31st day of March of any year." This latter substitution is necessitated by s. 58 (1), (2) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), which provide for the yearly making up of the accounts of parish councils to March 31st, and for the auditing of such accounts by a district auditor.

Vestries of parishes may concur in providing a burial ground for the common use

**23.** The vestries of any parishes which shall have respectively resolved to provide burial grounds under this Act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this Act, as they shall mutually agree, and may

agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed upon, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers; and all the provisions of this Act shall apply to such joint burial board accordingly; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

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of such  
parishes, etc.  
[General.]

See s. 19, *supra*, for payment of expenses out of poor rates, and s. 18 for provisions as to auditors.

This section provides for the joint action of distinct parishes with separate vestries. The appointment of one burial board for different parishes or places united for all or any ecclesiastical purposes, or having a common church or burial ground, or a common vestry, is provided for by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 11; and the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 9, and see *Reg. v. Colehill* (1862), 2 B. & S. 825; 9 Jur. (n.s.) 226; 31 L. J. Q. B. 219; 7 L. T. (n.s.) 244. Affirmed on appeal, 34 L. J. Q. B. 96.

For what constitutes a parish capable of uniting with other parishes in appointing a joint burial board, see s. 52, *infra*, and *Reg. v. Sudbury Burial Board* (1858), El. B. & E. 264; 27 L. J. Q. B. 232; 31 L. T. 161; 4 Jur. (n.s.) 948.

To remedy the difficulties arising where a joint burial board acting for several parishes requires the consent or approval of the vestries of such parishes for doing any act, it is provided by the City of London Burial Act, 1857 (20 & 21 Vict. c. 35), s. 2, that in the city of London, the consent or approval of the major part of the vestries should be sufficient to enable the Commissioners of Sewers (constituted by s. 43 of this Act the burial board for the city) to do anything requiring the consent or approval of the various parish vestries. And by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 1, in the case of all joint burial boards, the consent or authority of the major part of the vestries is substituted for the unanimous consent or authority of such vestries.

A joint burial board may be dissolved at any time before it has provided a burial ground (*id.*, s. 2).

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**Rural parishes.**—The parish meeting of a rural parish is the authority for resolving to provide a burial ground (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (1), (8)). But the other powers of the vestry are transferred to the parish council if the parish has one (*id.*, s. 6 (1) (a)). The operation of this section in rural parishes will, therefore, be to enable the parish councils of such parishes, whose parish meetings have respectively resolved to provide burial grounds to concur in providing one burial ground for the common use of such parishes. There is no provision, however, in the Local Government Act, 1894, enabling two or more parish councils to unite as a joint parish council for the execution of the Burial Acts; but s. 57 of that Act enables a parish council to concur with any other parish council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring on such committee any powers, except the powers of borrowing money or making any rate, which the appointing council might exercise if the purpose related exclusively to their own parish. The various parish councils, therefore, which desire to concur in providing one burial ground for the common use of their respective parishes, may appoint a joint committee, and delegate to such committee their powers and duties in relation to the execution of the Burial Acts, except the powers of borrowing money or making a rate. If it is necessary to raise a loan or make a rate, the committee must decide the amount required and apportion the same among the various parishes which they represent, and the parish councils of such parishes must take the proper steps for raising their proportionate amounts of the loan, and for getting the necessary rate made in their respective parishes. Any expense to be incurred by the joint committee which under the Burial Acts, if incurred by a joint burial board, would, by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 1, require the consent or authority of the major part of the vestries of the parishes concerned, must receive the consent or authority of the major part of the parish meetings of such parishes (Local Government Act, 1894, s. 7 (3)).

It is to be noted that the provisions of the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), apply only to joint committees appointed under s. 53 of the Local Government Act, 1894, and do not, therefore, apply to such a joint committee as is mentioned in this note.

Incorporation, etc. of burial boards.  
[General.]

**24.** For the more easy execution of the purposes of this Act the burial board of every parish appointed under this Act shall be a body corporate, by the name of "The Burial Board for the parish of \_\_\_\_\_ in the county of \_\_\_\_\_," and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any license in mortmain) to take, purchase, and hold land for the purposes of this Act: and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the

purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of "The Burial Board for the parishes of            and            in the county of           ," and by that name shall have perpetual succession and a common seal, and shall sue and be sued and have power and authority as aforesaid to take, purchase, and hold land for the purposes of this Act.

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There is no express statutory provision regulating service of process on a burial board, so that a writ of summons may be served upon the clerk, treasurer, or secretary of the board (R. S. C. 1883, O. 9, r. 8). A judgment or order against a burial board may be enforced in the manner provided by O. 42, r. 31.

For the provisions of this Act relative to the formalities to be observed by the board in entering into contracts see s. 31, *infra*.

**Rural Parishes.**—As in rural parishes there will be no more burial boards where there are parish councils, this section will have no operation in such parishes, but the parish councils and joint committees, as the authorities for the execution of the Burial Acts, will have the status given to them by the Local Government Act, 1894, s. 3 (9), and s. 57.

25. Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; and in providing such burial ground the board shall have reference to the convenience of access thereto from the parish or parishes for which the same is provided; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided [*but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this Act, nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.*]

Board to provide a burial ground, which may be within or without the parish. [General.]

A burial board must not exceed the amount authorised by the vestry for providing and laying out a burial ground (s. 19, *supra*). If, however, the vestry shall refuse or neglect to authorise the necessary expenditure, it may be sanctioned by the Local Government Board without further authority, sanction, or approval of the vestry (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 6), but the board cannot enforce the levy of a rate to pay expenses connected with the acquisition of a burial ground for which they had no authority from

**Sect. 25.** the vestry nor the warrant of the Home Secretary (*Reg. v. Kilham Burial Board* (1885), 1 T. L. R. 577, 678).

NOTE.

A burial board becomes owner of the burial ground provided, and is liable in respect of it as any other owner of land. Thus where a burial board planted yew trees in the burial ground, and allowed the branches to project into and over an adjoining meadow, and the plaintiff's horse, pasturing in this meadow, ate a quantity of the projecting leaves and branches and was poisoned, it was held that the burial board was liable for the damage (*Crouchurst v. Amersham Burial Board* (1878), 4 Ex. D. 5; 48 L. J. Ex. 109; 39 L. T. 355; 27 W. R. 95).

The words between brackets were practically repealed by the Burial Act, 1854 (17 & 18 Vict. c. 87), s. 12, which enacts that they shall cease to apply, and then re-enacts them, substituting the words "one hundred yards" for "two hundred yards." They were actually repealed by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 9, which provides that no burial ground shall be used for burial within the distance of one hundred yards from a dwelling-house without the consent required by this section; and this is the only provision now in force, as 17 & 18 Vict. c. 87, s. 12, is now repealed by the Statute Law Revision Act, 1892.

For a summary of the provisions of the Burial Acts as to the site and position of new burial grounds, see note to 18 & 19 Vict. c. 128, s. 9, *post*.

The limit of two hundred yards still applies to cemeteries authorised by any Act of Parliament which incorporates the Cemeteries Clauses Act (10 & 11 Vict. c. 65), s. 10, and therefore applies to cemeteries provided by local authorities under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 12, the burial board was formerly required as soon as the ground was in fit and proper condition, to apply to the bishop of the diocese for the consecration thereof; and the duty of making such application was enforceable by *mandamus* (*Reg. v. Attleborough Burial Board*, Times, February 11th, 1887; *Reg. v. North Kelsey Burial Board*, Times, March 22nd, 1892). Now by the Burial Act, 1900 (63 & 64 Vict. c. 15), that provision is repealed, and by s. 1 of that Act a burial board may, if it think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by the Secretary of State; and if it do not make the application within a reasonable time after a request in that behalf, and the Secretary of State is satisfied that a reasonable number of persons within the area for which the ground is provided desire that a portion be consecrated, the Secretary of State may make the application to the bishop. An appeal lies to the archbishop from a refusal of the bishop to consecrate (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 12).

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 7, a burial board may take over a burial ground provided under the Church Building Acts, for which money has been borrowed on the security of the church rates; and, with the consent of the vestry, may enlarge the same by the addition of unconsecrated ground.

Section 26, *infra*, enables a burial board (with the approval of the vestry) to purchase land of cemeteries, or to contract with cemetery owners for the interment of the bodies of persons who would have

had rights of interment in the parish burial ground. And by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 26, a burial board may, with the like approval, purchase a closed cemetery for the purpose of erecting buildings thereon, or of making approaches to the new burial ground.

By s. 28, *infra*, a burial board may, with the consent of the persons therein mentioned, appropriate for the purposes of a burial ground land belonging to the parish, or to any charity in the parish.

The guardians of a parish or union are authorised by the Burial Act, 1857, s. 6, with the consent of the Local Government Board, to provide a separate burial ground for paupers; and by the Poor Law Amendment Act, 1850 (13 & 14 Vict. c. 101), s. 2, to contribute out of the poor rates such sum of money as the Local Government Board may approve towards enlarging any churchyard, or enlarging or obtaining any consecrated public burial ground in the parish in which the workhouse is situated, or in any other parish of the union.

By s. 42, *infra*, burial boards are empowered to provide mortuaries, and for that purpose to exercise all the powers vested in them under this Act for providing burial grounds.

By the Tithe Act, 1878 (41 & 42 Vict. c. 42), s. 1, the burial board is required to redeem any tithe rentcharge existing upon the land taken for a burial ground at twenty-five years' purchase.

**Rural Parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, this section will apply with the substitution of the words "parish council" for "burial board." If it has been resolved to provide one burial ground for two or more rural parishes, this section will be put in operation by the joint committee appointed as described in the note to s. 23, *supra*.

26. For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial

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NOTE.

Board may, with approval of vestry, purchase land for forming a burial ground, or purchase an existing cemetery, or contract for interments in a cemetery. [General.]

**Sect. 26.** board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes.

For the various modes in which the burial board may provide a burial ground, see note to s. 25, *supra*.

Power is conferred upon burial boards by s. 28, *infra*, to sell superfluous lands, with the approval of the vestry; and by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 17, power is also given them, subject to the sanction of the Local Government Board, to let superfluous lands which have not been consecrated; provided in either case that no interments have taken place in the land so sold or let.

By s. 41, *infra*, burial boards may make arrangements with cemetery companies for conveying dead bodies to the burial ground.

If a burial board purchase lands for a burial ground in a different parish from that for which such burial ground is provided, the persons ultimately liable to pay for keeping such burial ground in repair, if closed by Order in Council, are the ratepayers of the parish in which such burial ground is situate, not those of the parish for which the burial ground was provided (18 & 19 Vict. c. 128, s. 18). See *Reg. v. Bishop Wearmouth* (1879), 5 Q. B. D. 67.

As to the necessity of obtaining the approval of the vestry under this section, see note to the Burial Act, 1855, s. 6, *post*.

**Rural Parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the approval of the parish meeting will be necessary for the contract or purchase authorised by this section (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (3)).

For the compulsory powers of a parish council to acquire land for a burial ground or other purpose, see *id.*, s. 9.

Certain provisions of 8 & 9 Vict. c. 18, incorporated with this Act.  
[General.]

27. The Lands Clauses Consolidation Act, 1845, except the provisions of that Act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking under the provisions of the Lands Clauses Consolidation Act, 1845, or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provision to be made for affording access to the special Act by all parties interested," shall be incorporated with this Act; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean any such burial board.

**Rural Parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, it can, subject to certain conditions, resort to the compulsory sections of the Lands Clauses Acts for acquiring land for the purpose of the Burial Acts, which a burial board could not do. See Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 9.

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NOTE.

28. It shall be lawful for any such board, with the approval of the vestry, to sell and dispose of any lands purchased by them under this Act, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of; and for completing and carrying any such sale into effect such board may make and execute a conveyance of the lands sold and disposed of as aforesaid unto the purchaser, or as he shall direct; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the hands of two of the members of the board shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received; and the money to arise from such sale shall be applied to such of the purposes of this Act as the board shall think fit.

Power to sell lands not wanted.

[General.]

8 &amp; 9 Vict. c. 18.

If the part sold is part of a burial ground closed by Order in Council, no building can be erected thereon except for the purpose of enlarging a place of worship (Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3, *post*).

Under the provisions of a local Act, part of a consecrated cemetery, which was supposed not to have been used for interments, was sold for building purposes. It was afterwards found that it had been at one time used for burials, and on the representation that the number of bodies buried therein did not exceed twenty, a faculty was obtained for the removal of the bodies and the decent interment of them elsewhere. Subsequently 400 or 500 more coffins were found and removed from the spot:—*Held*, that the powers conferred by the faculty had been exceeded; that the faculty must be withdrawn, and the bodies decently re-interred in the places from which they had been taken (*St. Pancras v. St. Martin-in-the-Fields* (1860), 6 Jur. (n.s.) 540).

By the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 17, a burial board may, with the sanction of the Local Government Board, let



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superfluous land which has not been consecrated, and in which no interment has taken place; and by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 24, trustees of unconsecrated land or buildings vested in them for the purposes of a cemetery or burial ground, and closed by Order in Council, may, with the sanction of a Secretary of State, sell or let any part or parts thereof in which no interment shall have taken place.

By the Open Spaces Acts, 1877, 1881 and 1887 (40 & 41 Vict. c. 35; 44 & 45 Vict. c. 35; and 50 & 51 Vict. c. 96), disused burial grounds in the metropolis and elsewhere, may be conveyed to the local authority to be preserved as open spaces.

See s. 132 of the Lands Clauses Consolidation Act, 1845, for the effect of the word "grant."

**Bural parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, it may sell and dispose of lands under this section without the consent of any other body, as such sale or disposition is not "an expense or rate," which would require the consent of the parish meeting under s. 7 (3) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), and the other powers of the vestry are transferred to the parish council itself (*id.* s. 6 (a)).

Board may, with approval of vestry, etc., appropriate land belonging to parish.

[*General.*]

**29.** Provided always, that any burial board under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish, or for any specific charity: Provided always, that where any land so taken and appropriated shall be subject to any charitable use, such lands shall be taken on such conditions only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts shall appoint and direct.

The Chancery Division of the High Court will not entertain any application under this section in respect of lands subject to a charitable use unless the Charity Commissioners have previously given their sanction to the application being made, although it is not necessary that they should approve of the application being granted (*Ex parte The Watford Burial Board* (1856), 2 Jur. (N.S.) 1045).

The Egham Burial Board, seeking to obtain a site for a burial ground, made a report to the vestry in which it was erroneously represented, in comparing the merits of two rival sites, that one of such sites being held by the parish on certain charitable trusts, would cost the parish nothing. The vestry thereupon voted in favour of taking the charity land. The land did, in fact, belong to

the parish, but was held on a charitable trust for certain only of the poor, and not for the general benefit of the parish. Upon application to the court under this section to determine the conditions on which the land should be taken, it was held that a price must be paid for it, and the matter was remitted to the vestry for reconsideration. The vestry then decided that the site was unfit for the purpose, and refused its approval to its being appropriated for a burial ground. Upon further application to the court, it was held that the court had no authority to make any order, inasmuch as the previous approval of the vestry had been made under an erroneous impression as to the facts, and had not been confirmed when the true state of facts was known (*In re Egham Burial Board* (1857), 3 Jur. (n.s.) 956).

By the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), s. 2, the Local Government Board is substituted for the Poor Law Board.

The sanction of the Local Government Board is not required if the burial board is a town council, and the land appropriated belongs to the borough or to trustees of a charity (Burial Act, 1854 (17 & 18 Vict. c. 87), s. 11).

**Rural parishes.**—The legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish other than property connected with the affairs of the church or held for an ecclesiastical charity will, subject to all trusts and liabilities affecting the same, be vested in the parish council (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (2) (c)), or in the parish meeting if there is no parish council (*id.* s. 19 (7)). The approval of the parish meeting will not be necessary under this section for the appropriation of the land, unless the conditions imposed by the Chancery Division for such appropriation include the payment of a sum of money for the benefit of the charity to the use of which the lands are subject, in which case there would be an "expense" within *id.* s. 7 (3), for which the approval of the parish meeting is substituted for the approval of the vestry. Otherwise the powers or duties of the vestry are transferred to the parish council (*id.* s. 6 (1) (a)), unless the land to be taken is held for an ecclesiastical charity, in which case the vestry retains its powers and duties in respect thereto, and its approval must, consequently, be obtained for an appropriation of such land under this section.

30. It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper, [*and to build on any land to be purchased or appropriated for a burial ground under this Act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the* Part of ground may be consecrated and part unconsecrated. (General.)

**Sect. 30.** *purposes of interment according to the rites of the United Church: Provided always, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service.]*

The part of the section printed in italics is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), and is replaced, so far as it relates to the division of the burial ground into consecrated and unconsecrated parts, by s. 1 of that Act, and, so far as it relates to the building of a chapel or chapels, by s. 2 of that Act.

By the scheme of legislation contained in this Act it was intended to substitute the burial ground for the old parochial churchyard, and to place it as far as possible in the same position with regard to the employment of the religious rites and ceremonies, and the ordinary usages and observances of burials in accordance with the practice of the Church of England. The chapel provided by the burial board in the consecrated part of the burial ground was, for the purpose of divine service at funerals, a substitute for the parish church (*Burial Board of St. Margaret, Rochester v. Thompson* (1871), L. R. 6 C. P. 445; 50 L. J. C. P. 213; 24 L. T. 673; 19 W. R. 892).

Although considerable changes relative to the building of chapels for the performance of funeral services are introduced by the Burial Act, 1900, so as to make the decision in the above case inapplicable to chapels built by a burial board out of the rates after the passing of that Act, it is apprehended that it is still applicable to such chapels built before the commencement of that Act.

**Rural parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, this section will apply with the substitution of the words “parish council” for “burial board.”

Burial board  
may contract  
for works to  
be done.  
[General.]

**31.** Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels [*as aforesaid.*] and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by such burial board,

for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial board at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the burial board to contract with the person offering the lowest price.

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The words in this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15).

As this section requires all contracts to *specify* the several works and things to be done, and *copies* thereof to be entered in books, it follows that all contracts entered into by burial boards must be in writing, and must consequently be under the seal of the board, which is incorporated by s. 24. A parol contract, or a contract not under seal, would, therefore, not be enforceable either by or against the board (*Hunt v. Wimbledon Local Board* (1878), 4 C. P. D. 48; 48 L. J. C. P. 207; 40 L. T. 115; 27 W. R. 123, and cases there cited), except, perhaps, where the amount of the contract is sufficiently small to bring the case within the principles applied in *Nicholson v. Bradfield Union* (1866), L. R. 1 Q. B. 620; 35 L. J. Q. B. 176; 14 W. R. 731; 14 L. T. (n.s.) 830; *Clarke v. Cuckfield Union* (1862), 21 L. J. Q. B. 349; 16 Jur. 686; and *Church v. Imperial Gaslight Co.* (1837), 6 A. & E. 846, viz., that where the contract has been executed, and the work done or the goods supplied is or are incidental or necessary to the purposes for which the corporation is created, the contractor may recover against the corporation, though the contract is not under seal.

Where a burial board contracted under seal with one Stevens that he should do certain repairs to the chapel for £38, and in the course of the work the surveyor of the board verbally ordered extras, amounting altogether to £13, the court (FRY, L.J., and MATHEW, J.) differed on the question whether the price of the extras could be recovered by reason of the contract for them not being under seal; FRY, L.J., holding that as they related to the same general work as the original contract, they should have been included in it, and were not affected by the common law doctrine that an order for matters of slight importance or frequent occurrence, etc., need not be under seal (*Stevens v. Hounslow Burial Board* (1889), 61 L. T. 839; 38 W. R. 236; 54 J. P. 309).

The provision as to contracts above £100 would seem from the judgment in *Novell v. Worcester (Mayor of)* (1854), 9 Ex. 457; 2 C. L. R. 981; 23 L. J. Ex. 139; 18 Jur. 64, decided upon s. 12 of the repealed Public Health Act, 1848 (11 & 12 Vict. c. 63), to be directory only, and not a condition precedent to the right to contract, so that the board could sue and be sued upon a contract made by it without having observed this provision, though its non-observance might affect the right of the board to charge the amount of the contract on the poor rates, which by s. 19, *supra*, can only be done when the

**Sect. 31.** expenses so charged are incurred "in carrying this Act into execution."

**NOTE.**

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, it will exercise the powers conferred by this section, but there is some doubt whether the exercise of such powers, when vested in the parish council, is subject to the conditions and restrictions which occur after the first paragraph of the section, there being no such conditions imposed upon the parish council with regard to its general powers of contracting. It is submitted, however, that although in some matters a parish council from its very nature and constitution is not subject to particular provisions of the Burial Act, such as quorum, meetings, etc., yet in the execution of these Acts it has no wider powers than a burial board has, unless they are specially conferred upon it by statute. A burial board under this section has only power to make certain contracts *sub modo*, and it seems to follow that the parish council, when acting as the authority for the execution of the Burial Acts, has only a power co-extensive with that of a burial board, and must, therefore, observe the conditions and contract subject to the restrictions of this section.

Provision is made by s. 88 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), for keeping in force all contracts, etc., entered into by an existing burial board, whose powers may be transferred to a parish council.

Burial ground to be the burial ground of the parish or parishes for which it is provided.  
[General.]

Duties, rights and fees of incumbent and clerk and sexton therein.

**32.** [*From and after the consecration as aforesaid of*] any burial ground provided under this Act [*(except any portion thereof intended not to be so consecrated), or, where all or any part of such burial ground, by reason of the same having been already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground*] shall be deemed the burial ground of the parish for which the same is provided; and where the same is provided for two or more parishes, such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent or minister of the parish or of each of the parishes (as the case may be) for which such burial ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorise, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, [*and shall be entitled to receive the same fees as*

*respect of such burials which he has previously enjoyed and received;*] and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, [*and shall be entitled to receive the same fees on such burials,*] as he has previously performed and exercised [*and received,*] as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively; and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained.

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The words of this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15).

This section before its amendment by the Burial Act, 1900, recognised in the incumbent an exclusive right to perform the service over the body of any parishioner buried in the consecrated part of a burial ground provided under the Burial Acts, a right to receive a fee for so doing, and a right that such fee should be the same as he had previously received for performing the service in the parish churchyard. His rights in respect of grants of exclusive rights of burial or of rights of constructing vaults, or erecting tombstones or monuments, were provided for by s. 33, *infra*.

The Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), trenching upon the exclusive right of the incumbent to perform the service over the bodies of parishioners buried in the consecrated part of the burial ground, by providing that upon notice being duly given to the incumbent, any person entitled to be buried in the consecrated part of the burial ground might be buried there either without any religious service or with such Christian and orderly religious service as the person in charge of the burial might think fit. By s. 5 of that Act, however, the right was reserved to the incumbent to receive the like fee upon a burial under that Act as he would have been entitled to if he had himself performed the service.

The Burial Act, 1900, does not alter the incumbent's right as modified by the provisions of the Burial Laws Amendment Act, 1880, to perform the service over parishioners in the consecrated part of the burial ground; nor does it affect his right to be paid a fee whenever he performs the service; but by s. 3 (1), (2), (3) it alters the amount of the fee from that to which he was entitled for performing the service in the parish churchyard to one which may be settled by the burial authority and approved by the Home

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Secretary ; and by s. 3 (4) it deprives the incumbent of his right to be paid a fee where the burial takes place under the Burial Laws Amendment Act, 1880, in any burial ground provided after the passing of the Act, 1900, and abolishes the incumbent's right to such fee altogether in any burial ground after present incumbencies or the period of fifteen years, whichever may be the longer period.

A burial board was under no obligation to collect the fees payable under this section, and if it did, it was only as a matter of convenience for the person entitled to them, who might at any time have forbidden the burial board to receive them on his behalf, and have required them to be paid direct to himself. Now, however, by s. 3 (3) of the Burial Act, 1900, the incumbent's and sexton's fees are to be paid in the first instance to, and collected by, the burial board, and then paid over by them to the incumbent and sexton respectively, and by s. 3 (5) clerk's fees are abolished altogether.

Before the Burial Act, 1900, it was held that a burial board for a parish was under no obligation to give the incumbent of such parish notice of a burial that was about to take place of the body of a parishioner ; and if, in consequence of his not receiving such notice, the incumbent did not perform the service, he could not recover from the burial board any fee that might have been paid through the burial board to some other person for performing such service, either as money received to his use or by way of damages (*Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713 ; 66 L. T. 90 ; 40 W. R. 390). And it does not appear that the Burial Act, 1900, alters the law in this respect.

It was also, however, held in the same case that, apart from the provisions of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), a person commits an ecclesiastical offence if, not being in orders, or, though in orders, not being authorised in that behalf by the incumbent of the parish, he conducts a religious service at a burial in the consecrated portion of the burial ground of that parish. It is therefore an illegal act on the part of a burial board knowingly to permit such unqualified or unauthorised person so to act ; and *semble*, if there were reason for believing that the burial board would continue to permit such persons so to act, the board would be restrained by injunction (*id.*).

It will be observed that there is no provision in this section with regard to the payment of fees for the performance by the incumbent even of duties *quoad sacra* in respect of the burial of non-parishioners, and it may be gathered from the above case that the incumbent is not entitled to any fees whatever in respect of the burial of non-parishioners. The omission in the Burial Acts to make any provision for conducting the service over non-parishioners who are allowed by the burial board to be buried in the burial ground is pointed out and commented on by Dr. TRISTRAM in *Re Fulham Burial Fees*, Times, November 26th, 1878. The effect of s. 3 of the Burial Act, 1900, however, appears to be, that if a non-parishioner is allowed to be buried in the consecrated part of the burial ground, the incumbent is entitled to be paid the approved fee provided that he performs the service over the body. And as no other person can lawfully perform the Church of England service in such consecrated part, it follows that the incumbent now can, if he please, perform the service and earn the fee as well when a non-parishioner as when a parishioner is buried in the consecrated part,

provided that the service desired is that of the Church of England, and not a service under the Burial Laws Amendment Act, 1880.

The burial ground provided by the board takes the place of the parish churchyard, and every parishioner has the same right to be buried in such burial ground as he had in the churchyard. On the question who is a "parishioner" or "inhabitant of the parish," see note to s. 34, *infra*.

It was the intention of this section that the burials of parishioners in the consecrated part of the new burial ground should be conducted with the same ceremonies and in the same manner as they would have been in the parish churchyard, and the effect of this and s. 30 taken together, was to make the chapel erected for the consecrated part of the burial ground a substitute for the parish church for the purposes of such burials. The sexton was, therefore, entitled to toll the bell in the chapel (if it had one) at such burials, the tolling of the bell being part of the burial rite of the Church; and the board were not justified in refusing to allow him entry to the chapel for that purpose, or to the burial ground for the purpose of performing any of the duties which he would have been entitled to perform in the parish churchyard (*St. Margaret, Rochester, Burial Board v. Thompson* (1871), L. R. 6 C. P. 445; 40 L. J. C. P. 213; 24 L. T. 673; 19 W. R. 892). As the Burial Act, 1900, repeals all the provisions in the previous Burial Acts relative to the erection of chapels for burial grounds, and provides that for the future one chapel only shall be built at the public expense, which shall be upon unconsecrated ground, the above decision, so far as it relates to chapels, must be taken as referring only to chapels built before the Burial Act, 1900, on the consecrated part of the burial ground, and, possibly, to chapels built after Act at the request and cost of residents belonging to the Church of England.

Under this section parish clerks and sextons were entitled to perform, when necessary (*i.e.*, from time to time whenever a burial took place in consecrated ground), the same functions and duties, and to receive the same fees therefor, in respect of the burials of parishioners and inhabitants of the parishes of which they were clerks and sextons, in the new burial grounds provided by burial boards under the Burial Acts, as before such new burial grounds were provided, and the burial boards could not deprive them of such fees by appointing other persons to do their duties (*Gell v. Birmingham* (1864), 10 L. T. (N.S.) 497). This is still the law with regard to sextons, except that by s. 3 of the Burial Act, 1900, a sexton is entitled only to fees for services rendered, and that such fees are, not the ancient customary fees, but of such amount as may be settled by the burial authority and approved by the Home Secretary. Clerks' fees are abolished by the Burial Act, 1900, s. 3 (5).

For the rights of a sexton to fees in a district parish, see the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 5, *post*, and notes thereto, and *Ormerod v. Blackburn* (1873), 28 L. T. 433; 21 W. R. 539.

By the interpretation clause (s. 52, *infra*), which contains a definition of "incumbent," it is provided that any dispute in respect of the right to receive fees between two or more persons claiming to be the "incumbent or minister," shall be determined by the bishop of the diocese.

The incumbent of a "new parish" under the New Parishes Act, 1856 (19 & 20 Vict. c. 104), is, by virtue of s. 5 of the Burial Act,

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1857 (20 & 21 Vict. c. 81), entitled to the burial fees on the resignation of the incumbent of the original parish (*Cronshaw v. Wigan Burial Board* (1873), L. R. 8 Q. B. 217; 42 L. J. Q. B. 137; 28 L. T. (N.S.) 283).

By the Burial Act, 1857, s. 16, the officiating minister is released from the necessity of forwarding to the rector, vicar, or other minister of the particular parish in which the burial ground is situated, a certificate of burial as provided by the Parochial Registers Act, 1812 (52 Geo. 3, c. 146, s. 4).

The following cases, in so far as they decide anything beyond who is the incumbent entitled to perform the burial service in the particular instances before the court, and in so far as they decide that any incumbent entitled to perform such service and actually performing it is not entitled to a fee, do not since the Burial Act, 1900, correctly represent the present state of the law. Under that Act, any minister who actually performs the burial service over a body buried in a burial ground provided by a burial authority is entitled to be paid by the burial authority the fee settled and approved under s. 3 (1)—(3) of that Act, independently of the question whether he would have been entitled to any fee if the body had been buried in a churchyard belonging or annexed to any church in his parish:—

Where a township which was a parish within the meaning of the interpretation clause was, before the passing of this Act, divided into two ecclesiastical districts under the provisions of the Church Building Acts, with separate burial grounds, and subsequently a third ecclesiastical district, without a separate burial ground, was formed out of one of these districts, and both burial grounds having been closed by Order in Council, a new burial ground was provided under this Act for the whole township, it was held that each incumbent of the two original districts was entitled to the burial fees in respect of the burial service performed by him in the burial ground provided under this Act to which he would have been entitled before the Act if any deceased person had been buried in the burial ground attached to his district, the incumbent of the district from which the third district without a separate burial ground had been formed being entitled to the fees from such third district (*Day v. Peacock* (1865), 18 C. B. (N.S.) 702; 34 L. J. C. P. 225; 12 L. T. (N.S.) 571; 11 Jur. (N.S.) 428; 13 W. R. 717).

The Burial Acts do not give or confer upon the vicar of a parish claiming an undefined interest in an adjoining district, of which he is not "incumbent," any right to receive fees for the performance of the burial service over the remains of the inhabitants of such district buried within a cemetery established therein, when no fees have ever been paid to the vicar for such service. Where a church has a burial ground in which persons dying within the parish or ecclesiastical district attached to the church could only have been buried by purchase, and not as of right, the incumbent will not be entitled to any burial fees in a burial ground provided under the Burial Acts (*Hornby v. Toxteth Park Burial Board* (1862), 31 Beav. 52; 8 Jur. (N.S.) 531; 31 L. J. Ch. 643). In that case a portion of the ancient parish of Walton had its own overseers, and separately maintained its own poor, under the name of Toxteth Park, so as to be a distinct parish under s. 52 of this Act. The vicar of Walton treated this district as

extra-parochial, and only buried its inhabitants in the Walton churchyard on payment of higher fees than those charged for the burial of parishioners. Toxteth Park contained three churches, of which one, St. James', had an ecclesiastical district, part of Toxteth Park, assigned to it by Order in Council. St. James' also had a burial ground established by the local Act providing for the building of the church, in which sepulture could be purchased by any of the public, but could not be claimed as of right by any inhabitant of Toxteth Park, or of the ecclesiastical district assigned to St. James'. Another church, St. Michael's, had no district attached to it, but had a burial ground differing only from that of St. James' in the fact that a local Act provided that one-fourth of it should be reserved for the burial of the poor dying within one mile from the church. The third church, provided under the Church Building Acts, had a district, but no burial ground. Half the burial fees received by the incumbents of the churches having burial grounds were, by the local Acts, payable to the vicar of Walton. A burial board was appointed and a burial ground provided under the Burial Acts for the whole of Toxteth Park. On a bill being filed by the vicar of Walton and the incumbents of the three Toxteth Park churches for a declaration that they or one or some of them were, collectively or separately, entitled to the fees on burials in the new burial ground, it was held that none of them were so entitled; the vicar of Walton because Toxteth Park was a separate parish under the Burial Acts, and he, therefore, was not incumbent of the parish, and the incumbents of the Toxteth Park churches on the ground that, as the inhabitants were never entitled as of right to be buried in either of the old burial grounds, the incumbents had never previously been entitled to fees for their burial.

The parish of Walton, which included the township of West Derby, had an ancient churchyard, fees being by custom payable to the vicar (as distinguished from the rector) for burials therein. By the Walton Rectory Act, 1843, the township of West Derby was made a separate parish and rectory. It comprised three chapels-of-ease with consecrated cemeteries attached, which, prior to the separation, had been provided for the parish of Walton. The sentences of consecration of such chapels and cemeteries (one of them confirmed by Act of Parliament) provided that double fees should be paid for burials in the cemeteries, one-half of which should go to the vicar of Walton and the other half to the curates of the respective chapels. None of the chapels had any district attached to them. No special provision was made in the Walton Rectory Act as to the burial fees in the cemeteries, but the rector or incumbent of West Derby was to have the *surplice fees* arising within the new rectory. The plaintiff became rector of West Derby in 1847, and there was some evidence that for a short time he received one-half of the fees from one of the three cemeteries. The parish of West Derby had separate overseers of the poor, and separately maintained its own poor. Burials continued to take place in the three cemeteries, which had never been closed. In 1884 a burial board was appointed for the parish of West Derby and a burial ground provided for the parish. The burial board employed various clergymen to perform the burial service in the new burial ground, and paid them for their services when required.

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The plaintiff, as rector of West Derby, claimed the right of performing all burial services in the burial ground, and the fees payable in respect thereof:—*Held*, that the plaintiff, being rector of the pariah, was entitled and bound to perform the services, and was entitled to have the rights and authorities incidental to the duties performed by him, and was entitled to receive all such fees as the burial board might themselves collect or receive in respect of such duties. But no opinion was expressed whether he was entitled to monumental fees, or whether the burial board had any right to receive or demand burial fees for or on behalf of the rector. And it was declared that the plaintiff himself had no right to demand burial fees directly for the burial of any parishioner (*Stewart v. West Derby Burial Board* (1886), 34 Ch. D. 314; 56 L. J. Ch. 425; 56 L. T. 380; 35 W. R. 268).

In the year 1823 a piece of ground in the parish of St. Margaret, Leicester, was purchased and conveyed to the commissioners for building new churches, who erected a chapel on part of it, and enclosed the remainder for a burial ground. In 1827 the chapel and burial ground were consecrated. In 1828 an Order in Council was made and published, whereby, after reciting s. 16 of 53 Geo. 3, c. 45, which empowers the commissioners to divide populous parishes into two or more distinct and separate parishes, also reciting s. 21 of that statute, which empowers the commissioners to divide populous parishes into ecclesiastical districts, also reciting that the commissioners had made a representation to the Crown respecting the increase of population and insufficient church accommodation in the parish, also reciting that it appeared to the commissioners expedient that an ecclesiastical district should be assigned to the new chapel under the provisions of 59 Geo. 3, c. 134, s. 16, and that the consent of the bishop had been obtained, his Majesty ordered that the proposed division should be made and effected according to the provisions of the said Acts. The boundaries of the district were duly enrolled under 58 Geo. 3, c. 45, s. 22. No Order in Council was made respecting the performance of the offices of the church in the said chapel, or the appropriation of the fees payable in respect thereof, nor did the commissioners make any order as to whether the fees for burials, etc., were to be reserved to the incumbent of the parish or assigned to the curate of the chapel, or whether burials, etc., should be performed in such chapel. In the year 1848, the corporation of Leicester established a cemetery within the borough under the provisions of 11 Vict. c. ii., by which the burial service over deceased persons removed for interment in the cemetery was to be performed by, and the fees paid to, the incumbent who might have been required to perform the service, and would have been entitled to the fees if the interment had taken place in his parish or ecclesiastical district:—*Held*, that the Order in Council was made under the 58 Geo. 3, c. 45, s. 21, and not under the 59 Geo. 3, c. 134, s. 16; and that, upon enrolment of the boundaries, the chapelry became a separate district parish for all ecclesiastical purposes; and that, after the death of the then incumbent of the original parish, the curate of the district parish was entitled to the fees for burial, both in his parish and in respect of deceased persons removed therefrom for interment in the cemetery (*Edgell v. Burnaby* (1853), 8 Ex. 788; 23 L. J. Ex. 65).

Before the passing of 51 Geo. 3, c. cli., the incumbent or *minister* of the parish of St. Marylebone (which was a lay rectory), by himself or his curates, performed the duty on all burials in the parish, and received the surplice fees thereon as part of the profits of the living. By that Act the vestry of the parish were empowered to provide an additional cemetery for the parish and erect a chapel thereon, and by s. 41 the lay rector was empowered to appoint a *burying minister* to officiate in burying the dead in the said cemetery, and a *reader* and *preacher* for the chapel, such reader and preacher to receive such salaries as the vestry should appoint. By s. 89 nothing therein contained was to lessen or alter the title of the lay rector, or the person for the time being entitled to the rectory and advowson, to the ecclesiastical dues, oblations, and obventions belonging thereto. By a subsequent Act (1 & 2 Geo. 4, c. xxi.), for effectuating the building of four district churches within the parish, it was enacted that the parish should remain and be one entire and undivided parish for all ecclesiastical and civil purposes, and the plaintiff was subsequently appointed rector of the parish. By the 6 Geo. 4, c. cxxiv. (whereby the four districts were made district rectories for certain purposes), the district rectors were empowered to solemnise marriages and baptisms, and take fees for the same, but nothing therein was to alter or affect the law respecting burials or burial fees within the parish. In 1824 W. was presented by the Crown (in whose hands the lay rectory then was) to the *chapel* built under the provisions of 51 Geo. 3, c. cli., and thenceforth performed all the burials there and received the burial fees, which he paid over to the plaintiff, the rector, until 1839, when the defendant, by direction of the vestry, received and retained them:—*Held*, that the plaintiff was entitled to recover the amount of such fees in an action for money had and received (*Spry v. Emperor* (1840), 6 M. & W. 639).

By the same Act (51 Geo. 3, c. cli.) the vestrymen of the parish of St. Marylebone were empowered to settle the rates and fees for burial in the cemetery, and to borrow upon the credit of such rates and fees. In 1733, the then minister and the parish referred to a third party the settlement of the minister's fees, and a table of fees was accordingly prepared by the referee. From that time to 1838 a fee of 1s. 6d. was paid by the parish officers to the rector for the burial of a pauper in any of the cemeteries of the parish, and from 1835 to 1847 the fee of 8s. 6d. had been paid to the rector, and a fee of 1s. to the clerk and sexton, in pursuance of a further table of fees settled by the vestry, in which was the item, "Paupers from the workhouse, 2s. 6d." The defendant had given orders for the burial of certain paupers in a cemetery of the parish, and the service was not performed by the rector of St. Marylebone or any of his curates, but by the reader of one of the chapels in the parish. In an action by the rector to recover his fees for the burial of the said paupers, it was held that such fees could only be due by immemorial custom or by some Act of Parliament, that an immemorial custom was neither stated nor proved, and that they were not due by the Act of Parliament (*Spry v. Gallop* (1847), 16 M. & W. 716; 16 L. J. Ex. 218).

By the South Metropolitan Cemetery Company's Act (6 & 7 Will. 4, c. xxix.), it was provided that certain burial fees should be paid by the company to the incumbent of the parish or other ecclesiastical district or division from which any body should be

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removed for interment in the cemetery, and directed that a portion of such fees should be paid over to the churchwardens or chapelwardens, to be by them applied among the persons entitled by law or custom to share in the burial fees receivable in such parishes or districts by the churchwardens or chapelwardens. In an action by the rector of the mother parish to recover the burial fees for the whole parish, it was held that the fees in respect of interments from a district which had been created out of the mother parish since the Cemetery Act, under an Order in Council conferring powers of marrying, churching, and baptising, but silent as to burials, were payable to the incumbent of such district, and not to the incumbent of the mother parish (*Vaughan v. South Metropolitan Cemetery Co.* (1860), 1 J. & H. 256; 7 Jur. (n.s.) 159; 30 L. J. Ch. 265; 9 W. R. 228; 3 L. T. (n.s.) 727; *Bowyer v. Stantial* (1878), 3 Ex. D. 315; 38 L. T. (n.s.) 271).

**Bural Parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the duties of the sexton will remain the same as though a burial board had been appointed for the parish, and his right to fees upon the burial of any parishioner is unaffected by the Local Government Act, 1894. The sexton is clearly an ecclesiastical officer (see Cripps' Law of Church and Clergy, 6th ed., p. 201), and his appointment, therefore, is not affected by the Local Government Act, 1894, but remains in the person or body of persons in whom it was before the passing of that Act. The parish clerk is no longer entitled to any fees on burials in any burial ground provided by a burial authority (Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3 (6)).

Board may sell exclusive rights of burial, and right to construct vaults and erect monuments.  
[General.]

**33.** Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet or monumental inscription in such burial ground; [*but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or, if no such fees or sums shall have been so settled, then such fees as he would by law or custom have been*

entitled to on the grant of the like rights in the burial ground of his parish].

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The words of this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), and by that Act, no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any other matter whatsoever in any burial ground maintained by a burial authority, except for services rendered by him, provided nevertheless that where, at the passing of that Act, fees other than for services rendered were payable in respect of any matter arising in any burial ground attached to or used for the purposes of a parish, and laid out and used before the passing of the Act, the like fees shall continue to be paid during the incumbency of the person who, at the passing of the Act, was the incumbent of the parish, or during a period of fifteen years therefrom, whichever is longer. The effect of such proviso, therefore, is, in the cases therein contemplated, to retain in force the repealed portion of this section for the prescribed period.

Even before the Burial Act, 1900, the incumbent or minister was not entitled to receive any fees from the burial board out of the moneys received by the board for the sale of any of the rights enumerated in this section to or on account of a non-parishioner (*Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713; 66 L. T. 90; 40 W. R. 390).

In a case decided before the Burial Act, 1900, it was held by a county court judge that an incumbent could, under this section, sue direct any person who purchased from the burial board a right of exclusive burial, or a right to erect a monument, etc., for the fees declared by this section to be payable to the incumbent out of the fees or payments to be paid in respect of such rights acquired (*Poynte v. Honeybone*, L. T. Jour., April 16th, 1898). But it is submitted that such decision was not justified by the provisions of this section, which establish no privity between the purchaser and the incumbent.

Under this section a burial board may grant a grave space to the grantee and his heirs, and the title to the burial rights under such grant will descend to the heirs of the grantee, and will not be vested in all members of the family of the grantee (*Matthews v. Jeffrey* (1860), 6 Q. B. D. 290; 50 L. J. Q. B. 164; 29 W. R. 282; 43 L. T. 796; 45 J. P. 361). But the grant may be made to the grantee and his "family," as in the case of a faculty for a vault (*Magnay v. Rector of St. Michael* (1827), 1 Hag. Ec. 48), under which grant, it seems, that any member of the family of the grantee might be buried, subject to the approval of the burial board, which is substituted for that of the rector (*Matthews v. Jeffrey, supra*).

And as no faculty is required for the grant of a vault under these Acts, a burial board is not embarrassed by the necessity of adhering to any particular form of grant, or to any limitation as was insisted on in *Magnay v. St. Michael, supra*, viz., "to the grantee and his heirs so long as they remain parishioners."

In cemeteries provided by local authorities under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), and in other

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cemeteries to which the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), applies, it is provided by s. 44 of that Act that the exclusive right of burial in such cemetery, whether in perpetuity or for a limited time, shall be considered as the personal estate of the grantee, and may be assigned in his lifetime, or bequeathed by his will.

An exclusive right of burial is an easement, arising out of land, and the grant of such a right must be by deed (*Bryan v. Whistler* (1828), 8 B. & C. 288; 2 M. & R. 318).

An absolute grant under this section of an exclusive right of burial in part of a burial ground conveys also the right to plant flowers on the grave, and to keep the head and curb stones in decorative repair; any subsequent byelaws made by the burial board under the general powers of management conferred upon it by s. 38 of this Act limiting or interfering with such right are *ultra vires* (*Ashby v. Harris* (1868), L. R. 3 C. P. 523; 37 L. J. M. C. 164; 18 L. T. (N.S.) 719; 16 W. R. 869). This case was, however, commented on somewhat adversely, though not overruled, in *McGough v. Lancaster Burial Board* (1888), 21 Q. B. D. 323, where the facts were as follows: For the purpose of burying a deceased daughter, the plaintiff purchased from the defendants, and they conveyed to him "the exclusive right of burial" in a grave space in their burial ground in perpetuity; and they also granted him the right to erect a gravestone on the grave. He afterwards placed upon the grave a wreath and, to protect it, a glass shade covered with a wire frame. It was the general rule of the defendants never to allow the placing of such glass shades on the graves in their burial ground, and, accordingly, the defendants removed the glass shade and wire frame without the consent of the plaintiff; and it was held that the plaintiff had only acquired such rights as, under s. 33, the defendants were empowered to sell; that such rights did not include a right to place the glass shade and wire covering on the grave; and that, in the exercise of the control vested in them by s. 38, the defendants were entitled to remove the same. LINDLEY, L.J., however, distinguished this case from that of *Ashby v. Harris* on the ground that in this case the rule prohibiting the placing of glass shades on graves was in force when the grant of the exclusive right of burial was made by the defendants, whereas in *Ashby's Case*, the byelaw which the board sought to enforce was made after the grant.

The burial board under its general powers of control may exercise a censorship over monumental inscriptions; but if any question arises as to the fitness of any inscription in the consecrated part of the ground, the bishop is to determine it (s. 38, *infra*). For a similar power of the bishop to object to and remove monumental inscriptions in cemeteries, see the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), s. 51, *post*.

**Rural parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, it will exercise the powers conferred by this section, as amended, precisely in the same manner as a burial board.

Board to fix payments for interments in burial ground

**34.** Every burial board under this Act shall and may [(without prejudice to the fees and payments herein specially provided for)] fix and settle and receive such fees and pay-

ments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground; and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid; and a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground.

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and for  
vaults and  
monuments.  
[General.]

The words in this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), as a necessary sequel to the repeal of the provisions as to fees in ss. 32, 33, *supra*.

The settlement of all fees which may be fixed, settled, or received by a burial board under this section is subject to the approval of the Local Government Board (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 7).

It is the practice of burial boards to fix the fees for interment, and for exclusive right of burial, vaults, monuments, etc., upon two scales, of which the lower applies to "parishioners" and the higher to "non-parishioners." It is important, therefore, to consider who is a "parishioner," so as to be entitled to pay only the lower scale of fees. Section 32, *supra*, which provides that the incumbent shall perform the duties of burial in the burial ground of the remains of "parishioners or inhabitants of the parish," shows that no narrow meaning must be attached to the term "parishioners"; that at all events it must extend to and include "inhabitants of the parish." The word "inhabitants," again, has no definite legal meaning, but varies in its import according to the subject-matter to which it is applied (*Reg. v. Mashiter* (1837), 6 A. & E. 153).

In *Attorney-General v. Parker* (1747), 3 Atk. 576, Lord HARDWICKE says: "*Parishioner* is a very large word, takes in not only inhabitants of the parish, but persons who are occupiers of lands, that pay the several rates and duties, though they are not resident, nor do contribute to the ornaments of the church. *Inhabitants* is a still larger word: takes in housekeepers, though not rated to the poor; takes in also persons who are not housekeepers, as, for instance, such who have gained a settlement, and by that means become inhabitants."

Lord COKE says upon the word *inhabitants* in the Statute of Bridges (22 Hen. 8, c. 5, s. 3), 2 Inst. 702, that it is "the largest word of this kind"; and, p. 703, that "every person that dwelleth in any shire, riding, city, or town corporate, though he hath but a personal residence, yet is he said in law to be an inhabitant or dweller



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there, as servants." And in *Reg. v. Mashiter, supra*, LITLEDALÉ, J., said that the word might mean not only tenants, but "lodgers, inmates, servants, or, perhaps, other descriptions of persons." In *Holledge's Case* (circ. 1623), 2 Rolle's Rep. 238; 1 Bott's Poor Law, 119, a mere lessee of a stall in a market, which he frequented once a week, was held not to be such an inhabitant of the place as to be liable to be rated for the repairs of the church. In *Wilson v. Sunderland-near-the-Sea* (1865), 34 L. J. M. C. 90, where a local Act required vestrymen to be "inhabitants" of the parish, BEST, C.J., remarked, "I am of opinion that the word 'inhabitants' in the local Act has not the limited meaning of persons 'residing and sleeping' within the parish. Since the time of Henry VIII. the word 'inhabitant' when used in statutes relating to rates, has always been construed to mean 'rateable occupier.' And I do not know of an instance in which it has been decided that it must be a person who has resided and slept within the parish. In respect of gaining a settlement it is otherwise, and there the person is required for that purpose to have slept in the parish."

A person not resident in a parish, but owning property within it in respect of which he pays parish rates, is a "parishioner," and as such entitled to bring an action against persons alleged to be infringing the rights of parishioners (*Batten v. Gedye* (1889), 41 Ch. D. 507; 58 L. J. Ch. 549; 60 L. T. 802; 37 W. R. 540; 53 J. P. 501).

There is no definition in any of the Burial Acts of either "parishioner" or "inhabitant"; it is submitted, however, that the words should, for the purposes of the Burial Acts, be deemed equivalent to or to include "every person who would have been entitled to be buried in the churchyard for which the burial ground has been substituted under the provisions of these Acts." (See judgments in *St. Margaret's, Rochester, Burial Board v. Thompson* (1871), L. R. 6 C. P. 445; 50 L. J. C. P. 213; 24 L. T. (n.s.) 673; 19 W. R. 892.) If that is so, and if the broad statement of Degge (Part I., Chap. 12) is correct, that "by the custom of England every person may be buried in the churchyard of the parish where he dies," it would follow that not only "parishioners" or "inhabitants," strictly so called, but also all persons dying within the parish for which a burial ground has been provided under the Burial Acts, are entitled to be buried in such burial ground, and if any person has the right to be buried there, then the only fee legally payable is the fee charged for the burial of a "parishioner," and not of a "non-parishioner," as the fees chargeable for the burial of a non-parishioner may be so high as to be prohibitory, and therefore destructive of the right (see *Nevill v. Bridger* (1874), L. R. 9 Ex. 214; 43 L. J. Ex. 147; 30 L. T. 690; 22 W. R. 740). It is to be observed, in support of this view, that the City of London Burial Act, 1857 (20 & 21 Vict. c. 35), s. 8, *post*, interprets the words "parishioner" or "inhabitant" as meaning "a person inhabiting a house or dying in one of the parishes in the city of London or the liberties thereof."

**Rural parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, it will exercise the powers conferred by this section on a burial board.

Division of fees between incumbents of parishes and

**35.** [Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent

*of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this Act as he was entitled to in respect of interments in the old burial ground.]* **Sect. 35.**  
ecclesiastical districts. [General.]

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15). Its provisions became inapplicable upon the enactment in s. 3 of that Act, that only the minister performing the service (by himself or deputy) is entitled to a fee, and that no fees should be payable other than for services rendered.

**36.** *[Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this Act, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this Act, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and moneys received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability.]* Fees payable to churchwardens and others for parochial purposes. [General.]

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), as a necessary sequel to the abolition by that Act of fees other than for services rendered. The effect, however, of the first proviso to s. 3 (4) to that Act, is that fees will still continue payable under this section for fifteen years after the passing of that Act, if they were so payable at the passing of that Act.

Under the provisions of a local Act, certain fees payable in respect of burial in the burial ground of a metropolitan parish, were applicable to the purpose, amongst others, of the repair of the parish church:—*Held*, that the repair of the parish church was a “parochial

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purpose" within the meaning of this section, and that the fees received by the burial board under s. 34 of this Act, were applicable to the purpose of this repair (*Reg. v. St. Marylebone Vestry*, [1895] 1 Q. B. 771).

Where a sum of money had been paid by a railway company as compensation to a burial board for the right of using part of the burial ground for the purpose of re-interring certain soil and human remains removed from an old burial ground which had been taken by the railway company under statutory powers for the purpose of its undertaking, it was held that the re-interment of such remains was not an "interment" under this section (*Scadding v. St. Pancras Burial Board* (1889), W. N. 45, 120); see *supra*, s. 22, note.

It is stated in an *Anonymous Case* (1682), 2 Show. 184: "That the churchwardens have a right to the churchyard and not to the church, for the parson only hath that, although here about London the churchwardens take money for breaking open the ground in the churches, and the parson only for the chancel. And note, by Spelman, 'tis but of late years that they have buried in churches so commonly as now."

**Rural parishes.**—If the periodical payment, or other liability, is a liability to pay instalments of money borrowed on the mortgage of church rates made before 1873 for the purpose of acquiring a churchyard for the parish under the Church Building Acts, the powers and duties of the churchwardens in respect thereto would be powers and duties relating to the affairs of the church, and not, therefore, transferred to the parish council of a rural parish under s. 6 (1) (b) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), or to the parish meeting, if there is no parish council, under s. 19 (4) of that Act. Where, therefore, the parish council is the authority for the execution of the Burial Acts in a rural parish, it will in the cases and for the period provided for in the first proviso to s. 3 (4) of the Burial Act, 1900 (63 & 64 Vict. c. 15), be lawful for the council to act upon the request of the churchwardens under this section, as though they were a burial board.

Power to vestry, with consent of bishop, to revise the fees to incumbent, etc., or to substitute a fixed payment. [General.]

**37.** [*It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this Act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint; and in such last-mentioned case the fees which would otherwise be payable under this Act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such fixed payments as aforesaid shall be paid by such board.*]

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15); and by s. 3 (7) of that Act, it is enacted that "the provisions of this section [i.e., s. 3], except those as to collection, shall apply to any fixed annual sum substituted for fees in pursuance of section 37 of the Burials Act, 1852, in like manner as they apply to fees," as to the possible meaning of which, see the note to that subsection, *post*. For the future, it will not be lawful to substitute a stipend for fees.

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**38.** The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of this Act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same; provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.

Management of burial ground to be vested in board.  
[General.]

The "regulations" to which the control of the burial board is subject, are those formerly made by a Secretary of State, and now by the Local Government Board, under s. 44, *infra*.

Although large powers of control are given to the burial board by this section, they cannot override or interfere with the rights of persons previously acquired by grant from the board. So, where a burial board granted the right of making a private grave and the exclusive right of burial therein, in a certain spot in their cemetery to hold the same in perpetuity for the purpose of burial, and of erecting thereon a monument, with a proviso that if the monument with its appurtenances should not from time to time be kept in repair by the owner according to such rules, orders, and regulations as had been, or should be from time to time, made by the burial board for the management and regulation of the cemetery and the vaults, graves, and monuments therein, the grant should be void, and the board afterwards made a regulation that no person should be allowed to plant flowers, etc., on the graves, but that they themselves should alone do it, at certain prices they fixed, and they prevented the grantee from planting the said spot with flowers, it was held they had no right to prevent the grantee from so planting the said spot (*Ashby v. Harris* (1868), L. R. 3 C. P. 523; 37 L. J. M. C. 164; 18 L. T. (N.S.) 719; 16 W. R. 869).

This decision was, however, said by the Court of Appeal "to go rather far"; and where, at the time of a grant of exclusive right of burial, glass and wire cases for wreaths were not allowed to be placed on graves, it was held that the burial board were justified in removing such a case that had been placed on a grave by the grantee of such right (*McGough v. Lancaster Burial Board* (1888), 21 Q. B. D. 323; 36 W. R. 822).

Although the freehold of the burial ground is in the burial board, an action of trespass will lie for the erector of a tombstone against a person who wrongfully removes it and erases the inscription, even

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though such person were the burial board itself (*Spooner v. Brewster* (1825), 3 Bing. 136; 10 Moore, 495; 2 C. & P. 34).

In a churchyard a faculty should, in strictness, be obtained for the erection of any monument; but in practice the permission of the incumbent is in most cases substituted for the faculty (*Maidman v. Malpas* (1794), 1 Hag. Con. 205).

When an incumbent refuses to sanction the erection of a monument in a churchyard, the person aggrieved may apply to the ordinary for a faculty, and from the decision of the ordinary an appeal lies to the official principal, and from him to the judicial committee of the Privy Council (*Keet v. Smith* (1876), L. R. 4 A. & E. 398; 1 P. D. 73, where an incumbent refused to allow the erection of a tombstone on which the petitioner was described as the "Rev. Henry Keet, Wesleyan minister," and the Privy Council, overruling the Dean of Arches and the Chancellor of the Diocese of Lincoln, ordered the grant of a faculty permitting such inscription).

Although no faculty is required for erection of tombstones, etc. in a burial ground provided under the Burial Acts, yet it is presumed that if a question arise as to the fitness of an inscription under this section, such question will be determined upon the same principles as apply to the grant of a faculty for the erection of a tombstone with the inscription in controversy. As to which, see *ante*, p. 59.

When the board has granted the right of erecting a monument under s. 33, *supra*, and a question arises as to the fitness of the inscription, the question must then be determined by the bishop. No method of procedure is prescribed for appealing to the bishop, but it would seem that the proper course is to apply to the chancellor of the diocese to hold a court to decide the question. In the *Dean of Carlisle's Case*, Times, December 21st, 1866, in which the operation of this section was reviewed at length, it was stated by the Chancellor that while the board may object to any particular inscription, as ministers and churchwardens have hitherto objected, on the other hand any person hindered by the board may appeal to the court. The bishop's jurisdiction, however, is not confined merely to cases of disputes between the burial board and other persons respecting the fitness of an inscription, but extends to all cases where any questions may arise concerning its fitness, so that the bishop may intervene *proprio motu*, or, in a proper case, on the complaint of any third party.

For a similar provision with regard to inscriptions in cemeteries, see the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), s. 51, *post*.

The provisions against brawling in burial grounds and churchyards, and the penalties on offenders, are contained in the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32), and the statutes mentioned in that Act, *post*.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the powers conferred by this section will be exercised by the parish council. Provision is made by s. 87 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), for the continuance of byelaws made by an existing burial board whose powers are transferred to a parish council.

**39.** Where a burial ground is provided under this Act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or, in case of equal numbers, one half of the incumbents shall approve; and such arrangement so confirmed shall be binding upon all the parties concerned.

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 Arrangements between incumbents where burial ground is provided for the common use of two or more parishes.  
 [General.]

The burial board cannot maintain a chaplain from the rates (see s. 15, *supra*). He can only be appointed by virtue of an arrangement between the incumbents of the parishes for which the burial ground has been provided, and will act as the deputy for such incumbents, so that the fees earned will be payable to the incumbent "for services rendered" within s. 3 (1) of the Burial Act, 1900 (63 & 64 Vict. c. 15.)

If a chaplain is appointed, s. 1 of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), provided that the notice required by that section should be addressed to the chaplain, but should be given to or left at the office of the clerk of the burial board. Now by the Burial Act, 1900, s. 8, such notice shall be given at such time and to such person as the burial authority may direct.

It does not appear that the bishop has any power to refuse confirmation of a scheme approved under this section by one-half of the incumbents interested.

**40.** The provision of the Cemeteries Clauses Act, 1847, with respect to the protection of the cemetery, shall be incorporated with this Act, and be applicable to any burial ground provided under this Act.

Provisions of 10 & 11 Vict. c. 65, incorporated.  
 [General.]

The sections of the Cemeteries Clauses Act here incorporated are ss. 58, 59 and 62, which last section incorporates in the Cemeteries Clauses Act such clauses of the Railways Clauses Consolidation Act relating to recovery of damages and penalties and to proceedings before justices as are not repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43). See *post*.

**41.** Any burial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this Act, or to any other place of burial, subject to

Conveyance of bodies to burial grounds.  
 [General.]

**Sect. 41.** the provisions of this Act and the regulations to be made thereunder; and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

See s. 26, *supra*, for the powers of a burial board to contract with a cemetery company to bury the dead bodies of parishioners in the cemetery, instead of themselves providing a burial ground.

The regulations referred to in this section are those which the Home Secretary was, and the Local Government Board now are empowered to make by s. 44, *infra*.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the powers conferred by this section will be exercised by the parish council. Such powers appear to include that of purchasing and maintaining a hearse for parochial use.

Places for  
reception of  
bodies until  
interment.  
[General.]

**42.** It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish [*in the metropolis*] for which a burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, taken on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein; and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and [*such*] churchwardens and overseers may exercise all such powers as, under the Poor Relief Act, 1819, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish.

59 Geo. 3,  
c. 12.

For the powers of the local authority to provide mortuaries under the Public Health Act, 1875, see note to s. 2 of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), *post*.

By the Sanitary Act, 1866 (29 & 30 Vict. c. 90), ss. 27, 28, nuisance authorities in the metropolis were enabled to provide places for the reception of dead bodies. That Act is now repealed (except s. 41) by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76),

which by ss. 88—93 empowers sanitary authorities and the county council to establish mortuaries. The powers, etc., of sanitary authorities in the metropolis are now vested in the borough councils of the various metropolitan boroughs by virtue of the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4.

The only Act in force enabling "overseers and churchwardens" to provide a workhouse for a parish not having a workhouse is the Poor Relief Act, 1601 (43 Eliz. c. 2), s. 5. The following statutes, however, regulate the powers of overseers and guardians for the same object: Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), ss. 21, 23, 24; Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69); Union and Parish Property Act, 1837 (7 Will. 4 and 1 Vict. c. 50); Workhouse Sites Act, 1857 (20 & 21 Vict. c. 13); Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106), s. 17; Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), s. 14.

For the powers vested in a burial board for providing burial grounds, see note to s. 25, *supra*.

**Rural parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, the powers conferred on a burial board by this section will be exercised by the parish council, with the approval of the parish meeting. The parish meeting is substituted for the vestry in this case by s. 7 (3), of the Local Government Act, 1894 (56 & 57 Vict. c. 73), as the matter is one that "relates to an expense." If there is no parish council the powers exercisable under this section by the "churchwardens and overseers" will be exercised by the overseers alone (*id.*, s. 5 (2) (b)), by direction of the parish meeting.

43. The provisions hereinbefore contained for the appointment of burial boards shall not apply to any parish within the limits of the city of London and the liberties thereof; but it shall be lawful for the mayor, aldermen, and commons of the said city, in common council assembled, if and when they see fit so to do, to authorise and direct the Commissioners of Sewers of the City of London to exercise for the said city and liberties all the powers and authorities vested in burial boards under this Act; and thereupon such commissioners shall have and exercise for and on behalf of the said city and liberties all such powers and authorities as are hereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry; but the expenses to be incurred by such commissioners in providing and laying out any burial ground or burial grounds under this Act, and building the necessary chapel or chapels therein, shall not exceed such sum as the said mayor, aldermen, and commons in common council assembled shall authorise to be expended for this

**Sect. 42.**

NOTE.

The Commissioners of Sewers to be burial board for the parishes in the City.  
[Metropolis.]



**Sect. 43.**

11 & 12 Vict.  
c. clxiii.

purpose ; and the money required for defraying the expenses incurred under this Act by the said commissioners shall be charged upon and payable out of the consolidated rate authorised to be made by the City of London Sewers Act, 1848, or any moneys applicable for defraying the expenses by the said Act charged upon or payable out of such rate ; and the income of any burial ground provided under this Act by such commissioners, which, if such ground had been provided by a burial board for any parish, would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the said consolidated rate ; and the provisions contained in the City of London Sewers Act, 1848, for the purpose (as therein expressed) of enabling the said commissioners to effect the purchases therein authorised shall be applicable for the purpose of enabling the said commissioners to purchase land for the purposes of this Act ; and the powers for and auxiliary to the sale and disposal of land given or expressed to be given by the City of London Sewers Act, 1848, and the City of London Sewers Act, 1851, with respect to land purchased by the said commissioners for any of the purposes mentioned in such last-mentioned Act, and deemed by them unnecessary for such purposes, shall be applicable with respect to any land purchased by the said commissioners for the purposes of this Act which may not appear to them to be wanted for such purposes ; and all the provisions of the said City of London Sewers Acts applicable to the exercise of the powers vested in the said commissioners shall be applicable to and for the purposes of this Act, as if the powers which under this Act may become vested in such commissioners had been powers vested in them under the said City of London Sewers Act, 1848 ; provided that it shall be lawful for the said mayor, aldermen, and commons to appoint any incumbent or incumbents of any parish or parishes within the said city or liberties to act with the said commissioners for the purposes of this Act.

11 & 12 Vict.  
c. clxiii.  
14 & 15 Vict.  
c. xci.

The commissioners of sewers having acquired a cemetery under this Act at Little Ilford, further provisions were made with regard to fees, vestries, chaplain, etc., by the City of London Burial Act, 1857 (20 & 21 Vict. c. 35), *post*.

**44.** It shall be lawful for *one of her Majesty's principal Secretaries of State* from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this Act, as to him may seem proper, for the protection of the public health and the maintenance of public decency; and the burial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.

**Sect. 44.**  
Secretary of State may make regulations as to burial grounds, etc. [General.]

The Local Government Board is substituted for the Secretary of State in this section by the Burial Act, 1900 (63 & 64 Vict. c. 14), s. 4.

For regulations issued under this section, see Appendix A., No. 4, *post*. By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 10, regulations may be made by the Local Government Board in respect of burials in common graves in the cemeteries mentioned in Schedule (B.) of this Act, and in any cemetery established under a local Act of Parliament.

By the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 8, the Local Government Board may provide for the inspection of burial grounds; and by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 23, supplemented by the Burial Act, 1859 (22 Vict. c. 1), persons having the care of vaults may be ordered to do such acts as may be necessary to prevent their becoming a nuisance.

In any town or district in which the prevention of nuisance clauses of the Towns Improvement Act, 1847 (10 & 11 Vict. c. 34), are adopted by incorporation in the special Act referring to such town or district, it is provided by s. 103 of that Act that: "No coffin containing a corpse shall be buried in any grave within the limits of the special Act, not being a vault or catacomb, without at least thirty inches of soil between the ordinary surface of such burial ground and the upper side of the coffin; and if the person having the preparation or the immediate charge of the preparation of the grave to receive such coffin permit the coffin to be buried in such grave, or if the person having the control of the burial ground knowingly permit any coffin to be buried in any grave, in which there is not left after the burial thereof thirty inches at the least of soil, measuring from the ordinary surface of such burial ground to the upper side of the coffin, the person having the immediate charge of the preparation of the grave, and the person having the control of the burial ground in which such burial is made, shall for every such offence be liable to a penalty not exceeding five pounds."

**45.** [Recital as to uncompleted purchase of the Brompton Cemetery by the General Board of Health under 13 & 14 Vict. c. 52.] The rights and obligations of the general board of health with reference to the purchase of the said cemetery

Brompton Cemetery vested in Commissioners of Works. [Metropolis.]

**Sect. 45.** shall upon the passing of this Act become transferred to the Commissioners of Works; and in case the said cemetery shall be conveyed to them by virtue of the transfer hereby made of such rights and liabilities, then immediately upon such cemetery being so conveyed, the said cemetery shall, without any further conveyance, become vested in the said Commissioners of Works in the like corporate capacity in which any lands, tenements, or hereditaments are vested in them under the Act of this last session of Parliament, chapter forty-two, but subject to the rights to graves, vaults, and monuments subject to which such cemetery may have been conveyed to such commissioners or to the general board of health, as the case may be, and subject to the powers and for the purposes herein-after mentioned.

14 & 15 Vict.  
c. 42.

The *said cemetery* mentioned in this section is the West of London and Westminster Cemetery, commonly called Brompton Cemetery; the early part of this section referring to it by name is repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

The Crown Lands Act, 1851 (14 & 15 Vict. c. 42), s. 27, provides for the vesting of property in the Commissioners of her Majesty's Works and Public Buildings, to whom the short title of Commissioners of Works is given by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12.

In the report from the Select Committee on Ecclesiastical and Mortuary Fees, 1882, it is stated: "The amount of fees paid out of Brompton Cemetery to London incumbents is considerable, having been £39,925 2s. in thirty years; and this for no service performed or responsibility incurred, as two chaplains are maintained by the Government, and paid each £250 a year for reading the burial services, which the incumbents were formerly required to read in their own parish churchyards, where such churchyards existed. No deduction is made from the compensation fees paid to the incumbents on account of the pay of the two chaplains who perform the original, or presumed original, duty of such incumbents."

**46.** [*Money authorised to be advanced under 14 & 15 Vict. c. 89, may be applied in completing the purchase of the Brompton Cemetery. Rep. by the Statute Law Revision Act, 1892.*]

**47.** [*Provision for winding up the West of London and Westminster Cemetery Company. Rep. by the Statute Law Revision Act, 1875.*]

Brompton  
Cemetery  
may be sold

**48.** The said Commissioners of Works shall and may, in case the said Brompton Cemetery be vested in them by or

under this Act, sell and dispose of the same or any part thereof, subject to the rights affecting the same, as the Treasury may direct; and in the meantime, until such sale, the Secretary of State may and shall permit the same to be used for the purposes of interment, upon such terms and conditions as he shall think fit; and the residue of the moneys arising from the sale and disposal of the said cemetery, or any part thereof, and in respect of the interments therein, after defraying the expenses incident to such sale and to the care and management of the cemetery, until the whole thereof shall be sold and disposed of, shall be paid to the Metropolitan Interments Repayments Account mentioned in the said Act of the last session of Parliament, to be carried to the said Consolidated Fund.

**Sect. 48.**

by direction of the Treasury, and in the meantime used for interments. [Metropolis.] Application of proceeds of sale.

14 & 15 Vict. c. 89, s. 2.

The "said Act of the last session of Parliament" is 14 & 15 Vict. c. 89, mentioned in the repealed s. 46. It related to interments in the metropolis, and was repealed by the Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).

49. Where any body is buried in any of the cemeteries mentioned in Schedule (B.) to this Act, at the expense of any union or parish, the fee or sum to be paid or payable on the interment of such body, or otherwise in respect thereof, to the incumbent of the parish or ecclesiastical district from which such body is removed for interment, shall not exceed the sum of one shilling, or, where the incumbent now receives in respect of the like burial in the ground of his parish more than one shilling, shall not exceed the sum now received, and in no case shall exceed two shillings and sixpence; and no other fee or sum whatsoever shall be payable in respect of such interment, to or for the use of any person as an officer of such parish or district, or for or on behalf of such parish or district, anything in any Act mentioned in the said Schedule (B.) or any other Act notwithstanding.

Fees on pauper burials in cemeteries mentioned in Sched. (B.) [Applies to all cemeteries established by authority of Parliament.]

By the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 7, the provisions of this section are extended to all cemeteries already established and hereafter to be established under the authority of Parliament in like manner as to those mentioned in Schedule (B.) to this Act, and as respects the cemeteries to which this section is thereby extended, it shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union

**Sect. 49.****NOTE.**

or parish. The phrase "cemetaries established under the authority of Parliament" has been held to mean cemetaries authorised by special Act of Parliament, and not to comprise burial grounds provided under the Burial Acts (*Reg. v. Maude* (1855), 5 E. & B. 702; 25 L. J. M. C. 45; 2 Jur. (n.s.) 182).

Incumbents fees to be payable to churchwardens, etc. where the fees on burials are now paid to them, etc.  
[General.]

**50.** Where under any local Act fees on interments in any burial ground of any parish [*in the metropolis*] are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this Act, or any Act relating to any cemetery company, would on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons; and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), this section is repealed so far as it relates to a burial ground under a burial authority, that is, to any burial ground provided under the Burial Acts, or to any cemetery provided under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

This section, so far as it is unrepealed, only applies to cases where fees on interments are payable *under any local Act* to churchwardens or trustees, and does not apply where such fees are payable to the churchwardens, etc., by custom or otherwise. By the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), s. 52, it is provided that cemetery companies shall pay to the incumbent of the parish from which the body shall have been removed such sums, if any, as shall be prescribed for that purpose in the special Act.

Where closed burial ground is situate in a different parish from that to which it belongs, the chapel attached thereto may be conveyed for the use of such parish.  
[General.]

**51.** Where any burial ground in which interment is discontinued under this Act belongs to any parish other than the parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which

the same is situate, with the consent of the vestry or persons possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connection with such chapel, shall cease.

**Sect. 51.**

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This section provides only for the conveyance of a *chapel and site* in or attached to a burial ground, and does not authorise the conveyance of the burial ground itself. This provision is supplemented by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 8, which enables the vestry of the parish in which the closed burial ground is situate to purchase such burial ground.

There does not appear to be any obligation on a parish or a burial board to keep in repair the chapel of a closed burial ground. Their only obligation appears to be to keep the burial ground itself in decent order, and to repair the walls and other fences thereof. See the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 18.

**Rural parishes.**—The power of conveying a chapel and site under this section is a power relating to the affairs of the church, and so far as it is exercisable by the churchwardens of a rural parish will continue to be exercisable by them, and will not be transferred to the parish council under s. 6 (1) (b) of the Local Government Act, 1894. The vestry will also in such a case continue to be the body whose consent must be obtained for the nomination of the persons to whom the conveyance shall be made, and also for the making of the conveyance, unless such conveyance entails an expense upon the parish, in which event the parish meeting will be substituted for the vestry under s. 7 (3) of that Act.

**52.** In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

Interpretation of terms  
[General.]

“Parish” shall mean every place having separate overseers of the poor, and separately maintaining its own poor:

**Sect. 52.****NOTE.**

It was held in *Reg. v. Sudbury* (1858), E. B. & E. 264 ; 27 L. J. Q. B. 232 ; 31 L. T. 161 ; 4 Jur. (N.S.) 948, that the effect of this interpretation clause was to extend the meaning of the word "parish," so as to include both parishes which had not separate overseers or did not separately maintain their own poor, and places which were not parishes but had separate overseers and separately maintained their own poor.

By the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 18, it was provided that "in all statutes, except there shall be something in the context inconsistent therewith, the word 'parish' shall, among other meanings applicable to it, signify a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed."

That provision is now repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 5, which enacts that : "In every Act passed after the year 1866, whether before or after the commencement of this Act, the expression 'parish' shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed."

**Extra-parochial places.**

By the Extra Parochial Places Act, 1857 (20 Vict. c. 19), s. 1, after December 31st, 1857, every place entered separately on the report of the Registrar-General on the last census as extra-parochial, and wherein no poor rate is levied, shall for certain purposes, including the burial of the dead, be deemed a parish for such purposes.

By the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 27, every extra-parochial place having no overseer is for all civil parochial purposes incorporated with the next adjoining parish with which it has the longest common boundary.

**Divided parishes.**

By the Divided Parishes Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), ss. 1, 4, the Local Government Board may by order constitute isolated or detached portions of parishes into distinct parishes, or amalgamate them with the parish or parishes in which they are included or to which they may be annexed, but such order shall not affect ecclesiastical divisions of parishes. And by 45 & 46 Vict. c. 58, s. 2, any isolated portion of a parish wholly surrounded by another parish is to form part of the parish surrounding it, as though an order of the Local Government Board had been made respecting it.

**Rural parishes.**—For the purposes of the Local Government Act, 1894 (56 & 57 Vict. c. 73), rural parishes are defined by s. 1 (2), (3), of that Act :—

"(2.) For the purposes of this Act every parish in a rural sanitary district shall be a rural parish.

"(3.) Where a parish is at the passing of this Act situate partly within and partly without a rural sanitary district, the part of the parish which is within the district, and the part which is without, shall as from the appointed day, but subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same."

“Ratepayers” shall mean the persons for the time being assessed to and paying rates for the relief of the poor of the parish : **Sect. 52.**

“Incumbent” and “minister” shall, in respect of any fee made payable to an incumbent or minister under this Act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of this Act; and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese : Differences between incumbents to be determined by bishop.

Owing to the repeal by the Burial Act, 1900 (63 & 64 Vict. c. 15), of so much of ss. 32—34 of this Act as relates to fees payable to incumbents, and of ss. 35—37, this definition of incumbent and minister ceases to have any operation.

The bishop has no jurisdiction to make any order as to the destination of fees for the burial of non-parishioners which may be the subject of contention between the incumbents of the parish and of the district parishes or ecclesiastical districts for which a burial ground has been provided under the Burial Acts (*per* Dr. TRISTRAM, *Re Fulham Burial Fees*, Times, November 26th, 1878).

“Churchwardens” shall mean also chapelwardens, or other persons discharging the duties of churchwardens :

“Overseers” shall mean also any persons authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor :

“Vestry” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry [*elected under an Act of the fifty-ninth year of King George the Third, chapter twelve, “to amend the laws for the relief of the poor,” or*] elected under the Vestries Act, 1831, or 1 & 2 Will. 4. c. 60. elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry :



**Sect. 52.****NOTE.**

The words between brackets are repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

As to what vestry is entitled to act, where in any parish there is more than one meeting in the nature of a vestry, see note to s. 10, *supra*.

**Rural Parishes.**—By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 75, in that Act, the expression “vestry,” in relation to a parish, means the inhabitants of the parish, whether in vestry assembled or not, and includes any select vestry, either by statute or at common law.

“Clerk” shall mean the clerk appointed pursuant to this Act by any burial board appointed under this Act.

Definition  
of “the  
metropolis.”  
[*Metropolis.*]

**53.** For the purposes of this Act, the expression “the metropolis” shall be construed to mean and include the cities and liberties of London and Westminster, the borough of Southwark, and the parishes, precincts, townships, and places mentioned in the Schedule (A.) to this Act.

This definition of the metropolis differs from that of the Metropolitan Management Act, 1855 (18 & 19 Vict. c. 120), s. 250, by including Willesden, and by excluding Eltham, Lea, Kidbrooke, Lewisham, and the hamlet of Penge.

Saving of  
rights of  
cemetery  
companies.  
[*Metropolis.*]

**54.** Provided always, that nothing in this Act contained shall extend to take away, diminish, alter, or prejudice any of the rights, powers, or authorities vested in any of the cemetery companies incorporated under the several Acts mentioned in the said Schedule (B.) to this Act; but all such rights, powers, and authorities shall be as good, valid, and effectual, as if this Act had not passed.

Resolutions can, however, be made by Order in Council in respect of burials in common graves in those cemeteries, for protection of the public health and maintenance of decency (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 10).

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#### SCHEDULE (A.).

The City of London and the Liberties thereof, the Inner Temple and Middle Temple, and all other places and parts of places contained within the exterior boundaries of the Liberties of the City of London.

#### IN MIDDLESEX.

The City and Liberties of Westminster.

The parishes of St. Margaret and St. John the Evangelist.  
The parish of St. Martin in the Fields.

**Sched. (A.)**

- The parish of St. George Hanover Square.  
 The parish of St. James.  
 The parish of St. Mary-le-Strand, as well within the liberty of  
 Westminster as within the Duchy liberty.  
 The parish of St. Clement Danes, as well within the liberty of  
 Westminster as within the Duchy liberty.  
 The parish of St. Paul Covent Garden.  
 The parish of St. Anne Soho.  
 Whitehall Gardens (whether the same be parochial or extra-  
 parochial).  
 Whitehall (whether the same be parochial or extra-parochial).  
 Richmond Terrace (whether the same be parochial or extra-  
 parochial).  
 The Close of the Collegiate Church of St. Peter.
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- The parishes of St. Giles in the Fields and St. George Bloomsbury.  
 The parishes of St. Andrew Holborn and St. George the Martyr.  
 The liberty of Hatton Garden, Saffron Hill, and Ely Rents.  
 The liberty of the Rolls.  
 The parish of St. Pancras.  
 The parish of St. John Hampstead.  
 The parish of St. Marylebone.  
 The parish of Paddington.  
 The precinct of the Savoy.  
 The parish of St. Luke.  
 The liberty of Glasshouse Yard.  
 The parish of St. Sepulchre.  
 The parish of St. James Clerkenwell, including both districts of  
 St. James and St. John.  
 The parish of St. Mary Islington.  
 The parish of St. Mary Stoke Newington.  
 The Charterhouse.  
 The parish of St. Mary Whitechapel.  
 The parish of Christchurch Spitalfields.  
 The parish of St. Leonard Shoreditch.  
 The liberty of Norton Folgate.  
 The parish of St. John Hackney.  
 The parish of St. Matthew Bethnal Green.  
 The hamlet of Mile End Old Town.  
 The hamlet of Mile End New Town.  
 The parish of St. Mary Stratford Bow.  
 The parish of Bromley St. Leonard.  
 The parish of All Saints Poplar.  
 The parish of St. Anne Limehouse.  
 The hamlet of Ratcliffe.  
 The parish of St. Paul Shadwell.

**Sched. (A).**  
 ———  
 The parish of St. George in the East.  
 The parish of St. John Wapping.  
 The liberty of East Smithfield.  
 The precinct of St. Catherine.  
 The liberty of her Majesty's Tower of London, consisting of—  
   The liberty of the Old Artillery Ground.  
   The parish of Trinity, Minories.  
   The Old Tower precinct.  
   The precinct of the Tower within.  
   The precinct of Wellclose.  
 The parish of Kensington.  
 The parish of St. Luke Chelsea.  
 The parish of Fulham.  
 The parish of Hammersmith.  
 Lincoln's Inn.  
 New Inn.  
 Gray's Inn.  
 Staple Inn.  
 That part of Furnival's Inn in the county of Middlesex.  
 Ely place.  
 The parish of Willesden.

## IN KENT.

The parish of St. Paul Deptford.  
 The parish of St. Nicholas Deptford.  
 The parish of Greenwich.  
 The parish of Woolwich.  
 The parish of Charlton.  
 The parish of Plumstead.

## IN SURREY.

The Borough of Southwark.

The parish of St. George the Martyr.  
 The parish of St. Saviour.  
 The parish of St. John Horsleydown.  
 The parish of St. Olave.  
 The parish of St. Thomas.

—————  
 The parish of Battersea (except the hamlet of Penge).  
 The parish of Bermondsey.  
 The parish of Camberwell.  
 The parish of Clapham.  
 The parish of Lambeth.  
 The parish of Newington.

The parish of Putney.

The parish of Rotherhithe.

The parish of Streatham.

The parish of Tooting.

The parish of Wandsworth.

The parish of Christchurch.

The Clink liberty.

The hamlet of Hatcham in the parish of Deptford.

Sched. (A.)

SCHEDULE (B.)

[Sects. 7, 54.]

The several CEMETERIES established under the several ACTS herein-  
after mentioned, viz.—

An Act for establishing a general cemetery for the interment of the dead in the neighbourhood of the metropolis: 2 & 3 Will. 4, c. cx.

An Act for establishing a cemetery for the interment of the dead southward of the metropolis, to be called the "South Metropolitan Cemetery": 6 & 7 Will. 4, c. cxxxix.

An Act for establishing cemeteries for the interment of the dead, northward, southward, and eastward of the metropolis, by a company to be called "The London Cemetery Company": 6 & 7 Will. 4, c. cxxxvi.

An Act for establishing a cemetery for the interment of the dead westward of the metropolis, by a company to be called "The West of London and Westminster Cemetery Company": and 7 Will. 4 & 1 Vict. c. cxxx.

An Act to establish a general cemetery for the interment of the dead, in the parishes of Saint Dunstan Stepney and Saint Leonard Bromley in the county of Middlesex. 4 & 5 Vict. c. lxiii.

The Victoria Park Cemetery in the parish of Saint Matthew Bethnal Green in the county of Middlesex: and

The Abney Park Cemetery in the parish of Saint Mary Stoke Newington in the county of Middlesex.

## BURIAL ACT, 1853.

(16 &amp; 17 VICT. c. 134.)

*An Act to amend the Laws concerning the Burial of the Dead in England beyond the limits of the Metropolis and to amend the Act concerning the Burial of the Dead in the Metropolis.* [20th August 1853.]

Preamble recited the Burial Act, 1852 (15 & 16 Vict. c. 85), and that it was expedient to make better provision for and in relation to burials beyond the limits of the said Act. Repealed by Statute Law Revision Act, 1892.

Order in Council for discontinuance of burials in city or town, etc.

1. In case it appear to her Majesty in Council, upon the representation of *one of her Majesty's principal Secretaries of State*, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits save with the previous approval of *one of such Secretaries of State*, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for her Majesty, by and with the advice of her Privy Council, to order that no new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the Order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require: Provided always, that notice of such representation, and of the time when it shall please her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the London Gazette, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered: Provided also, that no such representation shall be made in relation to the

**Sect. 1.**

burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk or churchwardens of such parish.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

For a similar provision respecting the discontinuance of burial in burial grounds of the metropolis, see Burial Act, 1852 (15 & 16 Vict. c. 85), s. 2, *ante*.

In every parish where there is no burial board, the churchwardens are required to call a vestry meeting immediately after receipt of the notice of the intention of the Local Government Board to make a representation as to the closing of the burial ground of a parish, for the purpose of determining whether a burial ground shall be provided for the parish (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 3).

The duty of keeping in order a closed churchyard or burial ground of any parish devolves upon the churchwardens or the burial board respectively, as the case may be (*ib.*, s. 18).

Where an Order in Council directed the discontinuance of burials in a burial ground with the following exception: "In such reserved grave spaces as have never been buried in, burials may be allowed of such members of the families of parishioners to whom they may be allotted as can be buried at or below the depth of five feet," a faculty was granted for allotment of a burial space to a living non-parishioner who was a member of the family of a parishioner (*In re Sargent* (1890), 15 P. D. 168).

Where an addition has been made to a churchyard by a gift of land, of which a portion is reserved to the donor for his exclusive use under the Consecration of Churchyards Act, 1867 (30 & 31 Vict. c. 133), it is provided by s. 11 of that Act that such reserved portion shall not be included in any Order in Council under the Burial Acts for closing the churchyard to which it belongs, but may be closed under a separate order on a special report that the ground is in such a state as to render further interments therein prejudicial to the public.

It is provided by 11 & 12 Vict. c. 63, s. 83, re-enacted by the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 343, and Sched. V., Part 3, that "no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after August 31st, 1848; and whoever shall bury or cause, permit, or suffer to be buried any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person with full costs of suit in an action of debt."

By the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), as amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 4, it is forbidden to erect any buildings upon any disused burial ground, whether or not partially or wholly closed by any statute or Order in

**Sect. 1.****NOTE.**

Council, except for the purpose of enlarging a church, chapel, meeting-house, or other place of worship.

By s. 4, *infra*, the Local Government Board may, at their discretion, allow burials to take place in certain cases in closed burial grounds. And any Order in Council closing a burial ground may be varied or postponed by any subsequent order (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 1). Hence, if land is held upon trust to be used as a burial ground, the trust is not extinguished but merely suspended by an Order in Council closing the burial ground, however absolute in form the order may be. Nor is the property in a burial ground in any way altered by an Order in Council; and if any part of a burial ground closed by an Order in Council is taken for public purposes or under parliamentary powers, the dividends accruing from the money paid as compensation for the land taken will be paid to the same persons who, before the Order in Council, were entitled to receive the burial fees.

By a local Act of 1792, land was directed to be purchased for an additional burial ground of a parish, and it was provided that the land when purchased was to vest in the vicar and churchwardens of the parish and their successors for the purpose of a burying ground for the parish. In 1816 a body was constituted called the church trustees. In 1821 the Act of 1792 was repealed, except that the additional burying ground was to remain vested in the vicar and churchwardens as before; but it was provided that the burial fees should be paid over by the churchwardens to the trustees to be applied to defined charitable purposes. Afterwards an Order in Council was made closing the additional burial ground, but the trustees continued to receive the burial fees from interments in a new cemetery which had been provided for the parish. A railway company took part of the closed burial ground for their undertaking. Upon two petitions, one by the church trustees praying that the purchase moneys should be paid out to them, and the other by the Attorney-General, asking that the moneys might be applied to charitable purposes, the vicar at the same time contending that he was entitled to the income as owner of the profits of all the consecrated ground in the parish, it was held that the trusts of the closed ground were merely suspended, and that the moneys must be paid out to the church trustees (*In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173; 36 L. J. Ch. 52).

By an Act of 10 & 11 Will. 3, certain land belonging to the parish of Liverpool was set apart and dedicated to the use of a burial ground, and by the sentence of consecration the corporation renounced all right to the land. In 1854 the ground was closed for burials by Order in Council. In 1866 the corporation, being authorised to take a portion of the closed burial ground under a local Act, served upon the rector, ordinary, and patron of the parish a notice to treat, and upon reference to arbitration, a sum of money was awarded for compensation. The corporation subsequently refused to pay, upon the ground that the fee simple of the land reverted to the corporation upon its being closed for burials, and the use for which it was dedicated having come to an end:—*Held*, that by the Act of Parliament, followed by the sentence of consecration, the land was dedicated for ever to the use of a burial ground, and there was no reverter of the fee to the corporation; and that, if

necessary, the court would presume a conveyance of the legal estate by the corporation (*Campbell v. Mayor, etc. of Liverpool* (1870), L. R. 9 Eq. 579; 21 L. T. (N.S.) 214; 18 W. R. 422). The compensation money having been paid into court, it was claimed both by the rector of Liverpool and by the select vestry of Liverpool, and upon petition it was ordered that the sum should remain in court, and the dividends therefrom paid to the rector till further order, he being the person who until the closing of the burial ground had enjoyed the right to such fees (*Ex parte Rector of Liverpool* (1870), L. R. 11 Eq. 15; 40 L. J. Ch. 65).

In 1807 by a local Act reciting the insufficiency of an existing churchyard, the rector and churchwardens and certain other persons were constituted trustees, and empowered to enlarge the existing churchyard, and to buy land for an additional burial ground, to be conveyed to the rector and churchwardens "for the use of the inhabitants of the parish." In 1849 a portion of the land purchased under the Act was taken by a railway company, and the purchase money paid into court, an order being subsequently made that it should be invested and the income paid to the rector and churchwardens, to be applied by them for the purpose of the local Act. In 1859 the ground was closed for burials:—*Held*, that inasmuch as the land was intended as an addition to the churchyard, the rights of the rector therein were the same as his rights in the old churchyard, so far as they were not affected by the Act under which the land was purchased, and that, as he had always received the burial fees, he was entitled to the dividends on the fund (*Ex parte Rector of St. Martin's, Birmingham* (1870), L. R. 11 Eq. 23; 40 L. J. Ch. 69; 23 L. T. 575).

In assessing, however, the amount of compensation payable by the undertakers of public works for part of a closed churchyard taken by them under their parliamentary powers, the rector or vicar of the parish is not entitled to compensation based upon the augmentation of value by reason of the secularization of the land; he is only entitled to what the bare value of the land is to him as a closed churchyard (*Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; 40 L. J. Q. B. 1; 23 L. T. 530; 19 W. R. 73).

As to notice to the vestry clerk in parishes with a population of over 2,000, the appointment and duties of a vestry clerk are regulated by the Vestries Act, 1850 (13 & 14 Vict. c. 57) (ss. 6—9 of which are, however, repealed by the Local Government Act, 1894 (56 & 57 Vict. c. 73), so far as they relate to parish meetings under that Act), if an order has been made by the Poor Law Commissioners (or since 34 & 35 Vict. c. 70, by the Local Government Board) applying that Act to such parish. In parishes of a less population than 2,000, or to which the Act has not been so applied, the vestry may elect a vestry clerk, but are under no obligation to do so (*Rex v. Churchwardens of Croydon* (1794), 5 T. R. 713).

For form of queries addressed by the Local Government Board in respect of a parish with old burial ground to obtain information as to advisability of discontinuing burials in the same, see Appendix C., No. 1, *post*.

**Rural parishes.**—In a rural parish having a parish council, the powers, duties, and liabilities of the churchwardens, except so far as

**Sect. 1.**  


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**NOTE.**



**Sect. 1.** they relate to the affairs of the church, or to charities, or are powers and duties of overseers, are transferred to the parish council (Local Government Act, 1894, s. 6 (1), (b)).

**NOTE.**

The giving notice under this section to the churchwardens of the intention to make a representation is not a matter within the above exception, and, therefore, by s. 52 (5) of that Act the words "parish council" must be read in this section for "churchwardens," and the required notice may be given to the clerk of the council (*id.*, Sched. 1, Part II., r. 15).

Orders not to extend to burial grounds of Quakers or Jews, or private burial grounds unless expressly included.

2. No such Order in Council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such Order in Council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Burials not to take place after Order in Council for discontinuance, etc.

3. It shall not be lawful, after the time mentioned in any such Order in Council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere, within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body contrary to this enactment, shall be guilty of a misdemeanor.

For similar provision as to metropolis, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 4.

By the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 2, any person disobeying such Order in Council may, on summary conviction, be fined a sum not exceeding £10.

The vicar and churchwardens of a parish church in the diocese of London, built under the Church Building Act, 1818 (58 Geo. 3, c. 45), and closed for burials by virtue of an Order in Council under the Burial Act, 1853, concurred in an application by the widow of a parishioner whose dead body had been cremated,

praying the Consistory Court of London to authorise by faculty the formation of a niche in the wall of the church, inside the church, and above the level of the floor, and the permanently placing therein of a sealed urn containing the cremated ashes of such dead body. By the affidavit to lead the faculty it appeared that the deceased, during his life, had expressed a wish that in the event of his death his remains might be cremated, and a certificate was brought in to the effect that the vestry of the parish was in favour of the remains being interred beneath the church:—*Held*, that the burial of the cremated ashes of a dead body in the church had not been prohibited by the Church Building Act, 1818, the Public Health Acts, 1848 and 1875, or by the Order in Council closing the church under the Burial Act, 1853, the provisions in those Acts as to "burial" not applying to the burial of the remains of a corpse after it has been reduced to ashes, and that the court had jurisdiction in its discretion to grant the faculty as prayed, but must decline to do so, having regard to the inconvenience which might ensue in the case of alterations in the church, etc., if the urn was deposited in the church wall, according to the proposal of the applicant. *Held* also, that the court having ascertained from the Home Office that no objection on sanitary grounds was entertained by the Home Secretary to the interment of the urn containing the remains below the floor of the church, was prepared at the request of the applicant to decree the issue of a faculty for the urn and its contents being so interred below the church, subject to a proper fee for the interment being paid to the incumbent of the parish. *Semble*, that cremated remains cannot lawfully be interred in or under a parish church, except under the authority of a faculty from the ordinary (*In re Kerr*, [1894] P. 284).

## Sect. 3.

NOTE.

4. Provided always, that notwithstanding any such Order in Council, where, by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this Act, it shall be lawful for one of her Majesty's principal Secretaries of State from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such Secretary of State may think fit; but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or

Saving of certain rights to bury in vaults, etc.

**Sect. 4.** controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this Act had not been passed.

See identical provision affecting the metropolis, *Burial Act, 1852* (15 & 16 Vict. c. 85), s. 6, *ante*, p. 121, and notes thereon.

By the *Burial Act, 1900* (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

Saving as to certain cemeteries.

**5.** The provisions of this Act shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person, in any cemetery established under the authority of any Act of Parliament, or in any burial ground or cemetery to be hereafter provided with the approval of *one of her Majesty's principal Secretaries of State*, as herein mentioned.

By the *Burial Act, 1900*, s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

The phrase "any cemetery established under an Act of Parliament," means "a cemetery established by authority of some special Act," such as the cemeteries enumerated in Schedule (B.) to 15 & 16 Vict. c. 85, *ante*, and does not extend to burial grounds established by persons who merely derive their power from the authority of general Acts, such as the *Church Building Acts* or *Burial Acts* (*Reg. v. Maude and Others, JJ. of Manchester* (1855), 5 E. & B. 702 ; 25 L. J. M. C. 45 ; 2 Jur. (n.s.) 182).

Although when a burial board has been duly appointed, the approval of the Local Government Board to the burial ground intended to be provided by the board is not requisite, except in the cases mentioned in ss. 1 and 6, and the corresponding sections of the *Burial Act, 1852* (15 & 16 Vict. c. 85), yet it is advisable in all cases to obtain such approval, inasmuch as the provisions of this section then become applicable, and the ground so provided affords better security for the usual loan which the board will endeavour to raise for providing the purchase money.

New burial grounds not to be opened contrary to Order in Council.

**6.** Where by any such Order in Council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of *one of her Majesty's principal Secretaries of State*, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

**Sect. 6.**  
**NOTE**

It has been held in *Greenwood v. Wadsworth* (1873), L. R. 16 Eq. 288; 43 L. J. Ch. 78; 29 L. T. 88; 21 W. R. 722, that even a private burial ground made within limits to which an Order in Council applies, after application to and approval by the Secretary of State, is subject to the provisions of the Burial Act. But see note on this case at s. 9 of the Burial Act, 1855 (18 & 19 Vict. c. 128), *post*, p. 208.

The burial board of Portsmouth, where by Order in Council no new burial ground was to be opened without the previous approval of one of the Secretaries of State, contracted in 1889, with the consent of the vestry, for the purchase of a piece of land for the purpose of adding to their existing burial ground. The purchase was not to be completed till June 1896. In the meantime no interest was to run and the vendor was to be at liberty to remove the clay, and make bricks on the land. In 1895 the property and liabilities of the board were transferred to the corporation. Shortly before the time for completion, the corporation applied to the Home Secretary for his approval of the land as a burial ground, which he refused to give. The corporation then declined to complete, and the vendor sued for specific performance or damages:—*Held*, that this section, which provides that no new burial ground shall be “provided and used” within the limits there specified without the approval of a Secretary of State, applies to an addition to an existing burial ground. *Held* also, that this section does not prohibit the contracting to purchase land with the consent of the vestry for the purpose of a burial ground without the approval of a Secretary of State, and that the contract was therefore binding, and the vendor entitled to damages for the breach of it, he not insisting on specific performance (*Ward v. Portsmouth Corporation*, [1898] 2 Ch. 191).

7. All the provisions contained in the Burial Act, 1852, from section ten to section forty-two (both inclusive) of the said Act, and also in sections forty-four, fifty, fifty-one, and fifty-two of the said Act, shall extend and be applicable to and in respect of any parish not in the metropolis, and for the purpose of providing a burial ground for any such parish, or otherwise providing for the interment of the bodies of persons who would have had right of interment in the burial ground of any such parish, and generally in relation to every such burial ground to be so provided, and the fees and payments to be received in respect of interment or other rights therein, and otherwise, as if such sections were re-enacted in this Act, [and the words “in the metropolis,” wherever they occur in such sections, or any of them, were omitted]; and section forty-nine of the said Act

**Extension of certain provisions of 15 & 16 Vict. c. 85, to parishes not in the metropolis.**

**Sect. 7.**

Division of  
burial  
grounds  
under  
15 & 16 Vict.  
c. 85, and  
this Act into  
consecrated  
and uncon-  
secrated  
parts, etc.

shall extend to all cemeteries already established and hereafter to be established under the authority of Parliament in like manner as to those mentioned in Schedule (B.) to that Act; and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish: Provided always, that in all cases in which any burial board shall provide a new burial ground under the Burial Act, 1852, or under this Act, [*that new burial ground shall be divided into consecrated and unconsecrated parts in such proportions, and*] the unconsecrated part thereof shall be allotted in such manner and in such portions, as may be sanctioned by one of her Majesty's principal Secretaries of State; [*and when any burial board shall, by virtue of section thirty of the said Act, build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said church, such chapel accommodation for the performance of [the] burial service by persons not being members of the said church as may be approved of by one of her Majesty's Secretaries of State*].

The words of this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), and other provisions substituted therefor by ss. 1 and 2 of that Act.

The provisions of this section as to allotment of the unconsecrated part of a burial ground are, by s. 9 of the Burial Act, 1900, applied to burial grounds provided under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), as if the burial authority were a burial board.

There seems little reason for doubting that the words "cemeteries established under the authority of parliament," used in this section, are to be interpreted in the same sense as the words, "any cemetery established under the authority of any Act of Parliament," used in s. 5, *supra*, as applying only to cemeteries established by companies or individuals under special Acts (*Reg. v. Maude and Others, J.J. of Manchester* (1855), 5 E. & B. 702; 25 L. J. M. C. 45; 2 Jur. (n.s.) 182).

**Rural parishes.**—The provisions of this section are now subject to provisions of the Local Government Act, 1894, by which in rural parishes, the parish council is substituted for a burial board, and will be the authority for the execution of the Burial Acts. See

notes to ss. 10 and 11 of the Burial Act, 1852 (15 & 16 Vict. c. 85),  
ante, pp. 125, 127.

**Sect. 7.**

**NOTE.**

**Urban districts.**—By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62 (2), after the appointed day no burial board shall be appointed for any part of an urban district without the approval of the council of that district.

8. All burials within any burial ground provided under the Burial Act, 1852, or this Act shall be registered in a register book to be provided by the burial board providing such ground, (or, where the same is provided by the Commissioners of Sewers of the city of London, then by such commissioners,) and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board or commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and, where the whole of such burial ground is not consecrated for interments according to the rites of the United Church of England and Ireland, whether in the portion so consecrated or in the portion not so consecrated, the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts therefrom, shall be received in all courts as evidence of the burials entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by the Births and Deaths Registration Act, 1836, so far as such regulations relate to register books of burials kept by any rector, vicar or curate.

Registration of burials in grounds provided under 15 & 16 Vict. c. 85, or this Act.

6 & 7 Will. 4, c. 86.

**Sect. 8.****NOTE.**

The Act regulating the keeping of registers by the rectors, vicars, or curates of parishes or ecclesiastical districts in England is the Parochial Registers Act, 1812 (52 Geo. 3, c. 146), modified by the Forgery Act, 1830 (11 Geo. 4 and 1 Will. 4, c. 66), s. 31; the Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 1, and the Statute Law Revision Act, 1873. See *post*, REGISTRATION OF BURIALS.

The general Acts regulating the registration of births, deaths, and marriages are the Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86); the Births and Deaths Registration Act, 1837 (7 Will. 4 and 1 Vict. c. 22); the Births and Deaths Registration Act, 1858 (21 & 22 Vict. c. 25); the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88). For ss. 18, 19 of the last-named Act relating to burials, see *post*. For registration of burials generally, see the Registration of Burials Act, 1864 (27 & 28 Vict. c. 97), *post*.

The Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 35, provides that "every rector, vicar, or curate, and every registrar, registering officer, and secretary, who shall have the keeping for the time being of any register book of births, deaths, or marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same, on payment of the fee hereinafter mentioned; (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate."

This section does not authorise any charge for extracts made by the person searching the register (*Steele v. Williams* (1853), 22 L. J. Ex. 255; 8 Ex. 625). The searcher would not indeed be entitled to remain an unreasonable time looking at the registers, and perhaps he would not be entitled in strictness to have the book in his hand for that purpose (*per PARKE, B., id.*).

By s. 64 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), "the duty upon a certified copy or extract of or from any register of births, baptisms, marriages, deaths, or burials is to be paid by the person requiring the copy or extract, and may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the copy or extract is signed before he delivers the same out of his hands, custody, or power." By the schedule to the said Act the duty on any certified copy or extract from any register of births, baptisms, marriages, deaths, or burials is *1d.*, with the following exemptions:— (1.) Copy or extract furnished by any clergyman, registrar, or other official person pursuant to and for the purposes of any Act, or furnished to any general or superintending registrar under any general regulation. (2.) Copy or extract for which the person giving the same is not entitled to any fee or reward.

For transmission of certificates and entry of burials in the register, where the burial has taken place in consecrated ground without a religious service, or with a religious service other than that of the Church of England, see the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 10, *post*.

Forgery in, or wilfully destroying or injuring, any register of burials, or giving false certificates of entries therein is felony (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 15, *post*).

**Rural Parishes.**—When the parish council is the authority for the execution of the Burial Acts in a rural parish, the register must be provided by the council, and kept by some officer appointed by the council.

Sect. 8.  
—  
NOTE.

9. Nothing in this Act, except the provisions in sections seven and eight, shall extend to any parish in “the metropolis,” as defined by the Burial Act, 1852, or otherwise affect the provisions of that Act. Saving as to metropolis.

For definition of “the metropolis,” see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 53, *ante*, p. 178.

10. This Act shall not extend to Scotland or Ireland.

Extent of Act.

## BURIAL ACT, 1854.

(17 & 18 VICT. c. 87.)

*An Act to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis.*

[10th August 1854.]

Preamble recited the Burial Act, 1853 (16 & 17 Vict. c. 134), and that in some cases of parishes wholly or partly within boroughs there was difficulty or inconvenience in providing requisite places of burial under the said Act, and that it was expedient in such cases that such places of burial should be provided by the councils of such boroughs. Repealed by Statute Law Revision Act, 1892.

1. In case it appear to her Majesty in Council, upon the petition of the town council of any borough, stating that an Order in Council has been made for closing all or any of the burial grounds of one or more parishes being wholly or partly within such borough, that there is difficulty or inconvenience in providing under the powers of the Burial Act, 1853, requisite places of burial for the inhabitants of such parish or parishes, it shall be lawful for her Majesty, with the advice of her Privy Council, to order that powers shall be vested in the council of such borough for providing such places of burial under the provisions of this Act: Provided always, that notice of such petition and of the time when

Her Majesty may, by Order in Council, invest town councils with the power of providing burial grounds for parishes wholly or partly within boroughs, where such grounds cannot be



**Sect. 1.**  
provided  
under  
16 & 17 Vict.  
c. 134.

it shall please her Majesty to order that the same be taken into consideration by the Privy Council shall be published in the London Gazette, and in one of the newspapers usually circulating in such borough, one month at least before such petition is so considered.

For definitions of "borough" and "town council of any borough," whenever used in this Act, see Burial Act, 1857 (20 & 21 Vict. c. 81), s. 29, *post*.

The burial ground or grounds provided by the town council are, by s. 7, *infra*, to be deemed to be provided for such parish or parishes as the town council may determine; and by s. 9, *infra*, if any parish is at the time of the petition provided with a sufficient burial ground, his Majesty in Council may in the order direct that such parish or parishes shall not be assessed towards defraying the expenses of providing such burial ground or grounds. Any parish in a borough, therefore, which desires to keep a separate burial ground should make a representation to that effect to his Majesty in Council before the order is made on the petition of the town council, otherwise the parish may have to contribute not only towards the expenses of maintaining its own burial ground, but also towards the expenses of providing and maintaining the burial ground provided by the town council.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62, where a burial board exists in any urban district or part of an urban district, the council of that district may resolve that the powers, duties, property, debts, and liabilities of such burial board shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the burial board shall cease to exist, and the council shall be the successors of the burial board; and after the appointed day no burial board shall be appointed for any part of an urban district without the approval of the council of that district.

Upon the  
making of  
any such  
order, the  
borough  
council to be  
a burial  
board.  
16 & 17 Vict.  
c. 134;  
15 & 16 Vict.  
c. 85.

2. Upon the making of any such Order of her Majesty in Council as aforesaid in relation to any borough, if the town council of the same shall decide upon providing one or more burial grounds, the said town council shall be a burial board for that purpose; and the provisions of the Burial Act, 1853, and the provisions of the Burial Act, 1852, in the Burial Act, 1853, mentioned or referred to, and thereby extended and made applicable as therein mentioned, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, shall, subject to the provisions herein contained, extend and be applicable to such borough and the council thereof, and to any burial ground and any places for the reception of the bodies of the dead previously to interment which may be

provided by such council under this Act, in like manner as the same are applicable to any parish and the burial board thereof, and to any burial ground and any such places as aforesaid provided by such burial board, save that no approval, sanction, or authorisation of the vestry of any parish shall be requisite.

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The provisions of the Burial Act, 1852 (15 & 16 Vict. c. 85), excepted by this section, are contained in ss. 10, 11, 13, 14, 16—18, 24, of that Act.

As to providing mortuaries, see the Burial Act, 1852, s. 42.

3. Provided always, that all expenses of carrying this Act into execution in any borough shall, subject to the provisions hereinafter contained, be chargeable upon and paid out of the borough fund and borough rates of such borough, or partly out of such fund and partly out of such rates, in like manner as if the same were expenses incurred in carrying into effect the provisions of the Municipal Corporations Act, 1835; and any money to be borrowed under the authority of this Act by the council of such borough, and the interest thereon, shall be charged by such council on the moneys out of which such expenses are by this Act directed to be paid, and the said provisions hereby extended and made applicable to the said council shall be construed accordingly; and any surplus of money raised for defraying such expenses as aforesaid, and of the income of any burial ground provided by the council of any borough, which if the same were provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the borough fund or borough rates of such borough, or in case a separate rate has been levied in parts only of such borough for the purposes of this Act, as hereinafter provided, then such surplus shall be applied rateably towards payment or satisfaction of so much of any borough rate as may be leviable in such parts of such borough: Provided always, that such surplus shall be ascertained upon the auditing of the accounts of the treasurer of such borough in the month of September in any year.

Expenses to be paid out of borough fund and borough rates; 5 & 6 Will. 4, c. 76.

How money borrowed under this Act shall be charged.

Application of surplus of money borrowed, and of income of burial ground.

The Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), is repealed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), which provides in s. 242, that a reference to the latter Act in

**Sect. 3.****NOTE.**

17 & 18 Vict. c. 87, shall be deemed to be substituted for a reference to the former Act and any Act amending it.

Provisions are contained in the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), as to the constitution of a town council (ss. 8—16); meetings and entries of proceedings (s. 22); accounts and audit (ss. 25—28); election of auditors (s. 62); borough funds and rate (ss. 139—149).

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 22, town councils are empowered to make a separate rate for burial expenses.

Burial boards and town councils may borrow at a lower rate of interest to pay off securities bearing a higher rate.  
16 & 17 Vict. c. 134;

4. If any burial board under the Burial Act, 1853, or the council of any borough acting under this Act, can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they think fit, so borrow accordingly in order to pay off and discharge any security or securities bearing a higher rate of interest, and to secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other moneys authorised to be borrowed by such burial board or council under the Burial Act, 1853, or this Act.

For borrowing powers generally of burial boards, see the Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 20, 21, and the Burial Act, 1857, ss. 18—21.

It would seem that the provisions in this and the next section do not apply to burial boards of metropolitan parishes. The powers hereby conferred are conferred only on burial boards "under the Burial Act, 1853," and burial boards of metropolitan parishes are formed under the Burial Act, 1852. An examination of s. 7 of the Burial Act, 1853, shows that the provisions of the Act of 1852 are only made general in respect of any parish not in the metropolis, so that the burial board of a metropolitan parish is entirely under the Act of 1852, as amended by the latter part of s. 7 and by s. 8 of the Act of 1853, and, therefore, these sections do not apply to such board.

and may borrow money to pay off mortgages which they are otherwise unable to pay off.

5. If at the time appointed by any mortgage for payment of the principal money secured thereby any such burial board or council as aforesaid are unable to pay off the same, they may, if they think fit, borrow such sum of money as may be necessary for the purpose of paying off all or any part of such principal money, and secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other moneys authorised to be borrowed by such burial board or council under the Burial Act, 1853, or this Act.

16 & 17 Vict. c. 134.

See note to s. 4, *supra*.

**6.** The council of any borough shall act in execution and exercise of their duties, powers, and authorities under this Act in like manner as in execution and exercise of their duties, powers, and authorities under the Municipal Corporations Act, 1835; and every conveyance of lands to be purchased for the purposes of this Act shall be taken in the name of the body corporate of such borough, and such body corporate shall have power to hold such lands for the purposes of this Act; and no lands purchased under this Act by the council of any borough shall be sold, except with the like approbation and subject to the like restrictions as if sold under the Municipal Corporations Act, 1835; and the signature of any member or members of such council shall not be necessary to any conveyance of any lands so sold; and a receipt under the hand of the treasurer of such borough shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

**Sect. 6.**

Council shall act under this Act as under 5 & 6 Will. 4, c. 76.

Conveyance and sales of land under this Act, how to be made.

See the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) (which repeals and, by s. 242, is substituted for 5 & 6 Will. 4, c. 76), ss. 107—109, for the acquisition and sale of lands by a town council.

**7.** The burial ground or burial grounds provided for any borough under this Act shall be deemed to be provided for such parish or parishes wholly or in part situate in such borough as the town council shall determine.

Burial grounds to be for such of the parishes in the borough as the council determines.

For the consequences of a burial ground provided under the Burial Acts becoming the burial ground of the parish or parishes for which it is provided, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 32, *ante*.

**Rural parishes.**—If on March 5th, 1894, the day of the passing of the Local Government Act, 1894, a parish was partly within the borough, and partly within a rural sanitary district, the part which was within the borough and the part which was within the rural sanitary district became, as from the appointed day, but subject to any alteration of area made by or in pursuance of that or any other Act, separate parishes, as though they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same (Local Government Act, 1894, s. 1 (3)), and the part which was within the rural sanitary district will be a rural parish (*id.* s. 1 (2)). Power, however, was reserved to the county council (*id.* s. 36 (1)), to make an order before the appointed day that the whole parish should be included within the borough; so that for the future there will be no civil parishes partly within and partly without a borough. Ecclesiastical parishes are not affected by that Act.

**Sect. 8.**

Rates of payment for interment, etc. in respect of the inhabitants of the out-lying part of any parish, partly situate in the borough.  
15 & 16 Vict. c. 85, s. 34.

8. [It shall be lawful for the council of any borough, if they see fit, in fixing and settling, revising and altering, the fees, payments, and sums mentioned in section thirty-four of the Burial Act, 1852, from time to time to fix all or any of such fees, payments, and sums in respect of interments of the remains of persons being inhabitants of that part of any parish partly within and partly without the limits of such borough which is without such limits, and in respect of other rights to be exercised with reference to the interment of the remains of such persons, at a higher amount than the ordinary charge for the time being fixed by such council in respect of the like matters: Provided always, that such higher amount shall be fixed with the approval of one of her Majesty's principal Secretaries of State.]

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), but it is presumed that if a town council had before the passing of the Local Government Act, 1894 (56 & 57 Vict. c. 73), provided a burial ground under this Act for a parish partly within and partly without the borough, and had fixed a higher scale of interment fees for the inhabitants of that part of the parish that was without the borough, such scale is not affected by the mere repeal of this section.

Exemption of parishes already having burial grounds.

9. Where previously to the making of any Order in Council under this Act in relation to any borough it appears to her Majesty in Council, upon the petition of the town council so made as aforesaid, or otherwise, that any parish wholly or in part within such borough is provided with a sufficient burial ground, it shall be lawful for her Majesty in and by such order to direct that no part of such parish shall be assessed towards defraying the expenses of executing this Act in such borough, and in such case no burial ground provided for such borough under this Act shall be deemed to be provided for such parish; and any money required to be raised in such borough for defraying such expenses, or paying any money borrowed under this Act by the council of such borough, or any interest thereon, by means of a rate to be levied in such borough, shall be raised by a separate rate, to be levied within such parts of such borough as are not exempted under such order from being assessed as aforesaid; and (so far as may be consistent with this provision) the council of such borough shall have all such

powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the Municipal Corporations Act, 1835. Sect. 9.  
5 & 6 Will. 4,  
c. 76.

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 22, a town council may make a separate rate for burial expenses, to be made and levied in the same way as a borough rate under the Municipal Corporations Act, 1835 (45 & 46 Vict. c. 50), ss. 144—149, which by s. 242 of that Act is substituted for the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76).

For the transfer of the powers, &c., of a burial board for any part of an urban district to the council of that district under section 62 of the Local Government Act, 1894, see note to s. 1, *supra*, p. 194.

10. *[The powers of settling and fixing the fees or sums to be payable to the incumbent or minister, and of revising and varying the fees payable to the incumbent, clerk, and sexton, and other persons and bodies, and of substituting for such fees fixed annual sums, by sections thirty-three and thirty-seven of the Burial Act, 1852, given to the vestry, and exercisable with the approval or consent of the bishop of the diocese, as therein mentioned, shall, with respect to fees and sums arising in or from any burial ground provided under this Act by the council of any borough, be transferred to such council, and be exercisable with the like approval or consent.]* Powers as to  
fixing and  
revising the  
fees payable  
to incumbent,  
etc.  
15 & 16 Vict.  
c. 85, ss. 33,  
37.

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), which, by s. 3 (1)—(5), provides for fixing the fees of the incumbent and sexton for services rendered, abolishes, with certain temporary reservations, the right of the incumbent to fees other than for services rendered, and abolishes clerk's fees altogether.

11. It shall be lawful for the council of any borough to appropriate for the purposes of this Act any land belonging to the body corporate of such borough, or vested in any feoffees, trustees, or others, for the general benefit of the borough, or for any specific charity: Provided always, that where any land so appropriated shall be subject to any charitable use, such land shall be taken on such conditions only as the Court of Chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct. Appropriation of land  
for the  
purposes of  
this Act.

For the appropriation by burial boards of public or charitable lands for a burial ground, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 29, *ante*

**Sect. 12.**  
Burial ground not to be within 100 yards of a dwelling-house.

12. [So much of the said Act of the fifteenth and sixteenth years of her Majesty as enacts that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall not extend or be applicable to or in respect of any burial grounds which have been or may be provided under the said Act of the last session and this Act, or either of them, or to or in respect of any addition which has been or may be so provided to any burial ground; but no ground not already used as or appropriated for a cemetery shall be appropriated under the said Act of the last session and this Act, or either of them, as a burial ground, or as an addition to a burial ground, nearer than one hundred yards to any dwelling-house, without such consent as aforesaid.]

This section is repealed by the Statute Law Revision Act, 1892.

For an examination of the provisions of the Burial Acts regulating the site and position of new burial grounds, see notes to Burial Act, 1855, s. 9, *post*, p. 207.

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## BURIAL ACT, 1855.

(18 & 19 VICT. c. 128.)

*An Act further to amend the Laws concerning the Burial of the Dead in England.*

[14th August 1855.]

Preamble recited the Burial Acts, 1852, 1853, and 1854, and that it was expedient that further provision should be made for the burial of the dead, and that the said Acts should be amended. Repealed by Statute Law Revision Act, 1892.

Orders in Council may be varied so as to postpone the time for discontinuance of burials, etc.

1. It shall be lawful for her Majesty, by and with the advice of her Privy Council, from time to time to postpone the time appointed by any Order in Council for the discontinuance of burials, or otherwise to vary any Order in Council made under any of the said recited Acts or this Act, (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such

order shall or shall not have arrived,) as to her Majesty, with such advice as aforesaid, may seem fit. Sect. 1.

As an order closing a burial ground may be varied by any subsequent order, the trusts upon which a burial ground may be held are only suspended, and not extinguished, by such order (*In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173 ; 36 L. J. Ch. 52 ; see *ante*, p. 184).

2. If any person, after the time mentioned in any Order in Council under the said Acts or any of them, or this Act, for the discontinuance of burials, shall knowingly and willfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial, or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds. Penalty on persons buying contrary to the provisions of Orders in Council.

A penalty of £50 is imposed by the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 80, for burying within the walls of any church erected under the provisions of the Church Building Acts, or within twenty feet from the external walls thereof, except in brick or stone vaults constructed for the purpose under the church, to which the only access is on the outside of the church.

By the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 3, *ante*, p. 186, it is made a misdemeanor to bury any body in any place closed by Order in Council. This section does not repeal the provisions of the earlier Act, but offers an alternative course of proceeding summarily before justices instead of by indictment, in which case the punishment would be a fine or imprisonment, or both, in the discretion of the court. See *Reg. v. Maude and Others, JJ. of Manchester* (1855), 5 E. & B. 702 ; 25 L. J. M. C. 45 ; 2 Jur. (N.S.) 182, where a rule was granted calling on justices to hear and adjudicate on an information laid under this section.

3. The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed may, at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish ; and where any Order in Council has been made before the passing of this Act for discontinuing burials (wholly or subject to any exception or Vestry meetings for providing burial grounds.



**Sect. 3.**

qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the *Secretary of State* to make a representation to her Majesty in Council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall with all convenient speed after the passing of this Act convene a meeting of the vestry for the purpose aforesaid; and where at any time hereafter notice is given of the intention of the *Secretary of State* to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid; and all the provisions of the said Acts, as amended by this Act, relating to and consequent upon vestry meetings convened upon such requisition as provided by the first-recited Act, shall be applicable to vestry meetings convened under this enactment.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

This section amends s. 10 of the Burial Act, 1852 (15 & 16 Vict. c. 85), which requires a requisition in writing of ten ratepayers to convene such vestry meeting. For notice of intention of the Local Government Board to make a representation, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 2, and the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 1.

**Rural parishes.**—For the operation of this section in rural parishes in consequence of the provisions of the Local Government Act, 1894, see note to ss. 10, 11 of the Burial Act, 1852 (15 & 16 Vict. c. 85), *ante*, pp. 125, 127.

**Urban districts.**—By s. 62 (2) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), after the appointed day no burial board shall be appointed for any part of an urban district without the approval of the council of that district.

Vacancies in  
burial board.

4. Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the

**Sect. 4.**

vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein.

This section takes the place of the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 12 (repealed by the Statute Law Revision Act, 1875), which allowed the vestry to fill up vacancies when and as it should think fit.

By the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 34, a member of a burial board vacates his office on being adjudged bankrupt.

The vestry may fill up a vacancy after the month has expired if the burial board has not done so in the meantime (*Reg. v. South Weald* (1864), 5 B. & S. 391; 33 L. J. M. C. 193; 10 L. T. (N.S.) 498; 12 W. R. 873).

The reasonable expenses incurred in taking a poll of the ratepayers of any parish on a contested election in case of a vacancy in burial board may be paid by the burial board (Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), s. 2).

As by s. 21, *infra*, this Act and the Burial Act, 1852 (15 & 16 Vict. c. 85), are to be read and construed together as one Act, it would seem that the incumbent of the parish may be elected on the burial board to fill up a vacancy under this section, although not a ratepayer, by virtue of the proviso in s. 11 of the Act of 1852. There is some doubt, however, upon the point, as that section only provides for his appointment upon a new board and subsequent reappointments, and does not contemplate an appointment to fill a vacancy upon an old board, which is provided for by this section with the added condition that every person elected to fill a vacancy shall be a ratepayer.

Whether the board can act when there are so many vacancies that a quorum cannot be formed, see note to 15 & 16 Vict. c. 85, s. 14, *ante*, p. 129.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish, this section will have no application, but the vacancy in the council will be filled up in accordance with provisions of the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 47 (4), and Sched. 1, Part II., rule 2.

**5.** [So much of section thirteen of the said Act of the Monthly fifteenth and sixteenth years of her Majesty as requires that the burial board shall meet once at least in every month shall be repealed.] <sup>meetings of boards</sup> ~~repealed.~~

Repealed by Statute Law Revision Act, 1875.

**Sect. 6.**

If vestry refuse or neglect to authorise expenditure, *Secretary of State* may authorise burial board to act without such authority.

15 & 16 Vict. c. 85.

6. If the vestry of any parish shall refuse or neglect to authorise the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to *one of her Majesty's principal Secretaries of State*; and in case it shall appear to *the Secretary of State*, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for *such Secretary of State*, by warrant under his hand, to authorise such burial board, without further authority, sanction, or approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts, as under the sections nineteen, twenty, twenty-six, and forty-two of the Burial Act, 1852, might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as *such Secretary of State* may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval and sanction of such vestry had in every case been obtained.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section, are transferred to the Local Government Board.

By the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 19, the expenses to be incurred by the burial board in providing and laying out a burial ground, and building the necessary chapel or chapels therein, are not to exceed such sum as the vestry shall authorise to be expended for such purpose. By s. 26 of the same Act, the consent of the vestry is required to enable the burial board to contract for or purchase any lands for a burial ground. If the vestry refuse to authorise the necessary expenditure, and the warrant of the Local Government Board is obtained under this section, the burial board may forthwith purchase a burial ground without further approval of the vestry. If, however, the vestry authorise the expenditure, but nullify their sanction by refusing to approve of any site for the burial ground

under 15 & 16 Vict. c. 85, s. 26, there is some doubt whether this section will assist the board. It is submitted, however, that if it can be shown that the vestry arbitrarily refuse to approve of any proposed site with a view of preventing the board from carrying out the objects of the Burial Acts, the Local Government Board would be justified in issuing their warrant under this section, so as to get rid of the opposition of the vestry.

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NOTE.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish, the sanction of the parish meeting is substituted for the sanction of the vestry whenever such sanction is required in relation to any expense or rate (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (3)). If the parish meeting refuse or neglect to authorise the necessary expenditure, the parish council may apply under this section to the Local Government Board, who may issue a warrant to the council authorising such expenditure. As, however, there is a special provision in s. 12 (3) of the Local Government Act, 1894, that a parish council shall not borrow for the purposes of the Burial Acts otherwise than in accordance with that Act, the warrant of the Local Government Board under this section, will not authorise the council to borrow money in the manner prescribed by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 20, but such money must be borrowed in the manner prescribed by the Local Government Act, 1894.

7. All such fees, payments, and sums as may be fixed, settled, and received by any burial board, under section thirty-four of the Burial Act, 1852, shall be so fixed and settled subject to the approval of *one of her Majesty's principal Secretaries of State*; and no such fees, payments, or sums shall be altered or varied without such approval.

Fees, etc. to be subject to the approval of Secretary of State.

15 & 16 Vict. c. 85.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

The fees mentioned in this section are those only which are payable to the burial board in respect of interments, exclusive right of burial, the right to construct vaults, erect monuments, etc., and do not include the fees to the incumbent or sexton, which are now provided for by s. 3 of the Burial Act, 1900, and require the approval of the Home Secretary.

It is the duty of the burial board to fix and settle the fees referred to in this section, and the proposed scale should then be sent to the Local Government Board, authenticated by the signature of the chairman, or by the seal of the board, for the approval of that Board.

As a general rule, the Home Secretary did, and probably the Local Government Board will, require evidence that the proposed scale of fees has been published in the district to which it applies a sufficient time to allow of objections being made to it. The publication usually required is by advertisement in a local newspaper and by affixing the scale of fees to the doors of all churches and chapels in

**Sect. 7.** the district, for not less than three weeks before the application is made for approval.

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The observance, however, of these domestic regulations of the Home Office, was not a condition precedent to the approval by the Home Secretary to the proposed scale, and such approval has, in some instances, been given without any previous publication or opportunity for objections being made. Probably, the practice of the Local Government Board will in the future be similar in this respect.

Inspection of burial grounds.

8. It shall be lawful for *one of her Majesty's principal Secretaries of State* from time to time to appoint and authorise any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the *Secretary of State* under the said Acts or any of them, to ascertain whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery or other place shall obstruct any person so authorised to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to such regulations as aforesaid shall violate or neglect or fail to observe and comply with any such regulation, or any regulation imposed by this Act, every person so offending shall upon summary conviction thereof before two justices forfeit and pay a sum not exceeding ten pounds.

Penalty for obstructing inspector or violating regulations.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

Regulations concerning burial grounds may be made by the Local Government Board under the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 44; and concerning certain burials in cemeteries by Order in Council under the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 10. For regulations, see *post*, Appendix A., No. 4.

[Part of s. 24 (*sic*) of 15 & 16 Vict. c. 85 repealed.]

9. [So much of the said Act of the fifteenth and sixteenth years of her Majesty as enacts that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall be repealed; but]

no ground not already used as or appropriated for a cemetery shall be used for burials under the said Act or this Act, or either of them, within the distance of one hundred yards from any dwelling-house, without such consent as aforesaid. **Sect. 9.**

New burial ground not to be within 100 yards of a dwelling-house.

The section hereby partly repealed is s. 25 of the Burial Act, 1852 (15 & 16 Vict. c. 85), not s. 24, as appears in the side-note.

The words of this section printed in italics are repealed by the Statute Law Revision Act, 1892, but it is necessary to retain them here in order to explain to what the last words of the section "such consent as aforesaid" refer.

See the Burial Act, 1854 (17 & 18 Vict. c. 87), s. 12, for the previous enactment on this subject.

It may be convenient to collect here the various provisions of the Burial Acts regulating the site and position of new burial grounds :

By the Burial Act, 1852, s. 9, no new burial ground or cemetery (parochial or non-parochial) shall be provided or used in the metropolis, or within two miles of any part thereof, without the previous approval of a Secretary of State (now the Local Government Board).

By the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 1, his Majesty in Council may order that no new burial ground shall be opened in any city or town, or within any defined limits, without the previous approval of a Secretary of State (now the Local Government Board), and by s. 6, after such order, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town or within such limits without such previous approval.

The Burial Act, 1852, s. 25, originally provided "that no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this Act nearer than *two hundred yards* to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house."

This provision was altered by the Burial Act, 1854 (17 & 18 Vict. c. 87), s. 12, which declared that the above quoted provision should not apply, and enacted that "no ground not already used as or appropriated for a cemetery shall be appropriated under the said Act of the last session or this Act, or either of them, as a burial ground, or as an addition to a burial ground, nearer than *one hundred yards* to any dwelling-house, without such consent as aforesaid." It will be noticed that except the substitution of *one hundred* for *two hundred* yards, the wording of the latter statute is identical with that of the former.

The Burial Act, 1855, s. 9, repealed the now useless words of 15 & 16 Vict. c. 85, s. 25, and enacted that "no ground not already used as or appropriated for a cemetery shall be *used for burials* under the said Act or this Act, or either of them, within the distance of *one hundred yards* from any dwelling-house, without such consent as aforesaid."

This section, it will be seen, only prohibits a new ground from being "used for burials" within a hundred yards of a dwelling-house ; whereas 17 & 18 Vict. c. 87, s. 12, prohibited a new ground from being "appropriated as a burial ground or as an addition to a

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burial ground" within that distance. It was held in *Cowley v. Byas* (1877), 5 Ch. D. 944; 26 W. R. 1; 37 L. T. 238; 41 J. P. 804, that the effect of this difference in language was practically to repeal 17 & 18 Vict. c. 87, s. 12, and that new ground might be appropriated as a cemetery within a hundred yards of a dwelling-house without the consent of the owner or occupier, provided that no part of the ground so appropriated was actually used for the burial of bodies within the hundred yards, and now by the Statute Law Revision Act, 1892, s. 12 of 17 & 18 Vict. c. 87, is expressly repealed.

The Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), s. 10, provides that "no part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance be prescribed, two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house." The limit of two hundred yards applies, therefore, to cemeteries constructed by a local authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), with which the Cemeteries Clauses Act, 1847, is incorporated.

It will be noticed that each of the sections above cited, 15 & 16 Vict. c. 85, s. 25; 17 & 18 Vict. c. 87, s. 12; and 18 & 19 Vict. c. 128, s. 9, is restricted in its operation to new grounds appropriated or used for burial under one or another of the cited Acts, or all of them. Under the provisions of subsequent Acts for construing such subsequent Acts as one with the previous Burial Acts (see 20 & 21 Vict. c. 81, s. 30; 22 Vict. c. 1, s. 2; 34 & 35 Vict. c. 33, s. 2), the provisions of these sections are extended to new grounds appropriated or used for burial under any of the Burial Acts. It would apparently result from the limitation in the operation of these sections that burial grounds not appropriated or used for burial under the Burial Acts, would not be affected by the provisions of the above cited sections with regard to the hundred yards radius; and that private burial grounds might be made subject only to the common law prohibition against nuisances. It was decided, however, by MALINS, V.-C., in *Greenwood v. Wadsworth* (1873), L. R. 16 Eq. 288; 43 L. J. Ch. 78; 29 L. T. 88; 21 W. R. 722, that where the approval of the Home Secretary has been requested and obtained for the extension of a private burial ground, s. 9 of 18 & 19 Vict. c. 128, applied, and the new ground could not be used for burials within the distance of a hundred yards from a house, the owner of which had refused his consent. The judgment as reported in the Law Reports is not altogether satisfactory. The Vice-Chancellor is made to say: "The first of the series of these Acts, 15 & 16 Vict. c. 85, provides that no new burial places, whether parochial or non-parochial, shall be opened without the previous approval of the owners of buildings. That provision, therefore, consequently applies to burial grounds of all kinds." There is, however, no such provision in that Act at all. The only section in that Act referring to the consent of owners of buildings is s. 25, and that says nothing about non-parochial burial grounds. The expression "parochial or non-parochial" occurs in s. 9 of 15 & 16 Vict. c. 85, which provides that no new burial ground (parochial or non-parochial) shall be opened within a distance of two miles from the metropolis without the approval of a Secretary of State, and in 16 & 17 Vict. c. 134, s. 6, which provides that no new burial ground (parochial or non-parochial)

shall be opened within limits mentioned in an Order in Council without the approval of a Secretary of State; but the expression nowhere occurs in connection with the owners of neighbouring property. The premiss, therefore, from which it is inferred that the provision applies to burial grounds of all kinds is erroneous, and the inference fails. Then the Vice-Chancellor is made to continue; "Then the 25th section (of 15 & 16 Vict. c. 85) provides for the formation of new burial grounds, and then follows the enactment prohibiting burials within two hundred yards, which is again general in words." But the section contains the express limitation to burial grounds "under this Act." So that again there is a mistaken assumption for the conclusion at which the Vice-Chancellor arrives: "That, therefore, is in my opinion a general enactment." The report does not state the fact that an Order in Council had been made prohibiting the opening of a new burial ground within the district in question without the approval of a Secretary of State (see London Gazette, February 8th, 1870); though, perhaps, this might be inferred from the fact that the trustees of the chapel had applied for and obtained such approval. Carefully considered, this judgment at the most only decides that the limitation as to distance from a dwelling-house applies to new burial grounds, other than public burial grounds provided by burial boards, which are opened in a district within which the opening of new burial grounds has been prohibited by Order in Council except with the approval of a Secretary of State (now the Local Government Board) under 16 & 17 Vict. c. 144, ss. 1, 6. And it is submitted that that decision is erroneous.

The one hundred yards mentioned in this section are to be measured from the walls of the dwelling-house, not from the wall or boundary of the curtilage adjoining the house (*Wright v. Wallasey Local Board* (1887), 18 Q. B. D. 783; 56 L. J. Q. B. D. 259); and the distance must be measured as the crow flies (*Mouflet v. Cole* (1873), L. R. 8 Ex. 32; 42 L. J. Ex. 8; 27 L. T. 678; 21 W. R. 175).

By the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 80, no body may be buried within the walls of any church erected under the provisions of the Church Building Acts, or within twenty feet from the external walls thereof, except in brick or stone vaults constructed for the purpose under the church, to which the only access is on the outside of the church, under a penalty of £50; and by 11 & 12 Vict. c. 63, s. 83, re-enacted by s. 343 of the Public Health Act, 1875, in Part III. of Sched. 5 of that Act, no vault or grave is to be made within the walls or underneath any church built in any urban district after August 31st, 1848; and the penalty for burying any body in a vault so made is £50.

10. [If the ratepayers assembled at any vestry duly convened under the provisions of this Act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of this Act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or

If ratepayers resolve, land for new burial ground may be conveyed and settled as old burial ground.

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**Sect. 10.** *churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited Acts notwithstanding; and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled: Provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this Act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited Acts and this Act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish.]*

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15). All burial grounds provided in the future under the Burial Acts must contain a portion which remains unconsecrated. See s. 1 of that Act and note thereto.

Burial boards  
and grounds  
for united  
parishes.

**11.** Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for proposes common to such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately

maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed, and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places, as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone.

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A burial board cannot be legally appointed under this section without the approval of the Local Government Board (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 9; Burial Act, 1871 (34 & 35 Vict. c. 33), s. 1).

A burial board of a parish comprising within its limits several townships, each having separate overseers of the poor, and separately maintaining its own poor, cannot apportion the sums to be contributed by the various townships, unless they bring themselves within the provisions of this section, in which case the consent of a Secretary of State (now the Local Government Board) to the appointment of the burial board is necessary (*Reg. v. Wright* (1861), 8 Jur. (n.s.) 280; 10 W. R. 86; 5 L. T. (n.s.) 345). In that case the ancient parish of Middlewich was divided into fifteen townships, of which Minshull Vernon was one. Each of the said townships had separate overseers, and separately maintained its own poor. The inhabitants of the whole parish assembled in one vestry, and there was an ancient parish church with burial ground attached, which was within the parish of Middlewich. In 1858 the vestry resolved to provide a new burial ground for the whole parish, and appointed a burial board, which borrowed money on mortgage for the purpose of carrying the Burial Acts into execution. In order to make the first annual payment of principal and interest, the board required a sum from the poor rates, and apportioned such sum rateably among the various townships. The overseers of Minshull Vernon refused to contribute, and a *mandamus* was obtained to compel them. The return set out the above facts, and added that the said burial board was appointed and the said money borrowed without the authority of the vestry, or meeting in the nature of a vestry, of the particular township of Minshull Vernon, and that the said burial board was appointed after the passing of 20 & 21 Vict. c. 81, and without the approval of a Secretary of State. On demurrer to the return, it was held that there was no power in the burial board to apportion the sums to be contributed by the various townships unless they brought themselves within the provisions of this section; and when they did that, the consent of a Secretary of State was essential to make their proceedings valid. Consequently, the return was good, and judgment must go for the defendants on the demurrer.

The parish of Amersham and the hamlet of Coleshill constituted one parish for all ecclesiastical purposes. They had one church for

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their joint use, and till 1860 one burial ground. They respectively maintained their own poor and had separate overseers, but the rate-payers of both used to meet in one vestry and transact all business usually performed in a vestry with the exception of their separate affairs. This vestry, with the approval of a Secretary of State, appointed a burial board for A. and C., which borrowed money for the purpose of providing a burial ground, and by deed charged the repayment thereof with interest on the future poor rates of A. and C. In order to pay the interest and provide a sinking fund, the burial board made an order upon the overseers of C. to pay out of the poor rates of C. a sum which had been ascertained by apportioning the expenses between A. and C. in proportion to the value of property in them as rated to the relief of the poor:—*Held*, that A. and C. were united parishes within the meaning of 18 & 19 Vict. c. 120, s. 11, and that the one burial board was rightly constituted for the two places instead of a joint burial board appointed by the separate parishes under 15 & 16 Vict. c. 85, s. 23; and that the order upon the overseers was good, as the proportion to be paid by A. and C. respectively ought to be calculated according to the rateable value from time to time as it was necessary to raise the money (*Reg. v. Coleshill* (1862), 31 L. J. Q. B. 219; 2 B. & S. 825; 9 Jur. (n.s.) 226; 7 L. T. (n.s.) 244. Affirmed on appeal, 34 L. J. Q. B. 96).

For appointment to vacancies in the burial board, see 18 & 19 Vict. c. 128, s. 4, *ante*.

The appointment of a burial board under this section is quite distinct from the appointment of a joint burial board under the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 23; and if a burial board is appointed under this section for several places having a common vestry as well as separate vestries, it would seem that in all cases where the Burial Acts require the approval of the vestry to legalise any Act of the burial board, the approval of the common vestry would be necessary and sufficient, and not the approval of the majority of the separate vestries under the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 1.

**Rural parishes.**—It is very doubtful what the operation of the Local Government Act, 1894 (56 & 57 Vict. c. 73), may be upon this section, but on the whole it would seem that it repeals it altogether so far as it applies to distinct rural parishes. Every rural parish under that Act, whether it has a parish council or not, is provided with a parish meeting, but there is no provision in the Act for two or more parish meetings of different parishes uniting and acting together for any purpose whatsoever. They have not even the power of appointing joint committees, which is conferred on parish councils by s. 57 of that Act. In the case, therefore, of united parishes, which hitherto have had a common vestry or meeting in the nature of a vestry, the parish meeting of each several parish will act for such parish, but the parish meetings of all the several parishes cannot act for the united parishes. Section 7 (1), (8), confers on the parish meeting in every rural parish the exclusive right of passing a resolution to provide a burial ground for such parish under the Burial Acts, but does not confer any right on the several parish meetings of united parishes to unite in passing a resolution to provide a burial ground for the united parishes. The power of the old common vestry to appoint a burial board cannot,

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it would seem, be exercised in face of the enactment that in every rural parish no body other than the parish meeting can pass the resolution to provide a burial ground, which is a necessary preliminary, under the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10, to the appointment of a burial board. In future, therefore, if distinct rural parishes are united in the manner described in this section, and it is desired to have one burial ground for all such parishes, it would seem that the parish meeting of each parish must pass a separate resolution to provide a burial ground, and a joint committee of the parish councils of such parishes must be appointed to provide such burial ground as described in the note to the Burial Act, 1852, s. 23, *ante*, p. 140. This interpretation is borne out to a great extent by the fact that if at the passing of the Local Government Act, 1894 (56 & 57 Vict. c. 73), there was an existing burial board for united parishes which were distinct rural parishes, or of which one was a rural parish or part of a rural parish, such burial board, by the operation of s. 52 (2) of the Local Government Act, 1894, ceased to exist, and its powers and duties were transferred to the parish councils of the rural parishes wholly or partly comprised in the area formerly under the burial board, or if such area was partly comprised in an urban district, to those parish councils and the district council of the urban district, who exercise such powers and duties by a joint committee appointed by those councils. It is extremely improbable, therefore, that an Act which expressly provides for the breaking up of a burial board already in existence for united parishes, would be interpreted as sanctioning the future appointment of a burial board for such parishes, and that too by a vestry, the abolition of which as a civil authority it is one of the main objects of the Act to effect.

If any combination of places, not being separate parishes, united in the manner described in this section is comprised within one rural parish, a resolution may be passed by a parish meeting, held for such combination of places, to adopt the Burial Acts (Local Government Act, 1894, s. 7 (4)), and the authority for the execution of these Acts will be the parish council (s. 7 (7)), or a committee constituted in accordance with the provisions of s. 56 (2).

12. The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground, and otherwise, as if such parish, township, or other district had been a parish separately maintaining its own poor.

Burial boards may be appointed for townships, etc. which have had separate burial grounds.

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The provisions of this section are extended by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 5, to places which have had no separate burial ground.

The existence of a legally constituted burial board for the whole of a parish does not prevent the vestry of an ecclesiastical district formed out of such parish under the Church Building Act, 1831 (1 & 2 Will. 4, c. 38), which, before the passing of this Act, had a separate burial ground, but did not maintain its own poor, from legally appointing a burial board for such district under this section (*Reg. v. Tonbridge* (1884), 13 Q. B. D. 339; 53 L. J. Q. B. 489). [This section is misquoted in the judgment of BRETT, M.R., as reported in the Law Reports.]

The expression "heretofore" in this section means before the passing of this Act (*Reg. v. Tonbridge, supra*).

Where an ecclesiastical district forming part of a parish may, under this section, appoint a burial board for such district severed from the rest of the parish, the rest of the parish may also appoint a separate burial board for itself (*Viner v. Tonbridge* (1859), 2 El. & El. 9; 5 Jur. (N.S.) 1293; 28 L. J. M. C. 251; 33 L. T. 202).

**Rural Parishes.**—If the parish, township, or other district, is a rural parish or part of a rural parish, the power of passing the resolution to provide a burial ground for such parish, township, or other district, which, by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10, is a necessary preliminary to the appointment of a burial board, is transferred from the vestry or meeting in the nature of a vestry for such place, to the parish meeting of the parish, or to a parish meeting held for the part of the parish affected (Local Government Act, 1894, s. 7 (1), (4), (8)). If the township or other district is not wholly comprised in one parish, and part of it is in a rural parish, there will be no power in future for a resolution to be passed to provide a burial ground for the whole of such township or district, for the reasons mentioned in the note, s. 11, *supra*, p. 212.

Expenses of burial boards in places not separately maintaining their own poor

13. Where any district (whether a parish or township or other sub-division) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate to the overseers of such parish, or the overseers or other persons authorised to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial

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board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorised as aforesaid had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor: Provided, that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid.

The somewhat complicated provisions of this section may be simplified if taken severally, thus:—If a district not separately maintaining its own poor forms part of a parish or of a poor law union, and has a separate burial board, such burial board may issue its certificate to the overseers of the parish or collectors of the common rate of the union for payment of the sums required for the expenses of such burial board. Or if a district, not separately maintaining its own poor, forms part of an area which is not co-extensive with a parish or poor law union, and such area has one burial board, then that burial board may issue its certificate to the overseers of the parish or collectors of the common rate of the union in which such district is situated (as the case may be), for payment of the sums required in respect of the portion of the expenses of such burial board to be borne by such district. In either case, whether the district forms a distinct burial area or is only part of a larger one, the overseers or collectors of the parish or union in which it is situated must obey the certificate issued to them and levy rates in the district for the payment of moneys thereby required, as though the district separately maintained its own poor and they were the overseers or collectors thereof.

Provision is made for such a district or area appointing a burial board by s. 12, *supra*, and by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 5, *post*.

**Rural parishes.**—If the district mentioned in this section forms part of one rural parish, the powers, duties, and liabilities of an existing burial board for such district may, at the option of the

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burial board or of the parish meeting for such part, be transferred to the parish council of such rural parish (Local Government Act, 1894, s. 53 (1)). If such district was not, at the passing of that Act, comprised within one rural parish, the powers and duties of an existing burial board for such district were transferred to the parish councils of the rural parishes wholly or partly comprised in such district; or if such district was partly comprised in an urban district, to those parish councils and the district council of the urban district, to be exercised by a joint committee appointed by such councils (*id.* s. 53 (2)), subject, nevertheless, to the provisions of the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40).

*14. [And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the United Church of England and Ireland, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said church: Be it enacted, that in any such case as aforesaid, where it shall appear to one of her Majesty's principal Secretaries of State, upon the representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said church is undesirable and unnecessary, it shall be lawful for the said Secretary of State, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same: Provided always, that such Secretary of State shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof.]*

This section and all other sections in the Burial Acts previous to 1900, except s. 16 of this Act, relating to the building of chapels for burial grounds, are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), and the provision of a chapel or chapels for a burial ground is now regulated by s. 2 of that Act.

Provision where chapel for persons not members of the Church of England is declared unnecessary.

Assessment of lands purchased and used for

**15.** No land already or to be hereafter purchased or acquired, under the provisions of any of the Acts hereinbefore recited, for the purpose of a burial ground (with or

without any building erected or to be erected thereon), shall **Sect. 15.**  
 while used for such purposes be assessed to any county, burial  
 parochial, or other local rates at a higher value or more grounds.  
 improved rent than the value or rent at which the same  
 was assessed at the time of such purchase or acquisition.

This section does not apply to cemeteries made by companies, etc., which are rated on their annual value, as also, it would seem, are cemeteries established by local authorities under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31). See note to the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), s. 16, *post*.

16. In any case where the burial boards appointed under Separate  
 the Burial Act, 1852, and the Burial Act, 1853, or either of burial boards  
 them, for any two parishes shall provide separate burial grounds whose burial  
 grounds for such parishes respectively, and such burial grounds  
 grounds shall adjoin each other, it shall be lawful for the adjoin may  
 said burial boards to concur in building, either on one of building  
 the said burial grounds or partly on one of such grounds and chapels.  
 partly on the other, such chapels as are authorised to be 15 & 16 Vict.  
 built by the said Acts, and such chapels when erected shall c. 85.  
 be used in common by both of such parishes, and be deemed 16 & 17 Vict.  
 and taken to be the chapels of and belonging to each of c. 134.  
 such burial grounds respectively, in such manner, consistent  
 with the provisions of the said Acts or either of them, as  
 the said burial boards shall mutually agree upon; and the  
 said burial boards may agree as to the proportions in which  
 the expenses of erecting such chapel accommodation shall  
 be borne by each of the said boards respectively; and the  
 proportion for each of such parishes of such expenses shall  
 be chargeable upon and paid in the same manner as the  
 costs of providing burial grounds under the said Acts; and  
 where any burial board shall provide a burial ground, and  
 cause chapels to be built thereon, pursuant to the said  
 recited Acts, it shall be lawful for such burial board, with  
 the sanction of one of her Majesty's principal Secretaries of  
 State, to contract with any other burial board whose burial  
 ground shall adjoin the one on which such chapels shall so  
 have been built for the use of such chapels, in such manner  
 and on such terms as such respective burial boards shall  
 mutually agree; and during the existence of any such agree-  
 ment such chapels shall be deemed and taken to be the



**Sect. 16.** chapels of and belonging to each of such burial grounds respectively.

As this section has not been repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), which repeals all other sections in the Burial Acts previous to 1900, relating to the building of chapels for burial grounds, it is open to burial boards still to take advantage of its provisions, subject, nevertheless, to the provisions of s. 2 of the Burial Act, 1900.

**Rural parishes.**—In rural parishes where the parish councils are the authorities for the execution of the Burial Acts, such councils may concur and contract in the same manner as in this section is allowed to burial boards.

Burial board may let land not required for burials.

17. It shall be lawful for any burial board, with the sanction of *one of her Majesty's principal Secretaries of State*, and subject to regulations approved of by him, to let any land purchased by and vested in them under this Act or any of the Acts hereinbefore recited, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid. upon giving six months' notice.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section, are transferred to the Local Government Board.

For sale of lands by burial boards, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 28. For sale or letting of cemetery lands by trustees, see the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 24.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 8 (2), a parish council has a power of selling and letting lands vested in the council, but if such land be acquired for the purposes of a burial ground, the letting of any part thereof is subject to the provisions of this section.

Burial board to keep in order closed burial grounds, etc.

18. 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.

As to the common law liability of parishioners to repair the fences of churchyards, see *ante*, p. 26. And as to the secularisation of consecrated ground, *ante*, p. 28.

The provisions of this section apply only to parochial burial grounds which have been closed by Order in Council, and not to private burial grounds (*Reg. v. St. John, Westgate, and Elswick Burial Board* (1861), 2 B. & S. 703; 31 L. J. Q. B. 15, 205; 10 W. R. 77, 606; 6 L. T. (N.S.) 504).

If the burial ground that is closed is a churchyard, the churchwardens are the persons bound to keep it in repair; if it is a burial ground provided by a burial board then the onus lies upon the burial board (*Reg. v. Bishop Wearmouth* (1879), 5 Q. B. D. 67).

If a burial ground, situate in a different parish from that for which it is the burial ground, be closed by Order in Council, the persons ultimately liable to pay for its repair are the ratepayers of the parish in which it is situate, not those of the parish to which the burial ground belongs (*id.*).

The vestry of St. Mary's, Islington, who by a local Act were constituted the overseers of the parish, passed a resolution to the effect that certain churchyards and a burial ground attached to a chapel-of-ease, in the parish which had been closed by Order in Council, should be maintained, and the walls repaired by the churchwardens, and that the expenses incurred by them in so doing, should be paid to them by the vestry out of the poor rate. Subsequently the vestry sanctioned extensive alterations to the walls of the burial ground, which had been laid out as a recreation ground, and the senior churchwarden, acting upon such sanction, obtained tenders for the work, and entered into contracts by which he rendered himself liable for the costs of the alterations. Before the contracts were actually signed, or any money paid under them by the churchwarden, he sent to the vestry a letter or precept asking for payment of a sum of money not less than the amount for which he had made himself liable under the contracts:—*Held*, that the vestry were bound to pay the churchwarden the amount of the expenses for which he, acting under their authority, had rendered himself liable, although not actually paid by him; and also, that a letter or precept written by the churchwarden stating the sum required, was a sufficient certificate within the meaning of this section (*Reg. v. St. Mary, Islington* (1890), 25 Q. B. D. 523; 59 L. J. Q. B. 462; 63 L. T. 226; 39 W. R. 10).

It should be noticed that an additional burial ground procured by a parish with consent of the Ecclesiastical Commissioners under the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 26, is by that section declared to be part of the parish for which it is procured, though not situate within its bounds. And the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 14, provides that the Commissioners may make a similar declaration with respect to any burial ground acquired under the Church Building Act, 1819 (59 Geo. 3, c. 134), ss. 36, 37.

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By the Church Building Act, 1819 (59 Geo. c. 134), s. 39, the Ecclesiastical Commissioners are empowered to alter, repair, pull down, and rebuild, or order or direct to be altered, repaired, pulled down, and rebuilt the walls and fences of any existing churchyard or burial ground of any parish or chapelry, and to fence off any additional or new burial ground provided under that Act; and with the consent of the justices to stop up or alter any entrance to or path through any churchyard or burial ground.

By 24 & 25 Vict. c. 61, s. 21, re-enacted in Part III. of Sched. (V.), of the Public Health Act, 1875, any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and may from time to time pass byelaws (subject to the provisions of that Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying such section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 23, and the Burial Act, 1859 (22 Vict. c. 1), Orders in Council may direct specific acts to be done to prevent vaults or places of burial from becoming or continuing dangerous to health.

The Union of Benefices Acts Amendment Act, 1871 (34 & 35 Vict. c. 90), s. 4, provides for the fencing in and preservation of sites of churches which have been pulled down, and of the churchyards attached thereto.

By the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), *post*, no buildings may be erected upon any disused burial grounds except for the purpose of enlarging a place of worship.

By the Metropolitan Open Spaces Acts, 1877 and 1881 (40 & 41 Vict. c. 35, and 44 & 45 Vict. c. 34), a closed burial ground within the metropolis, as defined by the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), may be transferred to the Metropolitan Board of Works (now the London County Council) or the vestry or district board of the parish or district (now the council of the borough) in which such burial ground is situate to be laid out and maintained as an open space for the benefit of the public. By the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), the provisions of these Acts are with certain restrictions extended to the rest of the United Kingdom.

**Rural parishes.**—By s. 6 (1) (b), of the Local Government Act, 1894 (56 & 57 Vict. c. 73), it is provided that, upon the parish council of a rural parish coming into office, there shall be transferred to that council, “the powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens 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: Provided that such obligations

shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1853, provided, in order to obtain the repayment of such expenses out of the poor rate."

As the churchwardens can only give their certificate for costs and expenses already incurred, the result of the provisions of the above sub-section will be that the churchwardens must continue to do the necessary repairs, at all events on the first occasion, after the coming into office of the parish council, that such repairs, etc., become necessary. When the expenses of such repairs have been incurred, the churchwardens may, perhaps, prefer to appeal to members of the church for subscriptions to defray them, so as to keep the management of the churchyard out of the hands of the parish council; and so long as the expenses are defrayed out of such subscriptions, or from any source other than the poor rate, the parish council will have no right to interfere with the churchyard. If, however, the churchwardens once give their certificate, and obtain repayment of such expenses out of the poor rate, their authority over the churchyard is gone for ever, and the obligations of keeping it in order and repair will vest thenceforth in the parish council.

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NOTE.

19. Nothing in this Act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health, being the burial board of a borough created or to exist under or by virtue of any local Act of Parliament.

Saving of powers of local boards, being burial boards of boroughs.

By the Local Government Act, 1894, s. 21 (1), local boards are now called urban district councils.

20. Any local board of health acting as or created a board under or by virtue of the powers of any local Act of Parliament shall and may have and exercise all the powers, rights, and privileges which by this Act or by the Burial Act, 1853, are or can or may be had, enjoyed, or exercised by any burial board therein named.

Powers of local boards of health under this Act or 16 & 17 Vict. c. 134.

The Burial Act, 1857 (20 & 21 Vict. c. 81), s. 4, provides that local boards of any district established under the Public Health Act, or Improvement Commissioners acting under any local Act, may be constituted a burial board for their district by Order in Council.

21. The Burial Act, 1852, the Burial Act, 1853, the Burial Act, 1854, and this Act, shall be read and construed together as one Act.

Construction. 15 & 16 Vict. c. 85. 16 & 17 Vict. c. 134. 17 & 18 Vict. c. 87.

By the Burial Act, 1871 (34 & 35 Vict. c. 33), s. 2, all the Burial Acts, 1852 to 1871, are construed as one; and the Burial Act, 1900 (63 & 64 Vict. c. 15), is by s. 13 of that Act to be construed with all the previous Burial Acts.

## CITY OF LONDON BURIAL ACT, 1857.

(20 &amp; 21 VICT. c. 35.) (a)

*An Act to amend an Act passed in the fifteenth and sixteenth years of the reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," so far as relates to the City of London and the Liberties thereof.*

[10th August 1857.]

The preamble recited the Burial Act, 1852 (15 & 16 Vict. c. 85), and also that the Commissioners of Sewers of the City of London had provided and constructed a cemetery at Little Ilford, in the county of Essex. Repealed by the Statute Law Revision Act, 1892.

The fees in schedule to be the fees payable to incumbents in the city of London.

1. [*The fees enumerated in the schedule to this Act shall be the fees which the incumbents of the parishes within the City of London and the liberties thereof shall be entitled to receive upon all interments in the consecrated portion of the said cemetery at Little Ilford, whether of the remains of parishioners or inhabitants of the said parishes, or of any other persons; and the same fees shall be in satisfaction of all claims on the part of such incumbents to fees of every description, whether in respect of burial in vaults or graves, or of the erection of monuments, gravestones, or tablets, or of monumental inscriptions in the said cemetery.*]

This section and ss. 3, 4, 5, and the schedule are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15). The effect of this repeal is that the fees of the incumbents and sextons of the parishes within the City of London and the liberties thereof in respect of burials in the cemetery at Little Ilford are placed on the same footing as similar fees in other burial grounds provided under the Burial Acts, and are governed by the provisions of s. 3 of the Act of 1900, which also abolishes clerk's fees.

Approval of a majority of vestries in the city of London to be sufficient.

2. When and as often as the consent or approval of the vestries of the several parishes within the limits of the city of London and the liberties thereof is by the said recited Act required for the purpose of enabling the commissioners of sewers of the city of London to exercise any power or

(a) This Act is not incorporated with the other Burial Acts. See 34 & 35 Vict. c. 32, s. 2, and schedule.

authority given to or vested in them by the said Act, or to execute any act, deed, matter, or thing under the authority of the said Act, or to confirm or render valid any act, deed, matter, or thing made or done, or agreed or proposed to be made or done, by the said commissioners, then and in every case the consent or approval of the major part in number of the vestries of the several parishes within the said city and liberties shall be sufficient to enable the said commissioners to exercise any such power or authority, or to do or execute any such act, deed, matter, or thing as aforesaid, and to confirm and render valid any act, deed, matter or thing made or done, or agreed or proposed to be made or done, by them, and shall be as valid and effectual for all the purposes of the said Act as if all the vestries of the said parishes within the city of London and the liberties thereof had actually consented to or approved thereof, or had confirmed the same: Provided, that the parishes united under the provisions of the Act of the twenty-second year of Charles Second, chapter eleven, or united for ecclesiastical purposes by the provisions of that or any other Act or Acts, shall, for the purposes of this Act and the said recited Act, be and be deemed one parish.

**Sect. 2.**

For the provisions of 22 Car. 2, c. 11, see *infra*, p. 227.

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 1, the consent of the major part of the vestries is substituted for the consent of all the vestries in the case of every joint burial board.

3. [*The provisions in the said recited Act contained with reference to fees payable to incumbents, churchwardens, and others for parochial or other purposes, and also with reference to the powers given to vestries of revising and varying, with the consent of the bishop, the fees payable to incumbents, clerks, and sextons, or of substituting fixed payments in lieu thereof, which provisions are comprised in the thirty-second, thirty-third, thirty-fifth, thirty-sixth, thirty-seventh, and fiftieth sections of the said Act, shall not apply to parishes situated within the city of London or the liberties thereof.*]

15 & 16 Vict. c. 85, ss. 32, 33, 35—37, 50, not to apply to the city of London.

See note to a. 1, *supra*.

4. [*It shall be lawful for Commissioners of Sewers of the City of London, acting as burial board for the several* Fees of churchwardens, etc.

**Sect. 4.**

*parishes within the city and the liberties thereof, with the approval of the major part in number of the vestries of such parishes, to settle and determine whether any and what fees shall be payable to the churchwardens or to the clerk or sexton of any parish within the city of London or the liberties thereof, or to any trustees or other persons for any parochial or other purpose whatever, on any interment, or for any monument, gravestone, tablet, or monumental inscription in any burial ground already provided or which may hereafter be provided by the said commissioners in pursuance of the powers contained in the said Act; and such fees (if any) as shall be so settled and determined shall be paid to the commissioners, and shall be paid over by them to the parties for the time being entitled to receive the same.]*

See note to s. 1, *supra*.

Fees to be paid by the commissioners.

**5.** *[All fees payable under the provisions of this Act to incumbents of parishes within the city of London and the liberties thereof shall be paid by the Commissioners of Sewers of the City of London, by quarterly payments in each year, to such person or persons as shall by such incumbents, or the major part of them, be appointed from time to time to receive the same; and such fees shall be applied according to a scheme to be agreed upon by such incumbents, or the major part of them, with the consent of the bishop of the diocese.]*

See note to s. 1, *supra*. By the Burial Act, 1900, s. 3 (3), the fees of the incumbent and sexton are now in all cases payable to and collected by the burial authority.

Commissioners to settle fees for burial of persons not residing in London.  
18 & 19 Vict. c. 128.

**6.** It shall be lawful for the said commissioners, subject and without prejudice to the fees payable to incumbents under the provisions of this Act, and subject to the approval required by the seventh section of the Burial Act, 1855, to settle a scale of fees for the burial in the cemetery at Little Ilford aforesaid of persons not residing within the city of London or the liberties thereof, and from time to time to revise and vary the same.

The Burial Act, 1855 (18 & 19 Vict. c. 128), s. 7, as amended by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, requires the approval of the Local Government Board to the settlement of a scale of charges for interments.

The fees in this section mentioned do not apply to incumbents' or sextons' fees, which by s. 3 (3) of the Burial Act, 1900, are to be settled by the burial authority and approved by the Secretary of State.

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**Not.**

7. The chaplain or chaplains who for the time being shall have been or shall hereafter be appointed under the thirty-ninth section of the said recited Act, by the incumbents of the parishes within the city of London and the liberties thereof, for the performance of burials in the consecrated part of the said cemetery, shall conform to all such regulations of the Commissioners of Sewers for the City of London as shall not interfere with the performance of the funeral service according to the Order of the United Church of England and Ireland.

Chaplains of cemetery to conform to regulations of commissioners, 15 & 16 Vict. c. 85.

8. In this Act and in the said recited Act, so far as the same applies to the city of London and the liberties thereof, the words "parishioner" or "inhabitant" shall mean a person inhabiting a house or dying in one of the parishes in the city of London or the liberties thereof; and when such house shall be situated in more than one parish, the parish in which the greater part of such house is situated shall be deemed to be the parish of which the person inhabiting the same is a parishioner or inhabitant.

Interpretation of terms.

9. [*Expenses of obtaining Act.* Rep. by the Statute Law Revision Act, 1875.]

**THE SCHEDULE.**

	£	s.	d.
<i>For each burial in a catacomb in consecrated ground</i>	0	15	0
<i>For each burial in a vault in ditto</i>	0	10	0
<i>For each burial in a brick grave in ditto</i>	0	7	6
<i>For each burial in a private grave in ditto</i>	0	5	0
<i>For each burial in a common grave in ditto</i>	0	2	6
<i>For each burial of a pauper in ditto</i>	0	1	0

See note to s. 1, *supra*.

No less than sixty Orders in Council have been made closing burial grounds in the city of London.

By the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), s. 110, it is enacted "that from and after the commencement of this Act no coffin shall be interred in any grave in any burial ground



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within the city, in which after the interment thereof there shall not be left at least five feet of soil remaining below the ordinary surface of such burial ground, clear of every part of the coffin so to be interred in such grave; and if the sexton or other person having the preparation or the immediate charge of the preparation of the grave to receive such coffin shall permit the coffin to be interred in such grave, or if the minister, churchwarden, or trustee, or other person having the control of the burial ground shall knowingly permit any coffin to be interred in any grave in which there shall not be left, after the interment thereof, five feet at the least of soil, measuring below the ordinary surface of such burial ground, clear of any part of the coffin so to be interred, every such sexton or other person having the immediate charge of the preparation of the grave, and every such minister, churchwarden, trustee, or other person having the control of the churchyard, burial ground, or cemetery in which such interment shall be made, shall forfeit for every such offence a sum not exceeding twenty pounds."

By the City of London Sewers Act, 1851 (14 & 15 Vict. c. xci.), it is provided:

Section 32.—That after any churchyard or burial ground shall have ceased to be used for the interment of the dead it shall be lawful for the commissioners [of sewers], with the consent of the Bishop of London, to be signified by any instrument in writing under his hand and seal, to enter into such arrangements as may be agreed upon with the incumbent and churchwardens of the parish in which such churchyard or burial ground may be situated, for the appropriation thereof to public improvements or to enlarge and improve the public streets.

Section 33.—That it shall be lawful for the relative of any deceased person, with the consent of the incumbent or other person having the care or control of any such churchyard or burial ground as aforesaid in which the body of such deceased person has been interred or deposited, but subject to the regulations of the commissioners, to cause such body to be removed to and interred in any burial ground or in any cemetery without the city, without any faculty for that purpose.

Section 34.—That it shall be lawful for the commissioners, with the consent of the Bishop of London, to cause any churchyard or burial ground within the city, after the same shall have been finally closed, to be planted, paved, or otherwise covered over, or any part thereof, and if the surface of such churchyard or burial ground shall be above the level of the adjoining ground, to cause the same to be lowered, and for such purpose to dig and carry away the soil of such churchyard or burial ground.

Section 35.—Provided always that if the commissioners shall cause any churchyard or burial ground to be lowered, the graves and vaults in such churchyard or burial ground shall be as little disturbed as possible, and it shall be lawful for the relative of any deceased person, whose body may within the last twenty years have been interred or deposited in any grave or vault, which may be so disturbed, to cause the remains of such person to be removed, carried away, and placed in some other churchyard or burial ground, in such manner as the Bishop of London or such person as he may appoint shall direct, and the expenses of such removing, carrying

away, and placing (not exceeding in any one case the sum of ten pounds) shall be paid by the commissioners; and the remains of such persons as shall have been interred or deposited in the graves or vaults so disturbed as aforesaid which shall not be removed or carried away as aforesaid, shall (except such graves or vaults as shall be finally closed up), at the expense of the commissioners, be removed from such graves or vaults, and be interred in such manner as the Bishop of London or such person as he shall appoint shall direct.

Section 36.—That if the commissioners shall cause the soil of any churchyard or burial ground to be planted, paved, or covered over, it shall be lawful for the relatives of any deceased person who may have been buried therein, or to whose memory any tomb, monument, or inscription may have been erected or placed, to cause such tomb, monument, or inscription to be removed and taken away, but such removal and taking away shall be at the expense of the person causing the same to be done.

By 22 Car. 2, c. 11, ss. 62, 63 (An Act for the Rebuilding of the City of London), mentioned in s. 2, *supra*, it was provided that there should be for the future the following fifty-one parishes within the city of London; those in brackets being united into one parish with the church of the first-named parish respectively for the parish church:

Allhallows, Lombard Street.	{ St. Bennet, Gracechurch.
St. Bartholomew Exchange.	{ St. Leonard, Eastcheap.
St. Bridget, <i>alias</i> Brides.	{ St. Bennet, Paul's Wharf.
St. Bennet's Fink.	{ St. Peter, Paul's Wharf.
St. Michael's, Croked Lane.	{ Christ Church.
St. Christopher's.	{ St. Leonard, Foster Lane.
St. Dionis Back-Church.	{ St. Edmund the King.
St. Dunstan's in the East.	{ St. Nicholas Acons.
St. James' Garlick-hithe.	{ St. George, Botolph Lane.
St. Michael, Cornhill.	{ St. Botolph, Billingsgate.
St. Michael, Bassishaw.	{ St. Lawrence, Jury.
St. Margaret, Loathbury.	{ St. Magdalen's, Milk Street.
St. Mary, Aldermanbury.	{ St. Magnus.
St. Martin, Ludgate.	{ St. Margaret, New Fish Street.
St. Peter's, Cornhill.	{ St. Michael, Royal.
St. Stephen's, Coleman Street.	{ St. Martin's, Vintry.
St. Sepulchre's.	{ St. Matthew, Friday Street.
{ Allhallows, Bread Street.	{ St. Peter's, Cheap.
{ St. John Evangelist.	{ St. Margaret Pattens.
{ Allhallows the Great.	{ St. Gabriel, Fenchurch.
{ Allhallows the Less.	{ St. Mary Athill.
{ St. Alban's, Wood Street.	{ St. Andrew Hubbard.
{ St. Olave's, Silver Street.	{ St. Mary Wolnoth.
{ St. Anne and St. Agnes.	{ St. Mary Woolchurch.
{ St. John Zachary.	{ St. Clement, Eastcheap.
{ St. Austin's.	{ St. Martin's, Orgars.
{ St. Faith's.	{ St. Mary Abchurch.
{ St. Andrew, Wardrobe.	{ St. Lawrence Pountney.
{ St. Anne, Black-Friars.	{ St. Mary, Aldermary.
{ St. Antholius.	{ St. Thomas Apostle's.
{ St. John Baptist.	

Sched.  
NOTE.

<b>Sched.</b> <hr style="width: 50px; margin-left: 0;"/> <b>Notrs.</b>	{ St. Mary Le Bow. { St. Pancras, Soaper Lane. { Allhallows, Honey Lane. { St. Mildred's, Poultry. { St. Mary Cole-church. { St. Michael, Wood Street. { St. Mary Staining. { St. Mildred, Bread Street. { St. Margaret Moses. { St. Michael, Queenhith. { Trinity. { St. Mary Magdalen's, Old Fish { Street. { St. Gregories.	{ St. Mary Somerset. { St. Mary Munthaw. { St. Nicholas Cole Abby. { St. Nicholas Olaves. { St. Olave's, Jury. { St. Martin's Pomroy, <i>alias</i> { Ironmonger Lane. { St. Stephen, Walbrook. { St. Bennet, Sherhog. { St. Swithin. { St. Mary Bothaw. { St. Vedast, <i>alias</i> St. Foster's. { St. Michael Quern.
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**Tower Burial Ground.**—By the 51 Geo. 3, c. 116, power was given to the Crown to grant a piece of ground within the Tower of London, to be used as an additional burial ground for persons dying within the Tower.

**Bunhill Fields.**—By 30 & 31 Vict. c. 38, it is provided that the Bunhill Fields burial ground should be preserved as an open space, to be ornamented and laid out, and afterwards maintained in order by and at the expense of the corporation of the City of London; power, however, being reserved to the Ecclesiastical Commissioners to assume the management of the ground on notice to the town clerk of the City of London.

## BURIAL ACT, 1857.

(20 & 21 Vict. c. 81.)

*An Act to amend the Burial Acts.* [25th August 1857.]

The preamble recited the Burial Act, 1852 (15 & 16 Vict. c. 85); the Burial Act, 1853 (16 & 17 Vict. c. 134); the Burial Act, 1854 (17 & 18 Vict. c. 87); 18 & 19 Vict. c. 78; and the Burial Act, 1855 (18 & 19 Vict. c. 128). The Act 18 & 19 Vict. c. 78, is, however, recited by mistake. It is a Revenue and Post-Office Act, and the only Act of 18 & 19 Vict. besides c. 128 in any way relating to the burial of the dead is c. 79, which is entitled "An Act to amend the law relating to the burial of poor persons by guardians and overseers of the poor." The preamble is repealed by the Statute Law Revision Act, 1892.

Approval of  
a majority  
of vestries  
of parishes  
sufficient for

1. All Acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted

for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes.

## Sect. 1.

acts done by  
burial boards  
acting for  
more than  
two parishes.

For appointment of joint burial board, see the Burial Act, 1852, s. 23. If a burial board is appointed under the Burial Act, 1855, s. 11, for united parishes, which have a common vestry as well as separate vestries, the approval and consent of the common vestry only is necessary and sufficient (*Reg. v. Coleshill* (1862), 31 L. J. Q. B. 219; 2 B. & S. 825; 9 Jur. (N.S.) 226; 7 L. T. (N.S.) 244; affirmed on appeal, 34 L. J. Q. B. 96).

For approval of major part of the vestries of parishes in city of London, see the City of London Burial Act, 1857 (20 & 21 Vict. c. 35), s. 2.

**Rural parishes.**—In rural parishes where it is desired to provide a common burial ground for two or more such parishes such purpose will be carried into execution by a joint committee of the parish councils of such parishes, and the approval, sanction, or authority of the parish meetings of such parishes will be substituted for the approval, etc., of the vestries thereof. See note to 15 & 16 Vict. c. 85, s. 23, *ante*, p. 140.

2. Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement; and upon such union being so determined all the provisions of the said Acts and this Act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said Acts.

For appointment of joint burial boards, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 23.

**Rural parishes.**—A joint burial board cannot be dissolved after it has provided a burial ground. A joint committee appointed by the parish councils of two or more parishes which desire to provide a common burial ground for such parishes has no such stability, as it only holds office until fourteen days after the next annual meeting of any of the councils which appointed it (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 57 (3)). It must be presumed that parish councils, which have once agreed to provide a common burial ground for their parishes, will continue to act in harmony and appoint annually a joint committee for its management, but if they do not, it is a matter of speculation what the result would be, as no provision is made in the Local Government Act, 1894, for such a

**Sect. 2.** catastrophe; and the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), does not apply to such a joint committee, but is limited to joint committees appointed in pursuance of s. 53 (2) of the Local Government Act, 1894.

**NOTE.**

Burial boards may provide more than one burial ground.

3. Any burial board may, if they see fit, with the approval of one of her Majesty's principal Secretaries of State, provide more than one burial ground [*and may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: where before the passing of this Act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said Acts*].

The words of this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 2 of which Act now contains all the provisions relative to the division of a burial ground into consecrated and unconsecrated parts, in substitution for the repealed provisions in the previous Burial Acts.

Local board of health or improvement commissioners may, by Order in Council, be constituted a burial board.

4. In case it appear to her Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an Order in Council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for her Majesty, with the advice of her Privy Council, in case her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a

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burial board for the district of such commissioners; and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorisation of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the London Gazette, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning 11 & 12 Vict. c. 63. of the Public Health Act, 1848.

The Public Health Act of 1848 is now replaced by the Act of 1875, by s. 313 of which it is provided that where in any Act in force at the time of the passing of that Act (1875), any provisions of any of the Sanitary Acts repealed by that Act (which include the Public Health Act, 1848) are mentioned or referred to, such Act shall be read as if the provisions of that Act (1875), applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same.

The excepted provisions relating to the constitution, appointment, and resignation of members of burial boards are those contained in the Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 11, 14, and the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 4. The provisions relating to the appointment of local boards are contained in Schedule II. of the Public Health Act, 1875.

By the Burial Act, 1855 (18 & 19 Vict. c. 128), ss. 19, 20, *ante*, p. 221, a local board of health created by any local Act of Parliament may have all the powers, rights, and privileges of a burial board.

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A local board may be constituted a burial board by Order in Council on petition under this section without any resolution of vestry. It may also be appointed by resolution of the vestry without petition under 21 & 22 Vict. c. 98, s. 49, re-enacted in Schedule V., Part 3, of the Public Health Act, 1875.

The Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), *post*, enables any local authority to acquire and maintain a cemetery without being constituted a burial board, but subject to the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 343, re-enacts in Schedule V., Part 3, the following provisions relating to burial boards and burial grounds:

21 & 22 Vict. c. 98, s. 49.—When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate. Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

24 & 25 Vict. c. 61, s. 21.—Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass byelaws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

29 & 30 Vict. c. 90, s. 44.—When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities, and from and after such transfer, the urban authority shall have all such estate property rights powers duties and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

The effect of these sections is, however, now greatly modified by the Local Government Act, 1894, s. 62, *post*.

The Public Health Act, 1875, s. 310, also makes the following provision for the transfer of powers, etc., to the council of a borough:

Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners, or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers rights

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**Norm.**

duties capacities liabilities obligations and property exercisable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament, within or for the benefit of such district or part of a district, shall pass to and be exercisable by and vested in the council of such borough.

The transfer by virtue of the Public Health Act, 1872, of the powers rights duties capacities liabilities obligations and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers rights duties capacities liabilities obligations and property exercisable by attaching to or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament.

It would seem, however, that if the district of the improvement commissioners or local board is smaller than the borough, the transferred powers, etc., can only be exercised by the council within the area of such district (*Reg. v. Overseers of Walsall*, 4 App. Cas. 467).

“Corporate borough,” by s. 4 of the Public Health Act, 1875, means any place for the time being subject to the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), and any Act amending the same, and therefore has the meaning given to it by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 6, 7, viz.: “Every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporations Acts are under this Act extended by charter, but no other place.” When the district is a borough, the provisions of the Burial Act, 1854 (17 & 18 Vict. c. 87), for vesting the powers of a burial board in the town council, become applicable.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21 (1), urban sanitary authorities (*e.g.*, local boards and improvement commissioners) shall be called urban district councils, and their districts shall be called urban districts; and by s. 62 it is provided:

- (1.) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts [*i.e.*, *inter alia*, the Burial Acts], the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.
- (2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

§. The vestry, or meeting in the nature of a vestry, of any Burial board parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate

may be established for a district



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burial  
ground.

6 & 7 Vict.  
c. 37.  
7 & 8 Vict.  
c. 94.  
19 & 20 Vict.  
c. 104.

burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid [*and consecrated*] for any new parish or district created or to be created pursuant to the provisions of the New Parishes Act, 1843, the New Parishes Act, 1844, and the New Parishes Act, 1856, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district, (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable,) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, [*and be entitled to the same fees,*] and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, [*and be entitled to the same fees,*] in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said Burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

The words of this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15).

This section is an extension of s. 12 of the Burial Act, 1855 (18 & 19 Vict. c. 128), which provided for the appointment of burial boards for parishes or districts, not separately maintaining their own poor, which had theretofore had a separate burial ground.

For the provisions as to payment of expenses of burial boards of places not separately maintaining their own poor, see the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 13, *ante*, p. 214.

The words "other district not separately maintaining its own poor" are not applicable to any collection of lands and houses taken at random, but to some definite district which has either a vestry, or a meeting in the nature of a vestry, or which may become a "new parish," under the New Parishes Act, 1856 (19 & 20 Vict. c. 104).

For the formation from old parishes of separate and distinct parishes, see the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 16, and for formation of district parishes and chapelries, see the Church Building Acts, 1818 (58 Geo. 3, c. 45), ss. 21, 24; 1819 (59 Geo. 3, c. 134); 1823 (3 Geo. 4, c. 72); 1825 (5 Geo. 4, c. 103); 1827 (7 & 8 Geo. 4, c. 72); 1831 (1 & 2 Will. 4, c. 38); 1838 (1 & 2 Vict. c. 107); 1845 (8 & 9 Vict. c. 70); 1851 (14 & 15 Vict. c. 97); for formation of new parishes, see the New Parishes Acts, 1843 (6 & 7 Vict. c. 37), ss. 9, 15; 1844 (7 & 8 Vict. c. 94); 1856 (19 & 20 Vict. c. 104), s. 14. By the last-mentioned Act, s. 14, it is provided that as soon as banns of matrimony and the solemnization of marriages, churchings, and baptisms are authorised in any consecrated church or chapel to which a district shall belong (such district not being a separate parish), and the incumbent thereof is entitled for his own benefit to the entire fees arising from the performance of such offices, such district shall be a "new parish."

If an old parish has been divided into separate parishes under the Church Building Act, 1818 (58 Geo. 3, c. 45), and none of the separate parishes have appointed a burial board under this section, the vestry of the old parish may properly appoint a burial board for the whole old parish under the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10 (*Reg. v. Walcot* (1862), 31 L. J. M. C. 217; 2 B. & S. 555; 10 W. R. 599; 6 L. T. (n.s.) 325); but if any one of the separate parishes has a separate burial ground, the approval of the Local Government Board is now necessary for such appointment (Burial Act, 1850 (23 & 24 Vict. c. 64), s. 4, *post*).

But notwithstanding the appointment of a burial board for the entire old parish, each of the separate parishes may afterwards appoint a burial board of its own under this section (*Reg. v. Walcot St. Swithin* (1862), 31 L. J. M. C. 221; 2 B. & S. 571; 10 W. R. 602). In this case the court definitely decided the point here stated, but entertained great doubts as to the proper construction to be placed on the proviso that, upon the appointment of a burial board for any of the separate parishes, all powers of any other vestry or burial board should then cease and determine so far as related to such separate parish. The general opinion of the court, however, was that where a burial board had already been appointed for the whole parish, the powers of such board, though superseded in the new district for the future, were yet kept alive with reference to past expenses and general liabilities already incurred; and that consequently the new district would be liable to be rated for the purpose

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of defraying the liabilities of the burial board of the whole parish, as well as of their own district.

So, too, if an ancient parish is divided into ecclesiastical districts under the Church Building Act, 1831 (1 & 2 Will. 4, c. 38), and a burial board is appointed for the entire parish, a burial board may subsequently be appointed for any of such districts (*Reg. v. Tonbridge* (1884), 13 Q. B. D. 339; 53 L. J. 448).

The repeal of the provisions of this section relating to fees payable to the incumbent, clerk, and sexton, coupled with the enactments as to such fees, in s. 3 of the Burial Act, 1900 (63 & 64 Vict. c. 15), does not affect the right of such persons to perform the duties conferred upon such persons by this section, but merely substitutes the fees provided by that Act for the customary fees to which they would otherwise have been entitled under this section; that is, the incumbent and sexton will, for services rendered by them, be entitled to the fees settled by the burial authority and approved by the Home Secretary, while the clerk will no longer be entitled to any fees at all.

It has always been a matter of great doubt whether the incumbent of the new parish ever became entitled under this section to fees for the erection of monuments, making of vaults, etc., in the new burial ground. The better opinion seems to be that he did not (see *Haig v. Barton* (1892), Trist. Cons. Rep. 149), and consequently is not entitled to the benefit of the proviso to sub-s. (4) of s. 3 of the Burial Act, 1900 (63 & 64 Vict. c. 15), continuing such fees for fifteen years or during his incumbency.

The following cases, though brought to establish the right to fees under this section, are, notwithstanding the repeal of the words conferring such right, valuable as determining what persons are entitled to perform the duty of incumbent or sexton in the new burial grounds.

In 1851 a church was built and consecrated, and in 1852 an Order in Council, under the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 16, authorised services to be performed in the new church, assigned a district to it out of the ancient parish in which it was situated, and granted the fees to the incumbent. There was then no burial ground in the district, and the persons dying in it continued to be buried as before in the churchyard of the old parish. The plaintiff was appointed incumbent of the new church in 1854, and in 1856, a burial ground for the whole parish was provided, the district of the new church contributing to the rates for providing it. A new rector of the parish was appointed in 1864:—*Held*, that the district was a new parish within the meaning of this section, and that the plaintiff, on the first avoidance of the rectory, was entitled to the fees in respect of the burial of inhabitants in the district (*Cronshaw v. Wigan Burial Board* (1873), 8 L. R. Q. B. 217; 42 L. J. Q. B. 137; 28 L. T. (N.S.) 283).

The ancient parish of St. Mary comprised the district parish of St. Mark, in which was a churchyard where the parishioners of St. Mark's were buried. In 1852 a burial board was formed for the whole parish of St. Mary. In 1853 the churchyard of St. Mark's was closed by Order in Council, and the parishioners of St. Mark's were thenceforth buried in the burial ground provided by the burial board of St. Mary. In 1875 a church called St. James's was built in the district parish of St. Mark, and part of the district of St. Mark

was assigned to it by Order in Council. The rector of the parish of St. Mary at the time of the Order in Council was still living. The incumbent of the district of St. Mark died in 1879, having till his death received the fees for all persons buried from the districts of St. Mark and St. James:—*Held*, that St. James's was a new parish within the meaning of this section, and that the incumbent of St. James was entitled to the fees on all burials in the burial ground of persons from the district of St. James (*Harris v. Lambeth Burial Board* (1883), 47 J. P. 501).

The sexton of a chapelry district constituted under the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 16, is not, when the churchyard is closed, entitled to fees in respect of the burial of inhabitants in the burial ground provided for the parish from which the district has been taken. But the sexton of such a chapelry district, which is afterwards formed into a district parish for ecclesiastical purposes under the New Parishes Act, 1856 (19 & 20 Vict. c. 104), ss. 11—14, is entitled by virtue of the proviso in this section to such fees (*Ormerod v. Blackburn Burial Board* (1873), 28 L. T. (N.S.) 438; 21 W. R. 539).

The precinct or chapelry of Norwood became long before 1859, by augmentation of Queen Anne's Bounty, a perpetual curacy, and was treated as a separate and distinct parish for all civil purposes; baptisms, marriages, and burials being performed in the chapel and the burial ground thereto belonging. In 1850 a portion of the precinct of Norwood was assigned to St. John's Church, Southall, which district became under the New Parishes Act, 1843 (6 & 7 Vict. c. 37), and other Acts a new parish for all ecclesiastical purposes.

By Order in Council of May, 1859, the chapelry of Norwood, except the part so assigned to St. John's, was constituted a separate parish for ecclesiastical purposes, and the chapel became the parish church of Norwood.

In 1860, a piece of land adjoining St. John's Church, which had been conveyed to the Ecclesiastical Commissioners for the purpose of a burial ground for that district (there having been previously no burial ground within the district, and the parishioners thereof having been buried in the churchyard of Norwood), was consecrated as such burial ground, and used as the burial ground both for the parish of St. John and the perpetual curacy of Norwood. The sexton of St. John's performed the duties and received the fees for interments in the churchyard of St. John's. By an Order in Council of September, 1880, a portion of the parish or perpetual curacy of Norwood was assigned to St. John's, and became, under the provisions of the New Parishes Acts and Church Building Acts Amendment Act, 1869 (32 & 33 Vict. c. 94), s. 1, a part of that parish.

In 1881, a burial board was formed for the whole poor law parish of Norwood (including St. John's and the perpetual curacy of Norwood), and they provided a cemetery for the whole district, the churchyard at Norwood being closed for burials.

The statute under which the Orders in Council were made, *i.e.*, the New Parishes Act, 1843 (6 & 7 Vict. c. 37), makes provision for all other persons affected by the change, but is silent as to the position of the sexton and his fees:—*Held*, that the plaintiff (who had been appointed sexton of Norwood in 1865) was not entitled to the fees in respect of burials in the cemetery from that portion of

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the parish of Norwood which had been annexed to the parish of St. John; but that the burial board had a right to apportion the burial fees in accordance with the existing limits of the two parishes (*White v. Norwood Burial Board* (1885), 18 Q. B. D. 58; 55 L. J. Q. B. 63; 34 W. R. 123; 54 L. T. 81; 50 J. P. 100).

**Bural Parishes.**—As to the transfer by the Local Government Board Act, 1894, of the powers of existing burial boards appointed for areas similar to those mentioned in this section, but which had therefore had separate burial grounds, and the means of putting the Burial Acts into operation in the future in such areas in rural parishes, see note to Burial Act, 1855 (18 & 19 Vict. c. 128), s. 12, *ante*, p. 214. The same difficulties beset the construction of the proviso in this section when applied to rural parishes (with the substitution of the terms “parish meeting” and “parish council” for “vestry” and “burial board”) as were commented on in *Reg. v. Walcot St. Swithin* (1862), 31 L. J. M. C. 221; 10 W. R. 602; 2 B. & S. 571, *supra*.

Ordinary of diocese may consecrate the whole or part of land belonging to any parish for the burial of poor persons.

6. Where the guardians of any parish or union are or shall hereafter become possessed of any land suitable to the purposes of a burial ground, and the Poor Law Board shall consent to the same being appropriated to the reception of the dead bodies of any poor persons whom such guardians shall be authorised or required by law to bury, it shall be lawful for the ordinary of the diocese wherein such land shall be situated, if he see fit, to consecrate the whole or a part of such land for burial purposes; and after consecration the guardians may lawfully direct any such dead body as aforesaid to be buried therein; and the land so consecrated shall not thenceforth be used for any other purposes than for burials according to the rites of the United Church of England and Ireland, and shall be kept in decent order; and the fences thereof, and any building or other erection therein or adjoining thereto used for the performance of the burial service, shall be maintained in good repair by the guardians, out of the common fund of such parish or union: Provided nevertheless, that the guardians shall not be authorised to direct the body of any poor person to be buried in such grounds, who, or whose husband, wife, or next-of-kin, shall, by letter addressed to the master of the workhouse or otherwise, have expressly desired burial to take place elsewhere.

As this Act and the recited Acts are to be construed together as one Act (section 30, *infra*), the ground appropriated by the guardians for a burial ground under this section must not be so

situated as to be used for burials within 100 yards from any dwelling-house without the written consents required by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 9.

By the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 31; *post*, guardians or overseers are authorised to bury the body of any poor person which may be within their parish or union respectively, and charge the expense to any parish under their control to which such person may have been chargeable or in which he may have died, or otherwise in which such body may be; and by s. 56, for the purposes of the burial of the poor, the workhouse of any union or parish shall be deemed to be situated in the parish to which each poor person to be buried *is or has been chargeable*. This last provision is somewhat modified by the Union Chargeability Act, 1865 (28 & 29 Vict. c. 79), s. 10, which enacts that, "for the purposes of the burial of any poor person dying in the workhouse of any union, such workhouse shall be considered as situated in the parish of the union *where such poor person resided last previously to his removal to the workhouse*."

Guardians or overseers are not, however, required or bound to bury the body of any poor person who does not die in a parish house, poor house, or union house (*Reg. v. Stewart* (1840), 12 A. & E. 771; 4 P. & D. 349).

It is probable that any burial ground provided under this section would be available for the burial of dead bodies, which the relieving officer of the district is required to cause to be buried under the Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34), s. 10, and the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 89.

By the Poor Law Amendment Act, 1850 (13 & 14 Vict. c. 101), s. 2, *post*, the guardians of a union may contribute towards the enlargement of any churchyard or consecrated burial ground in the parish wherein the workhouse is situated.

By the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 2, the burial of any poor person may take place in consecrated ground without the rites of the Church of England if due notice is given as provided by that section.

The words "United Church of England and Ireland" are to be read distributively (Irish Church Act, 1869 (32 & 33 Vict. c. 42), s. 69). As this Act does not apply to Ireland the words are, therefore, equivalent to "Church of England."

The powers and duties of the Poor Law Board are transferred to the Local Government Board by the Local Government Board Act, 1871 (34 & 35 Vict. c. 70).

7. Where a burial ground has been provided for any parish under any of the Acts commonly referred to or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which

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NOTE.

Provision for transfer to a burial board of a burial ground provided under Church Building Acts.

**Sect. 7.** such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons, signified in writing under their hands to whom two-thirds of such debt is due, the said burial ground shall be vested in and be under the care and management of such burial board; and thereupon the same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the hereinbefore recited Acts and this Act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board; and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the non-payment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned Acts and this Act would be chargeable with the expense of providing a burial ground by such board; and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of the Acts herein recited and of this Act in respect to the unconsecrated portions of burial grounds.

For an enumeration of the numerous Church Building Acts, see the Short Titles Act, 1896 (59 & 60 Vict. c. 14), and for the acquisition of churchyards by parishes, see specially the Church Building Act, 1819 (59 Geo. 3, c. 134), ss. 36—39 (incorporating the powers of purchase given by 58 Geo. 3, c. 45); the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 26; and the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 14, *post*.

The power of enforcing payment of church rates, except where money is due on the security of them, was abolished by the Compulsory Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109), ss. 1—5.

Expenses of a burial board are payable out of poor rates by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 19; and the Burial Act, 1855 (18 & 19 Vict. c. 128), ss. 11, 13; out of borough fund by the

Burial Act, 1854 (17 & 18 Vict. c. 87), s. 3 ; out of separate burial rate for boroughs by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 22 ; out of rate in nature of district rate by local boards by 21 & 22 Vict. c. 98, s. 49, re-enacted in Public Health Act, 1875, Sched. V., Part 3 ; out of general district rate, or by separate rate by local boards by the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 1.

The provisions in the Burial Acts relating to unconsecrated portions of burial grounds are all repealed by the Burial Act, 1900, and new provisions are substituted therefor by s. 1 of that Act.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish, it will exercise and have the powers and duties conferred by this section upon a burial board ; but the approval of the parish meeting will be necessary in lieu of the approval of the vestry for an enlargement of the burial ground, as such a matter is one “in relation to an expense” (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (3)).

8. It shall and may be lawful for the vestry of any parish in which any burial ground closed by Order in Council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground ; and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate.

Vestry of parish in which burial ground is closed may purchase such burial ground if not belonging to parish.

As the freehold in the closed burial ground, which the vestry are authorised by this section to purchase, might very possibly belong to some person or persons, who in the ordinary course of events would be incapable of alienating it (*e.g.*, the incumbent of a neighbouring parish of which it had formerly been the burial ground), this section must either be construed as conferring on such person or persons a power of alienation, or as restricting the powers of purchase by the vestry to private burial grounds which can be legally alienated. As there is no provision in any of the Burial Acts respecting what is to be done with the purchase money, it is probable that the latter is the correct construction. A conveyance under this section would, it would seem, be properly made to trustees for the parish purchasing the ground, and not to the vestry itself, which is not a corporation.

See the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 51, for power of incumbent and churchwardens of a parish, to which a closed burial ground situated in another parish belongs, to convey the chapel thereof to trustees for such other parish.

By the Metropolitan Open Spaces Act, 1881 (44 & 45 Vict. c. 34), s. 4, the vestry of a parish within the metropolis may acquire a disused burial ground within the parish for the purpose of laying out the same as an open space accessible to the public. And the provisions of this Act, with certain restrictions and alterations, is extended to the whole of the United Kingdom by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32).



**Sect. 8.****NOTE.**

**Rural parishes.**—The power of a vestry of a rural parish to purchase a closed burial ground, is one of the powers transferred to the parish council of such parish (Local Government Act, 1894, s. 6 (1) (a)), or to the parish meeting if there is no parish council (*id.*, s. 19 (4)). The purchase of such a ground cannot well be said to be “an act on the part of the vestry *required* in relation to an expense” within the meaning of s. 7 (3) of that Act, so as to make it necessary, where there is a parish council, that the assent of the parish meeting should be obtained to such purchase being made by the council. The conveyance would properly be made to the parish council.

Burial boards not to be appointed in certain cases without the sanction of the *Secretary of State*.  
18 & 19 Vict. c. 128, s. 11.

9. And whereas by the Burial Act, 1855, it is enacted, that where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry, or any meeting in the nature of a vestry of such several parishes or places, in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers, as, under the Acts therein recited and that Act, are vested in the vestry of a parish or place separately maintaining its own poor: Where any of the several parishes or places under the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said enactment without the approval of *one of her Majesty's principal Secretaries of State*; and in case it appear to the *Secretary of State* that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the *Secretary of State* may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall

## Sect. 9.

be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under the said Acts and this Act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

See the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 11, and notes thereto, as to the provision of burial grounds for united parishes. For means of obtaining approval of Local Government Board, see the Burial Act, 1871 (34 & 35 Vict. c. 33), *post*.

10. It shall be lawful for her Majesty, by Order made by and with the advice of her Privy Council, on the representation of *one of her Majesty's principal Secretaries of State*, from time to time to establish such regulations as to her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in Schedule (B.) to the Burial Act, 1852, and in respect of the like burials in any cemetery established under the authority of any local Act of Parliament; and every such Order in Council shall be published in the London Gazette; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds: Provided always, that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the persons having the control or care of such cemetery or burial ground.

Orders in Council may be made for regulating burial grounds, etc.

15 & 16 Vict. c. 85.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

**Sect. 10.****NOTE.**

By the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 44, as amended by the Burial Act, 1900, s. 4, the Local Government Board is empowered to make regulations in relation to burial grounds and mortuaries provided under the Burial Acts.

For postponement or variation of Orders in Council, see the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 1, *ante*.

For saving of rights of cemetery companies mentioned in the Schedule (B.), see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 54.

No wall or fence required between the consecrated and unconsecrated portions of burial ground.

Boundary marks to be provided.

11. It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited Acts and this Act, or any of them: Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.

In *Reg. v. Tiverton* (1858), 13 L. T. (o.s.) 233, it was held, on demurrer to a return to a *mandamus* issued before the passing of this Act, that the division between the consecrated and unconsecrated portions of a burial ground was sufficiently marked by a wall twelve inches high.

Proceedings where bishop refuses to consecrate.

12. If, upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the Church of England, [*which application the board is required to make as soon as such ground is in such fit and proper condition,*] the said bishop shall refuse to consecrate the same, it shall be lawful for such burial board to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the said archbishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the board shall be bound to put the said ground in a fit and proper condition; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the

bishop aforesaid; and if after such communication the said bishop shall not within one calendar month consecrate the said burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the Church of England; and the licence of the said archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated.

The words in this section printed in italics are repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), which by s. 1 provides that if a burial authority think fit, they may apply to the bishop to consecrate a portion of any burial ground, and that the Secretary of State may make such application if the burial authority make default in applying.

Before the repeal of these words a *mandamus* lay to compel a burial board to apply to the bishop to consecrate a part of the burial ground, as appears from the cases hereunder cited. But as there is now no duty upon the burial board to apply, and power is given to a Secretary of State to do so if the board do not, the reason for issuing a *mandamus* has ceased to exist.

In *Reg. v. Attleborough Burial Board*, Times, February 11th, 1887, between the day on which the rule *nisi* had been obtained and the day fixed for showing cause, the burial board, which refused to make application to the bishop, resigned with the exception of one member, who appeared in court to point out that a quorum no longer existed (15 & 16 Vict. c. 85, s. 14), upon which a *mandamus* could have effect, and the case was accordingly adjourned "to await the development of events."

In *Reg. v. North Kelsey Burial Board*, Times, March 22nd, 1892, application was made for a peremptory *mandamus* to the burial board of North Kelsey to apply to the bishop to consecrate a portion of the burial ground. A writ of *mandamus* had previously been granted against the board to this effect, and the board had met it by passing a resolution which made their application to the bishop conditional on the clergy foregoing all their claims for fees. This resolution was set out in their return to the writ. It was submitted that such a return was illusory, and no one appearing to oppose on behalf of the board, a peremptory *mandamus* was ordered to issue.

In *Reg. v. Basingstoke Burial Board* (1896), 60 J. P. 708, a burial board refused to apply to the bishop to consecrate any part of an additional burial ground, on the ground that this section only applied to new burial grounds and not to additions to an old burial ground:—*Held*, that the section applied equally to such additions as to new burial grounds, and the rule for a *mandamus* was made absolute.

There is no means of compelling a bishop to consecrate, this section leaving the matter in his discretion. *Semble*, that the minister of the parish would be liable to penalties for refusing to perform the burial service over a parishioner buried in a ground licensed by the archbishop which the bishop had refused to consecrate.

**Sect. 12.****NOTE.**

A stamp duty of £2 is payable on such licence under the Stamp Act, 1891 (54 & 55 Vict. c. 39, Sched. "Licence"), inasmuch as the ground not being consecrated, it does not fall within the exemption of a "licence . . . relating to a consecrated building or ground."

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, this section will be applicable with the substitution of the words "parish council" for "burial board."

Power to incumbent or curate to bury in burial ground certified by Secretary of State prior to consecration.

**13.** In any burial ground provided under the powers of the Acts hereinbefore recited or this Act, respecting which one of her Majesty's principal Secretaries of State shall have certified that the necessary provisions have been complied with, it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person as any such incumbent may authorise, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.

The provisions necessary to be complied with seem to be the making of proper sanitary arrangements, and of arrangements for facilitating burials (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 25); observing distance of 100 yards from any dwelling-house (Burial Act, 1885 (18 & 19 Vict. c. 128), s. 9); and applying to the bishop to consecrate a portion of the ground approved in that behalf by the Secretary of State (Burial Act, 1900 (63 & 64 Vict. c. 15), s. 1).

Section 32 of 3 Geo. 4, c. 126, exempting funerals from tolls, extended to funerals in burial grounds provided for the parish although not within its limits.

**14.** Whereas by section thirty-two of the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other Act or Acts of Parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie, from and after the first day of July, one thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date, the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial

ground provided for the parish, township, or place in which he died under the Acts hereinbefore recited and this Act, or any of them, or under any other Act of Parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie. **Sect. 14.**

15. Every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this Act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony. Persons wilfully destroying, etc. register book of burials guilty of felony.

By the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 8, a register of burials must be kept in every burial ground provided under the Burial Acts, and a copy thereof, verified and signed by the officer appointed to keep the same, must be sent from time to time to the registrar of the diocese. The "certified copy" mentioned in this section would apparently include the verified copy required to be transmitted to the registrar.

The Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36, makes the fraudulent alteration or forgery of, or false insertion in, any register of births, baptisms, marriages, deaths, or burials, or any certified copy thereof, and the uttering or disposing of such false, forged, or altered certificate, felony, punishable with penal servitude for life.

16. [Whereas by the Act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapelyard of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, Section 4 of 52 Geo. 3, c. 146, not apply to burials in grounds provided under the Burial Acts.

**Sect. 16.** *or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that Act for such purpose: And whereas distinct registers are by law required to be kept in the burial grounds provided under the Burial Acts.]* The recited enactment of the said Act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the Acts of her Majesty hereinbefore recited and this Act, or any of them.

The part of the section printed in italics is repealed by the Statute Law Revision Act, 1892.

For the provisions requiring registers to be kept in burial grounds, see the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 8, and note thereto.

Fees for service done in unconsecrated portion of burial ground to be identical as for consecrated portion.

17. *[No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton.]*

This section is repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15). Such repeal was necessitated by the provisions in s. 3 of that Act, that the burial authority should fix a table of fees to be received by them in respect of services to be rendered by any minister of religion or sexton; that such fees should be of the same amount in respect of burial service in the consecrated and unconsecrated parts of a burial ground; and that no fees should be payable to any incumbent except for services rendered by him, nor to any clerk.

So much of s. 20 of 15 & 16 Vict. c. 85, as to payment of money borrowed repealed.

18. *[So much of section twenty of the firstly hereinbefore recited Act as requires "that there shall be paid in every year in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged," shall be repealed, and the provisions of the other Acts hereinbefore recited to*

*which the said section has been extended shall be construed accordingly.]* **Sect. 18.**

This section, repealing a portion of the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 20, is repealed by the Statute Law Revision Act, 1892.

**19.** The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall apply to mortgages and other securities to be executed by burial boards; and for the purposes of this Act the expression "the commissioners" where used in the said clauses shall mean the burial board acting in the execution of the said clauses and the Acts hereinbefore recited or this Act.

Clauses of 10 & 11 Vict. c. 16, with respect to mortgages incorporated.

For these clauses, 10 & 11 Vict. c. 16, ss. 75—88, see *post*.

For form of mortgage of poor rates by burial board, see Appendix F., Form 10, *post*.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, it cannot borrow for the purposes of the Burial Acts otherwise than in accordance with the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 12. This section is, therefore, inapplicable to loans to parish councils acting in the execution of the Burial Acts.

**20.** Provided always, that for the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under any of the said Acts or this Act, the burial board shall once in every year set aside, out of the moneys charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one-fiftieth part of the principal money so borrowed.

Sinking fund to be provided for paying off mortgages.

**Rural parishes.**—See note to s. 19, *supra*.

**21.** Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under any of the said Acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years, to be paid out of the like moneys as provided with regard to the moneys secured by such mortgages.

Power to burial boards to borrow money on terminable annuities.

For form of grant of terminable annuity by burial board, see Appendix F., Form 11.

**Rural parishes.**—See note to s. 19, *supra*.

**22.** Any money required by the council of any borough for the purpose of defraying the expense of executing the

Power to councils of boroughs to



**Section 22.** Acts hereinbefore recited, or any of them, or this Act, or for paying any moneys borrowed under such Act, or any interest thereon, may be raised by such council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within such borough liable to be charged to the borough rate; and the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the Municipal Corporations Act, 1835.

make a separate rate for burial and expenses.

5 & 6 Vict. c. 76.

The Burial Act, 1854 (17 & 18 Vict. c. 87), s. 3, empowers councils of boroughs to pay expenses incurred under the Burial Acts out of the borough fund or rates; and the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 1, empowers local boards constituted burial boards to pay such expenses out of the general district rate, or by a separate burial rate.

The provisions respecting borough rates contained in ss. 144—149 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), now take the place of those in the Act of 1835 (5 & 6 Will. 4, c. 76).

**Urban districts.**—When the powers, duties, and liabilities of a burial board within an urban district are transferred to the council of such district in pursuance of s. 62 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), the only portion of the district that can be made liable for the expenses incurred by the council in respect of the powers, etc., so transferred, is the area which was previously under the burial board (Local Government Act, 1894, s. 53 (3), and s. 67).

Orders in Council may be issued, on representation of Secretary of State, so as to prevent vaults, etc., being dangerous to health.

**23.** It shall be lawful for her Majesty, upon the representation of *one of her Majesty's principal Secretaries of State*, by and with the advice of her Privy Council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for (*sic*) preventing them from becoming or continuing dangerous or injurious to the public health; and every such Order in Council shall be published in the London Gazette; and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the

vaults or places of burial to which the representation relates. Sect. 23.

Any nuisance in a churchyard is also a matter of ecclesiastical cognizance (*Quiller v. Newton* (1690), Carth. 152).

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section, are transferred to the Local Government Board.

If the vaults and places of burial are in a burial ground maintained by a burial board, or by a council or committee exercising the powers and duties of a burial board, the churchwardens have no powers of management or control over them, and the order should be addressed to the burial board, council, or committee.

By the Burial Act, 1859 (22 Vict. c. 1), if persons other than the churchwardens having the care of vaults or places of burial, do not comply with the Order in Council, the churchwardens may be required to do all the acts which are directed by such order.

This section applies, and the authority of his Majesty in Council can be exercised only, where an existing burial ground is under the care of churchwardens or other persons who have the charge of it, for the purpose of the burial of the dead. The ground must be a burial ground *de facto* or *de jure*, in use or in trust. If the ground has been closed for burials, an order cannot be made under this section unless the ground is affected with a trust which prevents its being used for any other purpose than that of burial (*Foster v. Dodd* (1867), L. R. 3 Q. B. 67; 8 B. & S. 854; 37 L. J. Q. B. 28; 17 L. T (N.S.) 814; 15 W. R. 155).

In that case, from the year 1679 till 1844, land was held by a corporation, from time to time, under long leases as a burial ground, and afterwards from year to year till 1855. There was no evidence of consecration, and the presumption was that it had never been consecrated. No burials took place after 1844, and in 1854 the ground was closed by Order in Council. In 1857, the freeholder demised the ground for 99 years to S., who entered and put some rubbish on the land. In 1859, S. demised to the plaintiff for 50 years, and he entered on the land. In the same year, an Order in Council was made under this section directed to "the person having the care of the burial ground," and served on the plaintiff, to do certain acts. The plaintiff disregarded the order, and thereupon the Secretary of State made an order under the Burial Act, 1859 (22 Vict. c. 1), s. 1, on the churchwardens of the parish in which the ground was situate, to do the acts. The churchwardens having entered in pursuance of the order, held, that the sections did not apply, and that the orders were invalid, and the churchwardens, therefore, liable as trespassers.

This case was followed in *Jacobson v. The Vestry of St. Pancras* (1880), 44 J. P. 184, when JESSEL, M.R., held that a closed private burial ground that had never been consecrated, was not within the provisions of this section, and that an Order in Council made in respect of it under this section was invalid.

The care of closed burial grounds and churchyards is imposed upon the burial board and churchwardens respectively by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 18. The cost of keeping them in order has, by that section, to be borne by the parish in which they

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are situated. See note to that section, *ante*, p. 219, and *Reg. v. Bishop Wearmouth*, there cited. It is left uncertain by this section whether, in the case of a burial place belonging to one parish but situated in another, the cost of obeying the Order in Council is to fall on the parish in which the burial place is situated, or on the parish to which it belongs.

It would seem, on the analogy of s. 94 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), that the Order in Council ought to specify the particular acts required to be done for preventing or abating the nuisance. See *Reg. v. Wheatley* (1885), 16 Q. B. D. 34 ; 55 L. J. M. C. 11 ; 54 L. T. 680 ; 34 W. R. 257 ; *Whitaker v. Derby Urban Sanitary Authority* (1885), 55 L. J. M. C. 8.

In two cases in which Orders in Council were made under this section directing the removal of human remains from underneath the flooring of the churches in question, application was made on behalf of the churchwardens to whom the Order in Council was addressed, for a faculty to issue authorising such removal, and it was held by the Chancellor of the Diocese of London that this was the proper course to pursue, and that the churchwardens would have acted illegally if they had attempted to perform the acts which the Order in Council directed them to do, without first obtaining a faculty for the purpose (*Rector, etc. of St. Mary-at-Hill v. Parishioners*, [1892] P. 394 ; *Rector, etc. of St. Michael Bassishaw v. Parishioners*, [1893] P. 233). This judgment of the learned Chancellor is stated by himself to be in opposition to the opinion of certain law officers of the Crown; and, though entitled to all the respect due to the opinions of so eminent an ecclesiastical judge, is, perhaps, open to the criticism that it fails to deal satisfactorily with the position that might be created by the ordinary taking a different view from the Home Secretary, as to the necessity or advisability of the acts ordered to be done by the Order in Council, and refusing the issue of a faculty for their performance. Although the learned Chancellor points out with effect how intolerable it would be for the rights of the bishop over consecrated soil to be invaded by what no doubt is practically the *fiat* of the Home Secretary, he passes somewhat unconcernedly over the possible spectacle of the bishop nullifying the Orders of his Majesty in Council issued in pursuance of an Act of Parliament by refusing them the cachet of his judicial approval. Meanwhile it will be advisable for churchwardens, to whom such Orders in Council are addressed, to apply in due course for the necessary faculty fortified by two considerations: first, that there is no great probability of the ecclesiastical entering into conflict with the civil power by refusing the issue of the required faculty; and, secondly, that their fees and expenses, and the fees and expenses of the court and of everybody properly supporting the application, will be paid out of the poor rates of the parish.

In a similar case, the churchwardens on receiving the Order in Council, directing them to remove the whole of the human remains lying beneath the floor of the church, and to re-bury them in a specified cemetery, proceeded, without obtaining any faculty from the ordinary, to pull down the pews, take up the flooring, and remove the remains. Whereupon application was made to cite the churchwardens before the court, and the Chancellor decreed a citation to issue, on the grounds that the acts of churchwardens, not having

been authorised by a faculty, were illegal ; that the Orders in Council afforded no justification for what had been done by them ; and that such orders were either wholly *ultra vires*, or were to be construed as merely directing an application for a faculty to carry out their terms (*Lee v. Hawtrey*, [1898] P. 63).

**Rural parishes.**—As the churchwardens can only have the care of vaults or places of burial attached to the church or churchyard, their duties under this section are not transferred to the parish council of any rural parish by s. 6 (1) (b) of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

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NOTE.

**24.** In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local Act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by Order in Council under the hereinbefore recited Acts or any of them have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground, from time to time, with the sanction of *one of her Majesty's principal Secretaries of State*, to let, demise, or lease any part or parts, in which no interment shall have taken place, of such land or buildings, and to renew or accept surrenders of any leases or tenancies thereof, and to sell and absolutely dispose thereof for money in gross, or for any perpetual or other rent or rents to be made payable thereout, and by public auction or private contract, and to sell all or any such perpetual or other rent or rents for money in gross and in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient ; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold, and the receipts of such trustee or trustees shall be effectual discharges for the moneys therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such moneys ; and the net moneys to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery

Trustees of closed cemeteries empowered, with sanction of *Secretary of State*, to let, lease, or sell portions thereof which have not received interments.

**Sect. 24.** or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity; and any residue of such moneys shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct; but where such land or buildings shall have been held in trust for the benefit of private persons, such residue shall be divided by such trustee or trustees rateably among the cestuique trusts; and it shall be lawful for such trustee or trustees so to apply any reserved fund in his or their hands.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

This section does not apply to burial grounds belonging to burial boards. Powers of sale of superfluous lands belonging to burial boards are given by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 28.

The owner of any disused burial ground situated within the metropolis or elsewhere, may convey it to the local authority to be kept as an open space under the Open Spaces Acts, 1881 and 1887 (44 & 45 Vict. c. 34, and 50 & 51 Vict. c. 32), *post*.

With respect to part of a closed burial ground or cemetery taken for public purposes or under parliamentary powers, see note to the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 1.

**Rural parishes.**—The direction of the parish council will be substituted for that of the vestry under this section in any rural parish (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 6 (1) (a)).

Bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State.

**25.** Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of her Majesty's principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such licence; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds.

It is a misdemeanor at common law to remove a body from any burial ground without lawful authority, and the motive for such

removal is immaterial (*Reg. v. Sharpe* (1857), Dears. & B. 160; 3 Jur. (n.s.) 192; 26 L. J. M. C. 47; 7 Cox C. C. 214). See *ante*, p. 7.

“A dead body by law belongs to no one, and is, therefore, under the protection of the public. If it lies in consecrated ground the ecclesiastical law will interpose for its protection, but whether in ground consecrated or unconsecrated, indignities offered to human remains in improperly and indecently disinterring them are the ground of an indictment” (*Foster v. Dodd* (1867), *per* BYLES, J., 8 B. & S. 854; L. R. 3 Q. B. 67; 37 L. J. Q. B. 28; 17 L. T. (n.s.) 614; 15 W. R. 155).

Where a dead body had been buried in a cemetery, a faculty was refused to the widow of the deceased to remove the body for the purposes of cremation (*Re Dixon*, [1892] P. 386; 56 J. P. 841).

The jurisdiction of the ordinary to grant a faculty for the disinterment of a dead body buried in consecrated ground is not limited to cases where it is desired to remove the body to another consecrated ground, but extends to cases where the exhumation is required for the purposes of identification (*In re Sarah Pope* (1851), 15 Jur. 614), or for the purpose of taking out of the coffin papers which had been buried with the dead body (*In re Edward Hall* (1893), not reported, but cited in *Reg. v. Tristram, infra*). When a faculty is required for exhumation, for the purpose of identification, of a body which has been buried in consecrated ground, the licence of the Secretary of State is not a condition precedent to the grant, although the faculty may be inoperative until the licence has been obtained (*Reg. v. Tristram*, [1898] 2 Q. B. 371). And on an application for a faculty for the above purpose made subsequently to the decision in *Reg. v. Tristram, supra*, it was held by Dr. TRISTRAM that the faculty might issue without the insertion of a clause that it was to be acted upon subject to a licence being obtained from the Secretary of State; and the opinion was expressed by the learned Chancellor that it was not necessary for the grantee of the faculty to obtain the licence of the Secretary of State to enable her to act upon the faculty (*Druce v. Young*, [1899] P. 84).

The removal of remains from unconsecrated places of burial being by the above section placed under the control of a Secretary of State, the court cannot now, as it would have done before the passing of the Burial Act, 1857, refuse to exercise whatever jurisdiction it might possess to grant a faculty for the removal of remains to unconsecrated ground on account of the objection that the remains when removed would not be sufficiently protected from disturbance. The superior of St. Edmund's College (one of the Roman Catholic theological colleges in England) applied to the court for a faculty to authorise the removal of the remains of a former superior of the college from their place of interment in a vault in the churchyard of a parish church in the diocese of London to a vault under the chapel of the college wherein three of the predecessors of the petitioner and the deceased lay buried. It appeared that the owner of the vault from which it was proposed to remove the remains of the deceased could not be discovered, but that the incumbent of the parish church in whom the freehold of the churchyard was vested and the next-of-kin of the deceased consented to the proposed

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NOTE.

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removal. No evidence was given that the vault under the college chapel had ever been consecrated. The court in its discretion granted the faculty ; but, being of opinion that the vault under the college chapel was not a consecrated place of burial within the meaning of the above section, directed that the faculty should issue upon condition that it was not to be acted upon until a licence approving the place of reinterment had been obtained from a Secretary of State (*In re Talbot*, [1901] P. 1).

For queries which must be answered to the satisfaction of the Home Office by any person wishing to remove a dead body, see Appendix D., *post*.

Burial boards may in certain cases purchase cemeteries which have been closed.

**26.** Where any cemetery in which burials have, by Order in Council, under the hereinbefore recited Acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery ; and where in the like case any cemetery has been so purchased before the passing of this Act, the purchase thereof shall be deemed to have been lawful: Provided always, that, notwithstanding such purchase, such Order in Council shall remain in full force and effect in relation to such cemetery.

Orders in Council to remain in force.

By the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 26, a burial board may purchase land of any cemetery company for the purpose of providing a burial ground.

If there are more vestries than one interested, the approval of a majority of vestries is sufficient (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 1).

No buildings, temporary or otherwise, may now be erected on a disused burial ground except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship (Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 4). But it seems doubtful whether these provisions would be held to prevent the erection of uninhabited buildings on a disused burial ground purchased by a burial board under this section for the purposes of the burial ground.

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in any rural parish, it will exercise the powers conferred by this section on a burial board, with the approval of the parish meeting (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (3)).

**27.** No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity or error.

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Resolutions,  
etc., of  
vestries not  
to be void by  
reason of  
irregularity  
of notices, etc

See the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10.

It is provided by the Vestries Act, 1818 (58 Geo. 3, c. 69), s. 1, that "no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden, until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same . . . on the principal door of such church or chapel." This provision is modified by the Parish Notices Act, 1837 (7 Will. 4 & 1 Vict. c. 45), s. 2, which provides that "all proclamations or notices, which under or by virtue of any law or statute or by custom or otherwise have been heretofore made or given in churches or chapels during or after divine service, shall be reduced into writing, and copies thereof, either in writing or in print, or partly in writing or partly in print, shall, previously to the commencement of divine service on the several days on which such proclamations or notices have heretofore been made or given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place; and such notices when so affixed shall be in lieu of and as a substitution for the several proclamations and notices as heretofore given as aforesaid, and shall be good, valid, and effectual to all intents and purposes whatsoever." And by s. 3 it is 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



**Sect. 27.****NOTE.**

been signed by a churchwarden of the church or chapel, or by the rector, vicar, or [perpetual] curate of such parish, or by an overseer of the poor of such parish; but every such notice so signed shall be affixed on or near to the principal door of such church or chapel." The notice must be affixed to each of such churches and chapels, however recently they may have been respectively built (*Reg. v Whipp* (1843), 4 Q. B. 141; 3 G. & D. 372; 7 Jur. 194; 12 L. J. M. C. 64); but not to the door of an old church or chapel in which divine service has ceased *de facto* to be celebrated, nor is it necessary to affix it to Roman Catholic or Dissenting meeting houses, nor to a schoolroom used for the celebration of divine service according to the rites of the Church of England, nor *semble* to Church of England proprietary or private chapels (*Ormerod and Others v. Chadwick* (1847), 16 M. & W. 367; 16 L. J. M. C. 143). It is sufficient to affix the notice before the commencement of either of the usual services, whether morning, afternoon, or evening (*Burnley v. The Overseers of Methley* (1859), 1 EL. & EL. 789; 5 Jur. (N.S.) 914; 28 L. J. M. C. 152; 7 W. R. 422).

**Rural parishes.**—As the power of the vestry of a rural parish to pass a resolution to provide a burial ground is transferred to the parish meeting (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (1), (8)), the word "vestry" or "meeting" in this section must be read as "parish meeting," where the passing of such resolution is concerned (*id.*, s. 52 (5)). The same remark also applies to all cases when the assent or approval or other act of the vestry is required in relation to an expense or rate under the Burial Acts (*id.*, s. 7 (3)). The persons to whom it belongs to call parish meetings are specified in s. 45 (3) of that Act.

Meaning  
of "burial  
board."

**28.** In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts or any of them, or under this Act.

Construction  
of certain  
expressions  
used in  
17 & 18 Vict.  
c. 87.

**29.** [*Definition of "borough," "council of any borough," "town council of any borough" in the Burial Act, 1854.*]

This section is repealed by the Statute Law Revision Act, 1892. By the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 7, "borough" means, unless a contrary intention appears, a city or town to which that Act applies. And by s. 6 it is provided that "this Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act [1st January, 1883], and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporation Acts are under this Act extended by charter, but to no other place."

Recited Acts  
and this as  
one.

**30.** The hereinbefore recited Acts and this Act shall be construed together as one Act.

## BURIAL ACT, 1859.

(22 VICT. C. 1.)

*An Act more effectually to prevent Danger to the Public Health from Places of Burial.* [25th March 1859.]

The preamble recited s. 23 of the Burial Act, 1857 (20 & 21 Vict. c. 81). Repealed by the Statute Law Revision Act, 1892.

1. Where it appears to *one of her Majesty's principal Secretaries of State*, on the representation of any person authorised by him to inspect any vaults or place of burial in relation to which an Order in Council has been or shall have been issued under the said recited enactment, that any acts which by such Order in Council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not done or performed within a reasonable time, and according to the intent of such Order in Council, it shall be lawful for *such Secretary of State*, by writing under his hand, to authorise and direct the churchwardens of the parish in which such vaults or place of burial may be situate forthwith to do or complete the acts in such Order in Council mentioned, or such of them as remain undone; and such order of the *Secretary of State* shall be obeyed by such churchwardens; and they and all persons acting under their direction shall have the same power of entering and doing all such acts upon the premises to which the Order in Council relates as if the said acts had by the Order in Council been directed to be done by such churchwardens, and such vaults or place of burial had been under their care; and any person who shall obstruct such churchwardens or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanor.

Where persons having the care of a place of burial neglect to comply with Order in Council, the churchwardens may be authorised to act in their stead.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

**Sect. 1.** See the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 23, and note thereon, with regard to the subject-matter of the enactments contained in this section.

**NOTE.**

The Burial Act, 1855 (18 & 19 Vict. c. 128), s. 8, as amended by the Burial Act, 1900, empowers the Local Government Board to direct inspection of burial grounds.

**Rural parishes.**--If the vaults or place of burial in respect of which an order is made by the Local Government Board belong to the church or churchyard, the duties of the churchwardens with regard to the same are unaffected by the Local Government Act, 1894. But if they are in a private or proprietary burial ground in a rural parish, the duties of the churchwardens in regard thereto are transferred to the parish council of the parish by s. 6 (1) (a), and the order would be properly made on the parish council.

Construction.  
20 & 21 Vict  
c. 81

2. This Act shall be read together with the Burial Act, 1857, and the Burial Acts therein mentioned as one Act.

## BURIAL ACT, 1860.

(23 & 24 VICT. c. 64.)

*An Act to make further Provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.* [6th August 1860.]

The preamble recited the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 4, and that by the Local Government Act, 1858 (21 & 22 Vict. c. 98), s. 49, a local board might at the option of the vestry be the burial board in certain cases; and that it was expedient that such local boards and improvement commissioners, when constituted burial boards, should be authorised to provide for their expenses as hereinafter mentioned. Repealed by the Statute Law Revision Act, 1892.

Expenses of local board constituted a burial board may be paid out of general district rate or by a separate rate.

1. Any money required by any local board constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of this Act in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and

such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate, to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

**Sect. 1**  
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For the constitution of local boards as burial boards, see the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 4, and note thereto; and for the saving of powers of any local board constituted a burial board by local Act of Parliament, see the Burial Act, 1855 (18 & 19 Vict. c. 128), ss. 19, 20.

For the borrowing powers of burial boards see the Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 20, 21; the Burial Act, 1854 (17 & 18 Vict. c. 87), ss. 4, 5; and the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 20.

For rating powers of urban authorities, see Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 207—228.

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21, local boards are to be called urban district councils, and their districts are to be called urban districts.

Notwithstanding the provisions of this section, the expenses of an urban district council which, in pursuance of s. 62 of the Local Government Act, 1894, resolves that the powers, etc., of any burial board within its district shall be transferred to the council, must be defrayed out of the poor rate, and not out of the general district rate (*Rex v. Connah's Quay*, [1901] 2 K. B. 174).

2. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed, or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district; and the commissioners as such burial board may levy as part of the improvement rate, or by a separate rate, under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

Expenses of improvement commissioners, when acting as a burial board, may be paid out of improvement rate, or by a separate rate.

**Sect. 2.****NOTE.**

The "commissioners as aforesaid" are the improvement commissioners mentioned in the recited Acts, who may be constituted a burial board under the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 4.

Power is given by the Burial Act, 1862 (25 & 26 Vict. c. 100), s. 1, to improvement commissioners acting as a burial board, to mortgage the improvement and burial rates for purposes of the Burial Acts.

By the Local Government Act, 1894, s. 21, improvement commissioners are to be called urban district councils, and their districts are to be called urban districts.

Separate  
accounts to  
be kept, etc.

3. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by moneys raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively; and any surplus of the moneys raised by any rate made under this Act, and of the income of any burial ground provided by means of moneys raised or paid under the provisions of this Act, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act.

For audit of accounts of local authorities, see Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 245—250.

Income tax is payable on such surplus (*Paddington Burial Board v. Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9; 53 L. J. Q. B. 224; 50 L. T. 211; 32 W. R. 551; 48 J. P. 311).

Consent of  
*Secretary of  
State* to  
appointment  
of burial  
boards in  
certain cases.

4. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of *one of her Majesty's principal Secretaries of State*.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

See *Reg. v. Wright* (1861), 8 Jur. (N.S.) 260; 10 W. R. 86; 5 L. T. (N.S.) 345, *ante*, p. 211; and *Reg. v. Walcot* (1862), 31 L. J. M. C. 217; 10 W. R. 599; 6 L. T. (N.S.) 325; 2 B. & S. 555, *ante*, pp. 125, 235. But the existence of a burial board for the whole parish will not prevent each ecclesiastical district from appointing a burial board under 20 & 21 Vict. c. 81, s. 5, without consulting the Local Government Board (see *Reg. v. Walcot St. Swithin* (1862), 31 L. J. M. C. 221; 10 W. R. 602; 2 B. & S. 571, *ante*, p. 235; *Reg. v. Tonbridge* (1884), 13 Q. B. D. 339; 53 L. J. 448, *ante*, pp. 214, 236).

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NOTE.

For mode of obtaining approval of the Local Government Board to appointment of burial board, see the Burial Act, 1871 (34 & 35 Vict. c. 33), s. 1, *post*.

For appointment of burial boards for parishes united for ecclesiastical purposes, etc., see the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 11, and the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 9.

**Rural parishes.**—As for the future, no burial board will be appointed in a rural parish, but, upon the passing of a resolution by the parish meeting to provide a burial ground under the Burial Acts, the parish council will be the authority for the execution of such Acts (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (1), (7), (8)), it is to be presumed that in the case of a rural parish this section, taken in conjunction with the provisions of the Burial Act, 1871 (34 & 35 Vict. c. 33), s. 1, must be read somewhat as follows: "Where any rural parish has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, any resolution passed by the parish meeting of such rural parish, to provide a burial ground under the Burial Acts for the whole parish, shall have no force or effect until the same has been approved by the Local Government Board; and approval of such resolution shall be deemed to be approval of the parish council putting into execution the Burial Acts, in respect of the whole of such rural parish."

## BURIAL ACT, 1862.

(25 & 26 VICT. c. 100.)

*An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the purposes of the Burial Acts.* [7th August 1862.]

Preamble recited the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 2, and that doubts had arisen whether under the provisions of that section the improvement rate or burial rate could be legally mortgaged or assigned as a security for the payment of the sums therein mentioned. Repealed by the Statute Law Revision Act, 1892.

1. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, Commissioners with consent of Treasury,

**Sect. 1.** who shall have been constituted a burial board for any district, may, with the approval of the Treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviabie within the district, such sums of money as may be required by the burial board for the purposes of the Burial Act within the district.

may mortgage improvement rate and burial rate or either.

Such commissioners are empowered to act as a burial board for their district by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 4, *ante*, p. 230, and empowered to pay expenses incurred by them acting as such board out of improvement rate or separate rate by the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 2, *ante*, p. 261. By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21, such commissioners are now called urban district councils, and their districts urban districts.

10 & 11 Vict. c. 16, to apply to mortgages under this Act.

**2.** The clauses and provisions of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof.

For these clauses, 10 & 11 Vict. c. 16, ss. 75—88, see *post*.

## BURIAL ACT, 1871.

(34 & 35 VICT. C. 33.)

*An Act to explain and amend the Burial Acts.*

[29th June 1871.]

Preamble recited the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 9, and the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 4, and that doubts had arisen whether the approval of the Secretary of State therein mentioned was to be given before or after the appointment of a burial board. Repealed by the Statute Law Revision Act, 1893.

Approval of Secretary of State to appointment of burial board.

**1.** Where the approval of *one of her Majesty's principal Secretaries of State* to the appointment of a burial board by a vestry or meeting in the nature of a vestry is required under the Burial Acts, such vestry or meeting in the nature of a vestry shall not appoint such board until a resolution of such vestry or meeting declaring the expediency of such

appointment has been passed, and notice thereof sent to *one of her Majesty's principal Secretaries of State*, and the same has been approved of by the *Secretary of State*, and approval of such resolution shall be deemed to be approval of the appointment of the board.

**Sect. 1.**  
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The *Secretary of State* before giving such approval may require notice of such resolution, in such form and containing such particulars as he may direct, to be published in such manner as he may think sufficient for giving notice thereof to all persons interested.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4, the powers and duties of the Secretary of State under this section are transferred to the Local Government Board.

The approval of the Local Government Board to the appointment of a burial board is made necessary by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 9, in the case of burial boards appointed under the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 11; and by the Burial Act, 1860 (23 & 24 Vict. c. 64), s. 4, in the case provided for in that section.

**Bural parishes.**—For the application of this section in the case of rural parishes, see note to the Burial Act, 1860, s. 4, *ante*, p. 263.

2. This Act shall be construed as one with . . . the Construction. Burial Acts, 1852 to 1871.

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### SCHEDULE.

#### THE BURIAL ACTS, 1852 TO 1871.

This schedule contained all the Burial Acts between these dates enumerated in the Short Titles Act, 1896 (59 & 60 Vict. c. 14), *ante*, p. 117, except the City of London Burial Act, 1857 (20 & 21 Vict. c. 35). It is repealed by the Statute Law Revision (No. 2) Act, 1893.

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## BURIAL LAWS AMENDMENT ACT, 1880.

(43 &amp; 44 VICT. c. 41.)

*An Act to amend the Burial Laws.*

[7th September 1880.]

Preamble recited that it was expedient to amend the law of burial in England and the Channel Islands.

After passing of Act, notice may be given that burial will take place in churchyard or graveyard without the rites of the Church of England.

1. Any relative, friend, or legal representative having the charge of or being responsible for the burial of a deceased person may give forty-eight hours notice in writing, indorsed on the outside "notice of Burial," to, or leave or cause the same to be left at the usual place of abode of the rector vicar or other incumbent, or in his absence the officiating minister in charge of any parish or ecclesiastical district or place, or any person appointed by him to receive such notice, that it is intended that such deceased person shall be buried within the churchyard or graveyard of such parish or ecclesiastical district or place without the performance, in the manner prescribed by law, of the service for the burial of the dead according to the rites of the Church of England, and after receiving such notice no rector, vicar, incumbent, or officiating minister shall be liable to any censure or penalty, ecclesiastical or civil, for permitting any such burial as aforesaid. Such notice shall be in writing, plainly signed with the name and stating the address of the person giving it, and shall be in the form or to the effect of Schedule (A.) annexed to this Act.

The word "graveyard" in this Act shall include any burial ground or cemetery vested in any burial board, or provided under any Act relating to the burial of the dead, in which the parishioners or inhabitants of any parish or ecclesiastical district have rights of burial; and in the case of any such burial ground or cemetery, if a chaplain is appointed to perform the burial service of the Church of England therein, notice under this Act shall be addressed to such chaplain, but the same shall be given to or left at

the office of the clerk of the burial board, if any, in whom any such burial ground or cemetery may be vested: Provided also, that it shall be lawful for the proprietors or directors of any proprietary cemetery or burial ground to make such byelaws or regulations as may be necessary for enabling any burial to take place therein in accordance with the provisions of this Act, any enactment to the contrary notwithstanding.

**Sect. 1.**  
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By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 8, the notice to be given of intention to bury in a burial ground maintained by a burial authority shall be given at such time and to such person as the burial authority may direct, and so much of this section as requires 48 hours notice to be given in any such case is repealed. By s. 9 of the same Act this Act so amended is applied to burial grounds provided under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), as if the burial authority were a burial board.

No right is conferred by this Act of burying a deceased person in any place where, apart from this Act, he would not have been entitled to be buried (s. 9, *infra*).

It should be noticed that the right to give the notice under this section is confined to the relative, friend, or legal personal representative having the charge of, or being responsible for, the *burial* of a deceased person. Now, the only person who, without taking charge of the burial, is responsible for the *burial* of a deceased person is the person in whose house the deceased died, for such person may be indicted if he do not have the body buried (*Reg. v. Stewart* (1840), 4 P. & D. 349; 12 A. & E. 773). Other persons may ultimately be liable for the *expenses of the funeral*, as a husband, wife, father, or executors (see *ante*, pp. 2—6); but unless the dead body is in the keeping or control of such persons they are none of them responsible for the *burial*. A notice, therefore, to the incumbent under this section, from any relative, etc., who does not take the charge of the burial, and who, from not having the keeping or control of the body is not responsible for the burial, although he may be responsible for the funeral expenses, would apparently not be a good notice.

The word "friend" used in this section is quite indefinite, and its applicability must depend upon the circumstances of each case. It apparently has not the same meaning as the word "person," but it might be comprehensive enough to include any *acquaintance* who took sufficient interest in the deceased to give a notice under this section.

A notice under this section is bad if it does not set out the name and address of the person giving it. A notice of burial without the church service, given under this section, contained the name of the plaintiff but not his address. The vicar at first objected to bury the body, on the ground that the churchyard was full, but afterwards room was found. The plaintiff attended with his friends on the day named in the notice, but had to postpone the burial to a

**Sect. 1****NOTE.**

future day. He then sued the vicar for the expenses of the abortive funeral on the day named in the notice:—*Held*, that the notice of burial was bad for not setting out the plaintiff's address, and the defect was not waived by the subsequent proceedings of the vicar (*Hoare v. Ram* (1881), 45 J. P. 729).

If the graveyard be a burial ground provided under the Burial Acts, the burial board is under no obligation to give the incumbent the notice under this section before it permits a burial to take place in the consecrated portion of the burial ground without the performance of the burial service according to the rites of the Church of England (*Wood v. Headley-cum-Burley Burial Board*, [1892] 1 Q. B. 713; 66 L. T. 90; 40 W. R. 390).

In *Jones v. Roberts* (Times, December 18th, 1888), it appeared that land had been given to a parish in 1864 as an additional churchyard, and interments had taken place therein, and the parishioners had built a wall enclosing it. The ground had not been consecrated, and in 1881 (apparently with the intention of defeating the provisions of this Act) the donor conveyed it by deed to trustees to hold as a burial ground for the burial therein only of persons according to the rites of the Church of England. The court, without deciding the question, doubted the legality of such a conveyance.

For appointment of chaplain by the incumbents interested where there is a burial board for two or more parishes, see the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 39. By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 7, no chaplain is for the future to be appointed by a burial authority for a burial ground provided under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the notice must be given at such time and to such person as the council may direct.

**Paupers.**

2. Such notice, in the case of any poor person deceased, whom the guardians of any parish or union are required or authorised by law to bury, may be given to the rector, vicar, or other incumbent in manner aforesaid, and also to the master of any workhouse in which such poor person may have died, or otherwise to the said guardians, by the husband, wife, or next-of-kin of such poor person, who, for the purposes of this Act, shall be deemed to be the person having the charge of the burial of such deceased poor person; and in any such case it shall be the duty of the said guardians to permit the body of such deceased person to be buried in the manner provided by this Act.

As to what persons the guardians are required or authorised by law to bury, see *ante*, pp. 5, 6, and note to the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 6.

3. Such notice shall state the day and hour when such burial is proposed to take place, and in case the time so stated be inconvenient on account of some other service having been, previously to the receipt of such notice, appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or on account of any byelaws or regulations lawfully in force in any graveyard limiting the times at which burials may take place in such graveyard, the person receiving the notice shall, unless some other day or time shall be mutually arranged within twenty-four hours from the time of giving or leaving such notice, signify in writing, to be delivered to or left at the address or usual place of abode of the person from whom such notice has been received, or at the house where the deceased person is lying, at which hour of the day named in the notice, or (in case of burial in a churchyard, if such day shall be a Sunday, Good Friday, or Christmas Day) of the day next following, such burial shall take place; and it shall be lawful for the burial to take place, and it shall take place, at the hour so appointed or mutually arranged, and in other respects in accordance with the notice: Provided that, unless it shall be otherwise mutually arranged, the time of such burial shall be between the hours of ten o'clock in the forenoon and six o'clock in the afternoon if the burial be between the first day of April and the first day of October, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon if the burial be between the first day of October and the first day of April: Provided also, that no such burial shall take place in any churchyard on Sunday, or on Good Friday or Christmas Day, if any such day being proposed by the notice shall be objected to in writing for a reason assigned by the person receiving such notice.

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Time of burial to be stated subject to variation.

The general control of burial grounds is vested in the burial boards to whom they belong (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 38); and they may consequently make, subject to the provisions of that Act, such regulations concerning them as they please which do not interfere with acquired rights (*Ashby v. Harris* (1868), L. R. 3 C. P. 523; 37 L. J. M. C. 164; 18 L. T. (n.s.) 719; 16 W. R. 869). The regulations which may be made under the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 10, by Order in Council for the cemeteries mentioned in Schedule (B.) to 15 & 16 Vict. c. 85, and for cemeteries

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established under local Acts, extend only to matters affecting health and public decency. Proprietors of cemeteries are empowered by s. 1 of this Act to make regulations for the purposes of this Act. Local authorities which have provided cemeteries under the Public Health (Interments) Act, 1879, may make byelaws under the powers given them by s. 141 of the Public Health Act, 1875.

**Burial to take place accordingly.**

4. When no such intimation of change of hour is sent to the person from whom the notice has been received, or left at the house where the deceased person is lying, the burial shall take place in accordance with and at the time specified in such notice.

**Regulations and fees.**

5. All regulations as to the position and making of the grave which would be in force in such churchyard or graveyard in the case of persons interred therein with the service of the Church of England shall be in force as to burials under this Act; and any person who, if the burial had taken place with the service of the Church of England, would have been entitled by law to receive any fee, shall be entitled, in case of a burial under this Act, to receive the like fee in respect thereof.

In burial grounds, the burial board may make regulations at their discretion as to the position of graves (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 38). And the power of a burial authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), to make byelaws for the regulation of a cemetery established under that Act confers a similar discretion upon such burial authority. In a parish churchyard, the law was stated by LITTLEDALE, J., in *Ex parte Blackmore* (1830), 1 B. & A. 122: "The clergyman is bound by law to bury the corpses of parishioners in the churchyard; but he is not bound to bury in any particular part of the churchyard. He and the churchwardens exercise a discretion on that subject; and if a rector is asked to do that which by law he is not bound to do, he may refuse, except upon certain conditions."

So much of this section as relates to the payment of fees is, so far as regards a burial ground provided by any burial authority, in effect repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3 (4), (5), whereby it is provided that no fee shall be payable to an incumbent of a parish in respect of any matter whatsoever in any burial ground maintained by a burial authority except for services rendered by him, and that no fee, other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or other ecclesiastical officer in respect of interments in such burial ground. Whether incumbents are entitled under the proviso to sub-s. (4) of s. 3 of that Act to be paid fees under this section during their incumbency or for fifteen years after the passing of that Act, whichever may be the longer period, is discussed in the note to that sub-section, *post*, p. 287.

Before the Burial Act, 1900, it was held that if the burial took place in a burial ground, and by reason of the friends of the deceased giving no notice to the incumbent of the funeral, the incumbent did not attend and collect his fees, his remedy to recover the same was against the friends or representatives of the deceased, and not against the burial board who permitted the funeral to take place without such notice having been given (*Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713; 66 L. T. 90; 40 W. R. 390).

With regard to the sexton's right to fees in churchyards under this section, if the burial had taken place with the service of the Church of England the sexton would have been entitled to toll the bell and earn a fee for so doing. His right to such fee is recognised in *St. Margaret's, Rochester v. Thompson* (1871), L. R. 6 C. P. 445; 40 L. J. C. P. 213; 24 L. T. (N.S.) 673; 19 W. R. 892; and, therefore, if the sexton toll the bell at a burial without the service of the Church of England under this Act, his right to the fee would be preserved to him under this section. But in several cases since the passing of this Act the incumbent has forbidden the bell to be tolled, and it has in consequence not been tolled. Whether the incumbent has any right to forbid the tolling of the bell is very doubtful (see 1 Burn's Ecclesiastical Law, 135, and *Pearce v. Rector of Clapham* (1795), 3 Hag. Ec., p. 16); but if in obedience to such orders the sexton do not toll the bell, it may be that he would not be entitled to any fee, according to the doctrine laid down in *Burdeaux v. Lancaster* (1697), 1 Salk. 332, that there are "no fees for christening or burying, unless by custom, and then he must do his duty." The question would probably turn upon whether the tolling of the bell is included in the words "the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England," the omission of which is required by the notice prescribed in the schedule to the Act. If it is, the fee would still be payable under this section; but, if not, it is submitted that the sexton would not be entitled to any fee therefor without "doing his duty." Undoubtedly, the canon law assumes the tolling of the bell to be a necessary and proper part of the service (see judgment of WILLES, J., in *St. Margaret's, Rochester v. Thompson, supra*); but the rubric, which alone has the sanction of statute law, makes no mention of tolling a bell; it remains, therefore, a matter for future decision whether the words in the notice refer to the manner prescribed by the canon or by the statute law. If the sexton dig the grave he is, of course, entitled to his usual fee for that service.

## Sect. 5.

## NOTE.

6. At any burial under this Act all persons shall have free access to the churchyard or graveyard in which the same shall take place. The burial may take place, at the option of the person so having the charge of or being responsible for the same as aforesaid, either without any religious service, or with such Christian and orderly religious service at the grave, as such person shall think fit; and any person or persons who shall be thereunto

Burial may be with or without religious service.

**Sect. 6.**

invited, or be authorised by the person having the charge of or being responsible for such burial, may conduct such service or take part in any religious act thereat. The words "Christian service" in this section shall include every religious service used by any church, denomination, or person professing to be Christian.

"The person so having charge" of the burial is the relative, friend, or legal representative mentioned in s. 1, *supra*.

Unless the conditions of this Act are complied with, it is illegal for anyone not lawfully authorised thereto to read or assist in reading a burial service in consecrated ground over a dead body (*Johnson v. Friend* (1860), 6 Jur. (N.S.) 280).

Apart from this Act (and the special prohibitions with regard to persons excommunicated, unbaptized, and that have laid violent hands upon themselves), no body can lawfully be buried in consecrated ground without the burial service being read over it (*Kemp v. Wickes* (1809), 3 Phillim., p. 295).

Burials to be conducted in a decent and orderly manner and without obstruction.

7. All burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner; and every person guilty of any riotous, violent, or indecent behaviour at any burial under this Act, or wilfully obstructing such burial or any such service as aforesaid thereat, or who shall, in any such churchyard or graveyard as aforesaid, deliver any address, not being part of or incidental to a religious service permitted by this Act, and not otherwise permitted by any lawful authority, or who shall, under colour of any religious service or otherwise, in any such churchyard or graveyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any church or denomination of Christians, or the members or any minister of any such church or denomination, or any other person, shall be guilty of a misdemeanor.

Powers for prevention of disorder.

8. All powers and authorities now existing by law for the preservation of order, and for the prevention and punishment of disorderly behaviour in any churchyard or graveyard, may be exercised in any case of burial under this Act in the same manner and by the same persons as if the same had been a burial according to the rites of the Church of England.

The "powers and authorities" mentioned in this section are those provided by 5 & 6 Edw. 6, c. 4 (still in force as to clerks, but repealed

as to lay persons), and by the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32), *post*, and the statutes in that Act mentioned. These Acts are directed against brawling in churches and burial grounds. Provision against disorderly conduct in cemeteries is also made by s. 59 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

Sect. 8.

NOTE.

9. Nothing in this Act shall authorise the burial of any person in any place where such person would have had no right of interment if this Act had not passed, or without performance of any express condition on which, by the terms of any trust deed, any right of interment in any burial ground vested in trustees under such trust deed, not being the churchyard or graveyard, or part of the churchyard or graveyard, of the parish or ecclesiastical district in which the same is situate, may have been granted.

Act not to give right of burial where no previous right existed.

This section is rendered necessary by the wide terms of s. 1, which provides for the notice under the Act being given to the rector, etc., of any parish, etc., that it is intended to bury the deceased in the churchyard, etc., of such parish, and of s. 4, which enacts that the burial shall take place according to the notice. This section prevents the burial of any person without the church service being a matter of right in any parish burial ground but his own; as to which, see Introduction, pp. 11—17.

10. When any burial has taken place under this Act the person so having the charge of or being responsible for such burial as aforesaid shall, on the day thereof, or the next day thereafter, transmit a certificate of such burial, in the form or to the effect of Schedule (B.) annexed to this Act, to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard is situate or to which it belongs, or in the case of any burial ground or cemetery vested in any burial board to the person required by law to keep the register of burials in such burial ground or cemetery, who shall thereupon enter such burial in the register of burials of such parish or district, or of such burial ground or cemetery, and such entry shall form part thereof. Such entry, instead of stating by whom the ceremony of burial was performed, shall state by whom the same has been certified under this Act. Any person who shall wilfully

Burials under Act to be registered.



**Sect. 10.** make any false statement in such certificate, and any rector, vicar, or minister, or other such person as aforesaid, receiving such certificate, who shall refuse or neglect duly to enter such burial in such register as aforesaid, shall be guilty of a misdemeanor.

In the case of a burial ground provided under the Burial Acts the certificate under this section must be transmitted to the officer appointed by the burial board to keep the register of burials (Burial Act, 1853 (16 & 17 Vict. c. 134), s. 8). In the case of a cemetery provided by a burial authority under the Public Health (Interments) Act, 1879, it must be transmitted to the chaplain, if there is one, and if there is not, then to the officer appointed by the burial authority.

On a *mandamus* to the rector of a parish to enter in the register of burials the burial of a parishioner who was buried after due notice without the rites of the Church, the rector pleaded that he was not bound by statute or common law to register anyone. On demurrer, it was held that the Parochial Registers Act, 1812 (52 Geo. 3, c. 146), and this section, made it his duty to register the burial (*Reg. v. Hall* (1881), 45 J. P. 436).

**Rural parishes.**—Where the parish council is the authority for the execution of the Burial Acts in a rural parish, the person required by law to keep the register of burials in the burial ground will be an officer to be appointed for that purpose by the parish council (Burial Act, 1853 (16 & 17 Vict. c. 134), s. 8; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7).

Order of coroner or certificate of registrar to be delivered to relative, etc., instead of to person who buries.

37 & 38 Vict. c. 88.

11. Every order of a coroner or certificate of a registrar given under the provisions of section seventeen of the Births and Deaths Registration Act, 1874, shall, in the case of a burial under *that* Act, be delivered to the relative, friend, or legal representative of the deceased, having the charge of or being responsible for the burial, instead of being delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate shall have been given by the coroner or registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings, and any such relative, friend, or legal representative so having charge of or being responsible for the burial of the body of any person buried under this Act as aforesaid, as to which no order or certificate under the same section of the said Act shall have been delivered to him, shall, within seven days after the burial, give notice thereof in writing to the

registrar, and if he fail so to do shall be liable to a penalty **Sect. 11.**  
not exceeding ten pounds.

The word *that* in italics in this section is a clerical error for *this*; the mistake is corrected by Burial and Registration Acts (Doubts Removal) Act, 1881 (44 & 45 Vict. c. 2), *post*.

For the provisions of the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), see *post*.

12. No minister in holy orders of the Church of England shall be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the said Church in any unconsecrated burial ground or cemetery or part of a burial ground or cemetery, or in any building thereon, in any case in which he might have lawfully used the same service, if such burial ground or cemetery or part of a burial ground or cemetery had been consecrated. The relative, friend, or legal representative having charge of or being responsible for the burial of any deceased person who had a right of interment in any such unconsecrated ground vested in any burial board, or provided under any Act relating to the burial of the dead, shall be entitled, if he think fit, to have such burial performed therein according to the rites of the Church of England by any minister of the said Church who may be willing to perform the same.

Liberty to use burial service of Church of England in unconsecrated ground.

In the rubric to the burial service it is stated: "Here it is to be noted that the office ensuing is not to be used for any that die unbaptised or excommunicate, or have laid violent hands upon themselves." This section does not therefore authorise a minister in holy orders of the Church of England to read the burial service over such persons when buried in unconsecrated ground. The Interments (*Felo de se*) Act, 1882 (45 & 46 Vict. c. 19), *post*, though permitting persons *felo de se* to be buried in consecrated ground, specially provides in s. 4 that nothing therein shall authorise the performing of any of the rites of Christian burial over such person.

13. It shall be lawful for any minister in holy orders of the Church of England authorised to perform the burial service, in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or legal representative having the charge of or being responsible for the burial of the deceased, to use at the burial such service, consisting of prayers taken from

Relief of clergy of Church of England from penalties in certain cases

**Sect. 13.** the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved of by the ordinary, without being subject to any ecclesiastical or other censure or penalty.

As the words "prescribed or approved" are used together, it would appear that the *previous* approval of the ordinary to the service used is necessary to exempt a clergyman of the Church of England from penalties for using any service other than that prescribed in the rubric.

Saving as to ministers of Church of England.

**14.** Save as is in this Act expressly provided as to ministers of the Church of England, nothing herein contained shall authorise or enable any such minister who shall not have become a declared member of any other church or denomination, or have executed a deed of relinquishment under the Clerical Disabilities Act, 1870, to do any act which he would not by law have been authorised or enabled to do if this Act had not passed, or to exempt him from any censure or penalty in respect thereof.

33 & 34 Vict. c. 91.

Application of Act.

**15.** This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

Short title of Act.

**16.** This Act may be cited as the Burial Laws Amendment Act, 1880.

#### SCHEDULES to which this Act refers :

[Sect. 1.]

#### SCHEDULE (A).

##### *Notice of Burial.*

I, \_\_\_\_\_, of \_\_\_\_\_, being the relative [or friend, or legal representative, as the case may be, describing the relation if a relative], having the charge of or being responsible for the burial of A. B., of \_\_\_\_\_, who died at \_\_\_\_\_, in the parish of \_\_\_\_\_, on the day of \_\_\_\_\_, do hereby give you notice that it is intended by me that the body of the said A. B. shall be buried within the [here describe the churchyard or graveyard in which the body is to be buried] on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_, without the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England,

and I give this notice pursuant to the Burial Laws Amendment **Sched. (A.)**  
Act, 1880.

To the Rector [*or, as the case may be*] of \_\_\_\_\_ ,

The address of the person giving this notice must be stated in the notice, which should also be signed. See s. 1, *ante* (*Hoare v. Ram* (1881), 45 J. P. 729).

SCHEDULE (B.). [Sect. 10.]

I \_\_\_\_\_ , of \_\_\_\_\_ , the person having the charge of (*or being responsible for*) the burial of the deceased, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_ , A. B., of \_\_\_\_\_ , aged \_\_\_\_\_ , was buried in the churchyard [*or graveyard*] of the parish [*or district*] of \_\_\_\_\_ ,

To the Rector [*or, as the case may be*] of \_\_\_\_\_ .

BURIAL AND REGISTRATION ACTS (DOUBTS  
REMOVAL) ACT, 1881.

(44 VICT. c. 2.)

*An Act to remove Doubts as to the operation and effect of so much of the Burial Laws Amendment Act, 1880, as relates to the Births and Deaths Registration Act, 1874.*  
[17th February 1881.]

WHEREAS doubts have arisen as to the operation and effect of the eleventh section of the Burial Laws Amendment Act, 1880, by reason of a clerical error in the first sentence thereof; and it is expedient that such doubts should be removed:

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Nothing in the eleventh section of the Burial Laws Amendment Act, 1880, shall have, or be deemed in law to have had, the effect of repealing, or in any manner altering, any of the provisions contained in the seventeenth section

**Sect. 1.** of the Births and Deaths Registration Act, 1874, in any case whatever, save and except only the case of a burial under the Burial Laws Amendment Act, 1880.

37 & 38 Vict.  
c. 88.

43 & 44 Vict.  
c. 41.

For s. 17 of the Births and Deaths Registration Act, 1874, see *post*.

Construction  
of 43 &  
44 Vict. c. 41,  
s. 11.

**2.** The words "in the case of a burial under that Act" in the first sentence of section eleven of the Burial Laws Amendment Act, 1880, shall be construed and read as if they had been "in the case of a burial under this Act."

Short title.

**3.** This Act may be cited as the Burial and Registration Acts (Doubts Removal) Act, 1881.

## BURIAL BOARDS (CONTESTED ELECTIONS) ACT, 1885.

(48 & 49 VICT. C. 21.)

*An Act to amend the Law with respect to Contested Elections of Burial Boards.* [25th June 1885.]

Preamble.

WHEREAS it is expedient that provision should be made with respect to the payment of expenses incurred in contested elections of burial boards appointed by vestries :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

**1.** This Act may be cited as the Burial Boards (Contested Elections) Act, 1885.

Expenses of  
polls to be  
paid by the  
burial board.

**2.** The reasonable expenses incurred in taking a poll of the ratepayers of any parish or part of a parish on the occasion either of the appointment or reappointment by the vestry of persons to be the burial board for such parish or part of a parish, or of the filling up by the vestry of any vacancy or vacancies on such burial board, shall be defrayed

by the burial board in the same manner as if they were expenses incurred by such burial board in carrying the Burial Acts into execution, and may be included in any certificate to the overseers in respect of the expenses of such burial board.

Sect. 2

For provisions relative to election of burial boards and to supplying vacancies therein, see the Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 10, 11, and the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 4.

For certificate to overseers, see the Burial Act, 1852, s. 19; and in cases of burial boards for places not separately maintaining their own poor, the Burial Act, 1855, s. 13.

**Rural parishes.**—If the Burial Acts are adopted in a rural parish having a parish council, the parish council is the authority for carrying such Acts into execution (Local Government Act, 1894, s. 7 (7)); and this Act has no application to the expense of electing such council, which are provided for by *ib.*, s. 11 (4). If, however, the parish has no parish council, the parish meeting must, unless the powers of a parish council are conferred upon it by the county council under *ib.*, s. 19 (10), elect a burial board; and in that case the expense of a poll will be defrayed as provided by this Act in pursuance of *ib.*, s. 7 (6), which provides that the Local Government Act, 1894, shall not alter the incidence of charge of any rate levied to defray expenses under the Burial Acts, and that any property applicable to the payment of such expenses shall continue to be so applicable.

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## BURIAL ACT, 1900.

(63 & 64 Vict. c. 15.)

*An Act to amend the Law relating to Burial Grounds.*

[10th July 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1.) The burial authority for any burial ground may, Consecration. if they think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by the Secretary of State.

(2.) If the burial authority do not make the application within a reasonable time after a request in that behalf, and

**Sect. 1**  
**(2).**

the Secretary of State is satisfied that a reasonable number of the persons for whom, or within the area for which, the burial ground is provided desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make the application in respect of an approved portion of the burial ground, and the bishop may consecrate accordingly, and it shall be the duty of the burial authority to make such arrangements as may be necessary for the consecration.

See s. 11, *infra*, for definition of "burial authority."

Before this Act the consecration of burial places provided under the Burial Acts, and the consecration of cemeteries established by local authorities under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), were respectively regulated by a different series of enactments.

The provisions relating to the consecration of burial grounds provided by burial boards were as follows: The burial ground must be divided into two such parts, one to be consecrated, and the other to remain unconsecrated, as might be sanctioned by a Secretary of State (Burial Act, 1853 (16 & 17 Vict. c. 134), s. 7), unless at a vestry specially called for the purpose, it was unanimously resolved that the new ground should be held and used in all respects as the existing churchyard; in which case another ground, not consecrated, might be provided within ten years (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 10); or the board might, with the approval of a Secretary of State, provide separate and distinct burial grounds to be used respectively as consecrated and unconsecrated burial grounds (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 3). As soon as the ground allotted for consecration was in a fit and proper condition, it was the duty of the burial board to apply to the bishop of the diocese to consecrate it (*ib.*, s. 12)—a duty which would in proper cases be enforced by *mandamus* (*Reg. v. North Kelsey Burial Board*, Times, March 22nd, 1892). It was thus necessary in every case in which a burial ground was provided under the Burial Acts, that application should be made to the bishop of the diocese to consecrate, at all events, a portion of such ground.

In the case of a cemetery established by a local authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), no obligation was imposed upon the local authority to apply to the bishop to consecrate any portion of the cemetery, although power to make such application was conferred upon them by s. 23 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

The effect of the present section, coupled with the repeal in s. 12, *infra*, of parts of s. 7 of the Burial Act, 1853 (16 & 17 Vict. c. 134), of s. 10 of the Burial Act, 1855 (18 & 19 Vict. c. 128), and of parts of ss. 3, 5, and 12 of the Burial Act, 1857 (20 & 21 Vict. c. 81), is to assimilate the powers and duties of burial boards and local authorities with regard to making application to the bishop to consecrate a portion of the burial ground or cemetery. Henceforth, any burial authority, as defined in s. 11, *infra*, may, but are not bound to,

apply to the bishop to consecrate a portion of the burial ground—it is to be noticed that they are not authorised to apply to have the whole of the ground consecrated,—and if they do not make such application, the Secretary of State may make it in the circumstances set out in sub-s. (2) to this section.

The bishop is not bound, and there is no means of compelling him, to consecrate the ground upon the application of a burial authority. If he refuse to consecrate, the position of a burial board appears to differ from that of a local authority. A burial board is empowered, upon the refusal of the bishop to consecrate, to appeal from such refusal to the archbishop; and if the archbishop certify to the bishop that the ground is in a fit and proper condition, then if the bishop still refuse to consecrate, the archbishop may license the ground, for burials, and such licence shall have the same efficacy as consecration (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 12). And prior to the decision of the bishop and archbishop, a Secretary of State may certify that all necessary provisions have been complied with, and thereafter it shall be lawful for any clergyman to bury in such burial ground, though not consecrated (*ib. s. 13*). These provisions are not applied to local authorities establishing cemeteries under the Public Health (Interments) Act, 1879, either by that Act or by the present Act, and there is therefore no means whereby a local authority can appeal from the refusal of a bishop to consecrate, or obtain the certificate of a Secretary of State. Such certificate, however, is not so important as it formerly was, inasmuch as by s. 12 of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), it is provided that no minister in holy orders of the Church of England shall be subject to any censure or penalty for officiating in any unconsecrated burial ground or cemetery, in any case in which he might lawfully have officiated if the same had been consecrated.

The table of fees for consecration will be found *post*, in Appendix E.

**Sect. 1.**

**NOTE.**

2.—(1.) A burial authority may at their own cost erect Chapels. on any part of their burial ground, which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for the exclusive use of any denomination.

(2.) A burial authority may, at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

(3.) Where such a request is made and the estimated costs are tendered to the burial authority or reasonably secured, then, if the burial authority refuse to grant the request or



**Sect. 2**  
**(3).**

fail to give effect to it within a reasonable time, a Secretary of State may, if he thinks fit, by order in writing, require the burial authority to erect, furnish, and maintain, or to give facilities for erecting, furnishing, and maintaining, such a chapel in accordance with directions given in the order, and the burial authority shall comply with the order.

(4.) Subject to the provisions of this section the obligation of a burial authority to build a chapel within the consecrated part of a burial ground provided under the Public Health (Interments) Act, 1879, shall cease.

42 & 43 Vict  
c. 31.

Before the passing of this Act, a burial board were empowered by s. 30 of the Burial Act, 1852 (15 & 16 Vict. c. 85), to build a chapel on any land purchased or appropriated for a burial ground under the Burial Acts, according to a plan to be approved by the bishop, for the performance of the burial service according to the rites of the Church of England; and such burial ground (including the part on which the chapel was built) might be consecrated by the bishop, provided, that in providing any burial ground the board should set apart a portion thereof which should not be consecrated, and might build thereon a suitable chapel or chapels for the performance of funeral service.

By the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 7, if the burial board built a chapel on the consecrated ground, it was incumbent on them to build also chapel accommodation on the unconsecrated ground; unless upon a representation by three-fourths of the vestry a Secretary of State should declare it unnecessary (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 14). And by s. 16 of the last-mentioned Act, separate burial boards, whose burial grounds adjoined, might concur in building a chapel for their joint use in either of the burial grounds, or partly in one and partly in the other; or a burial board might, with the sanction of a Secretary of State, contract with a burial board already having a chapel in an adjoining burial ground for the use of such chapel.

These latter provisions relative to burial boards having adjoining burial grounds still remain in force, but all the other enactments above mentioned relating to the building of a chapel or chapels are repealed by this Act; and the powers and obligations of a burial board in this respect are now regulated solely by the provisions of this section.

The powers and duties of a local authority with regard to building a chapel for a cemetery established by them under the Public Health (Interments) Act, 1879, were contained in s. 25 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65). As there was no obligation upon the local authority to obtain the consecration of any part of the cemetery, it followed that if no part were consecrated, no obligation arose to build a separate chapel for burials according to the rites of the Established Church. If, however, part of the cemetery were consecrated, and part left unconsecrated, the local authority were by the above-mentioned section bound to build such a chapel upon the consecrated part. They were also empowered by s. 36 of the same

Act, if any portion of the cemetery were left unconsecrated, to build any chapel or chapels upon such unconsecrated portion and to allow burial services to be performed therein other than the service according to the rites of the Church of England.

**Sect. 2**  
**NOTE.**

The provisions of s. 25 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65) are in effect repealed by sub-s. (4) of this present section, so far as they affect local authorities in respect of cemeteries established by them under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31); and the power of a local authority of applying public moneys towards the provision of chapels is now limited, by this section, to the erection of a chapel on the unconsecrated portion of the burial ground, which is not to be consecrated nor reserved for the exclusive use of any denomination.

The question may arise under sub-s. (2) of this section whether a chapel may be built upon the consecrated portion of the burial ground or cemetery at the request and cost of members of the Church of England. It is to be noticed that this section only sanctions the erection of a chapel for the use of any particular denomination on the ground appropriated to the use of that denomination, and a chapel for the use of members of the Church of England can, therefore, only be built upon the consecrated portion, if such portion can be properly said to be appropriated to the use of members of that Church. Inasmuch as by the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), persons of all denominations or of no denomination may be buried in the consecrated portion of a burial ground, and with or without a religious service, it would be difficult to say that such consecrated portion was "appropriated" to the use of members of the Church of England. The question may, perhaps, be solved by the burial authority under their general powers of management appropriating part of the consecrated ground specially to the use of members of the Church of England, and allowing interments under the Burial Laws Amendment Act, 1880, to take place in the other portion of the consecrated ground not so appropriated.

There is no definition of "denomination" as used in this section. It would, probably, include besides the Church of England, every body of persons whose places of meeting for religious worship may be registered with the Registrar-General under the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81).

3.—(1.) Every burial authority shall submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications. Provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground.

(2.) If the burial authority fail to submit such a table on being requested to do so by the Secretary of State, he may make a table of fees.

**Sect. 3.**  
**(3).**

(3.) The fees fixed by the table shall be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State.

Sub-sections (1)—(3) of this section deal with fees payable to ministers of religion for performing a burial service over bodies buried in burial grounds and cemeteries, frequently termed "surplice fees," as a convenient expression to distinguish them from fees payable in respect of a grant of the right to make vaults, erect monuments, etc., which are styled "monumental fees." The right to such fees before the passing of this Act varied according as the burials took place in burial grounds provided under the Burial Acts, or in cemeteries established under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

As to burial grounds provided under the Burial Acts :

Former law  
as to surplice  
fees in burial  
grounds  
provided  
under the  
Burial Acts.

By the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 32, a burial ground provided for a parish was (and still is) deemed to be the burial ground of the parish, and every incumbent or minister of such parish was entitled to receive the same fees in respect of the burials of parishioners or inhabitants of such parish in the consecrated part of the burial ground as he had previously enjoyed and received, and the clerk and sexton of such parish were also entitled to receive the same fees on such burials as the clerk or sexton of such parish had previously received. The fees which the incumbent or minister was thus authorised to receive were the same as he would have been entitled to by custom if he had performed the burial service over a parishioner in the parish churchyard, and were strictly, therefore, fees for "services rendered." The burial board were under no obligation to collect these fees, and if they did, it was only as a matter of convenience for all parties concerned ; they might at any time have refused to collect them, and the incumbent, on his part, might have forbidden the board to receive them, and required them to be paid direct to himself.

"Surplice fees" were only payable to an incumbent in cases where the body over which he performed the burial service was that of a parishioner or an inhabitant of the parish for which the burial ground was provided ; but the expression "inhabitant" probably included any person dying in the parish. If an incumbent performed the service in a burial ground over a non-parishioner he did not thereby become entitled to any fee (*Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713 ; 66 L. T. 90 ; 40 W. R. 390), though, probably, if he had made an antecedent bargain with the deceased's representatives for a fee he could have sued to recover it on the contract in the same way as he might have done in a similar case occurring in the parish churchyard. See *Nevill v. Bridger* (1874), L. R. 9 Ex. 214 ; 43 L. J. Ex. 147 ; 30 L. T. (n.s.) 690 ; 22 W. R. 740 ; *Hughes v. Lloyd* (1888), 22 Q. B. D. 157. But although not entitled to a fee for performing the burial service according to the rites of the Church of England in the consecrated

part of a burial ground over a non-parishioner, unless in pursuance of an antecedent contract, the incumbent of the parish was in a position to prevent any other clergyman of the Church of England from performing such service in his parish (see *Nesbitt v. Wallace*, [1901] P. 354; *Wood v. Headingley-cum-Burley Burial Board*, *supra*, per Lord COLERIDGE, C.J., citing *Johnson v. Friend and Ballard* (1860), 6 Jur. (N.S.) 280), so that in practice he could compel the deceased's representatives, who desired the body to be buried according to the rites of the Church of England, either to come to terms with him, or to cause the body to be buried elsewhere.

No person other than the incumbent of the parish for which the burial ground was provided had a right to any fee for the performing the service over the body of any person buried in the burial ground. A Nonconformist minister might contract with the representatives of a deceased person for a fee for performing a burial service in the unconsecrated part of the burial ground, and also in the consecrated part if the burial took place in pursuance of the Burial Laws Amendment Act, 1880, but the Burial Acts took no cognizance of such contracts, and a burial board had no direct control over them. It was a frequent practice, however, for a burial board to make an arrangement with a Nonconformist minister by which the minister undertook to perform a burial service for a stipulated charge whenever requested, and the burial board collected such charge and paid it over to the minister. No one, however, was obliged to avail himself of the services of such minister; and if they were dispensed with, no charge could be made for them either by the burial board or by the minister.

The changes effected in respect of the "surplice fees" or "fees for services rendered" in burial grounds by these sub-sections, coupled with the repeal by s. 12 of various provisions in the Burial Acts, are as follows:

## Sect. 3.

## NOTE.

Changes in respect of surplice fees effected by sub-ss. (1)-(3) in burial grounds.

(1.) The fee to which the incumbent of a parish for which a burial ground has been provided under the Burial Acts is entitled for performing the burial service in the consecrated part of such burial ground, over the body of a parishioner or person dying in the parish, is altered from the customary amount to which he would have been entitled for performing such service in the parish churchyard, to an amount to be settled by the burial authority and allowed by the Home Secretary.

(2.) The incumbent of the parish is entitled to be paid this settled amount if he perform the burial service over the body of a non-parishioner which the burial board allow to be buried in the burial ground, without having made any contract for the payment of the same.

(3.) Any minister of religion other than the incumbent of the parish who performs a burial service over a body buried in the burial ground, whether such burial takes place in the consecrated part of the burial ground under the Burial Laws Amendment Act, 1880, or in the unconsecrated part of the burial ground, is entitled to be paid this settled amount without having made any contract for the payment of the same.

(4.) It is made compulsory upon the burial authority to collect this fee from the person or persons responsible for its payment, and to pay it to the minister who has performed the service; and it

**Sect. 3.****NOTE.**

Former law  
as to surplice  
fees in  
cemeteries.

appears that the remedy of a minister who has performed the service in the burial ground to recover his fee for such service is now against the burial board and not against the personal representatives of the deceased.

As to cemeteries established under the Public Health (Interments) Act, 1879 :

It was not necessary that any part of a cemetery should be consecrated, and if no part were consecrated, no fees for performing a burial service were payable, except such as might be the subject of a contract between the personal representatives of the deceased, and the minister performing the service. The incumbent of the parish in which the cemetery was situate had, however, the right to prevent any other clergyman of the Church of England from performing the burial service according to the rites of that Church in an unconsecrated cemetery, so that practically only Nonconformist services could be held in such a cemetery, and a local authority had no statutory powers of control over the charges made for performing such services.

Where part of a cemetery was consecrated, the local authority were bound to appoint a clerk in holy orders of the Church of England to officiate as chaplain in the consecrated part (Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), s. 27); and the chaplain was required to perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery, and entitled to be buried in consecrated ground according to the rites and usages of the Established Church (*id.*, s. 78); but any clergyman of the Established Church might, at the request of the personal representatives of the deceased, and with the consent of the chaplain, perform the burial service over such person in the consecrated part of the cemetery (*id.*, s. 29). The chaplain was paid a salary by the local authority out of the money received by them (*id.*, s. 30), and was not entitled to any fees beyond his salary. It is provided by s. 52 of the same Act that "the company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial, such sums, if any, as shall be prescribed for that purpose in the special Act." The special Act applicable to cemeteries established by local authorities is the Public Health (Interments) Act, 1879, and as by that Act no sums are prescribed as payable to incumbents, none were therefore payable. Now, however, by s. 7, *infra*, the system is materially altered, and the provisions applicable for the future to the payment of such fees will be found in that section.

Changes in  
the law.

(4.) Subject to the provisions of this section, no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any other matter whatsoever, in any burial ground maintained by a burial authority, except for services rendered by him, and this enactment shall apply to any such fee which is by law or custom payable to the churchwardens

of any parish or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability, in like manner as it applies to fees payable to an incumbent.

**Sect. 3**  
**(4).**

Provided as follows :

- (i.) Where, at the passing of this Act, fees other than for services rendered are payable in respect of any matter arising in any burial ground attached to or used for the purposes of a parish, and laid out and used before the passing of this Act, the like fees shall continue to be paid during the incumbency of the person who, at the passing of this Act, is the incumbent of the parish, or during a period of fifteen years from the passing of this Act, whichever is longer, or if the fees are not paid to the incumbent, or to any person claiming through or under him, then during the said period of fifteen years, and shall be applicable to the like purposes as heretofore, and the burial authority shall collect and pay these fees in like manner as the fees to be paid for services rendered ;
- (ii.) The Ecclesiastical Commissioners may at the request and subject to the approval of the incumbent, or other person interested, agree with any burial authority for such payment, periodical or otherwise, as may be thought equitable in commutation of the fees other than those claimed for services rendered, and an agreement so approved shall be binding on the persons for the time being interested, and the burial authority may make accordingly any payment so agreed upon. Where the fees are paid to an incumbent, or to any person claiming through or under him, the Ecclesiastical Commissioners shall apply the commutation money in the first instance to such compensation of the existing incumbent as they may deem equitable, regard being had to all the circumstances of the case ; and the residue, if any, for the augmentation of the benefice.

By s. 33 of the Burial Act, 1852 (15 & 16 Vict. c. 85), a burial board were empowered to sell exclusive rights of burial, and the

Former law  
as to  
monumental  
fees, etc.

**Sect. 3**  
**(4).**

**NOTE.**

rights of constructing vaults, and erecting and placing monuments, gravestones, tablets, and monumental inscriptions in the burial ground, and that section also provided that upon such sale of rights in the consecrated part of the ground there should become payable to the incumbent of the parish, for which the burial ground was provided, out of the purchase money, in lieu of the fees to which he would have been entitled upon a grant of the like rights in the parish churchyard, such fees or sums as should be fixed by the vestry with the approval of the bishop, or if no such fees had been fixed, then such fees as he would by law or custom have been entitled to on the grant of the like rights in the parish churchyard. By the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 7, the sums which a burial board might charge on a sale of any of these rights, and also the sums which they might charge for simple interments in the burial ground were made subject to the approval of the Secretary of State; and it was also provided by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 17, that the sums charged by the burial board for interments, or for the grant of rights in the unconsecrated part of the burial ground should be identical in amount with the sums charged in respect of the same service or right in the consecrated part of such ground, less any such portion of such corresponding payments as might be received for or on account of any incumbent, etc.

By s. 34 of the Burial Act, 1852 (15 & 16 Vict. c. 85), a table of the fees or sums charged by the burial board for interments, and for the grant of monumental, etc., rights in the burial ground (which by s. 7 of the Burial Act, 1855 require the sanction of a Secretary of State), are to be printed and published, and affixed on some conspicuous part of the burial ground.

As the sale of exclusive rights of burial and rights of erecting gravestones, etc., in a burial ground provided under the Burial Acts, was entirely under the control of and conducted by the burial board, without the incumbent of the parish being required to do any service in the matter, "monumental fees" or the fees to which the incumbent became entitled on the sale of such rights, were strictly fees "other than for services rendered."

**Fees payable  
to incumbents  
under the  
Burial Laws  
Amendment  
Act, 1880.**

In addition to "surplice fees," which were for services rendered, and "monumental fees," which were "other than for services rendered," the incumbent of a parish for which a burial ground was provided, was entitled to a third class of fees, concerning which a doubt has been raised whether they fall within the category of fees "other than for services rendered," so as to be continued during present incumbencies under the proviso to sub-s. (4) of this section. These are the fees which were payable to the incumbent of a parish under s. 5 of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), *ante*, p. 270, upon the burial of parishioners or inhabitants of the parish in the consecrated part of the burial ground under the provisions of that Act. That section provides that "any person who, if the burial had taken place with the service of the Church of England, would have been entitled by law to receive any fee, shall be entitled in case of a burial under this Act, to receive the like fee in respect thereof"; and as the incumbent of the parish would have been by law the only person entitled, personally or by his authorised deputy, to perform the service of the Church of England, and to receive the fee for so doing, he became entitled to receive the same fee, upon a

burial under that Act, although he did not perform, or provide for the performance of the service.

**Sect. 3**  
**(4).**

**NOTE.**

At first sight, a fee so payable would appear to be clearly a fee "other than for services rendered," but it has been urged, that although the fee may be other than for services rendered by the incumbent, it is in truth a fee payable to the incumbent for or in respect of services rendered by the person who, under s. 6 of the Act of 1880, actually conducts such service as that section allows, and that the above sub-section (4) and the first proviso thereto operate therefore as follows: The sub-section abolishes these fees for the future, inasmuch as it abolishes all fees, "except for services rendered by him," i.e., by the incumbent, and these are not for services rendered by the incumbent. At the same time, as they are for services rendered, although not rendered by the incumbent, they are consequently not continued during present incumbencies by the proviso, which continues only fees "other than for services rendered," designedly omitting the words "by him."

It is submitted, however, that this contention is not well founded; first, because it appears more probable that the expression in the proviso, "fees other than for services rendered," was intended to comprehend the whole of the fees which had been mentioned in the operative part of the sub-section, than that any distinction was to be made between fees for services rendered by the incumbent, and fees payable to an incumbent for services rendered by somebody else, to which there is no allusion throughout the Act; and secondly, because it is negatived by the provisions of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41). Under s. 6 of that Act the burial may take place without any service at all, and no distinction is made, so far as regards the payment of fees to the incumbent, between burials where no service at all is held, and burials where a friend makes an address over the grave, or a Nonconformist minister performs the service used by his religious denomination. In each case the same fee is payable to the incumbent; and as it cannot well be said that the fee is paid "for services rendered" where no service at all is held, it follows that in the other cases it is not paid for services rendered, but is paid merely because the statute directs that, service or no service, it is to be paid.

If this submission is correct, it follows that the fee payable under s. 5 of the Burial Laws Amendment Act, 1880, will continue to be payable to the incumbent of a parish for which a burial ground has been provided before the passing of this Act, during the incumbency of the present incumbent, or for fifteen years, whichever period is the longer, and such fee must be collected and paid over by the burial board. During such period, therefore, it will be the duty of the burial board, when interments take place under the Act of 1880 with a service by a minister of religion, to collect and pay over two fees of like amount, one to the minister who performs the service, the other to the incumbent of the parish.

The provisions in force before the passing of this Act relative to Fees payable the payment of burial fees to the churchwardens of a parish, or to church-trustees for a parochial purpose, or for the discharge of any debt or wardens liability, were contained in ss. 36 and 50 of the Burial Act, 1852 (15 & 16 Vict. c. 85), which are now repealed by this Act. Such fees, if payable in respect of interments in a burial ground at the



**Sect. 3**  
**(4).**

passing of this Act, will continue to be payable for fifteen years after the passing of the Act, and must be collected and paid over in like manner as fees for services rendered.

**NOTE.**

“Burial ground.”

It will be noticed that proviso (i.) is applicable to “any burial ground attached to or used for the purposes of a parish,” and it has been suggested that these words would include a churchyard. It is obvious, however, from the concluding part of the proviso which directs the “burial authority” to collect the fees before referred to that “any burial ground” means “any burial ground provided by or vested in a burial authority.”

“Incumbent of the parish.”

Some obscurity is caused by the wording of the proviso (i.) that “the like fees shall continue to be paid during the incumbency of the person who, at the passing of the Act, is the incumbent of the parish.” It frequently happens that a burial ground has been provided for the whole of an ancient parish, which either before or after the provision of such ground has had several ecclesiastical districts carved out of it. These districts may have become new parishes under the New Parishes Act, 1856 (19 & 20 Vict. c. 104), and the respective incumbents of such parishes may have become entitled to fees in respect of the burials in the burial ground of the bodies of the parishioners or inhabitants of such parishes, under s. 5 of the Burial Act, 1857 (20 & 21 Vict. c. 81). Is the “incumbent of the parish,” whose length of life is to measure the period during which fees “other than for services rendered” are to remain payable, the incumbent of the mother parish? or is each parish, of which the inhabitants have rights of burial in the burial ground, whether a new parish or the mother parish, to be considered separately for the purposes of the proviso, so that the period during which fees will remain payable in respect of the various parishes will be measured by the length of life of their respective incumbents? It is submitted that the “incumbent of the parish” is the person who, if this Act had not passed, would have been entitled to receive these fees, so that if such fees would have been payable to the incumbent of the mother parish, his is the life to be considered, and if payable to respective incumbents of ecclesiastical districts, or new parishes, then their respective lives will afford the limit during which such fees will remain payable.

It is to be observed that proviso (ii.) to sub-s. (4) makes the agreement for commutation thereby authorised binding on “the persons for the time being interested.” A burial board being a corporation with perpetual succession is a “person,” and would be bound indefinitely by such an agreement; and a joint committee formed under s. 53 (2) of the Local Government Act, 1894, although not a corporation or a “person” within the ordinary meaning of that word, falls within the definition of “person” given in s. 19 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which provides that in “every Act passed after the commencement of this Act the expression ‘person’ shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.” The use of the words “for the time being” will apparently enable an incumbent to bind his successor.

(5.) No fee, other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or

other ecclesiastical officer in respect of interments in a burial ground maintained by a burial authority. Provided that any clerk or other ecclesiastical officer who at the passing of this Act is entitled to fees in respect of interments in any such burial ground may apply to the burial authority for compensation for the pecuniary loss caused to him by the foregoing enactment, and the burial authority shall receive and consider the application, and pay to him such sum of money as equitable compensation for his loss and in such manner as may be agreed on, or in default of agreement may be directed by the Secretary of State.

**Sect. 3**  
(5).

The rights of the clerk and sexton of a parish to perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish, for which a burial ground has been provided under the Burial Acts, and to receive the same fees on such burials as he had previously performed and exercised and received, were preserved by s. 32 of the Burial Act, 1852 (15 & 16 Vict. c. 85); and where a burial ground had been provided for the whole of an ancient parish, including any new parish carved out of the old parish which had contributed to the rates out of which the burial ground had been provided, similar rights were, by s. 5 of the Burial Act, 1857 (20 & 21 Vict. c. 81), expressly conferred on the clerk of such parish, and impliedly conferred on the sexton (if any) of such parish (*White v. Norwood Burial Board* (1885), 16 Q. B. D. 58; 55 L. J. Q. B. 63; 34 W. R. 123; 54 L. T. 81; 50 J. P. 100); and burial boards could not deprive them of such fees by appointing other persons to do their duties (*Gell v. Birmingham* (1864), 10 L. T. (n.s.) 497). The provisions of the above-mentioned sections relating to the fees of clerks and sextons are repealed by s. 12, *infra*, but no alteration is made in their respective rights to perform and exercise the duties and functions of their offices in the burial ground. The result, therefore, appears to be that the sexton will henceforth be entitled to perform a sexton's duties in the burial ground, and to receive such fees for services actually rendered by him as may be fixed by the table under sub-s. (1) of this section; while the clerk will still be entitled to perform a clerk's duties, but will have no right to receive a clerk's fees. What other "ecclesiastical officer" was ever entitled to fees in respect of interments in a burial ground is not disclosed in the Burial Acts.

In cemeteries provided under the Public Health (Interments) Act, 1879, the local authority were by s. 34 of the Cemeteries Clauses Act, 1847, empowered, but not obliged, to appoint a clerk to assist in performing the service for burials in the consecrated part (if any) of the cemetery, and to pay him such stipend as they might think proper. The power to pay such clerk a stipend in the future is impliedly repealed by this sub-section, and as such clerk was removable at the pleasure of the local authority, he could not enforce a claim for compensation for disturbance in his office.

**Sect. 3**  
**(6).**

(6.) For the purposes of this section, a burial authority may borrow in like manner and subject to the like conditions as they may borrow for the provision of a burial ground.

A burial board appointed under the Burial Acts, and a borough council invested with the powers of a burial board under the Burial Act, 1854 (17 & 18 Vict. c. 87), are empowered to borrow moneys for the provision of a burial ground by the Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 20, 21; the Burial Act, 1854 (17 & 18 Vict. c. 87), s. 4; and the Burial Act, 1857 (20 & 21 Vict. c. 81), ss. 19—21, which also incorporates the clauses of the Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), ss. 75—83, with respect to mortgages to be executed by the commissioners. The borrowing powers of metropolitan burial boards were not, however, affected by s. 4 of the Burial Act, 1854, and provision was made for loans to such boards by the London County Council (Money) Acts, authorising the London County Council to lend to the various metropolitan burial boards such sums of money, not exceeding a certain aggregate amount, as the burial boards may desire or be authorised to borrow. The powers of such burial boards are now exercised by the various metropolitan boroughs by virtue of the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4 (2).

Where a borough council is constituted a burial board under the Burial Act, 1854, the moneys required by such council for the purposes of providing a burial ground are borrowed by charging the borough fund and rates as provided by s. 3 of that Act.

Where a parish council has acquired the powers, etc., of a burial board under s. 7 or s. 53 (1) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), the borrowing powers of such council for the purpose of providing a burial ground are regulated by s. 12 of that Act.

Where the powers, etc., of a burial board are exercisable by a joint committee under s. 53 (2) of the Local Government Act, 1894, moneys for providing a burial ground must be borrowed by the councils appointing such committee in the manner prescribed by the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), *post*.

Where the powers, etc., of a burial board are transferred under s. 62 of the Local Government Act, 1894 (56 & 57 Vict. c. 73), to an urban district council, it would seem that powers of the district council to borrow for the purpose of providing a burial ground must be exercised in the same manner as the same would have been exercised by the burial board, *i.e.*, by mortgaging the poor rate, and not by mortgaging the district fund and rates under the Public Health Act, 1875 (38 & 39 Vict. c. 55). See *Rex v. Connah's Quay*, [1901] 2 K. B. 174.

The borrowing powers of a local authority for the purpose of providing a cemetery are the same as the borrowing powers of such authority for providing a mortuary under s. 92 of the Public Health Act, 1875, and will be found in ss. 233—244 of that Act.

(7.) The provisions of this section, except those as to collection, shall apply to any fixed annual sum substituted for fees in pursuance of section thirty-seven of the Burials Act, 1852, in like manner as they apply to fees.

Section 37 of the Burial Act, 1852 (15 & 16 Vict. c. 85), provided that the vestry of a parish, with the consent of the bishop of the diocese, might substitute for the fees payable to an incumbent, clerk, or sexton, and other persons and bodies respectively (meaning by these latter churchwardens or trustees to whom burial fees were by law or custom payable for parochial purposes, etc.) a fixed annual sum, and that the fees payable to the incumbent, etc., should thereafter be payable to, and the fixed payments should be made by the burial board. The powers under that section could also, by s. 10 of the Burial Act, 1854 (17 & 18 Vict. c. 87), be exercised by a borough council constituted a burial board under that Act. Both s. 37 of the Burial Act, 1852, and s. 10 of the Burial Act, 1854, are now repealed by s. 12, *infra*.

The application purported to be made by this sub-section of the other provisions of this section to such "fixed annual sum" is clumsy in the extreme, and it is difficult to say what the effect of the sub-section is. Sub-section (1) is not applicable to a fixed annual sum, for if such sum appeared on the table approved by the Secretary of State as payable to an incumbent in respect of burials in the consecrated ground an identical sum must also appear on the table as payable to a Nonconformist minister in respect of burials in the unconsecrated ground. Moreover, the fixed annual sum is payable to the incumbent in substitution for fees of all kinds connected with burials, surplice as well as monumental, and it is not possible to say how much is in substitution for one class of fees, and how much for the other, so as to submit such part of the annual sum as might represent fees "for services rendered" to the Secretary of State for his approval. And unless the annual sum can be so divided, it is not possible to apply the provisions of sub-s. (4) in their entirety to such annual sum. The most practical solution of the difficulty appears to be that the whole annual sum should continue to be paid to the incumbent during his life, or for fifteen years, whichever is the longer period, and should cease at the end of that period, after which the incumbent would be entitled only to fees for performing the service, such fees being fixed under sub-s. (1).

4. The powers and duties of the Secretary of State under or referred to in the enactments in the First Schedule to this Act shall be transferred to the Local Government Board, and those enactments shall have effect as if any reference therein to a Secretary of State were a reference to the Local Government Board.

Transfer of powers to Local Government Board.

The change effected by this section may be briefly summarised in the statement that supervision of all matters in the Burial Acts intimately connected with sanitary precautions and expenditure of money is transferred to the Local Government Board, while the matters connected with consecration and ecclesiastical law are left as before within the ken of the Home Office.

5.—(1.) The Secretary of State may, if he thinks fit, appoint any person to inquire into any matter relating to

Inquiries by Secretary of State.

Sect. 3  
(7).

NOTE.

**Sect. 5**  
**(1.)**

the consecration of any part of a burial ground, or the building of any chapel therein, or the fixing, varying, or commutation of or compensation for any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith.

(2.) The Secretary of State may make such order as he thinks just as to the payment by the burial authority or other parties of the whole or any part of the costs of the inquiry, including the remuneration and expenses hereinafter mentioned. Any such order may direct payment to be made to the Exchequer or other parties, and may be enforced as if it were an order of the High Court.

(3.) The Secretary of State may assign to any person appointed under this section such remuneration not exceeding five guineas a day as he may think fit, and a suitable allowance for expenses, and the remuneration and allowance so assigned shall, except so far as otherwise provided, be paid out of moneys provided by Parliament.

**Protection**  
**of uncon-**  
**secrated**  
**burial**  
**ground.**

6. Unconsecrated ground which is maintained by a burial authority and set apart for the purposes of burial shall not be applied to any other purpose except by leave of the Local Government Board.

By the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 28, a burial board, with the approval of the vestry, were empowered to sell and dispose of any lands purchased by them under that Act or any part thereof, in which no interment should have taken place, and which it appeared to the board might be properly sold or disposed of. By the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 17, a burial board, with the sanction of a Secretary of State (now of the Local Government Board), were empowered to let any land purchased under the Burial Acts which had not been consecrated, and in which no body had been at any time interred, and which was not at the time required for the purposes of a burial ground.

By the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), as amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 4, it was made unlawful to erect any buildings on a disused burial ground except for ecclesiastical purposes; the expression "disused burial ground" was defined to mean "any burial ground which is no longer used for interment, whether or not such ground shall have been partially or wholly closed for burials under the provision of any Statute or Order in Council"; and "burial ground" to include "any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment."

It would appear from *In re Ponsford and the Newport District School Board*, [1894] 1 Ch. 454, that in order to decide whether ground has

been "set apart for the purposes of burial," the cemetery or burial ground ought to be looked at as a whole, and the whole land of which such cemetery or burial ground is formed is to be deemed as "set apart" for such purposes, although portions of it may never have been used for interments.

The effect of this section appears to be that the Local Government Board is placed with regard to unconsecrated parts of cemeteries in much the same position as that occupied by the ordinary with regard to the consecrated parts, so that the leave of the board must be obtained for taking part of such ground for adding to a highway, or converting the ground wholly or in part into a garden, etc., to the same extent as a faculty must be obtained for dealing in a similar way with any part of the consecrated ground.

**Sect. 6.****NOTE.**

7. The incumbent of any ecclesiastical parish situate wholly or partly within the area for which a burial ground is provided under the Public Health (Interments) Act, 1879, shall, with respect to his own parishioners, and persons dying in his parish, be under the same obligation to perform funeral services in that burial ground as he is to perform funeral services in a burial ground provided under the Burial Acts, and the power of the burial authority to appoint a chaplain for a burial ground provided under the Public Health (Interments) Act, 1879, shall cease, and where there is no chaplain for a burial ground so provided, burials in the consecrated part of the ground shall be registered in like manner, and subject to the like provisions as burials in the unconsecrated part.

Obligation of incumbent as to burial.  
42 & 43 Vict. c. 31.

The obligation to perform funeral services in a burial ground provided under the Burial Acts over the bodies of parishioners and persons dying within a "parish," for the whole or part of which such burial ground has been provided, is imposed upon the incumbent of such "parish" by s. 32 of the Burial Act, 1852 (15 & 16 Vict. c. 85), and s. 5 of the Burial Act, 1857 (20 & 21 Vict. c. 81).

All districts and chapelries which have become "New Parishes" under the New Parishes Acts, 1843 and 1856 (6 & 7 Vict. c. 37, and 19 & 20 Vict. c. 104), are ecclesiastical parishes, and the incumbents thereof come under such obligation; but a district attached to a church, of which the incumbent is not entitled for his own benefit to the entire fees arising within the district from the performance of the church offices, is not an ecclesiastical parish, and such an incumbent is not under such obligation (*Day v. Peacock* (1865), 34 L. J. C. P. 225; 12 L. T. (N.S.) 571; 18 C. B. (N.S.) 702; 11 Jur. (N.S.) 428; 13 W. R. 717; and see *Reg. v. Sudbury* (1858), E. B. & E. 264; 27 L. J. Q. B. 232; 31 L. T. 161; 4 Jur. (N.S.) 948).

Where several ecclesiastical parishes are situate within the area for which a cemetery is provided, the incumbents of such parishes may make an arrangement among themselves for the performance

**Sect. 7.**  
**NOTE.**

of the burial service in the cemetery by one of their number, or by a chaplain whom they may appoint and remunerate as may be agreed (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 39).

The power of a local authority to appoint a chaplain to officiate in a cemetery is conferred by s. 27 of the Cemeteries Clauses Act, 1849 (10 & 11 Vict. c. 65); and by s. 28, an obligation is imposed upon the chaplain to perform the burial service in the consecrated part of the cemetery over the bodies of all persons entitled to be buried therein (see *post*, p. 322). A local authority has no power to remove a chaplain when once appointed, as the power of removal is given to the bishop alone (*ib.*, s. 27). Nor has the local authority any power to reduce the stipend of the chaplain, such stipend being fixed once for all by the bishop (*ib.*, s. 31). And his stipend is not a "fee" payable to an ecclesiastical officer, so as to be abolished by s. 4 (5) of this Act. In all cases, therefore, where a chaplain has before this Act been appointed by a local authority with a stipend, it appears that the local authority will be bound to continue payment of his stipend until his resignation or removal by the bishop, and also to pay the incumbent who performs the burial service over his parishioners the fee fixed under s. 3 (1) of this Act.

The registration of burials in the consecrated part of a cemetery was regulated by s. 32 of the Cemeteries Clauses Act, 1847, which is in effect repealed by this section so far as it applies to a cemetery provided by a local authority. Burials in the unconsecrated part are subject to the provisions as to registration contained in the Registration of Burials Act, 1864 (27 & 28 Vict. c. 97), *post*.

Notice of  
intention to  
bury.

8. The notice to be given of intention to bury in a burial ground maintained by a burial authority shall be given at such time and to such person as the burial authority may direct, and so much of section one of the Burial Laws Amendment Act, 1880, as requires forty-eight hours' notice to be given in any such case shall be repealed.

43 & 44 Vict.  
c. 41.

Application  
of certain  
provisions of  
Burial Acts to  
cemeteries  
under  
42 & 43 Vict.  
c. 31.

9. The provisions of section seven of the Burial Act, 1853, as to allotment of the unconsecrated part of a burial ground, and the Burial Laws Amendment Act, 1880, as amended by this Act, shall apply to burial grounds provided under the Public Health (Interments) Act, 1879, as if the burial authority were a burial board.

The provisions of s. 7 of the Burial Act, 1853, as amended by this Act, referred to in this section are now as follows :

"Provided always, that in all cases in which any burial board shall provide a new burial ground under the Burial Act, 1852, or under this Act, . . . the unconsecrated part thereof shall be allotted in such manner and in such portions, as may be sanctioned by one of her Majesty's Principal Secretaries of State."

These provisions will now take the place of s. 35 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), under which a local authority had unrestricted power of allotting that part of the cemetery not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church.

**Sect. 9.**  
**NOTE.**

There has always been a difference of opinion whether the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), applied to cemeteries established under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31). The question is now settled by this section. The provision in s. 5 of that Act as to the payment of a fee to the incumbent must, in the case of such cemeteries, be now deemed to be repealed by s. 3 (4) of this Act.

**10.** Section fifteen of the Cemeteries Clauses Act, 1847 (relating to boundary fences) shall not apply to a burial ground provided under the Public Health (Interments) Act, 1879. Boundary fences.  
10 & 11 Vict.  
c. 65.

Section 15 of the Cemeteries Clauses Act, 1847, required a cemetery established by a local authority to be enclosed by a wall or fence of the height of eight feet at least.

**11.** In this Act the expression "burial authority" shall mean any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act. Meaning of  
"burial  
authority."  
42 & 43 Vict.  
c. 31.

The powers of a burial board may be exercised by a parish council under s. 7 of the Local Government Act, 1894, by an urban district council under s. 62 of the Local Government Act, or under 29 & 30 Vict. c. 90, s. 44; by a borough council under the Burial Act, 1854; by a committee under s. 53 (2) of the Local Government Act, 1894; by a local board under 21 & 22 Vict. c. 98, s. 49; by improvement commissioners or local boards under ss. 19, 20 of the Burial Act, 1855, and s. 4 of the Burial Act, 1857; and by the Commissioners of Sewers of the City of London, under the City of London Burial Act, 1857 (20 & 21 Vict. c. 35).

**12.** The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule. Repeal.



- Sect. 13.** **13.**—(1.) This Act may be cited as the Burial Act, 1900, and may be cited and shall be construed with the Burial Acts, 1852 to 1885.
- Short title and commencement. (2.) This Act shall come into operation on the first day of January one thousand nine hundred and one.

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SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS GIVING OR REFERRING TO POWERS WHICH ARE TO BE TRANSFERRED TO THE LOCAL GOVERNMENT BOARD.

Session and Chapter.	Short Title.	Enactments.
15 & 16 Vict. c. 85 -	The Burial Act, 1852.	Sections two, six, seven, nine, ten, and forty-four.
16 & 17 Vict. c. 134	The Burial Act, 1853.	Sections one, four, five, and six.
18 & 19 Vict. c. 128	The Burial Act, 1855.	Sections three, six, seven, eight, and seventeen.
20 & 21 Vict. c. 81 -	The Burial Act, 1857.	Sections nine, ten, twenty-three, and twenty-four.
22 Vict. c. 1 - -	The Burial Act, 1859.	Section one.
23 & 24 Vict. c. 64 -	The Burial Act, 1860.	Section four.
34 & 35 Vict. c. 33 -	The Burial Act, 1871.	Section one.

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## SECOND SCHEDULE.

Sched.

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
15 & 16 Vict. c. 85 -	The Burial Act, 1852.	Section thirty, from "and to build" to the end of the section. In section thirty-one the words "as aforesaid." In section thirty-two the words "from and after the consecration as aforesaid of"; the words from "except any portion" to "appoint, such burial ground"; the words "and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received"; the words "and shall be entitled to receive the same fees on such burials"; and the words "and received" where they last occur. Section thirty-three, from "but there shall be payable" to the end of the section. In section thirty-four, the words "without prejudice to the fees and payments herein specially provided for." Sections thirty-five, thirty-six, and thirty-seven. Section fifty so far as it relates to a burial ground under a burial authority.
16 & 17 Vict. c. 134	The Burial Act, 1853.	Section seven, so far as it re-enacts any provision repealed by this Act, and the words "that new burial ground shall be divided into consecrated and unconsecrated parts, in such proportions and" and from "and when any burial board" to the end of the section.
17 & 18 Vict. c. 87 -	The Burial Act, 1854.	Sections eight and ten.
18 & 19 Vict. c. 128	The Burial Act, 1855.	Sections ten and fourteen.
20 & 21 Vict. c. 35 -	The City of London Burial Act, 1857.	Sections one, three, four, and five, and the Schedule.

## BURIAL ACT, 1900.

Sched.

Session and Chapter.	Short Title.	Extent of Repeal.
20 & 21 Vict. c. 81-	The Burial Act, 1857.	<p>Section three, from "and may, if they see fit," to the end of the section.</p> <p>In section five, the words "and consecrated," and the words "and be entitled to the same fees," in each case where they occur.</p> <p>In section twelve, the words "which application the board is required to make as soon as such ground is in such fit and proper condition."</p> <p>Section seventeen.</p>

## CEMETERIES.

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### PUBLIC HEALTH (INTERMENTS) ACT, 1879.

(42 & 43 VICT. c. 31.)

*An Act to amend the Public Health Act, 1875, as to Interments.* [21st July 1879.]

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act. Short title and construction. 38 & 39 Vict. c. 55.

This Act does not, therefore, apply to the metropolis (Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 2). Sanitary authorities in the metropolis and the London County Council are empowered to provide mortuaries for the reception of dead bodies, by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 88—93.

2.—(1.) The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery. The provisions of 38 & 39 Vict. c. 55, extended to cemeteries.

The provisions of the Public Health Act, 1875, as to providing a place for the reception of the dead before interment, are contained in ss. 141—143 of that Act. Powers for acquiring land for such a purpose, *inter alia*, are given by ss. 175—178; and for making byelaws by ss. 182—188, *post*.

(2.) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without

**Sect. 2**  
**2).**38 & 39 Vict.  
c. 55, ss. 32—  
34.

their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district.

For these sections, see *post*, pp. 305, 306.

By s. 4 of the Public Health Act, 1875, "local authority" means urban sanitary authority and rural sanitary authority. A cemetery may, therefore, be provided under this Act by any town or urban district council, or by a rural district council, but not by a parish council, which can only provide a burial ground under the Burial Act.

(3.) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The Memoranda issued by the Local Government Board (1) describing and observing upon the objects of this Act; (2) setting forth the sanitary requirements of cemeteries; (3) providing model byelaws, are set out in Appendix B., *post*.

10 & 11 Vict.  
c. 65,  
incorporated  
with this Act.

**3.** The Cemeteries Clauses Act, 1847, shall be incorporated with this Act.

For the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), see *post*, pp. 312 *et seq.*

A local authority providing a cemetery under the provisions of this Act does not become a burial board. It is subject to the provisions of the Public Health and Cemeteries Clauses Acts, and not to those of the Burial Acts, except the Burial Act, 1900 (63 & 64 Vict. c. 15), which applies equally to burial boards and to local authorities providing a cemetery under this Act. Where an urban district is a borough, the town council may become a burial board by virtue of the Burial Act, 1854 (17 & 18 Vict. c. 87), ss. 1, 2, and in other urban districts, the district council may become a burial board under 21 & 22 Vict. c. 98, s. 49, or 29 & 30 Vict. c. 90, s. 44 (re-enacted in Schedule V., Part 3 of the Public Health Act, 1875, by s. 343 of that Act), or under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62. But a town or district council may, instead of becoming a burial board, provide a cemetery under this Act.

It would seem, also, that in the case of a town or urban district council which is a burial board, the powers conferred by this Act are cumulative upon the powers possessed by the council as a burial board, and that it can provide a cemetery under this Act, instead of a burial ground or an additional burial ground under the Burial Acts. This discretion may sometimes become important, as a local authority may obtain compulsory powers for the acquisition of land for a cemetery under this Act, whereas in its capacity of burial

board under the Burial Acts it cannot do so. In other respects the provisions of the Burial Act, 1900, have to a great extent assimilated the incidents attached to the acquisition and management of cemeteries and burial grounds.

The main changes introduced by the Burial Act, 1900 (63 & 64 Vict. c. 15), into the incidents attached to a cemetery provided under this Act, are those relating to the consecration of a portion of the cemetery (s. 1); to the building of a chapel or chapels thereon (s. 2); to the substitution for a chaplain of the incumbents of the parishes comprised in the area for which the cemetery is provided as the persons entitled to perform the burial service in the consecrated part of the cemetery (s. 7); to the fixing of fees payable to such incumbents (s. 3); to the application of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41) to a cemetery (s. 9); and to the repeal of the obligation to make boundary fences (s. 10). The notes to the sections of the Burial Act, 1900, here enumerated, fully explain these changes.

It will be observed that by s. 141 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), in connection with this Act, the Local Government Board can compel a local authority to provide a cemetery.

This Act does not apply to the metropolis as defined in the Metropolitan Management Act, 1855 (18 & 19 Vict. c. 120), the metropolis being excluded from the provisions of the Public Health Act, 1875, by s. 5 of that Act. The provisions relating to mortuaries in the metropolis are contained in ss. 88 to 93 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), which repeals the Sanitary Act, 1866 (29 & 30 Vict. c. 90). They are as follows:

#### MORTUARIES, ETC.

88. Every sanitary authority shall provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make byelaws with respect to the management and charges for the use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such byelaws, of any dead body received into a mortuary.

Power of local authorities to provide mortuaries. [Metropolis.]

89.—(1.) Where either—

- (a) the body of a person who has died of any infectious disease is retained in a room in which persons live or sleep; or
- (b) the body of a person who has died of any dangerous infectious disease is retained without the sanction of the medical officer of health or any legally qualified medical practitioner for more than forty-eight hours, elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or work-room; or
- (c) any dead body is retained in any house or room, so as to endanger the health of the inmates thereof, or of any adjoining or neighbouring house or building,

Power of justice in certain cases to order removal of dead body to mortuary.

**Sect. 3.****NOTE.**

a justice may, on a certificate signed by a medical officer of health or other legally qualified medical practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, and be buried within the time limited by the justice; and may if it is the body of a person who has died of an infectious disease, or if he considers immediate burial necessary, direct that the body be buried immediately, without removal to the mortuary.

(2.) Unless the friends or relations of the deceased undertake to bury and do bury the body within the time so limited, it shall be the duty of the relieving officer to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner from any person legally liable to pay the expense of such burial.

(3.) If any person obstructs the execution of any direction given by a justice under this section, he shall be liable to a fine not exceeding five pounds.

Power of sanitary authority to provide places for post-mortem examinations.

90.—(1.) Any sanitary authority may, and if required by the county council shall, provide and maintain a proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building.

(2.) Any such building may be provided in connexion with a mortuary, but this enactment shall not authorise the conducting of any post-mortem examination in a mortuary.

Power to sanitary authorities to unite for providing mortuary.

91. Any sanitary authorities may, with the approval of the county council, execute their duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

Place for holding inquests.

92. The county council shall provide and maintain proper accommodation for the holding of inquests, and may by agreement with a sanitary authority provide and maintain the same in connexion with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority, and may do so on such terms as may be agreed on with the authority.

Mortuary for unidentified bodies.

93.—(1.) The county council may provide and fit up in London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained

and preserved with a view to the ultimate identification of such dead bodies.

**Sect. 3.**

**NOTE.**

(2.) A Secretary of State may make regulations as to—

(a.) the manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception ; and

(b.) the fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same ; and

(c.) the disposal and interment of any such bodies.

(3.) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body.

(4.) Subject to and in accordance with such regulations as may be made by a Secretary of State, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and subject as aforesaid the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner.

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The following are the sections of the Public Health Act, 1875 (38 & 39 Vict. c. 55), extended by s. 2 to the acquisition, construction, and maintenance of a cemetery (a) :

#### AS TO SEWAGE WORKS WITHOUT DISTRICT.

32. A local authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Notice to be given before commencing sewage works without district.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the

(a) These sections are included here for the sake of convenience ; but reference should be made to the valuable notes to the same in Lumley's Public Health Act, 1875, by Macmorran and Lushington.



**Sect. 3.**  
**NOTE.**

parishes, and the turnpike roads and streets, and other lands (if any) through across under or on which the work is to be made and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the trustees, surveyors of highways, or other persons having the care of such roads or streets.

In case of objection works not to be commenced without sanction of Local Government Board.

33. If any such owner, lessee, or occupier, or any such overseer, trustee, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

Inspector to hold inquiry and report to Local Government Board.

34. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

\* \* \* \* \*

#### MORTUARIES, ETC.

Power of local authority to provide mortuaries.

141. Any local authority may, and if required by the Local Government Board shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make byelaws with respect to the management and charges for the use of the same; they may also provide for the decent and economical interment at charges to be fixed by such byelaws of any dead body which may be received into a mortuary.

“Local authority” includes both urban and rural district councils (Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4). The power to make charges for use of the cemetery includes the power to charge for exclusive rights of burial, erecting monuments, etc., granted by s. 40 of the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65). The fees of any minister of religion in respect of services rendered by him must be fixed by the local authority and approved by the Home Secretary (Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3 (1)). Such fees are payable to the local authority, and are to be paid over by that authority to the minister (*id.*, s. 3 (3)).

142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Sect. 3.

NOTES.

Justice may in certain cases order removal of dead body to mortuary.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds.

143. Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place; [*and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such post-mortem examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for post-mortem examinations when ordered by the coroner.*]

Power of local authority to provide places for post-mortem examinations.

The words of this section printed in italics are repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71), of which ss. 21—24 provide for holding *post-mortem* examinations.

\* \* \* \* \*

#### PURCHASE OF LANDS.

175. Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease sell or exchange any lands, whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district.

Power to purchase lands.

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal

**Sect. 3.** moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

**NOTE.**

**Regulations as to purchase of lands.** 176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed ; (that is to say,)

(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 :

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall—

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require ; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents dissents or is neuter in respect of taking such lands :

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice ; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires :

(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition ; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners leasees and occupiers thereof :

**Sect. 3.**  
**NOTA.**

(5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit ; and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held before the expiration of one month from the last day of the second of the two months in which the notices are given ; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more of such persons on behalf of all such persons.

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same. Power to let lands.

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to her Majesty her heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase ; and on payment of the purchase Provision for lands belonging to the Duchy of Lancaster.

**Sect. 3.**  
**NOTE.**

money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

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**BYELAWS.**

**Authentica-  
tion and  
alteration of  
byelaws.**

**182.** All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

**Power to  
impose  
penalties on  
breach of  
byelaws.**

**183.** Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaw made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

**Confirmation  
of byelaws.**

**184.** Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

**Sect. 3.**  
**NOTE.**

A byelaw required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority.

185. All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours. Byelaws to be printed.

186. A copy of any byelaws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making confirmation and existence of such byelaws without further or other proof. Evidence of byelaws.

187. Byelaws made by the council of any borough under the provisions of section ninety of the Municipal Corporations Act, 1835, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to byelaws shall apply to the byelaws so made as if they were made under this Act. Byelaws as to nuisances in boroughs.

Section twenty-three of the Municipal Corporations Act, 1882, is now substituted for section ninety of the Act of 1835.

188. The provisions of this Act relating to byelaws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit. As to regulations of local authority.

## CEMETERIES CLAUSES ACT, 1847.

(10 &amp; 11 VICT. c. 65.)

*An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Cemeteries (a).*

[9th July 1847.]

Preamble recited that it was convenient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the making of cemeteries, as well for avoiding the necessity of repeating such provisions in each of the several Acts, relating to such undertakings as for insuring greater uniformity in the provisions themselves.

Incorporation  
with special  
Act.

[1.] This Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Interpretation

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

“The special  
Act”:

2. The expression “the special Act” used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the making of a cemetery, and with

“Pre-  
scribed”:

which this Act shall be incorporated; and the word “prescribed” used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word “prescribed” the expression “prescribed for that purpose in the special Act” had been

“The lands”:

used; and the expression “the lands” shall mean the lands which shall by the special Act be authorised to be taken or

(a) This Act is incorporated with the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), *ante*, p. 302.

used for the purposes thereof; and the expression "the company" shall mean the person by the special Act authorised to construct the cemetery. **Sect. 2.**  
 "The company."

The "special Act" authorising the making of a cemetery by a local authority is the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), *ante*, p. 301; and in respect of such a cemetery "the company" throughout this Act will mean such local authority.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number :

Words importing the masculine gender shall include females :

The word "person" shall include a corporation, whether aggregate or sole :

"Person":

The word "lands" shall include messuages, lands, and hereditaments, of any tenure :

"Lands":

The expression "the cemetery" shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorised to be constructed :

"The cemetery":

The word "month" shall mean calendar month :

"Month":

The expression "superior courts" shall mean her Majesty's superior courts at Westminster or Dublin, as the case may require . . . :

"Superior courts":

By the Courts of Justice Building Act, 1865 (28 & 29 Vict. c. 48), s. 18, it is provided that "notwithstanding their removal to the site provided by the Courts of Justice Concentration (Site) Act, 1865 [28 & 29 Vict. c. 49], the superior courts of law and equity may exercise the same jurisdiction and enjoy the same rights and privileges as they have hitherto exercised and enjoyed; and all statutes, charters, and other instruments wherein *Westminster* is described or referred to as being the locality of the said courts shall be construed as if the site provided by the Courts of Justice Concentration (Site) Act, 1865, had been described or referred to in the said statutes, charters, and other instruments as the locality of the said courts, instead of *Westminster*."

The jurisdiction of the Court of Common Pleas at Lancaster, and of the Court of Pleas at Durham, is transferred to the High Court by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16.



- Sect. 3.** The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :
- "Oath" :
- "Established Church" : The expression "Established Church" shall mean the United Church of England and Ireland as by law established :
- By the Irish Church Act, 1869 (32 & 33 Vict. c. 42), s. 69, it is provided that "in all enactments, deeds, and other documents in which mention is made of the United Church of England and Ireland, the enactments and provisions relating thereto shall be read distributively in respect of the Church of England and the Church of Ireland, but, as to the last-mentioned church, subject to the provisions of this Act."
- "County" : The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town :
- "Justice" : The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated ; and where any matter is authorised or required to be done by "two justices" the expression "two justices" shall be understood to mean two or more justices met and acting together :
- "Two justices" :
- "Quarter sessions." The expression "quarter sessions" shall mean the quarter sessions as defined by the special Act ; or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace.

*Citing the Act.*

And with respect to citing this Act or any part thereof, be it enacted as follows :

Short title.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Cemeteries Clauses Act, 1847."

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Sect. 5.

Form in which portions of this Act may be incorporated in other Acts.

And with respect to the making of the cemetery, be it enacted as follows :

*Making of cemetery.*

6. Where by the special Act the company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the constructed of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

Taking of lands for purpose of special Act to be subject to the provisions of this and the Lands Clauses Act, 8 & 9 Vict. c. 18.

**Sect. 7.**

Correction of errors and omissions in special Act.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described in the special Act or the schedule thereto, the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, mis-statement, or wrong description had not been made.

Certified copies of alterations, etc., to be evidence.

8. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Land used for burials not to be used for other than authorised purposes.

9. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorised by this or the special Act, or any Act incorporated therewith.

There is no power under this Act to sell any part of the consecrated ground except for the purpose of vaults and private graves (s. 40, *infra*).

By a 6 of the Burial Act, 1900 (63 & 64 Vict. c. 15), unconsecrated ground which is maintained by a burial authority, and set apart for the purpose of burial, shall not be applied to any other purpose except by leave of the Local Government Board.

Cemetery not to be within a certain

10. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance be prescribed, two hundred yards, except with the

consent in writing of the owner, lessee, and occupier of such house. **Sect. 10.**

distance of  
houses.

The distance is to be measured from the walls of the dwelling-house, not from the boundary of the curtilage adjoining the house (*Wright v. Wallasey Local Board*, 18 Q. B. D. 783; 56 L. J. Q. B. 259).

11. The company, upon any land which by the special Act they are authorised to use for the purposes of the cemetery, may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit. Company may build chapels and lay out grounds.

If part of the cemetery be consecrated, the company are bound to build a chapel for the performance of the burial service according to the rites of the Established Church (s. 25, *infra*).

If, however, the cemetery is provided by a local authority under the Public Health (Interments) Act, 1879, the power and duty of such authority as to building a chapel or chapels is defined by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 2.

12. The company, upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit. Company may make or widen roads to cemetery.

13. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof, if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law. No road to be widened without consent.

14. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same. Improvement of roads.

15. Every part of the cemetery shall be enclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed, Cemetery to be enclosed and fenced.

**Sect. 15.** by substantial walls or iron railings of the height of eight feet at least.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 10, this section is not to apply to a cemetery established by a local authority.

Cemetery to be kept in repair.

**16.** The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.

The company, or the local authority establishing a cemetery under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), are, therefore, the "occupiers" of the cemetery, and are liable to be rated as such (*Reg. v. St. Mary Abbots, Kensington* (1840), 12 A. & E. 824; 10 L. J. M. C. 25; and see *Reg. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515; 42 L. J. M. C. 124; 29 L. T. (n.s.) 174).

A cemetery company were by private Act prohibited from selling any of their consecrated land, but were empowered to make profits by selling exclusive rights of burial, etc. A new street was made abutting on the consecrated part of the cemetery:—*Held*, that the company were "owners" of the land within the definition of s. 250 of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), and were therefore liable to contribute to such expenses (*St. Giles, Camberwell v. London Cemetery Co., Limited*, [1894] 1 Q. B. 699). This decision will apply to any cemetery to which this Act applies, as ss. 9, 40 of this Act contain similar restrictions and powers as were contained in the private Act of the London Cemetery Company.

Compensation for damage

**17.** Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

A burial board was held liable for injury done to a horse from eating leaves and branches of yew trees growing in the burial ground, and projecting over a meadow in which the horse was pasturing (*Crowthurst v. Amersham Burial Board* (1878), 4 Ex. Div. 5; 45 L. J. Ex. 109; 39 L. T. (n.s.) 35).

A similar liability would attach to a local authority establishing a cemetery under the Public Health (Interments) Act, 1879.

Prevention of Nuisances.

And with respect to preventing nuisance from the cemetery, be it enacted as follows:

Power to make sewers, drains, etc.,

**18.** The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining

and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

Sect. 18.

in and about  
the cemetery.

It would appear from the decisions in *Croydale v. Sunbury-on-Thames District Council*, [1898] 2 Ch. 515; and *Sykes v Sowerby Urban District Council*, [1900] 1 Q. B. 584, that sewers made by a company under this section are "sewers made by a person for his own profit" within the meaning of s. 13 (1) of the Public Health Act, 1875, and do not therefore vest in the local authority.

19. When any street or road or sewer shall be opened with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer.

Provisions of  
10 & 11 Vict.  
c. 17,  
incorporated  
with this  
Act.

These clauses are ss. 28—34 of 10 & 11 Vict. c. 17, *post*.

20. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds.

Penalty on  
company for  
allowing  
water to be  
fouled.

The company or local authority would also be liable in damages at common law for suffering impure water from the cemetery to percolate underground so as to pollute the water of a well in neighbouring land (*Ballard v. Tomlinson* (1885), 29 Ch. D. 115; 54 L. J. Ch. 454; 52 L. T. 942; 33 W. R. 533; *Womersley v. Church* (1867), 17 L. T. (N.S.) 190).

**Sect. 21.**

By whom,  
how, and  
within what  
time such  
penalty may  
be recovered.

21. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter, in any of the superior courts, by action of debt or on the case: Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

Damages, or  
a daily  
penalty  
during the  
continuance  
of the offence  
after notice  
may be  
recovered.

22. In addition to the said penalty of fifty pounds, (and whether such penalty is recovered or not,) any person having right to use the water fouled by such offensive matter may sue the company, in an action on the case, in any court of competent jurisdiction, for any damage specially sustained by him by reason of the water being so fouled; or if no special-damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person.

**Burials.**

And with respect to burials in the cemetery, be it enacted as follows:

Part of  
cemetery to  
be set apart  
for burial  
according to  
rites of  
Established  
Church.

23. The bishop of the diocese in which the cemetery is situated may, on the application of the company, consecrate any portion of the cemetery set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

There is no obligation imposed by this Act upon the company to apply to the bishop to consecrate any portion of the cemetery, and if no portion is consecrated, ss. 24—34 of this Act will not come into operation.

Where a cemetery is established by a local authority under the Public Health (Interments) Act, 1879, the provisions of s. 1 of the Burial Act, 1900, with regard to consecration, are substituted for the provision of this section.

Consecrated  
and un-  
consecrated  
ground to  
be defined.

24. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery.

In *Reg. v. Tiverton* (1858), 31 L. T. (o.s.) 233, decided under the

Burial Act, 1852 (15 & 16 Vict. c. 85), s. 30, it was held that a wall twelve inches in height was sufficient to distinguish the consecrated from the unconsecrated part of a burial ground.

**Sect. 24.**  
—  
NOTE.

**25.** The company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

Chapel for  
Established  
Church  
service.

By s. 2 of the Burial Act, 1900, the obligation imposed by this section on a local authority to build a chapel within the consecrated part of a cemetery established under the Public Health (Interments) Act, 1879, is to cease, and the provisions of that section are substituted for those herein contained.

**26.** No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church.

Removal of  
bodies from  
consecrated  
ground.

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 25, it is provided that, except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body which may have been interred in any place of burial without licence under the hand of a Secretary of State; such provision would apply to the unconsecrated as well as to the consecrated part of the cemetery.

Nothing short of an Act of Parliament can divest consecrated ground of its sacred character, or enable persons, although they be owners of the soil, to remove bodies therefrom (*Reg. v. Twiss* (1869), L. R. 4 Q. B. 407; 38 L. J. Q. B. 228; 20 L. T. (N.S.) 522; 17 W. R. 785).

**27.** The company shall from time to time, with the approval of the bishop of the diocese in which the cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery; and such chaplain shall be licensed by and be subject to the jurisdiction of the said bishop, and the said bishop shall have power to revoke any such licence, and to remove such chaplain, for any cause which appears to him reasonable.

Appointment  
and licensing  
of chaplain.

By s. 7 of the Burial Act, 1900 (63 & 64 Vict. c. 15), the power of a local authority to appoint a chaplain for a cemetery established by them under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), is abolished, and the same obligation is cast upon the



**Sect. 27.****NOTE.**

incumbents of ecclesiastical parishes situate wholly or partly within the area for which the cemetery is provided, to perform the funeral services in the cemetery over the bodies of their parishioners or of persons dying in their parish as is imposed upon incumbents of parishes in a burial ground provided under the Burial Acts. No provision is made by the Act of 1900 for the cases where a chaplain had, before the passing of that Act, been appointed by a local authority with a stipend approved by the bishop under s. 30 of this Act. He apparently cannot be removed from his office by the local authority, the power of removal being, by this section, vested in the bishop of the diocese; nor can his stipend be altered by the local authority, at all events without the consent of the bishop (see s. 30, *infra*). He is no longer entitled to perform funeral services in the consecrated part of the cemetery against the wish of the incumbents of the parishes within the area for which the cemetery was established; and as his stipend is not a "fee," it is not made to cease by s. 3 (5) of the Act of 1900, nor is the provision in that subsection as to compensation applicable to him.

Burial service over bodies entitled to burial in consecrated ground.

**28.** The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to the rites and usage of the Established Church.

This and the preceding section, so far as they apply to any private cemetery established by a company, are now subject to the provisions of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), which provides in the cases therein specified for the burial of deceased persons in the consecrated ground of a cemetery without the service of the Established Church. By s. 1 of that Act, the chaplain of a cemetery is the person to whom the notice required by the Act must be addressed; and, by the proviso to the same section, proprietors of cemeteries are empowered to make such byelaws and regulations as may be necessary for enabling any burial to take place therein in accordance with the provisions of that Act.

This section is in effect repealed with regard to any cemetery established by a local authority under the Public Health (Interments) Act, 1879, by s. 7 of the Burial Act, 1900. See note to s. 27, *supra*.

Other clergymen of Established Church may be allowed to officiate.

**29.** Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop,

may perform the said burial service over such body in the consecrated part of the cemetery. **Sect. 29.**

It is difficult to say whether this section is still in force in respect of a cemetery established by a local authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31). Section 7 of the Burial Act, 1900 (63 & 64 Vict. c. 15), which casts upon incumbents of parishes situate within the area for which such cemetery is provided the same *obligation* to perform the funeral services over their parishioners in the cemetery as is imposed upon incumbents of parishes to perform such services in a burial ground provided under the Burial Acts, does not in terms confer upon them the *right* to perform such services, which is conferred upon incumbents by s. 32 of the Burial Act, 1852, in respect of burial grounds. As, however, the incumbent of a parish within the area is now under an obligation to perform the service, and if he does perform it, is entitled to a fee (Burial Act, 1900, s. 3 (1)—(3)), but is entitled to no fee if he does not perform it (*ib.*, s. 3 (4)), it is not improbable that this section must be now considered as repealed by implication, and that henceforth a stranger clergyman cannot be introduced to perform the service and deprive an incumbent of his fee without the consent of the incumbent interested. It may, however, be considered, that the necessity of obtaining the bishop's consent is a sufficient safeguard to the incumbent, as the bishop might make it a condition that the fee should be handed over to the incumbent who would otherwise be entitled to it.

30. The company, out of the moneys to be received by virtue of this and the special Act, shall allow to the chaplain of the cemetery for the time being such a stipend as is approved of by the bishop of the diocese in which the cemetery is situated, which shall be payable by equal moieties, on the twenty-fifth day of March and the twenty-ninth day of September in each year; and if any chaplain die, resign, or be removed or appointed, in the interval between the half-yearly days of payment, the company shall pay to him, or his executors or administrators, a part only of the half-yearly payment of the stipend, proportioned to the time during which he shall have been the chaplain since the last preceding day of payment. Company to pay the chaplain a stipend approved by the bishop.

This section is in effect repealed with regard to any cemetery established by a local authority under the Public Health (Interments) Act, 1879, by s. 7 of the Burial Act, 1900. See note to s. 27, *supra*.

31. If the stipend of the said chaplain, or any part thereof, be not paid to the chaplain entitled to receive the same, or to the executors or administrators of a deceased chaplain, Stipend may be recovered by action at law.

**Sect. 31.** for the space of thirty days next after any of the days of payment whereon the same ought to be paid, such chaplain, or his executors or administrators, may recover the same, with full costs of suit, against the company, by action of debt or upon the case in any court of competent jurisdiction.

This section is no longer of any effect with regard to any cemetery established by a local authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), except (probably) in the case of a chaplain appointed before the passing of the Burial Act, 1900 (63 & 64 Vict. c. 15). See note to s. 27, *supra*.

Register of burials in the consecrated portion.

**32.** All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese.

The Act regulating the keeping of registers by the rectors, vicars, or curates of parishes or ecclesiastical districts in England is the Parochial Registers Act (52 Geo. 3, c. 146), modified by the Forgery Act (11 Geo. 4 & 1 Will. 4, c. 66), s. 31; the Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 1; and the Statute Law Revision Act, 1873; see *post*, Registration. Burials in the unconsecrated part of the cemetery require to be registered in accordance with the provisions of the Registration of Burials Act, 1864 (27 & 28 Vict. c. 97); and by s. 7 of the Burial Act, 1900, that Act is made applicable to the registration of burials in the consecrated part of a cemetery established by a local authority, where there is no chaplain.

Registers to be subject to the regulations of 6 & 7 Will. 4, c. 86, as to searches, etc.

**33.** The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by the Births and Deaths Registration Act, 1836, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

This section will only apply in the case of any cemetery established by a local authority, so long, if at all, as a chaplain exists for such cemetery. See note to ss. 27 and 32, *supra*.

**Sect. 33.**

NOTE.

If the burial take place in consecrated ground without a religious service, or with a service other than that of the Established Church under the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), the entry of the burial must be made in the register in the manner directed by s. 10 of that Act.

**34.** The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the service for burials in the consecrated part of the cemetery, and allow to such clerk such stipend as they think proper out of the moneys to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

Appointment of clerk for consecrated part of the cemetery.

The provisions of this section are now in effect repealed with regard to any cemetery established by a local authority by s. 5 of the Burial Act, 1900 (63 & 64 Vict. c. 15), which enacts that no fees shall be paid to any clerk in respect of interments in a burial ground maintained by a burial authority.

**35.** The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint.

Burial of persons not members of Established Church.

The provisions of this section are now superseded with regard to any cemetery established by a local authority by s. 9 of the Burial Act, 1900, which applies to such cemetery the provisions of s. 7 of the Burial Act, 1853 (16 & 17 Vict. c. 134), as to allotment of the unconsecrated part of a burial ground, the effect of the change being that the allotment now requires to be sanctioned by the Home Secretary.

**36.** The company may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorised by law to officiate in such church or congregation,

Any burial service may be performed in chapels on unconsecrated part.

**Sect. 36.** or recognised as such by the religious community or society to which he belongs.

By the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 2, the powers conferred by this section are somewhat extended as regards any chapel built by a local authority for a cemetery established under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31).

Power to appoint gravediggers, etc.

**37.** The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit out of the moneys to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure.

A byelaw made by a cemetery company prohibited the admission of any discharged workman or servant of the company into the cemetery without special leave of the directors, and authorised the removal of such person if found within the cemetery. The owner of a grave employed a discharged servant of the company to do work upon the grave. The company removed him from the premises:—*Held*, that the byelaw was not unreasonable, and that the company was justified in its action (*Martin v. Wyatt* (1883), 48 J. P. 215).

Sextons of parishes situate within the area for which a cemetery was established by a local authority had, before the Burial Act, 1900 (63 & 64 Vict. c. 15), no rights within such cemetery corresponding to the rights of sextons of parishes for which a burial ground was provided under the Burial Acts; and no such rights appear to be given by that Act, although the wording of s. 3 (1), (5) gives some colour to the contention that they are.

Regulations.

**38.** The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels.

**39.** No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

*Exclusive Rights of Burial.*

And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the cemetery set apart for grant of exclusive rights of burial.

**40.** The company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions

as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.

**Sect. 40.**

Although the company may make grants of right of burial in perpetuity, yet it is still the occupier of the whole cemetery, and liable to be rated as such; and the purchase money received by the company for the sale of plots in which such rights should be exercised is to be treated for rating purposes as forming part of the annual value of the cemetery (*Reg. v. Abney Park Cemetery Company* (1873), 8 L. R. Q. B. 515; 52 L. J. M. C. 124; 29 L. T. 174; *Reg. v. St. Mary Abbots, Kensington* (1840), 12 A. & E. 824; 10 L. J. M. C. 25).

A cemetery company received from purchasers of grave spaces or lairs, in lieu of annual payment, a lump sum for keeping the lairs in order, and gave receipts in the following form:—"Received £ being the amount agreed to be accepted by the directors for keeping in order and dressing lair No. in said cemetery from time to time, during each year in all time coming":—*Held*, that the sums so received were assessable for income tax under Schedule A., No. 3, Rule III. of the Income Tax Act, 1842 (5 & 6 Vict. c. 35), as being part of the annual profits of the company (*Paisley Cemetery Co., Ltd. v. Reith* (*Surveyor of Taxes*) (1899), 63 J. P. 806).

For incidents attaching to a grant of exclusive rights of burial, see note to the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 33, *ante*, p. 159.

41. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Plan of parts set apart for grant of exclusive rights, and book of reference thereto, to be kept.

42. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing

Grant of exclusive right, etc., may be

**Sect. 42.** therein any monument, tablet, or gravestone, may be made in the form in the schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them.

according to form in schedule.

It is presumed that "any two or more of them" means, in the case of a company, any two or more of the members or directors of the company. In the case of a local authority, such authority will, if urban, be incorporated under s. 7 of the Public Health Act, 1875; if rural, under s. 24 (7) of the Local Government Act, 1894.

Register of grants to be kept.

**43.** A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shilling and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling, to the clerk of the company.

Rights of burial may be assigned or bequeathed.

**44.** The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will.

The form of grant in the schedule does not mention the heirs of the grantee. It has been doubted whether, if a grant of a plot of ground be made by a cemetery company to the grantee and his heirs, with exclusive right of burial therein, this section would have any operation. *Semble*, the right would descend according to the form of the grant (*Matthews v. Jeffrey* (1880), 6 Q. B. D. 290; 50 L. J. Q. B. 164; 29 W. R. 282; 43 L. T. 796; 45 J. P. 361). And see note to the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 33, *ante*, p. 159.

Form of assignments.

**45.** Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the

consideration shall be only set forth, and may be in the form in the schedule to this Act annexed, or to the like effect. Sect. 45.

46. Every such assignment shall, within six months after the execution thereof, if executed in Great Britain or Ireland, or within six months after the arrival thereof in Great Britain or Ireland, if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial, no right of burial shall be acquired under any such memorial; and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence. Assignments to be registered.

47. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition, shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant; and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence. Probates of wills disposing of rights of burial to be registered.

48. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial. Burials in places where exclusive right has been granted.

The owner for the time being will, if the grant is in the form given in the schedule, be the grantee or the legal personal representative of the grantee. If in some other form, he may be the heir of the grantee; see *Matthews v. Jeffrey*, *supra*, note to s. 44.

49. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body No grant to give right in consecrated



**Sect. 49.** of any person not entitled to be buried in consecrated ground, according to the rites and usage of the Established Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

ground, etc.,  
to persons  
not entitled  
to be buried  
according to  
rites of  
Established  
Church.

For the law regarding the right to Christian burial, see *ante*, pp. 10 *et seq.*

**50.** The company may take down and remove any gravestone, monument, tablet, or monumental inscription which shall have been placed within the cemetery without their authority.

Power to  
remove  
monuments  
erected  
without  
authority.

**51.** The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to and procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

Rights of  
bishop to  
object to  
monumental  
inscriptions  
in consecrated  
part of  
cemetery.

See note to the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 38, *ante*, p. 165.

**Payments to Incumbents of Parishes.** And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows :

**52.** The company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial, such sums, if any, as shall be prescribed for that purpose in the special Act.

Payments to  
incumbents  
of parishes  
from which  
bodies are  
brought.

Incumbents of new ecclesiastical districts formed out of an old parish after the passing of the South Metropolitan Cemetery Act, 1836 (6 & 7 Will. 4, c. cxxix.), were held entitled to the burial fees in respect of persons buried from such new districts in preference to the rector of the old parish (*Bowyer v. Stantial* (1878), 3 Ex. D. 315; 38 L. T. 271; *Vaughan v. South Metropolitan Cemetery Co.* (1860), 1 John. & H. 256; 30 L. J. Ch. 265). See *ante*, p. 158.

Where a cemetery has been provided by a local authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), that

Act is the "special Act" (s. 2). In such a case the special Act prescribes no sums as payable to incumbents, and as this section provides only that such sums, *if any*, shall be paid to the incumbents as are prescribed, nothing is payable to such incumbents, or to the clerks under s. 57. In the case of such a cemetery, ss. 52—57 are wholly inapplicable. Section 7 of the Burial Act, 1900 (63 & 64 Vict. c. 15), however, imposes an obligation on the incumbents of ecclesiastical parishes situate within the area for which any such cemetery is provided, to perform the funeral services over the bodies of their parishioners, etc., when buried in the cemetery; and if any such incumbent perform the service, he will be entitled to be paid the fee appearing on the table of fees to be approved by the Home Secretary under s. 3 (1)—(3) of that Act.

**Sect. 52****NOTE.**

**53.** For ascertaining the amount of the payments, if any, to be made to the incumbents of the several parishes or districts aforesaid, the company shall cause books to be kept, and entries to be made therein of the names of all persons whose bodies are buried within the consecrated part of the cemetery, and the names of the parishes or districts from which such bodies respectively have been removed, and the manner of their burial within the cemetery, (distinguishing whether in a place of exclusive burial or otherwise,) with the date of such burial; and such books shall be at all reasonable times open to the inspection of the incumbents for the time being of the said several parishes or districts, or any person employed by them, without fee or reward.

Accounts of interments in consecrated part of cemetery.

**54.** The company shall on the twenty-fifth day of March and twenty-ninth day of September in each year, or within one month after each of the said days, deliver to the person who is the incumbent of any parish or ecclesiastical district on that day, or to his executors or administrators, on demand made within the said month, an account of the sums, if any, payable in respect of bodies removed for burial within the consecrated part of the cemetery as aforesaid from such parish or ecclesiastical district during the half-year next preceding the said twenty-fifth day of March or twenty-ninth day of September, as the case may be.

Account of payments due to incumbents of parishes.

**55.** The sums payable by virtue of the special Act shall be paid half-yearly on the twenty-fifth day of March and the twenty-ninth day of September, or within one month

Payments to be made to incumbents of parishes half-yearly.

**Sect. 55,**

afterwards, to the persons who are the incumbents of the parishes or ecclesiastical districts in respect of which the same are payable on such twenty-fifth day of March and twenty-ninth day of September respectively, or the executors or administrators of such incumbents; (that is to say,) such sums as accrue between the twenty-ninth day of September and the twentieth-fifth day of March following shall be paid to the person who is the incumbent on the twenty-fifth day of March, and such sums as accrue between the twenty-fifth day of March and the twenty-ninth day of September following shall be paid to the person who is the incumbent on the twenty-ninth day of September; and if any such sums be not paid to the party entitled to receive the same within the period hereinbefore limited for the payment thereof, such party may recover the same, with full costs, by action of debt or on the case, in any court having competent jurisdiction.

Apportioned  
payments  
to the  
incumbent.

**56.** If any incumbent of any parish or district in respect of which sums are payable by the company by virtue of the special Act ceases to be incumbent, by cession, death, or otherwise, between the said two half-yearly days of payment, such incumbent shall be entitled to receive so much of the sum payable at the half-yearly day which happens next after he ceases to be incumbent as has accrued from the last preceding half-yearly day, or from the time when such incumbent became first entitled to receive the fruits of his living, as the case may require, up to the day at which he ceased to be incumbent, and the incumbent of any parish or district who receives from the company any sum to a part of which any preceding incumbent is entitled under the provisions herein contained shall pay such part to him, his executors or administrators, accordingly; and the company shall not be answerable to any person, other than the actual incumbent for the time being, for the payment of any sums by virtue of this or the special Act.

Prescribed  
sum payable  
to parish  
clerk.

**57.** The company shall, on the burial of every body within the consecrated part of the cemetery, except where the body is buried at the expense of any parish or ecclesiastical district, or union of parishes for the relief of the

poor, pay to the parish clerk of the parish or ecclesiastical district from which such body has been removed for burial, if he held the office of parish clerk of such parish or ecclesiastical district at the time of the passing of the special Act, but not otherwise, such sum, if any, as shall be prescribed for that purpose in the special Act.

**Sect. 57.**

A parish clerk is not entitled to any fee in respect of an interment in a cemetery established by a local authority under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31). See note to s. 52, *supra*, and the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3 (5).

And with respect to the protection of the cemetery, be it enacted as follows :

*Protection of cemetery.*

58. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

*Penalty for damaging the cemetery.*

The clauses for the protection of cemeteries are incorporated with the Burial Acts by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 40.

59. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

*Disturbances and nuisances in cemetery.*

60. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt and expenditure of all moneys levied by virtue of this or the special Act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure,

*Annual accounts.*

**Sect. 60.** with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds.

**61.** [*Tender of amends.*]

This section is repealed by the Statute Law Revision Act, 1894 (57 & 58 Vict. c. 56), and superseded in the case of proceedings against burial authorities by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.

*Recovery of  
Damages and  
Penalties.*

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows :

8 & 9 Vict.  
c. 20, incor-  
porated as  
to damages,  
etc.

**62.** The clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively.

These clauses (8 & 9 Vict. c. 20, ss. 140—149), as modified by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), are set out *post*.

The effect of the incorporation of these sections is that s. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), applies to proceedings before justices taken thereunder, so that any complaint or information which may be dealt with summarily by the justices must be made within six calendar months from the time when the matter of such complaint or information respectively arose. See *East London Waterworks Co. v. Charles*, [1894] 2 Q. B. 730.

**63.** [*In Ireland, part of penalty to be paid to guardians of unions.*]

Repealed by Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

**64.** All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices. **Sect. 64.**  
Powers of justices.

**65.** Every person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury. False evidence.

And with respect to affording access to the special Act, be it enacted as follows: *Access to Special Act.*

**66.** The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act, so printed as aforesaid; and the said clerk of the peace shall receive, and he and the company respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the Parliamentary Documents Deposits Act, 1837. Copies of special Act to be open to inspection.

7 Will. 4 &  
1 Vict. c. 83.

The 7 Will. 4 and 1 Vict. c. 83, ss. 2, 3, are as follows:

2. All persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

**Sect. 66.****NOTE.**

3. In case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace, to whom any complaint shall be made of any offence committed against this Act, to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited.

Penalty on company failing to keep or deposit such copies.

**67.** If the company fail to keep or deposit any of the said copies of the special Act, as hereinbefore mentioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Saving as to future Acts.

**68.** Nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

\* \* \* \* \*

SCHEDULES to which the foregoing Act refers:—

FORM OF GRANT OF RIGHT OF BURIAL. [Sect. 42.]

BY virtue of [*here name the special Act*], we [*here state the name or description of the company*], in consideration of the sum of \_\_\_\_\_ to us paid by \_\_\_\_\_, of \_\_\_\_\_, do hereby grant unto the said \_\_\_\_\_ the exclusive right of burial [*or the right of burying* \_\_\_\_\_ bodies, as the

*case may be*], [or the right of placing a monument, tablet, or grave-stone,] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add, "numbered* on the plan of the cemetery, made in pursuance of the said Act,"] to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Scheda.

Given under our common seal, [*or under our hands and seals, as the case may be,*] this day of , in the year of our Lord .

## FORM OF ASSIGNMENT OF RIGHT OF BURIAL. [S. 45.]

I, A. B., of , in consideration of the sum of paid to me by C. D., of , do hereby assign unto the said C. D. the exclusive right of burial in [*here describe the place*], and numbered on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or unto A. B. of* ] in perpetuity [*or as the case may be*] by [*here state the name of the company*], by a deed of grant bearing date the day of , and all my estate, title, and interest therein, to hold the same unto the said C. D. in perpetuity [*or as the case may be, for the remainder of the period for which the same was granted by the said company*], subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal, this day of .

INTERMENTS (*FELO DE SE*) ACT, 1882.

(45 &amp; 46 VICT. c. 19.)

*An Act to amend the Law relating to the Interment of any Person found felo de se.* [3rd July 1882.]

Preamble recited that it was expedient that the laws and usages relating to the interment of the remains of persons against whom a finding of *felo de se* should be had should be further altered and amended. Repealed by Statute Law Revision Act, 1898.

1. [*The Act of the fourth year of George the Fourth, [Repeal of chapter fifty-two, intituled "An Act to alter and amend the* <sup>4 Geo. 4,</sup> c. 52.]



**Sect. 1.** *Law relating to the interment of the remains of any person found felo de se," shall be and the same is hereby repealed.]*

Repealed by the Statute Law Revision Act, 1898.

Coroner to give directions for interment.

2. It shall not be lawful for any coroner or other officer having authority to hold inquests to issue any warrant or other process directing the interment of the remains of persons against whom a finding of felo de se shall be had in any public highway, or with any stake being driven through the body of such person, but such coroner or other officer shall give directions for the interment of the remains of such person felo de se in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of felo de se had not been found against such person.

Interment. 43 & 44 Vict. c. 41.

3. The interment of any such person as aforesaid may be made in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880.

For 43 & 44 Vict. c. 41, see *ante*, pp. 266 *et seq.*

Rites of Christian burial not to be performed on interment.

4. Save as aforesaid, nothing herein contained shall authorise the performing of any of the rites of Christian burial on the interment of the remains of any such person as aforesaid, or be taken to alter the laws or usages relating to the burial of such persons.

For the previous law on this subject, see *ante*, pp. 10 *et seq.*

Extent of Act.

5. This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

Short title.

6. This Act may be cited as the Interments (felo de se) Act, 1882.

## BURIAL OF DEAD CAST ON SHORE FROM THE SEA.

BURIAL OF DROWNED PERSONS ACT, 1808.  
(48 GEO. 3, c. 75.)

*An Act for providing suitable Interment in Churchyards or Parochial Burying Grounds in England for such dead Human Bodies as may be cast on Shore from the Sea, in cases of Wreck or otherwise.* [18th June 1808.]

WHEREAS no provision hath yet been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds for such dead human bodies as may be cast on shore from the sea, by wreck or otherwise, in that part of the United Kingdom called England: And whereas it is expedient that provision should be made for the decent interment of such bodies: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act the churchwarden and churchwardens, overseer and overseers of the poor for the time being of the respective parishes throughout England, in which any dead human body or dead human bodies shall be found thrown in or cast on shore from the sea by wreck or otherwise, shall and he and they is and are hereby required, upon notice to him or them given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish for which he or they shall be churchwarden or churchwardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such

In cases where dead human bodies shall be cast on shore churchwardens, etc., of the parish where the body shall be found to cause the same to be removed and interred in a decent manner in the churchyard of such parish.

**Sect. 1.**

Proviso  
for extra-  
parochial  
places.

body or bodies to be decently interred in the churchyard or burial ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish : Provided always, that in case any such body or bodies shall be thrown in or cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body or bodies is or are lying in such extra-parochial place, forthwith cause such body or bodies to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner as the churchwardens and overseers within England are hereby required to bury such body or bodies.

The parish of Woolwich had expended sums of money in burying dead bodies found in the Thames near Woolwich, the result of a collision between two steamers at that place. The parish applied to a justice for an order of reimbursement against the county under s. 6 of this Act. He refused, and on a case stated by quarter sessions, it was held that this part of the tidal river was not sea, and therefore the county was not liable to reimburse the parish under the statute (*Woolwich Churchwardens v. Robertson* (1881), 6 Q. B. D. 654 ; 50 L. J. M. C. 87 ; 44 L. T. 747 ; 29 W. R. 892 ; 45 J. P. 766 ; *Reg. v. Edwards* (1881), 45 J. P. 237). The result of this decision was the passing of the Burial of Drowned Persons Act, 1886 (49 & 50 Vict. c. 20), extending the provisions of this Act to bodies found in or cast on shore from any tidal or navigable waters, *post*, p. 344.

**Rural parishes.**—By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (2) (b), “references 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.”

Minister of  
the parish  
to perform  
the funeral  
service, etc.

2. And . . . , every minister, parish clerk, and sexton of such respective parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body or bodies being interred in such churchyards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expense of such parishes.

3. And . . . in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of five shillings for his, her, or their trouble, such sum to be forthwith paid to the person or persons first giving such notice only; but nevertheless that no greater sum than five shillings shall be paid for any one notice, although there may be a greater number of such bodies than one.

**Sect. 3.**

Reward to persons finding dead human bodies, and giving notice thereof to parish officers

4. Provided always, . . . that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every case such person or persons shall for every such offence forfeit and pay the sum of five pounds.

Penalty on persons finding dead human bodies cast on shore and not giving notice thereof.

By the Burial of Drowned Persons Act, 1886 (49 & 50 Vict. c. 20), s. 1, it is sufficient to give the required notice to a police constable.

5. And . . . all necessary and proper payments, costs, charges, and expenses, which shall be made or incurred in or about the execution of this Act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places as aforesaid.

Expenses to be paid by churchwardens, etc.

6. And, for the purpose of reimbursing him or them all such payments, costs, charges, and expenses, be it further

Reimbursement of expenses by

**Sect. 6.**

the treasurer  
of the county.

enacted, that it shall and may be lawful to and for any one justice of the peace for the county or place within that part of the United Kingdom called England, in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, to order and direct the treasurer for such county to pay such sum or sums of money to such churchwarden and churchwardens, overseer and overseers, constable or headborough, for his or their costs and expenses in or about the execution of this Act (after the same shall have been duly verified on oath) as to the said justice shall seem reasonable and necessary ; and such treasurer shall and he is hereby authorised and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same ; and such treasurer shall be allowed the same in his accounts.

An order made by a justice under this section, after stating that he had inquired into and ascertained on oath the costs and expenses amounting to £1 5s., incurred by the churchwardens and overseers by reason of a dead human body having been found and brought on to the shore within their parish, directed the county treasurer to pay to them the said sum of £1 5s., according to 48 Geo. 3, c. 75. The treasurer refused to pay as directed, and on showing cause against a rule for a *mandamus* to compel him to pay, it was held that the order was bad, because it did not show the expenses in question were proper and necessary expenses incurred in and about the execution of the Act, and therefore did not sufficiently state facts to show, or from which it could be inferred, that the justices had jurisdiction to make it (*Reg. v. Treasurer of the County of Kent* (1889), 22 Q. B. D. 603 ; 58 L. J. M. C. 71).

Penalty on  
parish officers  
neglecting to  
remove and  
inter dead  
human bodies  
so found or  
cast on shore.

7. Provided always, . . . that in case any such churchwarden or churchwardens, overseer or overseers, constable or headborough shall refuse or neglect to remove or cause to be removed such body or bodies from the sea shore to some convenient place prior to the interment thereof, for the space of twelve hours after such notice given to him or them, or left in writing at his or their last or usual place or places of abode by any person or persons whomsoever, or shall neglect or refuse to perform the several other duties required of him and them by this Act, then and in every such case every such churchwarden or overseer, constable or headborough, shall for every such offence forfeit and pay the sum of five pounds.

8. And . . . all penalties and forfeitures which shall be incurred under this Act, . . . when recovered, shall be paid to the informer or informers; . . .

**Sect. 8.**  
—  
Recovery of penalties under this Act.

The provisions in ss. 8, 9, 10, 11 of this Act, omitted here, relating to the procedure in recovering penalties and on appeal are repealed, and others substituted by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

\* \* \* \* \*

10. Provided always, and be it enacted, that if any person or persons shall think himself, herself, or themselves aggrieved by any judgment or determination, or by any matter or thing done in pursuance of this Act, such person or persons may appeal to the justices of the peace at the general or quarter sessions of the peace . . . and the said justices may if they see cause mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

Appeal to the quarter sessions.

\* \* \* \* \*

12. Provided always, and be it further enacted, that all penalties and expenses attendant thereon, which shall be incurred under the provisions of this Act, shall be paid and borne by the person or persons incurring the same, and that the parish or place wherein such person or persons ought to have acted in the duties prescribed by this Act shall be wholly exempted therefrom.

Penalties to be paid by persons incurring the same, and not by the parish.

13. Whereas in cases of dead wrecks wherein no living person is found or owner known, the lords of manors on which any such dead body or dead bodies may be washed in, and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof on trials at common law of the right of such lords of manors to wrecks in such manors: Be it therefore enacted,

Lords of manors, etc., to pay the same fee as heretofore on interring dead human bodies, etc.

**Sect. 13.** that in all and every such cases it shall and may be lawful to and for all and every lord or lords of any manor or manors throughout England to pay or cause to be paid to the churchwarden or churchwardens, overseer or overseers, constable or headborough of such respective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid; such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this Act, and credit to be given for the same by such overseers, churchwardens, constable or headborough, in their accounts with the county to which such accounts shall be submitted, anything in this Act to the contrary thereof in anywise notwithstanding.

[14. *Repealed by Statute Law Revision Act, 1872.*]

## BURIAL OF DROWNED PERSONS ACT, 1886.

(49 & 50 VICT. c. 20.)

*An Act to amend the Law in respect to the Discovery and Interment of Persons drowned.* [4th June 1886.]

Preamble recited the Burial of Drowned Persons Act, 1808 (48 Geo. 3, c. 75) (in this Act called "the principal Act"), and that it was expedient to amend the same and make it applicable to the discovery and interment of dead human bodies cast on shore from any tidal or navigable waters, or found in any such tidal or navigable waters and brought on shore.

Extension of provisions of principal Act.

1. The provisions of the principal Act shall be deemed to extend and apply not only to dead human bodies found in or cast on shore from the sea by wreck or otherwise, but also to any dead human body or dead human bodies found in or cast on shore from any tidal or navigable waters, and to all such

body or bodies found floating or sunken in any such waters and brought on to the shore or bank thereof: Provided, that notice of the finding of any such body or bodies shall be deemed to be duly given in pursuance of the principal Act if given to a police constable within the time specified in that Act, and such constable shall forthwith communicate the same to the parish officers mentioned in the said Act.

Sect. 1.



## INFECTIOUS DISEASES AND MORTUARIES.

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### INFECTIOUS DISEASE (PREVENTION) ACT, 1890.

(53 & 54 VICT. c. 34.) (a)

*An Act to prevent the Spread of Infectious Disease.*

[4th August 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliaments assembled, and by the authority of the same, as follows :

**Short title.** 1. This Act may be cited as the Infectious Disease (Prevention) Act, 1890.

**Definitions.** 2. Expressions used in this Act shall, unless the context otherwise requires, have the same meaning as the like expressions used in the Infectious Disease (Notification) Act, 1889 ; and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease in the same manner as that Act may be applied to such disease.

In this Act—

“ Dairy ” shall include any farm, farmhouse, cowshed,

(a) This Act is in effect repealed as to the metropolis by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 142 ; and somewhat similar provisions are re-enacted in that Act applicable to the metropolis alone. By the Public Health (Ports) Act, 1896 (59 & 60 Vict. c. 20), the Local Government Board are empowered to assign by order to any port sanitary authority any powers, rights, duties, capacities, and obligations under this Act, with the necessary modifications.

milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale :

**Sect. 2.**

“Dairyman” shall include any cowkeeper, purveyor of milk, or occupier of a dairy :

“Medical officer of health” shall include any person duly authorised to act temporarily as medical officer of health :

3. The provisions of this Act shall extend—

Extent of Act.

(b.) to any urban or rural sanitary district after the adoption thereof ;

and the local authority of any urban or rural sanitary district may adopt all or any of the sections of this Act by a resolution passed at a meeting of such authority. Fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either—

(a.) given in the mode in which notices to attend meetings of the local authority are usually given ;  
or

(b.) where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a pre-paid letter addressed to the member at his usual or last known place of abode in England.

Every such resolution shall be published by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the local authority may fix ; and upon its coming into operation such of the sections of this Act as are mentioned in such resolution shall extend to the district.

**Sect. 3.**

A copy of the resolution shall be sent to the Local Government Board when it is published.

A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement.

4. [*Inspection of dairies in certain cases: power to prohibit supply of milk.*]

5. [*Cleansing and disinfecting of premises, etc.: 29 & 30 Vict. c. 90; 38 & 39 Vict. c. 55.*]

6. [*Disinfection of bedding, etc.*]

7. [*Penalty on persons ceasing to occupy houses without previous disinfection or giving notice to owner, or persons making false answers.*]

Prohibiting retention of dead bodies in certain cases.

8. No person without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom, for more than forty-eight hours, the body of any person who has died of any infectious disease.

Bodies of persons dying of infectious diseases in hospital, etc., to be removed only for burial.

9. If any person shall die from any infectious disease in any hospital or place of temporary accommodation for the sick, and the medical officer of health, or any other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place except for the purpose of being forthwith buried, it shall not be lawful for any person or persons to remove such body from such hospital or place except for the last-mentioned purpose; and when the body is taken out of such hospital for that purpose it shall be forthwith carried

or taken direct to some cemetery or place of burial, and shall be forthwith there buried; and any person wilfully offending against this section shall be liable to a penalty not exceeding ten pounds. Nothing in this Act shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.

**Sect. 9**  
—

10. Where the body of any person who has died from any infectious disease remains unburied elsewhere than in a mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or workroom, for more than forty-eight hours after death without the sanction of the medical officer of health or of a registered medical practitioner, or where the dead body of any person is retained in any house or building so as to endanger the health of the inmates of such house or building, or of any adjoining or neighbouring house or building, any justice may, on the application of the medical officer of health, order the body to be removed at the cost of the local authority to any available mortuary, and direct the same to be buried within a time to be limited in the order; and any justice may, in the case of the body of any person who has died of any infectious disease, or in any case in which he shall consider immediate burial necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury and do bury the body within the time limited by such order, it shall be the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or in which the body shall be, if it has not been so removed, to bury such body, and any expense so incurred may be charged by the relieving officer in his accounts, and may be recovered by the board of guardians in a summary manner from any person legally liable to pay the expenses of such burial.

Justices may  
in certain  
cases order  
dead bodies  
to be buried.

11. [*Disinfection of public conveyances if used for carrying corpses.*]

12. [*Detention of infected person without proper lodging in hospital by order of justice.*]

**Sect. 13.** 13. [*Infectious rubbish thrown into ashpits, etc., to be disinfected.*]

14. [*Notice of certain provisions.*]

15. [*Temporary shelter, etc.*]

**Penalties.** 16. Every person who shall wilfully obstruct any duly authorised officer of the local authority in carrying out the provisions of this Act, or who shall obstruct the carrying out of an order made by a justice under this Act, or who shall offend against any enactment of this Act for the time being in force in any district by which no penalty is specifically imposed, shall be liable to a penalty not exceeding five pounds, and if the offence is a continuing one, to a daily penalty not exceeding forty shillings a day so long as the offence continues.

**Power of entry for purposes of s. 5.** 17. For the purpose of carrying into effect the provisions of section five of this Act the local authority may, by any officer appointed in that behalf, who shall produce his authority in writing, enter on any premises between the hours of ten o'clock of the forenoon and six o'clock of the afternoon.

**Recovery and application of penalties.** 18. Every penalty imposed by this Act shall be recoverable in a court of summary jurisdiction on the information or complaint of the local authority, or of their duly authorised officer, but not otherwise, and shall be paid to the local authority.

**Superseding in certain cases of provisions in local Acts.** 19. Where a provision of this Act is put in force in any district in which there is any similar provision in force contained in any local Act, such last-mentioned provision shall cease to be in operation.

**Expenses.** 20. Any expenses incurred by a local authority in the execution of any of the provisions of this Act, including the reasonable remuneration of any veterinary inspector or surgeon employed under section four, shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health, and in the case of a rural authority shall be general expenses.

**21.** Any resolution adopting all or any of the sections of this Act may be rescinded, either wholly or as regards any of the adopted sections, by resolution of the local authority, but notice of the meeting at which such resolution is to be proposed, and of the intention to propose the same, shall be given, and such resolution shall be published, and shall come into operation, in like manner and at such time as is hereinbefore provided with respect to resolutions adopting this Act, and a copy of the resolution shall be sent to the Local Government Board when it is published.

**Sect. 21.**  
 Power of local authority to rescind adoption of Act.

On the resolution coming into effect the sections of this Act, the adoption of which is thereby rescinded, shall cease to extend to the district.

The provisions hereinbefore contained, as to evidence of and objections to the effect of a resolution adopting this Act, shall apply to any resolution rescinding such adoption.

**22.** This Act shall not apply to Scotland.

Extent of Act.

**23.** This Act shall apply to Ireland, with the same modifications as are made in the Infectious Disease (Notification) Act, 1889, for the purpose of its application to Ireland, and with the following additional modifications :

Application of Act to Ireland.  
 52 & 53 Vict. c. 72.

In this Act, unless the context otherwise requires—

The expression “her Majesty’s Privy Council” means the Lord Lieutenant acting by the advice of her Majesty’s Privy Council in Ireland :

The expression “inspector of police” includes a member of the Royal Irish Constabulary Force and a member of the Dublin Metropolitan Police.

The reference to section one hundred and twenty of the Public Health Act, 1875, shall be taken to be a reference to section one hundred and thirty-seven of the Public Health (Ireland) Act, 1878.

41 & 42 Vict. c. 52.

**24.** [*Saving for Acts relating to dairies, animals, etc.*]

## PUBLIC HEALTH (LONDON) ACT, 1891.

(54 &amp; 55 VICT. c. 76.)

*An Act to consolidate and amend the Laws relating to Public Health in London.* [5th August 1891.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

\* \* \* \* \*

Prohibition of retention of dead body in certain cases.

72.—(1.) A person shall not without the sanction in writing of the medical officer of health, or of a legally qualified medical practitioner, retain unburied for more than forty-eight hours elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or workroom, the body of any person who has died of any dangerous infectious disease.

(2.) If a person acts in contravention of this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds.

Body of person dying of infectious disease in hospital, etc. to be removed only for burial.

73.—(1.) If a person dies in a hospital from any dangerous infectious disease, and the medical officer of health, or any legally qualified medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating such infectious disease, that the body be not removed from such hospital except for the purpose of being forthwith buried, it shall not be lawful for any person to remove the body except for that purpose; and the body when taken out of such hospital shall be forthwith taken direct to the place of burial, and there buried.

(2.) If any person wilfully offends against this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(3.) Nothing in this section shall prevent the removal of a dead body from a hospital to a mortuary, and such

mortuary shall, for the purposes of this section, be deemed part of such hospital. **Sect. 73**  
**(3).**

\* \* \* \* \*

**88.** Every sanitary authority shall provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make byelaws with respect to the management and charges for the use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such byelaws, of any dead body received into a mortuary.

Power of local authority to provide mortuaries.

The obligation imposed upon the sanitary authority by this section may be enforced in the manner provided by ss. 100, 101, *infra*.

By s. 91, *infra*, sanitary authorities may combine to provide a mortuary.

By the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4, the council of every metropolitan borough is constituted the sanitary authority for the whole borough.

**89.—(1.)** Where either—

(a) the body of a person who has died of any infectious disease is retained in a room in which persons live or sleep; or

(b) the body of a person who has died of any dangerous infectious disease is retained without the sanction of the medical officer of health or any legally qualified medical practitioner for more than forty-eight hours, elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or workroom; or

(c) any dead body is retained in any house or room, so as to endanger the health of the inmates thereof, or of any adjoining or neighbouring house or building,

Power of justice in certain cases to order removal of dead body to mortuary.

a justice may, on a certificate signed by a medical officer of health or other legally qualified medical practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, and be buried within the time limited by the justice; and may if it is the body of a person who has died of an infectious disease, or if he considers immediate burial necessary, direct that the body be buried immediately, without removal to the mortuary.



**Sect. 89 (2).** (2.) Unless the friends or relations of the deceased undertake to bury and do bury the body within the time so limited, it shall be the duty of the relieving officer to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner from any person legally liable to pay the expense of such burial.

(3.) If any person obstructs the execution of any direction given by a justice under this section, he shall be liable to a fine not exceeding five pounds.

An "infectious disease" as defined in s. 55 (8) of the Act, "means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes, as respects any particular district, any infectious disease to which this section has been applied by the sanitary authority of the district in manner provided by this Act."

A "dangerous infectious disease," as defined by s. 58 of this Act, includes all the infectious diseases above mentioned, and any other infectious disease to which the sanitary authority may order that part of this Act which relates to the prevention of infectious diseases to be applied.

Every householder in whose house a dead body lies is (if no other person undertakes the duty) bound by common law to inter the body; and the authorities of a hospital are "householders" in this sense so as to be liable to bury all persons dying in the hospital (*Reg. v. Stewart* (1840), 12 A. & E. 773; 4 P. & D. 439; *Reg. v. Price* (1884), 12 Q. B. D. 247; 53 L. J. M. C. 51; 33 W. R. 45; 15 Cox C. C. 389). Executors of the deceased having assets are liable to pay the expenses of the burial of the deceased (*Ambrose v. Kerrison* (1851), 10 C. B. 776; 20 L. J. C. P. 135). A husband is liable for the expense of burying his wife (*Jenkins v. Tucker* (1788), 1 H. Bl. 91), and a parent for the expense of burying a child (*Reg. v. Vann* (1851), 2 Den. C. C. 325; 21 L. J. M. C. 39; 15 Jur. 1090). But no one is liable who has no money wherewith to pay the expenses, and who can only obtain the money by incurring a debt (*Reg. v. Vann, supra*).

Power of  
sanitary  
authority to  
provide  
places for  
post-mortem  
examinations.

**90.**—(1.) Any sanitary authority may, and if required by the county council shall, provide and maintain a proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building.

(2.) Any such building may be provided in connexion with a mortuary, but this enactment shall not authorise the conducting of any post-mortem examination in a mortuary. **Sect. 90 (2).**

91. Any sanitary authorities may, with the approval of the county council, execute their duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon. **Power to sanitary authorities to unite for providing mortuary.**

92. The county council shall provide and maintain proper accommodation for the holding of inquests, and may by agreement with a sanitary authority provide and maintain the same in connexion with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority, and may do so on such terms as may be agreed on with the authority. **Place for holding inquests.**

93.—(1.) The county council may provide and fit up in London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained and preserved with a view to the ultimate identification of such dead bodies. **Mortuary for unidentified bodies.**

(2.) A Secretary of State may make regulations as to—

- (a) the manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception; and
- (b) the fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same; and
- (c) the disposal and interment of any such bodies.

**Sect. 93 (3).** (3.) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body.

(4.) Subject to and in accordance with such regulations as may be made by a Secretary of State, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and subject as aforesaid the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner.

\*     \*     \*     \*     \*

Definition  
of sanitary  
authority.  
18 & 19 Vict.  
c. 120.  
48 & 49 Vict.  
c. 33.  
50 & 51 Vict.  
c. 17.

**99.**—(1.) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this Act referred to as “the sanitary authority”) shall be as follows; (namely,)

- (a) in the City of London the commissioners of sewers; and
- (b) in each of the parishes mentioned in Schedule (A.) to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish; and
- (c) in each of the districts mentioned in Schedule (B.) to the same Act, as so amended, the district board for the district; and
- (d) in the parish of Woolwich, the local board of health; and
- (e) in any place mentioned in Schedule (C.) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor

for such place, or for the parish in which it is situate, and the said guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in the said place. **Sect. 99 (1).**

(2.) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority.

(3.) The purposes for which a committee of a vestry or district board may be appointed under the Metropolis Management Act, 1855, and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly.

(4.) Where a sanitary authority appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act.

(5.) A sanitary authority may acquire and hold land for the purposes of their duties without any licence in mortmain.

By the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4, all the powers and duties of every elective vestry and district board in the county of London are transferred to the council of the borough comprising the area within which those powers are exercised, so that, now the council of every metropolitan borough is the sanitary authority for the borough.

Schedule C. of the Metropolis Management Act comprises the following places :

The Close of the Collegiate	Lincoln's Inn.
Church of St. Peter.	Gray's Inn.
The Charter-House.	Staple Inn.
Inner Temple.	Furnival's Inn.
Middle Temple.	

Sub-section (4) of this section was enacted to meet the case of *St. Leonard, Shoreditch v. Holmes* (1886), 50 J. P. 132, where it was held that an officer of a sanitary authority could not himself give a notice which the previous Act required to be given by the sanitary authority without first obtaining their sanction or direction.

**Sect. 100**

Power of county council to prosecute on default of sanitary authority.

**100.** The county council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any byelaw, may institute any proceeding and do any act which the authority might have instituted or done for that purpose, and shall be entitled to recover from the sanitary authority in default all such expenses in and about the said proceeding or act as the county council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

Proceedings on complaint to Local Government Board of default of sanitary authority.

**101.—(1.)** Where complaint is made by the county council to the Local Government Board that a sanitary authority have made default in executing or enforcing any provisions which it is their duty to execute or enforce of this Act, or of any byelaw made in pursuance thereof, the Local Government Board, if satisfied after due inquiry that the authority have been guilty of the alleged default, and that the complaint cannot be remedied under the other provisions of this Act, shall make an order limiting a time for the performance of the duty of such authority in the matter of such complaint. If such duty is not performed by the time limited in the order, the order may be enforced by writ of mandamus, or the Local Government Board may appoint the county council to perform such duty.

(2.) Where such appointment is made, the county council shall, for the purpose of the execution of their duties under the said appointment, have all the powers of the defaulting sanitary authority, and all expenses incurred by the county council in the execution of the said duties, together with the costs of the previous proceedings, so far as not recovered from any other person, shall be a debt from the sanitary authority in default to the county council, and shall be paid by the sanitary authority out of any moneys or rate applicable to the payment of the expenses of performing the duty in which they have made default.

(3.) For the purpose of recovering such debt the county council, without prejudice to any other power of recovery, shall have the same power of levying the amount by a rate,

and of requiring officers of the defaulting authority to pay Sect. 101 (3) over money in their hands, as the defaulting authority would have in the case of expenses legally payable out of a rate raised by that authority.

(4.) The county council shall pay any surplus of the rate so levied to or to the order of the defaulting authority.

(5.) If any loan is required to be raised for the purpose of the execution of their duties under the said appointment, the county council with the consent of the Local Government Board may raise the same, and may for that purpose borrow the required sum in the name of the defaulting authority for the same period, on the same security, and on the same terms as that authority might have borrowed, and the principal and interest of such loan shall be a debt due from the defaulting authority, and shall be secured and may be recovered in like manner as if the loan had been borrowed by that authority.

(6.) The surplus (if any) of any loan not applied for the purpose for which it is raised shall, after payment of the expenses of raising the same, be paid to or to the order of the defaulting authority, and be applied as if it were the surplus of a loan raised by that authority.

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## BURIAL OF THE POOR.

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POOR LAW AMENDMENT ACT, 1844.

(7 & 8 VICT. c. 101.)

*An Act for the further Amendment of the Laws relating to  
the Poor in England.* [9th August 1844.]

• • • • •

Burials of  
paupers.

31. It shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorised to do), every dead body which the guardians or any of their officers duly authorised shall direct to be buried at the expense of the poor rates shall (unless the deceased person or the husband or wife or next of kin of such deceased person have otherwise desired) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial under the direction of the guardians or overseers as aforesaid the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of Parliament, shall be paid out of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such Act

Sect. 31.

may be entitled to receive any fee: Provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school, or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds.

Overseers were not, and guardians are not, bound to bury the dead body of a pauper lying in the parish, but not in any union or parochial house (*Reg. v. Stewart* (1840), 12 A. & E. 773; 4 P. & D. 349; *S. C.*, *Reg. v. Stennett* (1840), 10 L. J. M. C. 40). Nor, on the other hand, is any person who is without means, bound to accept relief by way of loan from the poor law authorities for the purpose of burying a dead body lying in his house (*Reg. v. Vann* (1851), 21 L. J. M. C. 39; 2 Den. C. C. 325; 15 Jur. 1050).

By the Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 16, *post*, p. 362, guardians may appropriate money or securities of paupers to reimburse the cost of their burial.

By the Union Chargeability Act, 1865 (28 & 29 Vict. c. 79), s. 1, the cost of burial of paupers in a union is cast on the common fund.

By the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 2, as amended by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 8, provision is made for giving notice of burial under that Act of persons whom the guardians are authorised or required to bury.

\* \* \* \* \*

56. For the purposes of relief, settlement, and removal of poor persons, and the burial of the poor, the workhouse of any union or parish, and every such district school, shall be considered as situated in the parish to which each person respectively to be relieved, removed, or buried, or otherwise concerned in any such purpose, is or has been chargeable: Provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such workhouse or building shall be charged

Workhouses and district schools to be deemed to be situate in every parish of an union, etc.  
Registry of births and deaths therein.



**Sect. 56.** by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable.

The provisions of this section are extended by the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 21, *post*, p. 370, to the case of a workhouse situated in two parishes, and by the same section provision is made for the charges of burial of paupers dying in district schools and asylums.

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POOR LAW AMENDMENT ACT, 1849.

(12 & 13 Vict. c. 103.)

*An Act . . . to make certain Amendments in the Laws for the Relief of the Poor.* [1st August 1849.]

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Guardians may appropriate money or securities of paupers to reimburse the cost of their relief or burial.

**16.** Where any pauper shall have in his possession or belonging to him any money or valuable security for money, the guardians of the union or parish within which such pauper is chargeable may take and appropriate so much of such money or the produce of such security, or recover the same as a debt before any local court, as will reimburse the said guardians for the amount expended by them, whether on behalf of the common fund or of any parish, in the relief of such pauper, during the period of twelve months prior to such taking and appropriation, or prior to such proceeding for the recovery thereof (as the case may be); and in the event of the death of any pauper having in his possession or belonging to him any money or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in and about the burial of such pauper, and in and about the maintenance of such pauper at any time during the twelve months previous to the decease.

The provisions of this section constitute the guardians ordinary and not preferential creditors of a deceased pauper for the amount expended by them (*inter alia*) upon the burial of the pauper; and

the executor of such a pauper is therefore entitled to retain a debt due from the pauper's estate to himself before satisfying the claim of the guardians (*Laver v. Botham & Sons*, [1895] 1 Q. B. 59; 64 L. J. Q. B. 110; 71 L. T. 570; 43 W. R. 25; 59 J. P. 454).

**Sect. 16.**

**NOTE.**

Administration of the effects of a pauper who dies chargeable to a union may be granted to the guardians of the union as creditors of the deceased under this section (*Cleaver v. McKenna* (1865), 35 L. J. P. & M. 91). The Queen's Proctor and the next-of-kin must, as a general rule, be cited (*Reeves, In the Goods of* (1891), 55 J. P. 24; *Lillicraft, In the Goods of* (1891), 55 J. P. 825; *Windeatt v. Sharland* (1871), L. R. 2 P. & M. 217; 41 L. J. P. & M. 9; 23 L. T. (N.S.) 877; *Sharland, In the Goods of* (1871), L. R. 2 P. & M. 266; 25 L. T. (N.S.) 574).

17. It shall be lawful for the guardians of any union or parish to pay the costs of the burial of any poor person dying out of the limits of such union or parish who was at the time of the death in the receipt of relief from such guardians; and the cost of burying any poor person by or under the direction of any guardians or overseers shall be recoverable in like manner, and from the same parties, as the cost of any relief (if given to such person when living) would have been recoverable.

Burial of persons in receipt of relief dying out of union, etc.

See note to the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 31, *ante*, p. 361.

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POOR LAW AMENDMENT ACT, 1850.

(13 & 14 VICT. c. 101.)

An Act . . . to make certain Amendments in the Laws for the Relief of the Poor. [14th August 1850.]

\* \* \* \* \*

2. It shall be lawful for the guardians of any union to contribute out of the common fund, or for the guardians of any parish to contribute out of the poor rates of such parish, such sum of money as the *Poor Law Board* shall approve, towards the enlargement of any churchyard or consecrated public burial ground in the parish wherein the workhouse shall be situated, or in any other parish of the

Guardians may contribute towards enlargement or purchase of burial ground, and may bury therein the bodies of poor persons dying in workhouses.

Sect. 2.

union, or towards the obtaining of any such consecrated public burial ground; and where any such burial ground shall be enlarged or obtained with the aid of such contribution, it shall be lawful for them to bury therein the dead body of any poor person dying in such workhouse: Provided always, that nothing in this Act contained shall discharge or vary the obligation now imposed by law upon the guardians to bury the dead body of such poor person elsewhere, in case the deceased person, or the husband, or wife, or next of kin of such deceased person, shall have so requested: Provided also, that in all cases of burial under the direction of the guardians as aforesaid the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said guardians for the burial of each such body to the person or persons who by such custom or under such Act shall be entitled to receive such fee or fees, and charged by them in like manner as the relief to the deceased when living was last chargeable.

For "Poor Law Board" in this section now read "Local Government Board" (Local Government Board Act, 1871 (34 & 35 Vict. c. 70)).

For the obligation of the guardians to bury the body of a pauper elsewhere, if so requested, see the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 108), s. 31, *ante*, p. 361.

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POOR (BURIALS) ACT, 1855.

(18 & 19 VICT. c. 79.)

*An Act to amend the Law regarding the Burial of Poor Persons by Guardians and Overseers of the Poor.*

[30th July 1855.]

Preamble recited the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 31. Repealed by Statute Law Revision Act, 1892.

Where the burial ground of a parish is closed or

1. Where the guardians of any union or parish, or any of their officers duly authorised in that behalf, or the overseers of any parish not under a board of guardians, shall

undertake the burial of any poor person, or shall contribute money or other aid towards the same, and the burial cannot take place in the parish where, according to the provisions of the said Act, the same would have been required to take place, by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the guardians or overseers respectively are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground (some part of which has been consecrated) or in some other parish, as near as conveniently may be to the parish wherein the burial would have been required to take place according to the provisions of the said Act: Provided, that in all cases of burial under the direction of the guardians or their officers, or of the overseers, as aforesaid, the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said guardians or overseers for the burial of each such body to the person or persons who by such custom or under such Act of Parliament shall be entitled to receive such fee or fees.

**Sect. 1.**

overcrowded, the guardians or overseers may bury poor persons in neighbouring parish.

By the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 6, *ante*, p. 238, the guardians may, with the consent of the Local Government Board, obtain consecration of any suitable land of which they are possessed for the burial therein of poor persons.

2. The guardians of any union or parish, or the overseers of any parish not under a board of guardians, may from time to time enter into agreements with the proprietors of any cemetery established under the authority of Parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury, or towards the burial whereof they may render assistance; and thereupon the burial of any such body, under the directions of the said guardians or their officer, or of such overseers, or with their aid respectively, in such cemetery, or in the burial ground of such burial board (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise expressly

Agreements with cemetery companies or burial boards.

**Sect. 2.** desired), shall be lawful: Provided, however, that no such agreement shall be valid, unless made in such form and with such stipulations as the *Poor Law Board* shall approve.

For "Poor Law Board" in this section now read "Local Government Board" (Local Government Board Act, 1871 (34 & 35 Vict. c. 70)).

Since the Local Government Act, 1894 (56 & 57 Vict. c. 73), which transferred the powers and duties of burial boards in any rural parish to the parish council, and in any district partly rural and partly urban to the parish council and urban district council, to be exercised by a joint committee appointed by such councils (see s. 53 (2) of that Act) agreements may be made by guardians under this section with any such parish council or joint committee, as the case may be.

Construction.  
4 & 5 Will. 4  
c. 76.

**3.** The words contained in this Act shall be construed in like manner as in the Poor Law Amendment Act, 1834, and in the several Acts incorporated therewith.

## EXTRA-PAROCHIAL PLACES ACT, 1857.

(20 VICT. c. 19.)

*An Act to provide for the Relief of the Poor in Extra-parochial Places.* [21st March 1857.]

Preamble recited that it was desirable that provision should be made for the relief of the poor in extra-parochial places.

Levy of poor  
rate in extra  
parochial  
places.

**1.** Every place entered separately in the report of the Registrar-General on the last census, which now is or is reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall for all the purposes of the assessment of the poor rate, the relief of the poor, the county, police, or borough rate, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal voters, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report; and the justices of the peace having jurisdiction over such

place or over the greater part thereof shall appoint overseers of the poor therein ; and with respect to any other place being or reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor therein, notwithstanding anything contained in the Poor Law Amendment Act, 1844.

**Sect. 1.**  
—

7 & 8 Vict.  
c. 101.

The census referred to in this section is that taken in the year 1851.

By the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 27, all extra-parochial places for which overseers were not, on December 25th, 1868, appointed, became annexed to the adjoining parish with which they had the largest common boundary.

Section 2 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), provides that after the passing of that Act, separate overseers shall not be appointed for any township or village or other place for which before that Act separate overseers had not lawfully been appointed.

It has been variously held that the entry of a place in the Registrar-General's report as extra-parochial is conclusive evidence that it was extra-parochial (*Mytton v. Thornbury* (1860), 29 L. J. M. C. 109 ; 6 Jur. (N.S.) 341 ; 2 L. T. (N.S.) 12 ; 24 J. P. 180 ; *S. C., Reg. v. Mytton* (1860), 2 E. & E. 557) ; and that it is not conclusive (*Reg. v. Cousins* (1864), 4 B. & S. 849 ; 33 L. J. M. C. 87 ; 10 Jur. (N.S.) 722 ; 23 J. P. 278).

Where the vicar of a parish in which a cathedral was situated, and who was also sub-dean of the cathedral, claimed the precincts as part of his parish, and sought to exclude the dean from reading the burial service in the cathedral churchyard, it was held that, it being doubtful whether the cathedral existed before or after the institution of civil parishes in 1189, the presumption was that the cathedral and precincts were from the first extra-parochial (*Braithwaite v. Hooke* (1862), 26 J. P. 660).

• • • • •

11. The words used in this Act shall be construed in the like manner as in the Poor Law Amendment Act, 1834 ; and the provisions contained therein, and in the subsequent Acts explaining and extending the same, and not repealed, shall, so far as they shall be consistent herewith, be extended to this Act.

Construction.  
4 & 5 Will. 4,  
c. 76.

## UNION CHARGEABILITY ACT, 1865.

(28 &amp; 29 VICT. c. 79.)

*An Act to provide for the better Distribution of the Charge for the Relief of the Poor in Unions.*

[29th June 1865.]

Preamble recited that it was expedient to make better distribution of the charge for the relief of the poor in unions.

Expenses of relief and burial of paupers, and in respect of vaccination and registration.

1. [*Repeal of so much of s. 26 of 4 & 5 Will. 4, c. 76, as requires that each of the parishes in a union formed under that Act shall be separately chargeable with the expense of its own poor.*] All the cost of the relief to the poor, and the expenses of the burial of the dead body of any poor person under the direction of the guardians or any of their officers duly authorised, in such union thenceforth incurred and all charges thenceforth incurred, by the guardians of such union in respect of vaccination and registration fees and expenses, shall be charged upon the common fund thereof.

“Such” union is a union formed under the authority of 4 & 5 Will. 4, c. 76, s. 26, which is repealed by the first part of this section, which again is repealed by the Statute Law Revision Act, 1893.

\* \* \* \* \*

Parish of pauper dying in workhouse.

10. For the purposes of the burial of any poor person dying in the workhouse of any union, such workhouse shall be considered as situated in the parish in the union where such poor person resided last, previously to his removal to the workhouse.

The provisions of this section supersede the provisions in the Poor Law Amendment Act, 1834 (7 & 8 Vict. c. 101), s. 56, *ante*, p. 361, so far as the same relates to the burial of paupers.

\* \* \* \* \*

Application of 4 & 5 Will. 4, c. 76, *etc.*

16. The words herein used shall be interpreted in the manner prescribed by the Poor Law Amendment Act, 1834, and the subsequent Acts amending or explaining the same; and the

provisions in such Acts which apply to poor persons rendered chargeable upon the common fund by reason of their having become irremovable through the operation of the statutes in that behalf shall apply to all the poor in the union hereby rendered chargeable upon the common fund.

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17. This Act may be cited as the Union Chargeability Act, 1865. Short title.

## POOR LAW AMENDMENT ACT, 1868.

(31 & 32 VICT. c. 122.)

*An Act to make further Amendments in the Laws for the Relief of the Poor in England and Wales.*

[31st July 1868.]

\* \* \* \* \*

13. The guardians of any union or parish may, with the consent of the *Poor Law Board*, send an idiotic pauper to an asylum or establishment for the reception and relief of idiots maintained at the charge of the county rate or by public subscription, and they may with the like consent send any idiotic, imbecile, or insane pauper who may lawfully be detained in a workhouse to the workhouse of any other union or parish, with the consent of the guardians of such last-mentioned union or parish, and pay the cost of the maintenance, clothing, and lodging of such pauper in the asylum, establishment, or workhouse, as well as the cost of his conveyance thereto or his removal therefrom, and the expenses of his burial, when necessary.

Guardians may send idiots to asylums for idiots, or idiotic or insane paupers to other workhouses, and pay expenses of removal, maintenance, and burial.

For "Poor Law Board" in this section now read "Local Government Board" (Local Government Board Act, 1871 (34 & 35 Vict. c. 70).

The detention of insane paupers in workhouses is now regulated by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 20—26.

\* \* \* \* \*

45. The words used in this Act shall be construed in the like manner as in the Poor Law Amendment Act, 1834, and

Interpretation and construction. 4 & 5 Will. 4, c. 76.



**Sect. 45.** subsequent Acts amending and extending the same; and the provisions contained therein and in such subsequent Acts, and not repealed, shall, so far as they shall be consistent herewith, be extended to this Act.

**Short title.** 46. This Act may be cited and described for all purposes as the Poor Law Amendment Act, 1868.

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DIVIDED PARISHES AND POOR LAW  
AMENDMENT ACT, 1876.

(39 & 40 VICT. c. 61.)

*An Act to provide for the better arrangement of divided Parishes and other local areas, and to make sundry amendments in the Law relating to the Relief of the Poor in England.* [15th August 1876.]

\* \* \* \* \*

Extension of  
7 & 8 Vict.  
c. 101, s. 56,  
as to  
registration  
to the case of  
a workhouse  
situated in  
two parishes,  
and provision  
for deaths of  
paupers in  
district  
schools and  
asylums.

21. The provision as to the registration of births and deaths in a workhouse contained in the fifty-sixth section of the Poor Law Amendment Act, 1844, shall be extended to the case of a workhouse which is situated in two parishes, so that the registration shall take place in the parish to which the workhouse belongs, or, if the parishes be not both in the same union, then in that parish of the union to which the workhouse belongs in which any part of the workhouse is situated.

And when a union is comprised in any school or other district the death of any pauper in the school or asylum of such district shall for the purposes of burial be deemed to have taken place in the parish of the union from which such pauper was sent to the said school or asylum, or to the workhouse of the union, as the case may be, and the charges of the burial shall be borne by the common fund of such union.

For 7 & 8 Vict. c. 101, s. 56, see *ante*, p. 361.

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## LUNACY ACT, 1890.

(53 &amp; 54 VICT. c. 5.) (a)

*An Act to consolidate certain of the enactments respecting Lunatics.*

[29th March 1890.]

\* \* \* \* \*

**258.**—(1.) The visiting committee of an asylum, with the consent of the local authority by whom they are appointed and of a Secretary of State, may provide for the burial of lunatics dying in the asylum, and of the officers and servants belonging thereto—

- (a.) By appropriating any land already belonging to them or acquiring any land, not exceeding in either case two acres, for enlarging an existing burial ground, or for providing a new burial ground;
- (b.) By agreeing with any corporation or persons or body of persons willing to provide for the burial of such lunatics and other persons as aforesaid.

(2.) The committee may procure the consecration of a new or enlarged burial ground, and in the case of a new burial ground, may provide for the appointment of a chaplain therein.

(3.) The incumbent of the parish in which a new or enlarged burial ground provided by a visiting committee is situate, shall not be entitled to any fee for the interment of any person buried therein by direction of the committee.

**259.** Where a visiting committee undertakes the burial of any pauper lunatic, and the public burial ground of the parish where the death took place is closed or inconveniently crowded, the burial may take place in a public burial ground of some other parish, with the consent of the minister and churchwardens of that parish; and in that case the visiting committee shall pay to the person entitled thereto the burial fees payable under any Act, or according to the custom of the place of burial.

As a rule an incumbent was not entitled to any fees on the burial of a non-parishioner in a burial ground provided under the Burial

(a) This Act repeals similar provisions in the following Acts:—16 & 17 Vict. c. 97; 18 & 19 Vict. c. 105; 25 & 26 Vict. c. 111.

**Sect. 259.** Acts. (See Burial Act, 1852 (15 & 16 Vict. c. 85), s. 32, and *Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713; 66 L. T. 90; 40 W. R. 390; 56 J. P. 326.) But now under the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 3, it would seem that if the burial board allow a non-parishioner to be buried in the burial ground, any minister who actually performs the service is entitled to the prescribed fee.

NOTE.

Expenses of removal, discharge, and burial.

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**297.** The necessary expenses attending the removal, discharge, or burial of a pauper lunatic in any institution for lunatics, shall be borne by the union to which the lunatic is chargeable, or the local authority liable for his maintenance, and shall be paid by the guardians of the union or by the treasurer of the local authority.

By s. 290 of this Act, a pauper lunatic may be adjudged to be chargeable to the council of a quarter sessions borough or to a county council (in this section referred to as "the local authority") when he is not settled in the union from which he was sent to an institution for lunatics.

Provisions of Act as to expenses to extend to pauper lunatics sent to asylums under any other Act.

**298.** The provisions of this Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any institution for lunatics under any other Act authorising their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have any real or personal property applicable to his maintenance) with respect to all other lunatics sent to any institution for lunatics under any order of a justice or justices made before the commencement of this Act, or under a summary reception order made by a justice under this Act, or under an order made by two or more commissioners before or after the commencement of this Act, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the union from which they are sent.

Persons may be sent as pauper lunatics to institutions for lunatics under other Acts, as follows: Soldiers, under the Army Act, 1881 (44 & 45 Vict. c. 58), s. 91, as amended by the Army (Annual) Act, 1891 (54 & 55 Vict. c. 5), s. 6; seamen in the navy, under the Naval Enlistment Act, 1884 (47 & 48 Vict. c. 46), s. 3; criminal lunatics about to be discharged, under the Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 74), s. 7.

By the Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 24, the provisions of this Act for the payment of expenses in relation to pauper lunatics are made applicable with respect to lunatics in institutions for lunatics who become paupers.

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## REGISTRATION OF BURIALS.

### PAROCHIAL REGISTERS ACT, 1812.

(52 GEO. 3, c. 146.) (a)

*An Act for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Burials in England.* [28th July 1812.]

WHEREAS the amending the manner and form of keeping and of preserving registers of baptisms, marriages, and burials of his Majesty's subjects in the several parishes and places in England will greatly facilitate the proof of pedigrees of persons claiming to be entitled to real or personal estates, and be otherwise of great public benefit and advantage: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the thirty-first day of December one thousand eight hundred and twelve registers of public and private baptisms, marriages, and burials solemnized according to the rites of the United Church of England and Ireland within all parishes or chapelries in England, whether subject to the ordinary or peculiar or other jurisdiction, shall be made and kept by the rector, vicar, curate, or officiating minister of every parish, or of any chapelry

Officiating ministers to keep registers of baptisms, etc.

(a) The Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), which provides for establishing a complete register of births, deaths, and marriages in England, repeals so much of this Act as relates to the registration of marriages, but provides by s. 49:— "Provided always, that nothing herein contained shall affect the registration of baptisms or burials as now by law established, or the right of any officiating minister to receive the fees now usually paid for the performance or registration of any baptism, burial, or marriage."

**Sect. 1.**

where the ceremonies of baptism, marriage, and burial have been usually and may according to law be performed, for the time being, in books of parchment or of good and durable paper, to be provided by his Majesty's printer as occasion may require at the expense of the respective parishes or chapelries, whereon shall be printed upon each side of every leaf the heads of information herein required to be entered in the registers of baptisms, marriages, and burials respectively; and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by number one; and every such entry shall be divided from the entry next following by a printed line, according to the forms contained in the Schedules (A.), (B.), (C.), hereto annexed; and every page of every such book shall be numbered with progressive numbers, the first page being marked with the number I. in the middle of the upper part of such page, and every subsequent page being marked in like manner with progressive numbers, from number I. to the end of the book.

King's  
printer to  
transmit the  
Act and  
books with  
forms of  
register to  
the ministers.

2. And, for better ensuring the regularity and uniformity of such register books, be it further enacted, that a printed copy of this Act, together with one book so prepared as aforesaid and adapted to the form of the register of baptisms prescribed in the Schedule (A.) to this Act annexed, [*and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of marriages in the Schedule (B.) to this Act annexed [Rep., 6 & 7 Will. 4, c. 86, s. 1]*], and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of burials in the Schedule (C.) to this Act annexed, shall, as soon as conveniently may be after the passing of this Act, be provided and transmitted by his Majesty's printer to the officiating ministers of the several parishes and chapelries in England respectively, who are hereby required to use and apply the same in and to the purposes of this Act; and such books respectively shall be proportioned to the population of the several parishes and chapelries according to the last returns of such population made under the authority of Parliament; and other books of like form and quality shall for the like purposes be furnished from time to time by the

Other such  
books to be  
provided as  
required.

Sect. 2.

churchwardens or chapelwardens of every parish or chapelry at the expense of the said parish or chapelry whenever they shall be required by the rector, vicar, curate, or officiating minister to provide the same; and all such books shall be of paper, unless required to be of parchment by such churchwardens or chapelwardens respectively.

3. And . . . such registers shall be kept in such separate books aforesaid; and . . . every such rector, vicar, curate, or officiating minister shall, as soon as possible after the solemnization of every baptism, whether private or public, or burial respectively, record and enter in a fair and legible handwriting in the proper register book to be provided, made and kept as aforesaid the several particulars described in the several schedules herein-before mentioned, and sign the same, and in no case, unless prevented by sickness or other unavoidable impediment, later than within seven days after the ceremony of any such baptism or burial shall have taken place.

Registers to be kept in separate books and recorded immediately after the ceremony.

On a *mandamus* to a rector of a parish to enter in the register of burials the burial of a parishioner who was buried after due notice in pursuance of s. 1 of the Burial Laws Amendment Act, 1880, without the rites of the church, the rector pleaded that he was not bound by statute or common law to register anyone. On demurrer, it was held that this section and s. 10 of the Burial Laws Amendment Act, 1880, made it his duty to register the burial (*Reg. v. Hall* (1881), 45 J. P. 436).

4. And . . . whenever the ceremony of baptism or burial shall be performed in any other place than the parish church or churchyard of any parish, or the chapel or chapelyard of any chapelry providing its own distinct registers, and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of baptism or burial shall on the same or the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such baptism or burial in the form contained in the Schedule (D.) to this Act annexed, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such baptism or burial according to such certificate in the book kept

Certificate of baptism or burial when performed in any other place than the parish church, etc., to be transmitted to minister according to Schedule (D.), etc.

**Sect. 4.** pursuant to this Act for such purpose; and shall add to such entry the following words: "According to the certificate of the Reverend \_\_\_\_\_, transmitted to me on the day of \_\_\_\_\_."

This section does not apply to burials in grounds provided under the Burial Acts (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 16).

Books to remain in custody of minister, etc.

**5.** And . . . the several books wherein such entries shall respectively be made, and all register books heretofore in use, shall be deemed to belong to every such parish or chapelry respectively, and shall be kept by and remain in the power and custody of the rector, vicar, curate, or other officiating minister of each respective parish or chapelry 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 of the purposes of this Act; and . . . immediately after making such respective 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.

Copies of register books to be made annually.

**6.** And . . . at the expiration of two months after the thirty-first day of December one thousand eight hundred and thirteen, and at the expiration of two months after the end of every subsequent year, fair copies of all the entries of the several baptisms, marriages, and burials which shall have been solemnized or shall have taken place within the year preceding shall be made by the rector, vicar, curate,

Sect. 6.

or other resident or officiating minister, (or by the churchwardens, chapelwardens, clerk, or other person duly appointed for the purpose under and by the direction of such rector, vicar, curate, or other resident or officiating minister,) on parchment, in the same form as prescribed in the schedules hereunto annexed (to be provided by the respective parishes); and the contents of such copies shall be verified and signed in the form following by the rector, vicar, curate, or officiating minister of the parish or chapelry to which such respective register book shall appertain :

“ I, *A. B.*, rector [*or as the case may be*] of the parish of *C.* [*or of the chapelry of D.*] in the county of *E.*, do hereby solemnly declare, that the several writings hereto annexed purporting to be copies of the several entries contained in the several register books of baptisms, marriages, and burials of the parish or chapelry aforesaid, from the            day of            to the            day of           , are true copies of all the several entries in the said several register books respectively from the said            day of            to the said            day of           , and that no other entry during such period is contained in any of such books respectively, are truly made according to the best of my knowledge and belief.

“ (Signed)            *A. B.*”

Which declaration shall be fairly written, without any stamp, on the said copy immediately after the last entry therein; and the signature to such declaration shall be attested by the churchwardens or chapelwardens, or one of them, of the parish or chapelry to which such register books shall belong.

7. And . . . copies of the said register books verified and attested as aforesaid shall, whether such parish or chapelry shall be subject to the ordinary, peculiar, or other jurisdiction, be transmitted by such churchwardens or chapelwardens, after they, or one of them, shall have signed the same, by the post, to the registrars of each diocese in England within which the church or chapel shall be situated, on or before the first day of June one thousand eight hundred and fourteen, and on or before the first day of June in every subsequent year.

Copies of register books to be transmitted annually to the registrars of each diocese.



**Sect. 8.**

Registrars to make reports to bishops, whether the returns have been sent to them.

8. And . . . the registrar of every diocese in England shall on or before the first day of July one thousand eight hundred and fourteen, and on or before the first day of July in every subsequent year, make a report to the bishop of such diocese, whether the copies of the registers of the baptisms, marriages, and burials in the several parishes and places within such diocese have been sent to such registrar in the manner and within the time herein required; and in the event of any failure of the transmission of the copies of the registers as herein required by the churchwardens and chapelwardens of any parish or chapelry in England, the registrar shall state the default of the parish or chapelry specially in his report to the bishop.

In case of neglect of minister to verify copies of the register books, churchwardens to certify the default.

9. And . . . in case the rector, vicar, or other officiating minister or curate of any parish or chapelry shall neglect or refuse to verify and sign such copies of such several register books and such declaration as aforesaid so that the churchwardens or chapelwardens shall not be able to transmit the same as required by this Act, such churchwardens or chapelwardens shall, within the time required by this Act for the transmission thereof, certify such default to the registrar of the diocese within which such parish or chapelry shall be, who shall specially state the same in his report to the bishop of such diocese.

In extra-parochial places memorandum may be delivered of every baptism or burial to the minister of some adjoining parish, to be entered in the register of such parish.

10. And, for the obtaining of returns and registers of baptisms and burials in extra-parochial places in England, where there is no church or chapel, be it further enacted, that in all cases of the baptism of any child or the burial of any person in any extra-parochial place in England, according to the rites of the Established Church, where there is no church or chapel, it shall be lawful for the officiating minister within one month after such baptism or burial to deliver to the rector, vicar, or curate of such parish immediately adjoining to the place in which such baptism or burial shall take place, as the ordinary shall direct, a memorandum of such baptism or burial, signed by such parent of the child baptized, or a memoranum of such burial, signed by the person employed about the same, together with two of the persons attending the same, according as the nature of

the case may respectively require ; and every such memorandum respectively shall contain all such particulars as are hereinbefore required ; and every such memorandum delivered to the rector, vicar, or curate of any such adjoining parish or chapelry shall be entered in the register of his parish and form a part thereof. **Sect. 10.**

11. And . . . the superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post to the several offices of the said registrars as aforesaid, shall be indorsed and signed by the churchwardens or chapelwardens of every respective parish and chapelry in England in the form contained in Schedule (E.) ; and . . . all such letters and packets shall be carried and conveyed by means of his Majesty's Post Office to and be delivered at the offices of the said registrars, . . .

Packets containing copies transmitted to registrars shall be endorsed in the form in Schedule (E.).

12. And . . . when and so often as the copies of the said register books of baptisms, marriages, and burials as aforesaid, and also the said lists of births, baptisms, marriages, or burials as aforesaid, shall be transmitted to the office of the said registrars respectively as aforesaid, pursuant to the directions hereinbefore contained for that purpose, the said registrars shall respectively cause all the said books and lists to be safely and securely deposited, kept, and preserved from damage or destruction by fire or otherwise, and to be carefully arranged for the purpose of being resorted to as occasion may require ; and the said registrars respectively shall also cause correct alphabetical lists to be made and kept in books suitable to the purpose of the names of all persons and places mentioned in such books and lists as shall have been transmitted to the said registrars respectively ; which alphabetical lists and books, and also the copies of registers and lists so transmitted to the said registrars as aforesaid, shall be open to public search at all reasonable times on payment of the usual fees.

Copies of register books and lists, when transmitted to registrars, to be safely kept from damage, etc.

\* \* \* \* \*

16. Provided always, that nothing in this Act contained shall in any manner diminish or increase the fees heretofore payable or of right due to any minister for the performance

Fees heretofore payable not to be altered by this Act.

**Sect. 16.** of any of the beforementioned duties, or to any minister or registrar for giving copies of such registrations; but that all due legal and accustomed fees on such occasions, and all powers and remedies for recovery thereof, shall be and remain as though this Act had not been made.

Copies of register not subject to stamp duty.

17. Provided also, . . . that no duplicate or copy of any register of baptism, marriage, or burial made under the directions and for the purposes of this Act shall be chargeable with any stamp duty thereon, any Act now in force to the contrary thereof in anywise notwithstanding.

Application of penalties.

18. And . . . one-half of the amount of all fines or penalties to be levied in pursuance of this Act shall go to the person who shall inform or sue for the same, and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve, and the remainder of such fines as shall be imposed on any rector, vicar, minister, or curate, or registrar, shall be paid and applied to such charitable purposes in the county within which the parish or place shall be, as shall be appointed and directed by the bishop of the diocese.

\* \* \* \* \*

Provisions of this Act to extend to cathedral churches, etc.

20. And . . . all and every the provisions in this Act shall extend, so far as circumstances will permit, to cathedral and collegiate churches and chapels of colleges or hospitals, and the burying grounds belonging thereto, and to the ministers who shall officiate in such cathedral or collegiate churches and chapels of colleges or hospitals and burying grounds respectively, and shall baptize, marry, or bury any person or persons, although such cathedral or collegiate churches or chapels of colleges or hospitals or the burying grounds belonging thereto may not be parochial, or the ministers officiating therein may not be as such parochial ministers, and there shall be no churchwarden or churchwardens thereof; and in all such cases the books hereinbefore directed to be provided shall be provided at the expense of the body having right to appoint the officiating minister in every such cathedral

or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as is herein directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college, or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens. . . .

SCHEDULES to which this Act refers :

SCHEDULE (C).

1.

Burials in the parish of A. in the county of B., in the year one thousand eight hundred and thirteen.

Name.	Abode.	When buried.	Age.	By whom the ceremony was performed.
John Wilson	Duke Street, Westminster.	1813. 1st May.	62	
No. 1.				

SCHEDULE (D).

I, \* , do hereby certify, that on the \* day of \* , A. B. of \* , aged \* , was buried in [*stating the place of burial*], and that the ceremony of burial was performed according to the rites of the United Church of England and Ireland by me, \* .  
To the rector [*or as the case may be*] of \* .

SCHEDULE (E).

To the registrar of the diocese of \* at  
A. B. } Churchwardens or chapelwardens of the parish or chapelry  
C. D. } of [*or such other description as the case shall require*].

## FORGERY ACT, 1830.

(11 GEO. 4 &amp; 1 WILL. 4, c. 66.)

*An Act for amending the Laws relative to Forgery (a).*

[23rd July 1830.]

\* \* \* \* \*

[Inserting any false entry in any register of baptisms, marriages, or burials; forging or altering any such entry; uttering any false or forged entry; destroying, etc., the register; forging any licence of marriage, felony; punishment, transportation or imprisonment.

20. *[If any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or burials, which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district parish, or chapelry in England, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter in any such register any entry of any matter relating to any baptism, marriage, or burial; or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered; or if any person shall utter any entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such entry to be false, forged, or altered, or shall utter any copy of such entry, knowing such entry to be false, forged, or altered, or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any such register or any part thereof; or shall forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage; every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.]*

Rector, etc.<sup>a</sup> not liable to any penalty for correcting, in the mode prescribed,

21. Provided always, that no rector, vicar, curate, or officiating minister of any parish, district parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism,

(a) The whole of this Act is repealed by 24 & 25 Vict. c. 95, s. 1, except s. 21, which section is, however, hardly intelligible without s. 20.

marriage, or burial respectively by him solemnized, shall be liable to any of the penalties herein mentioned if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptised, or of the parties married, or in the presence of two persons who shall have attended at any burial, or, in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid: Provided also, that in the copy of the register which shall be transmitted to the registrar of the diocese, the said rector, vicar, curate, or officiating minister shall certify the corrections so made by him as aforesaid.

Sect. 21.

accidental  
errors in the  
register.

\* \* \* \* \*

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**FORGERY ACT, 1861.**

(24 &amp; 25 VICT. c. 98.)

*An Act to consolidate and amend the Statute Law of England and Ireland relating to Indictable Offences by Forgery.*

[6th August 1861.]

\* \* \* \* \*

As to forging registers of births, marriages, and deaths :

**36.** Whosoever shall unlawfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any register of births, baptisms, marriages, deaths, or burials which now is or hereafter shall be by law authorised or required to be kept in England or Ireland, or any part of

Destroying,  
injuring  
forging, or  
falsifying  
registers of  
births,  
baptisms,

**Sect. 36.**

marriages,  
deaths, or  
burials, or  
certified  
copies.

any such register, or any certified copy of any such register, or any part thereof, or shall forge or fraudulently alter in any such register any entry relating to any birth, baptism, marriage, death, or burial, or any part of any such register, or any certified copy of such register, or of any part thereof, or shall knowingly and unlawfully insert or cause or permit to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death, or burial, or shall knowingly and unlawfully give any false certificate relating to any birth, baptism, marriage, death, or burial, or shall certify any writing to be a copy or extract from any such register, knowing such writing, or the part of such register whereof such copy or extract shall be so given, to be false in any material particular, or shall forge or counterfeit the seal of or belonging to any register office or burial board, or shall offer, utter, dispose of, or put off any such register, entry, certified copy, certificate, or seal, knowing the same to be false, forged, or altered, or shall offer, utter, dispose of, or put off any copy of any entry in any such register, knowing such entry to be false, forged, or altered, shall be guilty of felony, and being convicted thereof, shall be liable . . . to be kept in penal servitude for life . . .

Making  
false entries  
in copies of  
registers of  
baptisms,  
marriages,  
or burials,  
directed to be  
sent to any  
registrar, or  
destroying or  
concealing  
copies of  
registers.

**37.** Whosoever shall knowingly and wilfully insert or cause or permit to be inserted in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any copy of any register so directed or required to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so directed or required to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, or shall unlawfully destroy, deface, or injure, or shall for any fraudulent purpose take from its place of deposit, or conceal, any such copy of any register, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life . . .

\* \* \* \* \*

## REGISTRATION OF BURIALS ACT, 1864.

(27 &amp; 28 VICT. c. 97.)

*An Act to make further Provision for the Registration of Burials in England.* [29th July 1864.]

[Preamble.]

1. All burials in any burial ground in England which are not now by law required to be registered shall be registered in register books to be provided for each such burial ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose according to the laws in force by which registers are required to be kept by rectors, vicars, or curates of parishes or ecclesiastical districts in England.

All burials in burial grounds in England not now required to be registered, shall be registered.

See the Parochial Registers Act, 1812 (52 Geo. 3, c. 146), *ante*, p. 373, for the laws in force by which registers are required to be kept by rectors, etc.

2. Such register books shall be so kept for every such burial ground by some officer or person to be appointed to that duty by the company, body, or persons to whom such burial ground belongs.

Officers by whom books shall be kept.

3. Copies of the register books kept under this Act for every such burial ground shall be from time to time made, verified, and signed by such officer or person as aforesaid, and sent by him to the registrar of the diocese wherein the burial ground to which the same relates is situate, to be kept with the copies of the register books of the parishes within such diocese.

Copies of registers to be sent to registrars of dioceses.

4. If any such company, body, or persons, or any such officer or person as aforesaid wilfully fail to comply with any of the provisions of this Act, they or he shall be guilty of an offence against this Act, and on summary conviction thereof before a justice of the peace shall be liable for every such offence to a penalty not exceeding five pounds.

Penalty for failure to comply with Act.



**Sect. 5.**      **5.** The register books kept under this Act, or copies thereof or extracts therefrom, shall be received in all courts as evidence of the burials entered therein.

Registers and copies, etc., to be evidence.

Searches. 6 & 7 Will. 4, c. 86.

**6.** The register books kept under this Act shall, as to searches therein and copies thereof and extracts therefrom, be subject to the regulations of the Births and Deaths Registration Act, 1836, so far as those regulations relate to register books of burials kept by rectors, vicars, or curates.

There is nothing whatever in the Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), relating to register books of burials, except that in s. 49 it is provided that nothing in the Act should affect the registration of baptisms or burials as by law provided. The regulations referred to in this section may therefore either be those of 52 Geo. 3, c. 146, relative to copies, etc. of registers of burial, *ante*, pp. 376—379; or those contained in a. 35 of the Act of 1836, relative to registers of births, deaths, and marriages, which section is as follows:

“Every rector, vicar, or curate, and every registrar, registering officer, and secretary, who shall have the keeping for the time being of any register book of births, deaths, or marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same, on payment of the fee hereinafter mentioned; (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate.”

As to “burial ground.”      **7.** In this Act the term “burial ground” includes a vault or other place where any body is buried.

A dead body may be buried in any private ground beyond a radius of two miles from the metropolis provided (1) that a nuisance is not thereby created; and (2) that no order in council is in force prohibiting burials in the district within which such ground is situate. In such a case, however, it seems from the definition of “burial ground” in this section that a register must be provided, and the provisions of this Act observed, so far as it may be possible to observe them.

Short title.      **8.** This Act may be cited as the Registration of Burials Act, 1864.

BIRTHS AND DEATHS REGISTRATION  
ACT, 1874.

(37 &amp; 38 VICT. c. 88.)

*An Act to amend the Law relating to the Registration of Births and Deaths in England, and to consolidate the Law respecting the Registration of Births and Deaths at Sea.*  
[7th August 1874.]

\* \* \* \* \*

## BURIALS.

17. A coroner, [*upon holding an inquest upon any body, may, if he thinks fit, by order under his hand, authorise the body to be buried before registry of the death and*] shall give such order to the relative of the deceased or other person who causes the body to be buried, or to the undertaker or other person having charge of the funeral; [*and, except upon holding an inquest, no order, warrant, or other document for the burial of any body shall be given by the coroner*].

Coroner's  
order and  
registrar's  
certificate for  
burial.

The registrar, upon registering any death or upon receiving a written requisition to attend at a house to register a death, or upon receiving such written notice of the occurrence of a death, accompanied by a medical certificate as is before provided by this Act, shall forthwith, or as soon after as he is required, give, without fee or reward, either to the person giving information concerning the death or sending the requisition or notice, or to the undertaker or other person having charge of the funeral of the deceased, a certificate under his hand that he has registered or received notice of the death, as the case may be.

Every such order of the coroner and certificate of the registrar shall be delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate was given by the coroner or registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings.

**Sect. 17.**

The person who buries or performs any funeral or religious service for the burial of any dead body, as to which no order or certificate under this section is delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar, and if he fail so to do shall be liable to a penalty not exceeding ten pounds.

The words in this section printed in italics are repealed by the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 45, and replaced by s. 18 (5) of that Act, *post*, p. 390.

Burial of deceased children as still-born.

18. A person shall not wilfully bury or procure to be buried the body of any deceased child as if it were still-born.

A person who has control over or ordinarily buries bodies in any burial ground shall not permit to be buried in such burial ground the body of any deceased child as if it were still-born, and shall not permit to be buried or bury in such burial ground any still-born child before there is delivered to him either,—

- (a.) A written certificate that such child was not born alive, signed by a registered medical practitioner who was in attendance at the birth or has examined the body of such child ; or
- (b.) A declaration signed by some person who would, if the child had been born alive, have been required by this Act to give information concerning the birth, to the effect that no registered medical practitioner was present at the birth, or that his certificate cannot be obtained, and that the child was not born alive ; or
- (c.) If there has been an inquest, an order of the coroner.

Any person who acts in contravention of this section shall be liable to a penalty not exceeding ten pounds.

Notice where coffin contains more than one body.

19. Where there is in the coffin in which any deceased person is brought for burial the body of any other deceased person, or the body of any still-born child, the undertaker or other person who has charge of the funeral shall deliver to the person who buries or performs any funeral or religious service for the burial of such body or bodies notice in writing signed by such undertaker or other person, and stating to the best of his knowledge and belief with respect to each such body the following particulars :

- Sect. 19.**
- (a.) If the body is the body of a deceased person, the name, sex, and place of abode of the said deceased person ;
- (b.) If the body has been found exposed, and the name and place of abode are unknown, the fact of the body having been so found and of the said particulars being unknown ; and
- (c.) If the body is that of a deceased child without a name, or a still-born child, the name and place of abode of the father, or, if it is illegitimate, of the mother of such child.

Every person who fails to comply with this section shall be liable to a penalty not exceeding ten pounds.

\* \* \* \* \*

## CORONERS ACT, 1887.

(50 & 51 VICT. c. 71.)

*An Act to consolidate the Law relating to Coroners.*

[16th September 1887.]

\* \* \* \* \*

**18.** The following enactments shall be made with respect to procedure at coroner's inquests :

Enactments  
with respect  
to procedure  
at inquests.

- (1.) The inquisition shall be under the hands, and in the case of murder or manslaughter also under the seals, of the jurors who concur in the verdict, and of the coroner :
- (2.) An inquisition need not, except in the case of murder or manslaughter, be on parchment, and may be written or printed, or partly written and partly printed, and may be in the form contained in the Second Schedule to this Act, or to the like effect or in such other form as the Lord Chancellor from time to time prescribes, or to the like effect, and the statements therein may be made in concise and ordinary language.
- (3.) The coroner after the termination of an inquest on any death shall send to the registrar of deaths

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**(3).**

whose duty it is by law to register the death such certificate of the finding of the jury and within such time as is required by the Registration Acts.

- (4.) The coroner shall cause recognizances taken before him from a person charged by an inquisition with manslaughter to be taken, so far as circumstances admit, in one of the forms contained in the Second Schedule to this Act or in such other forms as the Lord Chancellor from time to time prescribes, and shall give notice of the recognizance to every person bound thereby.
- (5.) A person charged by an inquisition with murder or manslaughter shall be entitled to have from the person having for the time being the custody of the inquisition or of the depositions of the witnesses at the inquest, copies thereof on payment of a reasonable sum for the same, not exceeding the rate of three halfpence for every folio of ninety words.
- (6.) A coroner, upon holding an inquest upon any body, may, if he thinks fit after view of the body, by order under his hand, authorise the body to be buried before verdict and before registry of the death, and shall deliver such order to the relative or other person to whom the same is required by the Registration Acts to be delivered; but, except upon holding an inquest, no order, warrant, or other document for the burial of a body shall be given by the coroner.

\* \* \* \* \*

Removal of  
body for  
post-mortem  
examination.

**24.** Where a place has been provided by a sanitary authority or nuisance authority for the reception of dead bodies during the time required to conduct a post-mortem examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest.

\* \* \* \* \*

STAMP ACT, 1891.

(54 & 55 VICT. c. 39.)

*An Act to consolidate the Enactments granting and relating to the Stamp Duties upon Instruments and certain other enactments relating to Stamp Duties.*

[21st July 1891.]

1. From and after the commencement of this Act the stamp duties to be charged for the use of her Majesty upon the several instruments specified in the First Schedule to this Act shall be the several duties in the said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

Charge of duties in schedule.

\* \* \* \* \*

AS TO CERTIFIED COPIES AND EXTRACTS FROM REGISTERS OF BIRTHS, ETC.

64. The duty upon a certified copy or extract of or from any register of births, baptisms, marriages, deaths, or burials is to be paid by the person requiring the copy or extract, and may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the copy or extract is signed before he delivers the same out of his hands, custody, or power.

Duty may be denoted by adhesive stamp.

\* \* \* \* \*

SCHEDULE.

Copy or extract (certified) of or from any register of births, baptisms, marriages, deaths, or burials - - - - 0 0 1

*Exemptions.*

- (1.) Copy or extract furnished by any clergyman, registrar, or other official person pursuant to and for the purposes of any Act, or furnished to any general or superintending registrar under any general regulation.
- (2.) Copy or extract for which the person giving the same is not entitled to any fee or reward.

## OPEN SPACES AND DISUSED BURIAL GROUNDS.

### METROPOLITAN OPEN SPACES ACT, 1877.

(40 & 41 Vict. c. 35.)

*An Act for affording Facilities for the enjoyment by the  
Public of Open Spaces in the Metropolis.*

[2nd August 1877.]

Preamble recited that it was expedient to afford facilities for making available the open spaces in and near the metropolis for the use of the inhabitants for exercise and recreation, and to enable the Metropolitan Board of Works to acquire the control and management of such open spaces for such purposes. Repealed by the Statute Law Revision Act, 1894.

*Metropolitan  
Board of  
Works may  
acquire and  
hold open  
spaces for  
benefit of  
public.*

1. The *Metropolitan Board of Works* may, by purchase on voluntary sale or by the gift of the person or persons legally entitled to dispose of the same, acquire or accept the ownership of any open spaces, whether inclosed within rails or palings, or uninclosed, situated in the metropolis, and hold the same in trust for the perpetual use thereof by the public for exercise and recreation, and may from time to time make byelaws for the regulation of such open spaces, and may by such byelaws provide for the removal of any person infringing any such byelaw by any officer of the said Board or police constable. Byelaws under this section shall be made in the same manner and subject to the same conditions as byelaws made by the said Board under the *Metropolis Management Act, 1855*.

18 & 19 Vict.  
c. 120.

In sanitary districts outside the metropolis the sanitary authorities of such districts have the same powers as by this Act are conferred upon the Metropolitan Board of Works in the metropolis, as if the word "metropolis" in this Act meant such a sanitary district, and the words "Metropolitan Board" meant the sanitary authority of the same district (*Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 5*).

By the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), the London County Council was substituted for the Metropolitan Board of Works.

**Sect. 1.**

**NOTE.**

The sections of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), relating to the making of byelaws by the Board, are as follows :

Section 202. The Metropolitan Board of Works and every district board and vestry respectively may from time to time make, alter, and repeal byelaws for all or any of the purposes following ; (that is to say,) for regulating the business and proceedings at their meetings and of committees appointed by them, the appointment and removal of their officers and servants, and the duties, conduct, and remuneration of such officers and servants ; and the said Metropolitan Board may also from time to time make, alter, and repeal byelaws for regulating . . . the material of the pavement and roadway of new streets and roads, . . . and for regulating the dimensions, form, and mode of construction, and the keeping, cleansing, and repairing, of the pipes, drains, and other means of communicating with sewers, and the traps and apparatus connected therewith ; . . . and for regulating the form of appeal and mode of proceeding thereon ; and generally for carrying into effect the purposes of this Act ; and every such board and vestry may thereby impose such reasonable penalties as they think fit, not exceeding 40s., for each breach of such byelaws, and in case of a continuing offence a further penalty not exceeding 20s. for each day after notice of the offence from the board or vestry : Provided always, that under every such byelaw it shall be lawful for the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty : Provided also, that no byelaws shall be repugnant to the laws of England or to the provisions of this Act ; and that no byelaw shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry : Provided also, that no penalty shall be imposed by any such byelaw, unless the same be approved by one of her Majesty's principal Secretaries of State.

Section 203. All byelaws made and confirmed as aforesaid in pursuance of this Act shall be printed, and hung up in the principal office of the board or vestry, and be open to public inspection without payment, and copies thereof shall be delivered to any person applying for the same, on payment of such sum, not exceeding 2d., as the board or vestry shall direct ; and such byelaws, when so published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same ; and the production of a printed copy of such byelaws, authenticated by the seal of the board or vestry, shall be evidence of the existence, and of the due making, confirmation, and publication of such byelaws, in all prosecutions under the same, without adducing proof of such seal, or of the fact of such confirmation or publication of such byelaws.

It is provided, however, by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 10, *post*, that all the provisions in respect to byelaws contained in ss. 182—186 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), shall apply to all byelaws made by sanitary authorities under the powers of that Act. The above provisions of



**Sect. 1.****NOTE.**

the Metropolis Management Act, 1855, will, therefore, not be applicable to byelaws made in pursuance of the powers conferred on sanitary authorities under any of the Open Spaces Acts, 1887 to 1890, which are to be read as one Act (50 & 51 Vict. c. 32, s. 14; 53 & 54 Vict. c. 15, s. 1, *post*).

Further powers of making byelaws relating to open spaces in the metropolis are given to the county council by the London County Council (General Powers) Act, 1890 (53 & 54 Vict. c. ccxliii.).

Right of entry to places of recreation may be conveyed to *Metropolitan Board of Works*.

2. Where any open spaces now are or hereafter may be used as places of exercise and recreation for the inhabitants of certain houses, and the property and right of user is now or hereafter may be vested in one or more persons as owners or occupiers of such houses, such owners and occupiers (if any) may convey to the *Metropolitan Board of Works*, in trust for the public, the right to enter upon and use and enjoy such open spaces, subject to such terms and conditions as may be agreed upon.

The provisions of this Act, as amended by the Open Spaces Act, 1887 (except ss. 4, 5, 6, 7, 8), are by s. 5 of that Act extended and made applicable to and in respect of every urban sanitary district, and every rural sanitary district in respect of which the sanitary authority shall have been invested by an order of the Local Government Board with the powers of that Act, and to the open spaces and burial grounds in such districts respectively.

Provisions for keeping up open spaces.

3. The *Metropolitan Board of Works* shall be entitled to make such provision as may be necessary for maintaining and protecting the open spaces so acquired by them.

Expenses.

4. The *Metropolitan Board of Works* shall be empowered to pay out of the funds at their disposal or which they are empowered to raise under the [*said*] Metropolis Management Act, 1855, and the several Acts amending the same, the costs and charges which they may incur in the execution of this Act, and such costs and charges shall be deemed to be expenses for which provision is made by such Acts.

18 & 19 Vict. c. 120.

Extent of Act.

5. This Act shall not extend to the royal parks, nor to any land belonging to her Majesty in right of her Crown or of her Duchy of Lancaster, or any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners of Works or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any Metropolitan Common within the meaning of the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, nor to

14 & 15 Vict. c. 95.  
29 & 30 Vict. c. 122.  
32 & 33 Vict. c. 107.

any land belonging to either of the honourable Societies of the Inner Temple and Middle Temple. **Sect. 5.**

6. The term "metropolis" in this Act means all parishes and places mentioned in Schedules A., B., and C. to the [said] Metropolis Management Act, 1855. **Meaning of term "metropolis."**

7. The powers in this Act conferred on the *Metropolitan Board of Works* shall in the city of London be exercised by the mayor, aldermen, and commons of the said city, who shall defray all the expenses caused by or connected with the execution of such powers. **In the city of London the powers of the Act to be executed by corporation.**

8. This Act may be cited as the Metropolitan Open Spaces Act, 1877. **Short title.**

## METROPOLITAN OPEN SPACES ACT, 1881.

(44 & 45 VICT. c. 34.)

*An Act to amend the Metropolitan Open Spaces Act, 1877 (a).*  
[11th August 1881.]

Preamble recited the Metropolitan Open Spaces Act, 1877, and that it was expedient to amend and extend the said Act, and to provide greater facilities for the purpose thereof. Repealed by the Statute Law Revision Act, 1894.

1. In this Act, unless the context otherwise requires— **Interpretation clause.**  
"Open space" means any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied; [*but shall not include any inclosed land which has not a public road or foot-path completely round the same*];

The words in italics are repealed by 50 & 51 Vict. c. 32, *post*.

By the Open Spaces Act, 1890 (53 & 54 Vict. c. 15), s. 7, where a portion of an area of land not exceeding a twentieth part is covered with a building or buildings, such land may, notwithstanding, be deemed to be an open space within the meaning of the Open Spaces Acts, 1877 to 1890.

(a) By the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 5, *post*, all the provisions of this Act except so much of s. 6 as begins with the words "byelaws made under this Act," and ends with the figures "1855," and also except ss. 10—13, are extended and made applicable to every urban sanitary district, and to every rural sanitary district invested by the Local Government Board with the powers of that Act, and to the open spaces and burial grounds in such districts respectively.

**Sect. 1.**  
 18 & 19 Vict.  
 c. 120.

“The metropolis” means the metropolis as defined by the Metropolitan Management Act, 1855;

“The *Metropolitan Board*” means the *Metropolitan Board of Works* as constituted by the same Act;

In sanitary districts outside the metropolis the sanitary authorities of such districts have the same powers as by this Act are conferred upon the Metropolitan Board of Works in the metropolis, as if the word “metropolis” in this Act meant such a sanitary district, and the words “Metropolitan Board” meant the sanitary authority of the same district (50 & 51 Vict. c. 32, s. 5).

By the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8), the London County Council was substituted for the Metropolitan Board of Works.

“*Vestry*” means a vestry of one of the parishes specified in Schedule A. of the same Act;

“*District Board*” means a board of works of one of the districts specified in Schedule B. of the same Act;

By the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4, the powers and duties of the vestries and district boards in the metropolis were transferred to the council for the borough comprising the area within which those powers were exercised.

“The corporation” means the mayor and commonalty and citizens of the city of London, and the powers conferred upon them by this Act may be exercised by the mayor, aldermen, and commons of the said city in common council assembled;

The “owner” of a churchyard, cemetery, or burial ground means the person or persons, corporation sole, or body corporate in whom the soil and freehold of such churchyard, cemetery, or burial ground is vested, whether as appurtenant or incident to any benefice or cure of souls, or otherwise;

The term “burial ground” shall include any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment [*and in which interments have taken place since the year 1800*].

The words in italics are repealed by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), *post*.

As to what is a burial ground which may become a “disused burial ground,” see notes to the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 2, *post*.

2. Where any open space within the metropolis is under the provisions of any private or local Act of Parliament placed under the care and management of trustees or other persons, with a view to the preservation and regulation of the same as a garden or open space, it shall be lawful for the said trustees or other the managing body thereof for the time being, in pursuance of any resolution duly passed as hereinafter mentioned, and with the consent, to be signified in manner hereinafter appearing, of the owners and occupiers of any houses fronting upon, or the owners or occupiers of which are liable to be specially rated for the maintenance of the open space, to convey, assign, or transfer for valuable or nominal consideration, or by way of gift, to the *Metropolitan Board*, or to the *vestry or district board of the parish or district* in which such open space or any part thereof is situate, the soil and freehold of, or other their entire interest in, or (where no interest in the soil of such open space is vested in them) the entire care and management of the said open space, to the end that the same may be preserved for the enjoyment of the public; and upon such conveyance, assignment, or transfer such trustees or other managing body shall be relieved and discharged from all trusts, powers, and duties imposed upon them by the Act or other instrument under which they were constituted, or under which they then act or otherwise with reference to the said open space, *but shall hold any purchase money paid for or in respect of the said open space in trust for the benefit of the persons or class of persons for whose benefit the said open space was previously preserved and managed by the said trustees*, and such persons or class of persons shall be discharged from any special rate or other obligation previously imposed on them in respect of such open space.

**Sect. 2.**  
Power to trustees to transfer certain open spaces to local authority.

It shall be lawful for any trustees or managing body as aforesaid, in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, for any valuable or nominal consideration, by way of rent or otherwise, or without any consideration, to grant or transfer to the *Metropolitan Board*, or to any such *vestry or district board* as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or to enter into any agreement with the *Metropolitan Board* or any

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such *vestry or district board* as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry at all times or at any specified time or times, without the transfer to such board or vestry of any interest in the soil of such open space; and any such grant, demise, transfer, or agreement as aforesaid shall be deemed a good execution of the trusts, powers, and duties imposed upon the said trustees by the Act or other instrument under which they are constituted or act.

A resolution under this section shall be deemed to have been duly passed if at a meeting of the trustees or other the persons constituting such managing body as aforesaid summoned by at least one month's notice in writing left at or sent by post to their last known or usual place of abode, such resolution shall have been passed by a majority of two-thirds in number of the persons present at such meeting, and if such resolution shall also have been confirmed by two-thirds in number of the persons present at a second like meeting, to be summoned by such notice as aforesaid, and to be held at an interval of not less than one calendar month from the first meeting.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if, at a meeting of such persons summoned by at least one month's notice in writing given as hereinafter directed, a resolution shall have been passed by a majority of at least two-thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the *Metropolitan Board, vestry, or district board* as aforesaid, and if such resolution shall also have been confirmed by two-thirds in number of such owners and occupiers present at a second like meeting, to be summoned in like manner to the first meeting, and to be held at an interval of not less than one calendar month from the first meeting.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house fronting upon, or the owner or occupier of which is liable to be specially rated for the maintenance of, the said open space, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said

meeting, and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

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For the purposes of this section the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

If at any meeting of such trustees or managing body, or at any meeting of such owners or occupiers as before mentioned, the resolution proposed at any such meeting be not carried, no meeting shall be called or held with the same object in respect to the same garden or open space until the expiration of three years from the day on which such resolution so proposed was rejected at any such meeting as above mentioned.

A conveyance, assignment, demise, grant, or agreement under this section shall be made by an instrument under the common seal of the trustees or other managing body if such body be a corporation, and if it be not a corporation under the hands and seals of any five members of such body, or of all the members thereof if for the time being they be less than five in number.

The trustees or other the managing body of any such open space as aforesaid may (anything contained in the Act or other instrument under which they are constituted or act to the contrary notwithstanding), in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, signified as aforesaid, admit persons not owning, occupying, or residing in any house fronting on the said open space to the enjoyment of the said open space at all times, or at any specified time or times, and may regulate the admission of such persons thereto on such terms and conditions in all respects as the trustees may think proper.

Any trustees so acting as aforesaid shall have the same power of making byelaws as that conferred by the fourth section of the Act passed in the twenty-sixth year of her Majesty, chapter thirteen, intituled "An Act for the protection of certain garden or ornamental grounds in cities and boroughs upon the committee therein mentioned."

Where the freehold of any such open space as is referred to in this section, and the freehold of all or of the major

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part of the houses round such open space are vested in the same person or persons, the powers conferred by this section shall not be exercised without the consent of such person or persons.

This section is amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 2, *post*, which provides that "the purchase money paid for or in respect of the purchase of any open space as therein mentioned shall be held in trust, either as in the said section mentioned, or as the case may be, for the benefit of the objects to which any rates previously imposed in respect of such open space had been applied."

In this section and throughout the Act, for "Metropolitan Board" must now be read "London County Council"; and for "vestry or district board of the parish or district" must be read "council of the borough." See note to s. 1, *supra*.

Power to transfer other open space to local authority.

3. The owner of any open space within the metropolis which is subject to rights of user for exercise and recreation (secured by covenant or otherwise) in the owners and occupiers (or either of such classes) of any houses round or near the same may, with the consent (to be signified in manner hereinafter appearing) of such owners and occupiers of houses, convey to the *Metropolitan Board*, or to the *vestry or district board of the parish or district* in which such open space or any part thereof is situate, the soil of the said open space in trust for the enjoyment of the public; and the owner or any person or persons in whom any term of years or other limited interest in such open space is vested may, with the like consent, grant or transfer to the *Metropolitan Board* or such *vestry or district board* as aforesaid, in trust as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or enter into any agreement with the *Metropolitan Board* or any such *vestry or district board* as aforesaid for the opening to the public of such open space, and the care and management thereof by such *board or vestry* either at all times or at any specified time or times without the transfer to such *board or vestry* of any interest in the soil of such open space.

The consent of such owners and occupier of houses as aforesaid shall be held to have been given and signified if at a meeting of such persons summoned by at least one month's notice in writing (given as hereinafter directed) a resolution shall have been passed by a majority of at least

two-thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the *Metropolitan Board, vestry, or district board* as aforesaid, and the owner shall be thereupon discharged from any liability to any person entitled to such right of user as aforesaid in respect of any act done in accordance with such resolution.

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Notice of such meeting shall be given by leaving the same or sending the same through the post to every house, the owner or occupier of which is entitled to any right of user, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting; and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of an open space shall be any person or persons in whom the soil of the open space is vested for an estate in possession during his or their life or lives or for any larger estate; the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

4. The owner of any churchyard, cemetery, or burial ground situate within the metropolis, and closed for burials either under an order of her Majesty the Queen in Council, or otherwise, may convey the soil of such churchyard, cemetery, or burial ground, or grant any term of years or other limited interest therein to or enter into any agreement with the *Metropolitan Board* or the *vestry or district board of the parish or district* in which such churchyard, cemetery, or burial ground, or any part thereof, is situate for the purpose of giving the public access to the said churchyard, cemetery, or burial ground, and preserving the same as an open space accessible to the public, and under the control of such board or vestry, and for the purpose of improving and laying out the same.

Power to transfer dis-used burial grounds to local authority.

5. The *Metropolitan Board* and the *vestry or district board of the parish or district* within which any open space,

Powers and duties of local authority.



**Sect. 5.**

churchyard, cemetery, or burial ground, or any part thereof, is situate may, by agreement, and for valuable or nominal consideration by way of payment in gross or of rent, or otherwise, or without any consideration, take and hold the soil and freehold of, or any term of years or other limited estate or interest in, or any right or easement in or over any open space, churchyard, cemetery, or burial ground, and may, with reference to any open space, churchyard, cemetery, or burial ground, undertake the entire or partial care, management, and control thereof, whether any interest in the soil is transferred to the board or vestry or not, and may for the purposes aforesaid enter into any agreement with the persons authorised by this Act to agree with reference to any open space, churchyard, cemetery, or burial ground or with any other persons interested therein.

Any estate or interest in or control over any open space, churchyard, cemetery, or burial ground acquired by the *Metropolitan Board*, or any *vestry* or *district board* under the provisions of this Act, shall be held and administered by such board or vestry in trust to allow, and with a view to, the enjoyment by the public of such open space, churchyard, cemetery, or burial ground in an open condition, free from buildings and under proper control and regulation, and for no other purpose, [*but such Metropolitan board, vestry, or district board shall not allow the playing of any games or sports therein;*] and the *board* or *vestry* shall maintain and keep the same in a good and decent state, and may inclose or keep the same inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, seat, and otherwise improve the same, and do all such works and things, and employ such officers and servants, as may be requisite for the purposes aforesaid, or any of them.

Provided that no *board* or *vestry* shall exercise any of the powers of management in this Act mentioned with reference to any consecrated ground, unless and until they are authorised so to do by the licence or faculty in that behalf of the bishop of the diocese in which such consecrated ground is situate, which licence or faculty may be granted by such bishop upon the application of the board or vestry, and may extend to the removal of any tombstone

or monument, under such conditions and subject to such restrictions as to the bishop may seem fit. Sect. 5.

The words within brackets in this section are repealed by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), *post*, which by s. 2 provides for allowing games to be played in such churchyards, etc., subject to the sanctions and conditions therein specified. Section 3 of that Act lays down the conditions that must be complied with before any tombstone or monument is moved.

By the London Open Spaces Act, 1893 (56 & 57 Vict. c. lxxi.), s. 25, "it shall be lawful for any vestry or district board acting under the Metropolis Management Act, 1865, and the Acts amending the same [now borough council] to erect and maintain on any of the open spaces belonging to or under the control of such vestry or district board [council] buildings for the accommodation of keepers, constables, and other persons employed by them in connection with the maintenance and management of such open spaces, and also such other convenient and ornamental buildings and such appliances as they may think requisite for the purpose of exercise and recreation, and for refreshment rooms, band stands, conveniences, and other like purposes: Provided that the consent of the county council under their common seal to the erection thereof be first obtained, and the expenses so incurred by them shall be deemed to be expenses incurred by them under and for the purposes of the said Acts, and may be defrayed accordingly."

On an application for a faculty by the vestry under this section and the Open Spaces Act, 1887, s. 3, the ordinary will not decide any controversial matters with regard to proprietary rights or interests in the soil of the whole consecrated ground, but will leave the interested parties to protect their interests in a court of law (*Re Camden Town Burial Ground* (1889), 5 T. L. R. 311).

When a faculty had been decreed upon an application under this section, allowing a churchyard closed for burials and containing two private vaults, one in repair and the other out of repair, to be laid out as a public garden subject to future order as to how such vaults were to be dealt with, the court made an order that there should be no interference with the vault in repair, but that the vault out of repair should be levelled with the ground and filled up. The rule of the court in such cases was stated by the Chancellor, Dr. TRISTRAM, to be as follows: "Where a private vault is in good repair not to interfere with it without the consent of the family, but where it is in a dilapidated condition, unless the family come forward to repair it, to order it to be levelled with the ground and filled up, taking care that all memorial slabs belonging to it on which the inscriptions are legible be carefully preserved in the churchyard, and placed as near the vault as convenience will permit. The reason of this rule is that it is the duty of the family, and not that of the vestry, to keep private vaults in repair; but it is the duty of the vestry to keep the churchyard in sanitary and decent order" (*Vicar, etc. of St. Botolph-without-Aldgate v. Parishioners* (No. 2), [1892] P. 173).

6. The Metropolitan Board and any vestry or district Byelaws. board may, with reference to any open space, churchyard, cemetery, or burial ground in or over which it has acquired

Sect. 6.

any estate, interest, or control under the provisions of this Act, make byelaws for the regulation thereof, and of the days and times of admission thereto, and the preservation of order and prevention of nuisances therein, and may by such byelaws impose penalties for the infringement thereof, and provide for the removal of any person infringing any such byelaw by any officer of the board or vestry or police constable.

Byelaws made under this Act shall be made in the same manner and subject to the same conditions as byelaws made by the *Metropolitan Board* or by a *vestry or district board*, as the case may be, under the *Metropolis Management Act, 1855*.

Metropolitan Board and vestry or district board may carry out Act jointly.

7. The *Metropolitan Board* or any *vestry or district board*, and where an open space extends into two or more *parishes or districts* two or more *vestries or district boards*, either with or without the *Metropolitan Board*, may jointly carry out the provisions of this Act, and may enter into any agreement, on such terms as may be arranged between them, for so doing and for defraying the expenses of the execution of the Act, and the *Metropolitan Board* may defray the whole or any part of the expenses of the execution of this Act by any *vestry or district board*, and any *vestry or district board* may similarly defray the whole or any part of the expenses of the *Metropolitan Board* or, where an open space extends into two or more *parishes or districts*, of any other *vestry or district board*.

For "parishes or districts" in this section, must now be read "boroughs."

Provision for extra-parochial places.

8. Where any open space, churchyard, cemetery, or burial ground, by virtue of any Act of Parliament or otherwise, is extra-parochial, or forms part of some parish other than that which surrounds the same, the *vestry or district board* acting for the parish surrounding the same may carry out, or may enter into agreement with any one or more *vestries or district boards* acting for any other *parishes*, on such terms as may be arranged between them, and may jointly carry out, the provisions of this Act, and shall have the same powers in every respect as if such open space, churchyard, cemetery, or burial ground were part of the parish or district of such vestry or district board.

9. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space, churchyard, cemetery, or burial ground shall, except with the consent of the body or person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same; and such compensation shall be made by the *Metropolitan Board, vestry, or district board* by which such estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the Land Clauses Consolidation Act, 1845, and any Acts amending the same.

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Provision for compensation.

8 &amp; 9 Vict. c. 18.

10. All expenses incurred under this Act by the *Metropolitan Board* or by any *vestry or district board* shall be defrayed out of the funds at their disposal respectively, or which they respectively are empowered to raise under the Metropolis Management Act, 1855, and the several Acts amending the same; and such expenses shall be deemed to be expenses for which provision is made by such Acts.

Expenses.

This section (as well as ss. 11—13) is not extended, as the rest of the Act is, to urban and rural sanitary districts, the payment of the expenses of which are provided for by s. 8 of the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), *post*, p. 414.

11. This Act shall extend only to the metropolis, and shall not extend to the royal parks or to any land belonging to her Majesty in right of her Crown or of her Duchy of Lancaster, or to any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners for the time being of her Majesty's Works and Public Buildings or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any metropolitan common within the meaning of the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869.

Extent of Act.

14 &amp; 15 Vict. c. 95.

29 &amp; 30 Vict. c. 122.

32 &amp; 33 Vict.

c. 107.

See note to heading of Act, *supra*, p. 394, as to extension of Act to sanitary districts.

12. The powers in this Act conferred on and in relation to the *Metropolitan Board, vestries, and district boards* shall in the city of London be exercised by and have relation to

Application in city of London.

**Sect. 12.** the corporation, who shall defray, out of the metage of grain duty or otherwise, all the expenses caused by or connected with the execution of such powers by them; and any byelaws made by the corporation for the regulation of any open space acquired under the powers of this Act shall be made and allowed in manner prescribed by the Corporation of London (Open Spaces) Act, 1878.

41 & 42 Vict.  
c. cxxvii.

**Short title.** 13. This Act may be cited as the Metropolitan Open Spaces Act, 1881; and this Act and the Metropolitan Open Spaces Act, 1877, may together be cited as the Metropolitan Open Spaces Acts, 1877 and 1881.

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## DISUSED BURIAL GROUNDS ACT, 1884.

(47 & 48 VICT. c. 72.)

*An Act for preventing the erection of Buildings on Disused Burial Grounds.* [14th August 1884.]

Preamble recited the Burial Act, 1852 (15 & 16 Vict. c. 85), and the Burial Act, 1853 (16 & 17 Vict. c. 134), and that in pursuance of the provisions of the said recited Acts numerous Orders in Council had been made for the discontinuance of burials in certain burial grounds within the metropolis and elsewhere, and that it was expedient that no buildings should be erected on any burial ground affected by any of such Orders in Council. Repealed by the Statute Law Revision Act, 1898.

**Short title.** 1. This Act may be cited as the Disused Burial Grounds Act, 1884.

By the Metropolitan Board of Works (Various Powers) Act, 1885 (48 & 49 Vict. c. clxvii.), s. 56, "the Board [now the County Council] shall be and they are hereby constituted the authority for preventing the violation and for enforcing the due observance of the provisions of the Disused Burial Grounds Act, 1884, within the metropolis, and they may from time to time institute and prosecute all such legal proceedings, and do all such acts, matters, and things as may in the opinion of the Board [Council] be necessary or expedient for preventing the violation by any person, and for enforcing the due observance by all persons, of the provisions of the said Act within the metropolis."

2. In this Act a "disused burial ground" shall mean **Sect. 2.**  
 [a burial ground in respect of which an Order in Council has  
 been made for the discontinuance of burials therein in pur- Interpretation  
 suance of the provisions of the said recited Acts]. clause.

By the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 4, *post*, p. 412, it is enacted that in this Act the expression "disused burial ground" shall mean any burial ground which is no longer used for interment, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council; and the expression "burial ground," shall include any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment.

The site of a desecrated church in London sold under the Union of Benefices Act, 1860 (23 & 24 Vict. c. 142), is not a "disused burial ground" within the meaning of this Act (*In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702).

A summons was taken out under the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), to determine whether the vendor could make a good title to a plot of land at Newport, which he had agreed to sell to the Newport School Board, who required it for the purpose of building a school thereon. The ground in question was two-and-a-half acres in extent, a portion (about half) of a larger piece acquired by a cemetery company in 1842. The company had power by their deed of settlement to let or sell any portion of the land so acquired. The whole land acquired by the company became known as the "Old Cemetery," Newport. The ground in question was coloured green on a map referred to in an Order in Council made in 1890, the rest of the land being there coloured blue. In 1842 the whole land was enclosed within one boundary wall, a chapel was built and paths were made, which in fact were entirely on the blue land. No part of the land was ever consecrated; it was used as a burial ground, but no interment ever took place on any part of the green land. In January, 1878, an Order in Council was made, under the burial laws then in force, that burials should be discontinued in, among other places, the Old Cemetery at Newport, except in private vaults and graves which were free from water, and could be opened without exposure of remains or coffins. In 1885 the whole of the land was conveyed to new trustees, with the consent of all the persons interested in the company, on trust to sell such parts as should be agreed upon by the persons interested, and the green land was then separated from the rest by a wall. By another Order in Council, made in June, 1890, it was ordered that, with the exception of the portion of the cemetery company's land distinguished by a green colour on a plan deposited at the Home Office, burials should be discontinued forthwith and entirely in the Old Cemetery, Newport. In 1891 the green land was sold by the trustees to the present vendor, and in 1892 he agreed to sell it to the school board:—*Held*, that the objection by the school board to the vendor's title was good, on the grounds that the whole of the land (blue and green) formed one disused burial ground, that in construing these Acts the cemetery ought to be looked at as a whole, and that, looked at as a whole, it was land which at one time had been set apart for purposes of

**Sect. 2.****NOTE.**

No buildings to be erected upon disused burial grounds, except for enlargement, etc.

interment within the definition contained in this Act as amended by the Act of 1887; consequently, the prohibition as to building on the land attached (*In re Ponsford and the Newport District School Board*, [1894] 1 Ch. 454).

3. It shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship.

By the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 4, *post*, p. 412, the expression "building" in this Act shall include any temporary or moveable building.

The sacred character of consecrated ground is in no way affected by an Order in Council closing it as a burial ground. When ground is once consecrated and dedicated to sacred purposes, there is no power to grant a faculty to sanction the use of it for secular purposes; and nothing short of an Act of Parliament can divest it of its sacred character, or enable persons, although they be owners of the soil, to remove bodies therefrom (*Reg. v. Twiss* (1869), L. R. 4 Q. B. 407; 38 L. J. Q. B. 228; 20 L. T. 522; 17 W. R. 765; 10 B. & S. 298). Before this Act, however, faculties have been granted to sanction the erection of ecclesiastical or semi-ecclesiastical buildings upon consecrated ground, e.g., of a vestry room (*Campbell v. Paddington* (1852), 2 Rob. Ec. 558; 16 Jur. 646). But a faculty was refused for the erection of a charity school (*St. George, Hanover Square v. Stewart* (1740), 2 Stra. 1126), or for appropriating part of a churchyard for widening a public road (*Harper v. Forbes* (1859), 5 Jur. (n.s.) 275; *Rector of St. John's, Walbrook v. The Parishioners* (1852), 2 Rob. Ec. 515; 16 Jur. 645). And see *ante*, pp. 28—31, where the more recent cases are collected.

In *St. Pancras v. St. Martin-in-the-Fields* (1860), 6 Jur. (n.s.) 540, a faculty was granted for the removal of bodies from part of a cemetery sold under a local Act for building land under the supposition that such part had never been used for interments. The faculty was granted on the representation that about twenty bodies had been discovered, and would require to be removed to another part of the cemetery. Subsequently about 400 or 500 bodies were discovered and removed:—*Held*, that the powers granted by the faculty had been exceeded, and that the bodies must be decently re-interred in the places whence they had been removed.

An injunction was granted to restrain the St. Pancras Vestry from erecting a band stand upon a disused burial ground which had been thrown open to the public as an open space (*Attorney-General v. St. Pancras Vestry*, [1893] 69 L. T. 627; 58 J. P. 22).

A faculty for the erection on a disused burial ground of a churchyard wall, one side of which would be so built as to form an arcade or covered way for the protection from the weather of frescoes proposed to be painted on the panels of that side of the wall which would be inside the churchyard, was granted, the ordinary being of opinion that the wall or structure in question was not a "building" prohibited to be erected on a disused burial ground by this section (*St. Botolph, Aldersgate Without (Vicar of) v. Parishioners*, [1900] P. 69).

Upon an application for a faculty it was held by Dr. TRISTRAM, Chancellor of the diocese of London, that the ordinary had, without infringing the provisions of this section, jurisdiction to authorise by faculty the rebuilding and extension, by way of enlargement, of schools and a parish hall erected on a disused burial ground, and used for mission services for adults and children, which it was intended to use when rebuilt for the same purposes, supplemental to the services in the parish church and to meet the growing wants of the parish (*St. James-the-Less (Vicar of) v. Parishioners*, [1899] P. 55).

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Notr.

4. Nothing in this Act shall prevent the erection of any building on a disused burial ground for which a faculty has been obtained before the passing of this Act.

Saving for buildings already sanctioned.

5. Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament.

Saving of burial grounds sold by Act of Parliament.

By local Act of 1883 (46 & 47 Vict. c. xi.), trustees were empowered to sell certain land, or to let it on building or other leases. The land had formerly been used as a burial ground, but in 1853 it was closed as such by an Order in Council. In 1885 the trustees under the Act of 1883 put the land up for sale by auction, describing it in the particulars as "building land," and stating in the conditions that, although it was a disused burial ground, they believed that it came within s. 5 of this Act, and that they had, therefore, power under the Act of 1883 to sell it as building ground. The purchasers having refused to complete, it was held that the Act of 1883 did not constitute a sale or disposition "under the authority of any Act of Parliament," and that having regard to the provisions of this Act, the contract could not be enforced against the purchasers (*Trustees of St. Saviour's Rectory and Oyley* (1886), 31 Ch. D. 412; 55 L. J. Ch. 269; 54 L. T. 9; 34 W. R. 224; 50 J. P. 325). It would follow from this case that the words "has been sold or disposed of" mean "has been sold or disposed of before the passing of this Act"; but so far as this result follows from the decision, the judgment of BACON, V.-C., was dissented from by NORTH, J., in *In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702, where it was held that this section applies to dispositions made after as well as before the passing of this Act.

The above decision of NORTH, J., was also followed by STIRLING, J., in *Attorney-General v. Trustees of the London Parochial Charities*, [1896] 1 Ch. 541. In that case land forming part of a disused burial ground was, in 1885, acquired by the Commissioners of Sewers for the City of London, under the powers of 57 Geo. 3, c. xxix., for the purpose of street improvements. A portion of the land so acquired was afterwards sold by the commissioners as surplus land to the defendants, a body of charity trustees, who, with the consent of the Charity Commissioners, let it for general building purposes. An action being brought to restrain the defendants from building upon



**Sect. 5.****NOTE.**

the land, it was held that the land had been "sold under the authority of an Act of Parliament" within this section; that this section applies to a sale or disposition made after the commencement of the Act, and that consequently the land in question was excepted from the operation of the Act.

For the construction of electric chambers beneath a disused burial ground, see *In re St. Nicholas Cole Abbey*, [1893] P. 58, *ante*, p. 29.

## OPEN SPACES ACT, 1887.

(50 &amp; 51 VICT. c. 32.)

*An Act for extending certain Provisions of the Metropolitan Open Spaces Acts, 1877 and 1881, with Amendments, to Sanitary Districts throughout England, Wales, and Ireland; and for other purposes.* [23rd August 1887.]

40 & 41 Vict.  
c. 35.44 & 45 Vict.  
c. 34.

WHEREAS by the Metropolitan Open Spaces Acts, 1877 and 1881 (herein called the principal Acts), certain facilities were provided for making available the open spaces and burial grounds in the metropolis for the use of the inhabitants thereof for exercise and recreation, and it is expedient to provide facilities for making available open spaces and burial grounds in all sanitary districts in England, Wales, and Ireland, for the like use of the inhabitants thereof, and to make other provisions for the purpose aforesaid, and also to amend the Metropolitan Open Spaces Act, 1881, and the

47 & 48 Vict.  
c. 72.

Disused Burial Grounds Act, 1884:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpreta-  
tion.

1. In this Act, unless the context otherwise requires, the expression "urban sanitary district" and the expression "urban authority" respectively, and the expressions "rural sanitary district" and "rural authority" respectively shall have the meanings assigned to them respectively by the Public Health Act, 1875.

38 & 39 Vict.  
c. 55.

2.—(1.) The Metropolitan Open Spaces Act, 1881, is hereby repealed to the extent mentioned in the Schedule to this Act, and the second section of the said Act is hereby amended, as follows (that is to say), the purchase money paid for or in respect of the purchase of any open space as therein mentioned shall be held in trust, either as in the said section mentioned, or as the case may be, for the benefit of the objects to which any rates previously imposed in respect of such open space had been applied.

Sect. 2  
(1).  
Amendment  
of 44 &  
45 Vict. c. 34.

(2.) The playing of any games or sports shall not be allowed in any churchyard, cemetery, or burial ground in or over which any estate, interest, or control is acquired under section five of the Metropolitan Open Spaces Act, 1881.

Provided that—

(a.) In the case of consecrated ground, the bishop, by any licence or faculty granted under the Metropolitan Open Spaces Act or this Act, and

(b.) In the case of any churchyard, cemetery, or burial ground which is not consecrated, the body from which any such estate, interest, or control as aforesaid is acquired

may expressly sanction any such use of the ground, and may specify any conditions as to the extent or manner of such use.

3. In the case of any disused churchyard, cemetery, or burial ground, at least three months before any tombstone or monument is moved, the following steps shall be taken:

Provision as  
to removal of  
tombstones  
and  
monuments

(a.) A statement shall be prepared sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary;

(b.) Such statements shall be deposited with the clerk of the board or vestry, and shall be open to inspection by all persons;

(c.) An advertisement of the intention to remove or change the position of such tombstones and monuments shall be inserted three times at least

**Sect. 3.**

in some newspaper circulating in the neighbourhood of the burial ground, and such advertisement shall give notice of the deposit of such statement as is hereinbefore described, and of the hours within which the same may be inspected ;

- (d.) A notice in terms similar to the advertisement shall be placed on the door of the church (if any) to which such churchyard, cemetery, or burial ground is attached, and shall be delivered or sent by post to any person known or believed by the board or vestry to be a near relative of any person whose death is recorded on any such tombstone or monument.

In the case of any consecrated ground no application for a faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid.

Provided that on any application for a faculty, nothing shall prevent the bishop from directing or sanctioning the removal of any tombstone or monument if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal to the notice of some person having a family interest in such removal.

An ecclesiastical court will not, upon an application for a faculty under this section, inquire into questions of title (*In re Camden Town Burial Ground* (1889), 5 T. L. R. 111).

Amendment  
of 47 &  
48 Vict. c. 72.

4. In the Disused Burial Grounds Act, 1884, and this Act, the expression "burial ground" shall have the same meaning as in the Metropolitan Open Spaces Act, 1881, as amended by this Act, and the expression "disused burial ground" shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or order in council, and the expression "building" shall include any temporary or moveable building.

For the Disused Burial Grounds Act, 1884, and notes thereto, see *ante*, pp. 406—410.

5. All the provisions of the principal Acts as amended by this Act (except sections four, five, six, seven, and eight of the Metropolitan Open Spaces Act, 1877, and so much of section six of the Metropolitan Open Spaces Act, 1881, as begins with the words "byelaws made under this Act" and ends with the figures "1855," and also except sections ten, eleven, twelve, and thirteen of the last-mentioned Act), shall extend and be applicable to and in respect of any and every urban sanitary district, and any and every rural sanitary district in respect of which the sanitary authority shall have been invested by an order of the Local Government Board with the powers of this Act, and to the open spaces and burial grounds in such districts respectively; and for the purpose of such extension and application to every such district, every urban authority and every such rural authority shall have and may exercise, and there shall be vested in such authority in and for its district, all and every or any such powers, authorities, and capacities in respect of, or in relation to, open spaces or burial grounds within such district as the metropolitan board of works, herein called the metropolitan board, by virtue of the principal Acts as amended by this Act have or may exercise or enjoy with regard to open spaces or burial grounds within the metropolis or any of them; and for the purposes of this Act and in respect of any and every open space or burial ground within any such sanitary district, and of any and every such authority, the principal Acts shall be read and take effect as if the word "Metropolis" when used therein meant the same sanitary district, and as if the words "Metropolitan Board" and "Board" when used therein meant the sanitary authority of the same district, and as if the words "any two or more London daily papers," whenever they occur therein, meant "any two or more local newspapers circulating within the sanitary district."

**Sect. 5.**

Extension of certain provisions of Metropolitan Open Spaces Acts to urban and certain rural sanitary districts.

6. All powers and duties conferred upon the *Metropolitan Board* by the Metropolitan Open Spaces Act, 1877, may, after the passing of this Act, be exercised and performed by any *vestry or district board of works* for the parishes and districts specified in Schedules A. and B. of the

Extension of 40 & 41 Vict. c. 35, to vestries and district boards.

Sect. 6. Metropolis Management Act, 1855, as amended by subsequent Acts.

The powers, etc., of the Metropolitan Board are now vested in the London County Council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8) ); and the powers and duties of the vestries and district boards in the metropolis are vested in the metropolitan borough councils by the London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4.

Power of corporation to make free gift of land for open space.

7. Any corporation other than municipal corporations or body of persons having power, either with or without the consent of any other corporation or body of persons, to sell land belonging to such corporation or body may, but with the like consent (if any), convey, for valuable or nominal consideration or by way of gift, to any urban or rural authority such land, or any part thereof, for the purpose of the same being preserved as an open space for the enjoyment of the public, and may so convey the same with or without conditions, and the urban or rural authority may accept such open space, and, if conditions are imposed, subject to such conditions, and such open space shall be deemed to be an open space within the meaning of the principal Acts and this Act.

Where a corporation having power under this section to convey land are themselves the urban or rural authority, this section shall enable such authority to appropriate their land for an open space, and shall, with the necessary modifications, apply to such appropriation in like manner as it applies to the conveyance.

Expenses.

8.—(1.) All expenses incurred under this Act by an urban or a rural authority shall be deemed to have been incurred in the execution of the Public Health Act, 1875, and shall be defrayed accordingly, and the purposes of this Act shall be deemed to be the purposes of the Public Health Act, 1875.

(2.) Provided that the expenses incurred by a rural authority shall be deemed to be special expenses under that Act incurred in respect of the contributory place or places for which the powers of this Act are exercised, and all the provisions of the Public Health Act, 1875, which would be applicable in the case of an apportionment of special expenses for works for the common benefit of two or more contributory places, shall apply to any such expenses.

For the provisions relating to the expenses of urban and rural sanitary authorities under the Public Health Act, 1875 (38 & 39 Vict. c. 55), see ss. 207—250 of that Act.

Sect. 8.

NOTE.

9. This Act shall not extend to any land belonging to her Majesty in right of her Crown or of her Duchy of Lancaster, or to any garden or ornamental ground for the time being under the management of the Commissioners for the time being of her Majesty's works and Public Buildings.

Saving for Crown lands.

10. All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six (both inclusive) of the Public Health Act, 1875, shall apply to all byelaws from time to time made by an urban or rural authority under the powers of this Act, and the penalties imposed by any such byelaws may be recovered in a summary manner.

Byelaws.

For ss. 182—186 of the Public Health Act, 1875, see *ante*, pp. 310, 311.

11. The *Metropolitan Board* or the sanitary authority may exercise all the powers given to them by the Metropolitan Open Spaces Act, 1881, or this Act respecting open spaces, churchyards, cemeteries, and burial grounds transferred to them in pursuance of the said Act or of this Act in respect of any open spaces, churchyards, cemeteries, and burial grounds of a similar nature which are or shall be vested in them in pursuance of any other statute, or of which they are otherwise the owners.

Power over open spaces already vested in sanitary authority.

For Metropolitan Board now read London County Council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (8)).

12. The *Metropolitan Board* may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whosoever.

Power of Metropolitan Board with respect to public walks or pleasure grounds.

See note to s. 11.

13. The principal Acts and this Act shall apply to Ireland, subject to the following provisions :

Extension of Acts to Ireland.

**Sect. 13.**

41 & 42 Vict.  
c. 52.

In the said Acts—

References to the Public Health Act, 1875, shall be construed as references to the Public Health (Ireland) Act, 1878, and the reference to sections one hundred and eighty-two to one hundred and eighty-six of the first-mentioned Act shall be construed as referring to sections two hundred and nineteen to two hundred and twenty-three of the latter Act.

Reference to any private or local Act of Parliament shall be construed so as to include any Act of the Parliament of Ireland.

References to a "vestry," "district board," "corporation," or "Metropolitan Board" shall be construed as references to the sanitary authority.

References to the London daily papers shall be construed as references to any newspapers, daily or weekly, circulating within the district of the sanitary authority.

References to her Majesty's Council shall be construed as references to her Majesty's Privy Council in Ireland.

References to the Local Government Board shall be construed as references to the Local Government Board for Ireland.

23 & 24 Vict.  
c. 106.

14 & 15 Vict.  
c. 70.

23 & 24 Vict.  
c. 97.

27 & 28 Vict.  
c. 71.

31 & 32 Vict.  
c. 70.

References to the Lands Clauses Act, 1845, shall be construed as references to that Act, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways (Ireland) Act, 1851, the Railways (Ireland) Act, 1860, the Railways (Ireland) Act, 1864, and the Railways Traverse Act.

Nothing contained in the principal Acts or in this Act shall apply to any land for the time being under the management of the Commissioners of Public Works in Ireland, or belonging to the Benchers of the King's Inns in Dublin.

Short title  
and  
construction.

14. This Act may be cited as the Open Spaces Act, 1887, and may be read with the principal Acts as one Act.

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### SCHEDULE.

Portions of the Metropolitan Open Spaces Act, 1881, repealed:—  
In s. 1, the following words occurring in the definition of an "open space," viz., "but shall not include any enclosed land which has not a public road or footpath completely round the same."

In the same section, the following words occurring in the definition of a "burial ground" viz, "and in which interments have taken place since the year 1800."

Sched.  
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In the second paragraph of section 5, the words, "but such metropolitan board, vestry, or district board shall not allow the playing of any games or sports therein."

OPEN SPACES ACT, 1890.

(53 & 54 VICT. c. 15.)

*An Act to amend the Open Spaces Acts.* [25th July 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Open Spaces Act, 1890, and may be read with the Metropolitan Open Spaces Acts, 1877 and 1881, and the Open Spaces Act, 1887 (hereinafter called the principal Acts), as one Act, and this Act and the principal Acts may be cited as the Open Spaces Acts, 1877 to 1890.

Short title and construction. 40 & 41 Vict. c. 35. 44 & 45 Vict. c. 34. 50 & 51 Vict. c. 32.

2. In this Act—

The expression "local authority" shall mean and include any of the public bodies who are empowered by the principal Acts to hold open spaces for the purposes of the Open Spaces Acts, 1877 to 1890:

Definitions.

"The court" shall mean the Chancery Division of the High Court of Justice in England and Ireland, and the county court of the district in which the whole or part of any open space may be situated as herein provided.

3. The trustees of land held upon trust for the purposes of public recreation may, in pursuance of a resolution duly passed as provided by section two of the Metropolitan Open Spaces Act, 1881, transfer by free gift, absolutely or for a limited term, to the local authority of the district in which the whole or the greater part in area of the land is situate,

Transfer to local authority of spaces held by trustees for purposes of public recreation.



## Sect. 3.

the land so held by them, if such authority is willing to accept such transfer, to be held by the transferees on the trusts and subject to the conditions on which the transferors held the same, or upon such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed upon between the transferors and transferees with the approval of the Charity Commissioners for England and Wales, or, as respects Ireland, of the Commissioners of Charitable Donations and Bequests for Ireland. Subject to the obligation of the land so transferred being used for the purposes of public recreation as aforesaid, the local authority may hold the same as and for the purposes of an open space under the Open Spaces Acts, 1877 to 1890. This section shall not apply to any trustees elected or appointed under any local or special Act of Parliament.

Similar power with respect to trustees of other open spaces.

4. When any open space shall be situate wholly or in part within the district of a local authority, and shall be vested in trustees, other than such trustees as are mentioned in the principal Acts, or in the last preceding section of this Act, for any charitable purpose, and as part of their trust estate, and it shall appear to the majority of such trustees that such open space is no longer required for the purposes of their trust, or that the same may with advantage to the trust be dealt with under the provisions of this section, it shall be lawful for such trustees, in pursuance of a resolution passed by them in the manner prescribed in the last preceding section of this Act, and where the open space is subject to the provisions of the Charitable Trusts Acts, 1883 [*sic*] to 1887, with such authority or approval as is required by those Acts for a sale of the open space, and in other cases in pursuance of an order of the court to be obtained as hereinafter provided, to convey or demise such open space to such local authority upon such terms as shall be mutually agreed between them, and the local authority shall thenceforth be entitled to hold the same as an open space upon the terms and under the conditions specified in any such conveyance or demise, or upon such terms and under such conditions as may be so

authorised or approved, or as the court shall from time to time order, as the case may be. **Sect. 4.**

The Charitable Trusts Acts, 1883 to 1887, is a mistake for the Charitable Trusts Act, 1853 to 1887.

5. An order of the court may be made upon application by the trustees, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons as to the court shall seem expedient, and may make such order thereon as in its discretion appears proper. Rules for carrying out the preceding provisions of this Act may from time to time be made by the same authority as the General Rules or Orders of the High Court of Justice in England and Ireland, and of the county courts in England, Ireland, and Wales respectively are made. **Procedure for obtaining order of court.**

6. The Open Spaces Acts, 1877 to 1890, shall be applicable to the whole of any open space which is wholly or partly situated without the district of a local authority in the same manner to all intents and purposes as if the whole of such open space had been situated within such district. **Open Spaces Acts to apply outside district of local authority.**

7. Where a portion of an area of land not exceeding a twentieth part is covered with a building or buildings, such land may notwithstanding be deemed to be an open space within the meaning of the Open Spaces Acts, 1877 to 1890. **Buildings on open spaces.**

# REGULATION OF CHURCHYARDS.

## ECCLESIASTICAL COURTS JURISDICTION ACT, 1860.

(23 & 24 VICT. c. 32.)

*An Act to abolish the Jurisdiction of the Ecclesiastical Courts . . . in England and Ireland in certain Cases of Brawling.* [3d July 1860.]

[Preamble.]

Abolition of jurisdiction of ecclesiastical courts in suits for brawling against persons not in holy orders, etc.

1. It shall not be lawful for any ecclesiastical court in England . . . to entertain or adjudicate upon any suit or cause of brawling . . . against any person not being in holy orders . . . and in the case of every person committed or to be committed to gaol under any writ de contumace capiendo, issued in consequence of any proceedings before any ecclesiastical court in any cause or suit for defamation of character, or, where such person is not in holy orders, for brawling, the judge of the ecclesiastical court before whom such proceedings shall have been had shall make an order upon the officer in whose custody such person shall be at any time hereafter for discharging such person out of custody; and such officer shall on the receipt of such order forthwith discharge such person; and it shall not be necessary for such person to take any oath of future obedience to his or her ordinary: Provided always, that such order shall not be made unless the costs lawfully incurred in any such suit shall have been previously paid into the registry of such ecclesiastical court; . . .

This section is repealed so far as it relates to ecclesiastical courts in Ireland by the Statute Law Revision Act, 1875.

Penalty on persons guilty of

2. Any person who shall be guilty of riotous, violent, or indecent behaviour in England or Ireland in any cathedral

church, parish or district church or chapel of the Church of England and Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of the Places of Worship Registration Act, 1855, whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorised to preach therein, or any clergyman in holy orders ministering or celebrating any sacrament, or any divine service, rite, or office, in any cathedral, church, or chapel, or in any churchyard or burial ground, shall, on conviction thereof before two justices of the peace, be liable to a penalty of not more than five pounds for every such offence, or may, if the justices before whom he shall be convicted think fit, instead of being subjected to any pecuniary penalty, be committed to prison for any time not exceeding two months.

**Sect. 2.**  
 riotous behaviour, etc., in churches, chapels certified under 18 & 19 Vict. c. 81, etc., churchyards, or burial grounds. 18 & 19 Vict. c. 81.

“ Any person ” in this section applies to persons in holy orders as well as to laymen, and therefore an incumbent of a parish who was convicted before justices of violent and indecent behaviour in the churchyard of his own parish church, was held to be rightly convicted (*Vallancey v. Fletcher*, [1897] 1 Q. B. 265). To constitute the offence of molesting a clergyman under this section, the clergyman must be actually ministering or celebrating a sacrament or service, rite or office (*Cope v. Barber* (1872), L. R. 7 C. P. 393 ; 41 L. J. M. C. 137 ; 26 L. T. 891 ; 20 W. R. 885).

3. Every such offender in the premises after the said misdemeanor so committed immediately and forthwith may be apprehended and taken by any constable or churchwarden of the parish or place where the said offence shall be committed, and taken before a justice of the peace of the county or place where the said offence shall have been so committed, to be dealt with according to law.

Offenders may be apprehended, etc., immediately after offence committed.

To an action of assault and battery, a plea that the plaintiff disturbed a congregation while the minister was performing the rites of burial, and that the defendant (though neither constable, churchwarden, or other officer) *molliter manus imposuit* to prevent such disturbance is a good justification at common law (*Gleaver v. Hynde* (1672), 1 Mod. 168).

It is a justifiable act on the part of a churchwarden to switch boys playing in the churchyard or any disturbers of the peace in time of divine service (*Haw v. Planner* (1666), 2 Keb. 124 ; Sid. 301).

**Sect. 4.**

Persons aggrieved may appeal against conviction.

4. Any person convicted as aforesaid who shall think himself aggrieved by such conviction may forthwith appeal to the next court of general or quarter sessions . . .

The latter part of this section here omitted is repealed as to England by the Summary Jurisdiction Act, 1884.

[Chapter 4 of statute 5 & 6 Edw. 6, repealed.]

5. [The Act chapter four of the statute passed in the session of Parliament of the fifth and sixth years of the reign of Edward the sixth is hereby repealed, so far as relates to persons not in holy orders.]

This section is repealed by the Statute Law Revision Act, 1875. 5 & 6 Edw. 6, c. 4, which remains still in force so far as the same relates to persons in holy orders, is printed among the revised statutes as follows :

*"An Acte agaynste fightinge and quarelinge in churches and churcheyards.*

Persons brawling, etc., in church or churchyard may be suspended by the ordinary. If layman, *ab ingressu ecclesie*: if clerks, from ministration of their office.

"Forasmuche as of late diuise and manye outragious and barbarous behavours and acts have bene used and comytted by diuise ungodlie and irreligious peones by quarrellinge brawlinge frayinge and fightinge openly in churches and churchyardes; therefore it is enacted by the King our soveraigne lorde withe thassent of the lordes spual and temporall and the comons in this peent parliament assembled and by the auctoritie of the same, that yf anye pson whatsoever shall at any tyme after the firste daye of Maye next comynge by wordes onelye, quarrell chyde or brawle in anye churche or churcheyarde, that then it shalbe lafull to the ordynarie of the place where the same offence shalbe done, and pved by two lafull witnesses, to suspende everie pson soe offendinge, that ys to saye, yf he be a laye man, *ab ingressu Ecclesie*, and yf he be a clarke, from the mynistracion of his office, for so longe tyme as the saide ordinarie shall by his discrecon thincke mete and convenient accordinge to the faulte.

Persons smiting, etc., in a church, etc., excommunicated.

"2. And . . . that yf anye pson or psons, after the saide firste day of Maye, shall smyte or laye violent hands upon anye other, either in anye churche or churcheyarde, that then ipo fco everie pson soe offendinge shalbe demed excoicate and be excluded from the fellowship and companye of Christes congregacon."

Act not to affect statutes of 1 Mar. sess. 2, c. 3. 1 Eliz. c. 2, or s. 18 of 1 W. & M. c. 18.

6. Nothing hereinbefore contained shall be taken to repeal or alter the statute passed in the second session of the first year of the reign of Queen Mary, chapter three; or the statute passed in the first year of the reign of Queen Elizabeth, chapter two; or the eighteenth section of the

statute passed in the first year of the reign of King William and Queen Mary, chapter eighteen. Sect. 6.

The statute 1 Mary, sess. 2, c. 3, inflicts penalties upon persons disturbing peace during service, etc., or defacing crucifixes, etc., in a church or churchyard. 1 Eliz. c. 2 is the Act of Uniformity. Section 18 of 1 Will. & Mary, c. 18 (which appears in the Statutes of the Realm as s. 15) inflicts penalties upon disturbers of religious worship.

7. Provided also, that nothing herein contained shall limit, restrain, or abolish the power possessed by the ordinary over the fabric of any church or over the churchyard or burial ground connected therewith. Nothing to limit power of ordinary over fabric of churches, etc.

## ALIENATION OF LAND FOR CHURCHYARDS, ETC.

GIFTS FOR CHURCHES ACT, 1803.

(43 GEO. 3, c. 108.)

*An Act to promote the building, repairing, or otherwise providing of churches and chapels, and of houses for the residence of ministers, and the providing of churchyards and glebes (a).* [27th July 1803.]

WHEREAS a sufficient number of churches and chapels for the celebration of divine service according to the rites and ceremonies of the United Church of England and Ireland, and of mansion houses with competent glebes for the residence of ministers officiating in such churches and chapels, is necessary towards the promotion of religion and morality: And whereas the same are either wholly wanting or materially deficient in many parts of England and Ireland: And whereas many well disposed persons would be desirous of contributing towards the supply of such defects if they were enabled so to do in the manner hereinafter directed: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all and every person and persons having in his or their own right any estate or interest in possession, reversion, or contingency, of or in any lands or tenements, or of any property of or in any goods or chattels, shall have full power, licence, and authority, at his and their will and pleasure, by deed inrolled in such manner and within such

Persons by deed enrolled or will may give lands not exceeding five acres, or goods and chattels not exceeding £500 for the purposes of this Act.

(a) Repealed so far as relates to Ireland by 14 & 15 Vict. c. 71.

Sect. 1.

time as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for inrolment of bargains and sales, or by his, her, or their last will or testament in writing duly executed according to law, such deed or such will or testament being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant to and vest in any person or persons, or body politick or corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property in such lands or tenements, not exceeding five acres, or goods and chattels, or any part or parts thereof, not exceeding in value five hundred pounds, for or towards the erecting, rebuilding, repairing, purchasing, or providing any church or chapel where the liturgy and rites of the said united church are or shall be used or observed, or any mansion house for the residence of any minister of the said united church officiating or to officiate in any such church or chapel, or of any out-buildings, offices, churchyard, or glebe for the same respectively, and to be for those purposes applied according to the will of the said benefactor in and by such deed enrolled or by such will or testament executed as aforesaid expressed, the consent and approbation of the ordinary being first obtained, and in default of such direction, limitation, or appointment, in such manner as shall be directed and appointed by the patron and ordinary, with the consent and approbation of the parson, vicar, or other incumbent; and such person and persons, bodies politick and corporate, and their heirs and successors respectively shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same as from all other persons as shall be willing to sell or aliene to such person or persons, bodies politick or corporate, any lands or tenements, goods or chattels, without any licence or writ of *ad quod damnum*, the statute of mortmain or any other statute or law to the contrary notwithstanding: Provided But such powers not to be exercised by always, that this Act or anything therein contained shall not extend to enable any person or persons, being within



**Sect. 1.**  
 persons  
 within age,  
 or insane, etc.

age or of non-sane memory, nor women covert without their husbands, to make any such gift, grant, or alienation, anything in this Act contained to the contrary in any wise notwithstanding.

A testator by his will, executed three months before his death, devised all his real estate, which included a piece of land of about one acre, with an unconsecrated building thereon licensed by the bishop for public worship, to his wife absolutely. The devise was in pursuance of a secret agreement between the testator and his wife, whereby the latter undertook to hold the land and building upon trusts, after her husband's death, to convey the same as and for a parish or district church in perpetuity:—*Held*, that the devise was legal under this statute, and was not rendered illegal by any provisions of the Mortmain Act (9 Geo. 2, c. 36) (*O'Brien v. Tyssen* (1884), 28 Ch. D. 372; 54 L. J. Ch. 284; 51 L. T. 814; 33 W. R. 428).

Where pure and impure personalty is given by will to trustees to erect a church, they are entitled under this section to £500 out of the impure personalty in addition to the whole of the pure personalty (*Sinnett v. Herbert* (1872), L. R. 7 Ch. 232; 41 L. J. Ch. 388; 26 L. T. (N.S.) 7; 20 W. R. 270).

A testatrix bequeathed certain portions of her personal estate, which comprised both pure and impure personalty, to trustees with power of sale in trust to pay thereout £2,000 to the vicar of M. to be disposed of at his discretion "in or about restoring, altering, and enlarging and improving the church, parsonage-house, and school of M.":—*Held*, first, that the church being situate on land already in mortmain, there must be an inquiry to ascertain whether the parsonage-house and school, or which of them were or was also so situate, and what sums of money would be required to be laid out in restoring, altering, and enlarging and improving such of the three said objects of the legacy as were or was so situate, and that the legacy was valid, so far as the objects were concerned, to the extent of the money so ascertained to be required; secondly, that (following *Sinnett v. Herbert, supra*) the amount of the legacy required for the objects already in mortmain must be apportioned between the pure and impure personalty, and be paid out of the pure personalty to the extent of its proportion, and under this section out of the impure personalty to the full extent of £500 (*Champney v. Davy* (1879) 11 Ch. D. 949; 48 L. J. Ch. 268; 40 L. T. 189; 27 W. R. 390).

A bequest of money, not exceeding £500 on trust, to apply the income in repairing a churchyard is good under this section and is a charitable legacy (*In re Vaughan; Vaughan v. Thomas* (1886), 33 Ch. D. 187; 55 L. T. 547; 35 W. R. 104; *Rickard v. Robson* (1862), 8 Jur. (N.S.) 665).

The proviso in this section that the Act shall not extend to enable women covert without their husbands making any such gift, grant, or alienation is not affected by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), which, by s. 1 (1), gives power to married women to dispose by will of any real or personal property as her separate property in the same manner as if she were a *feme sole*. Consequently, a gift by a married woman, by will executed three

months before death, to the vicar and churchwardens of a church of a sum of £300, to be applied by them in the erection of a new church, and to be paid out of personal estate which was legally applicable for the purpose, was held to be invalid (*In re Smith's Estate; Clements v. Ward* (1887), 35 Ch. D. 589; 56 L. J. Ch. 726; 56 L. T. 850; 35 W. R. 514).

A gift of £200 for a new church clock was held to be within this section; but a gift for a choir fund not to be (*In re Hendry; Watson v. Blakeney* (1887), 56 L. T. 908; 35 W. R. 730).

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2. Provided also, . . . that no more than one such gift or devise shall be made by any one person, and that if any such gift or devise as aforesaid shall happen to exceed five acres in lands or tenements, or the value of five hundred pounds in goods and chattels, every such gift or devise shall be good and valid to the extent aforesaid; and it shall be lawful for the Lord Chancellor for the time being, on petition, to make order for reducing every such gift or devise to and within the said limits, and for allotting such specifick five acres, and, if occasion should require, such specifick goods and chattels as in his judgment shall be most convenient, and to make such further order touching the premises as to him shall appear just and reasonable.

Only one such gift shall be made by one person, and where it exceeds five acres or £500 the Chancellor may, on petition, order it to be reduced.

It appears from ss. 16, 17, 34, and 76 of the Judicature Act, 1873 (36 & 37 Vict. c. 66), that the jurisdiction of the Lord Chancellor under this and the following section is now transferred to the Chancery Division of the High Court of Justice. See *In re Pollard* (1888), 20 Q. B. D. 656.

3. Provided also, that no glebe containing upwards of fifty acres shall be augmented with more than one acre under or by virtue of this Act; but that the excess, if any, given or devised for the purpose of such augmentation shall be reduced in manner aforesaid by the said Lord Chancellor, and such order thereupon shall be by him made as hereinbefore is directed in the case of as excess beyond five acres.

No glebe upwards of 50 acres shall be augmented with more than one acre.

4. And whereas it often happens that small plots of land held in mortmain lie convenient to be annexed to some such church or chapel, or house of residence as aforesaid, or to some churchyard or curtilage thereto belonging or convenient to be employed as the scite of some such church

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Plots of land not exceeding one acre held in mortmain, lying convenient to be annexed to some church, etc. may be granted either by exchange or benefaction for that purpose.

or chapel or house to be hereafter erected, and for the necessary and commodious use and enjoyment thereof, and that they might be so employed to the advantage of the publick, and without detriment to the proprietors thereof, if they were enabled to give and grant the same for the purposes aforesaid: Be it therefore further enacted, that it shall be lawful for every body politick or corporate, sole or aggregate, by deed inrolled as aforesaid, with or without confirmation, as the law may require, to give and grant, either by way of exchange or benefaction, any such small plot of land, not exceeding one acre, to any person or persons, body politick or corporate, his and their heirs and successors respectively, to be held, used, and applied for the purposes aforesaid; and such last-mentioned person and persons, bodies politick and corporate, and their heirs and successors respectively shall have full capacity and ability, with consent of the incumbent, patron, and ordinary, to take, hold, and enjoy such small plot of land for the purposes aforesaid, without any licence or writ of ad quod damnum, the statute of mortmain or any other Act or law to the contrary notwithstanding.

Accommodation to be provided for persons resorting to church, etc.

5. Provided also, . . . that in every parochial church or chapel hereafter to be erected ample provision shall be made for the decent and suitable accommodation of all persons, of what rank or degree soever, who may be entitled to resort to the same, and whose circumstances may render them unable to pay for such accommodations.

Rights of giving or devising not affected.

6. Provided also, that nothing in this Act contained shall be construed to take away or abridge any right of giving or devising which already exists in any person whatsoever.

BURIAL GROUND ACT, 1816.

(56 GEO. 3, c. 141.)

*An Act for enabling Ecclesiastical Corporate Bodies, under certain circumstances, to alienate Lands for enlarging Cemeteries or Churchyards.* [2d July 1816.]

Preamble recited that burying grounds were in various places too small, and could not be enlarged without appropriating for consecration land belonging to corporations or spiritual persons not authorised by law to alienate such land. Repealed by Statute Law Revision (No. 2) Act, 1890.

[1.] It shall and may be lawful for any spiritual or ecclesiastical body corporate or spiritual person, being a corporation sole, possessing any land adjacent to any cemetery, churchyard, or burying ground, to sell, by indenture of bargain and sale, inrolled in the High Court of Chancery within six calendar months, for the purpose of consecration, such portion thereof as may be deemed necessary for enlarging any such cemetery, churchyard, or burying ground, not exceeding one acre.

Ecclesiastical corporations may sell portions of land adjoining cemeteries for enlarging thereof ;

Greater facilities for the sale or gift of lands for sites for building places of religious worship and for burial grounds, are now afforded by the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), *post*, p. 431.

2. Provided always, that in case of any spiritual person, being a corporation sole, the consent of the lord bishop of the diocese or ordinary, and of the patron of the living held by such corporation sole, shall be testified by their being parties to the alienation of the said land ; and that previously thereto the value of such land shall be ascertained, and, together with a description thereof, be committed to writing by some competent person, to be named and appointed by the ordinary ; which person so appointed shall verify the same on oath before some one of his Majesty's justices of the peace for the county, town, or district in which such land is situated ; which oath the said justice is hereby empowered to administer ; and in case the value shall appear to exceed one hundred pounds, that other

with certain consents.

Value of the land to be ascertained.

If above £100 other lands to be

**Sect. 2.** lands, of at least an equal value, estimated and verified in manner aforesaid, shall be well and legally conveyed to and conveyed in exchange. for the same uses as the lands conveyed by the said spiritual persons or corporations sole, and as the consideration thereof; and in case the value shall appear not to amount to one hundred pounds, but shall exceed twenty pounds, such value shall be paid to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, to be by them used and applied for the benefit of such spiritual person or corporation sole, in the same manner as they are now empowered by law to use and apply other sums of money coming into their hands: and in case the value shall not amount to twenty pounds, the said value shall be paid in money to such spiritual person or corporation sole, to be by him applied at his own discretion.

Application of the purchase money if under that value.

Limit of time within which alienations may be questioned.

**3.** Provided always, that no alienation made by virtue of this Act shall be questioned after the expiration of twenty years from the time of such alienation on account of any want of compliance with the forms prescribed by this Act.

Burial ground to be discharged of adverse titles, etc., after 20 years from the consecration thereof.

**4.** All ground which has been or shall be consecrated as burial ground shall after twenty years from the time of such consecration be considered as discharged from all adverse titles, claims, and demands whatsoever, and as absolutely vested in the trustee or trustees, if any, thereof; and if there should not be any such trustee or trustees, then in the vicar or perpetual curate, if any, for the time being; and if there should not be any vicar or perpetual curate, then in the rector for the time being of each parish in which such burial ground is or shall be situate.

Vesting thereof.

## PLACES OF WORSHIP SITES ACT, 1873.

(36 &amp; 37 VICT, c. 50.)

*An Act to afford further facilities for the Conveyance of Land for Sites for Places of Religious Worship and for Burial Places.* [21st July 1873.]

[Preamble.]

1. Any person or persons being seised or entitled in fee simple, fee tail, or for life or lives of or to any manor or lands of freehold tenure, and having the beneficial interest therein, and being in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange in fee simple, or for any term of years, any quantity not exceeding one acre of such land, not being part of a demesne or pleasure ground attached to any mansion house, as a site for a church, chapel, meeting house, or other place of divine worship, or for the residence of a minister officiating in such place of worship or in any place of worship within one mile of such site, or for a burial place, or any number of such sites, provided that each such site does not exceed the extent of one acre: Provided also, that no such grant, conveyance, or enfranchisement made by any person seised or entitled only for life or lives of or to any such manor or lands shall be valid unless the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail (if legally competent) shall be a party to and join in the same, or if such person be a minor, or a married woman, or lunatic, unless the guardian, husband, or committee of such person respectively shall in like manner concur: Provided also, that in case the said land so granted, conveyed, or enfranchised as aforesaid, or any part thereof, shall at any time be used for any purpose other than as a site for such place of worship or residence, or burial place, or in the case of a place of worship or residence, shall cease for a year at one time to be used as such place of worship or residence, the same shall thereupon revert to and become a portion of the lands from which the same was severed, as fully to

Landlords empowered to convey land to be used as sites for places of worship and residence of the minister.

If lands cease to be used for the purposes of the Act, then to revert.

**Sect. 1.**8 & 9 Vict.  
c. 18.

all intents and purposes as if this Act had not been passed, anything herein contained to the contrary notwithstanding. The provisions hereinbefore contained with respect to any manor or lands of freshhold tenure shall apply to lands of copyhold or customary tenure, but so, nevertheless, that the provisions of the Lands Clauses Consolidation Act, 1845, with respect to copyhold lands (being sections 95, 96, 97, and 98 of such Act) shall for the purposes of this enactment be incorporated with this Act.

A father who is a tenant for life of a settled estate, can, as guardian by nature of his infant son, who is entitled to the inheritance in remainder, concur on the son's behalf in a grant by himself of part of the settled estate as a site for a church under this section (*In re Marquis of Salisbury and Ecclesiastical Commissioners* (1875), 2 Ch. D. 29; 45 L. J. Ch. 250; 34 L. T. 5; 24 W. R. 380, reversing the decision of the M. R., 30 Eq. 527).

The provisions of this Act are extended by the Places of Worship Sites Amendment Act, 1882 (45 & 46 Vict. c. 21), to authorise conveyances for the purposes of the Act by corporation and public bodies, and by tenants for life where the person next entitled in remainder in fee is unborn or unascertained.

As to  
payment of  
purchase  
money, etc.

2. The purchase money or enfranchisement money or money to be received for equality of exchange on any such sale, enfranchisement, or exchange shall, if such sale, enfranchisement, or exchange be made by any person or persons seised or entitled in fee simple or fee tail, be paid to the person or persons making such sale, enfranchisement, or exchange, but if such sale, enfranchisement, or exchange be made by any person or persons seised or entitled for life or lives only, then such purchase money, or enfranchisement money, or money to be received for equality of exchange, shall be paid to the existing trustees or trustee (if any) of the instrument under which such person or persons is or are so seised or entitled, to be held by them upon the trusts upon which the land conveyed for such site was held, or if there be no such existing trustees or trustee to two or more trustees to be nominated in writing by the person or persons making such sale, enfranchisement, or exchange; and the receipt of any person or persons to whom such money is hereby directed to be paid shall effectually discharge the person or persons paying such purchase or enfranchisement money or money for equality of exchange therefrom, and from all liability in

**Sect. 2.**

respect of the application thereof; and the trustees so to be nominated as aforesaid shall invest such purchase or enfranchisement money or money to be received for equality of exchange in the purchase of other lands or hereditaments to be settled to the same uses and trusts as the land conveyed for such site should have stood limited to; and until such investment, such purchase or enfranchisement money or money to be received for equality of exchange shall be invested upon such securities or investments as would for the time being be authorised by statute or by the Court of Chancery, and for the purposes of devolution and enjoyment shall be treated as land subject to the same uses and trusts as the land conveyed for such site should have stood limited to.

3. Where any person or persons is or are equitably entitled to any manor or lands, but the legal estate therein shall be in some trustee or trustees, it shall be sufficient for such person or persons to convey or otherwise assure the same for the purposes of this Act without the trustee or trustees being party or parties to the conveyance or other assurance thereof, and where any married woman shall be seised or possessed of or entitled to any estate or interest, manorial or otherwise, in land proposed to be conveyed or otherwise assured for the purposes of this Act, she and her husband may convey, or otherwise assure the same, for such purposes by deed without any acknowledgment thereof; and where it is deemed expedient to purchase any land for the purposes aforesaid belonging to or vested in any infant, or lunatic, such land may be conveyed or otherwise assured by the guardian of such infant or the committee of such lunatic respectively, who may receive the purchase money for the same, and give valid and sufficient discharges to the party paying such purchase money, who shall not be required to see to the application thereof; and in every such case respectively the legal estate shall, by such conveyance or other assurance, vest in the trustees of such place of worship or residence; and if any land taken under this Act be subject to any rent, and part only of the land subject to any such rent be required to be taken for the purposes of this Act, the apportionment of

Persons under disability empowered to convey lands for the purposes of the Act.



**Sect. 3.**8 & 9 Vict.  
c. 18.

such rent may be settled by agreement between the owner of such rent and the person or persons to whom the land is conveyed; and if such apportionment be not so settled by agreement, then the same shall be settled by two justices as provided in the Lands Clauses Consolidation Act, 1845, section 119: Provided nevertheless, that nothing herein contained shall prejudice or affect the right of any person or persons entitled to any charge or incumbrance on such land.

Form of  
grants, etc.

4. All gifts, grants, conveyances, assurances, and leases of any site for a place of worship, or the residence of a minister, under the provisions of this Act, in respect of any land, messuages, or buildings may be made according to the form following, or as near thereto as the circumstances of the case will admit; (that is to say,)

“I [*or we*] under the authority of the Places of Worship Sites Act, 1873, do hereby freely and voluntarily, and without any valuable consideration, [*or, do, in the consideration of the sum of*            pounds to me or the said            paid] grant [*alienate*] and convey [*or lease*] to *A.B.* all [*description of the premises*], and all [*my or our or the right, title, and interest of the*] to and in the same manner and every part thereof, to hold unto and to the use of the said            and his or their heirs, or executors, or administrators, or successors, for the purposes of the said Act, and to be applied as a site for a place of worship, or for a residence for a minister, or ministers officiating in           , or for a burial place, and for no other purposes whatever. [*In case the site be conveyed to trustees, a clause providing for the removal of the trustees, and in cases where the land is purchased, exchanged, or demised, usual covenants or obligations for title may be added.*]

“In witness whereof, the conveying and other parties have hereunto set their hands and seals, the            day of           

“Signed, sealed, and delivered by the said            in the presence of            of            .”

One witness to the execution of the document by each party shall be sufficient, and any assurance under this Act shall be and continue valid if otherwise lawful, although the

donor or grantor shall die within twelve calendar months from the execution thereof. **Sect. 4.**

5. The persons hereinbefore specified may convey, by way of gift, sale, or exchange, any site or sites, not exceeding in the case of any one site the quantity aforesaid, for any of the purposes of the Church Building Acts, to the Ecclesiastical Commissioners, or as such Commissioners may direct, and such Commissioners may also act as trustees for the purpose of taking and holding any sites granted under this Act; and all conveyances made under this present enactment shall be deemed to be made under the Church Building Acts, and the land conveyed shall vest in conformity with such conveyances and the Church Building Acts. Ecclesiastical Commissioners may accept trusts.

6. The provisions of this Act shall not extend to Scotland or Ireland. Extent of Act.

7. This Act may be cited as the Places of Worship Sites Act, 1873. Short title.

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## PLACES OF WORSHIP SITES AMENDMENT ACT, 1882.

(45 & 46 VICT. c. 21.)

*An Act to amend the Places of Worship Sites Act, 1873.*

[12th July 1882.]

WHEREAS by the Places of Worship Sites Act, 1873, facilities are afforded for the conveyance of pieces of land not exceeding in quantity one acre for sites for places of religious worship and for burial places, but doubts have been entertained whether conveyances can be made under that Act by corporations and public bodies, and it is expedient to remove such doubts: 36 & 37 Vict c. 50.

And whereas cases have arisen in which tenants for life are unable to make conveyances under the said Act by

reason that the person next entitled to the manor or lands for a beneficial interest in fee simple or fee tail is unborn or unascertained; and it is expedient to grant increased facilities for making such conveyances :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Conveyance  
of lands by  
corporations  
and other  
public bodies.

1. The Places of Worship Sites Act, 1873, shall be construed as extending to authorise any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to grant, convey, or enfranchise for the purposes of the Act such quantity of land as therein mentioned : Provided as follows :

- (a.) An ecclesiastical corporation sole, being below the dignity of a bishop, shall not make any such grant without the consent in writing of the bishop of a the diocese to whose jurisdiction he is subject :
- (b.) A municipal corporation shall not make any such grant without the consent in writing of the Commissioners of her Majesty's Treasury :
- (c.) Parochial property shall not be so granted without the consent of a majority of the ratepayers and owners of property in the parish to which the property belongs, assembled at a meeting to be convened according to the mode pointed out in the Act of the session held in the fifth and sixth years of the reign of King William the Fourth, chapter sixty-nine, intituled "An Act to facilitate the conveyance of workhouses and other property of parishes, and of incorporations or unions of parishes in England and Wales," and of the Local Government Board and of the guardians of the poor of the parish or of the union comprising the parish, testified by their being parties to the conveyance :

5 & 6 Will. 4,  
c. 69.

The provision as to the "meeting" contained in the Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69), s. 3, is as follows :

"Provided always, that no such sale or exchange or letting of any workhouses, tenements, buildings, or land of any parish shall take place except with the consent of a majority of the ratepayers of such parish, and of the owners of property therein, entitled to vote under and by virtue of the Poor Law Amendment Act, 1834 [4 & 5 Will. 4, c. 76, s. 40], assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting, shall have been given in like manner as notices of vestry meetings are published and given, such majority to be ascertained in manner provided by the said Act."

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 52 (1), it is, however, now provided that "any power which may be exercised and any consent which may be given by the owners and ratepayers of a parish, or by the majority of them, under any of the Acts relating to the relief of the poor . . . so far as respects the dealing with parish property or the spending of money . . . may, in the case of a rural parish, be exercised or given by the parish meeting of the parish."

Sect. 1.

NOTE.

(d.) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

2. The said Act shall be construed as extending to authorize any person seised or entitled only for life or lives of or to any manor or lands of freehold tenure to make such grant, conveyance, or enfranchisement as is mentioned in the said Act in cases where the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail is unborn or unascertained: Provided that no such grant, conveyance, or enfranchisement made by any such person seised only for a life or lives shall be valid unless the person seised or entitled for a beneficial interest for life or lives, or for an estate in fee simple or fee tail (as the case may be) in remainder immediately expectant on the estate of such unborn or unascertained person of or to such manor or lands (if any, and if legally competent) shall be a party to and shall join in the same; and if there be no such person, or if such person be not legally competent, unless the trustees or trustee (if any) of such manor or lands during the suspense or contingency of the then immediate or expectant estate in fee simple or fee tail in such manor or lands shall in like manner concur.

Power for limited owner in case of unborn or unascertained remainderman to convey, etc.

3. This Act may be cited as the Places of Worship Sites Short title. Amendment Act, 1882.

## CONSECRATION OF CHURCHYARDS.

### CONSECRATION OF CHURCHYARDS ACT, 1867.

(30 & 31 VICT. c. 133.)

*An Act relating to the Consecration of Churchyards.*

[20th August 1867.]

Preamble recited that it was expedient to diminish the expense attendant on the consecration of portions of ground adjoining and added to existing churchyards.

Consecration of ground added to existing churchyard without presence of chancellor, etc.

1. Where any ground adjoining to an existing churchyard has been or is added thereto, the bishop of the diocese may, if he thinks fit, at the churchyard or in the church to which it belongs, by his own hand, or by the hand of any bishop of the United Church of England and Ireland lawfully appointed as his commissary, sign an instrument declaring or recording the consecration of such ground, without the presence of the chancellor or registrar of the diocese being necessary; and the signature of the bishop to such instrument shall be attested by the chancellor, or by a surrogate, or by any two clergymen of the diocese, and shall be in the following form, endorsed on a plan of the ground so added: I, *A. B.*, bishop of \_\_\_\_\_, do hereby declare and record the ground added to the churchyard of \_\_\_\_\_, as on the within plan, to be consecrated ground and part of the said churchyard; and such instrument, so signed and attested, on being deposited in the registry of the diocese, shall have the same effect as a sentence of consecration.

Land may adjoin and be added to an existing churchyard within the meaning of this section, although it is separated therefrom by a highway (*In re Bateman, Baroness, and Parker's Contract*, [1899] 1 Ch. 599).

2. No officer of the bishop or of the diocese shall receive any fee for attendance at such consecration, or any allowance for travelling or for attendance. **Sect. 2.**  
No fees for attendance.

3. A fee of five shillings shall be payable to the registrar for the deposit of every such instrument of consecration. Fee for deposit of instrument.

4. And whereas by the School Sites Act, 1841, and by the School Sites Act, 1849, powers are given 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; and it is expedient that the same powers should be extended to persons willing to grant land for the enlargement of churchyards or burial places in England or Wales: Be it therefore enacted, that the said Acts shall be deemed to apply to all persons desirous of granting land for the purpose of such enlargement, in the same way as if the said land had been granted as a site for a school: Provided nevertheless, that no such grant shall be made otherwise than in fee simple, and may be made in the form hereinafter provided; and that every such grant made by any person seised only for life shall be valid without the concurrence therein of the person next entitled in remainder in fee simple or fee tail, and such conveyance shall be good and valid without any licence or writ of ad quod damnum, the statutes of mortmain, or any other statute or law, to the contrary notwithstanding. 4 & 5 Vict. c. 38. 12 & 13 Vict. c. 49. School Sites Acts to apply to conveyances of land for enlargement of churchyards or burial grounds under this Act.

5. Any lands or hereditaments adjoining any churchyard or burial place may be conveyed for the purpose of adding thereto by a deed in the form following, with such variations (if any) as the circumstances of the case may require:

"I [or we, or the corporate title of a corporation], under the authority of the Consecration of Churchyards Act, 1867, do hereby freely and voluntarily give, grant, and convey [or, as the case may be, do hereby, in consideration of the sum of \_\_\_\_\_ to me, or us, or the \_\_\_\_\_ paid, grant Form of conveyance of land for addition to an existing churchyard or burial place.

**Sect. 5.**

and convey] unto the person or persons, or corporation sole or aggregate, in whom the churchyard or the burial place known as            of            is now vested, his or their heirs or successors, all [*describing the hereditaments to be conveyed*], and all right, title, and interest in the same and every part thereof, to be held for ever as part of the said churchyard or burial place” :

And every such conveyance shall be valid and effectual in the law to all intents and purposes.

Deed of gift, etc., not to be subject to stamp duties.

6. [*Recital of the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 35, and the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 28.*] No deed of gift, or grant, security, contract, agreement, deed, or conveyance, or other instrument, made for the purposes of this Act, or for the carrying into execution any of the powers, authorities, or provisions of this Act, shall be subject to any of the duties upon stamped vellum, parchment, or paper, anything in any Act or Acts of Parliament to the contrary notwithstanding.

Title to land added to churchyard or burial place not to be questioned after five years.

7. From and after the expiration of five years after the conveyance of any lands or hereditaments for such addition to any churchyard or burial place and the inclosure of the same within one boundary fence, although the same shall not have been consecrated and although no burial shall have been had within the same during that period of time, the said lands and hereditaments shall, for the purposes of this Act, become and be and remain absolutely vested in the person or persons or corporation in whom the churchyard or burial place to which they are added is vested, free from all demand or claim of any person or persons or corporation whatsoever, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.

The provisions of this section are almost identical with those of the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 29, *post*.

Saving provisions of former Acts as to conveyances of lands as sites for churchyards.

8. Except as is by this Act expressly enacted, nothing therein contained shall affect the provisions of any Act of Parliament with reference to lands or hereditaments conveyed as sites for churchyards or to the conveyances thereof.

9. Whenever any land shall be so added to a consecrated churchyard, and such land shall have been the gift of any person, whether resident or not in the parish or ecclesiastical district in which such churchyard is situated, it shall be lawful for the giver of such land to reserve the exclusive right in perpetuity of burial and of placing monuments and gravestones in a part of the land so added, not exceeding [fifty square yards or] one-sixth [part] of the whole of the said land; and the part in which such exclusive right is reserved shall be shown and coloured on the plan endorsed on the instrument declaring or recording the consecration of the land added to the churchyard; and a memorandum in the form following shall be written on the said instrument, and signed by the incumbent and churchwardens of the parish or ecclesiastical district in which the same is situated:

**Sect. 9.**  
Exclusive right of burial in a portion of the land added to a churchyard may be secured to the giver thereof.

We, *A. B.*, [rector, vicar, or incumbent,] and *C. D.*, and *E. F.*, churchwardens, of \_\_\_\_\_, declare the piece of land [here insert the description and measurement,] and coloured \_\_\_\_\_ on this plan, to be the burial place of *G. H.*, the giver of the land added to the churchyard of \_\_\_\_\_ his heirs and assigns.

Signed *A. B.*,  
*C. D.*,  
*E. F.*,

in the presence of *J. K.*

Dated this \_\_\_\_\_ day of \_\_\_\_\_

And the memorandum so signed shall, after such land shall have been declared to have been consecrated, operate as an exclusive right in perpetuity in the land therein referred to; and the expenses of preparing and executing such memorandum shall be borne by the person by whom the reservation is made.

By the Consecration of Churchyards Act, 1868 (31 & 32 Vict. c. 47), *post*, p. 443, this section is to be read as if for the words "fifty square yards or one-sixth" were substituted the words "one-sixth part."

10. The exclusive right of burial and of placing monuments and gravestones as aforesaid shall be considered to be the real estate of the giver, his heirs and assigns, and no body shall be buried or monument or gravestone placed in the land in which such rights have been granted except by consent of the owner thereof for the time being; but no

Conditions attending such grant of exclusive right of burial.



**Sect. 10.** such reservation shall give the right to bury the body of any person not entitled to be buried in consecrated ground; and the bishop of the diocese, and all persons acting under his authority, shall have the same right and powers to object to the placing and to procure the removal of any monumental inscription within the ground so reserved as he has to object to or procure the removal of any monumental inscription in any consecrated ground: Provided always, that the consent of the owner for the time being shall not be required for the burial of a deceased owner, or of a wife or widow of any deceased owner who has been buried or shall be about to be buried in such ground.

As to closing of reserved portion.

11. Such reserved portion shall not be included in any Order in Council under the Burial Acts for closing the churchyard to which it belongs, but it may be closed under a separate Order founded on a special report that the ground is in such a state as to render any further interments therein prejudicial to the public.

Where communion table has been moved, or walls of church have been partly demolished, marriages, etc., to be valid, although the church be not reconsecrated or reconciled.

12. [*And whereas doubts are entertained whether in cases where a church or chapel has been rebuilt, repaired or enlarged, and the external walls have been partly destroyed, or the position of the communion table altered, a reconsecration of such church or chapel be not necessary in order to the due and valid administration of divine offices there.*] All marriages, rites, and ceremonies heretofore or hereafter celebrated or performed in a consecrated church or chapel which may have been rebuilt, repaired, or enlarged prior to such celebration or performance, and wherein such marriages, rites, and ceremonies might have been legally solemnized or performed previously to such rebuilding, repair, or enlargement, shall be valid and effectual for all purposes, notwithstanding that upon such repair or enlargement the external walls of such church or chapel may not have remained entire, or the position of the communion table may have been altered, and notwithstanding that since such rebuilding, repair, or enlargement no reconsecration of such church or chapel may have taken place.

**Short title.** 13. This Act may be cited as the Consecration of Churchyards Act, 1867.

CONSECRATION OF CHURCHYARDS ACT, 1868.

(31 & 32 VICT. c. 47.)

*An Act to amend "The Consecration of Churchyards Act, 1867."* [13th July 1868.]

Preamble recited that it was expedient to amend the Consecration of Churchyards Act, 1867. Repealed by the Statute Law Revision Act, 1893.

1. In all cases where by the said Act the giver of any land to be added to a consecrated churchyard is empowered to reserve the exclusive right of perpetuity of burial, and of placing monuments and gravestones, in a part of the land so added not exceeding fifty square yards or one-sixth of the whole of the said land, in the manner and subject to the conditions and restrictions in the said Act mentioned, it shall be lawful for the giver of such land to reserve such exclusive right as aforesaid in a part of the land so added not exceeding one-sixth of the whole of the said land, subject to the restrictions and conditions and in the manner and for the purposes in the said Act mentioned; and the said Act shall be read as if in the ninth section thereof the words "not exceeding one-sixth part of the whole of the said land" were substituted for the words "not exceeding fifty square yards or one-sixth of the whole of the said land": Provided always, that all powers with regard to the placing or erection of monuments and gravestones in churchyards which before the passing of the said Act by law pertained to the bishop of the diocese, or to any person acting under his authority, shall remain in full force in respect to the land in which such exclusive right shall have been reserved as aforesaid.

Giver of land to be added to a churchyard may reserve the exclusive right of burial in a portion not exceeding one-sixth of the land so added.

Amendment of 30 & 31 Vict. c. 133, s. 9.

Reservation, as to land in which such right is reserved, of powers of bishop as to erection of monuments.

2. The provisions of the said Act shall apply to burial grounds attached or belonging to union houses in England and Wales.

Recited Act to apply to burial grounds of unions.

# CHURCH BUILDING ACTS.

## CHURCH BUILDING ACT, 1818.

(58 GEO. 3, c. 45.) (a)

*An Act for building and promoting the building of additional Churches in populous Parishes (b). [30th May 1818.]*

Preamble recited that the population of Great Britain having greatly increased, the churches and chapels in populous parishes were inadequate to the accommodation of the inhabitants; and that it was necessary that additional churches and chapels should be erected, and that a certain number of free seats should be made therein. See Statute Law Revision Act, 1890.

Sections 1—9, repealed by the Statute Law Revision Act, 1873, authorised appropriation of £1,000,000, and provided for appointment of commissioners for purposes of the Act, whose powers are now exercised by the Ecclesiastical Commissioners.

Commissioners may appoint secretary and clerk, and order surveys, reports, etc., and assign salaries.

10. It shall be lawful for the said commissioners to appoint a secretary and clerk, and to employ such surveyors and other fit persons to make plans and estimates, and (if the commissioners shall deem the same necessary) surveys and reports, for the purpose of affording to the commissioners all such information as they may require for the purpose of ascertaining the best mode of providing fit and proper accommodation for the largest number of persons at the least expense, and may assign and pay to all such

(a) This Act is repealed so far as it confers power to enforce payment of any rate by the Statute Law Revision Act, 1873. Any section or part of a section which is omitted here has been repealed; the sections of which the side notes are alone given are not repealed, but are not sufficiently connected with the subject of this work to be printed in full.

(b) This Act is described by KINDERSLEY, V.-C., as "ill-drawn and extremely difficult to apprehend" (*Tuckniss v. Alexander* (1863), 9 Jur. (N.S.) 1026; 32 L. J. Ch. 694; 2 Drew. & S. 614; 11 W. R. 938; 8 L. T. (N.S.) 821).

persons reasonable salaries or rewards for their services therein. **Sect. 10.**

The "said commissioners" are those whom the Crown was empowered by the repealed s. 8 to appoint for the purposes of this Act.

The commissioners for building new churches were abolished and their powers, etc., transferred to the Ecclesiastical Commissioners by the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55).

11. [*Repealed by 19 & 20 Vict. c. 55, s. 2.*]

12. The said commissioners shall, as soon after their appointment as the obtaining necessary information will allow, draw up certain rules for their general proceedings, and shall fix and specify therein the largest amount of allowances to be granted for building any church, and make such other regulations as the said commissioners shall deem expedient and necessary to be fixed and known for the furtherance of the purposes of the Act, and from time to time, as occasion may require, shall have power to alter or vary any such regulations, and to make any such further or additional regulations as they may deem expedient; and all such rules and regulations shall be laid before his Majesty in Council, who shall have power to approve or disallow the same.

Commissioners to draw up rules for their proceedings,  
  
which shall be laid before his Majesty in Council.

13. It shall be lawful for the said commissioners to make in his Majesty's name, out of the sum so appropriated by this Act, grants for building or to cause to be built churches or chapels in such parishes or extra-parochial places only in which there is a population of not less than four thousand persons, and in which there is not accommodation in the churches or chapels therein for more than one-fourth part of such population to attend divine service according to the rites of the United Church of England and Ireland, or in which there shall appear to the said commissioners to be one thousand persons resident more than four miles from any such church or chapel, . . . and also to make grants or loans to assist in building such churches and chapels in such other parishes or places as may contain a like population, and may equally require further accommodation for divine service, but in which the said commissioners may deem the parishioners and inhabitants

Commissioners may grant or lend money for building churches in parishes, etc., of a certain population, in which there is a want of church accommodation, etc.

**Sect. 13.** thereof capable of bearing a part of the expense of erecting such churches and chapels, or of repaying the same by instalments if advanced by way of loan.

By the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 5, the commissioners are empowered to treat with and make grants to divisions of parishes as if they were district parishes.

By the Irish Church Act, 1869 (32 & 33 Vict. c. 42), s. 69, the expression "United Church of England and Ireland" is to be read distributively in respect to the Church of England and the Church of Ireland.

Commissioners may make grants and advance money to build churches in parishes, etc., where a certain proportion of the expense is raised by rate or subscription.

**14. [Recital.]** It shall be lawful for the said commissioners, upon any parish or extra-parochial place offering to contribute or raise by rates or subscription, or by rates aided by subscription, such proportion of the expense of building any church or chapel or churches or chapels which may be required in any such parish or extra-parochial place, as shall have been fixed as a proper proportion by the said commissioners according to any such rules and regulations as aforesaid, or shall be deemed by the said commissioners a proper proportion, and they are hereby empowered to grant to any such parish or extra-parochial place the remaining sum necessary to build any such church or churches or chapel or chapels, and to advance and lend to such parish or extra-parochial place any part of the proportion so proposed to be raised by rates as aforesaid.

By the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 4, the commissioners are empowered in certain cases to make grants for defraying the whole of the expenses of building a church or chapel. And by the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 2, they are empowered under special circumstances to exercise their powers as to procuring land for any parish or place in cases which are not provided for in this Act or in 59 Geo. 3, c. 134.

Commissioners, in selecting parishes for grants, shall have regard to their relative proportions of population and want of accommodation, and

**15.** Provided always, that the said commissioners, in the selections of parishes and extra-parochial places for making their distribution of the sums granted by this Act, shall have regard to the amount of population in such parishes and extra-parochial places, and also to the disproportion between the number of inhabitants and the present accommodation for attendance upon divine service according to the rites of the United Church of England and Ireland as by law established, and in giving preference among such

parishes and extra-parochial places shall have regard to the proportion of the expense of affording the accommodation required which shall be offered to be contributed or raised in aid of the purposes of this Act towards the building churches or chapels in such respective parishes or extra-parochial places, and to the pecuniary ability of the inhabitants of such parishes or places; and the said commissioners, in giving preference as between parishes and extra-parochial places not offering to contribute any proportion of such expense as aforesaid, shall have regard to the order of priority in which parishes and extra-parochial places, under similar circumstances as to population and disproportion between such population and the accommodation afforded by the churches and chapels therein, shall have provided, and given notice to the commissioners of having provided, sites for the churches intended to be built in such respective parishes or extra-parochial places.

**Sect. 15.**

in giving preference shall have regard to the proportion of expense offered to be contributed, etc., and to the order of priority in providing sites.

16. In every case in which the said commissioners shall be of opinion that it will be expedient to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatever, it shall be lawful for the said commissioners, with the consent of the bishop of the diocese in which such parish is locally situated, signified under his hand and seal, to apply to the patron or patrons of the church of such parish for his consent to make such division, and for such patron or patrons to signify his or their consent thereto under his hand and seal; and the said commissioners shall, upon the consent of the said patron or patrons so signified, represent the whole matter to his Majesty in Council, and shall state in such representation the bounds by which it is proposed, with such consent as aforesaid, to divide such parish, together with the relative and respective proportions of glebe land, tithes, moduses, or other endowments which will by such division arise and accrue and remain and be within each of such respective divisions, and also the relative proportions of the estimated amount of the value or produce of fees, oblations, offerings, or other ecclesiastical dues or profits, which may arise and accrue within each of such respective divisions; and if

Upon representation of the commissioners in manner stated, parishes may be divided into separate parishes for all ecclesiastical purposes.

**Sect. 16.** thereupon his Majesty in Council shall think fit to direct such division to be made, such Order of his Majesty in Council shall be valid and good in law for the purpose of effecting such division: Provided always, that no such division of any parish into distinct parishes shall completely take effect until after the death, resignation, or other avoidance of the existing incumbent of the parish to be divided.

Portions may be separated from an original parish under this section, and under s. 21, at the same or separate times (Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 12).

By the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 32, the commissioners are empowered under special circumstances of any parish or place which shall not be within the provisions of this Act or of the Church Building Act, 1819 (59 Geo. 3, c. 134), to exercise all the provisions of these Acts with respect to the division or consolidation of any parish or district.

Power is now given by New Parishes Act, 1856 (19 & 20 Vict. c. 104), s. 25, to the ecclesiastical commissioners, with the consent of the bishop and patron, to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes, and to apportion the glebe tithes, endowments, &c., subject to ratification by Order in Council.

The clerk's and sexton's fees are provided for, on a division of the parish being made under this section, by the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 10.

For a long and learned dissertation on the distinction between "distinct" parishes formed under this section, and "district" parishes formed under s. 21 of this Act, see the judgment of Dr. LUSHINGTON in *Varty v. Mopsey and Nunn* (1841), 5 Jur. 1133, where the point actually decided was, that after a division of a parish under this section had completely taken effect, the church rates should be made for each division of the original parish separately.

Tithes, etc., to belong to and be recoverable by the incumbents of the divisions.

17. Provided always that all tithes, moduses, endowments, or other ecclesiastical dues or profits belonging to the incumbent of any such parish, whether by endowment, prescription, usage, or otherwise, shall, when so divided as aforesaid, belong to and be recoverable by the incumbents of the churches of each of the divisions respectively of the parish to which they shall be assigned, in like manner in every respect as they were before recoverable by the incumbent of the original parish.

18. [*Repealed by Statute Law Revision Act, 1873.*]

New churches,

19. Every such distinct and separate parish as aforesaid shall, when such division as aforesaid shall become

complete by the death, resignation, or other avoidance of the existing incumbent of the original parish, be deemed either a rectory, vicarage donative, or perpetual curacy, and the spiritual person serving the same the rector, vicar, or perpetual curate thereof, or person having cure of souls therein, according to the nature of the original church of the parish so divided, and shall be for ever thereafter subject to the laws, provisions, and regulations, as to presentation and appointment, and as to institution, collation, induction, or licence, and to all such jurisdiction of the bishop, or other jurisdiction, and to holding benefices, as are by law applicable to the original parish.

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when division complete, to be rectories, vicarages, or perpetual curacies, like original parish.

By the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 13, the right of patronage of parishes divided so as to become distinct parishes is to belong to the patron of the church of the original parish.

**20.** [*Repealed by Statute Law Revision Act, 1873.*]

**21.** In any case in which the said commissioners shall be of opinion that it is not expedient to divide any populous parish or extra-parochial place into such complete, separate, and distinct parishes as aforesaid, but that it is expedient to divide the same into such ecclesiastical districts as they, with the consent of the bishop, signified under his hand and seal, may deem necessary for the purpose of affording accommodation for the attending divine service according to the rites of the United Church of England and Ireland to persons residing therein, in the churches and parochial chapels already built, or in additional churches or chapels to be built therein, and as may appear to such commissioners to be convenient for the enabling the spiritual person or persons who may serve such churches or chapels to perform all ecclesiastical duties within the districts attached to such respective churches and chapels, and for the due ecclesiastical superintendence of such district, and the preservation and improvement of the religious and moral habits of the persons residing therein, the said commissioners shall represent such opinion to his Majesty in Council, and shall state in such representation the bounds by which such districts are proposed to be described; and if thereupon his majesty in Council shall think fit to direct

Upon representation of commissioners parishes may be divided into ecclesiastical districts, or commissioners may build or aid in building chapels, to be served by curates to be appointed by the incumbent of the parish.



**Sect. 21.**

such division to be made, such order of his Majesty in Council shall be valid and good in law for the purpose of effecting such division; or in any case in which the said commissioners shall be of opinion that it is not expedient to make any such division into such ecclesiastical districts as aforesaid, the said commissioners may build or aid the building of any additional chapels in any such parishes or extra-parochial places, to be served by curates to be respectively nominated and appointed by the respective incumbents of the churches of the respective parishes or extra-parochial places, and licensed by the bishop of the diocese; such curates to be paid such salaries as shall be assigned by the said commissioners under the provisions of this Act in manner hereinafter directed.

By the Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 12, any parish or extra-parochial place may be divided into distinct and into district parishes or district chapelries at the same time or at separate times.

New parishes and districts when made to be described, and description of boundaries enrolled in registry of diocese.

**22.** The several new parishes created by any such complete division as aforesaid, and also the several districts of any parish or extra-parochial place, where any such division thereof shall have been so made as aforesaid, shall be ascertained and marked out by described bounds; and the description of such bounds shall . . . be registered in the office of registry of the diocese, and notice thereof given in such manner as the commissioners shall deem necessary and direct for that purpose.

Power to alter such boundaries.

**23.** If his Majesty in Council, upon the representation of the said commissioners, made with the consent of the bishop of the diocese signified under his hand and seal, shall think fit to alter such boundaries at any time within five years after such enrolment, such Order in Council shall be valid and good in law for the purpose of effecting such alteration, and the same shall be . . . registered in like manner as is above mentioned.

Districts to be separate parishes for ecclesiastical purposes.

**24.** Such boundaries shall continue and be the boundaries of such parishes or districts respectively, unless so altered, and such districts shall thereupon become and be called district parishes by such names as shall be given to them

respectively in the instrument so enrolled as aforesaid, and shall become and be separate and distinct district parishes ; and the churches and chapels respectively assigned to such districts shall, when duly consecrated for that purpose, become and be the district parish churches of such district parishes for all purposes of ecclesiastical worship and performance of ecclesiastical duties, and as to all marriages, christenings, churchings, and burials, and the registry thereof respectively within the same, and in relation to all fees, oblations, and offerings, and the demanding, suing, and prosecuting for and recovering the same, and as to all other purposes whatsoever, save and except as is in this Act particularly excepted.

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25. Every church and chapel built or acquired under the provisions of this Act, and appropriated to any such district parish so made under the provisions of this Act, shall be deemed a perpetual curacy, and shall be considered in law as a benefice presentative, so far only as that the licence thereto shall operate in the same manner as institution to any such benefice, and shall render voidable other livings in like manner as institution to any such benefice ; and the spiritual person serving the same shall be deemed the incumbent thereof ; and such incumbents shall have perpetual succession, and shall be and are hereby declared to be bodies politic and corporate, and may receive and take such endowments in lands or tithes or both, or any such augmentation as shall be granted to them or their successors ; and all such incumbents and all persons presenting or appointing any such incumbents shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, and forfeitures contained in any Acts of Parliament in force relating thereto respectively ; and in case of any failure or neglect in not presenting or nominating any such incumbent for the space of six months, such presentation or appointment shall thereupon lapse as in cases of actual benefices.

Churches and chapels of such districts to be deemed perpetual curacies, etc.

The Church Building Act, 1819 (59 Geo. 3, c. 134), s. 19, provides that no chapel built or acquired under this Act in a district parish which is not the church of such district shall be a perpetual curacy or be considered a benefice presentative.

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No such parish or district church or chapel to be held with the original church, etc.

26. Provided also that no such church or chapel of any such parish or district parish, created according to the provisions of this Act, shall be tenable or holden with the original church of the parish or extra-parochial place out of which such parish or district parish shall have been taken, or with the church or chapel of any other such parish or district parish.

All Acts of Parliament, etc., relating to publishing banns of marriages, etc., to apply to such churches and chapels.

27. All Acts of Parliament, laws, and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to such separate and distinct parishes and district parishes so made as aforesaid, when they shall so become complete, separate, and distinct parishes or district parishes under the provisions of this Act, after the death, resignation, or other avoidance of the existing incumbents respectively in each such parish or extra-parochial place, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes.

Banns not to be published or marriages, etc., solemnized in any district church, etc., until after the death, etc. of the person who was incumbent of the parish church when the district church was consecrated.

28. Provided always, that no banns of matrimony shall be published, or marriages celebrated or solemnized, or baptisms or churchings had by any person whatever within any church or chapel of any such separate and distinct parish so made by any such division as aforesaid or in any private house therein, or within any such district church or chapel, or in any private house within such district, nor shall any burials be performed within any cemetery appertaining or belonging to any such church or chapel by any person whatever except by the incumbent of the church of the parish or extra-parochial place from which such parish shall have been separated, or some curate or such incumbent duly licensed in that behalf, until after the death, resignation, or other avoidance of the spiritual person who shall be the incumbent of the church of the parish or the extra-parochial place at the time of the consecration of any such church or chapel of any such separated

parish or district parish; and from and after the death, resignation, or other avoidance of the then incumbent, to be certified under and according to the provisions of this Act, banns of matrimony may be published and marriages celebrated and solemnized, and baptisms, burials, and churchings had, within the church or chapel of any such separated parish or district parish, provided the same be respectively published, celebrated, solemnized, and had according to the laws and canons in force within the realm in that behalf; and all such banns as shall be published, and also all and every such marriage and marriages as shall be celebrated and solemnized in any such church or chapel, after the entries, under and according to the provisions of this Act, of the notification under the hand and seal of the bishop of the diocese of the death, resignation, or other avoidance of the incumbent of the church of the parish or extra-parochial place, shall be as good, valid, and effectual to all intents and purposes, as if the same were published, celebrated, and solemnized in the church of the parish or extra-parochial place in which the same shall be situate.

**Sect. 28.**  
Validity of banns, marriages, etc., in district church, etc., afterwards.

29. The death, resignation, or other avoidance of the spiritual person who was the incumbent of the church of any parish and extra-parochial place in which any such separated parish or district church or chapel shall be so consecrated as aforesaid at the time of such consecration, shall be notified by the bishop of the diocese under his hand and seal to the spiritual person then serving the church or chapel, and to the churchwardens of the parish or place in which the church or chapel shall be situate; and such notification shall be preserved with and copies thereof shall be entered in the books of registers of marriages, births, and burials of the church of the parish or extra-parochial place; and copies of such notifications shall be also entered in the books of registers to be provided for entering the publications of banns and solemnization of marriages and the baptisms and burials in such chapels; and such entries shall be authenticated by the churchwardens of such churches and chapels respectively, and shall be sufficient evidence of the period of commencement, under the provisions of this

Death, etc., of incumbent of parish church to be notified by bishop, and entered in register books of the parish church and district church, etc., and such entries to be evidence of the commencement of publication of banns, etc., in the district church.

**Sect. 29.** Act, of the publication of banns and solemnization of marriages and baptisms and performance of burials in any such chapel or any cemetery thereof.

Division into district parishes only not to affect glebe, tithes, etc., of original parish.

**30.** Such division of any parish into district parishes only, and not into complete, separate, and distinct parishes, shall not in any manner affect any land, glebe, tithes, moduses, or endowment of or belonging to the original church of the parish or extra-parochial place; all which shall continue to belong to the incumbent thereof, and to be holden, demanded, taken, and received by him in like manner to all intents and purposes as if no such division had taken place; and the original parish shall remain and continue a parish as to all such glebe, land, tithes, moduses, and endowment, and all dues, rights, and remedies in relation thereto, as if this Act had not passed.

Division into distinct parishes or district parishes not to affect poor or other parochial rates, etc., except church rates.

**31.** No divisions of any parish or extra-parochial place, whether it be divided into separate parishes with the consent of the patron and bishop of the diocese, or into district parishes, nor anything in this Act contained in relation thereto, shall affect or in any manner be construed to affect any parish or extra-parochial place so divided, or the persons residing therein in any other respect than in this Act particularly provided, or in any manner to apply to any poor or other parochial rates which may be raised in the parish or extra-parochial place so divided, or in any such separated parish or district parish, or to the maintenance or relief of poor persons, or to any title or claim to such relief, or to any powers relating to any such rates, or holding vestries, or appointment or powers of parish officers, or any such relief or claim thereto, or to any Act or Acts of Parliament or law or custom relating thereto, save and except as to church rates, in so far as the same are regulated by the provisions of this Act, but the original parish shall to all such purposes remain and continue in law a parish to all intents, as if no such division thereof into separate parishes or district parishes had been made.

Commissioners may ascertain and make

**32.** The said commissioners may ascertain the average amount, in any parish or extra-parochial place, of all fees, oblations, and offerings, whether voluntary or otherwise,

for the three years preceding the making any such divisions into district parishes, and also for each year subsequent to such division during the incumbency of the existing incumbent, and may for that purpose summon and examine upon oath the incumbent or any other person or persons, and require the production of and examine any books or papers necessary for that purpose, and shall thereupon cause compensation to be made out of the moneys granted by this Act to the incumbent of any such parish during his incumbency for any loss which he may sustain by reason of the diminution thereof, in consequence of any such division into district parishes, and of such fees, oblations, and offerings being transferred thereby to the spiritual persons serving the churches or chapels of district parishes under the provisions of this Act: Provided always, that no such ascertainment or compensation made thereupon, or inquiry made, or matter or thing done, or evidence given or produced in relation thereto, shall in any manner affect or prejudice any question as to any right or claim in relation to any such fees, oblations, or offerings.

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compensation for diminution of fees, oblations and offerings consequent upon the division.

**33.** It shall be lawful for the said commissioners to accept and take any building or buildings fit to be used for or to be converted into such additional churches or chapels, and also any lands, tenements, and hereditaments proper for sites of additional churches or chapels, not exceeding in quantity in any one place what may be sufficient for building of a church or chapel, providing a churchyard, and making a proper and sufficient access or approach thereto, from any persons willing to give the same; and every such site, when conveyed to the said commissioners, and the church erected thereupon, and notice thereof given to the bishop of the diocese, shall become for ever thereafter devoted to ecclesiastical purposes only, in order that the same may be consecrated by the bishop to public worship according to the rites of the United Church of England and Ireland as by law established; and it shall also be lawful for the said commissioners to accept and take, from any person willing to give the same, any house, garden, and appurtenances, not exceeding ten acres in the whole, for the residence of the spiritual person serving such church or

Commissioners may accept buildings and sites for churches and parsonage houses devoted to ecclesiastical purposes.

**Sect. 33.** chapel, or any land, not exceeding the said ten acres in quantity, for erecting such house and appurtenances and making such garden; and the same shall (immediately upon or after the consecration of such church or chapel) become and be the house and glebe belonging to such church or chapel, and vest in the incumbent for the time being as such.

The amount of land that may be acquired by the commissioners for a residence of any incumbent by sale or exchange is limited to five acres by the Church Building Act, 1838 (1 & 2 Vict. c. 107).

The powers of the commissioners in this section are extended by the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 3, to accepting lands or grounds for enlarging and improving churches or chapels, or for rebuilding churches or chapels.

By the Irish Church Act, 1869 (32 & 33 Vict. c. 42), s. 69, the expression "United Church of England and Ireland" is to be read distributively in respect to the Church of England and the Church of Ireland.

Commissioners of Woods, with consent of Treasury and Duchies of Lancaster and Cornwall, etc., may grant buildings and sites for churches and parsonage houses.

**34.** It shall be lawful for the Commissioners of Woods, by and with the consent of the Treasury, in writing, or for his Majesty by any grant signed by the Chancellor of the Duchy of Lancaster for the time being, or for the Duke of Cornwall by any grant signed by the Chancellor of the Duchy of Cornwall for the time being, or for any body politic, corporate, or collegiate, or corporation aggregate or sole, to grant any such building or buildings, or any site or sites for the building of any such churches or chapels with or without cemeteries thereto, and any house or appurtenances and garden for the residence of the spiritual person who may serve the church or chapel.

Parishes and extra-parochial places shall furnish sites when required by commissioners.

**35.** All such parishes and extra-parochial places as shall be required by the commissioners shall furnish sites for such additional churches or chapels as the commissioners may deem necessary to be built under the provisions of this Act; and as soon as the commissioners shall have fixed upon any parish or extra-parochial place as being one in which it is necessary that a church or chapel should be built under the provisions of this Act, they shall give notice to the churchwardens thereof, by causing such notice to be left at their respective places of abode, of their intention to build or cause to be built such church or chapel, and of the

extent of ground which will be required for the site thereof and making a proper access and approach thereto, and of the part of the parish or extra-parochial place within which the same are required to be provided; and the said churchwardens shall within the space of fourteen days call a meeting of the vestry or select vestry of the parish or extra-parochial place, or the persons possessing under any Act or Acts of Parliament the powers of vestry of the parish or extra-parochial place, for the purpose of taking all such measures as may be necessary for providing such site and approach thereto as aforesaid; and in case such parish or extra-parochial place shall not be able to provide the same without purchase, then the vestry or select vestry, or the persons possessing as aforesaid the powers of vestry, shall and are hereby required forthwith to proceed to treat for a site and approach thereto according to such notice, but shall not conclude any bargain for the same without the approbation of the commissioners.

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Similar powers to those contained in this section are given to the commissioners by the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 36, for the furnishing of lands for enlarging or making additional churchyards or burial grounds.

As the powers and duties of the vestry under this section relate to the affairs of the Church, they are not transferred to the parish council in a rural parish by s. 6 (1) (a), of the Local Government Act, 1894.

**36.** It shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femmes covert, or other person or persons, and to and for all femmes covert who are or shall be seised, possessed of, or interested in their own right, and for every other person or persons whomsoever who shall be seised, possessed of, or interested in any lands, grounds, and hereditaments which shall be set out and ascertained for any such site, to contract for, sell, and convey, or, if copyhold, to enfranchise the same and every

Bodies politic and limited owners, etc., may sell and convey sites.



**Sect. 36**

part thereof, unto the said commissioners under the provisions of this Act; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in the law to all intents and purposes whatsoever, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding; and all bodies politic, corporate, or collegiate, and all persons whomsoever, so conveying as aforesaid, are hereby indemnified for or in respect of any such sale which he, she, or they, or any of them, shall respectively make by virtue or in pursuance of this Act.

Any of the persons in this section mentioned may convey, by sale or exchange, five acres for a residence of any incumbent (Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 9).

The powers conferred by this section with regard to the acquisition of *sites* are, by the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 37, extended to the acquisition of lands for enlarging or making a new churchyard or burial ground.

The provisions of this section are still further extended by the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 1, and the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50).

**37. [Repealed by Statute Law Revision Act, 1873.]**

Conveyance by lords of manors of lands taken from commons to be sufficient.

**38.** In all cases where there shall be occasion to take part of any common or waste grounds for the purposes of this Act, the conveyance thereof by the lord and lady of the manor wherein the same shall be situate shall be a good and sufficient conveyance for the purpose of vesting the fee simple and inheritance thereof under this Act, as fully and effectually as if every person having right of common upon such commons or waste grounds had joined in and executed such conveyance; and the compensation to be paid for any right of common upon any such commons or waste grounds as aforesaid shall be paid to the churchwardens of the respective parishes wherein such commons or waste grounds shall lie, and shall be by such churchwardens received and applied for such general or public purposes within such parishes respectively as a vestry of every such parish, to be convened by such churchwardens for that purpose, shall direct, except as is in this Act otherwise provided.

Application of compensation for rights of common.

Bodies politic and limited

**39.** Provided always, that all and every body and bodies politic, corporate, or collegiate, trustees, or other persons

hereinbefore capacitated to sell and convey any lands, tenements, and other hereditaments, or enfranchise any copyholds, or any owner or owners and the occupier or occupiers of any lands, tenements, or other hereditaments required to be taken for the purposes of this Act, may accept and receive satisfaction for the value of such lands, tenements, and hereditaments, or of any such interests as aforesaid; and from and immediately after the time of making and executing such sale and conveyance, or any contract or contracts for the same, the said commissioners, or any person or persons purchasing the same under the provisions and for the purposes of this Act, may and shall be at liberty to enter upon, and from thenceforth for ever to have, take, and use the said lands, tenements, and other hereditaments for the purposes of this Act; and in case the parties interested in such lands, tenements, or hereditaments cannot or do not agree as to the amount or value of such satisfaction, the same shall be ascertained and settled by the verdict of a jury as is hereinafter directed.

**Sect. 39.**  
 owners, etc.,  
 may accept  
 satisfaction  
 for the lands  
 conveyed, etc.

40. [*If parties are dissatisfied, or refuse or are unable to treat, etc., a jury to be impanelled to decide the matter.*]

41. [*Penalty on sheriff refusing to summon a jury, and on witnesses refusing to attend.*]

42. [*Verdicts to be recorded.*]

43. [*Power to enter upon and take possession of lands, etc., on payment or tender of purchase moneys.*]

44. [*Application of compensation when it shall amount to or exceed £200.*]

45. [*When less than £200 and exceeding £20.*]

46. [*When less than £20.*]

47. [*In case of not making out title, or if persons cannot be found, purchase money to be paid into the bank, subject to the order of the Court of Chancery, by motion or petition.*]

48. [*Where any question shall arise touching the title to money to be paid, the person who shall be in possession of the*

**Sect. 48.** *lands, etc., at the time of such purchase shall be deemed entitled thereto according to such possession.]*

**49.** [*The Court may order reasonable expenses of purchases to be paid by the commissioners.*]

**50.** [*Mortgagees to convey.*]

Commis-  
sioners may  
resell lands  
not wanted.

**51.** [*Recital.*] It shall be lawful for the said commissioners, by indenture under the hands and seals of any five or more of them, to grant and convey, by way of absolute sale, for a consideration in money, such lands, tenements, or hereditaments, or any such part or parts thereof, as shall not be wanted for the purposes of this Act; and all such conveyances from the said commissioners shall be valid and effectual, anything in this Act contained, or any other law, statute, or custom to the contrary thereof in anywise notwithstanding; and upon payment of the money which shall arise by sale or sales of such lands, tenements, and hereditaments it shall and may be lawful for the secretary for the time being to the said commissioners to sign and give receipts for the money for which the same shall be sold, which receipts shall be sufficient discharges to any person or persons for the purchase money for which such lands or buildings shall be so sold, or for so much thereof as in such receipts shall be acknowledged or expressed to be received, and such person or persons shall not afterwards be answerable or accountable for any loss, misapplication, or non-application of such purchase money or any part thereof: Provided always, that the said commissioners, before they shall sell and dispose of such lands, tenements, or hereditaments, shall first offer to resell the same to the person or persons from whom they shall have purchased the same, or would have been then entitled thereto in case the same had not been purchased by the said commissioners, the price at which the same shall be resold being adjusted and settled by a jury, in like manner as the price for any land to be taken in pursuance of this Act is hereinbefore directed to be settled in case of difference or dispute as to the value thereof; and if such person or persons shall not agree, or shall refuse to repurchase the same, it shall and may be lawful to and for any person or persons not interested in

Original  
vendors to  
have right of  
pre-emption.

the premises to make an affidavit, to be sworn before a master extraordinary of the High Court of Chancery or before one of his Majesty's justices of the peace for the county where such lands shall be situate, stating that such offer was made by or on behalf of the said commissioners, and that such person or persons did not agree or refuse to purchase such lands or buildings, as the case may be ; and such affidavit shall in all courts be sufficient evidence and proof that such offer was made, and not agreed to, or refused.

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By the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 34, the commissioners are empowered, instead of re-selling lands not wanted, to re-convey them without pecuniary consideration to the grantor.

52. In every case in which any parish or extra-parochial place is or shall be empowered by any Act or Acts of Parliament to build any church or chapel, or enlarge any existing church or chapel, and also in every case in which any parish or extra-parochial place shall be desirous of building any church or chapel, or enlarging any existing church or chapel, and defraying the expense thereof without any aid from the commissioners in that behalf, and are not able to procure a fit and proper site for such new church or chapel, or for the enlarging such existing church or chapel, by reason of the inability of any person or persons, body or bodies interested in such site or any part thereof to convey or make a good title to the same, freed and discharged from all incumbrances, or shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorised and empowered, if, upon application made for that purpose, and upon a statement of all the circumstances of the case, they shall think it proper and expedient, to proceed under the provisions of this Act to procure such site ; and the expense of procuring such site shall be chargeable and charged upon the parish or extra-parochial place making such application, in like manner as in cases of money advanced for sites under this Act ; and all the powers, authorities, provisions, and regulations and clauses in this Act contained in relation to procuring sites for churches

Where a parish desires to procure a site for a church, but the owner is under disability, commissioners may procure the same under this Act.

**Sect. 52.** to be built under the provisions thereof, shall extend and apply to the procuring and taking of such sites, as fully in any respect as if such churches or chapels were built under the provisions of this Act.

Further compulsory powers for taking land are conferred on the commissioners by the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 8.

Certain premises not to be taken without leave of the owners, etc.

**53.** Provided always, that nothing in this Act contained shall empower the said commissioners to take any private dwelling-house or offices, or garden, orchard, yard, park, pleasure ground, paddock, or planted walk, or avenue appurtenant thereto, without the consent of the owners and occupiers thereof.

Commissioners may advance money to parishes to purchase sites.

**54.** It shall be lawful for the said commissioners to advance money to any parish or extra-parochial place to purchase any site or sites, in case from the amount of the sum or the state of the parish or extra-parochial place as to its population, parochial rates, and other circumstances, it may appear to the commissioners to be proper to make such advance; and the commissioners shall in every such case assign periods for repayment of all moneys so advanced by instalments within ten years.

The Church Building Act, 1819 (59 Geo. 3, c. 134), s. 22, enables the commissioners to advance money without security for the purposes of this section, and also for the purchase of cemeteries or additional cemeteries. More general powers are also given by the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 7.

If parish does not procure a site, commissioners may, and charge the expense upon the parish.

**55.** If no site shall be provided in any parish or extra-parochial place and duly notified to the said commissioners, within six months after notice shall have been given by the said commissioners that a site would be required in such parish or extra-parochial place, it shall be lawful for the said commissioners and they are hereby empowered to purchase a site, and charge the expense of such purchase upon the rates raised or to be raised under the provisions of this Act in such parish or extra-parochial place, giving notice of the amount, and of the periods within which the repayment by instalments will be required.

Sums expended in purchasing

**56.** The church rates of the parish shall in all cases be and be deemed in law to be the security for the repayment

of all money expended by the parish in providing any site or sites, or advanced by the commissioners to any parish under the provisions of this Act, or paid by the commissioners in cases of neglect in providing sites; and all such sums of money so expended or advanced under the provisions of this Act, in carrying into execution the purposes thereof in any parish, shall be and are hereby made chargeable and charged upon such rates; and the churchwardens shall in every such case make, and they are hereby required and empowered to make, proper and sufficient rates for repaying such expenses and advances within the periods or at the times which shall be specified by the commissioners under the authority of this Act in that behalf.

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sites or advanced to parishes by commissioners to be charged upon and paid out of the church rates.

57. In every case in which any sum or sums of money shall have been expended in purchasing any site or sites for any church or churches, or chapel or chapels, or advanced by the commissioners under the provisions of this Act for any extra-parochial place in which no church rates shall be made, raised, or collected, it shall be lawful for the said commissioners to require any justice or justices acting in or for the division of the county in which such extra-parochial place shall be, and every such justice or justices shall from time to time, as the case may require, appoint two or more proper persons to make, raise, collect, and levy rates for making all such payments and repayments as may be required under the provisions of this Act; and all such persons so appointed shall have all such and the like powers and authorities for making, raising, levying, and collecting [and enforcing payment of] any such rates as any churchwardens have by law in that behalf, and are hereby required and empowered to make, raise, levy, and collect sufficient rates for making such payments and repayments as aforesaid; and all sums so expended or advanced shall be charged upon such rates and paid thereout at such times and in like manner and under the like provisions, as if such place had been and was a parish in which church rates were made, levied, and collected by law, and all such rates shall be deemed in law church rates for the purposes of this Act, and made, raised, levied, collected, and accounted for as such; and all Acts of Parliament, and clauses, provisions, regulations, penalties, and forfeitures contained in any Act

Rates may be raised in extra-parochial places for the purposes of this Act.

**Sect. 57.** or Acts of Parliament, and all powers, authorities, and laws, ecclesiastical or others, for the making, raising, levying, collecting, and accounting for church rates, shall apply and be enforced for the making, raising, levying, and collecting such rates in any such extra-parochial place, from time to time, when and so often as it shall be or become necessary to make or raise any such rates for the purposes of this Act.

The words in this section printed in italics were in effect repealed by the Compulsory Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 109); and the Statute Law Revision Act, 1873, explicitly repealed so much of this Act as conferred the power to enforce payment of any rate.

Power of church-wardens, etc., to borrow money on the security of the rates.

**58.** It shall be lawful for the churchwardens of any parish, or persons appointed in any extra-parochial place, with the consent in any parish of the vestry or select vestry, or persons possessing, under any Act or Acts of Parliament, the powers of vestry, and with the consent in any extra-parochial place of the majority of the persons, who would be entitled to vote in vestry if the same had been a parish, assembled at any meeting called for that purpose, with notice given in the church or chapel of the extra-parochial place or in the church or chapel nearest adjoining thereto, to borrow any money upon the credit of the rates of the parish or extra-parochial place so to be made as aforesaid, and they are hereby empowered and required, in any case in which such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and one-twentieth part of the principal sum borrowed out of the produce of such rates, until the whole of the money so borrowed shall be repaid.

**59.** [*Power of Churchwardens to raise money for the enlargement of existing churches or chapels.*]

**60.** [*Application to be made, with consent of majority of inhabitants paying poor rates, or where there is a select vestry, then with consent of not less than four-fifths of such vestry.*]

**61.** [*Churchwardens may raise rates for the purpose.*]

**62.** [*Commissioners may build churches upon such plans as they shall think most convenient.*]

63. [Commissioners may settle amount of rents of pews ; application of produce.] **Sect. 63.**

64. [Commissioners to assign stipends to the clergymen out of pew rents—Differences as to stipends.]

65. [Bishops may direct the performance of a third service with a sermon, under certain circumstances.]

66. [Provision for the clergymen who may perform additional service.]

67. The nomination or appointment of the spiritual person to serve all such district churches and chapels shall belong to the patron of the church of the parish or extra-parochial place out of which such district shall be taken ; and the spiritual person so presented, and instituted or licensed (as the case may be) by the bishop of the diocese, shall be subject to the same jurisdiction and visitation as the incumbent of the parish now is.

Incumbent of district church to be nominated by same patron, and be under same jurisdiction as incumbent of parish church.

68. Provided always, that in any case in which any chapel shall be built either wholly or in part by means of any rates to be raised in any parish, the first and subsequent nominations of the minister of the chapel shall be in the incumbent of the church of the parish or extra-parochial place in which such chapel shall be built.

Minister of chapel built by rates to be nominated by incumbent of parish church.

69. [Rights of Brazen Nose College to present clerks to churches within the parish of Stepney not to be affected.]

70. [Repairs to be made by rates upon the district.]

71. [Repealed by Statute Law Revision Act, 1873.]

72. [Grants for clergymen's salaries to be enrolled and registered.]

73. Two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this Act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the inhabitant householders entitled to vote in the election of churchwardens

Appointment of churchwardens.



**Sect. 73.**

Recovery  
by church-  
wardens of  
rents of  
pews, etc.

residing in the district to which the church or chapel shall belong, and of any extra-parochial place by such inhabitant householders as would be entitled to vote in the election of churchwardens if such extra-parochial place had been a parish; and the two persons, when so elected churchwardens, shall appear and be admitted and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay the stipends or salaries appointed by the commissioners to be paid to the minister and clerk of and belonging to the church or chapel for the time being, and also shall do, perform, and execute all lawful acts, matters, and things necessary and requisite for and concerning the repairs, management, good order, and decency of behaviour to be kept and observed in the church or chapel by the congregation thereof; and the persons so to be appointed or chosen churchwardens shall continue in their said office until others shall be chosen in like manner in their stead; and all persons so chosen churchwardens are hereby authorised and empowered, in case of non-payment of the rents of the seats and pews of the church or chapel for which they shall be appointed, to enter upon and sell the same, or else to sue for and recover the same by action or actions for such rents, in the names of "The Churchwardens of the Church or Chapel of" (describing the same), as the case shall or may require, without specifying the Christian or surnames of such churchwardens; and no such action shall abate by reason of the death or removal or going out of office of any such churchwarden.

Under this section and s. 26 of the Church Building Act, 1819 (59 Geo. 3, c. 134), the minister is entitled to be paid the pew rents applicable to his stipend as soon as they are received, and has, therefore, a right of action against the churchwardens in the event of their not performing their duty in so paying them over (*Lloyd v. Burrup* (1869), L. R. 4 Ex. 63).

Where parish  
is not  
divided the  
church-  
wardens  
thereof shall  
act under  
this Act.

**74.** The churchwardens of every parish in which any additional chapel shall be built or provided under any of the provisions of this Act without making any division thereof into separate parishes or district parishes, shall be and are hereby authorised and required to execute and do all such things as the churchwardens to be appointed under the provisions of this Act are authorised and required to do.

75. [*Pews to be provided for minister, etc., and free seats for poor persons.*] **Sect. 75.**

76. [*Choice of pews by subscribers.*]

77. [*Pews to be let to raise the sum required for ministers' salaries, etc.*]

78. [*Churchwardens may, with consent of incumbent, patron, and bishop, alter pew rents.*]

79. [*For the recovery of pew rents half-yearly.*]

80. It shall not be lawful to break up the pavement or to open the soil beneath the same within any church or chapel to be erected under the provisions of this Act for the purposes of burial, or to make any grave in any cemetery or churchyard thereunto adjacent or belonging, at any less distance than twenty feet from the external walls of such church or chapel respectively: Provided always, that nothing herein contained shall extend or be construed to extend to prevent the burial of dead bodies in any vault wholly arched with brick or stone, which may have been constructed for such purposes under any church or chapel, and to which the only access shall be by steps on the outside of the external walls thereof; and if any burial shall take place or any grave be made otherwise than is herein provided, the person or persons ordering or causing the same to be made shall for every such offence, on conviction thereof before any two of his Majesty's justices of the peace for the county or place, forfeit and pay the sum of fifty pounds; and in default of payment thereof the same shall and may be levied and recovered by warrant under the hand and seal of such justices, by distress and sale of the goods and chattels of such offender or offenders, rendering the overplus (if any) to the owner thereof; of which penalty one moiety shall be given to the informer, and the other moiety to the use of the poor of the parish.

No opening to be made in any church or chapel for the purposes of burial; nor any grave made in any churchyard at a less distance than twenty feet from the walls of the church. Proviso as to burials in vaults.

This section does not forbid the burial of cremated ashes of a dead body in a church provided under the Church Building Acts (*In re Kerr*, [1894] P. 284. See *ante*, p. 187).

81. Accounts shall annually be laid before both Houses of Parliament of the progress made by the said commissioners in execution of the purposes of this Act, stating the Accounts of commissioners to be annually

**Sect. 81.**  
laid before  
Parliament.

number of churches or chapels built or building, the stipends assigned to the incumbent or curates thereof, the money expended, and for what purposes, and all such other particulars as shall be necessary for explaining the progress made in carrying the purposes of this Act into execution.

**82.** [*Repealed by 7 Will. 4 & 1 Vict. c. 32 (Post Office Repeal).*]

**83.** [*As to limitation of actions. Repealed by Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).*]

Saving as to  
ecclesiastical  
laws and  
powers of  
bishop, etc.

**84.** Provided always, that neither this Act, nor anything herein contained, shall extend to invalidate or avoid any ecclesiastical law or constitution of the Church of England, or to destroy any of the rights or powers belonging to any bishop of any diocese, or any archdeacon, chancellor, or official.

Bishop, etc.,  
may exercise  
ecclesiastical  
jurisdiction  
in parishes  
under this  
Act.

**85.** He and they respectively may at all times hereafter visit, institute, and exercise ecclesiastical jurisdiction in all the parishes to be erected or divided by virtue or in pursuance of this Act, or in any part or place within the same, as amply as they or any of them may do now therein, and in such manner as in any other parishes or places within his or their diocese or jurisdiction respectively.

**86.** [*Repealed by Statute Law Revision Act, 1873.*]

## CHURCH BUILDING ACT, 1819.

(59 GEO. 3, c. 134.)

*An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous parishes (a).* [13th July 1819.]

Preamble recited the Church Building Act, 1818 (58 Geo. 3, c. 45). Repealed by Statute Law Revision Act, 1890.

**1—3.** [*Provided for the appointment of commissioners to supply vacancies, etc. Repealed by Statute Law Revision Act, 1873.*]

(a) This Act is repealed, so far as it confers power to enforce payment of any rate, by the Statute Law Revision Act, 1873. The power to enforce the payment of church rates was abolished by the Compulsory Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 109).

4. It shall be lawful for the said commissioners and they are hereby empowered to allow and make grants for the defraying of the whole of the charges and expenses of building any churches or chapels under the provisions of the said recited Act or this Act, in all cases in which the commissioners shall see fit, either on account of the inability of the inhabitants to bear any part of the charge of building any such churches or chapels, or from any other cause which shall, in the judgment and discretion of the said commissioners, be sufficient, anything in the said recited Act contained to the contrary notwithstanding.

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Commissioners may allow the whole of the expenses of building churches, etc., in certain cases.

The "said commissioners" are the commissioners for building new churches, etc., authorised to be appointed by s. 8 of the Church Building Act, 1818, whose powers, etc., are now transferred to the Ecclesiastical Commissioners by the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55).

The "anything to the contrary" in the recited Act refers to the limitations in the powers of the commissioners contained in 58 Geo. 3, c. 45, ss. 13—15, *ante*, pp. 445, 446.

5. [*Recital that many parishes were divided into townships and other divisions which were large and populous, and might conveniently be treated as parishes.*] It shall be lawful for the said commissioners and they are hereby empowered to make grants or loans, or grants and loans, to any such townships, hamlets, vills, chapelries, or other divisions of parishes, as may, in the judgment of the commissioners, from their population require further accommodation for divine service according to the rites of the United Church of England and Ireland, although the population of any such division may not amount to four thousand, and although in the whole parish there may be accommodation for more than one-fourth part of the inhabitants; and the commissioners may in every such case proceed in relation to any such divisions under the provisions of the said Act and this Act, in every respect as if they were separate and distinct parishes; and all the provisions in the said Act and this Act contained for enabling the said commissioners to make grants or loans to any parishes or extra-parochial places shall extend and apply and be in full force as to such divisions of parishes, as fully and effectually to all intents and purposes as if such divisions were separate and

Commissioners may make grants or loans to townships, etc., as if they were distinct parishes.

**Sect. 5.**

distinct parishes, and as if all the powers, authorities, and provisions in the said Act and this Act contained in relation to parishes were severally and separately re-enacted as to such divisions of parishes.

Commissioners may unite contiguous parts of parishes into ecclesiastical districts, and make grants, etc., for building chapels for the use of such districts, etc.

6. And whereas a considerable population is frequently collected together at the extremities of and locally situate in parishes or extra-parochial places contiguous to each other, at a distance from the respective churches or chapels of such respective parishes or extra-parochial places: Be it therefore enacted, that it shall be lawful for the said commissioners, with such consent as is required by the said recited Act in the case of district parishes, to unite and consolidate any such contiguous parts of such parishes and extra-parochial places into a separate and distinct district for all ecclesiastical purposes, and to cause such district to be named, ascertained, and marked out by described bounds, and such name, and the description of such bounds, when approved by his Majesty in Council, to be enrolled . . . in the office of the registry of the diocese to which such district shall belong, under the provisions of this Act, and to make grants or loans for or towards the building of or to build any chapel or chapels, with or without cemeteries, in and for the use of the inhabitants of any such district, in such manner and under such regulations as may, in the judgment of the commissioners, appear from the circumstances to be most expedient, and to constitute any such district a consolidated chapelry; and every such chapelry shall be under the superintendence of such spiritual person as shall be appointed under the provisions of this Act to serve any such chapel; and such spiritual person shall have cure of souls in such district; and the right of presentation and appointment of such spiritual person shall thenceforth belong to such person or persons, and be exercised in such manner as may be agreed by the several patrons of the churches or chapels of such parishes and extra-parochial places respectively, with the approbation of the commissioners; and banns of marriage may be published, and marriages, christenings, churchings, and burials may be solemnized and performed in any such chapel immediately and at all times after the consecration thereof; and the

Cure of souls, marriages, etc., in such district.

Sect. 6.

pew rents in such chapel shall be fixed, and salaries to the minister and clerk assigned therefrom, in such manner as is directed in the said recited Act or in this Act concerning pew rents and salaries in separate or district parishes; and all fees and offerings which may arise and accrue within such chapelry according to such table of fees as the commissioners shall make with the approbation of the bishop, may be demanded, received, sued for, prosecuted, and recovered by the spiritual person having cure of souls therein, and by the clerk and sexton of such chapelries, in like manner as if every such chapelry was a distinct parish; and it shall be lawful for the said commissioners and they are hereby required in every such case to ascertain and make compensation, in manner directed in like cases under the said recited Act, for any loss which may be sustained by the incumbent of any contiguous parish or extra-parochial place which shall form part of any such district, by reason of any fees, oblations, and offerings being transferred to the spiritual person serving any such chapel . . .

By the Church Building Act, 1832 (2 & 3 Will. 4, c. 61), it is provided that chapels of chapelries consolidated under this section, if within exempt or peculiar jurisdictions, shall be subject to the bishop and archdeacon within whose diocese and archdeaconry the altar is locally situate.

This section is explained and amended by the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 9, by which, indeed, as stated by COCKBURN, C.J., it is virtually repealed (*R. v. South Weald* (1864), 5 B. & S. 391; 33 L. J. M. C. 193; 10 L. T. (n.s.) 498; 12 W. R. 873).

The manner in which compensation is to be ascertained and made is directed by the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 32.

Churchwardens are to be appointed for every district or consolidated chapelry formed under these Acts (Church Building Act, 1845, s. 6), and by s. 10 of that Act the fees are to belong to the incumbent and clerk respectively of the parishes out of which the consolidated chapelry was formed, until the next avoidance of such respective incumbencies and the situations of such respective clerks shall have become vacant.

A district formed under this section, and called a consolidated chapelry, is governed by the same regulations as a district formed under 58 Geo. 3, c. 45, and called a district parish (*Jones v. Gough* (1865), 2 Moo. P. C. C. (n.s.) 1; 11 Jur. (n.s.) 251; 13 W. R. 509; 12 L. T. (n.s.) 31).

7. In every case in which the commissioners shall determine that any additional church or chapel or churches or

Commissioners may make grants, etc.

**Sect. 7.**

without previously determining as to whether the parish shall be divided, or whether the building shall be deemed a church or chapel, etc.

chapels shall be erected in any parish or extra-parochial place, it shall be lawful for the said commissioners to require sites to be provided for the same, in manner directed by the said recited Act, and to grant or lend money for the purchasing of sites, and for the erecting, or to erect or build, under the provisions of the said Act or this Act, any building or buildings for the celebration of divine service according to the rites of the United Church of England and Ireland, without determining before the making of any such requisition of sites, or of any such grant or loan, or before the erecting or building any such church or chapel, whether the parish or extra-parochial place in which the same shall be built shall be divided into separate and distinct parishes or districts for ecclesiastical purposes under the provisions of the said Act, or whether any such building shall, after the consecration thereof, be deemed a church or chapel, or whether the same shall be appropriated to the accommodation of the parish at large in which the same is built, or to any particular district or division or divisions thereof; anything in the said recited Act to the contrary notwithstanding.

8. [*In divided parishes, glebe, etc., may be apportioned without regard to local situation.*]

9. [*Commissioners in divided parishes to apportion permanent charges as well as glebe, etc.*]

When parishes are divided clerks and sextons of divisions may recover their fees, etc.

10. When any parish shall be divided under the provisions of the said recited Act or this Act, all fees, dues, profits, and emoluments belonging to the parish clerk or sexton respectively of any such parish, whether by prescription, usage, or otherwise, which shall thereafter arise in any district or division of any parish divided under the provisions of the said recited Act, shall belong to and be recoverable by the clerks and sextons respectively of each of the divisions respectively of the parish to which they shall be assigned, in like manner in every respect and after the same rate as they were before recoverable by the clerk and sexton respectively of the original parish; and it shall be lawful for the said commissioners in every such case to ascertain and make compensation, in manner directed by the said recited Act in cases of compensation by reason of loss of fees, for

any loss of fees, dues, profits, and emoluments, which any clerk or sexton may sustain by reason of any such division.

**Sect. 10.**

In 1810 a chapel was purchased for the purpose of being consecrated as a chapel of ease in the parish. The chapel was consecrated under the provisions of a deed, by which the parish clerk and sexton were to be entitled to the fees for christenings, burials and marriages in the chapel and cemetery as if they had taken place in the mother church. By an Order in Council, 1853, the chapel was created a district chapelry under 59 Geo. 3, c. 134, s. 16. The clerk and sexton of the parish having brought an action for money had and received against the clerk and sexton of the chapel for fees received for christenings, burials, and marriages in the chapel :—*Held*, that this being a district chapelry, was not within the operation of this section so as to confer the fees upon the clerk and sexton of the chapel, and that the clerk and sexton of the parish church was entitled to recover the fees arising at the chapel (*Roberts v. Aulton* (1857), 2 H. & N. 432 ; 26 L. J. Ex. 380).

11. It shall be lawful for the said commissioners and Commissioners may they are hereby empowered to make and fix any table of fees for any parish, with the consent of the vestry or select vestry, or persons exercising the powers of vestry in such parish, and also to make and fix any such table of fees for any extra-parochial place, or in or for any district chapelry or parochial chapelry, in which any church or chapel shall be built or appropriated under the provisions of the said recited Act or this Act, with the consent nevertheless in all such cases of the bishop of the diocese ; and all fees so fixed may be demanded, received, sued for, prosecuted, and recovered by the spiritual person or clerk or sexton to whom the same shall be assigned, in like manner and by such and the same means as any ancient legal fees of a like nature may be sued for, prosecuted, and recovered.

This section is of general applicability, and enables the Ecclesiastical Commissioners, with the consent of the vestry of the parish, and of the bishop of the diocese, to fix the burial fees to be taken in any parish. By s. 18, *infra*, the table of fees must be registered in the registry of the diocese.

The powers of the vestry under this section, relating as they do to the affairs of the church, are not transferred to the parish council or parish meeting in a rural parish under s. 6 (1) or s. 19 (4) of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

12. All churches which shall be built or acquired under the provisions of the said Act or this Act, whether New churches to become



**Sect. 12.** distinct benefices; but to be served during existing incumbency, by stipendiary curates, and be held by incumbent of parish.

belonging to parishes completely divided or to district parishes, shall immediately after the consecration thereof become and be deemed to be and be distinct benefices and churches for all ecclesiastical purposes: Provided always, that during the incumbency of the then existing incumbent of the parish, except as hereinafter excepted, such churches shall be served by licensed stipendiary curates, appointed by the existing incumbent, and subject to all the laws in force relating to stipendiary curates, except as to the assigning salaries to such curates by the bishop of the diocese; and every such existing incumbent shall until his death or other avoidance, continue to hold all the churches of the several divisions of his parish as if they were one church, unless he shall voluntarily resign one or more of them; any statute or law against plurality of benefices, or anything contained in the said recited Act or any other Act or Acts of Parliament, to the contrary notwithstanding.

By the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 12, it is provided that the commissioners may direct that, in case of division into district parishes, the whole or any part of the fees shall continue to belong to the incumbent of the original church of the parish.

Right of patronage of divided parishes shall belong to the patron of the original church, and be exercised by him after existing incumbency.

13. Provided always, that the right of presentation and appointment of the spiritual persons to be the respective incumbents of or to serve the churches of the several parishes created by the complete division of any parish under the provisions of the said recited Act or this Act, shall in every case belong to the patron of the church of the original parish; and the exercise of such right of presentation or appointment shall commence on the death or other avoidance of the existing incumbent, except in any case in which the division of any parish shall have been made, or in which the commissioners shall have declared their intention of dividing any parish, before or during any avoidance, in which cases the exercise of such right of presentation or appointment shall commence upon the consecration of the church or churches respectively of any such division: and the several churches erected in and for such divisions respectively shall immediately upon consecration become benefices, and subject to all the laws in force concerning presentations and appointments to

benefices and churches, and lapse, and all other laws, provisions, and regulations relating to the holding of benefices and churches, anything in the said recited Act or in this Act to the contrary notwithstanding: Provided always, that the spiritual care and superintendence of every parish so divided during avoidance shall, until incumbents shall have been presented or appointed for the divisions thereof, continue in the spiritual person who shall be the incumbent of the original parish; and such spiritual person shall receive all emoluments accruing and arising within the parish during such superintendence.

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Superintendence of divided parishes during avoidance.

14. It shall and may be lawful for the churchwardens of any parish, with the consent of the vestry or persons possessing the powers of vestry, and with the consent of the bishop and incumbent, and they are hereby authorised and empowered to borrow and raise upon the credit of the church rates, or of any rates made under the said recited Act or this Act, of any such parish, such sum or sums of money as shall be necessary for defraying the expense of repairing any churches or chapels; and they are hereby empowered and required, in any case in which such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and not less than ten per cent. of the principal sum borrowed, out of the produce of such rates, until the whole of the money so borrowed shall be repaid.

Churchwardens, with consent of vestry, etc., may raise money upon the credit of the church rates for the repair of churches, etc., and provide for the repayment thereof by rate.

See note to heading of Act, *supra*, p. 468.

15. It shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert, or other person or persons, and to and for all femes covert who are or shall be possessed of or entitled to or interested in their own right, and for every other persons whomsoever who shall be possessed of or entitled to or interested in any right of patronage, or of presentation or appointment to any benefice, donative,

Bodies politic, etc., may give up rights of patronage, and endow chapels.

**Sect. 15.** perpetual curacy, or of any spiritual person to any church or chapel, or the performance of any ecclesiastical duties in any church or chapel, to surrender any such right of patronage, presentation, or appointment, or enter into or make any agreement relating thereto with the said commissioners, or the bishop of the diocese, for the purpose of regulating the same according to the provisions of this Act; and it shall also be lawful for any such bodies or persons as aforesaid to endow or agree to the endowment of any chapel heretofore built out of the pew rents thereof; anything contained in any Act or Acts of Parliament, or in any deed or deeds, or any trusts relating thereto respectively, to the contrary notwithstanding.

Commissioners may assign districts to chapels under the care of curates, subject to the control of incumbent of parish;

**16.** It shall be lawful for the commissioners, in the same manner and with the like consents as are required in case of division into ecclesiastical districts under the said recited Act or this Act, to assign a particular district to any chapel of ease or parochial chapel already existing, or to any chapel built or which may hereafter be built or acquired under the powers of the said Act or this Act; and such district shall be under the immediate care of the curate appointed to serve such chapel, but subject nevertheless to the superintendence and control of the incumbent of the parish church; and all such curates shall be nominated by the incumbent of the parish to the bishop for his licence, except where the right of nomination shall already be legally vested in any other person or persons, and in every such case by the person or persons possessing such right of nomination; subject to all the laws in force relating to stipendiary curates except as to the assigning of salaries to such curates: Provided always, that it shall be lawful for the commissioners, with the consent of the bishop of the diocese, to determine whether any and what part or proportion of the fees or dues for marriages, baptisms, churchings, and burials shall be assigned to any such curate, and whether banns of marriage shall be published, and marriages or baptisms, churchings, or burials shall be solemnized or performed in any such chapel, or not; and in any case in which marriages shall be allowed in any such chapel, the commissioners shall cause the boundaries of the

and, with consent of bishop, may determine what fees for marriages, etc., shall be assigned.

district assigned to such chapel to be enrolled . . . **Sect. 16.**  
 in the office of the registry of the diocese, anything in the  
 said recited Act to the contrary notwithstanding . . .

The consents required in case of division into ecclesiastical districts are specified in the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 21.

By the Church Building Act, 1822 (3 Geo. 4, c. 72), s. 16, the commissioners may with proper consents convert district chapelries into district parishes where suitable residences and incomes can be obtained for the incumbents.

By the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 6, churchwardens are to be appointed for district chapelries.

District chapelries may now become new parishes as provided by the New Parishes Act, 1854 (19 & 20 Vict. c. 104), s. 14.

The inhabitants of a district constituted and assigned under this section retain the right to vote at the election of churchwardens for the common law parish from which the district was taken (*Reg. v. Stevens* (1863), 3 B. & S. 333; 32 L. J. Q. B. 90).

A sexton of a chapelry district constituted under this section is not, when the churchyard is closed, entitled to fees in respect of the burial of inhabitants in a burial ground provided under the Burial Acts for the parish from which the district has been taken. But when such district is afterwards formed into a district parish under the New Parishes Act, 1854 (19 & 20 Vict. c. 104), ss. 11, 14, the sexton does become entitled by virtue of the proviso in the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 5, to such fees (*Ormerod v. Blackburn Burial Board* (1873), 28 L. T. 438; 21 W. R. 539).

An ancient chapelry, situate within a large parish, had from time immemorial had a separate church and churchyard, and separate churchwardens and church rates, and the incumbent had performed marriages, christenings, and burials therein, and retained the fees to his own use. The right of presentation to the chapelry (which was a perpetual curacy) was in the rector of the parish. The chapelry was described as a parish in the ecclesiastical survey; but in recent local Acts of Parliament the church of the chapelry was referred to as a church or ancient chapel of ease:—*Held*, that the chapelry was not a distinct parish, and that under the powers conferred by this section the Ecclesiastical Commissioners were authorised to divide the chapelry into districts, and to assign a particular district to the ancient chapel (*Tuckniss v. Alexander* (1863), 32 L. J. Ch. 794; 2 Drew. & S. 614; 9 Jur. (N.S.) 1026; 11 W. R. 938; 9 L. T. (N.S.) 821).

The church of St. Nicholas was formerly the parish church of Plumstead; but in the year 1860 the new church of St. Margaret was substituted for it as the parish church, and in 1864 a chapelry district was assigned to the church of St. Nicholas. The old churchyard, which was contiguous to the church of St. Nicholas, remained the only churchyard for the parish. The plaintiff was the sexton of the parish, having been appointed by the vicar in 1870. The defendant, who was the incumbent of the district chapelry, claimed the right to appoint a clerk and sexton for the chapelry to perform burials in the churchyard under this section and the New Parishes

**Sect. 16.****NOTE.**

Act, 1854 (19 & 20 Vict. c. 104), s. 9. The court was of opinion that notwithstanding the Acts relied on, the freehold of the churchyard of the whole parish and the right to perform burials there remained in the vicar of the parish, and gave judgment accordingly for the plaintiff, the sexton of the parish (*Hammond v. M'Allister*, Times, November 14th, 1874).

Where on the formation of a district chapelry under this section the Order in Council directed that during the incumbency of the then rector of the parish two-thirds of the fees to be received for marriages, baptisms, churchings, and burials at the district chapel should "belong and be paid" to the rector, and one-third to the minister of the chapel:—*Held*, that where the minister had actually received the entire fees for marriages, etc., the rector might recover from him two-thirds in an action for money had and received; but that this section and the Order in Council did not oblige the minister to receive the fees or any part of them, and that the rector could not maintain *assumpsit* against him on a supposed duty to take the fees and pay the rector his two-thirds (*King v. Alston* (1848), 12 Q. B. 971; 18 L. J. Q. B. 59).

All Acts of Parliament, etc., relating to publishing banns of marriage, marriages, etc., to apply to churches and chapels of districts.

17. All Acts of Parliament, laws, and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all districts and consolidated or district chapelries, and divisions of any parishes or extra-parochial places, whereof the boundaries shall be enrolled in the High Court of Chancery under the provisions of the said recited Act and this Act, and in the churches and chapels whereof banns of marriage shall be allowed to be published, and marriages, christenings, churchings, and burials, or any of them shall be allowed to be solemnized, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls therein or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law to all intents and purposes.

So much of the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 22, as requires the boundaries to be enrolled in Chancery is now repealed. See s. 18, *infra*.

Apportionments of glebe, etc., and of charges, descriptions of bounds,

18. Every apportionment of glebe land, tithes, moduses, and other endowments and emoluments, and of any fees, oblations, offerings, or other ecclesiastical dues or profits, and also of all permanent and other charges made under the provisions of the said recited Act or this Act, and also

the description of boundaries assigned to chapels under this Act, in which no marriages shall be allowed to be solemnized, and all tables of fees made under the provisions of this Act, shall be registered in the registry of the diocese to which the parish, in relation to which any such apportionment shall be made, shall be or be locally situate, and not enrolled in the Court of Chancery; anything in the said recited Act to the contrary notwithstanding.

**Sect. 18.**

and tables of fees, shall be registered in the registry of the diocese, and not enrolled in Chancery.

Power to make tables of fees is given by s. 11, *supra*.

19. No chapel built or acquired under the provisions of the said recited Act, which shall be situate in any district parish made a parish for ecclesiastical purposes under the provisions of the said recited Act, and which shall not be or be made the church of such district, shall be or be deemed to be a perpetual curacy, or considered in law as a benefice presentative under the provisions of the said recited Act, anything therein contained to the contrary notwithstanding.

Certain chapels not to be deemed perpetual curacies, etc.

20. [*Commissioners of Woods and Forests, etc., with consent of Treasury, may grant materials for building churches and chapels.*]

21. [*Repealed by Statute Law Revision Act, 1873.*]

22. It shall be lawful for the commissioners, and they are hereby authorised and empowered, in any case or cases in which they shall deem it expedient, from the amount or description of the population of any parish, township, hamlet, vill, chapelry, or other division of any parish, and the amount of the rates paid therein, or any other good and sufficient cause, to grant money for or towards the purchase of sites, or to treat by themselves or their agents for the purchase of sites for the building of churches or chapels, with or without cemeteries, and without requiring or demanding repayment or security for the repayment of the money so granted or expended in the purchase of such sites or cemeteries from the parishes or divisions of parishes for which such sites shall be so provided; and it shall also be lawful for the said commissioners to purchase or grant money for the purchasing of cemeteries not within the

Commissioners may grant money for providing sites of churches and cemeteries, etc., without requiring repayment or security, etc.

**Sect. 22.**

bounds of the parish for which the same shall be provided, or for enlarging cemeteries or providing additional cemeteries within such parish respectively; all which cemeteries, if not within the bounds of such parish, shall, after consecration, be deemed part of the parish for the use of which they shall have been purchased or provided; anything in the said recited Act, or in any Act or Acts of Parliament, or law or laws, to the contrary notwithstanding.

The provisions of this section are extended by the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 14, *post*.

Church-wardens empowered to levy rates.

**23.** It shall be lawful for any churchwarden or chapelwarden of any parish or division of any parish, or of any consolidated or district chapelry, in which rates shall be made under the provisions of the said recited Act or this Act, to demand, receive, sue for, levy, and recover all such rates, by all such ways and means as any church rates may be demanded, sued for, levied, and recovered, as fully and effectually as if all powers, authorities, provisions, penalties, and forfeitures relating to the demanding, suing for, levying, and recovering of any church rates, or for any refusal to pay any like rates, were specially enacted for that purpose in the said recited Act and this Act: Provided always, that any churchwardens or chapelwardens appointed under the provisions of the said recited Act or this Act shall not in virtue of such office be deemed overseers of the poor.

So much of this Act as confers power to enforce payment of any rates is repealed by the Statute Law Revision Act, 1873; the same being rendered ineffectual by reason of the abolition of compulsory church rates by the Compulsory Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 109).

No application to build or enlarge any church, etc., shall be made if one-third of the proprietors of messuages, etc., in the parish shall dissent therefrom.

**24.** [*Recital and repeal of parts of 58 Geo. 3, c. 45, requiring consent of two-thirds of proprietors to application to build or enlarge church by means of rates.*] No application and offer to build or enlarge any church or chapel, either wholly or in part, shall be made, nor shall any church or chapel be built or rebuilt or enlarged, or any purchase made of any new or additional burial ground, by means of any rates upon any parish, in any case in which one-third part or more in value, such value to be ascertained by an average of the rate for the relief of the poor for the preceding

three years, of the proprietors of messuages, lands, and tenements within such parish, whether for estates of freehold or copyhold, or by virtue of leases for terms of years absolute whereof not less than fifteen years shall be unexpired, or determinable upon a life or lives, shall dissent therefrom; such dissent to be entered in the book containing the proceedings of the vestry, and to be signified, in case of any future vestry, within two months after any resolution for the purposes aforesaid of such vestry or select vestry as aforesaid . . . and in case of corporations aggregate, under the hand of the president, head, or chief member thereof for the time being, and in case of females covert, minors, insane persons, and persons absent from the kingdom, under the hands of their respective husbands, guardians, committees, trustees, attorneys, or agents, who are hereby respectively authorised to sign such dissents, and in cases of trustees of charitable institutions, under the hands of the major part of the trustees, or of any such body of any such trustees as may under their respective trusts be authorised to act in the execution of the trusts.

Sect. 24.

Manner of signifying such dissent.

Words omitted are repealed by the Statute Law Revision Act, 1873.

25. Provided always, that it shall be lawful for the inhabitants of any parish who shall be assembled and present at any vestry, or the major part of the inhabitants so assembled and present at any such vestry, of which notice shall have been given upon two successive Sundays preceding the meeting of such vestry, or for two-third parts of such of the persons exercising the powers of vestry in such parish as shall be assembled at any meeting, of which due notice shall have been given according to the mode of giving notices for the assembling of such persons, to order and direct the making and raising of any rate, not exceeding the amount of one shilling in the pound in any one year, or the amount of five shillings in the pound in the whole, upon the annual value of the property in the parish, for the purpose of building or enlarging any church or churches, or chapel or chapels, either wholly or in part, by means of rates, without any further or other or any greater

A certain majority of inhabitants in vestry may order a rate not exceeding one shilling in the pound in any one year, or five shillings in the pound in the whole, for building or enlarging a church or chapel, without further consents of proprietors, etc.



**Sect. 25.** number of consents of any inhabitants or proprietors or occupiers or other persons, anything in the said recited Act to the contrary notwithstanding: Provided always, that no greater or larger rate than aforesaid shall be ordered or directed to be made or raised in relation to any application or offer to build or to enlarge any church or chapel, either wholly or in part, by means of rates, if any such proportion of dissents as are in this Act specified are signified in writing in manner directed by this Act; and every such order and direction so made as aforesaid under the provisions of this Act shall be imperative upon the churchwardens or chapelwardens of the parish in which such order shall be made, who shall forthwith make and raise and levy and collect the rate so ordered, for the purpose of the said recited Act and this Act, anything in the said recited Act or any other Act or Acts of Parliament to the contrary notwithstanding; and every such rate shall be made, raised, levied, collected, received, and accounted for in like manner, and with all such powers, authorities, provisos, and regulations, and under and subject to such penalties and forfeitures, as are in law applicable to the making, raising, levying, and collecting any church rate in any parish.

See note to heading of Act, *supra*, p. 468.

26. [*Commissioners may assign the pew rents to the parish and order a fixed stipend to the minister.*]

27. [*Surplus of pew rents after payment of stipend, how to be disposed of.*]

28. [*Assignment of stipend to be registered in the registry of the diocese.*]

Appointment  
of clerk.

29. The clerk in every church and chapel erected, built, or acquired or appropriated under the provisions of the said recited Act or this Act shall be annually appointed by the minister of the church or chapel.

Assignment  
of pews to  
church-  
wardens.

30. Proper pews shall be assigned and provided in every such church and chapel for the use of the church or chapelwardens thereof.

**31.** [*Churchwardens may alter pew rents, with consent of bishop, etc.*] **Sect. 31.**

**32.** [*Pews to be let to parishioners only, and not by auction; and rates to be payable in advance.*]

**33.** [*Commissioners may discharge subscribers from payment of pew rents, in proportion to their subscription, and allow them to assign.*]

**34.** If any lands, tenements, or hereditaments which shall have been acquired by the commissioners under the said recited Act and this Act, whether by gift or otherwise, shall happen to remain unconsecrated at the end of the term of ten years therein mentioned, or at any other determination of any commission granted by his Majesty under the said recited Act or this Act, such unconsecrated lands, tenements, and hereditaments shall be immediately vested in his Majesty, his heirs and successors, to be applied to the uses, intents, and purposes for which they were acquired, under the direction of his Majesty in Council; unless or until any other provision respecting the same shall be made by authority of Parliament.

Disposal of lands acquired by commissioners, and remaining unconsecrated.

The "term of ten years therein mentioned" was the term for which the commission was originally appointed under the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 8; a section which is now repealed.

**35.** [*Repealed by Statute Law Revision Act, 1873.*]

**36.** All such parishes and extra-parochial places as shall be required by the commissioners for executing the said recited Act and this Act shall furnish lands for enlarging such existing churchyards or burial grounds, or for making such additional churchyards or burial grounds, as the commissioners may deem necessary to be enlarged or set out under the provisions of this Act; and as soon as the commissioners shall have fixed upon any parish or extra-parochial place, as being one in which it is necessary that the churchyard or burial ground should be enlarged, or that a new burial ground should be made under the provisions of this Act, they shall give notice to the churchwardens thereof, by causing such notice to be left at their respective

Parishes and extra-parochial places to furnish lands, when required by commissioners, for burial grounds.

**Sect. 36.**

places of abode, of their intention to enlarge such churchyard or burial ground, or to set out a new burial ground, and of the extent of ground which will be required for any such purpose, and for making a proper access and approach thereto, and of the part of the parish or extra-parochial place within which the same is required to be provided; and the said churchwardens shall, within the space of fourteen days, call a meeting of the vestry of the parish or extra-parochial place, or the persons possessing under any Act or Acts of Parliament the powers of vestry of the parish or extra-parochial place, for the purpose of taking all such measures as may be necessary for providing such additional churchyard or burial ground and approach thereto as aforesaid; and in case such parish or extra-parochial place shall not be able to provide the same without purchase, then the vestry or the persons possessing as aforesaid the powers of vestry shall and are hereby required forthwith to proceed to treat for a piece of ground and approach thereto, according to such notice, but shall not conclude any bargain for the same without the approbation of the commissioners.

The Church Building Act, 1822 (3 Geo. 4, c. 72), s. 26, contains further provisions for parishes acquiring burial grounds or additional burial grounds, but as a vestry cannot now enforce a church rate, the charging of which was their only means of borrowing money for the purchase of land for a church burial ground, the provisions of this section are now practically obsolete.

Powers of Acts as to purchasing lands, etc., for building churches, extended to purchase of lands for burial grounds.

**37.** All the powers and provisions of the said recited Act or of this Act, which authorise or relate to the grant, sale, conveyance, purchase, and re-sale of any lands, tenements, or hereditaments from or in the name of or on behalf of his Majesty, or from any bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors and administrators, cestuique trusts, infants, lunatics, idiots, femes covert, or any other person or persons whomsoever, to or by the said commissioners, for the purpose of building any additional churches or chapels, or the issuing, advancing, levying, or raising, or borrowing or taking up at interest of any money for any such purpose, shall be and are hereby declared to be extended to and be applicable in all respects,

mutatis mutandis for the grant, sale, conveyance, purchase, or re-sale of any lands, tenements, or hereditaments which may be necessary for enlarging any churchyard or burial ground, or for making any new burial ground and approaches thereto, under the provisions of this Act, and for the issuing, advancing, levying, and raising, or borrowing and taking up at interest of any money which may be required for any of those purposes, and for repaying the same by instalments or otherwise, in like manner as if all such powers and provisions had been fully repeated and re-enacted in this Act.

See note to s. 36, *supra*.

**38.** Any piece or parcel of land or ground which shall under the provisions of this Act be added to any existing churchyard or burial ground, or be appropriated and set apart as and for a new burial ground, shall be, as soon as conveniently may be, consecrated for the burial of the dead according to the usage of the United Church of England and Ireland, and shall for ever thereafter be used as and for an additional burial ground; and the freehold of the land which shall be so consecrated shall, from and after the consecration thereof, vest in the person or persons in whom the freehold of the ancient churchyard or burial ground of any such parish or chapelry where the same may be situated shall from time to time be vested.

**Sect. 37.**

Land added to existing, or set apart for new, burial ground shall be consecrated and held with the old burial ground.

**39.** It shall be lawful for the said commissioners if they should think fit, to alter, repair, pull down, and rebuild, or order or direct to be altered, repaired, pulled down, and rebuilt, the walls or fences of any existing churchyard or burial ground of any parish or chapelry, and to fence off with walls or otherwise any additional or new burial ground to be set out or provided by virtue of this Act; and also to stop up and discontinue, or alter or vary, or order to be stopped up and discontinued, or altered or varied, any entrance or gate leading into any churchyard or burial ground, and the paths, footways, and passages into, through, or over the same, as to them may appear useless and unnecessary, or as they shall think fit to alter or vary; provided that the same be done with the consent of any two justices of the peace of the county, city, town, or place

Commissioners may alter and repair, etc., fences of churchyards, and turn footpaths, etc.

**Sect. 39.** where any such entrance, gate, path, or passage shall be stopped up or altered; and on notice being given in the manner and form prescribed by an Act passed in the fifty-fifth year of the reign of his present Majesty, intituled "An Act to amend an Act of the Thirteenth Year of his present Majesty, for the Amendment and Preservation of the Public Highways, in so far as the same relates to notice of Appeal against turning or diverting a Public Highway, and to extend the provisions of the same Act to the stopping up of unnecessary roads."

55 Geo. 3,  
c. 68.

No appeal lies from an order of the commissioners duly made under this section (*Reg. v. Stock* (1838), 8 A. & E. 405; 3 N. & P. 420; 1 W. W. & H. 394).

The notice of stopping up useless ways in a churchyard must be given before making an order of the commissioners; and an order made and consented to by two justices before notice, and confirmed at sessions, is bad (*Reg. v. Arkwright* (1848), 12 Q. B. 960; 13 Jur. 300; 18 L. J. Q. B. 26).

The Act 55 Geo. 3, c. 68, which is repealed by the Highway Act, 1835 (5 & 6 Will. 4, c. 50), contained the following provision:

2. . . . Provided that in the several cases before mentioned a notice in the form or to the effect of Sched. (A.) to this Act annexed, shall be affixed in legible characters at the place and by the side of the said highway, bridleway, or footway from whence the same is directed to be turned, diverted, or stopped up, and also inserted in one or more newspaper or newspapers, published or generally circulated in the county where the parish, township, or place in which the highway, bridleway, or footway so ordered to be diverted and turned or stopped up (as the case may be) shall lie (or in case no such newspaper shall be so published or circulated in such county, then in any newspaper or newspapers published or circulated in the nearest adjoining county) for three successive weeks after the making of such order; and a like notice shall be affixed to the door of the church or chapel of every parish or township in which such highway, bridleway, or footway so ordered to be diverted, turned, or stopped up, or any part thereof, shall lie, on three successive Sundays subsequent to the making of such order.

Schedule to which the Act 55 Geo. 3, c. 68, refers:

#### SCHEDULE (A.).

##### FORM OF NOTICE.

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_ last an order signed by J. W. and T. H., two of his Majesty's justices of the peace, in and for the county of \_\_\_\_\_ for [if the order be for turning, diverting, and stopping up, etc., here so state it, and describe the road ordered to be turned, diverted, and stopped up. If the order be for stopping up a useless road, here so state it, and describe the road ordered to be stopped up] and that the said order will be lodged with the

clerk of the peace for the said county at the general quarter sessions of the peace to be holden at \_\_\_\_\_ in and for the said county on the day of \_\_\_\_\_ next, and also that the said order will, at the said quarter sessions, be confirmed and enrolled, unless, upon an appeal against the same to be then made, it be otherwise determined.

Sect. 39.

NOTE.

40. When any parish shall be desirous of extending and increasing the accommodation in the parish church, and it shall be found necessary or expedient to that end to take down the existing church, and to rebuild the same on the same site, or on a more convenient site, it shall and may be lawful for the churchwardens of any such parish, with the consent of the vestry or persons possessing the powers of vestry, and with the consent also of the ordinary, patron, incumbent, and lay impropriator, if any such there be, to take down such existing church, and to rebuild the same upon the same or upon a new site; and the said churchwardens are hereby authorised and empowered to borrow and raise, upon the credit of the church rates, or any rates made under the said recited Act or this Act, of any such parish, such sum or sums of money as shall be necessary for defraying the expense or any part of the expense of the taking down and rebuilding such church, and to make rates for the payment of the interest of such sum or sums of money so to be borrowed and raised, and for providing a fund, of not less than the amount of the interest of the sum advanced, for the repayment of the principal thereof, or for repaying such principal in such manner, and at such times, and in such proportions, as shall be agreed upon with the persons advancing any such money: Provided always, that no church shall be so taken down and rebuilt by means of any rates upon any parish, if such proportion of dissents as are in this Act specified in relation to any application to build or to enlarge any church or chapel, either wholly or in part, by means of rates, are signified in writing in manner directed by this Act; and such church, when consecrated, shall be to all intents and purposes the parish church of such parish for the celebration of divine offices and the solemnization of marriages according to the rites and ceremonies of the Church of England: Provided always, that one-half of the additional accommodation which shall be obtained by the rebuilding

Churchwardens, with consent of vestry and ordinary, etc., may take down and rebuild church, and raise money for the purpose on the credit of the church rates, etc., and make rates for repayment thereof;

under certain conditions.

**Sect. 40.** such church shall be set apart for free and open sittings :  
 And provided also, that all persons enjoying any pews or sittings within such church<sup>s</sup> so to be taken down, in virtue of any faculty or prescription, shall have a pew or pews, sitting or sittings, as near as may be in the same situation, and of like dimensions, allotted and set apart for them in such new church ; and that all tombstones, monuments, and monumental inscriptions in such church so to be taken down shall be carefully preserved by the churchwardens, and when the said church shall be rebuilt on the same or a more convenient site the said tombstones, monuments, and monumental inscriptions shall be set up by the said churchwardens, at the charge of the parish, in such new church, as near as circumstances will admit, in the situation from whence they were removed in the said church so to be taken down.

See note to heading of Act, *supra*, p. 468.

Commissioners may pay or advance the parliamentary fees for obtaining special Acts.

**41.** And whereas particular and special circumstances may in certain cases render it necessary, for the more effectual carrying into execution the beneficial purposes of this Act in certain parishes, divisions of parishes, or extra-parochial places, that particular Acts of Parliament should be passed for such parishes, divisions, and places : Be it therefore enacted, that it shall be lawful for the said commissioners, in any such case in which they shall deem it proper, to pay or advance money for the payment of any fees which may become due and be payable in either House of Parliament in respect of the passing of any such Act or Acts of Parliament ; and that such fees may be paid out of any money in the hands of the commissioners arising out of any exchequer bills under the provisions of this Act ; and that such Acts shall in all other respects be considered as public Acts.

Such Acts to be deemed public Acts.

## CHURCH BUILDING ACT, 1822.

(3 GEO. 4, c. 72.)

*An Act to amend and render more effectual Two Acts passed in the Fifty-eighth and Fifty-ninth Years of his late Majesty, for building and promoting the building of additional churches in populous parishes (a).*

[22d July 1822.]

Preamble recited the Church Building Acts, 1818 and 1819 (58 Geo. 3, c. 45 and 59 Geo. 3, c. 134): Repealed by the Statute Law Revision (No. 2) Act, 1890.

[1.] It shall be lawful for the master general and principal officers of his Majesty's ordnance, and also for the comptroller of the barrack department, and also for the principal officers of any other public department, having or holding any messuages or buildings, or any lands, grounds, tenements, or hereditaments for and on behalf of his Majesty for the public use of any such department, by any grant or conveyance signed by the master general or any two of the principal officers of the ordnance department or by any grant or conveyance signed by the comptroller of the barrack department or by any grant or conveyance signed by any one or more of the principal officers of any such other public department as aforesaid, and countersigned, as to all such last-mentioned grants or conveyances, by the Treasury, and it shall also be lawful for any and every body politic, corporate, and collegiate, and corporation aggregate or sole, or for any trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, schools, charitable foundations, or other public institutions, by any grant or conveyance signed by or under the seal of such body or corporation respectively, to give, grant, and convey any messuages, buildings, lands, grounds, tenements, or hereditaments

Ordnance and other public departments, and all corporations, may give messuages, lands, etc., for sites for churches, etc.

(a) This Act is repealed so far as it confers power to enforce payment of any rate (Statute Law Revision Act, 1873). The power to enforce the payment of church rates was abolished by the Compulsory Church Rates Abolition Act, 1868 (31 & 32 Vict. c. 109).



**Sect. 1.** respectively, and if any such messuages, buildings, lands, grounds, tenements, or hereditaments respectively shall be copyhold at the time of any such gift, grant, or conveyance, in any case in which the lord is willing to enfranchise the same, to be used as sites for churches or chapels, or for enlarging sites of churches or chapels, or for church or chapel yards or cemeteries, or for enlarging sites for church or chapel yards or cemeteries, or for parsonages or residences for ecclesiastical persons; and all such gifts, grants, and conveyances shall be made to the commissioners or such other person or persons as shall be specified by the said commissioners under the said recited Acts and this Act, to be used for the purposes thereof; and all such gifts and grants may be made and given without any valuable consideration whatever; and all conveyances and assurances made for carrying any such gifts or grants into effect shall be valid and effectual in the law to all intents and purposes whatsoever, any law, statute, usage, or custom to the contrary thereof in any wise notwithstanding; and all bodies politic, corporate, or collegiate, and all persons whosoever so giving, granting, and conveying as aforesaid are hereby indemnified for or in respect of any such gift, grant, conveyance, or enfranchisement which he, she, or they, or any of them shall respectively make or convey by virtue of or in pursuance and for the purposes of the said recited Acts and this Act.

The powers of the commissioners are now exercised by the Ecclesiastical Commissioners (Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55)).

Enlarged powers for granting lands for sites, etc., are now given by the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), and the Places of Worship Sites Amendment Act, 1882 (45 & 46 Vict. c. 21).

The trustee of a charity is not authorised by any enactment in the Church Building Acts to convey to the commissioners the private chapel of a charitable foundation held by him as a trustee for the benefit of the charity. Such a conveyance was declared to be a breach of trust, and a reconveyance ordered, although the commissioners had caused the chapel to be consecrated as a parish church, and had caused the person who was chaplain of the charity to be appointed the incumbent, as of a parish church, and caused a district to be assigned to it as a parish church under an Order in Council (*Attorney-General v. Manchester (Bishop of)* (1867), L. R. 3 Eq. 436).

2. All grants, conveyances, and assurances, which shall be made under the authority of the said recited Acts or this Act, or either of them, of any messuages, buildings, lands, grounds, tenements, or hereditaments, whether belonging to his Majesty as part of the Duchy of Cornwall or of the Duchy of Lancaster, or otherwise, or to any body or persons whatever, to the said commissioners or any other person or persons under their direction for the purposes of the recited Acts and this Act, may and shall be made according to the form following, or in such other form as the case may require, or as near thereto as the circumstances of the case will admit; videlicet,

**Sect. 2.**  
Form of conveyance.

“ I [*or we, or the corporate title if a corporation*] under the authority and for the purposes of the Church Building Acts, 1818, 1819, and 1822, do hereby freely and voluntarily give to his Majesty's Commissioners [*or to* ] (*as the case may require*), and by these presents freely and voluntarily, and without any valuable consideration, [*if the lands, et cætera, are conveyed for a valuable consideration, leave out the words in italics, and insert, do, for and in consideration of the sum of* , to me, or us, or the paid, hereby under the authority of the several recited Acts, grant, convey, and release to the said ] all [*describing the premises to be conveyed*], and all [*my, or our, or the*] right, title, and interest of [*if a corporation*] to and in the same and every part thereof; to hold to the said and their successors, for the purposes of the said several Acts, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the said several recited Acts. In witness whereof, et cætera.”

And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail, and other estates, rights, titles, trusts, and interests and incumbrances whatsoever.

3. It shall be lawful for the said commissioners under the said recited Acts and this Act to procure and obtain, or require parishes, chapelries, townships, and places to provide and furnish, by all or any of such ways and means

Commissioners may obtain or accept lands required for enlarging or

**Sect. 3.**  
 rebuilding  
 any church,  
 etc., whether  
 contiguous  
 to old site  
 or not.

as are specified in the said recited Acts or either of them or this Act, in relation to sites for additional churches or for church or chapel yards or cemeteries, or to accept and receive as gifts and grants under and for the purposes of the said recited Acts and this Act, and to take grants of to themselves, or direct grants of to be made to any other person specified by them for that purpose, any such land or ground or additional land or ground, as may in the judgment of the said commissioners be required for the enlarging or improving any church or chapel, and also any land or ground which may be required or be convenient for the rebuilding of any church or chapel, whether contiguous or not to the present site thereof; and all the powers, authorities, clauses, and provisions in the said recited Acts or either of them or in this Act contained, in relation to the obtaining or procuring any lands or grounds, or requiring any lands or grounds to be provided or furnished by any parishes or places, for any sites for additional churches, or any other purpose of the said recited Acts, shall extend and be construed to extend to the obtaining, procuring, requiring, accepting, or receiving, under the authority of the said recited Acts or this Act or either of them, any lands or grounds for the purposes aforesaid, as fully and effectually to all intents and purposes as if all such powers and authorities had been given and all such clauses and provisions had been repeated and re-enacted in this Act, as to such lands and grounds.

Where lands  
 are subject  
 to fines on  
 renewals,  
 the value of  
 such fines  
 shall be paid  
 to the cor-  
 poration  
 entitled  
 thereto.

4. In every case in which any lands, tenements, hereditaments, or any interest in or arising out of any lands, tenements, or hereditaments, shall be given up, sold, or surrendered by or taken under the provisions of the said Act or this Act from any body politic or corporate or person, and which any such body politic, corporate, or person shall be entitled to take any fine or fines upon the renewal of any life or lives, or of any lease or leases upon or of any such lands, tenements, or hereditaments, the amount of the value of the interest of such body politic or corporate or person which would arise out of the renewal of such life or lives or lease or leases, if the same were renewed at the time of such lands, tenements, or hereditaments being so given

up, sold, surrendered, or taken, shall be paid to the body politic, corporate, or person entitled thereto, out of the principal sum ascertained under the provisions of the said recited Acts as the value of such lands, tenements, or hereditaments; and the remainder of such principal sum shall be applied under the provisions of the said recited Acts or this Act.

**Sect. 4.**

**8, 6.** [*Repealed by Statute Law Revision Act, 1873.*]

7. It shall be lawful for the said commissioners, and also for any parish or place for which any Act or Acts of Parliament shall have been passed in relation to the building or rebuilding or enlarging any church or chapel, or enlarging or procuring any church or chapel yard or cemetery, to make any grants or loans, or give or grant any other aid or assistance in procuring sites for churches or chapels, or land or ground for such church or chapel yards or cemetery, or any addition thereto, and to use, enforce, and apply all the powers, authorities, claims, regulations, and provisions in the said several Acts and this Act contained for carrying into execution any of the purposes thereof, anything in any Act or Acts relating to any such parish or place to the contrary notwithstanding.

Commissioners and places for which local Acts as to building any church, etc., have been passed, may make grants or loans for procuring land, etc.

8. In every case in which any parish or place shall not have been able or shall not hereafter be able to procure any land or ground for the building or rebuilding any church or chapel, or enlarging any existing church or chapel, or for the making of any yard to any church or chapel, or for any cemetery, or for enlarging any yard to any church or chapel or any cemetery, by reason of the inability of any person or persons, body or bodies, interested in such land or ground or any part thereof, to convey or make a good title to the same, freed and discharged from all incumbrances, or that any such person or persons or body or bodies shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorised and empowered, if upon consideration of all the circumstances of the case they shall think proper, to take such land or ground for any such purpose as aforesaid for any such

Commissioners in certain cases may take land for parishes, and pay the value assessed.

**Sect. 8.**

parish or place; and it shall be lawful for the said commissioners in every such case to use, apply, and put in force all such of the powers and authorities of the said recited Acts or this Act respectively as may be necessary for the assessing, ascertaining, and paying the value and taking and giving possession of any such land or ground; and all the powers and authorities in the said recited Acts and this Act contained, in relation to the assessing or ascertaining and to the paying the sums assessed on the value of and to the taking and giving possession of sites for churches to be built under the said recited Acts and this Act, shall extend and apply to the assessing and ascertaining, and to the paying the sums assessed as the value, and to the taking and giving possession of such land or ground, as fully and effectually to all intents and purposes as if the same were severally and separately repeated and re-enacted for the purposes aforesaid; anything in the said recited Acts or either of them or this Act to the contrary notwithstanding.

Apportionment of quit or other reserved rents.

9. Whenever any quit, chief, or other rent or rentcharge, either for term of years, or for life or lives, or in fee, shall be reserved upon or payable out of any lands, tenements, or hereditaments, part of which may be given, sold, or taken under the provisions of the said recited Acts or this Act, for the purposes thereof respectively, and difficulties may arise as to the apportioning such rents, and exonerating the portions of any such lands, tenements, or hereditaments so given, sold, or taken for any claim in respect of such rents, and as to the effectually charging the remainder of such lands, tenements, or hereditaments with the remainder of such rent, it shall be lawful for the public or corporate body or trustees or other persons giving or selling any such portion of any such lands, tenements, or hereditaments, or from whom the same may be taken under the provisions of the said recited Acts or this Act, to apportion any such rent, with the consent and concurrence of the said commissioners; and the lands, tenements, and hereditaments used and applied for the purposes of the said Acts or this Act shall in every such case be wholly exonerated from any such rents or any part thereof, but the remaining part of such lands, tenements, or hereditaments shall not be thereby discharged from the remaining part of the rent

fixed by any such apportionment, and the rent so apportioned shall in every such case be deemed the entire rent upon the remaining part of such lands, tenements, and hereditaments; and all remedies by distress, entry, action, or otherwise, which might have been used and applied for the recovery of the original entire rent shall be used, enforced, and applied for the recovery of the rent fixed by such apportionment.

**Sect. 9.**

10, 11. [*Repealed by Statute Law Revision Act, 1873.*]

12. It shall be lawful for the said commissioners, in every case in which any parish or place shall be divided, under the provisions of the said recited Acts, into district parishes or places for ecclesiastical purposes, with distinct district churches for each of such divisions, to order and direct, with the consent of the bishop of the diocese, that all or any proportion of the fees, dues, and emoluments arising and accruing from the publication of banns and celebration of marriages, and from churchings and burials, and the making, opening, or using any catacombs, vaults, or ground for burials, in all or any the several districts and divisions of such parish or extra-parochial place, shall remain with, and continue to belong to, and to be received by or for and on account of, and to the use of, and to be accounted for, wholly or in part, as the case may require, to the incumbent of the original church or chapel, anything in the said recited Acts or either of them or in this Act contained to the contrary notwithstanding; and every such order shall be registered in the registry of the diocese, and a duplicate copy thereof deposited and kept in the respective chests of the churches and chapels respectively of such parish or place: Provided always, that it shall be lawful for the commissioners, with such consent as aforesaid, at any time within five years after the making of any such original order or direction, to annul or in any manner to alter any such order or direction, or the appropriation made thereby; and such new order or direction or alteration, when made, shall be registered in manner aforesaid.

Commissioners may, in case of division into district parishes, direct that all or any part of the fees for marriages and burials, etc., shall continue to belong to the incumbent of original church of the parish.

13. [*In cases in which the rectorial tithes, etc., shall be surrendered by impropriators, etc., for the purpose of con-*

**Sect. 13.** *verting vicarages into rectories the commissioners shall direct the same to be done accordingly.]*

**14.** [*Sinecure rector may release part of rectorial glebe, etc., and retain the remainder in fee simple, for the purpose of converting any vicarage into a rectory by the commissioners.]*

Bodies politic, etc., may give up rights of patronage, and endowments and emoluments, to enable the commissioners to convert churches into district parish churches.

**15.** It shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femmes coverts, or other person or persons, and to and for all femmes covert who are or shall be possessed of or entitled to or interested in their own right, and for every other person whomsoever who shall be possessed of or entitled to or interested in any right of patronage or of presentation or appointment to any benefice, donative, perpetual curacy, or of any spiritual person to any church or chapel, or the performance of any ecclesiastical duties in any church or chapel, or for the trustees of any endowments or emoluments for the use of any church or chapel, or the incumbent thereof, or spiritual person serving the same, to surrender any such right of patronage, presentation or appointment, endowments or emoluments, or to enter into or make any agreement relating thereto with the said commissioners and the bishop of the diocese, and to attach any contiguous division of any parish or place, with consent of the patron and incumbent of the parish or place, to any such chapel, for the purpose of better enabling the said commissioners to convert any such church or chapel into the church or parochial chapel or chapel of ease of a district parish or chapelry, and to convert any chapelries or other divisions into districts or separate parishes for ecclesiastical purposes, anything contained in any Act or Acts of Parliament, or in any deed or deeds, or any trusts relating thereto, respectively to the contrary notwithstanding.

The surrenderee of the patronage may be lay or spiritual (Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 15).

**16.** It shall be lawful for the said commissioners, and **Sect. 16.** they are hereby empowered, with the consent of the ordinary and the patron and of the incumbent of the parish for the time being, or, in case of the refusal of any incumbent, then with the consent of the ordinary upon the next avoidance, to convert any district chapelry made under the provisions of the said recited Acts into a separate and distinct parish for ecclesiastical purposes, or into a district parish under the said Acts, in any case in which a suitable house of residence, and such maintenance as the said commissioners shall deem competent, can be procured and established for the use of the minister of such separate and distinct or district parish so to be made, and his successors, and in which a compensation shall be provided, to the satisfaction of the commissioners and the then incumbent of the parish, for all fees, oblations, offerings, and other ecclesiastical dues which may by such conversion be transferred to the minister of such separate and distinct or district parish so to be made; and every such conversion shall be made under the seal of the said commissioners, and registered in the registry of the diocese in which the parish shall be locally situate, and enrolled in the High Court of Chancery, and duplicate [*sic*] thereof shall be lodged in the chest of the original parish church and in the church or chapel of the separate and distinct or district parish.

Commissioners may, with consent of ordinary, etc., convert district chapelries into separate or district parishes, where suitable residences, etc., can be obtained for incumbents and fees transferred to them and compensated for.

District chapelries are formed under the provisions of the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 16; separate and distinct parishes for ecclesiastical purposes, under the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 16; and district parishes under s. 21 of that Act.

**17.** [*Where marriages are allowed to be celebrated in district chapelries, the banns of marriage shall be published in the chapels of the districts.*]

**18.** All Acts of Parliament, laws, and customs relating to publishing banns of marriage, and to marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all extra-parochial places, and to all divisions and districts of any extra-parochial places, in and for which any churches or chapels shall be built or appropriated under the pro-

All Acts, etc., relating to publishing banns of marriage and to marriages, etc., to apply to extra-parochial



**Sect. 18.**

places for which churches, etc., are provided, etc.

visions of the said recited Acts or this Act, and to the churches and chapels thereof, and to the ecclesiastical persons having the cure of souls therein, or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes.

19. [*When banns may be published and marriages celebrated in any churches and chapels the bishop of the diocese to certify the same.—Marriages not to be invalid for want of such certificate, if had in the churches authorised by the Acts.*]

20. [*All chapels belonging to parishes, with or without districts assigned, to be repaired by the parishioners at large, in the same manner as the church of the parish.*]

21. [*Repealed by Statute Law Revision Act, 1873.*]

22. [*Commissioners may apportion glebe, tithes, etc., or make permanent charge thereon, for benefit of persons serving any chapel in the parish.*]

23. [*Commissioners may, with consent of owners, transfer pew rights from existing churches to new churches, etc., of divisions, for the purpose of making free seats.—No greater right to be given on the transfer of pews.*]

24. [*Regulation as to letting of pews.*]

25. [*For avoidance of pew leases.*]

Commissioners may authorise parishes to procure and buy additional burial grounds, etc.

26. It shall be lawful for the said commissioners to authorise and empower any parish, chapelry, township, or extra-parochial place which shall be desirous of procuring a burial ground, or adding to any existing church or chapel yard or cemetery, to procure and purchase any such land or ground as may in the opinion of the commissioners be sufficient and properly situated for a church or chapel yard or burial ground, or as an addition to any existing church or chapel yard or cemetery (whether such land or ground shall be situated within the parish or place for the use of which the same shall be intended), and to make, raise, levy, and collect rates for purchase thereof, or for the repayment

with interest of any money borrowed for the making such purchase, at such times and in such proportions as shall be agreed upon with the person or persons advancing any such money, and approved of by the said commissioners; and the churchwardens or chapelwardens or persons authorised under the said recited Acts to make rates for any of the purposes of the said recited Acts of any such parish, chapelry, township, or extra-parochial place, may and shall in every such case use and exercise all the powers and authorities in the said recited Acts for the purposes of making and completing such purchases, and also all the powers and authorities in the said recited Acts specified as to making, raising, and levying any rates for any of the purposes of the said recited Acts; and when any such land or ground so purchased shall be situate out of the bounds of the parish or place for which the same is intended, the same shall after consecration become and be deemed part of such parish or place, anything in any Act, law, or custom to the contrary notwithstanding.

Sect. 28.

See note to heading of Act, *supra*, p. 489.

The freehold of every burial ground of which the commissioners accept a conveyance under this or any of the Church Building Acts, is by the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 13, *post*, vested, after consecration, in the incumbent of the church to which such burial ground shall belong.

A resolution passed at a vestry meeting convened for the purpose of expressing to the commissioners the desire of the parish to acquire additional land for enlarging the churchyard, but which resolution had been passed by a majority of the meeting, when a poll, which had been demanded by the dissentient minority, was refused, was held not to legally express the desire of the parish; and the order of the commissioners founded thereon, and all that had been done under that order, was declared illegal and void (*White v. Steele* (1862), 12 C. B. (N.S.) 383; 8 Jur. (N.S.) 1177; 31 L. J. C. P. 265; 6 L. T. (N.S.) 686).

27. [*Repealed by Statute Law Revision Act, 1873.*]

28. [*Recital.*] No deed of gift or grant, security, contract, agreement, deed, or conveyance, or other instrument made for any of the purposes in the said recited Acts mentioned, or for any other of the purposes or under any of the provisions in the said recited Acts or either of them, or of this Act, or for the carrying into execution any of the powers, authorities, regulations, purposes, or provisions

Deeds of gift, etc., for purposes of the Act not to be subject to stamp duties.

**Sect. 28.** thereof, or therein mentioned respectively, shall be subject to any of the duties upon stamped vellum, parchment, or paper; anything in any Act or Acts of Parliament to the contrary notwithstanding.

Title of commissioners to sites not to be questioned after five years.

**29.** From and after the expiration of five years after the transfer or conveyance of any messuages, lands, grounds, tenements, or hereditaments to the said commissioners, or to any person or persons for the use of any parish or place, as a site for any church or chapel, or any church or chapel yard or cemetery, whether such transfer or conveyance shall have been by gift or grant or upon or in pursuance of any sale or purchase under the provisions of the said recited Acts or this Act, although no church or chapel shall have been before the expiration of the said five years erected or built and consecrated upon such site, the said messuages, lands, grounds, tenements, or hereditaments shall become and be and remain absolutely vested in such commissioners, or the person or persons to whom the same was conveyed, for the purposes of the said Acts and this Act, free from all demands or claims of any body politic or corporate or person or persons whatever, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.

The provisions of this section are by the Consecration of Churchyards Act, 1867 (30 & 31 Vict. c. 133), s. 7, made applicable to lands granted for an addition to a churchyard under that Act.

**30.** [*Repealed by Statute Law Revision Act, 1873.*]

**31.** [*Appointment of ecclesiastical persons to serve new churches or chapels built by aid from commissioners in certain cases to belong to the diocesan.*]

Commissioners may, under any special circumstances, to be recorded in their proceedings, apply their

**32.** [*Recital.*] It shall be lawful for the said commissioners, in any case in which they shall, under the special circumstances of any parish or place which shall not be within any of the provisions of the said recited Acts or this Act, deem it expedient, and they are hereby authorised and empowered to use, exercise, and put in execution all or any of the provisions of the said recited Acts or this Act relating to

the procuring or taking of any land or ground for the purpose of procuring for any such parish or place, or of aiding in the procuring for any such parish or place, any land or ground for any of the purposes of the said recited Acts or this Act, or for the purpose of carrying into execution any of the provisions of the said recited Acts or this Act with respect to the division or consolidation of any parish or district: Provided nevertheless, that the commissioners shall in every such case enter in their proceedings the nature of the special grounds and circumstances under which they shall deem it expedient so to act.

**Sect. 32.**

powers to parishes not within the provisions of the Acts.

33. [*Recital.*] It shall be lawful for the said commissioners to make any grant or grants in relation or confirm any grant or grants heretofore made for any church or chapel in relation to which any trusts have been created by any Act or Acts of Parliament, or any deed or deeds, or instrument of consecration, which may not in all respects concur with the provisions of the said recited Acts or this Act, and to declare at the time of making or confirming any such grant that any such trusts shall notwithstanding remain and continue in full force: Provided always, that the commissioners shall, in any such case, enter in their proceedings the special grounds upon which every such grant has been made and confirmed; and in every such case such trusts shall remain and continue in full force; anything in the said recited Acts or this Act, or in the said trusts and regulations, to the contrary notwithstanding.

Commissioners may make grants for churches as to which trusts have been created.

34. In every case in which any grant shall have been or shall be made of any land or ground, for any of the purposes of the said recited Acts or this Act, as a gift, or without any pecuniary consideration being paid for the same, and in which the commissioners shall determine not to apply such land or ground to any of the purposes of the said recited Acts or this Act, it shall be lawful for the said commissioners, and they are hereby authorised and empowered, to exchange any such land or ground for any other land or ground which may, in the judgment of the said commissioners, be more eligible for the purpose for which the same was given; or, with the consent of the grantor or grantors thereof, or their heirs or successors,

Land acquired for purposes of the Acts and not used, may be exchanged or applied to other ecclesiastical purposes, or reconveyed to grantor, etc.

**Sect. 34.** to apply such land or ground to any other ecclesiastical purposes, either as glebe or otherwise for the use of the incumbent of the parish or place, or for the purpose of any parochial or charitable school, or any other charitable or public purpose relating to any such parish or place; or to reconvey, without requiring, taking, or receiving any pecuniary consideration for such reconveyance, any such land or ground, or any part thereof, in case only a part of any such land or ground shall have been applied to the purposes of the said recited Acts or this Act, to the grantor or grantors thereof, or their heirs or successors; anything in the said recited Acts or this Act to the contrary notwithstanding.

The commissioners were empowered by the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 51, to re-sell lands granted to them which were not required for the purposes for which they were granted.

This Act not to affect the provisions of certain Acts relating to particular parishes.

**35.** Provided always, that nothing in this Act contained shall extend or be construed to extend to repeal or alter, vary or affect, any powers, authorities, clauses, or provisions contained in any Act or Acts of Parliament passed in the last session of Parliament, or which may be passed in this present session of Parliament, relating to any particular parish or place, or to authorise or empower the commissioners under the said recited Acts or this Act to make or enforce any order, direction, or regulation under the provisions of the said recited Acts or this Act, so as to alter or affect any such powers or authorities as aforesaid, or otherwise contrary to any clause or provision contained in any such Act or Acts of Parliament relating to any particular parish or place; and that all the powers, authorities, clauses, regulations, and provisions in such local Acts contained shall remain in full force, and be used, enforced, and applied, in the same manner and by the same persons as if this Act had not passed; anything in this Act to the contrary notwithstanding.

Saving as to ecclesiastical laws and rights of bishops, etc.

**36.** Provided always, that neither this Act nor the said recited Acts, nor anything therein or herein contained, nor any act, matter, or thing done by or under the authority of the same, or of the commissioners under the said recited

Acts or this Act, shall extend to invalidate or avoid any ecclesiastical law or constitution of the Church of England, or to destroy any of the rights or powers belonging to any bishop of any diocese, or any archdeacon, chancellor, or official. Sect. 36.

37. Every bishop of any diocese, and every archdeacon, chancellor, and official respectively, may at all times hereafter visit, institute, and exercise ecclesiastical jurisdiction in all the parishes to be erected or divided by virtue or in pursuance of this Act, and in every division or district into which any parish may be divided under the provisions of the said recited Acts or this Act, and in relation to every church and chapel within the same, as amply as they or any of them may do now therein, and in such manner as in any other parishes or places within his or their dioceses or jurisdictions respectively. Bishops, etc., may exercise ecclesiastical jurisdiction in new and divided parishes.

38. [Repealed by Statute Law Revision Act, 1873.]

### CHURCH BUILDING ACT, 1824.

(5 GEO. 4, c. 103.)

*An Act to make further Provision, and to amend and render more effectual Three Acts passed in the Fifty-eighth and Fifty-ninth Years of his late Majesty, and in the Third Year of his present Majesty, for building and promoting the building of additional Churches in populous Parishes.*  
[24th June 1824.]

Preamble recited the Church Building Acts, 1818 (58 Geo. 3, c. 46); 1819 (59 Geo. 3, c. 134); and 1822 (3 Geo. 4, c. 72). Repealed by Statute Law Revision (No. 2) Act, 1890.

1—4. [Repealed by Statute Law Revision Act, 1873.]

5. [Recital that in many places there is insufficient accommodation for parishioners in the churches, and that there may be persons belonging to the Church desirous of building or purchasing churches or chapels for the performance therein of Church of England services.] Whenever any twelve or Bishops may consent to the building or purchase of an additional church by

**Sect. 5.**

private subscription in any parish upon certificate of twelve or more householders that there is not accommodation for more than one-fourth of the inhabitants, etc., and that they are willing to provide additional accommodation.

more substantial householders of any parish, township, or extra-parochial place shall certify in writing to the bishop of the diocese within which such parish, chapelry, township, or extra-parochial place shall be situate that there is not accommodation for more than one-fourth of the inhabitants thereof for the attendance upon divine service according to the rites of the Church of England, and that they or some of them, either by themselves or with the assistance of other persons belonging to the Church of England, are desirous of raising by private subscription such sum as may be necessary for building or purchasing a church or chapel, or any building or buildings to be used as a church or chapel for the performance of the said service, and to provide out of pew rents of such church or chapel a competent stipend for the spiritual person who may officiate therein, and for a clerk thereof, and for all other expenses incident to the performance of divine service, and for maintaining the said church or chapel, and the said bishop shall be satisfied of the several particulars contained in such application, it shall be lawful for such bishop, if he shall think fit, to signify his consent to the building or purchasing such church or chapel, as the case may be, according to such plan, and upon such site as shall be submitted to and approved by him for that purpose.

A cemetery may be acquired with the church or chapel. See ss. 14, 15, *infra*.

Subscribers of £50 to elect three life trustees for the management of the church, and nomination of minister for a limited period.

6. The several and respective persons proposing to build or purchase any such church or chapel, or any such building as aforesaid, and their assigns, respectively subscribing for that purpose sums of not less than fifty pounds each, shall elect three trustees from amongst themselves, for the management and general regulations of the temporal affairs of such church and chapel, and for the nomination to the bishop, for a limited period, of a spiritual person to serve the same; and such trustees shall be called life trustees of such church or chapel, and shall continue such trustees, so long as any spiritual person nominated by them under the provisions of this Act shall serve such church or chapel.

A church was built by subscription raised in accordance with this Act, and trustees were appointed, of whom all died but one. There

was also a surviving subscriber who had not been a trustee. He did not then know that there was a surviving trustee, and called in due form a meeting of subscribers. The surviving trustee did not attend it; the subscriber did, and elected himself a trustee. He pursued the same course after becoming aware of the death of the last trustee. After each election of himself as trustee he nominated a clerk:—*Held*, that he had not under this Act any title to make such nomination, which, therefore, conferred no title to admission (*Fowler v. Bishop of Gloucester*; *Allen v. Same* (1869), L. R. 4 C. P. 668; 6 H. L. 219).

Sect. 6.

NOTE.

7. In case any of the persons first appointed life trustees of any such church or chapel shall during the period above mentioned happen to die, or shall signify to the other life trustees his resignation of such trust, it shall be lawful for the majority of the persons who have subscribed towards the building or purchasing such church or chapel sums not less than fifty pounds each, and being owners or renters of pews in the same, who shall be present at any meeting to be called for that purpose, and which meeting any one or more of such trustees are hereby authorised and required to call and appoint, upon fourteen days notice at the least being affixed to the door of such church or chapel, upon the two Sundays next preceding the day on which such meeting is intended to be held, from time to time to nominate and appoint, by writing under their hands, any other person having subscribed a sum not less than fifty pounds, and being an owner or renter of a pew in such church or chapel, and a member of the Church of England, a life trustee in the place of the life trustee so dying or resigning; and every such new life trustee shall in every respect be vested with such and the like powers and authorities, to all intents and purposes, as the person to whose place he may be nominated and appointed as aforesaid.

Nomination of new trustees on death or resignation of life trustees

8. If the number of persons subscribing to build or purchase such church or chapel shall not exceed three, such person or persons shall be and be deemed to be the life trustee or life trustees of such church or chapel under the provisions of this Act, and shall have, use, and exercise all such and the like powers and authorities, to all intents and purposes, as any such life trustees as aforesaid, chosen under the provisions of this Act, may use and exercise; and in case of the death or resignation of any such life

If subscribers do not exceed three they shall be deemed the life trustees, and may appoint successors.



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trustee, the person nominated by him, being a member of the Church of England, by his last will and testament, or by any instrument signed by him, shall be a life trustee in his place.

Bishop may consent as aforesaid upon joint application of persons willing to subscribe one-half or more, and parishioners willing to raise the remainder on the credit of the rates.

9. In any case in which application shall be made to the bishop of any diocese for his consent to the building or purchasing any church or chapel, or buildings to be used as a church or chapel, in any parish, chapelry, township, or extra-parochial place situate within the said diocese, for the purpose aforesaid, by any person or persons belonging to the Church of England, who may be willing to subscribe one-half part at the least of the money necessary for building or purchasing the same, jointly with the parishioners of such place, who may be willing to raise the remainder of the money by rates, or to raise and borrow such sum upon the credit of the rates of such place, and the said bishop shall be satisfied of the several particulars contained in such application, it shall be lawful for such bishop, if he shall think fit, to signify his consent thereunto.

Application to bishop shall state certain particulars as to services and free seats.

10. Provided always, that every application which shall be made under the provisions of this Act to the bishop of any diocese shall state that the church or chapel is to be appropriated to the performance of divine service according to the rites of the Church of England, and shall offer to set apart such number or proportion of free seats as is required by the said recited Acts in cases in which churches or chapels are built or purchased under the provisions of the said recited Acts with any money advanced by the commissioners under the said recited Acts, and shall also offer to provide out of the pew rents arising from the remaining part of the seats of such church or chapel a competent salary for the spiritual person who may officiate therein, and for all other expenses incident to the performance of such divine service, and for maintaining the said church or chapel: Provided also, that no pew rents shall be taken, nor any service performed in such church or chapel, whether built or purchased by subscription only, or jointly by subscription and by rates, before the same shall have been duly consecrated, and a duplicate copy of such application,

with the assent of the bishop of the diocese to the same, **Sect. 10.**  
shall be deposited in such church or chapel.

11. The persons or parishioners of any parish or place as aforesaid, making such application to the bishop, shall in every such case, at the time of making the same, give notice in writing thereof to the patron and incumbent of the church of the parish, chapelry, township, or extra-parochial place in which it is proposed to build or purchase any such church or chapel, in order to afford to such patron or incumbent the opportunity of laying before the bishop any statement in writing relating thereto; and the said bishop shall not signify his consent to such application within three calendar months from the time when he shall have received the same, together with a certificate that the said notice has been given.

Notice of application to bishop to be given to patron and incumbent of parish church.

12. The life trustee or trustees of any such church or chapel which shall be built or purchased by private subscription may nominate for the first two turns which shall occur after the consecration of the church or chapel, or for any number of turns which may occur during the space of forty years after the same, to the bishop of the diocese, for his approbation and licence, a spiritual person to serve the same; and all subsequent nomination shall be in the incumbent of the parish or extra-parochial place in which such church or chapel shall be built or purchased; unless in case of such chapel being made a district church as hereinafter mentioned, in which case such subsequent nomination shall be in the patron of the church of the original parish; and in case of any neglect of any trustee or trustees patron or incumbent respectively to make such nomination the same shall lapse, as in the case of actual benefices; and if all the subscribers entitled to elect trustees shall die before such nominations shall have been made, or such forty years shall have elapsed as aforesaid, then and in every such case the nomination shall be made by the incumbent during such period: Provided also, that if all such subscribers shall die, so that no such election of any trustee can be made, and any one of the trustees for the time shall die or vacate, then and in every such case the incumbent for the time being shall be and become a trustee,

Life trustees to nominate minister for the first two turns, or for any number of turns which may occur in forty years. Subsequent nominations to be in incumbent of parish unless the church is made a district church, and then in patron, etc.

**Sect. 12.** to use and exercise all powers and authorities given to trustees under the provisions of this Act.

See note to s. 6, *supra*, p. 504.

If church is built in part by rates, incumbent or patron shall have first and subsequent nominations.

**13.** Provided always, that in any case in which any such church or chapel shall be built or purchased in part by means of any rates to be raised in any parish, chapelry, township, or extra-parochial place, the first and subsequent nominations of the minister of such church or chapel shall be in the incumbent of the church of the original parish in which the same shall be built or purchased, except in case of such church or chapel being made a district church, when the same shall vest in the patron as aforesaid.

Church and ground, etc., shall vest in such persons as are specified in the sentence of consecration, who shall be a corporation.

**14.** From and after the completion of every such church or chapel, the land, ground, and scite whereon the same shall be built, with the cemetery thereto belonging, if any, and which land, ground, and scite shall be specified and described in the sentence of consecration of the church or chapel, shall be and the same are hereby declared to be vested in such person or persons and their successors for ever, by such name and style, as shall be specified in the sentence of consecration of the church or chapel; and such person or persons shall in every such case have perpetual succession in the name and style specified in the sentence of consecration, and shall hold the lands, grounds, and scites so vested in them as bodies corporate, by such name and style, without incurring or being subjected to any of the penalties or forfeitures of the statute of mortmain, or of any other law or statute whatsoever, to the use, intent, and purpose that every such church or chapel, with the cemetery to the same, if any, shall, when consecrated, be for ever thereafter set apart and dedicated to the service of Almighty God as a place of divine worship, according to the liturgy and usages of the United Church of England and Ireland as by law established, and be subject to the bishop of the diocese as such.

Life trustees or church-wardens may

**15.** It shall be lawful for the life trustees or church-wardens respectively of any such church or chapel, and

their successors, and they are hereby authorised and empowered, to sell and dispose of the vaults or burial places under any such church or chapel, and of vaults or burial grounds in the cemetery or yard of the church or chapel, if there shall be any cemetery or burial ground thereto; and such life trustees or churchwardens respectively are hereby empowered and required to pay to the incumbent of the parish such dues or sums as such incumbent would be entitled to and have of vaults or burial places of a like description in the church of the parish, and shall, after making such payments, invest or lay out the remainder of the moneys thence arising in some public funds, stocks, or securities, from time to time, and also from time to time in like manner to lay out the interest, dividends, or proceeds of such public funds, stocks, or securities, or such part thereof as shall not be applied under the provisions of this Act, in life funds, stocks, or public securities; and such life trustees or churchwardens shall, out of such interest, dividends, or proceeds, from time to time make good any deficiencies, if any shall arise, in the payment of the stipends or salaries of the minister or clerk of the church or chapel, or any other payments or incidental expenses to be paid from the produce of the rents of pews or seats, by reason of the rents of pews not being adequate to the payment of such stipends, salaries, or expenses; and in the next place shall apply such interest, dividends, and proceeds in the maintaining, supporting, and repairing the church or chapel: Provided always, that if by reason of any such funds, or if the produce of pew rents being more than sufficient for all the purposes to which the same are made applicable under the provisions of this Act, there shall be a surplus of annual income, then and in any such case such surplus shall be applied in subsequent years to the purposes to which pew rents are applicable; and the pew rents shall in every such case be reduced rateably and in equal proportions, or a larger number of free seats shall be opened, as the bishop of the diocese shall order and direct.

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dispose of vaults, etc., and after paying the dues to which incumbent of parish is entitled, the remainder shall form a fund for supplying deficiencies in salaries of minister and clerk, and for repairs.

Application of surplus income.

16. It shall be lawful for the said commissioners, with consent of a majority of the subscribers entitled to elect the Church may by consent be made

**Sect. 16.** trustees of any such church or chapel, and of the bishop, and of the patron and incumbent, to make any such church or chapel a district church or chapel, under the provisions of the said recited Acts and this Act.

a district church.

The "said commissioners" are the Church Building Commissioners, whose powers are transferred to the Ecclesiastical Commissioners by the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55).

At expiration of forty years church shall become a district church without consent, if parish be divided, etc., otherwise shall become a parochial chapel.

**17.** At the expiration of the forty years all such churches and chapels shall become in all respects district churches, without any consent being obtained for that purpose, if his Majesty in Council shall have made a division of the parish or extra-parochial place for that purpose, in manner directed by the said recited Acts, or shall remain parochial chapels if no such division and appropriation of any such churches or chapels to a district shall have been made.

The forty years mentioned in this section is the term mentioned in a. 12, *supra*, during which the nomination of the incumbent remains in the trustees.

Provision of recited Acts, as to salary of minister. pew rents, and free seats to apply to churches and chapels built by subscription, etc., under this Act.

**18.** All the powers, authorities, provisions, regulations, clauses, penalties, and forfeitures in the said recited Acts or any or either of them contained, for the securing, recovering, and paying the salaries of spiritual persons, and for the recovery of pew rents, and all regulations as to the number or proportions of free seats in churches or chapels built or purchased wholly or in part with money advanced by the commissioners under the provisions of the said recited Acts, shall extend and be in full force, and be applied in all cases of any such churches or chapels as aforesaid being built or purchased by subscription or by rates under the provisions of this Act, as fully and effectually, to all intents and purposes, as if the same and each and every of them were severally and separately re-enacted and repeated in this Act.

**19.** [*Repealed by Statute Law Revision Act, 1873.*]

## CHURCH BUILDING ACT, 1827.

(7 &amp; 8 GEO. 4, c. 72.)

*An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes.*

[2d July 1827.]

Preamble recited the Church Building Acts, 1818 (58 Geo. 3, c. 45); 1819 (59 Geo. 3, c. 134); 1822 (3 Geo. 4, c. 72); and 1824 (5 Geo. 4, c. 103). Repealed by the Statute Law Revision (No. 2) Act, 1890.

1. [*Repealed by Statute Law Revision Act, 1873.*]

2. It shall be lawful for the said commissioners to divide any parish or extra-parochial place into such ecclesiastical districts in manner provided by the said Act passed in the fifty-eighth year of the reign of his late Majesty King George the Third; and if there shall not be any burial ground within such district, then and in every such case, until a burial ground shall be provided, the bodies of persons dying within such district may be interred in the cemetery of the parish church in all respects as if such division had not taken place.

Commissioners may divide parishes, and extra-parochial places into districts under 58 Geo. 3, c. 45.

The "said Act" is the Church Building Act, 1818 (58 Geo. 3, c. 45), which, by s. 16, provides for the division of a parish into distinct and separate parishes for all ecclesiastical purposes; and by s. 21, for the division of a parish or extra-parochial place into ecclesiastical districts.

The "said commissioners" are the Church Building Commissioners who were originally appointed under 58 Geo. 3, c. 45, s. 8, for a term of only ten years, but whose appointment was continued by s. 1 of this Act for another ten years. Their powers are now transferred to the Ecclesiastical Commissioners by the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55).

It has been decided that where any district, which has become a new parish by virtue of the New Parishes Act, 1856 (19 & 20 Vict. c. 104), has a burial ground of its own, the inhabitants of such district lose the right of being buried in the churchyard of the mother parish (*Hughes v. Lloyd* (1888), 22 Q. B. D. 157).

As this section only applies in terms to ecclesiastical districts formed under the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 21, it is doubtful what would be the rights of the inhabitants of a district formed in some other manner, *e.g.*, a district or consolidated chapelry,

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which has no burial ground of its own. Such a district in nearly all cases becomes a new parish by virtue of the New Parishes Act, 1856 (19 & 20 Vict. c. 104), and that Act makes no discrimination between such parishes having burial grounds and those not having burial grounds. The decision in *Hughes v. Lloyd, supra*, if carried to its logical conclusion, would therefore deprive the inhabitants of all new parishes, except those provided for in this section, of the right to be buried in the churchyard of the mother parish, whether there was a burial ground in the new parish or not; and as many new parishes are created without any provision being first made for their having burial grounds of their own, a great number of persons would thus, during the time at all events that must necessarily elapse before a burial ground can be provided for the new parish, be without any place in which they could be buried as of right, and so might be compelled to pay any fee for burial that the incumbent of a neighbouring parish might choose to demand. See *Nevill v. Bridger* (1874), L. R. 9 Ex. 214; 43 L. J. Ex. 147; 30 L. T. 690; 22 W. R. 740. A possible escape from this difficulty may be found in the provisions of the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 25, which provides that the existing powers, privileges, and authorities contained in the Church Building Acts up to that date (including the Act of 7 & 8 Geo. 4, c. 72), or any of them, may be used and applied for the purpose of carrying that Act (8 & 9 Vict. c. 70), or any of the said Acts respectively into execution, *mutatis mutandis*, so far as the same are applicable thereto. It may be urged that the privilege conferred by this Act (7 & 8 Geo. 4, c. 72), being for the purpose of carrying into execution the provisions of the Church Building Act, 1818 (58 Geo. 3, c. 45), may be applied for the purpose of carrying into execution any of the other Church Building Acts, so as that where any division of a parish into districts has been made under any of the Church Building Acts, the inhabitants of such district will retain the privilege of being buried in the cemetery of the mother parish church until a separate burial ground has been provided for their district, in the same way as the inhabitants of a district formed under 58 Geo. 3, c. 45, s. 21, are allowed to be so buried by virtue of the provisions of this Act. If this view were taken, some point would be given to the remark of the judge in *Bliss v. Woods* (1831), 3 Hag. Ec. 521, who, in alluding to this Act, said, "the burial in the original churchyard was a matter of necessity."

**3. [Repealed by Statute Law Revision Act, 1873.]**

## CHURCH BUILDING ACT, 1831.

(1 &amp; 2 WILL. 4, c. 38.)

*An Act to amend and render more effectual an Act passed in the seventh and eighth years of the reign of his late Majesty, intituled "An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes."* [15th October 1831.]

Preamble recited the Church Buildings Acts, 1818 (58 Geo. 3, c. 45); 1819 (59 Geo. 3, c. 134); 1822 (3 Geo. 4, c. 72); 1824 (5 Geo. 4, c. 103), s. 12; 1827 (8 Geo. 4, c. 72), s. 3. Repealed by Statute Law Revision (No. 2) Act, 1890.

## 1. [Repealed by Statute Law Revision Act, 1874.]

2. In all parishes and extra-parochial places the population of which, according to the returns then last made in pursuance of any Act or Acts of Parliament, shall amount to two thousand persons, and in which the existing churches or chapels do not afford accommodation for more than one-third of the inhabitants for the attendance upon divine service according to the rites of the United Church of England and Ireland, and also in all parishes and extra-parochial places in which three hundred persons, whatever may be the amount of the whole population, shall be resident upwards of two miles from any such existing church or chapel and within one mile of the site upon which a new church or chapel is proposed to be erected under the provisions of this Act, and where any person or persons belonging to the Church of England shall declare his, her, or their intention of building a church or chapel, or of purchasing any building fit in all respects to be used as a church or chapel for the performance of divine service as aforesaid, or where a church or chapel has already been built on the faith of the said recited Act of the seventh and eighth years of the reign of King George the Fourth, in such a situation within the said parish or place as shall be adapted to the convenience of that part of the inhabitants for whom such additional accommodation is necessary, and where such person or persons shall declare their intention

In parishes, etc., where population amounts to 2,000 and existing church does not accommodate above one-third of inhabitants, or where 300 persons reside more than two miles from such church, and within one mile of proposed church, if any person declares his intention of building a church and providing for the endowment and repairs thereof, the bishop may declare the right of nominating a minister to



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 such church  
 to be in  
 such person  
 or in trustees  
 appointed  
 by him.

of providing a sum of one thousand pounds at the least by way of endowment for such church or chapel, to be secured upon lands or money in the funds in addition to the pew rents and profits arising from the said church or chapel, in case any such rents shall be taken, and shall also declare his, her, or their intention of providing a fund for the repairs of the said church or chapel, in manner following, (namely,) one sum, equal in amount to five pounds upon every one hundred pounds of the original cost of erecting and fitting up or of purchasing such chapel or building, to be secured upon lands or money in the funds as aforesaid, and also a further sum to be reserved annually out of the pew rents of the said church or chapel, after the rate of five pounds for every one hundred pounds of the sum so to be provided as last aforesaid, and also if such person or persons shall further declare his, her, or their intention of setting apart or appropriating one-third at least of the sittings in such church or chapel to be and continue for ever as free sittings, it shall be lawful for the bishop of the diocese in which such parish or extra-parochial place is locally situate, if he shall see fit, and he is hereby authorised, to declare by writing under his hand and seal that the right of nominating a minister to such church or chapel, when so built or purchased and endowed as aforesaid, and when the conditions hereinbefore mentioned shall have been performed, shall for ever thereafter be in the person or persons so building or purchasing and endowing the same, his, her, or their heirs and assigns, or in such trustee or trustees, being members of the United Church of England and Ireland, as he, she, or they shall appoint, and in such future trustee or trustees, being members of the United Church of England and Ireland, as shall from time to time be nominated by writing under the hand or hands of the trustees or trustee for the time being of the said church or chapel, or the major part of them, or chosen in such manner as may in the first instance be agreed upon by the persons building and endowing such church or chapel, or the major part of them, and the bishop of the diocese, in writing under their hands and seals, in the place and stead of any one or more who shall from time to time die, resign, or become incapable of acting, or in such ecclesiastical

person or body corporate, and his or their successors, as the persons so applying shall at the time of application to the bishop nominate and appoint: Provided always, that if it should happen that all the trustees of the said church or chapel for the time being should die without having appointed any other trustee or trustees as their successors, then and in such case it shall be lawful for the incumbent for the time being of the said church or chapel, with consent of the bishop of the diocese, to appoint a requisite number of trustees to supply the vacancies; and provided also, that the patronage of any such church or chapel shall not at any time be vested in or held in trust by more than five persons, except in cases where such patronage shall pass by descent to coparceners, or by the custom of gavelkind to more than five, or shall be conveyed by will or deed to more than five children, grandchildren, nephews, or nieces of the grantor or devisor: Provided also, that no church or chapel built for the accommodation of three hundred persons resident upwards of two miles from the existing parochial church or chapel shall be placed nearer than two miles from such existing church or chapel.

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Proviso for appointment of new trustees where all trustees die without appointing successors.

Patronage not to be vested in more than five persons except by descent.

New church built for residents at a distance not to be within two miles of existing church.

The right of nominating to a church or chapel under the statute cannot be acquired unless the conditions prescribed by this section are strictly complied with. The conditions are conditions precedent (*Williams v. Brown* (1835), 1 Curt. 53).

3. [*Previous to nomination, a certificate of the facts to be produced to the bishop.*]

4. [*Pews may be let.*]

5. [*In all other cases where a church or chapel has been built and endowed to the satisfaction of the commissioners, they may, with the consent of the bishop, declare the right of nominating to be in the person so building and endowing.—Limitation as to the number of persons in whom the patronage shall vest.*]

6. [*Application required to be made to commissioners previous to their declaring the right of nomination.—Copies of such application to be sent to the patron and incumbent of the parish.*]

Amended by the Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 2.

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7. [*Persons intending to build and endow to give notice to the patron and incumbent, stating particulars.—If the patron within two months after such notice shall bind himself to build and endow to the satisfaction of the bishop of the diocese, he shall be preferred.*]

Amended by the Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 2.

8. [*Preference to be given to enlargement of churches in certain cases.*]

9. [*As soon as churches or chapels are finished and consecrated, the right of nomination to be vested in the persons building and endowing.*]

Commissioners or bishop to assign districts to additional churches and determine as to the performance of certain offices therein.

10. The said commissioners, with consent of the bishop of the diocese, in all such cases as shall come before them, and the bishop of the diocese alone in all such other cases as are hereinbefore mentioned, and also with the consent of the patron and incumbent in all other cases in which additional churches or chapels shall have been already built and endowed, shall, with all convenient speed, proceed to assign a particular district to every such church or chapel, except where from special circumstances they shall deem it not advisable to assign a district; and such district shall be under the immediate care of the minister who shall have been duly licensed to serve such church or chapel, so far only as regards the visitation of the sick and other pastoral duties, and shall not be deemed a district for any other purpose whatsoever: Provided always, that it shall be lawful for the said commissioners, with the consent of the bishop of the diocese, in all such cases as shall come before the said commissioners, and for the said bishop alone in all other cases, to determine whether baptisms, churchings, or burials shall be solemnized or performed in any such church or chapel, or not; and the said commissioners or bishop respectively, as the case may be, shall cause a description of the boundaries of the district assigned by them to such church or chapel to be registered in the registry of the bishop of the diocese, and shall also cause their order and direction in writing, as to all offices to be performed in any such church or chapel, to be registered in the registry of the diocese.

Description of boundaries of the district, and order as to offices to be registered in diocesan registry. ...]

The "said commissioners" are the Church Building Commissioners, whose powers are transferred to the Ecclesiastical Commissioners by the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55).

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NOTE.

The bishop may license such church for publication of banns and solemnization of marriages therein, under the Marriage Act, 1836 (6 & 7 Will. 4, c. 85). If such church, having a district assigned to it, is licensed by the Ecclesiastical Commissioners with the consent of the bishop of the diocese, for publication of banns, solemnization of marriages, churchings, and baptisms under s. 11 of the New Parishes Act, 1856 (19 & 20 Vict. c. 104), the district becomes a new parish under that Act. (See note to 19 & 20 Vict. c. 104, s. 14, *post.*)

By the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 18, the Ecclesiastical Commissioners may order the fees, etc., for marriages, to belong, after the next avoidance of the parish church, to the incumbent of the new church.

11. Provided always, that in cases where the district to be provided for any church or chapel erected or to be erected shall extend into more parishes than one, all the conditions hereby directed to be complied with shall be observed with respect to the patrons and incumbents of each parish any part of which shall be comprised in such district, and the patron or patrons, incumbent or incumbents, of each such parish shall be entitled to such and the same notices, and such and the same rights and privileges, as if such district were solely situate in one only of such parishes.

Provision where districts extend beyond one parish.

12. Every such church or chapel to which such particular district has been assigned as aforesaid shall be deemed a perpetual curacy, and shall be considered in law as a benefice presentative, so far only as that the licence thereto shall operate in the same manner as institution to any such benefice, and shall render voidable other livings in like manner as institution to any such benefice; and the spiritual person serving the same shall be deemed the incumbent thereof; and such incumbents shall have perpetual succession, and shall be and are hereby declared to be bodies politic and corporate, and may receive and take such endowments in lands or tithes, or both, or any such augmentation, as shall be granted to them or their successors; and all such incumbents, and all persons presenting or appointing any such incumbents, shall respectively be subject to all jurisdictions and laws, ecclesiastical or

Churches or chapels to be deemed perpetual curacies, etc.

Status, powers, and duties of incumbents.

**Sect. 12.** common, and to all provisions, regulations, penalties, and forfeitures contained in any Acts of Parliament in force relating thereto respectively; and in case of any failure or neglect in not presenting or nominating any such incumbent for the space of six months, such presentation or appointment shall thereupon lapse, as in cases of actual benefices; and all churches or chapels built or appropriated under the provisions of this Act shall be subject to the jurisdiction of the bishop of the diocese and the archdeacon of the archdeaconry within which the same shall be locally situated.

Lapse of presentation.

Jurisdiction of bishop and archdeacon.

No district church to be held with original parish church or any other benefice.

**13.** No such church or chapel to which a particular district has been assigned as aforesaid shall be tenable or holden with the original church of the parish, chapelry, or place in which such church or chapel has been built, or with any other benefice having cure of souls: Provided always, that no person holding any benefice shall exempt from residence upon such benefice in respect of any duty which he may perform in any such church or chapel to which no district shall have been assigned as aforesaid.

The laws relating to baptisms, burials, etc., to apply to the churches in which their performance is authorised.

Application of fees.

**14.** Where the said commissioners or bishop of the diocese respectively, as the case may be, shall have determined that baptisms, churchings, or burials shall be solemnized or performed in any such churches or chapels, all Acts of Parliament, laws, and customs relating to the performance of such offices of the church shall apply to such churches or chapels as to the performances of such offices respectively: Provided always, that all fees, dues, offerings, and other emoluments, which of right or custom belong to the incumbent or clerk of any parish, chapelry, or place in which such church or chapel shall have been or shall be erected, shall be received by or for and on account of such incumbent and clerk respectively, and be paid over to them, anything in the said recited Acts contained to the contrary notwithstanding, except such portion of the said fees, dues, offerings, or other emoluments as the said commissioners, with the consents of the bishop of the diocese, the patron, and the said incumbent respectively, in those cases which shall come before the said commissioners, by order under their common seal, or the

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bishop of the diocese alone, with the consent of the patron and incumbent, in all such other cases as hereinbefore mentioned, by order under his hand and seal, shall assign to the minister of such church or chapel; and every such instrument of assignment shall be registered in the registry of the bishop of the diocese within which such church or chapel shall be locally situated.

For compensation to incumbent of original parish for fees transferred, see the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 4, *post*.

“Chapelry” in this section means a parochial chapelry, strictly so called, not merely a district recently treated as a parochial chapelry. A parochial chapelry must have been coeval with the parish—that is, immemorial; but in the absence of evidence to the contrary, its existence may be inferred from modern usage, like other ancient rights and exemptions (*Carr v. Mostyn* (1850), 5 Exch. 69; 19 L. J. Exch. 249).

When parishioners, dwelling within a chapelry, contribute to the repairs of the parish church, it is strong, but not conclusive, evidence that the chapel is a chapel of ease to the inhabitants of the parish, and not a separate and distinct chapelry (*Dent v. Rob* (1834), 1 Y & C. Exch. 1).

15. [*To whom copies of applications shall be sent in case the patronage of any place shall be in the Crown.*]

16. Two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this Act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the renters of pews in such church or chapel; and the two persons, when so elected churchwardens, shall appear, and be admitted and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay over the residue thereof which shall remain after the annual reservation aforesaid for repairs, and after paying the salary of the clerk, beadles, pew-openers, and other expenses incident to the performance of divine service, to the minister of the said church or chapel, to be taken by the said minister and for his own use by way of stipend, in addition to the yearly interest or dividends which shall arise from the landed or funded endowment hereinbefore mentioned; and

Appointment and duties of churchwardens.

**Sect. 16.**

the said churchwardens shall also do, perform, and execute all lawful acts, matters, and things, necessary and requisite for and concerning the repairs, management, good order, and decency of behaviour to be kept and observed in the church or chapel by the congregation thereof; and the persons so to be appointed or chosen churchwardens shall continue in their said office until others shall be chosen in like manner in their stead; and all the persons so chosen churchwardens are hereby authorised and empowered, in case of non-payment of the rents of the seats and pews of the church or chapel for which they shall be appointed, to enter upon and sell the same, or else to sue for and recover the same by action or actions for such rents, in the names of "The Churchwardens of the Church or Chapel of" (describing the same), as the case shall or may require, without specifying the Christian or surname of such churchwardens; and no such action shall abate by reason of the death or removal or going out of office of any such churchwarden.

No one is eligible for appointment as churchwarden under this section who is not an inhabitant of the parish (*Reg. v. Cree* (1892), 67 L. T. 556; 57 J. P. 72).

Land conveyed for the site of any church under this Act to become absolutely vested in trustees, etc., after five years.

Where judgment in ejectment is obtained against such trustees, etc., they shall pay the costs and value of the land when conveyed to them.

17. From and after the expiration of five years after the transfer or conveyance of any messuages, lands, grounds, tenements, or hereditaments to any person or persons, as a site for any church or chapel, or any church or chapel yard or cemetery, under the provisions of this Act, the said messuages, lands, grounds, tenements, or hereditaments shall become and be and remain absolutely vested in the person or persons to whom the same are conveyed, his, her, or their heirs and assigns: Provided that any person to whom any messuages, lands, grounds, tenements, or hereditaments shall have been conveyed for the purposes of this Act shall, within two months after any judgment in ejectment shall have been obtained against him for such messuages, lands, grounds, tenements, or hereditaments, tender or pay to the lessor of the plaintiff in such ejectment his costs on such ejectment, and such sum of money as a jury shall in the manner hereinafter mentioned find to have been the value of the said messuages, lands, grounds, tene-

ments, or hereditaments at the time when such messuages, lands, grounds, tenements, or hereditaments were conveyed for the purposes of this Act.

**Sect. 17.**

18. The jury who shall try any ejectment brought for the recovery of any messuages, lands, grounds, tenements, or hereditaments which have been conveyed for the purposes of this Act, or if judgment on ejectment shall have been obtained by default, or for not confessing lease, entry, and ouster, a jury under a writ of enquiry (which writ of enquiry the court in which such action shall be brought is hereby empowered to issue), shall ascertain the value of such messuages, lands, grounds, tenements, or hereditaments at the time when they were conveyed for the purposes of this Act; and the value so found shall be endorsed by the judge who tried the ejectment on the postea, or shall be returned to the court by the sheriff or under sheriff or other person before whom any writ of enquiry shall be executed under this Act, in the same manner as other inquests are returned on writs of enquiry.

The jury who try any such ejectment, or a jury under a writ of enquiry, shall ascertain the value of the land.

19. [*Nominations to be sealed and registered.*]

10. [*Declaring the validity of deeds sealed before the passing of this Act.*]

21. And whereas the said commissioners acting under the powers of the said recited Act of the fifty-ninth year of the reign of King George the Third have executed deeds or instruments for the purpose of discharging subscribers towards building churches or chapels, and also subscribers towards purchasing sites on which churches or chapels have been built, from the payment of pew rents in such churches or chapels: And whereas doubts have arisen whether the powers of the said Act extend to cases of persons subscribing towards purchasing sites for churches or chapels: Be it enacted, that it shall be lawful for the said commissioners, in any case in which they shall deem it expedient, to make and execute any deed or instrument, or to confirm any deed or instrument already made by them, discharging any person or persons subscribing towards either of the purposes aforesaid, either wholly or in part, from the payment of pew

Commissioners may discharge from pew rents subscribers towards purchasing sites for churches as



**Sect. 21.** rents in the said church or chapel for the term or period and in the manner in the said Act mentioned; and all such deeds or instruments, whether hereafter to be made, or already made and afterwards confirmed in pursuance of the power hereby given, shall, as from the date and execution of such deed or instrument, be good and valid to all intents and purposes whatsoever; anything in the said recited Acts or any of them to the contrary notwithstanding.

well as subscribers towards building churches.

Churches may be subjected to provisions of recited Acts, or of this Act, as to pews, etc.

**22.** It shall be lawful for the said commissioners, if they shall think fit, in all such cases as shall come before the said commissioners, to order and direct that such church or chapel shall be subject to all the provisions of the said recited Acts or this Act as to apportionment of accommodation in pews and free sittings, and as to pew rents.

Where any person is willing to endow an existing chapel of ease, it may be separated from the parish church, and the district belonging thereto made a distinct parish.

**23.** And whereas in certain parishes of large extent there exist chapels of ease at a considerable distance from the parish church, having chapelries, townships, or districts belonging or supposed to belong thereto: Be it therefore enacted, that when any person or persons shall be willing to endow any such chapel with such a provision, secured upon land, money in the funds, tithes, or other hereditaments, as shall in the opinion of the bishop of the diocese be sufficient to ensure a competent stipend to the minister of such chapel, it shall be lawful for the bishop, with the consent of the patron and incumbent of the parish, by writing under his hand and seal, to declare that such chapel, when so endowed, shall thenceforth be separate from and independent of the parish church, and that the chapelry, township, or district belonging or supposed to belong thereto shall be thenceforth a separate and distinct parish for all spiritual purposes.

This section is amplified and explained by the Church Building Act, 1838 (1 & 2 Vict. c. 107), s. 7.

Agreement as to the future right of nomination to such chapel.

**24.** It shall be lawful for the patron, with consent of the incumbent, to make any agreement with the bishop of the diocese touching the future right of nominating a minister to such chapel, such agreement in writing to be signed and sealed by the bishop, patron, and incumbent; and the right

of nominating a minister to such chapel shall for ever thereafter be exercised according to the terms of such agreement: Provided always, that if the incumbent of any parish wherein such chapel of ease is situate shall refuse his consent to such separation or agreement, then the declaration of separation, and the deed of agreement touching the right of nominating a minister to such chapel, when signed and sealed by the bishop and patron, shall be good and valid in law, and shall take effect immediately after the next avoidance of the parish church, and not before; and every declaration of separation, and every deed of agreement, made under the provisions of this Act, shall be registered in the registry of the diocese.

**Sect. 24.**

Separation and agreement, when to take effect.

25. Two fit and proper persons shall be chosen yearly at the usual time of choosing parish officers, out of the inhabitants of such new parish so constituted, being members of the Established Church, to act as churchwardens of the said parish, one to be chosen by the minister, and one by the persons exercising the powers of vestry in the said new parish; and the persons so chosen shall be duly admitted and sworn, and shall do all things pertaining to the office of churchwardens as to ecclesiastical matters, in the said new parish, in like manner as though the same had been of old time a separate and distinct parish.

Churchwardens to be chosen for such new parish.

26. In all cases wherein the consent of the patron is required, under the provisions of this Act or of any of the Acts hereinbefore recited, the consent of bishops, deans, and chapters, or other ecclesiastical corporations or colleges, acting as patrons of benefices in right of their bishoprics, dignities, or corporate capacities, shall be as good and valid, for all the purposes of the said Acts, as though such consent had been given by a patron in fee simple.

Consent of ecclesiastical corporations as patrons.

27. Nothing in this Act contained shall extend or be construed to extend to repeal, alter, vary, or affect any powers, authorities, clauses, or provisions contained in any Act or Acts passed relating to any particular parish or place, so far as relates to any church or chapel already

This Act not to affect any local Act with respect to churches already built, unless

**Sect. 27.** built, unless with the consent of the patron and incumbent and of the select vestry or persons exercising the powers of vestry in such parish or place, or contained in any deed or deeds of trust executed under the sanction of the bishop or of any diocese for the regulation of any church or chapel already built.

with the consent of the patron, etc., or any existing deed of trust.

**Extent of Act.** 28. All the provisions of this Act shall extend and be construed to extend to the *Isle of Man*, and to the islands of Guernsey, Jersey, Alderney, and Sark.

As to application of Act to Isle of Man, see note to the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 30, *post*, p. 568.

## CHURCH BUILDING ACT, 1832.

(2 & 3 WILL. 4, c. 61.)

*An Act to render more effectual an Act passed in the Fifty-ninth Year of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes."* [11th July 1832.]

Recital of 59 Geo. 3, c. 134, s. 6.

WHEREAS an Act was passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional churches in populous parishes," whereby it is (amongst other things) enacted, that it should be lawful for the commissioners appointed for the execution of the therein-recited Act, with certain consents in the now-reciting Act mentioned or referred to, to unite and consolidate contiguous parts of parishes and extra-parochial places into a separate and distinct district for all ecclesiastical purposes, and to make grants or loans towards the building of any chapel or chapels in any such district, and to constitute any such district a consolidated chapelry; and that all such chapelries should be deemed to be benefices, and be subject to the jurisdiction of the bishop and archdeacon within whose diocese and archdeaconry the altar of such chapel should be locally situate:

And whereas doubts have arisen touching such jurisdiction in the case of chapels or districts situated wholly or in part within exempt or peculiar jurisdictions: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that every such chapel and district, whether situated wholly or in part within any exempt or peculiar jurisdiction, shall be subject to the jurisdiction of the bishop and archdeacon within the limits of whose diocese and archdeaconry the altar of any such chapel shall be locally situate, in as full and ample a manner as it would be if no part of such chapelry were within some exempt or peculiar jurisdiction; and in every such case all other ecclesiastical jurisdiction over the said chapel and chapelry shall wholly cease, and no other such jurisdiction shall be exercised in the said chapelry, save and except the jurisdiction of the bishop and archdeacon as aforesaid, any law, usage, or custom to the contrary notwithstanding.

Chapels of chapelries consolidated under recited Act if within exempt or peculiar jurisdictions shall be subject to the bishop and archdeacon within whose diocese and archdeaconry the altar is locally situate.

Section 6 of the Church Building Act, 1819, herein recited is, in effect, repealed and replaced by s. 9 of the Church Building Act, 1845 (8 & 9 Vict. c. 70). As the Church Building Acts are to be read together, the provisions of this Act will, no doubt, apply to chapelries consolidated under the Act of 1845, as they did to chapelries consolidated under the Act of 1819.

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## CHURCH BUILDING ACT, 1838.

(1 & 2 Vict. c. 107.)

*An Act to amend and render more effectual the Church Building Acts.* [15th August 1838.]

Preamble recited the Church Building Acts, 1818 to 1832 (58 Geo. 3, c. 45; 59 Geo. 3, c. 134; 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 7 & 8 Geo. 4, c. 72; 1 & 2 Will. 4, c. 38; 2 & 3 Will. 4, c. 61), and 7 Will. 4 & 1 Vict. c. 75 (since repealed). See Statute Law Revision (No. 2) Act, 1890.

1. [To remove doubts as to jurisdiction of bishops in certain cases with respect to the patronage of churches and chapels

**Sect. 1.** *under 1 & 2 Will. 4, c. 38, s. 2. Repealed by Statute Law Revision Act, 1874.]*

Certain notices may be served on patron alone if there be no incumbent.

2. Where notices by the said last-recited Act are required to be sent to or served upon the patron and incumbent, a notice to the patron alone shall be sufficient in those cases where, at the time such notices are required to be sent or served as aforesaid, there shall be no incumbent of the parish in which such church or chapel is built or proposed to be built and endowed under such last-recited Act or this Act, and where such parish shall have remained without an incumbent for the space of twelve months.

The "said last recited Act" is 1 & 2 Will. 4, c. 38, s. 2, which is mentioned in s. 1, *supra*. The notices are those required to be sent by ss. 6, 7 of that Act.

**3—5.** [*Repealed by Statute Law Revision Act, 1874.*]

Form of grant or conveyance of sites for churches and chapels, etc., under 1 & 2 Will. 4, c. 38, or this Act.

6. All grants, conveyances, and assurances of any site for any church or chapel, or any churchyard, under the provisions of the said last-mentioned Act or this Act, in respect of any messuages, buildings, lands, grounds, tenements, or hereditaments, whether belonging to her Majesty, as part of the Duchy of Cornwall or of the Duchy of Lancaster, or otherwise, or to any body or persons whatever, may and shall be made according to the form following, or in such other form as the case may require, or as near thereto as the circumstances of the case will admit; videlicet,

"I [*or we, or the corporate title if a corporation*], under the authority of an Act passed in the first year of the reign of her present Majesty, intituled 'An Act to amend and render more effectual the Church Building Acts,' do hereby freely and voluntarily give to her Majesty's Commissioners for Building New Churches [*or to* ], [*as the case may require*], and by these presents, freely and voluntarily, and without any valuable consideration, [*if the lands, et cetera, are conveyed for a valuable consideration leave out the words in italics, and insert 'do for and in consideration of the sum of* to me, or us, or the paid,'] hereby, under the authority of the said recited Act, grant, convey, and release to the said all [*describing the premises to be conveyed*], and all [*my, or our, or the*] right, title, and

Sect. 6.

interest of [*if a corporation*] to and in the same and every part thereof; to hold to the said and their successors for the purposes of the said Act, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the before-mentioned Act. In witness, et cetera."

And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, interests, and incumbrances whatsoever.

"The last-mentioned Act" is 1 & 2 Will. 4, c. 38.

7. And whereas it is by the said recited Act passed in the first and second years of his late Majesty King William the Fourth, amongst other things, enacted, that in certain parishes of large extent, where there exist chapels of ease at a considerable distance from the parish church, having chapelries, townships, or districts belonging or supposed to belong thereto, when any person or persons should be willing to endow any such chapel with such a provision secured upon land, money in the funds, tithes, or other hereditaments, as should in the opinion of the bishop of the diocese be sufficient to ensure a competent stipend to the minister of such chapel, it should be lawful for the bishop, with certain consents therein mentioned, to declare that such chapel, when so endowed, should thenceforth be separate from and independent of the parish church, and that the chapelry, township, or district belonging or supposed to belong thereto should be thenceforth a separate and distinct parish for all spiritual purposes; and that it should be lawful for the patron, with the consent of the incumbent, to make any agreement with the bishop of the diocese touching the future right of nomination to such chapel, such agreement to take effect in the manner therein mentioned: And whereas doubts may arise as to the extent and meaning of such provisions: Be it therefore enacted, that such provisions shall extend to any churches or chapels, with chapelries, townships, or districts as aforesaid, whether the same were or shall be erected and consecrated before or after the passing of the said last-mentioned Act.

Recited provisions shall extend to churches, etc., erected before or after recited Act.

**Sect. 8.**

Land, parcel of Duchy of Cornwall, may be conveyed for purposes of recited Acts.

8. And whereas doubts are entertained whether, since the Duchy of Cornwall became vested in her Majesty, any lands, grounds, tenements, or hereditaments, parcel of the said duchy, can be granted, conveyed, or enfranchised under the provisions of the herein-before recited Acts for the purposes thereof: Be it therefore enacted, that it shall be lawful for any three or more of the officers of the said duchy, who by virtue of their several offices are or shall be concerned in the general superintendence and management of the revenue and affairs of the said duchy, and duly authorised by her Majesty during the time that the Duchy of Cornwall is not held separately from the Crown by any deed or instrument under their hands and seals in the form prescribed by the said recited Act of the third year of his late Majesty King George the Fourth, or as near thereto as circumstances will permit, to grant, convey, or enfranchise lands, grounds, tenements, or hereditaments for any such purposes of the said recited Acts or any or either of them as are in the said Acts or any or either of them specified in relation to grants to be made by public departments under the said recited Acts.

Powers of 58 Geo. 3, c. 45, shall extend to transfer of land for sites of parsonage houses.

9. All the powers and authorities given and conferred by the said Act passed in the fifty-eighth year of his Majesty King George the Third, intituled "An Act for the building and promoting the building of additional churches in populous parishes," for enabling the bodies politic and persons therein mentioned to convey, and the commissioners to take, land for the sites of churches and chapels, shall extend to the transfer, by sale or exchange only, of land for a site for a house of residence of any incumbent, provided the same do not exceed five acres.

These powers and authorities are contained in ss. 36—50 of the Church Building Act, 1818 (E8 Geo. 3, c. 45).

Commissioners may assign a district to churches and chapels in certain cases.

10. In all cases where a church or chapel has been or shall be hereafter built by subscription, and endowed and subsequently augmented by a grant from Queen Anne's bounty, and where the patronage of such church or chapel shall have been acquired under any of the Acts passed for regulating the distribution of such bounty, it shall be lawful

for the said commissioners, with the consent of the said bishop and the patron and incumbent of the parish, district parish, or district parish in which the said church or chapel may be, to assign a district to such church or chapel, and make the same a district parish; and the patronage of such church or chapel shall not be affected thereby.

Sect. 10.

11. [*Repealed by the Statute Law Revision Act, 1874.*]

12. [*Recital of 58 Geo. 3, c. 45, ss. 16, 21.*] It shall be lawful for her Majesty in Council, where she shall judge fit, on a representation to be made to her by the said commissioners of the expediency of the same, to direct, by an Order in Council, the dividing off from any original parish or extra-parochial place any part or parts thereof, and forming the same into a distinct and separate parish or distinct and separate parishes, or into a district parish or district parishes, either at the same time or at separate times, and to make any extra-parochial place, or any part thereof, a district parish or district chapelry, or part of such district parish or district chapelry, and also at any time to direct the dividing off any such separate and distinct parish or district parish so formed into other distinct and separate or district parish or parishes, or district chapelry or chapelries: Provided always, that all such divisions, and all parishes so divided, shall respectively be under and subject to the like consents and to the same rules and regulations as are provided in the said recited Acts or this Act with respect to distinct and separate parishes and district parishes and district chapelries respectively; and that the nomination to the chapel of a chapelry district so taken from any distinct and separate parish or district parish as aforesaid shall belong to the incumbent of the distinct and separate parish or district parish out of which such district chapelry shall have been taken; and that the sub-division of a district parish shall not take effect during the time of the existing minister of such district church, without his consent.

Any parts of a parish or extra-parochial place may be divided off into distinct and district parishes or district chapelries at the same time, or at separate times, etc.

13. [*Licence of stipendiary curate of district chapelry not to be void by avoidance of parish church, unless revoked by the bishop.*]



**Sect. 14.** **14.** [*The provisions of the Augmentation of Benefices Act, 1831 (1 & 2 Will. 4, c. 45), s. 21, extended, with respect to endowments to chapels of consolidated chapelries.*]

**15.** [*Surrender of rights of patronage permitted for certain purposes. Section 15 of the Church Building Act, 1822 (3 Geo. 4, c. 72), to apply to cases whether the surrenderee be lay or spiritual.*]

Com-  
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sioners, with  
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bishop, etc.,  
may make  
any church  
or chapel the  
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a district  
church or  
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ease, etc.

**16.** It shall be lawful for the said commissioners, with the consent in writing of the bishop of the diocese and of the patron of the parish church, and with the consent also of the vestry or persons possessing the power of vestry, to order and direct, by instrument under their common seal, that any church or chapel in any parish shall become and be and remain the parish church of such parish, in the stead of the ancient parish church; and the said church or chapel so constituted the parish church shall thenceforth become and be and remain, and be taken in law to be, the parish church of such parish, as fully and effectually, for all purposes, and in relation to all rights, emoluments, endowments, dues, privileges, and all other matters and things, civil or ecclesiastical, theretofore belonging to the parish church, or patron or lay impropiator (if any thereof), as if the same had been always the parish church of such parish; and the said commissioners are hereby empowered to authorise and direct the transfer of the endowments, emoluments, or rights of or belonging to the old and existing church of such parish, or to the incumbent for the time being thereof, to any such church or chapel so made and constituted the parish church as aforesaid, and to the incumbent thereof for the time being, and his successors; and it shall be lawful in every such case for any trustees of any such ancient church as aforesaid, or of any rights, emoluments, and endowments of or belonging to any such church or to the incumbent thereof for the time being, and they are hereby required (and indemnified for so doing) to transfer all such rights, emoluments, and endowments, according to the direction of the said commissioners, to such church or chapel so constituted the parish church as aforesaid, or to the incumbent thereof; and immediately

Sect. 16.

from and after any such transfer as aforesaid all tithes or commutations for tithes, moduses, or other compositions for tithes, and all emoluments, dues, fees, offerings, oblations, and other profits and advantages, and all messuages, glebe and other lands, tenements, or hereditaments, rents, sums of money, or real or personal chattels whatsoever, and all rights and privileges whatsoever and wheresoever, wherewith any such ancient church may be endowed, or to which the minister thereof then is or at any time theretofore was or ought to be entitled, shall severally and respectively become and be vested in the minister for the time being of the said church or chapel so made the parish church as aforesaid, and his successors for ever, in as full and ample a manner as the minister of the ancient church might or could have received and enjoyed the same in case such substitution or transfer had not been made; and every such instrument of substitution and transfer shall be registered in the registry of the diocese, and enrolled in the High Court of Chancery; and all Acts of Parliament, laws, and customs, relating to the publishing banns of marriage, and celebration of marriages, christenings, churchings, and burials, and to all ecclesiastical fees, oblations, and offerings, shall apply to every such church or chapel so constituted the parish church as aforesaid, in like manner in every respect as to the former parish church of the said parish; and such former parish church shall from such time be and be deemed to be a district church or a chapel with or without a district, as the said commissioners shall in such case direct: Provided always, that no such instrument of substitution or transfer shall take effect till after the first avoidance of such ancient parish church, unless with the consent in writing of the actual incumbent thereof; in which case such incumbent shall be and is hereby declared to be to all intents and purposes the rector, vicar, or perpetual curate, as the case may be, of the church or chapel so constituted the parish church, instead of rector, vicar, or perpetual curate of the former parish church, without any presentation, institution, induction, collation, or other form of law being had, observed, or required: Provided also, that the chancel (if any) of such former parish church shall continue to be repaired in such manner and by the same

**Sect. 16.** person or persons as are now by law or custom liable to the repairs thereof.

For further provisions on the subject-matter of this section, see the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 1.

By the Church Building Act, 1839 (2 & 3 Vict. c. 49), s. 9, the powers granted by this section of making any chapel or church the parish church, etc., are not to extend to churches or chapels built under this Act or under the Church Building Act, 1831 (1 & 2 Will. 4, c. 38), without the consent of the patron and incumbent.

Incumbent of parish to be thenceforth incumbent of the new parish church; and patron of former parish church to be patron of the new parish church.

**17.** The incumbent of such parish next succeeding after such substitution and transfer as aforesaid shall be and is hereby declared to be the rector, vicar, or perpetual curate, as the case may be, of such church so made the parish church as aforesaid; and the person or persons who for the time being would have had a right of presenting, nominating, or appointing the incumbent to the former parish church, in case such transfer and substitution as aforesaid had not been made, shall thenceforth, in lieu thereof, when any vacancy occurs, have such and the like right of presenting, nominating, or appointing the incumbents of the church so made the parish church as aforesaid, as he, she, or they respectively would have had with respect to the former parish church.

**18.** [*Commissioners may provide for ministers of such churches out of the pew rents—Saving of rights of pew owners.*]

Amended by the New Parishes Acts and Church Building Acts Amendment Act, 1884 (47 & 48 Vict. c. 65), s. 4.

Extent of Act.

**19.** This Act shall extend only to that part of the United Kingdom called England and Wales, *and to the Isle of Man*, and to the Islands of Guernsey, Jersey, Alderney, and Sark.

As to application of Act to Isle of Man, see note to Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 30, *post*, p. 568.

## CHURCH BUILDING ACT, 1840.

(3 &amp; 4 VICT. c. 60.)

*An Act to further amend the Church Building Acts.*

[7th August 1840.]

Preamble recited the Church Building Acts, 1818, 1819, 1822, 1824, 1827, 1831, 1832, 1838, and 1839 (58 Geo. 3, c. 45; 59 Geo. 3, c. 134; 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 7 & 8 Geo. 4, c. 72; 1 & 2 Will. 4, c. 38; 2 & 3 Will. 4, c. 61; 1 & 2 Vict. c. 107; 2 & 3 Vict. c. 49), and the Act now spent (7 Will. 4 & 1 Vict. c. 75).

[1.] It shall be lawful for her Majesty's Commissioners for building new churches to assign a new district chapelry or new district chapelries, under the provisions of the hereinbefore recited Acts, or some or one of them, with such consent and in such manner as is therein required and specified, to any church or chapel situated in a district chapelry which has been or hereafter may be formed under the said recited Acts, or some or one of them, and such new district chapelry or district chapelries may be formed out of a part or parts of one or more such first formed district chapelry or chapelries, with or without any part or parts of the parish or parishes out of which such district chapelry or chapelries may have been formed, and also of any extra-parochial place, or any part thereof; and the right of nomination to the chapel or chapels of such new district chapelry or district chapelries shall belong to and be exercised by the incumbent of the parish out of which such first assigned district chapelry shall have been taken, unless the right of nomination thereto shall be legally vested in some other party or parties, and in that case such right of nomination shall belong to him or them, or to such party or parties as shall be agreed upon by him or them and the said commissioners, with consent of the bishop; and the chapel or chapels of such new district chapelry or district chapelries shall respectively be subject to the provisions and regulations contained in the hereinbefore recited Acts respecting district chapelries.

Commissioners may assign a new district chapelry or new district chapelries out of any district chapelry or chapelries already formed.

2. In any case where, under the hereinbefore recited Acts or either of them, or of this Act, an endowment, grant, or licence in mortmain not necessary in

**Sect. 2.**  
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cases of  
endowment,  
grant, or  
conveyance  
of houses,  
lands, etc.,  
under the  
Church  
Building  
Acts.

conveyance, consisting of or arising out of houses, lands, tithes, advowsons, rentcharges, tenements, or other hereditaments, or consisting of money to be laid out in lands or other hereditaments, is authorised to be made for the purpose of a site for any church or chapel, or churchyard, or parsonage house, or glebe, or for the use or benefit of any church or chapel, or of the incumbent or minister thereof, or for the repairs thereof, such endowment, grant, or conveyance, whether made before or after the passing of this Act, shall be good and valid, without any licence or writ of *ad quod damnum*, the Statutes of Mortmain or any other statute or law to the contrary notwithstanding.

Mortmain  
Acts to apply  
where  
endowment  
exceeds the  
annual value  
of £300.

3. Provided nevertheless, that nothing herein contained shall authorise an exemption from the provisions of the Mortmain Acts, where, in the case of an endowment as aforesaid for the use or benefit of any church or chapel or of the incumbent or minister thereof, such endowment, whether made at one period or at different periods, shall in any one case exceed in the whole the clear annual value of three hundred pounds.

Power to  
determine  
the clear  
annual value  
of such  
endowment.

4. In every case in which it shall be desired to ascertain the clear annual value of such endowment, it shall be lawful for the said commissioners or for the bishop of the diocese to cause such clear annual value to be determined and ascertained by any two persons whom they or he shall appoint for that purpose, by writing under the common seal of the said commissioners, or by writing under the hand of the said bishop, which writing is hereby directed to be afterwards annexed to the instrument by which such endowment shall be effected; and a certificate of such clear annual value, written and endorsed on the instrument by which such endowment shall be effected, and signed by such persons as aforesaid, shall for all the purposes of this Act be conclusive evidence of such clear annual value as aforesaid.

5. *[Commissioners, with consent of the bishop, may, in certain cases, augment the stipend of the incumbent or minister of a church or chapel out of the surplus pew rents.—This power not to be exercised where surplus pew rents*

*have been invested in Government securities to form a fund for building or purchasing a parsonage house, etc.]* **Sec. 5.**

**6.** [*Recital of 58 Geo. 3, c. 45, s. 23.*] If her Majesty in Council, upon the representation of the said commissioners made with the consents of the bishop of the diocese and of the patron and incumbent of the parish church, signified under their respective hands and seals, shall think fit to alter the boundaries of a distinct and separate parish or a district parish or a district chapelry (formed under the hereinbefore mentioned Acts passed in the fifty-eighth and fifty-ninth years of the reign of his late Majesty King George the Third, or either of them), at any time after five years from the time the description of such boundaries has been enrolled in the High Court of Chancery, such Order in Council shall be good and valid in law for the purpose of effecting such alteration, any thing in the said recited Act of the fifty-eighth year of the reign of his late Majesty King George the Third, limiting the power of making such alteration in such boundaries to five years from the time the description of such boundaries has been enrolled in the High Court of Chancery, to the contrary notwithstanding; and such Order in Council shall be . . . registered in manner directed by the said last-mentioned Act.

Boundaries of distinct and separate parishes, or district parishes or district chapelries, may be altered by an Order in Council, on representation by the commissioners, with certain consents.

**7.** If the consent of the incumbent as aforesaid is not obtained to such alteration of boundaries, such order in council on the representation of the said commissioners may be made, and shall be good and valid, with the consents of the bishop of the diocese and the patron aforesaid, though without the consent of such incumbent; provided that such alteration does not take effect until after the next avoidance of the parish church.

Alteration of boundaries not to take effect, without incumbent's consent, until next avoidance.

**8—11.** [*Repealed by Statute Law Revision Act, 1874.*]

**12.** For the purposes of the said recited Acts passed in the first and second years of the reign of his late Majesty King William the Fourth, chapter thirty-eight, and the first and second years of her present Majesty's reign, chapter one hundred and seven, an endowment consisting of houses or lands in fee simple of the value of one thousand

Amount of endowment necessary where the bishop is authorised to grant the patronage

**Sect. 12.** pounds at the least, or an endowment of one thousand pounds at the least vested in houses or lands in fee simple, or an endowment of such a sum vested in houses or lands in fee simple as will with a further investment in the funds amount to one thousand pounds at the least, may be taken in those cases where the bishop of the diocese is authorised, if he sees fit, to grant the perpetual right of nominating a minister in the manner specified in the said recited Acts or either of them; provided that where such endowment consists of houses or lands in fee simple of the value of one thousand pounds at the least, or where such endowment is composed of such a sum vested in the houses or lands in fee simple as will, with a further investment in the funds, amount to one thousand pounds at the least, a certificate shall in each such case be produced to the bishop of the diocese, signed by two architects or surveyors, to the effect that the actual value of such endowment amounts to one thousand pounds at the least.

of a church  
built under  
1 & 2 Will. 4,  
c. 38, and  
1 & 2 Vict.  
c. 107.

**13, 14.** [*Repealed by Statute Law Revision Act, 1874.*]

A perpetual  
rentcharge  
for repairs  
under  
1 & 2 Will. 4,  
c. 38, and  
1 & 2 Vict.  
c. 107, may  
be secured  
on lands, etc.,  
and may  
be assigned  
to the  
incumbent.

**15.** For the purpose of a fund directed or authorised to be secured for the repairs of a church or chapel built and endowed or to be built and endowed under the said last-mentioned Acts or one of them, a perpetual rentcharge, equal in value to the repair fund directed or authorised by the said Acts or either of them to be secured for such purpose, may be made on lands or other hereditaments; and it shall and may be lawful for the incumbent of such church or chapel, so soon as the same has been consecrated, and a particular district assigned thereto, under the said recited Act of the first and second years of his late Majesty King William the Fourth, to accept, take, and hold any such rentcharge upon the trusts and for the intents and purposes for which the same shall have been or hereafter may be given or granted by the person or persons providing the same, in like manner as any such repair fund may now be taken or held by any private trustee or trustees; and it shall and may be lawful for any trustee or trustees of any such repair fund to assign and transfer such rentcharge to such incumbent and his successors, to be held and applied by him or them, or to allow the same to be so applied, upon

the same trusts, intents, and purposes, as the same previously to such assignment and transfer were held by such trustee or trustees.

**Sect. 15.**  
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16. Where a church or chapel has been or shall hereafter be built and endowed, under the provisions of the said last-mentioned Acts or either of them, in any extra-parochial place where there is no incumbent, it shall be sufficient, with respect to the notices required to be sent or served on the patron and incumbent, to send such notices with respect to such extra-parochial place to the bishop of the diocese alone; and such notices, when so sent, shall be deemed to be as good and valid as if the same had been sent to the patron and incumbent.

Where a church, etc., is built in an extra-parochial place, where there is no incumbent, notices may be sent to the bishop.

17. An additional permanent endowment may be at any time made for the use or benefit of any church or chapel, or of the incumbent or minister thereof, which may have been previously built and endowed under the said last-mentioned Acts or either of them; and such additional endowment may consist of houses, lands, tithes, advowsons, rentcharges, tenements, or other hereditaments, or of money in the funds, or of money to be laid out in lands or other hereditaments: Provided always, that nothing herein contained shall be construed to extend to the authorising any such additional endowment, without the same being subject to the provisions of the Mortmain Acts, which shall amount, together with the former endowment or endowments, in any one case to more than the clear yearly value of three hundred pounds.

Additional endowments may be made; but shall not be exempted from the Mortmain Acts, where the clear yearly value of the whole is more than £300.

18. In any case in which the said commissioners, or the bishop of the diocese, as the case may be, shall hereafter grant the patronage of any church or chapel built and endowed or to be built and endowed under the said recited Acts passed in the first and second years of the reign of his late Majesty King William the Fourth and in the first and second years of the reign of her present Majesty, or either of them, and shall hereafter assign a particular district to such church or chapel under the said first-mentioned Act, and shall determine under that Act that the offices of baptisms, churchings, or burials, or some or

Commissioners, with consent of bishop, or bishop alone, may order the fees for ecclesiastical offices to belong, after next avoidance of parish church, to the incumbent of



**Sect. 18.** one of them, shall be performed in such church or chapel, it shall be lawful for the said commissioners, if they think fit, with the consent in writing of the bishop of the diocese, or for the bishop of the diocese alone, as the case may be, to order and direct that all or a portion of the fees arising from the performance of such offices, and from the making, opening, or using any catacombs, vaults, or ground for burials of or belonging to such church or chapel, shall, from and after the next avoidance of the parish church of the parish in which such church or chapel is situated, belong and be paid to the incumbent of such church or chapel for his own use and benefit; and every such order or direction shall be good and valid, anything in the said recited Acts or either of them to the contrary notwithstanding; and every such order and direction shall be registered in the registry of the diocese.

Commis-  
sioners may  
apply land to  
ecclesiastical  
purposes, or  
to parochial  
or charitable  
uses.

**19.** In every case in which any grant shall have been or shall be made of any land or ground to the said commissioners for any of the purposes of the said recited Acts or of any of them, either for a valuable consideration being paid for the same, and in which the said commissioners shall determine to apply a part only of such land or ground to any of the purposes of the said recited Acts or any of them, it shall be lawful for the said commissioners and they are hereby authorised and empowered, with the consent of the grantor or grantors or donor or donors (as the case may be) of such land or ground, or of his, her, or their heirs or successors, (which consent such grantor or grantors or donor or donors, and his, her, or their heirs and successors, whether he, she, or they shall or shall not be under any legal or equitable disability or incapacity whatsoever to give such consent, is and are hereby fully authorised and empowered to give accordingly,) to apply any part of such land or ground which shall not have been or shall not be applied by the said commissioners for the purposes of the said recited Acts, or of any of them, or to any other ecclesiastical purposes, either as glebe or otherwise, for the use of the incumbent or minister of the parish, place, or district in which such land or ground is situate, or for the purpose of any parochial or charitable school or any

other charitable or public purpose relating to any such parish or place. Sect. 19.

A piece of land was in 1846 granted in fee to the church building commissioners under s. 33 of the Church Building Act, 1818, and a church built thereon. The whole of the land was enclosed, and in 1849 the church was consecrated. So much of the land as was not actually occupied by the church was not consecrated. In 1891 the London County Council, under statutory powers, purchased part of the unconsecrated ground, and the purchase money was paid into court under the Lands Clauses Act, 1845 (8 & 9 Vict. c. 18). The purchased land was afterwards conveyed to the county council by the vicar. Upon a summons for payment out:—*Held*, that, notwithstanding the consecration, the ecclesiastical commissioners (as successors of the church building commissioners) had power under this section, with the consent of the original donor of the land, to direct that the purchase money should be applied to any of the purposes mentioned in this section:—*Held*, also, that the payment of part of the principal money remaining due upon a mortgage to the governors of Queen Anne's bounty of the glebe profits and emoluments of the vicarage made by a former vicar to secure the repayment of a loan made to him by the governors for the purchase of a vicarage house, was an ecclesiastical purpose within the meaning of this section (*Ex parte London County Council; Ex parte Christ Church, East Greenwich, Vicar of*, [1896] 1 Ch. 520; 65 L. J. Ch. 331; 74 L. T. 18; 44 W. R. 520).

**20.** [*Repealed by Statute Law Revision Act, 1874.*]

**21.** The provisions contained in an Act passed in the first and second years of the reign of her present Majesty, intituled "An Act to abridge the holding of benefices in plurality, and to make better provision for the residence of the clergy," touching the party or parties who for the purposes of such Act shall be in the cases therein mentioned considered the patron or patrons, and the manner in which the consent of or the execution of any deed or deeds, instrument or instruments by or notice to such patron or patrons shall be given or effected, shall apply to the consent of or the execution of any deed or deeds, instrument or instruments by or notice to such patron or patrons for the purposes of the hereinbefore first-recited Acts or this Act.

The provisions of 1 & 2 Vict. c. 106, as to the parties to be considered patrons, and to the mode of giving consents, to apply to recited Acts and this Act.

**22.** This Act shall extend only to that part of the United Kingdom called England and Wales, and to the Isle of Man, and to the islands of Guernsey, Jersey, Alderney, and Sark.

Extent of Act.

As to application of Act to Isle of Man, see note to Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 30, *post*, p. 568.

## CHURCH BUILDING ACT, 1845.

(8 &amp; 9 VICT. c. 70.)

*An Act for the further Amendment of the Church Building Acts.* [31st July 1845.]

Preamble recited the Church Building Acts, 1818—1844 (58 Geo. 3, c. 45; 59 Geo. 3, c. 134; 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 7 & 8 Geo. 4, c. 72; 1 & 2 Will. 4, c. 38; 2 & 3 Will. 4, c. 61; 7 Will. 4 & 1 Vict. c. 75; 1 & 2 Vict. c. 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60; 7 & 8 Vict. c. 56). See Statute Law Revision Act, 1891.

Substitution in certain cases of new church for old parish church, etc. 3 Geo. 4, c. 72.

[1.] Notwithstanding any limitation or restriction or other thing contained in the Church Building Act, 1822, where a new church has been already built or shall hereafter be built in any parish or district parish, or ancient or parochial chapelry, and where the bishop of the diocese and the patron and incumbent of such parish, district parish, or ancient or parochial chapelry shall at any time certify to her Majesty's commissioners for building new churches that it will be for the convenience of such parish, district parish, or ancient or parochial chapelry that such new church, being duly consecrated, shall be substituted for the old or existing church situate therein, it shall be lawful for the said commissioners, by an instrument under their common seal, with the consents of such bishop, patron, and incumbent, under their hands and seals, to declare that such new church, being duly consecrated, shall be substituted for such old or existing church, and to transfer the endowments, emoluments, or rights belonging to such old or existing church, or to the incumbent or minister thereof, to such new church, and to the incumbent or minister thereof, and his successors; and it shall be lawful in every such case for the trustees (if any) of such old or existing church, or of any rights, emoluments, or endowments belonging thereto, or to the incumbent or minister thereof, and they are hereby required, and indemnified for so doing, to transfer the same according to the direction of the said commissioners; and immediately from and after such transfer all glebe lands, tithes, and other endowments,

Transfer of glebe lands, tithes, and endowments.

**Sect. 1.**

emoluments, fees, and profits, and every matter or thing, whether real or personal, and all rights and privileges, wherewith any such old or existing church is or was at the time of such substitution endowed, or to which the incumbent or minister thereof was or is entitled, shall be vested in and belong to the incumbent or minister for the time being of such new church, and his successors, in as ample a manner as the incumbent or minister of the old or existing church might have enjoyed the same if such transfer had not taken place, and the incumbent or minister of such old or existing church shall thereupon be, to all intents and purposes the rector, vicar, perpetual curate, or minister, as the case may be, of such new church, instead of rector, vicar, perpetual curate, or minister of such old or existing church, without any presentation, institution, induction, collation, or other form of law being had, observed, or required; and such new church shall thereupon have the same rights and privileges as such old or existing church, and such offices of the church as were performed and celebrated in such old or existing church shall be performed and celebrated in such new church, and such new church shall be to all intents and purposes in lieu of the old or existing church; and at any time within six months after the substitution of such new church for the old or existing church the bishop of the diocese may of his own mere motion issue, or, if thereunto required by any person claiming to hold a pew or seat free of rent in such old or existing church by faculty or prescription, shall issue, a commission under his hand and seal, directed to the archdeacon of the archdeaconry in which such old or existing church shall be situate, and to any two incumbents of parishes situate within such archdeaconry, and to any two laymen nominated by the churchwardens of such old or existing church, who are hereby required to nominate for such purpose two fit persons not claiming any such pew or seat as aforesaid; and such commission shall direct the commissioners thereby appointed to inquire into the rights of persons, if any, who claim to hold any such pews or seats as aforesaid; and the said commissioners, or any three or more of them, of whom the said archdeacon shall be one, shall, as soon as conveniently may be, proceed to

Claims of persons to pews in the old church to be investigated; and if proved such persons to have pews in the new church on the same terms as in the old one!

**Sect. 1.** examine into such claims, after giving fourteen days previous notice thereof, by affixing a copy of such commission on the church door of such new church ; and such notice, signed by such archdeacon, shall specify the day and time and place on which such examination is to be made ; and after making an examination into such claims the commissioners so appointed, or the majority of them, shall, under their hands transmit in writing to the said bishop the names and residences of the persons who have substantiated their claims to such pews or seats, and if the said bishop is satisfied therewith he shall assign, under his hand and seal, to such parties respectively, convenient pews or seats in such new church, and such seats so assigned shall be held and enjoyed by the parties entitled to the same in as free and ample a manner as the pews or seats to which they had or would have been entitled in such old or existing church ; and if any party shall find himself aggrieved by the finding of such commission the bishop of the diocese shall have power to afford redress, by allotting to such party seats in such new church, if the justice of the case shall in his judgment require it ; and the old or existing church, if such bishop shall think fit, may thereupon be wholly or partly pulled down, under a faculty to be granted for that purpose ; and the said bishop shall in that case take care that all tombstones, monuments, and monumental inscriptions in such church so pulled down are as far as may be preserved by the churchwardens, at the expense of the parish, or if it shall seem fit to the said bishop the same shall be transferred to the church so substituted as aforesaid, at the expense of the said parish or district parish, or ancient or parochial chapelry, as the case may be : provided that in case such new church shall have been built wholly or in part out of the funds placed at the disposal of her Majesty's said commissioners under the provisions of the hereinbefore recited Acts or any of them, and such transfer shall have been made, rents for the pews or seats in such new church shall only be fixed by her Majesty's said commissioners under the provisions of such Acts for that number of seats therein which shall exceed the number of seats provided in such old or existing church : Provided always, that nothing herein contained shall authorise the substitution

Old church  
may be pulled  
down, etc.

Tombstones,  
etc., to be  
preserved or  
transferred to  
new church.

of any new church in lieu of the old or existing church as aforesaid, when the advowson of or right of nomination to such new church shall belong to any other body or person than to the patron of such old or existing church, without the consents in writing of the patron and incumbent or minister of such new church.

**Sect. 1.**

By the New Parishes Acts and Church Building Acts Amendment Act, 1869 (32 & 33 Vict. c. 94) s. 8, provision may be made for the use or preservation of the site of a church pulled down in pursuance of this section.

2. The rector, vicar, perpetual curate, or minister of such old or existing church next succeeding after such transfer, and his successors, shall be and is hereby declared to be the rector, vicar, perpetual curate, or minister, as the case may be, of such new church; and the body or person who for the time being would have had a right of presenting or appointing the incumbent or minister of such old or existing church, in case such transfer had not been made, shall in lieu thereof, when any vacancy occurs, have such and the like right of presenting or appointing the incumbent or minister of such new church as such body or person would have had with respect to the old or existing church.

Incumbent of old church and his successors to be incumbents of new church.  
Right of presentation.

3. [*Repealed by Statute Law Revision Act, 1875.*]

4. [*Where any part of a cathedral church has been accustomed to be used as a parochial church, a transfer of the rights, endowments, etc., belonging to such parochial church may, with certain consents, be made by the Church Building Commissioners to a new church; and the parochial church shall thenceforth be under the same control and subject to the same laws as to repairs as exist with respect to the cathedral church.*]

5. Where at the passing of this Act there is not any consecrated church in one of two parishes which may have been for thirty years next before the passing of this Act united, or reputed to have been united, for ecclesiastical purposes, and where a new church has been or shall hereafter be built wholly or in part out of any funds at the disposal of her Majesty's said commissioners in the said

A parish heretofore united with another may be disunited after a new church has been built therein, and formed into

**Sect. 5.** a separate parish, in the same manner as a district formed out of an existing parish under recited Acts and this Act.

parish in which there is not any such church as aforesaid, the whole of such parish may, after the consecration of such new church, be disunited for ecclesiastical purposes from the other parish, and may be formed into a separate and distinct parish for such purposes, with the same consents, in the same manner, and under and subject to the same provisions and consequences as are mentioned and contained in the hereinbefore-recited Acts or any of them, or in this Act, relative to the formation of a distinct and separate parish, where the same is formed out of one parish not united with another parish.

Appointment of churchwardens for district chapelries and consolidated chapelries.

**6.** Anything in the hereinbefore-recited Acts or any of them to the contrary notwithstanding, in all cases not otherwise expressly provided for, two fit persons shall be annually appointed churchwardens for the church of every district chapelry or consolidated chapelry already or hereafter to be formed under the provisions of the hereinbefore-recited Acts or any of them, or this Act, such persons residing within the district chapelry or consolidated chapelry; and the first appointment of two such persons shall, with respect to the church of any district chapelry or consolidated chapelry already formed as aforesaid, take place within two calendar months after the passing of this Act, and with respect to a chapelry district or consolidated chapelry to be hereafter formed as aforesaid, within two calendar months after the formation of the same; and the first appointment of such persons, in either of such cases, shall take place at a meeting of the minister of such church and the householders of the district, to be summoned in all respects as such minister shall direct; and every subsequent appointment shall take place at the usual period of appointing parish officers, at a meeting to be summoned in all respects as if such district were a parish and such meeting were a parish vestry meeting; and in each such case one of such persons shall be chosen by the then incumbent or minister serving such church, and the other by the householders, or the majority of such householders, residing in such district chapelry or consolidated chapelry; and the two persons, when so appointed and elected churchwardens, shall appear and be admitted

## Sect. 6.

according to law, and shall collect and receive the rents of the pews and seats in every such church, and pay the stipend or salary assigned by her Majesty's said commissioners to the minister and clerk of such church, if the said commissioners have fixed the rents for the same, or assigned such stipend or salary, and shall also do, perform, and execute all lawful acts, matters, and things necessary for and concerning the management, good order, and decency of behaviour to be kept and observed in such church by the congregation thereof, and for the recovery of such pew rents, if in arrear; and the money given at the offertory at such church shall be disposed of by the minister and churchwardens of such church in the same manner as the money given at the offertory at any parish church is by law directed to be disposed of by the minister and churchwardens of such parish; and the persons so to be appointed and chosen churchwardens shall continue in their said office until others shall be appointed and chosen in like manner in their stead.

Contiguous portions of the parishes of Bottisham and Swaffham were formed into a consolidated chapelry for all ecclesiastical purposes, and assigned to the consecrated church of St. James, in the parish of Bottisham, by Order in Council, under this Act, and the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55):—*Held*, that the ratepayers residing within that part of the parish of Bottisham lying within the consolidated chapelry had a right to vote in the election of churchwardens for the whole ancient parish of Bottisham (*Newman v. King* (1870), 34 J. P. 358).

7. Anything in the hereinbefore-recited Acts or any of them to the contrary notwithstanding, in all cases not otherwise expressly provided for two fit and proper persons shall be annually appointed churchwardens for any new church (without a district) already built or hereafter to be built upon a site whereof her Majesty's said commissioners shall have accepted the conveyance under the provisions of the hereinbefore-recited Acts; and the first appointment of such persons shall take place within two calendar months after the passing of this Act with respect to a church already built and consecrated, and within two months after the consecration of a church to be so hereafter built; and the next appointment of such persons, in either

Appointment of churchwardens for a new church (without a district), the site whereof has been accepted by the commissioners.



**Sect. 7.** of such cases, shall take place at the next usual period of appointing parish officers; and in each such case one of such persons shall be chosen by the minister of such church, and the other by the renters of pews therein, or by the majority thereof, at any meeting, to be summoned in all respects as the minister of such church, or (if there shall be no minister) as the churchwardens going out of office, shall direct; and the two persons, when so appointed and elected churchwardens, shall appear and be admitted according to law, and shall collect and receive the rents, if any, of the pews and seats in any such church, and pay the stipend and salary, if any, assigned by the said commissioners to the minister and clerk of such church, and shall also do, perform, and execute all lawful acts, matters, and things necessary for and concerning the management, good order, and decency of behaviour to be kept and observed in such church by the congregation thereof, and for the recovery of the pew rents in such church, if the same are in arrear; and the persons so to be appointed and chosen churchwardens shall continue in their said office until others shall be appointed and admitted in like manner in their stead: Provided always, that if there are no rented pews in such church the minister of such church shall appoint both churchwardens: Provided also, that if such new church is made the church of a distinct and separate parish, district parish, district chapelry, or consolidated chapelry, the several provisions of the hereinbefore-recited Acts or this Act touching the appointment and election of churchwardens for the same, and their powers and duties in each such case, shall thenceforth respectively apply to such church.

Appoint-  
ment of  
church-  
wardens if  
new church  
be made the  
church of a  
parish, etc.

No church-  
warden  
under this  
Act to be so  
for other  
duties than  
are herein  
mentioned,  
nor to be by  
virtue of  
his office  
overseer of  
the poor.

8. Provided always, that no churchwardens appointed under the provisions of this Act shall be churchwardens for any other duties than for those hereinbefore mentioned; but all other legal duties appertaining to the office of churchwardens shall be discharged within such district chapelry or consolidated chapelry, and in respect of the church thereof, and also in respect of any such new church as aforesaid without a district, by the churchwardens who would have discharged the same if this Act had not been

passed; and that no churchwardens appointed under the provisions of this Act shall in virtue of such office be deemed overseers of the poor.

**Sect. 8.**

By the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5 (2), all churchwardens of rural parishes ceased to be overseers.

9. [*Recital of 59 Geo. 3, c. 134, s. 6.*] Where a population is collected together at the extremities of and locally situate in parishes or extra-parochial places contiguous to each other, at a distance from the respective churches of such respective parishes or extra-parochial places, and where there is or shall hereafter be a consecrated church in any of such parishes or extra-parochial places so circumstanced and situated as aforesaid, it shall be lawful for the said commissioners, with the consent of the bishop of the diocese, or if such parishes or places are situate in different dioceses, then with the consents of the respective bishops thereof, signified under his or their hands and seals, and with the consents also in like manner signified of the patrons of such respective parishes or extra-parochial places, to represent to her Majesty in Council the expediency of uniting any such contiguous parts of such parishes or parts, or the whole of such extra-parochial places, into one consolidated chapelry for such church with respect to all ecclesiastical purposes, and such representation shall contain a description of such boundaries as may appear advisable to her Majesty's said commissioners for such consolidated chapelry, . . . and if thereupon her Majesty in Council shall think fit to order such consolidated chapelry to be so formed, such order shall be good and valid for the purpose of forming the same, . . . and (save and except in those cases where at the time of such consolidation such church was either the church of a rectory or vicarage, and then the said church shall retain its original character,) the church of such consolidated chapelry shall be deemed a perpetual curacy, and shall be considered in law as a benefice representative, so far only as that the licence thereto shall operate in the same manner as institution to any benefice, and shall render void other livings, in like manner as institution to any benefice, and the spiritual person serving the same shall be deemed the incumbent thereof,

Union of contiguous parts of parishes, and extra-parochial places into consolidated chapelries.

Minister to be a perpetual curate.

**Sect. 9.**

with exclusive cure of souls therein, and shall have perpetual succession, and shall be and is hereby declared to be a body politic and corporate, and he and his successors may receive, take, and hold such endowments in lands or tithes, or both, or any such augmentation, as shall be granted to him or them, in the same manner as any other incumbent is by law entitled to do; and every such incumbent shall be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions contained in any Acts of Parliament in force relating to such persons, and the church of every such consolidated chapelry shall be subject to the jurisdiction of the bishop within whose diocese and archdeaconry the communion table of such church shall be locally situated, and to all the laws in force concerning presentation and appointment to benefices and churches, and all other laws relating to the holding the same: Provided always, that where at the time of forming such consolidated chapelry the said church shall be full, the spiritual person filling such church shall be and remain incumbent of the said church and also of the whole consolidated chapelry.

This section practically repeals s. 6 of the Church Building Act, 1819 (59 Geo. 3, c. 134) (*per* COCKBURN, C.J., in *Reg. v. South Weald* (1864), 5 B. & S. 391; 10 Jur. (N.S.) 1099; 33 L. J. M. C. 193; 10 L. T. (N.S.) 498; 12 W. R. 873).

The provisions of this section are by the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 19, extended to the formation of consolidated chapelries out of any parishes or districts already formed or to be formed, the boundaries of which are contiguous to each other.

A consolidated chapelry formed under this section by an Order in Council, on the representation of the Church Building Commissioners (now, by 19 & 20 Vict. c. 55, the Ecclesiastical Commissioners), the boundaries of which are set out in the order, is duly constituted without enrolment of the name and description of boundaries, even supposing it rendered essential by 59 Geo. 3, c. 134, s. 6 (*Reg. v. South Weald, supra*).

Marriages,  
etc. in  
churches of  
consolidated  
chapelries,  
etc.  
59 Geo. 3,  
c. 134.

10. Banns of marriage may be published, and marriages, christenings, churchings, and burials performed, in the church of every such consolidated chapelry so formed; and notwithstanding anything contained in the Church Building Act, 1819, to the contrary thereof, the fees arising therefrom shall, unless voluntarily relinquished by them or either of

them, belong to the incumbent and clerk respectively of the parishes out of which such consolidated chapelry shall have been formed under the provisions of this Act, during their respective incumbencies, or during the time the clerk shall retain his situation; and the incumbent of such consolidated chapelry formed under this Act shall keep an account of the fees so received, and shall every year pay over the same to such incumbents and clerks respectively who would have been entitled to them if such consolidated chapelry had not been formed; and after the next avoidance of such respective incumbencies, and after the situations of such respective clerks shall have become vacant, such fees shall belong and be paid to the incumbent of such consolidated chapelry and the clerk of the church thereof.

**Sect. 10.**  
Appropriation of fees.

Apportionment of fees.

By the Church Building Act, 1851 (14 & 15 Vict. c. 97), ss. 3, 5, the fees may be transferred to the incumbent of the consolidated chapelry, and compensation made to the incumbents of the parishes or districts out of which the chapelry was formed.

As to apportionment of fees, see also the New Parishes Act, 1856 19 & 20 Vict. c. 104), s. 12.

11. [*Pew rents may be fixed for the minister and clerk of any consolidated chapelry, where the commissioners have granted money for its erection.*]

12. It shall be lawful for her Majesty's said commissioners to make a grant out of the available moneys in their hands for or towards the erection of new churches in aid of the erection of any new church intended to be made the church of any consolidated chapelry, although the population of the parish or extra-parochial place in which such church will be situate may not amount to four thousand persons and upwards, and although there may be church accommodation for more than one-fourth of the inhabitants of such parish or extra-parochial place, provided that the consolidated chapelry to be formed under the provisions of this Act shall contain a population of at least four thousand persons, with church accommodation therein for not more than one-fourth of the inhabitants thereof.

Commissioners may in certain cases make grants in aid of the erection of churches for consolidated chapelries.

13. In all cases the freehold of the site of every church of which her Majesty's said commissioners may have accepted or shall accept a conveyance under the provisions

Vesting of the freehold of sites of churches,

**Sect. 13.** of the hereinbefore recited Acts or any of them (as to any church not yet consecrated, when the same shall be consecrated,) shall vest in the incumbent for the time being of such church; and the freehold of every burial ground of which the said commissioners may have accepted or shall accept a conveyance under the provisions of the hereinbefore recited Acts or any of them shall, after the same shall have been consecrated, vest in the incumbent for the time being of the church to which such burial ground shall belong, or if there shall be no such incumbent, then in such body or person as the said commissioners may with consent of the bishop of the diocese, in such special case direct, until there shall be an incumbent, and from and after that time then in such incumbent, for the use of the inhabitants of the place for which such burial ground was acquired; and the freehold of any house, garden, and appurtenances, and land for the residence and glebe of the spiritual person serving any church, of which the said commissioners may have accepted or shall hereafter accept a conveyance under the provisions of the hereinbefore recited Acts or any of them, shall vest in the incumbent or minister of such church for the time being; provided that nothing in this Act contained shall authorise the interment of any person under any church.

burial grounds, etc., of which the commissioners accept conveyance under recited Acts.

By the New Parishes Act, 1856 (19 & 20 Vict. c. 104), s. 10, the freehold of the site of any church of any new parish, and of the churchyard, etc., is to be vested in the incumbent of such parish.

Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and part only of the land were consecrated:—*Held*, that upon such consecration, the whole of the land so conveyed to the commissioners vested in the incumbent under this section; that the commissioners had ceased to be owners of any part of it, and were therefore not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street on which the land abutted (*Plumstead Board of Works v. Ecclesiastical Commissioners*, [1891] 2 Q. B. 361; 64 L. T. 830; 39 W. R. 700; 55 J. P. 791).

Where land of the parish has been obtained for a new or additional

14. [*Recital of 59 Geo. 3, c. 134, s. 22.*] Where any land shall have been purchased or obtained for any new or additional burial ground not within the bounds of the parish or parishes for the use of which the same shall have

been so purchased or obtained, it shall be lawful for the said commissioners, if they shall think fit, in accepting a conveyance of such land for the purposes aforesaid, under the provisions of the hereinbefore recited Acts or any of them, to declare in such conveyance, or by any other instrument under their common seal, that such land shall, after the consecration thereof for the purposes aforesaid, be and be deemed to be part of the parish or parishes for the use of which such land shall have been so purchased or obtained, and, after consecration, such land shall be part of such parish or parishes accordingly for the purposes aforesaid.

**Sect. 14.**  
 burial ground for any parish Commissioners may declare that the same shall be part of such parish.

The provisions of this section are, by the Church Building (Burial Service in Chapels) Act, 1846 (9 & 10 Vict. c. 68), extended to any distinct and separate parish, district parish, district chapelry, or consolidated chapelry already or hereafter to be formed under the Church Building Acts, or any of them, or to any new parish. The previous provision on the subject was contained in the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 22.

**15.** [*Church of a district parish may be resigned by the incumbent of original parish; such resignation to operate in the same manner as avoidance of church of the original parish.*]

**16.** [*Boundaries of new parishes or districts may be altered, although five years may not have elapsed since such new parishes or districts were formed.*]

**17.** [*Church of a district chapelry and church augmented by the Ecclesiastical Commissioners for England to be a perpetual curacy, and minister a perpetual curate.*]

**18.** [*Licence of minister of a new church (without a district) not void by reason of the avoidance of the parish church, unless revoked by bishop.*]

**19.** Anything in the hereinbefore recited Acts or any of them to the contrary notwithstanding it shall not be necessary to pay into the Bank of England any sums of money to be paid for any lands or hereditaments to be purchased or acquired by virtue of such Acts or any of them, although the same may amount to or exceed two hundred pounds

The purchase money of lands sold under the provisions of recited Acts need not be

**Sect. 19.** (unless her Majesty's said commissioners shall require such sums to be paid into such bank,) but the same may be invested in the names of trustees, as in the said Act is provided in the cases when the amount thereof shall be under the sum of two hundred pounds; and in any declaration of trust to be made of any such moneys the said commissioners may make such special provisions for the investment of such moneys, and the appointment of new trustees thereof, or otherwise, as they shall think fit.

paid into Bank of England, though it may amount to or exceed 200*l.*, but may be paid to trustees.

The provisions here referred to are contained in ss. 44 and 45 of the Church Building Act, 1818 (58 Geo. 3, c. 45).

The purchase money of lands belonging to an incumbent in right of his living, and sold under 58 Geo. 3, c. 45, may be paid to and applied by the governors of Queen Anne's bounty for the benefit of the benefice.

**20.** In every case in which land or other hereditaments belonging to an incumbent in right of his church shall be sold and conveyed by him to her Majesty's said commissioners, and in which the purchase money is, under the provisions of the Church Building Act, 1818, directed to be paid into the Bank of England, or invested in the names of trustees, such purchase money shall, instead of being paid into the Bank of England, or invested in the names of trustees, be paid to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and be appropriated by the said governors to the benefice to which the land or other hereditaments so sold shall have belonged, and shall be applicable and disposable by the said governors to and for the benefit and augmentation of such benefice, in such and the same manner, and with such and the same powers of investment in the purchase of land, and exchange for other land and hereditaments, and otherwise, and with other powers and authorities, in all respects, according to the rules, orders, and constitutions for the time being in force for the management of the bounty of Queen Anne, as if the money so appropriated had been originally provided or appropriated by the said governors, out of the funds at their disposal, for the benefit and augmentation of the same benefice.

Such purchase money to be paid

**21.** In all cases in which money shall be payable to the governors of the bounty of Queen Anne under the provision

last hereinbefore contained, such money shall be paid to the treasurer for the time being of the said governors; and the receipt or receipts of such treasurer shall be an effectual discharge or effectual discharges for so much money as in such receipt or receipts shall be expressed to the person or persons paying the same; and after obtaining such receipt or receipts the person or persons paying such money shall be absolutely discharged from all liability touching such money, and from all trust relating thereto.

**Sect. 21.**  
to the treasurer of Queen Anne's bounty, whose receipt shall be a valid discharge.

**22.** [*Apportionment of bequests, etc., and also of debts, between original parish and district formed thereout, to be made by the Court of Chancery on petition presented under 52 Geo. 3, c. 101.*]

See, as to construction of this section, *In re Church Estate Charity, Wandsworth* (1871), L. R. 6 Ch. 296; 40 L. J. Ch. 157; 24 L. T. (n.s.) 243; 19 W. R. 456; *In re Camden Charities* (No. 2) (1883), 24 Ch. D. 213.

**23.** [*Agreement as to right of nomination entered into before building or consecration of any new church to be binding.*]

Explained by s. 4 of the Church Building Act, 1848 (11 & 12 Vict. c. 37).

**24.** No further conveyance to be made to the said commissioners in pursuance of the hereinbefore recited Acts or any of them, or any other future instrument thereby directed to be made with their privity or assent, shall be valid and effectual unless and until the assent thereto of the said commissioners shall be testified by any seal in use by them being affixed thereto; but after such seal shall have been affixed to such instrument such instrument shall take effect as from the making thereof; and no future instrument to which such seal is as aforesaid so directed to be affixed, and which is directed to be registered in the registry of any diocese, shall be so registered unless and until such seal shall have been so affixed.

Assent of the commissioners to any conveyance or other instrument shall be testified by their seal.

Unless so testified, the instrument shall not be registered.

**25.** The existing powers, privileges, and authorities contained in the hereinbefore first recited Acts or any of them may be used and applied for the purpose of carrying this

Application of former Church Building



**Sect. 25.** Act or the said Acts respectively into execution, *mutatis mutandis*, so far as the same are applicable thereto, and are not inconsistent with or repugnant to the provisions of this Act.

Acts to this Act.

As to whether this section operates to extend the provisions of the Church Building Act, 1827 (7 & 8 Geo. 4, c. 72), s. 2, to other districts than those mentioned in that section, see note to that section, *ante*, p. 512.

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### CHURCH BUILDING (BURIAL SERVICE IN CHAPELS) ACT, 1846.

(9 & 10 VICT. c. 68.)

*An Act for better enabling the Burial Service to be performed in one chapel where contiguous Burial Grounds shall have been provided for two or more Parishes or Places.*

[26th August 1846.]

8 & 9 Vict.  
c. 70.

WHEREAS an Act was passed in the session of Parliament holden in the eighth and ninth years of the reign of her present Majesty, intituled "An Act for the further amendment of the Church Building Acts," whereby it was amongst other things enacted, that where any land should have been purchased or obtained for any new or additional burial ground not within the bounds of the parish or parishes for the use of which the same should have been so purchased or obtained, it should be lawful for her Majesty's commissioners for building new churches, if they should think fit, in accepting a conveyance of such land for the purposes aforesaid, under the provisions of the thereinbefore recited Acts or any of them, to declare in such conveyance, or by any other instrument under their common seal, that such land should, after the consecration thereof for the purposes aforesaid, be and be deemed to be part of the parish or parishes for the use of which such land should have been purchased or obtained, and after consecration such land should be part of such parish or parishes accordingly for the purposes aforesaid: And whereas it is expedient that

the said provision of the hereinbefore recited Act should be amended :  Sect. 1.

[1.] Such provision shall extend to any distinct and separate parish, district parish, district chapelry, or consolidated district, already or to be hereafter formed under the Church Building Acts, and to any new parish already or to be hereafter constituted by or under the proceedings of the Ecclesiastical Commissioners; and where any land, wherever situated, shall have been purchased or obtained for the purpose hereinbefore recited, for the use of two or more parishes or places, it shall be lawful for the said commissioners, in accepting a conveyance of such land for the purposes aforesaid, to order and direct in such conveyance, or by any other instrument under their common seal, that any chapel which at the time of such order and direction shall have been or shall be thereafter erected on any portion of such land as aforesaid for the performance of the burial service therein, and any lodge or other building which shall at the time of such order and direction have been erected or shall thereafter be erected on any part of such land, and also any and every access or approach to and from such chapel, lodge, or other building, shall be for the use of all and every of the parishes or places for which such land shall have been purchased or obtained and conveyed as aforesaid, and such order and direction shall be valid and binding; and it shall be lawful for the officiating minister of each parish respectively to use (subject to the regulations hereinafter mentioned) the said chapel for the purpose of the burial service therein; and the like fees for the performance of such burials, and for the making, opening, or using any catacombs, vaults, or ground for burials within each such burial ground, shall be due and payable as are accustomed to be taken in the parish for which such burial ground shall have been purchased, obtained, and conveyed as aforesaid; and the use of such chapel, lodge, or other building by such officiating minister for the purpose aforesaid shall be subject to such regulations as the bishop of the diocese shall at any time under his hand and seal make or ordain.

Recited enactment extended.

Church Building Commissioners may direct one chapel to be used by two or more parishes for which one burial ground has been provided.

Ministers of each parish may use the chapel.

Same fees payable as are payable in the parishes for which the ground has been purchased.

Bishop to regulate use of chapel.

By the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 28, the freehold of the chapel when consecrated, and of the lodge, walks,

**Sect. 1.****NOTE.**

gates, etc., are vested in the bishop of the diocese ; but the custody and preservation thereof are to belong to the trustees of the repair fund.

Bishop may declare that such chapel is intended for the use of such respective parishes or places.

Same chapel to be used in case of purchase of adjoining land for additional burial ground.

One outside boundary fence sufficient, but bishop may order portions to be marked out.

This Act not to authorise any church rate for the repair of the chapel, etc.

2. It shall be lawful for the said bishop, in consecrating such chapel as aforesaid for the purposes aforesaid, to declare in the sentence of consecration that such chapel is intended for the use of the respective parishes or places, for the performance of the burial service therein, for which such land shall have been purchased or obtained and conveyed as aforesaid ; and if any additional land shall after the consecration of such chapel be purchased or obtained and conveyed as aforesaid to the said commissioners as a burial ground for the use of such parish or parishes, place or places, or for the use of any other parish or parishes, place or places, (such land adjoining or being near to such former land so purchased or obtained and conveyed,) such chapel, subject to the regulations as aforesaid by the bishop of the diocese, may be used for the performance of the burial service in such additional ground, and such lodge or other building, and every access and approach to and from such chapel, lodge, or building, may be in like manner used for the purposes aforesaid.

3. For the enclosure of such land one boundary fence around the whole may be declared by such bishop (if he think fit) sufficient, without any sub-division fences enclosing the portions conveyed to the said commissioners for the use of the several parishes or places respectively ; but if the said bishop shall think fit, he may require such bound stones to be put down as may appear to him necessary for marking the boundaries of the land so conveyed as aforesaid to the said commissioners for the use of the respective parishes.

4. Provided always, that nothing in this Act contained shall be construed to authorise any church rate to be made on the said parishes or any of them for the repair or sustentation of such chapel, lodge, or other building, or fence as aforesaid, but such repair or sustentation shall be provided for by such a sum of money as the said commissioners shall consider sufficient ; and such sum shall be set

apart, and invested in Government securities in the names of trustees to be appointed by the said commissioners, and shall be held by such trustees in trust for the purposes aforesaid, and the dividends or annual proceeds arising therefrom shall be applied in and about such repair and sustentation, as and when the trustees or trustee for the time being, with the consent of the bishop of the diocese, shall deem fit from time to time to direct; and in case of a vacancy or vacancies amongst such trustees, the remaining trustees or trustee, and if there shall be no remaining trustee, or no trustee that is capacitated or willing to act, the bishop of the diocese, shall supply such vacancy or vacancies, by the appointment of a fresh trustee or trustees, who shall hold such trust fund, and apply the annual dividends and proceeds arising therefrom, jointly with the remaining trustees or trustee, if any, in like manner as the former trustees or trustee in whose room he or they shall be appointed.

**Sect. 4**

Repairs to be provided for by a fund to be set apart, and invested in the names of trustees.  
Vacancies amongst trustees to be filled up.

By the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 28, the trustees may make orders and regulations for the preservation of the chapel, lodge, walks, etc.

5. In the interpretation of this Act, where the words "parish" or "parishes" occur therein, such words, or either of them, shall include any distinct and separate parish, district parish, district chapelry, or consolidated district, already or to be hereafter formed under the provisions of the Church Building Acts, and also any new parish already or to be hereafter constituted by or under the proceedings of the Ecclesiastical Commissioners.

Interpretation of "parish."

The new parishes here referred to are those constituted under the New Parishes Act, 1843 (6 & 7 Vict. c. 37), which Act is amended and extended by the New Parishes Act, 1856 (19 & 20 Vict. c. 104).

## CHURCH BUILDING ACT, 1848.

(11 &amp; 12 VICT. c. 37.)

*An Act to amend the Law relative to the Assignment of Ecclesiastical Districts.* [14th August 1848.]

Preamble recited the Church Building Acts, 1818 (58 Geo. 3, c. 45); 1819 (59 Geo. 3, c. 134); 1831 (1 & 2 Will. 4, c. 38); and 1845 (8 & 9 Vict. c. 70).

A district formed under 1 & 2 Will. 4, c. 38, shall be considered to be an original parish for the purposes of further ecclesiastical divisions.  
58 Geo. 3, c. 45.  
59 Geo. 3, c. 134.  
8 & 9 Vict. c. 70.  
1 & 2 Will. 4, c. 38.

[1.] For the purposes of forming a district parish, a district chapelry, or consolidated chapelry, under the Church Building Act, 1818, the Church Building Act, 1819, the Church Building Act, 1845, or any or either of them, or for the purpose of forming another particular district under the Church Building Act, 1831, a particular district before formed under the Act hereinbefore last mentioned shall be considered to be an original parish for such ecclesiastical divisions respectively; and the patron and incumbent for the time being of such particular district shall be entitled to the same rights, privileges, and notices as appertain to the incumbent and patron of an original parish touching such ecclesiastical divisions respectively; and such district parish, district chapelry, consolidated chapelry, and particular district, so formed as aforesaid, shall be formed by the like authority, and shall be under and be subject to the same provisions and regulations, as are provided and specified touching such ecclesiastical divisions respectively in the several Acts recited in the preamble to the Church Building Act, 1845, except so far as such provisions and regulations are altered or affected by this Act.

Boundaries of a district formed under 1 & 2 Will. 4, c. 38, may be altered, subject to certain notices to patron and incumbent.

2. [*Recital of 1 & 2 Will. 4, c. 38.*] Where a particular district has been or may hereafter be assigned under such last-mentioned Act to any church or chapel already or to be hereafter built or purchased and endowed, and the patronage thereof granted, under the provisions of such last-mentioned Act, it shall be lawful at any time for her Majesty's commissioners for building new churches, if they shall think fit, with the consent of the bishop of the diocese

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under his hand and seal, in any case in which the said commissioners shall have assigned such particular district, or for the said bishop of the diocese in any case in which he shall have assigned such particular district, if he shall think fit, to alter the boundaries of such particular district, by an order under their common seal, or under the hand and seal of the said bishop; and the said commissioners or the said bishop respectively, as the case may be, shall cause a description of the boundaries so altered to be registered in the registry of the diocese, and such alteration of boundaries shall be valid in law, for the purpose of substituting such altered boundaries in lieu of the former boundaries of such particular district as aforesaid: Provided always, nevertheless, that, previous to such alteration of boundaries being made, either by the said commissioners or by the bishop of the diocese, as the case may be, a draft or copy of the instrument by which such alteration is proposed to be effected shall be delivered or transmitted to the incumbent or incumbents and patron or patrons of the original parish or parishes out of which such particular district shall have been taken, in order that such incumbent or incumbents, patron or patrons, may have an opportunity of submitting to the said commissioners or the said bishop, as the case may be, any observations or objections upon or to the alteration of boundaries proposed; and the said commissioners or the said bishop, as the case may be, shall not effect such alteration of boundaries until after the expiration of one calendar month after such draft or copy shall have been so delivered or transmitted, unless such incumbent or incumbents and patron or patrons shall in the meantime consent to the same: Provided further, that if the consent of the incumbent or incumbents of such original parish or parishes is not obtained to such alteration of boundaries, such alteration of boundaries shall not take effect until after the next avoidance of the parish church or churches of such original parish or parishes.

3. It shall be lawful for her Majesty's said commissioners, if they shall think fit, with the consent of the bishop of the diocese, to represent to her Majesty in Council the expediency of altering the boundaries of any

Commissioners may, with certain consents, annex any

**Sect. 3.**  
 portion of  
 an adjacent  
 parish to a  
 district  
 chapelry  
 formed under  
 59 Geo. 3,  
 c. 134.

district chapelry formed under the provisions of the Church Building Act, 1819, by adding to such district chapelry any portion or portions of any adjacent parish or parishes, and if thereupon her Majesty in Council shall think fit to order such alteration, such order shall be good and valid for the purpose of effecting the same: Provided always, that such alteration shall not be made without the consent in writing, under their respective hands and seals, of the patron and incumbent of such district chapelry and of the patron and incumbent of any such parish, and that such district chapelry, when its boundaries shall have been so altered, shall be subject nevertheless to the same rules, regulations, and provisions, except as are herein excepted, as are applicable to other district chapelries formed under the Church Building Acts.

Removal of  
 doubts as to  
 extent and  
 meaning of  
 8 & 9 Vict.  
 c. 70, s. 23.

4. [*Recital of 8 & 9 Vict. c. 70, s. 23, as to agreements between the bishop of the diocese and the patron and incumbent.*] Any agreement already made or hereafter to be made between such bishop, patron, and incumbent, under the provisions of the hereinbefore recited Act, purporting to be an agreement made between such parties with respect to any new church, before or during its building, or previous to its consecration, that the right of presentation thereto should on its consecration be vested either in perpetuity or otherwise in any body corporate, aggregate or sole, or any person or persons, their heirs or assigns, shall be valid and effectual for the purpose of vesting such patronage according to such agreement.

Extent of  
 Act.

5. This Act shall extend only to that part of the United Kingdom called England and Wales, and to the Isle of Man, and to the Islands of Guernsey, Jersey, Alderney, and Sark.

CHURCH BUILDING ACT, 1851.

(14 & 15 VICT. c. 97.)

*An Act to amend the Church Building Acts.*

[7th August 1851.]

Preamble recited the Church Building Acts, 1818—1848 (58 Geo. 3, c. 45; 59 Geo. 3, c. 134; 3 Geo. 4, c. 72; 5 Geo. 4, c. 103; 7 & 8 Geo. 4, c. 72; 1 & 2 Will. 4, c. 38; 2 & 3 Will. 4, c. 61; 7 Will. 4 & 1 Vict. c. 75; 1 & 2. Vict. c. 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60; 7 & 8 Vict. c. 56; 8 & 9 Vict. c. 70; 9 & 10 Vict. c. 68; 11 & 12 Vict. c. 37); the Church Patronage Act, 1846 (9 & 10 Vict. c. 88), and 11 & 12 Vict. c. 71 (since repealed). See Statute Law Revision Act, 1892.

1. [*Where a permanent provision is secured for any church in lieu of pew rents, commissioners may direct pew rents to cease.*]

2. In all cases where any district chapelry has already been or is hereafter formed under the authority of the Church Building Acts, and where, by the Order in Council forming such district chapelry, the fees or any part thereof arising from the performance of such of the offices of the church as are performed in the church of such district chapelry have been reserved, or such fees otherwise belong, to the then incumbent of the original parish or district (out of which such district chapelry is taken) during his incumbency, or to such incumbent and his successors, it shall be lawful for the said commissioners, out of any moneys hereafter placed at their disposal for that purpose, (not being moneys placed at their disposal for the building or contributing to the building of new churches,) to assign to such incumbent during his incumbency, if he still remain incumbent, or to such incumbent, as the case may require, such an annual sum as may appear to the said commissioners a just and reasonable compensation for the loss of any fees, dues, oblations, or offerings which such incumbent may sustain by reason of the transfer thereof, under the provision hereinafter contained, to the incumbent of the district chapelry.

Compensation for loss of fees and offerings on formation of district chapelry.

The Church Building Act, 1819 (59 Geo. 3, c. 134), s. 16, provides for the formation of district chapelries.



**Sect. 3.**

The like in respect of consolidated chapelries.

3. Where the fees arising from the performance of the offices of the church of a consolidated chapelry already or hereafter formed under the Church Building Acts are under such Acts reserved to the incumbents of the parishes out of which such consolidated chapelry is formed during their respective incumbencies, unless voluntarily relinquished by them or either of them, compensation may be made as aforesaid by the said commissioners to such incumbents, if still entitled to such fees, for the loss of any fees, dues, oblations, or offerings, which such incumbents may sustain by reason of the transfer thereof, under the provision hereinafter contained, to the incumbent of such consolidated chapelry.

The formation of consolidated chapelries is provided for by the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 6, and the Church Building Act, 1845 (8 & 9 Vict. c. 70), ss. 9, 10.

The like in respect of churches built and endowed, etc., under Church Building Acts.

4. Where the fees or a portion thereof arising from the performance of offices of the church in the church, with a particular district thereto, already or hereafter built and endowed, and the patronage thereof specially declared, under the provisions of the Church Building Acts or this Act, are reserved or belong to the incumbent of the original parish or district out of which such particular district is taken, compensation may be made as aforesaid by the said commissioners to the then incumbent, or to such incumbent, as the case may require, for the loss of any fees, dues, oblations, or offerings by reason of the transfer thereof, under the provision hereinafter contained, to the incumbent of such church.

The reservation of fees is provided for in s. 14 of the Church Building Act, 1831 (1 & 2 Will. 4, c. 38).

After compensation, fees and offerings to belong to incumbent of the district chapelry, etc.

5. After such compensation as aforesaid has been awarded by the said commissioners or otherwise to the then incumbent, or to such incumbent, as the case may require, of the original parish or district, and such compensation has been certified by the said commissioners, (which certificate shall be registered in the registry of the diocese,) all the fees or portion of fees reserved by the Order in Council, or otherwise belonging to the incumbent of the original parish

Sect. 5.

or district during his incumbency, or to the incumbent thereof for the time being and his successors, shall, notwithstanding such reservation or claim, together with all mortuary and other ecclesiastical fees, dues, oblations, or offerings arising within such district chapelry, consolidated chapelry, or particular district, belong and be paid to the incumbent for the time being of such district chapelry, consolidated chapelry, or particular district, for his own use and benefit.

6. Where the fees or any part thereof arising from the performance of the offices of the church, or any of them, are not reserved or do not otherwise belong to the incumbent of the original parish or district out of which the district chapelry, consolidated chapelry, or particular district is taken, all the mortuary and other ecclesiastical fees, dues, oblations, or offerings arising within such district chapelry, consolidated chapelry, or particular district, shall from and after the passing of this Act belong and be paid to the incumbent for the time being of such district chapelry, consolidated chapelry, or particular district, notwithstanding no compensation for the loss thereof has been made to the incumbent of the original parish or district.

Mortuary and other fees, etc., not belonging to incumbent of original parish, to belong to incumbent of district chapelry, etc.

7. [*With consent of bishop, commissioners may in all cases, subject to notices to patron and incumbent, declare perpetual right of patronage to be in the body or person building and endowing a new church, or in certain other persons.*]

8. [*Commissioners may accept, for the purpose of an endowment and a repair fund, lands, etc., and money.*]

9. [*In whom right of patronage may be vested.*]

10. [*Appointment of trustees.*]

11. [*Certain information to be sent by the commissioners to patron and incumbent before they declare right of patronage.*]

12. [*How notices shall be sent when patrons are numerous.*]

**Sect. 13.**

**13.** [*Instrument declaring right of nomination may be executed after completion of new church, and after execution of such instrument, and consecration, right may be exercised.*]

**14.** [*Sole jurisdiction of bishop to declare such patronage, under circumstances, to cease.*]

**15.** [*The existing powers of the commissioners as to declaration of the patronage of a new church built and endowed under 1 & 2 Will. 4, c. 38, or 1 & 2 Vict. c. 107, to extend to churches under this Act, except so far as they are altered or enlarged by this Act.*]

Powers of sub-division to apply to new parishes formed by the ecclesiastical commissioners.

**16.** The powers and provisions of the Church Building Acts or this Act relative to the formation of any parish or district shall be applicable to the formation of any parish or district out of any new parish formed or hereafter to be constituted by or under the proceedings of the Ecclesiastical Commissioners.

Provision for supplemental Orders in Council for performance of baptisms, churchings, and burials in churches of district chapelries.

**17.** Where a district chapelry has been already or is hereafter assigned to any church under the provisions of the Church Building Acts, and the Order in Council assigning such district chapelry does not direct that the offices of baptisms, churchings, and burials shall be performed in such church, or only directs that one or two of such offices should be performed therein, it shall be lawful for her Majesty, by any supplemental Order in Council, on a representation to be made to her Majesty by the said commissioners, with the consent of the bishop of the diocese, to order that all or any of the offices of baptisms, churchings, and burials, not included in such first Order in Council as aforesaid, shall be thereafter performed in such church, and that all the fees arising from the performance of the offices so authorised, or a part thereof, shall thereafter belong and be paid to the minister of such church, or after the next avoidance of the parish or district out of which such district chapelry is formed, or that all or a portion of such fees shall belong and be paid to the incumbent of such parish church or district; and all the laws in force relating to the performance of such offices, and the registration thereof, shall apply to such offices as may be performed under such supplemental Order in Council;

provided that nothing herein contained shall authorise receiving fees for baptisms. **Sect. 17.**

**18.** Anything in the Church Building (Banns and Marriages) Act, 1844, to the contrary notwithstanding, it shall be lawful for the said commissioners, if they think fit, with the consent in writing of the bishop of the diocese, to order and direct that all or a portion of the fees, dues, offerings, and other emoluments arising from the publication of banns or the solemnization of marriages in any new church already or hereafter built, acquired, and endowed, and the patronage thereof, specially declared under the provisions of the Church Building Act, 1831, or this Act, by the said commissioners or the bishop of the diocese, and in which church banns of matrimony may be published and marriages solemnized, under the provisions of the Church Building (Banns and Marriages) Act, 1844, shall, from and after the next avoidance, from the time of such order and direction, of the parish church or district out of which the district of the new church is taken, or of the parish churches or districts, (if the district be taken out of more than one parish or district,) belong and be paid to the incumbent for the time being of such new church, for his own use and benefit.

Provision as to marriages in case of new churches. 7 & 8 Vict. c. 56.

1 & 2 Will. 4. c. 38.

**19.** The provisions contained in the Church Building Act, 1845, relative to the formation of a consolidated chapelry out of parishes or extra-parochial places the boundaries of which are contiguous to each other, . . . shall extend and apply to the formation of any consolidated chapelry out of any parishes or districts already formed or hereafter to be formed, the boundaries of which are contiguous to each other.

Formation of consolidated chapelry out of ecclesiastical districts. 8 & 9 Vict. c. 70.

See the Church Building Act, 1845 (8 & 9 Vict. c. 70), ss. 9, 10, for the formation of consolidated chapelries, *ante*, pp. 547, 548.

**20.** [*If the major part in number of the patrons of such parishes, etc., agree, the chapelry may be formed and the patronage vested according to such agreement, and the same shall be valid.*]

**21.** Whenever, under and by virtue of any local Act now in force, any parish cannot be brought within the provisions of the Church Building Acts touching the formation

Application of Church Building Acts to

**Sect. 21.** parishes regulated by local Acts. thereout of a parish or district, and whenever a representation is made to the said commissioners by the patron and incumbent of such parish, and by the vestry or select vestry or persons exercising the powers of vestry in ecclesiastical matters in such parish, that it will be for the spiritual benefit of such parish that it should be brought within such provisions, it shall be lawful for the said commissioners, if they think fit, with the consent of the bishop of the diocese, to apply and put in execution with respect to such parish the powers and provisions of the Church Building Acts and this Act relative to the formation of any parish or district; and such provisions shall thereupon be applicable to such parish, any local Act of Parliament to the contrary notwithstanding; provided that if the patronage of such church is vested in or exercised by the inhabitants thereof generally, or by any body or class of persons exceeding thirty in number, such application to the said commissioners shall be sufficient if signed by the incumbent of such parish and by the vestry or select vestry, or persons exercising the powers of vestry; and such vestry or select vestry or persons exercising the powers of vestry as aforesaid in such parish may meet for the purpose of considering and deciding whether it is expedient to make such representation as aforesaid to the said commissioners; and if the majority in number of those present at such meeting be in favour thereof, the churchwardens of such vestry, or the chairman of such meeting, may and shall sign such representation on behalf of such vestry or meeting.

Saving of 13 & 14 Vict. c. 41.

**22.** Provided, that nothing in this Act contained shall alter or affect the provisions of the Parish of Manchester Division Act, 1850.

**23.** [*Abolishing select vestries formed under Church Building Acts. Repealed by Statute Law Revision Act, 1875.*]

Provisions of 6 & 7 Vict. c. 37, s. 22, to apply to an ecclesiastical corporation, aggregate or sole, with certain consents.

**24.** The powers and provisions contained in the New Parishes Act, 1843, section twenty-two, enabling persons and bodies corporate to give and grant lands, tithes, tenements, or other hereditaments for the purposes of the said Act, shall be construed and held to authorise any ecclesiastical corporation, aggregate or sole, to give or grant any land or tithes belonging to such corporation in the manner and for

**Sect. 24.**

the purposes in the said Act mentioned: Provided always, that the power hereby given shall only be exercised with the following consents in writing; that is to say, in the case of a college, with the consent of the visitors; in the case of a bishop, with the consent of the archbishop of the province; in the case of a dean, with the consent of the dean and chapter; in the case of a canon or prebendary, with the consent of the patron of such canonry or prebend respectively; in the case of the incumbent of a benefice, with the consents of the bishop of the diocese and the patron of such benefice; and that the provisions of the Pluralities Act, 1 & 2 Vict. 1838, respecting the party or parties to be deemed patron or patrons, and also respecting the manner in which and the party by whom any such consent is to be given, shall be held to apply to the consents hereby required, c. 106.

For 6 & 7 Vict. c. 37, s. 22, see *post*.

The provisions of the Pluralities Act, 1838 (1 & 2 Vict. c. 106), herein referred to, are contained in ss. 125—128 of that Act.

25. [*The validity of marriages performed in error, and without fraud, in certain churches with parishes or districts assigned to them, not to be questioned, except where any action pending on 19th June, 1851.*]

26. [*To whom the nomination to the church of a distinct and separate parish, district parish, or district chapelry, formed out of an extra-parochial place, shall belong.*]

27. [*Apportionment or release of quit-rents, etc.*]

28. The freehold of any chapel already or to be hereafter built under the provisions of the Church Building (Burial Service in Chapels) Act, 1846, as a chapel for the burial service, when such chapel has been consecrated, and the freehold of any lodge, walks, or gates already or hereafter erected or made under such Act on any part of such burial ground as aforesaid, shall vest in the bishop of the diocese for the time being in which the same is situate; and the preservation and custody thereof shall belong to the trustees for the time being of the repair fund appointed under the provisions of the said last-mentioned Act, who shall have power to make such orders and regulations from time to time as may be proper to them in that behalf seem proper. Freehold of chapel, lodge, etc., erected under 9 & 10 Vict. c. 68, shall vest in bishop, etc.

**Sect. 29.**

Interpreta-  
tion of terms.

1 & 2 Vict.  
c. 106.

**29.** In the construction and for the purposes of this Act unless there be something in the subject or context repugnant to or inconsistent with such construction, the word "church" shall mean and include any consecrated church or chapel belonging to the Church of England; the word "bishop" shall be construed to comprehend archbishop, and the word "diocese" shall be construed to comprehend all places to which the jurisdiction of any bishop extends under and for the purposes of the Pluralities Act, 1838; the word "tithes" shall mean and include all commuted or uncommuted tithes, rentcharges in lieu of tithes, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments; the words "Church Building Acts" shall mean and include all or any of the Acts mentioned in the preamble of this Act; the words "parish or district" or "new parish or district" shall mean and include any distinct and separate parish, district parish, district chapelry, consolidated chapelry, or particular district, already or hereafter formed under the provisions of the Church Building Acts; the word "churchwarden" shall mean and include churchwarden and chapelwarden; and the words "body or person" shall mean and include any body politic, corporate, or collegiate, or any corporation aggregate or sole, as well as one individual.

Of the Acts recited in the preamble, 7 Will. 4 & 1 Vict. c. 75 is repealed by the Statute Law Revision Act, 1874; and 11 & 12 Vict. c. 71, by the Statute Law Revision Act, 1875. It is to be noticed that 9 & 10 Vict. c. 68, which is recited in the preamble, and here called a Church Building Act, is not included in the list of Church Building Acts set out in the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

Extent of  
Act.

**30.** This Act shall extend only to that part of the United Kingdom called England and Wales, *and to the Isle of Man*, and to the Islands of Guernsey, Jersey, Alderney, and Sark.

By the Isle of Man (Church Building and New Parishes) Act, 1897 (60 & 61 Vict. c. 33), the Church Building Acts, 1818 to 1884, and the New Parishes Acts, 1843 to 1884, shall be construed as not extending to the Isle of Man; provided that any order made for the Isle of Man under any of those Acts before the passing of this Act and not declared invalid, shall be valid, but may be revoked or altered by or in pursuance of an Act of Tynwald.

## NEW PARISHES ACTS.

### NEW PARISHES ACT, 1843.

(6 & 7 VICT. c. 37.)

*An Act to make better Provision for the Spiritual Care of populous Parishes (a).* [28th July 1843.]

Preamble recited that it was expedient to make better provision for the spiritual care of populous parishes, and to render the estates and revenues vested in the Ecclesiastical Commissioners, and the funds at the disposal of the Governors of Queen Anne's bounty applicable to such purpose. See Statute Law Revision Act, 1891.

1—8. [*These sections are concerned only with the powers of Queen Anne's Bounty Board to lend the Ecclesiastical Commissioners a sum of stock.*]

9. And whereas there are divers parishes, chapelries, and districts of great extent, and containing a large population, wherein or in parts whereof the provision for public worship and for pastoral superintendence is insufficient for the spiritual wants of the inhabitants thereof: Be it therefore enacted, that if at any time it shall be made to appear to the said Ecclesiastical Commissioners that it would promote the interests of religion that any part or parts of any such parish or parishes, chapelry or chapelries, district or districts, or any extra-parochial place or places, or any part or parts thereof, should be constituted a separate district for spiritual purposes, it shall be lawful, by the authority aforesaid, with the consent of the bishop of the diocese under his hand and seal, to set out by metes and bounds and constitute a separate district accordingly, *such district not then containing within its limits any consecrated church or chapel in use for the purposes of divine worship*, and to fix and declare the name of such

Separate districts may be constituted for spiritual purposes.

(a) This Act is known and often referred to as "Peel's Act."



**Sect. 9.** *district: Provided always, that the draft of any scheme for constituting any such district proposed to be laid before her Majesty in Council by the said commissioners shall be delivered or transmitted to the incumbent and to the patron or patrons of the church or chapel of any parish, chapelry, or district out of which it is recommended that any such district or any part thereof should be taken, in order that such incumbent, patron or patrons, may have an opportunity of offering or making to the said commissioners or to such bishop any observations or objections upon or to the constituting of such district; and that such scheme shall not be laid before her Majesty in Council until after the expiration of one calendar month next after such copy shall have been so delivered or transmitted; unless such incumbent and patron or patrons shall in the meantime consent to the same: Provided also, that in every scheme for constituting any such district the said commissioners shall recommend to her Majesty in Council that the minister of such district, when duly licensed as hereinafter mentioned, shall be permanently endowed, under the provisions hereinafter contained, to an amount of not less than the annual value of one hundred pounds; and also, if such endowment be of less than the annual value of one hundred and fifty pounds, that the same shall be increased under the like provisions to such last-mentioned amount, at the least, so soon as such district shall have become a new parish as hereinafter provided.*

*Draft scheme to be submitted to incumbent and patron of church of parish, etc., out of which any district is to be taken.*

*Ministers of such districts are to be endowed to a certain amount at the least.*

The words in italics are in effect repealed by the New Parishes Act, 1856 (19 & 20 Vict. c. 104), s. 1. By the New Parishes Acts and Church Building Acts Amendment Act, 1884 (47 & 48 Vict. c. 65), s. 2, *post*, a district formed under this section may be dissolved by the Ecclesiastical Commissioners before a church is provided for or allotted to such district and the endowment, if any, returned to the donor.

It was provided by the New Parishes Act, 1844 (7 & 8 Vict. c. 94), s. 9, that the bounds of the district might be altered within twelve months; this period was extended to five years by the Ecclesiastical Commissioners Act, 1850 (13 & 14 Vict. c. 94), s. 27; and by the New Parishes Acts and Church Building Acts Amendment Act, 1869 (32 & 33 Vict. c. 94), s. 1, amended by the New Parishes Acts and Church Building Acts Amendment Act, 1884, s. 3, such alteration may now be made at any time.

By the New Parishes Act, 1856, s. 3, the constitution of a district may be recommended without providing in the scheme for the permanent endowment required by this section.

10. A map or plan setting forth and describing such metes and bounds shall be annexed to the scheme for constituting such district, and transmitted therewith to her Majesty in Council, and a copy thereof shall be registered by the registrar of the diocese, together with any order issued by her Majesty in Council for ratifying such scheme: Provided always, that it shall not be necessary to publish any such map or plan in the London Gazette.

**Sect. 10.**  
Map of district to be annexed to scheme, and a copy registered, with Order in Council ratifying scheme.

By the New Parishes Act, 1844 (7 & 8 Vict. c. 94), s. 8, the original map or plan instead of a copy may be registered.

11. Upon any such district being so constituted a minister may and shall be nominated thereto in manner hereinafter provided, and may thereupon be licensed thereto by the bishop, and shall have power to perform and shall perform within such district all such pastoral duties appertaining to the office of a minister according to the rites and usages of the United Church of England and Ireland as shall be specified and set forth in his licence, and, when a building shall be licensed within such district for divine worship in manner hereinafter provided, shall also perform such services and offices as shall be specified and set forth in the same or any further licence granted in that behalf by the bishop of the diocese; and such minister shall perform such pastoral duties, services, and offices respectively, independently of the incumbent or minister of the church of any parish, chapelry, or district out of which such new district or any part thereof shall have been taken, and shall, so far as the performance of the same may be authorised by such licence or licences, have the cure of souls in and over such new district: Provided always, that no burials shall be performed in such licensed building, and that nothing in this Act contained shall empower such bishop to include in any such licence the solemnization of marriages.

Minister to be nominated and licensed to district;

and to have the cure of souls therein.

Proviso as to burials and marriages.

By the New Parishes Act, 1844 (7 & 8 Vict. c. 94), s. 10, nothing in any scheme or order constituting a new district is to affect any parish or district until a minister is duly licensed to the new district.

A building may be licensed for divine worship in the district under s. 13, *infra*.

12. Such minister shall be styled "the minister of the district of \_\_\_\_\_," according to the name thereof so fixed

Style and character of minister.

**Sect. 12.**

Minister to be a body corporate, with power to hold endowments.

as aforesaid, and shall be in all respects subject to the jurisdiction of the bishop and archdeacon within whose diocese and archdeaconry such district shall be situate, and shall only be removeable from his office of such minister for the like reasons and in the same manner as any perpetual curate is now by law removeable; and such minister shall be a body politic and corporate, and shall have perpetual succession, as well by the name and in the character aforesaid, as by the name and in the character of perpetual curate hereinafter mentioned and provided, as the case may be; and such minister and perpetual curate respectively may, in such name and character respectively, notwithstanding the statutes of mortmain, receive and take, to him and his successors, as well every grant of endowment or augmentation made or granted by the authority aforesaid, as also any real or personal estate or effects whatsoever which any person or persons or body corporate may give or grant to him according to law.

Bishop may license a place of worship in district.

Churchings and baptisms.

**13.** It shall be lawful for the bishop of the diocese, at any time after the constituting of any such district as aforesaid, to license any building within such district which he may consider to be fit and proper for such purpose for the performance of divine service by such minister according to the rites and usages of such united church; and such minister may for any churchings performed under any such licence receive such fees as shall be fixed and determined in manner hereinafter provided; and all laws now in force relating to the registration of baptisms shall apply to all baptisms performed under any such licence.

Until church or chapel is consecrated nothing herein shall prevent marriages and burials in mother church, or affect certain other rights.

**14.** Provided always, that until a church or chapel shall have been built or acquired within such district, and shall have been approved and consecrated as hereinafter provided, nothing herein contained shall prejudice or affect the right of any incumbent of any other church or chapel, who before the constituting of such district possessed the entire cure of souls within the same or any part thereof, to publish any banns, solemnize any marriages, or perform any burials in his own church or chapel which he could have published, solemnized, or performed therein, or to receive any fees,

dues, or emoluments (except the fees hereinbefore authorised to be received by the minister of such district) which as such incumbent he could have received if such district had not been constituted, nor any right to attend divine service in any other church or chapel which any inhabitant of such district possessed before such district was constituted.

**Sect. 14.**

The "fees hereinbefore authorised to be received by the minister" are the fees for churchings provided for in s. 13, *supra*.

15. When any church or chapel shall be built, purchased, or acquired in any district constituted as aforesaid, and shall have been approved by the said commissioners, by an instrument in writing under their common seal, and consecrated as the church or chapel of such district, for the use and service of the minister and inhabitants thereof, such district shall, from and after the consecration of such church or chapel, be and be deemed to be a new parish for ecclesiastical purposes, and shall be known as such by the name of "the new parish of \_\_\_\_\_," instead of "the district of \_\_\_\_\_," according to the name so as aforesaid fixed for such district; and such church or chapel shall become and be the church of such new parish accordingly; and any licence granted by the bishop, licensing any building for divine worship as aforesaid shall thereupon become void; and it shall be lawful to publish banns of matrimony in such church, and according to the laws and canons in force in this realm to solemnize therein marriages, baptisms, churchings, and burials, and to require and receive such fees upon the solemnization of such offices or any of them as shall be fixed by the chancellor of the diocese in which such new parish shall be situate, and which fees, and also the fees for churchings to be received as aforesaid by the minister of such district, such chancellor is hereby empowered and required to fix accordingly; and the like Easter offerings and dues may be received within the limits of such new parish by the perpetual curate thereof as are and were, at and before the time of the passing of this Act, payable to the incumbent of the church of the principal parish of which such new parish originally formed a part; and the several laws, statutes, and customs in force relating to the publication of banns of matrimony, and to the performance of

District to become a new parish upon a church being consecrated.

Licence of any other place of worship shall thereupon become void.

Marriages, baptisms, churchings and burials may be solemnized, and fees and dues received by minister.

**Sect. 15.**

No fee for baptism.

marriages, baptisms, churchings, and burials, and the registering thereof respectively, and to the suing for and recovering of fees, oblations, or offerings in respect thereof, shall apply to the church of such new parish, and to the perpetual curate thereof for the time being: Provided always, that it shall not be lawful for any such minister or perpetual curate to receive any fee for the performance of any baptism within his district or new parish, as the case may be, or for the registration thereof.

Minister to become perpetual curate of new parish;

and parish to be perpetual curacy, and benefice with cure of souls.

16. Upon any such district so becoming a new parish, the minister of such district, having been duly licensed, shall, without any further process or form in law, become and be perpetual curate of such new parish and of the church thereof, and shall have exclusive cure of souls in and over such parish; and shall be a body politic and corporate, and have perpetual succession; and such parish and church shall be and be deemed to be a perpetual curacy, and a benefice with cure of souls, to all intents and purposes.

Church wardens to be chosen.

17. In every such case of a district so becoming a new parish two fit and proper persons, being members of the United Church of England and Ireland, shall within twenty-one days from the consecration of the church thereof be chosen churchwardens for such new parish, one being chosen by the perpetual curate thereof, and the other by the inhabitants, residing therein and having a similar qualification to that which would entitle inhabitants to vote at the election of churchwardens for the principal parish as aforesaid, or the majority of such inhabitants, and such election shall take place at a meeting to be summoned in such manner in all respects as such perpetual curate shall direct; and such persons shall continue such churchwardens until the next usual period of appointing parish officers following their appointment; and at the like time in every year two such persons shall thenceforward be chosen by the perpetual curate for the time being and inhabitants assembled as aforesaid; and every person so chosen as aforesaid shall be duly admitted, and shall do all things pertaining to the office of churchwarden as to ecclesiastical matters in the said new parish: Provided always,

that nothing herein contained shall render any such churchwardens liable or competent to perform the duties of overseer of the poor in respect of such their office of churchwardens. **Sect. 17**

18. Provided always, that, until Parliament shall otherwise determine, nothing herein contained shall be construed to affect or alter any rights, privileges, or liabilities whatsoever, ecclesiastical or civil, of any parish, chapelry, or district, except as is herein expressly provided.

Act not to affect parochial rights, etc., otherwise than as expressly provided.

By s. 30 of the New Parishes Act, 1856 (19 & 20 Vict. c. 104), this Act is to be read and construed as one with that Act.

19. The said recited Acts, so far as they apply to making better provision for the cure of souls, shall extend to authorise the endowment or augmentation of the income of such ministers and perpetual curates as aforesaid, to such an amount or in such proportion, and in such manner as shall be deemed expedient, by the authority aforesaid; and also to authorise the assigning, at any time and from time to time, to the incumbent of any church or chapel whose fees, dues, or other emoluments, shall be diminished by or in consequence of any proceeding under the provisions of this Act, and, if it be deemed fit by the like authority, to his successors also, of such an annual sum as shall, upon due inquiry, appear to be a just and reasonable compensation for such diminution.

Endowment of minister.

Compensation to incumbent of mother church.

The recited Acts are the Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), and the Ecclesiastical Commissioners Act, 1841 (4 & 5 Vict. c. 39), mentioned in s. 4.

20. [*Patronage may be conferred upon contributors to endowment or to a church, or their nominees.*]

21. [*Remaining patronage to be exercised alternately by Crown and bishops.*]

22. [*Lands, etc., may be vested in ecclesiastical commissioners by deed enrolled under 27 Hen. 8, c. 16, or by will for endowment of ministers or for providing churches.*]

Extended to ecclesiastical corporations by the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 24; and to ecclesiastical and collegiate corporations by the New Parishes Act, 1856 (19 & 20 Vict. c. 104), s. 4.

**Sect. 23.**

Powers of  
3 & 4 Vict.  
c. 113, and  
4 & 5 Vict.  
c. 39,  
extended to  
this Act.

**23.** All the powers and authorities vested in her Majesty in Council and in the said commissioners by the said recited Acts, with reference to the matters therein contained, and all other the provisions of the same Acts relating to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and shall apply to her Majesty in Council and to the said commissioners, and to all schemes and orders prepared, made, and issued by them respectively, with reference to all matters contained in this Act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein; and the provisions contained in the Pluralities Act, 1838, respecting the party or parties to be deemed patron or patrons, for the purposes of notice to be served upon and consent to be given by such patron or patrons, and also respecting the manner in which and the party by whom any such consent is to be given, shall be construed to apply to the like matters respectively under this Act.

1 & 2 Vict.  
c. 106, as to  
notices to,  
and consent  
of, patrons  
to apply to  
this Act.

The "said recited Acts" are those mentioned in the margin. They are recited in s. 4. The provisions of the Pluralities Act, 1838 (1 & 2 Vict. c. 106), herein referred to, are contained in ss. 125—128 of that Act.

Power to  
make grants  
although  
patronage  
may not  
belong to  
incumbent  
of mother  
church.

**24.** [*Recital.*] It shall be lawful for the said commissioners to make any such grant in aid of the erection of any such new church or chapel as aforesaid as shall seem fit to them, if they are authorised so to do under the Church Building Acts, although the right of patronage of such church or chapel may not belong on the consecration thereof to the incumbent of the original parish in which such church or chapel shall be situate, any thing in such Acts to the contrary notwithstanding.

**25.** [*Reviving so much of 17 Car. 2, c. 3, as enables improPRIATORS to augment (repealed by 1 & 2 Vict. c. 106, s. 15). Repealed by Statute Law Revision Act, 1891.*]

Extent of  
Act.

**26.** This Act shall extend only to England and Wales, the Isle of Man, the islands of Guernsey, Jersey, Alderney, and Sark, and the Scilly Islands.

As to application of Act to Isle of Man, see note to Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 30, *ante*, p. 568.

**27.** [*Repealed by Statute Law Revision Act, 1874.*]

## NEW PARISHES ACT, 1844.

(7 &amp; 8 VICT. c. 94.)

*An Act to explain and amend an Act for making better Provision for the Spiritual Care of populous Parishes.*

[9th August 1844.]

Preamble recited the New Parishes Act, 1843 (6 & 7 Vict. c. 37). See Statute Law Revision Act, 1891.

1. [*Where right of patronage of district or new parish vested in the Crown, her Majesty may nominate ministers.*]

2. [*Where right of patronage is vested in the bishop he may license, as to any existing perpetual curacy.*]

3. [*No fee for warrant.—Fee for licence.*]

4. [*Service of scheme where incumbent or patron absent from England.*]

5. [*Service where incumbent incapacitated or benefice sequestered.*]

6. [*Service where patrons numerous.*]

7. In the construction of the said recited Act the words "goods and chattels" shall be construed to extend to and comprehend all personal estate and property whatsoever; and the word "testament" shall be construed to extend to and comprehend any will or testamentary paper whatsoever, including under such definition the execution by any such will, testament, or testamentary paper of any appointment, in pursuance of any power, howsoever conferred or acquired.

Construction of certain terms in 6 & 7 Vict. c. 37.

These terms occur in s. 22 of the New Parishes Act, 1843 (6 & 7 Vict. c. 37).

8. Notwithstanding anything in the said recited Act contained, it shall be lawful to transmit the original map or plan annexed to any scheme laid before her Majesty in

Original map or plan may be registered.



**Sect. 8.** Council under the provisions of the said recited Act, to be registered in the registry of the diocese, instead of a copy thereof, as provided by the same Act.

See s. 10 of the New Parishes Act, 1843 (6 & 7 Vict. c. 37), provided for registering a copy of the map or plan, *ante*, p. 571.

Bounds of districts may be varied within 12 months from first licence of minister of new district.

9. It shall be lawful, by the authority in the said recited Act provided, at any time or times within twelve months after the date of the licence of the minister first licensed to any separate district constituted under the provisions of the same Act, to alter the bounds of such district, although any alteration be not required with a view to the constituting of another separate district: Provided always, that the scheme for making any such alteration shall be subject to all the provisions in the same Act and in this Act contained relating to schemes for constituting separate districts thereunder; and that any portion of any such separate district which by any such alteration as aforesaid shall become detached or excluded therefrom shall to all intents and purposes again belong to and form part of the parish, chapelry, or district out of which such portion was taken upon such separate district being originally constituted, or to and of any new district, as shall be determined by the like authority.

The alteration of the bounds of the district may now be made at any time. See note to s. 9 of the New Parishes Act, 1843 (6 & 7 Vict. c. 37), *ante*, p. 570.

Cure of souls not to be affected until minister is licensed.

10. In the case of any district constituted under the provisions of the said recited Act nothing contained in the scheme or order for constituting the same shall in any manner whatever affect any parish, chapelry, or district, as to the pastoral superintendence of the inhabitants thereof or otherwise, until a minister shall have been duly licensed to such newly constituted district.

Form of grant or conveyance as in schedule.

11. Any grant, conveyance, or assurance which shall be made to the said commissioners by deed, under the authority of the said recited Act, of any lands, tithes, tenements, or other hereditaments, may be made according to the form in the schedule hereunto annexed contained, or as near thereto as the circumstances of the case will admit; and

every such conveyance and assurance shall be valid and effectual in the law to all intents and purposes. Sect. 11.

12. [*Repealed by Statute Law Revision Act, 1874.*]

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SCHEDULE.

[Sect. 11.]

I [*or we, or the corporate title, if a corporation*], under the authority of the New Parishes Acts, 1843 and 1844, do by these presents freely and voluntarily, and without any valuable consideration, give, grant, convey, and assure to the Ecclesiastical Commissioners for England all [*describe the premises to be conveyed*], and all [*my, or our, or the*] right, title, and interest [*of, if a corporation*] to and in the same and every part thereof, to hold to the said commissioners and their successors for the purpose of [*describe the particular purpose, being some purpose within the provisions of the said Acts, or say, generally, for the purposes of the said Acts*]. In witness whereof, etc.

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NEW PARISHES ACT, 1856.

(19 & 20 VICT. c. 104.)

*An Act to extend the provisions of an Act of the sixth and seventh years of her Majesty, for making better provision for the Spiritual Care of populous Parishes; and further to provide for the Formation and Endowment of separate and distinct Parishes.* [29th July 1856.](a)

Preamble recited the New Parishes Acts, 1843 (6 & 7 Vict. c. 37), and 1844 (7 & 8 Vict. c. 94), and that it was expedient that they should be extended and amended in the manner following. See Statute Law Revision Act, 1892.

1. It shall be lawful to constitute districts under the provisions of the said Acts, notwithstanding that there may

Constitution  
of districts  
under recited  
Acts.

(a) This Act is known and often referred to as "Blandford's Act." It is stigmatised by Dr. LUSHINGTON as "entitled to pre-eminence for obscurity and difficulty of construction" (*Gough v. Jones* (1863), 9 Jur. (N.S.) 82).

**Sect. 1.** be within the limits of any such district a consecrated church or chapel, any local Act to the contrary notwithstanding.

Power is given by the New Parishes Acts and Church Building Acts Amendment Act, 1884 (47 & 48 Vict. c. 65), s. 2, *post*, to the Ecclesiastical Commissioners, subject to certain restrictions, to dissolve a district formed under this Act before a church has been provided for or allotted to such district, and to return the endowment, if any, to the body or person who provided the same.

Scheme may specify church to become the parish church of district.

2. It shall be lawful for the commissioners, in the scheme for constituting any district, to specify some existing or intended church within the district as the parish church of such district; and immediately upon the issuing of the order of her Majesty in Council ratifying such scheme such district shall become and be a new parish, and such church, when consecrated, the church thereof, and the incumbent of such church, the incumbent thereof, in the same manner, and to the same extent, to all intents and purposes, as is contemplated with respect to new parishes formed under the said Acts, and to the churches and incumbents thereof respectively; and the incumbent of such church shall be liable to the performance of all pastoral duties within the limits of such new parish.

Scheme need not provide for endowment if endowment is expected from other sources. 6 & 7 Vict. c. 37, s. 9.

3. It shall be lawful to recommend the constitution of such district without providing in the scheme for the same the permanent endowment required by the ninth section of the New Parishes Act, 1843, if it shall appear to the commissioners, and shall be declared in the said scheme, that there is reason to expect from other sources an adequate maintenance for the incumbent.

Grant of lands by ecclesiastical and collegiate corporations. 6 & 7 Vict. c. 37, s. 22.

4. The powers and provisions contained in the twenty-second section of the New Parishes Act, 1843, enabling any person or body corporate to give and grant lands, tithes, tenements, or other hereditaments, goods or chattels, for the purposes of the said Act, shall be construed and held to authorise any ecclesiastical or collegiate corporation, aggregate or sole, to give or grant any lands, tithes, tenements, or other hereditaments, goods or chattels belonging to such corporation, in such manner as is in the said firstly and

secondly recited Acts mentioned, for the purposes of the said recited Acts or of this Act: Provided always, that the said powers shall not be exercised by the incumbent of any benefice with cure of souls without the consent of the patron of such benefice.

**Sect. 4.**

5. Every person resident within the limits of any new parish or district already formed under any of the Church Building Acts, or hereafter to be formed under the provisions of the New Parishes Act, 1843, and the New Parishes Act, 1844, or of this Act, who shall have claimed and have had assigned to him sittings in the church of such new parish, shall thereby surrender, as to any right that he may have possessed, an equal number of sittings in the church of the original parish or other ecclesiastical district out of which such parish shall have been taken, unless such last-mentioned sittings be held by faculty or under an Act of Parliament.

On assign-  
ment of  
sittings in  
church of  
new district,  
sittings in  
old parish  
church to be  
surrendered.  
6 & 7 Vict.  
c. 37.  
7 & 8 Vict.  
c. 94.

6. [*Pew rents may be taken according to scale, and applied towards repair of church and providing endowment.*]

7. [*Upon permanent endowment of any church or chapel a proportionate number of sittings to be declared free, or scale of pew rents to be reduced.*]

8. [*Scale of pew rents may be altered.*]

9. The parish clerk and sexton of the church of any parish constituted under the said recited Acts or this Act shall and may be appointed by the incumbent for the time being of such church, and be by him removable, with the consent of the bishop of the diocese, for any misconduct.

Clerk and  
sexton to be  
appointed  
by incum-  
bent.

If there is no churchyard belonging to the new parish, and all burials are effected in the old parish churchyard, the incumbent of the new parish has no right to appoint a sexton to perform burials in the old churchyard (*Hammond v. McAllister*, Times, November 14th, 1874). See note to the Church Building Act, 1819 (59 Geo. 3, c. 134), s. 16, *ante*, p. 477.

10. The freehold of the site of the church of any new parish created under this Act or the said firstly and secondly recited Acts, and of the churchyard, burial ground,

Freeholds  
of sites of  
churches,  
etc., to vest

**Sect. 10.**  
in incum-  
bents.

and vaults belonging thereto, with the rights, members, and appurtenances thereof, but in case the same shall be vested in any vestry by any local Act of Parliament, then not without the consent of such vestry, and the house of residence, with the appurtenances thereof, and all the lands, tithes, tenements, hereditaments, and other endowments belonging to such church, or held by or vested in any person or body corporate in trust exclusively for or for the exclusive benefit of the incumbent of such church, shall become and be vested in such incumbent and his successors for ever, and be held and enjoyed by him and them in right of such incumbency; and all lands, tenements, or hereditaments granted or conveyed for the site of any church, and upon which any church shall be built, or for a burial ground, shall from and after the consecration of such church and burial ground respectively remain and be freed from and discharged of all the estate, right, title, interest, claim, and demand of any person, body politic or corporate, whatsoever, unto or out of the same or any part thereof respectively, subject nevertheless to any rent that may be reserved thereout, and to the covenants and conditions subject to which the same may have been granted or conveyed.

For the vesting in the incumbent of sites, etc., conveyed to the commissioners under the Church Building Acts, see the Church Building Act, 1845 (8 & 9 Vict. c. 70), s. 13, *ante*, p. 549.

In 1816, under a local Act, a new church was built in St. Pancras, which was to be the "parish church," the old church being thereby converted into a "parish chapel." In 1853, by an Order in Council, the original burial place for the parish, which surrounded the old church, and also an additional ground provided under an earlier local Act, were closed, and a cemetery was provided for the whole parish. In 1863, that part of the parish in which the old church stood was formed into a new district, and the "parish chapel" was declared to be the church of that district:—*Held*, that this section did not operate to vest the old churchyard in the incumbent of the new district church, but that the freehold thereof still remained in the vicar of the parish (*Champneys v. Arrowsmith* (1867), L. R. 3 C. P. 107; 37 L. J. C. P. 22; 17 L. T. (N.S.) 261; 16 W. R. 277).

Offices of  
the church  
to be per-  
formed in  
all churches

11. The commissioners may, if they shall think fit, upon application of the incumbent of any church or chapel to which a district shall belong, with the consent in writing of the bishop of the diocese, make an order, under their

common seal, authorising the publication of banns of matrimony and the solemnization therein of marriages, baptisms, churchings, and burials, according to the laws and canons now in force in this realm; and all the fees payable for the performance of such offices, as well as all the mortuary and other ecclesiastical fees, dues, oblations, or offerings arising within the limits of such district, shall be payable and be paid to the incumbent of such district.

12. In every case in which all or any part of the fees or other ecclesiastical dues arising within the limits of any district, or payable in respect of marriages, churchings, and burials in the church or chapel thereof, or of such fees as are hereby made payable to the incumbent of any district, shall have been reserved, or, if such last-mentioned order had not been made, would of right belong, to the incumbent of the original parish, district, or place out of which the district of such church or chapel shall have been taken, or to the clerk thereof, an account of such fees shall be kept by the incumbent of such church or chapel, who is hereby required to receive and every three months pay over the same to the incumbent and clerk respectively who would have been entitled to them in case such districts had not been formed; and from and after the next avoidance of such incumbency, or the relinquishment of such fees by such incumbent, and after the situation of such clerk shall have become vacant, or after a compensation in lieu of fees has been awarded to such clerk by the bishop of the diocese, which he is hereby empowered to do, such reservation shall altogether cease and determine; and all such fees and dues shall belong to the incumbent of the district within which the same shall arise, or to the clerk of the church thereof.

In the case of a consolidated chapelry created under the Church Building Act, 1819 (59 Geo. 3, c. 134), the words "such incumbent" in this section mean the incumbents of all the parishes out of which the chapelry has been formed (*Jones v. Gough* (1865), 3 Moo. P. C. C. (N.S.) 1; 11 Jur. (N.S.) 251; 13 W. R. 509; 12 L. T. (N.S.) 31).

The voluntary relinquishment of fees under this section need not be in writing (*ibid.*).

When a new parish is constituted, the clerk of the old parish remains entitled, so long as he holds the office of clerk, to all the

**Sect. 12.****NOTE.**

clerk's fees in the new parish, unless he receives compensation in lieu thereof under this section (*Re Hampstead Parish*, Times, November 21st, 1876). The following is a report of that case extracted from the Times :

"The application made in this case to the Bishop of London by the parish clerk of St. John's, Hampstead, as to his fees, which his lordship had referred to his chancellor, and which had been reported in the Times on a former occasion, was now decided. The question was of some general importance. The learned Chancellor (Dr. TRISTRAM), in the course of his judgment, said the question was whether Mr. William Langmead, the parish clerk of Hampstead, who was appointed in 1844, and licensed by the bishop in 1852, was entitled to the customary fees for the publication of banns of marriages and churchings performed in the various churches which had been built and consecrated (nine in number) since the year 1852, and to which district chapelries had been assigned under Orders in Council.

"The clerks or vicars of three of the district chapelries, namely, St. Paul's, St. Peter's, and St. Stephen's, having doubted Mr. Langmead's legal right to the fees, the matter was brought before the Bishop of London to award him compensation under 19 & 20 Vict. c. 104 (Lord Blandford's Act), and the case came before this court. The clerk to the church trustees, Mr. Mowes, had been examined, as well as the vicars of the three districts mentioned. The point was whether Mr. Langmead was by law entitled to all the parish clerk's fees payable in the parish of Hampstead, immediately prior to the creation of the chapelries. Upon the evidence and upon the authorities, Dr. TRISTRAM was of opinion that Mr. Langmead was entitled to the fees. The next question was whether his right had been taken away, and after citing various statutes, he said, in his view, Mr. Langmead had not been deprived of his fees. He referred to the case of *Roberts v. Aulton* (1857), 2 H. & N. 432 ; 26 L. J. Ex. 380, in which it was held that a clerk was entitled to his fees. After reading several provisions in Lord Blandford's Act, the learned Chancellor said he was clearly of opinion that Mr. Langmead had a right to the fees while he was clerk ; and by the 12th section of that Act (19 & 20 Vict. c. 104), the incumbents of the several districts were bound to take an account and hand them over, unless the bishop of the diocese awarded compensation in lieu of fees. He should, therefore, advise the Bishop of London that Mr. Langmead, according to the correct construction of the Church Building Acts, was entitled to the parish clerk's fees for the publication of banns of marriages and churchings in the several districts of St. Peter's, St. Paul's, and St. Stephen's, an arrangement having been made in the other districts, and that it was a proper case for the bishop to exercise the discretion vested in him by the Act, and to award compensation to Mr. Langmead. The fees in each of the three districts were about £6 a year, and, in his judgment, a compensation of £4 10s. a year from each had better be made, to be paid to Mr. Langmead so long as he held the office of clerk to the parish."

In the case of a cemetery or burial ground provided by a burial authority for a district parish, it is doubtful whether since the Burial Act, 1900 (63 & 64 Vict. c. 15), the fees for performing the burial service in the consecrated part thereof will belong to

the incumbent of the district whenever such incumbent actually performs the service, notwithstanding there has not yet been an avoidance of the incumbency of the original parish or a relinquishment of fees under this section. The burial authority would, however, appear to be right in paying the fee to the incumbent who actually performs the service, leaving the two incumbents to settle between themselves which of the two is eventually entitled to it for his own use.

**Sect. 12.**

NOTE.

13. The provisions contained in the nineteenth section of the New Parishes Act, 1843, relating to compensation to be given as therein mentioned, shall be applicable to and may be exercised by the commissioners in like manner with respect to persons affected by the provisions of this Act.

Compensation.  
6 & 7 Vict.  
c. 37, s. 19.

14. Wheresoever or as soon as banns of matrimony and the solemnization of marriages, churchings, and baptisms according to the laws and canons in force in this realm are authorised to be published and performed in any consecrated church or chapel to which a district shall belong, such district not being at the time of the passing of this Act a separate and distinct parish for ecclesiastical purposes, and the incumbent of which is by such authority entitled for his own benefit to the entire fees arising from the performance of such offices without any reservation thereout, such district or place shall become and be a separate and distinct parish for ecclesiastical purposes, such as is contemplated in the fifteenth section of the New Parishes Act, 1843, and the church or chapel of such district shall be the church of such parish; and all and singular the provisions of the said firstly and secondly recited Acts (as amended by this Act) relative to new parishes, upon their becoming such, and to the matters and things consequent thereon, shall extend and apply to the said parish and church, as fully and effectually as if the same had become a new parish under the provisions of the said last-mentioned Acts.

When church of district authorised for church offices, district to become a separate parish.

6 & 7 Vict.  
c. 37.

Consolidated chapelries and district parishes, though differing in origin, are, when once formed, precisely similar in character, and are both regulated by the provisions of this Act (*Jones v. Gough* (1865), 3 Moo. P. C. C. (n.s.) 1; 11 Jur. (n.s.) 251; 13 W. R. 509; 12 L. T. (n.s.) 31).

A new church was built and endowed, and had a district assigned



## Sect. 14.

## NOTE.

to it, and a fund provided for repairs under the Church Building Act, 1831 (1 & 2 Will. 4, c. 38), and the bishop, under the Marriage Act, 1836 (6 & 7 Will. 4, c. 85), gave his licence for the publication of banns and solemnization of marriages therein, and for taking the same fees as were taken in the mother church:—*Held*, that the authority intended by this section was not a licence by the bishop, which, by 6 & 7 Will. 4, c. 85, is revocable, but an authority under the order of the commissioners, under s. 11 of this Act, and therefore the district did not become a distinct parish within this section (*Reg. v. Perry* (1861), 3 E. & E. 640; 30 L. J. Q. B. 141; 7 Jur. (n.s.) 655; 3 L. T. (n.s.) 885; 9 W. R. 383; *Jones v. Gough, supra*).

In 1851 the Church of St. T. was built and consecrated, and in 1852 a district was assigned to it by Order in Council (as a chapel of ease) under the Church Building Acts, 1818, 1819 (58 Geo. 3, c. 45; 59 Geo. 3, c. 134, s. 16), out of the ancient parish of W. At that time the deceased inhabitants were all buried in the parish churchyard. By the act of consecration and Order in Council, authority was given to perform baptisms, marriages, and burials in the new church, and the fees were to be received by the incumbent of the district. A burial ground having been provided for the whole parish (the district of St. T. contributing to the expense), and the old churchyard closed, it was held that the district of St. T. became a distinct and new parish under this section upon the passing of this Act, and that the incumbent was, under the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 5, entitled to the fees on the burial of the inhabitants of the district in the parish burial ground upon the resignation of the rector of the ancient parish (*Cronshaw v. The Wigan Burial Board* (1873), L. R. 8 Q. B. 217; 42 L. J. Q. B. 137; 28 L. T. 283). It is to be noted, that the words in s. 5 of the Burial Act of 1857, relating to fees are now repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15), but such repeal does not affect the decision in this case. The effect produced by such repeal would be to make it possible that the fees might belong to the incumbent of the new parish, if he actually performed the burial service in the burial ground, although the district had not become a separate and distinct parish by virtue of this section.

The publication of the banns of marriage and the solemnization of marriage are “ecclesiastical purposes” within the meaning of this section, and, where a district becomes within this section a separate and distinct parish for ecclesiastical purposes, the incumbent of such parish has the exclusive right of performing the office of marriage in the case of persons resident in his parish, and of receiving the fees for such marriages, and the incumbent of the mother parish has no right to solemnize such marriages in the church of the mother parish or to receive fees for the same (*Fuller v. Alford* (1883), 10 Q. B. D. 418; 52 L. J. Q. B. 265; 48 L. T. 431; 31 W. R. 522; 47 J. P. 423).

Incumbents of new parishes to have exclusive cure of souls therein.

15. The incumbent of every new parish created or hereafter to be created pursuant to the provisions of the said firstly and secondly recited Acts or of this Act shall, saving the rights of the bishop of the diocese, have sole and

exclusive cure of souls and the exclusive right of performing all ecclesiastical offices within the limits of the same, for the resident inhabitants therein, who shall for all ecclesiastical purposes be parishioners thereof, and of no other parish; and such new parish shall, for the like purposes, have and possess all and the same rights and privileges, and be affected with such and the same liabilities, as are incident or belong to a distinct and separate parish, and to no other liabilities: Provided always, that nothing herein contained shall be taken to affect the legal liabilities of any parish regulated by a local Act of Parliament, or the security for any loan of money legally borrowed under any Act of Parliament or otherwise.

Burial in consecrated ground is an "ecclesiastical purpose," and when a district, which has become a new parish by the operation of this Act, has a burial ground of its own, the inhabitants of such district have no right of burial in the burial ground of the old parish from which the district was taken (*Hughes v. Lloyd* (1888), 22 Q. B. D. 157). As to what may be the rights of the inhabitants of a new parish which has no burial ground of its own, see note to 7 & 8 Geo. 4, c. 72, s. 2, *ante*, p. 512.

16. [*Assignment of rights of patronage in benefices in consideration of augmentation of endowments* (6 & 7 Vict. c. 37, s. 20).]

17. [*Consideration required for assignment of patronage in perpetuity.*]

18. [*Assignment of patronage to be made with certain consents.*]

This section is partly repealed by the New Parishes Acts and Church Building Acts Amendment Act, 1869 (32 & 33 Vict. c. 94), s. 10.

19. [*Notices of intended assignments to be sent to patrons.*]

20. [*Who to be deemed patrons.*]

21. [*Patronage assigned in perpetuity not to be subsequently sold in certain cases for thirty years except on certain conditions.*]

22. [*Patronage until assigned in consideration of augmentation of endowment, may be assigned to incumbent of original parish.*]

**Sect. 15.**

**Sect. 23.** **23.** [*Endowments hereafter provided for any parish to be vested in incumbent.*]

**24.** [*Where patronage is assigned in perpetuity to the nominees of any body or person, such nominees shall be trustees for exercise of the right.*]

Parishes may be divided for ecclesiastical purposes by scheme ratified by Order in Council.

**25.** It shall be lawful for the commissioners, by the authority aforesaid, and subject to such consents as are hereinafter mentioned, to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatsoever, and to fix and settle the respective proportion of tithes, glebe lands, and other endowments which shall arise, accrue, remain, and be within each of such respective divisions, according as by the like authority shall be deemed advisable; and the order made by her Majesty in Council, ratifying the scheme for such division, shall be good and valid in law for the purpose of effecting the same; and such scheme shall set forth the particular expediency of such division, and how far it may be necessary in consequence thereof to make any alteration in ecclesiastical jurisdiction, and how the changes consequent upon such division in respect of patronage, rights of pew holders, and other rights and privileges, glebe lands, tithes, rent-charges, and other ecclesiastical dues, oblations, offerings, rates, and payments, may be made with justice to all parties interested; and such scheme shall also contain such directions and regulations relative to the duties and character of the incumbents of the respective divisions of such parish, and to the performance of the offices and services of the church in the respective churches thereof, and to the fees to be taken for the same respectively, and to any other matter or thing, which may be necessary or expedient by reason or in consequence of such change: Provided always, that such division shall be made in the following cases with the following consents only; that is to say, in the case of a benefice in the patronage of the Crown, or in the Chancellor of the Duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, or of a benefice in private patronage, with the consent of the patrons thereof respectively, with the consent

of the bishop of the diocese, such consents to be testified as aforesaid: And provided also, that no such provision shall take effect until after the first avoidance then next ensuing of the church of the parish to be so divided, unless with the consent in writing of the actual incumbent thereof. Sect. 25.

This section confers upon the Ecclesiastical Commissioners very similar powers to those conferred upon the Church Building Commissioners by the Church Building Act, 1818 (58 Geo. 3, c. 45), s. 16, which had already been transferred to the Ecclesiastical Commissioners by the Church Building Commissioners (Transfer of Powers) Act, 1856 (19 & 20 Vict. c. 55).

26. [*Where parishes are divided or new districts constituted, a division and resettlement of endowments may be made.*]

27. For the purpose of providing for the incumbent of any church or chapel a convenient house of residence, or for a site thereof, or for a garden or glebe thereto, it shall be lawful for any body or person who shall give, grant, or convey to the Ecclesiastical Commissioners any messuage, lands, tenements, or hereditaments, to give or grant the same, and for the said commissioners to receive the same, subject to such conditions and stipulations, for the purpose of more effectually securing the same to and for the use of such spiritual person aforesaid and his successors for ever, as may be agreed upon between the said commissioners and the body or person so giving or conveying the same. As to providing houses of residence for incumbents of churches or chapels.

The words "body or person" are defined in s. 33, *infra*.

28. [*Churchwardens to be paid compensation for rights of common* (58 Geo. 3, c. 45, s. 38).]

29. Nothing herein contained shall be construed to affect or alter the provisions of the Parish of Manchester Division Act, 1850, or to affect or alter any existing or special rights, privileges, or liabilities whatsoever, ecclesiastical or civil, of any parish, district, or place, except as is herein otherwise provided. Saving for 13 & 14 Vict. c. 41, etc.

30. All the powers and authorities vested in her Majesty in Council and the Ecclesiastical Commissioners by the Powers of 3 & 4 Vict. c. 113, and

**Sect. 30.**  
 1 & 5 Vict.  
 c. 39, ex-  
 tended to  
 this Act.

Ecclesiastical Commissioners Act, 1840, and by the Ecclesiastical Commissioners Act, 1841, with reference to the matters therein contained, and all other the provisions of the same Acts relative to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and shall apply to her Majesty in Council, and to the commissioners, and to all schemes and orders prepared, made, and issued by them respectively with reference to all matters contained in this Act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein, and the said recited Acts and this Act shall be read and construed as one and the same Act.

Apportion-  
 ment of  
 endowments  
 for the  
 repairs of  
 churches  
 within the  
 parishes.

**31.** It shall be lawful for the commissioners, with the consent of the bishop of the diocese, and of the patron and incumbent of the church of any parish, to apportion any sum arising from a permanent endowment belonging to such church, and applicable to the repair and maintenance thereof, to the repair or maintenance of any church or churches situated within the original limits of such parish, anything contained in any local Act to the contrary notwithstanding.

For purposes  
 of burial  
 parishes to  
 be ecclesi-  
 astical dis-  
 tricts.

**32.** For the purposes of the Acts concerning or regulating the burial of the dead, every parish created under the said recited Acts or this Act shall be held to be an ecclesiastical district within the meaning of the said Acts.

Interpreta-  
 tion.

**33.** In the construction of this Act :

The expression "parish, district, or place," shall mean and include any ancient or distinct and separate parish, district parish, chapelry, district chapelry, consolidated chapelry, or extra-parochial place ; and the word "extra-parochial place" shall include any township, vill, village, or hamlet, being extra-parochial :

The word "commissioners" shall mean the Ecclesiastical Commissioners :

The word "lands" shall extend to and include manors, messuages, buildings, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description :

The word "tithes" shall mean and include all commuted and uncommuted rentcharges in lieu of tithes, portions and parcels of tithe, and all moduses, compositions, prescriptive and customary payments: Sect. 33.

The expression "body or person" shall mean and include any body politic, corporate, or collegiate, the trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, school, or charitable foundation, and any corporation aggregate or sole, as well as one person:

The word "bishop" shall include archbishop.

**34.** This Act shall extend only to that part of the United Kingdom called England and Wales, *and the Isle of Man*, and to the islands of Guernsey, Jersey, Alderney, and Sark, and to the Scilly Islands.

As to application of this Act to the Isle of Man, see note to the Church Building Act, 1851 (14 & 15 Vict. c. 97), s. 30, *ante*, p. 568.

**35.** Whenever it may be necessary to cite this Act, it shall be sufficient to use the expression "New Parishes Act, 1856." Short title of Act.

## NEW PARISHES ACTS AND CHURCH BUILDING ACTS AMENDMENT ACT, 1869.

(32 & 33 Vict. c. 94.)

*An Act to amend the New Parishes Acts and Church Building Acts.* [11th August 1869.]

**1.** The powers and provisions relating to the alteration of the boundaries of districts which are contained in the ninth section of the New Parishes Act, 1844, shall, notwithstanding the lapse of the periods of twelve months and five years mentioned in the same section and in the twenty-seventh section of the Ecclesiastical Commissioners Act, 1850, respectively, or either of them, be at any time applicable to the alteration of the boundaries of any and every ecclesiastical district which may or shall have become a new parish for ecclesiastical purposes under the provisions of the "New Parishes Acts," whether such district has

Powers of New Parishes Acts to apply at any time to new parishes for ecclesiastical purposes. 7 & 8 Vict. c. 94. 13 & 14 Vict. c. 94.

**Sect. 1.** been or shall have been originally created under the provisions of the said Acts or any of them, or of any other Act of Parliament.

Amended by the New Parishes and Church Building Acts Amendment Act, 1884 (47 & 48 Vict. c. 65), s. 3, *post*.

Pews or sittings may be surrendered to Ecclesiastical Commissioners.

2. Whenever by virtue of any public or private Act of Parliament now or hereafter in force, or by virtue of any deed or instrument, the pews or sittings, or some or one of the pews or sittings, in any church or chapel, consecrated or unconsecrated, are or is or shall be subject to any trust as to the grant, demise, sale, or disposal of such pews or sittings, pew or sitting, or are, is, or shall be the private property for any estate whatsoever of any person or persons, then and in every such case it shall be lawful for the trustees of such church or chapel, or other the persons exercising powers of grant, demise, sale, or disposal as aforesaid, or for all or any persons possessing on their own behalf or on the behalf of others any rights, qualified or unqualified, of ownership, by reason of any such grant, demise, sale, or disposal as aforesaid, or for any person or persons to whom any pews or sittings, pew or sitting, in such church or chapel shall belong, for any estate whatsoever, under or by virtue of such Act of Parliament, deed, or instrument as aforesaid, with or without consideration, to surrender and for ever yield up, either altogether or separately, and according to the nature and extent of their several rights and interests, to the bishop of the diocese wherein such church or chapel is situate, or to the Ecclesiastical Commissioners, who are hereby respectively authorised to accept every such surrender, all rights of ownership, grant, demise, sale, disposal, or other right whatsoever which they the said trustees, persons, or person, may have in, over, or in respect of such pews or sittings, pew or sitting.

Surrender to be by deed, executed by the parties, including bishop of diocese.

3. Every such surrender shall be made by deed executed by all the parties to the same, amongst whom shall be included the bishop of the diocese wherein the church or chapel to be affected by it is situate, and the patron or patrons of such church or chapel aforesaid; and such deed shall be registered in the registry of the said diocese.

**4.** So soon as all rights and powers over or in respect of **Sect. 4.**  
 the pews or sittings in any such church or chapel shall have  
 been surrendered to the bishop of the diocese or to the said  
 commissioners as aforesaid, the trusts or rights of ownership,  
 and the obligations affecting such pews or sittings, or any of  
 them, under such Act of Parliament, deed, or instrument as  
 aforesaid, shall at once and ipso facto determine, and all  
 the provisions of such Act of Parliament, deed, or instru-  
 ment as to pews or sittings in such church or chapel shall  
 thenceforth be void and of none effect.

Upon sur-  
 render all  
 rights of  
 ownership,  
 etc., to  
 cease.

**5.** From and after every such surrender to the said bishop  
 or commissioners, the pews or sittings, pew or sitting,  
 affected thereby shall, to the extent of the rights or powers  
 expressed to be surrendered, be subject to the same laws as  
 to all rights and property therein as the pews and sittings  
 of ancient parish churches are now subject to: Provided  
 that if the church or chapel be not consecrated such pews  
 or sittings, pew or sitting, shall belong absolutely to the  
 bishop and his successors or to the said commissioners, as  
 the case may be, until the consecration of the said church  
 or chapel, and from and after the consecration thereof the  
 right of the said bishop or commissioners shall cease, and  
 the said pews or sittings shall be subject to the same laws  
 as to all rights and property therein as the pews and sittings  
 of ancient parish churches.

And pews,  
 etc., subject  
 as pews  
 of ancient  
 parish  
 churches.

**6.** The powers and provisions hereinbefore contained as  
 to pews and sittings subject to trusts as aforesaid in any  
 such church or chapel as aforesaid shall, mutatis mutandis,  
 be held to apply to and shall be held to authorise the  
 absolute transfer and conveyance to the said commissioners,  
 by any deed or deeds, made without consideration and  
 executed by all the parties thereto as aforesaid, of the free-  
 hold of any church or chapel, consecrated or unconsecrated,  
 and of the vaults therein or thereunder, which, under or by  
 virtue of any such Act of Parliament, deed, or instrument  
 as aforesaid, is or are or shall be vested in any persons or  
 person in their own right or as trustees or trustee of such  
 church or chapel for an estate in perpetuity; and if such  
 church or chapel be unconsecrated at the time of such  
 transfer and conveyance, such freehold so transferred and  
 conveyed shall remain in the said commissioners until the

Powers  
 hereinbefore  
 contained  
 to apply to  
 and authorise  
 absolute  
 transfer to  
 Ecclesi-  
 astical  
 Commis-  
 sioners.



**Sect. 6.**

consecration of the same church or chapel, and shall then ipso facto become subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches.

Upon complete surrender, all rights created by Act for building church to cease.

7. In every case in which a complete surrender and determination of the rights, powers, obligations, and trusts affecting the pews or sittings in a church or chapel shall have been carried out as aforesaid, and in every case in which such transfer and conveyance as aforesaid of the freehold of a church or chapel, and the vaults (if any) thereof, shall have been effected, all other rights, powers, obligations, and trusts created, conferred, or enforced as to such church or chapel by the Act of Parliament, deed, or instrument under which such church or chapel was built, shall upon such complete surrender and determination, or (as the case may be) such transfer and conveyance, absolutely cease and determine; provided always, that such cesser and determination shall not diminish or in anywise affect any right or rights of patronage.

Provision for sites of churches pulled down. 8 & 9 Vict. c. 70.

8. In and by any faculty granted by a bishop for wholly pulling down any church, under the provisions contained in the first section of the Church Building Act, 1845, it shall be lawful to make such provision as such bishop may deem proper and expedient for the use or preservation of the site of such church, either by the incumbent of the substituted church, or by the churchwardens of the parish wherein such site lies, or by any other person being the owner of the freehold of the land adjoining such site with the consent of the incumbent and of such other person.

The portions of a benefice held in severalty may be consolidated into one.

9. In every case where the respective incumbents of two or more benefices held in severalty (whether each of such benefices belongs to the same patron or to different patrons) have or shall have by statute or by custom the right in virtue of their respective incumbencies to execute the office of an incumbent within one and the same church, and within no other church other than a chapel of ease, then the powers and provisions given by and contained in the seventy-second section of the Ecclesiastical Commissioners Act, 1840, with respect to the consolidation of two or more portions of a benefice divided as therein mentioned into one benefice to be held by one incumbent, shall, subject to the

3 & 4 Vict. c. 113.

Sect. 9.

conditions therein expressed, be available for and shall apply to and may be used for effecting the consolidation of both or all of such benefices into one benefice to be held by one incumbent, and this notwithstanding that such benefice when so united may include the cure of souls within more than one parish: Provided always, that any plan or scheme for such consolidation to be framed under the provisions of the Act last mentioned may contain a regulation that such consolidation shall not take effect until after the next avoidance of any one or more of such benefices to be specially named in such plan or scheme; and provided also, that nothing herein contained shall be held to create an union of the two or more parishes so as aforesaid to be included within such united benefice, but that each of such parishes shall remain for all purposes, civil and ecclesiastical, precisely in the same position as if no such union of benefices as aforesaid had taken place.

10. [*Repeal of so much of 19 & 20 Vict. c. 104, s. 18, as requires that in the case of a benefice in the patronage of the incumbent for the time being of any other benefice the consent of the patron of such other benefice, if a private patron, shall be necessary in order to effect an assignment of patronage under that Act. Statute Law Revision (No. 2) Act, 1893.*] Part of 19 & 20 Vict. c. 104, s. 18, repealed.

The private patron in any such case shall have one month's notice from the Ecclesiastical Commissioners, and he may require the commissioners to assess the amount of diminution in the value of his advowson, if any, likely to be caused by any contemplated assignment of patronage under the said Act, or may require that such diminution shall be ascertained by reference to the decision of two arbitrators, one to be appointed by himself and the other by the commissioners, and if thereupon it shall appear that any such diminution will be caused by the assignment of patronage contemplated, such private patron shall be entitled to claim and recover the amount of such diminution from the person or persons or body to whom the said assignment of patronage may be made.

11. [*As to parish where there is no church and no patron.*]

12. [*Contract for the assignment of patronage under the Church Building and New Parishes Acts not to be simoniacal.*]

**Sect. 13.**

**13.** [*Certain assignments of patronage under Church Building and New Parishes Acts to be valid, and none of the penalties against simony to attach.*]

Meaning of  
"church"  
and  
"chapel."

**14.** The words church and chapel in this Act shall apply only to churches and chapels of the Established Church of England.

## NEW PARISHES ACTS AND CHURCH BUILDING ACTS AMENDMENT ACT, 1884.

(47 & 48 VICT. c. 65.)

*An Act to further amend the New Parishes Acts and the Church Building Acts.* [14th August 1884.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

**1.** This Act may be cited as the New Parishes Acts and Church Building Acts Amendment Act, 1884.

### AMENDMENT OF NEW PARISHES ACTS.

Power to dissolve district formed under New Parishes Acts.  
6 & 7 Vict. c. 37.  
7 & 8 Vict. c. 94.  
19 & 20 Vict. c. 104.

**2.**—(1.) Where, under the New Parishes Acts, 1843, 1844, and 1856, or any of them, a district has been constituted, but a church has not been provided for or allotted to such district, it shall be lawful for the Ecclesiastical Commissioners for England, if it appears to them expedient, to submit (with the consent of the bishop of the diocese under his hand) to her Majesty in Council a scheme for the dissolution of such district, and for the reincorporation of its area or parts or part thereof in the parish or parishes or district or districts, out of which it was constituted, or for the addition of its area or parts or part thereof to some other parish or parishes or district or districts, as to the said commissioners may appear most expedient.

(2.) If an endowment has been provided for the district so dissolved, any scheme under this section shall provide for its return to and revesting in the body or person who provided the same ; and any such scheme may contain such other incidental or auxiliary provisions as the said commissioners may deem necessary or proper.

(3.) The draft of any scheme made under this section must be delivered or transmitted to every incumbent or minister and patron affected thereby; and such scheme shall not be submitted to her Majesty in Council until after the expiration of one month next after such draft shall have been so delivered or transmitted, unless every such incumbent or minister and patron shall in the meantime consent thereto; and if any person shall at the time of the ratification of such scheme be the incumbent or minister of the district proposed to be dissolved, the scheme shall not have any operation unless and until such person shall have consented thereto, or shall have ceased to be such incumbent or minister.

Sect. 2

(4.) A map or plan showing every alteration of boundaries proposed to be affected by a scheme under this section shall be annexed to the draft scheme, and a copy of such map or plan settled so as to correspond with the provisions of the scheme so ratified, shall be registered by the registrar of the diocese, together with any order of her Majesty in Council ratifying such scheme, but it shall not be necessary to publish any such map or plan in the London Gazette.

(5.) Subject as aforesaid, the provisions of the said New Parishes Acts relative to the making, publication, and ratification of schemes shall apply to schemes under this section.

3. The powers as to alterations of boundaries contained in the first section of the New Parishes Acts and Church Building Acts Amendment Act, 1869, shall be applicable and may be exercised in the case of any district constituted under the New Parishes Acts, 1843, 1844, and 1856, or any of them, in which no church shall have been provided and consecrated, as well as in the case of a district which shall have become a new parish for ecclesiastical purposes.

Amendment  
of s. 1 of  
32 & 33 Vict.  
c. 94.

#### AMENDMENT OF CHURCH BUILDING ACTS.

4.—(1.) Where a church or chapel has been constituted the parish church of a parish in the stead of the ancient parish church under the Act passed in the year 1838, "To amend and render more effectual the Church Building Acts," and provision has been made under section eighteen of the same Act for the maintenance of the ministers and clerks of the respective churches, or either of them, out of

Power to  
revoke or  
alter pro-  
vision made  
under s. 18  
of 1 & 2 Vict.  
c. 107, with  
respect to  
application  
of pew rents.

**Sect. 4.** the pew rents of either of such churches, it shall be lawful for the Ecclesiastical Commissioners for England from time to time by deed under their common seal, made with the consent of the bishop of the diocese, and of every patron and minister affected thereby, to revoke in whole or part or in any way to alter as they may see fit the deed or other instrument making such provision.

(2.) A consent under this section must be testified by writing under the hand of the person giving the same, and attested by at least one witness.

(3.) Any deed or other instrument making such provision as aforesaid, which is expressed to be revoked or altered by a deed duly made in compliance with this section, shall to the extent of such revocation or alteration cease to be in force and become of no effect.

**5. [Short titles of Church Building Acts.]**

This section, and the schedule enumerating all the Church Building Acts, 1818 to 1884, with their short titles, are repealed by the Statute Law Revision Act, 1898, in consequence of the passing of the Short Titles Act, 1896 (59 & 60 Vict. c. 14), in the schedule to which a similar enumeration is given of those Acts, with the same short titles as in this schedule, as follows :

**SCHEDULE.**

58 Geo. 3, c. 45	- -	The Church Building Act, 1818.
59 Geo. 3, c. 134	- -	The Church Building Act, 1819.
3 Geo. 4, c. 72	- -	The Church Building Act, 1822.
5 Geo. 4, c. 103	- -	The Church Building Act, 1824.
7 & 8 Geo. 4, c. 72	- -	The Church Building Act, 1827.
1 & 2 Will. 4, c. 38	- -	The Church Building Act, 1831.
2 & 3 Will. 4, c. 61	- -	The Church Building Act, 1832.
1 & 2 Vict. c. 107	- -	The Church Building Act, 1838.
2 & 3 Vict. c. 49	- -	The Church Building Act, 1839.
3 & 4 Vict. c. 60	- -	The Church Building Act, 1840.
7 & 8 Vict. c. 56	- -	The Church Building (Banns and Marriages) Act, 1844.
8 & 9 Vict. c. 70	- -	The Church Building Act, 1845.
9 & 10 Vict. c. 68	- -	The Church Building (Burial Service in Chapels) Act, 1846.
11 & 12 Vict. c. 37	- -	The Church Building Act, 1848.
14 & 15 Vict. c. 97	- -	The Church Building Act, 1851.
17 & 18 Vict. c. 32	- -	The Church Building Act, 1854.
19 & 20 Vict. c. 55	- -	The Church Building Commissioners- (Transfer of Powers) Act, 1855.
32 & 33 Vict. c. 94	- -	The New Parishes Acts and Church Building Acts Amendment Act, 1869.
47 & 48 Vict. c. 65	- -	The New Parishes Acts and Church Building Acts Amendment Act, 1884.

## UNION OF BENEFICES ACTS.

### UNION OF BENEFICES ACT, 1860.

(23 & 24 VICT. c. 142.)

*An Act to make better Provision for the Union of contiguous Benefices in Cities, Towns, and Boroughs.*

[28th August 1860.]

Preamble recited the Pluralities Act, 1838 (1 & 2 Vict. c. 106); the Pluralities Act, 1850 (13 & 14 Vict. c. 98); 18 & 19 Vict. c. 127 (expired).

1. Two or more contiguous benefices within the metropolis as defined by the Metropolis Management Act, 1855, may from time to time be united, or a benefice or contiguous benefices and one or more spiritual sinecure rectory or rectories, vicarage or vicarages, contiguous to such benefice or benefices, and situate in the metropolis, may from time to time be united, without regard in any case to aggregate population or aggregate yearly value, and without limitation as to the same; and every such union shall be effected in the manner hereinafter provided.

Union of benefices within the metropolis. 18 & 19 Vict. c. 120.

2. The expression "union of benefices" shall throughout this Act (unless there shall be something in the context repugnant to such construction) mean such an union of two or more contiguous benefices with one another, or such an union of a benefice or benefices with a spiritual sinecure rectory or spiritual sinecure rectories, vicarage or vicarages, as is specified in the preceding section of this Act; and the expression "united parish" shall mean the parishes which in consequence of an union of benefices shall have become united for ecclesiastical purposes under this Act.

Interpretation of terms.

3. Whenever it shall appear to the bishop of the diocese of London or of Winchester, as the case may be, that an

Power to bishops of London or

**Sect. 3.**

Winchester  
to issue com-  
missions.

union of benefices may with advantage to the interests of religion be effected within his diocese, he may cause a commission to be issued under his hand and seal, addressed to five persons, to be nominated as after mentioned, authorising and requiring them to inquire into and report upon the expediency of the proposed union; and such commissioners shall and may inquire into all such matters in anywise affecting such union or connected therewith as they may deem necessary; and the commissioners shall make their return to the commission within six calendar months from the issuing of the commission, or within such enlarged time as the bishop shall, by writing under his hand, from time to time direct; and notice of the issuing of a commission shall be sent by the bishop to the vestry clerk of each parish proposed to be united; and notice thereof shall be published by such vestry clerk by affixing it upon the door of the parish church.

Commission,  
how to be  
nominated.

4. Three of the commissioners shall be beneficed clergymen residing within the diocese, of whom one shall be nominated by the dean and chapter of the cathedral church of Saint Paul, and two by the bishop of the diocese, and the remaining two shall be lay members of the Church of England, and shall be nominated to the bishop by the corporation of the City of London; and no commissioner shall be entitled to claim or shall receive any salary or payment for performing the duties imposed on him as such commissioner.

Quorum and  
powers of  
commis-  
sioners.

5. Three of the commissioners, of whom one shall be a lay commissioner, shall constitute a quorum; and the commissioners shall have power at their discretion to call for the production before them of any documents not affecting private interests which they may deem necessary for the purposes of the commission; and the persons having the care or custody of such documents shall be bound to produce them to the commissioners upon the requisition in writing of any two commissioners; and the commissioners may examine on oath all persons desirous or willing to be examined by them touching any matter relating to the object of the commission, and may administer the oaths

necessary for that purpose; and the churchwardens of the parishes proposed to be united shall have notice of the sittings of such commission, and shall be entitled, with their vestry clerk, to attend thereat; and the commissioners shall in their return to the commission certify all such matters and things as shall appear to them material, together with their opinion as to the expediency or otherwise of the proposed union, and, if they or any three of them competent to constitute a quorum shall deem the union expedient, shall recommend the terms on which in their opinion the same ought to be effected.

**Sect. 5.**

Return to the commission.

6. If before the return to the commission any commissioner shall die, or become incapable of acting by removal from the diocese or otherwise, the commission shall continue in full force, unless there shall not be sufficient commissioners remaining to constitute a quorum; and notwithstanding the death or disqualification of any one or more of the commissioners the qualified commissioners for the time being shall continue to exercise the powers given to the commissioners by this Act until such vacancy or vacancies shall have been filled up; but if there shall not be a sufficient quorum, the bishop may, either before or after the time limited for the return to the commission, issue a fresh commission under the provisions of this Act in lieu of the original commission; and the commissioners under such substituted commission shall have all the powers of the original commission, and may adopt the evidence taken under it.

Provisions in case of death or disqualification of commissioners.

7. If the return to the commission shall recommend an union, the bishop shall cause proposals for a scheme, based upon the terms recommended, to be prepared for effecting the union; which proposals, with the consent thereto in writing of the patron or patrons of each of the benefices affected, shall be transmitted by the bishop to the churchwardens of each parish proposed to be united, in order that the same may be considered by the inhabitants in vestry assembled; and all such proposals shall have especial regard to the residence of the incumbent on the benefice proposed to be constituted the united benefice, and shall contain all necessary provisions conducing to such residence.

Bishop to prepare and transmit proposals for a scheme to churchwardens, etc.



**Sect. 8.**

Vestry to notify assent or objections, and bishop to transmit final proposals to ecclesiastical commissioners, who shall prepare scheme, and certify same to the Queen in Council.

8. The vestry of each parish shall, by the vestry clerk or other officer, notify to the bishop, within two calendar months after the receipt of the proposals, their assent or their objections to or any suggestions for the modification of the same; and the bishop shall give full consideration to every such notification of vestry, and shall make such alterations in the proposals as he may think right; and the bishop shall cause such proposals, as finally approved by him and assented to by the patrons, and by the vestries of the parishes to be affected thereby, to be transmitted to the Ecclesiastical Commissioners for England, who shall thereupon cause to be prepared a scheme for carrying out the proposed union, which scheme may, with the assent of the bishop and patrons, and the vestries of the parishes to be affected thereby, embody any modifications of the proposals, and shall send drafts of such proposed scheme to the churchwardens of the parishes to be respectively affected by the scheme, with notice that they or any of them may, within two calendar months, show cause to the Ecclesiastical Commissioners against the proposed union or any part or parts of the scheme relating thereto; and if within such period of two calendar months no cause be shown, the Ecclesiastical Commissioners shall certify the scheme, and the consent thereto in writing of the bishop and of the patron, and of the vestries of the parishes to be affected thereby, to her Majesty in Council; and thereupon it shall be lawful for her Majesty in Council to make and issue any Order or Orders for effecting the union, and for uniting the parishes of the united benefices into one parish for ecclesiastical purposes, and for such other purposes as are herein provided: Provided always, that if any petition or statement is lodged by way of protest, or any appeal is made against the scheme or any part thereof, as hereinafter is provided, no such Order or Orders in Council shall be made or issued until such petition or statement has been duly considered, or the parties to such appeal have been duly heard.

Order in council for effecting union.

What the Commissioners shall insert in the scheme.

9. It shall be lawful for the Ecclesiastical Commissioners to insert in any scheme to be prepared by them all proper directions for the appointment of the first incumbent of the

**Sect. 9.**

united benefice, and for regulating the course and succession in which the patrons, if there be more than one patron, shall present or nominate to such united benefice from time to time as the same shall become vacant; and they shall have power to insert in any scheme all such provisions in addition to those hereby expressly authorised as may in their opinion be necessary for effectually carrying out the particular measures proposed by the scheme, including any provisions which may be found necessary for the compensation of any of the incumbents of the benefices to be united who may be willing to retire therefrom; and the Ecclesiastical Commissioners shall and may, for the purposes of this Act, exercise all powers and privileges now or for the time being exercisable by them under the Acts of Parliament relating to their commission, or under the Church Building Acts, particularly as regards the purchase of sites and the erection of churches.

10. [*Part of a benefice or united benefice may be severed and included in scheme.*]

11. [*Surplus revenue of united benefice may be annexed as an endowment to any other benefice in the metropolis or its vicinity.*]

12. [*Patronage of benefices may be exchanged for facilitating unions.*]

13. The Order or Orders in Council affirming any scheme or directing any union, severance, or annexation shall, as soon as may be after the making thereof by her Majesty in Council, be inserted and published in the London Gazette, and shall be registered in the registry of the diocese; and the registrar of the diocese is hereby required to make such registry; and such Order in Council, so soon as the same shall have been gazetted, shall (but subject and without prejudice to the rights of any incumbent affected thereby who shall not assent thereto) have full force and effect of law in all respects, and as to all things therein contained.

Orders in Council to be published in the Gazette and registered, and to have force of law.

14. Any scheme may (but subject to objection and protest as after mentioned, and subject to the restrictions herein contained), provide for the erection of any new church or

Scheme may provide for erection of new church

**Sect. 14.** or parsonage, removal of old church or parsonage, sale of site, etc. parsonage house, for the pulling down or removal of any existing church, except as hereinafter provided, or parsonage house of any benefices proposed to be united, and for the appropriation or sale of the materials and site of the same respectively, and of the ground annexed thereto and necessary for the use and enjoyment thereof, for the appropriation of any plate or other furniture held in trust for any church to be pulled down, for the disposal of any organ in such church, for the transfer of any lectureships attached to such church, but not so as to affect the right of appointment to any lectureship, or for sale or exchange of any parsonage or glebe houses or buildings, or the sites thereof, with their appurtenances, for compensation to parish clerks or other officers, or for arrangement with respect to fees or vestry rooms; but the font, communion table, and plate used for the purposes of the Holy Communion shall not be sold, but shall be transferred to the church of the united benefice, or, if such font, communion table, and plate be not needed for such church, then to any other church or chapel, or churches or chapels, within the diocese which the bishop may select: Provided always, that nothing in this Act contained shall authorise the pulling down the churches of Saint Stephen's Walbrook, Saint Martin Ludgate, Saint Peter Cornhill, and Saint Swithin Cannon Street; provided also, that the scheme for the removal of any church or parsonage shall provide for the erection of another church or parsonage within the limits of the metropolis.

Schemes to be laid before Parliament.

**15.** Provided always, that no such scheme shall be submitted to her Majesty in Council until it has been laid before both Houses of Parliament for the space of two calendar months.

Appeals and protests against schemes.

**16.** Any person interested who may have shown cause to the Ecclesiastical Commissioners against the proposed union of any benefices, or against subjecting the endowments or revenues thereof, or any part of them, to any rentcharge or transfer, or annexation, or against any part or parts of any scheme certified by them to her Majesty in Council, may appeal to her Majesty in Council against such scheme or any part thereof in the usual manner, or may, at his option, state in writing by way of protest his objections to such

union or any part or parts thereof; and the Ecclesiastical Commissioners shall annex such written statement or protest to their certificate to the Queen in Council, and her Majesty in Council may order and direct that such objections shall be considered by the Judicial Committee of the Privy Council; and the said Judicial Committee shall make report to her Majesty in Council thereupon, and may propose to her Majesty in Council to affirm, vary, or dismiss the scheme certified by the commissioners, or to return the same to the said commissioners for alteration or amendment; and her Majesty in Council may affirm, vary, or dismiss the scheme accordingly, or return the same to the commissioners to be reconsidered as to any parts thereof.

**Sect. 16.**

17. Nothing in this Act contained shall legalize the sale or letting or appropriation of the site of any church unless with the consents in writing of the archbishop of the province, the bishop of the diocese, the archdeacon, and the Secretary of State for the Home Department; and the site shall be dealt with subject to such directions and restrictions as to the removal of the remains of persons deposited under the church to be pulled down, and as to the not disturbing and finally closing such vaults or graves, as to such Secretary of State shall seem meet; but nothing in this Act contained shall legalize the sale or letting of any churchyard or burial ground; and no sale or letting shall be made of the site of any church wherein any bodies are known to be interred until after the remains of the persons deposited under such church shall have been properly removed at the cost of the Ecclesiastical Commissioners, to be paid out of the fund hereinafter provided, into some consecrated churchyard or burial ground, or to such portion of the vaults of the same church as may be separated and set apart for a burial place; and notice shall be given by the churchwardens, or one of them, to the heirs, executors, or administrators of any persons interred in or under any such church, where they can be ascertained, of the intention to remove such remains; and a certificate in writing under the hand of one of the churchwardens of the united parish that such removal has been duly made, and that such notice has been given, or that such heirs, executors, or

Site of church pulled down not to be sold or let without certain consents.

Removal of remains of persons interred, and of monuments.

**Sect. 17.** administrators cannot be ascertained, shall be conclusive evidence of the provisions of this Act in regard to such removal having been complied with; and as to any tablets or monuments in such church, the same, if not removed by the heirs, executors, administrators, relatives, or friends of the person, or of some or one of the persons, to whose memory the same shall have been erected, shall, at the cost of the Ecclesiastical Commissioners, to be paid out of the fund hereinafter provided, be carefully removed and fixed in some convenient part of the church to be constituted the church of the united parishes; but every such removal of tablets or monuments may be made without the necessity of a faculty from the bishop's court, and shall be free from the payment of any fees to the incumbent of such church or to any officer of the same or of the parish thereof: Provided always, that it shall be lawful for the heirs, executors, administrators, relations, or friends of any persons who shall be interred or deposited in or under any such church, or in any such first-mentioned churchyard or burial ground, under proper direction, to remove the remains of such persons, and also the tablets or monuments erected to their memory, to any place they may think proper; and the expenses of such removal, not exceeding ten pounds in each case, shall be paid by the Ecclesiastical Commissioners out of the said fund.

Under this Act and an Order in Council an ancient church in the metropolis was vested in the Ecclesiastical Commissioners upon trust to pull down the building, dispose of the materials, and sell the site. They pulled down the church, and the site was still vacant. The defendant, who had become the owner of land formerly part of the glebe of the church on which some low buildings had stood, commenced the erection of buildings which, if completed, would have materially obstructed the access of light to those occupying the same position of those of the late church. The Ecclesiastical Commissioners, having commenced an action to restrain the erection of the proposed buildings:—*Held*, by the Court of Appeal, that the fact of there being no existing windows, the access of light to which would be interfered with, was no objection to granting an injunction if the right to access of light had not been abandoned; that the Ecclesiastical Commissioners had power to sell the site, with all the easements which had been enjoyed by the church, so that if the church had ancient lights the purchaser would have the benefit of them; that, although the freehold of both the church and the glebe had been throughout vested in the rector, there was no such manifest

impossibility for the church to have a title by prescription or grant to access of light over the glebe as to induce the court to refuse an *interim* injunction; and, *semble*, that such an easement might be effectually created (*Ecclesiastical Commissioners v. Kino* (1880), 14 Ch. D. 213).

## Sect. 17.

18. After an union of benefices, the parishes whereof the benefices shall be united shall become and continue united, but for ecclesiastical purposes only; and in case there shall be only one church left standing and remaining within such united parish, such church shall be the church of the united parish; but in case more than one church shall be left standing, then the scheme shall determine which of the churches so left standing shall be the church of the united parish; and the vestry room of the church so constituted the parish church shall be held to be the vestry room of the united parish for the use of the parishioners thereof, and also the vestry room for secular purposes for the parishioners of each of the parishes forming the united parish, and for the care and preservation of the deeds, muniments, and records belonging to the same, unless otherwise provided by the scheme.

After union of benefices parishes to become united for ecclesiastical purposes; and scheme to determine which church shall be parish church, when two are left standing.

19. In case any church shall be left standing within the limits of any united parish other than the parish church, it shall be lawful for the bishop of the diocese, by an instrument in writing under his hand and seal, deposited in the registry of the diocese, to allow the same to be used for the performance of divine service, according to the rites and ceremonies of the United Church of England and Ireland, in the Welsh or Irish or in any foreign language, or for the purposes of a school or schools in connexion with the said United Church: Provided always, that nothing herein contained shall authorise any person to officiate in any such church according to the rites and ceremonies of the United Church of England and Ireland, except with the licence of the bishop; and that, before the grant of any permission by the bishop for the use of any such church for any of the purposes hereby authorised, such bishop shall require proper provision to be made for the repair and sustentation of the fabric of the church so to be used, and for the preservation and care of the monuments and tablets therein.

Bishop may allow additional church left standing to be used for certain purposes.

**Sect. 20.**

Estates of parishes united to remain distinct as before union, except as affected by this Act, etc.

20. Notwithstanding any union of parishes under this Act, the parishes to become united shall, as to all estates and other property, and all rates, taxes, parochial rights, and all privileges, liberties, and respects whatsoever, other than such as are affected by this Act, continue and remain distinct, in the same manner as they were before such union; and the parishioners of such parishes shall continue severally to elect churchwardens and other parish officers for the said parishes in the same manner as they could have done before such union; and the churchwardens so to be elected in each of the said parishes shall together be churchwardens of the church of the united parish; and the vestries of the united parish shall together form one joint vestry for all ecclesiastical purposes; but whenever a parish or parishes shall be represented by a select vestry (unless all the parishes to be united shall be so represented), the persons to form the joint vestry shall consist of the select vestry for the time being of such parish or parishes and of the parishioners, the number whereof shall be determined by the scheme, of the other parish or parishes; and the mode of electing and maintaining the representation at the joint vestry of the parish or parishes not represented by a select vestry shall be determined by the scheme; and in the scheme may be inserted all such other provisions for the maintenance and regulation of the joint vestry, and for defining the proportions in which each parish shall contribute towards the sustentation of the fabric of the church of the united parish, and for the maintenance of the services therein, and for other ecclesiastical purposes, as the Ecclesiastical Commissioners, having regard to the circumstances of each particular case, may deem necessary.

Property belonging to separate parishes, how to be applied.

21. No union of benefices under the provisions of this Act shall affect the estates or property, donations, charities, and benefactions heretofore given to or for the benefit of the parishioners, or any of the parishioners of any particular parish, or held upon any special trusts, or applicable by law or usage for or towards the maintenance of the poor, but the same shall remain and continue to be applicable to the purposes to which the same have or ought to have been heretofore applied, except that where attendance, or the

performance of divine service, or any other Act is required at any church within the united parish other than the parish church of the united parish, the parish church shall, so far as regards any such attendance, performance of divine service, or other Act, be deemed to be such other or original church; and all property which, if such union had not been effected, would have been vested in any incumbent for the time being of any benefice proposed to be affected by such union, either solely, or jointly with the churchwardens or any other person or corporation, upon any special trusts, the incumbent for the time being of the united benefice shall be substituted for and represent the incumbent of such separate parish; and the trust property shall vest in such incumbent, solely or jointly with such churchwardens or other person or corporation (as the case may be), and such incumbent shall have the same powers as the incumbent whom he shall represent would have had in regard thereto if such union of benefices had not been effected; and if any such property shall have been vested in a corporation of which the incumbent of the separate parish shall have been a member, the corporation shall not be affected by the union, but the incumbent for the time being of the united benefice shall become a member of such corporation in lieu of the incumbent of the separate parish.

Sect. 21.

22. All expenses which shall be incurred by or under the sanction or direction and on behalf of any bishop or the Ecclesiastical Commissioners in promoting any union of benefices, and in otherwise carrying the provisions of this Act into execution, and of the scheme under which any union shall be effected, including all preliminary expenses so incurred, shall be paid by the Ecclesiastical Commissioners, out of a fund to be provided by them, in manner following (that is to say): They shall on the first sale by them of property or materials in pursuance of any scheme and order under this Act appropriate the whole or such portion as they may think sufficient of the produce of such sale as a fund, which shall be applied by them in payment of the expenses incurred and to be incurred in relation to all the proposals and schemes for the union of benefices;

Fund for  
payment of  
expenses of  
carrying Act  
into execu-  
tion.



**Sect. 22.**

and the same fund shall from time to time be augmented by the said commissioners from the produce of similar sales of property as there may be occasion ; and out of the fund so to be created the said commissioners shall defray all the expenses incurred in relation or incidental to any commission to be issued under this Act having reference to any union or proposed union of benefices, and to all inquiries, proposals, and schemes which shall be made and prepared in consequence of any such commission (including all preliminary costs and expenses, whether incurred prior or subsequently to the creation of such fund), and whether such inquiries, proposals, and schemes shall result in an Order in Council or not ; and after providing a sufficient fund for the payment of all such expenses, and after providing and appropriating a portion of such fund sufficient in the opinion of the Ecclesiastical Commissioners to meet the probable preliminary expenses of any future commission to be issued under this Act, having reference to the union of benefices, the surplus of the moneys so set apart shall be applied by them, with the consent in writing of the bishop, for the benefit of any benefice or benefices in the metropolis, to whose benefit the said commissioners may, with such consent, think fit to apply the same.

23. [*Scheme to be valid notwithstanding informalities or omissions.*]

24. [*As to consents of patrons and vestries to schemes.*]

25. [*Supplemental orders may be made.*]

26. [*Bishop may prepare a scheme as to lectures customarily preached in churches which may be pulled down.*]

27. [*Bishop of diocese may direct churches to be reseated, and seats to be apportioned for the accommodation of parishioners.*]

28. [*Appropriation of seats in church of united parish.*]

Property to be sold shall vest in Ecclesiastical Commissioners, and church

29. Upon any Order in Council under this Act coming into full operation all churches, houses, buildings, lands, and hereditaments which shall be authorised by such Order to be pulled down or sold shall, without any conveyance or other form of law, be and become absolutely vested in the

Ecclesiastical Commissioners, in trust to deal with or dispose of the same, and the proceeds and produce thereof as directed by this Act; and the freehold of the parish church of the united parish, and the freehold of all such other lands and hereditaments previously vested in the respective incumbents of the parishes constituting the united parish as shall not be vested in the Ecclesiastical Commissioners, shall become vested in the incumbent for the time being of the united parish; and the said commissioners shall have power to make all necessary conveyances of the hereditaments so vested in them, and to make sale and dispose of the same, at such times, and at such prices, and in such manner in all respects as to them shall seem expedient; and the receipt in writing of the treasurers for the time being of the said Ecclesiastical Commissioners for the purchase moneys, rents, and profits of such hereditaments shall effectually discharge the purchasers thereof and other persons paying the same from the same purchase moneys, rents, and profits, and from all liability in respect thereof.

**Sect. 29.**  
of united  
parish in  
incumbent.

**30.** The provisions contained in the Pluralities Act, 1838, in relation to the disunion of united benefices, shall apply to all benefices which shall have been united under the provisions of this Act . . .

**Disunion**  
of united  
benefices.  
1 & 2 Vict.  
c. 106.

**31.** This Act shall not abridge or interfere with the powers contained in the Pluralities Act, 1838, or in any other Act of Parliament now in force in regard to the union of benefices; but all such powers and the powers conferred by this Act may be exercised independently of one another or concurrently.

**Saving as to**  
1 & 2 Vict.  
c. 106.

**32.** Where the proposed union is within the city of Westminster, one clerical commissioner shall be nominated by the dean and chapter of Westminster, instead of being nominated by the dean and chapter of Saint Paul's; and where the proposed union is not within the city of London or the liberties thereof, the lay commissioners shall be nominated to the bishop by the vestries of the parishes respectively proposed to be affected by the union, instead of being nominated by the corporation of the city of London.

**Nomination**  
of commis-  
sioners in  
certain cases.

UNION OF BENEFICES ACTS AMENDMENT  
ACT, 1871.

(34 &amp; 35 VICT. C. 90.)

*An Act to amend the Law relating to the Union of Benefices.*  
[21st August 1871.]Preamble recited the Pluralities Act, 1838 (1 & 2 Vict. c. 106),  
and the Pluralities Act, 1850 (13 & 14 Vict. c. 98).Short title.      1. This Act may be cited as the Union of Benefices Acts  
Amendment Act.Act to be construed  
with recited  
Acts.              2. This Act shall be construed as one with the above-  
mentioned Acts.This Act is not confined, like the Union of Benefices Act, 1860, to  
the metropolis (*In re Ecclesiastical Commissioners and New City of  
London Brewery Co.'s Contract*, [1895] 1 Ch. 702).One church  
to be the  
parish church  
of an united  
or separate  
benefice.          3. Where two or more benefices are united, or two or  
more portions of the same benefice, or of different benefices,  
are constituted a separate benefice, and held by one incum-  
bent, and there are more churches than one situate within  
the limits of such united or separate benefice, it shall be  
lawful for the bishop of the diocese, upon the application  
and with the consent in writing of the incumbent and  
patron or patrons of the benefice, and with the consent of  
two-thirds of the parishioners within the limits of such  
united or separate benefice in vestry assembled, by a faculty  
from his consistorial court, to decree that one of such  
churches shall henceforth be constituted the parish church  
of such united or separate benefice, and that any other  
church or churches within the limits of such united or  
separate benefice may be either wholly or partly pulled  
down or suffered to remain standing or still be used for the  
purposes of divine service, either as a chapel or chapels of  
ease to the parish church or otherwise, or be converted into  
a mortuary chapel or mortuary chapels; and the vestry  
room of the church so constituted the parish church shall

be held to be the vestry room of the parishes or places constituting such united or separate benefice for the use of the parishioners thereof; provided, that the said bishop shall not make any such decree for the pulling down either the whole or part of any such church or churches until a sum sufficient to defray the expenses of the transfer as hereinafter prescribed of the tombstones, monuments, tablets, and monumental inscriptions in the church so to be wholly or partly pulled down has been collected by voluntary subscriptions, and placed in the hands of two or more trustees to be applied to such purpose.

**Sect. 3.**

4. The site of any church which shall be wholly or partly pulled down, and the churchyard belonging thereto, shall be properly fenced in and preserved and kept free from desecration, and until such churchyard shall be legally closed for interments the persons for the time being having rights of burial in such churchyard shall not be entitled to rights of burial in any other churchyard within the limits of the same united or separate benefice: Provided always, that nothing in this Act contained shall apply to any proceedings for the union of benefices taken under the provisions of the Union of Benefices Act, 1860.

Site of disused church to be preserved.  
Burials.

23 & 24 Vict.  
c. 142.

5. The tombstones, monuments, tablets, and monumental inscriptions in any church so wholly pulled down, or in such part of any church as is pulled down, shall be transferred to the parish church of such united or separate benefice, or in the case where the removal is from such part of a church as has been pulled down, to the part of the church which is suffered to remain standing; and the font, communion table, and plate used for the purposes of the Holy Communion belonging to or held in trust for any church so wholly pulled down shall be transferred to such parish church; and all lectureships attached to any church so wholly pulled down or disused for the purposes of divine service shall be transferred to the parish church of such united or separate benefice; and all sums of money or other property held by any body or person or persons in trust for the maintenance, repair, or insurance of any church which shall cease to be

Tombstones, etc. to be transferred from disused church to parish church.  
Repair fund, etc.

**Sect. 5.**

used for the purposes of divine service or for a mortuary chapel under the provisions of this Act shall thereupon be held upon the like trusts for such parish church.

This section does not restrain or interfere with the power to build on the site of a metropolitan church sold under a scheme made in pursuance of the Union of Benefices Act, 1860 (23 & 24 Vict. c. 142) (*In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702).

**Rights of parishioners.**

6. When any church shall have been so constituted a parish church the persons residing within the limits of the said united or separate benefice shall, subject as in this Act mentioned, have the same rights, be entitled to the same privileges, and be subject to the same obligations in relation to such church as if the same church had always existed as such parish church.

**Bishop to direct the arrangement of the seats in church, which shall be of an uniform pattern.**

7. Upon any union of benefices the bishop of the diocese, under his hand and seal, shall and he is hereby authorised by faculty from his court to alter and readjust the seats and the appropriation thereof in the church of the united or separate benefice so that not less than one half of the sittings in such church shall be left unappropriated; and all the seats whether appropriated or free under any new arrangement made under this provision shall be made as near as possible of the same size and general appearance.

## LOCAL GOVERNMENT ACTS.

### LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. c. 73.)

*An Act to make further provision for Local Government in  
England and Wales (a). [5th March 1894.]*

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

#### PART I.

##### PARISH MEETINGS AND PARISH COUNCILS.

###### *Constitution of Parish Meetings and Parish Councils.*

1.—(1.) There shall be a parish meeting for every rural parish, and there shall be a parish council for every rural parish which has a population of three hundred or upwards : Provided that an order of the county council in pursuance of Part III. of this Act—

Constitution  
of parish  
meetings and  
establishment  
of parish  
councils.

- (a) shall, if the parish meeting of a rural parish having a population of one hundred or upwards so resolve, provide for establishing a parish council in the parish, and may, with the consent of the parish meeting of any rural parish having a population of less than one hundred, provide for establishing a parish council in the parish ; and

(a) Only so much of this Act is printed here as appears likely to have a practical bearing upon matters arising by reason of such councils assuming the functions of a burial board. For other matters of detail or of a general character, the reader is referred to Macmorran and Dill's edition of the Act, 1898.

Sect. 1 (1). (b) may provide for grouping a parish with some neighbouring parish or parishes under a common parish council, but with a separate parish meeting for every parish so grouped, so, however, that no parish shall be grouped without the consent of the parish meeting for that parish.

(2.) For the purposes of this Act every parish in a rural sanitary district shall be a rural parish.

(3.) Where a parish is at the passing of this Act situate partly within and partly without a rural sanitary district, the part of the parish which is within the district, and the part which is without, shall as from the appointed day, but subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vict.  
c. 61.

In every rural parish the parish meeting has the exclusive power of adopting the Burial Acts, which it exercises by passing a resolution to provide a burial ground under those Acts (s. 7, (1) (8)).

In order to avoid the creation of separate parishes under sub-s. (3), the county council has wide powers under s. 36 of altering the existing boundaries of parishes and sanitary districts, so that each parish may be wholly included within the same district. If, however, a parish was divided by reason of its remaining partly within a rural sanitary district and partly without such district, so that the parts became separate parishes by virtue of this subsection, then if there was previously a burial board for the whole parish, the powers and duties of such burial board were by s. 53 (2) transferred to the parish councils of the separate parishes, or if the original parish was partly comprised in an urban district, to those parish councils and the district council of the urban district, and are exercised by a joint committee appointed by those councils; and for the purpose of this provision, if a rural parish has not a parish council, the parish meeting is substituted for the parish council.

Parish  
meetings.

2.—(1.) The parish meeting for a rural parish shall consist of the following persons, in this Act referred to as parochial electors, and no others, namely, the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish.

(2.) Each parochial elector may, at any parish meeting, or at any poll consequent thereon, give one vote and no more on any question, or, in the case of an election, for each of any number of persons not exceeding the number to be elected.

(3.) The parish meeting shall assemble at least once in every year, and the proceedings of every parish meeting shall begin not earlier than six o'clock in the evening. **Sect. 2 (3).**

(4.) Subject to the provisions of this Act as to any particular person being the chairman of a parish meeting, the meeting may choose their own chairman.

(5.) A poll consequent on a parish meeting shall be taken by ballot.

(6.) The reasonable expenses of and incidental to the holding of a parish meeting or the taking of a poll consequent thereon shall be defrayed as hereinafter provided.

(7.) With respect to parish meetings the provisions in the First Schedule to this Act shall have effect.

3.—(1.) The parish council for a rural parish shall be elected from among the parochial electors of that parish or persons who have during the whole of the twelve months preceding the election resided in the parish, or within three miles thereof, and shall consist of a chairman and councillors, and the number of councillors shall be such as may be fixed from time to time by the county council, not being less than five nor more than fifteen. **Constitution of parish council.**

(2.) No person shall be disqualified by sex or marriage for being elected or being a member of a parish council.

(3.) [*The term of office of a parish councillor shall be one year.*]

This sub-section and sub-ss. (4) and (7) are repealed by the Parish Councils (Tenure of Office) Act, 1899 (62 & 63 Vict. c. 10), s. 1, which provides that the term of office of a parish councillor shall be three years; that on the 15th April in every third year after 1901, parish councillors shall go out of office, and their places be filled by the newly-elected councillors; and that the parish council shall in every year, on or within seven days of the 15th April, hold an annual meeting.

(4.) [*On the fifteenth day of April in each year (in this Act referred to as the ordinary day of coming into office of councillors) the parish councillors shall go out of office, and their places shall be filled by the newly elected councillors.*]

(5.) The parish councillors shall be elected by the parochial electors of the parish.

(6.) The election of parish councillors shall, subject to the provisions of this Act, be conducted according to rules framed under this Act for that purpose by the Local Government Board.



**Sect. 3 (7).** (7.) [*The parish council shall in every year, on or within seven days after the ordinary day of coming into office of councillors, hold an annual meeting.*]

See note to sub-s. (3), *supra*.

(8.) At the annual meeting, the parish council shall elect, from their own body or from other persons qualified to be councillors of the parish, a chairman, who shall, unless he resigns, or ceases to be qualified, or becomes disqualified, continue in office until his successor is elected.

9.) Every parish council shall be a body corporate by the name of the parish council, with the addition of the name of the parish, or if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession, and may hold land for the purposes of their powers and duties without licence in mortmain; and any act of the council may be signified by an instrument executed at a meeting of the council, and under the hands or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the council.

Where the parish council is the authority for the execution of the Burial Acts, the provisions of this sub-section are applicable in lieu of the provisions of the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 24, relating to the incorporation of a burial board.

(10.) With respect to meetings of parish councils the provisions in the First Schedule to this Act shall have effect.

\* \* \* \* \*

*Powers and Duties of Parish Councils and Parish Meetings.*

Parish council to appoint overseers.

5.—(1.) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer, for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case

forthwith give written notice thereof in the prescribed form to the board of guardians. **Sect. 5 (1).**

(2.) As from the appointed day—

(a) the churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and

(b) references 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

(c) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than 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, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

**6.—(1.)** Upon the parish council of a rural parish coming into office, there shall be transferred to that council :

(a.) The powers, duties, and liabilities of the vestry of the parish except—

(i.) so far as relates to the affairs of the church or to ecclesiastical charities ; and

(ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority ;

The power of the vestry to pass a resolution to provide a burial ground for the parish is transferred to the parish meeting (s. 7 (1), (8)) ; and where the consent or approval of, or other act on the part of, the vestry is required in relation to an expense or rate under the Burial Acts, the parish meeting is substituted for the vestry (s. 7 (3)).

(b.) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are

Transfer of certain powers of vestry and other authorities to parish council.

**Sect. 6 (1).**18 & 19 Vict  
c. 123.

powers and duties of overseers, but inclusive of the obligations of the churchwardens 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: Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently 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.

The obligation of keeping a closed churchyard in repair is laid upon the churchwardens by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 18. As the churchwardens can only give a certificate after they have incurred, or at least become liable for, the expenses, they will have to carry out, at all event, the first repairs which become necessary after the passing of this Act. If means of defraying such expenses from other sources than the poor rate can be found, the churchwardens need not issue their certificate requiring repayment out of the poor rate, and until such certificate is issued the duty of keeping the closed churchyard in repair will remain with the churchwardens, and not be transferred to the parish council.

- (c.) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to—
- (i.) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate; and
  - (ii.) the provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto and
  - (iii.) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them;

(d.) The powers exercisable with the approval of the **Sect. 6 (1).**  
 Local Government Board by the board of  
 guardians for the poor law union comprising the  
 parish in respect of the sale, exchange, or letting  
 of any parish property.

(2.) A parish council shall have the same power of  
 making any complaint or representation as to unhealthy  
 dwellings or obstructive buildings as is conferred on  
 inhabitant householders by the Housing of the Working  
 Classes Act, 1890, but without prejudice to the powers of  
 c. 70.  
 such householders.

(3.) A parish council shall have the same power of  
 making a representation with respect to allotments, and of  
 applying for the election of allotment managers, as is  
 conferred on parliamentary electors by the Allotments Act,  
 1887, or the Allotments Act, 1890, but without prejudice to  
 the powers of those electors.  
 c. 48.  
 53 & 54 Vict.  
 c. 65.

(4.) Where any Act constitutes any persons wardens for  
 allotments, or authorises or requires the appointment or  
 election of any wardens committee or managers for the  
 purpose of allotments, then, after a parish council for the  
 parish interested in such allotments comes into office, the  
 powers and duties of the wardens, committee, or managers  
 shall be exercised and performed by the parish council, and  
 it shall not be necessary to make the said appointment or  
 to hold the said election, and for the purpose of section  
 sixteen of the Small Holdings Act, 1892, two members  
 of the parish council shall be substituted for allotment  
 c. 31.  
 managers or persons appointed as allotment managers.

7.—(1.) As from the appointed day, in every rural parish  
 the parish meeting shall, exclusively, have the power of  
 adopting any of the following Acts, inclusive of any Acts  
 amending the same (all which Acts are in this Act referred  
 to as "the adoptive Acts"); namely—  
 powers under  
 adoptive  
 Acts.

- |  |  |
|--|--|
| (a.) The Lighting and Watching Act, 1833 ;         | 3 & 4 Will. 4,<br>c. 90.                     |
| (b.) The Baths and Washhouses Acts, 1846 to 1882 ; | 9 & 10 Vict. c. 74;<br>45 & 46 Vict. c. 30.  |
| (c.) The Burial Acts, 1852 to 1885 ;               | 15 & 16 Vict. c. 86;<br>46 & 49 Vict. c. 31. |
| (d.) The Public Improvements Act, 1860 ;           | 23 & 24 Vict. c. 30.                         |
| (e.) The Public Libraries Act, 1892.               | 55 & 56 Vict. c. 53.                         |

**Sect. 7 (2).** (2.) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

Under the Burial Acts a simple majority of the vestry is alone requisite for passing a resolution to provide a burial ground for the parish (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10, *ante*, p. 123); and there is no provision in those Acts for taking the opinion of the voters by means of voting papers. See the Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), *ante*, p. 278.

(3.) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression "vestry" shall include any meeting of ratepayers or voters.

The various matters requiring the consent or approval of the vestry under the Burial Acts are collected *ante*, p. 105.

(4.) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part.

The various places for which burial boards could be appointed under the Burial Acts are stated *ante*, pp. 65—67. Where any of the places there mentioned form a part only of one rural parish, the Burial Acts can be adopted for such part, by a parish meeting held for that part in the manner provided by s. 49, *infra*. This Act, however, provides no machinery for adopting the Burial Acts for an area which overlaps portions of two or more rural parishes, such, for instance, as a consolidated chapelry for which a burial board might have been appointed under the Burial Acts. In such a case the Burial Acts must be adopted in each rural parish in which any part of the consolidated chapelry lies, and the various parish councils should then concur in appointing a joint committee under s. 57, *infra*, to exercise their powers, etc., within the area of the chapelry.

(5.) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

Where a burial board had been established for the whole of a rural parish it ceased to exist on the parish council coming into office, and its powers, duties, and liabilities were transferred to the parish council. If the parish, by reason of the smallness of its population, had no parish council, the burial board continued to exist as before, and its place was not taken by the parish meeting, though it would seem that the county council might, under s. 19 (10), *infra*, on the application of the parish meeting, transfer to it the powers of a burial board.

The transfer of the powers, etc., of a burial board for an area not co-extensive with one rural parish is provided for by s. 53, *infra*.

Sect. 7 (5).

NOTE.

(6.) This Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts, and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable.

Provision is made by s. 67, *infra*, for the transfer of the property, debts, and liabilities of an existing burial board to the parish council; and further provision is made by s. 53 (3), *infra*, to meet the case where the powers, etc. of a burial board for an area not co-incident with a rural parish are transferred to the various parish or district councils of the parishes or urban districts in which such area was comprised, so as to ensure that the same property shall be rated to pay the expenses of the successors to the old burial board as was previously rated to pay the expenses of the burial board.

By s. 11 (3), *infra*, the expenses incurred by a parish council in the execution of the Burial Acts, are to be excluded in calculating the maximum annual sum which the parish council are authorised to raise for their expenses

(7.) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

As the powers of the vestry, except in matters relating to the church, are transferred to the parish council (s. 6 (1), *supra*), the consent or approval of the vestry which was required for various acts of a burial board under the Burial Acts (see *ante*, pp. 65—67) will not be required for similar acts of the parish council. But by sub-s. (3), *supra*, when the consent or approval of the vestry was required in relation to an expense or rate, the consent or approval of the parish meeting is now required.

Certain powers under the Burial Acts were vested in the vestry alone, such, for instance, as the right of fixing and revising the incumbent's fee for monuments, etc., and the substitution of the payment of a salary to the incumbent instead of fees (Burial Act, 1852 (15 & 16 Vict. c. 85), ss. 33, 37). These were powers apparently

**Sect. 7 (7).** "relating to the affairs of the church," and as such would not be transferred to the parish council by s. 6 (1). All provisions of the Burial Acts conferring such powers are, however, now repealed by the Burial Act, 1900 (63 & 64 Vict. c. 15).

**NOTE.**

When the Burial Acts are adopted for a part only of a rural parish, as, for instance, when they are adopted for an ecclesiastical district of the parish, which has become a "new parish" under the New Parishes Act, 1856 (19 & 20 Vict. c. 104), the parish council is bound, under s. 56 (2), *infra*, if required by a parish meeting for that district, to appoint annually to exercise its powers and duties under the Burial Acts, a committee consisting partly of members of the council and partly of other persons representing the said district.

(8.) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

By Schedule I., r. 3, *infra*, fourteen days notice must be given of any parish meeting at which it is proposed to pass a resolution to provide a burial ground under the Burial Acts, which should now be expressed in such resolution as "the Burial Acts, 1852 to 1900."

For form of resolution, see Appendix F., No. 3, *post*.

Additional powers of parish council.

8.—(1.) A parish council shall have the following additional powers, namely, power—

- (a) to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and
- (b) to provide or acquire land for such buildings and for a recreation ground and for public walks; and
- (h) to accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; and
- (i) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity; and
- (k) to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

Sect. 8.

(2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

The sale of lands acquired, but not wanted, for burial purposes is provided for by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 28, and a burial board is empowered by the Burial Act, 1855 (18 & 19 Vict. c. 128), s. 17, with the sanction of the Local Government Board, to let superfluous land which has not been consecrated, and in which no interment has taken place.

\* \* \* \* \*

9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

Powers for acquisition of land.

38 & 39 Vict. c. 55.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

A parish council acting as the authority for the execution of the Burial Acts is empowered under those Acts to acquire land for the purposes of a burial ground (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 26), but not otherwise than by agreement. As this sub-section is applicable to the compulsory acquisition of suitable land by a parish council for any purpose for which it is authorised to acquire it, the parish council apparently has wider powers in this respect than a burial board has under the Burial Acts.



**Sect. 9.**50 & 51 Vict.  
c. 48.53 & 54 Vict.  
c. 65.

(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this subsection overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

- Sect. 9.**  

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- (a) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order :
  - (b) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order :
  - (c) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry.

(9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisos (a), (b), and (c) of sub-section (4) of that section are incorporated with this section and shall apply accordingly : Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested

**Sect. 9.** by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

50 & 51 Vict.  
c. 48.  
53 & 54 Vict.  
c. 65.

(13.) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council; and any land purchased by a county council for allotments under the Allotments Acts, 1887 and 1890, and this Act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16.) In this section the expression "allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

(17.) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that Act shall apply as amended by this section, and the parish council shall have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890.

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(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

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11.—(1.) A parish council shall not, without the consent of a parish meeting, incur expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or which will involve a loan. Restrictions  
on ex-  
penditure.

(2.) A parish council shall not, without the approval of the county council, incur any expense or liability which will involve a loan.

(3.) The sum raised in any local financial year by a parish council for their expenses (other than expenses under the adoptive Acts) shall not exceed a sum equal to a rate of sixpence in the pound on the rateable value of the parish at the commencement of the year, and for the purpose of this enactment the expression "expenses" includes any annual charge, whether of principal or interest, in respect of any loan.

By s. 57 (3) *infra*, if the powers of a burial board have been transferred to a parish council, the debts and liabilities of the burial board become the debts and liabilities of the council, and are to be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

(4.) Subject to the provisions of this Act, the expenses of a parish council and of a parish meeting, including the expenses of any poll, shall be paid out of the poor rate; and where there is a parish council that council shall pay the said expenses of the parish meeting of the parish; and the parish council, and where there is no parish council the chairman of the parish meeting, shall, for the purpose of obtaining payment of such expenses, have the same powers as a board of guardians have for the purpose of obtaining contributions to their common fund.

- Sect. 11.** (5.) The demand note for any rate levied for defraying the expenses of a parish council or a parish meeting, together with other expenses, shall state in the prescribed form the proportion of the rate levied for the expenses of the council or meeting, and the proportion (if any) levied for the purpose of any of the adoptive Acts.

This section does not limit the expenses of a parish council acting in the execution of the Burial Acts, or impose any condition upon the parish council in respect of such expenses, except that contained in sub-s. (5) with regard to the demand note. It is provided, however, by s. 7 (3), that when under the Burial Acts the consent or approval of the vestry is required in relation to an expense or rate, the parish meeting shall be substituted for the vestry, so that the parish meeting will have a moderating control over the expenditure of the parish council in the execution of those Acts.

A form of demand note under this section is prescribed by order of the Local Government Board, dated September 21st, 1895. See Macmorran and Will's Local Government Act, 1894, 3rd ed., p. 474.

Borrowing  
by parish  
council.

12.—(1.) A parish council for any of the following purposes, that is to say—

- (a) For purchasing any land, or building any buildings, which the council are authorised to purchase or build; and
- (b) For any purpose for which the council are authorised to borrow under any of the adoptive Acts; and
- (c) For any permanent work or other thing which the council are authorised to execute or do, and the cost of which ought, in the opinion of the county council and the Local Government Board, to be spread over a term of years;

may, with the consent of the county council and the Local Government Board, borrow money in like manner and subject to the like conditions as a local authority may borrow for defraying expenses incurred in the execution of the Public Health Acts, and sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine of the Public Health Act, 1875, shall apply accordingly, except that the money shall be borrowed on the security of the poor rate and of the whole or part of the revenues of the parish council, and except that as respects the limit of the sum to

Sect. 12.

be borrowed, one half of the assessable value shall be substituted for the assessable value for two years.

(2.) A county council may lend to a parish council any money which the parish council are authorised to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of borrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may by general or special order impose.

(3.) A parish council shall not borrow for the purposes of any of the adoptive Acts otherwise than in accordance with this Act, but the charge for the purpose of any of the adoptive Acts shall ultimately be on the rate applicable to the purposes of that Act.

It follows from the express provisions of sub-s. (3) that the provisions in the Burial Acts relative to loans for the purposes of those Acts are inapplicable to a parish council acting in the execution of these Acts, and, consequently, that the sanction of the Treasury required by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 20, for the borrowing of moneys to provide and lay out a burial ground may be dispensed with.

The rate applicable to the purposes of the Burial Acts in a rural parish is the poor rate (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 19).

By the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), s. 1, *post*, where a joint committee is appointed under s. 53 of this Act for the purposes of the Burial Acts, the borrowing by the council of any money for those purposes must be made in accordance with the provisions of that Act, and the consent of the county council is not required.

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17.—(1.) A parish council may appoint one of their Parish number to act as clerk of the council without remuneration. officers and parish documents.

(2.) If no member of the parish council is appointed so to act, and there is an assistant overseer, he, or such one of the assistant overseers, if more than one, as may be appointed by the council, shall be the clerk of the parish council, and the performance of his duties as such shall be taken into account in determining his salary.

(3.) If there is no assistant overseer, the parish council may appoint a collector of poor rates, or some other fit

**Sect. 17.** person, to be their clerk, with such remuneration as they may think fit.

(4.) A parish council shall not appoint to the office of vestry clerk.

(5.) When a parish council act as a parochial committee by delegation from the district council they shall have the services of the clerk of the district council, unless the district council otherwise direct.

(6.) The parish council may appoint one of their own number or some other person to act as treasurer without remuneration, and the treasurer shall give such security as may be required by regulations of the county council.

(7.) All documents required by statute or by standing orders of Parliament to be deposited with the parish clerk of a rural parish shall, after the election of a parish council, be deposited with the clerk, or, if there is none, with the chairman, of the parish council, and the enactments with respect to the inspection of, and taking copies of, and extracts from, any such documents shall apply as if the clerk, or chairman, as the case may be, were mentioned therein.

(8.) 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, shall remain as provided by the existing law unaffected by this Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. 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 difference as to custody or access shall be determined by the county council.

Where there was an existing burial board in a parish, the custody of the register of burials was entrusted to an officer appointed by the burial board to that duty (Burial Act, 1853 (16 & 17 Vict. c. 134), s. 8). Such officer, on the transfer of the powers and duties of the burial board to a parish or district council under this Act, became the officer of such council (s. 81, *infra*).

(9.) Every county council shall from time to time inquire into the manner in which the public books, writings, papers, and documents under the control of the parish council or parish meeting, are kept with a view to the proper preservation thereof, and shall make such orders as they think necessary for such preservation, and those orders shall be complied with by the parish council or parish meeting.

**Sect. 17.**  
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19. In a rural parish not having a separate parish council, the following provisions shall, as from the appointed day, but subject to provisions made by a grouping order, if the parish is grouped with some other parish or parishes, have effect:

Provisions  
as to small  
parishes.

- (1.) At the annual assembly the parish meeting shall choose a chairman for the year;
- (2.) The parish meeting shall assemble not less than twice in each year;
- (3.) The parish meeting may appoint a committee of their own number for any purposes which, in the opinion of the parish meeting, would be better regulated and managed by means of such a committee, and all the acts of the committee shall be submitted to the parish meeting for their approval;

As this Act contains no provision for the parish meeting itself acting as the authority for the execution of the Burial Acts, unless empowered by the county council under sub-s. (10) of this section, such meeting cannot, unless so empowered, appoint a committee of its own number so to act. If in such a parish the Burial Acts are adopted under s. 7, *supra*, the parish meeting must elect a burial board.

- (4.) All powers, duties, and liabilities of the vestry shall, except so far as they relate to the affairs of the church or to ecclesiastical charities, or are transferred by this Act to any other authority, be transferred to the parish meeting;
- (5.) The power and the duty of appointing the overseers, and of notifying the appointment, and the power of appointing and revoking the appointment of an assistant overseer, shall be transferred to and vest in the parish meeting, and the power given by this



**Sect. 19.**

Act to a parish council of appointing trustees of a charity in the place of overseers or churchwardens, shall vest in the parish meeting;

- (6.) The chairman of the parish meeting and the overseers of the parish shall be a body corporate by the name of the chairman and overseers of the parish, and shall have perpetual succession, and may hold land for the purposes of the parish without licence in mortmain; but shall in all respects act in manner directed by the parish meeting, and any act of such body corporate shall be executed under the hands, or if an instrument under seal is required under the hands and seals, of the said chairman and overseers;
- (7.) The legal interest in all property which under this Act would, if there were a parish council, be vested on the appointed day in the parish council shall vest in the said body corporate of the chairman and overseers of the parish, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers (if any) as are requisite to give effect to this enactment;

If in any rural parish there is an existing burial board, all the property of the burial board would, under s. 67, pass to and vest in the parish council, if there were one. If there is no parish council, the effect of this sub-section, if it were to be interpreted strictly, would be to vest such property in the parish meeting. As, however, there is no power under this Act for the parish meeting to act as the authority for the execution of the Burial Acts (unless such power has been conferred by sub-s. (10) of this section), and the existing burial board would continue to exist, with all its powers and duties, it would be a strange result of this sub-section if the board's property were nevertheless taken from them and vested in the parish meeting.

- (8.) The provisions of this Act with respect to the stopping or diversion of a public right of way, or the declaring of a highway to be unnecessary and not repairable at the public expense, and with respect to a complaint to a county council of a default by a district council, shall apply, with the substitution of the parish meeting for the parish council;

- (9.) A rate levied for defraying the expenses of the parish meeting (when added to expenses under any of the adoptive Acts) shall not exceed sixpence in the pound in any local financial year ;
- (10.) On the application of the parish meeting the county council may confer on that meeting any of the powers conferred on a parish council by this Act ;

Sect. 19.

The terms of this sub-section appear wide enough to empower the county council to authorise a parish meeting to act as the authority for the execution of the Burial Acts, in which case the meeting could appoint a committee to exercise its powers under sub-s. (3). The powers of a parish meeting so acting, might, indeed, be greatly cramped by the provisions of sub-s. (9) of this section, which limit the total expenses of a parish meeting, including its expenses in the execution of the Burial Acts, to an amount not exceeding a rate of sixpence in the pound in any year. And it is not very probable that in practice the wants of a parish, which has too small a population to necessitate the existence of a parish council, will exceed the accommodation afforded by the churchyard of the parish.

- (11.) Any act of the parish meeting may be signified by an instrument executed at the meeting under the hands, or, if an instrument under seal is required under the hands and seals, of the chairman presiding at the meeting and two other parochial electors present at the meeting.

## PART II.

## GUARDIANS AND DISTRICT COUNCILS.

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21. As from the appointed day—

- (1.) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts ; but nothing in this section shall alter the style or title of the corporation or council of a borough :
- (2.) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district :
- (3.) In this and every other Act of Parliament, unless the context otherwise requires, the expression "district council" shall include the council of

Names of  
county  
districts  
and district  
councils.

**Sect. 21.**

every urban district, whether a borough or not, and of every rural district, and the expression "county district" shall include every urban and rural district whether a borough or not.

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Expenses of urban district council.

**28.** The expenses incurred by the council of an urban district in the execution of the additional powers conferred on the council by this Act shall, subject to the provisions of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the Public Health Act, 1875.

38 & 39 Vict. c. 55.

Under s. 62 (1), *infra*, an urban district council may take over the powers, etc., of any existing burial board within its district. If it does so, it would seem that s. 53 (3), and s. 67 (3), rather than this section, will be applicable as pointing out the fund from which the expenses incurred in the execution of such additional powers must be defrayed. It was in effect so decided in *Rez v. Connah's Quay*, [1901] 2 K. B. 174.

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### PART III.

#### AREAS AND BOUNDARIES.

Duties and powers of county council with respect to areas and boundaries.

**36.—(1.)** For the purpose of carrying this Act into effect in the case of—

- (a) Every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county; and
- (b) Every parish which at the passing of this Act is situate partly within and partly without a sanitary district; and
- (c) Every rural parish which has a population of less than two hundred; and
- (d) Every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and
- e) Every rural parish which is co-extensive with a rural sanitary district;

every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in section fifty-seven of the Local Government Act, 1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given, and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely :—

**Sect. 36.**

51 & 52 Vict.  
c. 41.

- (i.) The whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county ;
- (ii.) The whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district ; and
- (iii.) Every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts.

(2.) Where a parish is at the passing of this Act situate in more than one urban district, the parts of the parish in each such district shall, as from the appointed day, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vict.  
c. 61.

(3.) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4.) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council

**Sect. 36.**

shall, in addition to their own powers, have the powers of and be deemed to be, the parish council.

(5.) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

(6.) Where the alteration of a poor law union seems expedient by reason of any of the provisions of this Act, the county council may, by their order, provide for such alteration in accordance with section fifty-eight of the Local Government Act, 1888, or otherwise, but this provision shall not affect the powers of the Local Government Board with respect to the alteration of unions.

(7.) Where an order for the alteration of the boundary of any parish or the division thereof, or the union thereof or of any part thereof, with another parish is proposed to be made after the appointed day, notice thereof shall, a reasonable time before it is made, be given to the parish council of that parish, or if there is no parish council, to the parish meeting, and that parish council or parish meeting, as the case may be, shall have the right to appear at any inquiry held by the county council with reference to the order, and shall be at liberty to petition the Local Government Board against the confirmation of the order.

(8.) Where the alteration of the boundary of any parish, or the division thereof or the union thereof or of part thereof with another parish, seems expedient for any of the purposes of this Act, provision for such alteration, division, or union may be made by an order of the county council confirmed by the Local Government Board under section fifty-seven of the Local Government Act, 1888.

51 & 52 Vict.  
c. 41.

(9.) Where a parish is by this Act divided into two or more parishes, those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included.

(10.) Subject to the provisions of this Act, any order made by a county council in pursuance of this Part of this Act shall be deemed to be an order under section fifty-seven of the Local Government Act, 1888, and any board of guardians affected by an order shall have the same right of

petitioning against that order as is given by that section to any other authority. **Sect. 36.**

(11.) Where any of the areas referred to in section fifty-seven of the Local Government Act, 1888, is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to have always had power to make orders under that section with respect to that area; and where at the passing of this Act a rural sanitary district or parish is situate in more than one county, a joint committee of the councils of those counties shall act under this section, and if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Provided that any question arising as to the constitution or procedure of any such joint committee shall, if the county councils concerned fail to agree, be determined by the Local Government Board.

(12.) Every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration before framing any order under the powers conferred on them under this Act. <sup>50 & 51 Vict. c. 61.</sup>

(13.) Every county council shall, within two years after the passing of this Act, or within such further period as the Local Government Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration of the said two years or further period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers.

37. Where it is proved to the satisfaction of the county council that any part of a parish has a defined boundary, <sup>Provision as to parishes having parts with defined boundaries.</sup>

**Sect. 37.** and has any property or rights distinct from the rest of the parish, the county council may order that the consent of a parish meeting held for that part of the parish shall be required for any such act or class of acts of the parish council affecting the said property or rights as is specified in the order.

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## PART IV.

### SUPPLEMENTAL.

#### *Parish Meetings and Elections.*

\* \* \* \* \*

**Supplemental provisions as to parish meetings.** **45.**—(1.) Subject to the provisions of this Act, parish meetings shall be held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting.

(2.) If the chairman of the parish council is present at a parish meeting and is not a candidate for election at the meeting, he shall, save as otherwise provided by this Act, be the chairman of the meeting.

(3.) The chairman of the parish council, or any two parish councillors, or the chairman of the parish meeting, or any six parochial electors, may at any time convene a parish meeting.

\* \* \* \* \*

**Provision as to parish meeting for part of parish.** **49.** Where a parish meeting is required or authorised in pursuance of this Act to be held for a ward or other part of a parish, then—

(a) The persons entitled to attend and vote at the meeting, or at any poll consequent thereon, shall be the parochial electors registered in respect of qualifications in that ward or part; and

(b) The provisions of this Act with respect to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by parochial electors, shall apply as if the ward or part were the whole parish.

\* \* \* \* \*

Sect. 51.*Parish and District Councils.*

**51.** A public notice given by a parish council for the purposes of this Act, or otherwise for the execution of their duties, and a public notice of a parish meeting, shall be given in the manner required for giving notice of vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the council or to the persons convening the meeting desirable for giving publicity to the notice.

Public notices.

For the manner in which notice of vestry meetings is required to be given, see note to the Burial Act, 1852 (20 & 21 Vict. c. 81), s. 27, *ante*, p. 257.

**52.**

(5.) All enactments in any Act, whether general or local and personal, relating to any powers, duties, or liabilities transferred by this Act to a parish council or parish meeting from justices or the vestry or overseers or churchwardens and overseers shall, subject to the provisions of this Act and so far as circumstances admit, be construed as if any reference therein to justices or to the vestry, or to the overseers, or to the churchwardens and overseers, referred to the parish council or parish meeting as the case requires, and the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

**53.**—(1.) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

Supplemental provisions as to adoptive Acts.

In some rural parishes a burial board exists for a division of the parish, such as a new parish constituted under the New Parishes Acts, and unless a transfer is made under this section, such burial board will continue to exist as the authority for the execution of the



**Sect. 53 (1).** Burial Acts in that division. As a burial board, however, exercises many of its powers only with the consent or approbation of the vestry or meeting in the nature of a vestry of the district for which it is appointed, and the powers and duties of such vestry, or meeting in the nature of a vestry (s. 75), are transferred by s. 6 to the parish council, the consent or approbation of the parish council will be required for the exercise of such powers by the burial board. Some complication may arise in such a case from the provisions of s. 37, inasmuch as under that section the consent of a parish meeting held for the division of the parish under the burial board may become necessary to validate any act of the parish council in relation to the burial board for such division. For example: the burial board may resolve to purchase some land for an additional burial ground for their district under the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 26, and to carry out such resolution the consent of the vestry or meeting in the nature of a vestry of the district would formerly have been necessary, and consequently now the consent of the parish council is requisite; but the giving or withholding of such consent by the parish council would be an act of the council affecting the property or rights of a part of the parish having a defined boundary and having property and rights distinct from the rest of the parish, and, therefore, the consent of a parish meeting held for such part of the parish may be required for such act by an order of the county council under s. 37.

**NOTE.**

It will be noticed that the sub-section is merely permissive. The transfer may be made either by the burial board or by the parish meeting for the district, and apparently without either authority obtaining the consent of the other or of the parish council.

(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

It will be observed that while sub-s. (1) of this section is permissive, the provisions of this sub-section are imperative, its effect being that every burial board, and every local authority acting as a burial board under the Burial Acts, whose district extended over a portion of a rural parish and was not comprised entirely within such parish (unless some alteration of boundaries was made in pursuance of other provisions in this Act), ceased to exist as a burial board,

and its powers and duties as such were transferred to the councils or parish meetings as indicated in the sub-section. It seems to follow also from this provision that a burial board cannot now be established for any area which includes, together with other land, any portion of a rural parish; although two or more parish councils, or district councils having the powers of parish councils under s. 33 of this Act, may severally adopt the Burial Acts, and then appoint a joint committee under s. 57, *infra*, to exercise such of the powers of a burial board in respect of their united areas as they may think fit to delegate to the committee.

Sect. 53 (2).

NOTE.

Although this sub-section only enacts that the *powers and duties* of the existing authority shall be transferred to the councils or parish meetings, the debts and liabilities of such authority will also be transferred by virtue of s. 67, *infra*, but such debts and liabilities will be charged only upon those portions of the various parishes or urban districts to whose councils or meetings they are transferred as are indicated by sub-s. (3) of this section.

The appointment and borrowing powers of joint committees under this section are not regulated by s. 57, *infra*, which applies generally to joint committees, but are regulated by the provisions of the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), *post*, p. 666, which also applies Part IV. of Schedule I. of this Act to the proceedings of such joint committees.

As a joint committee is an unincorporated body, and the property of the councils appointing it are not transferred to the committee, it cannot make a valid grant of a grave space, or an exclusive right of burial which is an incorporeal hereditament. The proper course is for the clerk to the joint committee, being thereto duly authorised, to give a voucher for the money paid for the grave space or exclusive right of burial, with an undertaking to obtain a conveyance from the proper authority. The conveyance can then be drawn, and should be sealed by the various councils appointing the committee at their next meetings. For Forms of such conveyance and voucher, see Appendix F., Nos. 5, 6, *post*.

(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

The drafting of this sub-section is open to criticism, but if read in connection with s. 67, *infra*, and s. 7 (6), *supra*, it would seem to

**Sect. 53 (3).** provide that when the powers and duties of an existing burial board are transferred to the various councils or parish meetings mentioned in sub-s. (2) hereof, the property of the burial board is transferred to and vests in such councils and parish meetings to be held by them on trust for the several particular portions of the parishes or districts which previously were comprised in the area under the burial board, which portions of the various parishes or districts can alone be charged with the debts and liabilities of the burial board, and with the expenses incurred by the joint committee appointed to exercise the powers previously exercised by the burial board.

**NOTE.**

(4.) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right.

If a parish has no parish council, the parish meeting may under s. 19 (10), be empowered by the county council to make an application under this sub-section.

The provisions of this sub-section do not authorise the alteration of the boundaries of any parish or district, but merely of the area which, for instance, was under an existing burial board. This can only mean that the county council may exclude the inhabitants of certain portions of the area from their right to use the burial ground provided for the area, or may admit the inhabitants of certain districts outside the area to the use of the burial ground. In the former case the inhabitants of the districts excluded would cease to be rated towards the expenses of the authorities taking over the powers and duties of the burial board, and in the latter case the inhabitants of the districts admitted would become liable to be rated.

By the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 59 (4), it is provided as follows :

“Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say—

“(a.) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the

election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area." **Sect. 53 (4).**

NOTE.

It has been held that the above expression "local authority" in this sub-section includes a burial board, and that a county council may, in exercise of its powers under such sub-section, alter an area formed under the Burial Acts (*Reg. v. Durham County Council*, reported in *Local Government Chronicle*, 1897, p. 70). Also, that if an order dividing a parish in the whole of which the Burial Acts were in force, does not expressly provide for the alteration of the Burial Acts area, that area will apparently remain unaltered, and precepts may be issued by the burial authority of the whole area to the overseers of the new parishes formed by the division, to meet the expenses of such authority under the Burial Acts (*Reg. v. Keighley (Overseers of)*, reported in *Local Government Chronicle*, 1897, p. 47).

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**56.**—(1.) A parish or district council may appoint committees consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval. **Committees of parish or district councils.**

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

(2.) Where a parish council have any powers and duties which are to be exercised in a part only of the parish, or in relation to a recreation ground, building, or property held for the benefit of a part of a parish, and the part has a defined boundary, the parish council shall, if required by a parish meeting held for that part, appoint annually to exercise such powers and duties a committee consisting partly of members of the council and partly of other persons representing the said part of the parish.

This sub-section will become applicable in any case where a resolution to provide a burial ground for a part only of a rural parish has been passed by the parish meeting for that part; as, for instance, in the case of an ecclesiastical district which has become a new parish under the New Parishes Acts.

**Sect. 56 (3).** (3.) With respect to committees of parish and district councils the provisions in the First Schedule to this Act shall have effect.

(4.) This section shall not apply to the council of a borough.

**Joint committees.**

**57.—**(1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district.

(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

**Audit of accounts of district and parish councils and inspection.**

**58.—**(1.) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

Where a parish council is the authority for the execution of the Burial Acts, the provisions of this section with regard to audit will take the place of the provisions of the Burial Acts relating thereto. See Burial Act, 1852 (15 & 16 Vict. c. 85), s. 18.

(2.) The said accounts shall, except in the case of accounts **Sect. 58 (2).**  
 audited by the auditors of a borough, (but inclusive of the  
 accounts of a joint committee appointed by a borough  
 council with another council not being a borough council,)  
 be audited by a district auditor, and the enactments relating  
 to audit by district auditors of accounts of urban sanitary  
 authorities and their officers, and to all matters incidental  
 thereto and consequential thereon, shall apply accordingly,  
 except that in the case of the accounts of rural district  
 councils, their committees and officers, the audit shall be  
 half-yearly instead of yearly.

(3.) The Local Government Board may, with respect to  
 any audit to which this section applies, make rules modi-  
 fying the enactments as to publication of notice of the  
 audit and of the abstract of accounts and the report of the  
 auditor.

(4.) Every parochial elector of a rural parish may, at all  
 reasonable times, without payment, inspect and take copies  
 of and extracts from all books, accounts, and documents  
 belonging to or under the control of the parish council of  
 the parish or parish meeting.

(5.) Every parochial elector of a parish in a rural district  
 may, at all reasonable times, without payment, inspect and  
 take copies of and extracts from all books, accounts, and  
 documents belonging to or under the control of the district  
 council of the district.

\* \* \* \* \*

#### *Miscellaneous.*

**62.**—(1.) Where there is in any urban district, or part of **Permissive**  
 an urban district, any authority constituted under any of **transfer to**  
 the adoptive Acts, the council of that district may resolve **urban dis-**  
 that the powers, duties, property, debts, and liabilities of **trict council**  
 that authority shall be transferred to the council as from **of powers**  
 the date specified in the resolution, and upon that date the **of other**  
 same shall be transferred accordingly, and the authority **authorities.**  
 shall cease to exist, and the council shall be the successors  
 of that authority.

This sub-section will apply not only to any burial board existing  
 on the appointed day, but to any burial board which may thereafter  
 be appointed in any urban district. The council of the district will  
 hold the property so transferred to it, subject to the conditions and

**Sect. 62 (1).** restrictions under which it would have been held if it had not been transferred (s. 67); that is to say, if it has transferred to it a burial ground which has been provided for an urban parish or district, by the burial board for such parish or district, it will hold it for the use only of the inhabitants of the parish or district for which it was so provided, and such inhabitants will under s. 53 (3), *supra*, remain liable to defray the expenses of it.

NOTE.

The provisions of s. 28, *supra*, as to defraying expenses of an urban district council incurred in the execution of additional powers conferred on the council by this Act, do not apply to expenses incurred by such council in the execution of the Burial Acts, when the council has under this sub-section resolved that the powers, etc., of a burial board shall be transferred to the council; such expenses are payable out of the poor rate and not out of the general district rate (*Re v. Connah's Quay*, [1901] 2 K. B. 174).

(2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

The Burial Acts are adopted by the passing of a resolution to provide a burial ground under those Acts. The approval required by this sub-section will, therefore, be an approval of such a resolution passed by a vestry in accordance with the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10. If the approval of the council be given, a burial board will be appointed, and all the provisions of the Burial Acts will be applicable as though this Act had not passed. The council will, however, under sub-s. (1) of this section, always have the power of causing the powers, etc., of such burial board when appointed to be transferred to itself.

\* \* \* \* \*

Transfer  
of property  
and debts and  
liabilities.

**67.** Where any powers and duties are transferred by this Act from one authority to another authority—

- (1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and
- (2.) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and
- (3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become

debts and liabilities of the latter authority, and be **Sect 67 (3).**  
 defrayed out of the like property and funds out of  
 which they would have been defrayed if this Act  
 had not passed.

In the case of the transfer of the powers and duties of an existing burial board to a parish council, this section must be read in connection with s. 53 (3), *supra*, whereby the expenses incurred by the new authority in the exercise of the powers and duties so transferred are to be charged to the account of the rates levied in the area for which the burial board existed.

By s. 100 of the Local Government Act, 1888 (51 & 52 Vict. c. 41) (which section is applied to this Act by s. 75 *infra*), "property" is defined as including "all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authorities"; and the expression "liabilities" is defined as including "liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose."

**68.**—(1.) Where any adjustment is required for the **Adjustment**  
 purpose of this Act, or of any order, or thing made or done **of property**  
 under this Act, then, if the adjustment is not otherwise **and**  
 made, the authorities interested may make agreements for **liabilities.**  
 the purpose, and may thereby adjust any property, income,  
 debts, liabilities, and expenses, so far as affected by this  
 Act, or such scheme, order, or thing, of the parties to the  
 agreement.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a



**Sect. 68 (2).** terminable annuity for a period not exceeding that allowed by the Local Government Board : Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

52 & 53 Vict.  
c. 49.

(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Power to deal with matters arising out of alteration of boundaries.

**69.** Where an alteration of any area is made by this Act, an order for any of the matters mentioned in section fifty-nine of the Local Government Act, 1888, may, if it appears to the county council desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, but nothing

in this section shall empower a county council or joint committee to alter the boundaries of a county. **Sect. 69.**

Power is given by s. 53 (4), *supra*, to a county council to alter the area of *inter alia* a burial board.

70.—(1.) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, or in the chairman and overseers of a rural parish, or in a district council, that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the Court; and the Court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

Summary proceeding for determination of questions as to transfer of powers.

(3.) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

\* \* \* \* \*

75.—(1.) The definition of "parish" in section one hundred of the Local Government Act, 1888, shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

Construction of Act.  
51 & 52 Vict c. 41.

(2.) In this Act, unless the context otherwise requires—  
Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression "parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

The expression "election" includes both the nomination and the poll.

**Sect. 75 (2).**

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used. The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes:—

- (a) for any spiritual purpose which is a legal purpose ;  
or
- (b) for the benefit of any spiritual person or ecclesiastical officer as such ; or
- (c) for use, if a building, as a church, chapel, mission room, or 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.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act ; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include 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" shall include the distribution of offertories or other collections made in any church.

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to 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.

The expression "vestry" in relation to a parish means **Sect. 75 (2).**  
the inhabitants of the parish whether in vestry  
assembled or not, and includes any select vestry either  
by statute or at common law.

The interpretation of "vestry" here given will include a "vestry  
or meeting in the nature of a vestry," which, under the Burial Acts,  
is empowered to appoint a burial board for districts not coincident  
with common law parishes. See the Burial Acts, 1855 (18 & 19 Vict.  
c. 128), ss. 11, 12 ; and 1857 (20 & 21 Vict. c. 81), s. 5.

The expression "rateable value" means the rateable  
value stated in the valuation list in force, or, if there  
is no such list, in the last poor rate.

The expression "county" includes a county borough,  
and the expression "county council" includes the  
council of a county borough.

The expression "elementary school" means an elemen-  
tary school within the meaning of the Elementary  
Education Act, 1870.

The expression "local and personal Act" includes a  
Provisional Order confirmed by an Act and the Act  
confirming the Order.

33 & 34 Vict.  
c. 75.

The expression "prescribed" means prescribed by order  
of the Local Government Board.

76. This Act shall not extend to Scotland or Ireland.

Extent of  
Act.

77. This Act may be cited as the Local Government Act, 1894.

Short title.

## PART V.

### TRANSITORY PROVISIONS.

\* \* \* \* \*

81.—(1.) Where the powers and duties of any authority **Existing**  
other than justices are transferred by this Act to any parish **officers.**  
or district council, the officers of that authority shall become  
the officers of that council, and for the purposes of this  
section the body appointing a surveyor of highways shall be  
deemed to be a highway authority and any paid surveyor  
to be an officer of that body.

**Sect. 81 (1).** Burial boards are authorised by the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 15, to appoint "officers and servants." This subsection only provides that the officers shall become the officers of the council to which the powers and duties of a burial board are transferred, and there may be some difficulty in distinguishing between "officers" and "servants."

**NOTE.**

(2.) Where there is in a rural parish an existing vestry clerk appointed under the Vestries Act, 1850, he shall become the clerk of the parish council, and if there is also an assistant overseer in the parish, then, notwithstanding the foregoing provisions of this Act, that assistant overseer shall not, while such vestry clerk holds office, be the clerk of the parish council.

13 & 14 Vict.  
c. 57.

(3.) Any existing assistant overseer in a parish for which a parish council is elected shall, unless appointed by a board of guardians, become an officer of the parish council.

(4.) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

(5.) Where a parish or rural sanitary district is divided by this Act, any officer for the parish or district so divided shall hold his office as such officer for each parish or district formed by the division, and his salary shall be borne by the respective parishes or districts in proportion to their rateable value at the commencement of the local financial year next after the passing of this Act.

(6.) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

51 & 52 Vict.  
c. 41.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses

incurred by a district council in pursuance of this section **Sect. 81 (7).**  
 shall be paid as general expenses of the council, and any  
 expenses incurred by a board of guardians in pursuance of  
 this section shall be paid out of their common fund, and  
 any expenses incurred by any other authority in pursuance  
 of this section shall be paid out of the fund applicable to  
 payment of the salary of the offices affected.

\* \* \* \* \*

**84.**—(4.) Subject as in this Act mentioned, “the ap- Appointed  
 pointed day” shall, day.

- (a) for the purpose of elections and of parish meetings in parishes not having a parish council, be the day or respective days fixed for the first elections under this Act, or such prior day as may be necessary for the purpose of giving notices or doing other acts preliminary to such elections; and
- (b) for the purpose of the powers, duties, and liabilities of councils or other bodies elected under this Act, or other matters not specifically mentioned, be the day on which the members of such councils or other bodies first elected under this Act come into office; and
- (c) for the purpose of powers, duties, and liabilities transferred to a council of a borough by this Act, be the first day of November next after the passing of this Act;

and the lists and registers of parochial electors shall be made out in such parts as may be necessary for the purpose of the first elections under this Act.

**85.**—(1.) Every rate and precept for contributions made Current  
 before the appointed day may be assessed, levied, and rates, etc.  
 collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as

**Sect. 85 (2).** practicable after the appointed day; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office, and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

(3.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act.

(4.) Every valuation list made for a parish divided by this Act shall continue in force until a new valuation list is made.

(5.) The change of name of an urban sanitary authority shall not affect their identity as a corporate body, or derogate from their powers, and any enactment in any Act, whether public general or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.

Saving for existing securities and discharge of debts.

**86.—(1.)** Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require.

(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate

so far as practicable before the appointed day, all current debts and liabilities incurred by such authority. Sect. 86.

**87.** All such byelaws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly. Saving for existing byelaws.

**88.**—(1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto, the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed. Saving for pending contracts, etc.

(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

**89.** The Acts specified in the Second Schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of that schedule mentioned, and so much of any Act, whether public general or local and personal, as is inconsistent with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be alterable in like manner as if they had been fixed by an order of the county council under this or any other Act. Repeal.



## SCHEDULES.

## FIRST SCHEDULE.

## RULES AS TO PARISH MEETINGS, PARISH COUNCILS, AND COMMITTEES.

## PART ONE.

[Sect. 2.] *Rules applicable to Parish Meetings.*

[These rules are made applicable to parish meetings by s. 2 (7), *supra*.]

(1.) The annual assembly of the parish meeting shall be held on some day between the first day of March and the first day of April, both inclusive, in each year.

[This rule is substituted for the original rule by the Local Government Act, 1897 (60 Vict. c. 1), s. 2.]

(2.) Not less than seven clear days before any parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by the chairman of the parish council or other conveners of the meeting.

(3.) If the business relates to the establishment or dissolution of a parish council, or the grouping of a parish, or the adoption of any of the adoptive Acts, not less than fourteen days' notice shall be given.

(4.) A parish meeting may discuss parish affairs and pass resolutions thereon.

(5.) Every question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present and voting on the question, and the chairman shall announce his decision as to the result, and that decision shall be final, unless a poll is demanded.

(6.) A poll may be demanded at any time before the conclusion of a parish meeting.

(7.) A poll may be demanded by any one parochial elector in the case of a resolution respecting any of the following matters, namely :

(a.) Any application, representation, or complaint to a county council or district council ;

Sched. I.  

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- (b.) The appointment of a chairman for the year or of a committee, or the delegation of any powers or duties to a committee, or the approval of the acts of a committee ;
- (c.) The appointment of an overseer, the appointment or revocation of the appointment or dismissal of an assistant overseer or a parish officer ;
- (d.) The appointment of trustees or beneficiaries of a charity ;
- (e.) The adoption of any of the adoptive Acts ;
- (f.) The formation or dissolution of a school board ;
- (g.) The consent or refusal of consent to any act, matter, or thing which cannot by law be done without that consent ;
- (h.) The incurring of any expense or liability ;
- (i.) The place and time for the assembly of the parish meeting ;
- (k.) Any other prescribed matter ;

but, save as aforesaid, a poll shall not be taken unless either the chairman of the meeting assents, or the poll is demanded by parochial electors present at the meeting, not being less than five in number or one-third of those present, whichever number is least.

(8.) In case of an equal division of votes at a parish meeting the chairman shall have a second or casting vote.

(9.) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a parochial elector, not to vote.

(10.) If the chairman of the parish meeting is absent from or unwilling or unable to take the chair at any assembly of the parish meeting, the meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

(11.) Any notice required to be given to or served on a parish meeting may be given to or served on the chairman of the parish meeting.

## PART TWO.

### *Rules applicable to Parish Councils.* [Sect. 3.]

[These rules are made applicable to parish councils by s. 3 (10), *supra*.]

(1.) Every parish councillor shall, at the first meeting after his election, or if the council at the first meeting so permit, then at a later meeting fixed by the council, sign, in the presence of some

**Sched. I.** member of the council, a declaration that he accepts the office, and if he does not sign such a declaration his office shall be void.

(2.) If any casual vacancy arises in the council, the council shall forthwith be convened for filling the vacancy.

(3.) The first business at the annual meeting shall be to elect a chairman and to appoint the overseers.

(4.) The chairman may at any time convene a meeting of the parish council. If the chairman refuses to convene a meeting of the council after a requisition for that purpose signed by two members of the council has been presented to him, any two members of the council may forthwith, on that refusal, convene a meeting. If the chairman (without so refusing) does not within seven days after such presentation, convene a meeting, any two members of the council may, on the expiration of those seven days, convene a meeting.

(5.) Three clear days at least before any meeting of a parish council notice thereof, specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by or on behalf of the chairman of the parish council or persons convening the meeting, shall be given to every member of the parish council, and in case of the annual meeting notice specifying the like particulars shall be given to every member of the parish council immediately after his election.

(6.) Any notice required by law to be given to the chairman or any other member of the parish council may be left at or sent by post to the usual place of abode of such chairman or member.

(7.) No business shall be transacted at any meeting of a parish council unless at least one third of the full number of members are present thereat, subject to this qualification, that in no case shall the quorum be less than three.

(8.) The names of the members present at any meeting of the parish council, as well as of those voting on each question on which a division is taken, shall be recorded, so as to show whether each vote given was for or against the question.

(9.) Every question at a meeting of a parish council shall be decided by a majority of votes of the members present and voting on that question.

(10.) In case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(11.) The parish council may, if they think fit, appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

(12.) The proceedings of a parish council shall not be invalidated by any vacancy among their members, or by any defect in the election or qualification of any members thereof.

(13.) A parish council shall hold not less than four meetings in each year, of which one shall be the annual meeting, and every such meeting shall be open to the public unless the council otherwise direct.

(14.) Every cheque or other order for payment of money by a parish council shall be signed by two members of the council.

(15.) Any notice required to be given to or served on a parish council may be given to or served on the clerk to the parish council.

(16.) The parish council may appear before any court or in any legal proceeding by their clerk or by any officer or member authorised generally or in respect of any special proceeding by resolution of the council, and their clerk or any member or officer shall, if so authorised, be at liberty to institute and carry on any proceeding which the parish council are authorised to institute and carry on.

### PART THREE.

#### *General.*

[Sects. 2, 3.]

(1.) Minutes of the proceedings of every parish council and parish meeting shall be kept in a book provided for that purpose.

(2.) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish meeting, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(4.) Any instrument purporting to be executed under the hands or under the hands and seals of the chairman and of two other members of a parish council or of a parish meeting shall, until the contrary is proved, be deemed to have been duly so executed.

(5.) Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of their proceedings and business, and of the proceedings and business at parish meetings for a rural parish having a parish council.

(6.) Where there is no council for a rural parish, the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

Sched. I.

## PART FOUR.

[S. 56.] *Proceedings of Committees of Parish or District Councils.*

[This part of the schedule is made applicable to joint burial committees by the Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40), s. 1 (1) (c).]

(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the council or councils appointing the committee.

(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.

## SECOND SCHEDULE.

## [Sect. 89.] ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
54 Geo. 3, c. 91	- An Act to amend so much of an Act passed in the forty-third year of her late Majesty Queen Elizabeth, as concerns the time for appointing overseers of the poor.	The whole Act, so far as it relates to rural parishes.
58 Geo. 3, c. 69	- The Vestries Act, 1818.	Sections one, two, three, and four, so far as they relate to parish meetings and parish councils under this Act.
59 Geo. 3, c. 85	- The Vestries Act, 1819.	The whole Act, so far as it relates to parish meetings under this Act.
1 & 2 Will. 4, c. 60	The Vestries Act, 1831.	The whole Act, so far as it relates to parish meetings under this Act, except section thirty-nine.

## Sched. II.

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Will. 4, c. 76	The Poor Law Amendment Act, 1834.	<p>In section thirty-eight, the words "and the said guardians shall be elected by the ratepayers and by such owners of property in the parishes forming such union as shall in manner hereinafter mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively"; and from "and also fix a qualification" to "for the ensuing year shall be chosen"; and from "and every justice of the peace" to "as such elected guardians"; and from "Provided also" to the end of the section.</p> <p>Section thirty-nine, from "and every justice" to the end of the section.</p> <p>In section forty, the words "In all cases of the election of guardians under this Act or."</p> <p>Section forty-one.</p> <p>Section forty-eight from "Provided always" to the end of the section, so far as the words repealed relate to the office of parish or district councillor or guardian.</p>
5 & 6 Will. 4, c. 50	The Highway Act, 1835.	<p>In section forty-eight, the words "with the consent in writing of the justices of the peace at a special sessions for the highways" and the words "at and for such price as the said justices may deem fair and reasonable."</p>
7 Will. 4 & 1 Vict. c. 45.	The Parish Notices Act, 1837.	<p>Section three, so far as it relates to notices by parish councils and notices of parish meetings under this Act.</p>

## Sched. II.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Vict. c. 57 -	The Poor Law Amendment Act, 1842.	Section eight, section eleven, from "and in every case," to the end of the section, and section fifteen.
7 & 8 Vict. c. 101 -	The Poor Law Amendment Act, 1844.	Sections seventeen, twenty, and twenty-four, and section sixty-one from "and wherever any such collector" to "provisions of this Act."
13 & 14 Vict. c. 57 -	The Vestries Act, 1850.	Sections six, seven, eight, and nine, so far as they relate to parish meetings under this Act.
14 & 15 Vict. c. 105	The Poor Law Amendment Act, 1851.	Section two and section three.
16 & 17 Vict. c. 65 -	The Vestries Act, 1853.	The whole Act, so far as it relates to parish meetings under this Act.
18 & 19 Vict. c. 120	The Metropolis Management Act, 1855.	Section six. Sections thirteen to twenty-seven. In section thirty the words "or custom." Section fifty-four.
19 & 20 Vict. c. 112	The Metropolis Management Amendment Act, 1856.	In section two hundred and thirty-five the words "under this Act," where they secondly occur. Sections six, seven, and eight.
23 & 24 Vict. c. 30 -	The Public Improvements Act, 1860.	In section four the words "in value."
25 & 26 Vict. c. 102	The Metropolis Management Amendment Act, 1862.	Section thirty-six; and section forty from "by rating" to "of such parish."
25 & 26 Vict. c. 103	The Union Assessment Act, 1862.	In section two, the words "consisting partly of ex officio and partly of elected guardians," and from "Provided always" to the end of the section. In section five, the words "ex officio or elected," in both places where they occur, and the words "as the case may be."

## Sched. II

Session and Chapter.	Short Title.	Extent of Repeal.
30 & 31 Vict. c. 6 -	The Metropolitan Poor Act, 1867.	Section seventy-nine.
30 & 31 Vict. c. 106	The Poor Law Amendment Act, 1867.	Sections four, five, six, and nine, section ten so far as it relates to elections of guardians, and section twelve.
31 & 32 Vict. c. 122	The Poor Law Amendment Act, 1868.	Section four, from "and the powers" to the end of the section.
38 & 39 Vict. c. 55 -	The Public Health Act, 1875.	<p>Section eight from "and the number" to the end of the section. In section nine, from "Provided that (1) An ex officio guardian" to "situated in an urban district" (being the provisos); and the words "from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for a union," and from "Subject to the provisions of this Act" to the end of the section.</p> <p>Section two hundred, except so far as it applies to boroughs; sections two hundred and one and two hundred and four, section two hundred and forty-eight, except so far as it relates to overseers, and section three hundred and twelve.</p> <p>So much of Schedule I. as relates to committees, and Schedule II.</p>
39 & 40 Vict. c. 61 -	The Divided Parishes and Poor Law Amendment Act, 1876.;	Section six, from "The meeting of inhabitants" to the end of the section, so far as it relates to rural parishes. Section eight to "no alteration," except as to cases where a parish is dealt with by order of the Local Government Board.



## Sched. II.

Session and Chapter.	Short Title.	Extent of Repeal.
39 & 40 Vict. c. 79 -	The Elementary Education Act, 1876.	In section seven the words "so however that in the case of a committee appointed by guardians one third at least shall consist of ex officio guardians, if there are any, and sufficient ex officio guardians."
47 & 48 Vict. c. 70 -	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	Section thirty-six from "(h.) The Local Government Board" to "validity of any vote."
48 & 49 Vict. c. 53 -	The Public Health (Members and Officers) Act, 1885.	Sections three and four.
55 & 56 Vict. c. 53 -	The Public Libraries Act, 1892.	Sub-section three of section one. The First Schedule so far as it applies to rural parishes.

LOCAL GOVERNMENT (JOINT COMMITTEES)  
ACT, 1897.

(60 & 61 Vict. c. 40.)

*An Act to amend the Local Government Act, 1894, with regard to Joint Committees for the purposes of the Burial Acts.* [6th August 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Joint committees for Burial Acts. 56 & 57 Vict. c. 73.

1.—(1.) Where a joint committee is appointed under section fifty-three of the Local Government Act, 1894, for the purposes of the Burial Acts, 1852 to 1885—

(a) any expenses incurred in carrying out those purposes shall be defrayed, any money borrowed for those

purposes shall be borrowed, and any receipts arising from those purposes shall be divided, by the councils appointing the committee in such proportion as they may agree upon, or, as in default of agreement, may be determined by the county council, or, if one of the councils so appointing is the council of a county borough, by the Local Government Board ;

**Sect. 1 (1).**

- (b) the consent of the Local Government Board shall be required to the borrowing by any council of any money required to be borrowed for those purposes, but that consent shall be conclusive as to the power of the council to borrow, and no other consent shall be required either under the said Burial Acts, or the Local Government, 1894, or any other Act ;
- (c) Part IV. of the First Schedule to the Local Government Act, 1894, shall apply to the proceedings of the committee.

(2.) If any difference arises as to the constitution of any such committee it may be determined by order of the Local Government Board.

(3.) For the purposes of this section references to a council shall, in the case of a parish not having a parish council, include the parish meeting, and the parish meeting shall have the same power of borrowing for the purposes of the Burial Acts as a parish council would have.

The power of a burial board to borrow money for expenses under the Burial Act was exercised by charging the future poor rates of the parish (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 20), and for this the sanction of the vestry and Treasury was required. Section 53 (2) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), transferred this power, *inter alia*, in the cases specified to parish and district councils, to be exercised by a joint committee of such councils. The present Act enacts that when there is a joint committee and it is necessary that money should be borrowed for the purpose of the Burial Acts, such money shall be borrowed by the councils appointing the joint committee. In the case of an urban district council, it has been doubted whether such money should be borrowed on the security of the general district rate, in pursuance of the powers conferred on urban authorities by the Public Health Act, 1875 (38 & 39 Vict. c. 55), or on the security of the poor rates. Inasmuch as the power to borrow for such purposes is a power of the burial board transferred to the district council by s. 53 (2) of the Local Government Act, and now

**Sect. 1.****NOTE.**

by this Act directed to be exercised by the district council instead of by the joint committee, it appears that it would be more properly exercised by borrowing on the security of the poor rates than on the security of the district rate; and this appears to be the view of the court in *Rex v. Connah's Quay*, [1901] 2 Q. B. 174.

**Short title.**

2. This Act shall be construed as one with the Local Government Act, 1894, and may be cited as the Local Government (Joint Committees) Act, 1897.

## RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 20.) (a)

*An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the making of Railways.*  
[8th May 1845.]

\* \* \* \* \*

*Recovery of damages and penalties.*

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

**Provision for ascertainment of damages not otherwise provided for.**

**Enforcement by distress.**

140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice on application, shall issue their or his warrant accordingly.

(a) Either portions or the whole of ss. 145—147, 150, 151, 155, are repealed by Statute Law Revision Acts, 1884, 1892. The sections here printed are incorporated with the Cemeteries Clauses Act, 1847, by s. 62 of that Act.

Proceeding taken under this section must be commenced within six months from the time when the matter of the complaint arose as required by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11 (*East London Waterworks Co. v. Charles*, [1894] 2 Q. B. 730).

Sect. 140.

NOTE.

141. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Distress  
against the  
treasurer.Notice to  
treasurer.Reimburse-  
ment of  
treasurer.

142. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of  
proceeding  
before jus-  
tices in ques-  
tions of  
damages, etc.

143. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any byelaw of the company affecting other persons than the shareholders, officers, or

Publication  
of penalties.

**Sect. 143.**

servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

**144.** If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

**145.** Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices. . . .

**146, 147.** [*Repealed by Statute Law Revision Act, 1892.*]

Distress, how to be levied.

**148.** Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

**149.** No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other

proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case. **Sect. 149.**

**150.** The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish. . . . **Application of penalties.**

**151.** [*Repealed by Statute Law Revision Act, 1892.*]

**152.** If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. **Damage to be made good in addition to penalty.**

**153.** It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence. **Penalty on witnesses making default.**

This section is repealed, so far as relates to any matter in which the Summary Jurisdiction Acts apply, by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

**Sect. 154.**

Transient  
offenders.

**154.** It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

**155.** [*Repealed by Statute Law Revision Act, 1892.*]

Proceedings  
not to be  
quashed for  
want of form,  
etc.

**156.** No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Parties  
allowed to  
appeal to  
quarter  
sessions, on  
giving  
security.

**157.** If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions [for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon].

The words within brackets are repealed as to England by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4.

Court to  
make such  
order as  
they think  
reasonable.

**158.** At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or

levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable. Sect. 158.

159. Provided always, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act. Receiver of metropolitan police district to receive penalties incurred within his district.  
2 & 3 Vict. c. 71.

160. And be it enacted, that every person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury. Persons giving false evidence liable to penalties of perjury.



## COMMISSIONERS CLAUSES ACT, 1847.

(10 &amp; 11 VICT. c. 16.)

*An Act for consolidating in one Act certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on Undertakings of a public nature (a).*

[23rd April 1847.]

\* \* \* \* \*

*Mortgages.*

And with respect to the mortgages to be executed by the commissioners, be it enacted as follows :

Mortgages  
of rates.

**75.** Every mortgage or assignation in security of rates or other property authorised to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the commissioners, if they be a body corporate, or, if they be not a body corporate, shall be executed by the commissioners, or any five of them, and may be according to the form in the Schedule (B.) to this Act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such moneys, or of the dates of any such mortgages or assignations respectively.

Register of  
mortgages.

**76.** A register of mortgages or assignations in security shall be kept by the clerk to the commissioners, and where by the special Act the commissioners are authorised or required to raise separate sums on separate rates or other property a separate register shall be kept for each class of

(a) The sections of the Act here printed are incorporated with the Burial Acts by the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 19, and the Burial Act, 1862 (25 & 26 Vict. c. 100), s. 2.

mortgages or assignments in security; and within fourteen days after the date of any mortgage or assignment in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignment in security, without fee or reward. **Sect. 76.**

**77.** Any person entitled to any such mortgage or assignment may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated, and every such transfer may be according to the form in the Schedule (C.) to this Act annexed, or to the like effect. **Transfer of mortgages.**

**78.** Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignment in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignment in security, and the principal and interest thereby secured, and such transferee may in like manner assign or transfer the same again, toties quoties, and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignment so transferred, or any money thereby secured. **Register of transfers.**

**79.** Unless otherwise provided by any mortgage or assignment in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto. **Interest on mortgages.**

**80.** If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any **Power to borrow money at a**

**Sect. 80.** securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this or the special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage or assignation in security.

lower rate of interest to pay off securities at a higher rate.

Repayment of money borrowed at a time and place agreed upon.

**81.** The commissioners may, if they think proper, fix a period for the repayment of all principal moneys borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Repayment of money borrowed when no time or place has been agreed upon.

**82.** If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose, and in the like case the commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if given by the commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette, if the office of the commissioners is in England,

the Edinburgh Gazette, if it is in Scotland, or in the Dublin Gazette, if it is in Ireland, Sect. 82.

**83.** If the commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security. Interest to cease on expiration of notice to pay off a mortgage debt.

**84.** In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed one twentieth part, of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal moneys so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Exchequer Bills or other Government securities, or in Scotland deposited in one of the banks there incorporated by Act of Parliament or Royal Charter, and to be increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof which the commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned. Sinking fund.

**85.** Whenever the commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express Commissioners shall determine by lot which mortgages shall be paid off, and give notice accordingly.

**Sect. 85.** the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

When  
payment of  
interest in  
arrear may be  
enforced by  
appointment  
of a receiver.

**86.** Where by the special Act the mortgagees or assignees in security of the commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage or assignment in security has become payable, and after demand thereof in writing, the same be not paid, the mortgagee or assignee in security may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage or assignment in security has become payable, and after demand thereof in writing, the same be not paid, together with all interest due in respect thereof, the mortgagee or assignee in security, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts, may, if his debt amount to the prescribed sum, alone, or, if his debt do not amount to the prescribed sum, he may in conjunction with other mortgagees or assignees in security whose debts, being so in arrear, after demand as aforesaid, together with his amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

When  
payment of  
principal and  
interest in  
arrear may be  
so enforced.

Appointment  
of receiver.

**87.** Every application for a receiver in the cases aforesaid shall in England or Ireland be made to two justices, and in Scotland to the sheriff, and on any such application such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates and sums of money as aforesaid, or such part thereof as may be

ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

**Sect. 87.**

**88.** The books of account of the commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the commission, with liberty to take extracts therefrom without fee or reward.

Account books to be open to the inspection of mortgagees.

\* \* \* \* \*

### SCHEDULE (B.)

[Sect. 75.]

#### FORM OF MORTGAGE.

By virtue of [*here name the special Act*], we, [*here name the corporation, if the commissioners be incorporated, or if not incorporated, five of the commissioners,*] appointed in pursuance of the said Act, in consideration of the sum of            paid to the treasurer to the said commissioners by A. B., of           , for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates, rents, profits, and other moneys arising or accruing by virtue of the said Act from [*here describe the rates or other property proposed to be mortgaged*] as the said sum of            doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or moneys, to hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of           , with interest at            per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid at the end of            years from the date hereof [*in case any period be agreed upon for that purpose*]). Given under our corporate seal [*or In witness whereof we have hereunto set our hands and seals, or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland, as the case may be,*] this            day of           , one thousand eight hundred and           .

Sched. (C.)

## SCHEDULE (C.)

[Sect. 77.]

## FORM OF TRANSFER OF MORTGAGE.

I, *A. B.*, of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ paid to me by *C. D.*, of \_\_\_\_\_, do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage [or, if the deed be granted in Scotland, a certain assignation in security], number \_\_\_\_\_, made by "the commissioners for executing the [here name the special Act] to \_\_\_\_\_, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, for securing the sum of \_\_\_\_\_ and \_\_\_\_\_ interest [or, if such transfer be by endorsement, the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits, or other moneys thereby assigned. In witness whereof I have hereunto set my hand and seal [or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland] this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

## WATERWORKS CLAUSES ACT, 1847.

(10 &amp; 11 VICT. c. 17.)

*An Act for consolidating in one Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water (a).*

[23rd April 1847.]

\* \* \* \* \*

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows :

Power to break up streets, etc., under superintendence, and to open drains and to lay pipes.

28. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines,

(a) The sections of this Act here printed are incorporated with the Cemeteries Clauses Act, 1847, by s. 19 of that Act, *ante*, p. 319.

and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

**Sect. 28.**

29. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

Undertakers not to enter on private land without consent.

30. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Notice to be served on persons having control, etc., before breaking up streets or opening drains.

31. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the

Streets or drains not to be broken up except under superintendence of persons having control of the same.



**Sect. 31.**

application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer.

Streets, etc.,  
broken  
up to be  
reinstated  
without  
delay.

**32.** When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept there against, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Penalty for  
delay in  
reinstating  
streets, etc.

**33.** If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as

**Sect. 33.**

aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or, if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

**34.** If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same way as damages are recoverable under this and the special Act.

In case of delay, persons having control of streets, etc., may reinstate them.

\* \* \* \* \*

## CREMATION ACT, 1902.

(2 EDW. 7, c. 8.)

*An Act for the regulation of the Burning of Human Remains,  
and to enable Burial Authorities to establish Crematoria.*

[22nd July 1902.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

- Short title.           1. This Act may be cited as the Cremation Act, 1902.
- Definitions.           2. In this Act—  
The expression "burial authority" shall mean any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act :
- 42 & 43 Vict.  
c. 31.                   This definition of "burial authority" is identical with that given of that expression in s. 11 of the Burial Act, 1900, *ante*, p. 297.
- The expression "crematorium" shall mean any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto.
- Application to Scotland.   3. In the application of this Act to Scotland—  
The expression "burial authority" shall mean the parish council or town council of any parish or burgh, as the case may be, vested with the powers and duties conferred by the Burial Grounds (Scotland) Act, 1855, or any Act amending the same :
- 18 & 19 Vict.  
c. 58.                   The expression "the Local Government Board" shall mean the Local Government Board for Scotland :
- The expression "Secretary of State" shall mean the Secretary for Scotland.
- Burial authority may provide for cremation.   4. The powers of a burial authority to provide and maintain burial grounds or cemeteries, or anything essential, ancillary, or incidental thereto, shall be deemed to extend to and include the provision and maintenance of crematoria :

**Sect. 4.**

Provided that no human remains shall be burned in any such crematorium until the plans and site thereof have been approved by the Local Government Board, and until the crematorium has been certified by the burial authority to the Secretary of State to be complete, built in accordance with such plans, and properly equipped for the purpose of the disposal of human remains by burning.

A crematorium under this section may be provided in the same manner as a burial ground may be provided by a burial board, or authority entitled to exercise the powers of a burial board, under the Burial Acts, or as a cemetery may be provided by a local authority under the Public Health (Interments) Act, 1879. The authorities entitled to exercise the powers of a burial board are enumerated *ante*, pp. 65—71, and to them must be added parish councils adopting the Burial Acts under s. 7 of the Local Government Act, 1894, and joint committees appointed for the purposes of the Burial Acts under s. 53 of that Act. The powers of a local authority to provide and maintain a cemetery under the Public Health (Interments) Act, 1879, will be found *ante*, pp. 301 *et seq.*

There does not appear to be anything in this section which would excuse a burial board or authority exercising the powers of a burial board from performance of the positive direction contained in s. 25 of the Burial Act, 1852, that they shall "with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments within;" and it is submitted that, where for instance the churchyard has been closed by Order in Council, and a burial board have been appointed for the parish, or a parish council have adopted the Burial Acts for the parish, a crematorium cannot be provided and maintained as a substitute for a burial ground for the parish, but only in addition to a burial ground. A local authority, however, is not obliged to establish a cemetery for their district unless the Local Government Board require them to do so under s. 141 of the Public Health Act, 1875, as applied by the Public Health (Interments) Act, 1879, and it follows that a local authority may, unless required by the Local Government Board to provide a cemetery, provide and maintain a crematorium, although they do not provide a cemetery.

**5.** No crematorium shall be constructed nearer to any dwelling-house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority. Site of crematorium.

The distance of 200 yards from the dwelling-house is to be measured from the walls of the dwelling-house, not from the boundary of the curtilage adjoining the house (*Wright v. Wallasey Local Board* (1887), 18 Q. B. D. 783; 56 L. J. Q. B. 259).

**Sect. 5.****NOTE.**

A "highway" in its widest sense, in which it is apparently used here, includes all portions of land over which every subject of the Crown may lawfully pass. See Pratt's Law of Highways, 14th ed., p. 1.

Donations of land.

6. A burial authority may accept a donation of land for the purpose of a crematorium, and a donation of money or other property for enabling them to acquire, construct, or maintain a crematorium.

Regulations as to burning.

5 & 6 Will. 4, c. 62.

7. The Secretary of State shall make regulations as to the maintenance and inspection of crematoria and prescribing in what cases and under what conditions the burning of any human remains may take place, and directing the disposition or interment of the ashes, and prescribing the forms of the notices, certificates, and declarations to be given or made before any such burning is permitted to take place, such declarations to be made under and by virtue of the Statutory Declarations Act, 1835, and also regulations as to the registration of such burnings as have taken place. A copy of such regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, or, if not, then within three weeks after the beginning of the next ensuing Session of Parliament; and, after such regulations have lain for forty days before Parliament, then, unless within such forty days an address has been presented by one or other of the said Houses praying his Majesty to withhold his assent from such regulations or any part thereof, such regulations shall have the same effect as if they were enacted in this Act. All statutory provisions relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in courts and otherwise, shall apply to the register of burnings directed by such regulations to be kept, and the Stamp Act, 1891, shall apply to a register under this Act as if it were a register of burials.

54 & 55 Vict. c. 39.

Regulations under this section have not yet been issued.

It is to be noticed that the provisions of this section and s. 8 are of general application, and are not confined to crematoria established by burial authorities or to the burning therein of human remains. The general right, therefore, of executors, etc., to dispose of the remains of a human body by burning, which hitherto, according to *Reg. v. Stephenson* (1884), 13 Q. B. D. 331, *ante*, p. 10, and *Reg. v. Price* (1884), 12 Q. B. D. 247, *ante*, p. 11, was lawful if only the process were conducted in such a manner as not to amount to a

nuisance at common law, is now restricted by the necessity of complying with the regulations made or to be made by the Secretary of State under this section.

The Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), s. 18, provides that "Whereas it may be necessary and proper in many cases not herein specified to require confirmation of written instruments or allegations, or proof of debts, or of the execution of deeds or other matters; be it therefore enacted, that it shall and may be lawful for any justice of the peace, notary public, or other officer now by law authorised to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form in the schedule to this Act annexed; and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanor."

SCHEDULE referred to by the foregoing Act.

I, A. B., do solemnly and sincerely declare, that and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

The statutory provisions relating to the destruction and falsification of registers of burials are contained in the Burial Act, 1857 (20 & 21 Vict. c. 81), s. 15, *ante*, p. 247, and the Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 36, 37, *ante*, p. 383. Those relating to the admissibility of extracts therefrom as evidence in courts or otherwise, are contained in the Burial Act, 1853 (16 & 17 Vict. c. 134), s. 8, *ante*, p. 191, and the Registration of Burials Act, 1864 (27 & 28 Vict. c. 97), s. 5, *ante*, p. 386. The provisions of the Stamp Act, 1891, as to registers of burials, are contained in ss. 1, 64, of that Act, *ante*, p. 391.

8.—(1.) Every person who shall contravene any such regulation as aforesaid, or shall knowingly carry out or procure or take part in the burning of any human remains except in accordance with such regulations and the provisions of this Act, shall (in addition to any liability or penalty which he may otherwise incur) be liable on summary conviction to a penalty not exceeding fifty pounds. Provided that any person aggrieved by any conviction may appeal therefrom to quarter sessions.

Penalties for breach of regulations, etc.

As no time is specially limited for laying an information for an offence under this sub-section, it must be laid within six calendar months from the time when the matter of such information arose (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11).

In addition to the liability to the penalty imposed by this sub-section, an offender may be liable to an indictment for a common nuisance, and, if convicted, to fine or imprisonment, or both.

(2.) Every person who shall wilfully make any false declaration or representation, or sign or utter any false

**Sect. 7.**

NOTE.

**Sect. 8 (2).** certificate, with a view to procuring the burning of any human remains, shall (in addition to any penalty or liability which he may otherwise incur) be liable to imprisonment with or without hard labour not exceeding two years.

Any person making a false declaration is guilty of a misdemeanour under the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), s. 18.

Signing or uttering a false certificate of birth, baptism, marriage or death, is felony under the Forgery Act, 1861 (24 & 25 Vict. c. 98), and punishable with penal servitude for life, or imprisonment with hard labour.

(3.) Every person who with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body, or with such intent makes any declaration or gives any certificate under this Act, shall be liable to conviction on indictment to penal servitude for a term not exceeding five years.

Fees.

9. The burial authority may demand payment of any such charges or fees for the burning of human remains in any crematorium provided by them as may be authorised by any table approved by the Local Government Board, and such charges or fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of the deceased.

As to the payment of and liability for funeral expenses, see pp. 2—7, *ante*.

Saving for coroners.

50 & 51 Vict. c. 71.

10. Nothing in this Act shall interfere with the jurisdiction of any coroner under the Coroners Act, 1887, or any Act amending the same, and nothing in this Act shall authorise the burial authority or any person to create or permit a nuisance.

It is a misdemeanour to burn or otherwise dispose of a dead body, with intent thereby to prevent the holding upon such body of an intended coroner's inquest, and so to obstruct a coroner in the execution of his duty, in a case where the inquest is one which the coroner has jurisdiction to hold (*Reg. v. Stephenson* (1884), 13 Q. B. D. 331 ; 53 L. J. M. C. 176 ; 33 W. R. 44).

Incumbent not to be obliged to perform burial service.

11. The incumbent of any ecclesiastical parish shall not, with respect to his parishioners or persons dying in his parish, be under any obligation to perform a funeral service before, at, or after the cremation of their remains, withi

**Sect. 11.**

the ground of a burial authority, but, upon his refusal so to do, any clerk in Holy Orders of the Established Church not being prohibited under ecclesiastical censure, may, with the permission of the bishop and at the request of the executor of the deceased person, or of the burial authority, or other person having charge of the cremation or interment of the cremated remains, perform such service within such ground.

An incumbent of a parish is by the general ecclesiastical law empowered to prevent any other clergyman of the Church of England from performing any service of the church in his parish without his authority (*Nesbitt v. Wallace*, [1901] P. 354).

12. In any table of fees respecting burials to be made or approved by the Secretary of State, a fee may be fixed in respect of a burial service before, at, or after cremation, and if no fee is fixed, the fee, if any, fixed in respect of a burial service shall apply. Fees may be fixed.

Fees in respect of burial service are fixed by the burial authority subject to the approval of the Secretary of State under the provisions of s. 3 of the Burial Act, 1900, *ante*, p. 283.

13. Sections fifty-two and fifty-seven of the Cemeteries Clauses Act, 1847, and any similar provisions in any local and personal Act authorising the making of a cemetery, shall apply to the disposition or interment of the ashes of a cremated body as if it were the burial of a body. Application of 10 & 11 Vict. c. 65, ss. 52 and 57.

The above-mentioned sections, which relate to the payment of fees to incumbents and clerks of parishes from which bodies are brought to be buried in a cemetery established by a company, will be found at pp. 330, 332, *ante*. They have no application to cemeteries established by burial authorities under the Public Health (Interments) Act, 1879.

14. As from the date at which regulations under this Act come into force, any provisions of any local and personal Act for the like purpose as this Act, and any byelaws or regulations made thereunder, shall, so far as they relate to that purpose, cease to be in operation. Repeal of local Acts.

15. This Act shall come into operation on the first day of April one thousand nine hundred and three. Commencement of Act.

16. This Act shall not apply to Ireland. Extent of Act.



# APPENDICES.

## APPENDIX A.—No. 1.

### Home Office Circular as to the effect of the Burial Act, 1900. BURIAL ACT, 1900.

WHITEHALL,  
*December 17th, 1900.*

SIR,—I am directed by Mr. Secretary Ritchie to call your attention to the important changes in the law affecting burial authorities which will come into effect on the 1st January, 1901, under the provisions of the Burial Act of 1900, of which a copy is enclosed herewith.

#### BURIAL AUTHORITIES.

The "burial authorities" referred to in the Act are "any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act." (Section 11.)

Two main features of the Act are :

The redistribution between the Secretary of State and the Local Government Board of the powers and duties of a central authority under the laws affecting burial. (Section 4 and Schedule I.)

The alteration of the law regulating consecration, chapels and fees payable to ministers, clerks, and sextons. (Sections 1—3.)

#### I.—TRANSFER OF POWERS.

Section 4 and Schedule I. of the Act transfer to the Local Government Board the powers, duties, and functions of the Secretary of State under the enactments set out in that schedule.

Accordingly, from the 1st January, 1901, all correspondence on matters connected with these powers should be addressed to the

Jurisdiction  
of the Local  
Government  
Board.

Secretary to the Local Government Board, and not as heretofore to this Department.

**App. A.**  
**No. 1.**

These matters may be summarised as follows :

- (a) The closing of burial grounds and the prohibition of the opening of new ones.
- (b) The approval of new burial grounds, and of additions to existing grounds.
- (c) The adoption of the Burial Acts and the constitution, powers, and areas of burial authorities.
- (d) The inspection and regulation of burial grounds.
- (e) Certain provisions as to the borrowing powers and expenses of burial authorities.
- (f) Fees other than ecclesiastical fees to be taken by burial authorities.
- (g) The purchase, sale, and letting of land.
- (h) The sanitary regulation of vaults and places of burial.
- (i) The grant of licences for interment in closed burial grounds.

The Secretary of State will be the central authority regarding the consecration of burial grounds, the allotment of parts thereof for the use of particular denominations, the building of chapels, and the removal of human remains; and new functions are entrusted to him with respect to the fixing, varying, or commutation of, or compensation for, fees payable to ministers of religion, ecclesiastical officers, and sextons.

Jurisdiction of the Secretary of State.

It will be observed that, speaking generally, all questions relating to sanitation, and to the constitution, powers, and finances (a) of burial authorities, will in future be dealt with by the Local Government Board, whilst matters affecting the interests of the church and other religious denominations and their officers are referred to the Secretary of State, whether such matters arise in connection with burial grounds under the Burial Acts or with cemeteries under the Public Health (Interments) Act.

## II.—CONSECRATION.

The law which will in future regulate the consecration of burial grounds is set out succinctly in the first section of the Act; it applies to all burial grounds provided by a "burial authority" as defined in section 11, whether such grounds are already open or are to be opened hereafter.

(a) No alteration is made in the existing law under which the authority of the Treasury is required for borrowing by certain burial authorities.

**App. A.****III.—ALLOTMENTS.****No. 1.**  
**Allotments.**

The law enabling burial boards with the approval of the Secretary of State to allot portions of the unconsecrated part of their burial ground for the exclusive use of particular denominations is now extended (*see* section 9) to the case of burial grounds provided by burial authorities under the Public Health (Interments) Act, 1879.

**IV.—CHAPELS.****Chapels.**

The law relating to cemetery chapels is entirely altered by section 2 of the Act, so far as relates to chapels to be erected hereafter.

All burial authorities will have power to erect on any part of their ground which is not consecrated or allotted as above a chapel for the performance of burial services; but such a chapel must be unconsecrated, and for the use of all denominations in common.

And if any part of the ground is consecrated or allotted to any particular denomination they may be called upon by the Secretary of State to cause or allow a chapel or chapels for funeral services according to the rites of such denominations to be erected, furnished, and maintained on the site or sites so appropriated.

Such chapels will be erected, furnished, and maintained at the cost of the persons belonging to the particular denominations and residing within the district of the burial authority.

The obligation hitherto attaching to a burial authority, who have provided a cemetery under the Public Health (Interments) Act, to build a chapel at their own cost in the consecrated part, if any, will cease.

**V.—FEES.****Fees of burial authority.**

**A.** Fees receivable by the burial authority for their own use.

As already explained the functions hitherto exercised by the Secretary of State with regard to these fees are transferred to the Local Government Board: in other respects the law is unaltered.

**Ecclesiastical fees.**

**B.** Fees receivable by ministers and others or by burial authorities on their behalf.

With regard to these the law is changed in important respects.

*Fees for Services Rendered.***Ministers.  
Sextons.**

On and after the 1st January next the incumbent and the sexton will no longer be entitled to the fees in respect of their services at funerals which they have hitherto enjoyed by custom and under the provisions of section 32 of the Burial Act, 1852. The burial authority must collect and pay over to them such fees as the Secretary of State

shall have approved in respect of their services. And fees on a like scale and with the like approval must be collected by the burial authority and paid to any minister of religion conducting a funeral in the unconsecrated part of the burial ground or in the consecrated side in case of interments under the Burial Act, 1880. (Section 3 (1), (2), (3).)

**App. A.**

**No. 1.**

Fees to clerks and other ecclesiastical officers (except the sexton's Clerks. fees for services rendered) are abolished, subject to compensation for vested interests. (Section 3 (5).)

*Fees other than for Services Rendered.*

Such fees as those in respect of monuments or any other matter arising in a burial ground maintained by a burial authority which have hitherto been customary in many places will no longer be payable whether to incumbents, churchwardens, trustees, or other persons; subject to the following provisions.

Where such fees were payable on the 10th July, 1900, in respect of monuments or any other matter arising in a parochial burial ground laid out and used before that date, the like fees will continue to be paid during the incumbency of the then incumbent or for fifteen years from that date, whichever is the longer period, and in the case of fees payable to churchwardens, trustees, or others not claiming through or under the incumbent, they will continue to be payable for fifteen years. (Section 3 (4), (i).)

In any case the burial authority is to collect and pay over the fees for the legal period in like manner as the fees for services rendered, unless an arrangement is made for their equitable commutation in the manner provided in section 3 (4), (ii).

**VI.—FIXED PAYMENTS IN LIEU OF FEES.**

In consequence of the repeal of section 37 of the Burial Act of 1852 it will not in future be possible to substitute a fixed payment for the fees payable to incumbents, clerks, and sextons in the manner therein provided; but, where such fixed payments have been arranged, the provisions of section 3 of the new Act—save those relating to collection—apply to them equally as to fees. (Section 3 (7).)

**VII.—CEMETERIES UNDER THE PUBLIC HEALTH  
(INTERMENTS) ACT.**

In addition to the matters referred to already there are several further respects in which these cemeteries are placed in the same position as burial grounds provided under the Burial Acts, or are otherwise affected.

- App. A.**
- No. 1.**
- Duties of incumbent.
- Chaplain.
- Burial Act of 1880.
- Boundary fences, s. 10.
- (a) Incumbents are placed under the same obligations with respect to the interment therein of their parishioners and of persons dying in their parishes as they are under with respect to their own churchyards, viz., to perform the duties connected with the burial and religious service in person or by duly qualified deputy. (Section 7.)
- (b) The power to appoint a chaplain ceases. (Section 7.)
- The appointment of existing chaplains is not necessarily determined by the Act; such chaplains will have the right to continue to perform burial services in the consecrated part of the ground and will be entitled to receive the fees set out in the scale approved by the Secretary of State. The Secretary of State is advised that the obligations of the incumbent referred to in (a) will be suspended until the appointment of the chaplain is determined.
- (c) The provisions of the Burial Laws Amendment Act, 1880, subject to the amendment mentioned below, will apply as if the burial authority were a burial board. (Section 9.)
- (d) Where there is no chaplain, burials in the consecrated part of the ground are to be registered in the same way as burials in the unconsecrated part. (Section 7.)
- (e) The provisions of section 15 of the Cemeteries Clauses Act, 1847, which were applicable to cemeteries under the Public Health (Interments) Act, and required them to be enclosed by substantial walls or iron railings, at least eight feet high, will no longer apply to such cemeteries.

#### VIII.—MINOR ALTERATIONS OF THE LAW.

- Notice of burial under Act of 1890, s. 1.
- Protection of unconsecrated ground, s. 6.
1. The Burial Laws Amendment Act, 1880, requires forty-eight hours' notice to be given of intention to bury in accordance with its provisions. This enactment is repealed, and in future the burial authority will prescribe in what manner the notice is to be given.
2. For the future, any unconsecrated ground which is maintained by a burial authority and set apart for the purposes of burial must not be applied to any other purpose except by leave of the Local Government Board.
3. Section 10 of the Burial Act, 1855, under which a burial ground provided under the Burial Acts may be conveyed and settled so as to be held and used in all respects as the churchyard is repealed.

I am, Sir,

Your obedient servant,

KENELM E. DIGBY.

## No. 2.

App. A.

No. 2.

**Home Office Directions in respect of the Matters left within the cognizance of the Secretary of State by the Burial Act, 1900, by which many of the Powers and Duties of the Secretary of State under the Burial Acts were transferred to the Local Government Board.**

**DIRECTIONS TO BURIAL AUTHORITIES ISSUED BY THE SECRETARY OF STATE FOR THE HOME DEPARTMENT.**

HOME OFFICE, WHITEHALL, S.W.,

*January 1st, 1901.*

1. Under the provisions of the Burial Act, 1900, the functions of the Secretary of State in the administration of the law relating to the burial of the dead have been substantially limited, and the following instructions as to the mode in which applications should be addressed to him upon the various matters which remain or have been placed within his jurisdiction, have been compiled for the convenience of burial authorities. The printed "Directions" formerly issued from the Home Office are hereby superseded.

2. All requests or inquiries addressed to the Secretary of State by burial authorities should set out clearly the full name of the authority and its nature, *i.e.*, whether urban district council, burial board, joint committee, etc., and the area of its jurisdiction; also the situation of the burial ground or grounds to which the application refers.

**CONSECRATION AND ALLOTMENTS.**

3. Under section 1 (1) the burial authority must obtain the approval of the Secretary of State to the selection of the portion of the burial ground which they purpose asking the bishop to consecrate.

4. Application to the Secretary of State for his approval under **Plans**. this section should include a copy of the resolution of the burial authority duly verified by the signature of the chairman, and should be accompanied by plans or tracings in duplicate, which should be drawn to an indicated scale, and should show the whole site of the burial ground, together with the approaches thereto and the roads and buildings adjoining the boundary. The plans should also indicate the paths, flower-beds, plantations, etc., which it is proposed to lay out, the allotments and the chapels, if any, and the mortuaries, lodges, cottages, superintendent's house, and other buildings which may be contemplated.

**App. A.****No. 2.**

5. Statements should also be submitted showing—

- (a) The population of the area for which the ground is to be provided.
- (b) The estimated number of burials annually.
- (c) The estimated proportion of burials in consecrated ground to others.

If a burial ground has been in use for some time the actual figures should be given.

- (d) Whether applications have been received for allotments, and, if so, on behalf of what denominations.
- (e) The estimated number of persons belonging to such denominations and residing within the district.
- (f) Whether the allotments proposed, if any, are approved by the representatives of such denominations.
- (g) The nature of any objection which may have been raised to the proposed division or allotments.

**CHAPELS.**

6. Neither the site nor the plans of the chapel to be erected by the burial authority for common use have to be approved by the Secretary of State.

7. Nor is any reference to the Secretary of State necessary with respect to chapels which the burial authority may consent to provide at the request and cost of the residents in their district belonging to any particular denomination on the ground appropriated to the use of that denomination.

8. Should a case arise of complaint to the Secretary of State respecting the refusal or delay of a burial authority to erect such a chapel after due request and tender of costs, the Secretary of State will in all cases call upon the burial authority for a full statement of their reasons before announcing his decision, under section 2 (3) of the Act.

**FEEs FOR SERVICES RENDERED.**

9. When the Act is in operation the fees in respect of services in connection with interments to be paid to any incumbent or other minister of religion, or to any sexton, shall be the fees which are included in a table approved by the Secretary of State.

10. The fees in this table must be collected by the burial authority, and paid to the ministers or sextons in such manner as may be agreed upon or directed.

11. The interment fees hitherto payable by ancient custom and preserved by section 32 of the Burial Act, 1852, will no longer be due. This applies not only to the customary fees to incumbents,

but also to those which may have been payable to clerks, sextons, and other ecclesiastical officers.

**App. A.**  
**No. 2.**

12. In applying to the Secretary of State for approval to a table of fees, the burial authority should state—

- (i.) In what burial ground or grounds the fees will arise.
- (ii.) The names of the parishes, civil and ecclesiastical, the inhabitants of which have rights of interment.
- (iii.) The distance of the burial grounds from the church and the centre of population.
- (iv.) The amount of the fees, if any, hitherto payable to the incumbent and sexton.
- (v.) Whether such fees have been levied or remitted, or have been commuted for an annual payment.
- (vi.) Whether the proposed table has been assented to in writing by the incumbent and other ministers interested, and the sexton.
- (vii.) What fees have been payable to clerks or other ecclesiastical officers.
- (viii.) The estimated annual number of interments in the various parts of the ground.
- (ix.) Whether the sexton has hitherto rendered services in connection with interments in all parts of the ground, or on the consecrated side only.

13. The burial service fees must be of the same amount in the consecrated and unconsecrated parts of the ground; but where the charges for grave-spaces in different parts of the ground vary, the Secretary of State would be willing to approve varying fees. This would admit of a small fee for pauper funerals.

14. The Secretary of State does not propose to compile a Model Table of Fees for general use; but will consider the suggestions which burial authorities make to meet the requirements of their locality. He considers it desirable that the fees should be settled with the full concurrence of the ministers of religion concerned; but if agreement be found impossible, the points on which difference arises should be clearly laid before him.

#### FEEs FOR MONUMENTS, EXCLUSIVE RIGHTS OF BURIAL, ETC.

15. Fees other than fees for services rendered in respect of matters arising in burial grounds maintained by burial authorities are henceforth abolished, subject to two important provisions—

- (a) Incumbents' fees payable in respect of matters arising in burial grounds laid out and used before the 10th of July, 1900, are continued (subject to commutation) during the



**App. A.****No. 2.**

incumbency of then existing incumbents, or for fifteen years, whichever period is longer.

Correspondence with respect to the commutation of such fees should be addressed to the Ecclesiastical Commissioners, 10, Whitehall Place, S.W.

- (b) Clerks, sextons, and other ecclesiastical officers who have heretofore enjoyed such fees in a burial ground maintained by a burial authority are entitled to receive such equitable compensation for the abolition of their fees as may be agreed upon, or, in default of agreement, as may be settled by the Secretary of State.

16. The Secretary of State hopes that an agreement will be generally arrived at in such cases; but if reference to him should become necessary, the burial authority should furnish the Department with a return showing the amount of the fees received during the last five years separately in respect of each matter giving rise to fees, the date of the appointment of the holder of the office and his present age, the duties which have been performed, and whether they have been performed in person or by deputy.

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**No. 3.**

**Suggestions to Burial Boards providing and managing Burial Grounds, and making Arrangements for Interments by the Inspector under the Burial Acts of 1852—1855, 1857—1859, 1860, and 1871 (a).**

**SITUATION.**

The site for a burial ground should be chosen far enough from dwellings to secure their inmates from danger or annoyance, and near enough to the mass of the population to avoid as much as possible increasing the cost and inconvenience of conveying funerals a too great distance.

Small burial grounds may with propriety be established nearer to a town than larger ones, and nearer to towns which are slowly than to such as are rapidly increasing. It is desirable to choose a site towards which the town is not extending, both because such a situation is not likely to be encroached upon by houses, and because land not in demand for building is cheaper, and more of it may therefore be obtained at moderate cost. Land at building-ground price is generally too dear for graves. It is often, however, more economical

(a) Approved by the Secretary of State, November, 1872.

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to pay a rather higher price for land, than to fix the burial ground at such a distance as to render carriages necessary for all the funerals, the annual cost of which may exceed the saving of interest on the extra price of the land : the object being to keep down the charge of the entire funeral, not merely to secure cheap graves, the cost of which is often a small part only of the whole expense. Many burial grounds are much used as public walks, for which purpose they would be useless at too great a distance from the population.

The Burial Act of 1855 requires that no ground (not already used as or appropriated for a cemetery) shall be used for burials, *under this Act*, unless the consent in writing of the owner, lessee, and occupier of every dwelling within 100 yards of any ground to be so used shall be previously obtained. The object of this provision is doubtless to enable owners of houses to protect their property from depreciation, as well as to guard occupiers from annoyance or risk of injury. It is evidently important to avoid selecting a site for which many such consents must be obtained, but it is not necessary (as some have supposed) that no house whatever shall be within that distance.

#### SOIL AND DRAINAGE.

The quality of the soil is of great importance. Dry, open soils which readily admit air and moisture, allowing the rain which falls upon the surface to enter readily, carrying air down with it, facilitate decay, and permit graves to be sooner reopened for subsequent interments. Porous soils, mixed with vegetable mould, absorb and decompose the products of decay, and prevent the escape of injurious emanations, if the quantity of animal matter be not too large in proportion to the area, and if the soil near the coffin be left undisturbed until decomposition is completed. Dense clay soils are in all respects undesirable ; they exclude air and moisture, retard decomposition, and render it improper to reopen a grave, to nearly its original depth, within any reasonable period. In some such soils coffins have remained undecayed for thirty years or more, and therefore graves in such soils can be used a very limited number of times only. They are, moreover, expensive to drain ; they retain the gases of decomposition, and sometimes crack, possibly allowing dangerous exhalations to escape. It is so difficult and expensive to remedy these defects that it is better to select an open than a clay soil, even though the site be moderately more distant, or more costly. In some such cases the plan has been adopted of enclosing separately every coffin buried in concrete or cemented stone or brickwork, the extra cost of which is to be set against the diminished cost of less excavation, and less rapid filling of space.

Soils which have no proper mould, and which consist chiefly of stone, may allow of the passage of decomposed emanations, and

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it is difficult and expensive to supply the mould in which they are deficient. It is always desirable, before deciding upon a site, to have the soil examined in various places to the depth of at least eight feet.

The neighbourhood of any open reservoir or conduit conveying water used for domestic purposes should be avoided, and great care must be taken that there are no wells, or streams supplying water so used, liable to be polluted by drainage from graves.

Land which cannot be effectually drained, so as to prevent water remaining in any vault or grave, or which is liable to be flooded, is unsuitable. Several fatal accidents have been caused by the foul water from a grave or vault bursting in upon another grave made near it. Great reluctance is felt to burying a coffin in a wet grave, and it is very disagreeable and sometimes dangerous to bale water on to the surface.

As is well known, dense soils are rendered less so when effectually drained, and such are thereby rendered less unsuitable for burial purposes. Sometimes, when deep drainage is required, it will be sufficient to construct one or more deep drains through the cemetery without any artificial connection with the graves; but when the soil is very dense, the only effectual mode of preventing accumulation of foul water in the grave is by laying a pipe or broken stone drain from grave to grave, and so connecting them all with the main drain. In some such cases this cost has been diminished by making the first graves next to the drain, and merely opening the soil between the bottom of the grave and the drain, taking care to put at the bottom of every grave some gravel or other porous material. This plan has been found effectual for maintaining a passage for the water without great cost.

The surface water has been successfully managed in three different ways in soil too dense to allow of percolation. In some such cases great care has been taken by ramming in the soil to prevent surface water entering the grave, but this is difficult and costly; in other cases a line of drain pipes has been laid just below the surface soil at the upper end of each row of graves to catch the surface water which would otherwise trickle into them; the third plan has been to place drain pipes vertically in the corner of each grave to convey any water which may enter it direct to the drain at the bottom of each. The necessity for adopting any of these expedients shows the importance of avoiding, if possible, a soil so dense as to require them.

In a few instances, when it was impossible to obtain a sufficient outfall for the drainage, the water has been removed by pumping; in other cases escape for the water has been obtained by sinking a shaft through the impervious stratum which retained it, into a pervious stratum below. Very careful preliminary examination will

be necessary, and no difficult modes of drainage should be resorted to unless advised by a person of skill and experience; or very heavy expense may be incurred. In all cases care must be taken not to risk the pollution of water used for domestic purposes.

In some cemeteries clay soil has been improved by mixing sand or gravel with that with which graves are refilled, to render it porous. It has been proposed to use burnt clay for this purpose.

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#### PATHS AND ROADWAYS.

As burial grounds ought to be conveniently accessible at all seasons of the year, it is very important that the roads be of very hard material; and there should be ample provision of footpaths fit to walk upon in the wettest weather.

At Nottingham, Chesterfield, Sheffield, and some other of the midland and northern towns, roads and footpaths for gardens and cemeteries have been formed somewhat resembling asphalt, but very much cheaper. They are made of iron furnace cinder, or other hard material, bound together by gas tar, boiled down to a sort of pitch, only just enough to bind the material together being used, and sprinkled with sparkling spar to render them ornamental. This material is stated to be very suitable for a footpath which must be used in all weathers; being always hard and free alike from dirt or dust, cheap, durable, easily repaired, and requiring no weeding. No one possesses any patent right to make this asphalt, but those accustomed to make it are likely to do so best. It is rather extensively used at railway stations, and may be kept in good repair at small cost.

Some burial grounds have a footpath between every second row of graves, so that access to any may be obtained without walking on the grass. There is rarely occasion for incurring this expense, as the grass path, which may be easily left by so arranging that the ends of the graves shall be alternately rather less and rather more apart, will be usually all that is needed for giving access from the main path to all the graves, without trampling upon any. When the ground is wet and soft a temporary pathway of planks may be laid upon the grass paths.

#### FENCING AND PLANTING.

The official regulations require simply that the burial ground shall be effectually fenced, so that it may be protected from trespassers or from the intrusion of any animals which may injure the monuments, plants, or trees, leaving the sort of fence undetermined. When the burial ground is among fields, a good hedge, which may be strengthened by stretched wires, is all that is often thought

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necessary, with a dwarf wall and rail, if there be any public road adjoining. A favourite plan is a sunk fence with a wall on one side only, and evergreen or other hedge on the top. High walls are generally objected to as unsightly, unnecessarily expensive, and impeding the free passage of air. Sometimes, however, walls are useful to increase the seclusion of the cemetery, or to shelter it from cutting winds, which might prevent the growth of trees and shrubs. In almost all cases burial boards have been desirous of obtaining more ground than is absolutely required, in order that part may be devoted to ornamental planting, and sites are often chosen on which ornamental trees already stand. Growing vegetation is not only useful for ornament, but for absorbing and rendering harmless the products of putrefaction. Trees by their roots, carry off the products of decay, and enable a cemetery to serve some of the purposes of a public walk or garden, by making it a place of safe, quiet, and agreeable resort; and when cemeteries are, as is usual, ornamentally laid out and well kept, they are a source of great gratification and advantage; they are especially resorted to on Sunday afternoons, and are much valued by those who have little other opportunity of taking out-door exercise except during part of their day of rest. Very little complaint has been made of improper behaviour by those who resort to the cemeteries, except when the practice of burial on Sundays has been continued, when the presence of numerous spectators has often been found very inconvenient. Many burial boards have, to avoid this and other serious evils, limited burials on Sundays to those before morning service, greatly to the advantage of the servants of the burial boards, of the undertakers and their men, and, as is believed, of those who before buried their dead on Sundays, who, it is asserted, spent more in funeral expenses on Sundays than they saved by not giving up their earnings on a week day. The serious inconvenience that must be caused by imposing extra duty on ministers of religion on the days when they are otherwise most engaged is evident.

As cemeteries are frequented at all seasons, it is well to have a large proportion of evergreen trees, some of which, such as the cypress and yew, are peculiarly appropriate; but there should be mixed with them deciduous trees and some of quick growth, to relieve the bareness of newly enclosed ground; such trees may be removed when no longer needed.

“Mr. Loudon recommends for planting in cemeteries trees chiefly of the fastigate growing kinds, which neither cover a large space with their branches nor give too much shade when the sun shines, and which admit light and air to neutralise any mephitic effluvia. Of these there are the oriental arbor vitæ, the evergreen cypress, the Swedish and Irish juniper, etc. For the same reason, trees of the narrow conical form, such as the red cedar, and various pines

and firs, are desirable. In advantageously situated cemeteries, some of the larger trees, such as the cedar of Lebanon, the oriental plane, the purple beech, the dark yew, and the flowering ash, sycamores mountain ash, hollies, thorns, and some species of oaks, such as the evergreen oak, the Italian oak, with flowering trees and shrubs, would find places in due proportion " (b).

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It is of importance that trees and shrubs should not cover too large a portion of the burial ground, and that they should not be too closely planted, or should be thinned out as they grow large, to avoid interfering with the ventilation and with the free passage of air. A suitable disposal of trees or shrubs along roads or pathways would afford shelter to persons visiting graves, and to funeral processions. It is customary in well-regulated cemeteries to avoid burying close to the boundary fence. On many accounts this is advisable, as there is no law to prevent houses being built and wells sunk close to a burial ground ; there is, moreover, a disposition to erect houses in the vicinity of ornamental cemeteries. Much of the evil may be prevented by draining the ground in such a manner as to prevent the water passing into the subsoil of the neighbourhood, and by the adoption of proper regulations as to burial ; but it would nevertheless be advisable to leave a belt of land for planting between the fence and the nearest graves. This strip of ground would not be wasted, for part of it might be used as a walk and part for ornamental shrubs. A surrounding belt of shrubbery would contribute to the seclusion of the ground, and need not be so close as to check too much the free passage of air.

#### SIZE OF GRAVE SPACES.

The official regulations require that grave spaces for persons above twelve years of age be nine feet long by four feet wide or four square yards ; and for children under that age, six feet long by three feet wide, or equal to two square yards ; the average size (where two sizes are used) will therefore be rather more or rather less than three square yards, according as there is a larger or smaller proportion of children's burials, that is, generally, according to the sanitary condition of the district.

It will be noticed that these dimensions are conveniently commensurate with each other ; that the length of two large grave spaces is equal to that of three small ones, and in breadth three large ones equal four small ones ; thus the space occupied by six large grave spaces, namely eighteen feet long by twelve feet wide, may be divided into twelve small grave spaces in three rows of four each, or the reverse. This coincidence simplifies the laying out

(b) Supplementary Report on the Practice of Interment in Towns.

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of the ground, and renders it easy without waste to intermix large and small grave spaces, so as to allow those for children and their parents to be near each other, instead of in distant parts of the cemeteries which would otherwise be necessary.

These are the sizes of the grave spaces sanctioned by Parliament at the Woking Common Cemetery, and are less than have been adopted in many cemeteries abroad. In some Austrian cemeteries the grave space for adults is equal to ninety square feet ; at Wirtemberg it is above fifty-four square feet ; at Munich and Stuttgart it is thirty-two square feet, which is about the size some English cemeteries have adopted, though in many they are much less. The object of a large grave space is to secure such a quantity of soil as will effectually absorb the gases of decomposition, and such a separation between the graves as will prevent risk of the soil falling when the next grave is dug, while the space left at the head of the grave affords room where a monument may stand undisturbed, and, by so arranging that the rows of graves may be alternately nearer and more distant, space for a grass path between every alternate row of grave spaces may be left, and access given to every grave without trampling over any.

#### DEPTH OF GRAVES.

If bodies are buried at too small a depth beneath the soil, the emanations may not be effectually absorbed ; if at too great a depth, needless expense is incurred ; and if no objection were felt to the future disturbance of mere dry bones, a depth of four to six feet beneath the surface would be sufficient.

There is, however, so strong and natural a repugnance to having the bones of the dead dug up, that the plan is frequently adopted of burying at a depth of eight to ten feet (if the ground be free from water), with the intention of reopening the grave after a lapse of time, not quite to its original depth, but as nearly so as is possible without digging up any bones that may remain ; thus the same grave may be buried in many times before it becomes so full of bones as to be unfit for further use.

Burial boards have generally made such ample provision of ground that graves may remain unopened for much longer periods than are fixed by the official regulations, and it is therefore probable that the retardation of decomposition in consequence of the depth of graves will occasion no inconvenience.

The principle of interment generally adopted is that of allowing one body only to be in a grave at the same time, as the rule ; more than one as the exception. The exception is in the case of family graves, which may be re-opened when a death in the same family occurs. This exception is, however, generally speaking, more

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apparent than real, for deaths in the same family do not, on the average, occur within intervals too short to allow of decomposition, and where they do the regulation requires that a layer of earth, a foot thick at least, shall be left undisturbed above each coffin. It would be well, however, if even such exceptions could be avoided, as they often are, by adopting the plan of burying members of the same family in adjoining graves instead of in the same grave, a less costly plan than that of building walled graves if earthen graves be sold in plots at not much more than their cost to the burial board.

These regulations (except the last precaution) being similar to the immemorial custom of country churchyards in England, in respect to single interment, the regulation would merely make that the universal, which was before the general, rule.

By adopting this plan, the same grave may be used many times without digging up remains, without danger of having more animal matter at one spot than the soil and vegetation can absorb, and without making that painful distinction between classes which the practice of burying one body only in each private grave, but several, not related to each other, in the public graves, involves.

The economy of burying several bodies in a grave at a time is more apparent than real, for unless the grave be dug very deep, which is costly, or unless the coffins be packed close together, which is dangerous, a grave cannot hold so many coffins at once as might be safely buried in it at intervals, allowing for the decay of each corpse before another is buried, until the soil becomes too full of bones to be used any longer with propriety. Some burial boards, however, consider it more economical to incur the cost of digging very deep graves to hold several bodies each, rather than to have as many separate graves opened as there are burials; the objections to this plan are, however, very serious.

In many country churchyards it has long been the custom to allot to families a space of ground enough for several graves, so that relatives are buried side by side, not over each other, the graves being opened in succession, so that a very long interval must elapse before any such grave is re-opened. Burial boards may adopt a similar plan with advantage; if family grave plots, enough to bury from three to six members of a family side by side, were sold at less than the cost of walled graves, it is probable many such would be taken. The advantage would be, the family could, at a less cost than that of a walled grave, obtain, as secure and as distinctive, a permanent place of sepulture which would serve for generations, and the burial board would receive what is now paid to bricklayers. This plan is likely to be more acceptable than the use of vaults, if the land is charged for at a price proportionate to its cost. About 200 plots, large enough to permit of the burial of four adults and



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three children without re-opening a grave, may be laid out in an acre of actual burial surface. For every pound, therefore, charged, in addition to fees, for such plots, the available surface would be disposed of at the rate of £200 an acre, and if offered at a price not much above what is sufficient to cover the cost, so many family plots would probably be sold, that a large part of the first cost of the cemetery would be defrayed without practically being a burden to anyone.

A burial board could, without loss to the ratepayers, sell such graves in anticipation of the time when they would otherwise be purchased, at a very large reduction of price, because the purchaser by paying for them so long beforehand would in effect be paying compound interest on the sums charged during the interval. Every pound received fourteen years before it would otherwise be received is worth about two pounds if the payment be deferred; and if a family purchase three graves instead of one at once and pay the cost of two graves for them, the ratepayers will be relieved by the transaction, for in the ordinary way the graves purchased in anticipation would produce no income, as they do if they be paid for and the money either invested or the debt on the burial ground reduced. In some cemeteries family grave plots are sold, consisting of three grave spaces surrounded with a space for shrubs and flowers. In others the portion allotted for unpurchased graves is laid out in rows of grave spaces with flower beds nine feet wide between. When the graves are filled the flower beds can be moved on to the graves, and new graves dug in the space at first occupied with flowers; thus room for ornamentation is obtained without cost for ground.

#### RE-OPENING OF GRAVES.

The time necessary for the complete decay of bodies buried varies according to the nature of the soil, the depth of the grave, the quality and thickness of the wood of the coffins, the dryness or moisture of the soil, and the age of the body. In an ordinary soil, the bodies of adults decay (all but the large bones) in about ten or twelve years, and of children in about half that time; but in dense clay, coffins are scarcely affected after being buried thirty years, and sometimes very much longer. The regulations permit graves to be re-opened fourteen years after the burial of a person above twelve, and eight years after the burial of a child below twelve years of age. Generally after these intervals nothing but large bones will remain. If, however, decay should have been retarded, the coffins must not be broken, or the remains dug up, nor must any soil which is offensive be disturbed, but if, after a sufficient interval to allow of the complete decay of the body, the coffin is still undecayed, a second coffin may be placed beside it without disturbing either it or any other

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coffin if wide grave spaces be allowed. It will rarely happen that it will be necessary to re-open graves so soon, as new burial grounds are generally provided of area sufficient to permit of much longer intervals between the burials in the same grave.

In order to give effect to these regulations, the area which is to be used for burial should be laid out in grave spaces, and a plan of the cemetery will be required, on which every grave space should be shown, with the marks of reference.

It is necessary, to avoid mistakes in the re-opening of graves, and for other important purposes, to keep a register of graves (as well as the register of burials required by the Burial Act), in which are to be recorded the name, age, and date of interment of everyone buried in each grave, with reference to the marks in the burial ground, by which it may be identified. Very serious dissatisfaction has sometimes been caused by the register of graves having been carelessly kept, whereby graves, sold for the exclusive use of one family, have been intruded upon for the burial of others, the aggrieved families complaining of having lost that for which they have been highly charged, and greatly value.

#### BURIAL IN VAULTS, ETC.

Whenever vaults or walled graves are used, the regulations require, especially to prevent the escape of foul air when they are re-opened, that each coffin be separately entombed. This is generally done by placing immediately over each a flag or slab of stone resting upon a ledge in the wall, closely cemented down, to be never raised again. When this plan is adopted decay is much retarded, the gaseous products escape very gradually through the pores of the cement and brickwork, they are to a great extent decomposed, and appear to be diffused as fast as they escape, for when such vaults are opened the space above the slab covering the coffin is found free from offensive air. This method is not only cheaper, but safer, than the use of lead coffins, which are often not air-tight, sometimes burst, and are liable to be broken. Cases of such accident have occurred when the coffin has been air-tight and has confined putrid gas in a highly concentrated and dangerous state, very serious and even fatal injury having been sustained by those who were near when the coffin was broken; and very frequently vaults containing bodies enclosed in lead are found to be offensive when opened for a subsequent burial, to avoid which it is not uncommon to leave openings for the escape of such foul air, to the evident risk of those who may go near them. For these reasons the official regulations require that all coffins not buried in the soil shall be permanently entombed by stone or brickwork in an air-tight manner.

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Sometimes the entombment is effected by means of concrete made by mixing about seven parts of clean coarse gravel, or stones broken small, with one part of quick lime and as much water as is needed to make mortar, in which the coffin is embedded, which hardens around it, enclosing it completely, and preventing any further escape of gases except such as slowly ooze through the pores of the artificial stone thus formed.

The surface of the graves should be covered with fresh turf, or planted with flowers or shrubs. High mounds are undesirable, being difficult to keep in order: a very small rise will mark the grave, if that be desired, and will not much obstruct the mowing of the grass. Covering-stones are objectionable, as they prevent the free entrance of rain into the grave, retard decomposition, and postpone the period for re-opening. Head-stones are free from this objection, but they are commonly made so large and of such forms as to be disfiguring. One of the easiest ways of increasing the beauty of a burial ground is to select a number of good designs for monuments, and to admit none else without special permission, on the design being approved by the burial board. It is common to leave the selection of the design to the nearest mason, who is not likely to be a person of refined taste, and the result is that burial grounds are almost universally disfigured by badly designed monuments, often with inappropriate epitaphs.

**CONVEYANCE OF THE DEAD.**

Burial boards are enabled by the 41st section of the Act of 1852 to make arrangements for facilitating the conveyance of the dead to the burial ground. Some boards have procured hearses, others have entered into contracts for the supply of hearses and carriages at a fixed price, accepting the offer they considered most for the benefit of the public. Others have procured wheeled biers or hand hearses, to diminish the labour of carrying the dead and avoid the necessity for employing a double set of bearers, which would otherwise be necessary when the distance is considerable. A burial guild has very much reduced the cost of burial to its poorer members by lending pall, cloaks, and hoods; though such seems hardly to be the province of a burial board, the members individually might usefully assist their neighbours by forming voluntary associations for such purpose. Such a guild may effect all the useful purposes of a burial club without the danger supposed to attend the payment of money to those who have had care of the deceased. The arrangement proposed is that members of the guild should subscribe to raise a fund sufficient to insure the funeral expenses for such of

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them as may die, but that instead of paying any money to the friends of the deceased, payment is made direct to the undertaker employed by the guild to conduct the funeral as agreed. The undertaker being secure of payment, and desirous of retaining the business of the guild, charges much less than he otherwise could afford to do. While decent solemnity is observed, all useless expense for funeral display is discouraged, and poor families can thus be saved from the temptation to spend more than they can afford, often already impoverished by sickness and death in the household. The costs of funerals for the poor, who have a strong desire for a decent appearance at such times, can be much diminished by the guild lending them pall, cloaks, and hoods to cover the clothes of those who cannot buy new mourning. Such arrangements may not be exactly within the province of a burial board, but there are few ways in which the independent poor can be helped so much and so acceptably.

#### RECEPTION HOUSE.

The establishment of a place appropriate for the reception of the dead previous to interment would in some cases facilitate the conveyance of funerals and relieve the poor from risk of injury by the occasional long retention of the bodies of the dead in crowded dwellings, especially in cases of death from infectious diseases, such as smallpox, scarlet fever, etc.

The 42nd section of the Burial Act of 1852 authorises the establishment of such places, and much valuable information on the subject is contained in the Supplementary Report on the Practice of Interment in Towns of 1843. As is therein stated, p. 31: "In a large proportion of cases in the metropolis, and in some of the manufacturing districts, one room serves for one family of the labouring classes: it is their bedroom, their kitchen, their wash-house, their sitting-room, and their dining-room; and when they do not follow any outdoor occupation, it is frequently their work-room and their shop. In this one room they are born, and live, and sleep, and die, amidst the other inmates." From a statistical inquiry, instituted and carried out at the expense of the Earl of Harrowby by Mr. Weld, secretary of the Statistical Society, "it appeared that 1,465 families of the labouring classes (in the inner ward of St. George's, Hanover Square) had for their residence 2,175 rooms and 2,510 beds," and 623 out of 1,465 families had only one bed each.

Similar conditions prevail very extensively, as has been shown by evidence collected from all parts of the country, and given in the "Report on a General Scheme of Extra-mural Sepulture."

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When death takes place in such overcrowded living rooms the corpse is laid out and kept therein until the period of interment. It is sometimes stretched out on two chairs, or it occupies the only bed in the room ; the inmates pursue their avocations around it ; they eat beside it ; the children play beside it ; oftentimes the corpse is in an advanced state of putrefaction before it is removed for burial ; offensive putrid effluvia are disengaged, and the spread of disease in consequence is not of unfrequent occurrence.

During epidemics all these evils are of course greatly aggravated. Overcrowded living rooms furnish the largest number of attacks and deaths, and there is the greatest risk of the dead being unduly retained among the living, under the very circumstances where danger from such detention is the greatest. Instances are given in the report already cited of two and even three corpses lying in the house at the same time during the prevalence of the epidemic cholera of 1848, 1849 (c). The danger from the long retention of the dead is apt to be greatest where the practice of Sunday funerals is continued. In such places it is not unusual to put off the funeral until the next Sunday at least, and often until the next but one. The proportion of bodies brought for burial in an offensive state is considerably larger on Sundays than on other days, because of such frequent postponement.

The object is to enable reception houses for the dead to be provided wherever the local circumstances similar to those mentioned may appear to render such provision necessary. The use of these houses is optional ; and hence it is advisable, wherever they are established, to make them attractive both in external appearance and in internal arrangements and management. In some of the more recently erected cemetery chapels an arrangement has been made which might serve some of the purposes of places for the temporary reception of the dead before burial, as well as their chief object, that of protecting the mourners attending the funeral services from annoying or dangerous emanations from the dead. In these chapels a portion has been divided off from the main building by a glass screen, which completely separates the part in which the coffins are placed from that occupied by the mourners, and it is easy to make this separated portion large enough to hold several coffins, where they might remain without danger until preparation is made for the funeral.

#### SIZE OF BURIAL GROUNDS.

The proper size of a burial ground depends upon the number of deaths rather than on the amount of population, as the death rate varies considerably according to the sanitary condition of the district

(c) Report on General Scheme of Extra-mural Sepulture, p. 162.

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and other circumstances. The burial space actually required may be approximately estimated from the following data :

1st. The probable number of burials, making allowance for increase of population.

2nd. The size of the grave spaces, which may be on the average rather more or rather less than three square yards, according as the proportion of deaths among children is less or more than half of the total deaths.

3rd. The interval which must elapse before the graves can with propriety be re-opened, which depends partly upon the proportion of the deaths of young children, as the bodies of the young decay most rapidly ; and partly on the character of the soil.

In addition to actual burial surface, some space, which is seldom less and often much more than one-sixth of the whole, will be wanted for approaches, roads, paths, sites for buildings, and for ornamental planting.

Burial boards have rarely thought it expedient to obtain no more land than would merely permit observance of the official regulations, but have almost invariably obtained enough to allow of much more lengthened periods for graves to remain unopened.

Burial boards have frequently no data for accurately estimating the proportion of persons likely to be buried according to the rites of the Church of England, and are consequently at a loss to determine what proportion of the land ought to be consecrated, and it is generally thought expedient to leave a part of the unconsecrated portion in the first instance unappropriated, to be added hereafter either to the consecrated or not consecrated portion, as may hereafter prove desirable, and thus avoid rendering it useless, which would happen if more were consecrated than necessary. This difficulty of estimating the proportion in which burials will be divided is another reason for securing rather more space than absolutely necessary.

The 3rd section of the Burials Amendment Act of 1857 authorises the establishment of more than one burial ground in a district. This is in some instances expedient ; for example, when a district is so large that one burial ground, wheresoever situated, must be very distant from some part of it ; or when the enlargement of a churchyard is desired, and it is impossible or inconvenient to provide burial ground for Nonconformists at the same place, or when it may be convenient to enlarge a chapelyard also, or to establish a separate burial ground for the use of Nonconformists.

The 14th section of the Act, 1857, exempts from toll after June, 1858, persons attending the funeral of any person buried in burial grounds provided under the Burial Acts for the place in which he died. This provision diminishes the objection sometimes urged against a site to reach which a toll-bar must be passed.

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The 23rd section of the Act of 1857 contains provisions to which it is desirable that attention should be directed. This section authorises her Majesty in Council to order such acts to be done by or under the direction of the churchwardens or such persons as may have care of any vaults or places of burial for preventing them becoming or continuing dangerous to the public health; the expense incurred to be paid out of the poor rates. This would provide for the burial or entombing of coffins which may be insufficiently enclosed in vaults beneath places of worship, or for the covering old burial grounds with grass, or the adoption of other precautions to prevent danger.

It may sometimes be expedient to obtain, as the entrance to a new burial ground, or as sites for chapels or other buildings, an old burial ground which has been closed. This is authorised by s. 26 of the Act of 1857. Care will be requisite that no soil in an offensive condition or human remains be disturbed in digging foundations for buildings or otherwise: if the disturbance of such remains be unavoidable, the license of the Secretary of State authorising their removal should be applied for. See 20 & 21 Vict. c. 81, s. 25, which prohibits the removal of any body or the remains of any body (except where a body is removed from one consecrated place of burial to another by faculty) without license by the Secretary of State, and with such precautions as he may prescribe. The friends of persons buried in closed burial grounds sometimes desire to have them removed to the new burial grounds. This is illegal without such faculty or the license of the Secretary of State. The removal of only partially decayed remains cannot be safely effected without very carefully observed precautions.

By s. 18 of the Burial Act of 1855 (18 & 19 Vict. c. 128), it is directed that the burial board or churchwardens, as the case may be, shall maintain a churchyard or burial ground of a parish, which has been closed for burial by Order in Council, in decent order, and repair the walls and fences, and that the costs shall be repaid from the poor rate if no other fund be legally chargeable. There are very many closed burial grounds which the churchwardens cannot keep in order, having no funds, and all income from burial fees having stopped. A very moderate expense would render many of these grounds ornamental instead of disfiguring, and it is much to be desired that such expense should be incurred, as it is very distressing to those whose friends have been interred to see their resting-place in a state of neglect and disorder.

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**App. A.****No. 4.****No. 4.**

**Regulations for Burial Grounds provided under the Acts  
15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict.  
c. 87; 18 & 19 Vict. c. 128, and 20 & 21 Vict. c. 81 (d).**

**I.**

The burial ground shall be effectually fenced, and, if necessary, underdrained to such a depth as will prevent water remaining in any grave or vault.

**II.**

The area to be used for graves shall be divided in grave-spaces, to be designated by convenient marks, so that the position of each may be readily determined, and a corresponding plan kept on which each grave-space shall be shown.

**III.**

The grave-spaces for the burial of persons above twelve years of age shall be at least nine feet by four feet, and those for the burial of children under twelve years of age six feet by three feet, or, if preferred, half the measurement of the adult grave-space, namely, four and a half feet by four feet.

**IV.**

A register of graves shall be kept, in which the name, age, and date of burial in each shall be duly registered.

**V.**

Nobody shall be buried in any vault or walled grave unless the coffin be separately entombed in an air-tight manner; that is, by properly cemented stone or brick work, which shall never be disturbed.

(d) The powers and duties conferred and imposed on the Secretary of State by s. 44 of the Burial Act, 1852, with regard to issuing regulations from time to time in relation to burial grounds, are transferred by the Burial Act, 1900, to the Local Government Board. The regulations here printed were issued by the Secretary of State many years ago, and none have been issued by the Local Government Board since 1900, so that presumably these regulations are still in force.



**App. A.****No. 4.**

## VI.

One body only shall be buried in a grave at one time, unless the bodies be those of members of the same family.

## VII.

No unwalled grave shall be re-opened within fourteen years after the burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless to bury another member of the same family, in which case a layer of earth not less than one foot thick shall be left undisturbed above the previously buried coffin ; but if on re-opening any grave, the soil be found to be offensive, such soil shall not be disturbed, and in no case shall human remains be removed from the grave.

## VIII.

No coffin shall be buried in any unwalled grave within four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years, when it shall not be less than three feet below that level.

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**APPENDIX B.—No. 1.**
**LOCAL GOVERNMENT RULES AND  
DIRECTIONS.**

**Circular of the Local Government Board with regard to the  
Public Health (Interments) Act, 1879.**

(Dated 19th August, 1879.)

SIR,—I am directed by the President of the Local Government Board to request that you will bring under the notice of the sanitary authority the provisions of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), which received the Royal assent and came into operation on the 21st of July last.

The object of the Act is to enable sanitary authorities, rural as well as urban, to provide cemeteries for their districts, and for this purpose all the provisions of the Public Health Act, 1875, with respect to a mortuary are extended to a cemetery.

As the sanitary authority are aware, section 141 of the Public Health Act enables a sanitary authority to provide and fit up a

proper place as a mortuary for the reception of dead bodies before interment, and to make byelaws with respect to the management and charges for the use of the same, and it is, moreover, compulsory on a sanitary authority to provide a mortuary if they should be required by the Local Government to do so.

The effect, therefore, of the Act which has just been passed is in like manner to empower a sanitary authority to provide a cemetery, and to render it compulsory on them to do so if the Local Government Board should require one to be provided.

The legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute ; but, seeing that it is incorporated with the Public Health Act, there can be no doubt that wherever in the interests of the public health it is necessary that a cemetery should be provided in any locality, the legislature contemplated that the local authority would exercise the important powers now conferred upon them.

The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action :

1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided ;
2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health ;
3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place or within certain limits.

There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil ; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rights. On all or any of the following grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded, a compulsory order would necessarily follow.

The question, however, whether a cemetery should be provided for a particular locality will be one for the determination of the sanitary authority in the first instance ; and it is only in the event of their default to establish a proper cemetery where one is required, or in consequence of a loan being needed to carry out the undertaking, or, if they should determine to construct a cemetery outside their

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district, of objection being taken to such a proceeding, that the Local Government Board have any authority to interfere.

The President has reason to believe that in numerous localities considerations of public health require that a cemetery should be provided, and with a view of enabling the authority to determine whether on sanitary grounds it is necessary or desirable that a cemetery should be provided for all or any part of their district, the medical officers of health should be instructed to report upon the state of the several burial grounds within the area subject to their jurisdiction.

The statute enables a sanitary authority to acquire, construct, and maintain a cemetery either within or without their district. In the latter case, however, at least three months before the cemetery is commenced, public notice must be given, and, in the event of any objection, the work cannot proceed without the sanction of the Local Government Board after local inquiry.

It will be seen, therefore, that a sanitary authority are empowered not only to establish a cemetery, but also to purchase an existing one; and it will be competent for the sanitary authority, in the event of their failure to acquire a suitable site by agreement, to apply for a provisional order enabling them to take lands for the purpose compulsorily.

Moreover, with the sanction of the central authority, they will be enabled to borrow money to pay for the purchase of the requisite land, for draining and enclosing the site, and for rendering it otherwise suitable for the object intended.

At the same time I am to point out that if the sanitary authority should deem it expedient to provide a cemetery without resorting to a loan for the purpose, it is competent for them to do so, and to charge the cost upon the local rates.

In the case of an urban sanitary authority, the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority, the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.

If, however, the cemetery were provided for a separate contributory place, by which is meant a parish or special drainage district, or so much of a parish as is not within an urban sanitary district or a special drainage district, it would be competent for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the

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pound, in the case of special expenses the amount is raised by a separate rate to which lands are assessable at only one-fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee the exercise of their own powers in connection with the management of any cemetery which may be required for any contributory place.

In addition to the powers conferred upon sanitary authorities of purchasing land for a cemetery, the recent Act authorises them to accept a donation of land for the purpose, and also a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of section 141 of the Public Health Act, 1875, will enable the sanitary authority to make byelaws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein.

It should be borne in mind, however, that such byelaws must be made in conformity with the Public Health Act, and be confirmed by the central authority; and the President contemplates that the department should hereafter frame a series of model byelaws to be recommended for adoption.

In order to make further provision for the due maintenance and management of a cemetery, the recent statute incorporates the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated, either wholly or partly, with the Public Health Act, 1875, and the particular Act referred to has previously been incorporated with some general and several local improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

The President, therefore, thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exerciseable by them under the incorporated enactments.

**App. B.****No. 1.****WITH RESPECT TO THE MAKING OF THE CEMETERY.**

The cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupier.

The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery.

The cemetery must be inclosed by substantial walls, or iron railings, of the height of eight feet at least.

The sanitary authority must keep the cemetery and the buildings and fences thereof in complete repair and in good order and condition.

**WITH RESPECT TO BURIALS.**

The sanitary authority may set apart a portion of the cemetery for burials according to the rites of the Established Church, and the bishop of the diocese may, on the application of the sanitary authority, consecrate the portion so set apart.

A chapel, to be approved by the bishop, must be built on the consecrated part for the performance of the burial service of the Established Church.

A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Established Church, and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church.

**WITH RESPECT TO EXCLUSIVE RIGHTS OF BURIAL AND MONUMENTAL INSCRIPTIONS.**

The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the legislature.

I am, Sir, your obedient servant,

JOHN LAMBERT,  
Secretary.

To the Clerk to the  
Sanitary Authority.

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## No. 2.

### Memorandum issued by the Local Government Board on the Sanitary Requirements of Cemeteries.

(Dated 13th December, 1880.)

By the Public Health (Interments) Act, 1879, the powers of sanitary authorities under the Public Health Act, 1875, are extended to include the acquisition, construction, and maintenance of a place for the interment of the dead, in the Act of 1879 called a cemetery.

In cases where the sanitary authority propose to defray the cost of establishing a cemetery by means of a loan, the sanction of the Local Government Board becomes necessary (Public Health Act, 1875, s. 233). Among the points considered by the Board in each particular case, before granting their sanction to a loan for the purpose of a cemetery, the question as to whether the proposed site is suitable or unobjectionable from a sanitary point of view will no doubt find a place.

The following memorandum has been drawn up at the request of the medical officer, embodying the hygienic principles laid down by various English and foreign authorities as requisite to be observed in the establishment of a cemetery to prevent it from becoming a source of nuisance and danger to the living.

The dangers to the public health to which places of burial may give rise are of two kinds, viz., the contamination (1st) of *air* by the gaseous and volatile, and (2nd) of *drinking water* by the liquid and soluble, products of decomposition.

1. *Contamination of air.*—This may take place in several modes. The gases evolved from putrefying bodies may make their way to the surface through pores or fissures in the ground, or may pass into open graves dug in their neighbourhood. Or they may diffuse

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themselves laterally through the ground air and be drawn up into the interior of houses. Or noxious emanations may be given off from putrid drainage water, whether baled out of graves and thrown upon the surface, or draining into open channels or water-courses. Thus nuisance and danger to health may be occasioned, not only to gravediggers and persons attending funerals, but also to the inhabitants of houses in the neighbourhood of the burial ground. To obviate these risks it is necessary that the number of decomposing bodies in a given portion of ground should not at any time be so great that the gaseous products cannot be oxidized into harmless substances in the interstices of the soil, or taken up by vegetation: that a sufficient depth of earth intervene between corpses and the surface; and that the soil be of a suitable nature and properly drained, the drainage water being innocuously disposed of. Furthermore, since the atmospheric contamination which has to be especially guarded against is that of the air in the interior and neighbourhood of human habitations and frequented places, it is necessary that the place of burial should be in an open situation and at a sufficient distance from dwellings, in order that any effluvia arising from it may be diluted by diffusion, or dispersed by the winds, so as not to find their way in an injurious state of concentration to places where they will be liable to be inhaled.

2. *Pollution of water.*—Foul liquids from graves may enter and pollute a stream, or wells in the vicinity of a graveyard may be injured by percolation from it, and in either case if the water be used for drinking, injury to health may be occasioned. The liability of wells to pollution obviously depends partly upon their proximity to it and partly upon the configuration and geological structure of the ground. Thus an intervening impervious bed of clay will prevent foul matters from reaching a well, and filtration through a sufficient distance of porous aerated soil decomposes such matters into harmless inorganic substances, which are fixed by the soil or taken up by plants. It is necessary, therefore, in order to obviate risk from this cause, that a cemetery should have a suitable soil and be properly drained, and that it should be at a sufficient distance from subterranean sources of water supply, and in such a position with respect to them that the percolation of foul matters from one to the other may be impossible.

The sanitary requirements for a cemetery indicated under the foregoing remarks may be summed up under four headings:

- I. Suitable soil, and proper elevation of site.
- II. A suitable position, especially with respect to houses and sources of water supply.
- III. Sufficient space.
- IV. Proper regulation and management.

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1. The soil of a cemetery should be of an open porous nature, with numerous close interstices, through which air and moisture may pass in a finely divided state freely in every direction. In such a soil decay proceeds rapidly, and the products of decomposition are absorbed or oxidized. The soil should be easily worked, yet not so loose as to render the work of excavation dangerous through the liability to falls of earth. It should be free from water or hard rock to a depth of at least eight feet. If not naturally free from water, it should be drained if practicable to that depth: to this end it is necessary that the site should be sufficiently elevated above the drainage level of the locality, either naturally, or, where necessary, by filling it up to the required level with suitable earth.

Loam and sand, with a sufficient quantity of vegetable mould, are the best soils; clay and loose stones the worse. A dense clay is laborious to work and difficult to drain; by excluding moisture and air it retards decay, and it retains, in a concentrated state, the products of decomposition, sometimes to be discharged into graves opened in the vicinity, or sometimes to escape through cracks in the ground to the surface. A loose stony soil, on the other hand, allows the passage of effluvia.

2. The situation of a cemetery requires consideration from several points of view, of which the most important are its position with reference to dwelling-houses and sources of domestic water supply. While public convenience requires that the cemetery shall not be too far distant from the population for which it is intended, a due regard to public health requires that it shall not be dangerously near. The most suitable distance will vary in different cases; it will be greater in the case of a large than of a small cemetery; greater also in the case of a large and rapidly extending town than in that of a small and stationary village.

With regard to the minimum distance which should intervene between burial places and human habitations, the Burial Act of 1855 prescribes that no ground not already used as a cemetery shall be used for burial under that Act within a distance of 100 yards from any dwelling-house, without the consent of the owner, lessee, and occupier of such dwelling-house. In the Local Government Board's Circular Letter of the 19th August, 1879, explaining the provisions of the Public Health (Interments) Act, it is pointed out in accordance with section 10 of the Cemeteries Clauses Act, 1847, incorporated therewith, that a cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupiers. In France, the prescribed minimum distance of a cemetery from the nearest habitation is 100 metres (109 yards), and it is not lawful without special permission to build any house or dig any well within that distance of an existing cemetery.



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It may be taken that a distance of 200 yards is amply sufficient to prevent any injury arising to health from a well-kept cemetery, so far as regards noxious matters transmitted through the air. It is, however, by no means certain that cemeteries established under the Public Health (Interments) Act will in all cases and at all times be distant so much as 200 yards from the nearest human habitation. With the consent of the owners and occupiers of existing houses, a cemetery may be established within the prescribed limit ; and it is competent to any one afterwards to erect a new house as near to a cemetery as he pleases. It does not appear that the amount of danger to health to be feared from proximity to a well-kept cemetery is large. Since intra-mural interment has been abolished, recorded cases of injury to health, or even of nuisance arising from graveyard emanations, whether conveyed by air or water, are extremely rare. Dr. C. A. Cameron (*Manual of Hygiene*, p. 253) shows that the amount of organic matter deposited yearly in a well-kept cemetery is less than the amount removed from its surface in the form of vegetation, and considerably less than that spread as manure over a cultivated field. There is, therefore, no reason why a cemetery should necessarily be a nuisance, or become a source of danger to the health of those living near it. Nevertheless, in view of the evils which in former times have undoubtedly arisen from the practice of intra-mural sepulture, and also because the erection of houses near a cemetery interferes with the free play of air around and over it, it is desirable that the site of a cemetery should be in a neighbourhood in which building is not likely to take place, and also that so far as practicable a belt of ground should be reserved between the graves and the nearest land on which a house may be built, in order to obviate to some extent the risk of contamination of ground-air, and sub-soil water with decomposing matters. This is especially necessary where houses are constructed with cellars. It is, therefore, highly desirable that interments should not be made up to the extreme edge of the cemetery, and it would be possible without great waste of space to reserve in all cases a strip of ground free from interments, 15 to 30 feet in width, around the whole cemetery, on the interior of the boundary fence. This strip would afford room, on the inside, for a gravel or asphalt walk to give access to all parts of the cemetery, and on the outside next the fence to a belt of shrubs or trees, the rootlets of which penetrating the soil would arrest and assimilate any decomposing matters percolating to the exterior of the cemetery. Obviously a cemetery should not be placed on elevated ground above houses, where the soakings from it may percolate to the sites and foundations of the dwellings below.

If there be a mortuary or chapel attached to or within the precincts of the cemetery, care should be taken to see that both are efficiently ventilated by permanent openings of adequate size,

near or below the floor line for inlet, and in the ceiling for outlet of air. The chapel should be fitted with an iron trellis-work gate in the porch, so that the wooden door may be kept open in fine weather.

*Relations of Cemetery to Sources of Water Supply.*—It is evident that the drainage of a cemetery should not be allowed to enter a stream from which water is drawn for domestic purposes.

The degree to which the purity of neighbouring wells is endangered by a cemetery, and the distance to which contamination may extend, obviously depend in each particular case upon the relative elevation of the respective sites of cemetery and well, and upon the nature and dip of the intervening strata, so that it would seem impossible to lay down a general rule for all cases. Fissured rock might allow foul matters to traverse considerable distances, while the interposition of a bed of clay or a watertight vault would shut them off, or the passage through an aerated stratum of finely divided earth would oxidize and destroy them on their way. A dangerous state of things is when graves and wells are sunk near together in a shallow superficial water-bearing stratum of loosely porous nature resting on impervious clay. From experiments made at Dresden by Professor Fleck, quoted by the State Board of Health of Massachusetts, in their report dated January, 1875, it would seem that the degree to which wells so situated are liable to pollution is greater when the surface of the subsequent clay bed is horizontal than when it is sloping, even though the slope be towards the well. In the latter case the ground water is on the move; in the former it is stagnant, and hence the foul matters are concentrated in a smaller volume of water; just as the water of a stagnant pool is more liable to become foul than that of a running stream.

It does not appear, however, that the risk to which wells are exposed from the proximity of a properly managed cemetery is in ordinary cases great. A leaky cesspool is a far greater source of danger than a grave. The solid and liquid excretions voided by a human being in the course of a single year amount to several times the weight of his body.

The State Board of Health of Massachusetts, in their report already referred to, give a series of analyses of water taken from wells in the neighbourhood of cemeteries. Of seven wells in sandy and gravelly soil, varying in depth from 4 to 17 feet, situated at distances respectively of 60, 50, 10, 100, 200, 75, and 100 feet from the nearest graves, and having no other sources of contamination at hand, one only showed undoubted evidence of contamination; this was 10 feet from the nearest grave, the most recent interment, made 5½ months before, being 35 feet distant. The three purest wells were those at 60, 50, and 75 feet distance. The chemical

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characters by which it may be inferred that the contamination of a particular water is derived from decomposing bodies rather than from sewage are a high proportion of nitrogenous organic matter and ammonia, or if oxidation have proceeded further, of nitrates and nitrites, relatively to the amount of chlorine present, and also the presence in notable quantity of phosphates.

The precautions to be taken to avoid pollution of wells and springs in the neighbourhood of a cemetery will depend much upon local circumstances; they may be said to be, first, the intervention of a sufficient space between the cemetery and the water source; second, proper drainage, so that the subsoil water of the cemetery shall be conveyed away; and third, proper management of the cemetery, so that the amount of organic matter in one place shall not be more than the soil can dispose of. The English Acts and regulations prescribe no limit of distance from water supplies within which a cemetery is not to be established, but it is to be taken for granted that a site would not be sanctioned if it appeared likely that the purity of existing water supplies would be endangered. Nevertheless, as in the case of the erection of new houses, there is no power to prevent any one from sinking a well on his own property, as near to a cemetery as he pleases. Of course, should the well become polluted, it can be dealt with under the provisions of the Public Health Act. The reservation, free from interments, of a strip of land next the boundary, as before recommended, would be of service in this relation also.

The site of a cemetery should be open and somewhat elevated, so that the wind may blow freely over it; not shut in by hills or close belts of high trees. Sites sloping to the north are preferred in France. It is also deemed desirable there that the cemetery should be to the north or east of the town, so that any effluvia from it may be carried by the prevailing southerly and westerly winds in the opposite direction. Effluvia, however, ought not to arise from a well regulated cemetery to such an extent as to render this precaution requisite, and it must be borne in mind that though in this country the wind most frequently blows from the south and west, our hottest summer weather, when putrefactive odours are most likely to arise, often occurs during the prevalence of easterly winds. There are so many other circumstances affecting the choice of a site that it can rarely occur that the relative advantages of two sites are so evenly balanced that the question of a leeward situation can turn the scale between them.

Trees, though useful, should not be allowed to become an impediment to the air. For the same reason, as a fence open railings are preferable to high walls.

Sites are, of course, unsuitable which are liable to be flooded, or to landlips, or which are in danger of being washed away or encroached upon by streams or the sea. Very steep sites are not

desirable. The cemetery should be accessible by good roads from all parts of the district.

3. *Sufficiency of Space.*—On sanitary grounds it is requisite that each corpse shall be surrounded and covered by a mass of earth sufficient to deodorise and destroy the putrid emanations proceeding from it, and also that the total amount of space shall be so great that it may not be necessary to re-open any grave until the body previously interred therein shall be completely decomposed. On administrative grounds it is requisite that the accommodation provided shall be sufficient to last for the term of years over which the repayment of the loan is spread. On sentimental grounds it is desirable that sufficient space should be reserved that members of the same family may be interred near together. The latter consideration alone is usually sufficiently powerful to render local authorities desirous of providing more than the minimum amount of space.

The length of time necessary to effect complete decomposition varies (the material of coffins being similar) according to the nature of the soil, being shorter in a porous well-aërated soil than in one which is either dense and clayey, waterlogged, or surcharged with animal matter. The regulations of the Home Office prescribe that no unwallied grave shall be re-opened within fourteen years after the burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless to bury another member of the same family, in which case a layer of earth, not less than one foot thick, shall be left undisturbed above the previously buried coffin; but if on re-opening any grave the soil be found to be offensive, such soil shall not be disturbed, and in no case shall human remains be removed from the grave.

The size of grave spaces prescribed by the Home Office is 9 feet long by 4 feet broad = 4 square yards, for an adult, and for a child under twelve, 2 square yards, viz., either  $4\frac{1}{2}$  feet by 4 feet, or 6 feet by 3 feet. This size, which may be recommended to sanitary authorities for general adoption, allows the retention of a strip of undisturbed ground about two feet in width between every two adjacent graves. In any case it is important that each grave should be at least a foot distant from the nearest graves on every side, not only to prevent the passage of effluvia into the open grave from decomposing bodies in the adjoining graves, but also to avoid the danger of falls of earth which may happen if excavations are made too near to ground which has been previously disturbed.

The amount of space required for each 1,000 population will vary to some extent with the death-rate; but where the mortality is high, a larger proportion of the deaths will be those of persons under 12. More space will be required for an increasing than for a stationary population. Taking average numbers, in a stationary population of 1,000, there will be 22 deaths per annum, of whom

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about 8 will be under 12, and 14 above that age. For the interment of the persons above 12,  $14 \times 4 = 56$  square yards of ground will be required yearly, and as these grave spaces will not be again available, if the above-quoted rule be observed, until after the lapse of 14 years, at least 784 square yards must be provided for them. Similarly for children under 12,  $8 \times 2 \times 8 = 128$  square yards at least will be required; making a total of 912 square yards. The necessary paths and buildings usually occupy at least a sixth of the surface. We thus get a minimum allowance of something near a quarter of an acre, = 1,210 square yards per 1,000 inhabitants, which is the usually estimated minimum. The desirability, however, of providing more than this bare minimum of space is obvious, and is generally recognised.

If the suggestion previously made in this Memorandum be adopted, to leave a strip free from graves 15 or more feet in width, around the interior of the cemetery wall, a somewhat larger amount of land will be required. The proportion will vary with the size and shape of the plot of land to be used as a cemetery. Thus a strip 15 feet wide around an acre of land, if the plot be square (i.e.,  $69\frac{1}{2}$  yards in the sides), will take up 1,290 square yards, or rather more than a fourth; if the plot be rectangular,  $55 \times 88$  yards, a belt 15 feet wide will require 1,330 yards.

It is necessary, both for the carrying out of a proper practice as regards the re-opening of graves, and also to enable the place of burial of any particular person to be identified, if desired, that so much of the cemetery as is to be used for interments should be divided into numbered grave-places, and that a register of graves should be kept, in which the name, age, and date of burial of the person or persons interred in each shall be duly recorded. The grave spaces should be distinguished by appropriate marks (which may conveniently consist of a number at the ends of each longitudinal row of graves, and a letter at the ends of each transverse row, or *vice versa*), and their position should also be marked on a plan. This is obligatory under s. 41 of the Cemeteries Clauses Act, 1847, for burial places in which an exclusive right of burial has been granted, and it is desirable, for the reasons above given, that all grave spaces should be similarly distinguished.

4. *The Regulation and Management of Cemeteries.*—The regulations issued by the Secretary of State for the Home Department (e) for burial grounds provided under the Burial Acts are appended to this Memorandum.

H. FRANKLIN PARSONS.

October, 1880.

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(e) For these regulations, see *ante*, p. 713.

## No. 3.

App. B.

No. 3

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,

*February 16th, 1881.*

SIR,—I am directed by the Local Government Board to advert to their Circular of the 19th of August, 1879, and to forward herewith, for the use of the sanitary authority, a series of model byelaws with respect to cemeteries provided in pursuance of the Public Health (Interments) Act, 1879.

The board also direct me to enclose a copy of a memorandum which has been prepared under the supervision of their medical officer, and in which the sanitary requirements of cemeteries are discussed in detail.

This memorandum and the board's former Circular may be supplemented by a few observations upon one of the points to which the attention of the board has been drawn during the preparation of the model byelaws.

The combined effect of the enactments in section 141 of the Public Health Act, 1875, and in section 2(1) of the Public Health (Interments) Act, 1879, is to enable a local authority to make byelaws with respect to the management and charges for use of a cemetery provided under the latter Act. It is, however, to be observed that this power of making byelaws is only one of several means which the local authority may employ for the proper control of their cemetery. For example, section 37 of the Cemeteries Clauses Act, 1847, which is incorporated with the Act of 1879, enables the local authority to appoint gravediggers and other servants necessary for the care and use of the cemetery. Where a gravedigger is appointed by the local authority, they may conveniently dispense with many regulations which might otherwise require to be embodied in byelaws. It may be assumed that, as a servant of the local authority, the gravedigger will act in strict accordance with their directions as to such matters as the appointment of grave spaces, the dimensions of graves, and their separation by a sufficient thickness of undisturbed earth. These subjects may accordingly be regarded as outside the range of such byelaws as will ordinarily be needed. At the same time it is important, for the reasons which are explained in the accompanying memorandum, that the local authority should give definite instructions to their servants as to the manner in which their duties are to be discharged.

The board desire me to add that local authorities who may intend to adopt the model clauses as the basis of their byelaws will, on application to the board, be furnished with copies of those clauses,

**App. B.** on foolscap paper, with a margin for annotations. These draft forms should be used in accordance with the instructions in the Circular of the 25th of July, 1877.

**No. 3.**

I am, Sir,

Your obedient servant,

JOHN LAMBERT,

*Secretary.*

*To the Clerk to the  
Rural Sanitary Authority.*

#### No. 4.

#### Model Byelaws with respect to the Management of a Cemetery.

##### INTERPRETATION OF TERMS.

1. In the construction of these byelaws the following words have the meanings hereinafter respectively assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject matter in which such words occur ; that is to say,

“Grave” means a burial place formed in the ground by excavation and without any internal wall of brickwork or stonework or any other artificial lining.

“Vault” includes underground burial places of every description, except graves to which the word “grave” interpreted as aforesaid applies.

2. Every person who, in any part of the cemetery, causes a vault to be built for use as a burial place, shall cause the vault to be enclosed with walls constructed of good bricks, stone, or other hard and suitable material, properly bonded and solidly put together :

- (a) With good mortar compounded of good lime and clean sharp sand or other suitable material ; or
- (b) With good cement ; or
- (c) With good cement mixed with clean sharp sand.

(3.) A person shall not, in any part of the cemetery, except as is hereinafter provided, cause or suffer more than one body to be buried at any one time in a grave in respect of which no exclusive right of burial has been granted by the sanitary authority :

Provided that this byelaw shall not be deemed to prohibit the burial at any one time in any such grave of two or more bodies of persons who were members of the same family.

4. In every case where, in any part of the cemetery, the body of a person whose age at the time of death did not exceed *twelve years* has been buried in a grave in respect of which no exclusive right of

burial has been granted by the sanitary authority, a person shall not, at any time within a period of *eight* years after the date of the burial of the body, cause or suffer the grave to be opened for the purpose of burying therein the body of a person who was not a member of the family of which a person whose body has already been buried in the grave was a member.

5. In every case where, in any part of the cemetery, the body of a person whose age at the time of death exceeded *twelve* years has been buried in a grave in respect of which no exclusive right of burial has been granted by the sanitary authority, a person shall not, at any time within a period of *fourteen* years after the date of the burial of the body, cause or suffer the grave to be opened for the purpose of burying therein the body of a person who was not a member of the family of which a person whose body has already been buried in the grave was a member.

6. A person shall not, in any part of the cemetery, cause or suffer the body of a person whose age at the time of death did not exceed *twelve* years to be buried in a grave in such a manner as to require or allow any part of the coffin containing the body to be placed at a less depth than *three feet* below the level of the surface of the ground adjoining the grave.

7. A person shall not, in any part of the cemetery, cause or suffer the body of a person whose age at the time of death exceeded *twelve* years to be buried in a grave in such a manner as to require or allow any part of the coffin containing the body to be placed at a less depth than *four feet* below the level of the surface of the ground adjoining the grave.

8. A person shall not, in any part of the cemetery, cause a body to be buried in a grave otherwise than in such a manner as to provide by means of a sufficient layer or layers of earth, which shall throughout be closely rammed down and be not less than one foot in thickness, for the effectual separation of the coffin containing the body from any coffin already placed in the grave.

9. Every person who, in any part of the cemetery, buries a body in a vault shall, within a period of        hours after the deposit in the vault of the coffin containing the body, cause the coffin to be wholly and permanently embedded in and covered with a layer or layers of good cement concrete, not less in any part than        inches in thickness, or to be wholly and permanently enclosed in a separate cell or receptacle which shall be constructed of slate or stone flagging not less than *two inches* in thickness, properly jointed in cement, or of good brickwork in cement, and in such a manner as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or receptacle.



**App. B.****No. 4.**

10. Every person who, in any part of the cemetery, buries a body in a grave in respect of which an exclusive right of burial has been granted by the sanitary authority shall, as soon as conveniently may be after the lapse of such a period as may reasonably suffice for the natural subsidence of the earth with which the grave has been filled up, cause the surface of the grave to be properly covered with fresh turf, or with any gravestone or monument which, in pursuance of any grant by the sanitary authority, may lawfully be erected or placed on the grave, or shall cause the surface of the grave to be planted with shrubs or with other suitable vegetation.

11. A person shall not, in any part of the cemetery, by any violent or indecent behaviour, prevent, interrupt, or delay the decent and solemn burial of any body.

12. Every person who offends against any of the foregoing byelaws shall be liable for every such offence to a penalty of \_\_\_\_\_, and in the case of a continuing offence to a further penalty of \_\_\_\_\_ for each day after written notice of the offence from the sanitary authority :

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this byelaw.

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**No. 5.**
**BURIAL BOARDS.**

The following letter stating the presumed effect of the Local Government Act, 1894, was sent by the President of the Local Government Board to Mr. J. Carvell Williams, M.P., and was printed in the Times of the 22nd April, 1894 :—

“Statement as to effect of the Local Government Act, 1894,  
as regards Burial Boards.

“If, after the election of parish councils, the Burial Acts, 1852 to 1885, are adopted for the whole or part of any parish which has a parish council, no burial board will be elected, but the parish council will be the authority for the execution of the Acts. Consequently, after the Local Government Act, 1894, comes into operation a burial board cannot be newly established in any rural parish having a parish council.

“In cases in which the area of jurisdiction of any existing burial board is co-extensive with a rural parish, all the powers, duties, and

**App. B.****No. 5.**

liabilities of the burial board will be transferred to the parish council on the latter coming into office. The burial board will cease to exist, and their place will be taken by the parish council, without any adoption of the Burial Acts by the parish meeting.

“Where the area under a burial board is part only of a rural parish, the burial board, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the burial board to the parish council, subject to any conditions as to the execution thereof by a committee as the burial board or parish meeting may impose.

“Where the area is in two or more rural parishes, the powers of the burial board will be transferred by the Act of 1894 to the respective parish councils for such parishes; and where the area is partly in a rural parish and partly in an urban district, these powers will be transferred to the parish council and the district council of the urban district. Until other provision is made, the powers so transferred are to be exercised by a joint committee. Where there is no parish council, the parish meeting is to be substituted in the cases last mentioned.

“Subject to this, a parish meeting in a rural parish which has no parish council will have none of the powers of a burial board under the Burial Acts, unless the county council, on the application of the parish meeting, confer on them the powers conferred by the Act of 1894 on a parish council in this matter; but burial boards may still be newly established for the same areas as heretofore in rural parishes having no parish council, if there is no existing burial board for such area, and if the Burial Acts are adopted by the parish meeting for it. Any such burial board will have the usual power to provide a cemetery.

“Existing burial boards in rural parishes, except where they are superseded as above stated, will continue to exist without any adoption of the Burial Acts by the parish meeting.

“Where a burial board district is wholly in an urban district the council of the district may resolve that the powers, duties, and liabilities of the burial board shall be transferred to the council from a specified date, and such transfer will take effect from that date and the burial board will cease to exist. Subject to this, the burial board for such a district will not be affected by the Act.

“The powers possessed by rural sanitary authorities of providing cemeteries under the Public Health (Interments) Act, 1879, will be transferred to rural district councils.

“Local Government Board, April, 1894.”

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## APPENDIX C.—No. 1

## LOCAL GOVERNMENT BOARD QUERIES.

**Form of Queries to be filled up in connection with application to the Local Government Board for Order in Council closing Burial Ground.**

## DISCONTINUANCE OF BURIALS.

(15 & 16 VICT. c. 85 ; 16 & 17 VICT. c. 134 ; 63 & 64 VICT. c. 15.)

## QUERIES.

## REPLIES.

1. Name of county.
2. Name of parish { (a) civil.  
                          (b) ecclesiastical.
3. Name of the burial ground and date of opening for burial.
4. Area and situation of burial ground.
5. (a) Nature of soil to a depth of eight feet.  
(b) At what depth is water found ?
6. Population of area for which the burial ground is used  
(a) According to the last census.  
(b) Estimated at the present time.
7. Total annual number of interments for the last ten years, each year separately.
8. Number of family vaults and walled graves in the burial ground likely to be used in future.
9. Usual depth of grave.
10. Area allotted to each grave, or the space between the graves.
11. Number of bodies usually buried in a grave.
12. Amount of ground available for interments which has never hitherto been so used.
13. Whether any burials have taken place within church or chapel. If so, the number during each of the last ten years.
14. Whether any burials in vaults under church or chapel. If so, the annual number during each of the last ten years.

QUERIES.

REPLIES.

App. C.

No. 1.

15. Has any report been made by the medical officer of health on the condition of this burial ground? If so, send copy.
16. What is the nearest railway station, and what is the distance from the station to the burial ground?

(Signed)

N.B.—A copy of the Replies made to the above Queries should be kept.

No. 2.

**Form of Queries to be filled up and information to be furnished to the Local Government Board in connection with application by Burial Authorities under the Burial Acts relative to the provision of New Burial Ground.**

**THE BURIAL ACTS, 1852 TO 1885, AS AMENDED BY THE BURIAL ACT, 1900.**

PROVISION OF NEW BURIAL GROUND.

QUERIES.

REPLIES.

1. Name of burial authority.
2. (a) When was it constituted? and  
(b) Under what authority or enactment?
3. State the area comprised in the burial district, and the civil parishes included therein.
4. What is the population of the burial district?  
What has been the average number of burials in such district annually for a period of ten years?
5. Has an Order in Council been issued prohibiting the opening of a new burial ground in the parish in which the site is situate without the consent of the Secretary of State or the Local Government Board? If so, give a reference to it.

**App. C.****No. 2****QUERIES.****REPLIES.**

6. What is the area and precise locality of the proposed ground ?
7. Is any part of the proposed burial ground outside the burial district? If so, state names of civil parish and sanitary district.
8. What is the distance of the site from
  - (a) the nearest inhabited part of the burial district,
  - (b) the remotest part of such district,
  - (c) the most densely populated part of such district ?
9. (a) Are there any, and if so, how many, dwellings within 100 yards of the site ?
  - (b) Have the consents in writing of the owners, lessees and occupiers of such dwellings been obtained ?
10. Are there any sources of domestic water supply near the site ?  
If so, describe these sources and state the distance in each case from the site.
11. What is the nature of the soil as ascertained by trial holes at least eight feet deep ?
12. Is the soil free from water to a depth of eight feet ?  
If not, state
  - (a) the depth at which water is met with,
  - (b) what means are available for the drainage of the sub-soil to the depth of eight feet and for the disposal of the resulting water.
13. Has an agreement (subject to the approval of the Local Government Board being obtained) been entered into for the purchase of the site ?
14. What is the price to be paid for the land ?

(Signed)

*The following documents should be forwarded to the board :—*

**App. C.**

**No. 2.**

(i.) A copy of a resolution of the burial authority authorising application to be made for the board's approval of the site ;

(ii.) A plan of the site, drawn to scale, having the position of the trial holes marked upon it ;

(iii.) A key plan showing the locality of the site, its situation with regard to adjoining properties and the points of the compass, and also showing the means of access to the ground and the position of the sources of domestic water supply, if any, near the site ;

(iv.) A report by the Medical Officer of Health on the suitability of the proposed site. The question of the freedom from risk of contaminating sources of domestic water supply, and of nuisance from the disposal of drainage water, should receive consideration in this report.

*If the Burial Acts were adopted at a parish meeting the following documents should also be forwarded :—*

(v.) A copy of the notice convening the parish meeting, endorsed with a certificate to the effect that the notice has been published in accordance with the requirements of section 51 of the Local Government Act, 1894, and that it was published not less than fourteen days before the date of the parish meeting ;

(vi.) A copy of the resolution passed by the parish meeting, signed by the chairman of the meeting ;

(vii.) A statement as to (a) the number of parochial electors who voted for the resolution, and (b) the number who voted against it.

*If a poll was demanded on the question whether the Acts should be adopted, the board should be informed :—*

(a) Whether the requirements of the board's order of the 5th of February, 1895, as to polls were complied with, and

(b) What number of votes were given for the adoption, and what number against it.

*In the event of a parish council desiring to borrow money in connection with the provision of a burial ground, the following additional documents should be forwarded.*

(viii.) A copy of the resolution of the parish meeting approving of the purchase of the site and consenting to the loan. If a poll was demanded on the question, the result of such poll should be stated ;

(ix.) A copy of the document conveying the consent of the county council to the loan ;

**App. C.****No. 2.**

(x.) A copy of the resolution of the parish council applying for the board's consent to the loan ;

(xi.) Plans, sections and detailed estimates of the cost of all the proposed works ; and

(xii.) The financial particulars in the accompanying form.

*In the event of a joint committee constituted under section 53 (2) of the Local Government Act, 1894, desiring to borrow money for such a purpose, the under-mentioned documents should be forwarded :—*

(1) A copy of the agreement under section 1 (1) (a) of the Local Government (Joint Committees) Act, 1897, between the councils appointing the committee, as to the proportion in which the money is to be borrowed, or a copy of the order of the county council determining such proportion ;

(2) A copy of a resolution of each council (including any parish meeting) applying for the board's consent to the borrowing of the sum agreed or required to be borrowed by them ;

(3) A copy of the resolutions passed by the parish meeting (or in the case of parishes included in an urban district, by the vestries) of the parishes in the area for which the joint committee act, approving the purchase of the site and the expenditure proposed to be incurred in providing and laying out the burial ground ;

(4) Plans, sections and detailed estimates of the cost of all the proposed works ; and

(5) The financial particulars indicated in the accompanying form.

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**No. 3.**

**Form of Queries to be filled up and information to be furnished to the Local Government Board in connection with applications (other than from Burial Authorities under the Burial Acts) for approval of new Burial Ground.**

**PROVISION OF NEW BURIAL GROUND.**

**QUERIES.**

**REPLIES.**

1. State by whom the new burial ground is to be provided, and under what statutory authority, and in whom it will vest.
2. Name of parish—
  - (a) Civil.
  - (b) Ecclesiastical.

## QUERIES.

## REPLIES.

App. C.

No. 3.

3. What is the population of the parish?—  
 (a) Civil.  
 (b) Ecclesiastical.
4. What has been the average number of burials annually during the past ten years?
5. What is the area and precise locality of the proposed burial ground?  
 (Indicate the position of the site upon an ordnance sheet.)
6. What is the distance of the site from  
 (a) the nearest inhabited portion of the parish?  
 (b) the remotest portion of the parish?  
 (c) the most densely populated part of the parish?
7. Are there any sources of domestic water supply near the site?  
 If so, describe these sources and state the distance in each case from the site.  
 (Indicate these sources upon the ordnance sheet.)
8. What is the nature of the soil as ascertained by trial holes at least eight feet deep?
9. Is the soil free from water to a depth of eight feet?  
 If not, state  
 (a) the depth at which water is met with;  
 (b) what means are available for the drainage of the sub-soil to the depth of eight feet and for the disposal of the resulting water.
10. Attach tracings (in duplicate) from the ordnance map on a scale of not less than six inches to one mile, showing the site and the points of the compass.

(Signed)



App. D.

## APPENDIX D.

**Form of Queries to be answered and Information furnished to the Home Office on application under s. 25 of the Burial Act, 1857, for Licence to remove Remains from Place of Burial.**

BURIAL ACTS DEPARTMENT,  
HOME OFFICE,

19 .

I am instructed to report on an application for licence to remove remains of from a grave or vault in the cemetery or burial ground and shall be obliged if you will let me have replies to the following questions :

I am, your obedient servant,

*Medical Inspector.*

QUERIES.

REPLIES.

1. How long has the deceased been buried ?
2. What was the name and age of the deceased ?
3. Can the coffin be removed without disturbing any other coffin, and without any unusual difficulty ?
4. Is the coffin in consecrated ground ?
5. Do the authorities of the burial ground object to the removal ?
6. Where is the coffin to be re-buried
7. What was the cause of death ?

(Signed)

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## APPENDIX E.

## TABLE OF FEES AND PAYMENTS

To be made to Chancellors or Vicars-General, Registrars, Secretaries, and other Officers, on the Consecration of Churches, Chapels, Cemeteries, and Burial Grounds, on and incidental to the Grant of Faculties, and on the Ordination of Deacons and Priests, and to the Chancellors or Vicars-General, Registrars, and other Officers of Archbishops and Bishops, and to Archdeacons and their Officials, and other Officers, on the Visitation of such Archbishops and Bishops and Archdeacons respectively, settled pursuant to the provisions of 30 & 31 Vict. c. 135.

	Vicar-General, Chancellor, Archdeacon, or Official.	Registrar or other Officer by usage performing the Duty.	Secretary of Archbishop or Bishop.	Apparitor.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1 Consecration of a church and burial ground.	3 3 0	7 7 0	1 1 0	1 1 0
2 Consecration of a cemetery or burial ground.	2 2 0	6 6 0	1 1 0	1 1 0
3 Episcopal or archidiaconal visitation.	0 2 0	0 12 6	—	0 3 6
4 Faculty for alterations in churches or churchyards.	1 1 0	3 13 6	—	0 10 6
5 Ordination ... ..	—	0 5 0	2 2 0	—

1 and 2. The chancellor's fee includes the approval of plans, the perusal of the petitions and other papers, the settling the sentence, and the approval of the draft Act. The registrar's fee includes the perusal of the deeds of conveyance, the drawing and engrossing of the petition, and the sentence and the notarial act, the necessary attendance at the consecration, and the registering the deeds and the Act in the register book of the diocese. The secretary's fee includes the inspection of plans and correspondence prior to the papers being sent to the registry. The apparitor's fee includes all necessary citations and attendance on the bishop at the consecration.

3. The chancellor's fee includes the attendance of the chancellor or his surrogate, the examination of the presentments of the outgoing churchwardens, and the admission of new churchwardens to office. The registrar's fee includes the drawing and issuing of the inhibition and of the mandate for the citation of the clergy, the preparation of the visitation books and of the articles of inquiry,

**App. E.** and the presentment papers, the attendance at the visitation and attesting the presentments and declarations of the churchwardens, the registering the papers exhibited by the clergy, the tabulating in the registry the copies of the register books of baptisms and burials and other papers required to be annually transmitted. The apparitor's fee includes the preparation and delivery of citations to the clergy and churchwardens and the attendance at the visitation.

4. The chancellor's fee includes the perusal of the petition, the order for the notice or citation, as the case may be, the perusal of the certificate and other papers, and making the decree. The registrar's fee includes the perusal of the minutes of vestry and the petition, the drawing of the notice or citation, and attending the chancellor for his order, the preparation of the certificate and attendance on the chancellor for his decree, and the drawing and signing the faculty. The apparitor's fee includes the service of the notice or citation, but is exclusive of one shilling a mile for travelling expenses, if the citation is to be personally served in the country.

5. The registrar's fee is for registering the names and titles of the candidates in the register books of the diocese. The secretary's fee is for correspondence with the candidates, the drawing of papers and instructions prior to examination, attendance at the ordination, preparing the letters of orders, and entering the names and titles of the candidates in the Bishop's Act Book.

A. C. CANTUAR.  
HATHERLEY, C.  
W. EBOR.

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## APPENDIX F.

### FORMS.

1.—**Requisition of ten ratepayers to summon a meeting of vestry to determine whether burial ground shall be provided under Burial Acts (a).**

BURIAL ACT, 1852, s. 10.

To the churchwardens of the parish of \_\_\_\_\_, or other persons to whom it belongs to convene a meeting of the vestry of the said parish.

Whereas it appears to us the undersigned, being ratepayers of the above-mentioned parish, that the places of burial in the said parish are insufficient or dangerous to health: We hereby require you to convene forthwith a

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(a) Available only in parishes in urban districts since the Local Government Act, 1894 (56 & 57 Vict. c. 73). A meeting of the vestry for this purpose may also be called by the churchwardens, etc., without any requisition from ratepayers (Burial Act, 1855 (18 & 19 Vict. c. 128), s. 3.

meeting of the vestry of the said parish for the special purpose of determining whether a burial ground shall be provided under the Burial Acts, 1852 to 1900.

Dated the            day of            .

[To be signed by not less than ten ratepayers of the parish.]

**2.—Resolution of vestry of parish in an urban district to provide a burial ground for the parish under the Burial Acts (b).**

BURIAL ACT, 1852, SS. 10, 11.

Meeting of the vestry of the parish of            , held on the            day of            for the special purpose of determining whether a burial ground shall be provided for the parish under the Burial Acts, 1852 to 1900.

It was resolved that a burial ground be provided for the said parish under the Burial Acts, 1852 to 1900.

**3.—Resolution of parish council to adopt the Burial Acts, 1852 to 1900.**

BURIAL ACT, 1852, s. 10; LOCAL GOVERNMENT ACT, 1894, s. 7 (8).

Meeting of the parish council of the parish of            , in the county of            , held, etc. [as in Form 2, supra].

It was resolved that a burial ground be provided for the said parish under the Burial Acts, 1852 to 1900 (c).

**4.—Grant of exclusive right of burial by a burial board (d).**

BURIAL ACT, 1852, SS. 33, 34.

By virtue of the powers conferred on burial boards constituted under the Burial Acts, 1852 to 1900, to grant exclusive rights of burial, we, the burial board for the parish of            in the county of            in consideration of the sum of            to us paid by [A. B.] do hereby grant unto the said

(b) This resolution is ineffective without the consent of the urban district council (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 62 (2)). If the resolution is passed with the consent of the district council, the vestry must appoint not less than three and not more than nine ratepayers, the incumbent of the parish being eligible as though a ratepayer, even if not in fact a ratepayer. If there is an excess of candidates over the number to be appointed, a poll of the ratepayers must be had, and the expenses of such poll may be defrayed out of the poor rate (Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), s. 2). The resolution must be forwarded to the Local Government Board (Burial Act, 1852 (15 & 16 Vict. c. 85), s. 10, as amended by the Burial Act, 1900 (63 & 64 Vict. c. 15), s. 4).

(c) A resolution of a parish council in this form is to be deemed an adoption of the Burial Acts (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 7 (8)). Fourteen days' notice must be given of the meeting of the parish council at which such resolution is proposed (*ibid.*, Schedule I, Part I., r. 3).

(d) An exclusive right of burial is an easement, and the grant of such a right must therefore be made by deed (*Bryan v. Whistler* (1828), 8 B. & C. 288; 2 M. & R. 318).

**App. F.**

[A. B. or other person to whom it is desired that the grant should be made] h heirs and successors the exclusive right of burial in the grave space marked [ ] in section [ ] in the [consecrated or unconsecrated] portion of the ground at the cemetery situate at aforesaid being part of the ground provided by the said burial board To hold the same to the said [A. B. or other person to whom the grant is made] h heirs successors and assigns for the purpose of burial only subject to the regulations now in force or which may hereafter be issued with regard to interments in the said cemetery by the Local Government Board or by the said burial board or other competent authority.

Given under the seal of the said burial board this            day of  
19 .

**5.—Grant of exclusive right of burial where the powers, etc. of a burial board are exercised by a joint committee under s. 53 (2) of the Local Government Act, 1894 (e).**

By virtue of the powers conferred on burial boards constituted under the Burial Acts, 1852 to 1900, to grant exclusive rights of burial, and by virtue of the provisions of the Local Government Act, 1894, whereby the powers and duties of the burial board for the parish [or district] of            were transferred to the parish council[s] of the parish[es] of            and the district council of the urban district of            [as the case may be] to be exercised by a joint committee appointed by the aforesaid councils, we, the aforesaid parish council[s] and district council, at the request of the joint committee appointed in that behalf in consideration of the sum of            to the said joint committee paid by [A. B.], do hereby grant unto the said [A. B. or other person to whom it is desired the grant should be made] the exclusive right of burial in the grave space marked [ ] in section [ ] in the [consecrated or unconsecrated] portion of the ground at the cemetery situate at            aforesaid, being part of the burial ground vested in the said councils To hold the same to the said [A. B. or other person to whom the grant is made] h heirs successors and assigns for the purpose of burial only subject to the regulations now in force or which may hereafter be issued with regard to interments in the said cemetery by the Local Government Board or by the said joint committee or other competent authority.

Given this            day of            19            under the seal of the said district council of the urban district of            and under the hands and seals of [Chairman and two councillors of each parish council].

(e) This grant should be under the seal of the district council, and should be signed and sealed on behalf of the parish councils by the chairman presiding at the meeting of the council at which the deed is executed, and two other members of the council. See also note to s. 53 (2) of the Local Government Act, 1894 (56 & 57 Vict. c. 73), for reasons why grant should be made by the councils appointing the joint committee, and not by the joint committee itself.

- 6.—Voucher and undertaking by clerk on behalf of joint committee where the powers, etc. of a burial board are exercised by such joint committee under s. 53 (2) of the Local Government Act, 1894.** **App. F**

Received from [A. B.] the sum of \_\_\_\_\_ for a grant of the exclusive right of burial in the grave space marked [ ] in section [ ] in the [consecrated or unconsecrated] portion of the ground at the cemetery situate at [ ]. The said grant will in due course of time be executed by the proper authorities and forwarded by post to the said [A. B.].

For and on behalf of the joint committee exercising the powers of the burial board for the parish [or parishes or the district] of \_\_\_\_\_

X. Y.,

Clerk to the joint committee.

- 7.—Grant of exclusive right of burial, etc., in a cemetery established by special Act of Parliament, or by local authority under Public Health (Interments) Act, 1879.**

See Form in schedule to Cemeteries Clauses Act, 1847, *ante*, p. 336.

- 8.—Notice of Burial in Consecrated Ground without Church of England Service.**

BURIAL LAWS AMENDMENT ACT, 1880, s. 1, AND SCHED. (A.);  
BURIAL ACT, 1900, ss. 7, 8.

See Form in Sched. (A.) to Burial Laws Amendment Act, 1880, *ante*, p. 276.

- 9.—Certificate of Burial where Burial takes place under Burial Laws Amendment Act, 1880.**

See Form in Sched. (B.) to Burial Laws Amendment Act, 1880, *ante*, p. 277.

- 10.—Mortgage of Poor Rates by Burial Board.**

BURIAL ACT, 1852, s. 20; BURIAL ACT, 1854, s. 5; BURIAL ACT, 1857, ss. 19—21; COMMISSIONERS CLAUSES ACT, 1847, ss. 75—88, AND SCHED. (B.); PUBLIC WORKS LOANS ACT, 1875 (38 & 39 VICT. C. 89), ss. 9—11, AS AMENDED BY THE PUBLIC WORKS LOANS ACT, 1892 (55 & 56 VICT. C. 61), s. 2; LOCAL GOVERNMENT (JOINT COMMITTEES) ACT, 1897; BURIAL ACT, 1900, s. 3 (6) (f).

By virtue of the Burial Acts, 1852 to 1900, we, the burial board for the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, appointed in pursuance of the said Acts, in consideration of the sum of £ \_\_\_\_\_ paid to the said burial

(f) The general power of borrowing for the purposes of the Burial Acts upon the security of the poor rates is given to burial boards by the Burial Act, 1852, s. 20. A power to borrow money to pay off former

**App. F.** board by A. B., of \_\_\_\_\_, for the purposes of the said Acts, with the sanction of the vestry of the said parish and the approval of the Treasury, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the poor rates of the said parish of \_\_\_\_\_ as the said sum of £ \_\_\_\_\_ doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said poor rates. To hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of £ \_\_\_\_\_, with interest at £ \_\_\_\_\_ per cent. per annum for the same, shall be fully repaid and satisfied (the principal sum to be repaid at the end of \_\_\_\_\_ years from the date hereof [*in case any period be agreed upon for that purpose*]).

Given under our corporate seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

mortgages is given by the Burial Act, 1854, s. 5. The limitation that loans to burial boards must be paid off by instalments of not less than one-twentieth every year until the whole should be repaid imposed by the Burial Act, 1852, s. 20, was repealed by the Burial Act, 1857, s. 18, so that the term within which, and the mode in which any such loan must be repaid will be such as the Treasury may sanction, and if no other method of repayment is provided, provision for repayment must be made by setting aside as a sinking fund out of the poor rates every year a sum equal to or exceeding one-fiftieth part of the money borrowed (Burial Act, 1857 (20 & 21 Vict. c. 81), s. 20). If, however, the money be borrowed from the Public Works Loan Commissioners in pursuance of s. 21 of the Burial Act, 1852 (15 & 16 Vict. c. 85), the provisions of the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), s. 11, must be complied with, and the loan must be repaid by instalments (in the form of an annuity or otherwise) within a period not exceeding twenty years. The form here given is an adaptation of the form set out in Sched. (B.) to the Commissioners Clauses Act, 1847, *ante*, p. 679, and authorised by s. 75 of that Act, which section together with the other mortgage sections of that Act are incorporated with the Burial Acts by s. 19 of the Burial Act, 1857. If the loan is repayable by instalments, the latter part of the deed should be as follows: "Until the said sum of £ \_\_\_\_\_ with interest thereon at £ \_\_\_\_\_ per cent. per annum for the same or for so much as shall from time to time be owing and unpaid, shall be fully repaid and satisfied (the principal sum to be repaid by the instalments following, that is to say, the sum of £ \_\_\_\_\_ being [one-twentieth] part of the said principal sum of £ \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next, and the like sum on the \_\_\_\_\_ day of \_\_\_\_\_ in every succeeding year until the whole of the said principal sum is repaid)."

By the Public Works Loans Act, 1892 (55 & 56 Vict. c. 61), s. 2, the Loan Commissioners may lend money at the rate of £4 per cent. per annum interest.

A parish council acting in execution of the Burial Acts in a rural parish can only borrow for the purposes of the Burial Acts in accordance with the provisions and conditions of the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 12.

When the powers, etc. of a burial board have been transferred to more than one parish or district council under s. 53 of the Local Government Act, 1894, and are exercised by a joint committee appointed by such councils, any money to be borrowed for the purposes of the Burial Acts must be borrowed by the councils appointing the committee in accordance with the provisions of the Local Government (Joint Committees) Act, 1897, *ante*, p. 666, which *inter alia* substitutes the consent of the Local Government Board for the consent of the vestry and approval of the Treasury.

**11.—Grant of Terminable Annuity charged on Poor Rates to secure Repayment of Loan to Burial Board.**

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BURIAL ACT, 1857, s. 21 ; PUBLIC WORKS LOANS ACT, 1875 (38 & 39 VICT. c. 89), s. 11.

By virtue of, etc. [*as in Form 10, as far as Treasury*] do hereby grant unto the said A. B. and his assigns during the life of the said A. B. [*or unto the said A. B., his executors, administrators, and assigns during the lives of him the said A. B. and of C. D. of* and the life of the survivor of them *or unto the said A. B., his executors, administrators and assigns for the term of [not exceeding thirty] years from the date of these presents*] the annual sum of £ issuing out of the poor rates of the said parish, the first of such annual payments to be made on the day of next and the subsequent payments to be made on the like day in each succeeding year. And we hereby charge the said poor rates with the payment of the said annual sums for the period hereinbefore appearing.

Given under our corporate seal the day of 19 .

**12.—Transfer of Mortgage.**

BURIAL ACT, 1852, s. 20 ; BURIAL ACT, 1857, s. 19 ; COMMISSIONERS CLAUSES ACT, 1847, s. 77, AND SCHED. (C.) (g).

I, A. B., of , in consideration of the sum of £ paid to me by C. D. of , do hereby transfer to the said C. D., his executors administrators and assigns a certain mortgage numbered [*insert the number in the register of the burial board*] made by the burial board for the parish of in the county of bearing date the day of for securing the sum of £ and interest and all my right, estate and interest in and to the money thereby secured and in and to the poor rates thereby assigned.

In Witness, etc.

**13.—Agreement to Purchase Land by Burial Board conditional on Loan being sanctioned by Treasury, and upon Owner obtaining Consent of Owners and Occupiers of Dwelling-houses within 100 yards of Land to be used for Burials.**

BURIAL ACT, 1852, ss. 20, 26 ; BURIAL ACT, 1855, s. 9.

An agreement made the day of between A. B. of (hereinafter called the vendor) of the one part and the burial board for the parish of in the county of (hereinafter called the burial board) of the other part.

(g) This form is an adaptation of that set out in Sched. (C.) to the Commissioners Clauses Act, 1847, *ante*, p. 680, authorised by s. 77 of that Act, which also provides that such transfer shall be made by deed duly stamped, wherein the consideration shall be duly stated ; and by s. 78 is required to be registered with the burial board within thirty days from the date of its execution.



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Whereas the burial board are desirous of purchasing the property hereinafter described for the purpose of a burial ground or an additional burial ground for the said parish and have applied or intend to apply to the Treasury for their approval of the burial board borrowing the sum of £            for the purpose of purchasing the same and for other purposes sanctioned by the Burial Acts, 1852 to 1900, it is hereby agreed by and between the said parties hereto as follows :

1. The vendor shall sell and the burial board shall purchase all that [*describe parcels*].

2. Within seven days after the burial board shall have received from the Treasury notice of their approval of the burial board borrowing the said or other sufficient sum of money the burial board shall give notice in writing of such approval to the vendor, which notice shall state the date on which such approval was notified to the burial board, and the said purchase money shall be paid and the said purchase completed at the offices of the burial board on the expiration of [four] months from the said date on which the approval of the Treasury was so notified to the burial board.

3. The vendor shall before the date herein fixed for completion obtain the written consent of the owner, lessee and occupier of every dwelling-house situate within the distance of one hundred yards from any part of the land hereby agreed to be purchased that the whole of such land shall be used for burials and shall upon completion hand over such written consents to the burial board.

4, 5. [*Insert usual clauses as to delivery of abstract, requisitions, freedom from incumbrances, etc.*]

6. If from any cause whatever the Treasury do not within [twelve] months from the date of these presents give their approval to the burial board borrowing the said or other sufficient sum of money this agreement shall become void as though these presents had not been executed, and neither party hereto shall have any claim against the other for damages or compensation or costs of any kind whatsoever in respect thereof or of any breach thereof.

As Witness, etc.

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**14.—Conveyance on Purchase of Land to Burial Board or Parish or District Council being the Burial Authority.**

BURIAL ACT, 1852, ss. 26, 27 ; BURIAL ACT, 1853, s. 7 ; LANDS CLAUSES CONSOLIDATION ACT, 1845, s. 81, SCHEDULES. (A) AND (B) ; LOCAL GOVERNMENT ACT, 1894, ss. 7, 62.

I           , of           , in consideration of the sum of £            paid to me pursuant to the provisions of the Burial Acts, 1852 to 1900 [*if by a parish or district council, add* and the Local Government Act, 1894] by the

burial board for the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ [or by the parish council of \_\_\_\_\_ or by the urban district council of \_\_\_\_\_ in the county of \_\_\_\_\_] constituted the burial authority for the said parish [or district] under the provisions of the said Acts do hereby convey to the said burial board [or council] their successors and assigns all [*describing the premises to be conveyed*] together with all ways, rights and appurtenances thereto belonging. And all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Acts empowered to convey, to hold the premises to the said burial board [or council] their successors and assigns for ever, according to the true intent and meaning of the said Acts.

In Witness whereof I have hereunto set my hand and seal the \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_ .

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**15.—Conveyance on Chief Rent of Land to Burial Board or Parish or District Council being the Burial Authority.**

BURIAL ACT, 1852, SS. 26, 27; BURIAL ACT, 1853, S. 7; LANDS CLAUSES CONSOLIDATION ACT, 1845, S. 81, SCHEDS (A) AND (B); LOCAL GOVERNMENT ACT, 1894, SS. 7, 62.

I \_\_\_\_\_, of \_\_\_\_\_, in consideration of the rentcharge to be paid to me, my heirs and assigns, as hereinafter mentioned, by the burial board for the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ [or by the parish council of \_\_\_\_\_, or by the urban district council of \_\_\_\_\_ in the county of \_\_\_\_\_] constituted the burial authority for the said parish [or district] by virtue of the provisions of the Burial Acts, 1852 to 1900 [*if by a parish or district council, add, and the Local Government Act, 1894*] do hereby convey to the said burial board [or council] their successors and assigns all [*describing the premises to be conveyed*] together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof. To hold the said premises to the said burial board [or council] their successors and assigns for ever according to the true intent and meaning of the said Acts, they the said burial board [or council] their successors and assigns yielding and paying unto me, my heirs and assigns, one clear yearly rent of £ \_\_\_\_\_ by equal quarterly [or half-yearly, *as agreed upon*] portions, henceforth, on the [*stating the days*] clear of all taxes and deductions.

In Witness whereof I hereunto set my hand and seal the \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_ .

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## 16.—Application by Burial Authority to Bishop to Consecrate part of Burial Ground.

BURIAL ACT, 1900, s. 1.

To the Right Reverend the Lord Bishop of .

The petition of the . being the burial authority for the parish [*or*  
district *or* borough] of . in the county of .

Sheweth :

That the said . is duly constituted the burial authority for the said parish [*or* district *or* borough] under the provisions and by virtue of the Burial Acts, 1852 to 1900 [*if a parish or district council with powers of a burial board, add,* and the Local Government Act, 1894] [*or if a district council having provided a cemetery,* of the Public Health (Interments) Act, 1879, and the Burial Act, 1900] and the several Acts of Parliament incorporated therewith or amending the same, and that by deed of conveyance dated the . day of . 19 . and made between A. B. of, etc., of the one part, and the said . of the other part, the said A. B. for the consideration therein appearing did convey to your petitioners, their successors and assigns, all that piece or parcel of land situate in the parish of . in the county of ., containing [*describe parcels*] which said piece of land is delineated and coloured red and blue in the plan accompanying these presents. And all right, title and interest therein. To hold to your petitioners, their successors and assigns in fee simple for the purposes of the said Acts.

That a portion of the said piece of land hereinbefore described and coloured red in the said plan is intended to be used for ecclesiastical purposes and is now in a fit and proper condition for the purpose of interment according to the rites of the Church of England and is in a fit state to be consecrated.

That the approval of one of his Majesty's Secretaries of State has been obtained for the setting apart of the said portion of the said piece of land so coloured red in the said plan for the purpose of the same being consecrated.

Your petitioners do humbly beseech your lordship to consecrate the said piece of land so coloured red in the said plan as and for a burial ground for the use of the said . and their successors for ever according to the rights and ceremonies of the Church of England, and to separate the same from all profane and common uses whatsoever.

And your petitioners will ever pray.

[*To be sealed if application is made by a corporation having a seal; otherwise to be duly signed on behalf of the authority making the application.*]

**17.—Precept to Overseers for Expenses of Burial Board.****App. F.**

BURIAL ACT, 1852, s. 19; LOCAL GOVERNMENT ACT, 1894,  
ss. 7 (1), 53 (2) (h).

Burial Board for the Parish of \_\_\_\_\_ in the County of \_\_\_\_\_  
To A. B. and C. D., overseers of the poor of the said parish of \_\_\_\_\_  
You are hereby directed to pay to F. G. of \_\_\_\_\_, treasurer of the  
burial board of the above-named parish, at \_\_\_\_\_ on the \_\_\_\_\_ day of  
19\_\_\_\_, the sum of \_\_\_\_\_ pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence from  
the poor rate of the parish to meet the expenses payable by the said burial  
board in the execution of the Burial Acts, and to take the receipt of the  
said F. G. endorsed upon this paper for the said sum.

Sealed at a meeting of the burial board held on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

(L.S.) \_\_\_\_\_ Presiding chairman.  
\_\_\_\_\_ Clerk to the burial board.

**18.—Regulations for the Management of a Burial Ground or Cemetery.**

BURIAL ACT, 1852, s. 38.

1. Orders for interments must be given and fees paid to the clerk at the office of the board between the hours of 10 a.m. and 4 p.m., and on Saturdays between the hours of 10 a.m. and 1 p.m. Orders for interments in common graves must be given one clear day; for interments in private graves, two clear days; and for interments in brick graves or vaults, four clear days before the time fixed for burial.

2. Before re-opening a private grave, the consent in writing of the owner must be left with the clerk, or the grant of ownership must be produced.

3. All fees and charges must be paid in advance, and the names, abode, age, and calling of deceased, with the name and address of the undertaker, the day and hour of burial, and whether such burial is required to be in the consecrated or unconsecrated ground, must be stated in writing at the time of giving the order; and when a private and brick grave is purchased the full christian and surname and address of the purchaser must be stated.

4. Where it is desired that the interment should take place in the unconsecrated part of the burial ground, the relations or friends of the deceased will make their own arrangements for the conduct of the burial service (if any). The name and address of any minister engaged to perform such service should be furnished to the clerk.

(h) This precept can be varied where a parish or district council is the burial authority by substituting the name of the council for that of the burial board. A joint committee under s. 53 (2) of the Local Government Act, 1894, should address its precepts to the councils appointing the committee, and the councils should address their precepts in turn to the overseers in order to obtain their respective proportions from the poor rate.

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5. Interments, whether in the consecrated or unconsecrated part of the burial ground must take place at the following times, viz., 11 a.m., 2 p.m., or 3 p.m. An extra fee of 7s. 6d. will be charged for an interment taking place at any other than the above-mentioned hours, or such other hours as may from time to time be fixed by the board.

6. Two sketches upon tracing paper of every monument or gravestone intended to be erected with all dimensions marked thereon in plain figures, and a copy of the inscription intended to be inserted must be submitted for the approval of the board, and no monument or gravestone will be allowed to be erected, or inscription to be inserted, without such approval.

7. Head-stones are not to exceed the height of four feet in the front row, or five feet elsewhere, or foot-stones the height of eighteen inches, measuring from the surface of the ground.

8. Private graves and vaults and all monuments and gravestones must be kept in repair by the owners. If any monument or gravestone is not kept in proper repair, the board may remove or alter it in any way they may deem necessary or desirable for the due order of the burial ground.

9. A small gravestone with an inscription thereon may by special permission of the board be erected on common graves.

10. The section and number of all private and brick graves and vaults must be cut at the foot of stones in not less than one-inch letters.

11. The registrar's certificate of death, or the coroner's warrant where an inquest had been held, must be given to the officiating minister or the superintendent of the burial ground at the time of burial.

12. All common graves shall be numbered, and an extra register shall be kept, in which shall be recorded the depth of these graves and the names of the persons interred therein, together with their respective ages, which names shall also be recorded alphabetically in an index to such register.

13. No encroachment shall be allowed for burial purposes on any ground marked on the existing plan of the burial ground, as allotted to paths, buildings, etc.

14. No coffin shall be buried at a greater depth than twelve feet.

15. Wooden coffins only shall be allowed, except in purchased graves; and all coffins in vaults or brick graves must be made of lead. No coffins, unless of lead, shall be allowed to be removed after twelve months from the date of burial.

16. Not more than six adult's coffins shall be deposited in a grave twelve feet in depth.

17. No interments are permitted on Sunday's, Christmas Day, Good Friday, and the burial ground is closed against burials on bank holidays after twelve noon.

18. The receipt or demand of any gratuity fee, or unauthorised charge by any officer or servant of the board, will subject the party to instant dismissal.

## APPENDIX G.

## JOINT COMMITTEES APPOINTED UNDER SECTION 53 OF THE LOCAL GOVERNMENT ACT, 1894, FOR THE PURPOSES OF THE BURIAL ACTS.

To the several joint committees in England and Wales who for the time being are appointed for the purposes of the Burial Acts, and whose accounts are subject to audit in pursuance of section 58 of the Local Government Act, 1894 ;

To the district auditors for the time being authorised to audit the accounts of the said joint committees respectively ;

And to all others whom it may concern.

Whereas by sub-sections (1) and (2) of section 58 of the Local Government Act, 1894, it is enacted as follows :

“ 58.—(1.) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

“(2.) The said accounts shall, except in the case of accounts audited by the auditors of a borough, (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council,) be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly.”

And whereas by section 3 of the District Auditors Act, 1879, it is enacted as follows :

“ Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866)

**App. G.**

a financial statement in duplicate in the prescribed form and containing the prescribed particulars ; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.”

\* \* \* \* \*

And whereas the above-recited provision of the District Auditors Act, 1879, applies to all joint committees who for the time being are appointed under section 53 of the Local Government Act, 1894, for the purposes of the Burial Acts by any combination of district councils (including borough councils appointing with other councils not being borough councils), parish councils, or parish meetings, and whose accounts are subject to audit in pursuance of the above-recited provisions of the said Act of 1894 :

And whereas by an Order dated the 27th day of April, 1900, we, the Local Government Board, prescribed a form of financial statement to be prepared and submitted to the district auditor by each joint committee appointed for the purposes of the Burial Acts as aforesaid :

And whereas it is expedient that a fresh form of financial statement should be prescribed :

Now therefore, in pursuance of the powers given to us by the statutes in that behalf, we do hereby rescind the said Order dated the twenty-seventh day of April, one thousand nine hundred, and, subject to any departure which may hereafter be assented to by us, do hereby order and prescribe as follows with respect to each joint committee appointed for the purposes of the Burial Acts as aforesaid :

Article I.—The financial statement to be prepared and submitted to the district auditor in duplicate by the joint committee for the financial year ending on the thirty-first day of March, one thousand nine hundred and two, and for each succeeding year, shall, until we shall otherwise prescribe, be in the form in the schedule to this Order. The financial statement shall in each case contain the particulars required by the form in the schedule to this Order to be specified in the financial statement, so far as such particulars are applicable to the case ; and the certificate of the district auditor to be appended to each duplicate shall be in the form set forth at the foot of the form in the schedule to this Order.

Article II.—The financial statement to be prepared and submitted to the district auditor in duplicate by a joint committee in a case where the joint committee have been in existence for part only of the financial year ending on the thirty-first day of March in any year shall be in the form in the schedule to this Order, with such modifications as may be necessary to render the financial statement applicable to the period of existence of the joint committee.

App. G.

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### SCHEDULE.

Joint committee appointed for the purposes of the Burial Acts by :

The [*insert Town or Urban District, as the case may be*] Council  
of ;

The [*insert Town or Urban District, as the case may be*] Council  
of ;

The Parish [*insert Council or Meeting, as the case may be*] of the  
parish of ;

The Parish [*insert Council or Meeting, as the case may be*] of the  
parish of ;  
in the administrative Count of .

Names of parishes or parts of parishes for which the Joint Committee acted in the under-mentioned year :

WHOLE PARISHES for which the Joint Committee acted .

PARTS OF PARISHES for which the Joint Committee acted .

### FINANCIAL STATEMENT.

The District Auditors Act, 1879 (42 Vict. c. 6) ;

The Local Government Act, 1894 (56 & 57 Vict. c. 73) ; and

The Local Government (Joint Committees) Act, 1897 (60 & 61 Vict. c. 40).

STATEMENT of RECEIPTS and PAYMENTS of the above-named Joint Committee for the year ended the 31st day of March, 19 .

Name of Clerk (or other person keeping the accounts) .

Office address (including post town) .



**App. G.** RECEIPTS and PAYMENTS by the JOINT COMMITTEE appointed by  
between the and the ]

**PART I.—RECEIPTS AND PAYMENTS OTHER**

RECEIPTS OTHER THAN RECEIPTS FROM BORROWED MONIES.		£ s. d.	£ s. d.	£ s. d.
Balance brought forward from Financial Statement for the year ended 31st day of March, 19		- - -	- - -	- - -
Receipts from the councils or meetings appointing the committee (excluding receipts from borrowed moneys, which are to be entered on p. 6); viz.:				
From the—				
	Council of - - -	- - -	- - -	- - -
	Council of - - -	- - -	- - -	- - -
Parish	for the Parish of - - -	- - -	- - -	- - -
Parish	of the Parish of - - -	- - -	- - -	- - -
Other receipts from local authorities:				
Name of Authority.		Purpose.		
Burial fees other than those included in the next item below - - - - -		- - -	- - -	- - -
Fees, not being for services rendered, received by the burial authority under s. 3 (4) (1) of the Burial Act, 1900, on behalf of incumbents, churchwardens, trustees, or other persons - - - - -		- - -	- - -	- - -
From sales of burial rights, or rights of constructing vaults or other places of burial, etc. - - - - -		- - -	- - -	- - -
Rents of property - - - - -		- - -	- - -	- - -
Other receipts, specifying them:		£ s. d.		
Proceeds of sales of property - - -		- - -	- - -	- - -
Interest and dividends on sinking funds - - -		- - -	- - -	- - -
Sales of securities in which sinking funds were invested - - - - -		- - -	- - -	- - -
Total receipts, other than from borrowed moneys (excluding balance)		- - -	- - -	£ - - -
Total - - - - -		- - -	- - -	£ - - -

the \_\_\_\_\_ for the purposes of the Burial Acts, for the year [or period] \_\_\_\_\_ ended the 31st day of March, 19 \_\_\_\_\_ **App. G.**  
**THAN OUT OF BORROWED MONEYS.**

**PAYMENTS OTHER THAN PAYMENTS DEFRAIDED OUT OF BORROWED MONEYS.**

	£ s. d.	£ s. d.	£ s. d.
Cost of burial grounds and buildings thereon (including the wages of persons employed to keep the grounds in order, and the cost of making graves)	- - -		
Payments made by the Joint Committee in respect of loans raised by the (a) and not apportioned between the councils or meetings appointing the committee:			
Principal repaid—	£ s. d.		
(A) out of invested sinking fund - - - - -			
(B) otherwise than out of invested sinking fund - - - - -			
Interest (including including income tax) (b) -			
Payments to sinking fund during the year (c) -			
Fees paid to ministers of religion and sextons for services rendered - - - - -	- - -		
Fees, other than fees for services rendered, paid under s. 3 (4) (1) of the Burial Act, 1900; payments under s. 3 (4) (II) in commutation of such fees; and compensation paid under s. 3 (5) - - -	- - -		
Salaries and wages other than those included in the first item above - - - - -	- - -		
Establishment charges, including the cost of stationery, books, postage, printing, advertisements, audit stamp, gas and fuel for office, and rents, rates, taxes and insurance paid in respect of offices - - - - -	- - -		
Payments to appointing councils or meetings and to other local authorities:			
<b>Name of Authority.</b>	<b>Purpose.</b>		
Other payments, specifying them:			
Legal expenses - - - - -			
<b>Total payments other than out of borrowed moneys - - - - -</b>			<b>£</b>
<b>Balances at the end of the year:</b>	<b>£ s. d.</b>	<b>£ s. d.</b>	
In hands of treasurer - - - - -			
" - - - - -			
" - - - - -			
<b>Less:</b>			
<b>Net balance - - - - -</b>			<b>£</b>
<b>Total payments, other than out of borrowed moneys and balance</b>			<b>£</b>

(a) Insert name of the local authority by whom the money was borrowed.  
 (b) Annual payments in respect of terminable annuities should be apportioned, and the interest and principal repaid should be entered under those headings respectively.  
 (c) Any amounts set aside for sinking fund but remaining in the treasurer's hands should not be entered as expenditure. They should be included in the balances on this page.

App. G.

## PART II.—RECEIPTS FROM AND PAYMENTS

RECEIPTS FROM BORROWED MONIES.		£	s.	d.	£	s.	d.
Balance brought forward from Financial Statement for the year ended 31st day of March, 19	- - - - -	-	-	-			
Receipts from moneys borrowed by the under-mentioned councils or meetings appointing the committee, viz.:							
Total receipts from borrowed moneys (excluding balance)		-	£				
Total - - - - -			£				

## PART III.—STATEMENT in regard to LOANS (if any) which were raised at the end of the year been apportioned between the

Name of Authority by whom the Money was borrowed.	Amount authorised to be borrowed.	Period authorised for repayment.	Amount borrowed.	Date of borrowing.
1.	2.	3.	4.	5.
	£ s. d.	Years.	£ s. d.	
Totals - -				

(d) If any of the loans are repayable by means of a

## SINKING

Amount in Fund at the commencement of the Year.		Sums set apart during the Year, including Interest on Investments.	Amount taken out of the Fund during the Year and applied to repayment of Principal.
Invested.	Uninvested (if any).		
11.	12.	13.	14.
£ s. d.	£ s. d.	£ s. d.	£ s. d.
£			

OUT OF BORROWED MONEYS.

App. G.

EXPENDITURE DEFRAIDED OUT OF BORROWED MONEYS.

In respect of—	£ s. d.	
Total expenditure defrayed out of borrowed moneys - - -	£	
Balances at the end of the year, viz.:	£ s. d.	£ s. d.
In hands of treasurer - - - - -		
" - - - - -		
" - - - - -		
Less:		
Net balance - - - - -		£
Total expenditure defrayed out of borrowed moneys and balance		£

by the Burial Board succeeded by the Joint Committee and which had not Councils or Meetings by whom the Committee is appointed (d).

Rate of Interest per Cent.	Amount of Principal owing at commencement of the Year.	Amounts paid during the Year for		Amount of Principal owing at end of the Year.
		Principal (excluding payments out of Invested Sinking Fund).	Interest.	
6.	7.	8.	9.	10.
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.

sinking fund the following particulars should be given :

FUND.

Total Sum in Fund at end of the Year.		Securities in which Sinking Fund is Invested.
Invested.	Uninvested (if any).	
15.	16.	17.
£ s. d.	£ s. d.	
} £		

App. G.PART IV.—SUMMARY OF THE RECEIPTS AND PAYMENTS SHOWN  
IN THE FOREGOING STATEMENT.

		£	s.	d.
Receipts :				
Other than from borrowed moneys	- - - - -			
From borrowed moneys	- - - - -			
Total receipts	- - - - -	£		
Payments :				
Other than out of borrowed moneys	- - - - -	£	s.	d.
Less loans repaid out of invested sinking fund	- - - - -			
Out of borrowed moneys	- - - - -			
Net expenditure on which stamp duty is payable	- - - - -	£		

, Clerk to (or Chairman of) Joint Committee.  
day of , 19 .

		£	s.	d.	£	s.	d.
Total payments other than out of borrowed moneys	- - - - -						
Total payments out of borrowed moneys	- - - - -						
Total	- - - - -			£			
Less amount disallowed at audit	- - - - -						
Amount allowed at audit	- - - - -			£			

I hereby certify that I have compared the entries in this Financial Statement with the vouchers and other documents relating thereto, and that the regulations with respect to such statement have been duly complied with.

I hereby further certify that I have ascertained by audit the correctness of such statement, and that the expenditure of the Joint Committee during the period ended the 31st day of March, 19 , included in such statement and allowed by me at the audit, is (e)

As witness my hand this day of , 19 .  
(Stamp (f)). District Auditor.

Given under the Seal of Office of the Local Government Board, this  
Twenty-ninth day of April, in the year One thousand nine hundred  
and two.

(L.S.)  
S. B. PROVIS,  
Secretary.

WALTER H. LONG,  
President.

(e) The amount to be inserted in words at length.

(f) The description of the Joint Committee and the date of cancellation are to be written across the stamp.

# I N D E X.

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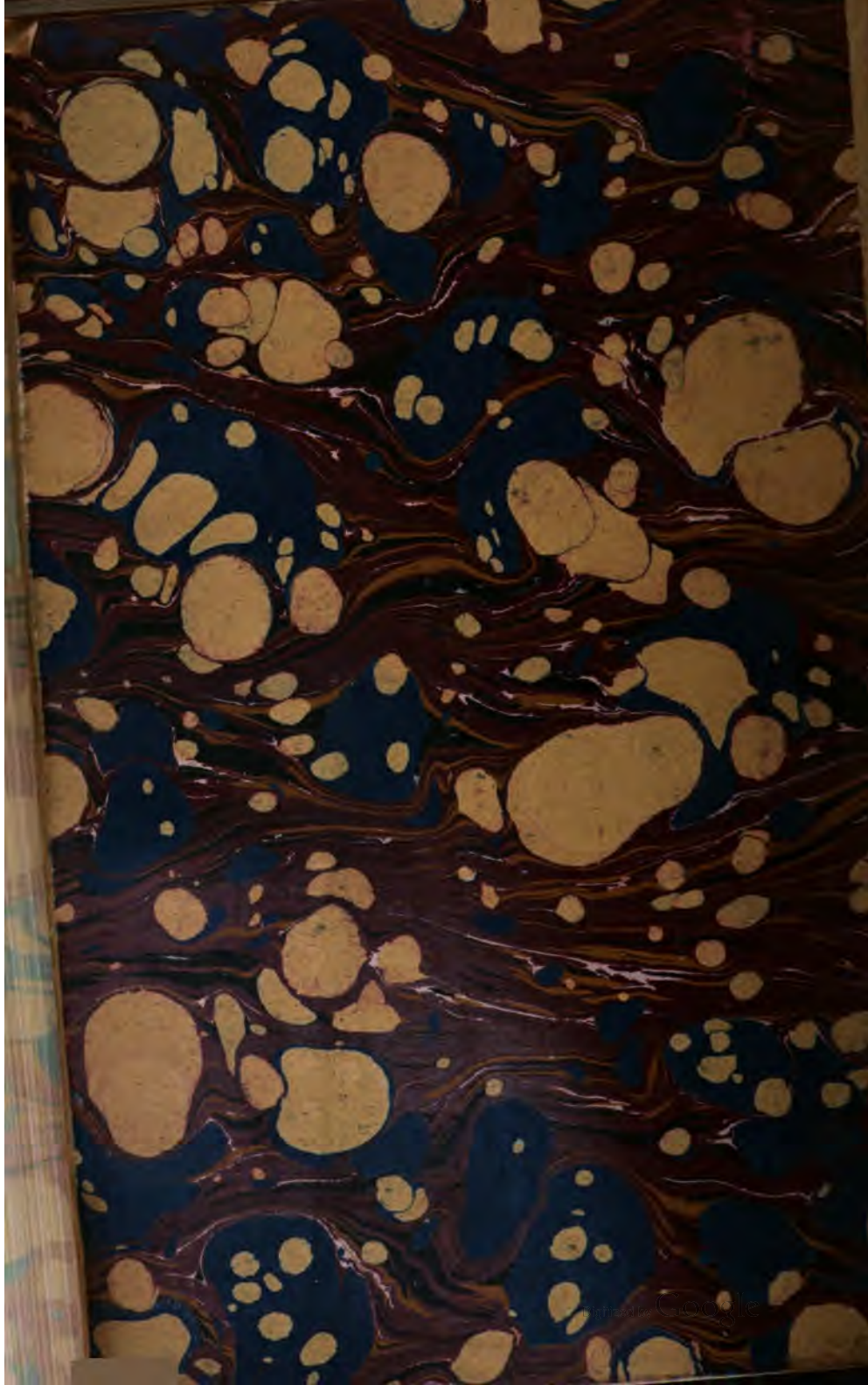














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